Agenda Item B.1
Situation Summary
March 2012

NATIONAL MARINE FISHERIES REPORT – HIGHLY MIGRATORY SPECIES

NMFS Southwest Region will brief the Council on recent regulatory activities. NMFS Southwest Fisheries Science Center will provide an update on science activities.

Council Action:

Discussion.

Reference Materials:

1. Agenda Item B1.b, Attachment 1: HMS Regulatory Activities Report.

Agenda Order:

a. Agenda Item Overview	Kit Dahl
b. Regulatory Activities	Mark Helvey
c. Fisheries Science Center Activities	Russ Vetter
d. Reports and Comments of Advisory Bodies and Management Entities	
e. Public Comment	
f. Council Discussion	

PFMC
02/13/12

NATIONAL MARINE FISHERIES SERVICES REPORT ON REGULATORY ACTIVITIES – HIGHLY MIGRATORY SPECIES

Final Rule to Implement New Swordfish Retention Limits for Deep-set Longline Fishery

The final rule implements the Council's recommendation to modify highly migratory species (HMS) fishery management plan (FMP) regulations governing the possession and landing limits of swordfish captured in the deep-set longline fishery as follows: 1) if a vessel without an observer onboard uses any J-hooks (tuna hooks), the trip limit is 10 swordfish; 2) if a vessel without an observer onboard uses only circle hooks, the trip limit is 25 swordfish; 3) if the vessel carries a NMFS-approved observer during the entire fishing trip, there is no limit on swordfish retained. Regulations prohibiting the use of shallow-set longline gear to target swordfish remain in place. On October 20, 2011, NMFS published the proposed rule (76FR65155) for this action. The public comment period closed November 22, 2011. NMFS received four public comments, two in support of the action and two critical of the action. NMFS has prepared responses to the critical comments as part of the final rule package that is undergoing review and approval in Silver Spring. The anticipated Federal Register publication date for the final rule is late February 2012.

Recreational Fisheries Update

On December 6, 2011, the NMFS released the Southwest Region Saltwater Recreational Fishing Action Agenda, developed by the Regional Office and Science Center, with input from regional anglers. It is available on the NMFS Southwest Regional Office (SWRO) website: http://swr.nmfs.noaa.gov/recfish/Action_Agenda_sw_Final.pdf

This plan follows up on the commitment NMFS made at the April 2010 Recreational Saltwater Fishing Summit to improve communication and collaboration with anglers. Seven regional plans were developed nationwide to identify regional priorities and objectives for recreational saltwater fishing issues.

Two upcoming opportunities for participation include the:

- ***FishSmart Pacific Workshop on Barotrauma* in May**. NMFS is collaborating with researchers and anglers to convene this workshop to discuss emerging research and techniques to reduce rockfish and salmon catch and release mortality. It is planned for the week of May 7 in Portland, OR. Participation will be primarily by invitation, but there will also be some space for public participation.
- ***Constituent Meeting at the Fred Hall Fishing and Boating Show* in March**. The NMFS Southwest Recreational Coordinators will meet with recreational constituents to discuss progress to date, concerns, and suggestions on the Action Agenda. The meeting will likely be March 6 or 7 in conjunction with the Long Beach Fred Hall Show. NMFS will also have a booth at both the Long Beach and Del Mar shows.

The NMFS Coordinators have had ongoing communications with constituents, including several fishing clubs and charter vessel / commercial passenger fishing vessel (CPFV) operators. Issues of interest and concern discussed include: fishing area access, confusion/concerns over new Mexican Visa requirements, interactions with pinnipeds, rockfish catch and release requirements, and opportunities to work with NMFS.

NMFS is also working with anglers on several important collaborative research projects. The Highly Migratory Species Biological Sample Donation Project was featured in a recent article in *Western Outdoor News*. Anglers have been working with NMFS report sightings of basking sharks. Finally, the NMFS National Angler Expenditure Survey is underway and on track for completion in June 2013 (May 2012 ends data collection phase).

PFMC
02/13/12

UPDATE ON AND RECOMMENDATIONS FOR INTERNATIONAL MANAGEMENT ACTIVITIES

Under this agenda item the Council has three issues to consider in relation to the international management of highly migratory species managed under the Council Fishery Management Plan, as outlined below. Additional information or issues may come up under this agenda item.

Developing a management framework for North Pacific albacore tuna

At the November 2011 meeting the Council was briefed on the Western and Central Pacific Fisheries Commission (WCPFC) Northern Committee's decision to develop a management framework for North Pacific albacore tuna, which would include identification of target and limit reference points, and predetermined management responses if a limit reference point was likely to be exceeded. The Council had previously recognized the need to develop a framework so the Council would be in a better position to react to future stock assessment results and management responses at the international level, which might require domestic action. In June 2011 the Council tasked the Highly Migratory Species Management Team (HMSMT) and HMS Advisory Subpanel (HMSAS) with beginning development of a proactive management framework for North Pacific albacore, towards a purpose of being proposed at the international level through U.S. delegations.

The HMSMT met January 10-12, 2012, to gather information for a report for the Council on this topic. Their report is attached as Agenda Item B.2.b, HMSMT Report.

Negotiations between the U.S. and Canada with respect to the Albacore Treaty

The U.S. and Canada met November 30-December 1, 2011, to discuss the Fishing Regime authorizing reciprocal access to each country's Exclusive Economic Zones by vessels from the other. The Fishing Regime is pursuant to the U.S.-Canada Albacore Treaty, as detailed in Appendix C (see Attachment 1). The 3-year regime described in Appendix C is set to expire~~d~~ at the end of 2011, unless extended by mutual consent. At the November 2-7, 2011, Council meeting, the Council provided general direction to Buzz Brizendine to represent the Council perspective at the negotiation session. Specifically, they advised he promote stability by not advocating termination of the treaty. Recognizing fluid issues emerging at the negotiation, such as fishing regime specifics, they asked that he contribute to the delegation in a manner consistent with the Council discussion at the time regarding improved equity for U.S. fishery participants and processors.

On November 21, 2011, Mr. David Hogan, Deputy Director of the Office of Marine Conservation, Department of State, received a joint letter from the Western Fishboat Owners Association (WFOA) and the American Albacore Fishing Association (AAFA) (Attachment 2) stating "In light of this treaty's history, WFOA and AAFA Boards of Directors are in full agreement that *fishing rights* under the Treaty should be terminated." The letter goes on to say "If discussions toward reestablishing reciprocal fishing access in the future receive broad stakeholder support, such discussions should proceed only after thorough study and consideration of the U.S. fishery, both during the Treaty's reciprocal fishing period and for an amount of time thereafter adequate to assess and address its impacts."

The U.S. delegation presented this position to the Canadian negotiators, who were not prepared with a response that would address U.S. concerns. The meeting ended without agreement on renewal of the Fishing Regime and no subsequent proposal was received from the Canadian representatives by December 31. 2011; therefore, there are no reciprocal access rights in place for 2012. The U.S. and Canada are discussing a second negotiating meeting but no date has been confirmed as of the briefing book deadline. Unless further negotiations result in an agreement before the beginning of the next actual fishing season (under the previous fishing regime reciprocal access began June 15), reciprocal access rights will be remain suspended in 2012 and future years.

Mr. Buzz Brizendine has submitted a brief report based on his participation in the U.S. delegation to the negotiations, (Attachment 3) and is available to answer questions.

Council recommendations to the WCPFC and IATTC delegations

At the November 2011 meeting, the Council adopted recommendations to the U.S. delegation to the Eighth Regular Session of the WCPFC (WCPFC8) scheduled for December 5-9, 2011, in Koror, Palau. However, the meeting was subsequently delayed to March 26-30, 2012. The Council therefore has the option of revisiting and revising their recommendations (see Attachment 4) if desired.

The Inter-American Tropical Tuna Commission (IATTC) will hold its Annual Meeting June 18-29, 2012, which overlaps with the June Council meeting. In addition, their Scientific Committee meets May 15-18. It is at this meeting that new stock assessments are presented and reviewed and staff conservation recommendations discussed. The timing of these meetings does not fit very well with the Council schedule. The Council should decide what to do about developing recommendations for the U.S. delegation to the IATTC Annual Meeting.

Council Action:

1. **Consider Recommendations for the Development of a Management Framework for Albacore Tuna by the Northern Committee and any Related Domestic Actions**
2. **Adopt Recommendations Relative to any Further Negotiations between the U.S. and Canada on the Fishing Regime Under the Albacore Treaty**
3. **Consider Any Additional Recommendations for the U.S. Delegation to WCPFC8 and the Development of Recommendations for the IATTC Annual Meeting**

Reference Materials:

1. Agenda Item B.2.a, Attachment 1: United States of America and Canada, Treaty on Pacific Coast albacore tuna vessels and port privileges (with annexes). Signed at Washington on 26 May 1981 and Annexes as Amended.
2. Agenda Item B.2.a, Attachment 2: Joint Letter to Mr. David Hogan on U.S. - Canada Albacore Treaty – Joint Position of WFOA & AAFA.
3. Agenda Item B.2.a, Attachment 3: Report on Negotiations between the U.S. and Canada on the Albacore Treaty, Buzz Brizendine.
4. Agenda Item B.2.a, Attachment 4: Letter to Russell Smith from Donald McIsaac with Council Recommendations to the U.S. Delegation to WCPFC8.
5. Agenda Item B.2.b, NMFS Report on International HMS Activities.
6. Agenda Item B.2.b, HMSMT Report.

7. Agenda Item B.2.c, Public Comment: U.S.-Canada Albacore Treaty.

Agenda Order:

a. Agenda Item Overview Kit Dahl
b. Reports and Comments of Advisory Bodies and Management Entities
c. Public Comment
d. **Council Action**: Consider and Adopt Recommendations on International Management Activities Concerning a Management Framework for Albacore Tuna and the U.S.-Canada Treaty

PFMC
02/09/12

Entered into force July 29, 1981.
Amendments: October 1997, August 2002, and June 2009.

TREATY BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA ON PACIFIC COAST ALBACORE TUNA VESSELS AND PORT PRIVILEGES

The Government of Canada and the Government of the United States of America,

Desiring to cooperate in matters concerning the albacore tuna fishery off the Pacific Coast of Canada and the United States,

Desiring to benefit the fishing industries involved in that fishery, and

Taking into account the deliberations of the Third United Nations Conference on the Law of the Sea in the field of fisheries,

Have agreed as follows:

ARTICLE I

Without prejudice to the respective juridical positions of both Parties regarding highly migratory species of tuna, each Party shall:

a) ensure that all its vessels engaged in fishing for albacore tuna in waters under the fisheries jurisdiction of the other Party shall do so in accordance with this Treaty;

b) permit fishing vessels of the other Party to fish for albacore tuna in waters under its fisheries jurisdiction beyond twelve nautical miles of the baselines from which the territorial sea is measured, in accordance with and subject to the limitations and conditions in Annex "A" and Annex "C" to this Treaty and subject to other applicable laws and regulations.

ARTICLE II

Vessels of the United States of America fishing pursuant to this Treaty shall be authorized to enter the Canadian ports listed in Annex “B” to this Treaty and to use Canadian facilities and services, subject to compliance with applicable customs, navigation, safety, environmental and other laws and regulations pertaining to port privileges, and payment of applicable albacore tuna landing fees provided that such fees do not discriminate according to nationality, for the following purposes:

1. to land their catches of albacore tuna without the payment of duties and

a) tran-ship them in bond under customs supervision to any port of the United States of America; or

b) sell them for export in bond; or

c) sell them locally on payment of the applicable customs duty; and

2. to obtain fuel, supplies, repairs and equipment on the same basis as albacore tuna vessels of the other Party.

ARTICLE III

Canadian vessels fishing pursuant to this Treaty shall be authorized to enter the United States ports listed in Annex "B" to this Treaty and to use United States facilities and services, subject to compliance with applicable customs, navigation, safety, environmental, and other laws and regulations pertaining to port privileges, and payment of applicable albacore tuna landing fees provided that such fees do not discriminate according to nationality, for the following purposes;

1. to land their catches of albacore tuna without the payment of duties and

a) tran-ship them in bond under customs supervision to any port of Canada; or

b) sell them for export in bond; or

c) sell them locally on payment of the applicable customs duty; and

2. to obtain fuel, supplies, repairs and equipment on the same basis as albacore tuna vessels of the other Party.

ARTICLE IV

Neither Party shall, pursuant to its fisheries legislation, prohibit the importation into its territory of Pacific albacore tuna and products from the other Party as a consequence of a dispute arising in other fisheries.

ARTICLE V

1. Vessels of each Party which are not in compliance with this Treaty are subject to enforcement action by the other Party when engaged in fishing for Pacific albacore tuna in waters under the fisheries jurisdiction of the other Party.

2. Arrested vessels and their crews shall be promptly released, subject to such reasonable bond or other security as may be determined by the court.

3. Enforcement actions under this Treaty shall not include imprisonment.

4. In the case of seizure and arrest of a vessel by the authorities of one Party, notification shall be given promptly through diplomatic or consular channels informing the other Party of the action taken and of any penalties subsequently imposed.

ARTICLE VI

1. Either Party may at any time request consultations on the interpretation or application of this Treaty. Such consultations should commence as soon as practicable but in any case not later than sixty days from the date of receipt of the request for consultations, unless otherwise agreed by the Parties.

2. In the event of a dispute arising between the Parties concerning the interpretation or application of this Treaty, the Parties shall consult with a view to resolving the dispute by negotiation.

ARTICLE VII

The Annexes may be amended by the Government of Canada and the President of the United States through an Exchange of Notes.

ARTICLE VIII

This Treaty shall enter into force upon the exchange of instruments of ratification at Ottawa. After two years from the date of entry into force, either Party may give written notice to the other Party to terminate this Treaty. The Treaty shall terminate on December 31 of the calendar year following that in which such notice was received by the other Party.

In WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

Done at Washington in duplicate, in the English and French languages, both versions being equally authentic, this Twenty-sixth day of May, 1981.

PETER TOWE
For the Government of Canada

WILLIAM CLARK
For the Government of the United States of America

ANNEX A

1.

a. Each Party agrees to provide annually to the other Party a list of its fishing vessels which propose to fish albacore tuna in the Exclusive Economic Zone (EEZ) of the other Party, which is defined in Article I(b) of the Treaty. The list will include:

(i) vessel name,

(ii) home port,

(iii) radio call sign or vessel identification marking that identifies the flag state of the vessel ("Vessel Identification Marking"),

(iv) fishing vessel registration number,

(v) captain or operator's name, if known, and

(vi) vessel length. For Canada, the list of vessels will be transmitted to the United States as of June 1. For the United States, a provisional list shall be provided by July 1 and may be revised during the fishing season.

b. With regard to the list of Canadian vessels, the list shall remain fixed for the entirety of the fishing season as defined in paragraph 2 of Annex C. No vessels may be added to or replaced on the list during the fishing season except pursuant to paragraph 1(c) below.

c. In the event of *force majeur* or other cause for an exceptional request by the captain or owner of a Canadian vessel on the list in 1(a) for replacement of a vessel within a season, an ad hoc review panel will be convened by the Government of Canada to review the request and determine whether the request is warranted. If the finding is positive, the basis for the finding and the information regarding the replacement vessel per paragraph 1(a) above shall be transmitted to the Government of the United States prior to the vessel entering the EEZ of the United States. Any replacement vessel shall not exceed the length overall of the original vessel it is replacing by more than 10 feet. Any subsequent replacements of that first replacement vessel must be of the same size or shorter than the vessel being replaced.

d. As soon as possible after receipt of the list of proposed fishing vessels, and subject to paragraph 1(e) below, the receiving Party shall satisfy itself that the list received meets the criteria of paragraph 1(a) and shall so inform the other Party in order to enable the albacore fishery to proceed pursuant to this Treaty.

e. Should one Party object to the inclusion of a particular vessel on the list of the other Party, the two Parties shall consult. Such objection may be made on the basis that the vessel in question has been involved in serious or repeated fisheries violations or

offenses. In the event of consultations, actions pursuant to paragraph 1(d), with regard to other vessels shall not be delayed. Following consultations, each Party shall notify its respective vessels that both Parties agree shall not be included on the list referred to in paragraph 1(d).

2. If required by either Party, each vessel shall, prior to entering and leaving the EEZ of such Party, so inform the appropriate authorities and provide the vessel name, radio call sign or Vessel Identification Marking, captain or operator's name and the purpose for being in such Party's EEZ.

3. When in the EEZ of the other Party, each vessel shall have its name and radio call sign or Vessel Identification Marking prominently displayed where they will be clearly visible both from the air and from a surface vessel.

4. Vessels of both Parties shall maintain accurate and complete records of catch, effort and other data on report forms provided by their respective governments while fishing pursuant to this Treaty. The Parties shall develop a real-time data reporting protocol to address the objective of achieving reporting of catches by vessels of one Party fishing in the EEZ of the other Party. Any logbooks and related databases maintained by either Party shall be made available to the other Party regularly for verification purposes, subject to the Parties' respective rules on data confidentiality.

5. In order that better information may be obtained concerning the stocks of albacore tuna which migrate off the west coasts of the United States and Canada, each vessel engaged in fishing pursuant to this Treaty shall be required to provide to its government statistics and other scientific information on its operations in the EEZ of the other Party. Each Party shall provide to the other Party such information and in particular the amount (weight) and a sampling of biological data of albacore tuna caught by its vessels in the EEZ of the other Party. Such information shall be provided on an annual basis and at least 30 days prior to the annual consultations referred to in paragraph 6 of this Annex. Other specific information to be provided, as well as the forms and procedures for providing such information, shall be agreed upon by the Parties.

6. The Parties shall consult annually, *inter alia,* to:

   a. discuss data and information on albacore tuna fisheries exchanged under paragraph 5 of this Annex; and

   b. exchange information on their respective conservation and management measures for albacore tuna and on implementation of internationally agreed conservation and management measures applicable to the Parties related to fisheries covered under this Treaty.

   The Parties shall also notify one another of the conservation and management laws and regulations applicable to vessels fishing in each other's EEZ pursuant to Article I(b) of this Treaty.

ANNEX B

1. Fishing vessels of the United States of America shall, pursuant to Article II, be authorized to enter the following ports located in Canada:

Coal Harbour

Port Hardy

Prince Rupert

Victoria

Vancouver

Ucluelet

2. Canadian fishing vessels shall, pursuant to Article III, be authorized to enter the following ports located in the United States of America:

Astoria

Bellingham

Coos Bay

Eureka

Newport

Westport

ANNEX C

1. Each Party agrees to limit fishing by its respective vessels engaged in fishing for albacore tuna in the in the Exclusive Economic Zone (EEZ) of the other Party, which is defined in Article I(b) of the Treaty, in accordance with the limitation regime (the "Regime") below.

2. During the term of the Regime, a "fishing season" shall be defined as a period of fishing commencing on June 15 and ending on October 31. The regime shall begin on the first June 15th occurring after the date of entry into force of this Annex and expire on the first December 31 occurring after the third fishing season of the Regime.

3.

    a. 12 months prior to the conclusion of the Regime, the Parties shall consult with a view to negotiating an extension and/or revision of the Regime, as appropriate, for a period of one or more years.

    b. The Parties shall conduct the consultations and negotiations referred to in 2(a) in good faith, including with sufficient time and resources, with an objective to conclude a new reciprocal fishing regime, if in the national interests of both Parties, within the one year period provided in 2(a). Criteria of national interest shall include, inter alia:

        i. the health of the stock,

        ii. the extent of landings of fish in the ports of each Party pursuant to the Regime, and

        iii. the economic benefits realized by the economies of both Parties as a result of the Regime.

    c. The Parties further agree that they may further extend the period of the Regime for an additional fishing season, by their mutual concurrence in writing, if that would improve the likelihood of concluding a new agreement extending and/or amending the existing Regime.

4. In each fishing season of the Regime, the Government of Canada shall limit fishing for albacore tuna by its vessels in the EEZ of the United States to 110 troll vessels. The Government of the United States shall limit fishing for albacore tuna by its vessels in the EEZ of Canada to a number of vessels reflective of historical levels.

5. If at any point during the term of this regime a Party receives a request for resolution of a matter related to the implementation of this Treaty with specific regard to the Regime, and notwithstanding the consultations contemplated in paragraphs one and two of Article VI of the Treaty, the Parties may establish through an exchange of letters setting out a mutually held understanding on the terms of reference for an ad hoc consultative group

consisting of an equal number of experts of the two Parties knowledgeable about the Pacific albacore tuna fishing industry who will serve in their personal capacity for the purpose of examining questions of implementation referred by the Parties.

a. The Parties will set out any question or matter of difference between them involving the rights, obligations or interests of either in relation to the other or to the inhabitants of the other.

b. Each Party will be responsible for determining the manner in which the travel and other costs associated with the operations of the consultative group for the members of the group that they nominate will be provided, and for the respective shares.

c. Each Party will be responsible for determining the manner in which any jointly incurred expenses associated with the operations of the consultative group are funded.

d. Any report submitted by the group should represent a consensus of the members appointed, but in the absence of a consensus, two reports, one by a majority of the members and the other by a minority of the members, or a report each should the views of the group be equally divided, may be submitted to the Parties for their further consideration.

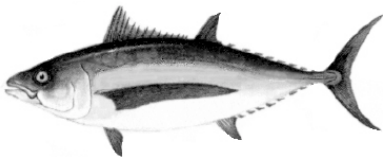
6.

a. Notwithstanding Article VIII, a Party may only terminate the Regime , by providing written notice to the other Party that:

i. an international fisheries management organization with competence over highly migratory species such as the Inter-American Tropical Tuna Commission has adopted a fisheries conservation and management measure for North Pacific Albacore that requires one or both Parties to adopt a domestic management regime, structure or measure that may not be consistent with or may undermine the implementation of the Regime, or

ii. as a result of domestic fisheries management requirements, regulation or laws, a Party must put in place measures for managing fisheries on albacore or associated species that may not be consistent with or may undermine the implementation of the Regime.

b. Upon notification, the Parties shall consult, taking into account the provisions of paragraph 2, to consider re-establishment of a reciprocal fishing regime. The Regime shall terminate on December 31 of the calendar year following that in which such notice was received by the other Party.



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November 21, 2011

COPY

VIA EMAIL TO: HoganDF@state.gov

Attn: David F. Hogan, Deputy Director
Office of Marine Conservation, U.S. Dept. of State
2201 C Street NW
Washington, D.C. 20520

Re: U.S. - Canada Albacore Treaty – Joint Position of WFOA & AAFA

Dear Mr. Hogan:

The Western Fishboat Owners Association (WFOA) and the American Albacore Fishing Association (AAFA) represent U.S. commercial albacore fishermen who participate in the traditional pole & troll albacore fishery in the exclusive economic zone (EEZ) of the United States and on the high seas.

Our associations have long criticized the imbalance of benefits perpetuated by the U.S. - Canada albacore Treaty. In recent years, Treaty renegotiations have failed to effectively address the concerns of U.S. stakeholders.

In light of this treaty's history, WFOA and AAFA Boards of Directors are in full agreement that *fishing rights* under the Treaty should be terminated. Immediate termination is requested. Starting January 1, 2012, there should be no more reciprocal fishing access under the Treaty.

The Treaty has deviated from its stated intent and has corrupted its original purpose, and we urge that the terms and conditions of the current fishing limitation "regime" be discarded. A history of apparent disregard for many of these terms and conditions demonstrates the regime's inability to advance the spirit of the Treaty.

If discussions toward reestablishing reciprocal fishing access in the future receive broad stakeholder support, such discussions should proceed only after thorough study and

consideration of the U.S. fishery, both during the Treaty's reciprocal fishing period and for an amount of time thereafter adequate to assess and address its impacts. The improved health of the U.S. fishery and economy should help guide such future discussions.

In summary, the Boards of Directors for the Western Fishboat Owners Association and the American Albacore Fishing Association strongly believe that continued fishing under the Treaty should be terminated. Together, WFOA and AAFA request the U.S. Department of State proceed with actions necessary to ensure there is no further reciprocal fishing access under the Treaty.

Sincerely,

Lewis Hill, President
Western Fishboat Owners Association

Date: _____

Sincerely,

Jack Webster, President
American Albacore Fishing Association

Date: _____

REPORT ON THE MEETING BETWEEN THE U.S. AND CANADA TO DISCUSS THE U.S.-CANADA ALBACORE TREATY

Buzz Brizendine, Council Member

The meeting took place at the Metropolitan Hotel, Vancouver, British Columbia, Canada, November 30-December 1, 2011. The U.S. delegation was led by Mr. David Hogan, U.S. State Department. National Marine Fisheries Staff, including Mr. Mark Helvey, and representatives of the west coast albacore fishery also participated.

The purpose of negotiation was to discuss a possible fishing regime for the 2012 fishing season and beyond. Shortly before the meeting the U.S. delegation received a letter from the American Albacore Fishing Association and the Western Fishboat Owners Association requesting that the fishing regime be suspended for the 2012 season (see Agenda Item B.2.a, Attachment 2).

The U.S. represented the position stated in the joint letter and no agreement was reached at the meeting on a replacement for the fishing regime that expired December 31, 2011. The U.S. and Canada agreed to the following tasks:

1) Canada will review the U.S.'s request to extend the time period for catch attribution for vessels fishing in the other party's waters.
2) Canada will look into developing a process for third-party administration of a self-imposed levy on their fishermen to fund albacore research.
3) The parties will continue to discuss suitable conditions for a reciprocal access agreement, including limits on the number of vessels, the length of the season, vessel size, etc.
4) The parties will reconvene the Data Working group as soon as possible.
5) The parties will investigate the economic benefits of the Treaty to U.S. port businesses and possibly form an Economic Working Group.
6) Harvesters will develop and endorse a mutually-agreed upon Code of Fishing Conduct governing on-the-water behavior and a dispute resolution process.

PFMC
02/09/12

Pacific Fishery Management Council

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Dan Wolford, Chairman — Donald O. McIsaac, Executive Director

November 16, 2011

Russell F. Smith III
Deputy Assistant Secretary for International Fisheries
NOAA, Office of International Affairs
Building HCHB, Room 6224
1401 Constitution Avenue, NW
Washington, D.C. 20230

Russell

Dear Mr. Smith:

At its November 2-7, 2011, meeting the Pacific Fishery Management Council (Pacific Council) discussed recommendations to the U.S. delegation to the upcoming Eighth Regular Session of the Western and Central Pacific Fisheries Commission (WCPFC8). The Council decided it would be most appropriate to forward to you the comments of its two advisory bodies, the Highly Migratory Species Advisory Subpanel and the Highly Migratory Species Management Team. I have attached their statements as the Council recommendations to the U.S. delegation. Briefly, these recommendations are:

- To address overfishing of bigeye tuna, implement a seasonal purse seine closure, similar to the one currently implemented by the Inter-American Tropical Tuna Commission (IATTC) in the Eastern Pacific Ocean, require full catch retention in purse seine fisheries, and maintain the bigeye longline catch quotas first implemented in CMM 2008-01.
- Support measures to minimize cetacean and whale shark mortality in the WCPFC Convention Area.
- Introduce a measure similar to IATTC Resolution C-11-10 to prohibit retention of oceanic whitetip sharks.
- Support proposals to increase compliance with WCPFC conservation and management measures.
- Push for the adoption of appropriate reference points for all managed stocks in the WCPFC Convention Area by 2014.
- Encourage greater cooperation between the WCPFC and IATTC to establish and implement uniform management measures in the overlap area of the respective Convention Areas.
- Do not support elements in the Regional Observer Program that would apply the same observer requirement to small vessels (often defined as vessels 24 meters or less in length) that apply to larger purse seine and longline vessels.

I look forward to working with you and the entire U.S. delegation during WCPFC8 to promote the adoption of necessary and appropriate measures.

Sincerely,

D. O. McIsaac, Ph.D.

KRD:kam

Attachments: Agenda Item I.1.b, Supplemental HMSAS Report, November 2011
Agenda Item I.1.b, Supplemental HMSMT Report, November 2011

c.c Council Members
HMSMT Members
HMSAS Members
WCPFC US Commissioners
Ms. Kitty Simonds, WPFMC
Mr. Bill Gibbons-Fly, DOS
Mr. Michael Tosatto, PIRO
Mr. Peter Flournoy, PAC Chair
Dr. Kit Dahl, Pacific Council Staff
Mr. Donald Hansen, Pacific Council Staff

HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON COUNCIL RECOMMENDATIONS ON INTERNATIONAL HIGHLY MIGRATORY SPECIES MANAGEMENT

WCPFC8

The Highly Migratory Species Advisory Subpanel (HMSAS) supports that the Council advise the U.S. delegation that on bigeye, yellowfin and skipjack tuna fisheries, the conservation measures developed for the large purse seine and longline vessels are not appropriate to our smaller scale commercial fisheries (which are similar to what other countries refer to as "artisanal fisheries"). However, the following general recommendations are suggested:

- The Western and Central Pacific Fisheries Commission should work with the Inter-American Tropical Tuna Commission in harmonizing regulations applicable to the overlap area.
- In establishing conservation and management measures, the goal should be to provide uniform implementation that achieves compliance in both Convention Areas.
- Uniform, complete and timely catch data is needed to insure fair and effective management measures.
- Observer requirements for larger U.S. purse seines and longline vessels are not suitable for smaller vessels.
- Support conservation measures that lead to recovery of the managed stocks.

The HMSAS also discussed the North Pacific albacore management framework contained in the Northern Committee workplan. As this framework is further developed, fisheries that do not target albacore but have albacore bycatch (or retained incidental catch) should be subject to the conservation measure.

U.S.-Canada Treaty

The HMSAS had a long discussion with Mr. Dave Hogan from the State Department, representatives from National Marine Fisheries Service, and west coast states government representatives. It is apparent that some of the albacore fishermen wish to have the treaty terminated for a variety of factors, including:

1. While a variety of market and regulatory roadblocks are hindering the U.S. fishery, the Canadians appear to have greater government support to expand their fishery and develop export markets.
2. The fleets are no longer comparable in terms of the composition of the fleet (vessel size, capacity, age, etc.), leaving the U.S. fleet at a competitive disadvantage to the Canadian fleet. This is reflected in the increasing size of Canadian vessels.
3. The aggressive and disruptive behavior of Canadian fishermen on the grounds reduces the catch of U.S. fishermen, in contravention of informal rules of behavior previously agreed to by U.S. and Canadian fishermen.
4. The recent catch histories in the respective Exclusive Economic Zones have strongly favored the Canadian fleet.

5. The Coast Guard is not equitable in its boarding and inspections of Canadian vessels versus U.S. vessels.

These opinions are not shared by all U.S. albacore fishermen.

In addition, it is apparent that U.S. processors and buyers of albacore tuna wish to continue the U.S.-Canada Treaty based on a perceived economic benefit to our coastal communities.

Given the above discussion, there are some points of agreement in the HMSAS and we request the Council to provide the following information to the U.S. delegation:

1. Compare 2011 Canadian fleet capacity and vessel size to what it was in 2001.
2. Determine the amount caught by Canadian vessels in U.S. waters and landed and sold in Canada compared to the U.S. landings from 2001 to 2011.
3. Research tonnage landed and unloaded by Canadian vessels in the U.S. that are actually sold and transported to Canadian buyers.
4. Research potential effects of treaty changes such as for Canadian vessels reducing areas of access in U.S. waters, reducing the length of season, reducing the number of vessels allowed in U.S. waters, and if any or all of these changes are implemented, whether the U.S. fleet would make up the difference in tonnage.
5. As noted above, the HMSAS did not achieve consensus on a Council recommendation to the U.S. Department of State to issue a letter of termination by December 31, 2011.
6. The HMSAS requests the Council task the Enforcement Consultants to report on the number of boardings and scope of inspections of Canadian albacore troll vessels fishing in U.S. waters.

PFMC
11/7/11

HIGHLY MIGRATORY SPECIES MANAGEMENT TEAM REPORT ON COUNCIL RECOMMENDATIONS ON INTERNATIONAL HIGHLY MIGRATORY SPECIES MANAGEMENT

Western and Central Pacific Fisheries Commission

The Highly Migratory Species Management Team (HMSMT) discussed recommendations that the Council could make to the U.S. delegation to the Western and Central Pacific Fisheries Commission (WCPFC). Numerous issues and proposals will be discussed at the WCPFC meeting; however, the HMSMT is only providing recommendations on issues that seemed most relevant to the Council.

Bigeye Tuna

In view of the ongoing concern over the stock of bigeye tuna in the Pacific Ocean, the HMSMT recommends that the Council supports strengthening measures above those imposed through the Western and Central Pacific Fisheries Commission (WCPFC) bigeye tuna conservation measure (CMM 2008/01). Specifically, the HMSMT recommends supporting a seasonal purse seine closure of the WCPFC Convention Area similar to what currently exists in the Inter-American Tropical Tuna Commission (IATTC) Convention Area to reduce fishing mortality on bigeye tuna. This recommendation is based upon the presumption that such a closure will be easier to enforce than the current WCPFC seasonal closure of purse seine fishing with fish aggregating devices (FADs). Adoption of a seasonal Convention-wide closure would also promote consistency across Regional Fishery Management Organizations.

The HMSMT further recommends that the bigeye tuna longline catch quotas be maintained at the levels specified in conservation and Conservation and Management Measures 2008/01.

In regards to catch retention, the HMSMT recommends supporting a conservation measure requiring full retention of all tuna caught with purse seine gear, including juvenile bigeye, yellowfin, and skipjack tuna, to discourage the practice of high grading.

Setting on Cetaceans and Whale Sharks

There were several proposals submitted to WCPFC7 regarding the take of cetaceans and whale sharks in the purse seine fisheries. It is expected that proposals will again be put forward at WCPFC8 to prohibit intentional setting on cetaceans and/or whale sharks, require logbook and observer reporting of observed interactions with cetaceans and whale sharks, and establish best handling practices to ensure release of live, unharmed cetaceans and/or whale sharks to the extent practicable. The HMSMT recommends that the Council support these proposals to minimize cetacean and whale shark mortality in the WCPFC Convention Area.

Prohibition on Oceanic Whitetip Shark Retention

At the 2011 IATTC annual meeting, a resolution prohibiting retention of oceanic whitetip sharks was adopted (C-11-10). Oceanic whitetip sharks are a pan-Pacific shark species which has experienced significant declines. If a similar proposal is discussed at WCPFC8, the HMSMT recommends that the Council support such a measure to protect this vulnerable species across its range.

Other Relevant Issues

The HMSMT recommends that the Council generally support proposals presented at WCPFC8 that would increase compliance with WCPFC conservation and management measures and provide the WCPFC with a process and mechanisms to censure or sanction members of the WCPFC that are not in compliance. Such proposals may address vessel chartering arrangements, improved catch documentation, port state measures, Exclusive Economic Zone entry and exit notification schemes, or other issues.

The WCPFC Chairman's proposed way forward on conservation and management of skipjack, bigeye and yellowfin tunas (Agenda Item I.1.a, Supplemental Attachment 5) indicates that the development and adoption of appropriate target and limit reference points for management of tropical tunas by 2014 is a high priority. The HMSMT recommends that the Council support efforts to develop and adopt appropriate reference points for all managed stocks in the WCPFC Convention Area by 2014.

The HMSMT also recommends that the Council continue to support the International Scientific Committee of Tuna and Tuna-like Species in the North Pacific Ocean (ISC)'s multi-species biological sampling program to improve stock assessments.

U.S. – Canada Albacore Tuna Treaty

The HMSMT also discussed the U.S. - Canada Albacore Treaty and provides the following considerations and recommendations to the Council to advise the U.S. delegation to the upcoming treaty re-negotiation meetings.

The U.S. – Canada Albacore Treaty was entered into between the United States and Canada in 1981. The treaty establishes the terms for Canadian fisherman to fish for North Pacific albacore in U.S. waters and reciprocal privileges for U.S. fishermen in Canadian waters. On December 31, 2011, reciprocal fishing privileges under the current treaty will expire and four options may be considered for 2012 or beyond:

a) The United States and Canada do not reach agreement on reciprocal fishing privileges for 2012 and beyond, and the U.S. or Canada sends a notice of termination of the treaty by December 31 to terminate the treaty by 2013;
b) The United States and Canada do not reach agreement and there would be no reciprocal fishing privileges for 2012 but the treaty would remain and negotiations on reciprocal fishing privileges could continue for subsequent years;
c) The United States and Canada reach agreement on reciprocal fishing privileges, but either the United States or Canada gives notice by December 31 to terminate the treaty by 2013; or
d) The United States and Canada reach agreement on reciprocal fishing privileges, and neither country gives notice to terminate the treaty.

Based on available information, it does not appear that the treaty is negatively affecting the sustainability of the North Pacific albacore stock. The HMSMT has inadequate information to evaluate the treaty's ramifications to the U.S. fisheries and coastal communities if reciprocal fishing privileges ended in 2011. The HMSMT notes that it could include consideration of the

treaty in its assignment regarding albacore management strategies. If the Council wishes, the HMSMT could gather further information on the ramifications of terminating or otherwise modifying the treaty.

PFMC
11/07/11

Agenda Item B.2.a
Supplemental Attachment 5
March 2012

MEETING OF THE PERMANENT ADVISORY COMMITTEE TO THE U.S. SECTION TO THE WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION

The first meeting of the Permanent Advisory Committee (PAC) occurred October 25-27, 2011, in Honolulu, Hawaii. The results of the meeting were not reported at the November 2011 Council meeting. This attachment contains the following materials:

- Final minutes of the PAC meeting
- Statement of Organization, Practices and Procedures as adopted October 25, 2011
- Recommendations drafted by Western Pacific Fishery Management Council staff and circulated at the PAC meeting. These recommendations reflect an agreed position of PAC members representing the longline and purse seine industries and the representatives from the U.S.-affiliated Pacific Islands but are not included in the official minutes of the meeting. They were, however, discussed by the full PAC during the meeting.
- A letter from Dr. Donald McIsaac, Pacific Council Executive Director, and Ms. Kitty Simonds, Western Pacific Council Executive Director, to Mr. Michael Tosatto, Regional Administrator, NMFS Pacific Island Region. The letter expresses concern that the minutes do not reflect conclusions reached by the Committee as a whole.

PFMC
02/21/12

Meeting of the Permanent Advisory Committee to the U.S. Section to the Western and Central Pacific Fisheries Commission
25-27 October, 2011

Minutes of the Meeting

Agenda Item I – Welcoming Remarks

1. The meeting was opened by U.S. Commissioner to the Western and Central Pacific Fisheries Commission (WCPFC) Russell Smith at 8:00 am on October 25, 2011. Mr. Russell Smith, NOAA Deputy Assistant Secretary for International Fisheries, delivered a welcoming address and invited attendees to introduce themselves.

2. Twenty-four Permanent Advisory Committee (PAC) members, four U.S. Commissioners, staff of the National Oceanic and Atmospheric Administration (NOAA) and the Department of State (DoS) participated in the meeting. Members of the public also attended the meeting. A list of participants is provided in Attachment 1.

Agenda Item II – Opening of the Meeting

Election of Chair

3. Regional Administrator of the NOAA Fisheries Service Pacific Islands Regional Office, Michael Tosatto, described meeting-related logistics and called for nominations for a Chair and Vice Chair for the 2011-2013 term of the PAC.

4. Peter Flournoy and Svein Fougner were nominated to chair the PAC. The PAC members voted by secret ballot. Peter Flournoy was elected Chair. Svein Fougner was then nominated and elected Vice Chair.

Agenda Item III – Adoption of Agenda

5. Clarification was sought regarding when it would be appropriate for the PAC to conduct business in executive session. NOAA General Counsel provided guidance, concluding that in developing a reasonable construct for what constitutes an executive session, the PAC should err on the side of transparency and public participation, but ensure that U.S. positions with respect to the WCPFC are not prematurely disclosed to the public. The PAC agreed to take provisional agenda items 6-11 out of executive session and to add an agenda item "Executive Session," with a sub-agenda item "Development of recommendations", to the end of the agenda.

6. The PAC agreed to an additional agenda item regarding the area of overlap between the respective areas of competence of the WCPFC and the Inter-American Tropical Tuna Commission (IATTC).

7. The PAC discussed provisional agenda item 5, "Public Comment," and agreed to remove it, and instead ask for public comment after each agenda item.

8. The adopted agenda is provided as Attachment 2.

Agenda Item IV – Consideration and Discussion of Advisory Committee Statement of Operating Practices and Procedures

9. NOAA staff presented the draft Statement of Operating Practices and Procedures (SOPPs) that had been previously circulated among the PAC members and explained the changes that had been incorporated into the document based on members' comments.

10. Topics discussed included: the status of ex-officio committee members; sub-committees and working groups – specifically, whether their members are appointed by the Chair or not and whether non-PAC members may serve on them; "closed meetings" and "executive sessions"; meeting frequency and dates; voting procedures; and developing advice as an advisory committee.

11. The PAC asked NOAA to revise the draft SOPPs so they could be adopted after the revised document was circulated.

12. NOAA staff presented the revisions to the SOPPs. There was discussion as to the interpretation of ex-officio members provided for under the Memorandum of Understanding Regarding Regional Fishery Management Council Participation in International Regional Fishery Management Organizations Governing Pacific Ocean Highly Migratory Species. NOAA staff provided legal advice as to the appointment of the two ex-officio members from the Pacific and Western Pacific Councils and how the appointees retained the same status and rights as official PAC members. The Chair disagreed with the legal advice and thought the matter was still open for interpretation and thus unresolved. A motion was passed to adopt the SOPPs.

13. The final adopted SOPPs are provided as Attachment 3.

Agenda Item V – Conservation and Management of Fish Stocks

A. Conservation and Management Measure for Yellowfin and Bigeye Tuna (CMM) 2008-01/2011-01 (see power point (ppt.) presentation 1 and paragraphs 1-7 in briefing book)

14. NOAA staff presented on overview of the status of Western and Central Pacific Ocean (WCPO) bigeye (BET), yellowfin (YFT) and skipjack (SKJ) stocks, as reported by the Seventh Regular Session of the WCPFC Scientific Committee (SC7).

15. In response to questions from PAC members, NOAA staff explained that recruitment levels for bigeye tuna had returned to more normal levels in the last year; that the observer coverage rate is less than 1% currently in the longline fleets in the WCPO; that it is too early to determine the reduction in the fishing mortality rate due to the Fish Aggregating Device (FAD) closure and other conservation measures in CMM 2008-01, and that it typically takes a few years after implementation of a given measure before its effect on the fishing mortality rate can be evaluated; that there is uncertainty in catch estimates due to lack of information for some fisheries such as those in Indonesia and Philippines, and for 2009 and 2010 in particular; that estimates of catches by Illegal, Unreported, and Unregulated (IUU) vessels cannot be quantified; that CCMs are obligated to submit their data for a given year by April 30 of the following year and that because work on the stock assessments starts in May, it is critical to submit the data on time; that under the base case assessment, about 10% more bigeye tuna stock depletion would put it into overfished status; that two of the six scenarios used as the

assessment basis showed the stock to be overfished; that likelihood profiles for overfishing and overfished status were included in previous assessment reports but perhaps not the most recent ones; that TUMAS is a software application that allows managers and other users to make stock projections under various management scenarios, including region-specific inputs; and that further details on stock status can be found in the SC7 papers available on the WCPFC website.

16. Concern was expressed by some PAC members about catches not being accounted for and other countries not being compliant with elements of CMM 2008-01.

17. NOAA staff offered potential discussion topics (skipjack conservation, base year, FAD closure versus seasonal total purse seine closure(s), high seas pocket closures, catch retention, total hard catch limit) for the management aspects of CMM 2008-01/2011-01 (see ppt. presentation 2 and 8-26 in briefing book).

18. Some PAC members expressed concern about the lack of FAD management plans and clarification was sought as to why the United States had not submitted a FAD management plan to the Commission and whether it was considering doing so. NOAA staff explained that the United States was concerned that the FAD management plan requirements, given the lack of clear guidance on what they are expected to do, would be difficult to implement uniformly among WCPFC CCMs. Because of the lack of standardized requirements, developing a plan has not been a high priority. NOAA staff further explained that the United States has implemented FAD management measures via regulations in our fisheries, particularly the FAD closures, and has actively monitored and enforced those regulations.

19. A PAC member stated that there appears to be little information about the number of FADs being deployed globally, and expressed concern that unless we begin to estimate those numbers, such as through the implementation of FAD management plans, the United States will not be in a leadership position on this issue. Other PAC members expressed support for NOAA's approach to the issue of FAD management plans, stressing that any such plans should be developed pursuant to an agreed WCPFC measure that requires all CCMs to adopt similar measures.

20. Questions were asked about U.S. enforcement activities with respect to the FAD closures, particularly how much time NOAA spent reviewing observer reports for vessels of other nations. NOAA staff responded that NOAA requested and reviewed observer reports only for U.S. purse seine vessels, that the United States can request data for foreign vessels only if we suspect there may have been a specific violation, and that the United States has gathered mostly anecdotal information for foreign vessels.

21. Concern was expressed about the rigid domestic regulatory measures in place for the United States versus those for other countries and the need to make measures equitable and enforceable for all WCPFC CCMs.

22. Clarification was sought on the concept of special management areas versus closing the high seas pockets. NOAA staff explained that the concept of establishing special management areas would involve a report-in/report-out process for vessels to deter help IUU fishing—as opposed to a complete closure. The point was made that States bordering on high seas pockets had no unique or special right to such information under international law, and that if "special management areas" were to continue to be utilized that whatever information was required from the flag State of the fishing vessel should be made available in the same manner to all WCPFC members.

23. Regarding the confidentiality of CCMs' Annual Reports Part II, it was commented that it is important to make data available to the public and that the United States should strive for more transparency regarding the information provided in Annual Reports Part II.

24. Observer reports were discussed and it was commented that it is important to continue improving the WCPFC observer program regarding observer training, and transparency. There was particular emphasis put on debriefing of the observer.

25. It was questioned whether there is a need for skipjack tuna management given the current stock status and estimated levels of catch. It was expressed that skipjack tuna is significant to artisanal fisheries and Small Island Developing States (SIDs).

26. It was expressed that by implementing management measures for other species, such as a total closure aimed at bigeye conservation, there might not be a need to develop specific measures for skipjack tuna.

27. In response to questions, NOAA staff explained the SC's findings that the 2010 skipjack tuna levels are close to Maximum Sustainable Yield (MSY), and that the stock's range may be contracting from the higher latitudes, such as from the waters off Japan and western Australia. A PAC member suggested that there may be a need to consider regional management for this species.

28. Clarification was sought regarding FAD closures and their effects on the stocks, including the size of fish being caught and spawning. NOAA staff clarified that the benefits of the FAD closure are still unclear.

29. After discussing the FAD closure versus a seasonal closure on all purse seine fishing there was strong support for the latter as it would be easier to enforce. As long as there is the science to support it, this would be the better conservation choice for the stocks.

30. There was discussion on the base year(s) to use for CMM 2011-01. Several PAC members agreed that using 2010 would be beneficial, and others expressed concern with that option. There was discussion of possibly using different base years for different fisheries, and it was agreed that there could be different base years for different fisheries as long as there was a scientific basis for the different base years.

31. Concern was expressed as to how measuring effectiveness is different from determining the effects in terms of fisheries and how base years were chosen.

32. Concern was also expressed as to how the U.S. was perceived regarding implementing CMM 2008-01 by other CCMs and making it a level playing field for all CCMs.

33. There was discussion regarding the proposed continued closing of the high seas pockets. There was concern expressed that there was no conservation basis to keeping the high seas pockets closed if effort simply shifted into domestic EEZs, yielding no decline in overall effort expended by PS vessels in the WCPO. Measures, such as the closure of the high seas pockets, that only displace effort to the benefit of some CMMs, were not supported.

34. The concept of Special Management Areas (SMAs) was supported as an interesting possible alternative and one that should be further investigated. There was concern expressed regarding

the need for better monitoring and enforcement in both the high seas areas and in coastal zones and the need to have more observers and reporting to better deter IUU. Pushing for more transparency from the Pacific Island Countries (PICs) was also an issue discussed.

35. It was also expressed that there should be 100% observer coverage on purse seine vessels on the high seas.

36. There was discussion of the catch retention provisions in the WCPFC Chair's WCPFC Chair's CMM 2011/01; (Version 7 Final Thurs Sept 15) document. Concern was expressed that requiring full retention for all species would be a problem for the purse seiners and longliners and could have serious adverse impacts on the industry. Concern was also expressed how to resolve the problem of juvenile catches. The importance of CCM compliance was noted in assessing whether the measure is having the intended effect.

37. Clarification was sought regarding how a hard catch limit on bigeye for longline vessels would work. There was support for a total cap as well as allocations for each CCM, allowing transferability. There was concern expressed as how this would be enforced as well as the confidence in the science. Interest was expressed regarding how allocation to the territories and U.S. allocation could be combined and then how this could be explored for domestic application.

B. Cetaceans/Whale Sharks (see 30-38 in briefing document)

38. NOAA staff presented a history of the deliberations of the WCPFC on whale sharks and cetaceans, including the proposals tabled in 2010 by Australia and the Parties to the Nauru Agreement (PNA). NOAA staff explained that the United States has been supportive of protecting both whale sharks as well as cetaceans and has previously expressed a preference for combining the two measures into one, and that NOAA has been gathering information about potential ways to handle whale sharks once they are in the net. NOAA staff suggested that issues of interest include improving species identification and observer training, combining the two measures into one, and developing guidelines for mitigation in the event a whale shark is netted.

39. Clarification was sought regarding whether the PNA had instituted a prohibition on setting on whale sharks and whether such a prohibition would be problematic if vessel operators sometimes do not know that they are setting on a whale shark. NOAA staff explained the PNA 3rd Implementing Arrangement language, and that NOAA is not aware of any implementing regulations that have been put in place by the PNA.

40. The PAC discussed the practicalities related to prohibiting intentional sets on whale sharks, with some PAC members expressing the view that given the behavior of whale sharks, it is not reasonable to expect vessel operators to be able to identify them in advance of a set.

41. Concern was expressed about the language in the proposed measures being too vague. It was questioned whether there is a scientific basis for the proposal to ban setting on whale sharks, and a suggestion was made that additional scientific information be sought.

42. There was broad support among the PAC for a ban on setting on cetaceans, particularly in order to level the playing field, given restrictions on U.S. fishermen under the Marine Mammal Protection Act. There was some support among the PAC for a ban on intentional setting on whale sharks, but there was also strong opposition to this approach. There was broad support

for post-capture whale shark handling guidelines to be developed. On the issue of a combined measure versus two different CMMs – one PAC member indicated that issue is best left to the Government /Commissioners.

C. Consideration of Revision of Shark CMM (see 39-46 in briefing document)

43. Given the Shark Conservation Act of 2010, particularly its fins-attached provisions, NOAA staff introduced the possibility of seeking revisions to the WCPFC shark measure, CMM 2010-07, which has been in place since 2007.

44. A PAC member agreed that the United States should begin at the eighth annual meeting of the Western and Central Pacific Fisheries Commission (WCPFC8) to push for changes to CMM 2010-07 to require fins attached, consistent with U.S. policy as of January 2011 in the form of the Shark Conservation Act, and noted that such changes would not require a lot of drafting.

45. One PAC member offered that progress on shark conservation could be made by the use of monofilament leaders versus wire leaders in order to reduce mortality. Another member pointed out that this would be problematic for the U.S. longline fleet, and would not result in significant benefits since 95% or more of sharks now caught are released alive.

46. NOAA staff also introduced the possibility of bringing a proposal to WCPFC8 regarding oceanic whitetip shark, for which both the International Commission for the Conservation of Atlantic Tunas (ICAAT) and IATTC have measures in place. NOAA staff summarized the findings of the WCPFC Scientific Committee (SC) with regard to oceanic whitetip shark, particularly the large decline in catch per unit effort and the Scientific Committee's recommendation that WCPFC8 consider a management measure for the stock.

47. There was discussion about the term "sharks" and "bycatch" and the need to be clear when defining such terms.

48. It was asked whether other countries would be supportive of a proposal for oceanic whitetip shark and whether other any other countries are intending to bring a proposal forward. NOAA staff responded that there has been no indication of proposals coming from other countries, and that apart from the European Union (EU) and Canada, which would likely be supportive, it is not known how supportive other CCMs would be.

49. One PAC member expressed strong support for proposing an oceanic whitetip shark measure similar to the IATTC measure.

50. The PAC discussed blue sharks, noting the WCPFC Scientific Committee's finding of moderate declines in catch per unit of effort and that a stock assessment is scheduled to be completed in 2013. After receiving clarification that blue shark is not under the purview of the Northern Committee, a PAC member expressed the view that the Pacific Island countries should not be managing species in the North Pacific Ocean.

D. Other Stocks (see ppt. 3 and 4 and 47-64 in briefing document)

<u>North Pacific Albacore</u>

51. NOAA staff presented background on North Pacific (NP) albacore, including of the WCPFC's conservation and management measure (CMM 2005-03) and interim limit reference

point for the fishing mortality rate (F), the status of the stock and the conservation advice of the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean (ISC), and outcomes from the 2011 Regular Session of the WCPFC Northern Committee.

52. Clarification was sought regarding the most recent ISC conservation advice – specifically whether it advised that F be maintained at levels no greater than the 2002-2004 average level or no greater than the 2005 – 2009 level. NOAA staff responded that the ISC advice, which can be found in the report of its 2011 plenary session, does not include an explicit recommendation regarding the level at which F should be maintained.

53. In response to a question of whether F has declined, NOAA staff explained that the estimate of "current" F in the 2011 stock assessment is lower than that in the 2006 assessment, and that the difference is partly due to a reduction over time and partly due to a change in the entire time series of F.

North Pacific Striped Marlin

54. NOAA staff presented background on NP striped marlin, including the CMM currently in place, CMM 2010-01, and outcomes from the 2011 Regular Session of the Northern Committee.

55. In response to a question as to whether any WCPFC CCM was considering tabling a proposal regarding this stock, NOAA staff responded that they were not aware of any such proposals.

Agenda Item VI – Monitoring, Control and Surveillance

A. Compliance Monitoring Scheme (see ppt. presentation 5 and 65 -75 in briefing document)

56. NOAA staff presented on the current Compliance Monitoring Scheme (CMS) CMM 2010-03, the outcomes of the Seventh Regular Annual Technical and Compliance Committee meeting (TCC7), and how Australia is preparing a draft measure for consideration at WCPFC8. Overall the CMS is a staged multiyear process, which will include a compliance review a compliance action plan, and compliance remedy for individual CCMs. WCPFC8 will set the compliance status for each CCM and make recommendations on corrective action needed. This year, the intent is to go only through the exercise of evaluating CCMs' compliance, and not address corrective action.

57. It was expressed that the CMS is a critical issue and that transparency be made a priority in developing a permanent scheme and that compliance may help in leveling the playing field by making all players accountable for their actions.

58. Clarification was sought regarding the compliance status of each CCM and if reports would be made public. There was agreement the whole process should be made more transparent. It was questioned as to how uniformly could a scheme like this be implemented among CCMs and how the process would work.

59. NOAA staff responded that so far the process had been based on self reporting, while the intent was that there be a verification process and that there be some public portion, it is not clear what information would be public at this stage. The process was still being worked out.

60. There were also questions concerning the number of vessels charged with WCPFC violations and whether there is a matrix that links provisions of CMMs to what countries are doing to implement a CMM.

61. NOAA staff responded that the matrix in question is basically a larger CMS report at the CCM level and not the individual vessel level, with all CCMs and that the process so far had been a useful discussion to have about whether or not CCMs had and how they had implemented CMM provisions.

62. NOAA staff clarified that the U.S. was not in complete compliance with all CMMs regarding certain issues and how in the CMS process the U.S. is considered among the better complying CCMs.

63. A DoS representative further explained the struggle this year regarding making the process transparent and meaningful.

64. The confidentiality of reports was further questioned as well as the confidential nature regarding dealing with governments and not individuals.

65. NOAA staff responded that reports were kept at the NOAA level and it would be up to the NOAA directorate to further distribute reports. It was further clarified that the Annual Report Part II report is confidential only because it is still in provisional and draft status to ensure that information is correct before it is made public. This decision was decided by WCPFC and TCC and not the U.S. government. Once finalized, reports would most likely become public.

66. It was commented that reviewing the CMS process in other RFMOs to see how their compliance monitoring schemes work could be helpful.

67. NOAA staff further explained that the U.S. did articulate at TCC wanting some form of final product that could be made public and that work is still being done regarding sensitivities and in what format information would not be too damaging for CCMs once made public.

B. Vessel Monitoring Scheme (see ppt. presentation 6 and 76-78 in briefing document)

68. NOAA staff summarized TCC7 progress on Vessel Monitoring System (VMS) recommendations and what came out of discussion of the Joint VMS review, the cost optimization study and the manual reporting requirements in the VMS standards specifications and procedures (SSPs).

69. It was commented that VMS data are supposed to be for science and for enforcement purposes and that the quality of some of the observer data seen thus far was questionable.

70. NOAA staff clarified that the primary purpose of in-zone data from VMS is for enforcement but that probably in other contexts, science applications such as stock assessment is also a “primary” purpose.

71. Clarification was sought regarding the requirement for VMS on albacore troll vessels to be on 24/7 and what happens if the VMS stops working at sea. Concern was expressed as to the economic consequences of a malfunction which might require breaking a trip and requiring the vessel to travel to a port, the need for this to be made aware to the Commissioners and queried if changes could be made domestically.

72. NOAA staff explained that the domestic regulations address VMS issues and that this would be taken up with the Office of Law Enforcement (OLE). WCPFC obligations could require manual reporting and an eventual return to port, and those affected should continue to work through the regional offices, the Southwest Regional Office and the Pacific Islands Regional Office to promote a reasonable approach to this issue.

73. There was emphasis on the need for alternatives to address the worst case scenarios and the desire to work with OLE, which may have some discretion/guidelines in alternatives so that only in worst case scenario should a vessel be instructed to return to port.

74. It was questioned if there had been any discussion on smart VMS, like that required by the Atlantic fleets.

75. NOAA staff responded that currently this is what is used in the Pacific U.S. fleets.

76. Clarification was sought regarding the TCC report in reference to a vessel being outside the Convention Area and there being a reduction in the VMS frequency requirements. There was question as to the process for implementation of such an adjustment and whether this could be done by domestic regulations.

77. NOAA staff explained that there was no linkage based on NOAA regulations and that U.S. regulations would not change based on this. Overall there has been a request made for the WCPFC compliance manager to lower the polling rate to decrease the costs to the WCPFC for the VMS.

78. There was a question regarding manual reporting and to whom this information was reported.

79. NOAA staff clarified that there currently was a manual reporting requirement for some fleets and that data is reported directly to OLE.

80. Clarification was sought on whether the issue of WCPFC CCMs getting VMS in their waters had been resolved.

81. NOAA staff explained that this was being worked on via the VMS template agreement (78 in briefing book).

C. WCPFC IUU Listing Process (see ppt. presentation 7 and 79-81 in briefing document)

82. NOAA staff presented on the Tonga proposal regarding the WCPFC IUU listing process (WCPFC-TCC7-2011-DP16).

83. Clarification was sought regarding the pending IUU legislation and whether higher penalties were being considered.

84. NOAA staffed clarified that increasing penalties are generally supported but the magnitude depends on the specifics of the case being considered. The problem is that all countries have different processes and one has to take this into account. Overall increasing penalties may help but does not completely solve the problem.

85. There was question as to whether the penalty scheme would be only for the high seas.

86. NOAA staff clarified that the issue for WCPFC is not a penalty scheme but a process for determining if a vessel is going to be on the IUU list based on a CCM's view as to whether the action taken against a violating vessel was sufficient. Guidelines would give meaning to what effective action means and in coming up with guidelines as to how a CCM has dealt with vessels on the IUU list. Penalties would still be assessed by flag state, and the guidelines would only address whether an action taken on a vessel was adequate in severity and action.

87. DoS further clarified that the flag state has to demonstrate what the action has been taken regarding IUU cases. The core issue is trying to allow the coastal state to have some role and ability in determining whether the action taken is/is not adequate.

88. Clarification was sought as to whether this management measure would apply both on the high seas and the Exclusive Economic Zones (EEZs).

89. NOAA staff clarified that a vessel could be IUU-listed based on a violation of domestic laws in national waters; it does not have to be a WCPFC violation to get IUU-listed.

D. Regional Observer Program (see 82-94 in briefing document)

90. NOAA staff reported on the WCPFC Regional Observer Program (ROP) noting a variety of issues and referred PAC members to the various papers posted on the TCC7 website. For the purposes of this meeting the focus was on various issues such as observer capacity, cross-endorsement of observers, adequate funding of the observer program, and possibly moving observer requirements of CMM 2008-01 to the observer CMM (2007-01), rather than in a new CMM (2011-01).

91. Clarification was sought regarding any more information about the PNA taking over the observer coverage for the purse seine fleet from the ROP with regard to placement of observers on purse seine vessels licensed to fish under the South Pacific Tuna Treaty (SPTT). There was overall support regarding debriefing and its importance and support to continue for the U.S. to be involved in the process of improving the program.

92. NOAA staff clarified that the IATTC has a model that is used regarding when vessels come into port and debriefing interviews take place, and this is being recommended for the WCPFC. The U.S. has concerns on unmitigated reliance on observer data if it is not verified. Staff also clarified that the PNA office in Majuro will develop their capacity to put PNA observers on vessels and that this appears to be the last year Pacific Islands Forum Fisheries Agency (FFA) will be responsible for placing observers on U.S. purse seine vessels licensed under the SPTT.

93. There was concern about the modest levels of debriefing and how there should be a move to improve the debriefing process as this also affects the data collected for scientific purposes.

94. NOAA staff explained that this was a major concern and that the single most important part of the data collection process by observers is debriefing.

95. It was expressed that cross observer training for observers that could then be placed on vessels that fish in both WCPFC and IATTC areas is very important, and the PAC urged NMFS and DoS to continue to be part of the process of ensuring orderly implementation.

96. The quality of observers' data was questioned and clarification was sought regarding the use of observer records for MCS, given the questions about the credibility of the data.

97. NOAA staff explained that there is a clear understanding on using data for compliance purposes, based on the WCPFC Ad Hoc data rules, and that data quality continues to be an issue that is continually discussed. It was clarified that the observer reports include narratives as well as data on pre-approved forms. The data forms are what are most amenable to the debriefing process.

98. Overall there was general appreciation for observers and general support that observer data should be improved and made more consistent across the board. There was also overall support for taking the observer requirements out of CMM 2008-01 and moving them to CMM 2007-01 or a replacement. There was general support for the U.S. to continue being involved until the ROP is up on its feet and running smoothly.

99. Clarification was sought as to whether any observer data were going to the Commission other than U.S. data.

100. NOAA staff clarified that data collected on purse seine vessels are provided to FFA and then to the Secretariat of the Pacific Community (SPC), which provides the data to the Commission; essentially the process is the same as how it has been implemented for the past 25 years. In that regard the U.S. is fully compliant. In the case of the U.S. longline fleet there is constraint on both the observer data side and on the operational data side. Now that the U.S. is authorized to provide the data to the Commission, NOAA has been working with the Secretariat to develop a process to actually transfer data. Other CCMs have not done much to provide data –especially operational data. The FFA has been fairly vocal in trying to pressure other CCMs to provide data.

101. Clarification was sought regarding how the science providers are getting the data if the longline data are not going to the Commission.

102. NOAA staff responded that there is an obligation to provide the data and that this has not been done directly in all cases. However, the data are cooperatively shared for the stock assessments but not retained.

E. Catch Documentation Scheme (CDS) (see 95-111 in briefing document)

103. NOAA staff presented on the issue of catch documentation scheme, which has been given low priority by TCC. Overall there has been little progress made on the issue and it is important to note that the European Union (EU) proposal has been re-tabled at the upcoming WCPFC8 and that Japan and Papua New Guinea have also introduced proposals.

104. Concern was expressed for processors and marketers of canned tuna and how this would be very cumbersome for vessels. It was noted that the IATTC process of using Form 370, which tracks fish all the way to the canneries, has been very useful and can maybe be used as a model.

105. Clarification was sought regarding if the U.S. had commented to the countries tabling the proposals.

106. NOAA staff clarified that the U.S. provided a letter to the EU on general concerns and provided numerous specific comments. A lot of the issues being raised by the PAC were raised

in the letter provided to the EU and WCPFC, including concerns about the paperwork burden the process would impose.

107. Overall there was agreement that moving towards an electronic documentation system is a good idea, with the initial focus being on species of greatest concern. It was pointed out that the current proposals were not suitable for the individual tracking of smaller fish such as the pole and line and baitboat catch of albacore.

F. Chartering including Catch Attribution (see ppt. presentation 8 and 112-124 in briefing document)

108. NOAA staff reported on the issue of chartering and highlighted the following discussion topics: linkage between CMMs, establishing attribution rules for charters, defining or certifying charters "as integral to" fisheries of chartering State/participating territories, and fisheries development of chartering State/participating territory.

109. Clarification was sought regarding the definition of charters and the term "integral".

110. NOAA staff clarified that definitions were from within Regional Fisheries Management Organizations (RFMOs) and were defined as consistent with the FAO definition yet in context there were three types of arrangements that could be considered as charters: direct charter and other arrangements, joint ventures, and access agreements and for these purposes it was broadly defined. NOAA staff emphasized the need for clarity and better consistency on how chartering is dealt with and proposed the idea of drafting a potential proposal to table at WCPFC8.

111. NOAA legal counsel agreed that it was important to focus on the conditions by which to determine when a charter vessel is truly operating as an integral part of the domestic fleet.

112. Clarification was sought regarding the case of Kiribati/China and the lack of reporting of longline catches and it being attributed (at least by China) to a charter arrangement. This case is still not clear. There was agreement that the current CMM 2009-08 should be tightened regarding which entity is responsible for collecting information and reporting catch and effort data from charters.

113. It was expressed that there seemed to be a loophole in the measure and in compliance and that it should be made clear against whose limit that catch report is going to count towards and that one way to start may be by covering catch attribution rules.

114. There was agreement that the Chartering Notification Scheme was important and that the issue should be worked on to better define issues such as attribution. Clarification was sought regarding the status of a U.S. proposal.

115. NOAA staff explained that nothing was drafted and that the U.S. was still developing its position. This issue was being presented to the PAC to see if there was support for such a proposal.

116. It was expressed that regarding the term "integral" there was more to it than just catch attribution and to keep in mind that developing states may not have the sought after fishing capacity, their own vessels etc. and that they need to be able to develop this aspect of their domestic fisheries.

117. It was expressed how there is a need to decide how far catch attribution actually goes.

118. NOAA staff clarified that attribution by zone is a key issue.

G. Marking and Identification of Fishing Gear (see ppt. presentation 9 and 125-132 in briefing document)

119. NOAA staff introduced a potential draft U.S. proposal that is not ready for public distribution. A brief history of the development of the issue was presented.

120. Clarification was sought regarding the U.S. regulations on purse seine related requirements with regard to marking certain gear. NOAA staff clarified that in terms of the U.S. regulations this fell under the helicopters and small boats for purse seine vessels and for instance not specific gear such as FADs at 50 C.F.R part 665 and 50 C.F.R part 300.

121. Concern was expressed as to not having had time to have thorough discussions internally on the draft proposal as well as the proper timing of such a proposal.

122. It was expressed that this may be considered a step towards a FAD management plan and how this should be done carefully and consistent with other CCMs efforts in the same direction. This idea was also questioned as to how something like requiring FAD marking would be enforced.

123. Concern was also expressed as to having the measures be applied throughout the range of the stocks and keeping this standardized.

124. NOAA clarified that the idea of gear marking was still in the preliminary stages and that the intent was to obtain feedback from the PAC. The proposal was very preliminary and had not been reviewed by other U.S. Government entities such as enforcement – NOAA staff were trying to get some general direction on this initiative.

125. Various opinions were voiced on the issue of a gear marking proposal - from the proposal slowly moving forward and that the PAC be kept closely informed on its progress to a strong support for the concept - given lost fishing gear is something that must be accounted for and that countries should take responsibility for. The ideas of consistency, accountability and keeping the final output as something uniform throughout Convention Area were stressed by several PAC members.

126. NOAA staff clarified that there was a 2009 FFA proposal to TCC and this draft draws some concepts from the FFA proposal. One PAC member noted that two other RFMOs have measures related to gear markings: Commission for the Conservation or Antarctic Marine Living Resources and the Northeast Atlantic Fisheries Commission and it might be useful to look at these measures for additional thoughts. Another PAC member commented that the RFMOs with gear marking measures were not tuna RFMOs. The chair pointed out that early review of proposals by fishermen being regulated had proven quite advantageous in constructing practical and well understood regulations.

H. Port State Measures (see ppt. presentation 10 and 133-137 in briefing document)

127. NOAA staff presented a brief history on the issue of Port State Measures (PSM) and the relevant actions at WCPFC. It was noted that domestic legislation and regulations are being developed to implement the FAO PSM agreement.

128. NOAA staff clarified that the U.S. had commented on the proposal tabled by the EU and had expressed concerns over verbatim adoption as the WCPO region is considered different from other RFMO regions that have implemented the PSM FAO agreement with limited debate or adjustment to suit regional concerns. In the WCPO there are implementation issues that need to be fully considered.

129. Concern was expressed as to how this would affect the territories and their communities as well as the need for resources and capacity building efforts to ensure orderly implementation. It was noted that there were potentially serious economic issues [disadvantages] depending on how a PSM is implemented.

130. NOAA staff explained that the concerns voiced by the PAC were similar to those expressed by the U.S. Government thus far, and that the process for both agreement on a measure as well as implementation would be very resource intensive—for not only the U.S. territories but all concerned.

131. General support was provided for the concept of PSM in the WCPFC, and how this is important but caution was expressed as how it should be a tailored to suit WCPO needs and situations. The chair opined that port state measures, catch documentation schemes, closing areas of the high seas, etc, were all measures which have been justified as reducing or eliminating IUU fishing The chair further stated that these measures merely place increasing burdens on those fishermen fishing legally and that the real solution to the IUU problem is for more money to be spent on surveillance and enforcement by countries so as to combat IUU vessels.

Agenda Item VII – WCPFC/IATTC Overlap Area

132. NOAA staff presented the current status regarding the WCPFC/IATTC overlap area including a brief history of the subject and on how the WCPFC7 directed the WCPFC Executive Director to meet with IATTC to develop draft terms of reference for a joint management scheme proposal, which had yet to be accomplished. NOAA staff provided a summary of what TCC7 recommended, which was similar to that of WCPFC7.

133. NOAA staff provided a further update regarding a meeting between the WCPFC and the IATTC Executive Directors to develop an agenda to deal with matters related to the overlap area.

134. It was expressed that one approach may be to have a moratorium on enforcement in the area to allow time to work out matters between the two Commissions- as the current cooperation on the matter appeared limited . The chair commented that if the two RFMOs were unable to resolve the matter quickly it was possible that international ENGOs would suggest that the area be closed to all fishing.

135. Overall there was strong support and encouragement by the PAC to facilitate development of the overlap issues so that these could be resolved as soon as possible. The current situation is perceived as detrimental to U.S. fishing interests. The chair expressed how the present OLE policy of subjecting vessels to the constraints of both RFMOs, while perhaps technically correct, is a debilitating burden on U.S. flag vessels.

Agenda Item VIII – Cooperating Non-Members (see ppt. presentation 11 and 138-144 in briefing document)

136. NOAA staff presented on Cooperating Non-Members (CNM) including explaining the application process, how these applications were reviewed and discussed at TCC and recommendations formulated for final approval, or not, at the annual meeting. The presentation included issues the U.S. continues to struggle with such as evaluating applicants with data submission deficiencies and IUU listed vessels. There is a need in some instances to strike the appropriate balance regarding a CNM's application and its participatory rights, such as in the overlap area.

137. Clarification was sought as to how to be better informed regarding the regulations in the overlap area both at an international level and domestically. Clarification was also requested regarding if CNM vessels could be considered IUU vessels.

138. NOAA staff clarified that there should be communication between fleets and the regional offices when issues related to implementation of regulations are in question. NOAA staff also clarified that it has been a long held position of the U.S. that if a country is not a participating member (at some level) of an RMFO, then they are not bound to the CMMs of that RFMO. However, the issue of the country's status with regard to the United Nations Implementing Agreement also comes into play on this matter. As is the case with many of these sorts of questions, the answers may not be straight forward.

Agenda Item IX – Territories

139. The representative from Guam indicated that the following issues are important issues or will have significant impact to the territories: the potential effect of port state measures; concerns about implementing a gear marking measure; and that the territories had a strong interest in the draft proposal as derelict gear is a major concern in those areas;, support for IATTC management of longline vessels under 24 meters; and for WCPFC to work with IATTC on the issue that there is a need for compatible measures;. , no support for the revision of CMM 2010-07 on sharks as well as the proposed CMM for Oceanic white tip sharks as there was no belief that these species were being negatively impacted and that Guam in particular supports the conservation of sharks by being part of the largest shark sanctuary in the world;, support for the reopening of high seas pockets;, and support for the base year to be set at 2010 levels for the purse seine fishery but maintaining a 2% harvest level on bigeye tuna in that fishery.

140. The representative of the Commonwealth of the Northern Marianas voiced that it is important that actions by the Commission be maintained regarding the SIDS given the unique challenges for these areas that do not have the capacity to implement measures that the large fishing States possess. There was expression for the need to sustain themselves and grow and develop at their own pace, as well as the need to develop their economy by building their fisheries.

141. The representative of American Samoa indicated that as well as being a U.S. territory, they are also a south pacific island and that their community was heavily dependent on the ocean for food. It was expressed that the closing of one of the tuna canneries on the island was having a great impact to the community and there was a need to improve the livelihood of American Samoans. Support was expressed for a vessel chartering arrangement that allowed their local industry to develop. It was also requested that American Samoa as a Polynesian culture be able to become actively involved with the recently formed group Ta Vaka Moana.

142. Concern was expressed regarding the marine debris situation in the territories and the effect of FADs and drifting nets on local marine life and reefs. It was stated that there is a need to see the Commission start talking about the nature of FAD construction, an initiative to establish ownership of the FADs /fishing gear and it was urged for the U.S. delegation to take some initiative to address these issues. It was noted that Southeast Atlantic Fisheries Organization has done studies of FADs and accountability.

143. A statement was made on behalf of the small-scale fishing fleet in Hawaii composed of the troll, handline, and ice boats who are limited by vessel size and trip duration. The view was expressed that these fleets should be considered artisanal as opposed to recreational. For many they have direct links to the culture and are a significant part of many Hawaii communities. It was questioned if this small boat fishery has an impact on the other fisheries and how is fishing capacity defined for small boats. It was expressed that these boats typically fish opportunistically, are an active component of the region's fisheries and are vital to many parts of the culture. The speaker wanted to remind the government that this community of fishers continues to be active and how they are not unlike the SIDS and territories, in terms of the way they should be treated.

144. It was expressed that what deserves more attention is the definition of artisanal fisheries, the importance of the cultural value as the fish flow into a community and how this is socially very important, and how hard it is to measure the economic value of these aspects.

145. It was also voiced that from the large fleet perspective, there is sympathy regarding SIDs and island territories. These meetings tend to focus on bigger issues, yet the intent is not to disadvantage regional artisanal fisheries.

146. Paul Dalzell of the Western Pacific Regional Fisheries Management Council gave a synopsis of the new modeling tool entitled TUMAS and its possible application to spatial management and the Hawaii longline fishery.

Agenda Item X – Other Issues

147. A DoS representative presented a history of the WCPFC Finance Administration Committee (FAC), a Committee intended to discuss financial matters of the Commissions and to make recommendations to the Commission on financial and administrative matters.

148. Clarification was sought regarding last year's Commission budget and the issue of non-payment from CCMs and how Commission money was reportedly being expended faster than it was coming in and if this situation was still currently occurring.

149. The DoS representative explained that although that did occur during a portion of the previous year, by the end of the year that was not the case and most had paid their obligations in full. The DoS representative further clarified that there is a provision in the FAC that one can lose voting rights for non-payment and that most countries pay over the first six months of the calendar year and keep WCPFC solvent and that the money tends to drip in over the last six months.

150. Clarification was also sought regarding how in the past there have been issues with U.S. Congress funding the Commission and if this was currently occurring.

151. The DoS representative explained that the administration had made the request to Congress for the U.S. obligation and that at this point were unsure of the status regarding confirmation of the approval of funds (noting that no other State, Commerce, Justice Departments spending measures were agreed to as of this writing).

152. It was requested that the PAC be kept informed on the budgetary issues and on the FAC outcomes. It was questioned as to what percentages of the budget are being allocated to each project and if there was any likelihood of any discussion of the Commission having a bigger budget.

153. The DoS representative explained that there is an effort to look at cost recovery and exploring ways to bring down various Commission costs. The U.S. has regularly requested reporting in more detail on the utility of very expensive programs, such as VMS. The U.S. would rather see a balanced approach with some money go towards other programs such as the observer program—as opposed to the current all or nothing methods employed. The DoS representative further clarified that what the U.S. provides in funds other than its membership obligation varies from year to year.

154. NOAA staff clarified the process to be part of the U.S. delegations to the WCPFC meetings and logistical issues for the upcoming meeting in Palau. The PAC was informed that the U.S. government already solicited for participation to the delegation for the WCPFC8 and that a decision on participation will be made in the following weeks.

155. Clarification was sought as to the size of the delegation and if this would pose any problems.

156. The representative DoS clarified that last years' delegation size was extra large because the meeting was held in Hawaii and should not be considered the standard. There is a defined internal process to get a delegation accredited through the White House, the process needs to begin very soon and has limits on overall size and participation. It was also explained that this year there would have to be additional limitations imposed, because of space limitations of the meeting hall in Palau. The delegation requires official accreditation and how without the accreditation there is no authority to make decisions on behalf of the United States.

Agenda Item XI. Executive Session

Development of recommendations

157. (This agenda item was discussed both in and out of executive session; only minutes of the non-executive session are included here.)

158. The vice-Chair led this session in the temporary absence of the Chair.

159. The PAC discussed how best to express the outcomes of the meeting, such as whether it would make consensus recommendations or individual comments. It was generally recognized that where there is a consensus, that would be reflected in the minutes of the meeting, and where no consensus is reached, the minutes would reflect the various views of participants.

160. This session involved discussion of a series of specific proposals on the topics identified below, which were offered or referred by one or more members of the PAC.

Skipjack tuna conservation

161. The PAC discussed the element of the WCPFC Chair's strawman also know as CMM 2011/01; (Version 7 Final Thurs Sept 15): to establish an interim catch limit for skipjack tuna that is no more than the level of catch in 2010, 1.556 million mt [editor's note: the PAC discussion was in reference to a proposed "Total Allowable Catch (TAC)" of 1.55 million mt; the WCPFC Chair's CMM 2011/01; (Version 7 Final Thurs Sept 15) describes its proposed catch limits as "indicative high levels catch limits only and not to be seen as an attempt to set a Convention area TAC"].

162. Some support was given for at least for establishing more directed management objectives for skipjack tuna, but no PAC members supported the specific proposed level of 1.55 million mt, while several PAC members expressed concern with the concept and the actual proposed limit. It was suggested that in lieu of a TAC, a benchmark could be established for the purpose of tracking the performance of the CMM. It was opined that in formulating management measures for skipjack tuna, consideration should be given to the social, economic and cultural values of skipjack tuna to the U.S. islands and territories. The idea was expressed that management should be based on the best available science, and there was general support for the idea that the United States should work with the WCPFC science provider to obtain information pertinent to establishing an appropriate TAC or benchmark.

Base year for the measure

Longline catch baselines

163. The PAC discussed a proposal for WCPFC CCMs to limit their longline catches in each of 2012, 2013 and 2014 to their respective 2010 levels, except for CCMs that caught less than 5,000 mt in 2010, which would have to limit their catches in each of those years to 5,000 mt. Under this approach, the fresh-fish longline provisions of CMM 2008-01 would not need to be carried forward.

164. The PAC discussed this proposal in terms of the scientific recommendations to limit total catches to particular levels and the need to allocate total allowable catches among WCPFC CCMs. It was opined that the scientific advice shows that the overall 2001-2004 catch and effort levels were not sufficient to meet the objectives of CMM 2008-01, and that advice is essentially unquestioned, and that it is not for any country to say it is wrong; thus, it is only a question of how to allocate the needed limits. Other PAC members responded that the proposal does not intend to reject the scientific advice, and any negotiating positions of the United States would fall within the scope of that advice. Rather, the proposal seeks to rectify the allocation under CMM 2008-01, which is in many ways unfair to the United States. Several PAC members noted that the WCPFC's longline fisheries collectively met the objectives established by the WCPFC in CMM 2008-01. One PAC member stated that the intent of the proposal tabled here (of the 5,000 per CCM) is for the United States to get a better deal, and the proposal is justifiable. One PAC member pointed out that the proposed limits are more conservative than those under CMM 2008-01, since the 5,000 mt limits would apply to all CCMs. One PAC member supported the notion that we should follow scientific advice, and stated that if there are allocation issues, they are secondary and positions of the United States on allocation are okay as long as are consistent with the scientific advice.

165. One PAC member pointed out the difficulties in keeping track of the expected conservation effects of a given proposed CMM as it is being negotiated and as its elements evolve, and

suggested that the U.S. delegation work with its scientific advisers during the course of negotiations to try to explain the conservation benefits..

166. There was discussion about whether the proposal seeks to limit catches to the actual levels of catch in 2010 or to the levels to which catches are to be limited under the existing CMM, and it was resolved that the intent was the former. It was also resolved that the intent of the proposal is to limit catches to those levels in the longline fisheries of all CCMs, not just in the Hawaii longline fishery.

167. In response to a question of whether the Scientific Committee recommended further reductions in longline catch, a PAC member responded that the impact borne by the longline fisheries collectively would not preclude small increases in one or more longline fisheries, and that a small increase in the Hawaii longline fishery would not be detrimental or counter to the scientific advice.

168. A PAC member noted that other WCPFC CCMs have been able to exempt their artisanal fisheries and asked why the Hawaii fishery, which produces fresh fish for Hawaii, could not do the same. The same member also stated that setting longline catch limitations only for vessels larger than 24m (as in the IATTC measure) needs to be examined in some detail if we are to better coordinate with the IATTC measures. Another PAC member opined that the fresh fish provision in CMM 2008-01, although viewed as an exemption by some, was not intended as one, but rather is a provision that recognizes the special characteristics of the Hawaii fishery. Reformulating the measure to provide for 5,000 mt catch limits would be a practical way to get rid of what might be viewed by some CCMs as an unpalatable exemption to the measure.

169. It was noted that false killer whale issues might lead to the establishment of a no-fishing zone south of Hawaii, which might have the effect of keeping the fishery from reaching the currently imposed limit.

170. There was a brief discussion of spatial management approaches, particularly an approach that takes into account the relatively low fishery impact on the bigeye tuna stock in region 2. One PAC member stated that this approach should be raised at the Commission meeting. Another PAC member, agreeing that it should be considered, expressed concern with closing areas to fishing, which would be closing, not managing, the fishery.

171. There was general agreement with the proposal as long as it does not override or contradict scientific advice.

<u>Purse seine effort baselines</u>

172. The PAC discussed a proposal to limit fishing effort in the purse seine fishery to 2010 levels, provided that effort limits be augmented by other measures that effectively limit the impact of the fishery on the skipjack tuna and yellowfin tuna stocks and reduce the impact on the bigeye tuna stocks.

173. A PAC member stated that the WCPFC science provider does not seem to be against this proposed baseline, that skipjack tuna does not seem to have a problem, and that the FAD closures have been working for bigeye tuna. The member further stated that obtaining a sufficient amount of fishing effort is a crucial element for the United States to be able to conclude the on-going South Pacific Tuna Treaty renegotiations, and that if the United States does not get enough fishing effort, we will not have a Treaty. Another PAC member, noting

"their" sensitivity to purse seine fishing effort, supported the proposal, noted that the 2010 level is better than the 2009 level, and that the 100% observer coverage requirement is good.

174. In response to a question of whether the proposal was intended to limit only total fishing effort in purse seine fisheries collectively or to also allocate the limit among CCMs, a proponent responded that the second aspect had not been addressed in the proposal.

175. Regarding the total allowable fishing effort, one PAC member stated that the status of bigeye tuna is less than optimal, that it is not the place of non-scientists to say how big the total allowable level should be, and that if the exploitation rate is brought back to the MSY level, the size of the pie will get bigger. A proponent agreed, suggested that the proposal include a caveat that it be within the bounds of the scientific advice, and noted that the science providers have already indicated that the proposed level is okay.

FAD closure versus seasonal closure(s)

176. The PAC discussed a proposal to establish seasonal closures on all purse seine fisheries instead of FAD closures, because full closures would promote greater compliance than FAD closures.

177. A proponent argued that a full seasonal closure would be much more effective than a FAD closure, and noted that use of the IATTC model, in which two alternative closed periods are available, would mean that the there is no period during which the fishery would be completely closed. The PAC member stated that there would also be conservation benefits for skipjack tuna and yellowfin tuna.

178. A PAC member expressed support for a full seasonal closure but expressed concern about the impacts on the American Samoa canneries, stating that the main need is to keep the canneries alive. The member also questioned whether the IATTC closures would be followed. A PAC member responded that there have been seasonal closures in the EPO for a number of years, and that processors manage around them and that there has never been an issue of not having fish, and it is not difficult to manage around the closures, especially if there are two alternative closures. The member added that taking out a number of available fishing days through the seasonal closures helps in the context of the constraints of the Vessel Day Scheme.

179. It was noted that the WCPFC science provider has not fully evaluated the closure option as requested by the United States. Several PAC members agreed that the United States should continue to press the WCPFC science provider to do so, and one PAC member emphasized that because the primary goal is to reduce impacts on bigeye tuna juveniles, the important question is how much benefit to bigeye tuna a seasonal closure would have relative to a FAD closure.

180. The issue of compliance was discussed. A PAC member stated the view that U.S. fishermen are the only ones that comply fully, and that the others, whether small or not, do not; and that only U.S. fishermen face consequences of non-compliance(for example, only the United States has complied with the full retention requirement). Another PAC member agreed that compliance is a serious issue that will always need attention, and the United States should address compliance issues across the board.

High seas pocket closures

181. The PAC discussed a proposal that the successor CMM to 2008-01 not include any high seas pocket closures because fishing effort would shift to adjacent EEZs, and that a notification scheme modeled on that used by the WCPFC for the Eastern High Seas Pockets would be inconsistent with the United Nations Law of the Sea.

182. A PAC member opined that the WCPFC should manage resources, that closing the high seas pockets does not accomplish anything, and that the approach used for the Eastern High Seas Pockets, which would enhance monitoring, control and surveillance on the high seas, is better than closing the high seas pockets. Another PAC member expressed concern with opening the high seas pockets, but stated that if strong management and enforcement tools can be established in lieu of the closures in order to ensure that fishing in the pockets does not have adverse impacts – and increasing observer coverage is one thing that should be addressed – then the possibility of opening the high seas pockets could be examined. Another member questioned why the high seas pockets should be considered to be more important than other areas, and stated that management measures should be based on science. Another member stressed the need for transparency from the PICs and how observer coverage needed to be further discussed as it could be a strong tool if a strong management program is put in place. Another PAC member agreed that establishing an SMA was a way to establish a program to monitor the fleets and opening SMAs would enhance the monitoring and surveillance on the high seas. Another member stated that closing areas is a legitimate management method and that areas can be closed for a variety of reasons – it depends on the goals. Another PAC member reminded the PAC about the suggestion made yesterday – that the area of overlap between the WCPFC and IATTC could be an area that is not heavily regulated until there is a cooperative agreement between the two RFMOs.

183. The session chair summed up his understanding that there is general agreement that if there is no conservation reason for the closures, there is good reason to open the areas, provided there are suitable controls in place to ensure that IUU fishing does not occur.

184. NOAA staff reminded the PAC that the issue of including national EEZs in the WCPFC VMS, which would provide an additional tool to address IUU fishing, is on the agenda for this year's WCPFC meeting.

Catch retention

185. The PAC discussed full catch retention for all species on longline and purse seine vessels.

186. A PAC member opined that this issue needs further consideration and asked whether the requirement to retain all tuna is meaningful, given the way that the rules are written. Another PAC member agreed that there are loopholes allowing fish to be dumped, but commented that the purse seine vessels believe there is no point in fighting this battle. However, the issue of retaining all species, not just tuna, is a different matter. Such a measure would contrary to some RFMO conservation measures requiring release of species, and would be economically burdensome to vessels.

187. NOAA staff clarified that although WCPFC full retention performance for purse seine has not been reviewed, the IATTC's retention policy has been reviewed and it was found that it was difficult to quantify conservation benefits.

188. A PAC member opined that with respect to longline, it is unsuitable to require retention of all fish. It seems especially contrary to the intent of conservation of sharks since about 95% of

sharks are released alive in the Hawaii fishery. To require retention of sharks would be economically not beneficial and wasteful. Another PAC member agreed and explained that usually longline vessels also release small marlin that are alive.

Total hard catch limits

189. The PAC discussed the inclusion of hard catch limits for longline vessels and associated catch limit transferability in the new CMM as well as how allocation should be accounted for.

190. A PAC member expressed that the strength of support for hard catch limits would vary depending on whether there is agreement on how the hard catch limits were determined as well as whether there would be catch limit transferability allowing for a CMM to obtain an increase in its allocation of bigeye catch, subject to the constraints of science. If the Commission were to set a very low overall catch limit, then there would be a greater need for an option with transferability. The member stressed that transferability could be a very useful tool and conceptually, as the PNAs Vessel Day Scheme (VDS) allows, which is allowing a transfer of days, transfers of quota would be analogous to the VDS.

191. Regarding the VDS, a Commissioner questioned if the Commission managed the infrastructure and if this proposal would mean that the Commission would take on the workload of tracking transfers.

192. NOAA staff clarified that the VDS is managed by the PNA office in Majuro and that not all the details are transparent. Regarding the longline component, most likely it would be part of the Commission and would be a 'burden' in a way but the VDS is a separate issue.

193. A PAC member stressed that if catch limits are set, then there should be transferability of these, and expressed a strong support for transferability. Another member also expressed moving toward catch limits and hard caps but with the premise that enforcement be carried out and that although they supported the direction, they were still not sure the issue of transferability was ripe yet, because of other compliance concerns, such as observers. Another PAC member opined that if catch is not utilized in a year it is lost and not carried over and so is a benefit for the environment. Another member expressed support of hard catch limits, transferability and that if an allocation is not utilized in a given year it is lost and not transferred over and that transferability provides an opportunity for the territories in terms of training and building their own capacity.

Other fisheries

194. The PAC discussed whether the capacity limit for bigeye should apply to other fisheries that catch more than 2,000 mt of bigeye.

195. A PAC member opined that other fisheries are within the grand scheme of things and that there should be a sensitivity to this. The member urged caution and to be mindful of other fisheries.

196. The session chair explained that the point of discussion was that small scale fisheries might not be having a significant impact on the stocks, and from the management perspective, there might be no need to curtail these fisheries; management of these fisheries would not impact the effectiveness of the CMM.

197. A PAC member opined that maybe small scale fisheries should be exempted but noted the need for clarification as to the term of "other fisheries" and what it meant in the context of WCPFC conservation and management. Another member agreed. Another PAC member expressed concern regarding when a CMM is being created and how there is need to stick to the subject matter and that this actually pertains to non domestic fisheries. Another member agreed that totally excluding artisanal fisheries and those taking less than 2,000 mt of bigeye and yellowfin was a good idea, and noted that para. 39 of CMM 2008-01 excludes artisanal fisheries though without a definition. The PAC member questioned if Indonesia and the Philippines were in this provision and/or whether these fisheries were being addressed.

198. NOAA staff clarified that para. 39 also pertains to the Philippino ringnets and Indonesian and Japanese artisanal fisheries.

199. A PAC member opined that another way to read para. 39 may be to consider those fisheries that take less than under 2,000 mt of bigeye as exemptions. A member expressed concern regarding the other species of concern and their impact to the communities and wanted to include a caveat that artisanal and coastal fisheries are exempt.

200. The session chair summed up the discussion by suggesting that there was some agreement that any fisheries that take less than 2000 mt should be exempt, i.e., should be considered as covered by the language of para. 39.

Compliance monitoring scheme

201. The PAC discussed moving the review of CCM compliance out of the non-public domain category.

202. A PAC member strongly supported this and stressed that there were consequences for non-compliance and wanted this overall for all CCMs. The member also expressed interest in wanting to see the U.S. government pursue potential consequences for non-compliance as this was a critical part. A PAC member thought that it was reasonable to say reports can remain confidential through the editing process, but once completed and countries have accepted that the information is accurate; at that point these reports should be put in the public domain such as the public side of TCC meeting web pages. Another member supported this and thought it was a shame that this was not a more powerful motivator for people from the PICs. Another PAC member expressed that compliance is a major concern and that if the U.S. is going to be put to the highest standards, then others should as well.

Whale sharks and cetaceans

203. The PAC discussed the development of CMMs regarding whale sharks and cetaceans.

204. A PAC member opined that it was important to think about how to achieve the goal overall and to be more specific as to what the measures should include. Another member expressed wanting to separate these into two measures, because sharks and marine mammals are different. Another PAC member expressed support for language to ban setting on whales and to ban on the intentional setting on whale sharks. A member expressed concern regarding using "intentional" as this could pose enforcement problems such as a captain not seeing a whale yet an observer seeing one and writing it in a report. A PAC member suggested language to ban the "intentional" setting on whale sharks, with guidelines for handling and release of incidental catches, and agreed that there was a need for clear guidance on distinguishing intentional sets

on whale sharks from unintentional sets. Another member agreed that intentional is an enforcement issue and that whale sharks are difficult to deal with in terms of enforcement and that language should be looked at in more detail.

205. A PAC member explained that because whale sharks spend less time at the surface than cetaceans it might be useful for observer records to identify if they see something on the surface and that maybe it would be useful to collect this information. A PAC member opined that whale sharks are sometimes targeted for setting and urged for language to include mandatory and safe release.

206. David Itano was asked to briefly explain the background regarding the discussion at the SC.

207. NOAA staff clarified that nothing had been developed in terms of policy and that so far everything being done was to compile information from the American Tuna Association. Discussions were not all consistent with draft guidelines circulated by ISSF, and the United States eventually will develop a strategy and then a policy. NOAA staff also clarified that little science was provided by SC7 regarding the species and that the working group also had very little information to offer thus far.

208. A PAC member requested clarification as to how frequently setting on whale sharks occurred, and how maybe it would be useful to develop language for observers regarding distinguishing between intentionally setting versus not.

209. The session chair summed that there was general support to get a CMM to protect the species. Overall there were mixed views regarding support for guidelines for safe release and handling including consideration of crew safety, and support for amending observer protocols or making them more complete to include reporting on large animals at sea.

Sharks

210. The PAC discussed the development of future conservation measures for sharks.

211. A PAC member questioned the species being considered and the number of key species and sought clarification as to whether the measure is just about reporting of catches or whether there were restrictions on those species.

212. NOAA staff clarified that this would only entail reporting requirements and that once a shark is listed as a key shark species data would ultimately be available for assessment so once on the list they do have an enhanced status. NOAA staff further clarified there were eight types and 13 species which had some sort of mandatory reporting requirements.

213. A PAC member expressed support for adding five species to the list of key species, urged that regulations regarding sharks be tightened, expressed strong support for the fins remaining attached as a provision in the CMM, and supported an evaluation of wire leaders versus monofilament leaders. A member disagreed and expressed that there be no need to further investigate the leader issue. Another member opined that maybe there was a need to investigate bait type and put an emphasis on squid bait rather than leaders.

Charter notification scheme

214. The PAC discussed CMM 2009-08 on Charter Notification Schemes and how this measure requires CCMs to report to the Commission that a charter is underway, but there are a lot of ambiguities that are not resolved.

215. A PAC member supported the recommendation for tightening the charter notification rules and requirements, but wanted clarification as to how this applied to U.S. territories and if chartering would allow other boats into U.S. waters and have this attributed to U.S. catch. Another member expressed that there was an understanding that the Western Pacific Fisheries Management Council was working on an amendment to resolve issues as to the territories (which cannot now do so) could enter into charters with U.S. or foreign vessels. Another PAC member expressed concern regarding the responsibility of the Commission and the need for this CMM to be fixed; it should specify reporting requirements, any requirements with respect to where and when fishing could be done or for landing in domestic ports, the attribution of catch to each side etc. A PAC member agreed and expressed support for a discussion on the definition of "integral" and added that chartered vessels still have a general nexus with the flag state under international law.

216. A PAC member opined that the catch needs to be attributed to someone's limit and needs to be reported to the Commission accordingly. Another PAC member expressed confusion as to who is considered the charterer and how this needed to be made clear. ICCAT Recommendation from 2002 was identified as a possibility regarding the terms chartering contracting party and flag chartering party. Discussion took place as to who a charterer was versus a charteree. Another PAC member expressed that for a number of PIPs the vessel flag state has no say in the chartering because it is run by a private company so, to include the vessel flag state as a charteree, may not be accurate. Another PAC member expressed that the main point is how catch is attributed.

Gear marking

217. The PAC discussed the draft gear marking proposal introduced at the PAC meeting and how the government should continue working with both the longline and purse seine fleets on refining the proposal.

218. A PAC member explained that both the Northwest Atlantic Fisheries Organization and the Northeast Atlantic Fisheries Commission have specific language regarding gear markings and there is need for reporting and tracking. Another PAC member opined that, in going down this road, it would be important that gear marking requirements be consistent in all areas, and that while it would be useful to see what other RFMOs have done, it needs to be kept in mind that no tuna RFMOs have developed any FAD or other gear marking requirements. Another PAC member explained how not all vessels have the ability to retrieve derelict gear, such as albacore troll boats, or to retrieve FADs that no longer have their transmitter attached.

219. The session chair clarified that the previous suggestions were that a protocol be developed and not a requirement.

220. A PAC member indicated no objection to the idea and that the main interest at this point was not to rush ahead at the next WCPFC meeting and recommend a binding measure because details needed to be worked out. Another PAC member agreed. Another PAC member agreed this was a good foundation and a good move towards FAD management plans.

221. A PAC member clarified that the gear marking draft proposal came from the Western Pacific Fisheries Management Council and thanked NOAA staff for bringing this forward. The member clarified that the marking requirement has been in the books for longline fisheries in this region for decades and that there is strong support for this proposal because it would help with enforcement and marine debris issues. The member also reiterated that this issue had been discussed in the prep con process and so there was already previous context on this issue in the WCPFC area.

222. The session chair requested that it would be helpful to the PAC if NOAA staff would prepare a summary of what that history has been and maybe PEW could enlighten the PAC as to what other organizations have dealt with similar issues as it is recognized that there are concerns and that this is a work in progress.

Port state measures

223. The PAC discussed the need for the U.S. to continue working on port state measures that are appropriate for the WCPFC and recognized the support needed by Pacific Islands, including the U.S. territories.

224. A PAC member appreciated the intent of the EU measure but expressed concerns regarding the process and the need to see improvements to the measure to make it more WCPFC-specific to alleviate some of the concerns that were raised.

WCPFC/IATTC overlap area

225. The PAC discussed how the U.S. should work to resolve issues in the overlap area and how the two organizations should be coordinating where appropriate.

226. The session chair summed up that overall this was an urgent problem to be solved and that there was agreement that the U.S. should push and do what needs to be done so that the issues in this area are resolved as soon as possible.

Other issues – observers

227. A PAC member stated that there was broad agreement around room to level the playing field and continue to try to increase observer coverage in foreign longline and purse seine fleets. Another PAC member agreed and expressed that how the data is collected should be standardized. Another PAC member opined on the importance of debriefing. A member expressed the importance of using observer data. A PAC member expressed concerns about putting observers on board because of safety and space and suggested that another tool to consider would be video monitoring. The Commission should look at that as an additional tool as well as the need to give more credence to observer data, perhaps in lieu of VMS data.

Other issues

228. A PAC member expressed concern about having the WCPFC as an RFMO lose control in the sense that the PICs were gaining more control and influence has been shifting to the PNA parties, and with that, there was no fair play..

229. Another PAC member urged the U.S. to take a robust role in promoting action to establish target limit reference points, as this should be the basis for setting responsible catch limits.

230. A PAC member expressed growing concern as to national waters and the tendency of PICs to treat their waters as national waters exempt from Commission controls. The session chair agreed and presumed the U.S. would continue to push that position.

231. A member expressed concerns about some positions the U.S. had taken in the past for expediency/pragmatic reasons and stressed the need to reiterate the overlap issue between the IATTC and WCPFC.

232. The session chair concluded discussion of the issues. The chair and vice-chair thanked NMFS for all the hard work setting up the meeting and preparing the briefing documents and presentations. Russell Smith, U.S. Commissioner, also made concluding remarks including an indication that he looked forward to working with the PAC in further development of U.S. positions prior to and at the WCPFC meeting.

25 October 2011

PERMANENT ADVISORY COMMITTEE

to the

UNITED STATES SECTION

to the

WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION

STATEMENT OF ORGANIZATION, PRACTICES AND PROCEDURES

(Adopted October 25, 2011)

I. AUTHORITY

The Permanent Advisory Committee (hereinafter referred to as the Advisory Committee) to the U.S. Section to the Western and Central Pacific Fisheries Commission (hereinafter referred to as the WCPFC) is established under authority of the Western and Central Pacific Fisheries Convention Implementation Act, 16 U.S.C. §§ 6901 et seq.

II. ADVISORY COMMITTEE ORGANIZATION

A. PURPOSE

The purpose of the Advisory Committee is to serve in an advisory capacity on the development of U.S. policies, positions and negotiating strategies to the U.S. Section to the WCPFC with respect to U.S. participation in the WCPFC. The U.S. Section is comprised of the U.S. Commissioners to the WCPFC and representatives of the Department of State, if the Department of State does not have an appointed Commissioner.

B. SUPPORT SERVICES

The National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, shall provide to the Advisory Committee such administrative and technical support services as are necessary for the Advisory Committee's effective functioning. An Executive Secretary to the Advisory Committee shall be appointed and provided by NOAA to carry out such functions. To the extent practicable, relevant materials should be distributed to members at least 10 days in advance of meetings.

C. ADVISORY COMMITTEE MEMBERSHIP, TERMS AND PRIVILEGES

1. Composition. The Advisory Committee shall be composed of:

a. Not less than 15 nor more than 20 individuals appointed by the Secretary of Commerce in consultation with the United States Commissioners, who shall select such individuals from the various groups concerned with the fisheries covered by the Western and Central Pacific Fisheries Convention, providing, to the maximum extent practicable, an equitable balance among such groups.
b. The chair of the Western Pacific Fishery Management Council's Advisory Committee or the chair's designee; and
c. Officials of the fisheries management authorities of American Samoa, Guam, and the Northern Mariana Islands (or their designees).
d. The Pacific and Western Pacific Council shall be afforded one seat each as ex-officio members.

2. Appointment Terms. Each member appointed under II. C. 1a of the Advisory Committee appointed under paragraph 1 of this section shall serve for a term of two years and shall be eligible for reappointment. Advisory Committee members will continue to serve in their term until a reappointment for them is finalized.

3. Compensation. Members of the Advisory Committee shall serve without pay, except they shall be allowed travel expenses to attend Advisory Committee meetings, if such service is conducted while away from their homes or regular places of business. In addition to travel expenses, members shall also be allowed per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

III. OFFICERS AND TERMS OF OFFICE

1. General. Every two years, the attending members of the Advisory Committee shall elect a Chair from among Advisory Committee members. The Chair shall serve for a period of two years and may succeed her/himself. A position of Vice-Chair shall also be established. The terms of office for a Vice-Chair would be the same as for the Chair and the Vice-Chair shall be elected in the same manner as the Chair.

2. Elections. The election of a Chair will be held first, followed by the election for Vice-Chair. The election shall be by written secret ballot. If there are two or more candidates, the election shall be by written secret ballot with the votes tabulated by the Executive Secretary. The Executive Secretary shall use the following rules to determine the winning candidate:

a. To win, a candidate must receive a majority of the votes cast by members present and those voting by proxy.
b. If no candidate receives a majority of the votes, the Executive Secretary shall declare no election. If there are more than two candidates, the candidate receiving the lowest number of votes shall be dropped from consideration and a vote will be taken by secret ballot for the remaining candidates. This process will continue until a candidate receives a majority of the votes cast.

c. Those preferring not to vote for any candidate shall write or check "ABSTAIN" on the ballot.
d. The number of ballots cast for an individual shall be announced, upon request by a member of the Advisory Committee. Any Advisory Committee member who questions the result may review the ballots. The vote of any Advisory Committee member shall not be identified nor made public in any respect.

3. Special Elections. In the event that the Chair cannot fulfill the Chair's obligations for the balance of the Chair's term, a special election will be held at the next scheduled Advisory Committee meeting to fill the position of Chair. In the event that the Vice-Chair cannot fulfill the Vice-Chair's obligations for the balance of the Vice-Chair's term, a special election will be held at the next scheduled Advisory Committee meeting to fill the position of Vice-Chair. The procedures for nominations and elections set forth above will be followed for special elections.

4. Authority of the Chair and Vice-Chair.
a. Subject to the authority of the Advisory Committee, the Chair shall have general charge, supervision over, and responsibility for the business and affairs of the Advisory Committee.

b. The Vice-Chair, at the direction of the Chair, shall assist the Chair in performing his/her duties, and carry out the duties of the Chair during such time as the Chair is unable to perform them.

5. Subcommittees and Working Groups.
The Advisory Committee shall have the authority to establish Subcommittees of Advisory Committee members and Working Groups, which may include non-Advisory Committee members as participants, and specify their functions, composition, duties, and responsibilities consistent with this Statement of Organization, Practices and Procedures, the Act, and other applicable law.

IV. ADMINISTRATIVE MATTERS

A. MEETINGS

1. All meetings of the Advisory Committee and any Subcommittees or Working Groups that the Advisory Committee establishes shall be open to the public, except when in executive session, which shall be closed to the public.

2. The Department of Commerce shall be responsible for providing notice of meetings to the public in a timely fashion and the Advisory Committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

3. A majority of all current members of the Advisory Committee shall constitute a quorum.

4. Subject to governmental restrictions on the use of confidential information, the Advisory Committee may receive, compile, or discuss data or reports showing the current or projected commercial operations of identified business enterprises.

5. The agendas for Advisory Committee meetings will be drawn up by the Chair and the Vice-Chair, with the concurrence of the Commissioner from the Department of Commerce (hereinafter referred to as Government Commissioner) or his or her representative. Members may submit items for the agenda up to two weeks prior to the next meeting, and the Executive Secretary shall circulate the agenda prior to the meeting. The agenda for the meeting may be amended by a decision of the Advisory Committee.

6. The Executive Secretary shall prepare the minutes of each meeting, which shall at a minimum contain: a record of all persons present; the names of persons from the public who attended the meeting and their interests or affiliations; a description of matters and materials discussed and conclusions reached and the rationale for same, a summary of the views expressed attributable to a member only with that members specific permission; and copies of all reports and other communications received, issued, or approved by the Advisory Committee. The minutes shall be reviewed and approved by the Advisory Committee.

7. Roberts Rules of Order shall apply on matters of procedure.

8. Confidential information, including discussion of the U.S. negotiating position for upcoming WCPFC meetings, other than input from the public, shall not be discussed during the public session.

B. CLOSED MEETINGS

1. Executive sessions of the Advisory Committee shall be closed to the public and all discussion occurring in these sessions shall be kept confidential unless otherwise specified by an appropriate U.S. Government official. Executive sessions can include:

   a. When the Advisory Committee is considering the U.S. negotiating position prior to or subsequent to international meetings;
   b. When the Advisory Committee is being briefed on litigation in which the Advisory Committee is interested;
   c. When the Advisory Committee is discussing internal operational matters;
   d. At such other times as requested by the Department of Commerce or the Department of State in order to protect classified, sensitive or confidential information; and
   e. Any other matters as determined by the majority of the Advisory Committee, consistent with applicable law.

2. To the extent practicable, notice of closed sessions on matters of substance should be included in the Federal Register notice announcing the Advisory Committee meeting.

C. MEETING FREQUENCY

1. The Advisory Committee, including meetings of any Subcommittees or Working Groups shall meet at appropriate times and places, at least once a year, subject to available funding, at the call of the Chair of the Advisory Committee or upon request of the U.S. Commissioners, the Secretary of Commerce, or the Secretary of State.

2. If a lack of funding or other factors preclude the convening of an in person meeting of the Advisory Committee, Subcommittees or Working Groups, every effort will be made to organize a teleconference, recognizing time zone differences.

V. VOTING AND DEVELOPING ADVICE

1. Procedural Matters. Decisions of the Advisory Committee on matters of procedure shall be taken by a majority of those members present and voting.

2. Substantive Matters. The Advisory Committee shall report the full range of views expressed to the U.S. Section. Any member may separately submit comments to the U.S. Section, indicating the reasons for his/her views.

3. Amendment of SOPPs. This Statement of Organization, Practices, and Procedures may be amended from time to time by a three-fourths majority vote of the present and voting Advisory Committee members, provided the specified proposed change has been sent in writing to the Executive Secretary to circulate to all members of the Advisory Committee at least ten (10) days in advance of the meeting in which the matter shall be presented. Notice provisions of this section, however, may be waived by the Advisory Committee.

Draft Recommendations[1]
Permanent Advisory Committee to the U.S. Section to the
Western and Central Pacific Fisheries Commission
25-27 October, 2011
Honolulu, Hawaii

Skipjack conservation

We does not support the proposed 1.55 million mt skipjack TAC as it is unclear how the proposed TAC relates to skipjack MSY and current and future Purse Seine capacity levels. We recognize that distribution of the WCPO skipjack stock range may have contracted which has affected the small scale fisheries in Guam and Hawaii. Therefore, we recommend the US work with the WCPFC Science Provider and other CCMs to explore measures that could be beneficial to the skipjack stock.

Base year

Longline catch baselines

1. We recommend that no further reductions in longline catch from the 2010 levels be required in the new CMM.

2. We recommend that the following paragraphs be included in the new CMM.

   Each member that caught less than 5,000 mt of bigeye in 2010 shall ensure that their catch does not exceed 5,000 mt in each of the next 3 years (2012, 2013 and 2014).

   Each member that caught more than 5,000 mt of bigeye in 2010 shall ensure that their catch does not exceed their respective 2010 catch levels in each of the next 3 years (2012, 2013 and 2014).

   If the above is included in the next CMM, the provisions related to fresh fish fisheries in 2008-01 need not be carried forward in a new conservation and management measure.

Purse Seine effort baselines

3. We recommend that effort in the Purse Seine fishery be limited to 2010 levels, but recognizes that effort limits must be augmented by other effective management measures that limit the impact of the Purse Seine fishery on skipjack and yellowfin, and reduce the impact on bigeye stocks.

[1] These draft recommendations were agreed to by PAC members representing the Hawaii longline fishery, U.S. Pacific Territories, and US purse seine industry and brought forth to the PAC for consideration on October 27, 2011.

FAD closure vs seasonal closure(s)

4. We recommend a total Purse Seine seasonal closure, mainly because it promotes greater compliance than a FAD closure.

High seas pocket closures

5. We recommend that no high seas pocket closures be included in the new CMM as effort will simply shift to adjacent EEZs, and further that a potential notification scheme modeled after the existing Resolution, appears inconsistent with the UNCLOS.

Catch retention

6. We do not support full catch retention for all species on longline and purse seine vessels as this would likely be inconsistent with MSA, ESA, and MMPA and/or have negative economic impacts without demonstrable conservation benefits.

Total hard catch limit
All have limits, transfers, over/under?

7. We support the inclusion of hard catch limits for longline vessels and associated catch limit transferability in the new CMM and recognizes that these measures may reduce the ambiguities related to catch attribution. We support incorporating into a resolution the concept that if an allocation is not utilized in given year it is lost, and should not be carried over into the subsequent year.

Other fisheries

8. We recommend that the (capacity limit) (bigeye catch limit?) should apply to other fisheries that catch more than 2,000 mt of bigeye.

Compliance Monitoring Scheme

9. We recommend that the US work to move the review of CCM compliance out of the non-public domain category as the public has significant interest in how individual CCMs are complying with WCPFC measures.

Whale Sharks and Cetaceans

10. We recommend that separate conservation and management measures be developed for whale sharks and whales, to include a ban on setting on whales and guidelines for safe release of whale sharks.

Sharks

11. We support development of future conservation measures for sharks and request that the US analyze the implications of potential gear modifications on US longline fisheries.

Charter notification scheme

12. We support the development of a measure to require that catches of vessels under charter are attributed to the chartering flag State to reduce the current ambiguities related to catch attribution under charter and similar arrangements.

Gear Marking

13. We recommend that the US further develop the gear marking proposal and work with US longline and purse seine fishermen and industry representatives on refining the proposal. Whatever is agreed on this matter must be enforceable and transparent.

Port State Measures and Catch Documentation Scheme

14. We recommend that the US continue to work on port state measures that are appropriate for the WCPFC and recognize the support needed by Pacific Islands, including the US participating territories, for the resources to implement the measure, and consider potential implications for US fisheries and single port operations in the region that may result in unanticipated negative economic impacts.

    The US should continue to work on the CDS scheme, being mindful of avoiding heavy paperwork burdens and potentially unworkable commitments, such as having the scheme apply to fish destined for canneries.

WCPFC/IATTC Overlap Area

15. We recommend the US work to resolve issues in the overlap area as the status quo is unacceptable for several reasons, including that it is disadvantageous to US vessels.

December 6, 2011

Mr. Mike Tosatto
Regional Administrator
NMFS Pacific Islands Regional Office
1601 Kapiolani Blvd., Suite 1110
Honolulu, HI 96814

Dear Mike:

We are writing to express our concerns about the recent meeting of the Permanent Advisory Committee (PAC) for the US delegation to the Western and Central Pacific Fisheries Commission (WCPFC). We appreciate that this was the first meeting of the PAC and as such it is only realistic to expect that refinements and improvement will evolve over time towards a higher level of operational success. Please accept these comments and recommendations in the constructive spirit that they are intended.

Among our primary concerns is the nature and substance of the PAC report to US Commissioners and members of the US delegation, and that the PAC minutes were finalized without adequate review and approval of the committee.

The PAC report should go beyond a detailed record of the meeting and should highlight specific points of advice, in accordance with the designated purpose of the PAC. The current version of the report simply reads as a narrative and does not indicate the conclusions reached (as specified in the Statement of Organization, Practices and Procedures (SOPP) paragraph IV A. 6), or where there was consensus view by PAC members, or a majority opinion. As such, we believe the document does not fulfill its objective to clearly advise the US Commissioners to the WCPFC PAC positions related to the issues they will confront at the next Commission meeting.

We recognize that there were differing opinions around the table at the PAC meeting, and that the PAC decided not to vote on recommendations, but there were items on which there was a consensus and this should be reflected more strongly in the report. Even where there were differing opinions, if there was a majority view this should be indicated, with dissenting views noted. The report is drafted as a broad summation, with no sense of clarity when the majority of PAC members thought there was a best response to particular issues. While SOPP Section V does call for reporting the full range of views, it does not prohibit the reporting of consensus recommendations; we believe highlighting consensus of the PAC can be very useful to the US Commissioners in developing final US positions.

Moreover, there was an agenda item within the Executive Session for the development of recommendations. We recognize that the Executive Session was spent deliberating on whether the Executive Session should be a closed session only for PAC members but the development of recommendations as outlined in the agenda did not take place. A list of draft recommendations

were generated by some PAC members to provide the basis for providing advice to the US Commissioners but these were not used as intended. In the future, we think that this approach should be considered since it would provide more succinct advice to the US Commissioners and Delegation. Further, in the case where there is a majority opinion of then PAC, but some differing views, these can still be captured in the recommendation text and/or minutes.

The review of the draft report and its finalization process was inadequate and should be reconsidered. A draft report was first circulated late on November 28, about a month after the meeting, with comments due three days later for proposed finalization. While we hope a more timely release of a draft can occur in the future, as discussed below, such an abbreviated review time is inadequate. Further, we understand that review comments from PAC members were not able to be sent by the short deadline and consent to finalize may not have even included a majority of PAC members. We note the SOPP under paragraph IV A. 6 states that "the minutes shall be reviewed and approved by the Advisory Committee". Given that the WCPFC8 meeting has been postponed, we recommend that final status of this report be retracted and additional time given to review the report, provided possible corrections, and include improvements, such as highlighted consensus recommendations.

We are also concerned about the timing of the PAC meeting and the release of a meeting report. This year, the PAC meeting was convened in the last week in October, but the report appeared on the December 5th, the same week as the now postponed eighth meeting of the WCPFC. Section V.B.1 of the MOU between the Regional Councils and the Commerce and State Departments calls for a meeting in advance of the WCPFC annual meetings for the purpose of developing US positions. As future meetings are planned, we recommend consideration be given to a mid-October PAC meeting soon after completion of the Technical and Compliance Meeting and a quick turnaround of a draft report for PAC review and approval, such that a final report can be considered in the referenced consultation.

Again, we acknowledge that this was the first regular meeting of the PAC, that roughness of approach is to be expected, and that operational functioning will likely improve over time. We offer these comments in the spirit of facilitating this improvement in subsequent PAC meetings.

Sincerely,

Kitty M. Simonds
Executive Director,
WPRFMC

Donald O. McIsaac
Executive Director,
PFMC

Copies: PAC Members
Russell Smith III

INFORMATION ABOUT BILATERAL NEGOTIATIONS ON U.S.–CANADA ALBACORE TREATY

On Wed, Feb 15, 2012 at 11:23 AM, David F Hogan (OES) wrote:

Colleagues –

In consultation with Mark Helvey I am writing to provide you with an update on the various matters that are being taken up on the future of the U.S.-Canada Albacore Treaty.

Economic Implications - Some initial work from the economics work group may be available shortly and either Mark or I will provide folks with a more specific update when available.

Code of Conduct - In Vancouver the two sides agreed that using case studies to identify ways to improve interactions on the fishing grounds, including possibly through another iteration of a code of conduct, might be a productive way to alleviate some of the negative feelings on a reciprocal fishing regime. A solicitation of examples generated a few concrete cases but also a lot of negative feedback that this exercise would not be useful or produce anything new to address the circumstances, so without a substantiated issue and a broad willingness to contribute to a solution it may be that this is no longer of interest to the U.S. delegation, leading to consideration of suspension of this work.

Next Bilateral Meeting - Due to unforeseen circumstances that created a scheduling conflict we were not able to schedule the next session of bilateral negotiations in March as we had discussed in Vancouver. Due to various other international and domestic fisheries activities the next best dates that worked for both governments are April 11-12. I regret that this scheduling may not be ideal for all participants but there was a dearth of viable alternatives that would have warranted broader coordination to pick dates. The venue remains the NMFS office in Portland, Oregon, located at:

1201 NE Lloyd Blvd, Suite 1100 Portland, OR 97232

Lodging in Portland can be secured by individual participants at their discretion (we looked at blocking off rooms but we are not able to guarantee the specific number of rooms that would be booked so that didn't work out). As a suggestion, there are two hotels that are very close (walking distance) to the NMFS offices. The closest hotel is the Doubletree which is across the street. The next closest hotel is a Courtyard just around the corner. The contact info for both hotels follows:

Doubletree by Hilton, 1000 NE Multnomah Street, Portland, Oregon 97232; Phone: 503.281.6111

Courtyard Portland Downtown/Lloyd Center, 435 NE Wasco St, Portland, Oregon 97232; Phone: 503-234-3200

Del calls to prep for next meeting - Mark or I will be in touch to ascertain availability for a delegation conference calls. Ideally we would have more than one call as the first one would be to discuss the outcomes of the work groups and to identify viable areas to explore as options for

a new regime, if any. A second (and additional, as needed) call would be used to come to some concrete terms of what, if anything, the United States might propose to Canada regarding the future of the reciprocal fishing regime and/or the Treaty itself. We will also be considering the scheduling of a delegation meeting once we are in Portland, possibly the morning of April 11; further specifics on that will follow when we are closer to the meeting dates.

Please feel free to circulate to others that were not included on this msg.

Thanks,

DFH

David F. Hogan
Deputy Director Office of Marine Conservation (OES/OMC)
U.S. Department of State

HIGHLY MIGRATORY SPECIES MANAGEMENT TEAM
REPORT ON ALBACORE MANAGEMENT FRAMEWORK

1 Introduction

In June 2011 the Council tasked the Highly Migratory Species Management Team (HMSMT) and HMS Advisory Subpanel (HMSAS) to begin developing a proactive management framework for North Pacific albacore (NPA), which could be proposed at the international level through U.S. delegations. At that time the Council had not yet received the results of the most recent North Pacific albacore stock assessment, adopted by the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean (ISC) in July 2011.

Discussion of the development of the framework has been scheduled on the March 2012 Council meeting agenda. The HMSMT met January 10-12, 2012, in La Jolla, California and began gathering information to prepare a report for the Council. The HMSMT will discuss their report with the HMSAS when they meet in advance of the March Council meeting. This will allow the HMSAS to provide input on the HMSMT's work. The HMSMT may also draft a supplemental report based on these discussions, and to summarize recommendations based on its work so far.

This HMSMT report addresses the Council's request by presenting information on the following topics:

- Section 2: A problem statement outlining potential Council tasks relative to developing a management framework
- Section 3: Past reports received by the Council relevant to albacore management
- Section 4: Activities at the international level contributing to the development of a management framework for albacore in the North Pacific
- Section 5: A description of existing management objectives articulated by the Inter-American Tropical Tuna Commission (IATTC) and Western and Central Pacific Fisheries Commission (WCPFC) and by the Council in the Fishery Management Plan for West Coast Fisheries for Highly Migratory Species (HMS FMP)
- Section 6: Aspects of the U.S. Canada Albacore Treaty relevant to an international management framework
- Section 7: A discussion of candidate fishing mortality based reference points identified by the ISC Albacore Working Group (AWG)
- Section 8: A review of possible management responses to overfishing
- Section 9: A discussion of potential management responses when a reference point is exceeded
- Section 10: Research needs related to developing a management framework

The HMSMT will submit a supplemental report with recommendations based on the information compiled in the current report.

2 Problem Statement

The WCPFC Northern Committee (NC) has set a goal of developing the management framework for North Pacific albacore over the next 2-3 years, and potentially implementing it by proposing a new or revised conservation measure to replace Conservation and Management Measure (CMM) 2005-03. The Council could engage with this process in the following ways:

- Develop recommendations for target and limit reference points consistent with U.S. policy and the HMS FMP management framework.
- Identify consistent control rules and related management measures that do not disproportionately or inequitably constrain U.S. fisheries. A starting point for recommendations would be whether measures should be effort- or catch-based.
- Specify how international measures would be implemented domestically, should fishery constraints be implemented at the international level.

As noted, at the NC level the framework will be developed over several years, so at this point the specifics of such a framework, and even whether an effective framework will be developed, are unknown. Implementation throughout the North Pacific would require complementary action by the IATTC. The Council will need to consider the timing of its recommendations and feedback from U.S. delegations to have an effective voice in the international process.

3 Supporting Analyses

The Council has received several reports relevant to the status and management of North Pacific albacore:

- In November 2009 the Council received a report summarizing management options based on a White Paper prepared under contract to National Marine Fisheries Service (NMFS) by Michael Laurs and Joseph Powers. The report was intended to help the Council develop a framework process to maintain or limit fishing effort by the West Coast albacore fishery. The HMSAS submitted a November 2009 report to the Council providing input on the White Paper.
- In April 2010 the Council considered initiating the development of a license limitation program for the west coast fishery. The Council decided not to move forward with developing a limited entry program, but they asked the HMSMT to begin collecting information relative to U.S. proposals for albacore conservation and management at the international regional fishery management organization level and appropriate domestic management measures, should action be necessary in response to an updated stock assessment scheduled for 2011.
- The HMSAS and HMSMT submitted reports to the Council in April 2010 on consideration of effort limitation in the West Coast albacore fishery.
- In June 2011 the Council received a report on the economic status of the west coast commercial albacore fishery, prepared under contract to NMFS by Lisa Wise Consulting Inc.
- In September 2011 the Council received an ISC report on the stock status of North Pacific albacore.

4 International Management Responses

In 2005 the ISC Plenary adopted a stock assessment for North Pacific albacore (NPA). The stock assessment modeled several different scenarios due to uncertainty about the level of fishing mortality and stock productivity. However, in its conclusion the authors stated that potentially declining biomass "coupled with a current fishing mortality rate (F_{2003}) that is high relative to commonly used reference points, may be cause for concern regarding the current stock status of NPA. Future conditions are less well known, but if rates of F continue at assumed levels, it is unlikely that the SSB [spawning stock biomass] will rebuild to SSB_{MSY} levels within a 5-year time horizon." That year, at its second plenary meeting, the WCPFC adopted CMM 2005-03 calling on members "…to ensure that the level of fishing effort by their vessels fishing for North Pacific albacore in the WCPF Convention Area is not increased beyond current levels" based on a proposal submitted by the United States. The IATTC followed suit with Resolution C-05-02, which has substantially the same objective with respect to constraining fishing effort. In 2007 the ISC adopted a new stock assessment for NPA (completed in 2006) indicating that the estimate of current fishing mortality ($F_{2002\text{-}2004}$) was high relative to most commonly accepted reference points.

Throughout this period, participants in the international fishery management process stressed the need for RFMOs to adopt reference points for the stock. In 2005 the ISC recommended:

> Future SSB [spawning stock biomass] can be maintained at or above the minimum 'observed' SSB (43,000 t in 1977) with F's slightly higher than the current F range. However, the lowest 'observed' SSB estimates all occurred in late 1970's and may be the least reliable estimates of SSB. A more robust SSB threshold could be based on the lower 10th or 25th percentile of 'observed' SSB. If so done, current F should maintain SSB at or above the 10th percentile threshold but a modest reduction from current F may be needed to maintain SSB at or above the 25th percentile threshold.

In 2008, the Northern Committee agreed on an interim management objective for NPA to maintain SSB above the average level of its 10 historically lowest points ($ATHL_{1996\text{-}2005}$). This differs from the ISC recommendation because it uses the average of the 10 historically lowest years for SSB rather than the 10^{th} percentile. The fishing mortality rate associated with the objective (F_{ATHL}) was calculated by the ISC Albacore Working Group using a simulation to find the rate at which there is a 50 percent probability of SSB falling below ATHL during the projection period. The associated F (0.75) was approximately equal to the current fishing mortality rate ($F_{2002\text{-}2004}$) in the 2006 assessment.

In 2010, at the request of the NC, the ISC Albacore Working Group prepared a paper reviewing a suite of candidate reference points. The NC held a 1-day workshop that year to discuss reference points for northern stocks. At this meeting no agreement was reached on a reference point to replace the interim reference point for NPA. The U.S. urged the adoption of reference points related to MSY over simulation-based reference points (like the interim one), because of the number of subjective decisions required in structuring the simulation and the fact that such reference points are not explicitly related to the stock's life history characteristics. In contrast, Japan viewed the interim reference point as too precautionary to be treated as a limit reference

point, given the current high level of SSB. This position may have been influenced by the assumption that when a limit reference point is reached, fishing mortality must be reduced to 0.

At the reference point workshop Canada tabled a paper on developing a management framework for North Pacific stocks, emphasizing the precautionary approach, defined as "being cautious when scientific knowledge is uncertain, and not using the absence of adequate scientific information as a reason to postpone, or fail to take action, to avoid serious harm to fish stocks or their ecosystem." Figure 1 is a diagrammatic representation of the Canadian proposal. It indicates management responses (scaling the removal rate, or F) in relation to a target reference point (the "removal reference") and a limit reference point. The proposal discusses the need to explicitly account for uncertainty/risk in management and to establish pre-agreed decision rules, or what is commonly referred to as a control rule in the U.S. fishery management context. Figure 1 is similar to Figure 4-1 in the HMS FMP (diagramming MSY and OY control rules outlined in the FMP), although the FMP figure attaches values to the axes in terms of F/F_{MSY} (Y-axis) and B/B_{MSY} (X-axis).

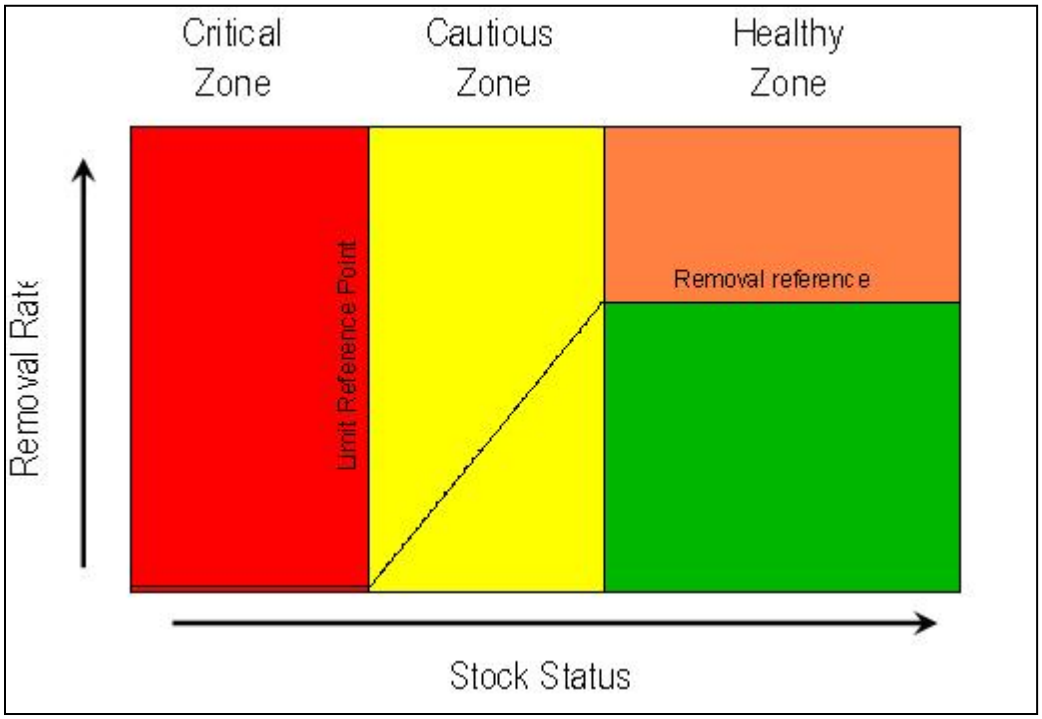

Figure 1. Diagram of proposed management framework for Northern Committee stocks proposed by Canada (WCPFC NC-6-DP-02).

In 2011, the ISC adopted a stock assessment that showed F had declined from the previously estimated level. Simulation indicated that the current fishing mortality rate ($F_{2006\text{-}2008}$) "is about 30% lower than the F that will result in future SSB falling below the SSB-ATHL threshold level at least once during the 2010-2035 projection period."

At the 2011 Northern Committee meeting, Canada followed up their management framework proposal with one specific to NPA. This proposal was adopted by the NC and incorporated into their work plan for the period 2011 to 2014, when the next albacore stock assessment is expected. As incorporated into the work plan it has three elements:

- Annually: Better estimate NPA catch and related fishing effort by members in relation to the objective of CMM 2005-03, based on improved annual reporting of catch/effort by members.
- Discuss in 2012, finalize in 2013: Develop reference points consistent with the management framework.
- Discuss in 2012, finalize in 2013: Develop decision rules for each of the limit reference points specifying what actions to take in the event a particular reference point is breached.

These elements are timed to support revisions to the conservation measure (CMM 2005-03) in 2014 when the next stock assessment is due to be completed.

In addition to these developments in the NC, IATTC staff has noted that the companion Resolution could be revised to make it more effective. For example, while the objective of the resolution is to control fishing effort, reporting is couched in terms of catch. However, at this stage no proposals similar to what was adopted by the NC have been introduced at the IATTC.

At the second global summit of Tuna Regional Fishery Management Organizations (RFMOs) a Strategy Matrix was proposed to provide a format to convey key science advice to RFMOs for decision-making (the meeting is referred to as Kobe II). In the proposal, an RFMO specifies a management target, such as a reference point, for each fishery, and the Strategy Matrix presents specific management measures to meet the target with a certain probability by a certain time. An RFMO determines the range of probabilities and timeframes to be evaluated and reported in the matrix. For fisheries managed under total allowable catches (TACs), the resulting management measures would be the various TACs that would achieve the management target, given the range of probabilities and timeframes. For fisheries managed by effort limitations, the resulting management measures would be various fishing effort levels or time/area closures,

Under this proposal, managers would be able to base management decisions upon the level of risk and the timeframe they determine are appropriate for that fishery, which is consistent with the proposal adopted by the NC.

5 Existing Management Objectives

5.1 RFMO Conventions

The WCPF Convention describes general management objectives in articles 5 and 6. Article 5 references the United Nations (U.N.) Law of the Sea Convention and U.N. Fish Stocks Agreement. A key objective stated in article 5 is to manage HMS for long-term sustainability using the best scientific information and "maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors…" (This is similar to the optimum yield concept defined in the Magnuson-Stevens Act.) Article 6 describes the precautionary approach, under which the Commission shall "determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded" and account for uncertainty in such determinations. Article 7 states "The principals and measures for conservation and management enumerated in

article 5 shall be applied by coastal States within areas under national jurisdiction…" and article 8 states that "Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of highly migratory fish stocks in their entirety."

Article II of the Antigua Convention[1] establishes the objective "to ensure the long-term conservation and sustainable use of the fish stocks covered by this Convention, in accordance with the relevant rules of international law." Article IV calls for the application of the precautionary approach. Article VII (Functions of the Commission) states in paragraph (c) that the Commission shall "adopt measures that are based on the best scientific evidence available to ensure the long-term conservation and sustainable use of the fish stocks covered by this Convention and to maintain or restore the populations of harvested species at levels of abundance which can produce the maximum sustainable yield, *inter alia,* through the setting of the total allowable catch of such fish stocks as the Commission may decide and/or the total allowable level of fishing capacity and/or level of fishing effort for the Convention Area as a whole." Article 5 states "conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible, in order to ensure the conservation and management of the fish stocks covered by this Convention."

5.2 HMS FMP

Among the management goals and objectives enumerated in section 2.2 of the HMS FMP are:

- Promote and actively contribute to international efforts for the long-term conservation and sustainable use of highly migratory species fisheries that are utilized by West Coast-based fishers, while recognizing these fishery resources contribute to the food supply, economy, and health of the nation.
- Implement harvest strategies which achieve optimum yield for long-term sustainable harvest levels.

Chapter 4, as amended, (Preventing Overfishing and Achieving Optimum Yield) describes the framework for establishing reference points including MSY, OY and status determination criteria.

6 Relevance of U.S.-Canada Treaty to Developing a Management Framework

Reciprocal access privileges for U.S. and Canadian vessels under the U.S.-Canada Albacore Treaty expired at the end of 2011 with no replacement. The U.S. and Canada historically have cooperated closely at the international level with respect to NPA management. How any suspension of access privileges would affect this relationship cannot be predicted. An Exchange of Notes also established the principal "that the portion of any national allocation received by Canada and the United States attributable to the catch taken in the EEZ of the other country shall be reallocated by each country to the country in whose EEZ that catch was taken…" This could

[1] Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention between the United States of America and the Republic of Costa Rica

take effect if a management framework involving national allocations were implemented by the IATTC through a complementary measure.

Annex C to the Albacore Treaty states in section 6, "a Party may only terminate the Regime, by providing written notice to the other Party that:

i. an international fisheries management organization with competence over highly migratory species such as the Inter-American Tropical Tuna Commission has adopted a fisheries conservation and management measure for North Pacific Albacore that requires one or both Parties to adopt a domestic management regime, structure or measure that may not be consistent with or may undermine the implementation of the Regime, or

ii. as a result of domestic fisheries management requirements, regulation or laws, a Party must put in place measures for managing fisheries on albacore or associated species that may not be consistent with or may undermine the implementation of the Regime."

However, since the current Fishing Regime (Annex C to the Treaty) expired at the end of 2011, these provisions are not applicable unless a new regime with these provisions is agreed to.

7 Review of Reference Points

In response to the NC request for the ISC species Working Groups to provide candidate reference points for northern stocks, the ISC prepared a paper reviewing a suite of reference points and their pros and cons. The paper included a table prepared by the Albacore Working Group (AWG) with reference points specific for albacore. Reference points can be target reference points, used to guide management objectives for achieving a desirable outcome and not to be exceeded on average, or more than 50 percent of the time, or limit reference points, used to indicate when harvest should be constrained substantially so that the stock remains within safe biological limits. In addition, reference points can address growth overfishing – when mortalities in weight exceed the population growth in weight, or recruitment overfishing – fishing mortality above which the recruitment to the exploitable stock becomes significantly reduced. The usefulness of any specific reference point depends upon the stock assessment modeling approach and input parameters.

The HMSMT was briefed by Dr. Steve Teo at their interim meeting in January 2012 on the candidate reference points selected by the ISC AWG for potential use with the 2011 stock assessment. The ISC AWG estimated current F ($F_{2006\text{-}2008}$) relative to several F-based reference points used in contemporary fisheries management. In addition to the simulation-based interim $F_{SSB\text{-}ATHL}$, these included F_{MAX}, F_{MED} and $F_{0.1}$, reference points that are based on yield-per-recruit analysis, and the $F_{20\text{-}50\%}$ reference points that are spawning biomass-based proxies of F_{MSY}. A summary of the results of the 2011 assessment with respect to these reference points and some of the problems identified with using each of the reference points is provided in Table 1.

Table 1. Estimated ratio of $F_{current}$ to commonly used F reference points, equilibrium spawning biomass and equilibrium yield for the 2011 NPA assessment.

Reference Point	$F_{2006\text{-}2008}/F_{ref}$	SSB (t)	Equilibrium Yield (t)	Drawbacks
$F_{SSB\text{-}ATHL}$	0.71	346,382	101,426	Not useful when there is a declining trend with the lowest biomasses during the end of the times series as each year's estimates will be contributing to the ATHL.
F_{MAX}	0.14	11,186	185,913	Difficult to estimate when Y/R curve is asymptotic, as for the 2011 assessment.
$F_{0.1}$	0.29	107,130	170,334	Not useful for recruitment overfishing; estimates highly sensitive to changes in M
F_{MED}	0.99	452,897	94,080	Assumes a stock recruitment relationship; may not be robust if number of recruits is estimated from narrow range of SSB.
$F_{20\%}$	0.38	171,427	156,922	Difficult to specify which %SPR is an appropriate proxy; advice in literature based on assumptions about stock productivity; not robust to changes in selectivity; does not consider impacts of environmental change on productivity.
$F_{30\%}$	0.52	257,140	138,248	
$F_{40\%}$	0.68	342,854	119,094	
$F_{50\%}$	0.91	428,567	99,643	

The ISC AWG was also tasked in 2010 with investigating the use of a spawning size fish abundance index or some other indicators, including catch and effort trends, to indicate stock status for years between assessments. The AWG examined the use of the HI and Japan distant water longline fishery indices for use in tracking trends in abundance. The Japan longline index and a qualitative examination of fishing effort based on number of vessels operating and recent catch trends could provide useful information to examine relative changes in stock status between assessments, although a full assessment will be the best indicator of stock status.

With the new requirements under HMS FMP Amendment 2 for adopting status determination criteria for managed stocks, the Council will need to determine whether there has been a change in F_{MSY} and B_{MSY} levels (or their proxies) and report on those values in the annual SAFE document. In the case of NPA, suitable F_{MSY} and B_{MSY} proxies should be chosen and approved by the SSC. For the 2011 assessment, estimates based on the interim reference point, $F_{SSB\text{-}ATHL}$ as presented in Table 1, could be chosen.

The timeline established by the NC for developing both international decision rules is to work toward having appropriate reference points selected and decision rules in place by 2014. The IATTC has not established a timeline for comparable goals in the eastern Pacific. The Council will have the opportunity to provide input to the U.S. delegation to the July IATTC meeting and the August 2012 NC meeting.

8 Potential Management Responses when an F-Based Limit Reference Point is Exceeded

The Council may provide input through the international RFMOs as to the choice of appropriate decision rules in the event that a reference point is exceeded. Currently the WCPFC and IATTC conservation measures in place constrain fishing effort; however, concerns have been raised that effort is not clearly defined and may be hard to monitor among fleets that operate with different

gears and fishing practices. Whatever decision rules are chosen at the international level, the Council will need to develop a framework to manage the U.S. west coast-based albacore fisheries to ensure compliance with the international measures.

Broadly, control rules may be imposed to limit output (catch) or input (effort). Domestically, the Council can impose restrictions on access in order to constrain either catch or effort. The paper by Laurs and Powers identifies some options for limiting access that can be considered for domestic management. These may include reductions in numbers of permits based on some control rule, limited entry into the fishery, time and/or area closures, or other options to restrict catch or effort.

9 Summary of Considerations for Management Responses

The HMSMT reviewed considerations for developing a framework for managing the NPA fishery, as covered in the Laurs and Powers White Paper and other applicable references, such as the Canadian ISC CMM discussed above. The November 2009 Supplemental HMSAS Report on the White Paper strongly cautioned against unilateral measures to establish a limited entry permit system for the U.S. West Coast fishery, due to the potential to reduce the U.S. stake in the international fishery; the HMSAS supported using information in the White Paper for developing a framework process to maintain or limit fishing effort by the West Coast albacore fishery in the event a future international management measure requires a reduction in U.S. catch.

There was some confusion as to whether the White Paper represented a call for current unilateral management in the West Coast NPA fishery, such as near-term establishment of a limited entry permit program, or if it represented a catalogue of potential responses to a future management need. The findings in the White Paper were based on 2006 assessment results. The 2011 assessment results suggested relatively more favorable stock conditions than the 2006 assessment, and did not indicate current overfishing or an overfished condition. Nonetheless, a long-term potential remains that a less favorable future assessment could require management measures which would limit both the international NPA fishery and the U.S. West Coast commercial NPA fishery covered by the HMS FMP. The HMSMT thus focused its attention on considerations to address a potential future management need.

Section 4 of the White Paper discusses potential management options, including pros and cons of various possible approaches. Options for consideration include a choice between output-based controls, such as catch limits, or input-based controls, such as gear restrictions, access limits or effort limits. Input controls have often proven ineffective due to the development of technological changes to offset the intended reduction in fishing pressure. Output-based controls may be rendered ineffective due to poor governance structures, imperfect implementation and enforcement, and choosing total allowable catch (TAC) levels which do not adequately reflect the risk of developing an overfished condition.

Management options identified in the White Paper are further classified by decisions about access: Limited Access Privilege Programs, limited entry, and open access are all discussed at length in the context of options for input or output controls. Should the Council ask the HMSMT

to develop a decision document for alternatives to implement a framework, a similar classification could provide a useful approach for comparing alternatives.

The overarching management process for a fishery under the auspices of international management, such as the U.S. West Coast albacore fishery, is discussed in Section 4.4. The example of an international TAC limit is provided. If assessment results indicated a need for management to address overfishing or an overfished stock condition, an overall TAC would be chosen, and then partitioned into country allocations. Individual countries would be responsible to implement management measures to assure their fishers stayed within their allocation. The two-step management process from the international down to the national level suggests developing separate but interrelated framework mechanisms to address a potential future management need at the international (RFMO) and domestic (PFMC) levels.

Challenges at the international level to developing a framework include developing generally accepted measures of catch or effort for management, providing a mutually acceptable method to allocate total catch or effort to individual member nations, monitoring and enforcing individual member nation shares of total catch or effort, developing and adopting mechanisms to prevent individual nations from exceeding their share of catch or effort, and implementing measures to detect and prevent illegal, unreported, and undocumented (IUU) fishing.

In addition to facing a similar list of challenges at the domestic level, a framework needs to address the challenge of coordinating national management with international (RFMO) management, and choosing between alternative domestic approaches to meet international management requirements for the U.S. West Coast albacore fishery.

10 Ongoing and Future Research Related to Development of The Framework

The HMSMT discussed ongoing and future research related to developing a management framework.
In its November 2009 Supplemental Report on the White Paper, the HMSAS noted that the White Paper did not address issues such as fleet structure, fleet operations, markets, socio-economics, climate and ocean conditions, and other factors that impact the recent and future operation of the NPA fishery. NMFS contracted with Lisa Wise Consulting Company (LWC) to conduct an economic study that addressed these concerns, which led to a May 2011 report presented by Henry Pontarelli at the June 2011 Council meeting.

The LWC report included information regarding the attitudes of participants towards management of the albacore fishery. Industry participants in the LWC study identified the following factors that should be considered in developing a management framework:

- The NPA fishery is closely interrelated with other West Coast Pacific fisheries.
- Industry participants have concerns related to using Limited Access Privilege Programs to manage this fishery.
- The open access nature of the fishery provides a benefit of flexible entry and exit to industry participants which might be lost if the fishery went to a limited entry permit system.

- The open access feature also enables the fleet to expand or contract with migratory patterns of albacore; in years when albacore are available "inshore," smaller vessels that are unable to travel long distances are able to opportunistically prosecute the fishery.
- Free entry allows the NPA fishery to serve as a "backup fishery," or option to continue fishing, when other fisheries are limited or closed due to regulations or environmental factors.
- Despite the open access feature, data presented in both the May 2011 LWC report and in the April 2010 HMSMT report suggest that participation in the U.S. West Coast commercial albacore fishery has been very stable at least since 1996, with no apparent evidence that effort has increased over the period in terms of catch or participating vessels.

In addition to the May 2011 report, LWC is currently developing a cost-and-earnings survey of the fishery which will support IOPAC analysis of local economic impacts, and a supply chain analysis which will study product flow from the vessel level to the retail level.[2]

The HMSMT plans to meet with the HMSAS at the March 2012 Council Meeting to share views on what additional information would be needed to develop a framework. This discussion could be summarized in a supplemental report to the Council.

PFMC
2/13/12

[2] IOPAC is an input-output model developed by NMFS Northwest Fisheries Science Center economists for forecasting the personal income impacts of fisheries.

Agenda Item B.2.b
NMFS Report
March 2012

NATIONAL MARINE FISHERIES SERVICE REPORT ON INTERNATIONAL HIGHLY MIGRATORY SPECIES ACTIVITIES

U.S.– Canada Albacore Treaty

A bilateral meeting with Canada was held November 30-December 1, 2011, to discuss a possible fishing regime for the 2012 fishing season and beyond. The meeting was conducted against the backdrop of a joint letter from the two harvesting sector organizations (American American Albacore Fishing Association Western Fishboat Owners Association) that requested the fishing regime be suspended for the 2012 season. One of the major factors behind the letter appears to be aggressive and crowding style of fishing displayed by the Canadian fishermen while in U.S. waters. While no agreement was reached, both Parties did agree that further work needed to be undertaken in the next several months before any further discussions on a specific fishing regime could move forward. These tasks include: 1) Canada's further reviewing the U.S. request for extending the timeline for catch history going to the country where the fish were caught; 2) developing a process for third-party administration of a self-imposed levy of approximately $500 per vessel on Canadian fishermen that would be used for albacore research; 3) continue further discussions on the number of vessels, length of season, and vessel size; 4) reconvene the Data Working group (which did occur January 17); 5) initiate a study that looks at the economic benefits of the Treaty to U.S. port businesses; and 6) harvesters endorsing a mutually agreed upon Code of Fishing Conduct for how they behave on the water and a resolution process for handling disputes.

With regard to item 5 above, an Economic Working Group was formed with government representatives from both Parties. The group is still developing its Terms of Reference but it did begin looking at estimating the economic impact of Canadian vessel landings of albacore to U.S. west coast ports using the IO-PAC Model.

A followup meeting was scheduled for mid-March but it appears that may be postponed till mid-April.

PFMC
02/10/12

HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON UPDATE ON RECOMMENDATIONS FOR INTERNATIONAL MANAGEMENT ACTIVITIES

U.S.-Canada Albacore Treaty:

The Highly Migratory Species Advisory Subpanel (HMSAS) recommends that the Council support a continued suspension of the "fishing regime" under the U.S.-Canada Albacore Treaty through 2012.

Suspension will allow stakeholders and managers to better assess information and data needed to address the long-term reciprocal fishing privileges under the treaty. Without added pressure of a pending fishing season shortly after the next scheduled bilateral meeting, the parties involved can compile necessary data in a more thorough manner. The HMSAS believes that to rush the process for the sake of one season is not the best approach.

The HMSAS also believes that the composition of the Canadian fleet, market and fishing methods have changed dramatically over the past 10 years. Such changes have resulted in increased vessel effort, catch per vessel, crowding on the grounds, leasing of permits and other activities that favor the Canadian fleet. This has led to confrontations on the grounds as described by letters submitted to the Council by U.S. fishermen. Therefore, the HMSAS is concerned about potential altercations between U.S. and Canadian fishermen.

Most U.S. fishermen agree that the presence of the Canadian fleet in the U.S. Exclusive Economic Zone (EEZ) has resulted in a reduction of the U.S. harvest in the U.S. EEZ.

The HMSAS requests that any economic study compares Canadian albacore removal from the U.S. EEZ beginning in 1995 (approximately 500 tons) to current removals estimated at over 4,000 tons. Currently, a much higher portion of the Canadian catch is delivered back to Canadian ports instead of U.S. ports.

The HMSAS recommends that the PFMC support research on albacore tuna and continued cooperation with Canada on international management objectives.

The HMSAS is aware that the treaty and its fishing regime are two separate issues. The treaty could remain without fishing, or with very little fishing, and remain a potential vehicle for cooperative research or management measures benefitting fleets of both countries.

Any new regime should clarify that catch in each EEZ is credited to that nation's EEZ regardless of whether the treaty (or fishing regime) exists or not.

The HMSAS is confident that future negotiations will be conducted with the improved health and stability of the U.S. albacore fishery as the guiding principle.

Albacore Framework Plan

The HMSAS generally supports the concept of a "framework" plan to address potential future negative stock assessments and overfishing before it is a problem.

However, the HMSAS remains concerned that the process to produce this plan could get ahead of the international process in such issues as establishing reference points either target or limit, as well as proposing controls on the US albacore fleet with either effort or catch controls.

The HMSAS is concerned that any detailed plan under the "framework" concept would telegraph the U.S. government's position to other nations in the international negotiations. Such transparent information could be detrimental to the U.S. industry which could result in lesser share of any potential access or national quotas.

Thus the HMSAS reminds the PFMC that:

- Presently NP albacore stocks are stable with no overfishing occurring;
- The U.S. albacore fleet and catch remain stable;
- Any effort or catch controls on the U.S. fleet needs to be applied multilaterally across the nations involved;
- The HMSAS also recommends any domestic or international reference points should be "target" and not "limit" points.
- One HMSAS member will be submitting a minority opinion during the public comment period with respect to the Management Framework for Albacore Tuna.

HMSAS ADVICE ON THE WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION (WCPFC)

The HMSAS reviewed developments with regard to the U.S. positions for the WCPFC Annual Meeting, which was delayed from December 2011 until March 26, 2012, and determined that very little had developed in the interim. Therefore, the HMSAS advice remains the same and can be summarized as:

1. The U.S. should support the adoption of appropriate biological reference points for all managed HMS stocks in the WCPFC Convention Area.
2. The U.S. should support increased compliance with WCPFC conservation and management measures including accurate and timely filing of required reports and statistics with the Commission.
3. The U.S. should encourage cooperation between the Inter-American Tropical Tuna Commission (IATTC) and the WCPFC to establish and implement conservation and management measures in the overlap area of the respective Convention Areas.
4. The U.S. should encourage the IATTC and the WCPFC to adopt management and conservation measures which are compatible with measures of the other organization, recognizing differences between stock behavior and historic fishing methods in different areas.
5. The U.S. should oppose elements of the Regional Observer Program which would apply the same requirements to small vessels (however defined) that apply to larger purse seine

and long line vessels without regard to the physical and economic differences between large and small vessels.

6. The U.S. should support efforts to address overfishing of bigeye tuna and other consequences of fishing on fish aggregating devices by complete closures of the purse seine fishery which would require vessels to remain in port during the one of two seasonal closures during which the vessel has indicated it will not fish on fish aggregating device (FADs), similar to measures enacted by the IATTC in order to increase compliance.
7. With regard to closure of high seas pockets and other high seas areas the U.S. should take the position that there is no conservation basis for such closures and that areas closed in the past should be reopened with suitable controls in place to prevent illegal, unregulated, and unreported (IUU) fishing in those areas.

HMSAS Advice on the IATTC Annual Meeting

HMSAS provides the following advice to the Council on positions for the U.S. Delegation to the June 2012 Annual meeting of the IATTC.

At this early date with no information from either the IATTC scientific staff or the IATTC Scientific Committee, it is difficult to make any specific recommendations. However, the HMSAS does believe that it is appropriate for the Council to make the following general recommendations to the U.S. Delegation:

1. The U.S. should support the adoption of appropriate biological reference points for all managed HMS stocks in the IATTC Convention Area.
2. The U.S. should support increased compliance with IATTC conservation and management measures including accurate and timely filing of required reports and statistics with the Commission.
3. The U.S. should encourage cooperation between the IATTC and the WCPFC to establish and implement conservation and management measures in the overlap area of the respective Convention Areas.
4. The U.S. should encourage the IATTC and the WCPFC to adopt management and conservation measures which are compatible with measures of the other organization, recognizing differences between stock behavior and historic fishing methods in different areas.

PFMC
03/02/12

HIGHLY MIGRATORY SPECIES MANAGEMENT TEAM REPORT ON UPDATE ON AND RECOMMENDATIONS FOR INTERNATIONAL MANAGEMENT ACTIVITIES (ALBACORE MANAGEMENT FRAMEWORK)

In June 2011, the Council tasked the Highly Migratory Species Management Team (HMSMT) and HMS Advisory Subpanel (HMSAS) to begin developing a proactive management framework for North Pacific albacore (NPA), which could be proposed at the international level through U.S. delegations. In July 2011, the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean (ISC) adopted a stock assessment that suggested overfishing is not occurring and the stock of NPA is not overfished.

At their September 2011 meeting, the Western and Central Pacific Fisheries Commission (WCPFC) Northern Committee (NC) set a goal of developing a management framework for NPA in advance of the 2014 stock assessment. Their intent is to establish a precautionary management framework to support any necessary revisions to the conservation measure addressing NPA (CMM 2005-03). In June 2005, the Inter-American Tropical Tuna Commission (IATTC) adopted resolution C-05-02, which has the same objective with respect to constraining fishing effort; it too could be revised pending a new stock assessment. The NC work plan generally parallels direction the Council provided to the HMSMT and HMSAS; that work plan has three elements applicable to international management:

- Better estimate NPA catch and related fishing effort by member nations;
- Develop reference points consistent with the management framework;
- Develop decision rules specify actions to be taken in the event a particular reference point is breached.

The Council could engage in this process in the following ways:

- Develop recommendations for target and limit reference points consistent with U.S. policy and the HMS FMP management framework.
- Identify consistent control rules and related management measures that do not disproportionately or inequitably constrain U.S. fisheries.
- Specify how international measures could be implemented domestically, should fishery constraints be implemented at the international level.

The HMSMT believes that the development of a proactive framework would be beneficial in preparing the U.S. to consider alternative responses to potential future proposals and management requirements that arise in the international arena. This could include promoting consistency between the NC work plan and complementary IATTC activities. Should the Council wish to have the HMSMT proceed with the development of a suite of alternatives we recommend the following timeline (see next page). These alternatives could include, and may not be limited to, recommending measures to regulate fishing mortality at the domestic level, and effort- and/or catch-based management strategies internationally.

Date	Task / Product
March 2012	- Brief Council regarding progress and understanding of assignment and offer a draft work plan for consideration and additional guidance.
Spring 2012	- Draft alternatives for domestic management measures in consultation with the HMSAS.
June 2012	- Brief the Council on progress and seek additional guidance as needed.
September 2012	- Council consideration of a suite of alternatives for domestic management measures that would compliment any international proposal.
November 2012	- Report back to the Pacific Council regarding stakeholder input and provide revised alternatives that address relevant comments.
March 2013	- Draft decision document with suite of alternatives reflecting the incorporation of relevant public comment and direction of the Pacific Council. - Begin considering international measures consistent with the timeline used in the domestic process.
April 2013	- Finalize Decision Document to incorporate direction from the Council. Solicit public comment.
June 2013	- Advise Council on input to the U.S. delegation for the 2013 NC meeting regarding the management framework as well as meetings of the IATTC where management measures are discussed.

PFMC
03/01/12

Pacific Fishery Management Council
7700 NE Ambassador Place
Suite 101
Portland, OR 97220
e-mail: pfmc.comments@noaa.gov

Re: US/Canada albacore Treaty

Dear Council Members,

I am a 3'd generation captain and owner with 42 years vested in the Tuna Industry. As a stockholder, I am against the current Treaty regime. I have had the unfortunate experience to watch the Canadian Treaty grow from a lopsided arrangement for fisherman to what it is today, a bad arrangement.

Overcrowding from foreign vessels in our own EEZ have led to exploitation and competing for our own resources, shore facilities, and anywhere from docking space to markets. This is a seasonal fishery with our coast as the main backdrop. The migratory nature of albacore gives us a small limited window of time and space in which we can fish and make a living.

Due to the overcrowding by Canadian vessels it puts the American fisherman on defensive in a hostile environment, forcing the American boats to leave good producing areas in search of far lesser producing areas. This action causes an extreme hike on our expense levels, loss of time, and fuel for traveling trying to locate less congested areas.

With the current climate of world economics, all countries are beginning to re-evaluate their relationships with their own ocean rights and resources. We should as well. First off, we must protect our citizens, our fishermen and our country's rights and resources. Secondly, we must also listen to the unified voice of the people that are most affected, the U.S. fisherman.

I appreciate the time you have allowed me to voice my deep concerns on the continuation of the Canadian regime. Again I must reiterate that I am not for the continuation of the regime, and I think it best if we discontinue and dissolve the regime to protect the future of American fishermen and the industry.

Thank you,

Bobby Blocker
F/V Her Grace
San Diego, California

Carl Nish
113 W. G Street #329
San Diego California 92101

January 9,2012

Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220
Email: pfmc.comments@noaa.gov

RE: UNITED STATES/CANADA ALBACORE TUNA TREATY

Dear Councilmembers,

I would like to reiterate once again my thoughts on the United States/Canadian Albacore Treaty. I would like the U.S. to take the time and revaluate the fishing regime with the Canadian fisherman. There is no economical benefit to United States Citizens and therefore Canadian fishermen should not be let back into the U.S. EEZ.

Canadian fishermen can fish albacore tuna in their own waters or outside the U.S. EEZ. I am not asking them to quit fishing albacore tuna, but rather use their own resources. Leave the U.S. EEZ to economically benefit U.S. Citizens.

I read an article that Canada is negotiating a free trade agreement with European Countries. This agreement is about exporting processed seafood/fish including albacore tuna, duty free. U.S. exports of processed seafood/fish including albacore tuna go with a 22% duty to European Countries. Once again, this is a prime example of the U.S. enabling Canada to better their own economy from within our EEZ.

I found this on NOAA web site - “About National Marine Fisheries”

VISION
The American people enjoy the riches and benefits of healthy and diverse marine ecosystems...
As a steward, NOAA Fisheries has an obligation to conserve, protect, and manage living marine resources in a way that ensures their continuation as functioning components of marine ecosystems, affords economic opportunities, and enhances the quality of life for the American public.

As a fellow American, I think it is time to protect our own resources to benefit the American public and quit giving it to other countries to boost their economy with no benefits to the United States of America.

I am 68 years old and would like to know that I did what I could to protect the future of our young fishermen. I think it is in NOAA's hands to preserve our resources for the next generation of American fisherman.

A Fellow American,

Carl Nish
Captain and Owner
F/V Lydorein

Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384

Email: pfmc.comments@noaa.gov

On The U.S./Canada Albacore Treaty

Dear Council Members,

I am writing this letter in response to the U.S. / Canadian Treaty. In my opinion, there is no benefit to the U.S. albacore fleet to allow the Canadian fishermen to work U.S. waters.

In my experience, they have interfered with my ability to maximize my catch potential. For example, when we find good schools of fish, if a Canadian boat hears or sees us catching, the whole Canadian fleet shows up and infringes on those waters therefore, limiting the fish the U.S. fleet catches.

As you know, we need to optimize our catch potential in these lean years. I do not support this treaty. It is my understanding, the fish they catch do not benefit the U.S. economy in any way. The fish they catch usually go back to Canada. If the treaty is renewed, I would like to see major changes that would benefit U.S. fisherman and our economy.

Sincerely,

Darrin Kang

F/V Robin Ann
Owner/operator
Oregon

CAPT. RICHARD J. STEPHENSON
4310 Randolph Street
San Diego, California 92103

(619) 296-4717

Pacific Fishery Management Council
email: pfmc.comments@noaa.gov

February 3, 2012

Dear Council Members,

At one time San Diego was the tuna capitol of the world with five canneries, over 150 large tuna seiners, and the related service businesses that together employed over 10,000 people. This has all disappeared, gone forever and will never be rebuilt. We are left with a small but dedicated albacore fleet, mostly owned and operated by second and third generation fishermen.

This fisheries is being threatened by the decisions of National Marine Fisheries, which is part of NOAA. Past decisions have led to an imbalance where the number of Canadian albacore boats in our water far outnumber the number of U.S. albacore boats fishing in Canada. To give you an idea of how much the Canadians value the right to fish in our waters, they pay up to $200,000 for a license to take our fish.

The American albacore tuna fishermen have one main area to fish and that is within the U.S. 200 mile limit off California, Oregon, and Washington. I feel strongly that these U.S. waters should be strictly for our U.S. fishing boats and our U.S. fishermen.

There will be meeting in March of this year to review the U.S.-Canada Albacore Treaty. As a concerned citizen and fisherman, I would like to see a change in this treaty to restrict the U.S. waters and resources for the benefit of our U.S. fisheries.

I do not want to see this remaining tuna fleet endangered. Please help in the effort to change or eliminate this existing treaty.

Sincerely,

Richard Stephenson

Capt. Richard Stephenson

PACIFIC FISHERY MANAGEMENT COUNCIL
7700 NE Ambassador Place, Suite 101
Portland, OR 97220
Email: pfmc.comments@noaa.gov

Re: U.S. & Canada Albacore Treaty

To the Pacific Fishery Management Council,

I strongly feel that Canadian fishermen have had a significant impact on my fishing business. I can say with certainty that the bad encounters I have had with these fishermen are far too numerous to list. I will leave good fishing grounds in order to find areas that are not infected by these "fishermen?". Captains cannot always be at the helm. We have to maintain the refrigeration, aux. engines, bait pumps, and main engines. Most times when Canadians show up to an area they go straight for a guy and fish as close to him as possible. I guess the thinking is that the fish must be right there and that is why the boat is there. And one Canadian can be avoided, but when they multiply around you it is just far too dangerous to leave the helm for even a minute to check on our machinery.

My time in this fishery is not as extent as some of the older guys in this fishery. But from my experience, I don't believe I ever need to go to Canada to make my living. I have gone to Canada in search of fish before and it has never paid off. I strongly feel that I would benefit far more from the lack of Canadian effort in US waters than I would ever benefit in my lifetime (or my kids' lifetimes) being able to go to Canada.

The lopsided benefit of our current treaty is obvious. Look in US fishing vessel logbook data and total up the number of days US vessels spent in Canadian waters (using any length of time; i.e. last 5 years). Compare that to the number of days that Canadian vessels spent in US waters. The numbers you will find is staggering. These Canadian vessels are directly impacting US albacore fishing operations. And our presence in their waters is trivial. Why should US fishermen bear the brunt of this treaty?

It is up to us to protect our fishermen and our country's resources. Every time we turn around someone in government is saying "we don't have the funding". There is no better or

easier way to save money than to end this treaty. Close the border.

Even now, I strongly feel that from the numbers of Canadian vessels that we are seeing on the grounds just does not match up to the numbers under the treaty.

I will guarantee you one thing, the US fishery has been hurting enough. US fishermen should have their EXCLUSIVE Economic Zone for the US fleet. Our earnings are spent in the United States of America. Not shipped away to a foreign country.

The miniscule amount that the Canadian fleet puts into the US economy for fuel and groceries does not compare to the large amount they are taking back to the Canadian economy. This is revenue exported from the US economy. From an exclusively US resource.

Thank you for reading me and my family's feelings about this US-Canadian treaty.

-Eric, Paige, Nicole and Kjirstin Hopfer

F/V Kjirstin Nicole
Tokeland, Washington

E-mail to: pfmc.comments@noaa.gov

Pacific Fishery Management Council
7700 NE Ambassador Pl., Suite 101
Portland, OR 97220-1384

RE: US/Canada Albacore Treaty

Dear Members of the Pacific Fishery Management Council,

As a US albacore fisherman I am very concerned about the US Canadian Treaty on albacore. There are many factors in deciding what the next step is for the future of the Treaty. Here are a few points I would ask you to consider.

We are a mom and pop operation. We have a moderate size fishing vessel that has a 15 ton fish hold capacity. We normally fish alone. On occasions we have fished with two or three other boats (a group).

In the time that we have been fishing albacore, approximately 10 years, we have noticed a dramatic change in the Canadian fleet. Where there used to be areas of 4 to 5 small-to-moderate size Canadian albacore vessels, now you see areas with 60 to 70 Canadian vessels. Vessels that are fairly large, perhaps with 30 to 60 ton fish hold capacities. More and larger Canadian vessels fishing in our US waters. It's a dramatic change.

We have also fallen prey to being bullied. There have been vessels that either push you off your tack, cross tack, make the fish sound, do the pinch, shut down and drift, and other aggressive maneuvers. The few Canadian people that we have talked to at the dock are very nice, but once your out on the fishing grounds it's a different ball game completely.

We also believe that without the Canadian treaty, there will be more participation with a younger generation of US fisherman. Our son has started to show interest in fishing. We really need to look forward to the future and make sure this US albacore fishery will still be strong.

As we all know, there is and always will be concerns of overfishing. We believe that the US EEZ should be exclusive to US fisheries and the exclusive responsibility of the US, to maintain, support and manage this sustainable fishery. Hopefully we can set an example for the rest of the world.

In conclusion, with our personal hands-on experience, we feel that the Canadian Treaty be, at the very minimum, temporarily suspended.

Thank you for your time,

Gary and Candee Mooslin
F/V Blue Dolphin
Eureka, California

Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384
e-mail: pfmc.comments@noaa.gov

US – Canada Albacore Treaty – PFMC Agenda Item B.2, March 2012

[The text below is an e-mail message received by the American Albacore Fishing Association from US albacore fisherman, Gene Fisher of SeaTac, WA. He is the owner and operator of the F/V Two Fishers, and an AAFA vessel member. It is being submitted, with permission, to the Council as public comment.]

The AAFA newsletter about the Canadian treaty was very interesting. I remember complaining about the Canadian vessel Native Dawn harassing me, and you asked me if I wanted you to pass on a complaint. I told you it was not worth the effort; obviously I was dead wrong!

I will most likely be out salmon fishing and won't make the AAFA's April meeting, but I believe it would be worth mentioning -- that we should all start documenting this harassment in our log books and send in a copy of the log.

I appreciate the efforts AAFA is giving to such a disaster as the unfair treaty.

Not sure I am telling any of you what you don't already know, but it will all boil down to bureaucracy and politics. Most likely both sides are not far different as to the procedures, but no doubt the Canadian government will back their fishermen more than ours will with this current administration.

For what it is worth, here is my view of how it will work:

Having been in politics for 16 years and dealing directly with professional bureaucrats, it is no surprise that they want to charge the fisherman a fee to study the problems for which we already know that the logical answer should be with this Canadian treaty. When politics are involved there is no such thing as logic. I have found out the hard way the system cannot be changed, it can only be worked within the same illogical structure. It happens at every level of government and is entrenched to an astonishing level of incompetence and inaction of government at all levels.

Contrary to belief, a win/win in political decisions seldom happens in reality, thus the most money that can be raised to hire consultants, attorneys, etc., (i.e., wheel-spinning) the safer avenue to point the finger at others to justify the decision to the inevitable

dissenters. What really happens is the more time and study of the issue, the better light the political win/win facade can be shown to all sides and the safer it is for the politicians and bureaucrats. The only consistent common denominator is the higher the level of wheel-spinning, involving the greatest number of players, the more money and time it takes to arrive at a decision.

It is especially hard for fishermen that are required to make decisions in split seconds to grasp the reality of this system, but please pass it on that my hat is off to the members that were involved. I not only appreciate the effort, but also understand the frustration.

Gene Fisher
F/V Two Fishers
SeaTac, Washington

e-mail: pfmc.comments@noaa.gov

PACIFIC FISHERY MANAGEMENT COUNCIL
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220

Re: US/Canada Albacore Treaty

Dear Councilmembers,

I started in this fishery catching one fish at a time in 1962. Other than two years of active duty serving our country during the Viet Nam War, I have been supplying Americans with fresh quality seafood full time.

One hundred miles North and South of 45º N. latitude has been the area that produces the best Albacore fishing. For the past twelve years working this area has become very hard because of the number and size and actions of the Canadian boats that are allowed to fish in US exclusive economic zone.

The Canadian fleet has grown to overwhelm the US boats fishing albacore. US boats are forced off our productive spots and have seek fish in other areas that are less productive. Each time this happens it costs the US boats time and money trying to find another area that with productive fishing. Time equals fuel, and time burning fuel without catching fish, is harmful to our small businesses.

The decline in this fishery is harm from this treaty. The smaller local boats have almost been eliminated because of the Canadian presence in the exclusive economic zone off our shores. The loss of boats from this fishery has been devastating to our smaller ports and their economies. Why have the EEZ if it isn't exclusive? Shouldn't our domestic albacore fishermen and their fishery have some priority over a fleet from a foreign country?

Our Government needs to serve US fisherman and allow only American boats to fish our EEZ starting now. Please put an end to the Canadian fleet in the US EEZ.

Regards,

Jack B. Vantress
F/V Seawind
Garabaldi, Oregon

Email: pfmc.comments@noaa.gov

Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384

US/Canadian Albacore Treaty

Dear Councilmembers,

I am the owner/captain of the US Albacore pole & troll vessel Millie G. I have over 30 years experience as a captain with the majority of those years as a US Albacore pole & troll fisherman. The US/Canadian Albacore treaty greatly concerns me.

For over a decade, US fishermen have complained how the treaty is lopsided in favor of the Canadian vessels that have the privilege of fishing in the US EEZ. After the treaty was formed in 1981, Canada began shifting its excess capacity into the US EEZ. During the 1990's it got to be unacceptable. In the last 10 years or so, there has been some steps to try to limit the increased effort that built up. But they were not successful.

I am strongly against any fishing by Canadian vessels in US waters and recommend that all such fishing be ended, now and into the future. I strongly oppose any efforts to renegotiate the treaty as history has proven this to be ineffective.

Historically, the majority of the Albacore catches come from US waters. History shows that nearly all US fishermen are not interested in fishing in Canada. There is no benefit to US fishermen from this treaty. Only hardship. (If the US fleet had access to its traditional fishing grounds in Mexico, there would be more interest from more US vessels)

The Canadian vessels that have the privilege of fishing in US waters have progressively become more and more aggressive on the fishing grounds and they put in much more effort and have much more capacity than ever before. It hampers the US vessels ability to catch fish. It also creates unsafe operating conditions. The bottom line is the treaty has a very negative impact on US fishermen's financial bottom line. That has a negative impact on our families, our communities, and our economy.

Previous attempts to change the treaty have failed to address the problem. And our US fleet has suffered. So have our dockside services. We have lost a lot of our processors and Canada has built up theirs. This treaty is a disservice to this US fishery.

Since the treaty does not require the Canadian fleet to unload catches from our waters in US ports, the economic benefit once again skips not only the US fisherman as individuals, but the financial benefits also escape the coastal communities and the US economy. Many millions of dollars in albacore is taken out of our US EEZ and added to the Canadian economy. Our US fishermen, the small businesses that depend on them, and the economies of our communities should have a right of priority to that resource. The US EEZ should be exclusive.

It is not equitable or reasonable to expect our smaller US vessels to compete with the modern Canadian fleet. It isn't even close to fair.

This is the only commercial fishery that I participate in, and I am not alone. This is true for many of the US Albacore fishing families. This sustainable fishery, its methods and its history are something that the United States and all Americans can be proud of. We need to protect this resource, this fishery, its fishermen, and very importantly, the US families that rely on it. For these reasons, I ask that fishing by Canadian vessels in US waters be ended.

Sincerely,

Jack Webster
F/V Millie G
San Diego, CA

Jeff Nish
2414 Euclid Ave
El Cajon, CA 92019

February 7, 2012

Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384
Email: pfmc.comments@noaa.gov

Re: U.S.-Canada Albacore Treaty

Dear Council Members,

I would like to introduce myself, I am Jeff Nish. I am a third generation fisherman. Fishing has been a way of life for our family for almost six decades. I am in the process of purchasing the family business from my father. My son is continuing the tradition with me, as my two other children will do in the future.

I am opposed to the U.S.-Canada Treaty allowing foreign vessels to fish in the U.S. EEZ. I strongly feel that any foreign competition in the U.S. EEZ hinders our productivity and catch. With the rising costs of fuel, supplies and all living expenses in general, we need to capitalize on our limited fishing opportunities. The Canadian Treaty unacceptably interferes with our doing that.

In the years past we were able to fish year round. Five months of the year in the North Pacific and the remainder of the year in Mexico. We have not been able to fish in Mexico for many years now due to not being able to get permits to do so. We now rely solely on Albacore fishing in the waters of U.S. exclusive economic zone or EEZ.

With so many businesses failing or leaving the U.S., it is in our best interest as a country, to keep our people working and to use our own natural resources for our benefit. Not only does this U.S. albacore fishery sustain our fisherman, it brings monies into ports and communities. We buy fuel and supplies from them, eat in restaurants, and stay in hotels. Locals are employed to unload our fish. Unlike foreign vessels, we maintain and repair our fishing vessels throughout the year. We rent slips and pay utilities and pay boat loans to U.S. banks. We pay state and federal taxes on our income from the albacore we catch. We contribute to the U.S. economy all year long.

I ask the Council to keep these thoughts and concerns in mind, and ask that you put a stop to the Canadian fleet fishing in our U.S. EEZ. Thank you for your time and consideration.

Sincerely,

Jeff Nish
F/V Lydorein

January 25, 2012

PACIFIC FISHERY MANAGEMENT COUNCIL
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220
e-mail: pfmc.comments@noaa.gov

US-Canada Albacore Treaty

Dear Council Members:

My name is Jeff Vouaux. I am a 2nd generation US albacore fisherman, boat owner, and operator. I am writing to you regarding the albacore treaty with Canada and its negative impact on the west coast American albacore fishing industry.

Albacore fishing on the west coast of the United States is my primary source of income.

This fishing is strictly pole & line and trolling. If you do find fish and they are not biting, you must search for an area with fish that will bite. This scenario happens daily.

With foreign vessels allowed to fish in the US EEZ under this treaty, when American fishermen are working an area, the Canadian fleet will often enter and occupy the same area. Quickly it then becomes overcrowded and the Canadian fleet is more aggressive. Canadian vessels have gotten larger and put in much more effort than when the treaty started. With all those vessels competing for a small area, American vessels get pushed off to try to find another, safer area with fish that will bite.

I find it difficult to work around a few Canadian vessels, let alone a Canadian fleet like they fish inside the U.S. EEZ. The bottom line is overcrowding and U.S. vessels losing opportunities, and no one wants that. A lot of fishermen have left this fishery and the treaty is a big part. We need to recognize this U.S. albacore fishery should be a priority.

I am adamantly against the Canadian/U.S. Albacore Treaty. I firmly believe that Canadians should not be permitted to fish albacore inside the U.S. EEZ, and this fishing treaty should end.

Sincerely,

Jeffrey Vouaux
Owner/Captain
F/V Charlotte V.

To: Pacific Fishery Management Council

From: John Harder (john-boy),
Owner/Captain
f/v "OCEAN JOY"
US Albacore stakeholder

In regards to: US-CAN Albacore Treaty:

Dear Council Members:

I would like to start by introducing myself and give you some of my background. I have over 30 years of experience fishing Albacore Tuna – starting with my Grandpa Bill Harder aboard f/v "Sun Ra II", 73'; Uncle Craig Harder f/v "Hispaniola", 79'; owner of f/v "Hey Mama", 81'; f/v "Warlord", 88'; f/v "Miss Angie", 91'; f/v "Ocean Joy", 68'.

I started out of Monterey Bay, CA & fished my way around both North & South Pacific Ocean. I have migrated with Albacore Tuna, trolling inside and outside of our US-EEZ, along with Canada's EEZ as well. I value my freedom to go where I please. I also honor, respect, cherish, and exercise that freedom when need be. I feel the need to also state that I have no other (alternate) fishery.

My income comes entirely from Albacore Tuna fishing. I share a love & compassion for this fishery & do not want it to fail or falter any longer. I want dearly to see our Albacore Tuna fishery flourish & thrive to its fullest potential

As for the US-CAN Albacore Treaty, I request it to be terminated. Please abolish this treaty for the simple fact that all countries have an EEZ. To have such a treaty in effect should be unconstitutional. It takes away the protection of the US fishery from foreign fleets. The EEZ is US territory for US fishermen.

EEZ stands for exclusive economic zone. If it isn't exclusive, it should not exist, or be renamed. The fact that it is Exclusive, gives US fishermen priority rights to the zone. The amount of income (benefits) that Canada takes out of the US EEZ is offending.

As an active fisherman, fishing our coastal waters, I have heard the opinions of many people involved with this fishery. I honestly feel that a very large majority of these stakeholders (the US being a democracy after all) say to ***"End this treaty!"***

On a more personal note, I remember the days when the US-CAN Albacore treaty was first put in place. There were around a dozen or so US fishermen migrating north with a run of albacore that got seized by Canada. There was no EEZ in effect for tuna, nor was there a great Canadian interest in the Albacore Tuna stocks off of Canada, at that time. If it was not for the US-CAN Albacore treaty, there would be some (very few) US fishermen that would not have benefitted during the few years the Albacore concentrated north in Canada's EEZ.

Today, things have changed and Canada transferred and expanded its capacity and aggressively pushed into the US EEZ, negatively impacting our US Albacore fishery. It is draining away our processors and offloading stations. Our processors are disappearing.

In my opinion, if a US-CAN Albacore treaty must exist, so should a US-Mexico Albacore treaty. At least one might have some benefit. In turn, the US State Dept. should

work diligently to create such treaty with Mexico. This would show that neighboring countries can share their EEZ's natural resources equally & fairly without offending, or discriminating against each other. Such treaties should be made **in a way that is agreeable to both Countries' fishermen (stakeholders).** We are small businesses and contribute to the US economy and our communities.

In closing, I would like to add that eliminating the US-CAN Albacore treaty should be viewed upon as a way we are managing Albacore tuna fishing effort for the US fishery. As an answer to the WCPFC & IATTC resolutions. This is the upholding of the "codes of conduct" & or fishing ethics instead. More focus should be on ELIMINATING the "High Seas driftnets"& ending the corruption that it is associated with this IUU fishing. This would greatly expand our fishery for both US & Canada's benefit.

Regards,

John Harder

P O Box 2463
Monterey, CA 93942
phone: (831) 320-2805
john-boy@sustainabletuna.com

Pacific Fishery Management Council

e-mail: pfmc.comments@noaa.gov

-- US / Canada Albacore Treaty

Dear Pacific Fishery Management Council Members,

My opinion on the Canadian treaty is that there are enough problems with the amount of boats fishing in United States waters for albacore. It is ludicrous to think that any amount of foreign fishing vessels should be allowed to continue fishing in the U.S. waters.

It is my opinion that the treaty should be terminated at this time. At some later time it maybe possible to renew negotiations. First giving time for the United States to deal with the management of its Albacore fishery without the influx of foreign vessels.

I feel strongly that this treaty is wrong. There are lots of reasons – the amount of Canadian landings in U.S. ports. Unfair competition in markets. Overcrowding on fishing grounds. They are VERY over-aggressive with U.S. boats on the grounds. Loss of U.S. supporting services for U.S. boats.

Please end this treaty. Thank you.

Yours truly,

Jon Klein
F/V Karen Jan

PACIFIC FISHERY MANAGEMENT COUNCIL
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220

e-mail: pfmc.comments@noaa.gov

RE: End the U.S. / Canada Albacore Treaty

Dear Council Members;

Thank you for an opportunity to express my opposition to the Albacore Treaty. I see this agreement as a lopsided treaty that favors the Canadian fishermen displaced by over-capitalization in Canada's fisheries. This treaty never intended to create an albacore fishery for their over capacity. In it's original conception I believe it was of a mutual benefit to both the American and Canadian fishermen. But as the years passed, we have seen increasing participation, effort and capacity from the Canadians. The fact that they harvest an estimated 5,000-6,000 tons of albacore from our waters each year (at 2011 prices equates to $16,000,000-21,000,000) is, in my opinion, a Lost Opportunity for AMERICAN FISHERMEN.

I find it outrageous that I have to compete on the grounds with a foreign fleet. Then to add insult to this, much of the Canadian finished product comes to the U.S. to compete for market share. This treaty has harmed our US fishery, our US fishermen, our US processors and our communities.

I believe without this treaty, the crowding and tensions fishing and the lopsided benefits that take exclusive out of our U.S. EEZ, we would see a safer, healthier and better U.S. fishery.

That's about it. Thank you for this opportunity.

John McDonell
F/V SCANDIA
Fort Bragg, CA

Feb. 7, 2012

Pacific Fishery Management Council
7700 NE Ambassador Pl., Suite 101
Portland, OR 97220-1384
Email: pfmc.comments@noaa.gov

US/Canada Albacore Treaty

Dear Pacific Fishery Management Council,

My name is Lynn Crump. I am the owner and operator of the fishing vessel BILLIE MARIE II.

My reasons for wanting the Canadian treaty canceled are: Canadians are unsafe to fish around. There are too many of them. US waters are for US vessels and US fishermen. The Canadians don't respect our fishing practices and interfere with fishing. They shut down too close at night and don't have adequate lighting. When weather gets rough, they go to port, take up all the slips and I never have anywhere to dock. Too many, too big, too much! Cancel the treaty.

I have never caught any fish off Canada to speak of, and don't intend to ever go up in their waters. I would rather have a treaty with Mexico. Then there might be some benefit to US fishermen.

Sincerely,

Lynn crump
f/v Billie Marie II
San Diego, CA

January 26, 2012

Pacific Fishery Management Council
Email: pfmc.comments@noaa.gov

Re: U.S. - Canada Albacore Treaty

Dear Council Members,

I am writing to you as a concerned stakeholder in the U.S. albacore industry.

Over the past 52 years as a fisherman, I have witnessed an invasion by the Canadian fleet of our waters. This fleet has expanded in both number of vessels, amount of fishing and tonnage capacity. This expansion far outweighs any by U.S. tuna boats. Further, Canadian vessels can unload their catch in a port to U.S. buyers, reducing demand for U.S. vessel landings, while the Canadian vessels return to their home country and take those U.S. dollars out of our economy. This is squeezing our tuna boats and driving fishermen away.

Another point I wish to bring to your attention is an unwritten fisherman's "code of ethics". In the U.S., a tuna fishing boat respects a healthy area of water surrounding a boat over a school of fish. Canadian vessels home in on our boats in an intrusive manner that forces us to relocate to operate safely.

As this is the third and final year of this treaty, I request that you recommend the U.S. dissolve or not renew this treaty in its present format. We should have some regulations in place that respect the numbers of vessels, tonnage capacity, effort and safety issues, and is supported by all stakeholders.

I hope to see a change in these issues which I consider very important because the Canadians are one step ahead of us. Give the U.S. fishing fleet a fair chance to survive. I would like to see my grandkids fish as we do and I don't see this possible if we allow the Canadians to continue to fish in our waters with a fleet that is increasing in size every season. Our U.S. fleet has been declining under the pressure of the Canadian fleet and the support they have at home. Please remember our fishermen and know that this decision is very important to them, their families and their communities.

Thank you for giving me the opportunity to express my concerns. If you care about our U.S. albacore industry, actions must be taken now so we can remain viable and avoid more harmful economic impacts.

Sincerely,
Paul M Hawkins
Captain, F/V Sea Chase
San Diego, CA

Stakeholder comment re. US – Canada Albacore Tuna Treaty

To: Pacific Fishery Management Council
Email: pfmc.comments@noaa.gov

From: Rick Sullivan
F/V "Wet & Wild"

Dear Council Members,

I am a US fisherman in the US albacore fishery. I am the owner/operator of the F/V Wet & Wild, a 77' sustainable Albacore Tuna Troller.

I strongly believe that the US – Canadian Albacore Treaty has been ABUSED.

I feel that the effort of the US fleet in Canadian waters, when compared to the effort of the Canadian fleet in US waters, it is not balanced or equitable.

Having the option to be able to fish in Canada is not worth putting up with the rest of the treaty. It's of no value to me. I value my right to fish inside our US EEZ, with other US fishermen. Without a foreign fleet around. I feel that the Canadians have really taken advantage of it and it should have been stopped a long time ago.

Our fishery has had hard times lately, so getting mowed down by a foreign Canadian boat, or FLEET, is hard to take. This fishery was once known as a gentlemen's fishery, but now the aggressive tactics of the Canadians make it hard to stay on the fish or to make any profit. Their boats got larger and more capacity and they want to catch fish. They are literally running me off the fish.

I feel that the waters of the US EEZ should benefit US taxpayers and US citizens. I pay taxes and use our US ports to keep our US economy going. I help gear stores, unloading docks, I buy fuel, etc. The Canadian fleet take their US caught albacore back to Canada where that Canadian ports, fish docks, etc. benefit at my expense. Even when they deliver in the US, they take that money back to Canada's economy. The treaty isn't helping, it's hurting. It has been hurting this fishery for years.

At the time the US- Canadian Treaty started , there was little effort made by the Canadians in the US EEZ. Well, now they fish in groups numbering 20-30 vessels and these are high capacity trollers.

Elimination of the treaty would not only benefit the US fleet, it would also help keep the US infrastructure going. Help our US economy. This is an important part of the US albacore fleet.

While discontinuing the treaty is important , rebuilding the offshore albacore fishery is just as important. Stopping IUU fishing would help create many more opportunities for all that wish to participate in albacore fishing as a source of income.

Between IUU fishing and extreme Canadian pressure on albacore stocks in the US EEZ, US fisherman in this fishery have a slim chance a survival.

Thank you for your attention,

Rick Sullivan
F/V WET & WILD
US doc. #589969.
260 Hames Rd
Watsonville, CA 95076
rsgardenia@aol.com

Pacific Fishery Management Council
e-mail: pfmc.comments@noaa.gov

February 9, 2012

McAdam's Fish
The cleanest catch

Re. The US-Canada Albacore Treaty

Dear Council Members:

We appreciate the opportunity to voice our concern about the US-Canada Albacore Treaty. In the last year, McAdam's Fish LLC has purchased six Albacore fishing boats. One of the boats, the Tommy John, was already participating in the fishery. The additional five boats were based in the Gulf of Mexico as Shrimpers, or out of commission. In the next few months, we plan to purchase an additional five vessels in the Gulf, and convert them to Albacore boats. To operate these additional ten vessels being added to the Albacore fishery in the North Pacific, we will need to hire ten Captains and fifty crew members. One of our biggest concerns as we expand my fleet is our competitiveness within our own US waters. Our Captains have complained to us numerous times about the disruptive fishing techniques employed by the Canadian fleet. Personally, I am still shocked that I face competition by foreign vessels within US waters.

McAdam's Fish LLC is making a substantial investment in this fishery. This investment includes the hiring over sixty US tax paying workers. If the US-Canada Treaty is dissolved, we will feel more comfortable committing to completing our proposed fleet expansion and possibly adding to it in the future. There are very few fisheries left in the US that have the ability to expand and prosper like the Pole and Line Albacore Fishery. US boat owners should have unhindered access to take advantage of that opportunity, instead of having to compete with extremely aggressive Canadian vessels.

Please let me know if you have any questions, or if I can help in any way.

Best Regards,

Rob McAdam

Rob McAdam
Manager
McAdam's Fish LLC

SUSTAINABLE FISH WITH NO BYCATCH – THE HEALTHY RESPONSIBLE CHOICE
775 East Blithedale Ave #149 • Mill Valley, CA • 94941 • www.mcadamsfish.com
rob@mcadamsfish.com • 415.302.1009 (c) • 415.634.2588 (f)

F/V JODY H

Owner/Operator: Scott Hawkins
3130 Madrid Street
San Diego, CA 92110

Pacific Fishery Management Council
e-mail: pfmc.comments@noaa.gov

With regard to the US-Canada Albacore Treaty

Dear Council Members;

I am a third generation troll and pole albacore fisherman. My family started fishing in the 1950's. I began my fishing career when I was 8 year's old working on our family's boat and then I started my full time albacore career in 1981. Because of my background, I feel that I can truly give you a true perspective of the negative impact the Canadian's have on the U.S. fleet, fishermen and economy.

Since the '90's not only have the Canadian vessels and effort increased dramatically, but their aggressive behavior and disrespect in U.S. water's is becoming a serious problem. Not to mention the impacts on our U.S. fleet, it's catch and most importantly, the U.S. economy. I will back up the facts that my co-fishermen have pointed out. I have witnessed the aggression and conflicts, but no matter how you view our statements, I guess it's all "hearsay" or so we're told.

Let's get right down to the main points. Allowing Canadian fishermen into the U.S. EEZ is not only minimizing what the U.S. fishermen can catch (or would catch) but its also cutting into the stability of the U.S. economy.

When you think about it, what is the total tonnage reported caught in U.S. water's by Canadians, compared to what is actually offloaded at U.S. buying stations by Canadians? How many Canadian vessels and their crew pay U.S. taxes for their catch and earnings?

Weigh that against the catch and deliveries by U.S. fishermen, not to mention the taxes paid by these U.S. vessels and their crews. I believe it would be safe to say that the large majority of the Canadian fleet returns to Canada (their home country) to sell their fish. The small amount of Canadian fishermen that do offload, and get supplies in the U.S. is no comparison to what the U.S. fleet would contribute to our coastal communities and the U.S. economy with the "extra" catch. If we weren't forced to compete with a Canadian fleet in our own EEZ. How is the EEZ exclusive?

What's the benefit to our coastal communities and our economy to continue allowing the Canadian fishermen to continue fishing our waters, taking from our fishermen, who

support these small communities along our coast? This treaty is taking our fishery. We continue to lose processors and the services that support our fishery. That hurts our U.S. fleet even more.

I can only speak in regards to my own vessel and crew, but my crew is made up of 5 U.S. citizens (who all have families) whose earned monies go back in the U.S. economy. I'd like to point out that the size of the U.S. fleet changes yearly due to other fisheries being closed (for example, salmon), which results in other U.S. fishermen converting their vessels to fish albacore to provide for their families. Even as an open access fishery, the impact of foreign vessels into EEZ is devastating the U.S. fleet, especially those whose primary (even sole) income if generated from albacore.

In the famous words of John F. Kennedy,
"*Ask not what your country can do for you – ask what you can do for your country.*"

Scott Hawkins

Pacific Fishery Management Council
Email: pfmc.comments@noaa.gov

Re; US—Canada Albacore Treaty

Dear Council Members,

This letter relates some specific interactions I had with Canadian vessels in U.S. waters this past season, 2011. I have been fishing albacore for about 30 years, with the last 14 on my 62' vessel, "Captain Banjo". Our average catch has been around 90 tons per year. Although Canadian interactions are so common its not something we normally enter in our logbooks, but one specific incident comes to mind.

In early September, after a summer of very slow fishing, we finally were in a decent area of small schools 100 miles NW of Eureka, CA. On the evening of Sept.10th, after drifting and jogging in bad weather for 2 days we were finally back on fish. Just before dark I noticed 2 Canadian boats just outside me. We had a good evening bite and shutdown on the fish. The next morning, we started up at daylight in bad visibility (fog) and had approximately 25 boats within 3 miles radius of us. When the fog lifted, we realized that there were more like 40 boats all in around us. All Canadian boats! The bite dropped off, so we moved east. They followed us.

On Sept.12th & 13th the Canadians ran us off school after school. We finally gave up and headed into Charleston, OR on 9/14/11. All this is documented in my logbook. We left many areas of fish earlier in the season due to the same scenario.

Albacore don't bite well when pressured by lots of boats in close proximity; usually the schools go down and the fish scatter. The Canadians fish in big packs of boats and watch our every move. It's heartbreaking to spend all day looking for a good school only to be run off by foreign boats in our "exclusive economic zone."

Please do not continue the treaty fishing regime. Allow our fishermen to thrive, creating more jobs for our young men, not foreigners.

Respectfully,

Henry "Skip" McMaster
f/v Captain Banjo
AAFA Board Member

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

Re: The US-Canada Albacore Treaty

Dear Chairman and Council Members,

I am opposed to this treaty. I have been fishing albacore since the early 1970s, so I feel qualified to comment. I am a troller in the early part of the season and fish as a bait boat from mid August till the end of October. I also want to note that I often produce 100+ tons per season.

There is a problem with aggressive behavior on the part of the Canadians, and I have experienced it myself. I don't think aggressive behavior on the part of Canadian fishermen fishing in our waters is something we as American fishermen fishing in our own waters need to present case by case. It is a problem. Fishermen don't want another panel formed to meet and sort it out. That's just more meetings. The Canadian Treaty is a constant drain on finances and time already. **The treaty should have ended years ago.**

I feel overcrowding on the fishing grounds is a big problem caused by the Canadian albacore fleet fishing in our EEZ waters; *We are competing with foreign fishermen in our own exclusive waters for a limited resource?*

When the U.S. fleet is working in an area that is productive, and a couple of Canadian vessels show up, it is only a matter of a day and a large part of the Canadian fleet moves in on our area. My self and many others find it so difficult to work under those crowded conditions that we have to leave the area to find something new.

Starting in August the fish are on the surface and we look for the schools with our eyes. The overcrowding starts costing the U.S. vessels substantially more money when a Canadian races the U.S. vessel to the limited number of visible schools of albacore. Once the Canadian vessel runs over a school it most likely goes down. So it is not available for another vessel. By the month of Sept. the trollers catch very little to nothing out of these surface schools. The bait boat's most productive part of the season is from August on. It is very costly to have the Canadian fleet running over schools for little or no fish, and a U.S. bait boat will produce a significant amount of fish from that same school if he gets to the school before it is run over. The Canadian fleet in our EEZ competing with U.S. vessels is very harmful to the U.S. fleet.

Respectfully,

Stephen Rittenberg
F/V Nicole Marie
Astoria, OR
AAFA Board Member

01/05/2011

Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384

Email: pfmc.comments@noaa.gov

Dear Council Members,

My name is Thomas Cardosa and I am owner and operator of the F/V Tommy John. I am a third generation fishermen and I depend on this US albacore fishery. As such, I am a very interested stakeholder in this treaty.

In my view, this treaty is a significant detriment to me and my business. What seemed to be a venture that would benefit both countries turned out to be very lopsided in favor of the Canadian fisherman. In my opinion it's not a level playing field. Not even close.

As an American citizen and owner of a small business I feel like I am being overrun by non-Americans in my own country (our US EEZ). I certainly feel outnumbered and at times unsafe, to the point where I have to leave good fishing areas because of too many Canadian boats.

Especially in these times of economic hardship I would hope my own country would do the right thing and help it's own citizens by allowing US fishermen to fish in US waters free from interference of foreign fleets. I would like to do away with the treaty altogether. I think almost all American fishermen would feel the same way.

This fishery is my livelihood. I'm passionate about it and depend on it to support my family like so many other American fisherman do. Therefore I feel this is a good opportunity to do the right thing and put American working families first.

Thank you,

Thomas E. Cardosa

U.S. F/V Tommy John 629-818

February 2, 2012

Pacific Fishery Management Council
email: pfmc.comments@noaa.gov

Re: US-Canada albacore treaty

Dear Council Members,

Dispute resolution will not the fix the problem of Canadian vessels fishing albacore in the U.S. EEZ.

I have been involved in a number of different fisheries over many years. Competition is part of commercial fishing. But competition from a foreign fleet in the US exclusive economic zone is not acceptable. US fishermen are working hard trying to make a living and in the US EEZ they must be able to do that without aggressive foreign vessels.

Overcrowding inevitably causes aggressive behavior. For me, overcrowding by Canadian vessels is the problem, plain and simple. You must tie together the aggressive behavior and the overcrowding.

When we're on an area of fish and the fleet size is so large that I have to say, "How can we improve or fix this overcrowding issue?", it seems practical that taking the foreign fleet (Canadian vessels) out of the picture would be the obvious solution. It would help turn around the decline in this US fishery.

Many times, we just leave the area to avoid incidents of aggression, which always costs time and money to relocate.

This treaty fishing regime has not worked for the U.S. fishermen. As of December 31, 2011, the regime is over. It should stay that way.

Please listen to the position statement of both fishing associations. These are the largest stakeholder groups in this issue and their unified voices should be heard loudly.

Sincerely,

Tim Thomas

F/V Steel Fin II
Garabaldi, Oregon

January 12,2012

Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384
Email: pfmc.comments@noaa.gov

Re: U.S. – Canada Albacore Treaty

Dear Mr. Chairman and members of the Council,

I have owned and operated my own boat and fished full time for albacore for 38 years. Over the course of my career I can count on one hand the seasons I have gone to Canada and caught any significant amount of fish. Even in these few cases the fish caught has been less than a third of my production for that year. It can be nice to have options but fishing in Canada has been and will in all likely hood remain a limited one and not worth the treaty.

In contrast, I have watched the Canadian effort grow. From a dozen or so full-time boats, along with the rest of the Canadian fleet's part-time participants that fished albacore between salmon openers – increase to a full size, full time fleet.

The composition of the Canadian Fleet has also changed dramatically, from what was primarily smaller salmon trollers to what now also includes a significant percent of very large aggressive vessels. It is now quite common for Canadian vessels to be in the majority in any given group of boats working an area of fish.

To the casual observer or someone not involved in the fishery, the entire coast would seem a large enough area for both fleets to spread out and fish with minimal interaction. *The reality however is far different.*

Although there are often fish found over a broad area, the highest concentration and most productive spots of albacore are often highly localized with the fish gathering along water temperature breaks or edges. As the season progresses, the warm water recedes from the coast and continues to condense, with both fish and boats crowding into ever shrinking areas. The predictable results are heated and potentially dangerous confrontations becoming all too common.

The effect of this increase Canadian effort has been very detrimental and disruptive to my fishing efforts, and to me the negatives far outweigh any possible benefit to fishing in Canada.

This doesn't even begin to address the bigger picture of possible future regulations concerning limiting production on an international level, possible limited entry for U.S. vessels or other like issues that would in all likely hood as I see it, be in direct odds with allowing continued Canadian production off the length of our coast.

No course of action is likely to be favored by all participants, but considering the limited benefits and significant harms to U.S fishermen, renewing the treaty agreement I feel would be short sighted and ludicrous.

Thank you for your consideration. Feel free to contact me.

Thomas Wraith

Fishing Vessel: Amy Lyn
Document #595-206
Brookings, Oregon

February 12, 2012

Pacific Fisheries Management Council
7700 NE Ambassador Dr. 101
Portland, OR 97220

RE: U.S. / Canada Albacore Treaty

Dear Mr. Chairman and council members;

I have been involved in the Albacore Troll fishery forty-five years. My vessels operate in the fishery in the U.S. west coast EEZ as well as offshore north pacific and south pacific oceans. I feel fortunate to have been able to vest myself exclusively in this fishery for all these years and have been successful enough that I now own three albacore vessels. These vessels are responsible for sustaining thirteen American families from income from which is, again, derived exclusively from the albacore fishery. The larger part of this income has come from fishing within the U.S. EEZ where we now interact with the Canadian fleet.

I believe that the presence of the Canadian fleet inside the U.S. EEZ is resulting in a significant impact on the U.S. fleets production. It is far from equitable. I would like to see the current regime which calls for reciprocal fishing rights be left to expire for at least a one to two year period to allow for a proper discussion of a new revised and more equitable agreement.

Years ago I fished alongside our Canadian counterparts off the coast of the U.S. and Canada. In the 1960's and 70's there was no EEZ. The fleets were small and there was no perceived competition. This situation has evolved to what I see today- large numbers of boats fishing very competitively for limited resources.

It is difficult to quantify the impact on the U.S. fleet as a result of the Canadian presence in the U.S. zone.

Aggressive behavior is definitely present: I have had close calls with Canadian vessels (which unfortunately I did not document). However, the bottom line of the Canadian presence in the U.S. zone is that there are 110 more boats working in a limited area for a finite resource. One result is that I, as well as the group of vessels that I work with will not transit to an area that we receive reports is being worked by Canadian vessels. From experience, we are aware that those areas are most likely fully exploited. I will spend unproductive time in transit to other areas that look to have potential. I have been working in productive areas which have been "discovered" by Canadian boats. In an effort to maintain productivity, I have felt forced to relocate from those particular area. These areas that I end up working tend to be on the southern end of the grounds, farther away from the Canadian border, and farther away from my homeport, i.e.; more time in transit.

I was in attendance at the December meeting of the Canadian and U.S. delegations. I was incensed to hear the Canadian delegate refer to the reports of fleet interaction as "hearsay". I find it disturbing that the American fleet is being asked to produce documented "proof" that we are being impacted. My forty years of experience tells me that I am being impacted. I

daresay that as a result of my continuous participation over the years in the albacore fishery that I have a good perspective on the development of this extensive Canadian fleet and the impact that it has had on the American fleets production. I was not aware that I needed to be documenting interaction with the Canadian fleet. I believe that a fair question to ask is- should there be a burden of proof on the U.S. fleet when the question involves the U.S. fleets ability to earn income from its own EEZ? I hope that our representatives give credence to the American fleets input- documented or not. In the future I will most definitely document departure from productive areas, unproductive time in transit to in an effort to locate new areas, and instances of "aggressive behavior".

If you will allow me to voice comment on other concerns as to this treaty;

I am taken aback that, at this point there are a number of Canadians that are apparently dependent on the Albacore fishery inside the U.S. EEZ to derive their livelihood. A lot of this dependency comes as a result of overcapitalization of Canadian fisheries. Creating a new fishery for displaced Canadian fishing capacity was NEVER the intent of this treaty. To add insult to injury there are Canadian permit holders and businesses that are trading the rights to fish in the U.S. EEZ. It seems incredible to me that people are able to enrich themselves- especially at the expense of U.S. fishermen.

Respectfully,

Paul Hill
F/V Betty H
F/V Dalena
F/V Constitution

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www.mascopetroleum.com

February 20, 2012

Pacific Fishery Management Council
7700 NE Ambassador Pl., Suite 101
Portland, Oregon 97220

RE: End the US-Canada Albacore Treaty Fishing

Dear Council Members;

My name is Sean Mason and I represent MASCO Petroleum. MASCO Petroleum owns and operates the fueling dock located in Westport, WA. During the albacore season Westport Washington serves as port to many US based boats fishing albacore and MASCO Petroleum sells the fleet both diesel fuel and lubricating oil.

MASCO Petroleum has owned the Westport fuel dock since 2004 and welcomes any boat wanting to buy fuel during the fishing season. It has been MASCO's experience that not many Canadian boats enter Westport to fuel their vessels however they come into US waters and harvest US fish. For this reason I strongly appose this treaty.

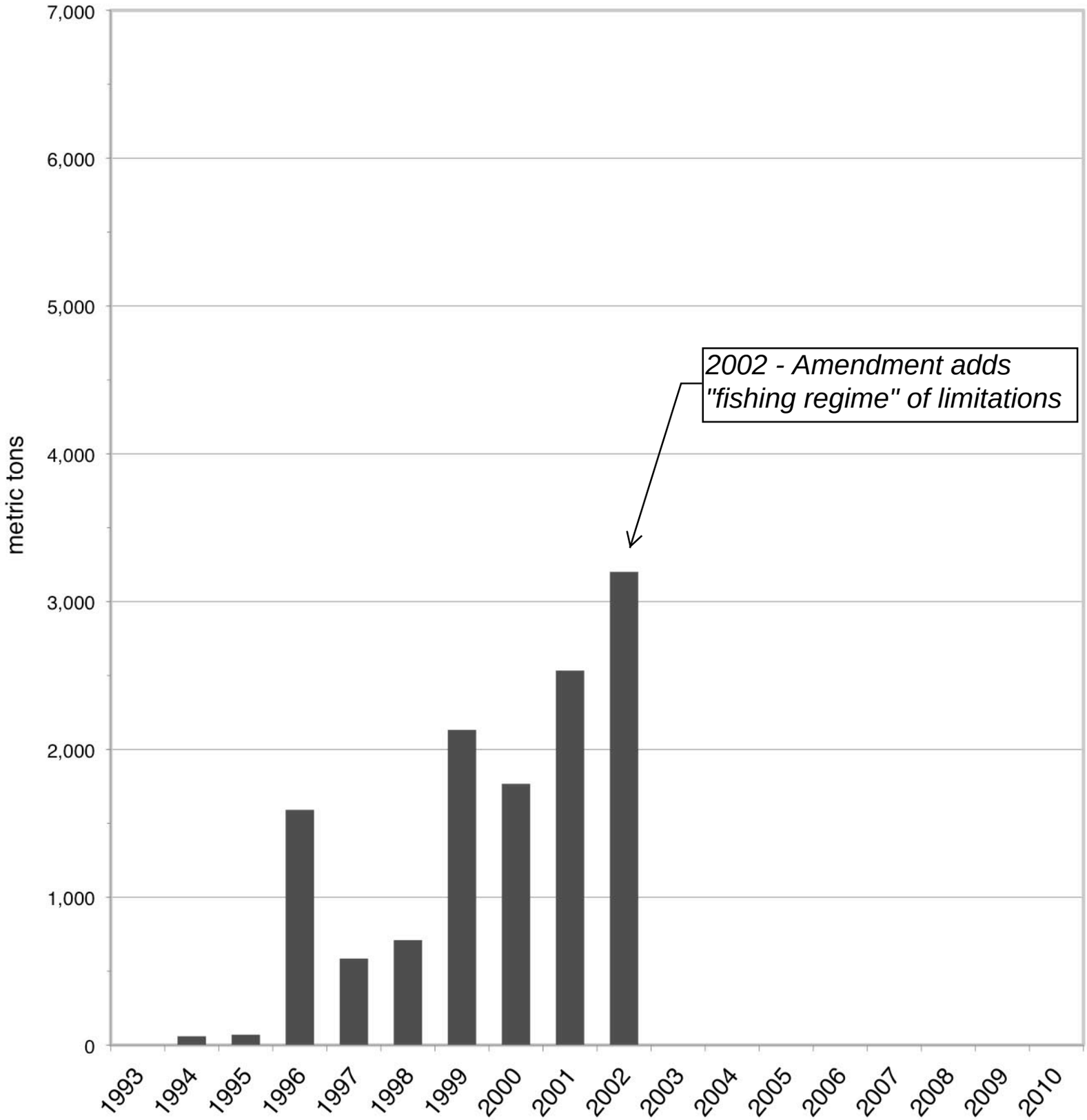
After researching this treaty it seems one sided and unfair towards US based fishermen and other US based business's like ourselves. How is it fair the Canadian boats that buy their fuel, supplies, and rigging in Canada can come down into US waters fill their boats then return to Canada to unload, refuel, and resupply their boats?

MASCO Petroleum urges you to oppose any effort to renew or renegotiate this treaty.

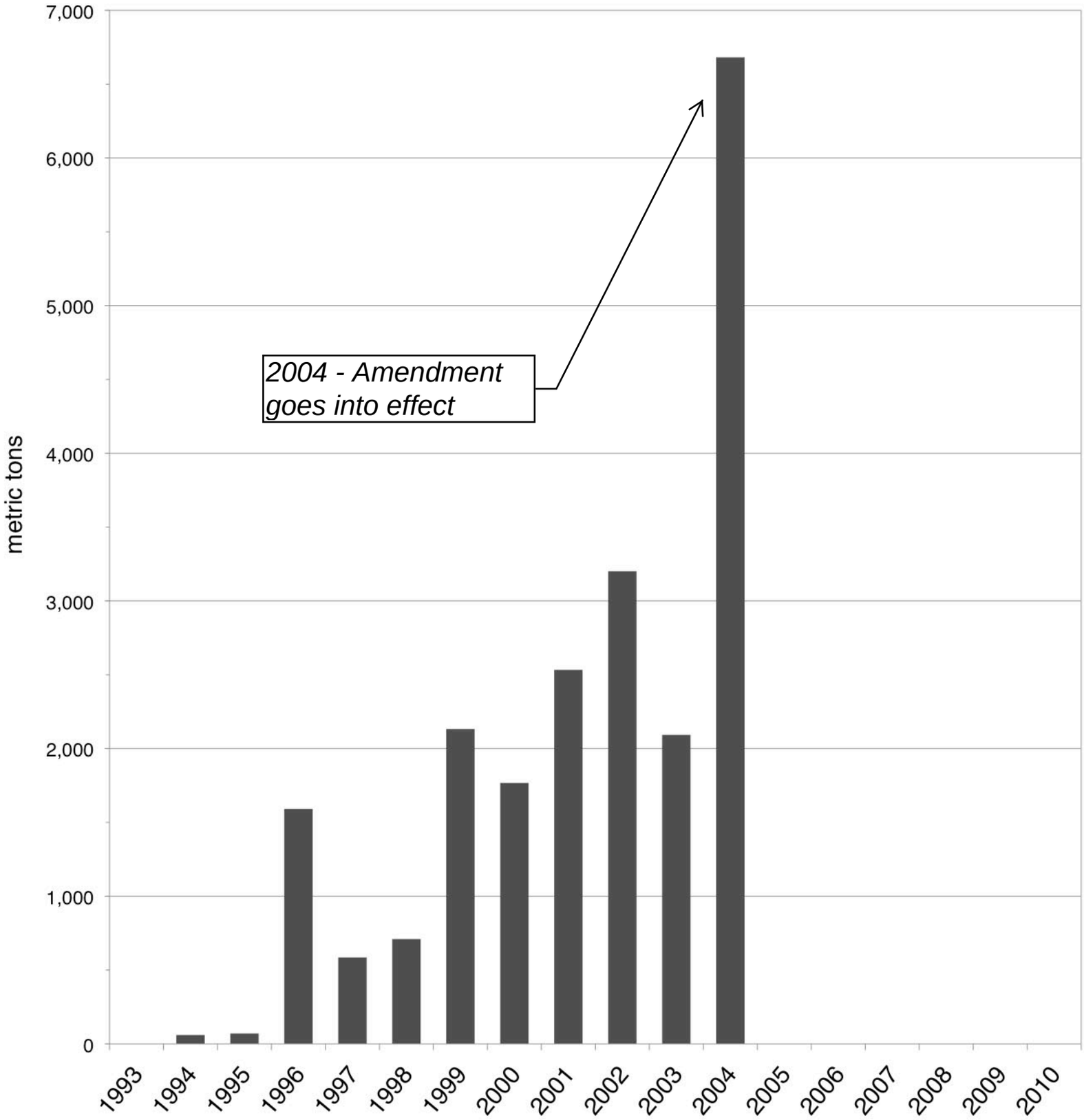
Regards,

Sean J. Mason
VP MASCO Petroleum

Canada Treaty Fleet Catch from US EEZ - 1993-2002

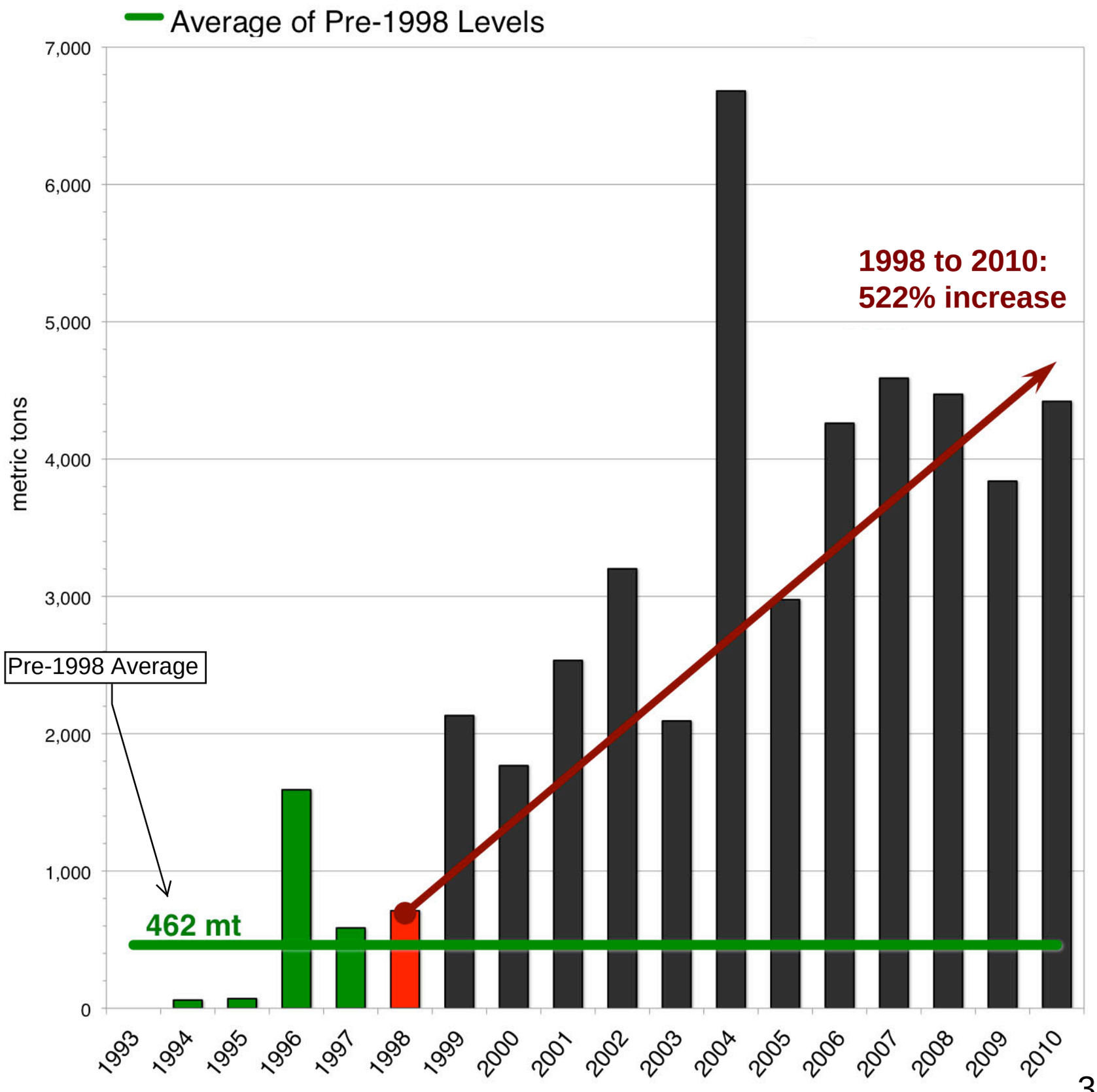


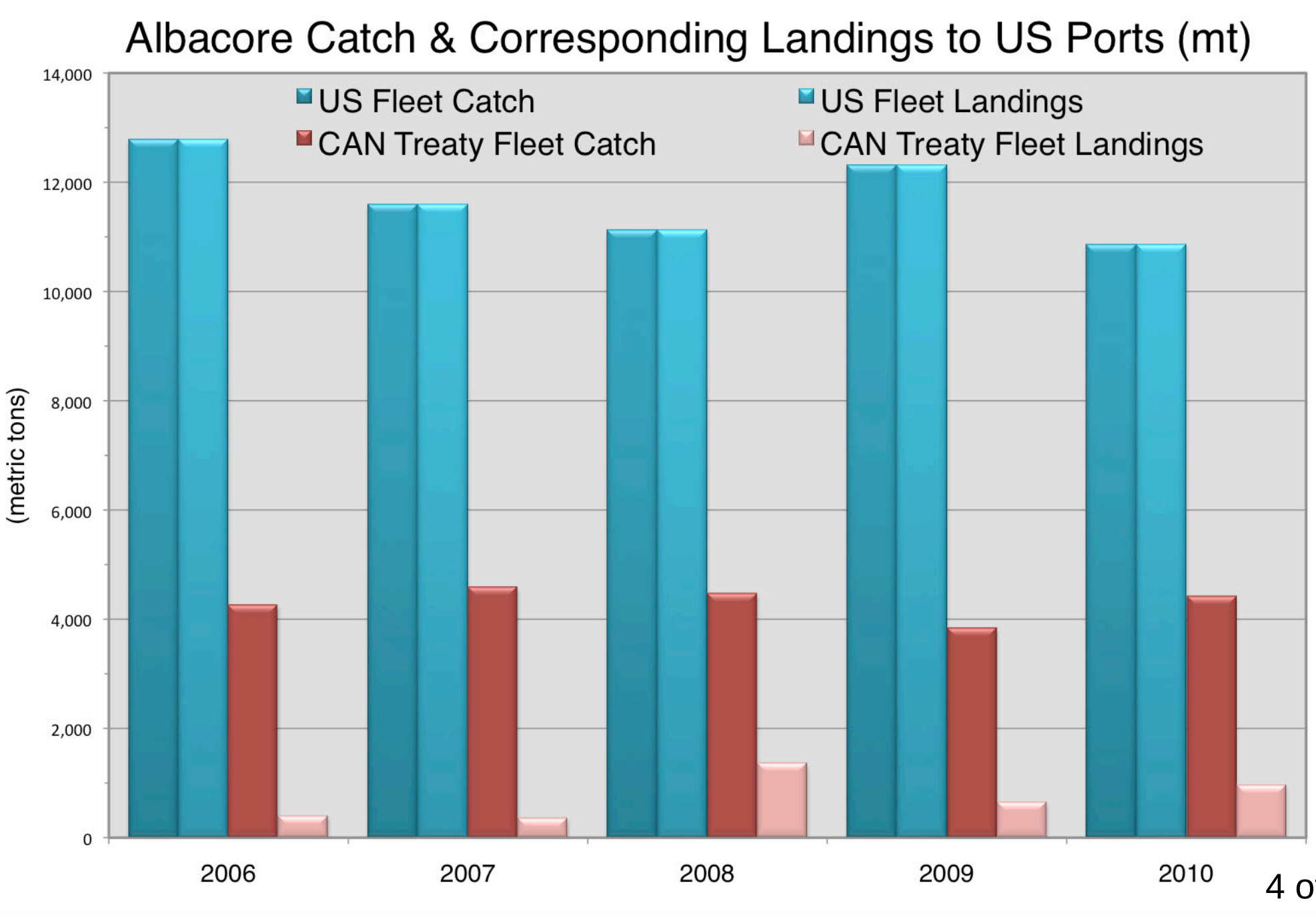
Canada Treaty Fleet Catch from US EEZ - 1993-2004

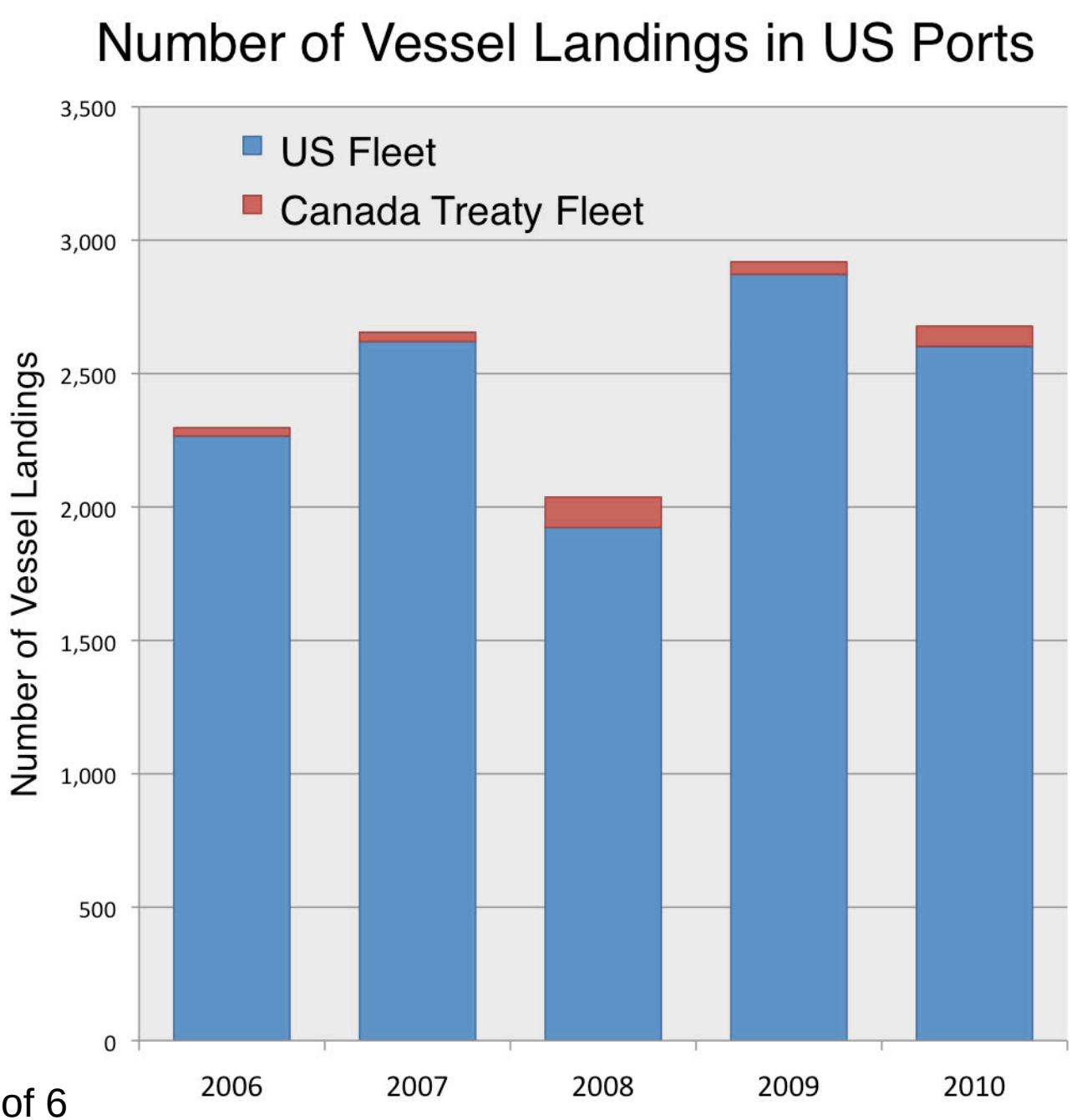


Canada Treaty Fleet Catch in US EEZ - 1993-2010

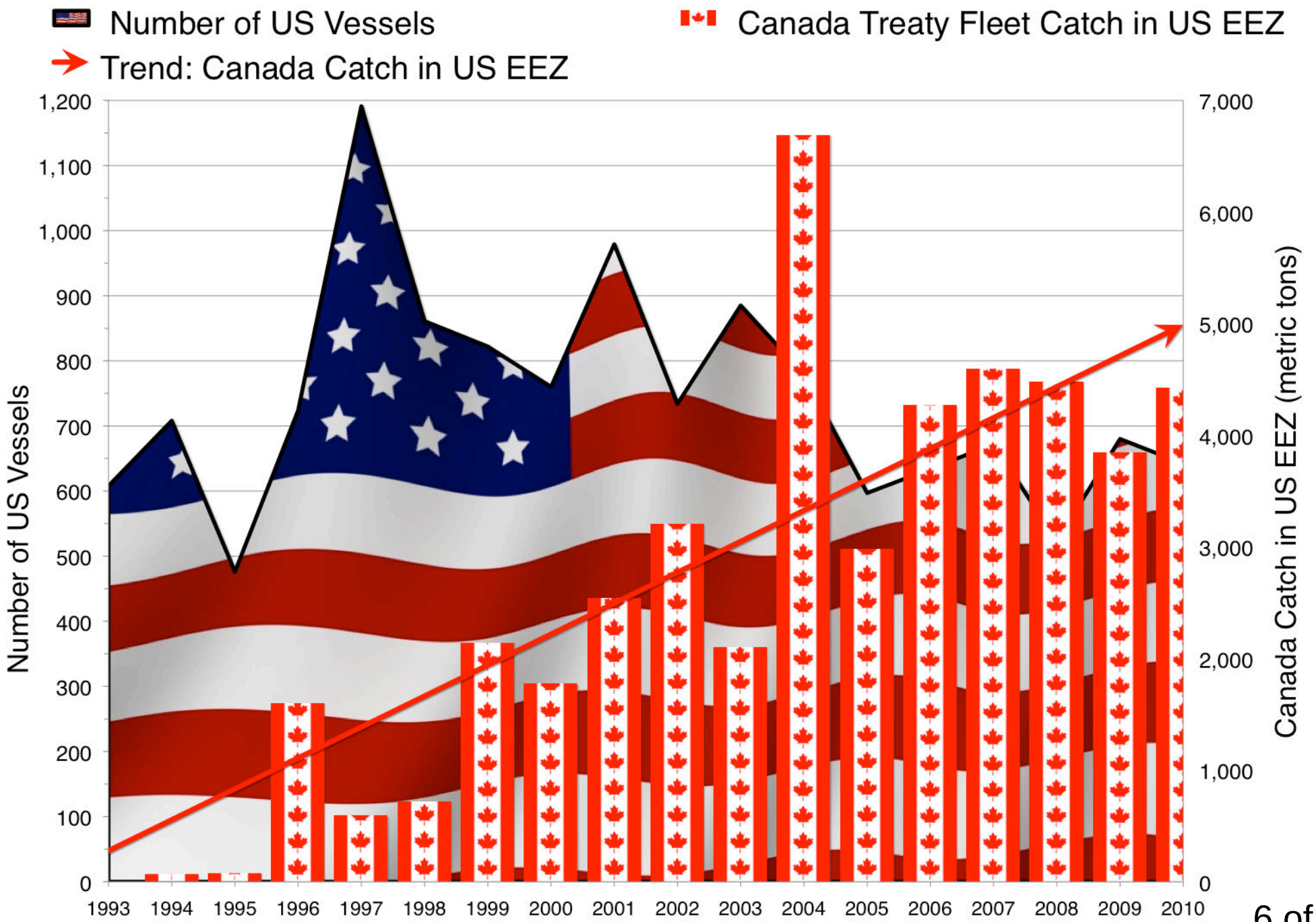
Amendment Objective = *"Pre-1998 Average Level"*




Albacore Catch & Corresponding Landings to US Ports (mt)
US Fleet Catch
US Fleet Landings
CAN Treaty Fleet Catch
CAN Treaty Fleet Landings
(metric tons)
14,000
12,000
10,000
8,000
6,000
4,000
2,000
0
2006
2007
2008
2009
2010


Number of Vessel Landings in US Ports
US Fleet
Canada Treaty Fleet
Number of Vessel Landings
3,500
3,000
2,500
2,000
1,500
1,000
500
0
2006
2007
2008
2009
2010

Number of US Vessels & Canada Treaty Fleet Catch in US EEZ



SWORDFISH MANAGEMENT DATA REPORT AND FUTURE MANAGEMENT RECOMMENDATIONS

In September 2011 the Council received a report from the National Marine Fisheries Service (NMFS) on the results of a 2-day informational workshop they hosted in San Diego, California, on May 10-11, 2011, titled *U.S. West Coast Swordfish Workshop: Working Towards Sustainability*. In response, The Council directed the Highly Migratory Species Management Team (HMSMT) and Advisory Subpanel to provide the following information to inform a decision on whether to change the current west coast swordfish fishery:

1. All relevant new information on bycatch and bycatch mitigation in swordfish fisheries, including the amount and reasons for changes in bycatch in the Hawaii-based longline fishery since 2000, and information about new gears, such as the buoy-based gear used in Florida area fisheries;
2. Current research on the distribution of sea turtles and their critical habitat off the west coast and its relevance to potential fishery management changes, including a change to the configuration of the Pacific Leatherback Conservation Area; and
3. Based on the information in 1 and 2 above, comparisons of protected species bycatch estimates between current, status quo west coast swordfish fisheries, the gear types described above, fisheries in place at the time of HMS Fishery Management Plan adoption and possible future fishery designs.

The HMSMT met January 10-12, 2012, to design a report for the Council on this topic and plan its completion. Their report will be provided as a supplemental attachment.

NMFS met with west coast swordfish fishermen to listen to their views on possible regulatory changes to the fishery. The NMFS Report summarizes these discussions.

Mr. John Harder, albacore troll fisherman, and Teri Shore on behalf of the Turtle Island Restoration Network submitted public comment letters for this agenda item.

Council Action:

Consider Available Management Data and Determine Whether or Not to Proceed Toward Developing a West Coast Fishery.

Reference Materials:

1. Agenda Item B.3.b, NMFS Report on West Coast Swordfish Fishery.
2. Agenda Item B.3.b, Supplemental HMSMT Report on Management Options for West Coast Swordfish Fisheries.
3. Agenda Item B.3.c, Public Comment.

Agenda Order:

a. Agenda Item Overview — Kit Dahl
b. Reports and Comments of Advisory Bodies and Management Entities

c. Public Comment
d. **Council Action**: Consider Available Management Data and Determine Whether or Not to Proceed Toward Developing a West Coast Fishery

PFMC
02/10/12

NATIONAL MARINE FISHERIES SERVICE REPORT ON MEETINGS WITH CALIFORNIA DRIFT GILLNET FISHERMEN

During the Highly Migratory Species discussions at the September 2011 Council meeting, one of the agenda items included a National Marine Fisheries Service (NMFS) report that summarized the results of its Swordfish Workshop held in May that was entitled "Working Towards Sustainability." Some of the conclusions of the workshop expanded on some past ideas regarding gear and operational modifications, including re-examining the science justifying a 3-month leatherback sea turtle closed area, experimenting with other gears to increase fishing selectivity, and looking at opportunities to form partnerships. Since that time, there has been continuing dialogue with the swordfish fleet including discussions at the Highly Migratory Species Management Team (HMSMT) meetings in January, a questionnaire sent out by the California Department of Fish and Game and two impromptu meetings with NMFS and drift gillnet (DGN) representatives in Morro Bay and Monterey. Ideas that were presented at the Morro Bay meeting included input from some of the DGN fishermen operating out of San Diego.

This report summarizes the ideas discussed at the Morro Bay and Monterey meetings with representatives from the DGN fleet held in early February. The purpose of the meetings was to hear ideas for increasing local swordfish production so that U.S. consumers have a greater choice of a sustainable seafood source, attracting new entrants into the fishery, and participating in sea turtle conservation efforts. The results of the meetings can be organized into four major themes: 1) operational changes - minor tweaks to the time/area leatherback closure and to the gear; 2) financial incentives to try other gears; 3) predicted location of leatherbacks during fishing; and 4) international sea turtle conservation issues.

For operational changes, attendees acknowledged that considerable information has come forward since the boundaries of the 3-month leatherback closure were initially established in 2001. The fleet suggested that an analysis be undertaken that would look at the effects of moving the Point Sur line due west, changing the season to open on August 1 rather than August 15, and opening the northern area on November 1 rather than November 15. There is also a "morning 2-hour after sunrise time limit" for retrieving gear that was first put in place when there were over 200 permits, and was implemented to minimize conflicts with the marlin sport fleet. The fleet asked this also be re-examined. Finally, there was interest expressed about expanding the nets in length by 25 percent.

With regard to potential gear switching, attendees noted that there are considerable costs tied up with their current investments in smaller vessels and net gear. However, there was interest expressed by some that, if there were financial incentives to test the efficacy of the gears, fishermen would be willing to consider switching to other gears such as pelagic longlines using circle hook/mackerel bait and buoy gear currently being evaluated. Where these financial incentives would come from was not discussed in detail, although there was agreement about the potential for funding assistance coming from the private sector.

At the Morro Bay meeting, there was a short discussion about programs that would use best available data on sea-surface temperature and ocean-current conditions to provide the predicted location of waters preferred by sea turtles, such as what is being done in Hawaii with NMFS' "TurtleWatch" Program. The TurtleWatch Program provides up-to-date maps to fishermen,

highlighting areas of potential overlap between loggerheads and longline gear so that fishermen can avoid those areas and reduce interactions. There was some interest in developing a similar program for California to reduce interactions with leatherbacks.

There were discussions about interest assisting in international turtle conservation issues, although it was recognized that the reality of the economic constraints of current regulations and the limited number of remaining participants in the drift net fishery would not materialize into any significant financial contributions. In other words, fishermen could impose a conservation tax on themselves that would be used to benefit sea turtle conservation in other areas, but that the amount would be marginal, although there was some discussion about leveraging those funds. It was pointed out that there was a voluntary effort years ago to create a conservation tax, but that was met with little success due to the inability to create an equitable fundraising process for enabling swordfish fishermen to invest in conservation projects. However, the funds that were raised were used to assist in sea turtle nesting beach recovery in Mexico from 2005 through 2007. Attendees also mentioned that their expertise based on gear improvements and knowledge of the fishery could be shared with NMFS and solution-oriented non-government organizations for the purpose of benefiting conservation efforts in other Pacific swordfish fisheries.

PFMC
02/10/12

HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON SWORDFISH MANAGEMENT DATA REPORT AND FUTURE MANAGEMENT RECOMMENTATIONS

The Highly Migratory Species Advisory Subpanel (HMSAS) is basing their comments on the statement at the end of the first paragraph in the briefing summary "…to provide the following information to inform a decision on whether to change the current west coast swordfish fishery." The following recommendations include:

- The existing drift gillnet (DGN) fishery opportunity for success can be enhanced by:
  - Changing the present southern boundary of the turtle exclusion zone from the offset line to a line extending due west from Point Sur;
  - Move the starting date ahead, at a minimum, from November 15 to November 1, preferably, moving to October 15 when there is warmer water in the fishing area; and
  - Finding other ways to lower the bycatch such as the Hawaii Turtle Watch Program.
- Continue research on the "Swordfish Buoy Gear" on the West Coast to determine whether it is practical to target swordfish and economically feasible as a supplement to the harpoon fishery. Data noted in the Highly Migratory Species Management Team (HMSMT) report indicated that the volume of fish caught in the Atlantic fishery would not be nearly as efficient as the current DGN fishery. The HMSAS advises this would only be an artisanal fishery and not a replacement for the DGN fishery.
- The HMSAS would encourage a process that will evaluate opportunities for Shallow Set Long Line (SSLL) fisheries both inside and outside the West Coast Exclusive Economic Zone (EEZ). We note that the Hawaii SSLL fleet can fish inside and outside the Hawaii EEZ. This situation is particularly confusing to the HMSAS as Hawaiian longliners are allowed to impact a given number of turtles just outside our West Coast EEZ and deliver swordfish and other catch into our West Coast ports whereas our West Coast licensed fishermen are not allowed to impact one turtle.
- The HMSAS would like National Marine Fisheries Service to evaluate the benefits of the observers on the DGN vessels. The fishery has been observed for 22 years and the observer program is a burden on the fishery. Scheduling, insurance, cost and privacy invasion are all concerns and there is a question of how much additional information can be gathered after 22 years of data.
- The HMSAS request the HMSAS and HMSMT jointly review ways to reduce the number of DGN permits.

In summary, the HMSAS wants to emphasize that bullet one of moving the season ahead and moving the southern turtle exclusion line due west from Point Sur could have an immediate positive effect or the DGN fishery. In discussions with the HMSMT, there is new data since the southern line was determined that indicates the proposed changes would not generate significant additional encounters with leatherback turtles. The industry is willing to cooperate with the fishery managers to monitor any fishing in the opened areas.

PFMC
03/02/12

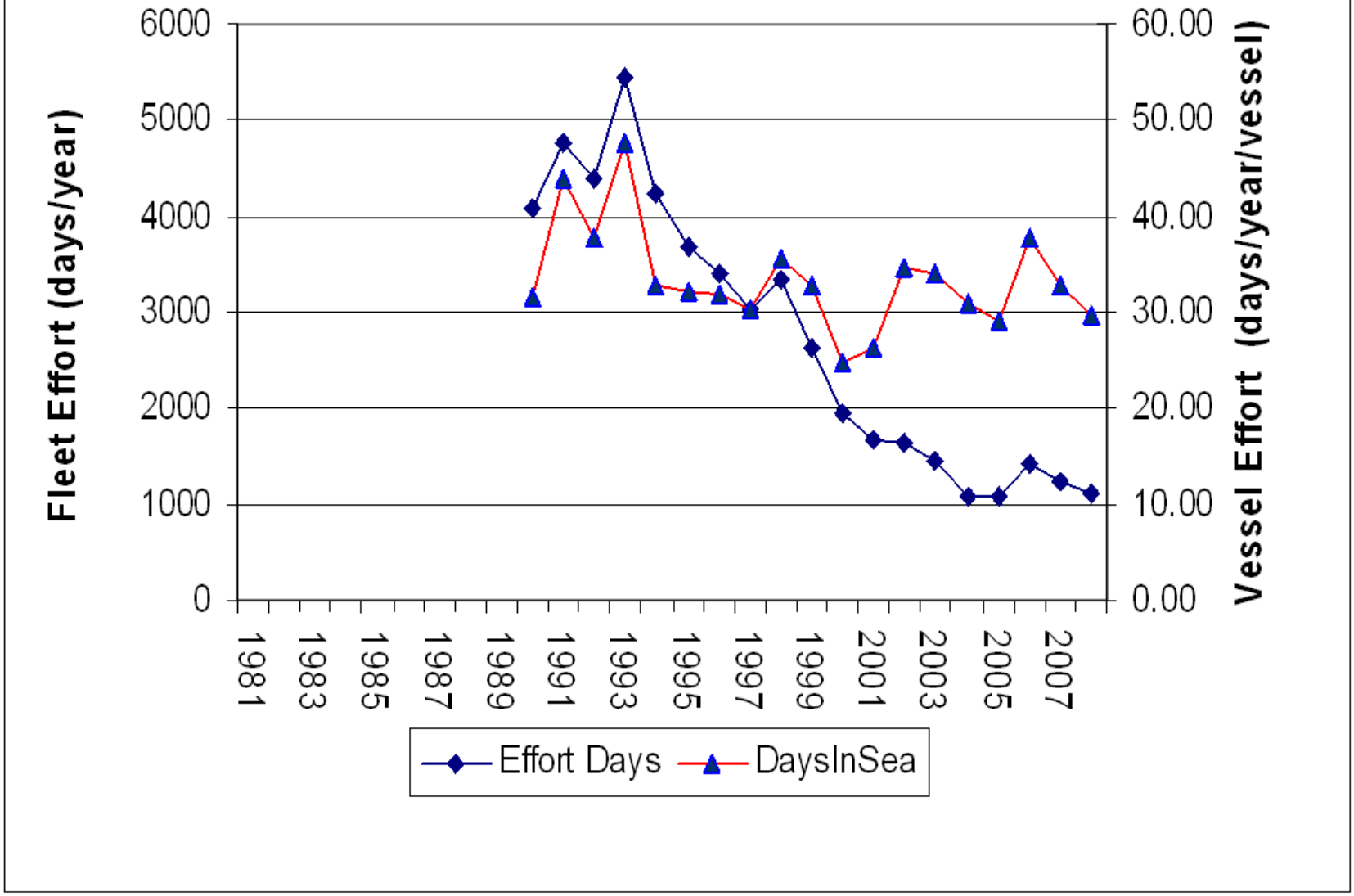


Figure 1. Fleet and vessel effort for the drift gillnet fishery. (Source: NMFS SWR).

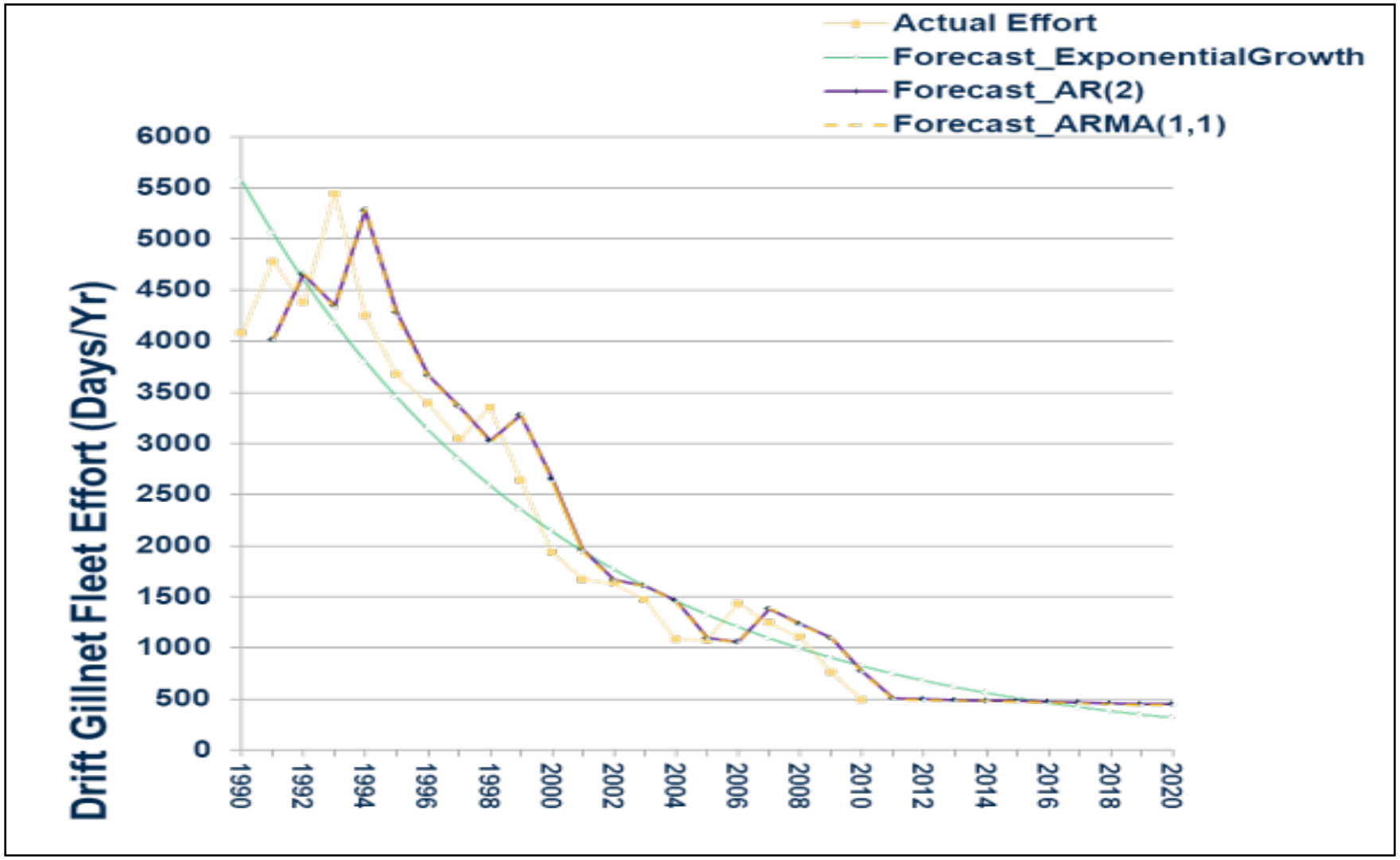


Figure 2. Forecast of change in drift gillnet fishing effort through 2020 (Source: NMFS SWR).

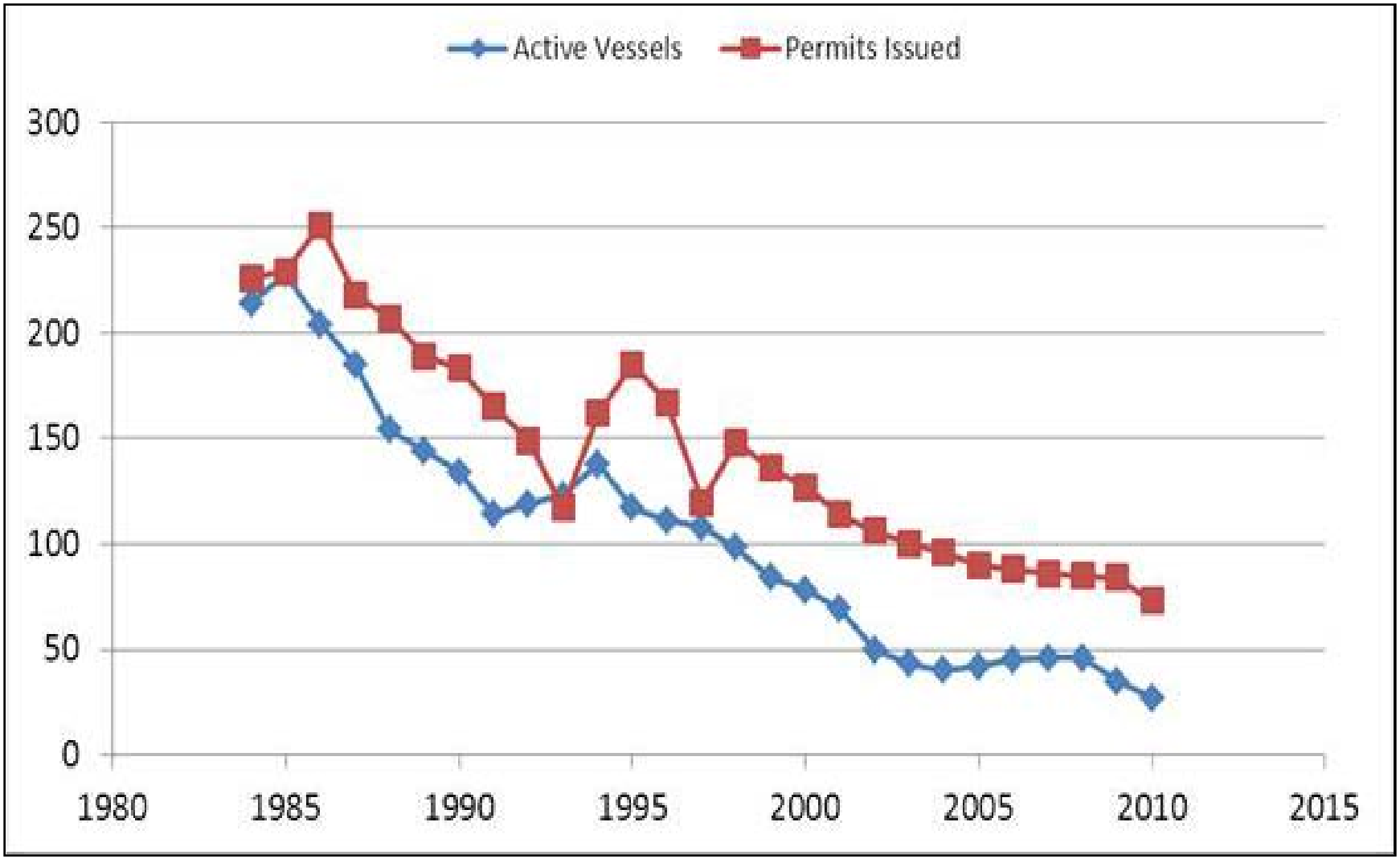


Figure 10. Annual drift gillnet permits and number of active vessels, 1984-2010.

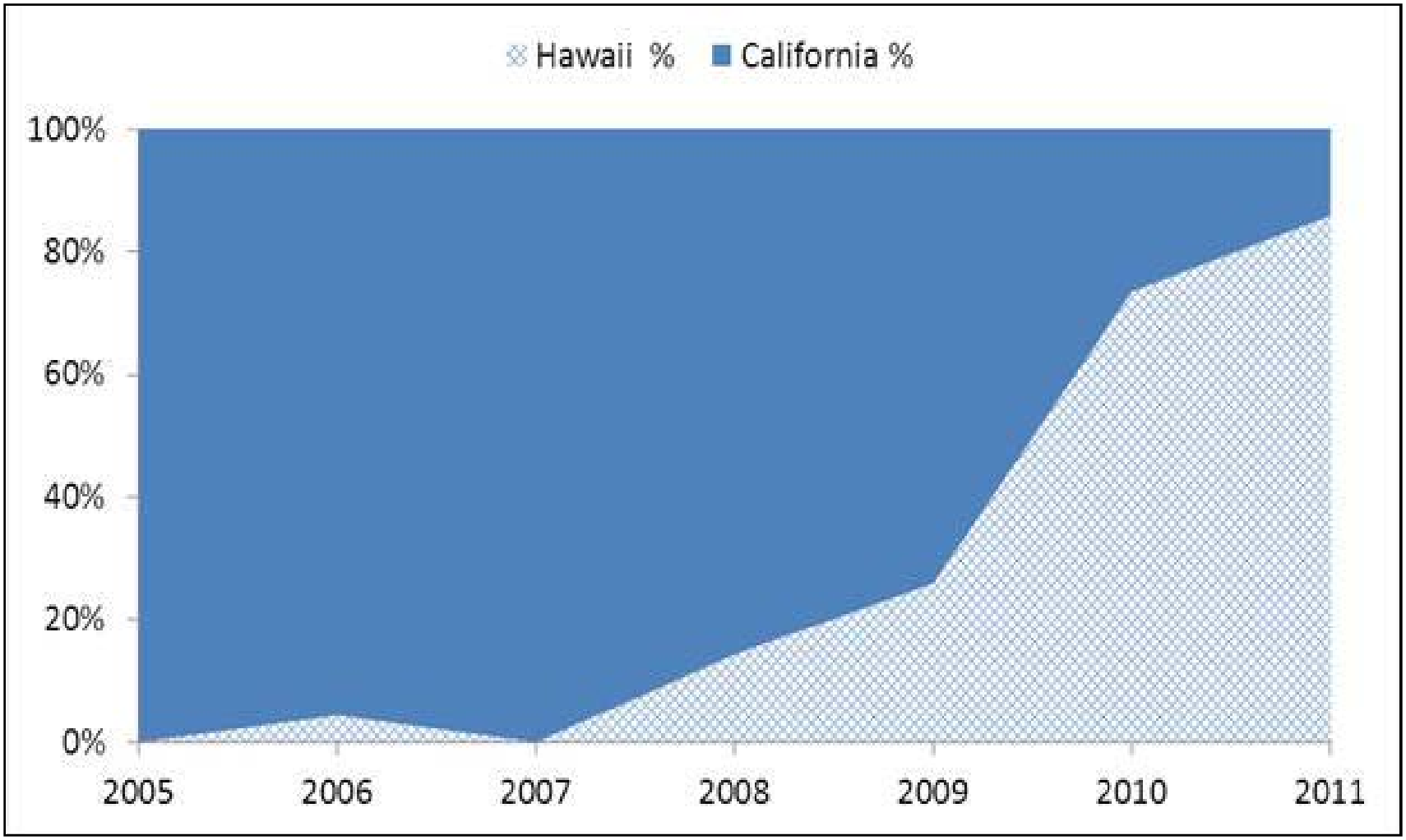


Figure 5. Hawaii and California fishery share of California swordfish landings.

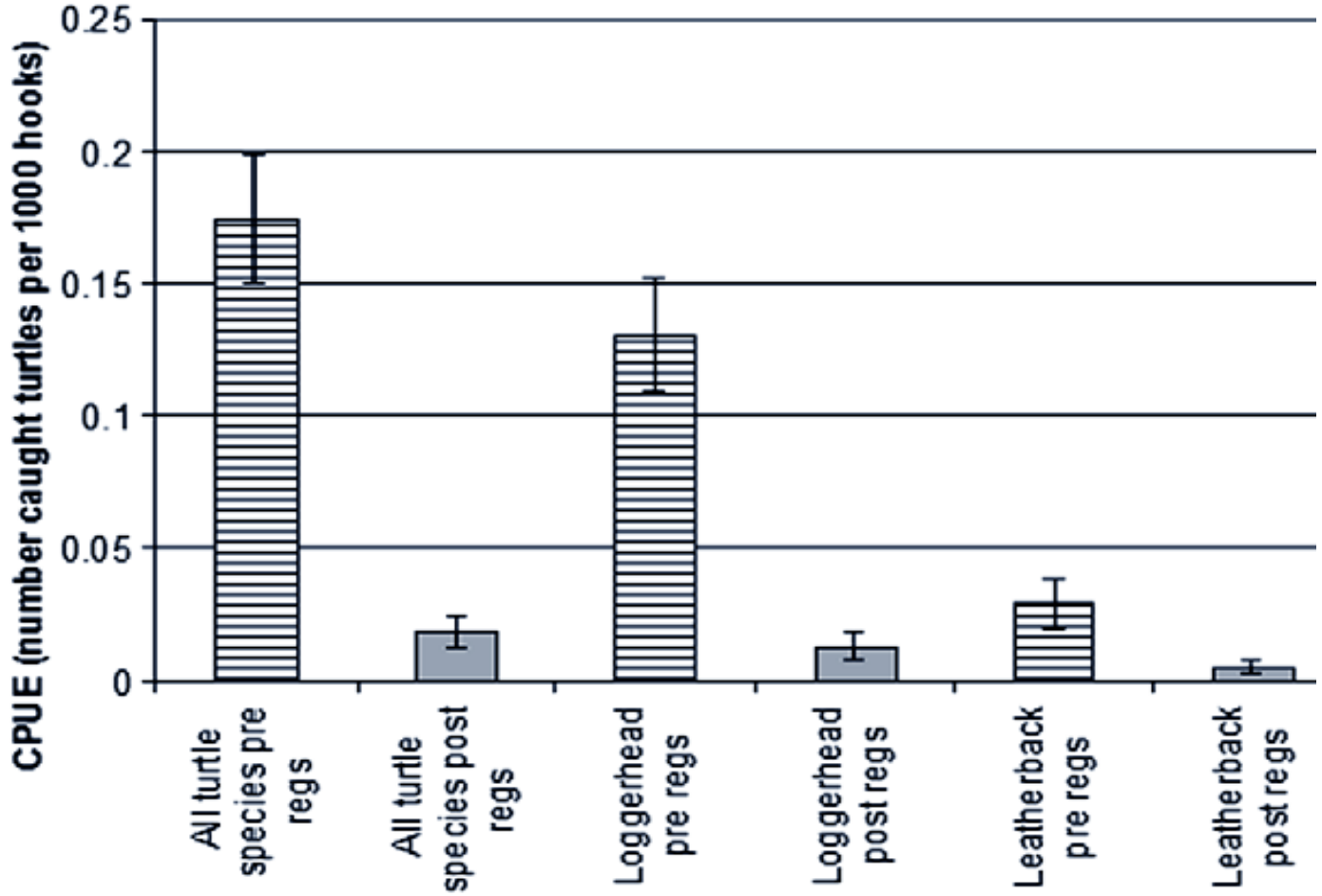


Figure 7. Catch rates of leatherback and loggerhead sea turtles in the Hawaii Shallow Set Longline Swordfish Fishery prior to use of circle hooks and mackerel bait (hatched) and after use of circle hooks and mackerel bait (shaded). (Gilman et al., 2006)

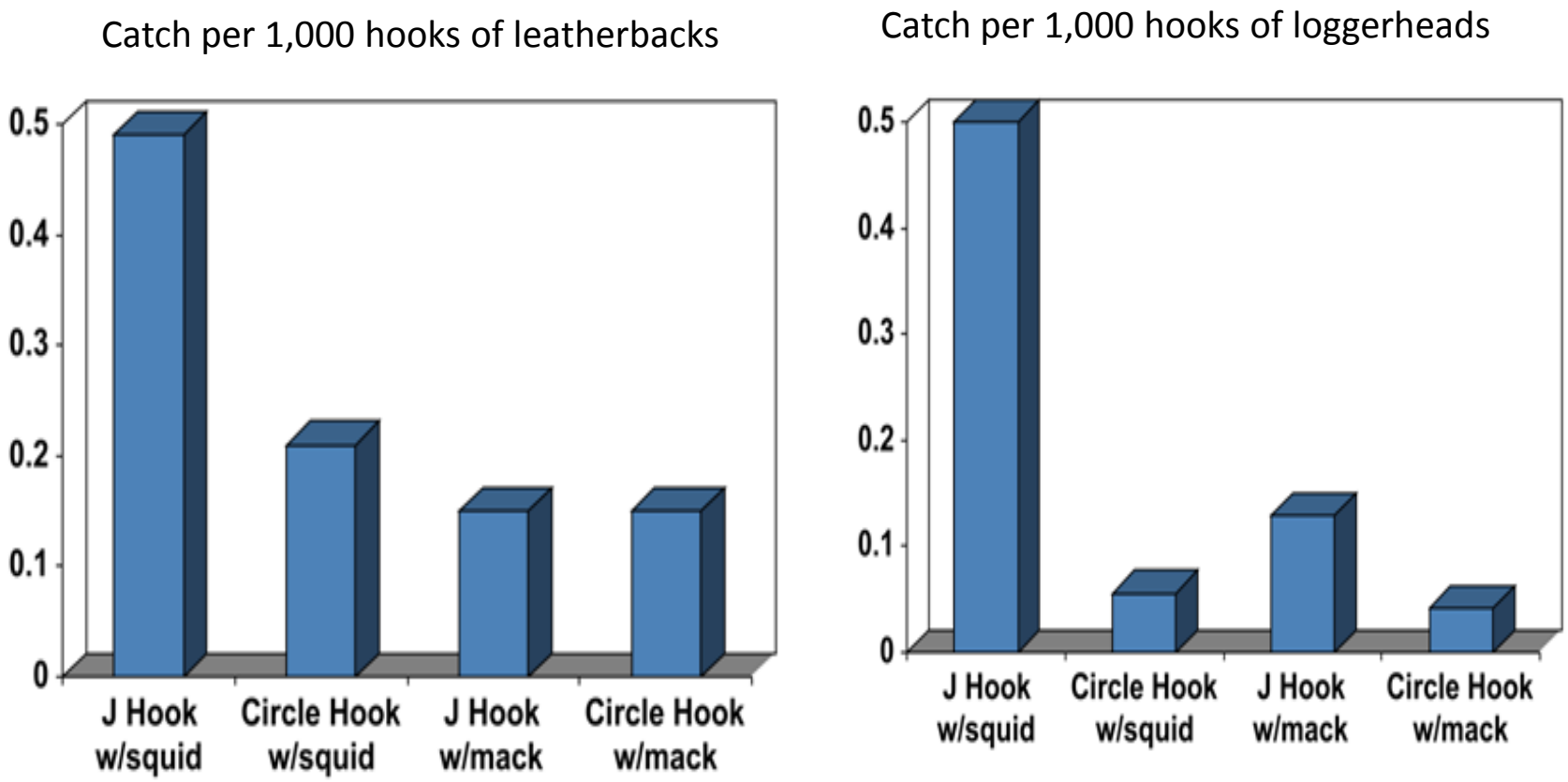


Figure 6. Catch rates of leatherback and loggerhead sea turtles in the U.S. Atlantic Shallow Set Longline Swordfish Fishery with varying hook and bait types. (Watson, et al. 2002).

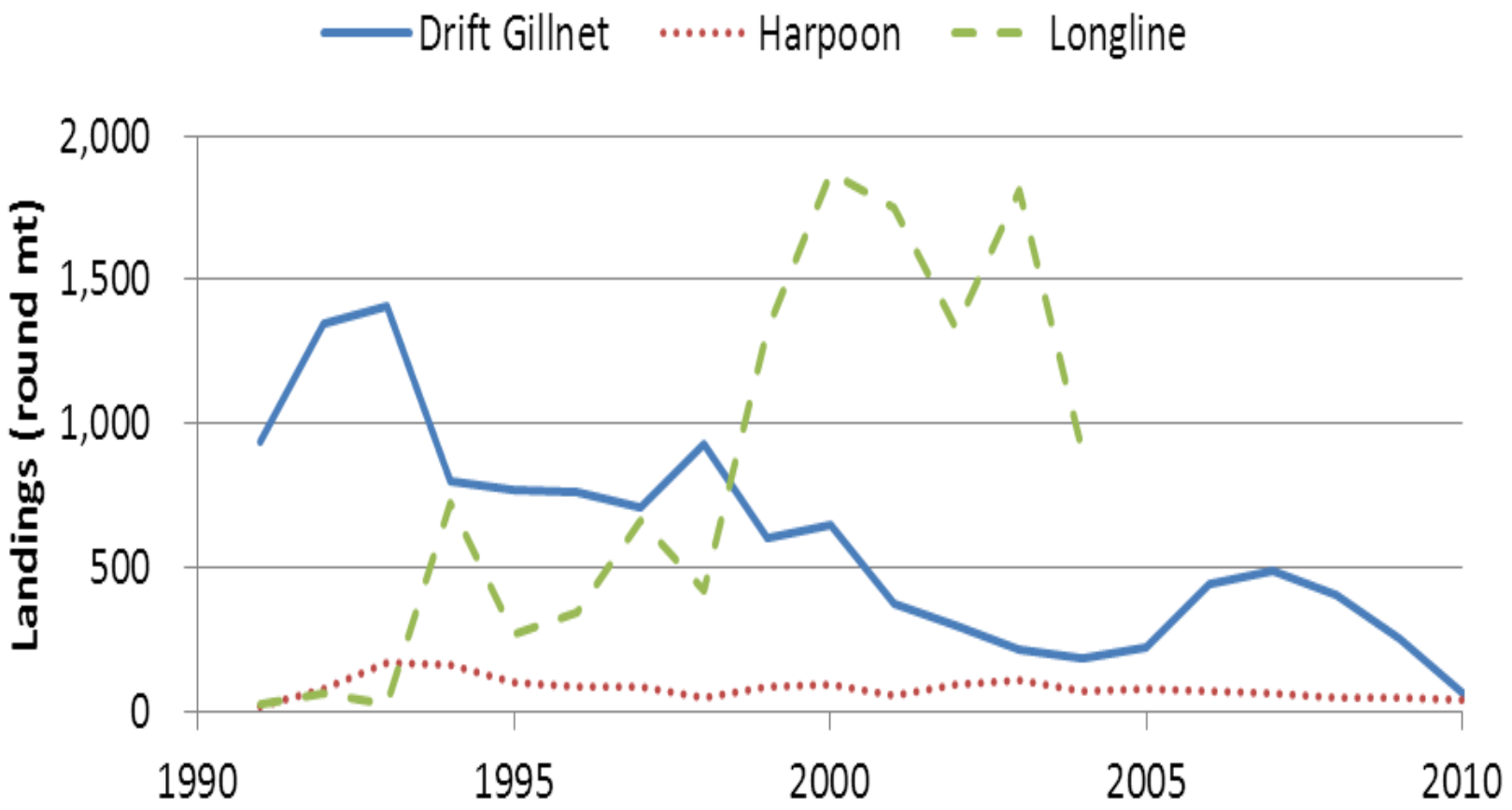


Figure 8. West coast commercial swordfish landing by west coast fisheries, for the years 1991-2010. (Source: Table 4-28, 2010 HMS SAFE Report, September 2011.)

Development and Trials of Deep-Set Buoy Gear in Southern California

Chugey Sepulveda, PhD
Scott Aalbers, MS
Craig Heberer, NOAA

Pfleger Institute of Environmental Research PIER

NOAA
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

Background

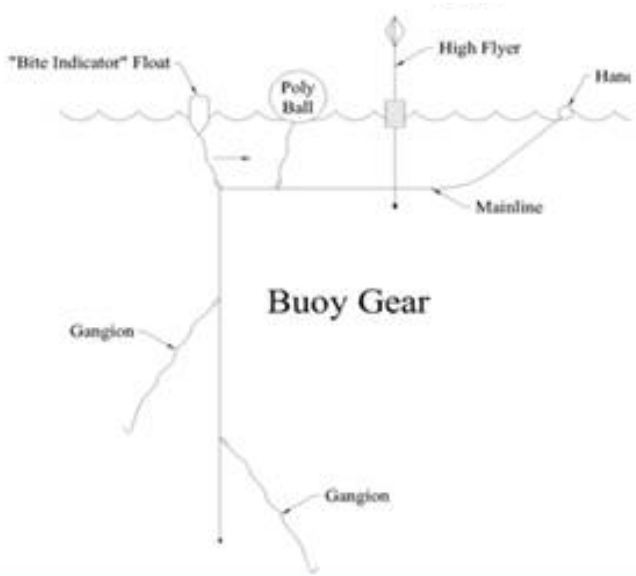
- **Saltonstall-Kennedy award to design and test the efficacy of deep-set buoy gear in Southern California**

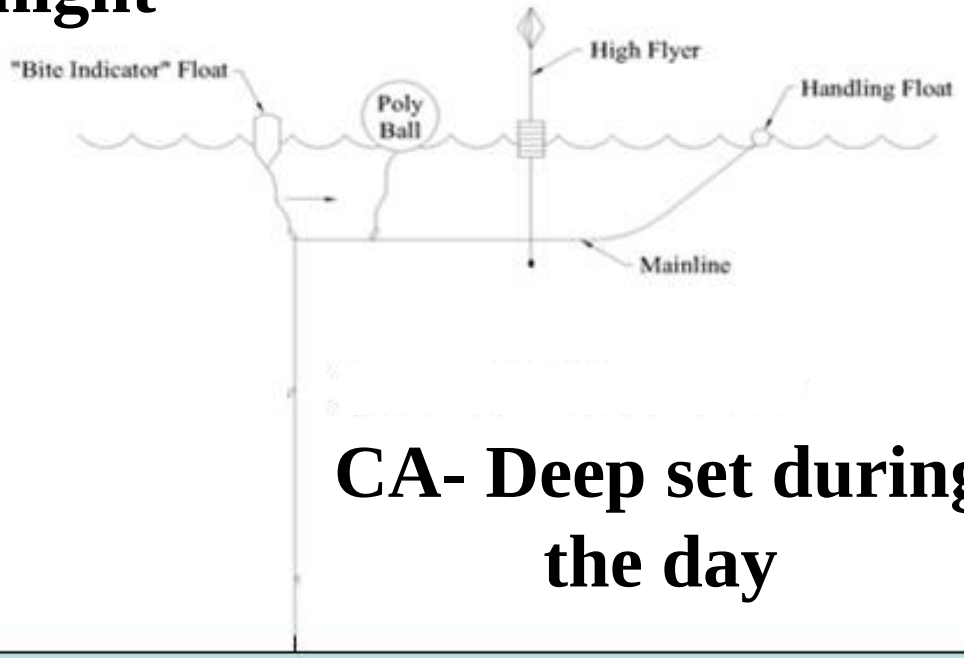
- **What is Buoy Gear?**
  How does it compare to other gear types (LL, DGN, harpoon)?

- **Where is it currently used?**

- **How does the proposed gear differ from that currently used in Florida?**

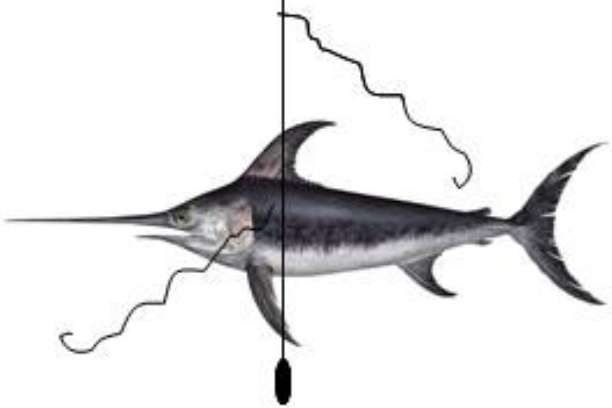
Florida- shallow set at night



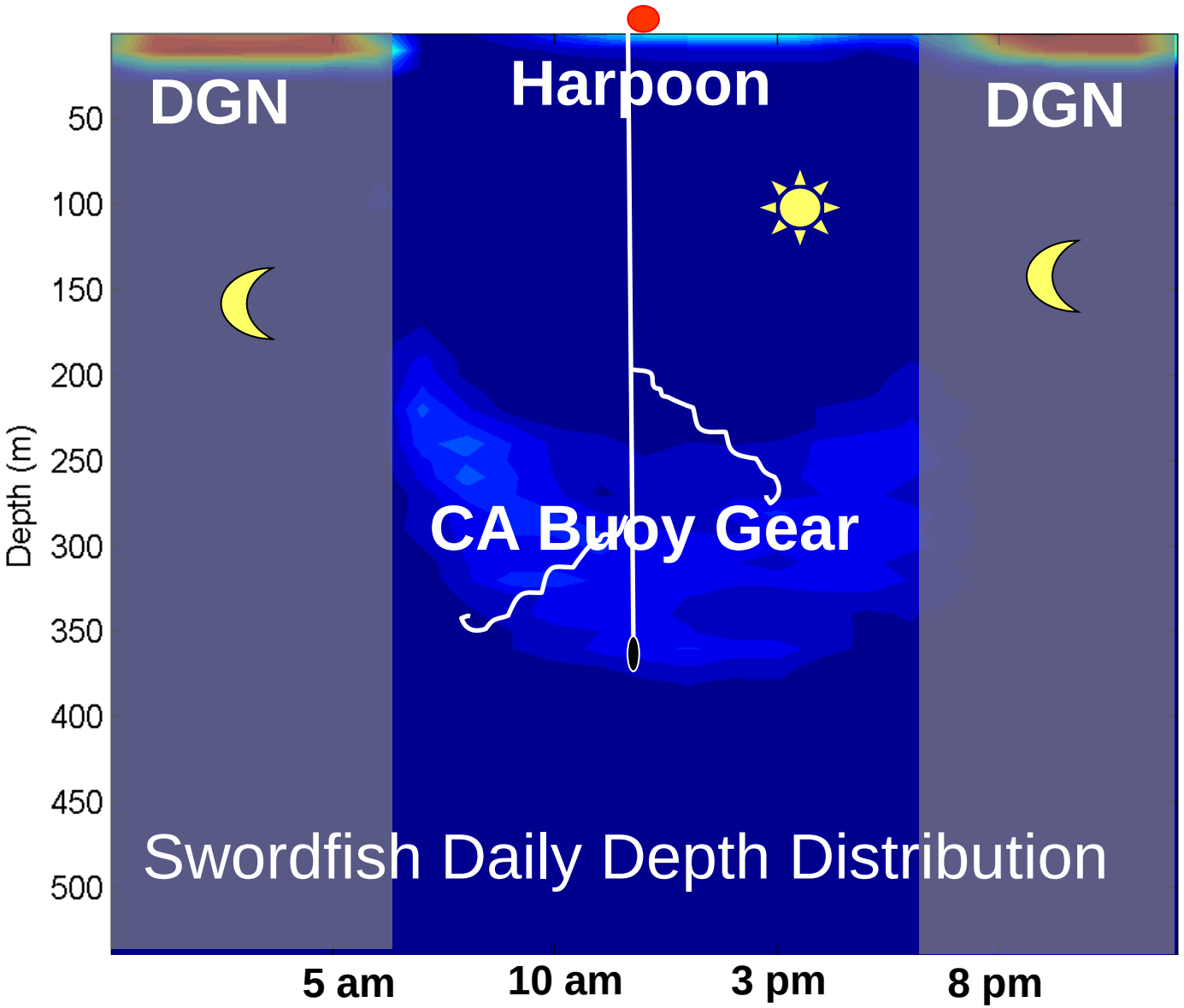


CA- Deep set during the day

Thermocline



Gear Configuration



From Sepulveda et al., 2010

Year 1 Objectives

Environmental Assessment

Gear development

Initiate first deployments

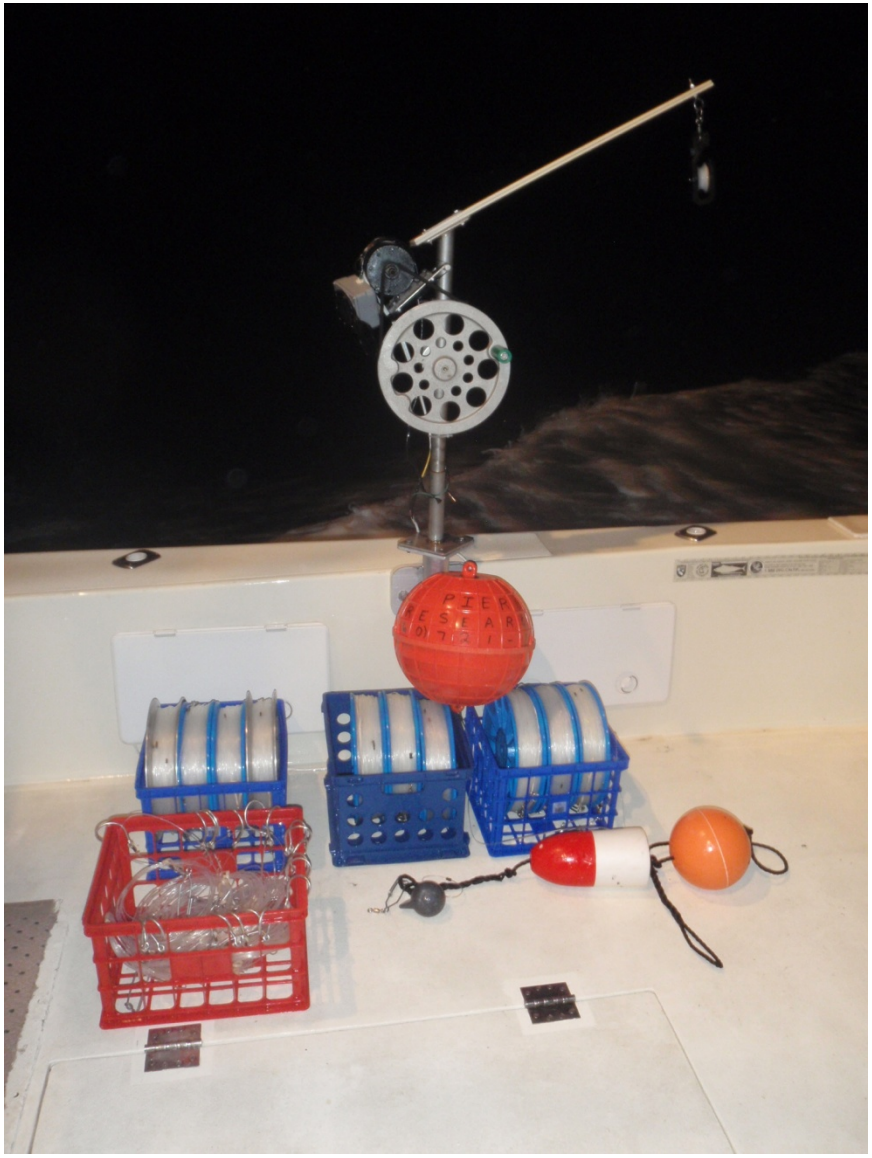
Refine gear and set protocols

Determine depth range and gear characteristics for year 2 trials

Gear Design

- Cost effective
- Easy to use
- Robust
  - 550 mainline
  - 400 leader
  - 46 lb float
  - 18/0 circle hooks

Total set-up cost for 10 sets of gear ~$3,400



Gear Experiments and Design

8-lb lead

Below thermocline in <1 minute

At Depth in 4 minutes

Leader lengths

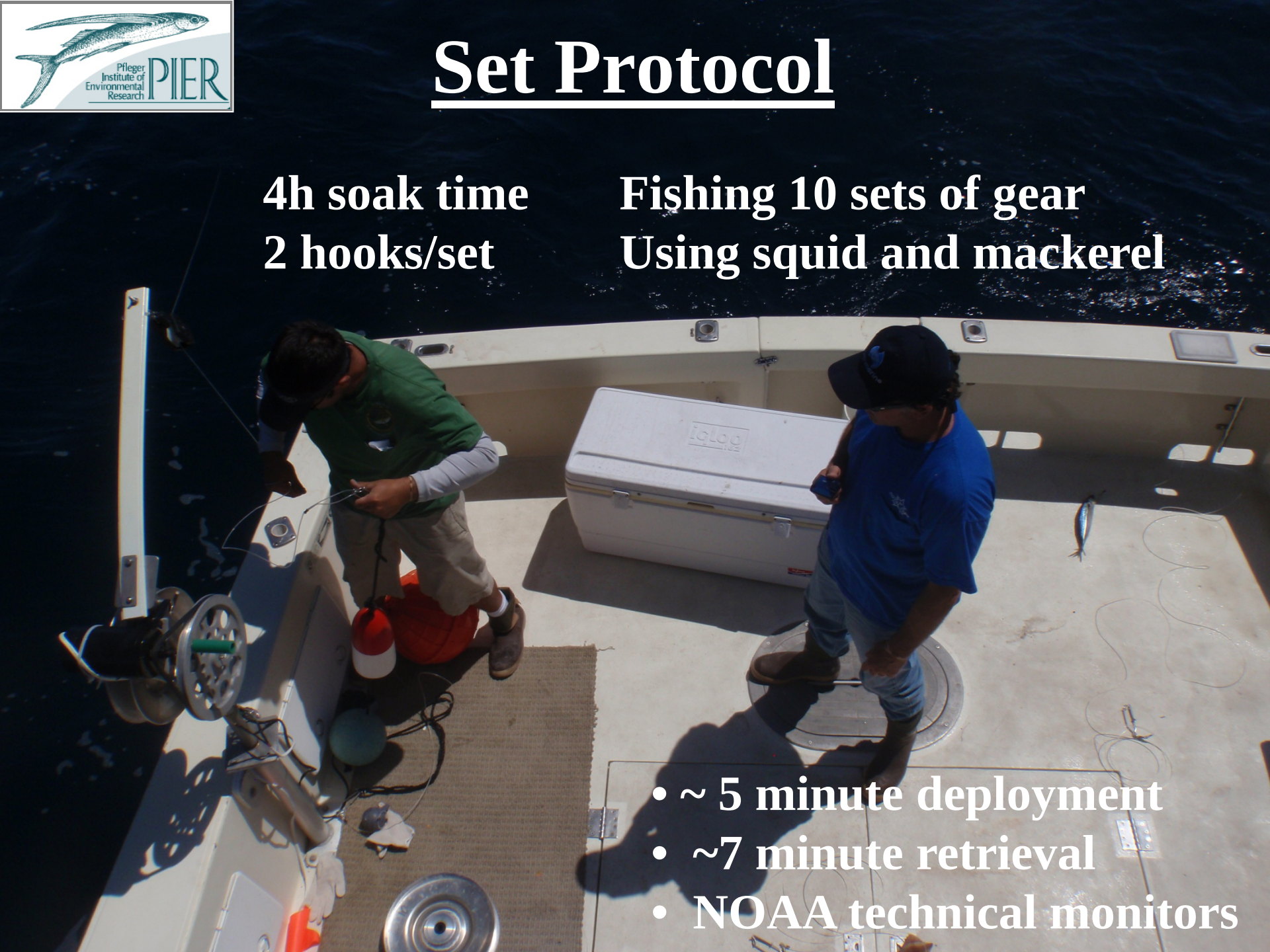
Light source

Buoy Configuration

Set Protocol

4h soak time
2 hooks/set

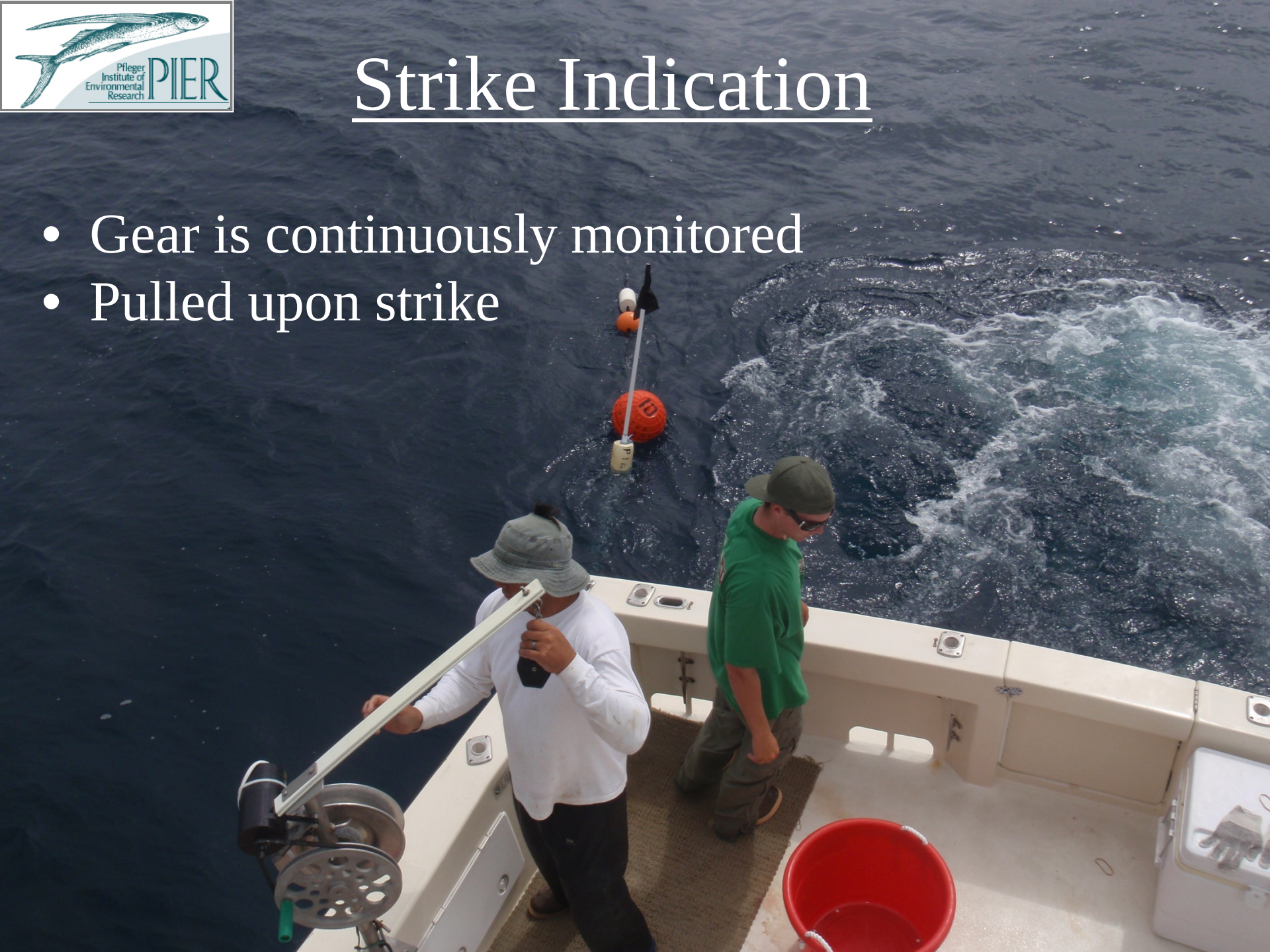
Fishing 10 sets of gear
Using squid and mackerel



- **~ 5 minute deployment**
- **~7 minute retrieval**
- **NOAA technical monitors**

Strike Indication

- Gear is continuously monitored
- Pulled upon strike



2011 Set Locations

- 22 sets total (10 pieces/set)
- (7 of which were gear set-up trials)
- No lost gear

Catch totals for year 1

- **4 Swordfish (~90-150 kg)**
- **4 Bigeye thresher sharks (~70-180 kg)**
- **2 Blue sharks (~18-20 kg)**

All catch arrived at the vessel alive

Foreseeable issues

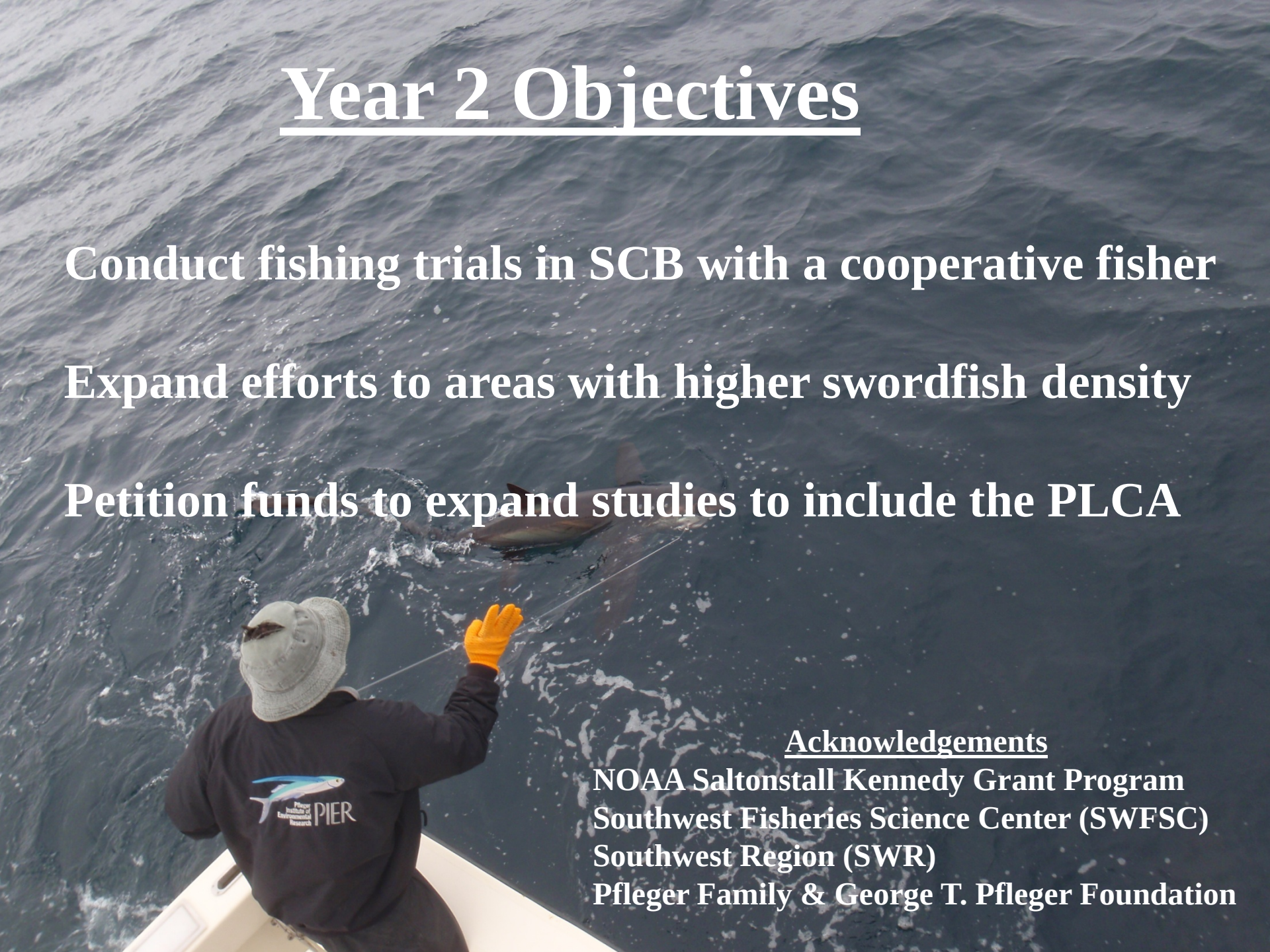
- **Bait predation**
  - **Jumbo squid (*Dosidicus gigas)***
- **Swordfish distribution**
  - **patchiness of resource**
- **Cost effectiveness**
  - **artisanal nature/scale of gear**
  - **price/lb of fish**

Year 2 Objectives

Conduct fishing trials in SCB with a cooperative fisher

Expand efforts to areas with higher swordfish density

Petition funds to expand studies to include the PLCA



Acknowledgements

NOAA Saltonstall Kennedy Grant Program
Southwest Fisheries Science Center (SWFSC)
Southwest Region (SWR)
Pfleger Family & George T. Pfleger Foundation

Commercial Swordfish Permits

To sell swordfish, you need a directed, incidental, or handgear swordfish limited access permit. To fish for swordfish with buoy gear, you need a valid commercial swordfish handgear limited access or directed swordfish limited access permit. Incidental swordfish permit holders may not target swordfish with buoy gear. Commercial swordfish permits are administered under a limited access program, and the National Marine Fisheries Service (NMFS) is no longer issuing new commercial swordfish permits. To obtain a permit, it must be transferred, within the upgrading restrictions, from someone who is leaving the fishery. Contact the Southeast Regional Office for information on renewing or transferring permits (727-824-5326).

Authorized Handgear

Handgear includes buoy gear, handline, rod and reel, harpoon, and bandit gear. Handlines must be attached to, or in contact with, the vessel.

Buoy Gear Construction and Deployment Restrictions

Buoy gear is defined as a fishing gear consisting of one or more floatation devices supporting a single mainline to which no more than two hooks or gangions are attached.

Floatation device is defined as any positively buoyant object rigged to be attached to a fishing gear.

Fishermen using buoy gear are limited to possessing or deploying no more than 35 individual floatation devices and are required to mark each floatation device with the vessel's name, registration number, or HMS permit number, as per regulations at 50 CFR § 635.6 (c).

Buoy gear must be constructed and deployed so that the hooks are attached to the vertical portion of the mainline. Floatation devices may be attached to one, but not both ends of the mainline, and no hooks or gangions may be attached to any floatation device or horizontal portion of the mainline. If more than one floatation device is attached to a buoy gear, no hook or gangion may be attached to the mainline between them. Individual buoy gears may not be linked or connected together in any way, and all buoy gears are required to be released and retrieved by hand.

Additionally, fishermen using buoy gear must affix gear monitoring equipment to each individual buoy gear to aid in recovery. Gear monitoring equipment may include, but is not limited to, radar reflectors, beeper devices, lights, or reflective tape. If only reflective tape is used, the vessel deploying the gear must possess an operable spotlight capable of illuminating deployed buoys. If a gear monitoring device is positively buoyant and rigged to be attached to a fishing gear, it would be included in the 35 floatation device vessel limit and would be required to be marked appropriately.

A diagram of a buoy gear constructed with four flotation devices attached

Retention Limits

North Atlantic Swordfish

Directed and Handgear - no trip limit (when the directed fishery closes, handgear fishemen may retain two swordfish per trip, however, no swordfish may be retained on harpoon trips).

Incidental - 2 swordfish per trip or no more than 5 if fishing with squid trawl.

Minimum Size & Weight Limit

Whole Fish - 47" lower jaw fork length (LJFL)

Science, Service, Stewardship

Protected Resources Update

Pacific Fisheries Management Council - HMS

March 2, 2012

NOAA FISHERIES SERVICE

NOAA FISHERIES SERVICE

Leatherback and Loggerhead Critical Habitat

- Critical Habitat regulatory requirements
- History/Background
- Current Status of CH for leatherbacks/loggerheads
- Biological information used to inform the process and future fishery actions

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Definition of Critical Habitat

"(1) the specific areas within the *geographical area occupied by the species*, at the time it is listed… on which are found those physical or biological features (I) essential to the conservation of the species *and* (II) which may require special management considerations or protection; and

(2) specific areas outside the geographical area occupied by the species at the time it is listed… upon a determination by the Secretary [of Commerce] that such areas are essential for the conservation of the species."

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2007 Petition

NMFS was petitioned in Oct. 2007 to revise this CH designation to include the Leatherback Conservation Area (aka DGN seasonal area closure, PLCA)

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What Does NMFS Consider?

- Identify the areas occupied by the species
- Biological features and PCE's
- Conservation benefit of designation
- Potential impacts to Federal activities (changes to activities to avoid destroying/modifying CH
- Economic costs of designation
- Exclusions (e.g. DOD, tribal U&As)

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Biological Report 2010

- Physical and biological features that make U.S. west coast important habitat for leatherbacks and essential for conservation
- Prey – [jellyfish] of sufficient condition, distribution, diversity and abundance
- Passage – migratory pathway conditions to allow for safe and timely passage to/from/within high use foraging areas

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Special Management Considerations

Activity types that have the potential to affect the PCEs by altering prey abundance, prey contamination levels, and free passage between and within specific areas.

- —pollution from point sources (e.g. National Pollution Discharge Elimination System (NPDES));
- —runoff from agricultural pesticide use;
- —oil spills;
- —power plants;
- —aquaculture;
- —desalination plants;
- —tidal energy or wave energy projects; and
- —liquid natural gas (LNG) projects.

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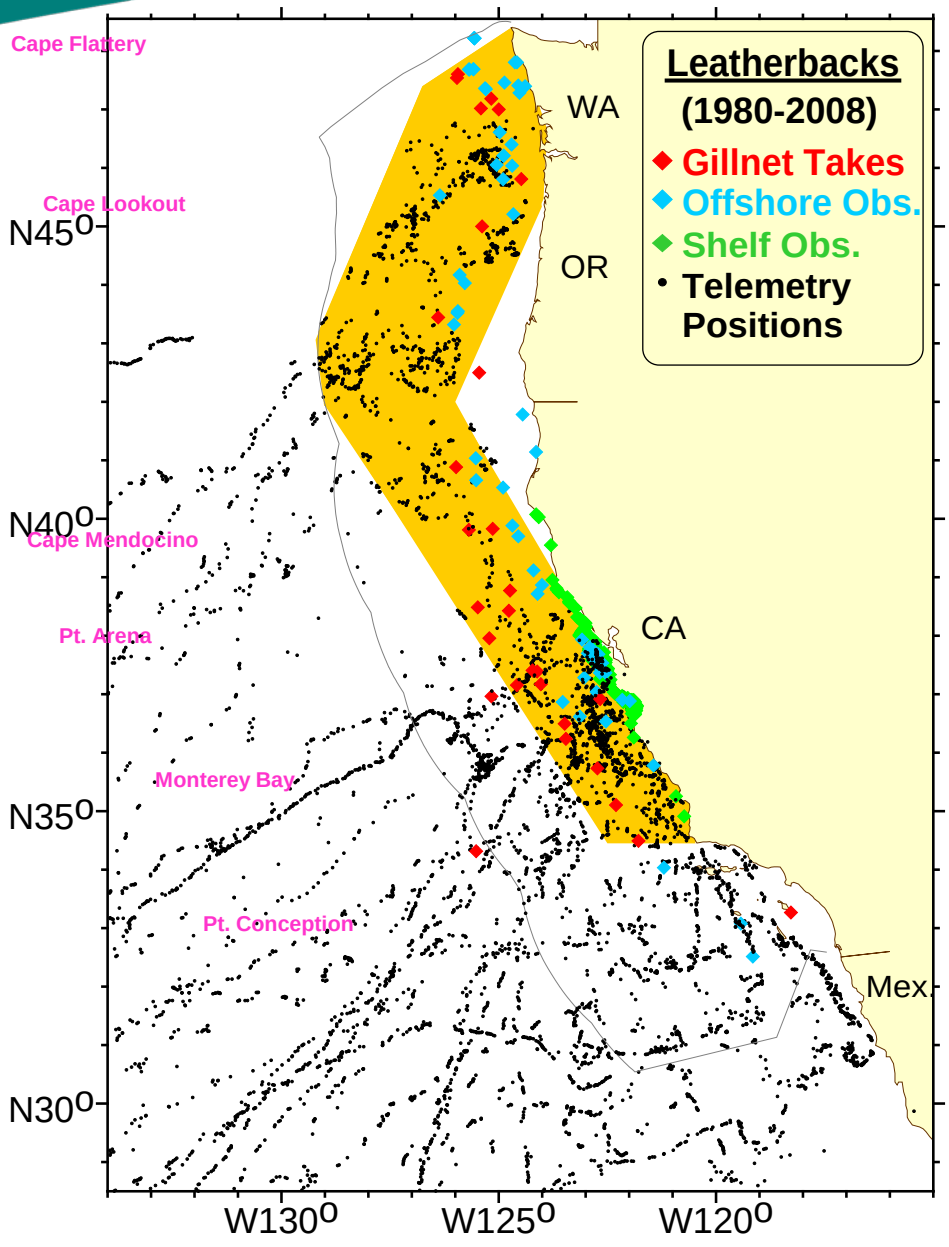
Data used:

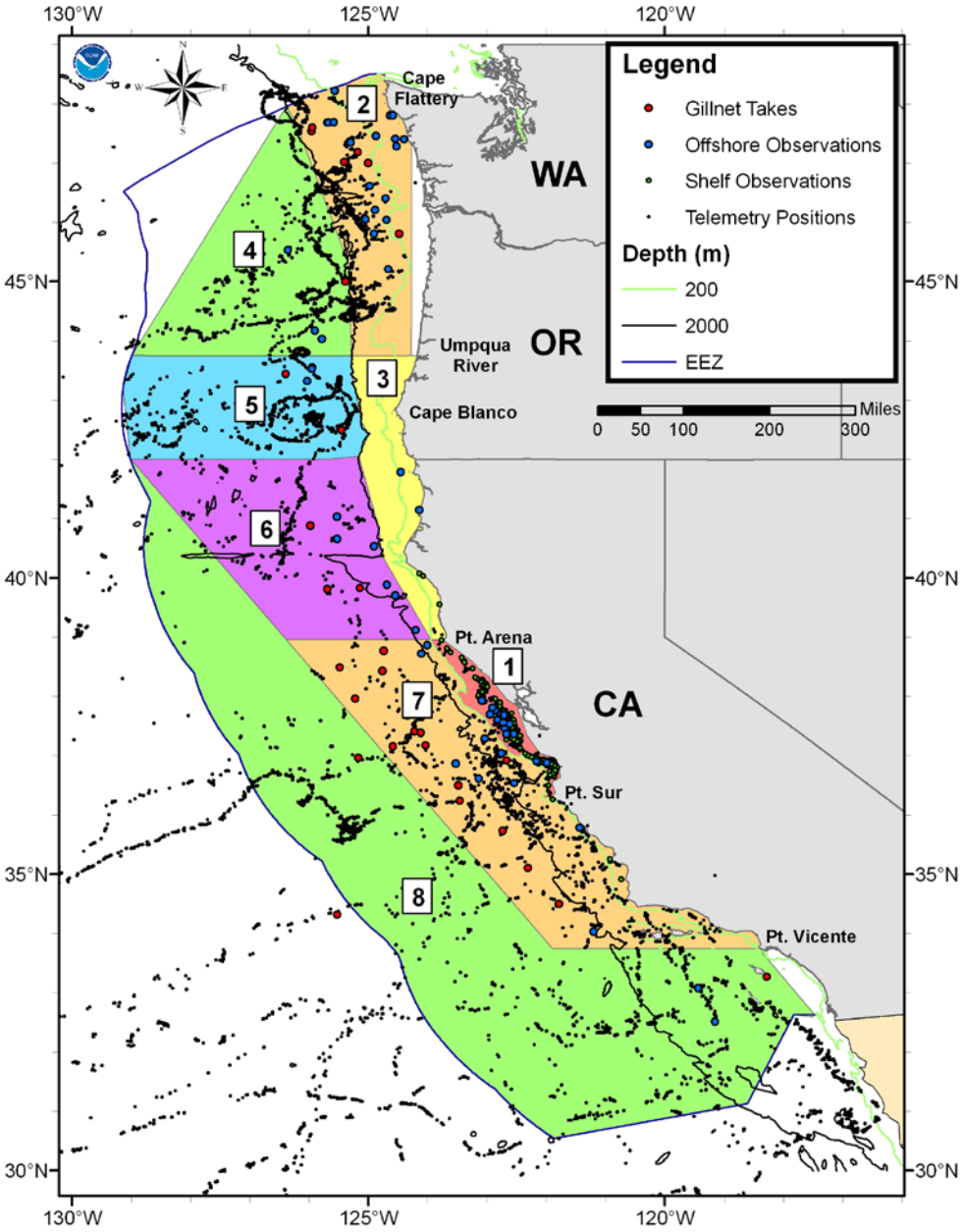
Fisheries Interactions

Satellite Telemetry Data

Observations (ship-based and shore-based)



NOAA FISHERIES SERVICE



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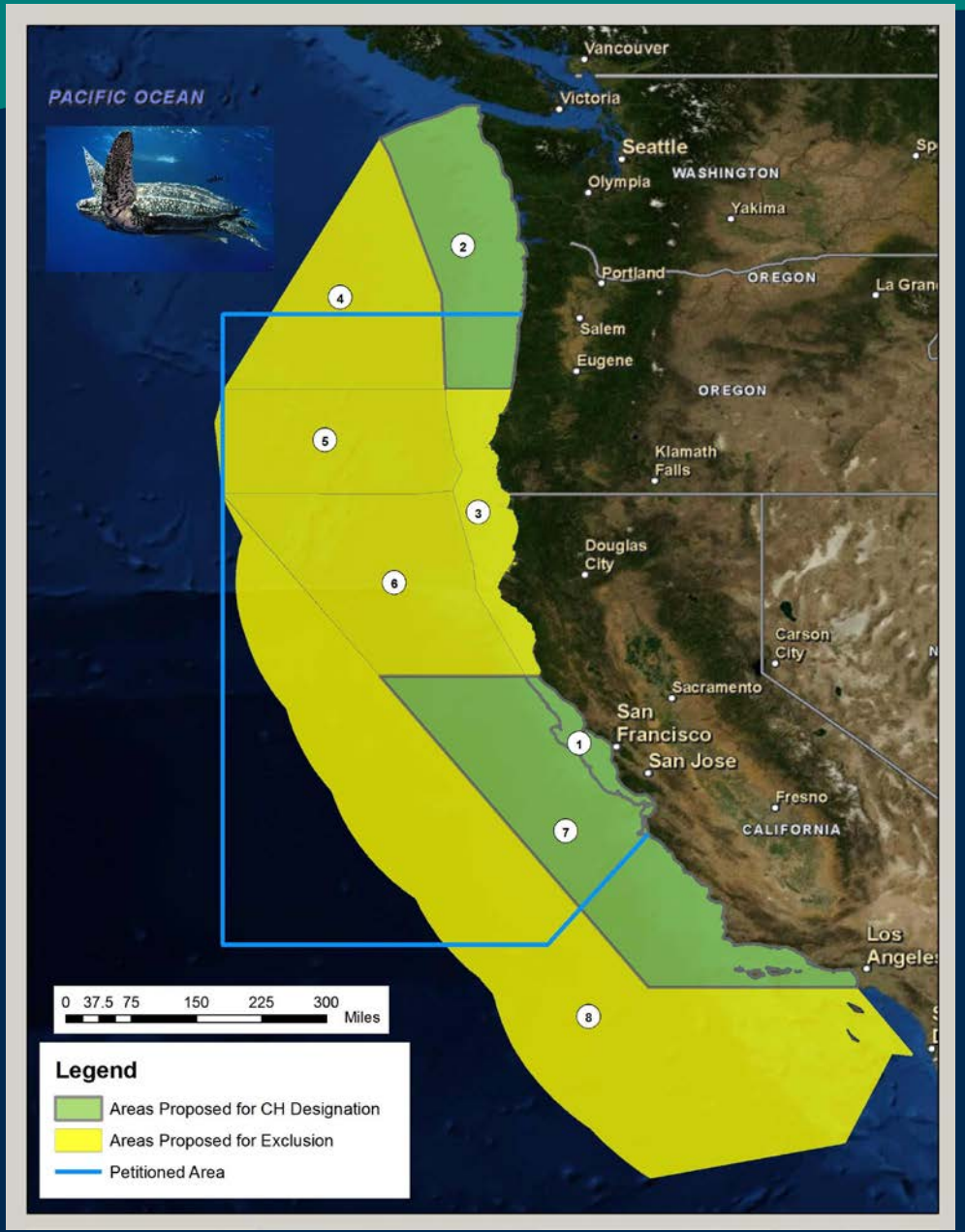
Proposed Critical Habitat for Leatherbacks

January, 2010



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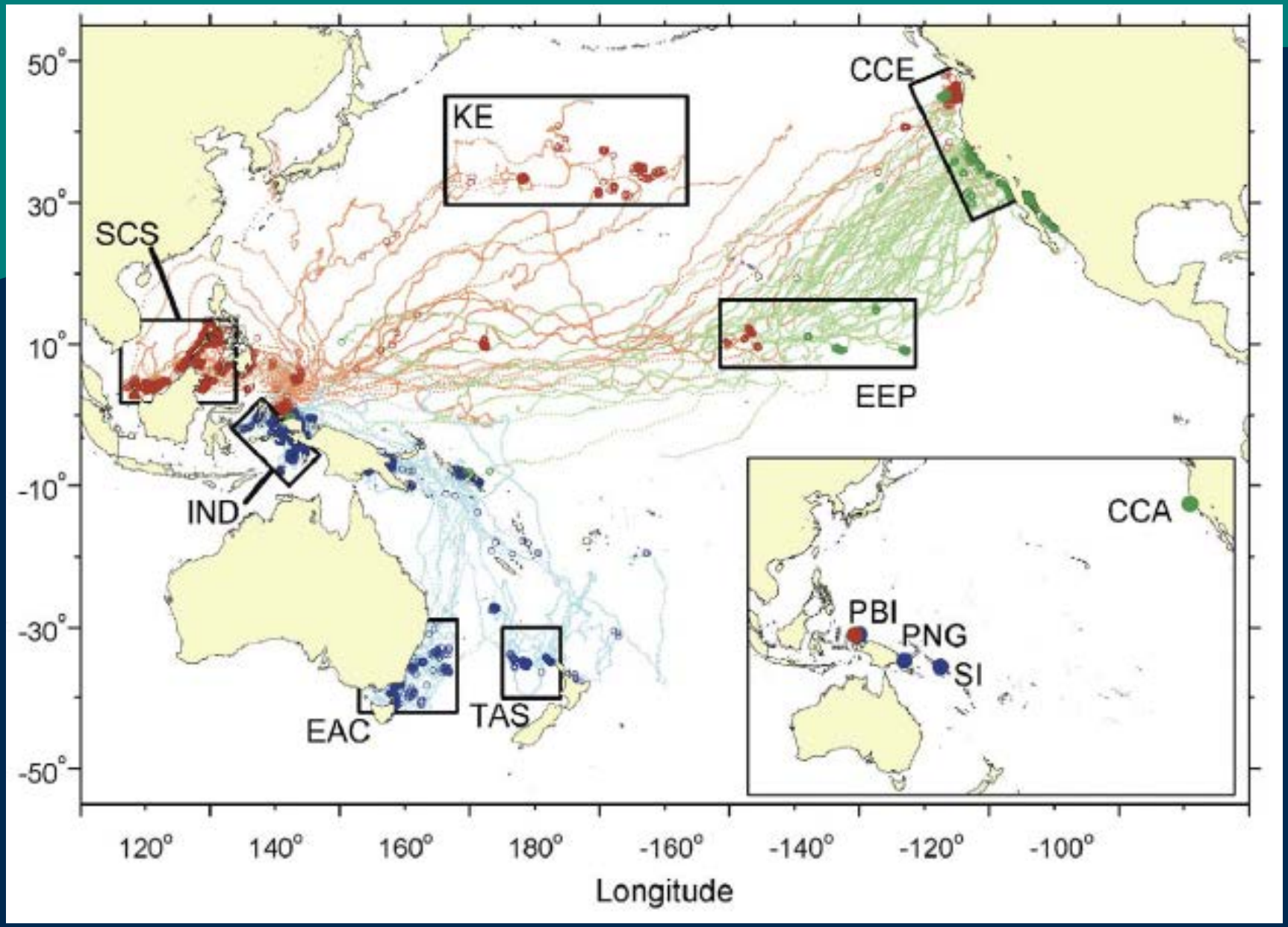
Jan 2010-present

Comment period through 4/23/2010

- —Response to comments
- —Peer review comments on economic and biological report
- —Benson et al. 2011 published

- —January 26, 2012 – FINAL DESIGNATION



Benson et al. 2011

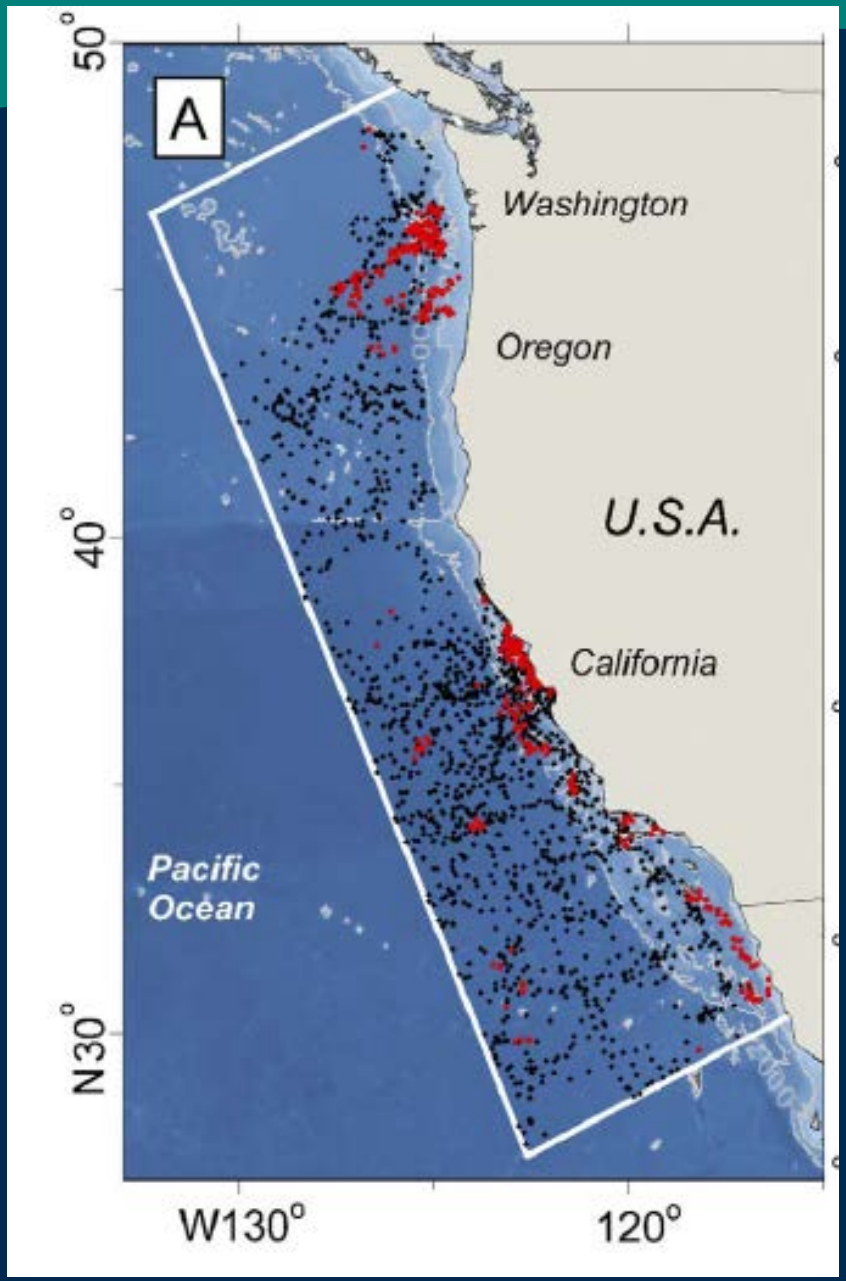
NOAA FISHERIES SERVICE

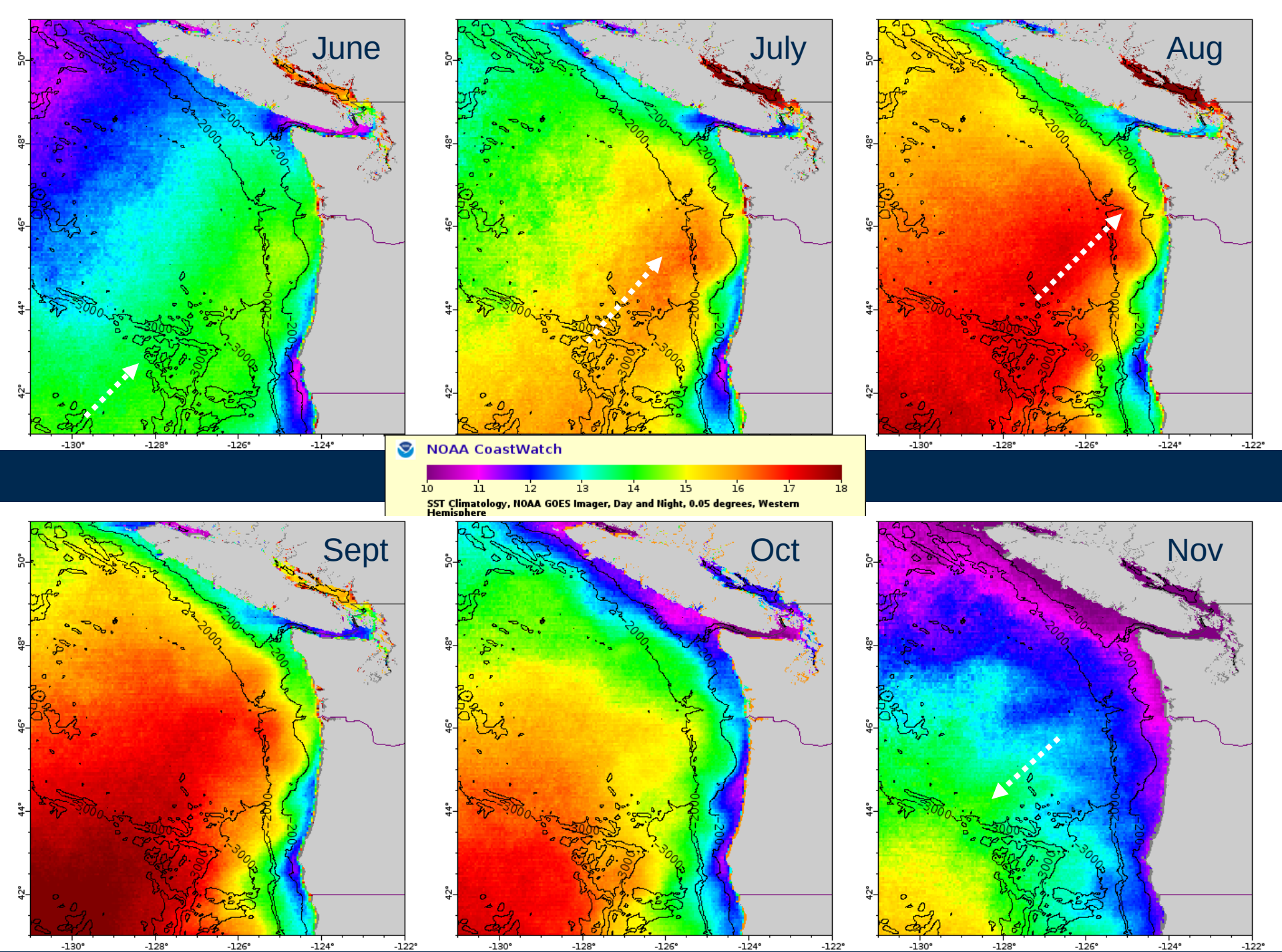
Area Restricted Search (red) v. Transiting (black dots)

Leatherbacks (n=40 turtles) engaged in ARS behavior 21% of the time in the California Current Ecosystem

ARS behavior occurred in cool habitats, shallow, with high CHL, low energy areas

[Benson et al. 2011]




June
July
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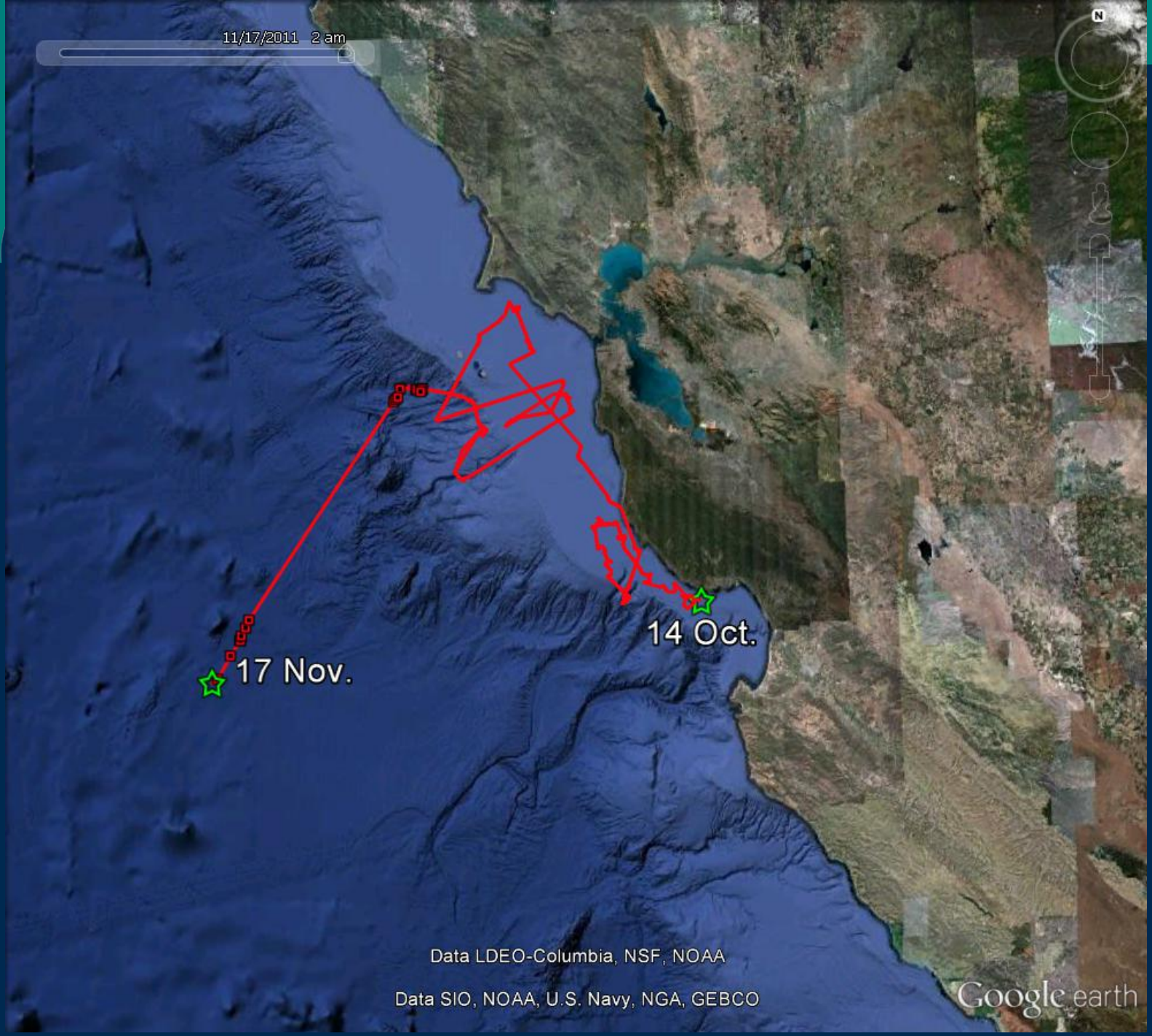
SST Climatology, NOAA GOES Imager, Day and Night, 0.05 degrees, Western Hemisphere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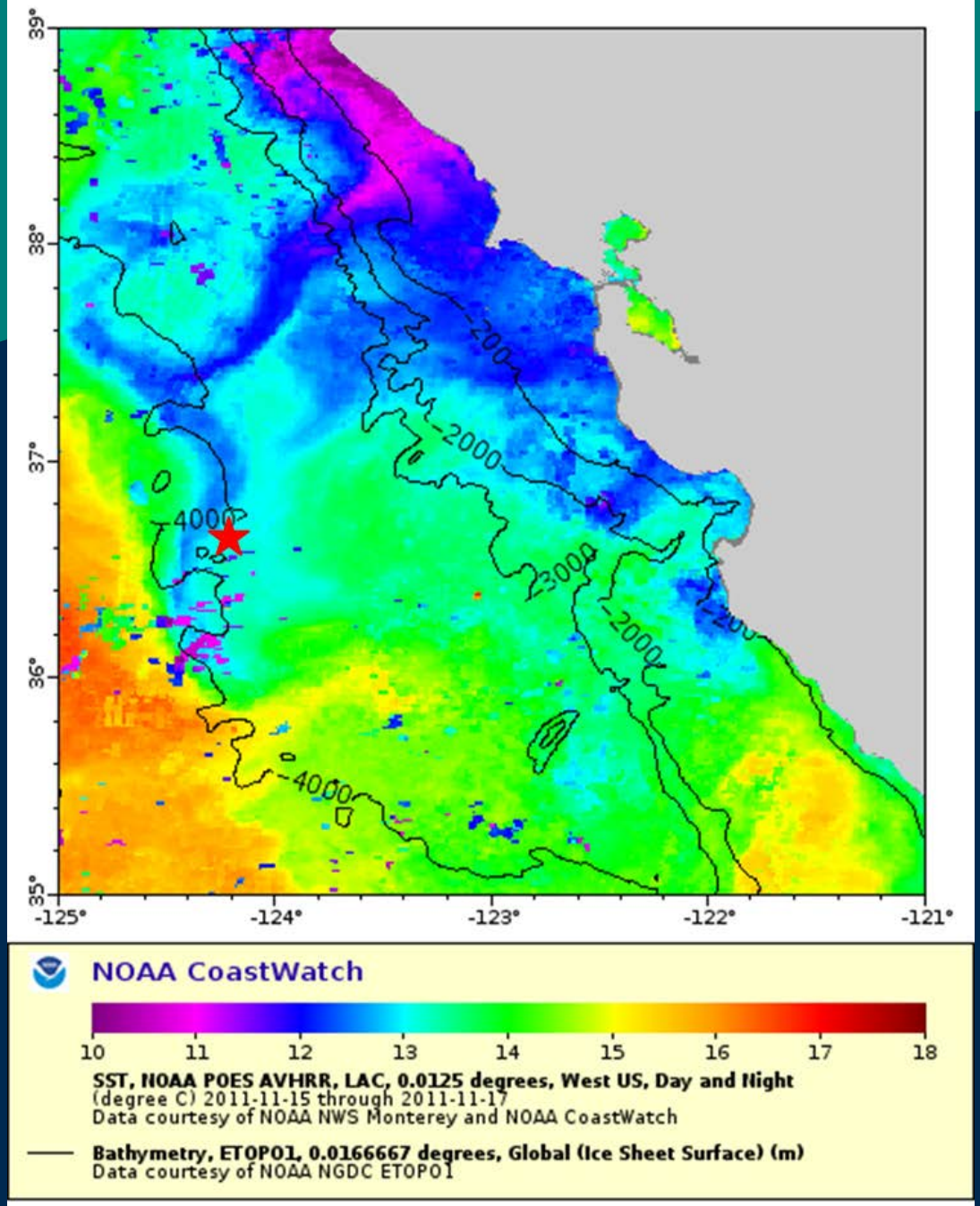

SSTs

November 15-17, 2011

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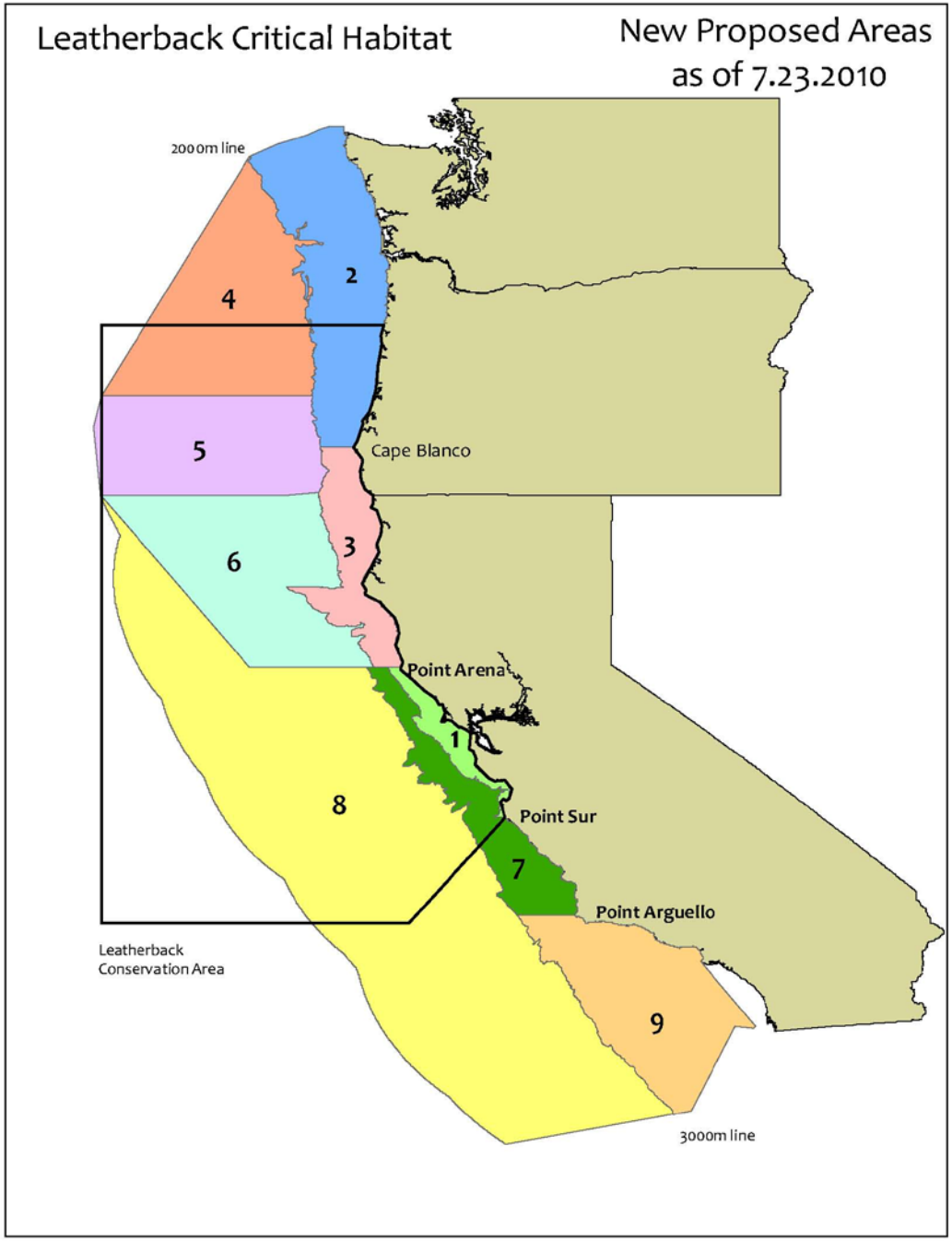
Major changes in Final Rule

- Eliminated “migratory pathway conditions” as a PCE
- Revised boundaries
- Clarified prey PCE to identify “density” as a characteristic:
  - “the occurrence of prey species, primarily scyphomedusae … of sufficient condition, distribution, diversity, abundance and density necessary to support individual as well as population growth, reproduction and dev’t of leatherbacks”



Areas 3, 4, 5, 6, 8 and 9 did not contain the prey PCE, as defined, and thus did not meet the definition of CH

Final Designation: Areas 1, 2 and 7

Pac NW: 25K sq miles east of 2000 m depth contour

CA: 17K sq. miles east of 3000 m depth contour

Max depth: 80m

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Activities/Agencies potentially affected

- Point-source pollution (NPDES/pesticide application) -- EPA
- Oil spill response – USCG/EPA
- Power plants -- NRC
- Desalination plants – EPA/USCG/ACOE
- Tidal/wave/wind energy -- FERC
- LNG projects – USCG/FERC

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Loggerhead Critical Habitat

September, 2011, North Pacific Distinct Population Segment of Loggerheads listed as Endangered

NMFS/USFWS - consider designating CH at time of listing

NEXT STEPS:

- Identify Occupied/Unoccupied Areas within U.S. EEZ
- Identify Physical and Biological Features Essential to the Conservation of the Species (PCEs) and which:
- Special Management may be required to protect the habitat

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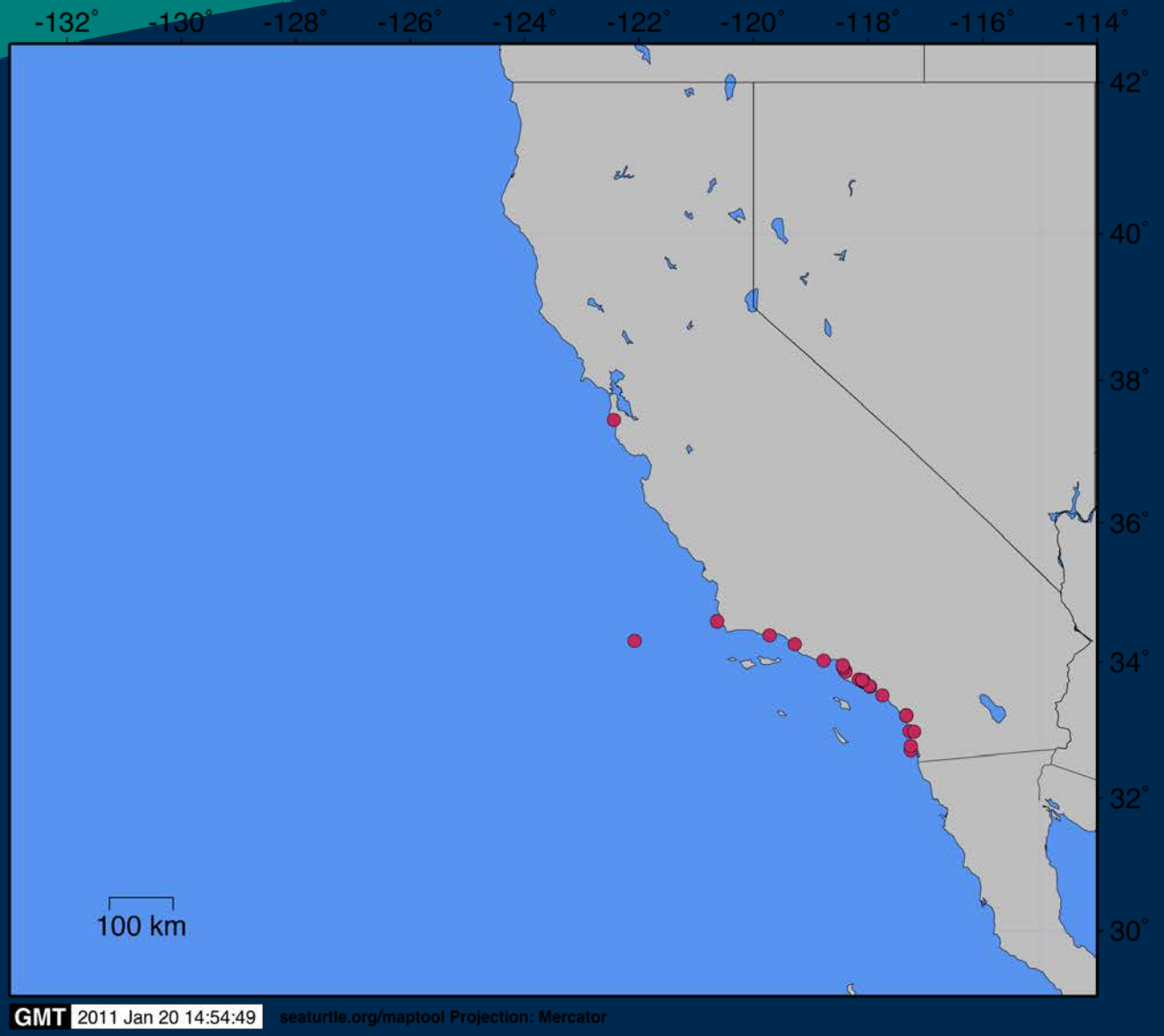
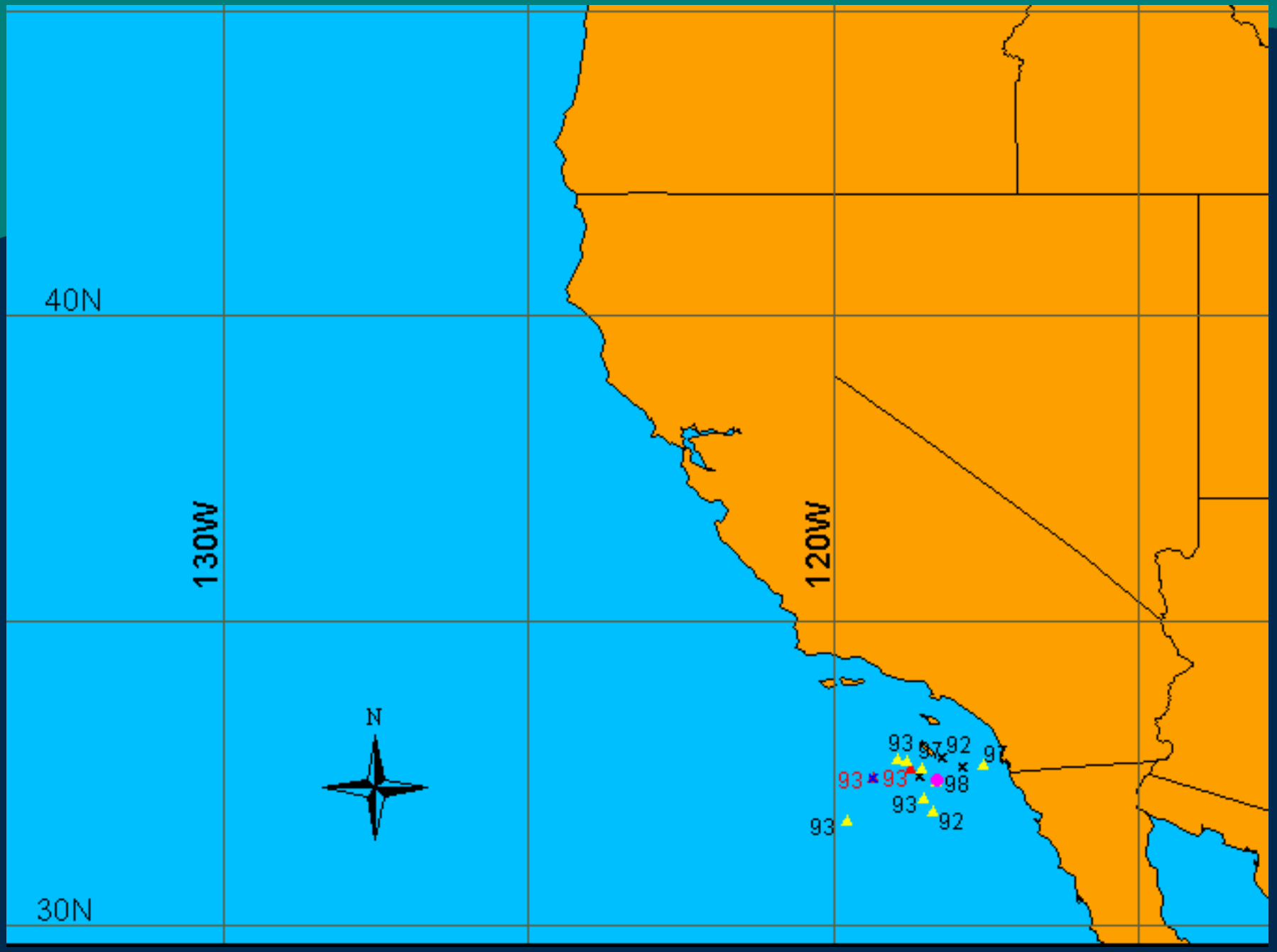
Loggerhead Strandings 1983-2009 (n=33)




40N
30N
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Physical and Biological Features for Loggerheads (?)

SSTs

HIGHLY MIGRATORY SPECIES MANAGEMENT TEAM
SWORDFISH MANAGEMENT DATA REPORT AND FUTURE MANAGEMENT RECOMMENDATIONS

Introduction

In September 2011 the Council received a report from the National Marine Fisheries Service (NMFS) on the results of a 2-day informational workshop they hosted in San Diego, California, on May 10-11, 2011, titled *U.S. West Coast Swordfish Workshop: Working Towards Sustainability*. Attendees included West Coast fishermen, processors, distributors, conservation organizations, fishery managers, natural resource economists, and legislative aides. The genesis for the workshop came from a NMFS analysis that forecasted a continued decline in West Coast-based swordfish fishing effort and landings through 2020, while continued deliveries of swordfish to the West Coast are expected. In response, The Council directed the Highly Migratory Species (HMS) Management Team and Advisory Subpanel to provide the following information to inform a decision on whether to make modifications to the current management regime for the west coast swordfish fishery:

1. All relevant new information on bycatch and bycatch mitigation in swordfish fisheries, including the amount and reasons for changes in bycatch in the Hawaii based longline fishery since 2000 and the DGN fishery since 2001, and information about new gears, such as the buoy-based gear used in Florida area fisheries and currently being trialed in southern California waters;
2. Current research on the distribution of sea turtles and their critical habitat off the west coast and its relevance to potential fishery management changes, including a potential change to the configuration of the Pacific Leatherback Conservation Area (PLCA); and
3. Based on the information in 1 and 2 above, comparisons of protected species bycatch estimates between current, status quo west coast swordfish fisheries, the gear types described above, fisheries in place at the time of HMS FMP adoption and possible future fishery designs.

This report addresses the Council's information request by a presenting a comprehensive look at the current status of the west coast swordfish fishery and includes:

1. Conservation and management issues, consumption and demand trends, swordfish stock status, protected species bycatch in swordfish fisheries, and current mitigation measures
2. Background on Council involvement in management of west coast swordfish fisheries
3. A summary of HMS permit holder responses to a questionnaire and informal port meetings exploring potential management options
4. Current and future research objectives and needs

Background

The NMFS-sponsored Swordfish Workshop highlighted several areas of concern and opened avenues for further discussion with stakeholders including consideration of potential gear and operational modifications coupled with potential management changes to revitalize the fishery while minimizing protected species bycatch. Since that time, there has been continuing constructive dialogue with west coast HMS fishermen including a Revitalizing the Swordfish Fishery Questionnaire sent out by the California Department of Fish and Game (Summary of Results in Appendix A) and two informal port

meetings with fishermen in Morro Bay and Monterey. (Agenda Item B.1.b, Attachment 1, March 2012, describes the results of these port meetings)

Swordfish are primarily harvested in the Pacific using pelagic longline gear with Japan accounting for over half of the annual landings. U.S. swordfish fisheries in the Pacific comprise roughly 20% of the Pacific-wide landings. Domestically, swordfish are harvested using shallow set longline gear off Hawaii and on the high seas, along with large mesh drift gillnets (DGN) off California and, to a lesser extent, harpoons during the summer-fall months in the Southern California Bight. Due to protected species bycatch concerns, NMFS- approved observers were first placed on DGN vessels starting in 1990 to gather data on interaction rates. Since then, the number of active vessels participating in the DGN fishery has ranged from a high of 154 vessels in 1992, to a low of 53 in 2010. Similarly, effort in the fishery based on total annual vessel days, has consistently declined since 1990 from a high of approximately 5,400 vessel days at sea in 1993 to approximately 760 days in 2009 and 492 days in 2010 (see Figure 1). Using data available in 2011, NMFS forecasts that DGN fleet effort in 2015 will hover around 500 days and will further decline to about 300 to 450 fishing days by 2020 (see Figure 2).

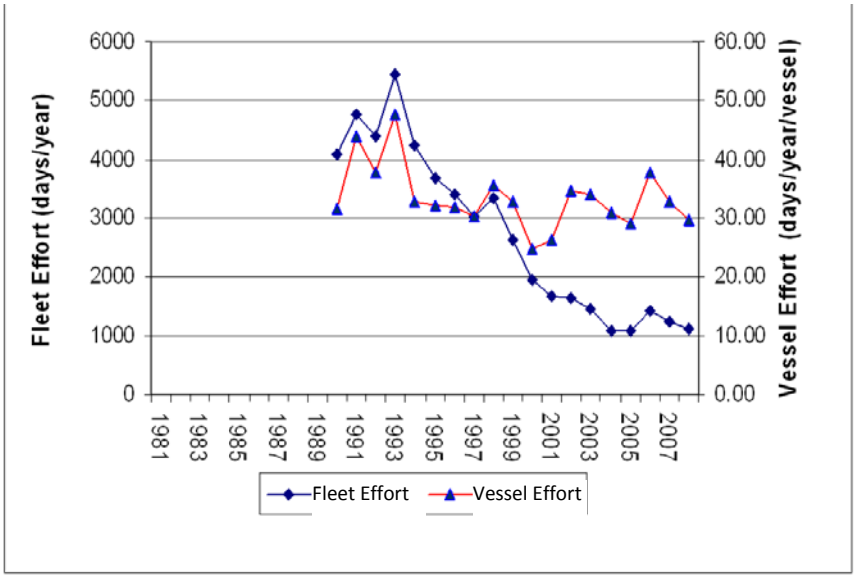

Figure 1. Fleet and vessel effort for the drift gillnet fishery. (Source: NMFS SWR).

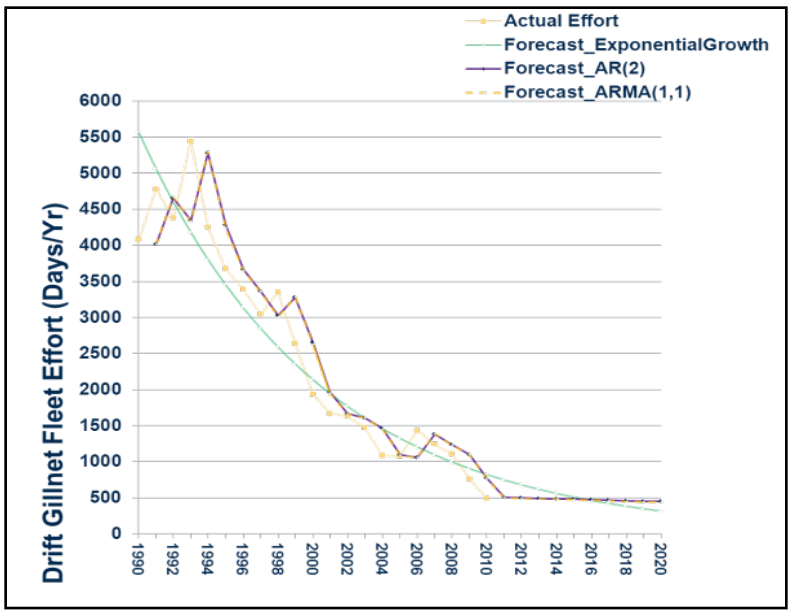

Figure 2. Forecast of change in drift gillnet fishing effort through 2020 (Source: NMFS SWR).

The current decline in DGN effort does not appear, however, to be associated with the status of the North Pacific swordfish stock as the most recent stock assessment for Pacific swordfish stocks indicate that the exploitable biomass of both sub-stocks is above biomass levels necessary to achieve maximum sustainable yield (see Stock Assessment Results in Appendix B). Industry representatives attribute the decline in vessel participation and annual effort to regulations implemented to protect threatened and endangered marine mammals, seabirds, and sea turtles.

Despite the declining trend in U.S. harvested supply, consumption of swordfish products in the United States remains high and is met primarily by foreign imports and secondarily by domestic landings from both California and Hawaii fisheries (see Figure 3). U.S. landings only supply fraction of total annual swordfish consumption in the United States. This trade deficit has implications for U.S. jobs, west coast communities, and local U.S. food production and security. Additionally, scientists are now investigating the effects of foreign swordfish harvest on protection and recovery of sea turtles that migrate through international waters and encounter fishing fleets that are not employing the same (if any) protective measures required of U.S. fishermen including adequate monitoring and enforcement oversight.

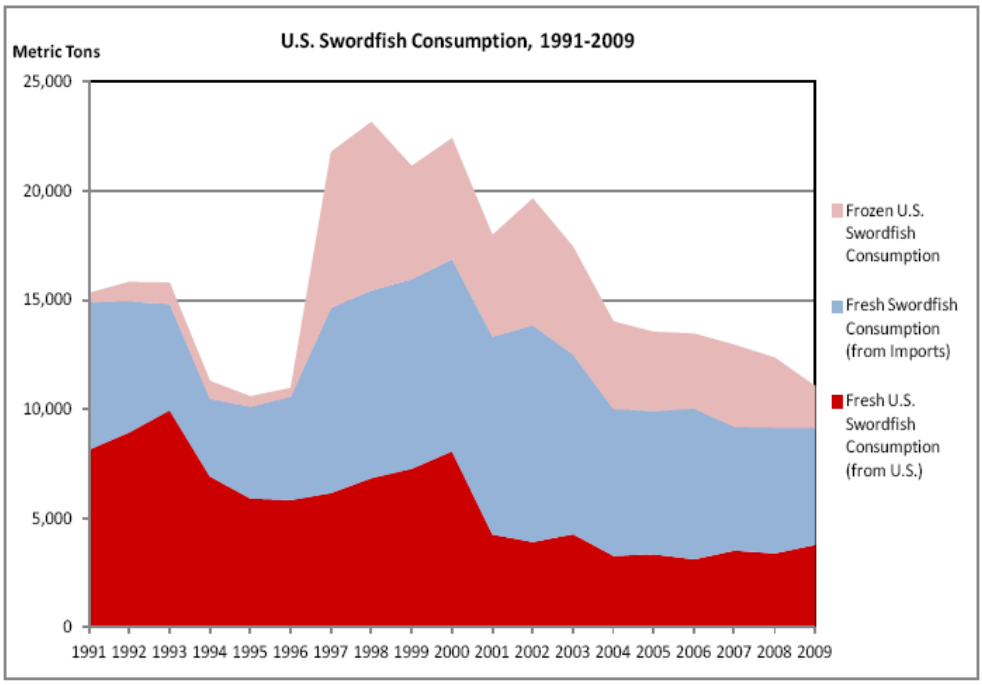

Figure 3. U.S. swordfish consumption, 1991-2009. (Source Chan, H.L. and M Pan. 2012. Spillover effects of environmental regulation for sea turtle protection: The case of the Hawaii shallow-set longling fishery. U.S. Dep. Commerce, NOAA Tech. Memo., NOAA-TM-NMFS-PIFSC-30, 38 p + appendices.)

History of Council Swordfish Management Decisions

Partial disapproval of the HMS FMP in 2004 resulted in the closure of the shallow-set longline fishery (SSLL) for swordfish that had been operating out of the west coast at that time. This closure resulted from the ESA section 7 consultation on the FMP which found that the fishery jeopardized the continued existence of loggerhead sea turtles. A large fraction of the west coast fleet was composed of vessels that had deregistered from their Hawaii limited access longline permit and moved over to California when the Hawaii fishery closed in 2001 (also because of sea turtle incidental take). However, also in 2004 the Hawaii fishery re-opened with a variety of mitigation measures to address incidental take of sea turtles, so those vessels returned to Hawaii and have been fishing from there ever since. In disapproving the portion of the FMP authorizing the SSLL fishery, Rod McInnis, the NMFS Regional Administrator, encouraged the Council to pursue the adoption of mitigation measures along the line of what had been implemented in the Hawaii fishery which would allow the west coast fishery to re-open. While the HMSMT began investigating the development of a limited entry program and other measures in 2004-05, this effort was never completed, in part because a hiatus in funding caused the Council to suspend activities related to the HMS FMP during this period.

From 2006 to 2008 the Council reviewed two proposed exempted fishing permits intended to explore management changes for both the SSLL fishery and the California drift gillnet (DGN) fishery, which also targets swordfish along with thresher shark.

The EFP for the DGN fishery was developed by the HMSMT and HMSAS in cooperation with DGN fishery participants. It would have allowed a small number of vessels to fish in the Pacific Leatherback Conservation Area (PLCA) under full observer coverage and caps on protected species takes that would trigger termination of fishing under the EFP. The PLCA was implemented in 2001 in response to an ESA

consultation on the DGN fishery that found jeopardy in the take of leatherback sea turtles. The PLCA seasonally closes a very large area (from south of Monterey in California to central Oregon) that encompasses some of the prime fishing grounds for the DGN fishery. The PLCA was drawn to encompass all the observed takes in the DGN fishery, because there was very little information at the time on the actual distribution and migratory patterns of the leatherback sea turtle. The DGN EFP was intended to explore whether the fishery could be prosecuted in some areas within the PLCA without encountering leatherback sea turtles and the use of mitigation measures (such as caps on turtle takes) to ensure that such activities would not trigger an ESA jeopardy finding. In 2006 and 2007 the Council recommended that NMFS issue the EFP but the permit was never issued.

The Council considered a second EFP to authorize a single vessel to fish in the west coast EEZ targeting swordfish with SSLL gear. The purpose of the EFP was to make an initial assessment of the economic viability of longline gear as an alternative to DGN gear with potentially lower bycatch mortality. The EFP would be issued with a range of mitigation measures to address protected species bycatch and other impacts. The Council recommended issuance of the EFP in 2007 and 2008 but the permit was never issued.

In 2009 the Council considered a limited entry program, various gear requirements along the lines of those required for the Hawaii fishery, and sea turtle take caps as part of a package to authorize a SSLL fishery outside the west coast EEZ (since longline fishing is prohibited inside the EEZ under the HMS FMP). The HMSMT evaluated and provided input to the applicant's proposal, which the Council considered in April 2009. At that time the Council voted to not proceed with further consideration of this management change.

While the Council has been unsuccessful in addressing constraints on west coast swordfish fisheries, primarily due to protected species impacts, the Hawaii SSLL fishery has re-opened and resumed operations. Figure 4 shows landings by the Hawaii longline fishery since 2000, noting the period when the SSLL fishery was closed. (Note that the deep-set tuna longline fishery has a small trip retention limit for swordfish accounting for the landings during the years when the SSLL fishery was closed.). In 2009 NMFS approved Amendment 18 to Western Pacific Council's Pelagics Fishery Ecosystem Plan and issued regulations (74 FR 65460), which lifted an annual effort limit on the SSLL fishery of 2,120 sets and increased the incidental take limit (turtle cap) for loggerhead sea turtles to 46, consistent with the no jeopardy finding in the Biological Opinion for that action, which was based on an estimated 5,500 sets per year.

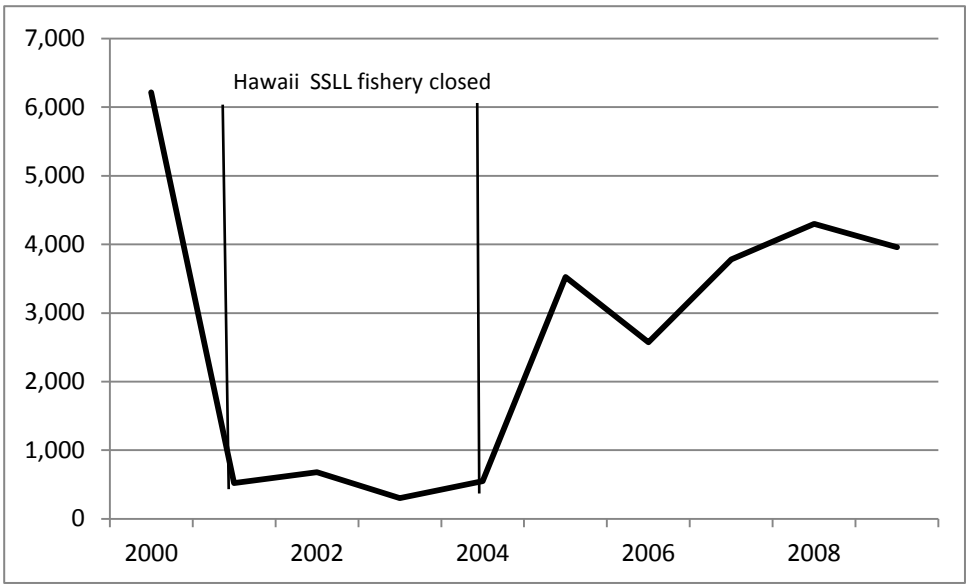

Figure 4. Hawaii swordfish longline landings, 2000-09 (mt). (Source: Pelagic Fisheries of the Western Pacific Region, 2009 Annual Report. WPFMC, 2011.)

However, the action was challenged in Federal Court by several environmental organizations. Eventually, the plaintiffs and NMFS agreed to settlement terms that on January 31, 2011, were approved under a stipulated injunction and order entered by the Court. Under the terms of settlement, that portion of the 2009 rule increasing the maximum annual incidental take of loggerhead sea turtles by the fishery to 46 was vacated and remanded to the agency. On March 11, 2011, consistent with the requirements of the stipulated injunction, the previous annual limit of 17 was reinstated through agency rulemaking (76 FR 13297). In addition, that portion of the 2008 BiOp addressing loggerhead and leatherback sea turtles was vacated and remanded to the agency. All remaining provisions of the 2009 rule remained in effect, including the removal of the annual set limits. The injunction required NMFS to prepare a new biological opinion and incidental take statement (ITS) for the fishery within 135 days of taking final action on a joint NMFS and U.S. Fish and Wildlife Service (USFWS) proposed rulemaking to designate nine distinct population segments (DPS) of loggerhead sea turtles and to change the listing status of loggerhead sea turtles under the ESA. The new biological opinion was released on January 30, 2012. The ITS finds that in a 2-year period the fishery could incur 68 interactions (14 killed) with loggerheads and 52 interactions (12 killed) with leatherbacks. The biological opinion concluded that this level of take would not jeopardize the continued existence of these species.

Hawaii longline vessels are also landing swordfish on the west coast. As discussed below, in the last 2 years swordfish landings on the west coast by these vessels have exceeded total swordfish landings by west coast vessels managed under the HMS FMP.

Recent Trends in Hawaii SSLL Landings to the West Coast

The HMSMT analyzed recent trends in Hawaii shallow-set longline swordfish landings to the West Coast. Federal regulations allow longline vessels to use shallow-set gear to catch swordfish seaward of the 200 mile West Coast EEZ limit and land their catch to California ports, provided they possess both a Hawaii Fisheries Ecosystem Plan (HI FEP) permit and a West Coast HMS FMP permit, and they follow both sets of permit regulations.

The following graph shows the recent share of overall California swordfish landings caught by vessels fishing under HI FEP permits (cross-hatched shading); the remaining share of landings were due to all

California fisheries combined (solid shading). The California fishery share of landings dropped off from over 95% during 2005-2007 to a level below 20% in 2011, suggesting that California market demand has been increasingly met in recent years by supply from the Hawaii fishery.

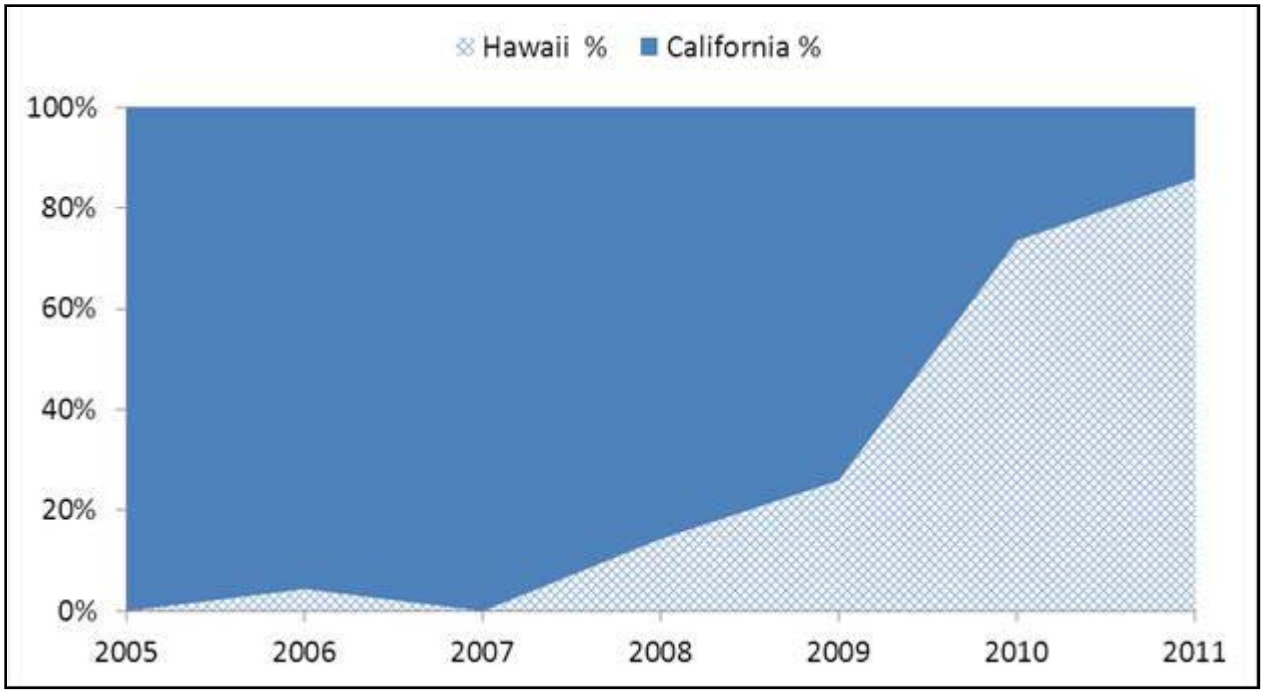

Figure 5. Hawaii and California fishery share of California swordfish landings.

Bycatch Estimates from Hawaii SSLL Vessels Landing on West Coast

The HMSMT has requested observer records from the NMFS Hawaii Observer Program for those Hawaii SSLL vessels that have made landings to west coast ports. At the time this report went to print those estimates were still forthcoming and it is hoped that they will be received in time to include in the HMSMT's Supplemental Report to the Council on Friday March 2.

Research conducted by Watson et al. (2002) on the effects of hook type and bait selection on sea turtle interaction rates in the U.S. Atlantic Coast SSLL swordfish fishery demonstrated significant reductions in the capture rates of both loggerhead and leatherback sea turtles when using circle hooks and mackerel bait compared to using J-hooks and squid bait (88% and 63% reductions respectively).

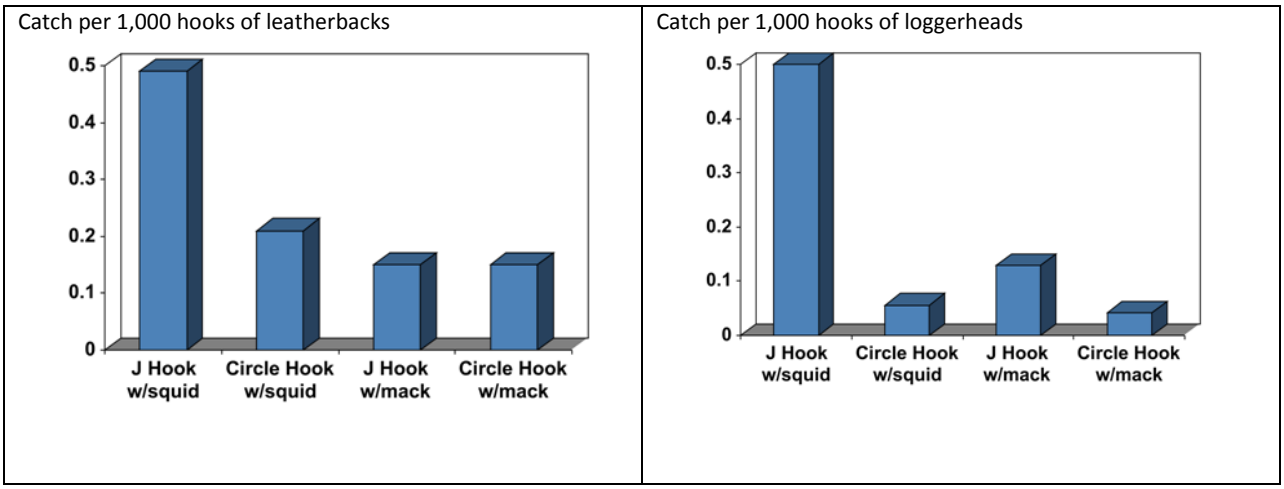

Figure 6. Catch rates of leatherback and loggerhead sea turtles in the U.S. Atlantic Shallow Set Longline Swordfish Fishery with varying hook and bait types. (Watson, et al. 2002).

The Hawaii SSLL swordfish fishery began using circle hook and mackerel bait in the 2004 fishing season when it re-opened after closure in 2001. As with the Watson study, observer records demonstrated a significant decrease in the catch rates for both loggerhead and leatherback sea turtles (Gilman, 2006).

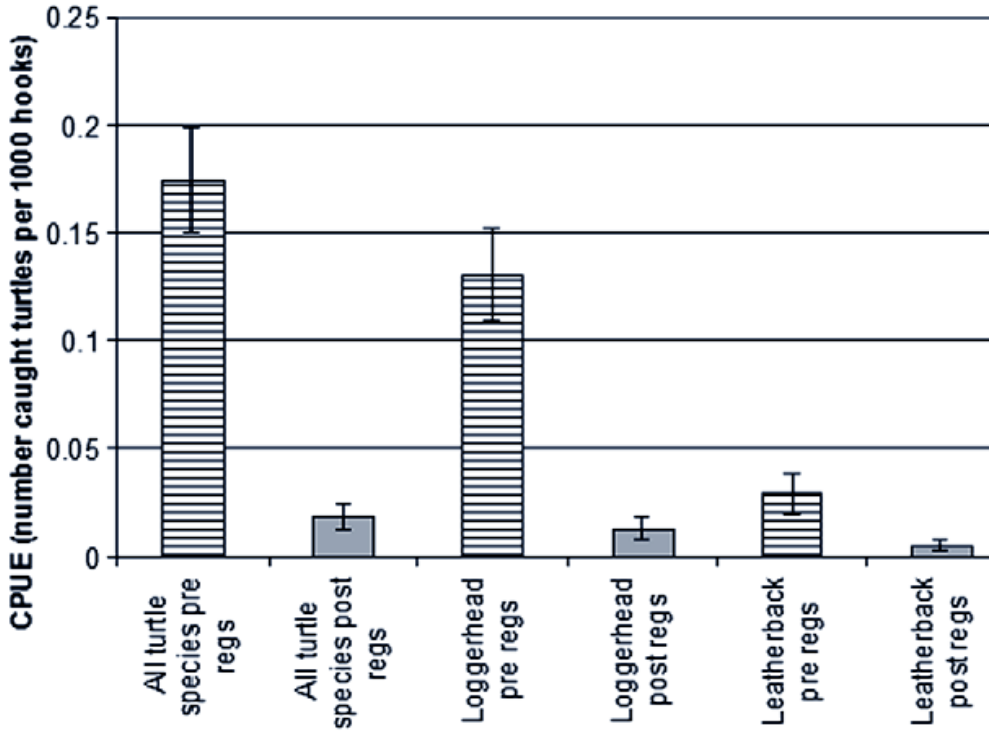

Figure 7. Catch rates of leatherback and loggerhead sea turtles in the Hawaii Shallow Set Longline Swordfish Fishery prior to use of circle hooks and mackerel bait (hatched) and after use of circle hooks and mackerel bait (shaded). (Gilman et al., 2006)

Bycatch Estimates from the West Coast DGN Fishery

Tables of the observed catch of finfish and protected species in the swordfish DGN fishery since 1990 are provided in Appendix C. Regulations prohibiting fishing in the PLCA between Aug. 15 and Nov. 15 went into effect in 2001. The data show that for a number of marketable non-target species, including shortfin mako and common thresher sharks, and opah, nominal catch per set has increased since the closure while swordfish nominal catch rate remains relatively unchanged. For bycatch species, there has been an increase in common mola catch, whereas blue shark catch has declined. For protected species, the numbers of interactions by species are very low precluding reliable statistical comparisons of interaction rates. However, when classified into larger taxonomic groups, nominal catch rates for turtles, mammals, and pinnipeds have each declined since implementation of the PLCA closure, restrictions limiting the extenders to no less than 36 ft, and the required use of pingers. Because data have not been available from within the PLCA for most of the past decade, interpretation of the changes in nominal catch rates is problematic and may not be reflective specifically of an effect of the closed area, particularly for these highly migratory species that inhabit a very vagile pelagic environment. The conclusion is that fewer protected species have been caught in the past decade and that analyses should be revised based on current fishery practices, current effort and the relative distribution and abundance of protected species and other species of concern.

Comparison of Bycatch Estimates from SSLL and DGN gears

A direct comparison of the bycatch with the two gear types is not possible because of the geographic separation between the two fisheries. The DGN fishery had operated in the U.S. EEZ from the U.S./Mexico border to the Oregon/Washington border but is now constrained primarily to the Southern California Bight due to the PLCA. The swordfish longline fishery operates outside the U.S. west coast EEZ on the high seas. Moreover, the California Current, where the DGN fishery primarily operates, is a highly productive boundary current system that may have a greater diversity and abundance of fish vulnerable to the fishery activities. Nonetheless, the observer data cited above are informative in demonstrating some differences.

Economic Viability of Harpoon Fishery and Market Demand

Conservation NGO representatives have suggested that harpoon should be the only gear allowed to target swordfish off the West Coast, based on the presumption that the fishery incurs little or no protected species bycatch. Anecdotal information shared by swordfish fishermen present at the January 2012 HMSMT meeting and on numerous other occasions suggests that harpoon is not an economically viable substitute for other gears historically used to target swordfish on the West Coast, including drift gillnet and longline. Harpoon fishing for swordfish entails high search costs, possibly involving the use of a spotter airplane, to locate swordfish on the surface where they can be speared. The relatively low rate at which swordfish can be located and harpooned (catch per unit effort) compared to other targeting strategies, and a season restricted by nature to the warm summer months and to the calm waters of the Southern California Bight, further limit the economic viability of harpoon as a swordfish gear.

Despite open access status, the available evidence indicates the West Coast harpoon fishery did not substitute for the sharp decrease in swordfish supply in recent years from the West Coast drift gillnet and longline swordfish fisheries. The following graph compares recent West Coast swordfish landings by the West Coast longline[1], drift gillnet and harpoon fisheries.

[1] The HMS FMP did not authorize longline effort on swordfish; hence the West Coast longline swordfish fishery data series ends in 2004.

The graph reflects a long-term pattern of declining participation in the California drift gillnet and longline fisheries for swordfish. For instance, the number of shallow-set longline vessels that landed in California was 40 in 2003 (Table 4-53, 2010 HMS SAFE Report, September 2011), but sharply declined to fewer than 10 vessels in each year since the HMS FMP went into effect in 2004 without authorizing shallow-set longline as a legal gear. Similarly, the numbers of drift gillnet vessels with HMS landings to California dwindled from 154 in 1992 down to 53 in 2010 (ibid.).

Harpoon landings remained relatively flat over the period, showing minimal supply response to significant reductions in longline and drift gillnet landings. The gap between market demand and supply at recent world swordfish market prices was unmet by the harpoon fishery.

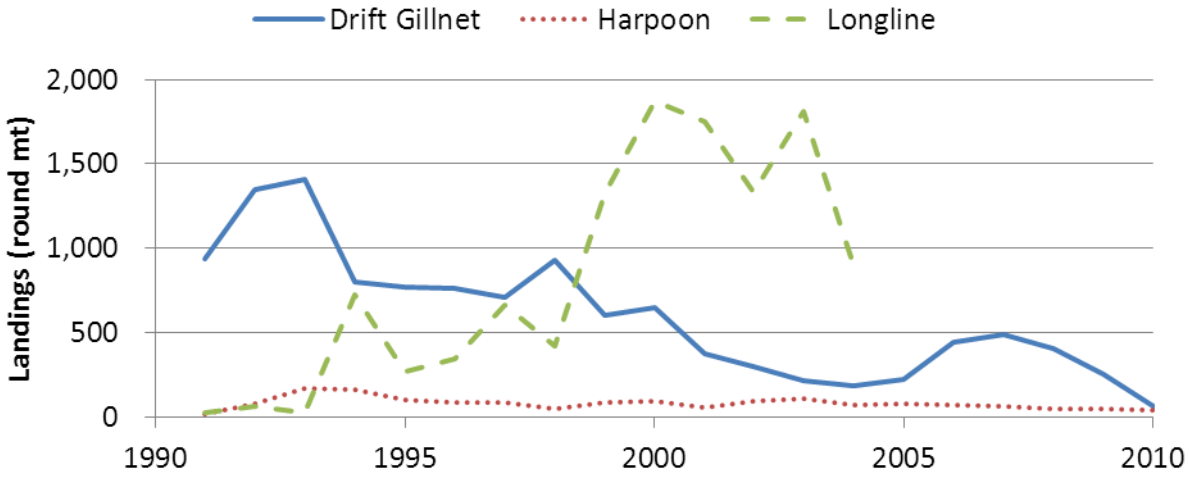

Figure 8. West coast commercial swordfish landing by west coast fisheries, for the years 1991-2010. (Source: Table 4-28, 2010 HMS SAFE Report, September 2011.)

DGN Latent Permit Issues

The HMSMT discussed latent permits in the drift gillnet fishery[2] at their January 2012 meeting. An issue raised when a limited entry permit system for swordfish was considered at the April 2008 Council meeting concerned the possibility that newly authorized longline effort, coupled with an increase in drift gillnet effort due to latent permits coming back into use, might result in an unacceptably high combined level effort for the two fisheries. According to the CDFG permits database, 82 DGN permits could potentially have been fished during the 2010 season.

The graph shown below tracks attrition from activity of 80 existing permits as of the 2009 fishing season, based on the last year they showed a record of landings in the California logbook database. No landings records were found in any year since 1985 for three of the permits, while the other 96.3% (77/80) registered activity since 1985, corresponding to the leftmost point on the graph. By 1996, only 80% (64/80) of the permits showed current or later activity. Slightly below 40% (31/80) of existing permits as of 2009 showed effort in 2009 or later, implying that slightly over 60% of existing permits as of 2009 were latent.

[2] A latent permit is not currently in use, but could allow a vessel to prosecute future drift gillnet fishing effort.

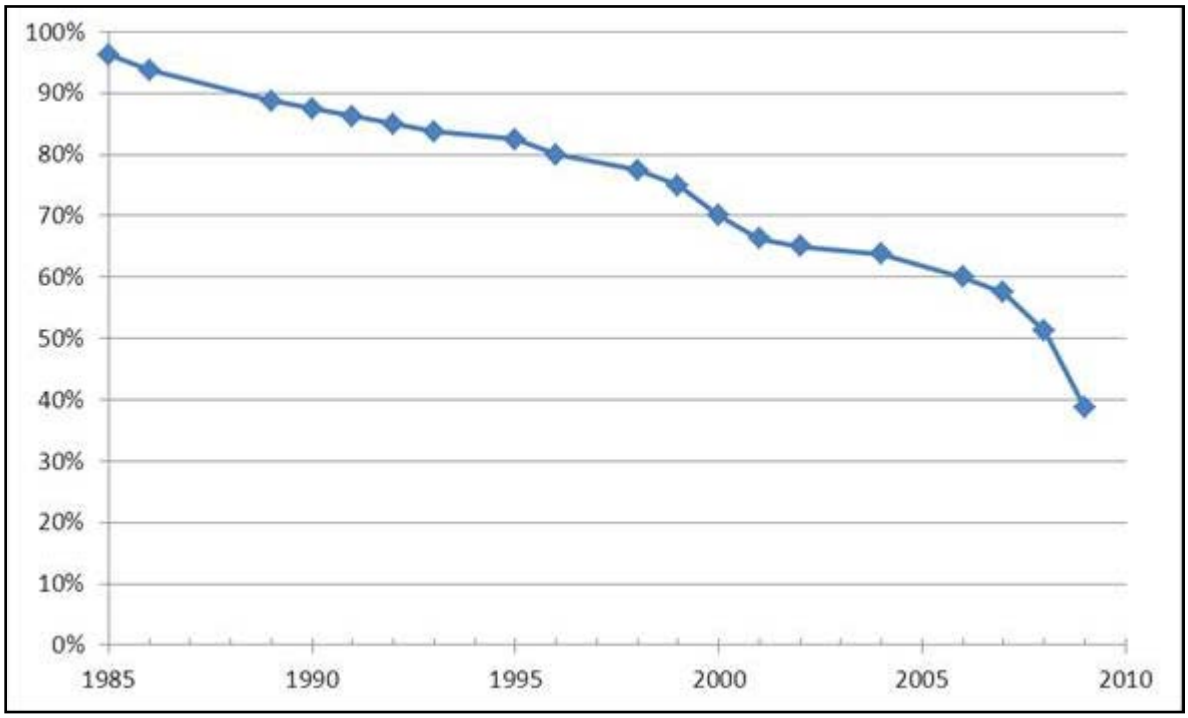

Figure 9. Attrition of existing permits in 2009 from active use.

Numbers of DGN permits issued are compared to active DGN vessels in the following chart, based on data from the 2010 HMS SAFE Report, Table 2-3. The graph shows a persistent excess of available permits over the number of active vessels all the way back to the late 1980s, with only a couple of years where the gap temporarily closed. The gap has grown slightly in absolute terms over recent years, but by more in percentage terms, due to the overall pattern of attrition from the DGN fishery in terms of both numbers of permits issued and active vessels.

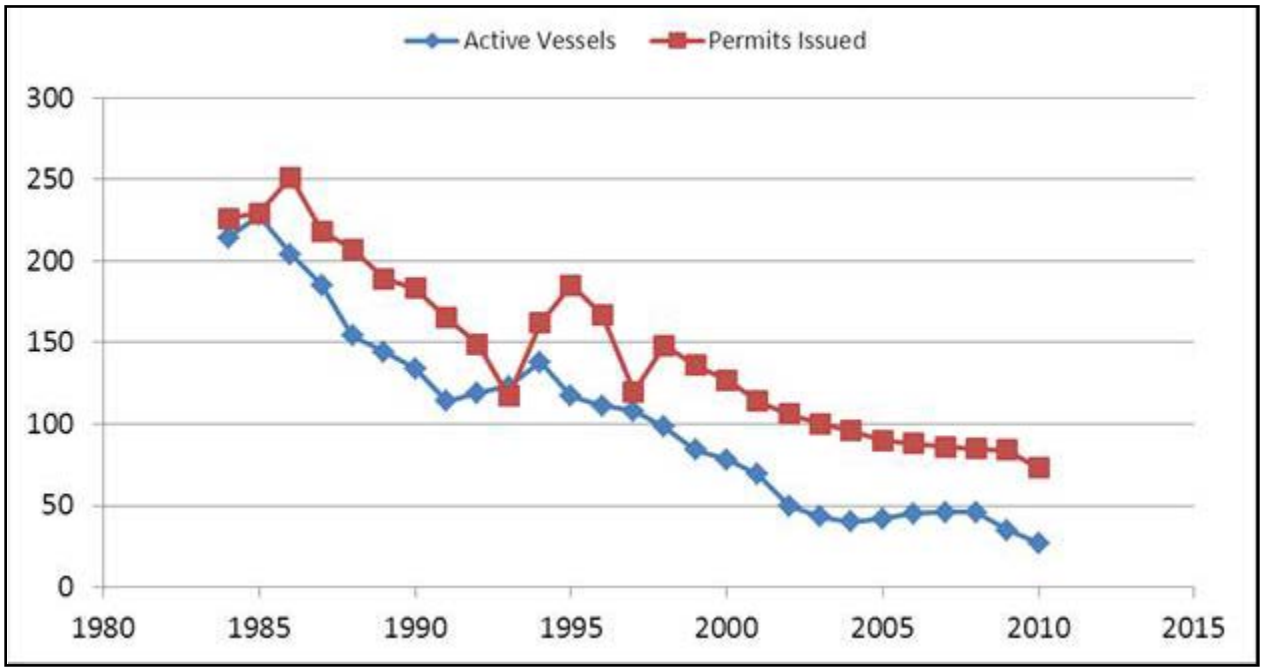

Figure 10. Annual drift gillnet permits and number of active vessels, 1984-2010.

If the Council reconsidered a West Coast-based longline fishery, the HMSMT could develop alternative strategies to connect changes in permitted longline fishing effort to drift gillnet permits, so combined effort for the two fisheries remained in compliance with federal and state conservation laws, including the RMSA, the ESA and the MMPA.

Recent Federal Actions Impacting Sea Turtle Populations

Designation of Leatherback Sea Turtle Critical Habitat

In January, 2012, NMFS issued a final rule to designate critical habitat for leatherback sea turtles in two areas, one including an area from Point Arena to Point Arguello off the coast of central California (16,910 square miles) and one off the Pacific Northwest, from Cape Flattery, Washington to Cape Blanco, Oregon (25,004 square miles) representing a total of approximately 41,914 square miles of marine habitat (see Figure 11). In October, 2007, NMFS received a petition from three environmental organizations to revise the leatherback critical habitat by adding areas in the Pacific Ocean. Following a proposed rule published in 2010 and a response to comments, NMFS determined that the principal biological or physical features that were essential to the conservation of the species should include prey only. Because NMFS could not identify specific migratory corridors used by leatherbacks to access areas of high prey density, the agency eliminated "migratory pathways" as an essential physical feature as it had proposed in 2010. Under section 4(b)(2) of the Endangered Species Act, NMFS was also required to identify specific management considerations or protections as a result of the designation. NMFS identified several activities that may require consultation under Section 7 of the ESA to determine whether they threaten the habitat (i.e. prey) of leatherbacks including: point source pollution (including pesticide application), oil spill response, power plants, desalination plants, tidal/wave/energy projects and liquid nitrogen gas facilities.

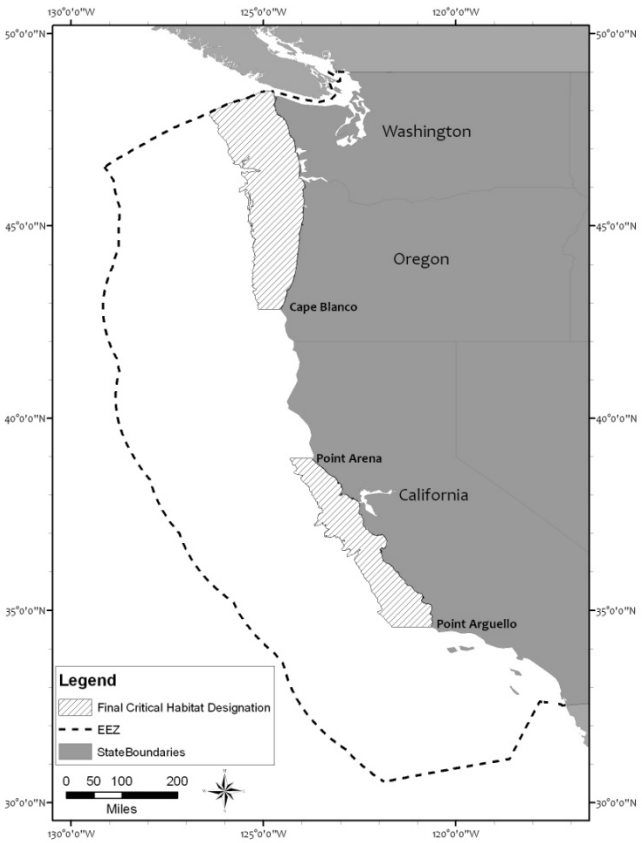

Figure 11. Final critical habitat designation for leatherback sea turtles on west coast.

Listing of Loggerhead Sea Turtles as Distinct Population Segments

In September, 2011, NMFS and the U.S. Fish and Wildlife Service published a final rule to list nine distinct population segments (DPS) of the loggerhead sea turtle. Two DPSs occur within the United States, including the North Pacific DPS (listed as endangered) and the Northwest Atlantic DPS (listed as threatened). Under the ESA, the Services are required to consider whether there are geographic areas that are essential to conserve the species. Generally, critical habitat can be concurrently proposed at the time of listing or within a year after the date of the listing. Currently, a critical habitat review team has been formed and met in late January 2012. The team plans to submit a proposed rule in September or October of 2012.

Swordfish Buoy Gear

Dr. Chugey Sepulveda of the Pfleger Institute of Environmental Research (PIER) will present to the Council an overview of current research underway in collaboration with NOAA Fisheries on the use and viability of deep-set swordfish buoy gear in the Southern California Bight. The gear and operational methods employed were derived from the existing U.S. Atlantic Coast Swordfish shallow-set Buoy Fishery with modifications for use as deep-set gear fishing in nearshore waters below the thermocline (see Figure 12).

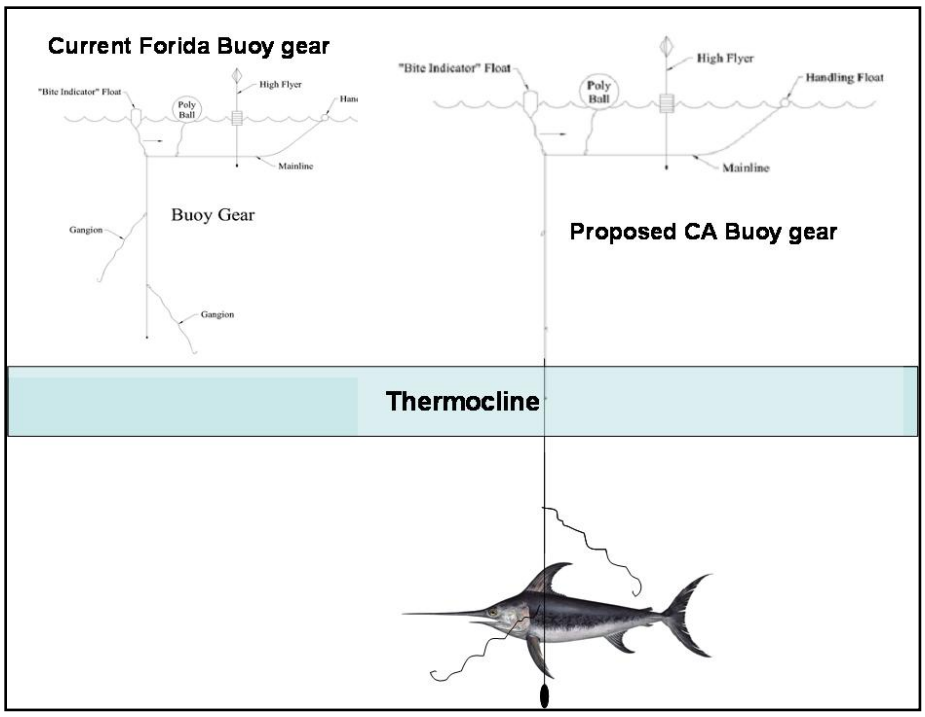

Figure 12. Graphic showing deployment of buoy gear.

The objective of fishing deep-set buoy gear below the thermocline during the day is to capitalize on the habitat separation and behavioral preferences (e.g., thermal ranges) between target swordfish and non-target species of concern (see Figure 13).

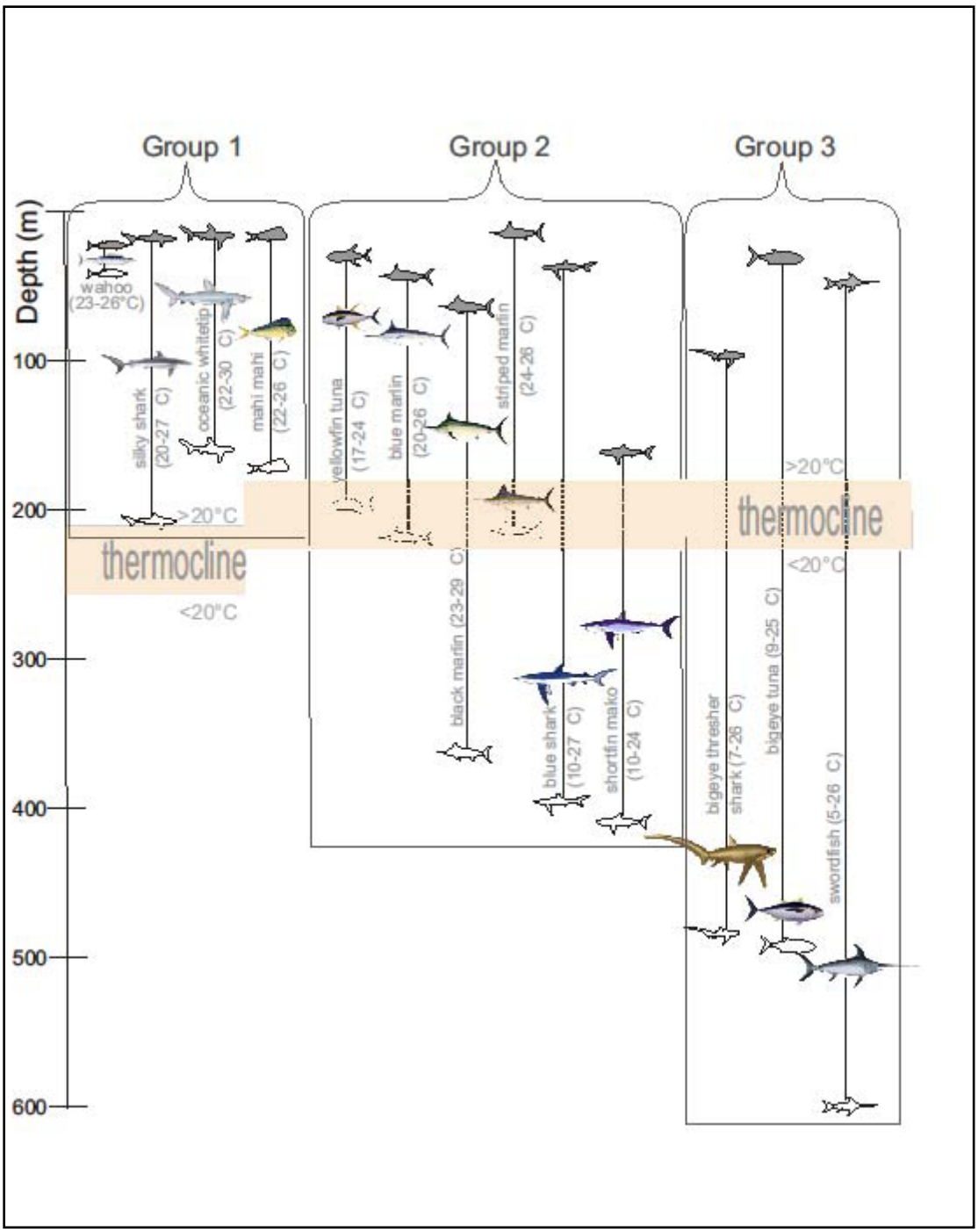

Figure 13. Schematic illustration depicting the thermal partitioning recently shown through the deployment of electronic tags (Bernal et al., 2009). Grey fish symbols show the approximate vertical distribution by each species at night whereas the white fish symbols show daytime depth distribution.

Domestic History and Current Management of Florida Atlantic Coast Buoy Fishery

Commercial buoy gear used to harvest swordfish on the Atlantic Coast was authorized in 2006 for Swordfish Directed and Handgear permit holders. Buoy gear is defined as consisting of one or more floatation devices supporting a single mainline to which no more than two hooks or gangions are

attached. The buoy gear fishery is usually prosecuted at night. Authorized permit holders may not possess or deploy more than 35 floatation devices, and may not deploy more than 35 individual buoy gears per vessel. Buoy gear must be constructed and deployed so that the hooks and/or gangions are attached to the vertical portion of the mainline. Floatation devices may be attached to one, but not both ends of the mainline, and no hooks or gangions may be attached to any floatation device or horizontal portion of the mainline. If more than one floatation device is attached to a buoy gear, no hook or gangion may be attached to the mainline between them. Individual buoy gears may not be linked, clipped, or connected together in any way. Buoy gears must be released and retrieved by hand. All deployed buoy gear must have some type of monitoring equipment affixed to it including, but not limited to, radar reflectors, beeper devices, lights, or reflective tape. If only reflective tape is affixed, the vessel deploying the buoy gear must possess on board an operable spotlight capable of illuminating deployed floatation devices. If a gear monitoring device is positively buoyant, and rigged to be attached to a fishing gear, it is included in the 35 floatation device vessel limit and must be marked appropriately.

Recent Catch, Landings, and Discards

Buoy gear effort and catch data for the U.S. Atlantic Coast are available for 2007 through 2010 (see Table 1, Table 2, and Table 3). Prior to 2007, buoy gear catch data were included in handline catch data. The preliminary logbook and observer data show that the gear is very effective at targeting swordfish without capturing significant quantities of non-target species. Of the 14,322 fish captured, approximately 13,445 (~94%) were swordfish (Table 3). In each year about 1 of 3 swordfish caught were released alive, due to small size, indicating that the fish are caught in good condition.

Table 1. Atlantic Coast Buoy Gear Effort. Source: NMFS Pelagic Logbook Program

	2007	2008	2009	2010
Number of Vessels	42	44	53	57
Number of Trips	745	598	708	632
Avg. Buoy Gears Deployed per Trip	11.0	11.2	11.9	11.9
Total Number of Hooks Set	11,742	8,922	11,595	8,855
Avg. Number Hooks per Gear	1.4	1.3	1.4	1.2

Table 2. Atlantic Coast Buoy Gear Landings in Pounds Dressed Weight. Source: NMFS Pelagic Logbook Program

	2007	2008	2009	2010
Swordfish	183,982	122,700	154,674	153,520
Dolphin	966	1,031	1,427	419
Oilfish	346	414	245	270
Shortfin mako shark	308	797	932	466
Wahoo	63	227	623	75
Bigeye tuna	150	0	0	0
Blacktip shark	9	0	0	0
King mackerel	0	194	67	576
Yellowfin tuna	0	0	350	0
Hammerhead Shark	0	0	350	1,190
Silky shark	0	0	20	48
Greater Amberjack	0	0	10	201
Bonito	0	0	86	120
Blackfin tuna	0	0	0	115

Table 3. Atlantic Coast buoy gear catches and discards in numbers of fish. Source: NMFS Pelagic Logbook Program

	2007	2008	2009	2010
Kept				
Swordfish	2,849	1,843	2,085	1,950
Dolphin	63	103	113	29
Oilfish	7	10	5	10
Bigeye tuna	5	0	0	0
Blackfin tuna	3	7	2	7
Wahoo	2	6	44	2
Bonito	0	7	11	6
King mackerel	0	53	4	7
Shortfin mako	3	4	8	4
Hammerhead shark	1	0	1	6
Blacktip shark	1	0	0	0
Silky shark	0	1	1	1
Yellowfin tuna	0	0	9	0
Greater amberjack	0	0	1	7
Released Alive				
Swordfish	1,559	1,018	763	1,031
Blue marlin	1	0	1	1
White marlin	0	3	0	0
Sailfish	2	1	0	1
Hammerhead shark	14	7	35	52
Blue shark	0	2	1	0
Thresher shark	0	1	1	2
Dusky shark	4	0	0	12
Night shark	16	1	34	39
Oceanic whitetip shark	0	1	0	0
Bigeye thresher shark	4	0	0	0
Tiger shark	1	2	1	1
Sandbar shark	1	0	1	2
Longfin mako shark	4	3	2	7
Shortfin mako shark	0	1	2	6
Blacktip shark	0	0	8	4
Silky shark	0	0	13	12
Oilfish	0	0	1	0
Greater amberjack	0	0	1	0
Discarded Dead				
Swordfish	129	80	51	87
Silky shark	9	0	0	0
Hammerhead shark	1	0	0	1
Blackfin tuna	0	0	1	0
Blue marlin	0	0	1	0
Night shark	0	0	0	1

Prohibiting Imports from Countries with Less Stringent Regulations

In March 2008, two environmental organizations petitioned the U.S. government to use the authority of the Marine Mammal Protection Act (MMPA) to ban swordfish imports from nations whose bycatch of marine mammals exceeds U.S. standards. On April 30, 2010, NOAA Fisheries published an advance notice of proposed rulemaking (ANPR) to implement the MMPA fish import provisions. NOAA Fisheries is drafting a proposed rule and Environmental Assessment to define "U.S. standards" for bycatch that parallels our domestic marine mammal bycatch management program. The rule would require nations that export fish and fish products to the United States to estimate the size of marine mammal stocks that interact with their fisheries, to estimate the marine mammal bycatch in those fisheries, and to reduce that bycatch to sustainable levels.

The rule includes a consultative procedure with the affected nation as well as a capacity building program to assist with monitoring and assessing marine mammals stocks. Ultimately, the Secretary of Commerce would make a final determination as to whether affected nations have established programs and taken action to address marine mammal bycatch in their commercial fisheries that are comparable in effectiveness to programs and actions taken in the US. The proposed rule itself would not prohibit importation of any fish or fish products, as the MMPA vests this authority with the Secretary of the Treasury. However, consistent with regulations implementing the High Seas Driftnet Moratorium Protection Act, the proposed rule would establish a process for the Secretary of Commerce to develop recommendations to the Secretary of the Treasury on the prohibition of certain fish and fish products from an exporting nation found to have not taken actions comparable in effectiveness to the United States.

Market-related Initiatives

MSC Certification for Swordfish Longline Fishery

http://www.worldfishing.net/news101/swordfish-longline-msc-certified

"The Southeast US North Atlantic swordfish pelagic longline and buoy gear fishery has received Marine Stewardship Council certification after a rigorous, independent assessment by MRAG Americas. The certification covers swordfish landed for Day Boat Seafood LLC, which is now eligible to bear the blue MSC ecolabel. The Unit of Certification combines pelagic longline and buoy gear types working with Day Boat Seafood LLC. All the swordfish landed - approximately 200t per year - is sold fresh in domestic markets. The fishery operates year round with some seasonal variation in an area off the Florida east coast. It is managed by the US Federal Government under the Magnuson-Stevens Act and in conformance with ICCAT (International Commission for the Conservation of Atlantic Tunas) management requirements. In addition, other US federal laws and regulations under the US National Marine Fisheries Service (NMFS) apply to the fishery, including endangered species. As part of the certification, nine conditions, or improvement actions are required that address issues raised during the process by the certification team, stakeholders, and peer review scientists. Progress in meeting the conditions is required and will be assessed during the annual surveillance audits. Debbie Lewis, Director of Compliance and Sustainability for Day Boat Seafood said: "We are proud our swordfish longline and buoy gear fishery has been awarded MSC certification, because it recognizes the dedication of the Florida east coast fishermen who have fished in a sustainable manner for the last decade, contributing to the revitalization of the North Atlantic swordfish population. We hope the benefits this certification brings will inspire other swordfish fisheries around the world to adopt similar measures. We wish to acknowledge the management practices of the National Marine Fisheries Service, Atlantic Highly Migratory Species Management Division, and the conservation organizations and stakeholders that worked with us to make this certification possible."

Ongoing and Needed Future Research

The SWFSC and SWR have been conducting research on different approaches to reducing protected species bycatch while maintaining swordfish catch rates at an economically viable level. One approach is to avoid areas where sea turtles are caught. With sufficient data on habitat use, areas to avoid can potentially be delineated in a dynamic fashion as with PIFSC "Turtlewatch" program. A second approach is modifying gear to reduce catch in areas where swordfish and sea turtle habitats overlap. Research updates and needs associated with both approaches are detailed below.

Leatherback and Swordfish Habitat Utilization

Leatherbacks

Considerable progress has been made on understanding the habitat use of leatherbacks and areas of high residency along the West Coast. Both tracks and aerial surveys show a preference for near-shore foraging areas that are typically characterized by convergence zones that aggregate their jellyfish prey. Long-term tracks reveal that offshore occurrence in the U.S. EEZ is generally associated with migrations either to or from the near-shore foraging grounds, although some offshore foraging is also apparent. While preliminary data reveal a tendency to remain at shallow depth while nearshore, additional information is needed to better characterize vertical habitat use both near and offshore and during different behavioral modes.

In a synthesis of over 125 satellite-linked telemetry deployments on leatherback turtles, Benson et al. (2011) characterized movements within the California Current Large Marine Ecosystem relative to a suite of oceanographic variables. Leatherbacks were most likely to engage in foraging behavior within upwelled modified waters of relatively high chlorophyll concentration over shelf and shelf break waters (<1500 m) at the 15^{o} C isotherm. Throughout the Pacific and Indo-Pacific, leatherback foraging activity occurred at mesoscale eddies, coastal retention areas, current boundaries, or stationary fronts, characterized by low eddy kinetic energy or low sea surface height. Such features are known mechanisms for aggregating gelatinous leatherback prey.

Although the telemetry data were useful for elucidation of large-scale movements and characterization of foraging habitats, less information was obtained about environmental cues that may influence turtles to leave neritic waters and begin their seasonal migration southwest through traditional DGN fishing grounds during the late fall months. This was likely a result of the transmitter attachment method (shoulder harness) that prompted the sampled turtles to prematurely engage in migratory behavior. A newly developed direct attachment technique was performed in Monterey Bay during October 2011 and results were encouraging. Following capture and transmitter attachment, the sampled leatherback remained over neritic central California waters for over 30 days before beginning migratory behavior. The cue for departure appeared to be the sharp seasonal decrease of sea surface temperatures. The onset of sea surface temperatures below 12^{o} C within the neritic habitat prompted the sampled turtle to leave abundant sea jelly prey and move 85 miles southwest during a 36 hour period. Better characterization of sea jelly prey densities and additional satellite tag deployments are needed to determine if reduced sea surface temperatures create foraging conditions that are energetically unfavorable for leatherbacks, thus prompting their transit through traditional DGN fishing grounds during late October and November.

Swordfish

Recent publications on swordfish provide insight into vertical habitat use along the U.S. West Coast south of Point Conception with implications for fisheries and identifying habitat separation. Sepulveda et al.

(2010) used fine-scale tracking of nine swordfish to characterize vertical movement and examine the implications for harpoon and DGN fisheries. Relevant to harpoon fisheries was the fact that only 8% of the daytime time was spent at the surface and there was no predictable pattern in basking events. Relevant to the DGN fishery was the nighttime depth distribution and its overlap with DGN gear. At the current 11 m dropper lengths the authors estimated that 54% of the time swordfish were shallower than the net.

Dewar et al. (2011) compared data from 31 tags deployed across a range of oceanographic regimes to better characterize factors influencing vertical movements. They found that variability in swordfish daytime depths was linked to water clarity such that swordfish are shallower near-shore than offshore. One implication of these findings is that daytime depths (200-400 m) in the California Current, at least south of point Conception, are within striking distance of deep-set longlines. This is not the case offshore where daytime depths of 600 m are more typical.

Both studies were focused in the southern California Bight; there are currently no data on vertical habitat use north of Point Conception, where the biggest concern about leatherback sea turtle bycatch exists. Additional satellite tag deployments are needed to better characterize habitat of swordfish north of Point Conception. In addition to vertical habitat, a better understanding of the geographic distribution of swordfish north of Point Conception is necessary to better characterize habitat overlap.

Low-bycatch gear development

Current gear studies focus on the potential for exploiting vertical habitat separation between turtles and swordfish. While swordfish forage deep in the water column during the day, leatherbacks tend to remain relatively close to the surface while in coastal waters. In one study, researchers are testing the potential to use buoy gear (see section above). In the second, deep-set long line gear is being used to target swordfish deep during the day. This gear is commonly used to target bigeye tunas. The goals of this study are to 1) target swordfish deep during the day, 2) use satellite tags and catch depth to characterize the daytime habitat use of swordfish and other marketable species north of Point Conception, 3) determine the composition of catch for deep day gear for both marketable and bycatch species, 4) conduct an economic analysis of cost and catch value, and 5) refine methods to target depths of 200 m and deeper.

Results from the first experimental daytime deep-set longline cruise conducted in 2011 are promising. Over the course of the cruise, 11 sets were conducted at least 50 nmi off shore. Circle hooks (18/0) with finfish bait were used and the average hook depth was 230 m. A range of marketable species were caught including swordfish, opah, and tuna. No turtles, marine mammals or birds were caught although there was some finfish bycatch. While the economic analysis has not been conducted, the captain felt the catch would have been profitable. For this first cruise most sets were conducted south of Point Conception due to weather constraints. During subsequent cruises, sets will be conducted farther north to meet the goals stated above.

Development of information products on leatherback distribution similar to Hawaii Turtle Watch program

Key to the development of any product like PIFSC “TurtleWatch” is accurate information on habitat use in time and space. Because leatherback distributions are not as strongly linked to SST (the basis for “TurtleWatch”), a more complex model will be required. It may also be of value to include vertical habitat, given the shift in depth as leatherbacks move farther offshore. As a part of research into potential adaptive management strategies like “TurtleWatch”, scientists in both the SWFSC Fisheries Resources and Protected Resources Divisions have been moving forward to model DGN fishing effort and swordfish distributions using logbook and observer data. Using relatively new modeling approaches (boosted

regression trees), models of fishing effort have provided high predictive value (~64%). A new research effort centers on the idea of dynamic ocean management (DOM) where management measures shift with time based on 1) ocean features, 2) how species of interest interact with these features, and 3) economics. The DOM model will use these 3 factors to determine where a fishing fleet can maximize its catch of target species and profit while avoiding bycatch. Different from other static or semi-dynamic management measures such as time-area closures, the goal is to improve efficiency by creating an integrated product that helps fishers optimize their effort.

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Appendix A - Revitalizing Swordfish Fishery Questionnaire

In December 2012, the California Department of Fish & Game, with input from NOAA Fisheries, mailed out a questionaire to all California swordfish permittees, asking for their opinions of the future directions of the swordfish fishery on the West Coast. Those contacted included harpoon permitees (n=54), and shark/swordfish drift gillnett permitees (n=80). Permittees returned their answers via mail, fax or email. Answers received were summarized below.

There were 48 respondents to the questionnaire, including 15 harpoon and 27 DGN permittees. Of the DGN permittees, 19 had not been fishing for swordfish for at least a year, with eleven of those for three or more years (latent permittees). There were different responses from harpoon and DGN; harpoon respondents unanimously feel the fishery is viable as it is (e.g., as a harpoon fishery), and most would like to completely ban DGN (although at least one suggested a buyout). A few harpoon fishermen would like to ban spotter planes. Several remember harpoon fishing being much better before DGN was allowed and feel it diminished their fishery, although others recognize the success of harpoon fishing is highly dependent on oceanic conditions from year to year.

DGN respondents felt that it's not viable for them to move into harpoon because:

- the high expense of fuel and paying for spotter planes (if used);
- they feel that they don't catch enough or make enough money for the effort involved in harpooning;
- harpooning does not provide enough fish for the market; and
- weather conditions are too rough most of the year north of Point Conception.

Other reasons given are that their boats are not designed or are too big for harpooning, and that harpooning is a "hobby."

If DGN respondents had a chance to change the rules, they would ideally do away with the leatherback conservation area or at least, change the borders or closure times to make it a bit easier to access the swordfish. They said that the area is closed right at the time when most swordfish are in the area. If the rules do not change, many see themselves as leaving the fishery, either by being put out of business, retiring, changing fisheries completely, or finding another line of work.

The reasons given for latent permittees keeping their permits, even if they have not been actively fishing included: hoping closed areas will re-open; hoping the economics will change or regulations will change so they can get back into the fishery. Respondents who are not fishing are involved in other fisheries or are doing something else terrestrially. Most of the DGN respondents don't fish DGN fulltime, but are also involved in albacore, salmon and crab fisheries, especially when swordfish years are bad.

Of those who expressed potential interest in a buyout program, 22 DGN respondents said that if they were offered some sort of value for boat or gear, it would take 50-100% of the value of their boat, and in some cases, their gear and/or whatever they would have made fishing (up to $100-200k/year), in order to get them out of the fishery – 13 expressed interest in some kind of buyout, but did not specify an amount. Some might be interested in exchanging their DGN permit for a permit for a fishery they could not normally get (e.g., groundfish, squid, or crab, federal or another state). As far as changing gear, most responded "No, but maybe" with some kind of financial incentive. Some expressed interest in switching to another gear type such as longline; however, for many, their boats are too small to fish outside the EEZ. There was slightly more interest in longline if it could be fished within the EEZ. Some responded they don't really know enough about new types of gear, but there was some mention of the Florida buoy gear and how well it works (but one harpooner mentioned that this gear takes very small fish).

Appendix B – Current Swordfish Stock Status (from PFMC 2010 HMS SAFE, September 2011)

The status and stock structure of NPO swordfish was assessed by the ISC Billfish Working Group in 2009 (ISC 2009). Modeling was based on a two stock hypothesis comprised of a northwest and central North Pacific stock and a southeastern North Pacific stock separated by an irregular boundary extending from Baja California, Mexico to the southwest. Fishery data used in 2009 for the eastern region (IATTC area) were deemed incomplete. Thus, in 2010, the ISC Billfish Working Group conducted an update to the 2009 assessment for the EPO region only that included new EPO fishery data (Brodziak 2010). Below is a summary of the results of the EPO assessment update from the ISC Tenth Plenary Report (ISC 2010). The full assessment report can be downloaded from http://isc.ac.affrc.go.jp/pdf/BILL/BILL_Apr10_FINAL_WP02.pdf.

"Based on the 2009 stock assessment results, the exploitable biomass of the WCPO SWO stock [in the North Pacific] was estimated to be about 75,000 t in 2006 (B_{2006}), roughly 30 percent above B_{MSY}. The exploitation rate on the WCPO stock in 2006 was estimated to be 14 percent with a total catch of roughly 9,900 t or roughly 69 percent of MSY (MSY=14,400 t). There was very high probability that B_{2006} was above B_{MSY}, a 93 out of 100 chance, and there was a 0 out of 100 chance that the exploitation rate in 2006 exceeded the rate to produce MSY. Based on the 2010 stock assessment update results for the EPO stock only, the exploitable biomass of the EPO SWO stock was estimated to be about 69,000 t in 2006, over 200 percent above B_{MSY}. Exploitation rate on the EPO stock in 2006 was estimated to be 6 percent with a total catch of roughly 3,900 t or roughly 78 percent of MSY (MSY=5,000 t). There was very high probability that B_{2006} was above B_{MSY}, a 99 out of 100 chance, and there was a two out of 100 chance that the exploitation rate in 2006 exceeded the rate to produce MSY. The exploitable biomass of the WCPO SWO stock was 31 percent above B_{MSY} and the exploitation rate was 46 percent below F_{MSY} in 2006. Similarly, exploitable biomass of the EPO SWO stock was over two-fold greater than B_{MSY} and the exploitation rate was 62 percent below F_{MSY} in 2006. Catch of swordfish by U.S. West Coast fisheries constitutes about 5.8 percent of the Eastern Pacific-wide catch.

Appendix C – Observer Data from the California DGN Fishery

Table C.1. Observed finfish catch in the California drift gillnet fishery, 1990-2010.*

Species	1990 - 2000				2001 - 2010				Nominal Catch Per Set Trend
	Number Caught	Percent Retained	Percent Returned Alive	Number Caught per 100 Swordfish	Number Caught	Percent Retained	Percent Returned Alive	Number Caught per 100 Swordfish	
Marketable Catch (Percent Retained greater than 50)									
Tuna, Albacore	14329	83.6	0.1	112	2364	87.9	0	51.4	⇓
Swordfish, Broadbill	12790	98.9	0		4599	96.9	0.2		⇔
Shark, Shortfin Mako	4808	97.3	1.3	37.6	2613	92.5	2.6	56.8	⇑
Shark, Common Thresher	4148	99.6	0.1	32.4	2059	98.7	0.7	44.8	⇑
Opah	3160	96.7	0.2	24.7	1952	95.9	0.1	42.4	⇑
Tuna, Bluefin	3141	92.1	0	24.6	697	90.8	0	15.2	⇓
Louvar	564	84.2	0.5	4.4	217	88	0.5	4.7	
Pomfret, Pacific	424	65.1	0.7	3.3	158	76.6	1.3	3.4	
Shark, Bigeye Thresher	408	91.9	0.5	3.2	231	52.8	0.9	5	
Bonito, Pacific	351	60.1	0.3	2.7	750	37.1	3.3	16.3	⇑
Tuna, Yellowfin	274	87.2	0	2.1	244	83.2	0	5.3	
Mackerel, Jack	135	69.6	1.5	1.1	24	58.3	8.3	0.5	
Shark, Pelagic Thresher	77	97.4	0	0.6	1	100	0	0	
Yellowtail	46	95.7	0	0.4	37	100	0	0.8	
Barracuda, California	29	72.4	3.4	0.2					
Tuna, Bigeye	20	100	0	0.2					
Seabass, White	7	85.7	0	0.1	2	50	0	0	
Shark, Soupfin	5	80	0	0	1	100	0	0	
Shark, Longfin Mako					5	100	0	0.1	
Non-marketable Catch									
Mola, Common	31743	0.4	92	248.2	21113	0.1	95.3	459.1	⇑
Shark, Blue	19313	0.6	31.4	151	2699	0.8	36	58.7	⇓
Tuna, Skipjack	7161	41.4	0.1	56	2394	36.6	1	52.1	
Mackerel, Pacific	4770	30.4	1.5	37.3	1658	17.6	4.4	36.1	
Mackerel, Bullet	2941	29.3	0.2	23	187	45.5	0.5	4.1	⇓
Fish, Unidentified	423	4	3.1	3.3	21	0	23.8	0.5	
Marlin, Striped	308	19.5	1.3	2.4	104	0	0	2.3	
Scombrid					96	6.3	0	2.1	
Hake, Pacific	253	3.6	7.1	2	4	0	0	0.1	
Stingray, Pelagic	242	0.4	74.8	1.9	109	1.8	77.1	2.4	
Fish, Other Identified	175	14.3	35.4	1.4	11	27.3	45.5	0.2	
Remora	98	1	93.9	0.8	21	0	95.2	0.5	
Mackerel, Unidentified	93	7.5	0	0.7	1	0	0	0	
Shark, Salmon	84	25	0	0.7	30	10	10	0.7	
Shark, Smooth Hammerhead	42	23.8	0	0.3	6	33.3	0	0.1	
Sardine, Pacific	40	12.5	0	0.3	12	50	8.3	0.3	
Marlin, Blue	39	5.1	0	0.3	10	0	0	0.2	
Ray, Pacific Electric	32	3.1	62.5	0.3	13	0	69.2	0.3	
Oilfish					9	11.1	22.2	0.2	
Ray, Manta	14	0	35.7	0.1	1	0	0	0	
Ray, Unidentified	11	9.1	36.4	0.1					
Ray, Bat	9	0	88.9	0.1	11	0	90.9	0.2	
Oarfish	8	12.5	0	0.1					
Anchovy, Northern	7	14.3	28.6	0.1					
Stingray, Round	7	0	85.7	0.1	1	0	100	0	
Marlin, Black	5	0	0	0					
Ray, Mobula	4	50	50	0	3	0	33.3	0.1	
Shark, Pacific Angel	4	0	50	0					
Shark, Prickly	4	0	75	0	2	0	50	0	
Shark, Unidentified	4	0	0	0					
Rockfish, Unidentified	2	0	50	0	4	0	100	0.1	
Billfish, Unidentified					5	0	0	0.1	
Other Non-marketable Fish	39				18				

* Number of observed sets for the periods 1990-2000 and 2001-2010 was 5,973 and 2,224, respectively. Total estimated effort for the periods 1990-2000 and 2001-2010 was 40,952 and 11,951 sets, respectively. Species listed by common name include finfish that were caught four or more times during either period. Other non-marketable fish include species for which three or fewer individuals were caught during either period.

Table C.2. Observed protected species catch in the California drift gillnet fishery, 1990-2010

Species	1990-2000		2001-2010	
	Number of Interactions	Number Released Uninjured	Number of Interactions	Number Released Uninjured
	Seaturtles			
Turtle, Leatherback	23	9	1	1
Turtle, Loggerhead	14	10	2	2
Turtle, Unidentified	3	2		
Turtle, Olive Ridley	1	1		
Turtle, Green/Black	1			
	Pinnipeds			
Sea Lion, California	122	3	64	1
Seal, Northern Elephant	109		5	
Sea Lion, Unidentified	3	1		
Sea Lion, Steller	2			
Pinniped, Unidentified	2			
	Cetaceans			
Dolphin, Short-Beaked Common	288		77	
Dolphin, Northern Right Whale	56		12	
Dolphin, Risso's	29		5	
Dolphin, Pacific White-sided	25		11	
Porpoise, Dall's	22			
Beaked Whale, Cuviers	21	1		
Dolphin, Unidentified Common	21	1	1	
Dolphin, Long-Beaked Common	12		9	
Whale, Short-finned Pilot	11		1	
Whale, Sperm	8	3	2	
Beaked Whale, Hubbs'	5			
Beaked Whale, Unidentified	3			
Dolphin, Bottlenose	3		1	
Whale, Minke	3	1		
Beaked Whale, Mesoplodont	2			
Cetacean, Unidentified	2			
Whale, Gray	2		1	
Whale, Humpback	2	2	1	1
Whale, Pygmy Sperm	2			
Beaked Whale, Baird's	1			
Beaked Whale, Stejneger's	1			
Dolphin, Striped	1			
Dolphin, Unidentified	1			
Whale, Fin	1			
Whale, Killer	1			
Whale, Unidentified	1		1	1
	Seabirds			
Fulmar, Northern	16	13	20	18
Bird, Unidentified	4		1	
Alcid, Unidentified			1	

HIGHLY MIGRATORY SPECIES MANAGEMENT TEAM REPORT ON WEST COAST SWORDFISH MANAGEMENT

The Highly Migratory Species Management Team (HMSMT) wrote a supplemental report (Agenda Item B.3.b.) to address the November 2011 Council request for new information on bycatch and bycatch mitigation in swordfish fisheries as background for a decision on whether to consider options for revitalizing the West Coast swordfish fishery. This report summarizes key points in the HMSMT supplemental report, provides additional information and offers HMSMT recommendations based on discussions held with the HMS Advisory Subpanel (HMSAS).

Executive Summary of Supplemental Report 1 and New Information:

The genesis for Council discussion on potential revitalization of the West Coast swordfish fishery was partially in response to a September 2011 National Marine Fisheries Service (NMFS) report to the Council on the May 2011 swordfish workshop sponsored by the NMFS Southwest Region. Background provided in the report summarizes recent trends in landings and effort in the U.S. West Coast-based drift gillnet (DGN) fishery. The fishery has experienced a marked decline in effort since the early 1990s (Figure 1) that is projected to decrease further if the current management regime continues (Figure 2), despite a healthy population of swordfish in the North Pacific (Appendix B). The U.S. fisheries account for roughly 20 percent of all swordfish landed in the North Pacific with Japan accounting for the largest share. Currently over half of U.S. swordfish consumption is met by imports from foreign fisheries.

The California Department of Fish and Game recently conducted a survey of swordfish fishermen in order to gather opinions on the current state of the swordfish fisheries in California (Appendix A). Of 130 surveys sent out, 48 were returned[1]. The DGN respondents overwhelmingly indicated that changes are needed in the fishery in order to make it more viable, specifically addressing time-area modifications to the Pacific Leatherback Conservation Area (PLCA). Survey results suggest that the majority of DGN respondents lack interest in transitioning to a longline fishery, unless it would be possible to fish within the U.S. Exclusive Economic Zone (EEZ). Since the survey only includes a subset of current fishery participants, and the West Coast swordfish fishery has dwindled in recent years, a question remains about the interests of other potential participants.

Past Council action regarding West Coast swordfish fisheries included consideration of EFPs for the DGN fishery (2006) and for authorizing a single vessel to target swordfish inside the West Coast EEZ with shallow-set longline (SSLL) gear and stringent bycatch mitigation measures (2007). In addition, the Council developed an amendment to the HMS Fishery Management Plan (2009) that would have authorized a limited entry SSLL fishery for swordfish outside the EEZ which was not adopted due in part to concerns raised about latent DGN permits and potential bycatch. Information on recent trends in active vs. latent permit holders is shown in Figure 10. Since the Hawaii SSLL reopened in 2004, vessels fishing under a Hawaii Pelagics

[1] Note that in Agenda Item B.3.b. Supplemental HMSMT Report 1, Appendix A indicates 48 respondents including 15 harpoon and "27" DGN fishers responded, but the correct number of DGN respondents should read "33".

Plan permit have supplied an increasing proportion of swordfish delivered to California ports (Figure 5). Recent evidence suggests that spillover effects of U.S. fishery regulations increased dependence on foreign fleets not subject to comparable bycatch mitigation measures to meet U.S. and global swordfish demand at a higher cost in terms of turtle bycatch (e.g. Rausser et al. 2008).

Significant reductions in sea turtle bycatch resulted when the Hawaii SSLL fishery reopened (Figure 7). The bycatch mitigation measures now required in the Hawaii SSLL fishery originated with gear experiments on the U.S. East Coast that showed large reductions in leatherback and loggerhead sea turtle bycatch with the use of circle hooks and mackerel-type bait (Figure 6). The success in meeting sustainability standards and reducing bycatch likely contributed to an MSC Certification of the U.S. North Atlantic swordfish pelagic longline and buoy gear fishery in 2011.

The observed catch and bycatch for the West Coast DGN fishery are provided in Appendix C comparing before and after implementation of the PLCA. The data demonstrate declines in the total catch of many species including swordfish, sea turtles, and mammals, while nominal swordfish catch per set has remained unchanged. Comparable data from the Hawaii SSLL observer program for vessels landing into or originating from California ports are shown below. While comparing these data with the DGN catch and bycatch data is somewhat problematic due to the different times and areas fished, the data suggest lower rates of non-marketable bycatch with SSLL than with DGN gear.

Table 1: Hawaii shallow-set longline fishery observed catch of finfish from trips landing in or originating from California ports, 2008-2011.[2]

Species	2008-2011			
	Number Caught	Percent Retained	Percent Returned Alive	Number Caught per 100 Swordfish
	Marketable Catch (Percent Retained greater than 50)			
Swordfish	12663	88.9	3.8	
Tuna, Albacore	2801	79.3	10.6	22.1
Dolphinfish	2449	81.9	15.4	19.3
Escolar	1176	59.2	24.7	9.3
Tuna, Bigeye	431	87.2	9.5	3.4
Opah	389	50.4	37.5	3.1
Pomfret, Brama spp.	101	70.3	12.9	0.8
Marlin, Striped	86	65.1	24.4	0.7
Spearfish, Shortbill	49	57.1	26.5	0.4
Tuna, Yellowfin	43	93.0	7.0	0.3
Pomfret, Sickle	20	95.0	0.0	0.2
Tuna, Skipjack	20	80.0	10.0	0.2
Marlin, Blue	12	66.7	16.7	0.1
Wahoo	4	100.0	0.0	0.0
	Non-marketable Catch			
Shark, Blue	6810	0.0	87.7	53.8
Lancetfish, Longnose	2420	0.0	10.6	19.1
Shark, Shortfin Mako	1414	5.3	67.1	11.2
Stingray, Pelagic	403	17.9	72.2	3.2
Oilfish	320	6.3	72.2	2.5
Snake Mackerel	119	20.2	37.8	0.9
Mola, Common	75	0.0	98.7	0.6
Shark, Unidentified	48	0.0	91.7	0.4
Ribbonfish, Tapertail	20	20.0	15.0	0.2
Shark, Bigeye Thresher	19	15.8	47.4	0.2
Boney Fish, Unidentified	19	0.0	89.5	0.2
Shark, Oceanic Whitetip	11	0.0	81.8	0.1
Shark, Unid. Mako	8	0.0	87.5	0.1
Puffer, Pelagic	7	0.0	100.0	0.1
Shark, Longfin Mako	7	0.0	100.0	0.1
Boney Fish, Other Identified	6	50.0	16.7	0.0
Pomfret, Dagger	5	0.0	60.0	0.0
Tuna, Unidentified	5	0.0	0.0	0.0
Dolphinfish, Pompano	4	50.0	50.0	0.0
Other Non-marketable Fish	16			

[2] Total number of hooks fished was 1,092,507 (1090 sets during 58 trips). Observer coverage was 100%. Species listed by common name include finfish that were caught four or more times. Other non-marketable fish include species for which three or fewer individuals were caught.

Table 2. Observed turtle, mammal and seabird catch in the Hawaii shallow-set longline fishery from trips landing in or originating from California ports, 2008-2011.[3]

Species	2008-2011	
	Number of Interactions	Number Released Alive
	Seaturtles	
Turtle, Leatherback	12	12
Turtle, Loggerhead	6	6
Turtle, Green/Black	1	1
	Cetaceans	
Dolphin, Risso's	9	8
Dolphin, Striped	2	1
Whale, Humpback	1	1
Beaked Whale, Mesoplodont	1	1
	Seabirds	
Albatross, Black-footed	13	9
Albatross, Laysan	12	9

There does not appear to be much potential for the harpoon fishery to substitute for other swordfish gears. West Coast longline and DGN landings declined substantially over 2000-2010; however, the open access harpoon fishery showed little increase in landings, suggesting it did not serve to replace DGN and longline landings (Figure 8)[4].

New information has become available since the implementation of the PLCA, including designation of critical habitat for leatherback turtles which warrants examination of the spatial and temporal extent of the existing closure. In addition, recent research includes experiments testing buoy gear and deep-set longlines for targeting swordfish deep during the day below the epipelagic zone where turtles forage. Swordfish were caught during both experiments. A key objective of both experiments is to determine where the swordfish are located relative to bycatch species (both vertical and horizontal separation) as measured by depth at capture and electronic tagging.

The HMSMT calls the Council's attention to Informational Report 1, a paper by Carretta and Barlow (2011), on the "Dinner Bell" properties of acoustic pingers in the DGN fishery. The key findings are that pingers have helped reduce cetacean bycatch, and there is little statistical evidence to link pinger use to increased marine mammal depredation in the DGN fishery.

Recent market-related initiatives for better meeting U.S. conservation standards in swordfish fisheries include proposed import prohibitions on nations that do not meet U.S. standards for bycatch reduction, and the aforementioned MSC certification of the U.S. Atlantic longline and buoy fishery.

[3] Total number of hooks fished was 1,092,507 over 58 trips (1090 sets). Observer coverage was 100%. Number released alive includes those released alive and alive with injury.

[4] Due to confidentiality requirements, no West Coast-based longline fishery landings are shown after 2004 when the HMS FMP went into effect without authorizing shallow-set longline as a legal gear.

The NOAA Southwest Fisheries Science Center has additional ongoing research into swordfish and leatherback habitat use and overlap including spatial modeling of marketable catch and bycatch with respect to environmental features. Predictive models similar to the Hawaii Turtle Watch product could help fishermen increase efficiency and avoid fishing times and locations where bycatch species of concern are likely to be present.

HMSMT Recommendations:

The HMSMT discussed the approach of pursuing near-term, mid-term and long-term strategies should the Council choose to revitalize the West Coast swordfish fishery. Near-term and mid-term steps could involve adopting precautionary adaptive management measures to enable fishing when conditions indicate low bycatch risk and to gain fisheries-dependent data needed to support long-term decisions. Measures would need to ensure compliance with applicable conservation laws.

Possible near-term actions could be to (a) modify the existing DGN PLCA boundary or open season, to reflect research about leatherback turtle habitat and distribution, as well as research on the effects of mandatory conservation gear such as pingers and net extenders; and (b) support ongoing research to inform decision-making.

Possible mid-term measures include (a) exploring development of a SSLL fishery inside the EEZ, subject to precautionary bycatch mitigation measures; (b) testing alternative gears and fishing strategies which reduce protected species interactions for a given level of swordfish and other desirable catch; and (c) revisiting alternatives for a west coast SSLL fishery outside the EEZ.

Data obtained from the near-term and mid-term phases of development would be used to support a long-term decision toward revitalizing a West Coast swordfish fishery.

In conclusion, the HMSMT recommends that the Council continue to support research that further informs decision-making. If the Council decides that current West Coast swordfish fishery management does not meet the Council's objectives, then the Council should proceed with developing precautionary adaptive management measures that:

1. Enable near-term and mid-term collection of fishery-dependent data needed to inform decision-making and long-term actions while ensuring compliance with applicable conservation law.
2. Modify the current PLCA boundary or open season as supported by research regarding leatherback turtle habitat and distribution, current effort levels, existing conservation measures, and current bycatch rates.
3. Use data collected over the near- and mid-term as the basis for a decision on long-term development of a sustainable, economically-viable West Coast swordfish fishery while promoting protected species and finfish conservation.

PFMC
03/02/12

From: John Harder- Californian Albacore Troll Fisherman/ owner f/v "Ocean Joy"

P O Box 2463

Monterey, CA. 93942

TO: **Pacific Fisheries Management Council (PFMC)**

Chairman Mr. Dan Wolford and council members

Doubletree Hotel Sacramento

2001 Point West Way

Sacramento, California 95815

Re: <u>Swordfish Management Data Report and Future Management Recommendations</u>

Dear Chair and members of the PFMC,

While fishing for Albacore Tuna off the west coast last year of 2011, using the sustainable "Troll" method (MSC certified), I found the highest percentage of drift net marked tuna to be in the area of Point Sur, south of the Monterey Bay, and off the Davison Seamount in late October. Catch rates per vessel were up to one ton per day in this area, but drastically dropped to non productive levels soon after the California swordfish driftnet vessels showed up in the area. It was later reported that California drift net swordfish vessels were catching one to two ton

of Albacore Tuna per day per vessel as by-catch, yet the Albacore Troll vessels could no longer catch enough to warrant fishing in this area.

This, in my opinion, is a clear case of discrimination between fisherman and "gear types" and is in violation of UN "law of the sea" and codes of conduct.

Article119*, *Conservation of the living resources of the high seas:

3. *States concerned shall ensure that conservation measures and their implementation* ***do not discriminate in form or in fact against the fishermen of any State****.*

*The taking of swordfish, by means of the drift net method****, discriminates*** *against the taking of swordfish, by means of the harpoon method.*

I am appalled that the state of California still allows, and persists to develop, this destructive "gear type", deemed by the United Nations. Even though California has a marine sanctuary in Monterey Bay, It allows drift net fishing just outside of its perimeters. I find this very hypocritical, to say the least. In this day and age where all are trying their best to achieve sustainability in our fisheries, California is hanging on to the most destructive methods of fishing known to the Pacific. This irresponsible choice by the NMFS sends a disturbing message to the rest of the world that is trying their best to Ban such a fishery. To further develop such a fishery would be like trying to make chicken soup out of chicken poop.

I ask the PFMC to:

1) Recommend to NMFS, and to US state department, to **eliminate** the west coast swordfish fishery using the **drift net method.**
2) Promote and develop the Harpoon method for taking swordfish, as it is the most sustainable method with **no by-catch**.
3) Develop and promote a shallow depth long line fishery that co-inside with the Hawaiian swordfish fishery with 50-100% observer coverage.

In conclusion, I would rather eat swordfish imported from Mexico, knowing it was caught by Long Liners, rather than locally caught Californian swordfish captured by the wasteful deadly drift net method of fishing.

Thank you for your attention in this matter.

Regards, John Harder

Owner/Operator F/V “Ocean Joy”

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February 9, 2012

Mr. Dan Wolford, Chair
And Council Members
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

RE: Comments on Council Agenda Item B.3.d Swordfish Management Data Report and Future Management Recommendations for Briefing Book – February 29-March 7, 2012 Meeting

Dear Chairman Wolford and Council Members,

Turtle Island Restoration Network (TIRN) is writing to urge the Pacific Fishery Management Council (the Council) to take action at this meeting to not proceed further with any efforts to expand the California drift gillnet fishery for swordfish and sharks or to develop a new pelagic longline fishery for swordfish and sharks off the U.S. West Coast.

At the November 2011 Council meeting where expanding the West Coast swordfish fishery was last discussed, TIRN expressed our concern and disappointment that National Marine Fisheries Service (NMFS) is once again pushing to increase Pacific swordfish landings and fishing effort with gears known to have high levels of bycatch of non-target fish such as sharks, billfish and tunas, marine mammals and endangered sea turtles.

Please see attached letter dated October 21, 2011, which describes in detail the reasons against expanding or developing a new West Coast swordfish fishery.

The letter spells out why it is unreasonable and counter-productive for NMFS to seek to expand the swordfish fishery at a time when West Coast states and our nation are seeking to attain sustainable fisheries and ecosystem-based approaches to management that protect and maintain the health and biodiversity of our oceans.

In its current state of operations, the California drift gillnet swordfish fishery continues to capture and kill dolphins and sea lions, and to toss back, dead and damaged, 20 to 30 percent of its catch of fish. The current time and area closures required in the fishery appear to have reduced interactions with endangered sea turtles. However, with observer coverage levels falling far below the required 20 percent, it is not certain that the fishery is adequately protecting these endangered marine species from jeopardy under the Endangered Species Act. Allowing more take of these highly endangered marine species in order to expand the fishery would not be helpful to sea turtle survival and recovery.

Additionally, this fishery is responsible for large volumes of bycatch of blue sharks, ocean sunfish (mola mola), thresher sharks and shortfin mako sharks. Increasing the size of this fishery without appropriate gear or mitigations will increase bycatch of these species. The status of offshore stocks of these shark species and how they interact with inshore populations is poorly known.

Further, it would be unreasonable to continue to invest in and promote controversial federal efforts to develop a pelagic longline fishery for swordfish when the State of California and the Pacific Fishery Management Council have already taken actions to prohibit it due to the high levels of bycatch associated with the fishery and the take of endangered and threatened species.

As stated in the letter, if, however, the Council, NMFS and state agencies are going to spend valuable time and taxpayer money investigating approaches to expand commercial fishing for swordfish on the West Coast, you can expect serious challenges by conservation organizations and others if those efforts are 1) not associated with the phase out and prohibition of drift gillnet gear, and 2) associated with any experimental gear that is similar to the drift gillnet or pelagic longline gear that NMFS has already tried, but failed to advance in recent years.

New and Related Federal and Other Actions

Since we submitted our October letter and since the November Council meeting, the following new and related federal and other actions must be considered in relation to any decisions about expanding or developing a new West Coast swordfish fishery. Here is a summary of those developments. More details will be presented at the Council meeting.

Leatherback Critical Habitat Designated Offshore California, Oregon and Washington Coasts

On February 27, 2012, new regulations take effect that designate nearly 42,000 square miles of ocean as critical habitat for leatherback sea turtles off the coasts of California, Oregon and Washington. The designation does not, in our view, go far enough in protecting leatherback migratory pathways or water quality and the rule fails to consider shipping and other habitat threats. However, it does require that any new federal activities such as energy projects, aquaculture or coastal development do not negatively impact leatherback prey species or foraging grounds.

Allowing an increase in the swordfish fishery has the real potential to harm leatherback habitat as a result of increased vessel activity, entanglement, and energy expenditures required for a leatherback to change course in order to avoid fishing gear when migrating to and from foraging grounds.

Importantly, the designation process helped NMFS pull together all of the data on leatherback migratory pathways, bycatch locations in the drift gill net fishery and observed sightings (see attached map). This data shows that leatherback sea turtles use waters inside the U.S. EEZ beyond the Pacific Leatherback Conservation Area (PLCA) (drift gill net time and area closure) and that they are vulnerable to capture outside of the PLCA.

North Pacific Loggerhead Uplisted to Endangered –Critical Habitat and New Bi-OP Needed

The uplisting of the Pacific loggerhead sea turtle from threatened to endangered last year requires that a new Biological Opinion (Bi-Op) be completed for the existing California drift gillnet fishery and to re-examine incidental take levels and other protection measures. This is likely to trigger provisions for stronger protections for this sea turtle species during El Niño years and at all times due to increasing climate change impacts. In addition, NMFS is now required to consider and establish critical habitat for

Northern Pacific loggerheads as a result of the uplisting. No new federal actions should occur in U.S. waters where this species occurs until critical habitat rulemaking and a new Bi-Op are completed.

Leatherback Conservation Area Should Be Enlarged

New and comprehensive science supporting the designation of critical habitat for leatherbacks along the West Coast also supports the fact that these waters, where the swordfish fishery now operates, attracts high concentrations of leatherback sea turtles. Currently, the PLCA covers many of the areas where leatherback interactions have occurred. However, the science also shows that leatherback interactions and satellite telemetry locations occur frequently outside of the PLCA.

Any review of the existing swordfish fishery should consider the expansion of the PLCA in size and duration to ensure adequate protection for leatherback sea turtles and to prevent increased harm. TIRN and our allies will oppose any reduction in the size or duration of the PLCA to accommodate a new or enlarged gillnet or longline fishery for swordfish.

Problems with Existing Drift Gillnet Fishery – Observers, Takes and Violations

Observer coverage in the existing West Coast drift gillnet fishery has fallen well below the 20 percent level required by the 2004 Bi-Op each year since 2006, suggesting that takes of leatherbacks and other sea turtle species and marine mammals may be exceeding allowable levels.

According to the 2004 Bi-Op, one observed interaction with a leatherback in a fishing season equates to nine entanglements and six mortalities over three years. The fishery currently has an incidental take statement for up to 3 anticipated leatherback interactions and 2 anticipated estimated mortalities annually. In October 2009, one leatherback was observed taken in the drift net fishery and released unharmed. This one observed take occurred when the fleet had the lowest observer coverage of any previous year at 13 percent.[1] This suggests that incidental take limits have been reached and perhaps exceeded given this period of low observer coverage.

In addition, we were very concerned to learn that no observers were placed on vessels during January 2009, a month when entanglement of common dolphins, a protected marine mammal species, is typically highest.[2]

We also understand that the one leatherback sea turtle interaction that was observed was entangled outside the PLCA. This was the first observed interaction recorded by NMFS since before 2001 when the PLCA was established. Given this information alone, NMFS should consider whether the size of the PLCA is adequate and whether it should be expanded in size and extended in duration.

The drift gillnet fishery has an incidental take statement for up to five anticipated loggerhead interactions and two anticipated mortalities annually. The Bi-Op equates one observed interaction to 5 entanglements and two mortalities, but only in El Niño years. Given that that one loggerhead was observed injured in 2006/07; and another one in 2001/2002, we are also concerned that for those two seasons, the take limit was met. Given the low observer coverage, it is also possible that the take limits were exceeded.

---

[1] J. V. Carretta and L. Enriquez, September 2010. Marine Mammal and Sea Turtle Bycatch in the California/Oregon Swordfish and Thresher Shark Drift Gillnet Fishery in 2009. National Marine Fisheries Service, Southwest Fisheries Science Center. Administrative Report LJ-10-03. Pages 1 and 2.

[2] Ibid., Page 4

In addition, these loggerhead entanglements occurred in years that were not designated as El Niño years by NMFS. With such low observer coverage and the declining populations of loggerheads, the Council and NMFS must immediately re-evaluate the El Niño take approach and implement measures to protect loggerheads at all times, including more accurate time and area closures to prevent interactions.

The Council and NMFS should consider the following when reviewing the swordfish and thresher shark fishery:

1. Extend the duration of the PLCA by at least two months, from July to December.
2. Extend the areas of the PLCA to include the Southern California Bight
3. Apply the loggerhead conservation area in the Southern California Bight to all years, not just during declared El Niño events.

Lastly, as the Council is aware, violations have occurred in the fishery as recently as last season when a drift gillnet fisherman was caught offshore of California in a closed area during a closed time with an illegal, over-sized gillnet violating the laws created to protect endangered leatherback sea turtles. The gillnet was more than 6,000 feet long, 900 feet over the maximum length allowed.

State Bans on Drift Gillnet and Longline Fisheries

Oregon banned drift gillnet fishing in its state waters in December 2009. The state also retired all its swordfish longline permits and experimental fishing permits in 2010. Washington State does not allow either gear in its waters. California has had a long-standing ban on longline fisheries in its waters and has opposed federal actions to re-open longline fisheries every time it has been attempted by the NMFS Southwest Region. Similar opposition can be expected if with any new swordfish proposal. See attached fact sheet which provides chronology of opposition from state of California.

Hawaii Surface Longline Fishery Closure, Take Exceedances and New Biological Opinion

When considering the West Coast swordfish fishery, the Council should review relevant federal actions and sea turtle take in Pacific Islands region longline fisheries managed by the Western Pacific Fishery Management Council (WESPAC).

The Hawaii surface longline fishery for swordfish was forced to close in November 2011 for the remainder of the year when it reached the take limit of 16 endangered Pacific leatherback sea turtles, despite the use of circle hooks and finfish bait and other measures designed to minimize interactions and mortality. These leatherbacks originate from the same population that utilizes the U.S. West Coast and interacts with the drift gillnet fishery, according to new Biological Opinion on the Continued Operation of the Hawaii-based Shallow-set Longline Swordfish Fishery dated January 30, 2012 (Hawaii Bi-Op).

Regulations governing the Hawaii-based shallow-set pelagic longline fishery for swordfish set annual limits of 16 leatherback sea turtles and 17 loggerhead sea turtles that can be hooked, injured or killed. Earlier this year, conservation groups successfully defended these sea turtle take limits for loggerheads in court, after the WESPAC and NMFS tripled loggerhead take to 46.

The new Hawaii Bi-Op also revealed that takes of green sea turtles in this fishery were exceeded, triggering the new Bi-Op, which was also required due to the Pacific loggerhead uplisting.

From January to September 16, 2011, there were four observed green turtle interactions in the fishery, when the incidental take limit in the 2008 Bi-Op authorized the take of three green turtles over a three-year period, including one mortality.

Nevertheless, the new Hawaii Bi-Op seeks increased take of these endangered sea turtle species, which we will oppose when the new Fishery Management Plan is released for public review. It seems counter-intuitive to increase allowable takes of an endangered species after its protective status is increased due to vulnerability to extinction.

America Samoa Deep Set Longline Fishery Exceeds Leatherback Takes

In another instance of longline fisheries exceeding sea turtle take limits, in 2011 the American Samoa deep-set longline fishery exceeded its take limits on leatherback sea turtles of one observed interaction every three years. Two leatherbacks were taken in 2011, one injured and one dead. The three-year limit of one olive ridley was also taken.

A new regulation prohibiting deep-set longline gear to be set below 100 meters was finalized in September 2011 for the American Samoa fishery, though this measure was never proven to be effective in reducing sea turtle interactions, according to the rulemaking documents. However, now WESPAC is proposing to introduce a new shallow-set longline fishery for swordfish in this same fishery region, an action that given the history of the deep-set fishery is certain to result in additional takes of endangered and threatened sea turtles.

Given these recent and ongoing violations of the Endangered Species Act by U.S. longline and drift gillnet fisheries, not to mention shrimp trawl, scallop dredge and other gears harmful to protected species, it is difficult to understand or support federal fishery managers that want to expand unsustainable fisheries and allow increase takes of the most vulnerable creatures in the ocean primarily for the benefit of short-term seafood profits and high-end fish consumers who can still afford to dine on high-priced swordfish. We urge the Council to consider these issues when deliberating the West Coast swordfish history.

Spillover Effects – Killing Sea Turtles to Save Sea Turtles

In order to rationalize its promotion of unsustainable fisheries, NMFS is now using the argument that allowing increased endangered sea turtle takes in U.S. waters will actually save sea turtles from fisheries that operate in foreign fleets. In a new Technical Memo (Technical Memorandum NOAA Technical Memorandum NMFS-PIFSC-30 January 2012 Spillover Effects of Environmental Regulation for Sea Turtle Protection: The Case of the Hawaii Shallow-set Longline Fishery), NMFS argues that providing more domestic swordfish will displace an equal amount (1 to 1) of foreign swordfish caught in the Pacific by longliners that don't impose comparable conservation measures, thereby saving sea turtles. We suspect that the technical memo, which is cited extensively in the Hawaii Bi-Op will be used to argue for the enlargement of the West Coast swordfish fishery.

TIRN is not prepared at this time to provide our complete response to the technical memo or the flawed spillover effects argument here, but would like to make several points that we hope that the Council will consider when scrutinizing the data provided by NMFS:

1. The NMFS Technical Memo is founded on a number of unsupported assumptions, not on any actual bycatch or observer or swordfish landings data from any foreign fisheries, as stated on Page 65 of the Hawaii Bio-Op:
   Due to limited reporting of sea turtle bycatch in foreign fisheries within the area, Chan and Pan were not able to make precise estimates of the bycatch numbers of individual species that would be beneficially affected. Based on the similarities of fishing styles and the area of operation, we can estimate the bycatch numbers by species by comparing data from the Hawaii fishery. We note, however, that because the data on foreign fisheries is likely incomplete or inaccurate,

foreign fishery bycatch rate estimation is imprecise. In addition, the expected number of sea turtle interactions with foreign fisheries that would have occurred but for the proposed action cannot be confirmed by direct observation. Therefore, for purposes of our spillover effects analysis, we do not believe the projected reduction in mortality numbers based on interactions avoided by foreign fisheries are at a level of precision as those data we analyzed for the direct effects of the proposed action (i.e., interactions observed with 100% observer coverage in the Hawaii shallow-set fishery).

2. Given that much of the swordfish caught in the Pacific is retained bycatch from tuna fisheries, neither effort or production is likely to be reduced by increasing domestic effort or production of targeted swordfish.
3. There is no evidence that if the U.S. swordfish supply did in fact saturate the market, that foreign fleets wouldn't simply sell to other markets where there is a demand for swordfish, casting considerable doubt on the market transfer effect.
4. The U.S. has full regulatory authority to restrict the imports of swordfish and other seafood from fishing nations that do not impose comparable fishing practices. However, it has not chosen to do so. We have urged NMFS to finalize the advanced notice of proposed rulemaking published in 2010 that would impose comparable standards on foreign fleets and establish a level playing field for U.S. fisheries. (See attached Federal Rulemaking and TIRN's comments).

Regulation to Increased Retention of Swordfish in West Coast Deep Set Longline Fishery

Recently NMFS, with support from the Council, published a proposed new regulation that would allow the West Coast deep-set high seas longline fishery to retain more swordfish. The regulation stated its intent as achieving consistency with swordfish retention limits in the Hawaii longline fleet managed by the Western Pacific Fishery Management Council (WESPAC). However, since WESPAC has not yet adopted a new swordfish retention regulation, pending consultation on seabird interactions, the proposed rule was premature, at best. The public comment period on the new seabird Bi-Op just closed today, February 9, 2012. See our comments on this rule prepared on our behalf, attached.

In any case, the proposed rule (NOAA–NMFS–2011–0211 Fisheries Off West Coast States; Highly Migratory Species Fisheries; Swordfish Retention Limits (RIN 0648–BA87) needs to be considered in relation to any action on the West Coast swordfish fishery in terms of the cumulative impacts on swordfish and take of protected marine species. See our attached comments on the rule.

NMFS SW Region Swordfish Workshop

The Council has been given updates on NMFS SW Region workshop on swordfish management that took place last year. NMFS is using their 'results' from the workshop as a platform to make the case that there is broad agreement that a) turtles are fully protected in the U.S., b) swordfish populations are healthy, c) bycatch is fully monitored in the U.S. fishery, and d) changes in management are needed to make the swordfish fishery economically robust. They also assert that the U.S. demand for swordfish is growing, and it is being met by foreign fisheries with lower conservation standards. They argue a larger U.S. swordfish fishery will ultimately save more turtles.

We strongly disagree with these conclusions. TIRN was invited to and attended the NMFS-sponsored workshop. Executive Director Todd Steiner did not agree with the conclusions made by NMFS related to the workshop. In fact, Steiner asserts that no new data was presented at the workshop that changed

TIRN's position that the West Coast drift gill net fishery remains contrary to the paradigm of healthy oceans and healthy communities. So we urge the Council to carefully scrutinize how NMFS presents its findings from the workshop.

The End of Sustainable Seafood

Both government and non-governmental organizations in the U.S. and internationally are attempting to market various species of seafood as sustainable. The U.S. government has clear mandates from Congress to make our fisheries sustainable, and yet NMFS continues to promote non-sustainable longline and drift gillnet fishing gear, violating laws and continually eroding the credibility of fishery management agencies.

To fill this gap, non-governmental organizations have attempted to assess fisheries independently with eco-labeling schemes and consumer seafood guides. However these programs are quickly losing their credibility and effectiveness for influencing consumer choice as more and more questionable fisheries are deemed "sustainable."

The recent certification by the Marine Stewardship Council (MSC) of a longline swordfish fishery in Florida and the pending certification of the Canadian longline fishery for swordfish, which operates without effective sea turtle protections, may be the death knell for sustainable seafood labels as a viable approach. The fact that Alaska salmon producers have recently vacated the MSC's program could also spell the end of third-party seafood certification as a viable benchmark for sustainability.

Conservationists, conscious seafood buyers and sellers and responsible fishers are quickly realizing that claims of "sustainable seafood" by government or NGOs makes more promises than it delivers when it comes to actually protecting fisheries, communities and the oceans. The conclusion that we may all come to is that there is no sustainable seafood and that the only way forward is to give seafood a break.

We hope that the Council and particularly members of the State of California, where a new state-funded seafood sustainability initiative was approved in December 2011, will consider the long-term ramifications to fisheries and biodiversity before allowing the expansion of wasteful longline, trawl and other un-sustainable fisheries and, even worse, calling them sustainable.

To demonstrate its commitment to sustainable fisheries, the Council should take a strong stand against expanding the wasteful drift gillnet fishery for swordfish and shark along the U.S. West Coast.

Mercury in Swordfish and Shark

The U.S. Federal Food and Drug Administration (FDA) warns all women of child-bearing age not to eat swordfish or shark due to known high levels of mercury and the risk of damage to developing fetuses. This means that women 18 to 45, or roughly half of the population, should not ***ever*** eat swordfish or shark, mackerel and tilefish. That's because these fish species routinely exceeds the FDA action level of 1 part per million methylmercury. These are well established facts based on science from the U.S. FDA and Environmental Protection Agency that federal fishery managers and the seafood industry regularly ignore, deny, minimize or attempt to counter with industry-funded pseudo-science.

The Council must consider the public health impacts and who exactly will benefit and who may be harmed when determining whether to proceed in expanding or developing a new West Coast swordfish fishery. TIRN would be happy to arrange a briefing for interested Council members from public health experts on the latest science related to mercury in fish and the need to do more to warn vulnerable populations about exposure.

Conclusion

Given these comments and the history of the West Coast swordfish fishery, we urge the Council to deny any further discussion or action on expanding the existing fishery or developing a new fishery.

If further action is considered, then Council must evaluate an alternative with an increase in observer coverage in the existing fishery to at least 30 percent, an alternative to phase out and close the drift gillnet fishery, an alternative to restrict swordfish imports and an alternative that addresses other concerns in this letter.

Finally, any changes to the swordfish and shark fishery would constitute a major federal action, requiring a full Environmental Impact Statement and a full range of alternatives, including the phase out of the fishery.

Sincerely yours,

Teri Shore
Program Director
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415 663 8590 ext 104

Attachments

October 21, 2011, letter to National Marine Fisheries Service
Leatherback sea turtle location map
California longline fishery fact sheet
Federal Register Notice on Seafood Import Rulemaking and TIRN comments
TIRN Comments on Hawaii longline fishery seabird Bi-Op
TIRN comments on West Coast High Seas Swordfish Retention Limits

EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, DC INTERNATIONAL

February 9, 2012

By Facsimile Transmission and Electronic Mail

Michael Green, Acting Chief
Division of Migratory Birds and Habitat Programs
Fax No.: (503) 231-2019
Email: pacific_birds@fws.gov

Re: Draft Environmental Assessment for the National Marine Fisheries Service Migratory Bird Treaty Act Permit for the Hawai'i-Based Shallow-Set Longline Fishery, 77 Fed. Reg. 1,501 (Jan. 10, 2012)

Acting Chief Green,

Earthjustice submits these comments on behalf of the Center for Biological Diversity and Turtle Island Restoration Network in response to the U.S. Fish and Wildlife Service's request for input on the Draft Environmental Assessment (DEA) for the National Marine Fisheries Service (NMFS) Migratory Bird Treaty Act (MBTA) Permit for the Hawai'i-Based Shallow-Set Longline Fishery (77 Fed. Reg. 1,501 (Jan. 10, 2012)). As the Service notes in the Federal Register, if issued, the permit would be the first of its kind under the Special Purpose permitting regulations "to authorize incidental take of migratory birds by an agency regulating a commercial, non-conservation activity." 77 Fed. Reg. at 1,502. Since issuance of an MBTA permit for Hawai'i's shallow-set longline fishery would break new ground, it is particularly important that the Service ensure that any authorized take "is compatible with the conservation intent of the MBTA." Id.

As discussed below, the proposed permit – which would simply authorize the fishery's current levels of seabird take without requiring any additional measures to avoid and minimize take – is not compatible with the MBTA's intent to protect migratory birds. NMFS has long known that side-setting can substantially reduce fishery interactions with Laysan and Black-footed albatross, the species for which NMFS seeks MBTA permit coverage. The DEA's failure to consider an alternative for permit issuance that requires immediate implementation of this feasible and time-tested take reduction measure violates the National Environmental Policy Act (NEPA). See Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-29 (9th Cir. 1988) ("consideration of alternatives is critical to the goals of NEPA even where a proposed action does not trigger the [environmental impact statement] process").

The MBTA's Conservation Intent

Congress passed the MBTA on July 3, 1918 to implement and make enforceable by the courts the International Convention for the Protection of Migratory Birds, 39 Stat. 1702 (1916),

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between the United States and Great Britain (acting for Canada). These governments were "desirous of saving from indiscriminate slaughter and of insuring the preservation of such migratory birds as are either useful to man or are harmless." Convention, August 16, 1916, U.S.-Gr. Brit., 39 Stat. 1702, 1702. The United States subsequently executed treaties with Mexico, Japan, and the former Union of Soviet Socialist Republics, the protections of which are now incorporated into the MBTA. 16 U.S.C. § 703.

The MBTA and the Convention it implemented are considered "conservation measures of prime importance." H.R. Rep. No. 65-243 at 3. Justice Holmes called the preservation of migratory birds a "national interest of very nearly the first magnitude." Missouri v. Holland, 252 U.S. 416, 435 (1920).

"The fundamental prohibition in the Migratory Bird Treaty Act is couched in … expansive" language. Andrus v. Allard, 444 U.S. 51, 59 (1979). MBTA section 2 provides that "it shall be unlawful at any time, by any means or in any manner," to, among other prohibited actions, "pursue, hunt, take, capture, [or] kill" any migratory bird included in the terms of the treaties. 16 U.S.C. § 703. The term "take" is defined to include to "pursue, hunt, shoot, wound, kill, trap, capture, or collect." 50 C.F.R. § 10.12. The Laysan and black-footed albatross that the Hawai'i fishery kills and injures are included in the list of migratory birds protected by the MBTA. See id. § 10.13 (list of protected migratory birds).

Notwithstanding these prohibitions, MBTA section 3 authorizes the Secretary of the Interior to "determine when, to what extent, if at all, and by what means, it is compatible with the terms of the conventions to allow hunting, take, capture, [or] killing … of any such bird." 16 U.S.C. § 704. The Service may issue a permit allowing the take of migratory birds if consistent with the treaties, statute and Service regulations. See 50 C.F.R. pt. 21.

NEPA's Requirement to Consider Alternatives

NEPA requires that federal agencies consider alternatives to recommended actions whenever those actions "involve[] unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). As the Ninth Circuit explained in Bob Marshall Alliance:

> The goal of the statute is to ensure "that federal agencies infuse in project planning a thorough consideration of environmental values." The consideration of alternatives requirement furthers that goal by guaranteeing that agency decisionmakers "[have] before [them] and take [ ] into proper account all possible approaches to a particular project … which would alter the environmental impact and the cost-benefit balance." NEPA's requirement that alternatives be studied, developed, and described both guides the substance of environmental decisionmaking and provides evidence that the mandated decisionmaking process has actually taken place. Informed and meaningful consideration of alternatives … is thus an integral part of the statutory scheme.

852 F.2d at 1228 (emphasis added; citations omitted; brackets in original).

The mere fact that the Service has prepared an environmental assessment, rather than an environmental impact statement (EIS), does not relieve the Service of its duty to consider feasible alternatives. The Ninth Circuit has consistently held that "consideration of alternatives is critical to the goals of NEPA even where a proposed action does not trigger the EIS process." Id. at 1228-29. "The purpose of NEPA is to require disclosure of relevant environmental considerations that were given a 'hard look' by the agency, and thereby to permit informed public comment on proposed action and any choices or alternatives that might be pursued with less environmental harm." Lands Council v. Powell, 395 F.3d 1019, 1027 (9th Cir. 2005) (emphasis added). In both EISs and EAs, agencies "must give full and meaningful consideration to all reasonable alternatives." Te-Moak Tribe of Western Shoshone of Nevada v. Dep't of Interior, 608 F.3d 592, 602 (9th Cir. 2010).

The DEA Improperly Fails to Consider Mandating Side-Setting

The DEA considers only three alternatives: the "no action" alternative (i.e., denial of the permit application), issuing the permit as requested, and issuing the permit with additional conditions to conduct research. See DEA at 18-19. The Service declined to consider any alternative that would mandate that the fishery promptly implement additional techniques to reduce seabird take because, allegedly, "data is [sic] lacking to support such a requirement." Id. at 20.

The DEA's claim is at odds with years of research, often conducted in collaboration with NMFS, that has studied extensively the effectiveness of methods to reduce seabird bycatch in the longline fishery. This research has demonstrated that the method known as side-setting combines the greatest level of effectiveness in deterring seabird interactions with convenience, which encourages crew to actually utilize the method, and enforceability. See, e.g., Eric Gilman et al., Comparison of three seabird bycatch avoidance methods in Hawaii-based pelagic longline fisheries, 73 Fisheries Science 208 (2007). As described in NMFS's 2008 Annual Report: Seabird Interactions and Mitigation Efforts in the Hawaii Longline Fisheries (Aug. 2009):

> Side-setting involves deploying the gear from the side of the vessel, as compared to the conventional approach of setting from the stern. The effect is that baited hooks are deployed closer to the side of the vessel's hull where seabirds are unable or unwilling to pursue them. With proper weighting, baited hooks deployed in this manner will sink to a depth where a North Pacific albatross species could not reach them.

Id. at 12-13.

> According to NMFS:
>
> Sea trials indicate that side-setting is the most effective of any single seabird mitigation method in reducing albatross mortality in the Hawaii longline fishery. Side-setting produced the lowest seabird interaction rates when compared to underwater setting chutes and blue-dyed bait in both deep-set and shallow-set

> fisheries. In 2005, observers did not record any seabird interactions on vessels employing side-setting.

Id. at 14 (emphasis added).

Despite the technique's proven effectiveness, NMFS's regulations governing pelagic longline seabird mitigation measures do not currently require side-setting. See 50 C.F.R. § 665.815; DEA at Table 4.1. Consequently, almost no swordfish longliners use it. See DEA at 21 n.5 ("at most only two shallow-set vessels have elected to side-set in any one year since the 2005 regulations were issued"); 2008 Annual Report at 14 ("No shallow-setting vessels were found to be using the sidesetting technique in 2008").

NMFS has emphasized that "[t]o resolve the problem of seabird mortality in these fisheries, there is a need to identify deterrent methods that not only have the capacity to minimize seabird interactions, but are also practical and convenient to use by fishermen." 2008 Annual Report at 11. The measures NMFS allows the longliners to use in lieu of side-setting do not meet either requirement. NMFS admits that, "over time, [strategic offal discharge] is believed to attract birds to the vicinity of the vessel, increasing bird abundance, searching intensity, and interaction by reinforcing the association that birds make with specific longline vessels being a source of food." Id. at 15 (citation omitted). NMFS also admits fishermen find using blue-dyed bait messy and inconvenient and "do not favor" it, leading to enforcement difficulties. Id. at 17. Moreover, the blue-dyed fish bait, used in the swordfish fishery (as opposed to blue-dyed squid bait, used by tuna longliners) has been proven ineffective experimentally. Lisa J. Cocking, et al., Seabird bycatch mitigation and blue-dyed bait: A spectral and experimental assessment, 141 J. Biol. Conserv. 1354-1364 (2008) ("When using fish baits, however, approximately 48% of all blue-dyed baits presented in the first two days of trials received strikes from seabirds but this increased to 90% over the last three days.").

Although NMFS has known for years that side-setting is the superior method, it persists in refusing to require the shallow-set fishery to implement this proven, effective take minimization technique. To be "compatible with the conservation intent of the MBTA," any special use permit for the shallow-set longline fishery must mandate the use of side-setting. 77 Fed. Reg. at 1,502. Moreover, to comply with NEPA, the DEA must be revised to include consideration of an alternative that requires use of this technique.

The DEA Inaccurately States That Take Minimization Measures Are Not Mandated South of 23°N

In conducting the DEA's analysis, the Service appears to be operating under the mistaken impression that the Hawai'i-based shallow-set longline fishery is not obliged to implement seabird take minimization measures south of 23°N latitude. See DEA at 20 (refusing to consider alternative that would "remove the southerly limit (23º N latitude) on the use of seabird deterrents in the fishery"), Table 4.1 (listing seabird-deterrent measures the shallow-set

longline fishery is required to use " when fishing north of 23º N latitude").[1] In fact, unlike the deep-set longline fishery, "[s]hallow-set longline fishing operations must use seabird avoidance techniques wherever they fish." 70 Fed. Reg. 75,075, 75,078 (Dec. 19, 2005) (emphasis added); see also 50 CFR 665.815(a) ("When deep-setting or shallow-setting north of 23° N. lat. or shallow-setting south of 23° N. lat., owners and operators of vessels registered for use under a Hawaii longline limited access permit, must either side-set according to paragraph (a)(1) of this section, or fish in accordance with paragraph (a)(2) of this section") (emphasis added).

NEPA's requirement that federal agencies take a "hard look" at the potential environmental impacts associated with their proposed actions presupposes that the agency has accurately characterized the action under review. See Native Ecosystems Council v. Tidwell, 599 F.3d 926, 937 (9th Cir. 2010) (use of "flawed methodology ... does not constitute the requisite 'hard look' mandated by NEPA"). The Service must revise any aspects of the DEA's analysis that rely on its incorrect assumption regarding the geographic scope of mandated seabird take minimization measures.

Thank you for your consideration of our comments. Please feel free to contact me should you wish to discuss this matter.

Sincerely,

David Henkin
Staff Attorney

DLH/tt
Enclosures

[1] The DEA identifies NMFS's permit application as the source of information for Table 4.1. Notably, Table 2 of NMFS's application identifies these measures as "current seabird requirements for the shallow-set fishery," without any geographic limitation. DEA app. 1 at 12.

2008 Annual Report

Seabird Interactions and Mitigation Efforts in the Hawaii Longline Fisheries

NOAA

NOAA FISHERIES SERVICE

Pacific Islands Regional Office

Science, Service, Stewardship

August 2009

U.S. Department of Commerce | National Oceanic and Atmospheric Administration | National Marine Fisheries Service

Cover photo:

Short-tailed albatross (*Phoebastria albatrus*), Midway Atoll,
by Marc Romano, U.S. Fish and Wildlife Service.

Annual Report on Seabird Interactions and Mitigation Efforts in the Hawaii Longline Fisheries for 2008

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5. Seabird Mitigation Measures

Background

The emergency rule (66 FR 31563, June 12, 2001) that closed the shallow-set fishery also implemented non-discretionary terms and conditions of the BiOp issued by the USFWS on November 28, 2000 (USFWS 2000). A final rule (67 FR 34408, May 14, 2002) subsequently implemented the requirements contained in the emergency rule. The required seabird mitigation techniques applied when making deep-sets north of 23° N and required fishermen to employ a line-setting machine with at least 45 g weights attached within 1 m of each hook. They must have also used thawed blue-dyed bait and strategic offal discards during the setting and hauling of longline gear. These measures were revised (70 FR 75075, December 19, 2005) to satisfy the terms and conditions of the 2004 BiOp. The seabird mitigation requirements for Hawaii-based longline fishermen are listed in Table 3.

Description of Mitigation Measures

Vessel operators have the option of either using side-setting (as defined under the regulations) or an alternate suite of mitigation methods. A variety of seabird deterrence methods for longline fisheries have been tested and found to reduce interaction rates and mortality of seabirds (e.g., Brothers 1995; Brothers et al. 1999; Gilman et al. 2003, 2005, and 2007; McNamara et al. 1999). When employed effectively, seabird interaction avoidance measures have the potential to nearly eliminate seabird interactions. To resolve the problem of seabird mortality in these fisheries, there is a need to identify deterrent methods that not only have the capacity to minimize seabird interactions, but are also practical and convenient to use by fishermen (Gilman et al. 2005).

The following seabird deterrent methods are explained in more detail:

- Side-setting;
- Strategic offal discarding;
- Thawed blue-dyed bait;
- Weighted branch lines; and
- Night setting.

Table 3. Summary of current seabird regulations for the Hawaii longline fleet, effective as of January 18, 2006.
(Source: PIRO)

X = Required Measure	Side-Setting			Stern-Setting		
	Shallow Set	Deep Set >23° N	Deep Set <23° N	Shallow Set	Deep Set >23° N	Deep Set <23° N
Weights (minimum 45 g) attached within 1 m of the hook	X	X			X	
Set from port or starboard side	X	X				
Setting station at least 1 m forward of stern corner	X	X				
Line shooter at least 1 m forward of stern corner (if used)	X	X				
Deploy gear so that hooks do not resurface	X	X				
Use bird curtain	X	X				
Use thawed & blue-dyed bait				X	X	
Maintain at least 2 - one lb containers of blue dye on board the vessel at all times				X	X	
Use line shooter					X	
Employ strategic offal discards				X	X	
Begin set 1 hr after local sunset & complete before dawn				X		
Follow all seabird handling procedures	X	X	X	X	X	X

Side-setting

Side-setting involves deploying the gear from the side of the vessel, as compared to the conventional approach of setting from the stern (Fig. 7). The effect is that baited hooks are deployed closer to the side of the vessel's hull where seabirds are unable or unwilling to pursue them. With proper weighting, baited hooks deployed in this manner will sink to a depth where a

North Pacific albatross species could not reach them. Additionally, deploying a bird curtain inhibits the ability of seabirds to land along the side of the vessel where baits are accessible. An ancillary benefit of this technique is reduced bait loss for fishermen.

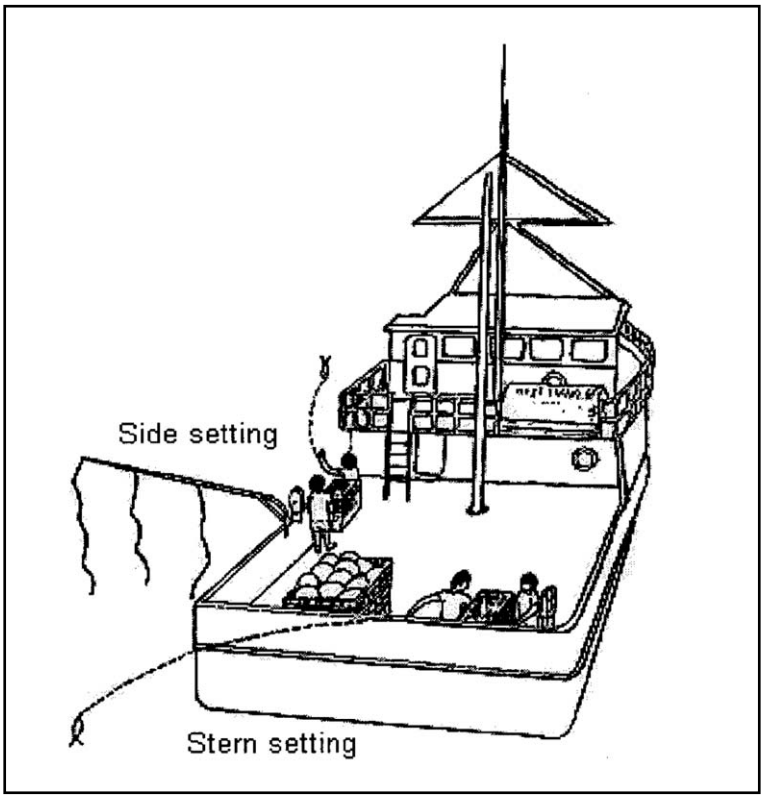

Figure 7. Depictions of side-setting and stern setting.
(Source: Gilman et al. 2003)

Side-setting requirements are as follows:

- Deploy the mainline as far forward on the vessel as practicable, including mounting line shooters (if used) at least 1 m forward from the stern corner of the vessel;
- Set the mainline and branch lines from the port or starboard side of the vessel;
- Attach weights (45 g minimum) to branch line within one meter of the hook;
- When seabirds are present, the longline gear must be deployed so that baited hooks remain submerged and do not rise to the sea surface; and
- A bird curtain must be deployed, that consists of the following three components (See example in Fig. 8):
    - A pole that is fixed to the side of the vessel aft of the line shooter and that is at least 3 m long;
    - At least three main streamers that are attached at regular intervals to the upper 2 m of the pole and each of which has a minimum diameter of 20 mm; and

- Branch streamers attached to each main streamer at the end opposite from the pole, each of which is long enough to drag on the sea surface in the absence of wind, and each of which has a minimum diameter of 10 mm.

If all of the above conditions are not met by a vessel, it is not considered to be side-setting by NMFS

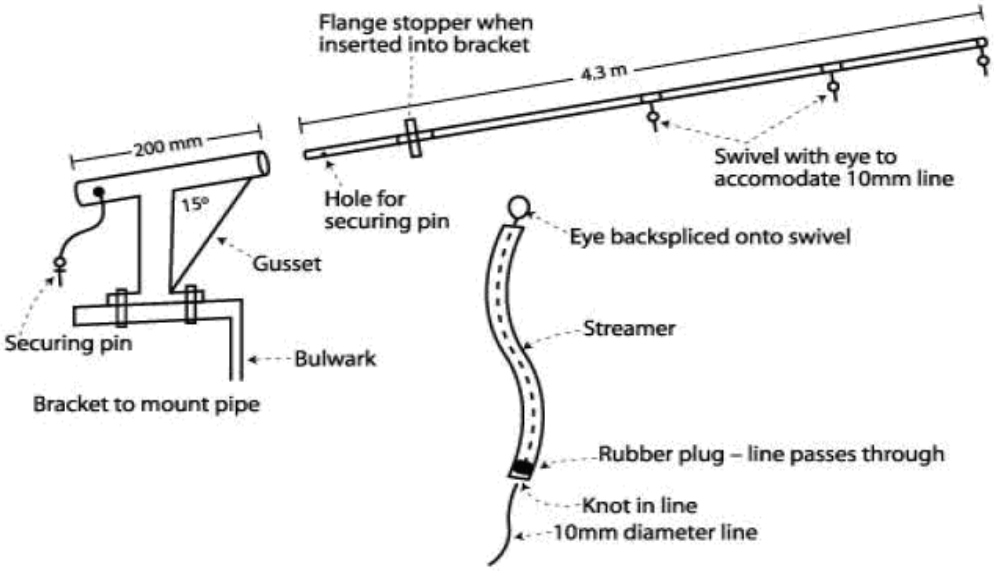

Figure 8. Bird curtain example design.
(Source: Modified from Gilman et al. 2003)

Sea trials and observations of fishing operations indicate that side-setting is the most effective of any single seabird mitigation method in reducing albatross mortality in the Hawaii longline fisheries. Side-setting produced the lowest seabird interaction rates when compared to underwater setting chutes and blue-dyed bait in both deep-set and shallow-set fisheries (Gilman and Kobayashi 2007). In 2005, observers did not observe any seabird interactions on vessels employing side-setting. Out of 124 active Hawaii longline vessels, 44 converted their vessels to side-setting by December 2005. In 2006, 35 vessels were configured to employ side-setting. In 2008, the trend of other vessels opting not to side-set continued. A partial survey of longline vessels found that some of the remaining side-set deep-setting vessels were planning on reconfiguring to stern setting vessels. No shallow-setting vessels were found to be using the side-setting technique in 2008. Some vessels that were outfitted for side-setting never used it and some vessels have reverted to stern-setting (Brothers and Gilman 2007). It is not known how many deep-set vessels have reverted to stern setting. Anecdotal information suggests that fishermen were concerned that setting the gear off of the side of the vessel might lead to fishing gear getting tangled in the propeller, but whether or not this has been widely realized is unknown. Some fishermen have reported no problems with propeller-fouling from side-setting and prefer this method over stern-setting. Another reason cited for not utilizing side-setting, or reconverting back to stern-setting was that after stern crew shelters had been erected, vessel

owners wanted to utilize the shelters after the expense and for crew safety. Again, because of its effectiveness and the high likelihood of compliance, even in the absence of observers, it is the seabird mitigation technique preferred by NMFS for deep-set vessels.

Vessel operators targeting swordfish are unlikely to switch to side-setting due to their unwillingness to place weights within one meter of the hook. Therefore, these vessels, even if they set their gear from the side, would not conform to the definition of side-setting under current regulations. While weights (≥45 g) are normally placed on shallow-set branch lines, they are usually situated far from the hook near the middle of the branch line. Fishermen usually cite safety considerations as the reason for placing weights near the middle of branch lines rather than closer to the hook.

Strategic Offal Discards

Strategically discarding offal is a technique developed by fishermen to mitigate interactions with albatrosses attempting to steal baits from hooks before the branch lines could be retrieved. Fishermen would throw swordfish heads and livers over the side of the vessel to distract albatrosses away from the baited hooks. NMFS observers in the mid-1990s noted that strategically discarding offal seemed to reduce incidental hookings and entanglements of albatrosses.

Strategic offal discards have been proven to be effective in reducing interactions with seabirds – if employed properly. Strategic offal discards reduced gear contacts with seabirds in the Hawaii longline shallow-set fishery by 51% and seabird interactions by 88% (McNamara et al. 1999). However, over time, this practice is believed to attract birds to the vicinity of the vessel, increasing bird abundance, searching intensity, and interactions by reinforcing the association that birds make with specific longline vessels being a source of food (Brothers et al. 1999). Brothers (1996) hypothesizes that seabirds learn to recognize, by smell, specific vessels that provide a source of food, implying that vessels that consistently discard offal and fish bycatch will attract more seabirds than vessels that do not discard offal and fish waste. NMFS continues to monitor the effectiveness of strategic offal discards and other mitigation measures.

Strategically discarding offal to reduce seabird interactions requires vessel operators to:

- Retain sufficient quantities of spent bait and fish offal with hooks removed for use as strategic offal discards during fishing operations;
- Retain swordfish heads and prepare them by removing the bill, and cutting them length-wise between the eyes (See Fig. 9);
- Retain swordfish livers; and
- Discharge all spent bait and fish parts on the opposite side of the vessel during gear deployment and retrieval, if seabirds are present.

Figure 9. Preparing swordfish head for strategic offal discard.
(Source: PIRO)

Traditionally in the Hawaii-based longline fisheries, only swordfish were gilled and gutted at sea. However, in December 2004, the Food and Drug Administration (FDA) regulations required all fish be gilled and gutted at sea. Results from an analysis of Hawaii longline fisheries observer data indicate that only 18% of deep-sets employed strategic offal discards (Gilman 2004).8 This percentage increased to approximately 50%9 in 2005, partially due to the new FDA regulations.

Thawed Blue-dyed Bait

Dyeing bait to a specific blue color is a means to reduce the visibility of baits by reducing their contrast with the sea surface. The bait is thawed to increase sink rates and to allow a more effective penetration of the blue dye.

Almost all bait used in the Hawaii longline fisheries consists of fusiform fish: mackerel (saba), sardines, and saury (sanma). Using squid for bait is prohibited in the shallow-set fishery to reduce sea turtle interactions. While squid may still be used in the deep-set fishery, the cost is prohibitive. Several concerns have been noted by fishermen regarding the required bait treatments of thawing and dyeing and bait type:

- Blue dye is absorbed less readily by fish than by squid;
- Baits must be thoroughly thawed in order to ensure maximum dye absorption;
- It is difficult to achieve the NMFS-required color intensity due to scale loss by fish baits,
- thawing the bait results in its lower retention because thawed bait falls off the hook more easily than partially frozen bait;

[8] Note that when deep-setting south of 23° N, strategic offal discards are not required.
[9] This percentage is an estimated value, as observer data was recorded differently beginning in June 2005 when the regulation for recording "strategic offal discards" on the observer's data forms changed to be recorded only when seabirds are present (NMFS 2006).

- Thawed blue-dyed bait results in slower hook setting rates because of the time spent thawing and dyeing the bait blue during the setting of longline gear, and
- Dye can be messy, dyeing the hands and clothes of the crew and the deck of the vessel.

While fishermen must comply with blue dyed bait requirements and the benefits have been experimentally proven, they do not favor the technique. Gilman et al. (2007) suggest most of the practicality and convenience problems could be addressed if pre-blue-dyed bait were commercially available.

Weighted Branch Lines

Weights placed close to the hook on branch lines are intended to quickly sink baited hooks, before foraging seabirds can take the baits and then become hooked or entangled in longline gear. Hawaii longline vessels use a range of weight sizes from 45 to 80 grams within 1 m of the hook to quickly sink their branch lines to desired target depths. A recent study comparing the effective sink rates of 45 g (1.2 m/s) and 60 g (1.3 m/s) weighted branch lines concluded the difference in sink rates to be negligible (Brothers and Gilman 2005). 45 g weights are the current minimum weight requirement for deep-setting vessels fishing north of 23° N, and for side-setting vessels wherever they fish.

Night Setting

The use of night setting as a seabird mitigation measure requires that fishermen set their gear no earlier than one hour after local sunset, and complete the set no later than the following sunrise, using only the minimum number of lights necessary to conform to navigation rules and best safety practices. Night setting is based on the premise that seabirds cannot see baited hooks in the dark and, thus, do not attack them. The effectiveness of this measure may potentially be affected by moon phase and cloud cover, vessel lighting, and the use of light sticks to illuminate baits making them more conspicuous10. Night-setting has been identified as an effective seabird mitigation measure, reducing seabird interactions by 73% (McNamara et al. 1999) and even by as much as 98% (Boggs 2001). In the past, shallow-set vessels were able to set before sunset, resulting in correspondingly high sea bird interaction rates. Interaction rates have remained low in the shallow-set fishery with the requirement for night setting.

Because the time at sunset changes with longitude and Hawaii-based longline vessels operate over a wide geographical area, NMFS observers aid fishermen to determine when it is legal for them to begin gear deployment. NMFS observers are trained to use issued Global Positioning System units to determine the exact time of sunset for their vessel's longitude. This has proven to be very helpful, especially on cloudy evenings.

Mitigation Research in 2008

In 2008, Gilman et al. (2008) found that mitigation measures reduced interactions with albatross by 67%. As has been previously pointed out, lead weights are important to increase sink rates to

[10] Light sticks are used to make baits more conspicuous to swordfish feeding at night.

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Short Paper

Comparison of three seabird bycatch avoidance methods in Hawaii-based pelagic longline fisheries

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KEY WORDS: **albatross, bycatch, Hawaii, longline fishery, seabird.**

Capture in longline fisheries is a critical threat to most albatross and large petrel species.[1–3] Black-footed *Phoebastria nigripes* and Laysan *P. immutabilis* albatrosses are the predominant seabird species incidentally caught in Hawaii longline fisheries. This study reports results of a trial in the Hawaii pelagic longline tuna and swordfish fisheries comparing four experimental treatments' seabird capture rates and commercial viability. Two research fishing trips were conducted between 1 April and 17 May 2003 on a Hawaii-based pelagic longline vessel, at traditional fishing grounds south of the Northwestern Hawaiian Islands, between 21° 41′N and 25° 08′N, 173° 58′W and 167° 43′W.

Two of the treatments employed were setting branch lines through 9 m and 6.5 m long underwater setting chutes, which release baited hooks beneath the sea surface, in an attempt to prevent diving seabirds from reaching them. The design of the underwater setting chute, illustrated in Molloy *et al.*,[4] is similar to that used in this present trial. When setting with the 9 m and 6.5 m chutes on the research vessel, 5.4 m and 2.9 m of the chute's shaft was underwater, respectively.

A third treatment, called side-setting, entailed setting from the side of the vessel, with other gear design the same as conventional approaches when setting from the stern. The crew throwing baited hooks was 8 m forward from the port-stern corner. Baited hooks were thrown forward, close to the side of the vessel's hull, to protect baits from seabirds. A bird curtain was used, 4.9 m forward from the port-stern corner, when side-setting to increase the effectiveness of this mitigation method by preventing birds from establishing a flight path along the side of the boat where baited hooks were being deployed. The hypothesis is that when side-setting, baited hooks will be set close to the side of the vessel hull where seabirds will be unable or unwilling to pursue the hooks. By the time the stern passes the hooks, the hooks will have sunk to a depth where seabirds cannot locate them or cannot dive.

A fourth treatment was blue-dyed bait. Bait was completely thawed and dyed blue by soaking in a large tub with dissolved blue food coloring (Virginia Dare FD & C Blue no. 1) powder at a concentration of 4 g/L of water for 1–4 h to achieve regulatory-required darkness. The hypothesis is that dyed bait is difficult for birds to detect because it reduces the contrast between bait and sea color.

Research on the efficacy of blue-dyed bait and underwater setting chutes for pelagic longline fisheries at reducing seabird bycatch has been conducted previously.[5,6–10] This present study is the first assessment of the effectiveness of side-setting at reducing seabird capture.

Setting occurred only during daylight to enable observations of seabird interactions with fishing gear. Both tuna and swordfish gear used 60 g swivels attached within 1 m of the hook, a weighting design selected by the Hawaii Longline Association. Gilman *et al.*[5] has provided details of the fishing gear and methods of the Hawaii longline tuna and swordfish fisheries.

A total of 40 242 hooks were set during the experiment using Hawaii longline tuna gear and 10 023 hooks using Hawaii longline swordfish gear. One replicate consisted of setting one tote containing an average of 493 hooks. However, if two or more consecutive totes employed the same treatment, these were combined and treated as a single replicate to avoid pseudo-replication.

Every 15 min throughout each set, a count of each seabird species within a 500 m by 500 m

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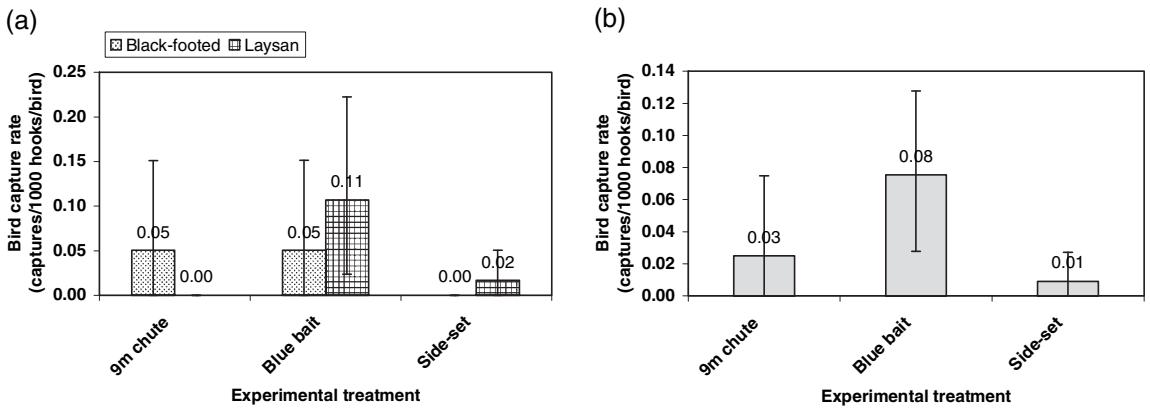

Fig. 1 (a) Laysan and black-footed albatross capture rates (captures/1000 hooks/bird) for experimental treatments used with swordfish gear. (b) Capture rates for experimental treatments used with swordfish gear for combined albatross species. Captures are based on the number of birds hauled aboard and not the number of birds observed captured during the set. Error bars are boostrapped ($n = 1000$) 95% non-parametric confidence intervals.

square area (within 250 m of port and starboard of the center of the vessel stern and within 500 m behind the vessel) astern of the vessel was recorded. Seabird captures and the species of seabirds caught during setting and hauling was recorded. A bird capture event during setting was recorded if a bird struggled persistently with outstretched flapping wings, and was finally lost to view astern as it maintained the same position of attachment to a hook. The number and species of dead seabirds hauled aboard was recorded.

Non-parametric 95% confidence intervals (95%CI) derived from percentile method bootstrapping at $n = 1000$ are reported for mean capture rates (using the number of birds hauled aboard). This is a standard resampling technique to address variability when the parametric assumptions cannot be met, when underlying distributions are poorly known because of a small sample size or other considerations such as skewed data and outliers.[11]

Seabird capture rates are reported for each experimental treatment. For instance, if seven birds were hauled aboard during an experimental treatment, 3896 hooks were set using this treatment, and the mean combined Laysan and black-footed albatross abundance during this treatment's replications was 27.8, then the mean capture rate (captures/1000 hooks/bird) is manually calculated as follows:

$$\frac{(7\ \text{captures})}{(3896\ \text{hooks}) \times (27.8\ \text{birds})} \times \frac{(1000\ \text{hooks})}{(1000\ \text{hooks})} = 0.06\ \text{captures}/1000\ \text{hooks/bird} \quad (1)$$

Figures 1 and 2 present the mean capture rates and 95%CI using the number of birds hauled aboard. Due to the rarity of seabird captures, some CI estimates of uncertainty for capture rates may be inaccurate, especially in cases of no observed captures, which is why no CI are presented around these means.

At the end of the third set of the first research fishing trip, the 9 m chute fractured and bent at the main pipe welding joint. This prevented further use in this trip, resulting in a smaller sample size than planned. Design problems were experienced with both chutes during the second trip.

No seabird captures were observed during hauling. Based on mean seabird capture rates (for combined albatross species, based on the number of seabirds hauled aboard), side-setting was the most effective treatment for both tuna and swordfish gear resulting in seabird capture rates of 0.002 (0.00–0.01 95%CI) and 0.01 (0.00–0.03 95%CI) captures/1000 hooks/bird, respectively (Figs 1 and 2). The second most effective method was the 9 m chute when used with swordfish gear (0.03 [0.00–0.07 95%CI] captures/1000 hooks/bird). The 6.5 m chute was the second most effective seabird avoidance method when used with tuna gear (0.01 [0.00–0.03 95%CI] captures/1000 hooks/bird). Blue-dyed bait resulted in 0.03 (0.01–0.06 95%CI) and 0.08 (0.03–0.13 95%CI) seabird captures/1000 hooks/bird when used with tuna and swordfish gear, respectively. Some of the mean bird capture rates were not significantly different. Unfortunately, engineering deficiencies experienced with the two chutes prevent meaningful evaluation of their efficacy.

Of the three methods assessed, side-setting holds the highest promise when considering both effectiveness and commercial viability. In addition to being more effective at avoiding seabird capture, side-setting provides substantial operational ben-

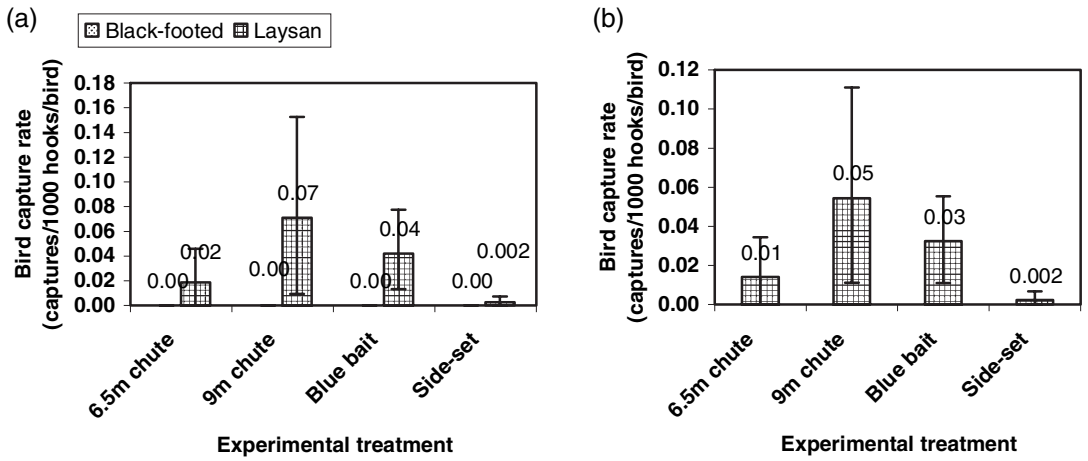

Fig. 2 (a) Laysan and black-footed albatross capture rates (captures/1000 hooks/bird) of experimental treatments used with tuna gear. (b) Capture rates of experimental treatments used with tuna gear for combined albatross species. Captures are based on the number of birds hauled aboard and not the number of birds observed captured during the set. Error bars are boostrapped (n = 1000) 95% non-parametric confidence intervals.

efits, such as eliminating the need to move gear and bait between two work stations, increasing available deck space by condensing the gear storage area, and having no cost to employ after the initial expense of converting the vessel deck design, which is on average less than $US1000. There were no incidences of gear being fouled in the propeller while side-setting, even when the captain turned the vessel hard to port and starboard to purposely attempt to foul the gear. Blue-dyed bait was impractical for several reasons, including the amount of time required to dye the bait, and the need to fully thaw bait, which increases bait loss from hooks and precludes retaining bait quality if a set is cut short. However, most inconveniences could be alleviated if pre-dyed bait were commercially available. The chute in its current degree of development is not expected to be acceptable to pelagic longline industries.

Side-setting, combined with adequate line weighting, holds promise to reduce seabird mortality in other pelagic as well as demersal longline fleets. Assessments in individual fisheries are needed to confirm this hypothesis. For instance, assessment of side-setting in longline fisheries with varying complexes of seabird species is needed to determine if there are species that can access baited hooks closer to the vessel hull than Laysan and black-footed albatrosses.

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Center for Biological Diversity
Turtle Island Restoration Network
The Humane Society of the United States
Natural Resources Defense Council
Defenders of Wildlife

Via Federal eRulemaking Portal

August 30, 2010

Dr. Rebecca Lent
Director, Office of International Affairs
Attn: MMPA Fish Import Provisions, NMFS, F/IA
1315 East-West Highway
Silver Spring, MD 20910

Re: RIN 0648-AY15; Implementation of Fish and Fish Product Import Provisions of the Marine Mammal Protection Act

Dear Dr. Lent,

The Center for Biological Diversity, Turtle Island Restoration Network, The Humane Society of the United States, Natural Resources Defense Council, and Defenders of Wildlife appreciate the opportunity to comment on the National Marine Fisheries Service's ("NMFS") proposed rulemaking to define U.S. standards relevant to implementing Marine Mammal Protection Act ("MMPA") section 101(a)(2). We believe that swift implementation of this law will serve a number of public interests, protecting both marine mammal populations and the economic interests of domestic fisheries. Therefore, we urge NMFS to initiate and complete expedited, formal rulemaking implementing this provision. We offer comments on the definition of the "U.S. standards" that must be met by nations wishing to export their fish and fish products to the U.S., as well as the process by which NMFS has proposed to implement MMPA section 101(a)(2).

I. MMPA Provisions Regarding Imports of Fish and Fish Products Must Be Implemented Swiftly, as Required by the Statute

In our 2008 petition, the Center and TIRN asked the U.S. government to enforce its non-discretionary duty under MMPA section 101, which states that the Secretary of the Treasury

> *shall* ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology that results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of the applying the preceding sentence, the Secretary . . . *shall* insist on reasonable proof from the

> government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States.

16 U.S.C. § 1371(a)(2) (emphasis added). While the Secretary of the Treasury has authority to implement the trade prohibition, the Secretary of Commerce is directed to collect the required proof from each nation.

The MMPA requires that the Secretary of Commerce, through NMFS, obtain reasonable proof of the effects of an exporting nation's fishing practices on marine mammals before allowing that nation to sell its products to the U.S. and, if those effects exceed U.S. standards for serious injury or death of marine mammals, that the Treasury Department prohibit the importation of the fish or fish product. The government's failure to do so for the more than three decades this provision has been in existence is unlawful. NMFS must take swift, concerted action to finally enforce this law and, by doing so, achieve its vital aims. Any further delay directly harms U.S. interests in conserving marine mammals, the ecosystems of which they are a part, and domestic commercial fishing industries.

As explained in the petition, Congress recognized that regulating U.S. fisheries alone would not be sufficient to protect marine mammals around the globe, many of which migrate great distances through international waters. The import prohibition in MMPA section 101 serves two critical purposes. First, it ensures that U.S. consumer dollars do not unwittingly contribute to the diminution of marine mammal populations by poorly regulated international fisheries. The law provides an incentive for foreign fisheries to adopt measures to reduce marine mammal bycatch by using U.S. economic power to discourage fishing methods that prove harmful to marine mammals. Whereas international treaties often lack adequate enforcement mechanisms, the plain and simple power of the U.S. market gives us the ability to more directly influence the fishing practices of nations that wish to export their fish and fish products to the U.S. This is particularly the case for swordfish, a luxury product for which the U.S. is the leading global consumer.

Second, the import prohibition serves to level the playing field for U.S. fishermen, who operate under various regulations designed to protect marine mammals and other species. Currently, U.S. fishermen must sell their catch alongside fish and fish products from nations that do not operate under any similar regulations and whose fishing operations likely cause significantly more harm to marine mammals than do closely regulated U.S. fisheries. The requirements of MMPA section 101 reflect the interests of fairness and conservation, which demand that U.S. fishermen not be forced to compete with fisheries whose practices do not meet U.S. standards.

For these reasons, we believe this provision must be implemented as rapidly as possible. We appreciate the need to act carefully when implementing international trade measures. We believe that the standards and processes we endorse provide appropriate means for NMFS and other federal agencies to carry out their non-discretionary duty to enforce the MMPA while addressing trade concerns.

II. "U.S. Standards" Must Be Defined in Terms of ZMRG and PBR for Purposes of Determining Compliance and Instituting Import Prohibitions

The basic "U.S. standards" that import-supplying nations must meet before selling their fish and fish products to the U.S. are set forth by the MMPA itself. The MMPA directs the U.S. government to ban the seafood imports that result in serious injury or death of marine mammals in excess of U.S. standards. 16 U.S.C. § 1371(a)(2). Directly preceding the sentence containing this directive, the law states, "In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate." *Id*. This is known as the "zero mortality rate goal" or "ZMRG".

The MMPA requires that fisheries "reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate." 16 U.S.C. § 1387(b)(1). For any domestic fishery that NMFS determines is not reducing marine mammal bycatch consistent with ZMRG, NMFS must develop and implement a take reduction plan "designed to assist in the recovery or prevent the depletion of each strategic stock which interacts with a commercial fishery listed under subsection (c)(1)(A)(i) or (ii) of this section…." *Id*. at § 1387(f)(1).

In pursuit of that goal, the MMPA requires that domestic fisheries be regulated, in part, based on the potential biological removal ("PBR") of a particular marine mammal stock. PBR is defined as "the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population." *Id*. § 1362(20). "Optimum sustainable population means, with respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element." *Id*. § 1362(9). By regulation, NMFS has defined achieving ZMRG as reducing take to ten percent or less of PBR. 69 Fed. Reg. 43338 (July 20, 2004).

In sum, the MMPA itself provides clear, measurable standards to determine the effects of a fishery on a marine mammal stock. Moreover, the very purpose of MMPA section 101(a)(2) is to ensure that the same MMPA protections that apply in the U.S. apply to fisheries that supply imported seafood, thereby protecting marine mammals in international waters as well as U.S. commercial fishing interests from unfair competition.

With these points in mind, we address the various options NMFS has proposed for defining "U.S. standards" according to the MMPA.

> Option 1: Evaluate whether marine mammal bycatch in import-supplying fisheries is maintained at a level below Potential Biological Removal (PBR) for marine mammal stocks.

> Option 2: Evaluate whether such bycatch has been reduced to insignificant levels approaching a zero mortality and serious injury rate (i.e. achieved ZMRG) to the extent feasible, taking into account different conditions.

We support using ZMRG and PBR as the basic standards of compliance for MMPA section 101(a)(2). The law requires that both domestic and import-supplying fisheries work toward the long-term goal of achieving a zero mortality and serious injury rate. In cases where a comparable U.S. fishery has achieved ZMRG, we support using ZMRG as the standard for determining whether import-supplying fisheries are meeting U.S. standards. However, we recognize that a number of domestic fisheries have yet to reach the zero mortality rate goal. Therefore, we support using the PBR standard as the basic standard of compliance, particularly for fisheries the U.S. equivalents of which have not attained ZMRG.

> Option 3: Evaluate whether marine mammal bycatch in import-supplying fisheries is maintained at levels below PBR or at levels comparable to those actually achieved in comparable U.S. fisheries, whichever is higher.

We believe this option is inconsistent with the spirit and letter of the MMPA. By setting the U.S. standard at whatever bycatch level occurs in the comparable U.S. fishery, even if that fishery itself is violating MMPA bycatch reduction requirements, this option could turn substandard domestic fishing practices into a standard for compliance. If a domestic fishery is failing to reduce take below PBR and move toward achieving the ZMRG, NMFS must take steps to bring the fishery into compliance. The agency may not simply sit by and accept a fishery's excessive harm to marine mammals as the norm. Yet Option 3 would establish the domestic fishery's bycatch rate as the goal for foreign fisheries even as the domestic fishery would remain subject to take reduction planning and subsequent regulatory measures to reduce bycatch.

> Option 4: Evaluate whether marine mammal bycatch in import-supplying fisheries either causes the depletion of a marine mammal stock below its optimum sustainable population or impedes the ability of a depleted stock to recover to its optimum sustainable population.

We do not support this option as a standard for determining compliance with U.S. standards. NMFS suggests this option because it "recognizes that foreign nations may have other approaches to achieving the same goal [of allowing marine mammal stocks to

reach or maintain their optimum sustainable populations], and that some of these might be commensurate with the U.S. marine mammal bycatch management program." 75 Fed. Reg. 22731, 22733 (April 30, 2010). However, this option appears to speak more to *how* a nation might satisfy the U.S. standards of PBR and ZMRG rather than what the standards are themselves. In other words, U.S. standards require bycatch reduction that is, at the very least, enough to bring a fishery's take below PBR levels and towards the ZMRG. We could support the evaluation NMFS proposes in Option 4 as a supplemental consideration to Options 1 and 2 if the following conditions were met: (1) NMFS were to base its evaluation of whether an import-supplying nation's bycatch reduction is "commensurate" with U.S. bycatch reduction measures on rigorous statistical modeling using reliable, independent observer data, and (2) such modeling demonstrated that the fishery is meeting the basic PBR standard.

> Option 5: Relying on standards from MMPA emergency regulations, evaluate whether bycatch in import-supplying fisheries has, or is likely to have, an immediate and significant adverse impact on a marine mammal stock.

We do not support this option. The MMPA uses significantly more protective standards, namely PBR and ZMRG, to regulate marine mammal bycatch and achieve vibrant marine mammal populations. Requiring that an import-supplying fishery have an immediate and significant adverse impact on a marine mammal stock in order to have negative effects in excess of U.S. standards would subject such a fishery to a substantially different standard that the ones required for U.S. fisheries and undermine the basic goals of the MMPA.

Moreover, this option does not seem to translate entirely to the international management context. Under the MMPA, NMFS can take emergency actions to reduce marine mammal bycatch in a fishery depending on whether a take reduction plan is in place, being developed, or entirely absent. Provisions related to fisheries without take reduction plans or teams rely on consultation with several U.S. agencies, including fishery councils. However, because these entities do not exist for foreign fisheries, most of these provisions would not apply.

That said, we agree that NMFS should use its authority and mandate to take emergency measures to ban imports from certain fisheries or impose immediate changes to reduce marine mammal bycatch while protective measures are being developed.

III. Standards Derived from the Endangered Species Act May Be Used to Prioritize Enforcement of Trade Prohibitions But Do Not Supply the Proper Basis for Defining "U.S. Standards" under MMPA Section 101(a)(2)

As noted above, the MMPA sets forth a substantially more protective standard for conserving marine mammal stocks than the jeopardy standard used under the Endangered Species Act ("ESA"). The MMPA was designed to ensure the conservation of vibrant

marine mammal populations as well as to prevent harm to individual animals. The overall goals of the MMPA include ensuring that marine mammals can remain at or recover to optimum sustainable population levels, maintain a significant functional role in the ecosystem, and support the overall health and stability of the ecosystem. *See* 16 U.S.C. § 1361. The MMPA therefore sets a more protective standard than the ESA by keeping populations well above the level of jeopardy.

In contrast, the ESA jeopardy standard focuses on whether a particular activity threatens the continued existence of a species. 16 U.S.C. § 1536(a)(2). The jeopardy standard does incorporate the notion of not interfering with the recovery of a threatened or endangered species. *See* 50 C.F.R. § 402.02; *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 481 F.3d 1224, 1236-37 (9th Cir. 2005). However, the ESA's definition of recovery – i.e. restoring the species to the point where protection under the ESA is no longer necessary to forestall the threat of extinction – is not as robust and protective as the MMPA's optimum sustainable population and zero mortality rate goals.

Therefore, we oppose NMFS's proposed Options 6 and 7, which would evaluate whether bycatch in import-supplying fisheries is likely to jeopardize the continued existence of any endangered or threatened marine mammal species (Option 6) or more broadly whether bycatch by import-supplying fisheries is likely to jeopardize the continued existence of a marine mammal species (Option 7). As explained above, NMFS should base its regulatory definition of U.S. standards on those set forth by the MMPA, as in Options 1 and 2, above.

However, we note that consideration of threatened and endangered species protection could provide an appropriate means to prioritize enforcement of trade prohibitions under MMPA section 101(a)(2). For instance, if an import-supplying fishery is known to cause serious injury or death to threatened or endangered species, or species that may not be listed under the ESA but would qualify as threatened or endangered based upon the best available science, it would be appropriate for NMFS to prioritize banning the import of that fishery's products, expediting the data gathering and consultation processes and quickly implementing the import ban.

In addition, NMFS could look at measures implemented in U.S. fisheries to protect ESA-listed species from bycatch as a reference point for determining what sorts of protective measures may be effective in reducing serious injury and mortality to marine mammals in import-supplying fisheries. In the U.S., ESA and MMPA requirements have resulted in a variety of bycatch reduction measures, including gear-based requirements such as the use of acoustic pingers and net extenders and limits on the length of longlines, as well as other measures like time-area closures, safe handling and release training and equipment, and mandatory levels of observer coverage. In any case, however, NMFS must base its determination of a fishery's effects on marine mammal stocks on reliable data collected from that fishery.

IV. Compliance with U.S. Standards Must Be Defined in Terms of Fishery Effects, Not Simply the Existence of National or International Regulatory Regimes

The MMPA explicitly requires the U.S. government to look at "*effects* on ocean mammals of the commercial fishing technology" used by the import-supplying nation. 16 U.S.C. § 1371(a)(2)(A) (emphasis added). For that reason, NMFS's proposed Options 8 and 9 are inconsistent with the MMPA. We discuss these options briefly below.

> Option 8: Evaluate whether marine mammal bycatch in a foreign nation's import-supplying fisheries is managed effectively by a relevant international fisheries management or conservation organization, or by the fishing nation itself.

We oppose this option, as it provides neither a relevant "U.S. standard" nor an effective measure of a foreign fishery's impact on marine mammals. International treaties are often not well implemented or rigorous enough to protect marine mammals from bycatch. While an evaluation could be beneficial, standards for determining compliance with the MMPA should not be based on international fisheries agreements, which tend to have only very general bycatch reduction requirements and are rarely enforced. Moreover, the MMPA itself refers to U.S. standards, which are plainly derived from U.S. law.

The relevant inquiry here is whether bycatch is managed "effectively" to achieve MMPA standards. As explained below, that inquiry may only be definitively answered with data from the import-supplying fishery itself.

> Option 9: Evaluate whether foreign nations that supply fish and fish product imports to the United States have implemented regulations to address marine mammal bycatch in the nations' import-supplying fisheries that are comparable to regulations implemented by the United States, taking into account different conditions.

We oppose this option. Without first defining U.S. standards, determining whether import-supplying nations have "comparable" regulations would likely be a difficult and circular exercise. While such an evaluation could be beneficial in determining what particular measures may be sufficient or effective in meeting the basic standards of working towards ZMRG and maintaining bycatch at or below PBR, it does not in itself provide a standard by which to judge overall compliance.

V. NMFS Must Demand and Obtain Reliable, Robust Bycatch Data as a Precondition to Allowing Imports under Any Definition of U.S. Standards

MMPA section 101(a)(2)(A) specifies that the U.S. government, in implementing its duty to ban imports of fish and fish products associated with excessive harm to marine mammals, "shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States." Quite sensibly, the statute requires "reasonable proof" that imported fish and fish products meet U.S. standards under the MMPA before they are permitted to be imported into the U.S. In absence of such proof, the government must prohibit the import of fish and fish products.

Therefore, the first step for determining whether an import-supplying nation has met U.S. standards must be to determine whether the nation has in place an independent fisheries observer program capable of producing robust, reliable data on the fishery's bycatch. In addition, it is crucial that the nation have reliable stock or population data on affected marine mammal species to provide a benchmark against which to measure the effects of bycatch. Where data is lacking, the U.S. government may not assume that bycatch is not significant. Rather, the U.S. must demand such data as a precondition to allowing import of the nation's seafood and seafood products.

A critical part of any program purporting to meet U.S. standards is an independent observer program capable of generating reliable information to provide insight into the level and sustainability of protected species "bycatch." A number of expert reports have discussed or enumerated options for design of observer programs that can serve as a general guideline for international programs (e.g., FAO 2003; Babcock, *et al*.).

It is important that a reliable observer program provide random and representative coverage of vessels and/or ports in the fleet. The level of observer coverage should be sufficient to provide data with a low coefficient of variation ("CV"). The CV for data resulting from the observer program should ideally be less than 30% (Wade, *et al*. 1997). An understanding of the relative importance of a particular level of bycatch is predicated on a reasonable understanding of the stock abundance. The NMFS itself has provided some guideline for consideration of mortality estimates in determining sustainability of bycatch of marine mammal stocks (Wade, *et al*., 1997).

NMFS has also provided cautionary notes on the structuring of an observer program, with particular attention to funding constraints, legal and legislative mandates, and consideration of bias and the most robust approaches to statistical analysis (NMFS 2003). While there may be flaws in the U.S. system, foreign fleets should not be held to a lesser standard.

Any nation attesting to the sustainability of protected species bycatch must provide objective evidence of the magnitude of marine mammal serious injury and mortality in the fishery. A simple assertion by another nation that the number of marine mammals taken in its fisheries is low and/or sustainable is not sufficient.

VI. NMFS's Process for Evaluating Bycatch and Consulting with Import-Supplying Nations Must Provide for Expeditious Enforcement of Appropriate Trade Prohibitions under MMPA Section 101(a)(2)

NMFS is considering a four-step process for evaluating bycatch in foreign import-supplying fisheries that would integrate processes from MMPA Sections 117 and 118 and the High Seas Driftnet Fishing Moratorium Protection Act Section 610. We agree that the basic steps NMFS is considering are reasonable given the need to balance speedy implementation of MMPA section 101(a)(2) evaluations and trade prohibitions with measures that will ensure that such trade prohibitions withstand any challenges related to the General Agreement on Trade and Tariffs. Our central concern with NMFS's proposed approach is that it not undermine NMFS's ability to fulfill its non-discretionary duty to prohibit the import of fish or fish products from fisheries or nations that cause harm to marine mammals in excess of U.S. standards. We offer the following specific comments on the proposed process.

> Step 1: Nations provide proof of impact of those fisheries on marine mammals. Reasonable proof would be information that indicates a nation meets U.S. marine mammal bycatch standards.

We support this process, as this basic information is clearly required under the MMPA. In order to meet U.S. standards, "reasonable proof" must be provided by robust, reliable data derived from an independent fisheries observer program. We note, however, that NMFS bears the duty under the MMPA to immediately *request* such reasonable proof from all import-supplying nations and diligently pursue that information. Furthermore, NMFS must receive reliable proof of a fishery's effects as a pre-condition to allowing its products to be imported.

In order to expedite the long overdue implementation of MMPA section 101(a)(2), we recommend that NMFS request such proof immediately from all import-supplying nations. This would enable NMFS to identify nations that may need to go through the proposed consulting phase and prepare to undertake that phase as this rulemaking is completed.

> Step 2: Initiate consultation with nations that fail to provide reasonable proof or whose import-supplying fisheries are known or not likely to meet U.S. standards.

We support a brief and finite consultation process in each of these cases. However, we have concerns regarding breadth of NMFS's proposed consultation process.

The immediate aim of the consultation should be to gather information to determine whether an import-supplying fishery is meeting U.S. standards and, if not, to identify steps needed to reduce serious injury and mortality of marine mammals in the fishery. That process should be limited to a period of no more than six months.

NMFS's proposed consultation process includes a much broader set of considerations that could effectively eviscerate the implementation of import prohibitions required under MMPA section 101(a)(2). For instance, NMFS proposes to consider "the efficacy of marine mammal bycatch measures adopted under multilateral agreements to which the nation is a party, as well as the nation's implementation of those measures." 75 Fed. Reg. at 22733. As noted above, these multilateral agreements do not represent the U.S. standards that each import-supplying fishery must meet and may not be used as a substitute for those standards.

NMFS also proposes to broadly consider "different conditions" when making decisions regarding foreign fisheries imports. We believe that consideration of different conditions, such as scientific, regulatory, or economic capacity, may be relevant when determining whether NMFS will provide capacity-building or other assistance, these differing conditions are not a permissible basis for failing to enforce MMPA section 101(a)(2). The plain language of the statute specifies that the U.S. shall ban imports from foreign fisheries that cause serious injury and mortality of marine mammals in excess of U.S. standards. It does not modify this requirement with any notion of differing conditions or feasibility.

Furthermore, to the extent that NMFS does provide capacity-building, training, or technological assistance, this process should be undertaken separately from the consultation process. We support efforts to provide such assistance to nations in need of it in order to achieve long-term sustainability in their fisheries. However, we also recognize that such assistance may take many years, during which impermissible harm to marine mammals would continue. Therefore, we recommend that NMFS's regulations specify that a trade prohibition may go into effect before capacity-building or other assistance has been provided or completed.

NMFS must exercise its authority to implement a swift import prohibition where an import-supplying fishery is known to have a significant adverse effect on one or more marine mammal stocks. NMFS should also exercise that authority in cases where a nation simply refuses to provide proof of its fisheries' effects on marine mammals. If the law is to achieve its intended goals of protecting marine mammals and U.S. commercial fishing interests, NMFS must not reward recalcitrant nations by allowing them to continue selling their fish and fish products in the U.S. even as they refuse to comply with the most basic U.S. standards.

Step 3: Allow time for consultation and proof of compliance to be completed.

As noted above, the consultation process should be brief and have explicit, firm deadlines for each stage. Should NMFS determine that a nation needs time to improve its capacity to conduct appropriate assessments, implement mitigation measures, or address other challenges, that additional time should not be included in the consultation period. Rather, NMFS should use that determination to prioritize its efforts to provide the necessary assistance or call upon relevant international fishery management bodies to do so. Where available information indicates that a fishery is having a significant adverse impact on marine mammals and the nation cannot or will not provide information to demonstrate otherwise, the prohibition on imports from that fishery should be put in place immediately.

Step 4: Prohibit import of fish and fish products from nations that fail to comply after consultation.

We support this step and again urge that consultations be brief, clearly delineated, and finite. The import prohibition must remain in place until the nation can supply reliable, robust data, preferably from multiple, consecutive fishing seasons, proving that it has reduced bycatch enough to meet U.S. standards.

VII. NMFS Should Require Intermediary Nations to Provide Proof that They Have Not Imported Any Fish or Fish Products Banned by the U.S.

We support NMFS's proposal to require that intermediary nations that re-export fish or fish products to the U.S. certify and provide reasonable proof that they have not imported any fish or fish products within the preceding six months that are subject to a direct trade import ban in the U.S. Such certification and proof should be requested and received from each intermediary nation before any fish or fish product is accepted for import. We do not support establishing procedures for implementing import prohibitions on a shipment-by-shipment or shipper-by-shipper basis, as this would be enormously resource-intensive and difficult to enforce, and would undermine the overall goal of the MMPA to raise marine mammal protection standards across international fisheries as a whole.

VIII. Conclusion

While we are encouraged that NMFS is finally moving forward to implement MMPA section 101(a)(2), we must stress that engaging in a rulemaking process is not sufficient, in and of itself, to fulfill NMFS's legal duties under the law. For nearly 30 years, the federal government has failed to execute the plain requirements of this statutory provision. Such a delay is unreasonable by any definition. The failure to comply with MMPA section 101(a)(2) has harmed marine mammal populations around the globe and placed U.S. fishermen at a competitive disadvantage for far too long.

We therefore urge NMFS to proceed expeditiously with a formal rulemaking to implement and enforce MMPA section 101(a)(2), as described above. Final regulations implementing this law are vital to ensuring that the core purposes of the MMPA are met and that imports from harmful import-supplying fisheries, such as longline and gillnet fisheries targeting swordfish, are swiftly prohibited. Rulemaking must be completed as quickly as possible while allowing time for public participation. Furthermore, NMFS must put the regulations into effect immediately upon completion and rigorously enforce MMPA section 101(a)(2) and implementing regulations.

We appreciate your attention to this important issue. Please do not hesitate to contact us if you have questions or wish to discuss the matter further.

Sincerely,

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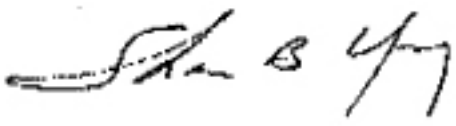

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Leatherback Sea Turtle Critical Habitat

"Sightings, Telemetry Positions, and Bycatch"

Seattle

WASHINGTON

Astoria

OREGON

Coos Bay

CALIFORNIA

Pacific Ocean

San Francisco

Monterey

Los Angeles

Photo: Nancy Black, NOAA

- Leatherback Telemetry Positions
- Leatherback Takes in Drift Gillnet Fishery
- Leatherback Sightings
- Leatherback Critical Habitat
- Pacific Leatherback Conservation Area*
- U.S. Exclusive Economic Zone

Leatherback sea turtle data
courtesy of NOAA Protected Resources
and NOAA Fisheries
Southwest Fisheries Science Center
published in: NMFS 2009
Revisions of Critical Habitat
for Leatherback Sea Turtles
Biological Report
http://www.nmfs.noaa.gov/pr/species/turtles/

*The Pacific Leatherback Conservation Area (PLCA) is closed to drift gillnets August 15 to November 15 each year.

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Miles

OCEANA

Map prepared by Ben Enticknap. January 30, 2012

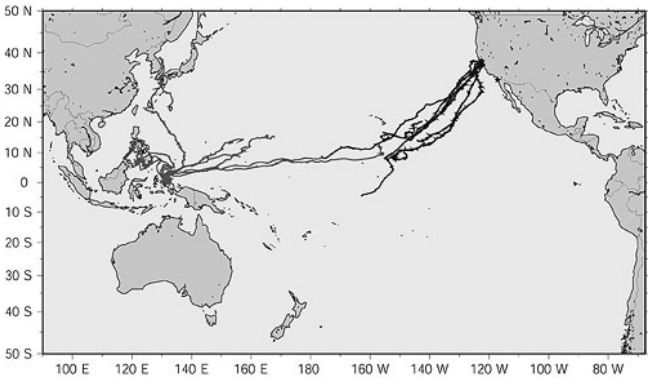
Adopting the Leatherback Sea Turtle as the Official State Marine Reptile

The Most Imperiled Sea Turtle in California

The California coast contains one of the most important feeding areas in the entire world for Western Pacific populations of the critically endangered leatherback sea turtle (*Dermochelys coriacea*)[1]. Naming this ancient mariner as the official State Marine Reptile will continue the State Legislature's dedication to protection of leatherback sea turtles described in Assembly Joint Resolution 62 (Leno) passed in 2008.

Pacific leatherbacks are among the most imperiled of any sea turtle population in any ocean basin on Earth. Populations of the Pacific leatherback, a 100 million-year-old species that outlived the dinosaurs, have declined by approximately 90 percent in the last 25 years. [2]

Scientists predict that unless current fishing practices are changed, Pacific leatherbacks will be extinct in as little as 10-30 years [2]. Other studies predict that the death of more than 1 percent of the adult female Pacific leatherback population each year could lead to its extinction [3]. Even small numbers of Pacific leatherbacks caught and killed in fisheries or harmed by coastal pollution and plastic pollution ingestion have serious consequences for the future survival of Pacific leatherback populations.



Satellite-tracked leatherback movements from nesting beaches in Papua, Indonesia and from foraging areas off the California coast in 2003-2004 (Dutton *et al*., unpublished).

Pacific Leatherback Threats

The immediate, primary threat to Pacific leatherbacks is drowning and injury from interactions with longline and gillnet fishing gear. Scientists estimate up to 50 percent of the remaining Pacific leatherbacks are caught each year by longline fisherman [2]. In 2000, pelagic longlines in the Pacific killed an estimated 1,000-3,200 leatherbacks [2]. Additional threats to leatherbacks come from coastal pollution, plastic ingestion, vessel strikes, poaching, and nesting beach degradation. Ingestion of plastic and entanglement in marine debris is common for leatherbacks, and can result in nutritional loss and even death [4].

California Legislative Actions Supporting Leatherbacks

Establishing the leatherback sea turtle as the official state marine reptile will continue the leadership role the State Legislature has played in protecting our oceans, marine wildlife, and leatherbacks as demonstrated by these historic actions;

In 1990, the California State Legislature banned all longline fishing in the Exclusive Economic Zone (EEZ) to prevent the deaths of leatherbacks sea turtles, marine mammals, and other marine species caught and killed as bycatch in this fishery [5]. No experimental fishing permits for longlines have been granted in the California's EEZ since that decision.

In 2008, the California State Legislature passed Assembly Joint Resolution No. 62 (Leno) relative to west coast

sea turtle protection. The Resolution put the Legislature of the State of California on record acknowledging the severe decline of Pacific leatherback and North Pacific loggerhead sea turtle populations and supporting efforts to recover and preserve these populations."

In 2009, the California State Legislature passed Assembly Joint Resolution 8 (Monning) requesting that National Marine Fisheries Service provide proof as required by law from any country that sells fish products to the United States that their fishing practices do not harm or kill marine mammals. This Resolution was sponsored by the Turtle Island Restoration Network and supports increased protections for Pacific leatherbacks.

The proposal by the National Marine Fisheries Service in 2010 to establish critical habitat for the leatherback within much of the California EEZ was supported in writing by California Assembly members Jared Huffman, Pedro Nava and William Monning, Senator Mark Leno, and Rep. Lynn Woolsey in the U.S. House of Representatives.

Draft Bill to Establish the Leatherback Sea Turtle as the Official State Marine Reptile

A Section is added to the Government Code, to read:

(1) California is a coastal state that is dedicated to protection of our ocean resources, fisheries, and marine wildlife; and

(2) Sea turtles, fish, and marine mammals are a central component of California's natural heritage and marine biodiversity; and

(3) The Legislature of the State of California acknowledges the severe decline of Western Pacific leatherback sea turtle populations and supports efforts to recover and preserve these populations; and

(4) According to the National Marine Fisheries Service, the waters off the central California coast are a critical foraging area for Western Pacific leatherback sea turtles; and

(5) Scientists have determined that the populations of Pacific leatherback sea turtles have declined by approximately 95 percent in the last 25 years, as reported by Duke University in 2004; and

(6) On December 31, 2009, the National Marine Fisheries Service proposed that California's waters be designated as critical habitat area for the endangered Western Pacific leatherback sea turtle under the federal Endangered Species Act.

(7) The Pacific leatherback sea turtle (*Dermochelys coriacea*) is the official state marine reptile; and,

(8) Pacific Leatherback Day in California is designated for October 15 of each year; and,

(9) The state legislature directs California public schools to include Pacific leatherback sea turtles into their teaching lessons and curriculum whenever possible; and,

(10) The state legislature urges state and federal agencies, non-governmental agencies, fishers, whale-watch tour operators and other interested stakeholders to establish and participate in a statewide, voluntary Leatherback Sea Turtle Watch to record sightings of the Pacific leatherback in California and West Coast waters; and

(11) The state legislature urges state and federal agencies to build cooperative relationships with the island nations where Pacific leatherback sea turtles return to nest in order to increase awareness and conservation of this critically endangered species.

Contact

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(2) Lewison *et al.* 2004. Quantifying the effects of fisheries on threatened species: the impact of pelagic longlines on logger head and leatherback sea turtles. Ecology Letters 226 (2004).

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(5) NMFS. Draft Environmental Assessment, 2007. Issuance of Exempted Fishing Permit to Fish with Longline Gear in West Coast EEZ, 2007. Available at: http://www.pcouncil.org/bb/2007/0407/

Government property includes both Government-furnished property and Contractor-acquired property. Government property consists of material, equipment, special tooling, special test equipment, and real property.

(b) *Policy for Contractor Reporting of Government Property Lost, Stolen, Damaged, or Destroyed.*

(1) The Contractor shall use the Defense Contract Management Agency (DCMA) "e-Tools" software application for reporting of loss, theft, damage, or destruction of Government property. Reporting value shall be at acquisition cost. The "e-Tools" system can be accessed from the DCMA home page External Web Access Management application at *http://www.dcma.mil.*

(2) Unless otherwise provided for in this contract, the requirements of paragraph (b)(1) of this clause do not apply to normal and reasonable inventory adjustments, *i.e.,* losses of "low risk" consumable material such as common hardware, as agreed to by the Contractor and the Government Property Administrator. Such losses are typically a product of normal process variation. The Contractor shall ensure that its property management system provides adequate management control measures, *e.g.,* statistical process controls, as a means of managing such variation.

(3) Reporting requirements apply to losses outside such variation. For example, due to theft of; or when losses occur due to a failure to provide adequate storage or security, *e.g.,* failure to repair a leaky roof; or due to "acts of God," *e.g.,* tornado damages warehouse or stockroom.

(4) The aforementioned reporting requirements in no way change the liability provisions or reporting requirements under the clauses at FAR 52.245–1, Government Property, or FAR 52.245–2, Government Property Installation Operation Services.

(End of clause)

[FR Doc. 2010–9890 Filed 4–29–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Docket No. 0907301201–91203–01

RIN 0648–AY15

Implementation of Fish and Fish Product Import Provisions of the Marine Mammal Protection Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS issues this advance notice of proposed rulemaking to announce that it is developing procedures to implement provisions of the Marine Mammal Protection Act for imports of fish and fish products. NMFS is seeking advance public comment on the development of these procedures and on the types of information to be considered in the process.

DATES: Written comments must be received by 5 p.m. on June 29, 2010.

ADDRESSES: You may submit comments by any of the following methods:

(1) Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov*.

(2) Mail: Director, Office of International Affairs, Attn: MMPA Fish Import Provisions, NMFS, F/IA, 1315 East-West Highway, Silver Spring, MD 20910

(3) Fax: (301) 713–2313

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Michael Simpkins at *Michael.Simpkins@noaa.gov* or 301–713–9090.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361–1423h, contains provisions addressing bycatch, or the incidental mortality and serious injury, of marine mammals in both domestic and foreign fisheries. With respect to foreign fisheries, section 101(a)(2) of the MMPA (16 U.S.C. 1371(a)(2)) states that "[t]he Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary [of Commerce]- (A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States."

This rulemaking would define the "United States standards" referred to in MMPA section 101(a)(2), along with any associated criteria by which the United States would assess foreign fisheries that supply fish and fish product imports to the United States (hereafter "import-supplying fisheries") with respect to marine mammal bycatch. The rule also would describe procedures for ensuring the established standards and their associated criteria are met, as well as procedures for developing recommendations regarding import prohibitions if those standards and associated criteria are not met. In defining the standards and associated criteria by which marine mammal bycatch in import-supplying fisheries would be evaluated, this rulemaking would consider U.S. statutory provisions and regulations applied to the management of incidental mortality and serious injury of marine mammals, including provisions of the MMPA, the Endangered Species Act (ESA), and the High Seas Driftnet Fishing Moratorium Protection Act (HSDFMPA).

This rulemaking also would recognize existing bilateral or multilateral arrangements to address marine mammal bycatch in foreign fisheries as well as the potential for such arrangements in the future. In the case of eastern tropical Pacific yellowfin tuna purse seine fisheries, marine mammal bycatch is covered by section 101(a)(2)(B) and Title III of the MMPA (16 U.S.C. 1371(a)(2)(B) & 1411–1417, respectively), which incorporate requirements adopted under the auspices of the Agreement on the International Dolphin Conservation Program (AIDCP).

U.S. Incidental Marine Mammal Mortality and Serious Injury Statutory Provisions

Section 2 of the MMPA describes several broad goals, including (1) maintaining the health and stability of the marine ecosystem; (2) retaining marine mammals as a significant functioning element in the ecosystem of which they are a part; and (3) ensuring that marine mammals can remain at or recover to their optimum sustainable population. The term "optimum sustainable population" is defined in section 3(9) (16 U.S.C. 1362(9), 50 CFR 216.3) of the MMPA as "the number of animals which will result in the maximum productivity of the

population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element."

Sections 117 and 118 (16 U.S.C. 1386 and 1387) of the MMPA describe the current U.S. program for regulating bycatch in domestic commercial fisheries. The program includes (1) evaluating marine mammal stock status; (2) evaluating bycatch in commercial fisheries; (3) developing bycatch reduction measures and regulations following consultation with stakeholder-based take reduction teams; and (4) implementing emergency regulations when necessary.

MMPA section 118(f)(2) defines both short- and long-term goals for take reduction plans created by take reduction teams. The short-term goal is to reduce and maintain marine mammal bycatch below the potential biological removal level for a given stock. MMPA section 3(20) defines "potential biological removal" (PBR) as "the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population." The long-term goal is to reduce bycatch "to insignificant levels approaching a zero mortality and serious injury rate," often referred to as the zero-mortality rate goal. MMPA section 118(f)(3) provides NMFS with discretion to prioritize and develop take reduction plans based on available funding. MMPA section 118(f)(2) provides additional discretion with respect to the long-term goal by requiring NMFS to take into account "the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans."

Section 118(g) of the MMPA empowers NMFS to prescribe emergency regulations to reduce marine mammal bycatch in a fishery if the Secretary of Commerce finds that such bycatch is having, or is likely to have, an immediate and significant adverse impact on a stock or species.

The ESA contains provisions that apply more broadly to any direct or incidental serious injury or mortality of species listed as endangered or threatened under the ESA. Specifically, section 7 of the ESA (16 U.S.C. 1536) requires Federal agencies to ensure that any action authorized, funded, or carried out by such agencies is not likely to jeopardize the continued existence of any species listed as endangered or threatened under the ESA, or any species proposed for such listing. If an action is determined to likely result in jeopardy to a species that has been listed or proposed to be listed under the ESA, the responsible Secretary (of Interior or Commerce) is required to develop reasonable and prudent alternatives, as necessary or appropriate, to mitigate such impact. If there is no reasonable and prudent alternative available, then section 7 of the ESA also provides that the Endangered Species Committee may decide whether to grant an exemption from the jeopardy prohibition.

Under section 610 of the HSDFMPA (16 U.S.C. 1826k), the Secretary of Commerce is required to identify nations whose fishing vessels engage in fishing activities or practices that result in bycatch of protected living marine resources (PLMRs), including marine mammals. In determining whether a nation's vessels have engaged in bycatch of a PLMR, the Secretary must determine whether the fishing activities in question result in bycatch of PLMRs in waters beyond any national jurisdiction or whether the bycatch involves stocks that are shared by the United States and occur beyond the exclusive economic zone of the United States. Such nations are identified if (1) the fishing activity in question occurred during the preceding calendar year; (2) the relevant international organizations for managing the fisheries or protecting the bycaught species have failed to implement effective measures to end or reduce such bycatch, or the nation is not a party or cooperating member of such organization; and (3) the nation has not adopted a regulatory program to reduce bycatch that is comparable to that of the United States, taking into account different conditions.

After a nation has been identified, the HSDFMPA requires that the Secretary, acting through the Secretary of State, notify and consult with the identified nation for the purpose of entering into treaties to protect the PLMRs in question. The HSDFMPA also authorizes the Secretary of Commerce to provide appropriate assistance to identified nations to assist those nations in qualifying for positive HSDFMPA certification, described below. Such assistance may include cooperative research, technology transfer, and assistance in designing and implementing fish harvesting plans.

Following consultation, an identified nation is certified positively only if it provides documentary evidence that the nation has adopted a regulatory program to conserve PLMRs that is comparable to that of the United States, taking into account different conditions, and also has established a management plan that will assist in gathering species-specific data to support international stock assessments and conservation efforts for PLMRs.

Failure by a nation to receive a positive certification under the HSDFMPA may result in denial of port privileges and prohibition of imports of some fish or fish products.

Possible Standards for Evaluating Marine Mammal Bycatch Associated with Fish and Fish Product Imports

NMFS is considering whether the statutory provisions described above rise to the level of "United States standards," and, if so, NMFS is considering several possible standards that could be used when evaluating marine mammal bycatch in import-supplying fisheries for the purposes of implementing MMPA section 101(a)(2). NMFS also is considering whether to use only one of these standards or a combination of two or more standards when evaluating marine mammal bycatch in import-supplying fisheries. The options under consideration as possible standards are described below.

Several possible standards that NMFS is considering are derived from the short- and long-term goals of take reduction plans developed under section 118(f)(2) of the MMPA. Specifically, NMFS is considering evaluating whether marine mammal bycatch in import-supplying fisheries is maintained at a level below PBR for impacted marine mammal stocks (option 1). Alternatively, NMFS is considering evaluating whether such bycatch has been reduced to insignificant levels approaching a zero mortality and serious injury rate to the extent feasible, taking into account different conditions (option 2). NMFS recognizes that these two goals have been met for many, but not all, U.S. domestic fisheries. Another alternative possible standard NMFS is considering is to evaluate whether marine mammal bycatch in import-supplying fisheries is maintained at levels below PBR or at levels comparable to those actually achieved in comparable U.S. fisheries, whichever is higher (option 3). With respect to all three of these possible standards, NMFS recognizes that section 118(f)(3) of the MMPA provides NMFS with discretion to prioritize and develop take reduction plans for domestic U.S. fisheries to achieve these goals subject to available funding.

NMFS also is considering possible standards derived from the population status goal described in MMPA section 2. Specifically, NMFS is considering evaluating whether marine mammal bycatch in import-supplying fisheries either causes the depletion of a marine

mammal stock below its optimum sustainable population or impedes the ability of a depleted stock to recover to its optimum sustainable population (option 4). Domestically, the United States manages marine mammal bycatch based on PBR levels to achieve the goal of allowing marine mammal stocks to reach or maintain their optimum sustainable populations. However, NMFS recognizes that foreign nations may have other approaches to achieving the same goal, and that some of these might be commensurate with the U.S. marine mammal bycatch management program.

NMFS also is considering possible standards derived from the trigger for emergency regulations in MMPA section 118(g). Specifically, NMFS is considering evaluating whether bycatch in import-supplying fisheries has, or is likely to have, an immediate and significant adverse impact on a marine mammal stock (option 5).

NMFS also is considering possible standards derived from the jeopardy criteria described in ESA section 7. Specifically, NMFS is considering evaluating whether bycatch in import-supplying fisheries is likely to jeopardize the continued existence of any endangered or threatened marine mammal species (option 6). For this option, NMFS is considering whether and how to apply such possible standards uniformly to bycatch of foreign or international marine mammal species that are endangered or threatened, but have not been evaluated or listed under the ESA. Alternatively, NMFS is considering evaluating more broadly whether bycatch by import-supplying fisheries is likely to jeopardize the continued existence of a marine mammal species (option 7).

NMFS also is considering possible standards derived from HSDFMPA section 610. Specifically, NMFS is considering evaluating whether marine mammal bycatch in a foreign nation's import-supplying fisheries is managed effectively by a relevant international fisheries management or conservation organization, or by the fishing nation itself (option 8). For this possible standard, NMFS would evaluate whether effective measures have been implemented by a relevant international fisheries management or conservation organization to which the nation is a party or cooperating member. If the relevant organization has not implemented effective measures, or the fishing nation is not a party or cooperating member of the organization, then NMFS would also evaluate whether the nation has adopted a regulatory program to reduce marine mammal bycatch that is comparable to that of the United States, taking into account different conditions.

Finally, NMFS is considering possible standards derived from regulations implemented to manage marine mammal bycatch in U.S. domestic fisheries. Specifically, NMFS is considering evaluating whether foreign nations that supply fish and fish product imports to the United States have implemented regulations to address marine mammal bycatch in the nations' import-supplying fisheries that are comparable to regulations implemented by the United States, taking into account different conditions (option 9). These U.S. domestic regulations are developed and applied on a regional and fishery-by-fishery basis, recognizing that different regional and fishery conditions bear on the effectiveness of the measures.

To the extent that the options described above are determined to rise to the level of "United States standards," NMFS anticipates selecting one or more of the possible standards described above to apply when evaluating marine mammal bycatch in a foreign nation's import-supplying fisheries and, in turn, to define those standards as "United States standards" for the purposes of section 101(a)(2)(A). NMFS intends to select clear standards and associated criteria that could be applied uniformly to all foreign fisheries that supply fish and fish product imports to the United States. NMFS also intends to select only standards and associated criteria that have been met by U.S. domestic fisheries.

NMFS requests comments on the standards to be used when evaluating foreign import-supplying fisheries, including any suggestions of other standards or associated criteria NMFS should consider or modifications of the standards suggested above; and whether to apply one or more standards.

Potential Procedures for Ensuring that U.S. Marine Mammal Bycatch Standards Are Met for Foreign Imports

NMFS is considering developing a process for evaluating bycatch in foreign import-supplying fisheries that would be consistent with both the U.S. process for managing domestic marine mammal bycatch, outlined in MMPA sections 117 and 118, and the process for assessing and certifying nations for bycatch of protected living marine resources, outlined in HSDFMPA section 610. In particular, NMFS is considering a process that would include (1) requesting that nations whose fisheries supply imports to the United States provide reasonable proof of the impact of those fisheries on marine mammals; (2) initiating consultation with nations who fail to provide such reasonable proof or whose import-supplying fisheries are known or likely to not meet U.S. marine mammal bycatch standards; (3) allowing some time for nations undergoing consultation to meet U.S. marine mammal bycatch standards by providing acceptable "reasonable proof" of the impacts of their import-supplying fisheries on marine mammals, by improving their assessment capabilities in order to provide such proof, or by implementing effective bycatch mitigation measures; and (4) recommending that the import of certain fish and fish products from a nation or fishery into the United States be prohibited if that nation or fishery fails to meet U.S. marine mammal bycatch standards after consultation.

With regard to (1) above, NMFS is considering defining "reasonable proof" as information that indicates that a nation's import-supplying fisheries meet U.S. marine mammal bycatch standards.

With respect to (2) above, NMFS is considering initiating consultation with nations to encourage each nation to take the necessary corrective action to meet the U.S. marine mammal bycatch standards. Such consultation would likely consider the efficacy of marine mammal bycatch measures adopted under multilateral agreements to which the nation is a party, as well as the nation's implementation of those measures. Such consultation also would likely identify different conditions that NMFS may consider when making decisions regarding foreign fisheries imports, including existing scientific capacity within the nation, differences in fishing practices, logistical and technical challenges to assessing status or bycatch of specific marine mammal stocks, and logistical and technical challenges to mitigating bycatch for some stocks or fisheries. As necessary, appropriate, and feasible, NMFS may provide capacity building, training, or technology transfer to address issues identified during consultation. Such consultation and capacity building would be consistent with the approach described in HSDFMPA section 610 for identifying and certifying nations for bycatch of protected living marine resources. Further, U.S. domestic consultations with take reduction teams also consider similar conditions, such as the quality of data available, logistical or technological challenges, and the feasibility of mitigation measures. NMFS also provides scientific support during domestic take reduction team consultations.

The time allotted in (3) above recognizes the need for some nations to improve their capacity to conduct suitable assessments, implement effective mitigation measures, or address unique challenges. NMFS is considering whether to include time to address these issues within the consultation period or to allow some time after consultation to assess the effectiveness of newly implemented measures before making import determinations. Both MMPA section 118(f) and HSDFMPA section 610 allow time for consultation before action is taken.

Finally, (4) refers to the implementation of import prohibitions themselves. NMFS would coordinate with other Federal agencies to make decisions regarding possible import prohibitions. NMFS also is considering whether and what kind of alternative procedures to establish for implementing import prohibitions on a shipment-by-shipment, shipper-by-shipper, or other basis if such imports were harvested by practices that do not result in marine mammal bycatch or were harvested by practices that are comparable to those of the United States. The HSDFMPA allows for the development of such alternative procedures.

NMFS is considering if and how intermediary nations should be addressed by the procedures under consideration. Intermediary nations are those that serve as intermediaries in re-exporting fish or fish products to the United States from the nation whose fisheries originally harvested the fish. With respect to yellowfin tuna harvested in the eastern tropical Pacific purse seine fisheries, section 101(a)(2)(D) of the MMPA requires that any intermediary nation certify and provide reasonable proof that "it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation to the United States." NMFS is considering using a similar approach to ensure that imports from intermediary nations meet U.S. marine mammal bycatch standards.

NMFS is requesting comments on the procedures under consideration for ensuring that foreign fisheries imports meet U.S. marine mammal bycatch standards, including whether to apply one or more of the possible standards when evaluating import-supplying fisheries to make decisions regarding initiating consultation or banning imports, which standards to apply, and whether to apply different standards for making the decision to initiate consultation than are used to make the decision to ban imports. Further, NMFS is requesting comments on what issues and conditions should be considered during consultation and whether and what kind of alternative procedures should be established for implementing import prohibitions on a shipment-by-shipment or shipper-by-shipper basis. Finally, NMFS is requesting comments regarding if and how intermediary nations should be addressed by the procedures under consideration.

Petition for Rulemaking

On March 5, 2008, the U.S. Department of Commerce and other relevant Departments were petitioned to initiate rulemaking to ban importation of swordfish and swordfish products from countries that have not satisfied the MMPA section 101(a)(2) requirement. The petition for rulemaking under the Administrative Procedure Act was submitted by two nongovernmental organizations, the Center for Biological Diversity and the Turtle Island Restoration Network. The complete text of the petition is available via the internet at the following web address: *http://www.nmfs.noaa.gov/ia/*. Copies of this petition may also be obtained by contacting NMFS [*see ADDRESSES*].

On December 15, 2008, NMFS published a notification of receipt of the petition, with a January 29, 2009, deadline for comments (73 FR 75988). NMFS subsequently reopened the comment period from February 4 to March 23, 2009 (74 FR 6010, February 4, 2009).

Although the petition only requested action regarding imports of swordfish and swordfish products, the import provisions of MMPA section 101(a)(2) apply more broadly to imports from other foreign fisheries that use "commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards". Therefore, this rulemaking would be broader in scope than the petition. Comments received on the petition were considered during the development of this advance notice of proposed rulemaking. Many of the comments were limited to the scope of the petition, but others are more broadly applicable. We have summarized all comments on the petition below.

Summary of Comments Received on Petition

NMFS received almost 45,000 comments on the petition during the two public comment periods, including comments from individual members of the public, environmental and industry groups, members of Congress, and swordfish exporting nations. The vast majority of public comments were submitted in association with mass comment campaigns by the Center for Biological Diversity and the Natural Resources Defense Council. NMFS developed this advance notice of proposed rulemaking in response to the comments received on the petition.

(1) *Support for the petition*—The vast majority of public comments supported the petition and recommended that NMFS implement the MMPA import provisions. Most of those comments recommended banning swordfish imports immediately, although a few comments recommended that NMFS request and evaluate information from nations before banning imports.

Some comments in support of the petition indicated that implementing the MMPA import provisions would (1) provide an incentive for foreign fisheries to implement bycatch reduction measures and data requirements similar to those of the United States; (2) provide added protection for marine mammals outside of U.S. waters; (3) level the "playing field" and protect U.S. fishers from unfair competition; and (4) ensure that U.S. consumers do not unwittingly contribute to the depletion of marine mammal populations as a result of poorly regulated fisheries. Several comments claimed that NMFS had failed to implement the MMPA import provisions and, thereby, had promoted the destruction of marine mammal populations and placed U.S. fishers at a significant competitive disadvantage. One comment suggested that NMFS did not need to develop regulations to implement a ban on swordfish imports because NMFS could "readily compare" foreign fishing operations to U.S. marine mammal bycatch standards.

(2) *Suggested alternative approaches to addressing international marine mammal bycatch*—Several comments suggested that working cooperatively with trading partners would be more effective than banning imports. Some of those comments suggested that the United States work to address international marine mammal bycatch through international organizations, such as regional fishery management organizations.

One comment suggested a capacity-building effort to bring about change in the fishing practices of trading partners. Another comment suggested developing a coalition of fish-importing companies in the United States to encourage suppliers in other countries to buy fish caught with "mammal safe" gear, which it suggested could be provided,

installed, and demonstrated by the U.S. government, industry, or non-governmental organization partners.

(3) *Possible standards*—A few comments pointed out the need to clearly define the "United States standards" regarding marine mammal bycatch in the context of section 101(a)(2) of the MMPA. Two comments recommended that NMFS consider the fisheries and fishing conditions of individual nations when evaluating those fisheries against U.S. marine mammal bycatch standards.

The majority of comments suggested that "United States Standards" should include consideration of the bycatch mitigation measures implemented by exporting nations. Comments suggested that foreign measures should be comparable to those used in U.S. fisheries, which include pingers (acoustic deterrents), net extenders, limits on longline length, time-area closures, safe handling and release training and equipment, and observer coverage.

Many comments suggested applying either the short- or long-term bycatch reduction goal of MMPA section 118 as a standard. The short-term goal specifies that bycatch should be reduced below a marine mammal stock's PBR level, while the long-term goal specifies that bycatch should be reduced to insignificant levels approaching a zero mortality and serious injury rate (sometimes referred to as the "zero mortality rate goal"). In contrast, one comment suggested that it would be inappropriate to hold exporting nations to the long-term goal until U.S. fisheries have achieved it. One comment recommended applying additional MMPA standards, including (1) maintaining the health and stability of the marine ecosystem; (2) recovering populations to, and maintaining them at, optimum sustainable populations; (3) ensuring that authorized take levels do not disadvantage affected stocks; and (4) requiring development of take reduction plans for fisheries that exceed a stock's PBR level. Several comments also pointed out that MMPA section 101(a)(2)(B) establishes standards for the eastern tropical Pacific purse seine fishery for tuna. Another comment suggested using the standards described in section 610 of the HSDFMPA.

(4) *Trade and economic issues*—Several comments discussed the relevance of the MMPA import provisions to intermediary nations. One comment recommended that NMFS apply the provisions to intermediary nations by requiring those nations to provide documentation as to how swordfish or swordfish products they export to the United States were harvested and what impact those fisheries had on marine mammals. Another comment suggested that harvesting nations should be responsible for issuing "mammal-free certifications" to vessels and that importers in intermediary nations should be required to obtain such "certifications" prior to landing fish at the nations' ports.

Numerous comments stated that a ban on swordfish imports would cause economic hardship for exporting nations. Another comment claimed that banning imports would financially harm importing companies in the United States because foreign harvesters would sell their fish to alternative markets.

Some comments voiced concern that implementing the MMPA import provisions could result in "unlawful barriers to international trade." Some comments suggested that any measures taken should not hamper trade in swordfish or any other fish caught by "proper fishing devices." A comment from one nation suggested that banning imports of swordfish would contradict the existing spirit of partnership and good relations with the United States. In contrast, one comment suggested that a ban on swordfish imports could be implemented in a manner consistent with the General Agreement on Tariffs and Trade and the World Trade Organization. That comment further suggested that NMFS is obligated to implement the MMPA import provisions, even if a ban on swordfish imports were found to be in conflict with international trade agreements.

(5) *Inaccuracies in petition and counter claims*—During its review of the petition, NMFS noted that the petition contained some factual errors. For example, some of the swordfish import amounts reported for Taiwan (referred to as China-Taipei in the petition), Mauritius, Mexico, New Zealand, and South Africa were incorrect. Corrections are available at *http://www.st.nmfs.noaa.gov/st1/trade/*.

NMFS also noted some discrepancies in the petition's description of the scope and timing of some U.S. fishery closures described in the petition. In particular, the description on page eleven of the petition underestimated the extent of longline closures in the Pacific, ignoring areas closed to longline fishing in Guam and the Northwestern and Main Hawaiian Islands. The description on page eight of the petition failed to recognize that the gillnet prohibition in the western Pacific fishery management area includes all U.S. EEZ waters around Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, and U.S. Pacific remote island areas. Further, the description on the same page of the timing of drift gillnet fishery closures on the U.S. west coast during El Niño events was incorrect; those closures are implemented from June 1 through August 31 when NMFS has forecasted or announced the occurrence of an El Niño event.

Several exporting nations offered counterclaims to those listed in the petition. Brazil noted that the petition claimed that Brazil expanded its longline fleet by leasing vessels from flag of convenience countries. In its comments, Brazil cited a law prohibiting vessels operating for Brazilian fishing companies from registering in other countries under flags of convenience. Taiwan provided comments questioning the validity of bycatch estimates for Taiwan fisheries in the petition. Taiwan argued that the estimates were derived using incorrect methods and data. Two nations commented that they believed there was no valid justification for the measures proposed by the petitioners.

A number of nations commented that their marine mammal protection programs were comparable to those of the United States. Those nations provided a variety of supporting information regarding their laws, regulations, and/or bycatch management measures.

One nation suggested that the provision of reasonable proof regarding the effects of fisheries on marine mammals is not a prior obligation of exporting nations, although the United States is entitled to request such information.

Classification

This advance notice of proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866.

Dated: April 26, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2010–10158 Filed 4–29–10; 8:45 am]

BILLING CODE 3510–22–S

October 21, 2011

Mr. Eric Schwaab
Assistant Administrator for Fisheries
National Marine Fisheries Service
1315 East West Highway
Silver Spring, MD 20910

RE: West Coast Swordfish Fishery

Dear Mr. Schwaab:

We are disappointed that the National Marine Fisheries Service (NMFS) is once again pushing to increase domestic Pacific swordfish landings and fishing effort with gears known to have high levels of bycatch. In this time when our country is seeking to promote sustainable industries and ecosystem-based approaches to management that protect and maintain the health and biodiversity of our oceans, it is unreasonable that NMFS continues to allow the California drift gillnet swordfish fishery to kill dolphins and sea lions, and to toss back, dead and damaged, 20 to 30 percent of its catch of fish. Further, it would be unreasonable to continue to invest in and promote efforts to develop a pelagic longline fishery for swordfish when the State of California and the Pacific Fishery Management Council have already taken actions to prohibit it due to the high levels of bycatch associated with this fishery and the take of endangered and threatened species.

We are writing to request that NMFS end this current effort to expand a west coast based drift gillnet or pelagic longline fishery for swordfish. If, however, NMFS is going to spend valuable time and taxpayer money investigating approaches to expand commercial fishing for swordfish on the west coast, you can expect serious challenges by conservation organizations and others if those efforts are 1) not associated with the phase out and prohibition of drift gillnet gear, and 2) associated with any experimental gear that is not significantly different from the drift gillnet or pelagic longline gear that NMFS has already tried, but failed to advance in recent years.

At the September 2011 meeting of the Pacific Fishery Management Council (PFMC), NMFS gave a report on the California-based driftnet fishery for swordfish and made the argument that NMFS and the PFMC must explore how to allow for greater catch levels of swordfish in U.S. waters in order to fulfill the local demand for swordfish. NMFS staff suggested in their report, without providing any supporting evidence, that if we increase domestic swordfish catch this will decrease the take of endangered leatherback sea turtles by other Pacific nations targeting swordfish. In response to the NMFS request, the PFMC directed its Highly Migratory Species (HMS) Management Team and Advisory Subpanel to provide information to inform a decision on whether to change the current driftnet swordfish fishery, scheduled for the March 2012 PFMC meeting.

If the agency's primary goal continues to be to increase domestic regional production of swordfish with a west coast fishery using drift gillnets and/or pelagic longlines, the result will be the increased take and mortality of endangered sea turtles, marine mammals, sharks, tunas, and many other fishes. We suggest, however, the primary goal ought to be a comprehensive international plan to protect marine mammals and recover endangered Pacific leatherback and loggerhead sea turtles from nesting beaches, across migratory pathways and in foraging hotspots. NMFS could work towards this goal by demanding changes to fisheries through international fisheries organizations to which the United States is a member, such as the Inter-American Tropical Tuna Commission (IATTC) and the Western and Central Pacific Fishery Commission (WCPFC), and also by using legal tools under the Magnuson-Stevens Fishery Conservation and Management Act and Marine Mammal Protection Act to restrict swordfish imports by Nations not meeting U.S. conservation standards.[1]

In particular, we urge NMFS to immediately finalize and publish a rulemaking to implement provisions of the Marine Mammal Protection Act that require foreign fisheries to meet the same levels of protections as domestic fishers for marine mammals. NMFS published an advanced notice of proposed rulemaking in April 2010 to develop regulations to implement these provisions and additional measures to ensure that foreign fleets protect all protected species including sea turtles under the Endangered Species Act.

Since the public comment period closed more than a year ago, NMFS has not moved forward on these important regulations. Doing so would help level the playing field for swordfish fishers in the U.S., and would likely be a far more effective option for providing sustainable seafood to the U.S. market than expanding the west coast swordfish fishery.

The PFMC, California legislators, the California Coastal Commission, conservation organizations, and thousands of members of the public have engaged in the debate over the west coast swordfish fishery now for decades. One thing is abundantly clear: these groups do not want to see an unselective west coast swordfish fishery that is going to kill marine mammals, endangered sea turtles and result in the annual bycatch of thousands of iconic fish and sharks. In 1992 the California Department of Fish and Game banned all pelagic longline fishing in the EEZ off the California Coast. Since 2004, longline gear used to target swordfish has been prohibited on the high seas off the U.S. west coast following NMFS' determination that the bycatch of North Pacific loggerhead sea turtles would violate the Endangered Species Act. In response to bycatch concerns, the State of Washington prohibits drift gillnet gear for swordfish and the State of Oregon revoked all of its drift gillnet permits for swordfish and thresher sharks in 2009. What is more, due to the projected high catch levels of non-target fish, marine mammals and sea turtles, the PFMC voted in April 2009 for the 'no action alternative' in a Draft Environmental Impact Statement that would have allowed for a west coast based high seas shallow-set longline

[1] 16 U.S.C. 1862i §608 'Actions to Strengthen International Fishery Management Organizations' and 16 U.S.C. 1826k §610 'Equivalent Conservation Measures' and 16 U.S.C. § 1371(a)(2) 'The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards.'

fishery for swordfish.[2] This high seas fishery proposal followed multiple failed Experimental Fishing Permit proposals to expand the geographic and temporal scope of the drift gillnet fishery into the Pacific Leatherback Conservation Area, and to allow for a single vessel to fish swordfish in the EEZ off California using pelagic longline gear.

In July 2008, the California Legislature passed AJR 62 with the resolution,

> That the Legislature of the State of California requests that the National Marine Fisheries Service defer consideration of any efforts to introduce shallow-set longline fishing off the California coast, both inside and outside the EEZ, until Pacific leatherback sea turtle critical habitat is established, the federal status of the North Pacific loggerhead sea turtle is clarified, and *critical habitat is designated for the North Pacific loggerhead sea turtle, if it is designated as "endangered". [emphasis added]*

As you know, on September 22, 2011, NMFS issued a final rule determining that North Pacific loggerhead sea turtles are a distinct population segment and that they are endangered with extinction, thus uplisting them from "threatened" to "endangered".[3] Given this resolution, however, NMFS should not pursue any efforts to expand pelagic longline fishing for swordfish until critical habitat is designated for both loggerheads and leatherbacks. While we expect a final rule designating critical habitat for leatherback sea turtles by November 15, 2011, NMFS has not yet issued a proposed rule to designate critical habitat for North Pacific loggerheads meaning that any effort by NMFS to expand a longline fishery would be contrary to the expressed resolution of the California Legislature.

Meanwhile, the California drift gillnet fishery targeting swordfish and thresher shark has a high level of indiscriminate and wasteful bycatch that includes many species of fish plus the lethal take of marine mammals (~138 marine mammals per year) ,[4] and at times, threatened and endangered sea turtles. Given this fishery's track record with bycatch, it is baffling that less than 14% of fishing effort was observed in the 2008-09 fishery and less than 13% in 2009-2010 fishery,[5] making it extremely difficult to accurately account for the bycatch of rare and endangered species known to be caught and killed by this gear. This is far under the 20%

[2] The proposed shallow-set longline fishery would have caught as bycatch, 3-9 leatherback sea turtles/ year, 4-27 loggerhead sea turtles/ year, 5-10 marine mammals per year, 5,900 – 30,900 sharks/ year, and 1,600-5,500 tuna/ year. NMFS 2009. Amednement 2 to the HMS FMP to authorize a shallow-set longline fishery seaward of the EEZ, PDSEIS, at 107, 72, and 99. PFMC Agenda Item D.2.a, Attachment 1, April 2009.
[3] 76 Fed Reg. 58868 (September 22, 2011)
[4] NMFS. 2011. National Bycatch Report, at 362
[5] NMFS California/Oregon Drift Gillnet Observer Program. Observed Catch-2009/2010 Fishing Season. http://swr.nmfs.noaa.gov/fmd/observer/catch0910.htm

observer coverage required by the 2004 Biological Opinion (BI-OP)[6] and the 30% coverage recommended by NMFS in the recently published National Bycatch Report.[7]

The NMFS National Bycatch Report finds that the bycatch of three marine mammal stocks in this fishery – the long-beaked common dolphin, short-finned pilot whale, and Northern right whale dolphin – exceed Potential Biological Removal levels defined in the Marine Mammal Protection Act and/ or the Zero Mortality Rate Goal.[8] Even with such low observer coverage, the bycatch of loggerhead sea turtles was observed in 2006, the bycatch of a leatherback turtle was observed in 2009, and the fishery is known to take prohibited species such as white shark, basking shark and megamouth shark.

NOAA's National Bycatch Strategy and bycatch reduction efforts define bycatch as "discarded catch of any living marine resource plus retained incidental catch and unobserved mortality due to a direct encounter with fishing gear."[9] This definition does not distinguish between live or dead discards; rather it includes all discards. In 2009, observers documented over 6 common molas discarded for every swordfish caught and an overall discard rate of 65% (number of animals discarded divided by total number of animals caught).[10] Using NMFS' bycatch definition, this is a bycatch rate of 91% (number of animals discarded or incidentally caught divided by total catch). Furthermore, from May 1, 2008 to January 31, 2009 there were 1,060 drift gillnet sets with approximately 25% of the catch returned to the sea dead or damaged (over 4,800 fish), including over a thousand sharks of various species, tunas and others fishes.[11]

We ask that you work with the Southwest Regional office of NMFS to end these repeated efforts to expand the west coast based drift gillnet fishery or pelagic longline fishery for swordfish. If anything, NMFS should be working to phase out and eventually close the California driftnet swordfish and thresher shark fishery once and for all, and in the meantime increase observer coverage to adequately monitor and account for all bycatch and discards, plus implement hard bycatch caps on all marine life taken including fish, marine mammals and sea turtles. We could envision exploration of other fishing gears that are substantially different from gillnets or longlines as part of a comprehensive strategy to develop a clean swordfish fishery, including potential expansion and/or marketing efforts focused on the harpoon fishery.

We also ask that NMFS develop and advance an international plan to protect and conserve marine mammals and sea turtles in fisheries from which the U.S. imports swordfish as described above. Clearly it is time to put an end to the indiscriminate killing and waste of marine life that has been occurring for decades in this driftnet fishery off the coast of California. Now is not the

---

[6] National Marine Fisheries Service, Southwest Region, Sustainable Fisheries Division and Protected Resources Division, Endangered Species Act Section 7 Consultation – Biological Opinion, Highly Migratory Species Fishery Management Plan, U.S. West Coast Fisheries. February 4, 2004. Page 38: "A vessel is required to carry an observer about 20 percent of the time."
[7] NMFS. 2011. National Bycatch Report, at 359
[8] NMFS. 2011. National Bycatch Report, at 359
[9] http://www.nmfs.noaa.gov/by_catch/bycatch_whatis.htm
[10] NMFS California/Oregon Drift Gillnet Observer Program. Observed Catch-2009/2010 Fishing Season. http://swr.nmfs.noaa.gov/fmd/observer/catch0910.htm
[11] NMFS, at http://swr.nmfs.noaa.gov/fmd/observer/catch0809.htm

time to take steps to expand this driftnet fishery or a pelagic longline fishery that will have similar, destructive impacts.

Sincerely,

Ben Enticknap
Pacific Project Manager
Oceana
222 NW Davis Street,
Suite 200
Portland, OR 97209

Teri Shore
Program Director
Turtle Island Restoration
Network
PO Box 370, Forest
Knolls, CA 94933

Catherine Kilduff
Staff Attorney
Center for Biological
Diversity
351 California St., Ste. 600
San Francisco, CA 94104

Enclosure: Table and Figure - Bycatch of marine mammals and fish species in the drift gillnet fishery

cc. Dan Wolford, Chair, Pacific Fishery Management Council
Rodney McInnis, Regional Administrator, NMFS SW Region
Mr. Jim Kellogg, President, California Fish and Game Commission

Table. Catch of marine mammals in the Drift Gillnet fishery after the Take Reduction Team requirement of acoustic "pingers" on nets was implemented. While observed takes declined after pingers were required, this fishery still catches and kills many marine mammals each year. From: PFMC and NMFS. March 2006. Draft EA, DGN EFP. PFMC Agenda Item J.3.a, Attachment 1, March 2006.

Dolphin, short-beaked common	**112**
Dolphin, long-beaked common	**6**
Dolphin, northern right whale	**22**
Dolphin, Pacific white-sided	**7**
Dolphin, Risso's	**9**
Dalls Poropoise	**1**
Sea lion, California	**84**
Seal, Northern Elephant	**17**
Whale, Fin	**1**
Whale, Gray	**3**
Whale, Humpback	**2**
Whale, Minke	**1**
Whale, short-finned pilot	**1**
Whale, Sperm	**2**

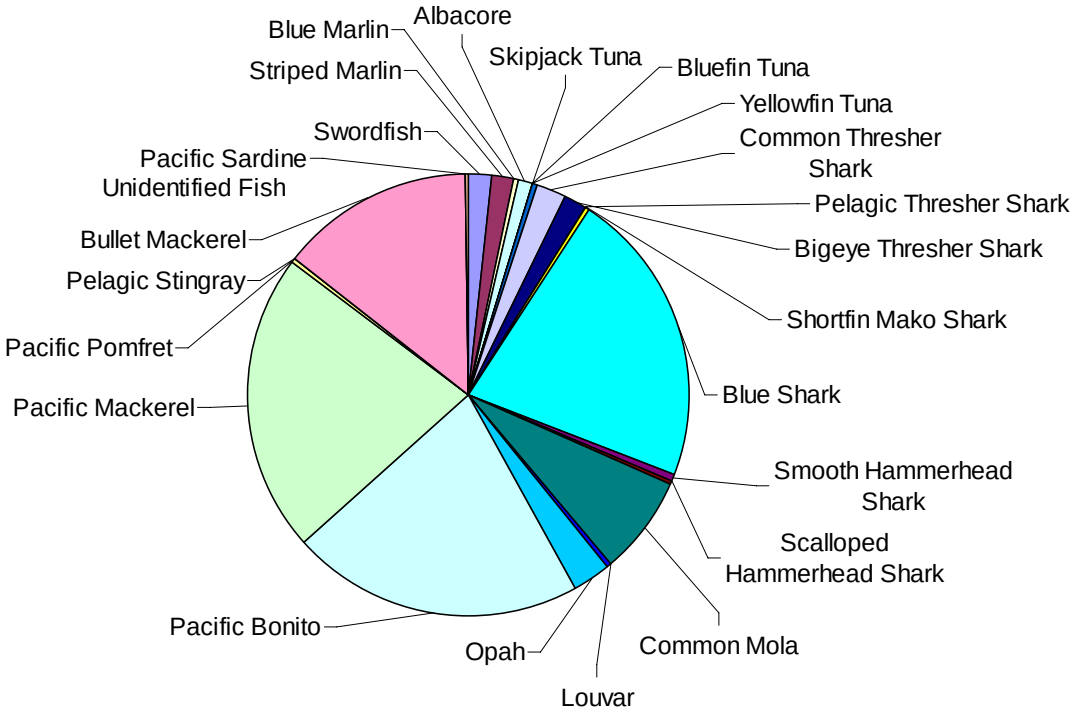

Figure. Discard mortality in the 2008-09 CA/OR Drift Gillnet Fishery. An estimated 3,595 fish were released dead based on observed rates from 146 sets and 1,060 total sets.

November 21, 2011

Mr. Rodney R. McInnis,
Regional Administrator
Southwest Region
National Marine Fisheries Service
501 West Ocean Blvd., Suite 4200
Long Beach, CA 90802–4213

Via Federal eRulemaking Portal

RE: NOAA–NMFS–2011–0211 Fisheries Off West Coast States; Highly Migratory Species Fisheries; Swordfish Retention Limits **(RIN 0648–BA87)**

Dear Mr. McInnis,

Please accept these comments from Turtle Island Restoration Network (TIRN) and the Center for Biological Diversity (The Center) on the proposed rule to implement the Pacific Fishery Management Council's (Council) recommendation to modify the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) regulations governing the possession and landing limits of swordfish captured in the Deep Set Longline (DSLL) fishery, contingent on hook type and fisheries observer presence.

TIRN and CBD cannot support the rule as proposed due to a lack of clarity on the need and overall intent of this regulation; how its implementation would impact federally protected sea turtles, marine mammals and bycatch species; its potential impact to Pacific swordfish populations; or whether it would lay the foundation for opening the West Coast High Seas to a surface longline fishery in the name of regulatory consistency.

Need and Intent of the Regulation
It appears that the main intent of the proposed action is to achieve consistency with swordfish retention limits in the Hawaii longline fleet managed by the Western Pacific Fisheries Management Council (WESPAC). If that is the case, then the publication and adoption of this rule is premature.

While we realize that WESPAC initiated actions to raise the limits of swordfish retention in the deep-set longline tuna fishery at its 148th meeting in June 2010, those recommendations have not been published, adopted or implemented by National Marine Fisheries Service.

The action on the potential regulation change in the Hawaii fishery was apparently delayed by National Marine Fisheries Service and remains on hold due to a consultation on seabirds under the U.S. Endangered Species Act, as described in this July 26, 2011, letter to WESPAC from National Marine Fisheries Service:

> The timing of developing the swordfish action appears to be on pace with a separate, related activity. NMFS is consulting with the U.S. Fish and Wildlife Service on the impacts of the continued operation of deep- and shallow-set longline fisheries on seabirds listed under the Endangered Species Act. We intend to complete the consultation before making determinations regarding ESA-listed seabirds in the swordfish retention action.

Since the regulation in Hawaii longline fishery has not been published, finalized or adopted, it is premature based on the consistency argument alone. Therefore, NMFS should not move forward with the proposed action in the West Coast DSLL fishery.

TIRN and The Center would also point to the closure of the Hawaii longline fishery on November 18, 2011, until the end of the year due to reaching the limit of 16 legal leatherback sea turtle takes. The fishery was also close to the limit of 17 loggerhead takes. Given this reality, striving for consistency with the Hawaii longline fishery is not necessarily a prudent step when it comes to protecting endangered marine species in the West Coast DPLL fishery.

Benefits of Proposed Action

The proposed regulation appears to have been developed to benefit a single fisherman that operates a longline fishing vessel on the West Coast High Seas. Because the regulation applies only to this one vessel, at least at this time, the regulatory documents do not provide detailed economic or environmental information need to assess the potential impacts of the proposed actions due to confidentiality issues.

As a result it is difficult if not impossible to provide detailed comments on the proposed action. In order to provide comprehensive comments on the proposed rulemaking, we seek answers to the following questions:

- How will the regulation impact bycatch of endangered sea turtles, marine mammals and other non-target species?
- How will the regulation impact swordfish populations?
- If the fishery already uses circle hooks and 100 percent observer coverage, what is the benefit of incentivizing use of circle hooks or observer coverage through increased swordfish retention?
- Will incentivizing circle hooks and 100 percent in the deep set tuna fishery provide any benefits other than potentially economic ones for the fisherman?
- Will incentivizing circle hooks provide new or additional bycatch information not currently available related to the use of circle hooks in tuna fisheries?
- If it is known that circle hooks reduce bycatch of sea turtles, why are they not already required in the deep-set tuna fishery?
- Why isn't the fishery also required to utilize weak hooks as is being required in the Hawaii longline fishery to protect false killer whales?
- Since the fishery already carries 100 percent observer coverage, how will allowing limitless retention of swordfish provide any additional benefits to information gathering or to improving sustainability of the fishery?

Entry of Additional Vessels to West Coast High Seas Fishery

A possible unintended consequence of the proposed action could be the entry of additional deep-set longline tuna vessels into the West Coast High Seas DSLL fishery. Currently there is no limit to the number of vessels that could enter the fishery, though NMFS has estimated that a maximum of six vessels are possible. The potential of up to five new vessels entering the fishery

was never analyzed in the proposed rule. National Marine Fisheries Service has not analyzed the potential for this to occur, nor what additional regulatory measures might be triggered if new vessels enter the fishery.

If additional vessels entered the fishery would 100 percent observer coverage be required on any vessels? What would the impacts on protected species and swordfish stocks be if additional vessels entered the fishery as a result of this action?

Need for Environmental Review

The questions above are most appropriately addressed through the processes of the Endangered Species Act, 16 U.S.C. §§ 1531-1544 ("ESA"), and the National Environmental Policy Act, 42 U.S.C. §§ 4321-4347. In order to fulfill the substantive purposes of the ESA, federal agencies are required to engage in Section 7 consultation to "insure that any action authorized, funded, or carried out by such agency...is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the adverse modification of habitat of such species... determined...to be critical." 16 U.S.C. § 1536(a)(2). Given that this action amends a rule implemented to avoid interactions with sea turtles, NMFS should analyze on the amendment's impacts to sea turtles. No such analysis was provided with the proposed rule on regulations.gov.

Several new regulatory developments related to U.S. West Coast sea turtle protections under the Endangered Species Act must also be considered in the environmental review process:

- The Pacific loggerhead sea turtle was recently uplisted from threatened to endangered[i], triggering the need for a new Biological Opinion for this and other fisheries that interact with this species. An analysis of the potential impacts to Pacific loggerheads from the proposed action and operation of the West Coast High Seas DSLL must be conducted.
- Critical Habitat for Pacific leatherback sea turtles is slated for designation in January 2011 after a needless and lengthy delay requested by National Marine Fisheries Service. The potential impacts to leatherback critical habitat from the proposed action and operation of the West Coast High Seas DSLL fishery must be analyzed in this rulemaking.

West Coast High Seas Surface Longline Fishery

Related to the proposed action, TIRN and The Center are very concerned that in September 2010 the Highly Migratory Species Subpanel of Pacific Fishery Management Council recommended re-opening the West Coast High Seas Surface Longline Fishery, citing regulatory consistency as a driver. While it is not clear if any regulatory action to implement this action has occurred, it is troubling that such a recommendation was made as follows:

> "The Highly Migratory Species Advisory Subpanel (HMSAS) strongly recommends that the Council begin the process to establish a shallow-set longline fishery for swordfish as allowed under the current regulatory framework.
> The HMSAS believes that a shallow-set fishery for swordfish is justified for the following reasons:
> • The Hawaiian shallow-set fishery reopened in 2004. This fishery has expanded and demonstrated that fishing for swordfish with longline gear can be prosecuted with minimal impacts to sea turtles.
>
> The HMSAS reiterates its strong support for establishing a longline shallow-set fishery for swordfish outside of the west coast 200 mile Exclusive Economic Zone. This is a great opportunity to provide our west coast fishermen access to a healthy and sustainable

> fishery and the dollars generated through this fishery will help both the industry and coastal communities our industry supports." [ii]

TIRN and The Center have major concerns with this proposal and would like to understand how the current action might be related to the recommendation. As mentioned above, the Hawaii longline fleet was shut down due to interactions with sea turtles on November 18, 2011, despite the use of circle hooks and finfish bait and other measures designed to minimize interactions and mortality.

TIRN and The Center are also concerned that since the NMFS swordfish workshop held in San Diego earlier this year that the Southwest Fisheries Science Center has advocating for enlarging the West Coast swordfish fishery despite the successes of the Leatherback Conservation Zone in preventing sea turtle interactions within the West Coast EEZ. NMFS staff have presented to the Council and the California Department of Fish Game, seeking support for expanding the swordfish fishery. In March 2012, the Council is expected to review the West Coast swordfish fishery at the request of NMFS. With these potential actions in mind, and given the lack of information and need for additional environmental review, it seems premature and counterproductive to move forward with the proposed action at this time.

Thank you for your consideration of our comments.

Sincerely yours,

Teri Shore, Program Director
Turtle Island Restoration Network
P. O. Box 370, Forest Knolls, CA 94933
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www.seaturtles.org

Catherine Kilduff, Staff Attorney
Center for Biological Diversity
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[i] Endangered and Threatened Species; Determination of Nine Distinct Population Segments of Loggerhead Sea Turtles as Endangered or Threatened, 76 Fed. Reg. 58,868 (Sept. 22, 2011).

[ii] Pacific Fisheries Management Council, Agenda Item K.2.b, Supplemental HMSAS Report September 2010 HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON CHANGES TO BIENNIAL MANAGEMENT MEASURES FOR 2011-2012

AQUARIUM
OF THE PACIFIC
A non-profit institution

February 29, 2012

Mr. Dan Wolford
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384

Dear Chairman Wolford and Council Members,

The Aquarium of the Pacific and its Seafood for the Future program strongly support the efforts of the National Marine Fisheries Service (NMFS) to revitalize the West Coast swordfish fishery. Particularly, we support adaptive measures that will enable alternative gear and regulations to further protect the leatherback turtle and other bycatch species, while enhancing the economic viability of the domestic swordfish fleet.

Over the past decade, the U.S. swordfish fisheries have been vilified for unsustainable practices. As a result, many of the men and women who depend on these fisheries have spent countless time, money, and resources to abide by the rules and regulations put forth by the Council and the NMFS. We applaud the Council's implementation of conservation measures such as the Pacific Leatherback Conservation Area (PLCA), however maintaining and/or creating healthy and viable domestic fisheries to support the fishing industry and the American appetite for seafood such as swordfish is also important.

In the U.S., swordfish fleets have drastically declined. Specifically, the Pacific drift gill net fleet has dropped from 129 vessels in 1990 and 1994 to 32 in 2009. These dramatic declines have resulted in the importation of more than 75% of the swordfish to the U.S. to bridge the gap between consumer demand and the dwindling domestic landings. Forty percent of these imports come from countries within the Eastern Pacific Ocean, where recent data suggest the leatherback turtles populations are particularly fragile. Many of these countries have few or no regulations to protect these and other special status species that may become bycatch of the swordfish fisheries.

The measures taken by the Council to protect the leatherback turtles are admirable and should not be discounted, however the unintended consequence—the dramatic decline of the domestic Pacific swordfish fishery needs to be addressed. The Council should adopt measures that allow alternative gear to be tested and utilized by the fleet. In addition, we support the continued efforts by NMFS to gather timely and relevant data to enable more adaptive measures that will further reduce bycatch, while maintaining the economic viability of the West Coast swordfish fishery.

Sincerely,

Jerry Schubel
President and CEO
Aquarium of the Pacific

Kim Thompson
Program Manager
Seafood for the Future

City of Morro Bay
Morro Bay, CA 93442
(805) 772-6200

February 27, 2012

Mr. Dan Wolford
Chairman, Pacific Fisheries Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220

RE: Agenda Item B-3-Future Swordfish Management Recommendations

Dear Chairman Wolford and Council Members:

The City of Morro Bay asks for your support for efforts to revitalize the West Coast Swordfish Fishery. In 2011 Morro Bay had a majority of the remaining Swordfish Drift Gillnet (DGN) Fishery landings, but overall landings and the number of participants dropped again this year. This fishery, as currently managed, experiences extremely low by-catch with minimal marine mammal interaction but is on a collapsing economic trajectory. At the same time swordfish imports, often from under-regulated and unobserved international fisheries, increase every year. The remaining participants in this fishery have identified some small changes in the Swordfish DGN Regulations that can help stabilize the fishery (and jobs) in the short term without negative by-catch or environmental impacts. This can occur while the industry, communities and the regulatory arena work on longer term improvements to keep these businesses and their high-quality product in the United States. We ask you to consider the suggestions of the industry participants included in Agenda Item B-3 to keep this clean and economically important fishery alive, while longer-term solutions can be implemented.

Sincerely,

William Yates,
Mayor

cc: Morro Bay City Council

u.w.letters.swordfish fishery

Approximately 260 emails with this message were received as of 3/1/12

---------- Forwarded message ----------
From: **Corrine Martinez** < >
Date: Thu, Mar 1, 2012 at 8:30 AM
Subject: Halt West Coast Swordfish Expansion
To: pfmc.comments@noaa.gov

Dear Chairman,

Dear Chairman Wolford and Council Members,

I am writing to urge the Pacific Fishery Management Council (the Council) to decide against taking any further action to expand the drift gillnet fishery for swordfish and shark or to develop a new pelagic longline fishery for swordfish and sharks off the U.S. West Coast.

Drift gillnets have been banned on the High Seas and along most of the West Coast because of high bycatch of marine life including endangered whales, dolphins, sea turtles, shark, tuna and other non-target fish. Recently two endangered sperm whales were entangled and killed in the California drift gillnet fishery. That is why it's called the curtain of death!

It makes no sense to invest taxpayer dollars in or support controversial federal efforts to develop a pelagic longline fishery for swordfish when the State of California and the Pacific Fishery Management Council have already taken actions to prohibit it due to the high levels of bycatch associated with the fishery and the take of endangered and threatened species.

Several new developments to protect endangered sea turtles along the West Coast must be considered in relation to the swordfish and shark fishery, including the designation of nearly 42,000 square miles of ocean as critical habitat for the endangered Pacific leatherback and the uplisting of the Pacific loggerhead from threatened to endangered under the U.S. Endangered Species Act.

For these reasons, I urge you to stop the plan to expand the swordfish fishery before it goes any farther. Instead, I urge the Council to begin to phase out the drift gillnet fishery along our coast, permanently ban longlining under any circumstances and to support sustainable fishing practices that don't compromise the health of endangered species, fisheries and our oceans.

Sincerely yours,

Corrine Martinez

A New Direction for the West Coast Swordfish Fishery

Geoff Shester, Ph.D.

OCEANA

Testimony to PFMC
March 2, 2012

NMFS National Bycatch Report 2011

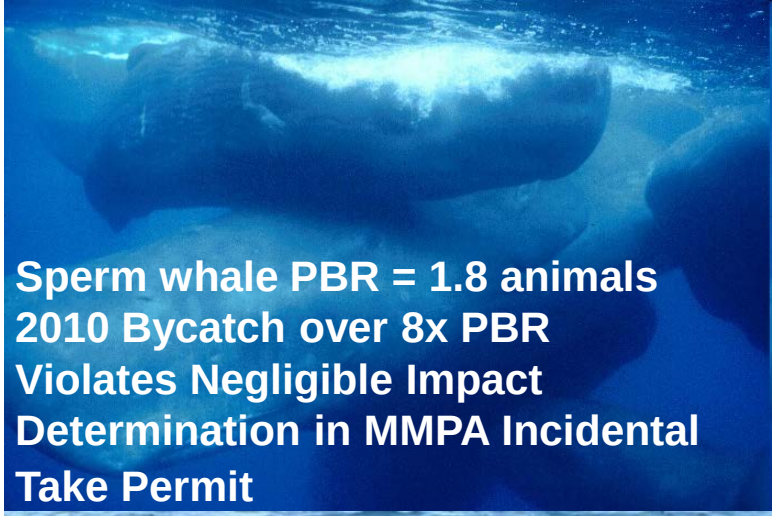
Subtable 4.5.A.1

CALIFORNIA/OREGON DRIFT GILLNET (MESH SIZE >14 INCHES) FOR SWORDFISH AND THRESHER SHARK					
COMMON NAME	**SCIENTIFIC NAME**	**DATA SOURCE**	**AVERAGE NUMBER**	**UNIT**	**CV**
California sea lion, U.S.	*Zalophus californianus*	2000–04	38	Individuals	0.38
Common dolphin, long-beaked, CA, OR, WA	*Delphinus capensis*	2000–04	4.4	Individuals	1.69
Common dolphin, short-beaked, CA, OR, WA	*Delphinus delphis*	2000–04	58	Individuals	0.15
Northern elephant seal, California breeding	*Mirounga angustirostris*	2000–04	8	Individuals	0.4
Northern right whale dolphin, CA, OR, WA	*Lissodelphis borealis*	2000–04	18	Individuals	0.31
Pacific white sided dolphin, CA, OR, WA, north and south	*Lagenorhynchus obliquidens*	2000–04	4.8	Individuals	0.72
Pilot whale, short-finned, CA, OR, WA	*Globicephala macrorhynchus*	2000–04	1	Individuals	1
Risso's dolphin, CA, OR, WA	*Grampus griseus*	2000–04	5.8	Individuals	1.02
TOTAL FISHERY BYCATCH			138	Individuals	5.67

2010 DGN Bycatch of Marine Mammals

Fishery and Species	Observed Bycatch	Bycatch Estimate
CA drift gillnet for swordfish and thresher shark		
Short-beaked common dolphin	3	25
Long-beaked common dolphin	1	8
Northern right whale dolphin	1	8
Bottlenose dolphin	1	8
Sperm whale	2	16

Carretta & Enriquez. 2012. NOAA ADMINISTRATIVE REPORT LJ-12-01



Sperm whale PBR = 1.8 animals
2010 Bycatch over 8x PBR
Violates Negligible Impact Determination in MMPA Incidental Take Permit

Observer Coverage

- 12% observer coverage is far too low to get accurate estimates of bycatch of rare species

- “The fraction of swordfish and thresher shark drift gillnet effort in 2010 that involved ‘unobservable’ or ‘unobserved’ vessels was approximately 40-45% of the total estimated effort, which raises concerns about the randomness of the observer sample”

Carretta & Enriquez. 2012. NOAA ADMINISTRATIVE REPORT LJ-12-01

Leatherback Sea Turtle Critical Habitat

"Sightings, Telemetry Positions, and Bycatch"

Photo: Nancy Black, NOAA

- Leatherback Telemetry Positions
- Leatherback Takes in Drift Gillnet Fishery
- Leatherback Sightings
- Leatherback Critical Habitat
- Pacific Leatherback Conservation Area*
- U.S. Exclusive Economic Zone

Leatherback sea turtle data courtesy of NOAA Protected Resources and NOAA Fisheries Southwest Fisheries Science Center published in: NMFS 2009 Revisions of Critical Habitat for Leatherback Sea Turtles Biological Report http://www.nmfs.noaa.gov/pr/species/turtles/

*The Pacific Leatherback Conservation Area (PLCA) is closed to drift gillnets August 15 to November 15 each year.

Seattle
WASHINGTON
Astoria
OREGON
Coos Bay
CALIFORNIA
Pacific Ocean
San Francisco
Monterey
Los Angeles

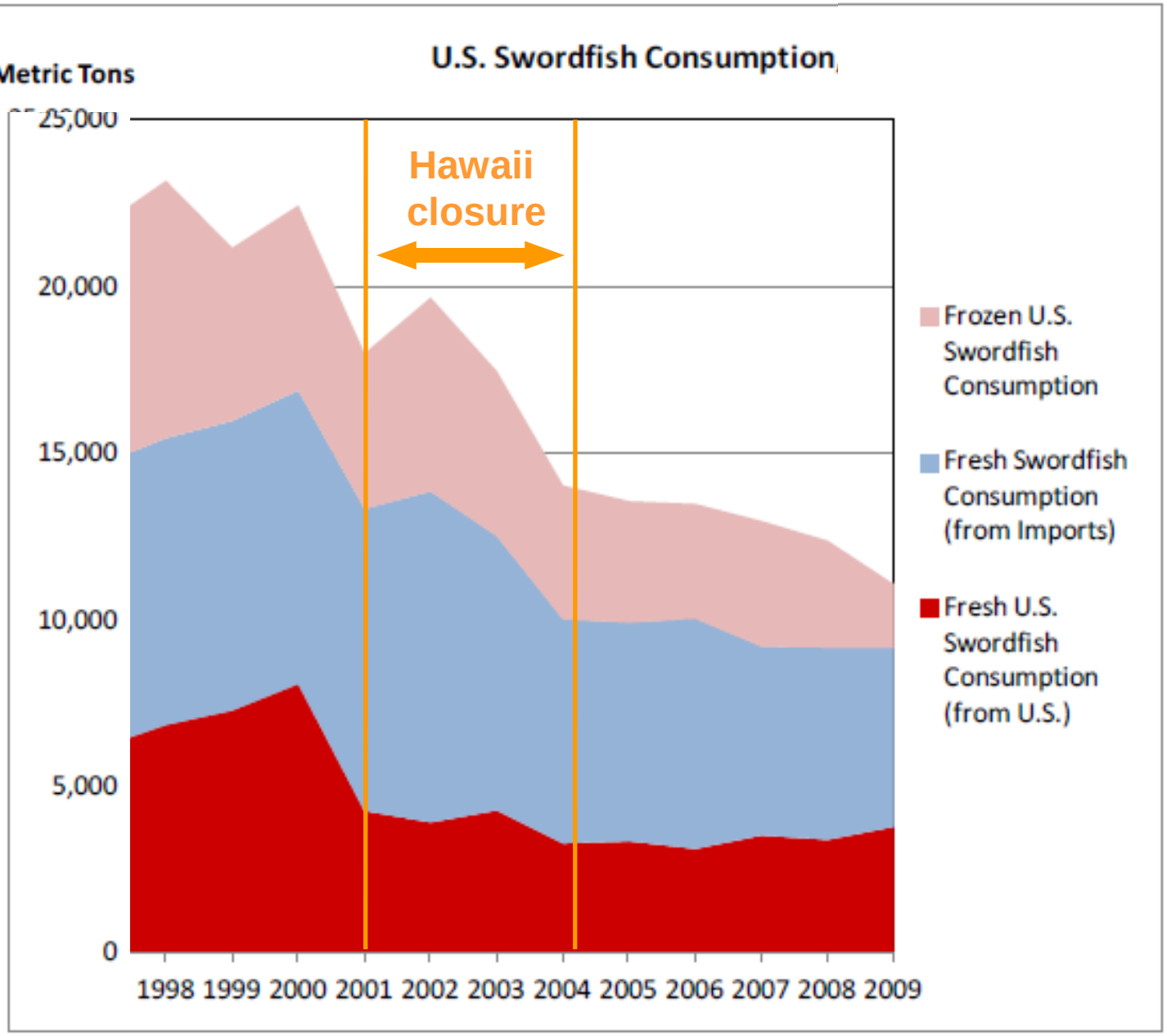
0 85 170 340
Miles

OCEANA

Map prepared by Ben Enticknap. January 30, 2012

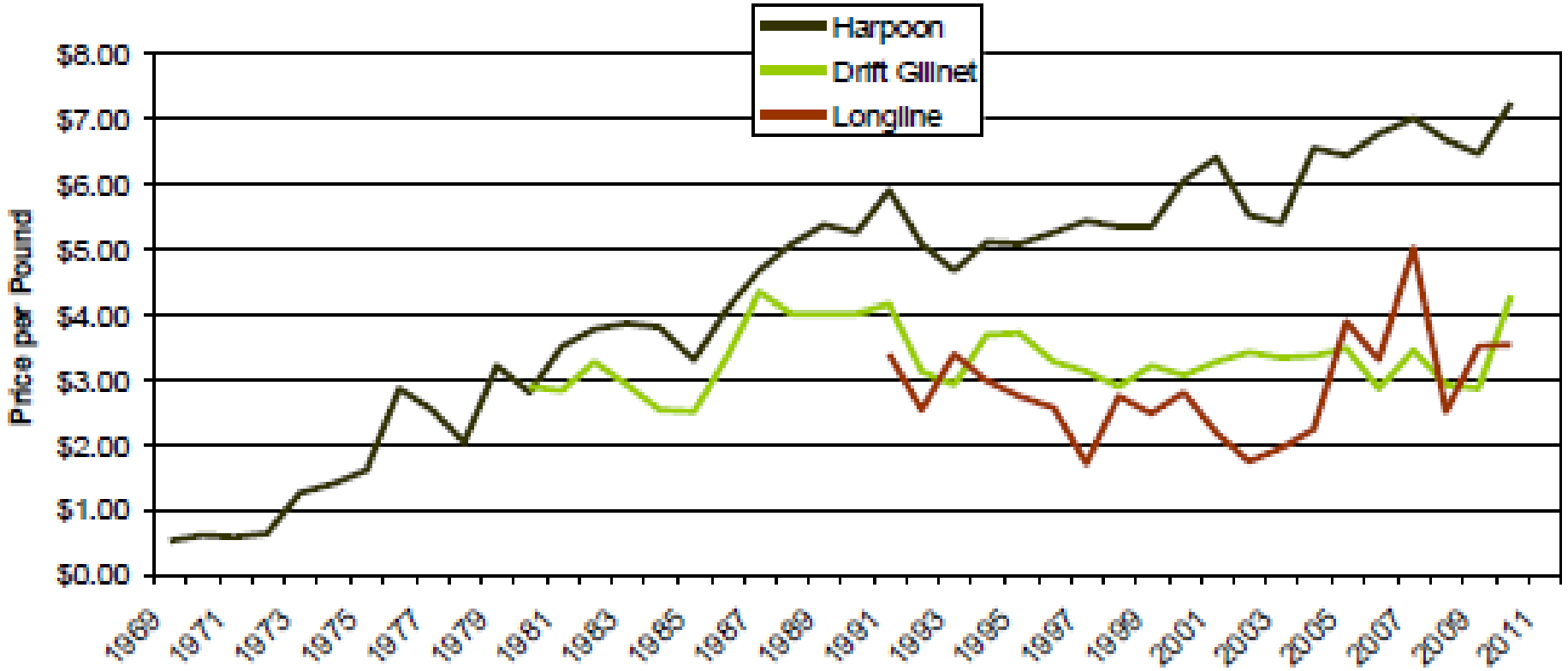
“Transfer Effect”

- As US production goes down, imports go up
- If imports go up, foreign fishermen fish harder
- Foreign fishermen have higher bycatch rates
- Therefore…kill more here so less die abroad



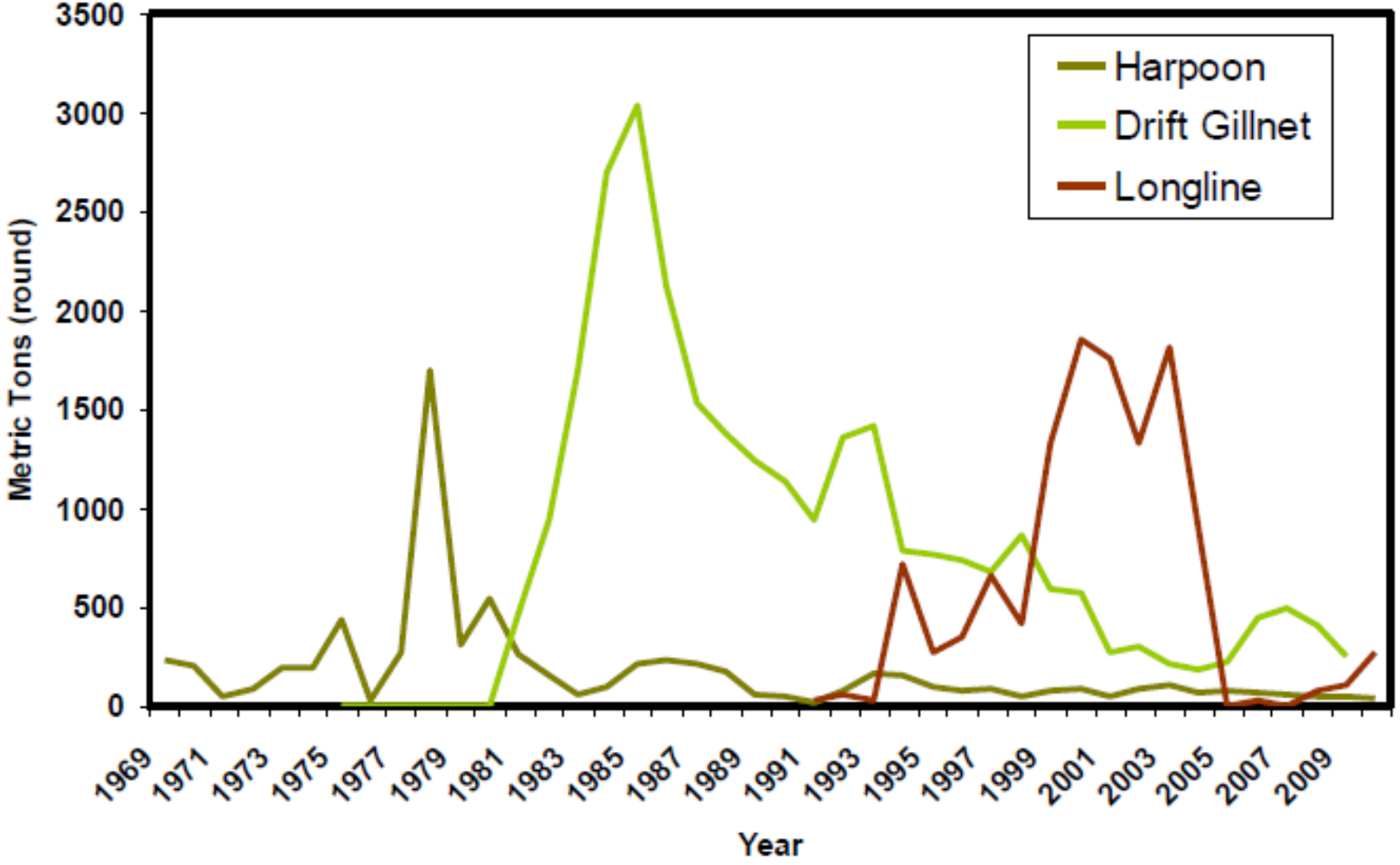
"One may assume that imports would increase as U.S. production declined but trade statistics showed that imports of fresh swordfish declined during the Hawaii closure period, as U.S. demand for swordfish declined."

Ex-Vessel Price per Pound for Swordfish



From CDFG presentation at May 2011 West Coast Swordfish Meeting

California Swordfish Landings by Gear Type



From CDFG presentation at May 2011 West Coast Swordfish Meeting

California AJR 62 (2008)

"The Legislature of the State of California requests that the National Marine Fisheries Service defer consideration of any efforts to introduce shallow-set longline fishing off the California coast, both inside and outside the EEZ, until … critical habitat is designated for the North Pacific loggerhead sea turtle, if it is designated as "endangered".

We Request:

- Phase out drift gillnet fishery altogether
- Address imports through MMPA and MSA
- Facilitate increased harpoon fishery effort to increase the capacity and create jobs
- Experiment with significantly different gear (e.g., buoy gear)
- Keep longlining off the table

Protecting Marine Species in the West Coast Swordfish and Shark Fishery

Critically Endangered!

Teri Shore

Program Director

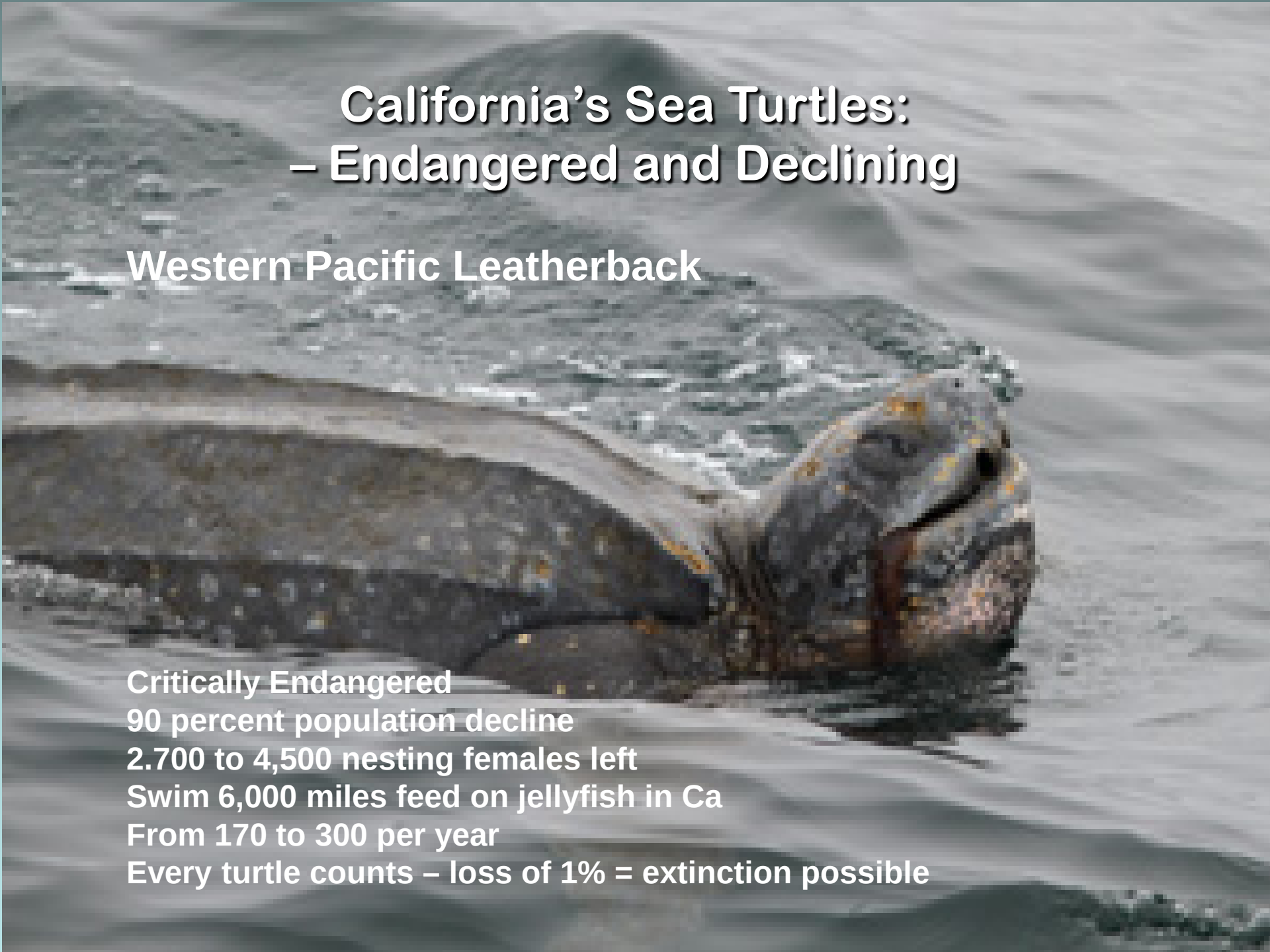
www.SeaTurtles.org

TURTLE ISLAND RESTORATION NETWORK

Pacific Fishery Management Council – March 2, 2012

Agenda Item B3.b Swordfish Management and Future Actions

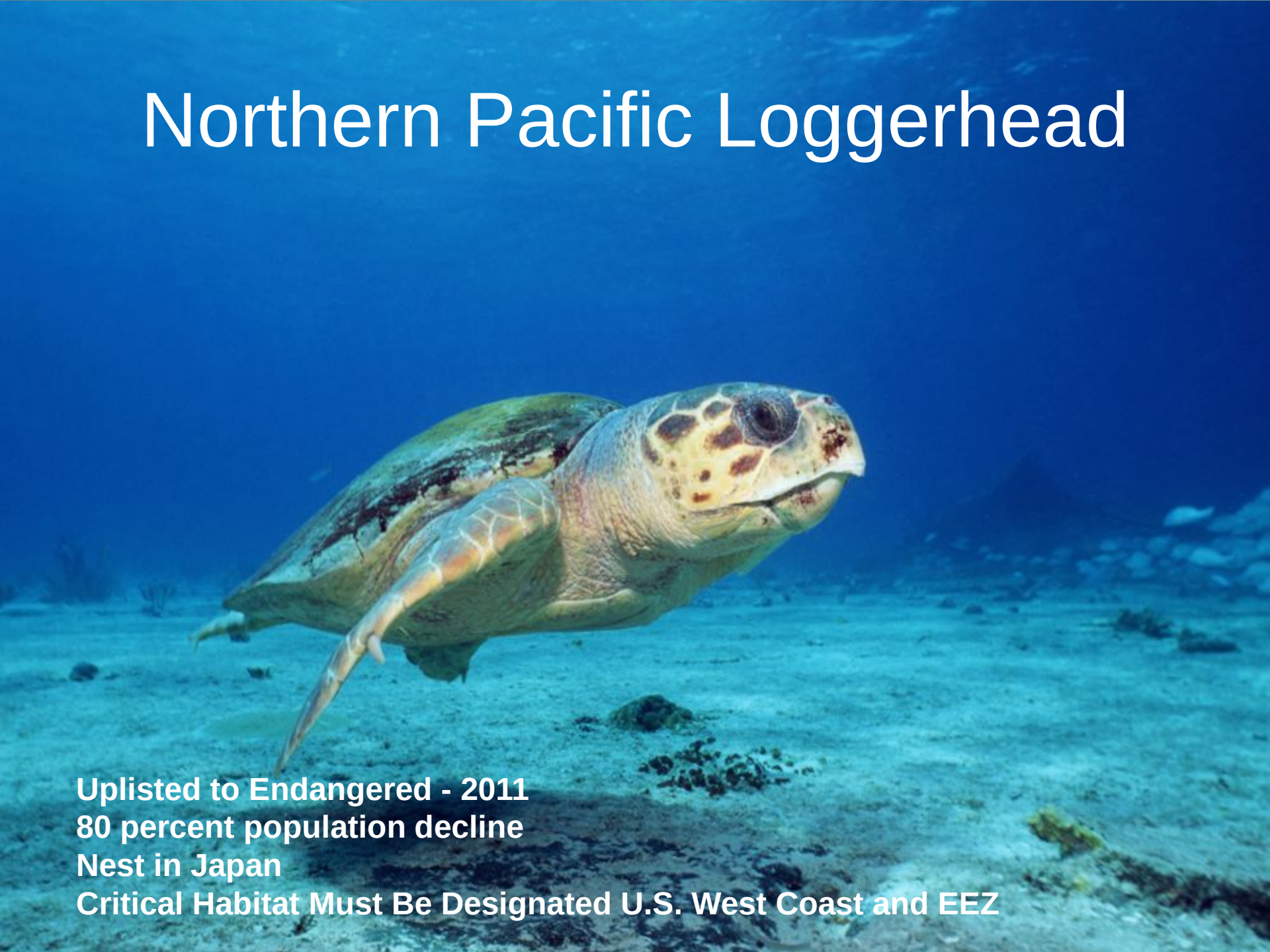
California's Sea Turtles: – Endangered and Declining



Western Pacific Leatherback

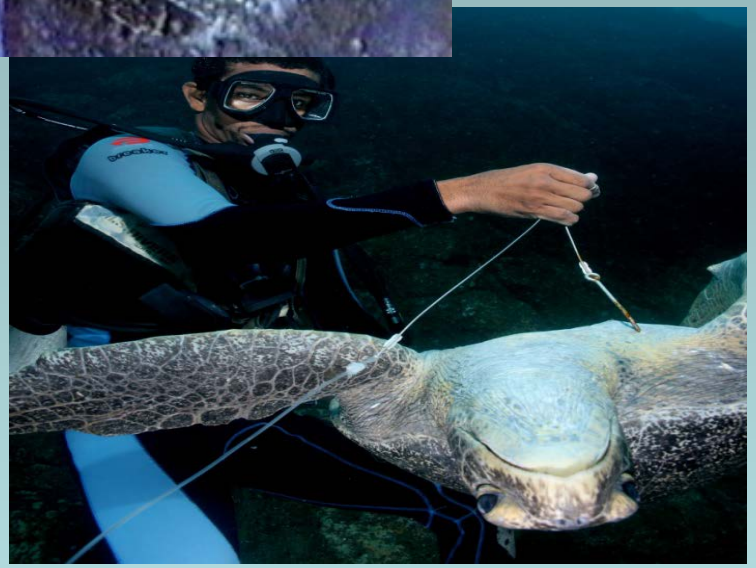
Critically Endangered
90 percent population decline
2.700 to 4,500 nesting females left
Swim 6,000 miles feed on jellyfish in Ca
From 170 to 300 per year
Every turtle counts – loss of 1% = extinction possible

Northern Pacific Loggerhead



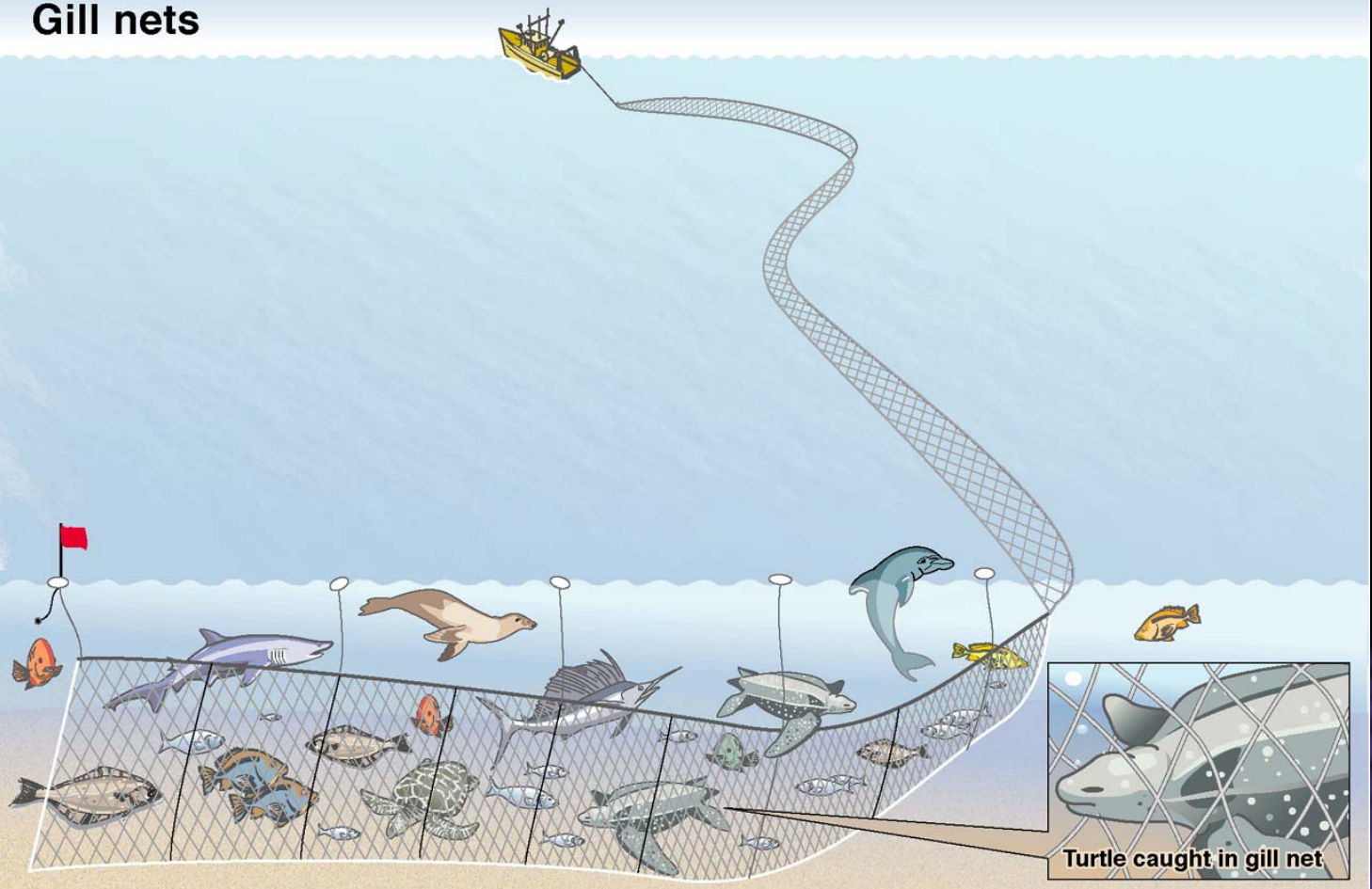
Uplisted to Endangered - 2011
80 percent population decline
Nest in Japan
Critical Habitat Must Be Designated U.S. West Coast and EEZ

Fisheries ByCatch a Primary Reason for Decline



The death of more than 1% of the adult female Pacific leatherback population each year could lead to its extinction (Spotila's est. of 1800–1900 breeding females)

Gill nets



Gillnets, with nearly invisible monofilament mesh, entangle and kill a wide range of marine species, including the critically endangered Pacific leatherback sea turtle.

Source: Pacific Coast Federation of Fishermen's Assoc., U.S. Geological Survey; photo of porpoise from "The Sierra Club Handbook of Whales and Dolphins", The San Francisco Chronicle

Marine Species Bycatch

Sea Turtles

Billfish

Sharks

Seabirds

Seals & Sea Lions

Whales & Dolphins

CA Drift Gillnet Fishery

- Long history of closures and conservation measures due to by catch
- Leatherback and Loggerhead Takes Reduced due to LBCA - 1 take LB outside of LBCA
- Observer coverage too low in recent years

2 -Sperm Whales Observed 2010

16 Total Estimated – Exceeds ITS

Drift Gill Net Recommendations

- Expand duration of PLCA
- Extend into Southern California Bight
- Increase Observer Coverage to 30 to 100 percent
- Apply loggerhead conservation to Southern California Bight to all years not just El Nino
- Phase Out Gear, Replace w/More Selective Gear (Testing, research)

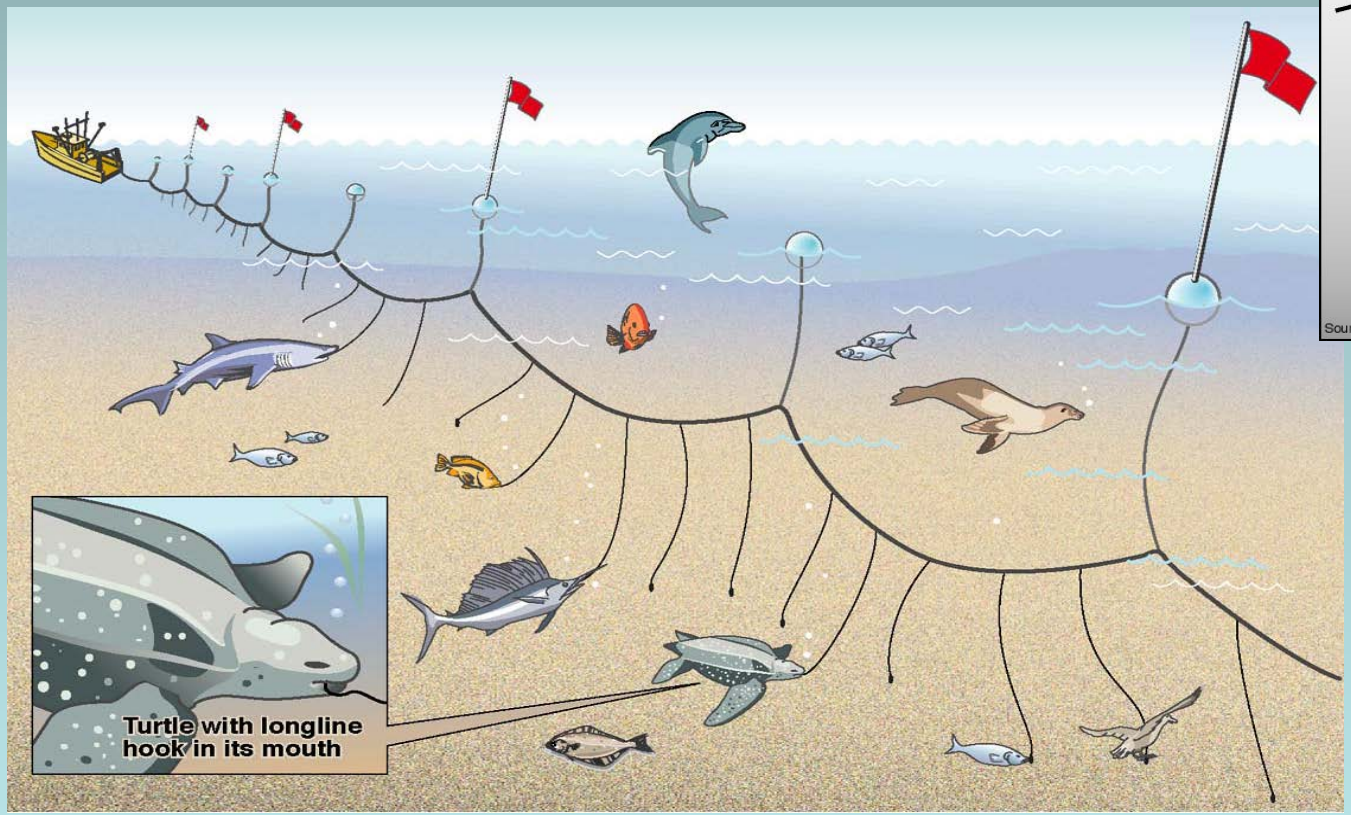
Pelagic Longline Fishing

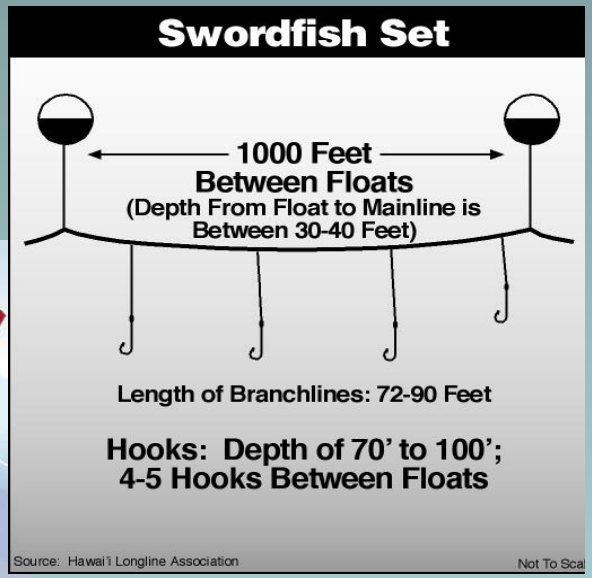
Non-selective fishing method that captures bycatch species

Bycatch is unintended fisheries catch (marine wildlife)

Main line up to 60 miles in length (SF to Santa Cruz)

1.4 billion hooks set per year worldwide in 2000





Set characteristics for tuna-targeted and swordfish-targeted longline gear. (Hoey and Moore 1999)

U.S. Longline Fleet

Circle Hooks, Bait, Time-Area Closures Have Reduced Turtle By Catch

Problems Remain

Hawaii SLL Fleet Hits LB Limit and Shuts down November 2011

Hawaii Surface LL Exceeds Green Turtle Take - Four Turtles

American Samoa Deep LL Exceeds Leatherback Take – Two Turtles

Florida Bottom Longline Fleet Shutdown in 2010 due to Exceeding Loggerhead Take

California's Historic Management Prohibits Longline Fishing

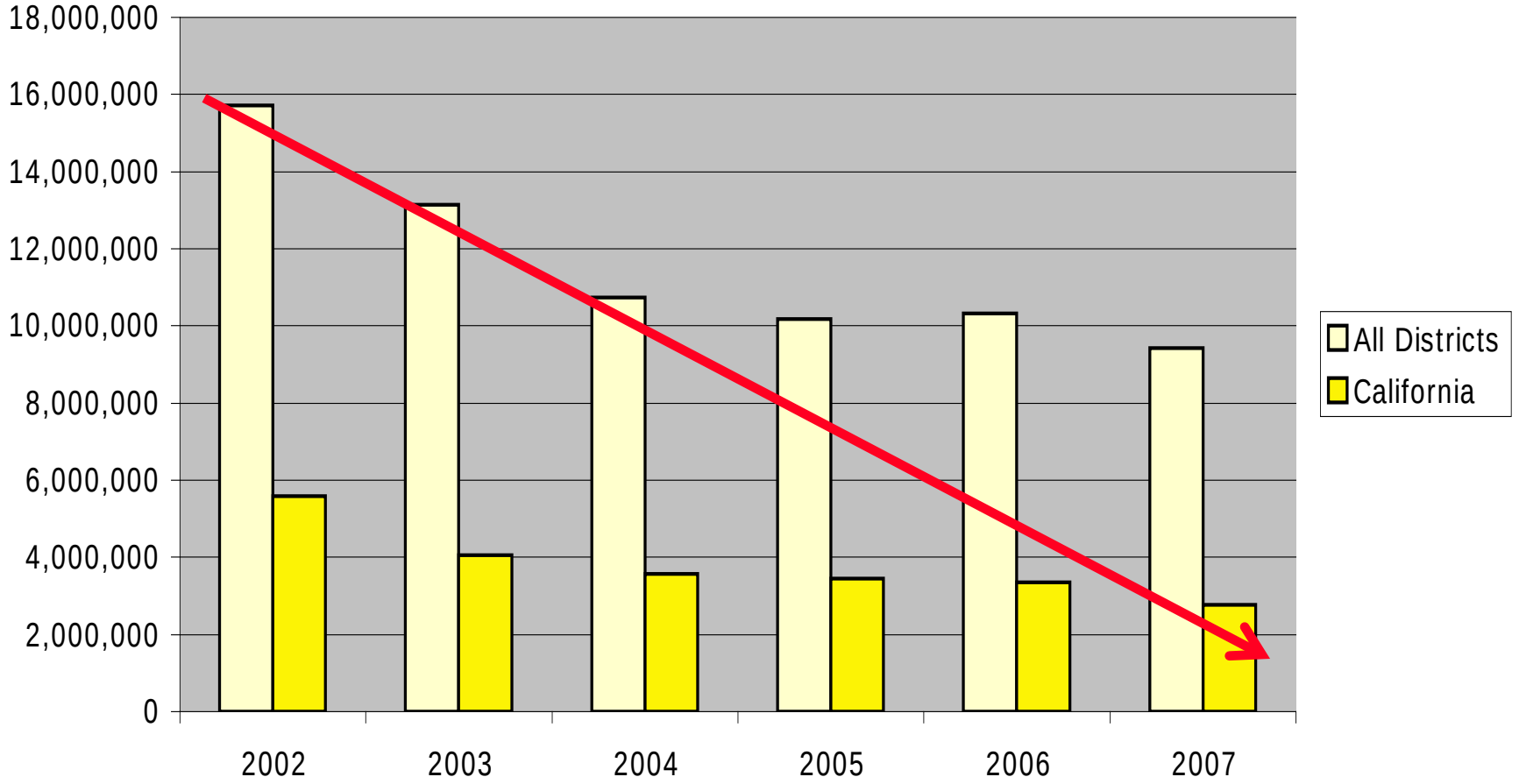
- A commercial longline industry has *never* existed in California's Exclusive Economic Zone (EEZ)
- The California State Legislature explicitly banned *all* forms of longline fishing in the EEZ in 1990 (Fish and Game Section 9028 was enacted by SB 1080)
- Longline EFP would reverse California's historic management designed to protect marine biodiversity off the U.S. West Coast

Imported Swordfish

Market Transfer – Myth or Reality?

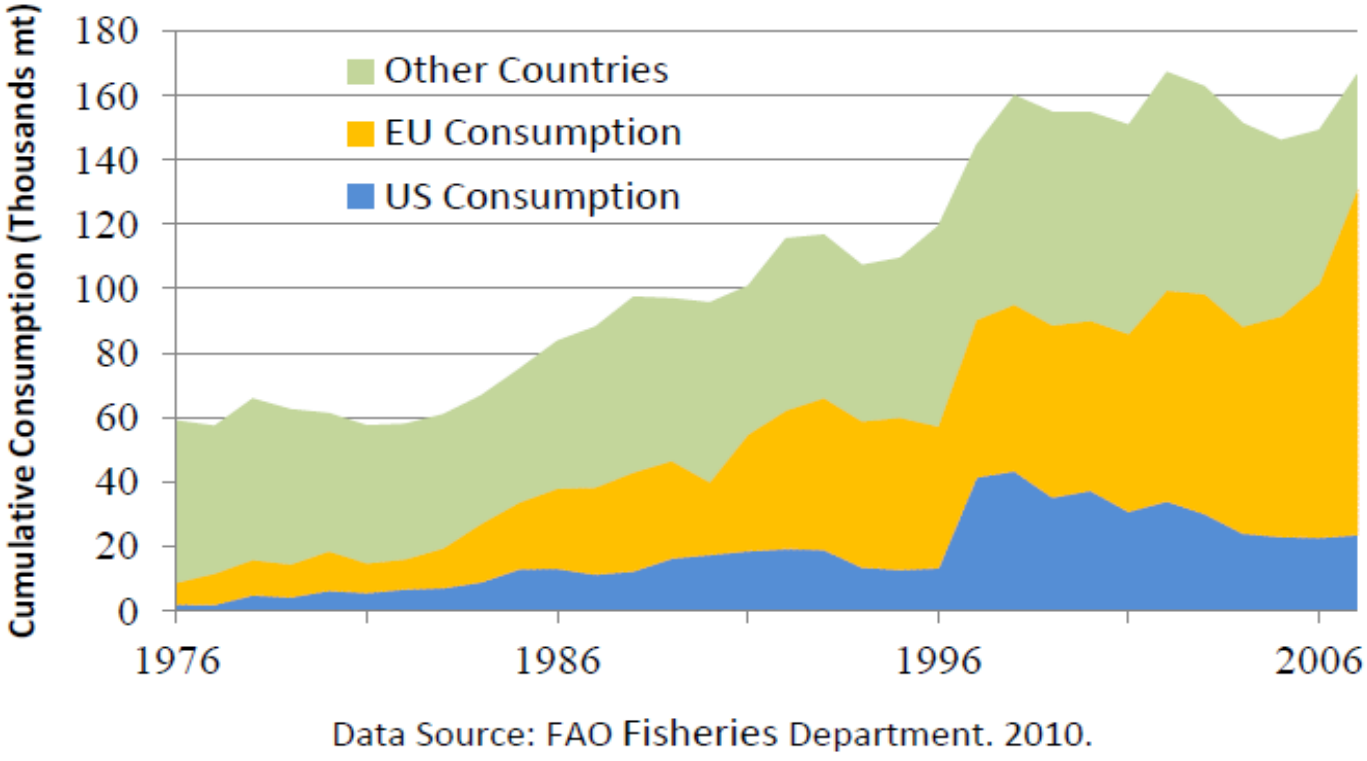
- New NMFS Technical Memo – Chan & Pan
- No bycatch or landing data from foreign fleets
- Swordfish Demand Declining Not Rising in U.S.
- Kill More Turtles Here to Save More There?

40% Decline Nationwide & 50% Decline in California



From: Dept Commerce CURRENT FISHERIES STATISTICS

Swordfish Consumption in the US, EU and Other Countries



Data Source: FAO Fisheries Department. 2010.

Swordfish Fishery Economics: Transfer Effect and West Coast Fishery Attrition

Stephen M. Stohs, Southwest Fishery Science Center, September 2011

Seafood Imports

- U.S. has authority to require imported seafood to meet our standards, but hasn't.
- Shrimp-Turtle Turtle Excluder Device Law
- MMPA Rulemaking Stalled since 2010
- Canadian Fishery with No Sea Turtle Protections Given MSC Certification and sold to major U.S. retailers
- U.S. Must Level Playing Field

WARNING!

Nearly all fish and seafood contain some amount of mercury and related compounds, chemicals known to the State of California to cause cancer, and birth defects or other reproductive harm. Certain fish contain higher levels than others.

Pregnant and nursing women, women who may become pregnant, and young children **should not eat** the following fish:

SWORDFISH · SHARK · KING MACKEREL · TILEFISH

They should also limit their consumption of other fish, including **fresh or frozen tuna**.

Fish and seafood can be an important source of nutrients and an important part of a balanced diet. However, the federal Food and Drug Administration advises pregnant and nursing women and women who may become pregnant to limit their consumption of fish to no more than 12 ounces per week.

Fish that tend to have little or no mercury include salmon (fresh, frozen, or canned), shrimp, and scallops. Mercury levels in canned tuna vary, but on average are lower than levels in many other fish. Chunk or chunk light tuna has less mercury than solid white or chunk white tuna.

The California Department of Health Services ("DHS") recommends certain steps you can take to reduce mercury exposure:

- Eat a variety of different types of fish;
- Eat smaller fish rather than older, larger fish;
- Begin following these guidelines one year before becoming pregnant.

For more information consult the following websites:
U.S. Food and Drug Administration ("FDA") **www.cfsan.fda.gov**
U.S. Environmental Protection Agency **www.epa.gov/mercury**
California Department of Health Services
www.dhs.ca.gov/ps/deodc/ehib/ehib2/topics/mercury_in_fish.html

or call the FDA toll-free at **1-888-SAFEFOOD (1-888-728-3366).**

Urge No Action to Expand Swordfish Fishery

- Drift Gillnet Fishery – Improve Conservation, Consider Gear Phase Out, Introduce New Selective Gear
- No new longlining along West Coast
- Close Loophole Allowing Hawaii Vessels to Land on West Coast
- Urge NMFS to require imports to meet U.S. standards or restrict

Thank you!

Western Pacific Leatherback Nesting –

Bird's Head Peninsula in Papua, Indonesia –

Deasy Lontoh photo

World Wildlife Fund
www.worldwildlife.org

February 22, 2012-02-22

Mr. Dan Wolford
Chairman, Pacific Fishery Management Council
7700 NE Ambassador Pl, Suite 101
Portland, OR 97220-1384

Dear Mr. Wolford:

The World Wildlife Fund (WWF) is pleased that the Pacific Fishery Management Council will be discussing the future of the U.S. west coast swordfish fishery at the March meeting. Swordfish is a highly desirable commodity for U.S. consumers. However, with U.S. production unable to meet domestic demand, there continues to be a reliance on imported swordfish, which is associated with higher bycatch rates. The most effective way to reduce this reliance on imports, is to increase domestic harvest. While the U.S. west coast is currently a small player in domestic swordfish production, it has the potential to be a more substantive contributor, but this would require examining the use of other gears with lower bycatch or discard rates. That would require the Council to support the research and testing of innovative gears as an approach for revitalizing the fishery.

As the global demand for seafood continues to increase, WWF believes that finding solutions for modifying fishing gears so that either fewer non-target species are caught or non-target species can escape or be released alive is a key strategy. Simply doing nothing about providing a sustainable source of domestically caught swordfish for U.S. consumers will not counteract the enormous environmental harm that unregulated bycatch is causing worldwide. To this end, WWF and its partners are working to inspire and reward new ideas for selective fishing through the International Smart Gear Competition. Our aim is to encourage sustainability in the world's fisheries, by working with all those involved - fishers, consumers, the seafood industry, and governments - to provide practical solutions to counteract the enormous environmental harm that bycatch is causing. We believe the Pacific Council could be a valuable contributor in that regard by being proactive in rejuvenating the West Coast swordfish fishery.

Thank you for the opportunity to comment.

Sincerely

William W. Fox, Jr., Ph.D.
Vice President & Managing Director
Fisheries

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February 24, 2012

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

RE: Agenda Item B.3 – Swordfish Management

Dear Chairman Wolford and Council Members:

Oceana is writing in opposition to any expansion of the California drift gillnet fishery for swordfish or the consideration of a West Coast-based pelagic longline fishery for swordfish. We attended the January 2012 Highly Migratory Species Management Team meeting where the team began initial discussions for the management of the U.S. West Coast swordfish fishery. While we were encouraged by a presentation on the use of potentially less harmful buoy gear to target swordfish, we were gravely disappointed that the focus of the conversation turned to how to expand the use of drift gillnet gear or to develop a shallow-set longline fishery for swordfish. In a time where we should be discussing innovative solutions to manage for ecologically sustainable fisheries, we should be talking about using gear types that do not kill threatened and endangered species or take marine mammals, and using gears that fully minimize any bycatch. We should be talking about phasing out and closing the drift gillnet fishery, not expanding it, nor introducing longline gear that has high bycatch levels.

We remain deeply concerned by the indiscriminate nature of the drift gillnet (DGN) fishery for swordfish, which entangles and kills over a hundred marine mammals per year,[1] as well as non-target fish such as blue shark, bigeye thresher shark, striped marlin, mola mola, and others. While some may believe that the injury and killing of endangered whales, seals and sharks is part of 'the cost of doing business', we believe it is an outrage and should be eliminated entirely. Despite the use of 'pingers' and 36-foot 'extenders' this fishery continues to jeopardize populations of whales, dolphins, seals and sea lions, year after year.

Furthermore, the DGN fishery has had only 11-13 percent observer coverage in recent years, which makes it entirely likely that there is undocumented take and mortality of rare and endangered species, such as the endangered leatherback sea turtle. For example, in the 2009/2010 DGN fishery there was one observed leatherback take. With only 12.9% observer coverage, the bycatch rate was 0.9 takes per 100 sets, which extrapolated out to the full number of sets, equals 7 to 8 leatherback sea turtle takes for the fishery in this one year. While some years there may be no observed takes, given the atrociously low observer coverage, we are not convinced that the fishery has not been continuing to take and kill endangered leatherback sea turtles.

[1] NMFS. 2011. National Bycatch Report, at 362

The recent designation of critical habitat for leatherback sea turtles and the data made available through that process illustrates that leatherbacks use a much broader area than the seasonal time/area closure known as the Pacific Leatherback Conservation Area. This is evident from the critical habitat designation, telemetry data, bycatch data, and observed sightings data made available through the designation process. Please see the map prepared by Oceana submitted in this briefing book. These data suggest that there should be a larger area closed to drift net gear to protect leatherback sea turtles, if not the entire EEZ.

Attached to these comments is a recent report by the National Marine Fisheries Service entitled 'Marine Mammal and Seabird Bycatch in California Gillnet Fisheries in 2010' (Carretta and Enriquez 2012). The report states that within the 11.9% of the DGN sets observed, "three short-beaked common dolphin (*Delphinus delphis*), one long-beaked common dolphin (*Delphinus capensis*), one northern right whale dolphin (*Lissodelphis borealis*), one common bottlenose dolphin (*Tursiops truncatus*) and two sperm whales (*Physeter macrocephalus*)" were taken. Furthermore, the report states that "[a]ll marine mammals were dead upon retrieval, with the exception of one sperm whale that was released seriously injured with trailing gear." Using bycatch ratio estimates, NMFS finds that in 2010 alone, the DGN fishery captured and killed 25 short-beaked common dolphins, 8 long-beaked common dolphins, 8 northern right whale dolphins, 8 bottlenose dolphins, and 16 endangered sperm whales.

As stated in our October 21, 2011 letter to the National Marine Fisheries Service (included in this briefing book), we request that you end this current effort to expand the California-based drift gillnet fishery or a shallow-set longline fishery for swordfish and instead take efforts to eliminate or significantly reduce bycatch. If, however, the PFMC chooses to move forward with an analysis of alternatives, we expect alternatives to: 1) phase out and prohibit the use of drift gillnet gear; 2) consider experimental gear, like buoy gear, so long as it is significantly different from the pelagic longline gear that NMFS has already tried, but failed to advance in recent years; 3) consider approaches to restrict the importation of swordfish by nations not meeting U.S. standards under the Marine Mammal Protection Act; and 4) evaluate the human health costs of the swordfish fishery due to the consumption of mercury found in West Coast swordfish. We also expect that there will be a full NEPA process, including an Environmental Impact Statement before any further actions are taken by the PFMC.

Thank you for your time and consideration of these comments.

Sincerely,

Ben Enticknap
Pacific Project Manager

Enclosure: Carretta, J. and L. Enriquez. 2012. Marine Mammal and Seabird Bycatch in California Gillnet Fisheries in 2010. National Marine Fisheries Service. Administrative Report LJ-12-01. February 2012.

FEBRUARY 2012

MARINE MAMMAL AND SEABIRD BYCATCH IN CALIFORNIA GILLNET FISHERIES IN 2010

by

James V. Carretta and Lyle Enriquez

ADMINISTRATIVE REPORT LJ-12-01

Marine mammal and seabird bycatch in California gillnet fisheries in 2010.

James V. Carretta[1] and Lyle Enriquez[2]

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ABSTRACT

Observed and estimated bycatch of marine mammals and seabirds is reported for the **California swordfish and thresher shark drift gillnet fishery** and the **California halibut and white seabass set gillnet fishery** from fishery observer data collected in 2010. Estimates of bycatch are generated using ratio estimation methods. There was no observed bycatch of sea turtles in California fisheries in 2010.

Observations in the swordfish and thresher shark fishery include 59 sets during 12 fishing trips, from an estimated 492 sets fished by all vessels (11.9% observer coverage). Observed bycatch included three short-beaked common dolphin (*Delphinus delphis*), one long-beaked common dolphin (*Delphinus capensis*), one northern right whale dolphin (*Lissodelphis borealis*), one common bottlenose dolphin (*Tursiops truncatus*) and two sperm whales (*Physeter macrocephalus*). All marine mammals were dead upon retrieval, with the exception of one sperm whale that was released seriously injured with trailing gear. Estimated bycatch is 25 (CV=0.64) short-beaked common dolphins, 8 (CV=1.00) long-beaked common dolphins, 8 (CV=0.98) northern right whale dolphins, 8 (CV=0.96) bottlenose dolphins, and 16 (CV=0.95) sperm whales.

Observations in the halibut and white seabass fishery include 216 sets during 57 fishing trips, from an estimated 1,724 sets fished by all vessels (12.5% observer coverage). Observed bycatch included one long-beaked common dolphin (*Delphinus capensis*), 25 California sea lions (*Zalophus californianus*), three harbor seals (*Phoca vitulina*), two common murres (*Uria aalge*), one double-crested cormorant (*Phalacrocorax auritus*), one Brandt's cormorant (*Phalacrocorax penicillatus*), one unidentified gull (family *Laridae*) and three unidentified birds. Estimated bycatch is 7 (CV=1.07) long-beaked common dolphin, 199 (CV=0.30) California sea lions, 23 (CV=0.59) harbor seals, 15 (CV=1.05) common murres, 7 (CV=1.15) double-crested cormorants, 7 (CV=1.13) Brandt's cormorants, 7 (CV=1.00) unidentified gulls, and 23 (CV=1.03) unidentified birds.

Other fisheries observed in 2010 include the **CA yellowtail, barracuda, and white seabass drift gillnet fishery** (11 sets, approximately 5% observer coverage) and the **CA pelagic longline**

fishery (at 100% observer coverage) that operates outside of the U.S. Exclusive Economic Zone. There was no marine mammal, sea turtle, or seabird bycatch observed in either fishery in 2010. Data confidentiality regulations preclude the reporting of set data for the California pelagic longline fishery, as only one vessel was active.

INTRODUCTION

Background

NOAA's National Marine Fisheries Service (NMFS) is required under Section 118 of the Marine Mammal Protection Act (MMPA) to "*obtain statistically reliable estimates of incidental mortality and serious injury*" of marine mammals in commercial fisheries, also known as 'bycatch'. Estimates of bycatch are used in the preparation of marine mammal stock assessments as required under Section 117 of the MMPA, with particular emphasis on how bycatch levels compare with potential biological removal (PBR) levels of a given marine mammal stock. The PBR level is defined as the maximum number of animals (not including natural mortality) that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. In addition to marine mammals, NMFS also estimates bycatch of other taxa, including sea turtles, fish, sharks, and seabirds. This report includes observed and estimated bycatch of marine mammals and seabirds from fishery observations in California commercial fisheries in calendar year 2010. Estimates of shark, finfish, and invertebrate bycatch in California commercial fisheries has been reported elsewhere (Larese and Coan 2008). No turtle bycatch was observed in 2010.

Fishery Classification Criteria

NMFS is required under Section 118 of the Marine Mammal Protection Act (MMPA) to place all U.S. commercial fisheries into one of three categories based on levels of incidental serious injury and mortality of marine mammals in each fishery (16 U.S.C. 1387 (c) (1)). Each year, NMFS publishes a 'List of Fisheries' in the Federal Register that determines whether fishery participants are subject to registration, observer coverage, and take reduction plan requirements. Fisheries are classified as Category I, II, or III, depending on the level of incidental takes relative to the PBR for each marine mammal stock. Category I fisheries are defined as those for which the annual level of incidental take of one or more stocks is greater than or equal to 50% of a stock's PBR. Category II fisheries are defined as those for which the annual takes of one or more stocks are greater than 1% but less than 50% of PBR. Category III fisheries include those where the overall serious injury and incidental take of all marine mammal stocks, across all fisheries that interact with these stocks, is less than 10% of the stocks' PBR level. In cases where combined takes across all fisheries exceed 10% for one or more stocks, then only those fisheries with annual takes less than 1% of PBR are considered Category III.

Fishery Descriptions

The **California swordfish and thresher shark large-mesh drift gillnet fishery** is a Category II fishery (Federal Register 76 FR 37716, 28 June 2011) with approximately 25 vessels participating. This fishery has been observed by NMFS annually since 1990, with annual observer coverage levels ranging between 4% and 20%. Historically, a wide variety of cetacean, pinniped, sea turtle, and seabird species have been incidentally caught in this fishery (Julian and Beeson, 1998;

Barlow and Cameron 2003; Carretta *et al*., 2004, Carretta *et al*. 2008, Carretta and Barlow 2011). A Take Reduction Plan (TRP) was implemented in 1996 because bycatch levels exceeded PBR for some cetacean stocks. The TRP resulted in the mandatory use of acoustic pingers on all nets, net extenders to increase minimum fishing depth to 11 m (6 fm), and mandatory skipper education workshops. Although marine mammal bycatch was significantly reduced as a result of pinger use in this fishery (Barlow and Cameron 2003), continued bycatch of leatherback turtles resulted in the establishment of a seasonal (15 August – 15 November) area closure in central California and southern Oregon waters in 2001 (Figure 1). An additional season/area closure in southern California is implemented during forecasted or existing El Niño periods to reduce the likelihood of entangling loggerhead turtles.

The **California halibut and white sea bass set gillnet fishery** is a Category II fishery (Federal Register 76 FR 37716, 28 June 2011) with approximately 50 vessels participating. This fishery currently operates only south of Point Conception, California. The fishery has been observed sporadically in recent years, with observer coverage levels of less than 10%.

The **California yellowtail, barracuda, and white seabass drift gillnet fishery** is a Category II fishery (Federal Register 76 FR 37716, 28 June 2011) with approximately 30 vessels participating. This fishery operates in southern California offshore waters near the Channel Islands. The fishery has been observed sporadically in recent years, with observer coverage levels of less than 10%.

Basic fishery descriptions can be found in marine mammal stock assessments published annually by NMFS (Carretta *et al*. 2011) and in the NMFS 2011 List of Fisheries (Federal Register 76 FR 37716, 28 June 2011)

METHODS

Estimation of Fishing Effort and Observer Coverage

Total fishing effort in the swordfish and thresher shark drift gillnet fishery is estimated from vessel operators' reports to the NMFS observer contractor. In addition, logbook data from the California Department of Fish and Game are utilized to estimate effort. Annual effort estimates from each source are usually similar, but the larger value is used for the purpose of bycatch estimation. In the swordfish and thresher shark drift gillnet fishery, one set is equal to one day of fishing effort, as nets are deployed near sunset and retrieved the next morning. Observer coverage is estimated as the number of observed sets, divided by the number of estimated sets fished.

Fishing effort in the halibut and white seabass set gillnet fishery is estimated from logbook data. Multiple sets per day are fished in the set gillnet fishery. Observer coverage is calculated as the number of observed fishing sets, divided by the estimated number of sets fished from logbook data. The most recent year for which complete logbook data are available is 2009, when 1,724 sets were reported fished. This value is used in place of pending logbook data for 2010.

Fishing effort in the yellowtail, barracuda, and white seabass drift gillnet fishery is estimated from logbook records. The most recent year for which complete logbook data are available in 2009, when 235 sets were reported fished. Observer coverage is calculated in the same manner as for the set gillnet fishery.

Bycatch Estimation

Bycatch is estimated with a ratio estimator following methods used by Julian and Beeson (1998) and Carretta *et al*. (2004). The bycatch rate for each species is calculated as

$$\hat{r}_s = \frac{\sum b_s}{\sum d} \qquad (1)$$

where b_s is the observed bycatch (in individuals) of species *s* during a fishing trip and *d* is the number of days (or sets) observed during the trip. The variance of the bycatch rate ($\sigma^2_{\hat{r}_s}$), is estimated with a bootstrap procedure, where one trip represents the sampling unit. Trips are resampled with replacement until each bootstrap sample contains the same number of trips as the actual observed effort. This method is preferable to resampling sets, because sets within a trip are more likely to be spatially and temporally correlated. A bycatch rate is then calculated from each bootstrap sample. This procedure is repeated 1,000 times, from which the bootstrap or bycatch rate sample variance $\sigma^2_{\hat{r}_s}$, is calculated.

Annual bycatch estimates ($\hat{m}_s$) for species *s* and the variance of the bycatch estimate (σ^2_m) are estimated for each species using the following formulae:

$$\hat{m}_s = \hat{D}\ \hat{r}_{s,} \qquad (2)$$

$$\sigma^2_m = \hat{D}^2\ \sigma^2_r \qquad (3)$$

where

$\hat{D}$ is the estimated number of sets fished,
$\hat{r}_s$ is the kill rate per set for species *s* and
σ^2_r is the bootstrap estimate of the kill rate variance.

RESULTS

Swordfish and thresher shark drift gillnet

In 2010, 59 sets were observed during 12 vessel trips, from an estimated 492 sets fished, resulting in an observer coverage rate of 11.9% (Table 1, Figure 1). Fishing effort in 2010 was determined exclusively through vessel activity reports submitted to the observer contractor, because complete logbook data were unavailable at the time this report was prepared. In 2010, 25 vessels made at least one set, though only 11 were observed. Eight vessels were deemed 'unobservable', because they are smaller vessels that lack berthing space for observers. Observer program tracking of sea days indicates that the 8 unobservable vessels contributed approximately 40-45% of the total fishing effort in 2010 (Scott Casey, Frank Orth & Associates, personal communication). An additional six vessels were not observed in 2010 due to unavailability of observers at the time these vessels fished. Fishing effort has declined from over 5,500 sets in 1993 to 492 sets in 2010 (Figure 2). In 2010, observed bycatch totals included three short-beaked common dolphin (*Delphinus delphis*), one long-beaked common dolphin (*Delphinus capensis*), one northern right whale dolphin (*Lissodelphis borealis*), one common bottlenose dolphin (*Tursiops truncatus*) and two sperm whales (*Physeter macrocephalus*). Both sperm whales were entangled in the same net. All marine mammals were dead upon retrieval, except one sperm whale released with trailing gear that was considered seriously injured (Table 1). Estimated bycatch is 25 (CV=0.64) short-beaked common

dolphins, 8 (CV=1.00) long-beaked common dolphins, 8 (CV=0.98) northern right whale dolphins, 8 (CV=0.96) common bottlenose dolphins, and 16 (CV=0.95) sperm whales (Table 2).

Sperm whale entanglements in the swordfish and thresher shark drift gillnet fishery have been rare, with only 10 records in over 8,000 observed fishing sets since 1990. Since acoustic pingers were introduced into the fishery in 1996, 4 sperm whale entanglements have been recorded. The entanglement of two sperm whales in 2010 occurred during the fifth set of a trip where all 40 pingers were found to be functional during observer checks of the first set. Following the entanglements, observers confirmed that pingers adjacent to the entangled animals were functioning. Observer notes indicated that a dead sperm whale approximately 20 ft. in length was cut loose from the net and that no photos of this animal were taken. Photographs of the released whale show an animal on its side with its head underwater. Based on the attitude of this animal, the fact that it was released with netting, and the fact that the associated animal had died, we have determined that the injuries incurred by the released animal were likely to result in death. Thus, the released animal is considered 'seriously injured'.

Halibut and white seabass set gillnet

In the halibut and white seabass set gillnet fishery, 216 sets during 57 fishing trips were observed from an estimated 1,724 sets fished by all vessels (12.5% observer coverage) (Figure 6). Observed bycatch included one long-beaked common dolphin (*Delphinus capensis*), 25 California sea lions (*Zalophus californianus*), three harbor seals (*Phoca vitulina*), two common murres (*Uria aalge*), one double-crested cormorant (*Phalacrocorax auritus*), one Brandt's cormorant (*Phalacrocorax penicillatus*), one unidentified gull (family *Laridae*) and three unidentified birds. Estimated bycatch is 7 (CV=1.07) long-beaked common dolphin, 199 (CV=0.30) California sea lions, 23 (CV=0.59) harbor seals, 15 (CV=1.05) common murres, 7 (CV=1.15) double-crested cormorants, 7 (CV=1.13) Brandt's cormorants, 7 (CV=1.00) unidentified gulls, and 23 (CV=1.03) unidentified birds.

Yellowtail, barracuda, and white seabass drift gillnet

A total of 11 sets were observed from an estimated 235 sets fished by all vessels (4.6% observer coverage). No bycatch of marine mammals or seabirds was observed.

DISCUSSION

Since acoustic pingers were introduced into the swordfish and thresher shark drift gillnet fishery in 1996, overall cetacean entanglement rates have declined by approximately 50% and there have been no observations of beaked whale bycatch during this time (Barlow and Cameron 2003, Carretta *et al*. 2008, Carretta and Barlow 2011, Figure 3). Short-beaked common dolphins continue to be the most commonly entangled species in this fishery. However, entanglement rates of common dolphin are approximately 50% lower since the introduction of acoustic pingers (Figure 4), despite the fact that the fishery today operates almost exclusively south of Point Conception, where common dolphin abundance is highest (Barlow and Forney 2007).

Barlow and Cameron (2003) reported a statistically significant *decline* in sea lion entanglement rates in drift gillnets with pingers during a 1996-1997 experiment, though this decline was somewhat unexpected, because it was thought that pinnipeds might be attracted to pingered nets to feed on the captured fish (the "dinner bell" effect). Following the pinger experiment, entanglement rates of sea lions *increased*, compared to sets without pingers (Carretta and Barlow

2011). However, an analysis of depredation of swordfish catch by sea lions in the drift gillnet fishery found that pinger use was no better a predictor of depredation than a random variable (Carretta and Barlow 2011). The number of pingers used was found to be 16th in importance out of 20 variables tested, while the variables total swordfish catch, month fished, area fished, and nocturnal use of vessels' deck lights provided the most predictive power of depredation (Carretta and Barlow 2011). Some of the increase in sea lion entanglement rates in recent years likely reflects the continuing increase in sea lion numbers in the area where the fishery occurs (Carretta and Barlow 2011).

The fraction swordfish and thresher shark drift gillnet effort in 2010 that involved 'unobservable' or 'unobserved' vessels was approximately 40-45% of the total estimated effort, which raises concerns about the randomness of the observer sample. An underlying assumption of ratio estimation is that unobserved and observed fishing effort is 'equivalent'. This assumption requires that unobserved vessels are compliant with pinger, extender length, closure area, and other gear regulations, and that bycatch rates are no different from observed vessels. If bycatch rates on unobserved vessels are significantly different, this would bias the resulting bycatch estimates. Vessels in this fishery are periodically boarded and inspected for gear compliance, and recorded violations have been rare (NMFS Enforcement, personal communication). A video experiment was utilized in the drift gillnet fishery recently to see if video monitoring of bycatch would be feasible on unobservable vessels. Some shortcomings of that methodology were identified, such as the inability to identify bycatch to species, high cost, and battery power drain issues for the fishing vessels. The Pacific Offshore Take Reduction Team recommended in 2007 that NMFS continue to pursue other technologies to address this gap in observer coverage, while continuing to refine the video technology for potential future use on unobservable vessels.

ACKNOWLEDGMENTS

Thanks to Suzy Kohin for maintaining the fishery observer database. Amy Betcher, Scott Casey, and John Childers provided logbook and observer data used to estimate fishing effort. Kerri Danil provided photographic and genetic information on the bycatch specimens. This work could not have been done without the diligent work of NMFS fishery observers and the cooperation of the California commercial fishermen. A draft of this manuscript was reviewed by Jay Barlow, Susan Chivers, and the Pacific Scientific Review Group at their 2011 annual meeting.

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Table 1. Fishery observer and fishing effort summaries for calendar year 2010 for California gillnet fisheries.

Fishery	MMAP Category	Number of active vessels	Mean mesh size (inches)	Estimated Sets Fished	Observed Sets	Observer Coverage	Observed Species Interactions (number killed or injured)
CA swordfish and thresher shark drift gillnet	Category II	25	20.5	492	59	11.9%	Common dolphin, short-beaked (3) Common dolphin, long-beaked (1) Northern right whale dolphin (1) Bottlenose dolphin (1) Sperm whale (2)
CA halibut and white seabass set gillnet	Category II	50	7.2	1,724*	216	12.5%	Common dolphin, long-beaked (1) California sea lion (25) Harbor seal (3) Brandt's cormorant (1) Double-crested cormorant (1) Common murre (2) Unidentified gull (1) Unidentified birds (3)
CA yellowtail, barracuda, and white seabass drift gillnet	Category II	30	6.5	235*	11	4.6%	None observed

*****Estimated fishing effort is based on logbook data from calendar year 2009, the most recent year for which logbooks are available.

Table 2. Summary of observed bycatch, rates, estimates and statistical precision for the California swordfish drift gillnet fishery in 2010.

Fishery and Species	Observed Bycatch	Bycatch per 100 sets	Bycatch per Set Variance	Bycatch Estimate	Bycatch Estimate CV
CA drift gillnet for swordfish and thresher shark					
Short-beaked common dolphin	3	5	1.0×10^{-3}	25	0.64
Long-beaked common dolphin	1	1.7	2.6×10^{-4}	8	1.00
Northern right whale dolphin	1	1.7	2.4×10^{-4}	8	0.98
Bottlenose dolphin	1	1.7	2.4×10^{-4}	8	0.96
Sperm whale	2	3.3	9.6×10^{-4}	16	0.95

Table 3. Summary of observed bycatch, rates, estimates and statistical precision for the California halibut and white seabass set gillnet fishery in 2010. A total of 216 fishing sets were observed in 2010.

Fishery and Species	Observed Bycatch	Bycatch per 100 sets	Bycatch per Set Variance	Bycatch Estimate	Bycatch Estimate CV
CA set gillnet for halibut and white seabass					
Long-beaked common dolphin	1	0.462	2.3×10^{-5}	7	1.17
California sea lion	25	11.6	1.2×10^{-3}	199	0.30
Harbor seal	3	1.39	6.1×10^{-5}	23	0.59
Brandt's cormorant	1	0.462	2.1×10^{-5}	7	1.13
Double-crested cormorant	1	0.462	2.2×10^{-5}	7	1.15
Common Murre	2	0.925	8.4×10^{-5}	15	1.05
Unidentified gull	1	0.462	2.1×10^{-5}	7	1.00
Unidentified bird	3	1.39	1.9×10^{-4}	23	1.03

Figure 1. Locations of 59 observed fishing sets and marine mammal entanglements in the drift gillnet fishery for swordfish and thresher shark in 2010. Key: ● = set locations; ▲= sperm whale; ▼= long-beaked common dolphin; + = short-beaked common dolphin; ✸ = northern right whale dolphin; □ = bottlenose dolphin. The shaded region indicates a seasonal area closure where drift gillnet fishing is annually prohibited between 15 August and 15 November. Dashed line delineates the U.S. Exclusive Economic Zone.

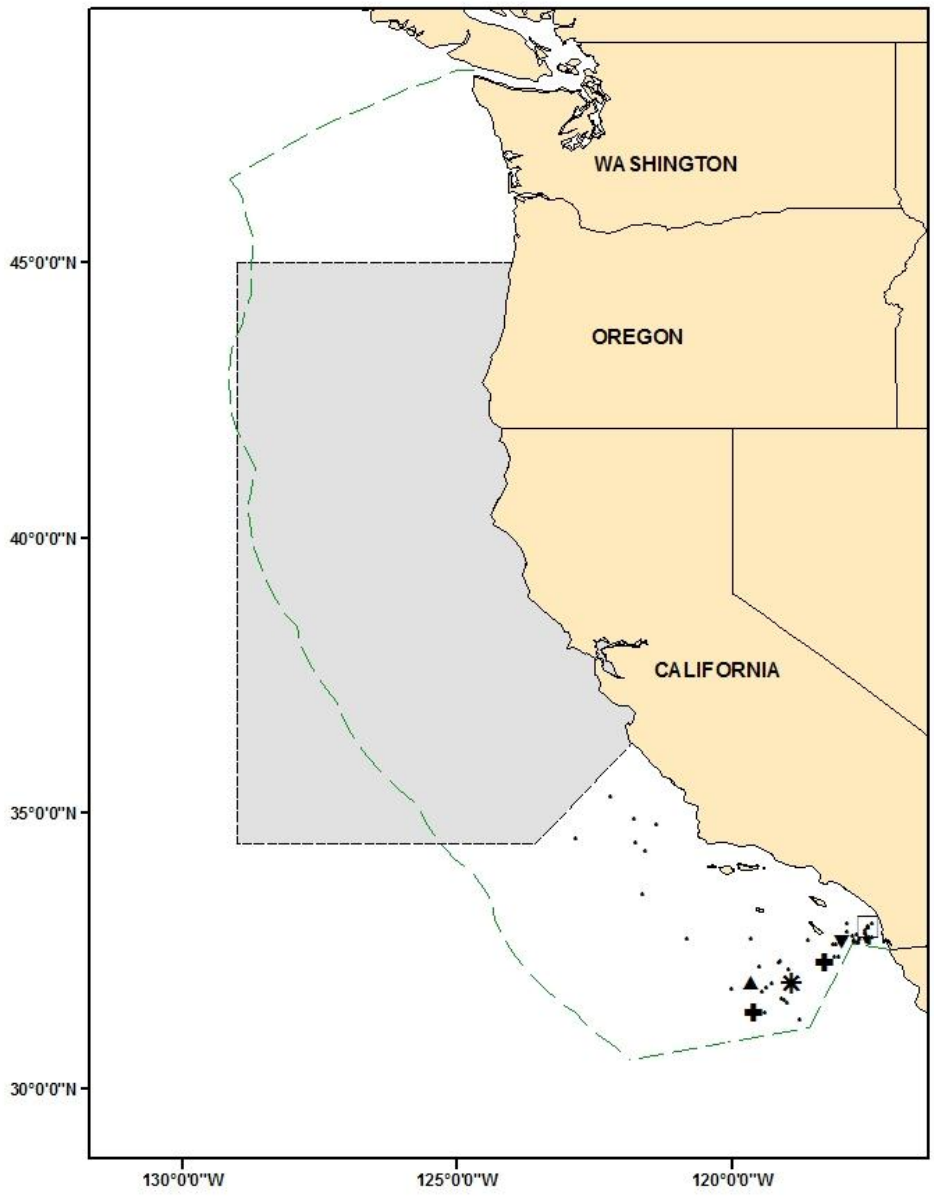


Figure 2. Estimated (gray) and observed (black) days of fishing effort in the California thresher shark and swordfish drift gillnet fishery for 1990-2010. Observer coverage (number of sets observed / number of sets fished) ranged from a low of 4% in 1990 to 22.9% in 2000. Estimated observer coverage in 2010 was 11.9%.

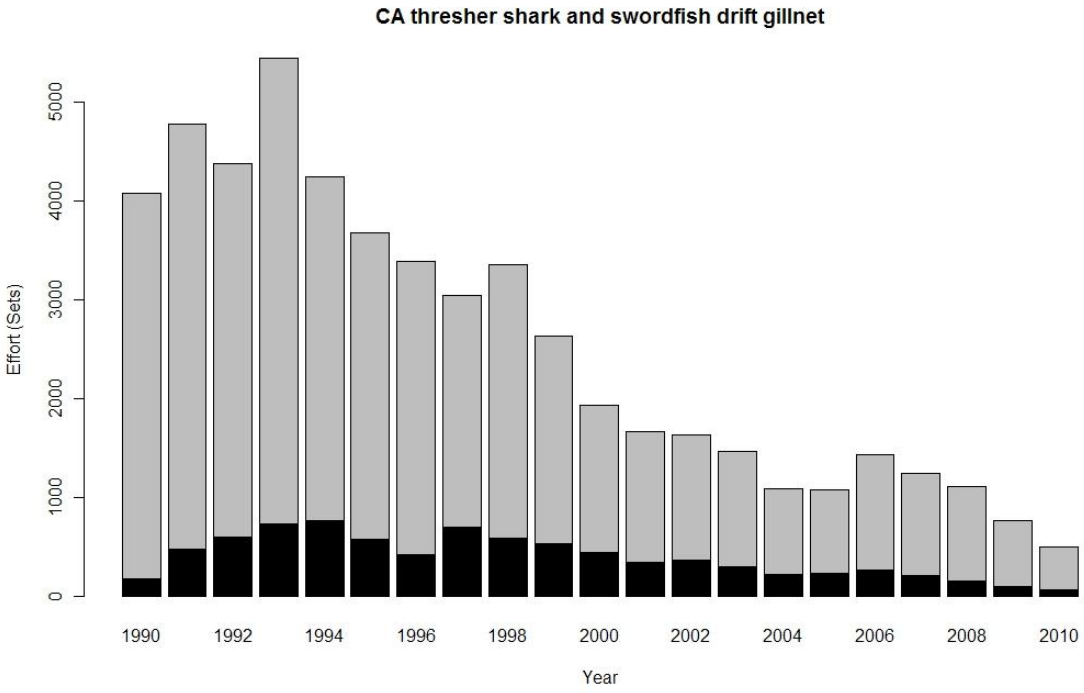


Figure 3. Bycatch rates (individuals per 100 sets) of cetaceans in the California thresher shark and swordfish drift gillnet fishery, 1990–2010.

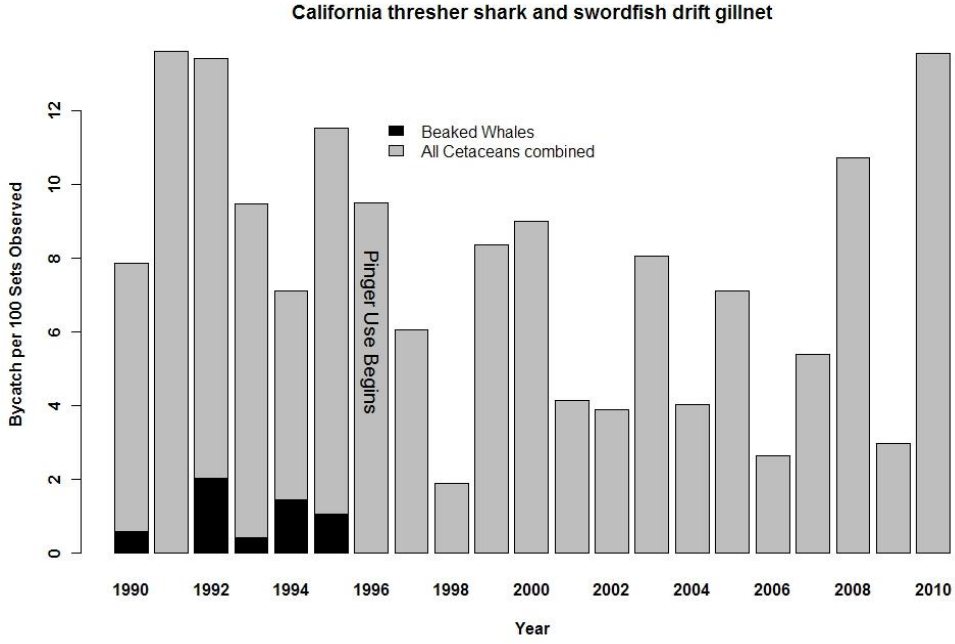


Figure 4. Entanglement rates of short-beaked common dolphin per 100 sets fished in the California swordfish drift gillnet fishery, 1990-2010. Pingers were not used from 1990-95 and were used experimentally in 1996 and 1997. In 1996, no short-beaked common dolphins were observed killed in 146 pingered sets. For the period 1998-2010, over 99% of all observed sets utilized pingers.

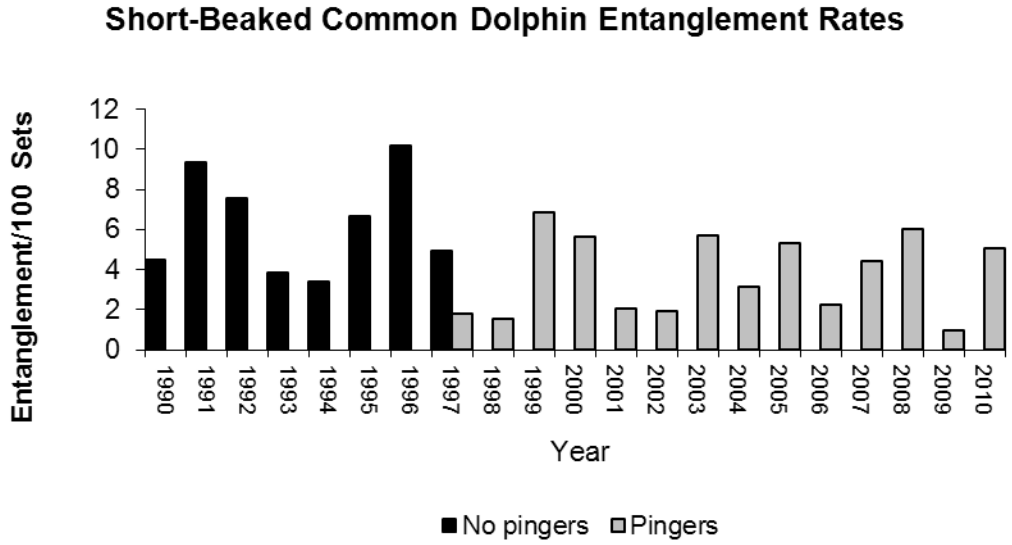


Figure 5. Entanglement rates of California sea lions per 100 sets fished in the California drift gillnet fishery for swordfish and thresher shark, 1990-2010. Pingers were not used from 1990-95 and were used experimentally in 1996 and 1997. For the period 1998-2010, over 99% of all observed sets utilized pingers. No sea lion entanglements were observed in 59 observed sets in 2010.

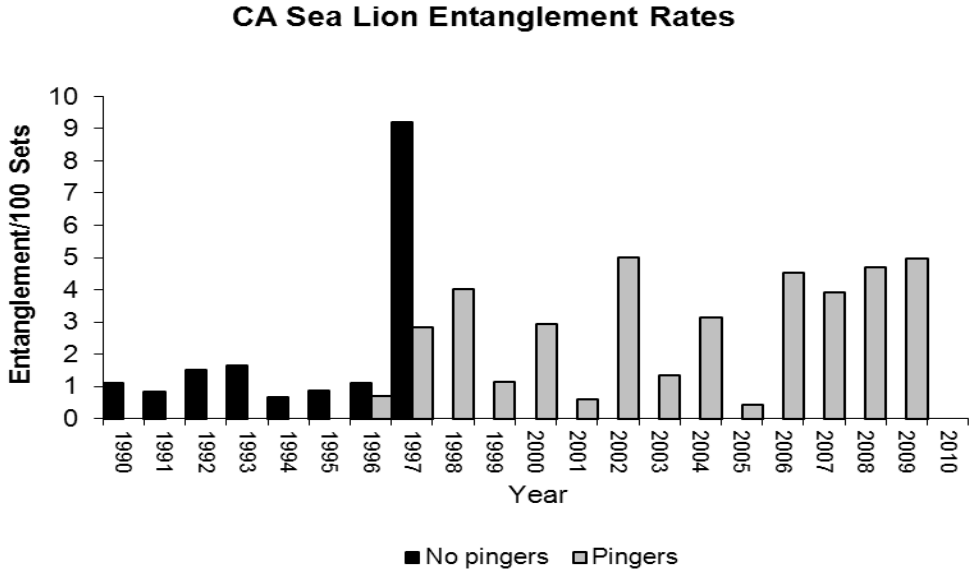
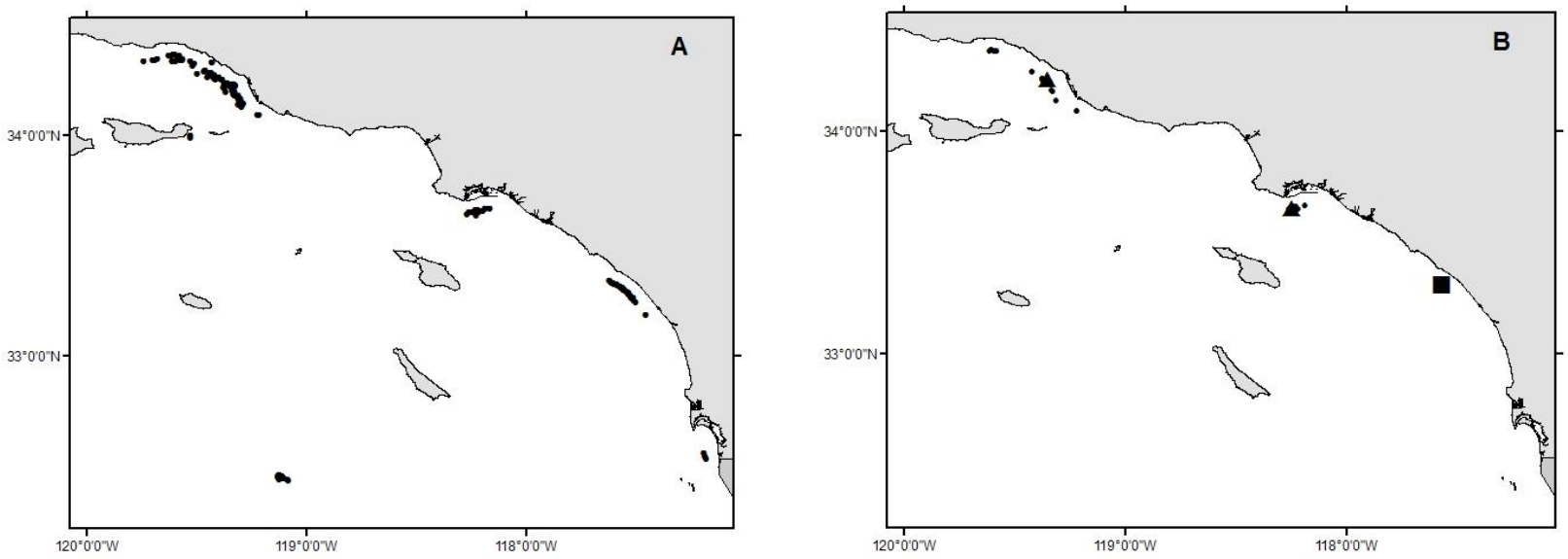


Figure 6. Locations of 216 observed sets (A) and marine mammal bycatch (B) in the halibut and white seabass set gillnet fishery in 2010. Key: ●= California sea lion; ▲= Harbor seal; ■= long-beaked common dolphin.



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February 24, 2012

Mr. Dan Wolford, Chair
And Council Members
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

RE: Additional Comments on Council Agenda Item B.3.d Swordfish Management Data Report and Future Management Recommendations – Public Health and Mercury in Swordfish and Shark

Dear Chairman Wolford and Council members,

Turtle Island Restoration Network (TIRN) is submitting these additional comments for your consideration in deliberating the expansion of the California Drift Gillnet Fishery for swordfish and shark. TIRN urges the Council, in addition to reviewing the bycatch and unsustainability of drift gillnet and longline fishing, to consider the potential public health impacts to women of child-bearing age and children from consumption of high-mercury fish, specifically swordfish and shark as a reason to deny further action on expanding the fishery.

As the Council may know, the U.S. Food and Drug Administration (FDA) and Environmental Protection Agency (EPA) advise women and children – more than half our population – never to eat swordfish or shark. Many healthy adult men have publicly reported negative health impacts from consuming high mercury fish, including the CEO of IMAX Films who recently funded a new research center on mercury in fish at Stonybrook University in New York.

TIRN would be happy to organize a briefing of Council members by mercury-in-fish health experts and to provide the most current science on the subject. Additional information on recent fish testing conducted by our mercury project can be easily accessed at www.GotMercury.org, which offers an online calculator to assess individual exposure to mercury based on fish species, serving size and body weight using official U.S. government mercury statistics.

TIRN urges the Council to consider the following overview of mercury-in-fish when deliberating the need for expanding the supply of swordfish and shark; and to consider petitioning the FDA to require posting of mercury-in-fish warnings wherever swordfish and shark and other high-mercury fish is sold to minimize unintentional public health impacts of the swordfish and shark fishery. Right now only California requires posting of mercury-in-fish warnings at seafood retailers and restaurants.

In 2004, the FDA and the EPA issued a joint advisory to women and children about methylmercury in seafood.[1] The federal advisory warns women and children to limit their consumption of tuna and to eliminate four other species of fish from their diets. The joint advisory states:

1. Do not eat Shark, Swordfish, King Mackerel, or Tilefish because they contain high levels of mercury.
2. Eat up to 12 ounces (2 average meals) a week of a variety of fish and shellfish that are lower in mercury.
    - Five of the most commonly eaten fish that are low in mercury are shrimp, canned light tuna, salmon, pollock, and catfish.
    - Another commonly eaten fish, albacore ("white") tuna has more mercury than canned light tuna. So, when choosing your two meals of fish and shellfish, you may eat up to 6 ounces (one average meal) of albacore tuna per week.
3. Check local advisories about the safety of fish caught by family and friends in your local lakes, rivers, and coastal areas. If no advice is available, eat up to 6 ounces (one average meal) per week of fish you catch from local waters, but don't consume any other fish during that week.

Health Effects of Mercury Exposure

According to the EPA, the primary source of mercury exposure in humans is consumption of fish. Mercury is a dangerous neurotoxin that enters the environment as a result of human activities such as burning coal and producing chlorine. Although volcanoes and other natural sources contribute to mercury's pervasive nature, two thirds of the mercury present in our environment is a result of human activities.[2] Mercury is deposited in the environment primarily from anthropogenic sources such as coal-fired power plants and industrial processes.

Once released into the air, mercury is deposited back onto land and water. Bacteria then convert mercury to toxic methylmercury.[3] This methylmercury is absorbed or consumed by small plants and animals such as plankton, which are then eaten by larger animals, including fish. These larger animals accumulate mercury from their prey through the process of bioaccumulation in which concentrations increase through the food chain so that larger predatory fish such as tuna, sharks and swordfish have the highest mercury levels among fish. Humans and other large mammals at the top of the food chain have the highest exposure.

Methylmercury can damage critical internal organs of the central nervous and cardiovascular systems. Children are particularly vulnerable to mercury's toxic effects. Infants and children exposed to high doses of mercury in the womb or after birth may have problems with attention span, language, visual-spatial skills, memory and

[1] http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/Seafood/FoodbornePathogensContaminants/Methylmercury/ucm115662.htm
[2] US Environmental Protection Agency (EPA). 1999 National Emission Inventory Documentation and Data. Final Version 3.0. Research Triangle Park, NC: US Environmental Protection Agency (EPA), Office of Air Quality Planning and Standards. Available at: http://www.epa.gov/ttn/chief/net/1999inventory.html#final3haps Accessed January 25, 2006.
[3] Lehnherr, I., V.L. St. Louis, H. Hintelmann, and J.L. Kirk. 2011. Methylation of inorganic mercury in polar marine waters. Nature Geoscience DOI: 10.1038/NGEO1134.

coordination. Very high levels of mercury exposure in children can lead to brain damage, seizures, blindness, mental retardation and even death.

A 2000 National Research Council report estimates that 60,000 newborns each year are at increased risk for developmental delays due to the mother's mercury exposure.[4] The same report also concludes that EPA's current reference dose for methylmercury (0.1 μg/kg per day) is scientifically justifiable for the protection of public health and provides critical guidance for a broad range of public-health and regulatory initiatives aimed at reducing mercury exposures and preventing adverse health impacts.[5] The goal of the reference dose is to estimate a level of daily exposure without adverse public health impacts even for sensitive individuals.[6]

Mercury's effects on adults can vary from increasing the risk of heart disease to a tingling sensation in the fingers. Recent studies have linked mercury to dementia and Alzheimer's disease. [7] People often do not associate their symptoms with mercury poisoning because the effects are sometimes very subtle. As a result, many people may continue to eat fish with high mercury levels, worsening the problem. Nervous system problems can include impaired coordination, tremors, irritability, memory loss, depression, blurred vision and a tingling sensation in the skin. Other symptoms include fatigue, nausea, headache, decreased concentration and muscle or joint pain.

A 2009 study conducted by the School of Medicine at the University of California, Los Angeles found that the mercury levels of women increased from 2 percent with elevated mercury levels in 1999-2000 to 30 percent with elevated mercury levels in 2005-2006. [8] Studies have even shown links between cardiovascular disease in adults and the consumption of fish high in mercury. A study published in 2010 in the Neurotoxicology and Teratology Journal showed that people who ate enough contaminated fish to raise mercury levels in their bodies to levels still considered "safe" had subtle changes to their heart rhythm that may affect their long-term health. [9]

High-risk Populations

Without knowing it, mothers, children, dieters, sushi lovers and other people who regularly eat fish are consuming quantities of mercury that can be harmful to their health because the FDA has not fulfilled its mandate to promulgate regulations necessary to protect public health. A study revealed that nationwide, one of every ten women of childbearing age—nearly 7 million women—exceeded levels of mercury concentration in their blood that may pose a risk to fetuses.[10]

Pregnant women, women of childbearing age and children are especially vulnerable to the detrimental health effects of mercury exposure through the consumption of seafood. Unfortunately, the current FDA/EPA advisory is not reaching these populations.

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[4] National Research Council, Toxicological Effects of Methylmercury, 2000, at 325.
[5] *Id.* at 329.
[6] *Id.* at 322.
[7] Joachim Mutter; Annika Curth; Johannes Naumann; Richard Deth; Harald Walach, Does Inorganic Mercury Play a Role in Alzheimer's Disease? A Systematic Review and an Integrated Molecular Mechanism. Journal of Alzheimer's disease, 2010 Aug

[8] Dan R. Laks, Assessment of chronic mercury exposure within the U.S. population, National Health and Nutrition Examination Survey, 1999-2006, BioMetals, ahead of print, 2009. doi: 10.1007/s10534-009-9261-0.
[9] Kozue Yaginuma-Sakuraia, Katsuyuki Muratac, Miyuki Shimadaa, Kunihiko Nakaia, Naoyuki Kurokawaa, Satomi Kameoa and Hiroshi Satoh, Intervention study on cardiac autonomic nervous effects of methylmercury from seafood , Neurotoxicology and Teratology Volume 32, Issue 2, March-April 2010, Pages 240-245
[10] Mahaffey KR, Clickner RP, Jeffries RA 2009. Adult Women's Blood Mercury Concentrations Vary Regionally in the United States: Association with Patterns of Fish Consumption (NHANES 1999–2004). Environ Health Perspect 117:47-53. doi:10.1289/ehp.11674

Although mercury exposure in the womb is more dangerous, postnatal exposure to mercury should also be avoided. There is no safe exposure level of mercury and all steps should be taken to eliminate or reduce the risk of mercury exposure as much as possible. Repeated studies have shown that mothers expose their nursing infants to methylmercury and inorganic mercury during breastfeeding. [11] Both forms of mercury are neurotoxins that are dangerous to the developing nervous system. Researchers have advised mothers to avoid high-mercury fish during pregnancy and lactation while eating low-mercury fish in moderation to obtain the benefits of seafood consumption.

Seafood Safety

Regulation of commercial seafood falls within the jurisdiction of the FDA, and the public relies upon accurate information and data to safeguard their health. Although the FDA has set an "action level" of 1 ppm for mercury levels in commercial seafood, many species of predatory fish such as swordfish and tuna regularly exceed the 1 ppm action level. Lack of rigorous testing and enforcement has increased the availability of high-mercury fish on the market and is being sold to consumers who are often completely unaware of toxic levels in these fish.

In 2007, a former FDA associate commissioner testified before a United States House of Representatives Committee that the FDA has neither the resources nor inspectors to stop importation of tainted food. Overall, the FDA inspects about 1 percent of the commercial fish sold on the U.S. market. A report from the *New York Times* revealed importers of swordfish, a very high-mercury fish, use a smaller, younger sample of swordfish in order to pass the FDA mercury test. One FDA seafood expert said that over half of the imported swordfish probably contains unacceptable levels of mercury.[12]

In 2009, scientists from Harvard University and the U.S. Geological Survey published findings that the ocean's mercury levels have risen about 30 percent over the last 20 years.[13]

Lack of Warning

Public agencies responsible for protecting people from mercury exposure are relying on obsolete 1970s policies and data despite mounting evidence that eating mercury-laden fish is harmful and toxicity levels are higher than current government averages. Testing of seafood for mercury has virtually ceased even though new scientific studies and case studies document mercury poisoning from eating commercial fish.

The 2004 FDA/EPA Advisory is not required to be posted at fish point-of-sale locations, and can only be found buried on the FDA website. This represents a very serious lapse in clear communication of the risks of mercury exposure to consumers from seafood. It would be easy for those especially vulnerable to the effects of mercury, such as women and children, to avoid eating high-mercury fish if the FDA/EPA Advisory was posted in locations where it would benefit those populations the most.

Mercury cannot be regulated out of the seafood supply, so the most practical option to prevent the health risks of mercury exposure is to provide clear information that is widely available so consumers can manage their own exposure risk. The current FDA/EPA mercury advisory is not providing maximum benefit to fish eaters. The

[11] Karolin Björnberg et al., *Transport of Methylmercury and Inorganic Mercury to the Fetus and Breast-Fed Infant*, Environmental Health Perspectives, 113(10): 1381–1385 (October 2005). *See also* H. Drexler and K.H. Schaller *The Mercury Concentration in Breast Milk Resulting from Amalgam Fillings and Dietary Habits*. Environmental Research, 77(2):124-129(6). (May 1998).

[12] http://www.nytimes.com/2007/07/18/washington/18imports.html

[13] Sunderland, E. M., D. P. Krabbenhoft, J. W. Moreau, S. A. Strode, and W. M. Landing (2009), Mercury sources, distribution, and bioavailability in the North Pacific Ocean: Insights from data and models, Global Biogeochem. Cycles, 23, GB2010, doi:10.1029/2008GB003425.

advisory clearly states women should not eat swordfish, shark, tilefish and king mackerel and limit consumption of albacore tuna. Yet the advisory is largely absent from fish point-of-sale locations.

Summary and Conclusion

The information provided in this letter attempts to quickly summarize the mercury-in-fish issue, but there is a vast body of literature, litigation, and legislation available on the subject if the Council would like to investigate further. However, TIRN hopes that this overview will provide enough information for Council members to understand the seriousness of the public health concerns and to consider action to address it, such as petitioning the FDA to require posting of warning signs, if it decides to move forward on expanding the swordfish and shark fishery.

Thank you for your consideration.

Sincerely yours,

Teri Shore
Program Director
tshore@tirn.net
415 663 8590, ext. 104

CITY OF MONTEREY

HARBOR/MARINA DIVISION

February 24, 2012

Dan Wolford
Chairman
Pacific Fisheries Management Council
7700 NE Ambassador Place, Suite 101
Portland, Or 97220-1384

Dear Chairman Wolford and Council Members,

On behalf of the City of Monterey I am writing of support of the efforts of the National Marine Fisheries Service to revitalize the West Coast swordfish fishery. Monterey Harbor used to see swordfish landings regularly, but now rarely does. We note that there is considerable irony in that high consumer demand for swordfish and the current limited ability for California fisherman to catch this product due to regulations, has driven the supply to foreign fisherman who have far less environmental safeguards than do U.S. Fisherman. I urge the Council to support the work of the National Marine Fisheries Service in identifying ways in which this fishery can be re-inviorgorated for the benefit of the environment, fisherman and coastal communities.

Sincerely,

Stephen B. Scheiblauer

Stephen Scheiblauer
Harbormaster

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February 24, 2012
Mr. Dan Wolford
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384

Dear Chairman Wolford and Council Members,

We understand the need for restrictive measures that have been put in place and enacted for U.S. West Coast swordfish fisheries, particularly the Pacific Leatherback Conservation Area (PLCA), and the critical role in how this time/area closure has helped with conservation efforts for Pacific Leatherback turtles (*Dermochelys coriacea*). This time/area closure and other gear modifications and regulation changes that have been implemented for the Drift Gillnet Fishery for swordfish by PFMC and NMFS have to date been effective at drastically reducing bycatch rates for this critical protected species.

With this said, one of the unintended consequences of the time/area closure was the transfer effect, in which overall domestic swordfish landings, revenue, and vessel participation drastically declined for port communities that were adjacent to the PLCA post 2001. As the demand for swordfish consumption continues to increase in the U.S. and has done so over the last several years, this increased demand has had to be filled with an increase in imports of foreign product. Some of these imports come from countries with less regulation, less human observers, and more bycatch than the U.S.

While we acknowledge the PLCA as an important and effective management tool in the preservation and conservation of Pacific Leatherback turtles, we also support the efforts of the National Marine Fisheries Service to revitalize the West Coast swordfish fishery. Particularly, the development and testing of deep-set buoy gear has the potential to harvest swordfish in a cleaner and more environmentally friendly way with less impacts on sea turtles and potentially reduced impacts on pelagic sharks. The quick deployment of this gear below the thermocline may drastically reduce the chances that turtles will be encountered. Also, setting and hauling the gear during the day may greatly reduce the chances for encounters with pelagic sharks as most of these species move up shallower in the water column at night, while swordfish remain at a relatively constant depth below the thermocline throughout the day.

We also support continued efforts by NMFS to gather relevant data that can help inform practical solutions for bycatch reduction measures of sea turtles, sea birds, and other species of concern for a shallow set longline fishery similar to the Hawaii-based longline fishery. Additionally, we also suggest testing new approaches to encourage better tracking of spatial and temporal patterns of bycatch. These and other collaborative efforts put forth by NMFS, PFMC, and other interest

groups can and will be important for helping to revitalize the local swordfish industry and promoting sustainable harvest strategies for local fishermen, rather than an overreliance on imports from foreign nations.

Sincerely,

C W Cook

Chuck Cook
Director of California's Coastal & Marine Program
The Nature Conservancy