November 4, 2019

Mr. Barry Thom
West Coast Regional Administrator
National Marine Fisheries Service
1201 NE Lloyd Blvd., Suite 1100
Portland, OR 97232

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

**Re: Agenda Item J.3: Scoping an Amendment Authorizing SSLL Gear Outside of the EEZ**

Dear Mr. Thom, Chair Anderson and Council members:

Thank you for the opportunity to provide comments on authorizing shallow-set longline (SSLL) gear outside of the West Coast Exclusive Economic Zone (EEZ). We understand that the Council is currently assessing the "need"[1] for pursuing an amendment to the Highly Migratory Species Fisheries Management Plan (HMS FMP) that would allow permitted SSLL fishing outside of the West Coast Exclusive EEZ. **We are writing to voice strong opposition to the authorization of any SSLL fishery**, especially in waters off the California coast that are designated as a global biodiversity hotspot.[2] Further, there is clearly no "need" for this fishery, as the fishery has been closed for over a decade and can remain closed if the Council votes for status quo.

In addition to maintaining the status quo regarding permitting of SSLL gear outside of the West Coast EEZ, we strongly encourage the Council to rescind the two Exempted Fishing Permits (EFP's) already in existence off of the West Coast.

Federally listed threatened and endangered sea turtles face many threats, including the significant threat of capture in commercial longline fishing gear.[3] Longline fishing uses thousands of hooks over a large ocean area to catch tuna or, in this case, swordfish. Longline vessels use fishing lines up to 60 miles long, suspended by floats in the water for hours. Several hundred or thousand individual hooks on a longline allow a single vessel to catch fish over miles of ocean. Sea turtles become hooked while trying to eat longline bait off the hook or from being entangled while

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[1] See Agenda Item J.3 Situation Summary at 1, November 2019, "The Council is currently assessing the need for pursuing an amendment to the [HMS FMP]."

[2] *See,* California Academy of Sciences, "HOTSPOT: California On the Edge," found at, https://www.nps.gov/goga/learn/management/upload/-1214-HOTSPOT-California-On-The-Edge-1.pdf .

[3] AR 258 at 13591; *Turtle Island Restoration Network v. U.S. Dep't of Commerce*, 878 F. 3d 725, 731 (9th Cir. 2017).

swimming through nearly invisible lines. The longlines also often ensnare marine mammals and other marine wildlife in addition to targeting swordfish or tuna.

Because of its harmful impacts, longline fishing is now banned within 200 miles off the U.S. West Coast under federal regulations and state law *to ensure the protection of protected species, especially federally listed sea turtles.*[4] NOAA Fisheries has repeatedly found that SSLL fishing methods have unacceptable impacts to federally listed sea turtles.[5] Now, NOAA Fisheries and the Pacific Fishery Management Council (PFMC) are considering reversing course and allowing SSLL fishing methods, despite all recent evidence indicating how harmful these methods are to threatened and endangered species. Please do not allow this to happen. Keep SSLL gear out of our waters.

**Allowing SSLL gear in the West Coast contradicts the Council's mandate of minimizing bycatch to the extent practicable**

The PFMC manages the West Coast swordfish fishery under its HMS FMP. Currently, SSLL gear may not be used within the U.S. EEZ of the West Coast, nor can it be used both east and west of 150 degrees W. longitude. The primary purpose of these restrictions is to eliminate "bycatch," or the catch of non-targeted species in the longlines. According to the PFMC's draft agenda Item J.3, Attachment 1,

> "Bycatch of non-target finfish species and incidental take of protected species while targeting swordfish remains an ongoing concern for the Council because protected species, including whales, dolphins, pinnipeds (e.g., seals, sea lions), sea turtles, and seabirds have special status under Federal Statutes. Therefore, the Council is required to monitor these fisheries, and *reduce or minimize bycatch of these animals to the extent practicable*."

PFMC is required to reduce and minimize bycatch of protected species, including federally listed threatened and endangered sea turtles, to the extent practicable. It is notable that "bycatch" does not necessarily mean that the animal caught by fishing gear be immediately killed; any non-target animal "caught" or somehow entangled in the SSLL gear is considered "bycatch," and the Council must reduce such interactions to the extent practicable. Thus far, the PFMC has attempted to do so by correctly restricting use of SSLL gear for the West Coast swordfish fishery entirely. Now, the Council is considering reversing course and allowing such gear to enter the waters with certain "improvements" to reduce bycatch. However, as will be explained below, even with modern advances SSLL gear still results in bycatch of federally listed species, especially vulnerable sea turtles. The only practicable way to continue to minimize catch of threatened and endangered sea turtles is to continue to prohibit SSLL gear in the West Coast EEZ.

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[4] 50 CFR § 660.712; Cal. Fish & Game Code § 9028. *See also* 69 Fed. Reg. 18,444, 18,450, April 7, 2004 (stating the purpose of enacting federal prohibitions against longlining is to "minimize[] potential bycatch of fish and protected species").

[5] *Id.*, 18,446 ("The consultation concluded that allowing [SSLL fishing] would appreciably reduce the likelihood of survival and recovery of the wild loggerhead sea turtles").

**Allowing SSLL gear in the West Coast contradicts goals of the Swordfish Management and Monitoring Plan (SMMP)**

In 2015, the PFMC developed a draft Swordfish Management and Monitoring Plan (SMMP) to provide a vision for future actions for the West Coast swordfish fishery as a subplan under the HMS FMP. The goals of the draft SMMP are to:

1. *Minimize protected species bycatch* to the extent practicable in the swordfish fishery through mitigation, gear innovation, and individual accountability.
2. Minimize unmarketable and prohibited finfish catch to the extent practicable in the swordfish fishery through mitigation, gear innovation, and individual accountability.
3. Support the economic viability of the swordfish fishery so that it can meet demand for fresh, high quality, locally-caught product and reduce reliance on imported seafood.
4. Promote and support a *wide range of harvest strategies* for swordfish off the West Coast.

In order to best meet goal (1) (minimize protected species bycatch), and goal (4) (promote a wide range of swordfish harvest strategies for swordfish), the PFMC should promote innovative fishing practices that will effectively minimize take of endangered sea turtles and other protected species.

There are currently three commercial gear types used in the West Coast EEZ to harvest swordfish: drift gillnet (DGN), harpoon, and deep-set buoy gear/linked deep-set buoy gear. While harpoon and deep-set buoy gear methods reduce catch volume of swordfish, they also result in relatively lower bycatch of protected species than DGN and longline methods.[6] Breathing life back into outdated SSLL practices directly contradict goals (1) and (4) of the SMMP.

Instead of scoping for methods that have been repeatedly proven to increase bycatch of protected species (DGN and SSLL gear), the Council should instead be scoping more sustainable fishing methods, such as harpoon and deep-set buoy gear.

**SSLL gear in West Coast EEZ will jeopardize the continued existence of Pacific leatherback sea turtles, as well as other federally protected species, and therefore violates the Endangered Species Act (ESA)**

The PFMC indicates that it is timely to consider SSLL in the West Coast because of technological advances in turtle exclusion devices (TEDs), other technological advances, and because SSLL gear has proven to work in Hawaii. While we appreciate the continual revisiting of policies to reflect emerging science and best available practices, current evidence clearly indicates that opening a SSLL fishery in the West Coast at this time will jeopardize the continued existence of many protected species, especially the leatherback sea turtle.

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[6] See Appendix A to draft SMMP, at 6 ("pelagic longline and DGN are capable of larger catch volume but result in relatively higher bycatch versus deep-set buoy gear and harpoon with low catch volume and little or no bycatch"), found in Agenda Item J.3, Attachment 1.

PFMC alleges that "sea turtle takes (specifically loggerhead and leatherback sea turtles) have been a focus of concern with [SSLL] gear type but the use of large circle hooks and mackerel type bait has been shown to substantially reduce takes, serious injuries, and mortality."[7] PFMC also highlights the recent Hawaii-permitted SSLL vessels that fish outside the EEZ and are allowed to make landings on the West Coast as further evidence to allow SSLL on the West Coast.

However, even with technological advancements and implementation of best available technology, the Hawaii-permitted SSLL fishery continues to take threatened loggerhead turtles and endangered leatherback turtles. This year, the Fishery was forced to close in March as a result of reaching their annual interaction limit of 17 loggerhead turtles.[8] Last year, the fishery resulted in the take of 6 leatherbacks and 33 loggerhead turtles before being forced to close in May as a result of a Court Order for exceeding their allowable interaction limit.[9] Clearly, the Hawaii-permitted SSLL fishery is not a sustainable model and should not be replicated on the West Coast.

Under the ESA, it is unlawful to "take" a listed species, where "take" includes actions such as, "harm," "harass," and "capture." In other words, the animal does not need to die in order for "take" to occur. Rather, "take" occurs when there has been an interaction with the animal, exactly like the above interactions did with the Hawaii-permitted SSLL fishery. In other words, there has been repeated and documented take occurring in the Hawaii SSLL swordfish fishery every year since the fishery has been open and recording such interactions.[10] Therefore, rather than expanding SSLL practices to the West Coast, the PFMC should act to prevent such practices from occurring on the West Coast and violating the ESA.

**Leatherback sea turtles are facing extinction in the near future, and the authorization of SSLL gear will ensure such extinction happens**

Since the implementation of the prohibition of SSLL gear within the U.S. West Coast EEZ, leatherback sea turtle conservation concerns have increased. In fact, Pacific leatherback sea turtles are one of just eight marine species that NOAA Fisheries has identified as most at risk of extinction.[11]

Scientific studies show that in the past 27 years, Pacific leatherback sea turtles numbers have dropped by 78 percent.[12] In 2013, scientists predicted that because threats (including bycatch from longlines) have not ceased, the population would be nearly extirpated by 2040.[13] Further, of

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[7] Draft SMMP, at 8, found in Agenda Item J.3, Attachment 1, Appendix A.

[8] NOAA Fisheries, Sea Turtle Interactions in the Hawai'i Shallow-set Longline Fishery, 2019 interactions (last visited October 31, 2019).

[9] *Id.*

[10] *Id.*

[11] *See,* NOAA Fisheries "Species in the Spotlight," found at, https://www.fisheries.noaa.gov/species/leatherback-turtle (last visited October 31, 2019).

[12] Gates, Verna, "Pacific leatherback turtle faces extinction in 20 years," REUTERS, Feb. 27, 2013. Found at, https://www.reuters.com/article/us-turtles-leatherback/pacific-leatherback-turtle-faces-extinction-in-20-years-idUSBRE91Q0VA20130227 (last visited November 4, 2019).

[13] *Id.*

the four primary Pacific nesting places, one population is extinct (Malaysian population), and two of the others (Mexico and Central American populations) have fallen by 95 percent.[14]

NOAA Fisheries recognizes *the primary threat* faced by leatherback sea turtles as incidental capture in fishing gear.[15] Further, NOAA Fisheries states on their website that they have "made it a priority to focus recovery efforts on stabilizing and recovering Pacific leatherback populations in order to prevent their extinction."[16]

If NOAA Fisheries is serious about recovering Pacific leatherback populations in order to prevent their extinction, the obvious course of action would be to restrict the greatest threats facing these sea turtles: incidental capture in SSLL fishing gear.

**Hawaii-permitted SSLL vessels are linked very closely to slavery and human rights abuses; we should end Hawaii SSLL practices and prevent similar practices from making their way to the West Coast**

The Hawaii swordfish fishery is linked very closely to slavery and other human rights abuses. This despicable but legal practice should be ended immediately, rather than replicated off the West Coast of the continental United States.

Currently, a federal loophole exists which allows undocumented people to work on fishing boats in Hawaiian waters, but exempts such workers from basic labor protections.[17] There is a fleet of about 140 boats, docking mainly on Pier 17 and Pier 38 in Honolulu once every three weeks, targeting swordfish and ahi tuna, which is the subject of alleged human rights abuses.[18]

At any given year, about 700 foreign workers live on boats off of Hawaiian shores, working in the Hawaii fishing industry, but lacking basic human rights. These workers generally come from impoverished Southeast Asian Pacific nations. They leave these countries to work for U.S. fisheries where they are paid as little as 70 cents per hour. They are not allowed to go on shore, and are forced to stay on small fishing vessels at all times. They have no legal standing on U.S. soil.

Foreign workers can be detained on boats where U.S. Customs and Border Protection requires the American captains to hold the workers' passports. In fact, vessel captains are given such control over these foreign workers that they essentially become captors.

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[14] *Id.*

[15] NOAA Fisheries "Species in the Spotlight," found at, https://www.fisheries.noaa.gov/species/leatherback-turtle (last visited October 31, 2019). ("The primary threat to leatherback turtle populations worldwide is bycatch in fishing gear. Bycatch primarily occurs in gillnets, *longlines*, trawls, and trap/pot fisheries.") (Emphasis added).

[16] *Id.*

[17] Martha Mendoza and Margie Mason, "Hawaiian Seafood Caught by Foreign Crews Confined on Boats," September 8, 2016. Found at, https://www.ap.org/explore/seafood-from-slaves/hawaiian-seafood-caught-foreign-crews-confined-boats.html.

[18] *Id.*

Workers described different experiences on different fishing vessels, and expressed that each experience ultimately comes down to each captain. While some captains may attempt to make every effort to keep their workers comfortable, many others do not. Investigative reporters for AP "found men living in squalor on some boats, forced to use buckets instead of toilets, suffering running sores from bed bugs and sometimes lacking sufficient food. It also revealed instances of human trafficking."[19]

While at sea, workers face extreme and dangerous conditions.

> "In the past 10 years, five fishermen in the Hawaii fleet have died when boats sank or burned, the [National Institute for Occupational Safety and Health] said, and at least four other workers were never found after falling overboard. Two men's quests for better lives ended with their deaths after they were stabbed at the dock in knife fights."[20]

Even when docked, workers do not face any reprieve from these conditions. While American citizens can rest at home or in another shelter while the boats are in port, foreign workers must remain on fishing vessels. They must therefore rely on their captains to bring them food, hygiene products, socks, underwear, medical care, and everything else they need for basic human comfort and health.

One reporter followed the stories of Abdul Fatah and Sorihin, two workers who arrived from Indonesia to fish on a Hawaiian vessel for swordfish and tuna.[21] Abdul faced physical hardships, first from a fishing line that nearly ripped off his finger. Immediately following that event, the captain of his vessel set his finger straight with a chopstick and had him keep working. In another incident, a winch cable snapped, badly bruising his shoulder. Immediately following this incident, the captain allowed him a two-hour rest before making him work again. Abdul's co-worker, Fatah, was kicked awake before work every morning, and was almost tossed overboard during a storm. Both were scared for their lives, so, "early one morning when their captain was gone, the two men broke into the skipper's quarters, grabbed their passports and made a run for it while docked in San Francisco."[22]

Swordfish obtained from this fleet is marketed as "sustainable seafood produced by Hawaii's hard-working fishermen."[23]

Clearly, the human rights abuses associated with the Hawaii swordfish industry are troubling to say the least. Until such time as these loopholes are closed and all foreign workers afforded basic human rights, these practices must not be allowed to expand to the West Coast Fishery.

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[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*

**Swordfish often contain toxic levels of mercury and should be discouraged as a protein source**

Swordfish contains higher average levels of mercury than any other type of fish or seafood consumed by humans.[24] In fact, the United States Food and Drug Administration recommends that women who are or might become pregnant, breastfeeding mothers, and young children completely avoid consuming swordfish due to high mercury levels.[25] In 2004, the Food and Drug Administration (FDA) made the following recommendation, "Do not eat Shark, *Swordfish*, King Mackerel, or Tilefish because they contain high levels of mercury."[26]

Mercury poisoning can create neurological and chromosomal problems in humans.[27] This can include hearing and vision changes, personality changes, memory problems, seizures, paralysis, and with children can also include developmental or muscle coordination problems.[28] Given these severe health threats, United States Federal Agencies should not be contributing to the supply of this fishery.

Swordfish are the greatest contributor to mercury poisoning in humans, so it is astounding that the PFMC is considering adding more of this harmful and unhealthy protein source to our supply. We urge the PFMC to NOT authorize SSLL gear off of the West Coast and effectively encourage the population to eat more protein that has been deemed harmful by our own government.

In summary, the PFMC and NOAA Fisheries should disallow all SSLL gear in the West Coast because of harmful interactions with highly migratory species, human health impacts, possibilities of exacerbating human rights violations and violations of federal law.

Sincerely,

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Turtle Island Restoration Network

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[24] Healthline, Nutrition, "Should You Avoid Fish Because of Mercury?" found at, https://www.healthline.com/nutrition/mercury-content-of-fish (last visited November 4, 2019). ("Here are the average levels in different types of fish and seafood, from highest to lowest...Swordfish: 0.995 ppm.").

[25] U.S. Food & Drug Admin., "Advice about Eating Fish For Women Who Are or Might Become Pregnant, Breastfeeding Mothers, and young Children" found at https://www.fda.gov/food/consumers/advice-about-eating-fish

[26] U.S. Food & Drug Admin., FDA/EPA 2004, "Advice on What You Need to Know About Mercury in Fish and Shellfish" (March, 2014), found at, https://www.fda.gov/food/metals/fdaepa-2004-advice-what-you-need-know-about-mercury-fish-and-shellfish

[27] U.S. Food & Drug Admin., FDA/EPA 2004, "Advice on What You Need to Know About Mercury in Fish and Shellfish" (March, 2014), found at, https://www.fda.gov/food/metals/fdaepa-2004-advice-what-you-need-know-about-mercury-fish-and-shellfish

[28] *Id.*