

**Written Statement by  
Gary Burke  
U.S. Commercial Swordfishermen  
Before the  
House Natural Resources Committee  
Subcommittee on Water, Oceans and Wildlife**

**May 8, 2019**

Chairman Huffman, Ranking Member McClintock, and members of the Committee, thank you for this opportunity to appear before you to provide the perspective of commercial fishermen on H.R. 1979, the Driftnet Modernization and Bycatch Reduction Act. I am appearing today on behalf of the Ventura County Commercial Fishermen's Association. The Association is a non-profit organization that promotes the regional efforts of fishing communities with the aim of improving the economic and biological sustainability of fisheries.

I was born and raised in California and have resided in Santa Barbara since 1964. I have a BS degree from UC Santa Barbara in geography. Shortly after graduating I worked as a deckhand on a commercial abalone boat. I bought my first boat in 1976, a 37-foot Kettenburg, and have had my current boat since 1986, a 50-foot steel boat built in Crescent City.

I fish for swordfish with the type of gear that would be banned by this legislation. Although I now primarily fish drift gillnet gear for swordfish and sharks with my boat, in the past I have also dragged for halibut and shrimp, trolled for tuna, trapped for slime eels, and set net fished for different species. Fishing for swordfish with drift gillnet gear allows me to catch a high value species like swordfish, as well as other species when necessary to make sure I have enough revenue to cover fuel and crew and other boat expenses.

I am a current member of the Pacific Fishery Management Council's Highly Migratory Subspecies Advisory Panel, which advises the Council on fishery management problems, planning efforts, and the content and effects of fishery management plans, amendments, and regulations. I am also a director for the Commercial Fisherman of Santa Barbara and an advisor to the California Fish and Wildlife Department for the white sea-bass management plan. I spend a lot of time at the Pacific Council and other fisheries management meetings to support the sustainable management of fisheries that I depend on for my livelihood.

I am here to express strong concerns about this legislation which would put me and other swordfishermen out of business. H.R. 1979 would eliminate a responsibly managed, sustainable U.S. fishery and have the following negative impacts:

- End livelihoods, disrupt families, eliminate jobs and hurt U.S. coastal economies
- Deprive U.S. seafood consumers of responsibly harvested, sustainable seafood

- Increase foreign imports from less responsible fisheries

The bill is drafted in a way that makes it seem as if there will be an easy transition to a “cleaner” gear type and that fishermen will not suffer economically. The truth is that this other gear is not ready for prime time and would bankrupt most, if not all, DGN fishermen if they are forced to depend on it to catch swordfish.

My hope is that this Committee will take my comments into consideration and amend H.R. 1979 to preserve the opportunity for swordfish fishermen to fish with the current sustainably managed gear until an alternative gear that works economically is available. The rest of my statement provides background on the hard work we have put in and the success that the DGN fleet has had to reduce and eliminate bycatch in our fishery.

### Successful Sustainable Management of the CA Drift Gillnet Swordfish Fishery

The west coast swordfish drift gillnet fishery is a strictly managed U.S. fishery. It is regulated by the Pacific Fishery Management Council in coordination with the National Marine Fisheries Service. This fishery has operated legally under the Magnuson-Stevens Fishery Conservation and Management Act; the Marine Mammal Protection Act, and the Endangered Species Act for decades. The fishery is currently in full compliance with the MSA, MMPA and ESA. With respect to the ESA, the most recent biological opinion prepared by NMFS and issued under ESA section 7, concluded:

“After reviewing the current status of ESA-listed fin whales, humpback whales, sperm whales, leatherback turtles, North Pacific DPS loggerhead sea turtles, green sea turtles, olive ridley sea turtles, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, it is NMFS’ biological opinion that the proposed action of continued management of the DGN fishery is not likely to jeopardize the continued existence of these seven species, and is not likely to destroy or adversely modify any ESA-listed designated critical habitat.”

Biological Opinion on the Continued Management of the DGN Fishery, May 2, 2013.

To address commercial fishing interactions with marine mammal species, Section 118 of the MMPA requires NMFS to develop and implement take reduction plans to assist in the recovery or to prevent the depletion of strategic marine mammal stocks. In an effort to mitigate bycatch in the west coast DGN fishery, NMFS established the Pacific Offshore Cetacean Take Reduction Team (POCTRT) in 1996. The POCTRT includes representatives of environmental organizations, NMFS, the California Department of Fish and Wildlife, the Pacific States Marine Fisheries Commission, academic and scientific organizations, and participants in the DGN fishery.

The POCTRT established three mandatory strategies for the DGN fishery, one being the use of extenders that lower the net 6 fathoms (36ft.) to avoid marine mammals and sharks which typically surface during the night when the nets are cast. Pingers, which are acoustic deterrent devices that broadcast a sound at various pulse rates are also mandatory, as well as skipper workshops. The skipper’s workshops have been helpful in educating fishermen on what types of ocean conditions tend to

result in increases in specific species of concern, as well as on the best seasonal time and area closures to protect Loggerhead and Pacific Leatherback sea turtles.

Historically, whale interactions are very rare in the CA DGN fishery, with only 10 observed whale interactions (4 of which were released alive) over the last 17 years.(1) Fortunately, sea turtle interactions are also very rare in the CA DGN fishery, which observed only 3 sea turtle interactions (all 3 were released alive) in the last decade.

Despite this record of success in reducing bycatch of marine mammals and sea turtles, the environmental community has continued to attack this fishery and attempt to put me and other fishermen out of business. In 2014 and 2015, environmental groups pressured the Pacific Council to establish “hard caps” or specific numeric limits on the bycatch of marine mammals and sea turtles. The Council passed an amendment to the DGN fishery management plan to implement hard caps, but it was rejected by the Obama Administration as inconsistent with the MSA, ESA and MMPA.

In a letter to NMFS on the hard cap issue, the Marine Mammal Commission stated:

“The Commission is concerned that the PFMC’s proposed measures are rather blunt, are not based on the best available science, do not reflect the most recent estimates of bycatch rates (and their variances), and would not reduce the probability of fishery interactions with marine mammals while the fishery is operating.” Marine Mammal Commission letter to NMFS Administrator Eileen Sobeck, dated June 26, 2015.

Administrator Sobeck sent a letter to the Pacific Offshore Cetacean Take Reduction Team that stated:

“The Pacific Offshore Cetacean Take Reduction Plan has been the most successful of all take reduction plans across the country.” Letter from NMFS Administrator Sobeck to the Pacific Offshore Cetacean Take Reduction Team, dated August 14, 2015.

I wanted to include these points to show that when this fishery is looked at from a scientific and regulatory management perspective, it is working exactly as intended and required under federal law. The fact that it was defended by Obama Administration officials highlights that this is not a political matter, but one of science and properly implemented fisheries management regulations.

As further evidence of the significant progress this fishery has made to reduce bycatch, the DGN swordfish fishery was reclassified as a Category II fishery in the Marine Mammal Protection Act’s 2018 List of Fisheries. A Category II fishery is one in which there is “occasional incidental mortality and serious injury of marine mammals” but at levels well below each mammal’s Potential Biological Removal. For years prior, the fishery was a Category I fishery, which is the label placed on U.S. fisheries with “frequent incidental mortality and serious injury of marine mammals”.

It is beyond dispute, as noted by fishery managers and regulators, the DGN fishery has been responsive to the calls to reduce bycatch and has changed its fishing practices to address this. Shutting down our fishery will only serve to increase the importation of swordfish from harvesting nations whose environmental standards are far below those of our domestic fisheries. I would like to request that the Chairman include in the record a published article on this issue, *Can the United States have its fish and eat it too?* It is very possible that eradicating our highly regulated fishery will result in a net

conservation loss as fishing effort shifts to harvesting nations with less concern over impacts to marine mammals and other species of concern.

Alternative gear is still being tested and has not shown to be economically viable on the west coast

I now want to turn to a significant misconception about this legislation. H.R. 1979 references “alternative gear with minimal incidental catch of living marine resources”. Without naming a specific gear type in the bill, it is pretty clear that it is talking about Deep-Set Buoy Gear (“DSBG”). This gear type is being evaluated under Experimental Fishing Permits authorized by the Pacific Council and a number of DGN boats have tried it. Unfortunately, the limited fishing attempts to date have shown DSBG to be far less effective than DGN in catching swordfish. Fewer swordfish caught means lower revenue for the boats, and at the current testing rates for DSBG it is not economically viable.

DSBG was never designed to be a stand-alone fishing method – it was designed to supplement other harvest methods including the DGN and harpoon fisheries. In 2015, the DSBG experimental fishery produced roughly 1.3 fish per 8 hours of fishing. In 2016 and 2017 this increased to 1.9 fish. It should be noted that in 2017, DSBG accounted for 41.1 mt of swordfish while DGN accounted for over four times as much at 175.7 mt. Preliminary data for 2018 indicate DSBG catch is dropping to levels closer to 2015. Most vessels which participate in the DSBG fishery are typically smaller and have lower operational costs. The DGN vessels are larger and even at 1.9 fish per day, we will lose money and be unable to provide swordfish to the nation’s seafood consumers. Economic viability of DSBG is a serious concern for our larger DGN vessels; vessels which likely have little or no value without any other viable fisheries to participate in.

Conclusion

I want to be very clear regarding the impacts of H.R. 1979 on the DGN fleet – it will shut us down. Alternative gear is not ready to support economically viable fishing for swordfish off the west coast. We do not want to be shut down and we ask Congress to amend H.R. 1979 to allow continued operation of our fishery until such a time that National Marine Fisheries Service can certify that DSBG, or another gear type, as a viable replacement for the sustainable harvest of swordfish off the U.S. West Coast.

H.R. 1979 presents a clear and present danger to me, my family, my crewmembers and their families. H.R. 1979, as written, will unnecessarily harm the Nation’s seafood supply and consumers who demand sustainably sourced, domestic, seafood. H.R. 1979 will further harm the state of California’s struggling coastal fishing communities and could cause further deterioration (or elimination) of necessary infrastructure to support the state’s commercial fisheries.

I respectfully ask the Committee to support a reasonable amendment to H.R. 1979 that will allow a sustainably managed fishery to continue to support hard working family businesses and take the time to ensure that alternative gear is proven effective and economically viable before mandating its use.

I would be happy to answer any questions the Committee’s members may have.