



THE BILLFISH FOUNDATION
CONSERVATION THROUGH RESEARCH, EDUCATION AND ADVOCACY
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Kim Marshall
1315 East-West Highway, SSMC3
Silver Spring, MD 20910

Dear Ms. Marshall,

The Billfish Foundation (TBF) appreciates the opportunity to provide comments on the Advanced Notice of Proposed Rule Making (ANPR) to implement The Billfish Conservation Act of 2012. The failure of the Pacific and the Western Fishery Management Councils to prohibit the sale of Pacific billfish in the U.S., as was done for Atlantic billfish by the Atlantic and Caribbean Fishery Management Councils years ago, provided the impetus to a legislative option—the BCA. The drafters' intentions and goal to stop consumption in the continental U.S. of Pacific billfish could certainly benefit the health of billfish stocks and recreational fishing opportunities if the fish are not just exported to another market for consumption.

The BCA is a step in the right direction, but some concerns remain. First, the wording in the ANPR seems most unusual for the National Marine Fisheries Service (NMFS) asks the public "what if any restrictions it can impose on transportation and sale of billfish caught by U.S. vessels and landed in Hawaii or Pacific Insular Areas." The agency, with its experts, should know whether it has the authority or not to implement "sale and transportation" of U.S. caught Pacific billfish. Public comment, which likely will not reflect authoritative sources, cannot be the source of agency action. Second, does "transportation" of dead fish parts for consumption constitute trade? If so, does it raise other legal questions surrounding implementation?

Third, the interpretation of the language within Section 4(c)(1) of the BCA leaves significant room for interpretation as to its reach—"Subsection (a) does not apply to billfish caught by U.S. fishing vessels and landed in the State of Hawaii or Pacific Insular Area." The interpretation of this section may be pivotal to the National Marine Fisheries Service's question concerning the extent to which it can or cannot restrict transportation and sale of Pacific billfish. If a legal interpretation determines that the exemption allows Pacific billfish caught by U.S. fishing vessels and landed in the State of Hawaii or Pacific Insular Areas can enter and be sold in the continental U.S., it would seem that the agency would not have authority to change or further restrict the exemption.

The National Marine Fisheries Service already requires a Billfish Certificate of Eligibility (COE) to accompany Pacific blue, black, striped marlin, sailfish or shortbill spearfish caught in the Pacific Ocean and imported into the continental United States. Implemented under 50 CFR 535.31(b), this agency tool is used to attest the billfish was not harvested from the Atlantic Ocean management unit and currently prohibited from importation and sale in United States. If the exemptions in the BCA are determined to allow the transport and sale of the U.S. caught Pacific billfish into the continental U.S., then the agency would need to require a COE for dealers shipping the Pacific caught fish. Would the COE be required to be presented to the first purchaser from the vessels in Hawaii or Pacific Insular Areas or to the first purchaser in the

continental U.S.? This raises a fourth concern, enforcement and accommodation for the Section 4 exemptions.

The BCA allows both foreign and U.S. vessels to land and harvest billfish in Hawaii and Pacific Insular Areas, which raises a concern how the fisheries processing facilities will keep separate the Pacific billfish harvested from U.S. vessels and from foreign vessels. If the exemption in Section 4(c)(1) allows billfish caught by U.S. vessels to be transported and sold in the U.S. mainland, the COE provides no enforcement means to identify foreign caught billfish that might become mixed with those caught by U.S. vessels. If enforcement at this point is not effective, there would not be a decrease Pacific billfish sold in the continental United States.

The proposed use of a Billfish Certificates of Eligibility (COE) to document billfish offered for sale qualify for exemption from the general prohibition is not adequate; a better mechanism is needed. The problems associated with the current COE system are documented in *The Economic Analysis of International Billfish Markets* study by Gentner and produced for the IGFA. It states that the COE is an unreliable measure to prevent the sale of Atlantic billfish due to the common mislabeling, common transshipping, and non-requirement to submit the paper work to NMFS, the FDA, or to customs agent during the importation process in many cases.

The effectiveness of the legislation to stop the transport/trade and sale of Pacific caught billfish in the continental U.S. will depend on the legal interpretation of the exemption section within the BCA. If only foreign caught Pacific billfish are prohibited from entering the continental U.S., there is nothing prohibiting them from entering other international markets and severely diminishing potential conservation benefits from the BCA. Some of these fish could still enter the continental U.S. if mixed with U.S. caught billfish in Hawaii or Pacific Insular Areas after being off-loaded from the catching vessels. In such cases a means more effective than a COE will be needed to trace each billfish from U.S. vessels to the point of the consumer. In light of no requirement for a federal agency to confirm the validity of current COEs from the Pacific, it would seem a COE offers no effectiveness for enforcement. Any conservation and management measures for Pacific billfish will still rest and depend upon the Pacific and the Western Pacific Fishery Management Councils, unless that authority is combined with the authority for Atlantic highly migratory species in Washington, D.C.

The Billfish Foundation applauds the drafters' intent of the Billfish Conservation Act, but the huge question remains whether that goal can be realized with the language in the law.

Sincerely,



Ellen Peel
President, The Billfish Foundation



Andrew Cox
Science and Policy Specialist, The Billfish Foundation