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September 1, 2015

Dorothy Lowman, Chair  
Pacific Fishery Management Council  
1100 NE Ambassador Place, #101  
Portland, OR 97220

Agenda Item H.8.b  
Supplemental Public Comment 5  
September 2015

**RE: Agenda Item H.8 (Amendment to Modify Groundfish Essential Fish Habitat and to Adjust Rockfish Conservation Areas)**

Dear Chair Lowman and Council Members,

We write in support of the Pacific Fishery Management Council's (Council) ongoing efforts to amend the Groundfish Fishery Management Plan (FMP) to comprehensively address and improve both habitat protections and economic opportunities in the fishery. This effort is an example of the Council's demonstrated commitment to protect marine habitats through an ecosystem-based approach to fishery management (EBFM). We appreciate the substantial work done by the project team since the June meeting, and are largely supportive of the approach they recommend in their two September reports.

For the September Council meeting, we request that the Council advance this Groundfish FMP amendment by adopting a range of alternatives for analysis. Our top priorities are the inclusion of alternatives for a precautionary bottom trawling closure in federally-managed waters beyond 3,500 meters depth, and inclusion of alternatives shoreward of 700 fathoms depth that would balance any re-openings of existing habitat or mortality closures against new habitat closures to produce a net increase in effective protections for groundfish habitat and structure-forming invertebrates like corals and sponges.

On the following pages we offer detailed recommendations, summarized as follows:

- Adopt the statements of purpose and need for the FMP amendment as developed by the project team;
- Develop and adopt objectives for the FMP amendment that provide further guidance, including on the protection of priority habitats; and
- Adopt the range of alternatives as developed by the project team, with the following modifications:
  - Explicitly include and describe alternatives for a bottom trawl closure for waters beyond 3,500 meters in depth; and
  - Provide guidance to the project team to develop comprehensive alternatives, within the trawl footprint, of linked Essential Fish Habitat (EFH) and Rockfish Conservation Area (RCA) modifications that result in a net increase in effective protections of EFH and structure-forming invertebrates like corals and sponges across a diverse array of habitat types, biogeographic sub-regions, and depth zones.

### **Adopt statements of purpose and need**

We support adoption of the draft statements of purpose and need for the FMP amendment as developed by the project team.<sup>1</sup> They effectively characterize the intent and scope of the action as we understand it, and we appreciate the efforts of the project team in distilling this highly complex effort into these concise and complete statements.

We do suggest that item 3 of the purposes list (relating to the evaluation and revision of RCA closures) should be modified to better address the Council's intent of increasing economic opportunity for the industry. The Council and industry have made steady progress in rebuilding depleted stocks, along with other accountability successes under the Individual Fishing Quota (IFQ) program. Therefore we support re-opening portions of the RCA.

This should be done in a way that ensures the fishing effort there is sustainable and does not adversely impact any species or species groups, especially overfished stocks. Similarly, adverse effects on habitat should also be avoided in the adoption of any re-openings: sensitive and/or recovered habitats, EFH, and biogenic habitat should be carefully identified and these areas should be transitioned to EFH closed areas. As we will explain in greater detail below, this should be done in a way that ensures a net overall increase in protected habitat results from the action.

These two priorities (conservation of managed stocks and protection of habitat) are effectively captured in the draft statements of purpose and need. But the Council's intent to respond to the recent rebuilding successes and increase economic opportunity for the industry is not expressed as effectively. Therefore we suggest that item 3 could be revised to read as follows:

“Evaluate and revise the RCA closures to minimize bycatch as necessary, to transition any appropriate areas within the RCA to longer-term habitat protection, and to increase economic opportunity for the industry”

### **Develop and adopt objectives for the FMP amendment**

We note that the project team has requested that the Council provide additional guidance on what types of habitat to prioritize for protection, and also on “which combination of alternatives and sub-alternatives should be analyzed and developed into a suite of integrated alternatives, for consideration at the April 2016 Council meeting.”<sup>2</sup>

The Council can provide this guidance (including on priority habitats) through the adoption of objectives for the FMP amendment. The draft statements of purpose and need previously discussed are adequate to the task of describing the reason for and scope of the Council's action, but they do not address the core questions of what the Council wants to accomplish. Therefore we concur with the suggestion of the Council's Habitat Committee in their June 2015 report that the adoption of objectives is an appropriate way to guide the development of the range of

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<sup>1</sup> See PFMC, September 2015 Briefing Book Agenda Item H.8 Attachment 1, [DRAFT RANGE OF ALTERNATIVES FOR MODIFYING PACIFIC COAST GROUND FISH ESSENTIAL FISH HABITAT](#), September 2015, pp.2-3

<sup>2</sup> Ibid, at p. 5. Also see September 2015 Briefing Book Agenda Item H.8 [Situation Summary](#), p. 2

alternatives.<sup>3</sup> We recommend that the Habitat Committee’s suggestion for specific objectives, which was drawn from the Record of Decision (ROD) for the Council’s previous EFH action (Amendment 19),<sup>4</sup> be modified and expanded into the following set of objectives for this action:

1. *Protect a diverse array of habitat types across latitude ranges and within the known biogeographic sub-regions and depth zones that occur in the project area*
2. *Protect the full range of benthic habitat to support each managed species*
3. *Prioritize pristine or sensitive habitats, including deep-sea corals*
4. *Protect unfished areas from bottom trawl impacts through precautionary closures*
5. *Increase protections from bottom trawl impacts for groundfish EFH, deep-sea corals (DSC), and other structure forming invertebrates*
6. *Achieve an overall net increase in effective habitat protection within the current trawl footprint (once all re-openings of habitat and/or mortality closures are balanced against new habitat closures)*
7. *Increase economic opportunity in the groundfish fishery by re-opening any mortality closures that can be fished sustainably without adverse effects on habitat*
8. *Implement area closures for different gear types within different habitat types to foster comparative scientific research*

**Adopt the draft range of alternatives, with modifications:**

The project team has organized the alternatives into a clear, concise and effective conceptual framework. While we are supportive of their recommendations, we do suggest two modifications consistent with the suggested objectives for the amendment listed above. The range of alternatives proposed by the project team should be modified as follows:

- Explicitly include and describe alternatives for a bottom trawl closure for waters beyond 3,500 meters in depth
- Provide guidance to the project team to develop comprehensive alternatives, within the trawl footprint (i.e., shoreward of 700 fathoms in depth), of linked EFH and RCA modifications that result in a net increase in effective protections of groundfish EFH and structure-forming invertebrates like corals and sponges across a diverse array of habitat types, biogeographic sub-regions, and depth zones

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<sup>3</sup> See PFMC, June 2015 Briefing Book Agenda Item D.6.a [Supplemental HC Report](#), June 2015, p.2

<sup>4</sup> Ibid. The five objectives from the Am 19 ROD suggested by the HC are as follows: “(1) *protect a diverse array of habitat types across latitude ranges and within the two known biogeographic zones that occur in the project area*, (2) *protect the full range of benthic habitat to account for each managed species*, (3) *prioritize pristine or sensitive habitats and the gear types most likely to have the highest impact*, (4) *distribute socioeconomic costs that would result from implementation of the alternative*, (5) *implement area closures for different gear types within different habitat types to foster comparative scientific research.*”

Seaward of 3,500 meters:

In past correspondence we have described in detail the purpose, need, ecological and management justification, and legal authority for precautionary closures of seafloor beyond 3,500 meters depth.<sup>5</sup> We do not go into this level of detail here, but reiterate our request that the Council move ahead with inclusion of this sensible protective action in the amendment. We acknowledge and appreciate the productive discussion at the June 2015 Council meeting relative to the legal authorities available to the Council for this type of closure, including the informative statement of the Habitat Committee.<sup>6</sup>

The project team adequately addresses this issue in their draft statements of purpose and need (including Table 1 of their report), and in the “other considerations” sections of their report.<sup>7</sup> However, we note an important inconsistency. Specifically, the intent (see Table 1) appears to be inclusion of alternatives that would apply Magnuson-Stevens Fishery Conservation and Management Act (MSA) discretionary authorities under Section 303(b) to protect “species and habitats including deep-sea corals”.<sup>8</sup> But Table 1 also indicates that the “alternatives that address this purpose” are Alternatives 1a-1f, which are later explicitly limited to modifications of EFH closed areas. Modifications of EFH closed areas, under EFH authority [16 U.S.C. § 1853(a)(7)], are necessarily different from the application of the MSA discretionary authorities [16 U.S.C. § 1853(b)(2); 16 U.S.C. § 1853(b)(12)] under the proposed structure of the alternatives. We request that this inconsistency be explicitly rectified through guidance to the project team to develop alternative for closures, including in the waters beyond 3,500 meters, which are based on the MSA discretionary authorities.

The Mid-Atlantic Fishery Management Council (MAFMC) recently took action to adopt a 38,000 square mile protective closure that includes very deep areas all the way to the edge of the U.S. Exclusive Economic Zone (EEZ), as previously highlighted by the Habitat Committee.<sup>9</sup> This is an excellent precedent for deep water protection, and a good example of how MSA discretionary authority could be applied in this Groundfish FMP amendment. Their action to close pristine deepwater areas currently beyond the practicable reach of fishing fleets, and to do so based on limited data that nevertheless showed corals were present in some areas and potentially present in others, should provide a helpful precedent.<sup>10</sup> It is also clear that the discretionary authorities in the MSA are adequate and appropriate for this protection. This

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<sup>5</sup> See PFMC, April 2015 Briefing Book, Agenda Item E.5.b, [Supplemental Public Comment Packet 2](#), Pew letter at pp.1-12. See also PFMC, June 2015 Briefing Book, Agenda Item D.6.b, [Supplemental Public Comment Packet 2](#), Pew letter at pp. 5-12

<sup>6</sup> See PFMC, June 2015 Briefing Book Agenda Item D.6.a [Supplemental HC Report](#), June 2015, pp. 1-2

<sup>7</sup> See PFMC, September 2015 Briefing Book Agenda Item H.8 Attachment 1, [DRAFT RANGE OF ALTERNATIVES FOR MODIFYING PACIFIC COAST GROUND FISH ESSENTIAL FISH HABITAT](#), September 2015, pp.2-3 and p. 6

<sup>8</sup> *Ibid.*, at p.3

<sup>9</sup> See PFMC, June 2015 Briefing Book Agenda Item D.6.a Supplemental HC Report, June 2015, p. 1. See also Mid Atlantic Fishery Management Council, [“Mid-Atlantic Council Approves Deep Sea Corals Amendment”](#), press release, June 11, 2015

<sup>10</sup> See MAFMC, [DEEP SEA CORALS AMENDMENT TO THE ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERY MANAGEMENT PLAN](#), Public Information Document, p. 44

includes the specific authority to close areas known or suspected to harbor deep sea corals. What we propose here is essentially the same action based on a similar level of available information.

Shoreward of 700 fathoms:

The potential range of alternatives inside the current footprint of the trawl fishery is highly complex. The potential scenarios for combinations of EFH closed area and RCA modifications are almost infinite at this point. As such, the basic conceptual framework laid out by the project team is adequate, and we support its adoption. It provides a wide range of options, and makes space for key stakeholder-driven alternatives including the EFH 5-year review Phase 2 stakeholder proposals,<sup>11</sup> and the pending proposal from the industry/non-governmental organization (NGO) collaborative.<sup>12</sup> However, we do suggest that additional Council direction is needed on how to merge the two key pieces (EFH closed area modifications and RCA modifications) into a reasonable range of alternatives.

We request that the Council provide guidance to the project team to develop comprehensive alternatives within the trawl footprint (i.e., shoreward of 700 fathoms in depth) that package EFH and RCA modifications to produce a net increase in effective protections of groundfish EFH and structure-forming invertebrates like corals and sponges across a diverse array of habitat types, biogeographic sub-regions, and depth zones. An overall improvement and increase in habitat protection is consistent with provisions of the MSA that call for the conservation and enhancement of EFH, and is thus a logical and necessary component of a reasonable range of alternatives.<sup>13</sup>

Thank you for your time and consideration. We appreciate the opportunity to continue to work with you to maintain sustainable fisheries and healthy ocean ecosystems.

Sincerely,



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<sup>11</sup> See PFMC, September 2013 Council Meeting Briefing Book, [Informational Report 3: Groundfish Essential Fish Habitat Review: Summary of Proposals Received and Process for Completion](#)

<sup>12</sup> See PFMC, September 2015 Council Meeting Briefing Book, Agenda Item H.8.b Public Comment 1, [Increasing habitat protection and economic opportunity through collaborative efforts to reconfigure groundfish Essential Fish Habitat Conservation Areas and the Trawl Rockfish Conservation Area](#), September 2015

<sup>13</sup> See 16 U.S.C. § 1853 (a)(7); see also 16 U.S.C. § 1855 (b)(1)(A)