



Natural Resources Defense Council
111 Sutter Street, 20th Floor
San Francisco, CA 94104
Tel: (415) 875-6100
Fax: (415) 875-6161

March 2, 2014

Ms. Dorothy Lowman, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220

RE: Agenda Item D.2, Groundfish Essential Fish Habitat Evaluation Criteria and Phase 2 Report

Dear Chair Lowman and Council Members:

Please accept the following comments on behalf of the Natural Resources Defense Council (NRDC), with respect to Agenda Item D.2, the Groundfish Essential Fish Habitat (EFH) 5-year review.

We understand from the Council's motion last November, as well as the situation summary for this agenda item, that the main task for discussion at this meeting is to provide guidance to the National Marine Fisheries Service (NMFS) on the Amendment 19 study. The Council has already made the decision to move into Phase 3, and decisions on the scope of an Fishery Management Plan (FMP) amendment and National Environmental Policy Act (NEPA) document are tentatively scheduled for September of this year. Accordingly, NRDC expects the March EFH agenda item to be relatively brief, and we limit our comments to the actions before the Council at this meeting.

1. Acknowledge the Precautionary Basis for Habitat Protection in the Amendment 19 Review

In providing guidance to NMFS on the Amendment 19 review, the Council should not set its expectations unrealistically high and expect quantitative measures of "how much is enough," or precise measures of impacts to habitat and the resulting effects on fishery productivity. In an ideal world these kinds of numbers would be available, but it is widely understood that the current state of the science is such that they are not. Moreover, they may not be available any time in the near future.

Not having perfect information, however, is no excuse for inaction. Given that we do not know precise details about existing habitats, their structures and functions, the relationships between habitat and managed species, or even the specific impacts that we are inflicting on these habitats, it becomes a question of risk and precaution—essentially, can we take reasonable measures to avoid destroying things that we do not fully understand?

NMFS has explicitly acknowledged that perfect information is not required to take action and protect habitat. See Essential Fish Habitat Final Rule 67 Fed. Reg. 2343, 2351-52 (Jan. 17, 2002) (discussing the types of information used to make EFH decisions); *id.* at 2352 (“For most species managed under the Magnuson-Stevens Act, available information on habitat requirements falls into Levels 1 or 2 (distribution or relative abundance data).”); *id.* at 2354 (“It is not appropriate to require definitive proof of a link between fishing impacts to EFH and reduced stock productivity before Councils can take action to minimize adverse fishing impacts to EFH to the extent practicable.”).

Moreover, in passing Amendment 19, this Council has already demonstrated its understanding that perfect information is not required before habitat protection can occur. Amendment 19 contained the beginnings of a habitat assessment (Appendix B), and an impact assessment (Appendix C), but it was never able to produce a quantitative estimate of how much intact habitat was necessary to maintain productivity in each managed species, nor of the precise extent to which current activities were impacting groundfish habitat. Rather, the management measures settled upon by the Council and approved by NMFS in Amendment 19 represented a policy decision made in the absence of perfect information.

For these reasons, NRDC regards the Amendment 19 review as an interesting and hopefully informative exercise, but we would caution the Council against expecting too much from it. During the last go-around on EFH there was no ready answer to the question of “how much is enough,” and we do not expect one to appear this time around either. Instead, we recommend the Council explicitly instruct NMFS to acknowledge and discuss the precautionary basis for habitat protection in its study of Amendment 19.

2. Avoid Inaccurate Metrics for Habitat Health in Assessing the Effectiveness of Amendment 19

A common trope in discussions of fish habitat is that when biomass is high, habitat must be doing fine. This is not limited to dockside conversations; NMFS and the North Pacific Council explicitly relied on the idea in their first attempt to deal with EFH in the early 2000s. Fortunately, external reviewers caught this assumption and noted that it was incorrect. One reviewer explained:

The primary criterion used to assess whether fishing is adversely affecting EFH in a more than minimal and non-temporary way was to assess whether any stocks were falling below their Minimum Stock Size Threshold (MSST). This is not an appropriate criterion:

it may be triggered only after severe non-temporary degradation to EFH (of particular concern, coral and sponge grounds may require centuries to recover); and the role of habitat loss may be difficult to separate from other potential causes of declining fish stocks (e.g. climate change, direct effects of fishing).

J. Anthony Koslow, Review of the Draft Environmental Impact Statement for Essential Fish Habitat Identification and Conservation in Alaska, at 1 (2004). Another reviewer added:

A spawning stock above the minimum stock size threshold (MSST) was used, as an indication that its essential habitat was not adversely affected by fishing. . . . In my view, the MSST considerations have been given too much weight . . . and have been interpreted in the direction of no evidence of adverse effects of fishing on EFH. In cases when stocks are above MSST (or rather BMSY), I would conclude that the stock assessments give no evidence for reduced production. This does not exclude that possible effects may exist and might reduce stocks and fisheries in the future. For stocks observed to be associated with slowly recovering living structure I would add a warning that these species might be dependent on vulnerable habitats, and further protection of those habitats would be a precautionary step to reduce the risk of future losses to the stock, fishery and ecosystem.

Asgeir Aglen, Center for Independent Experts (CIE) Review of Evaluation of Fishing Activities That May Adversely Affect Essential Fish Habitat (2004) (Executive Summary). The chair of the CIE review panel added:

If the habitat is being destroyed, it may take time for its effects to be observed. Certainly it is expected that the effect would probably be felt gradually. If this were combined with a large spawning stock biomass, it could be difficult to detect a habitat influence on the stock for a while after the habitat was damaged, perhaps until it was too late, i.e. too much of the habitat was destroyed. For this reason the use of the precautionary approach is paramount. This is especially true for those habitats with long recovery times, e.g. hard corals and sponges.

Ken Drinkwater, Review of the Draft of Appendix B: Evaluation of Fishing Activities that May Adversely Affect Essential Fish Habitat, at 9-10 (2004). The remaining CIE reviewers had similar things to say about using biomass to infer habitat status. See Kenneth T. Frank, Review Report: Evaluation of the Effects of Fishing on Essential Fish Habitat in Alaska, at 7-8 (2004); Pierre Pepin, Center for Independent Experts (CIE) Review of the National Marine Fisheries Service's Evaluation of the Effects of Fishing on Essential Fish Habitat in Alaska, at 12-14 (2004); Paul Snelgrove, Review of the National Marine Fisheries Service and the North Pacific Fishery Management Council Draft Environmental Impact Statement with Respect to Essential Fish Habitat, at 13-15 (2004).

Given the complexities of the habitat-productivity relationship, and the potential for shifting baselines in biomass reference points, NRDC urges the Council to avoid focusing on current biomass as a metric for habitat health, in its guidance to NMFS on the Amendment 19 evaluation.

3. Analyze the Effects of Removing the Trawl RCA in the Amendment 19 Study

In Amendment 19, the Trawl Rockfish Conservation Area (RCA) was acknowledged to be playing a de facto habitat protection role. *See, e.g.*, Pacific Fishery Management Council, Final Amendment 19 to the Pacific Coast Groundfish Fishery Management Plan, at 73 (2005) (noting the “mitigating effect on adverse impacts to EFH” created by the Trawl RCA). More recently, the Public Comment Draft Report of the Marine Stewardship Council certification of this fishery stated, “Much of the protection afforded to benthic habitats with respect to trawling is derived from the [Trawl RCA].” Paul A.H. Medley et al., MSC Assessment Report for United States West Coast Limited Entry Groundfish Trawl Fishery Version 4: Public Comment Draft Report, at 109 (Dec. 19, 2013).

Despite the habitat protection afforded by the Trawl RCA, NMFS has issued a proposed rule that would significantly reduce the scope of the Trawl RCA. *See* 78 Fed. Reg. 56,641 (Sept. 13, 2013). Industry has signaled its intent to eliminate the Trawl RCA entirely, and all signals indicate the Council intends to comply. Given the direction the Council and NMFS are moving on the Trawl RCA, it is imperative that the Amendment 19 study examine the loss of habitat protection that will ensue.

4. Use the Data Gathered in Phase 1 to Ask Relevant Questions in the Amendment 19 Study

The Council and NMFS gathered a tremendous amount of new data during Phase 1 of the EFH 5-year review. NRDC encourages the Council to make use of this new information, in evaluating Amendment 19. In particular, the Council should instruct NMFS to address the following:

- What are the long-term effects of current fishing patterns on sensitive habitats as identified by the Council (e.g., corals, sponges, sea pens, hard & mixed substrates)?
- To what extent has Amendment 19 minimized the bycatch of corals, sponges, and sea pens? Identify discrete geographic locations where this bycatch is occurring at the highest rate.
- Were there any discernable economic impacts on the groundfish fishery, local or coastwide, attributable to the implementation of EFH Conservation Areas? Specifically, were there increased costs or decreased revenues, or changes in landings?
- Develop and display results of a long-term effect index displaying the impacts of each fishing gear type on various habitat types, including but not limited to hard corals, sponges, and hard substrate.

- How accurate is the trawl footprint closure? To what extent are there remaining areas not subject to bottom trawling since Amendment 19 that fall outside EFH conservation areas? Identify the locations of such areas.
- How has our knowledge of the protection levels of sensitive habitat types (corals, sponges, sea pens, hard substrate, seamounts, submarine canyons) changed since Amendment 19 was adopted?
- In the area shallower than 700 fathoms, are there zones and/or depth ranges with disproportionately low levels of protection relative to others?
- To what extent are there areas that may contain corals or sponges that have not been trawled since implementation of Amendment 19, which are currently open to trawling?
- Which EFH Conservation Areas resulted in the greatest relative displacement of bottom trawl effort after Amendment 19, and to what extent have groundfish catch rates in the vicinity of those areas changed since 2006?

See March 2013 Briefing Book Agenda Item D.2.b, EFHRC Report at 59-60. NRDC believes all of these questions would provide useful starting points for evaluating the effectiveness of Amendment 19.

5. Do Not Inappropriately Narrow the Scope of the EFH 5-Year Review

Despite the Council's clear statement that scoping for a FMP amendment and NEPA document will take place this fall, we understand that some stakeholders are prepared to ask the Council to narrow the scope of the EFH 5-year review at this meeting—in particular by cutting proposals and limiting the geographic scope of any subsequent action. Doing so would be a bad idea, as there has been no analysis of the proposals at this point. While the EFHRC conducted a supposedly Bayesian polling exercise to gauge the subjective opinions of its members, this should not be confused with analysis of the proposals.

Cutting proposals and narrowing the geographic range of the action are by definition scoping decisions. In order for the Council to make a rational and non-arbitrary scoping decision, there must be a basis in the record for the decision. EFH decisions turn on two questions—protection of habitat and practicability. Currently no analyses have been done that inform these issues, and a scoping decision would lack a basis and be premature. NEPA requires an informed, non-arbitrary scoping decision and the Council is not yet situated to make such a decision.

6. Run Some Simple Analyses on the Proposals Over the Summer

Because the Council needs a basis to make its scoping decision this fall, NRDC recommends using the upcoming summer months to generate relevant information and set the stage for a reasoned decision.

As mentioned above, EFH decisions ultimately relate to the protection afforded to fish habitat from a certain policy, such as a trawl closure, and the corresponding practicability of that policy. NRDC recommends the Council instruct staff and NMFS to run a few easy analyses on the remaining proposals, focusing on these two aspects—protection created and practicability—in order to inform the scoping decision in September. In particular, we recommend the following:

- Make coastwide maps displaying spatial overlap of areas addressed by all proposals;
- Make coastwide maps displaying proposed EFH modifications of each proposal overlaid with physical and biogenic substrate data;
- Quantify changes in coverage of habitat types (corals, sponges, hard substrate, submarine canyons, representation) contained within bottom trawl closed areas resulting from each proposal; and
- Estimate the displaced and/or restored fishing effort resulting from the proposed changes in areas open and closed to fishing resulting in each proposal.

NRDC strongly recommends using the data gathered in Phase 1 to analyze the proposals so as to have a basis for making scoping decisions this fall.

* * *

We hope these comments are helpful, and thank you for your consideration.

Sincerely,



Seth Atkinson
Oceans Program Attorney
Natural Resources Defense Council
111 Sutter Street, 20th Floor
San Francisco, CA 94104
(415) 875-6100

725 Front Street
Suite 201
Santa Cruz, CA 95060



831.854.4630 Telephone
831.425.5604 Facsimile
www.oceanconservancy.org

March 2, 2014

Dan Wolford, Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place, #101
Portland, OR 97220

RE: Agenda Item D.2: EFH Evaluation Criteria and Phase 2 Report

Dear Chairman Wolford and Council Members:

Ocean Conservancy¹ participated extensively in the Council's development process for Amendment 19 and continues to view essential fish habitat (EFH) protection as a cornerstone of wise management of groundfish resources and their associated ecosystems. Ocean Conservancy is a co-author of the *Comprehensive Conservation Proposal for Ground fish Essential Fish Habitat Submitted by Ocean Conservancy, Oceana and NRDC* which supports this first comprehensive review of Amendment 19 by drawing on extensive new information, scientific findings and other material to recommend revised groundfish EFH identification and management measures. We urge the Council to accept the Phase 2 report, proceed with Phase 3 of EFH review, consider the following comments with respect to the report of the Essential Fish Habitat Review Committee (EFH RC) and Council guidance for developing criteria to evaluate Amendment 19.

In summary, Ocean Conservancy urges the Council to:

1. Close the trawl "footprint" in areas of the Economic Exclusive Zone (EEZ) seaward of 700 fathoms (fm) until information is available to determine EFH function is not impacted by fishing activity there;
2. Continue the precautionary, coastwide approach established in 2005 to implementing the Magnuson-Stevens Act (MSA) mandate to identify and conserve essential groundfish habitat, including deep sea corals and sponges; and
3. Request an Amendment 19 evaluation based on whether the scope and extent of EFH conservation areas meets the test of minimizing, to the extent practicable, the adverse effects of fishing on essential groundfish habitat.

¹ Ocean Conservancy is a non-profit organization that educates and empowers citizens to take action on behalf of the ocean. From the Arctic to the Gulf of Mexico to the halls of Congress, Ocean Conservancy brings people together to find solutions for our water planet. Informed by science, our work guides policy and engages people in protecting the ocean and its wildlife for future generations.

These recommendations are discussed below.

1. Designate Essential Habitat Necessary to Freeze the Trawl Footprint

The Council has previously addressed the scientific uncertainty associated with habitat use by each of the over 90 species covered under the Groundfish Fishery Management plan by utilizing a broad and inclusive definition of groundfish essential fish habitat.² In 2005, the Council submitted an EFH designation package to the National Marine Fisheries Service (NMFS) that would have placed EEZ areas from 700fm to the EEZ boundary within EFH Conservation Areas. However, NMFS objected because a portion of this area was not specifically designated groundfish EFH.³ The Council's approach was appropriately precautionary given our incomplete understanding of habitat associations by each of the federally managed groundfish species and given extensive documentation of the fragile, slow to recover deep water coral and sponge (DSC) communities at those depths⁴. Additionally, discussions about the potential inclusion of abyssal grenadier (*Coryphaenoides armatus*) into the Groundfish FMP along with this species' currently managed cousin (Pacific rattail grenadier) raise the question of potential biological interconnections between "abyssal" and shallower habitat. Although the EFH Review Committee report recommends against such a footprint closure,⁵ doing so appears to well within the Council's discretion. Seamounts, for example, in waters greater than 3,500 m are currently designated EFH. We urge the Council to continue with such inclusive, precautionary approaches to EFH designation in the face of incomplete information regarding habitat needs and associations of managed species. Designating these waters as EFH in order to close the deeper waters of the EEZ to trawling until more complete information exists is in the best interests of future resource conservation, provides a sound, precautionary management posture, and best suits the increasingly ecosystem-based approach to fisheries management being pursued by the Council.

Moreover, recent activities in Federal ocean resource management directly support this approach. The National Oceanographic and Atmospheric Administration's (NOAA) Strategic Plan for Deep Sea Coral and Sponge Ecosystems articulates a policy to freeze the footprint of mobile, bottom tending gear to protect DSC ecosystems "until research surveys demonstrate that proposed fishing will not cause serious or irreversible damage in those areas."⁶ In keeping with the precautionary approach the Council established in Amendment 19, and which is being

² [50 CFR 660.75](#). EFH for Pacific Coast Groundfish includes all waters and substrate within areas with a depth less than or equal to 3,500 m (1,914 fm) shoreward to the mean higher high water level or the upriver extent of saltwater intrusion (defined as upstream and landward to where ocean-derived salts measure less than 0.5 parts per thousand during the period of average annual low flow). Seamounts in depths greater than 3,500 m (1,914 fm) are also included due to their ecological importance to groundfish.

³ NMFS, 2006. Groundfish EFH Decision Document.

⁴ NMFS noted in the 2006 Decision Document the sensitivity to even low levels of fishing activity, and the extended recovery times associated with these habitats.

⁵ Review of Pacific Coast Groundfish Essential Fish Habitat Phase 2 Report to the Pacific Fishery Management Council, March 2014, p10

⁶ NOAA, 2010 pp. 27-28.

more widely adopted, we urge the Council to designate as EFH and close to mobile bottom tending gear all waters deeper than 3500m in order to protect against impacts to unsurveyed waters and to fulfil the 2005 intention of placing the 700fm to EEZ boundary area under EFH conservation area protection. Should the administrative mechanics of doing so prove unattractive, we would urge the Council to consider—within the current Amendment 19 review process—using its discretionary authorities under MSA Sections 303(b)2(B) (deep coral protection zones), 303(b)2(A) (gear type exclusions), or 303(b)(12) (conservation of non-target species and habitats).

1. Continue to Apply EFH Provisions to Sensitive Deep Sea Corals and Sponges

The EFH RC makes recommendations under the section titled “Magnuson Act Fishing Activities” of EFH that appear inconsistent with the Council’s approach to Amendment 19 and with the concept of “precautionary” management. The EFH RC report deems spatial fishery closures to protect DSC habitats as EFH as “appropriate provided the Council maintains a clear understanding that such measures would be precautionary (i.e. risk adverse in the absence of scientific certainty)⁷”. This discussion, despite the accurate definition of precaution, goes on to imply that EFH protection, including that of deep sea coral and sponge habitats, is *optional*. This implication is expanded under section 3.3 recommendation 3 stating that the Council may “reasonably choose to narrow the geographic scope of EFH Phase 3 ... in order to be more effective and responsive to local initiatives.” We believe the Council enacted Amendment 19 measures that included measures based on conserving DSC habitats in order to fully implement MSA guidance for EFH, rather than simply selecting a discrete risk-averse option. The basic standard for considering EFH designation and protection is found in the EFH language added by Congress to the Magnuson-Steven’s Act: “...(T)o minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat.”⁸ This congressional mandate to protect EFH is not optional. The vast array of newly available information contained, for example, in the *NMFS Phase 1 Habitat Report* and the *Groundfish Essential Habitat Synthesis Report* contributes substantially to confirming the Council’s action under Amendment 19 as a necessary, appropriate and ongoing response to MSA’s EFH provisions.

As for community initiatives, our impression from actively participating in the Amendment 19 process was that the Council’s strong signals of intent to fully implement Amendment 19 spurred enhanced engagement by stakeholders and encouraged negotiation over regional EFH conservation initiatives. While numerous proposals for EFH revision emerged from the Council’s Phase 2 request for proposals, experience from the 2005 process strongly suggests that this issue will receive much greater attention from a broad swath of stakeholders when the Council signals its intention to consider a comprehensive revision of Amendment 19.

⁷ Review of Pacific Coast Groundfish Essential Fish Habitat Phase 2 Report to the Pacific i Fishery Management Council, March 2014, p10

⁸ 16 U.S.C. 1853(a)(7).

Considerable attention is given in the EFH RC report to the incomplete (“Level 1”) state of scientific certainty regarding groundfish use of DSC habitats. However, scientific certainty in this regard was similar and in most cases much weaker in 2005. Yet, documented presence, known groundfish species associations with, and sensitivity of DSC habitats were identified as a key rationale for enacting Amendment 19 in 2006.⁹ NMFS’s regulations implementing the EFH provisions also establish a clear standard for addressing scientific uncertainty as to which habitats should be deemed essential, guiding Councils to treat habitats with “Level 1” associations as essential until proven otherwise.¹⁰ Finally, the above-referenced EFH Regulations explicitly states how “Level 1” habitat association should be treated in the absence of greater levels of certainty:

*Councils should interpret this information in a risk adverse fashion to ensure adequate areas are identified as EFH for managed species.*¹¹

DSC was found sufficient to trigger the MSA requirement to minimize adverse impacts in 2006, and new information regarding these habitats and potential impacts on it since then have only strengthened this interpretation.¹² Further, the value of DSC ecosystems has become recognized to extend well beyond their value as EFH for managed fish in initiatives such as NOAA’s Deep-Sea Coral Research and Technology program¹³ launched in 2009 and the new authorities for DSC established in the Magnuson-Stevens Reauthorization Act of 2006.¹⁴

On a more applied basis, we respectfully encourage the Council to recognize the complexity of habitat use by the many species managed under the Groundfish FMP. While managers and researchers can assign habitat use levels such as “obligate,” “facultative,” and “fortuitous” to the substrates containing managed groundfish, we believe the overall productivity and resilience of groundfish are served by each category of habitat. Occasional use of a habitat by a managed species may provide essential biological services to that species if the use occurs during a venerable or crucial life stage (e.g. breeding, cover from predators). This use may be more essential if the species range shifts due to temperature changes or if changes in species abundance or composition alter density patterns. This latter phenomenon is expected to be more common in Pacific waters due to the effect of climate change; such patterns are being observed elsewhere including in U.S. Northeast waters.¹⁵ Habitat diversity is likely to provide adaptive advantages to the ecosystems supporting managed groundfish, just as species diversity contributes to ecosystem resilience in the face of environmental change. Thus, DSC

⁹ 70 Fed. Reg. 39700 (July, 2000).

¹⁰ 50 CFR Sec. 600.815(a)(1)(iii)(A).

¹¹ 50 CFR Sec 600.815(a)(1)).

¹² It is worth noting that Amendment 19 called out protection of DSC habitats due to their sensitivity in a way that non-biogenic substrates were not. And EFH Conservation Areas restrict only the mobile bottom tending gears deemed most impactful, largely to the exclusion of non-mobile gears that nevertheless contact the seafloor.

¹³ NOAA, Deep Sea Coral Research and Technology Program, http://coralreef.noaa.gov/deepseacorals/noaasrole/research_technology/.

¹⁴ See, e.g., 16 U.S.C. §§ 1853(b)(2), 1884.

¹⁵ See for example, discussion of Western North Atlantic cod in Travis, et al 2014 PNAS January 14, 2014 vol. 111 no. 2 583.

habitats contribute to the quality of EFH, and impacts to them reduce the quality of EFH. EFH guidelines define adverse impacts to EFH as “any impact that reduced the quality and/or quantity of EFH”.¹⁶ We therefore urge the Council to retain deep water coral and sponge habitats among the criteria for identifying and crafting management measures for groundfish EFH.

2. Develop a Practical Assessment of Amendment 19 and Evaluate the Habitat Effects of RCA Modifications

Numerous Council committees including the EFH RC have noted the absence of a specific assessment of Amendment 19, and the Council has requested such an assessment. Ocean Conservancy shares the view that an objective review of Amendment 19 is an important step in the review process. We believe this assessment will aid in developing a clear statement of need and purpose to guide the review, and that it will help guide the Council in determining whether and how new information provided in both NMFS interpretive documents as well as the public EFH proposals should be applied. We are, however, concerned with several requests that have defined such an assessment in inappropriate and unrealistic stock status and yield terms that are neither likely to be achievable nor focused on the appropriate metrics.

We are also concerned with significant changes to the scope of habitat protection in the Pacific EEZ that will likely be associated with recently approved modifications to the Rockfish Conservation Area (RCA).¹⁷ Although the action to significantly reduce the scope of the RCA was taken based on changes in groundfish bycatch programs, there are enormous implications for groundfish essential fish habitat that have not yet been explored. Moreover, Amendment 19 management measures, including the habitat conservation areas, were developed in the management context of extensive, contiguous areas of the critical continental shelf being closed to high impact fishing gear. In that regard, the RCA forms—or formed—the skeleton of the overall groundfish habitat management system. The changes to this system stemming from a significantly narrower RCA are likely sufficient by themselves to prompt a review of groundfish EFH measures, but should *at least* be fully analyzed in an EFH evaluation process. Further, since it is evident that changed conditions in groundfish bycatch programs are likely to prompt future changes in the RCA, we would urge the Council to establish a procedure that links the effects of such changes to the effectiveness of groundfish habitat protections.

As discussed in the foregoing section, the chief standard for evaluating Amendment 19 should be whether the statutory purpose set out by Congress in establishing the Essential Fish Habitat program has been achieved, based on new information developed since Amendment 19. NMFS should apply new information regarding habitat locations and characteristics, and may consider newly developed techniques to quantify and measure Amendment 19 measures against this

¹⁶ 50 CFR 600.810(a).

¹⁷ September 2013 PFMC decision summary, at p4, *available at*. <http://www.pcouncil.org/wp-content/uploads/0913decisions.pdf>.

metric: how well has Amendment 19 served “(T)o minimize to the extent practicable adverse effects on such habitat caused by fishing”?

We recommend the Council provide guidance to NMFS in developing an Amendment 19 evaluation that gathers information and develops products related to the following types of questions:

- 1) Where is bycatch of habitat (substrate, corals and sponges) occurring most?
- 2) Are EFH conservation areas included in these areas? Are the conservation measures in these areas minimizing habitat bycatch “to the extent practicable”?
- 3) How are other management measures, including the rockfish conservation areas, minimizing adverse impacts to groundfish habitats, and what are the effects of planned changes in those programs on the scope and extent of habitat protection?
- 4) What changes in our scientific knowledge about impacts to and locations of sensitive habitats and high-impact gears have occurred since Amendment 19? How can this new knowledge be applied to meeting the MSA standard?
- 5) What has been the economic effect of Amendment 19 measures on the groundfish industry? Which EFH Conservation Areas have the highest and lowest displacement of trawl effort, and how have catch rates changed since 2006 in adjacent or nearby areas?

The above questions are likely to yield useful products and illuminate comparative data to assess Amendment 19, and are well suited to producing indices and illustrations to aid evaluation by the Council, Council advisory bodies and the public. We encourage the Council and NMFS to work toward a common set of focal areas for EFH evaluation in order to serve future Groundfish EFH reviews and to apply to EFH programs in other FMPs. Such an effort might be conducted or aided by Fishery Ecosystem Plan Cross-FMP Initiative #4.

With respect to requests that an Amendment 19 evaluation determine the specific effects of EFH Conservation Areas on stock status, there is considerable evidence and literature to suggest that this effort would be unproductive and inconsistent with the core purpose of EFH. An early EFH implementation effort by the North Pacific Fishery Management Council produced a great deal of controversy over the criteria for determining whether existing measures were successfully addressing the EFH provisions enacted in 1996. In that case, NMFS requested a review of its approach from the Center for Independent Experts (CIE). In confirming the need for a precautionary approach when considering the “burden of proof” over which habitat features to consider as “essential,” the CIE directly addressed the appropriateness of stock productivity and status as a standard for evaluating the adequacy of habitat protections.¹⁸ The CIE warned that habitat effects on fish productivity measures such as Minimum Stock Size Threshold (MSST) will become apparent well after potential damage is done. “MSST is inappropriate with regard to the impact of fishing on sensitive habitats...” the report stated,

¹⁸ Drinkwater, 2004 *Evaluation of Fishing Activities That May Adversely Affect Essential Fish Habitat in Alaska*.

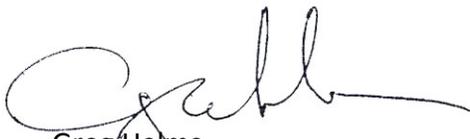
“...since it is likely difficult to detect an influence on the stock until after the habitat is damaged, perhaps even until much of the habitat is destroyed.”¹⁹

It is understandable—even desirable—that many stakeholders wish to know the benefits of habitat conservation to stock status and fishery sustainability. We encourage scientific inquiries into this subject; however, such efforts are unlikely to yield near-term guidance for how best to accomplish the EFH provisions in law. Essential Fish Habitat is necessarily a preventative effort, and assessments of current catches and stock productivity cannot answer the question of “how much is enough?” or “is it working?.” Instead, the effectiveness of EFH must be determined in light of the legal mandate of maximizing EFH conservation against the standard of what is “practicable.” We believe the above listed questions are the best guide as to this standard.

Conclusion

We recommend that the Council determine the successful conclusion of Phase 2 of the Groundfish EFH process with the completion of the Phase 2 report by the EFH RC. The Council has a substantial array of scientific data and stakeholder proposals to inform a coastwide Groundfish EFH review process, and greater engagement and input is likely to follow from a Phase 3 effort. We urge the Council to retain its precautionary management posture with respect to groundfish EFH, to develop an EFH designation that allows the area from 700fm to the EEZ boundary to be placed within an EFH Conservation Area, and to guide NMFS towards a realistic, productive assessment of existing Amendment 19 measures. We look forward to further engagement in this important effort to conserve the habitats that sustain managed species and the ecosystems that support them.

Yours



Greg Helms
Program Manager, Pacific

¹⁹ *Id.* at 18.

March 2, 2014

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

RE: Agenda Item D.2 (Groundfish Essential Fish Habitat)

Dear Chair Lowman and Council Members,

We write to express our support for the Pacific Fishery Management Council's (Council) ongoing efforts to review and update Essential Fish Habitat (EFH) designations and protections for managed groundfish species. We appreciate the Council's efforts to date in conducting a five-year review of groundfish EFH, as called for under EFH guidelines issued by the National Oceanic and Atmospheric Administration's Fisheries Service (NOAA Fisheries).¹ We also appreciate the Council's decision in November 2013 to initiate Phase 3 of this review process, including an evaluation of existing groundfish EFH provisions implemented through Amendment 19 to the Groundfish Fishery Management Plan (FMP).² We support the Council's decision to conduct such an evaluation as a preliminary step intended to facilitate the development and analysis, through Phase 3, of alternatives to update EFH measures.

We understand that the Council's main EFH-related objective at the March meeting is to provide guidance to the NOAA Fisheries Northwest and Southwest Fisheries Science Centers (NW/SWFSC) on the criteria and approach of the Amendment 19 evaluation, along with other business related to the completion of Phase 2 and the ongoing 5-year review.³ On the following pages we offer several recommendations in these areas, summarized as follows:

- Approve the final Phase 2 report of the Essential Fish Habitat Review Committee (EFHRC), including the minority statements.
- Continue with Phase 3 development of a range of alternatives for a Groundfish FMP amendment to revise and update EFH designations and protections.
- Adopt the guidance criteria for the evaluation of existing EFH provisions as recommended in the EFHRC Phase 2 Report (Section 3.4.3, Appendix B) with the following additions:
 - Assess whether Amendment 19 successfully mitigated the potential adverse effects for which it was designed

¹ See 67 Fed. Reg. 2343-2383 (January 17, 2002) ("Magnuson-Stevens Act Provisions; Essential Fish Habitat (EFH)") available at <https://www.federalregister.gov/articles/2002/01/17/02-885/magnuson-stevens-act-provisions-essential-fish-habitat-efh> page 2379

² See PFMC, Situation Summary, Agenda Item D.2, March 2014 Briefing Book available at http://www.pcouncil.org/wp-content/uploads/D2_SITSUM_MAR2014BB.pdf

³ Ibid

- Assess whether there are remaining, new, or potential adverse effects which must be mitigated
- Analyze the effects of recently proposed changes to the Rockfish Conservation Area (RCA) which if implemented will change RCA boundaries such that previously closed areas are re-opened to bottom trawl effort
- Assess the degree to which the Amendment 19 EFH regime is consistent with current NOAA Fisheries and Council management priorities
- Maintain a broad range of potential alternatives for Phase 3, to include:
 - A coastwide scope
 - Utilization of EFH or other discretionary authorities for new deep-sea coral (DSC) protections
 - All remaining stakeholder proposals in their entirety. We reiterate our request here that the Council initiate a technical analysis of the proposals to support Phase 3 decision-making
- Use core tenets of EFH and an ecosystem-based approach to fisheries management (EBFM) to guide analysis and further action.⁴

The following information provides a more thorough analysis and justification of our requests.

Adopt the final Phase 2 EFHRC Report including Minority Statements

The Phase 2 report, including the minority statements in Section 1.5, Section 2.4, and Section 3.4 (Appendix B), provides useful background information and forward-looking recommendations. It also supports the Council’s previous decision to initiate Phase 3 and consider changes to the EFH provisions of the FMP. Therefore we recommend the Council finalize the Phase 2 report, including an endorsement of the minority statements in Sections 1.5, 2.4 and 3.4 (Appendix B).

In particular, we would highlight the general Phase 2 Report finding that “there are topics relevant to the fishing impact subject area that may be worthwhile for consideration by the Council during Phase 3.”⁵ The Phase 2 Report also illustrates that there is a significant new body of information on EFH now available through the various Phase 1 products (e.g., the Phase 1 Report and the Synthesis Report) and that there are “opportunities to consider changes to the fishing subject area” in the stakeholder proposals.⁶ We agree with this finding and urge the Council to utilize all of these products to inform the development of Phase 3 alternatives.

The main concerns expressed in the Phase 2 report appear to be the current lack of an assessment of the effectiveness of Amendment 19, the lack of a peer review of various Phase 1 (e.g., the Synthesis report) and Phase 2 (e.g., the stakeholder proposals) products, the lack of a problem

⁴ Pew previously described several core tenets of EFH protection and identification, as drawn from the EFH Guidelines issued by NOAA Fisheries, in a letter to the PFMC in November 2013. See PFMC, November 2013 Council Meeting Briefing Book, [Agenda Item H.7.d Supplemental Public Comment packet #2](#), pages 8-12.

⁵ See PFMC, Review of Pacific Coast Groundfish Essential Fish Habitat: Phase 2 report to the Pacific Fishery Management Council (EFHRC Phase 2 Report), March 2014, Page 16, available at http://www.pcouncil.org/wp-content/uploads/D2b_EFHRC_RPT_PHASE2_MAR2014BB.pdf

⁶ Ibid, pages 14-15 and page 16

statement, and the attendant fear that the Council is therefore making decisions prematurely.⁷ However, these are all manageable issues.

First, the Council has already initiated an Amendment 19 evaluation, and the EFHRC report contains a good preliminary set of criteria for this effort (see below). Second, independent peer review of any and all Phase 3 analyses or Phase 1 and 2 products can be incorporated into the process moving forward at the Council's discretion. At a minimum, the Council's standard Scientific and Statistical Committee (SSC) review of all FMP-related actions will take place, and SSC review typically meets the standards of a peer review.⁸ External peer reviews were also incorporated into the Amendment 19 process, providing a potentially useful model for Council consideration.⁹ Third, a problem statement can be developed as the Council begins to define the issues and scope of a plan amendment, currently scheduled for September 2014. We note that the minority statement in Section 3.4.3 (Appendix B) provides some preliminary suggestions for a Statement of Purpose and Need, which may provide a useful starting point for this September discussion.¹⁰ In light of these existing activities and potential solutions, we suggest that the Council is not making premature decisions.

Continue with Phase 3 (development and analysis for FMP amendment)

The Council has significant new information at hand which warrants a regulatory update to groundfish EFH designations and protections. This information includes the Phase 1 Report, the EFH Synthesis Report, the EFHRC Phase 2 report, and the stakeholder proposals. Collectively this information is sufficient to support development, consideration and analysis of modifications to existing habitat closures and/or adding new ones, as well as other measures relating to major prey species, gear modification and enforcement.

Key next steps in Phase 3 include the ongoing evaluation of existing EFH provisions, analysis of stakeholder proposals, and development of alternatives for an FMP amendment. In the following sections we provide additional detail on these next steps.

Provide robust guidance to NOAA Fisheries on the evaluation of existing EFH provisions

In November 2013, the Council asked the NW/SWFSC to provide a potential approach to evaluating the effectiveness of the current EFH provisions in the Groundfish FMP.¹¹ At the March meeting the Council is scheduled to provide guidance on the evaluation criteria and approach.

⁷ Ibid, page 3

⁸ See 78 Fed. Reg. 43066-43089, (July 19, 2013) (NMFS, Revised National Standard 2 Guidelines), page 43068, available at <http://www.gpo.gov/fdsys/pkg/FR-2013-07-19/pdf/2013-17422.pdf>

⁹ See Amendment 19 Final EIS, page 1-12, available at http://www.westcoast.fisheries.noaa.gov/publications/nepa/groundfish/groundfish_efh_eis/front-pages-chapters-1-and-2.pdf

¹⁰ See EFHRC Phase 2 Report, pages 58-59

¹¹ See PFMC, Situation Summary, Agenda Item D.2, March 2014 Briefing Book available at http://www.pcouncil.org/wp-content/uploads/D2_SITSUM_MAR2014BB.pdf

The preliminary list of nine questions and focus areas provided in the EHFRC Phase 2 Report (see “Recommended Guidance for NMFS Science Center Assessment of Amendment 19”, EHFRC Phase 2 Report, Section 3.4.3, Appendix B, pages 59-60) are well thought-out and provide a useful starting point for Council guidance to the NW/SWFSC. With the understanding that the Council will also review an initial draft of potential scientific approaches prepared by the NW/SWFSC¹², we request that the Council include these nine evaluation criteria going forward.

In addition, we suggest the following additional questions and criteria for inclusion in the evaluation guidance to the NW/SWFSC:

1. Assess whether the adverse effects or potential adverse effects the action sought to mitigate were successfully mitigated.

The 1996 revision of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) included a requirement that NOAA Fisheries and the regional Councils identify EFH for all Council-managed species, and minimize adverse effects to that habitat caused by fishing to the extent practicable.¹³ Amendment 19, adopted by the Council in 2005 and implemented by NOAA Fisheries in 2006, updated EFH designations and included a suite of EFH protections.¹⁴ The purpose of Amendment 19 was as follows:

first, to provide the Council and NMFS with the information they need to better account for the function of Pacific Coast groundfish EFH when making fishery management decisions; second, to ensure that EFH is capable of sustaining groundfish stocks at levels that support sustainable fisheries; and third, that EFH is capable of sustaining enough groundfish to function as a healthy component of the ecosystem.”¹⁵

Furthermore, the Amendment 19 action was initiated for several reasons including to “minimize to the extent practicable the adverse effects of fishing on EFH.”¹⁶ While NOAA Fisheries ultimately determined that data and analytical limitations precluded a definitive finding that adverse effects from fishing were extant, Amendment 19 did conclude that there was sufficient “potential for adverse effects” to justify mitigation (e.g., bottom trawl closures).¹⁷ The evaluation criteria should include a careful analysis of whether and to what degree Amendment 19 provisions have successfully met these various Amendment 19 objectives, including EFH capable of sustaining the ecosystem-level role and services of both groundfish and groundfish habitat.

¹² Agenda Item D.2.c, Supplemental NW/SWFSC Report, which is expected to provide an initial recommendation on potential approaches, is expected to be included in the Supplemental Briefing Book.

¹³ See 16 U.S.C. § 1853 (a)(7)

¹⁴ See Pacific Fishery Management Council, [Final Amendment 19 to the Pacific Coast Groundfish Fishery Management Plan](#), November 2005

¹⁵ See Amendment 19 Final EIS, page 1-3

¹⁶ Ibid, page 1-3

¹⁷ See Amendment 19 Record of Decision, page 11, available at http://www.westcoast.fisheries.noaa.gov/publications/nepa/groundfish/groundfish_efh_eis/efh_feis_rod_small.pdf and 71 Fed. Reg. 27408-27426 (May 11, 2006) Amendment 19 Final Rule, page 27400-27401 available at <http://www.westcoast.fisheries.noaa.gov/publications/frn/2006/71fr27408.pdf>

2. Assess whether there are remaining, new, and/or cumulative adverse effects to groundfish habitat, or the potential for such adverse effects, which must be mitigated to the extent practicable

Any review of the Amendment 19 EFH regime, if it is to effectively inform the Council during Phase 3 and thereby assist the Council in meeting the requirements of the MSA, must also assess the Amendment 19 regime (i.e., the *status quo*) to determine if new information demonstrates that there are current adverse effects to habitat taking place, or the potential for adverse effects. These may be “carryover” adverse effects that were not successfully mitigated through Amendment 19, newly identified adverse effects, or cumulative impacts. For instance, the Council should examine all new information identified through Phases 1 and 2 of the 5-year review to determine whether adverse effects are present which must be mitigated to the extent practicable through a new FMP action. In essence, the Amendment 19 evaluation should be viewed as a stepping stone, one that helps build the foundational pieces of the Phase 3 analysis. To this end, the suggestions made by the EFHRC in Section 3.3 of its report (see bullets 4a-4c on page 16) are instructive and useful, and we are supportive of the Council pursuing those analytical approaches.

3. Assess the potential impacts of recent actions to re-open parts of the Rockfish Conservation Area

On September 13, 2013 NOAA Fisheries issued a Proposed Rule for changes to portions of the boundary of the depth-based bottom trawl closure known as the Rockfish Conservation Area (RCA). If implemented, this action will re-open certain areas closed to bottom trawling since 2004, including areas that may have partially recovered from trawl impacts.¹⁸ While the RCA closures were not established to serve as habitat protection (they were intended to address catch and bycatch of overfished stocks), they are nevertheless recognized for their “corollary mitigating effect on adverse impacts to EFH.”¹⁹ As such, it is important to consider and analyze the EFH-related effects of any RCA boundary changes in Phase 3 work going forward, including through the effectiveness evaluation of the Amendment 19 provisions.

4. Assess the degree to which existing EFH provisions are consistent with current NOAA Fisheries and Council priorities

Since Amendment 19 was enacted in 2006, managers and scientists on the regional and national level have made great strides in recognizing the importance of habitat, including on an ecosystem level, and in setting ambitious priorities for its protection and restoration. At the same time, a growing awareness of the numerous threats to the oceans, most notably the wide-ranging and still not entirely understood effects of climate change, has led to the

¹⁸ See 78 Fed. Reg. 56641-56645, (September 13, 2013), (“Rockfish Conservation Area Boundaries for Vessels Using Bottom Trawl Gear, Proposed Rule), page 56643, available at <http://www.westcoast.fisheries.noaa.gov/publications/frn/2013/78fr56641.pdf>

¹⁹ See Pacific Fishery Management Council, [Final Amendment 19 to the Pacific Coast Groundfish Fishery Management Plan](#), November 2005, page 73

adoption of precautionary policy goals that call for increased attention to protecting marine habitat as a way to build more resilience into the ecosystem.

On the regional level, the Council adopted a Fishery Ecosystem Plan (FEP) in April 2013.²⁰ This FEP devotes considerable attention to habitat, and to the potential effects of climate change.²¹ The FEP includes the following statement describing Council priorities regarding habitat:

“While all fish habitat is of interest to the Council, some habitat types, the habitat needs of some species, and some types of habitat disturbance are of particular concern to the Council for their effects on the ecosystem as a whole, such as activities that:

- Disturb or kills structure-forming invertebrates or vegetation in a manner that either prevents those species from recovering within the affected area within their mean generation times, or which reduces the known distribution of those species;*
- Alter the geological structure of the habitat such that the habitat cannot maintain or recover its functionality unaided;”²²*

NOAA Fisheries has also called for increased protection of ocean habitat. The NOAA “Habitat Blueprint” includes a guiding principle that calls for managers to “Anticipate and address changes to coastal and ocean habitats due to environmental change; including development, climate, and other pressures.”²³ Leading NOAA habitat scientists, in a briefing paper presented at the May 2013 Managing Our Nation’s Fisheries conference, presented additional detail on a precautionary and ecosystem-based NOAA Fisheries vision for habitat protection that drew in part on this Habitat Blueprint:

“In 2005, the U.S. Commission on Ocean Policy recommended that NOAA Fisheries change the designation of essential fish habitat from a species-by-species to a multispecies approach and, ultimately, to an ecosystem-based approach that includes consideration of ecologically valuable species that are not necessarily commercially important. While there is a growing body of science-based analytical methods that could support such designations, we suggest that there is already scientific and societal consensus on the importance of certain habitat types based on their contributions as fish habitat, biodiversity and ecosystem services. These include tropical coral reefs, coastal wetlands, seagrass and kelp beds, and deep-sea coral communities. ... While in most cases, the extent and quantity of habitat that is needed to contribute to increased productivity of a particular fisheries stock, or to a “healthy ecosystem” cannot be

²⁰ See PFMC, “Pacific Coast Fishery Ecosystem Plan for the U.S. Portion of the California Current Large Marine Ecosystem, Public Review Draft”, April 2013 available at http://www.pcouncil.org/wp-content/uploads/FEP_February2013_Draft_for_web.pdf

²¹ Ibid, at pages 152 to 153, pages 165 to 169; see also FEP Appendix A, pages A-16 to A-17, and pages A-21 to A-22, available at http://www.pcouncil.org/wp-content/uploads/FEP_Initiatives_Appendix_for_web.pdf

²² Ibid, at page 182

²³ See NOAA 2012, “NOAA Habitat Blueprint”, fact sheet, available at http://www.habitat.noaa.gov/habitatblueprint/pdf/habitat_blueprint_factsheet.pdf

determined exactly, suspected tipping points may be inferred, and prudent managers will set targets that are likely to avoid degradation.”²⁴

And finally, inter-agency efforts have produced an ambitious, sensible and prudent “Climate Adaptation Strategy,” to which NOAA is a party, with goals including “Conserve habitat to support healthy fish, wildlife, and plant populations and ecosystem functions in a changing climate” and “Reduce non-climate stressors to help fish, wildlife, plants, and ecosystems adapt to a changing climate.”²⁵

We recommend that as NOAA Fisheries and the Council begin to develop Phase 3 products in earnest, including the evaluation of the Amendment 19 regime currently in the design phase, that the aforementioned Council and agency goals be carefully considered and that the existing EFH provisions be assessed for consistency with those goals.

Maintain a broad range of potential alternatives for Phase 3

As the Council continues work on Phase 3, toward the development of a range of alternatives for an FMP amendment, we respectfully request that the Council keep a wide array of options open. It is early in the process, even to the point that foundational building blocks like the Amendment 19 evaluation are still in the design stage. As such, our specific suggestions at this time are to retain a coastwide scope for Phase 3, to keep all available options open regarding which MSA authority or authorities to utilize for deep-sea coral (DSC) designations and protections, and to keep all remaining stakeholder proposals eligible for inclusion in the range of alternatives.

We are concerned about a potential narrowing of the geographic scope of Phase 3 due to the EFHRC recommendation in Section 3.3 of the Phase 2 Report (see bullet #3 on page 16) stating that the Council “may reasonably choose to narrow the geographic scope of Phase 3).”²⁶ We would point out that this same recommendation also states that “there is insufficient baseline information to confirm that EFH is adequately protected.”²⁷ We appreciate the caveats included by the EFHRC on this issue and suggest that maintaining a broad scope is appropriate at this time.

The EFHRC Phase 2 Report contains useful information supportive of considering Phase 3 protections for DSC through precautionary action under EFH authorities and/or through other, discretionary authorities such as MSA Section 303(b)(12), which allows for broad conservation

²⁴ See Sutter et. al, “Integrating Habitat in Ecosystem-Based Fishery Management”, MONF III Session 2 speaker papers, Session 2.3 Integrating Habitat considerations, Sutter et. al. page 7, available at

http://www.managingfisheries.org/2013%20documents/All_Session_2_papers.pdf

²⁵ See National Fish, Wildlife and Plants Climate Adaptation Partnership. 2012. National Fish, Wildlife and Plants Climate Adaptation Strategy, Association of Fish and Wildlife Agencies, Council on Environmental Quality, Great Lakes Indian Fish and Wildlife Commission, National Oceanic and Atmospheric Administration, and U.S. Fish and Wildlife Service. Washington, DC. Available at <http://www.wildlifeadaptationstrategy.gov/pdf/NFWPCAS-Final.pdf>

²⁶ See EFHRC Phase 2 Report, page 16

²⁷ Ibid

measures to protect non-target species and habitats.²⁸ We are supportive of this flexible approach wherein DSC could potentially be protected shoreward of 3500 meters (the current extent of Groundfish EFH based on known groundfish distribution) using EFH authorities, and protected seaward of 3500 meters utilizing other MSA authorities, yet accomplished in the same Phase 3 management action. As such, we request that the Council keep all available options open at this time.

Finally, we would reiterate two points previously made in our correspondence to the Council in November of 2013.²⁹ At that time we encouraged the Council to undertake a thorough analysis of all stakeholder proposals and their contents, and requested that all remain eligible for consideration in a range of alternatives for management action until such initial analysis is completed. Because this analysis has not yet been undertaken, we urge the Council to keep all available options open, due to the diverse and valuable ideas contained collectively in these thoughtful proposals.

Use core tenets of EFH identification and protection and EBFM to guide analysis and consideration

As the Council continues its development of Phase 3 analytical products and alternatives, we would like to again draw attention to five core tenets of EFH identification and protection, distilled from the EFH Guidelines, especially the importance of applying an ecosystem-based approach to EFH protection. We previously described these five key tenets in our November 2013 correspondence, where we provide additional detail, but briefly they are as follows:³⁰

- Utilize an Ecosystem-Based Approach
- Seek to Improve on Current Protections
- Consider all Life Stages of Managed Species
- Develop and Utilize the Best Scientific Information Available
- Protect a Wide Array of Habitat Types

Select examples of next steps consistent with these tenets include:

- Application of the precautionary approach, for instance, as described in the EFHRC Phase 2 Report in Section 3.3, (Recommendation bullets 1 and 2 on page 16) and in Section 3.4.1, Appendix B.³¹
- Ensuring that all stakeholder proposals benefit from a full technical review in their entirety prior to narrowing the range of alternatives.
- Designing the Amendment 19 evaluation to ensure that a sufficiently broad analysis is completed, including analysis of whether there are adverse effects on EFH, remaining or newly identified, that should or must be addressed.

²⁸ Ibid

²⁹ See PFMC, November 2013 Council Meeting Briefing Book, [Agenda Item H.7.d Supplemental Public Comment packet #2](#), pages 8-12.

³⁰ Ibid

³¹ See EFHRC Phase 2 Report, page 16 and pages 51-55

The comprehensive conservation stakeholder proposal, submitted jointly by Oceana, the Natural Resources Defense Council, and Ocean Conservancy, captures the core tenets of EFH identification and protection and EBFM as described above very well. This proposal combines an emphasis on ecologically sensitive biogenic habitats, a risk-averse approach, a focus on protecting poorly understood, unfished areas before they undergo trawl impacts, innovative ideas for the designation of key groundfish prey species, and a coastwide scope, which are collectively very consistent with an ecosystem-based approach and the EFH Guidelines. Pew commends the authors of this proposal for their wide-ranging, ambitious, and collaborative approach.

In conclusion, we again thank the Council for its ongoing efforts to identify and protect EFH for groundfish species. As the MSA calls for the conservation and enhancement of habitat, managers should strive for improvement, and especially in the context of new information, must act to enhance the amount and quality of EFH, not just prevent further degradation. The Council deserves credit for undertaking a robust, inclusive and proactive five-year review, a process that has synthesized a great deal of new information and provided the Council with a wide array of stakeholder-driven options for updated designations and protections. As the Council proceeds with the first key step in Phase 3, the evaluation of its existing EFH provisions relative to new information, we have tried to offer constructive suggestions for the scope and criteria of this review. Most importantly, we urge the Council to structure the evaluation such that it asks more than “how much habitat protection is enough?” The real question, when presented with compelling new information such as that in the Phase 1 reports and the stakeholder proposals, is “how much is practicable?” If there are opportunities to enhance EFH, and new information to support these steps, with moderate, minimal or no impact on the fishing industry, the Council should pursue those opportunities.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom Rudolph".

Tom Rudolph
Officer, U.S. Oceans
The Pew Charitable Trusts
trudolph@pewtrusts.org



THE OCEAN FOUNDATION

February 28, 2014

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

RE: *Agenda Item D.2, Groundfish Essential Fish Habitat*

Dear Chair Lowman and Council Members,

Thank you for this opportunity to submit comments on behalf of The Ocean Foundation's Coastal Coordination Program. As you know, the Pacific Fishery Management Council has an important opportunity right now to update Essential Fish Habitat (EFH) for groundfish across the entire Pacific coast.

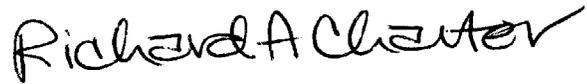
I urge the Council to continue moving ahead with Phase 3 of the ongoing five-year review process by taking key preparatory steps at your March meeting. These steps should support subsequent development of a full range of alternatives for a Groundfish Fishery Management Plan amendment to revise and enhance EFH designations and protections. I urge you to approve the Phase 2 report of the Essential Fish Habitat Review Committee, including the minority statements, and to proceed with the Council-requested evaluation of the existing EFH regulatory regime. Regarding this evaluation, the Council should provide guidance to the NMFS Science Centers that will ensure a comprehensive review which carefully considers whether there are any adverse effects to habitat that can be mitigated to the extent practicable through further Council action. Such adverse effects may be longstanding or new, and may be definitively known or potential. I also urge the Council to request that NMFS make a technical analysis of the stakeholder proposals an intrinsic part of the evaluation, so that the Council has that information at its disposal when the range of alternatives is defined later this year. Until that point in time, no proposals or elements of proposals should be eliminated from consideration. I also ask that the Council make sure that the alternatives protect additional habitat that is vital to a well-functioning marine ecosystem, including deep-sea corals and deepwater areas known to harbor corals.

West Coast residents all benefit from a healthy ocean ecosystem, and because we know that our ocean waters are becoming warmer and more acidic with a changing climate, the work of the Council is particularly important at this time. The implications of ocean acidification are alarming for the people who earn their living from sustainable fishing, as well as for all West Coast citizens who fish for recreation and those who enjoy local seafood. The Council should logically consider all of the proposals before you to enhance Essential Fish Habitat and move to undertake appropriate steps to build ecosystem resilience in the face of an altered climate. The Council deserves credit for a new Fishery Ecosystem Plan that explicitly recognizes the danger of certain fishing practices that "disturb or kill structure-forming invertebrates or vegetation." From the federal government's point of view, the U.S. Commission on Ocean Policy and the Obama administration's Climate Adaptation Strategy both call out the importance of improving habitat protection as a strategy for reducing ecological stress created by climate change.

The Council has received compelling new information through the technical information (including new data) on habitat compiled by NMFS, from the proposals you've received, and as a result of the review undertaken by the Essential Fish Habitat Review Committee, and should now move ahead toward crafting a full range of alternatives to designate and protect ecologically sensitive habitat coastwide.

Thank you for your ongoing efforts on behalf of our marine ecosystems and fisheries.

Sincerely,

A handwritten signature in black ink that reads "Richard A Charter". The signature is written in a cursive, slightly slanted style.

Richard Charter
Coastal Coordination Program
Senior Fellow
The Ocean Foundation



1661 Mission Street, San Francisco, CA 94103
Tel: 415-255-00-326-0959 • www.greenpeaceusa.org

March 2, 2013

Dorothy Lowman, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220

RE: Agenda Item D.2, Groundfish Essential Fish Habitat 5-Year Review

Dear Chair Lowman:

Thank you for the opportunity to comment and follow up on our Groundfish Essential Fish Habitat (EFH) proposal, submitted on July 31, 2013. As you know, Greenpeace's EFH proposal focuses on protecting major submarine features off the U.S. West Coast, particularly deep-sea canyons.

The Basis for Greenpeace's EFH Proposal

Submarine canyons play a critical role in ocean circulation and often encompass areas of upwelling and enhanced physical dynamics, which are associated with high biological productivity. Deep sea canyons are known to host a significant quantity and diversity of habitats which are inhabited by diverse assemblages of benthic and pelagic fauna that, in turn, support healthy fisheries.

NOAA has and continues to focus considerable resources to study submarine canyons throughout the US. They seek to better understand how ecological processes and biological communities are influenced by the physical and environmental characteristics of submarine canyons. Researchers are working to answer more questions about the ways biological communities associate with deep-sea corals and a variety of substrate types found in canyons. The importance of canyons as essential fish habitat and their role in associated fishery productivity has yet to be fully unveiled.

What we do know is that coral and sponge communities provide essential habitat for numerous species at various life stages, including many that are commercially important and many more that are integral parts of the ecosystem. Coral habitats are particularly important for juvenile fish, and provide places for fish and invertebrates to spawn and lay their eggs. Deep sea corals and sponges are often long-lived, extremely slow to recover, and highly vulnerable to bottom tending fishing gear. Recovery times for deep sea corals disturbed by fishing activities can be 50 to 100 years, if they recover at all, making it virtually impossible to replace their lost value to the ecosystem.

Studies have shown that chronic trawling reduces structural complexity and diversity of benthic species (McConnaughey et al. 2000), and a single pass of bottom trawl gear over structurally complex seabed habitats comprised of deep-sea corals and sponges can inflict extensive and long-lasting damage (Freese et al. 1999, Krieger 2001, Andrews et al. 2002, Stone and Shotwell 2007, Heifetz et al. 2009). A recent

study of deep sea canyons in the Bering Sea validated the important habitat function of benthic organisms for fish and crab species (Miller et al. 2012). While we still have much to learn about the intricacies of ecosystem functions in deep sea canyons, and relationships between benthic and pelagic species, we should take a precautionary management approach that can ensure the integrity of such productive ecosystems upon which we all depend.

Finally, it is worth noting that other Regional Fishery Management Councils are taking proactive steps to safeguard important submarine canyons within their jurisdictions, including the Pribilof and Zhemchug Canyons in the North Pacific, and numerous canyons and seamounts off the Mid-Atlantic and Southern New England coast. The Pacific Council, normally a leader in habitat protection, should take this opportunity to catch up with its fellow councils, and Greenpeace's EFH proposal provides a way to do so.

The Contents of Our EFH Proposal

The Greenpeace EFH proposal contains three main parts. First, we propose nine discrete area closures to protect specific undersea features from the impacts of fishing: Quinault Canyon, Astoria and Willapa Canyon Complex, Heceta Bank Canyon Complex, Rogue Canyon, Eel River Canyon, Delgada Canyon Complex, Pioneer Canyon and Farallon Escarpment, Ascension and Ano Nuevo Canyons, and the Lopez to La Cruz Canyon Complex.

Our proposal requests that these areas be designated for full EFH protection. There are myriad connections in the complex ecosystem that supports productive fisheries in the Pacific. Much remains poorly understood, though, about the relationships between benthic and pelagic species, and how complex ecosystem components interact to support a resilient and healthy ecosystem along the West Coast.

Upon announcing its new EFH program in 1997 NOAA's press release carried this header: NOAA Begins Essential Habitat Program to Enhance Nation's Living Marine Resources; Releases National Habitat Plan. Then Department of Commerce under secretary for oceans and atmosphere and administrator of NOAA, D. James Baker pledged: "The fisheries service will be working closely with the regional fishery management councils, coastal states, and other partners to protect and enhance the habitat essential to the fisheries and other marine resources under our stewardship."

A thorough analysis of management measures that can effectively meet NOAA's commitment to protect and enhance essential fish habitat should include fully protected areas, as we have proposed. The major undersea features identified in our proposal have high ecological value, and they should be protected from the damage inflicted by bottom fishing, especially bottom trawling. Enhancement of EFH would, presumably, include measures that go beyond reducing impacts on vulnerable habitat such as gear modifications or restrictions. With the increasing impacts of climate change and ocean acidification, as well as the cumulative degradation of seafloor habitat by bottom contact gear, creating a buffer against uncertainty makes sense from an economic perspective as well as an ecological one.

The second portion of our EFH proposal requests that the Council freeze the footprint of fishing in the groundfish fishery. Specifically, this means creating a spatial closure to trawling (a No Bottom Trawl Zone) that encompasses all areas outside the active trawl footprint. The Council already has an identified

maximum extent of the trawl fishery, in the Phase 1 Report and EFH Data Catalog, and we request that the Council put this data layer to use by prohibiting any expansion of the trawl footprint.

The Council should note that our request to freeze the footprint of the fishery inherently includes closing the deepwater portion of the Exclusive Economic Zone off California (deeper than 3500m), which the Council voted to do in Amendment 19 but NMFS avoided carrying out at that time. Numerous sources of authority are available to accomplish this goal, and the Council should take this opportunity to complete its policy of freezing the footprint.

Third, our EFH proposal requests that the Council begin a process to phase out unnecessarily unselective and destructive fishing gear types off the West Coast. We wish to clarify that this request should be read narrowly as only applying to gear used in the groundfish fishery (the reference to drift gillnets was simply illustrative of an unnecessarily unselective gear type, and was not intended to imply that drift gillnets are being used in the groundfish fishery). In particular, we ask that the Council establish specific deadlines and goals for gear modifications in the groundfish fishery, such that within a finite time period all gear used in the fishery must be demonstrated to have negligible impacts on benthic habitat, including corals and sponges.

The Law Requires Habitat Impacts To Be Minimized to the Extent Practicable

The Magnuson-Stevens Act requires the Council and NMFS to “minimize to the extent practicable adverse effects on [EFH] caused by fishing.” 16 U.S.C. § 1853(a)(7). This includes corals and sponges, which in many instances off the West Coast have been demonstrated to have Level 1 association with managed groundfish FMP species. 67 Fed. Reg. 2343, 2352 (Jan. 17, 2002) (“[I]n most cases the best available scientific information is fish distribution (Level 1) or relative abundance (Level 2) data. Additional guidance linking EFH to habitat function, beyond the clarification mentioned above, is not necessary at this time . . .”). Corals and sponges are also subject to the parallel requirement to minimize bycatch to the extent practicable, which appears in National Standard 9. 16 U.S.C. § 1851(a)(9).

The Council Has Conducted No Analysis of the Proposals

At this point the Council has no analysis before it, on the impact reduction that would be caused by each EFH proposal, or the proposals’ practicability. In order to make a non-arbitrary decision on each proposal, the Council must ask whether and to what degree the proposal will reduce the impacts of fishing on EFH off the West Coast, and how practicable the proposal is. Deciding to pursue some proposals but not others, without answering these fundamental questions, would amount to arbitrary and capricious decision-making.

The EFH Review Committee, despite its intended role as an analyzing body, conducted no substantive analysis. The Committee used a “Bayesian” survey tool that gathered the subjective impressions of a range of stakeholders (the so-called “Bayesian” aspects of the tool were not used). None of the data gathered by the Committee in the Phase 1 Report or the NMFS Synthesis was used to analyze proposals, although this could have easily been done. Instead, personal preferences of the Committee members were

polled, and the results of this popularity contest were provided in quantitative form, making it appear as if analysis had been conducted.

Greenpeace wishes to stress that the EFH Review Committee's exercise in no way constituted a substantive analysis of the proposals, and should not be used as an excuse to cut proposals at this stage. Real analysis would involve comparing proposals to the data gathered in Phase 1—such as the locations of hard substrate, trawl effort data, and coral-sponge records—and calculating certain metrics like coverage of habitat types by bioregion, displaced fishing effort, and so forth. By wholly ignoring the data gathered in Phase 1, the EFH Review Committee has made clear that its “recommendations” are nothing more than the subjective views of its members—which of course would be expected to diverge, given the diverse backgrounds of Committee members.

The Council Should Move Forward and Analyze All the Proposals

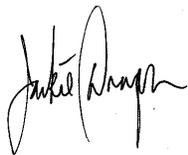
Because the Council has no substantive information on whether each proposal would be effective at mitigating the impacts of fishing on EFH, or on the practicability of each proposal, it would be premature to cut any proposals at this time. Instead, the Council should move forward and instruct NMFS and Council staff to conduct a brief, high-level analysis of the proposals based on these criteria—reduction of impacts and practicability—in order to make a legally-relevant decision at the September meeting.

The fact that our proposal did not rank at the top of the EFH Review Committee's popularity contest does not constitute a demonstration of its impracticability, nor of its ineffectiveness at mitigating the impacts of fishing on EFH. In order to make a non-arbitrary decision on which proposals to move forward to a FMP amendment and NEPA process, the Council must conduct actual analysis of each proposal, addressing both the extent to which the proposal reduces impacts on EFH, and its practicability.

Finally, we wish to reiterate that as members of the public, Greenpeace had an expectation based on the COP 22 and the Council's RFP that our proposal—which met all elements of the RFP—would be afforded legitimate analysis before any decision was made on it. It appears NMFS and some members of the Council are prepared to break this expectation and act prematurely, without even examining whether our proposal would improve the status of EFH off the West Coast, or whether it is practicable. We urge the Council to avoid this path, as it would be both misguided and contrary to good public process.

Thank you for your attention to this important matter, and we look forward to watching the Council's informed decision-making at the March meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Jackie Dragon". The signature is fluid and cursive, with the first name "Jackie" being more prominent than the last name "Dragon".

Jackie Dragon
Senior Oceans Campaigner
Greenpeace US

References:

- Andrews, A.H., et al. 2002. Age, growth and radiometric age validation of a deep-sea, habitat-forming gorgonian (*Primnoa resedaeformis*) from the Gulf of Alaska. *Hydrobiologia* 471: 101-110.
- Freese, L., et al. 1999. Effects of trawling on seafloor habitat and associated invertebrate taxa in the Gulf of Alaska. *Marine Ecology Progress Series* 182: 119-126.
- Heifetz, J., et al. 2009. Damage and disturbance to coral and sponge habitat of the Aleutian Archipelago. *MEPS* 397: 295-303.
- Krieger, K.J. 2001. Coral (*Primnoa*) impacted by fishing gear in the Gulf of Alaska, pp. 106-116, In: J.H. Martin Willison et al. (eds), *Proceedings of the First International Symposium on Deepwater Corals*, Halifax, Nova Scotia, 231 pp.
- McConnaughey, R.A., et al. 2000. An Examination of chronic trawling effects on soft-bottom benthos of the eastern Bering Sea. *ICES Journal of Marine Science* 57: 1377-1388.
- Miller, R.J., et al. 2012. Structure-forming corals and sponges and their use as fish habitat in Bering Sea submarine canyons. *PLOS ONE*, 7(3), e33885.
- Stone, R.P., and S.K. Shotwell 2007. State of Deep Coral Ecosystems in the Alaska Region, pp. 65-108, In: S.E. Lumsden et al. (eds.), *The State of Deep Coral Ecosystems of the United States*, NOAA Technical Memorandum CRCP-3, Silver Spring MD, 365 pp.
- NOAA. (1997). NOAA Begins Essential Habitat Program to Enhance Nation's Living Marine Resources; Releases National Habitat Plan [press release]. Retrieved from <http://www.publicaffairs.noaa.gov/pr97/jan97/noaa97-4.html>

The Northwest Guides and Anglers Association

To protect, enhance, and promote healthy sportfisheries and the ecosystems they depend on in the Pacific Northwest.

Ms. Dorothy M. Lowman, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384

Re: Agenda Item D.2: EFH Evaluation Criteria and Phase 2 Report

Dear Chair Lowman and council members:

The NW Guides and Anglers Association is made up of over 30 guides and charters also representing thousands of sport anglers that participate in NW sportfishing. Our mission is to protect, enhance and promote healthy sportfisheries and the ecosystems they depend on in the Pacific Northwest. It is for this reason that we are writing to you to urge you to continue moving ahead toward the protection of additional essential fish habitat, based on the new information brought to light in your recent 5-year review. I support the Council's intent to conduct, in collaboration with NOAA Fisheries, an evaluation of the existing protections put in place in 2006 through Amendment 19.

The Council should work to develop robust criteria for this review that adequately consider the Council's duty to improve upon existing protections and take a broad, precautionary, ecosystem-centered approach to EFH protection. The Council and NMFS should make certain to ask the right questions, including whether the Amendment 19 protections have met the goals of Amendment 19 to mitigate certain adverse impacts of fishing, and the separate question of whether there are other, newer adverse impacts that can and should be mitigated now. These steps are critical to ensuring that we are doing all we can to protect ecologically important areas that are susceptible to damage caused by bottom trawling and other fishing practices.

As a concerned citizen and business owner that depends on healthy fish populations, I encourage the council to build upon the work done through the current review process by considering a rigorous review process that both protects important habitat areas and provides an opportunity for continued sustainable fishing.

Thank you for the opportunity to comment.

Sincerely,

Robert Rees

Bob Rees, President
Northwest Guides and Anglers Association



Chuck Tracy - NOAA Affiliate <chuck.tracy@noaa.gov>

Fwd: EFH Evaluation Criteria and Phase 2 Report

1 message

PFMC Comments - NOAA Service Account <pfmc.comments@noaa.gov>

Mon, Mar 3, 2014 at 8:07 AM

To: Kerry Griffin - NOAA Affiliate <Kerry.Griffin@noaa.gov>

Cc: Chuck Tracy - NOAA Affiliate <chuck.tracy@noaa.gov>

----- Forwarded message -----

From: **Kevin Scribner** <scribfish@gmail.com>

Date: Sun, Mar 2, 2014 at 8:37 PM

Subject: EFH Evaluation Criteria and Phase 2 Report

To: pfmc.comments@noaa.gov

Ms. Dorothy M. Lowman, Chair

Pacific Fishery Management Council

7700 NE Ambassador Place, Suite 101

Portland, Oregon 97220-1384

Re: Agenda Item D.2: EFH Evaluation Criteria and Phase 2 Report

Dear Chair Lowman and council members:

I have enjoyed the opportunity to provide comment in person to the Council, an experience that is a testimony to how well the Council welcomes input from our region's residents. I commend you and all the Council members for this. And now, some additional input urging you to continue moving ahead toward the protection of additional essential fish habitat, based on the new information brought to light in your recent 5-year review. The Council's intent to conduct, in collaboration with NOAA Fisheries, an evaluation of the existing protections put in place in 2006 through Amendment 19 has my full support.

As well, I urge the Council to develop robust criteria for this review that adequately consider the Council's duty to improve upon existing protections and take a broad, precautionary, ecosystem-centered approach to EFH protection. Our region can model this approach for the other regional Management Councils. The Council and NMFS should make certain to ask the right questions, including whether the Amendment 19 protections have met the goals of Amendment 19 to mitigate certain adverse impacts of fishing, and the separate question keyed

to anticipating any other, newer adverse impacts that can and should be mitigated now. These steps are critical to ensuring that we are doing all we can to protect ecologically important areas that are susceptible to damage caused by bottom trawling and other fishing practices.

As a former commercial fisherman, current seafood marketer, and concerned citizen who has a love affair with the ocean, I encourage the council to build upon the work already accomplished through the current review process by considering a rigorous review process that both protects important habitat areas and provides an opportunity for continued sustainable fishing.

Thank you for your stewardship of our marine resources.

Sincerely,

Kevin Scribner, Kooskooskie Fish

PO Box 40729, Portland, OR 97240

--

Thank you for your comments to the Pacific Fishery Management Council. Your comments have been received and will be forwarded to the appropriate staff member for processing.

Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220
Phone: [503-820-2280](tel:503-820-2280)
Toll Free: [1-866-806-7204](tel:1-866-806-7204)
Fax: [503-820-2299](tel:503-820-2299)
Twitter: <http://Twitter.com/PacificCouncil>

Arctic Storm Management Group
2727 Alaskan Way, Pier 69
Seattle, WA 98121

Dorothy Lowman, Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220

February 28, 2014

RE: Agenda Item: D2 EFH

Dear Ms. Lowman,

At this meeting the Council is scheduled to provide guidance on the process to consider changes to groundfish Essential Fish Habitat (EFH), including the Science Center's recommendations on how to determine the effectiveness of current EFH closures, evaluation criteria for consideration of proposals in Phase 3, the process for considering changes to EFH and finalizing of the EFH Review Committee's Phase 2 Report. Arctic Storm has several recommendations on these issues as well as a general comment on the problematic recommendation that the MSA deep sea coral provision be incorporated into EFH actions.

Effectiveness of current EFH closures: Unfortunately, the Science Center has not yet made available its' recommendations on how to determine the effectiveness of current EFH closures. However, the EFHRC report has determined that there is no new information that would allow us to understand the performance of habitat closures implemented by Amendment 19. For this reason, the Council should proceed cautiously in expanding EFH closures.

Evaluation criteria: Unfortunately, the Science Center has not yet made available its' recommendations on evaluation criteria for consideration of new proposals. There are several criteria that might be considered in the evaluation of Phase 3 proposals.

1) Linkage to FMP species: EFH guidelines require that actions taken must be linked to protection of FMP species. Such a link should be established and evaluated in each proposal. Because we currently lack information to judge the performance level of EFH closures, such a link will provide a tool to judge efficacy in the future by assessing specie specific population trends in or around the designated areas.

2) Gear impact: Each proposal should provide enough information for the analysis to determine if fishing gear is negatively impacting FMP specie habitat in ways that are "*more than minimal and not temporary in nature*" as required by the EFH final rule.

3) New Data: The Council has given priority to the review of new data. Evaluation criteria might also give higher priority to proposals using new data that was unavailable during the last EFH review.

4) Specific geographic scope: The EFHRC recommended that the Council might want to consider narrowing the geographic scope of considered proposals.

5) Stakeholder involvement: The EFHRC also recommended giving highest priority to local initiatives that have been well vetted by stakeholders.

Process for considering changes to EFH: The EFHRC has done its job and evaluation of proposals now seems headed toward peer and public review. In preparing the proposals for further review, each specific proposal should be separated from bundled proposals for individual evaluation. For instance, some organizations such as Oceana have submitted several proposals in a single bundle which was evaluated as a package by the EFHRC. The proposals should now be evaluated as *stand alone* proposals.

Finalizing the EFHRC Phase 2 Report: The EFHRC has worked hard to produce this report. However, the report's recommendations seem muddled by controversy articulated in the various minority reports. The minority reports might, instead, better contribute to the dialogue as public comment. However, if the Council determines that the minority reports make a valuable contribution to the overall EFHRC report, *all* the minority reports should be included in the EFHRC instead of only those selected for inclusion.

Deep Sea Coral as EFH: Deep Sea Corals are not FMP species and their protection should not be included in the EFH review process unless it can be demonstrated that they protect an FMP species. Section 303 (b)(2)(B) provides Councils discretionary authority to develop protection zones for Deep Sea Corals. This section is not embedded in the EFH provisions because Deep Sea Corals are not FMP species. Further, EFH was crafted to protect FMP species when fishing gear impacts were shown to be *more than minimal and not temporary in nature* in damaging their essential habitat. The Council has discretionary authority to protect deep sea corals but, unless these corals are shown to provide fish habitat essential to the sustainability of FMP species *and* there is evidence that damage by fishing gear to that habitat is more than minimal and more than temporary, inclusion under an EFH action seems inappropriate and a dangerous precedent.

Thank you for consideration of our comments.

Sincerely,

Donna Parker
Director, Government Affairs