

## HABITAT COMMITTEE REPORT ON ESSENTIAL FISH HABITAT (EFH) EVALUATION CRITERIA AND PHASE 2 REPORT

The Habitat Committee (HC) received a presentation by Michelle McClure, National Marine Fisheries Service (NMFS) on the NMFS Science Center Report (Agenda Item D.2.c, Supplemental NW/SWFSC Report).

The HC appreciates the efforts the science centers expended in short order to produce this document. Dr. McClure pointed out that this effort is complex and resource intensive. The HC looks forwards to the science center pursuing this inquiry and in the future being able to provide the assessment of groundfish EFH measures the Council requested.

### **Phase 2 Report comments**

The HC commends the Essential Fish Habitat Review Committee (EFHRC) on completing the Phase 2 Report, and acknowledges the challenges the committee faced with opposing viewpoints and differences in interpretation of governing mandates. The HC appreciates the EFHRC for its extensive and impressive work gathering and summarizing new information.

The HC offers the following response to the EFHRC Phase 2 Report.

#### *Section 1 (Introduction and Data Limitations)*

##### Response to Recommendation #1 (Habitat Assessment):

The HC agrees with the recommendation to conduct a comprehensive habitat assessment that incorporates habitat science into the assessment and management of fish stocks, as well as providing sound protection measures for groundfish habitat. As noted by NMFS, a full assessment is not feasible at this time, but there are short-term elements that can be applied during Phase 3 (as noted above), which the HC supports. Planning for the incorporation of a full assessment into the next five-year review following this review period makes sense.

##### Response to Recommendation #2 (Independent, peer-review process of select products):

The HC spent some time considering what is meant by the peer-review of select Phase I and Phase 2 products noted in the EFH review report. The most common interpretation of “peer review” is independent review of reports for publication (e.g., scientific journals, NOAA tech memos). Some review of the Phase I products has occurred through this process as the NMFS synthesis has been revised as a tech memo. However, the standard for the Council is scientific review by the Scientific and Statistical Committee (SSC). Additional NMFS products may need scientific review to assist management decisions.

Ideally, the SSC would review both the data products and the scientific support for changes in EFH during Phase 3, prior to National Environmental Policy Act (NEPA) review. However, such analyses should be determined so as to not delay Phase 3. If the Council approves this type of

scientific review, it is worth considering whether the SSC has the current expertise to review habitat data products.

This scientific review, along with other guiding factors (e.g., precautionary principle, economic and social impacts, distribution of impacts across the region) will inform the selection of alternatives moving forward.

### *Section 2 (EFH Description and Identification)*

The HC agrees with the recommendations of the EFHRC majority in Section 2.3 regarding EFH description and identification. We do not support the minority recommendation regarding the expansion of EFH beyond 3500m, because the Magnuson-Stevens Act (MSA) does not provide for the designation of EFH for ecosystem component species. The HC does, however, strongly support additional habitat protection measures by applying the MSA's deep-sea coral discretionary authority. This is further discussed below.

### *Section 3 (MSA Fishing Activities that May Impact EFH)*

#### Response to Recommendation #1 (Precautionary Approach)

Several paragraphs in Section 3 acknowledge the vulnerability of deep-sea corals to fishing gear impacts and note that deep-sea coral taxa are slow-growing and could take hundreds of years to recover from fishing impacts.

The EFH Phase 1 Report summarized bycatch for coral, sponge and sea pen taxa in the West Coast Groundfish Observer Program before and after the Amendment 19 EFH closures of 2006. The changes in bycatch rates and frequencies (both increases and decreases) varied among taxa and were not easily explained. However, what is evident is that 45 percent of the total number of tows executed contained bycatch of corals and sponges, regardless of time period (EFHRC Phase 1 Report, Chapter 3, Table 4).

The HC agrees with the findings of the EFHRC and urges the Council to continue to implement precautionary measures to protect biogenic habitats in the absence of scientific certainty. Although we cannot quantify the contribution of biogenic habitat to the productivity of groundfish species, several studies have demonstrated varying degrees of associations of several groundfish species with deep-sea coral species, including deep-sea coral as shelter for some rockfish species. Given the vulnerability of these habitats and the continuous occurrence of biogenic bycatch in the trawl fishery, precautionary measures are necessary to protect these vulnerable habitats.

#### Response to Recommendation #2 (Discretionary Authority)

In its 2006 final rule, NMFS acknowledged that even minimal fishing effort could have high levels of impact on sensitive deep-sea habitats supporting vulnerable species, such as deep-sea corals, and deemed it appropriate to apply precautionary management measures to protect deep-sea habitats from fishing impacts. With the revision of the MSA, the Council can now use discretionary authority, (MSA Section 303(b), 2007) to designate deep-sea coral zones and regulate fishing activities deemed harmful to deep-sea corals.

The HC strongly supports the recommendation to use the MSA discretionary authority of Section 303(b)(2)(B) (in addition to EFH provisions), particularly if it can be accomplished expeditiously

within the Phase 3 window. Our concern is that delaying use of discretionary authority or the mandatory authorities under the EFH provisions until some later date will leave these vulnerable habitats unprotected from further injury.

Response to Recommendation #3 (geographic scope of review and evidence of imperiled habitat)

The HC disagrees with the recommendation to narrow the geographic scope of Phase 3. Substantial information has been collected and synthesized at the scale of the California Current ecosystem, and many proposals have been developed based on the information developed at this scale. Furthermore, the purpose of this review process is to consider new information that could inform changes across the Council's region. The Council Operating Procedure and Request for Proposals (RFP) did not indicate the Council would favor local initiatives over regional proposals. The HC believes it is appropriate and necessary to conduct Phase 3 at a regional scale.

The RFP also did not require that proposals be *supported* by potentially affected stakeholder groups. The RFP did, however, encourage proponents to collaborate with socioeconomic experts, as well as affected fishermen and communities, in order to identify socioeconomic costs and benefits. The HC recommends that the Council not exclude any proposals at this time, as Phase 3 will be conducted using NEPA guidelines, which include additional opportunities for local stakeholder groups to provide input during the public scoping and comment phases of the NEPA approach.

*Section 4 (Non-MSA Fishing Activities that May Impact EFH)*

The HC agrees with the recommendations in Section 4 regarding the application of Amendment 19 to non-MSA fisheries and outreach.

The HC understands that the geographic footprint of the shrimp trawl fishery has shifted in recent years and can give the impression that historical fishing grounds are no longer important or necessary to the fishery. To accurately determine the geographic coverage and relative impacts to the trawl fishery from proposed EFH designations, it will be necessary to accurately delineate the spatial footprint of the shrimp fishery for a number of years.

Furthermore, future EFH Conservation Areas would likely result in a spatial shift and concentration of fishing effort in some areas for non-MSA fisheries. It will be necessary, then, as part of Phase 3, to consider the consequences of each proposed EFH area on shifting or concentrating fishing effort into potentially sensitive habitats.

*Section 5 (Non-Fishing Activities that May Impact EFH)*

The HC agrees with all the recommendations to update the non-fishing activities and incorporate the non-fishing pressures analysis in Appendix D, as described. As noted, Appendix D can be updated outside the current fishery management plan process, but Appendix D could be used in the NEPA analysis if completed during Phase 3.

The HC notes that three important non-fishing stressors were not included in the list of non-fishing pressures or in the analysis of combined pressure intensity in the NMFS Synthesis Report (Figure 4.b.1). These stressors are ocean acidification, ocean warming and hypoxia. Ocean acidification in particular is an immediate high-level threat to calcifying structure-forming

invertebrate species such as deep-sea corals. The HC recommends these stressors be incorporated into any subsequent analyses in Phase 3.

#### *Section 6 (Cumulative Impacts Assessment)*

The HC agrees with the recommendation that the Council consider assessing the cumulative impacts of fishing and non-fishing activities. The HC recommends using the information in the Phase 1 and Synthesis Reports, as well as additional cumulative analysis tools that are currently available, such as Marxan.

#### *Section 7 (Prey Species)*

The HC recommends adopting the recommendations regarding updating and reclassifying prey species information during Phase 3, scientific review of major prey index methodologies, and an assessment of impacts to prey from fishing and non-fishing activities.

#### *Section 8 (Designation of Habitat Areas of Particular Concern [HAPCs])*

##### Response to Recommendation #1 to update the map for HAPC “Habitat Type”:

The HC agrees with the recommendation to update the HAPC map with new information for delineating currently designated HAPC “habitat types” (i.e., canopy kelp, seagrass, rocky reef, estuaries) where possible.

##### Response to Recommendation #2 to designate new HAPC “Areas of Interest”:

The three west coast sanctuary proposals include recommendations to designate new HAPC “Areas of Interest” for the protection of productive rocky reef, shelf, canyon, and biogenic habitats within sanctuary boundaries. Numerous scientific explorations in the sanctuaries have contributed to the body of evidence to support this designation of HAPC. Areas of comparable geologic features and species observations (relative to sample size) exist off all three states in areas not associated with the sanctuaries.

These features were identified in the NMFS Synthesis report and other proposals, although not specifically recommended as HAPCs. It is unclear if the EFHRC recommendation to “consider designating new HAPCs” is limited to just the HAPCs proposed by the sanctuaries, or if the recommendation applies more broadly to incorporate similar areas in the region during Phase 3. The HC supports the latter.

While the HAPC designation does not add any specific regulatory authority or process, it highlights certain habitat types and areas that are of high ecological importance.

#### *Section 9 (Research and Information Needs)*

Despite the significant amount of new information generated in the Phase I report and the Synthesis report, the HC understands the ongoing limitations on the available information needed to answer the key questions suggested by the EFHRC:

- Have EFH fishery closures met the goals and objectives of Amendment 19?
- How much habitat needs to be protected to maintain a sustainable fishery?
- What changes have occurred to fish and invertebrate communities inside the closures?

The HC suggests that the Council would also need to understand the qualities, characteristics, distribution and abundance of the habitat that best supports the fishery, particularly given the multitude and intensity of stressors on the marine environment.

Answering these questions requires a habitat assessment as proposed in the report. The HC recommends that a habitat assessment addressing these key questions be incorporated into the next EFH review cycle. A comprehensive habitat assessment (such as that proposed in NMFS' Habitat Assessment Improvement Plan) would provide, among other things, indicators of the value and condition of marine habitats, and an assessment of inter-species and species-habitat associations for all life stages and functional needs. This would provide the Council with a robust tool to make more informed decisions regarding groundfish habitat protection. The Council could promote further work on these specific questions by helping to distribute the Habitat Assessment Improvement Plan to academic institutions.

The Council's Phase 3 review process may benefit from some high level analysis of the proposals to aid scoping of potential amendments. The NMFS Science Center team could be tasked with analyzing the following items, which appear to use existing data that has been reviewed through the synthesis report or that could be technically reviewed in a timely manner:

- a. Bring all proposals into GIS for further review
  - i. Map untrawlable habitats.
  - ii. Produce a map displaying all proposed spatial closures/reopenings to facilitate identification of spatial overlap across proposals and development of action alternatives. The trawl Rockfish Conservation Area (RCA) could also be shown (sq. km, differentiated by areas of RCA that are year-round and those that are transient).
- b. Approximate amount of displaced or restored trawl effort that would result from each proposed spatial closure and reopening.
- c. Analyze whether coral sponge records meet data quality standards to map at relevant spatial resolutions.
- e. Using relevant groundfish trawl records, analyze presence/absence and abundance of groundfish in proposed essential fish habitat (EFH) conservation areas.

### **Closing Comments**

The Habitat Committee recommends that if there is to be a Phase 3 Review Committee, that it be an independent body with expertise in the fields of fishery biology, benthic ecology, habitat science, fisheries social and economics sciences, and ecological modeling.