UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

May 11, 2005

Reply To
Attn Of: ETPA-088 Ref: 05-008-NOA

D. Robert Lohn, Regional Administrator
NMFS/NOAA - Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115-0070

Dear Mr. Lohn:

The U.S. Environmental Protection Agency (EPA) has reviewed the draft Environmental Impact Statement (EIS) for **Essential Fish Habitat Designation and Minimization of Adverse Impacts** (CEQ No. 20050049) in accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. Section 309, independent of NEPA, specifically directs EPA to review and comment in writing on the environmental impacts associated with all major federal actions and the document=s adequacy in meeting NEPA requirements.

The draft EIS evaluates the effects of a strategy to conserve and enhance essential fish habitat (EFH) for fish managed under the Pacific Coast Groundfish Fishery Management Plan (FMP). The EIS includes alternatives for identification of EFH and Habitat Areas of Particular Concern (HAPC), measures to minimize adverse impacts to EFH from fishing activities, and research and monitoring actions to encourage the conservation and enhancement of EFH. The proposed action is to ensure compliance with section 303(a)(7) of the Magnuson-Stevens Act and will amend the Pacific Coast Groundfish FMP.

The EIS provides six alternatives for identifying and designating EFH, nine alternatives for designating HAPC, fourteen alternatives with various options for minimizing adverse fishing impacts to EFH and four alternatives with two expanded logbook program options for research and monitoring. The following tables provide ratings for each of the alternatives and options provided in the EIS.

An overall rating of EC-2 (Environmental Concerns - Insufficient Information) along with a summary of our comments will be published in the *Federal Register*. A copy of the rating system used in conducting our review is enclosed for your reference.

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Pacific Coast Groundfish Fishery Management Plan Essential Fish Habitat Designation and Minimization of Adverse Impacts Draft Environmental Impact Statement			
Alternative Designation	**Alternative Name**	**Preliminary Preferred Alt. (Yes/No)**	***Rating**
Category: Essential Fish Habitat			
A.1	No Action	No	LO
A.2	Depths less than 3,500 m	Yes	EC-2
A.3	100% Habitat Suitability Probability Area	Yes	EC-2
A.4	Habitat Suitability Probability Based on Management Status	No	EC-2
A.5	70% Habitat Suitability Probability Area	No	EC-2
A.6	30% Habitat Suitability Probability Area	No	EC-2
Category: Habitat Areas of Particular Concern			
B.1	No Action	No	EC-2
B.2	Estuaries	Yes	LO
B.3	Canopy Kelp	Yes	LO
B.4	Seagrass	Yes	LO
B.5	Core Habitat	No	EC-2
B.6	Rocky Reefs	Yes	LO
B.7	Areas of Interest	No	LO
B.8	Oil Production Platforms	No	EC-2
B.9	Process for new Habitat Areas of Particular Concern	No	LO

*LO – Lack of Objection
EC-2 Environmental Concerns – Insufficient Information

Pacific Coast Groundfish Fishery Management Plan
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Alternative Designation	Alternative Name	Preliminary Preferred Alt. (Yes/No)	*Rating
Category: Minimize Adverse Fishing Impacts to Essential Fish Habitat			
C.1	No Action	No	EC-2
C.2.1	Depth-based Gear Restrictions – Option 1	No	EC-2
C.2.2	Depth-based Gear Restrictions – Option 2	No	LO
C.2.3	Depth-based Gear Restrictions – Option 3	No	EC-2
C.3.1	Close Sensitive Habitat – Option 1	No	EC-2
C.3.2	Close Sensitive Habitat – Option 2	No	EC-2
C.3.3	Close Sensitive Habitat – Option 3	No	EC-2
C.3.4	Close Sensitive Habitat – Option 4	No	EC-2
C.4.1	Prohibit Geographic Expansion of Fishing – Option 1	Yes	EC-2
C.4.2	Prohibit Geographic Expansion of Fishing – Option 2	Yes	LO
C.5	Prohibit a Krill Fishery	No	LO
C.6	Close Hotspots	No	EC-2
C.7.1	Close Areas of Interest – Option 1	No	EC-2
C.7.2	Close Areas of Interest – Option 2	No	EC-2
C.8.1	Zoning Fishing Activities – Option 1	No	EC-2
C.8.2	Zoning Fishing Activities – Option 2	No	EC-2
C.9.1	Gear Restrictions: Prohibit Roller Gear Larger than 15 inches	Yes	LO
C.9.2	Gear Restrictions: Prohibit Flat Trawl Doors	Yes	LO
C.9.3	Gear Restrictions: Limit Longline Groundline Length to 3 nm	Yes	LO
C.9.4	Gear Restrictions: Employ Habitat-Friendly Anchoring Systems	Yes	LO
C.9.5	Gear Restrictions: Prohibit Dredge Gear	Yes	LO
C.9.6	Gear Restrictions: Prohibit Beam-Trawl Gear	Yes	LO
C.9.7	Gear Restrictions: Prohibit Set-Gillnets in Waters Deeper than 60 fm	Yes	LO
C.9.8	Gear Restriction: Prohibit Dingle Bar Gear (Troll Groundfish Gear)	Yes	LO
C.10	Central California No-Trawl Zones	Yes	LO
C.11	Relax Gear Endorsement Requirements	Yes	LO
C.12	Close Ecologically Important Areas to Bottom Trawl	Yes	EC-2
C.13	Close Ecologically Important Areas to Bottom-Contacting Gear	Yes	EC-2
C.14	Close Ecologically Important Areas to Fishing	Yes	LO

*LO – Lack of Objection
EC-2 Environmental Concerns – Insufficient Information

Pacific Coast Groundfish Fishery Management Plan Essential Fish Habitat Designation and Minimization of Adverse Impacts Draft Environmental Impact Statement			
Alternative Designation	**Alternative Name**	**Preliminary Preferred Alt. (Yes/No)**	***Rating**
Category: Research and Monitoring			
D.1	No Action	No	EC-2
D.2.1	Expanded Logbook Program – All Fishing Vessels	No	LO
D.2.2	Expanded Logbook Program – Random Sample	No	EC-2
D.3	Expanded Vessel Monitoring System Program	No	LO
D.4	Research Reserve System	No	LO

*LO – Lack of Objection
EC-2 Environmental Concerns – Insufficient Information

Our concerns with the EIS focus on data limitations and inaccuracies, the roles of NOAA-Fisheries and the Pacific Fisheries Management Council in the development and selection of alternatives, and the need for additional information on the Fisheries Economic Assessment Model and the Environmental Justice analysis. Detailed comments discussing our concerns and the alternatives are provided in the enclosure. EPA recognizes it might not be possible to address all data limitations prior to completion of the final EIS. Consequently, our ratings of the alternatives presented in the EIS reflect our concerns and recommend a protective approach to identifying and minimizing impacts to EFH in light of the stated uncertainties.

Thank you for the opportunity to review this draft EIS. If you would like to discuss these comments in detail, please contact Mike Letourneau at (206) 553-6382.

Sincerely,

/S/ Peter Contreras for

Christine Reichgott, Manager
NEPA Review Unit

cc: J. DeVore, PFMC
K. Dahl, PFMC

Enclosure

Pacific Coast Groundfish Fishery Management Plan
Essential Fish Habitat Designation and Minimization of Adverse Impacts
Draft Environmental Impact Statement

General Comments

We support the Habitat Suitability Probability (HSP) approach utilized in the EIS for identifying Essential Fish Habitat (EFH) and the associated sensitivity index approach used for identifying habitat for closure under Alternative C.3. However, due to the current data limitations and reported inaccuracies in some of the data used in the HSP and sensitivity indices, we have concerns about selecting alternatives that utilize these approaches.

We support your efforts to obtain additional high quality data and correct inaccuracies. In addition to expanding the logbook, vessel monitoring system (VMS) and research reserve programs, we support increasing observer coverage and manned and remote sensing devices that are nondestructive to marine habitats. We agree that combining VMS, logbook and observer data would result in a more complete picture of fishing activities and that VMS data with a higher resolution track line of trawl and fixed gear sets would be a significant benefit. We also support efforts to develop new fishing gear that is less destructive of EFH.

We appreciate the discussion on the non-fisheries related activities in the EIS. These activities described in the upland, riverine, estuarine, coastal and marine sections provide good information for evaluating cumulative impacts to EFH. While the suite of groundfish does not include anadromous species, like krill, they are prey species of groundfish and are impacted by the groundfish fishing activities. Consequently, the EIS would benefit from evaluating the extent to which freshwater habitats should be considered essential groundfish habitat and techniques and opportunities for identifying freshwater HAPC.

The EIS states that EFH recommendations from the National Marine Fisheries Service (NMFS) or a Fisheries Management Council (Council) to federal or state agencies are non-binding. The EIS needs to clarify that only the NMFS, not the Council, can provide EFH recommendations to federal or state agencies. In addition, the EIS should discuss how EFH recommendations from NMFS will impact the Council and its processes.

Alternatives for Identification and Description of Essential Fish Habitat (EFH)

As discussed above, we support the HSP approach utilized for identifying EFH, however, the limitations and inaccuracies of the data utilized in this approach could leave some essential habitat for groundfish species unprotected. Therefore, we support the No Action alternative that designates all waters from the mean higher high water line, and upriver extent of saltwater intrusion in river mouths, along the coasts of Washington, Oregon and California to the seaward boundary to the U.S. Exclusive Economic Zone (EEZ) as EFH.

The EIS states that some of the essential fish habitat maps generated from the information collected on the managed species and utilized in some of the Identification and Description EFH alternatives were incorrect. The final EIS should discuss if the essential fish habitat maps generated from the information collected on the managed species inaccuracies have been corrected and if so, the results of those corrections.

The EIS states that the Council and NMFS will attempt to have the methodology for calculating "biogenic areas" peer-reviewed by the Council's Scientific and Statistical Committee (SSC) during the

draft EIS review period, and that the methodology may be incorporated into the formal adoption of a Fisheries Management Plan (FMP) amendment and regulatory action. The EIS should clarify if such an action would require the development of a supplemental EIS.

The EIS discusses how the Scientific and Statistical Committee (SSC) approved the methodology for developing the indices used in the HSP model, but did not approve the impact function component of the model used for developing the alternatives. The EIS needs to explain why the SSC did not approve the impact function component of the model and if there are plans to obtain their approval prior to the selection of preferred alternatives by the NMFS.

Alternatives for Habitat Areas of Particular Concern (HAPC)

The EIS states that the HAPC alternatives are not mutually exclusive and that all of the action alternatives could be included in a final preferred alternative, even if some of the designated areas were to overlap. While the EIS is clear that HAPC must be a subset of EFH, it must also be clear that if all of the HAPC action alternatives (Alternatives B.2 through B.9) were selected, selection of a preferred EFH alternative would be limited. While the discussion and figures in Chapter 4 of the EIS provide information on what HAPC areas would be excluded under each EFH alternative, it is not clear which EFH alternatives would be excluded by selecting all of the HAPC alternatives. This needs to be clarified in the EIS.

While we support the approach of combining alternatives into a final preferred alternative, we have concerns with Alternatives B.5 (Core Habitat) and B.8 (Oil Production Platforms). The Core Habitat under Alternative B.5 is defined as the upper 10% area of an HSP greater than 0%, for the juvenile and adult life history stages of overfished and precautionary zone groundfish species. Because of the limitations and inaccuracies of the data utilized in the HSP analyses, there is a potential that some HAPC for some of the overfished and precautionary zone groundfish might not be protected under this alternative. Consequently, we have environmental concerns with this proposed alternative.

While there have been high concentrations of groundfish observed in association with many of the oil platforms off the coast of California, including overfished species, it is uncertain if this is a net benefit to the ecosystem. These unnatural structures may be attracting fish populations away from natural reefs, exposing fish to mercury contamination, attracting predators resulting in a net loss to the fish populations, and increasing fishing effort in the area. We recommend that Alternative B.8 be modified to address these concerns. Once it is determined that decommissioned platforms scheduled for removal do not pose a mercury contamination threat, we recommend that the platforms remain in place until such time that it is demonstrated that adequate natural habitat exists and overfished species meet maximum sustainable yield (MSY). Such an alternative would include the benefits these platforms provide to the groundfish species, address the mercury contamination and the potential attraction of fish from natural reefs, and protect the species from increased effort by fishers.

We support a process for new HAPC designations such as the one proposed in Alternative B.9. As additional information is obtained there is the potential for identifying new areas that are important to the survival and sustainability of a species. This information should undergo a technical and public review for consideration as HAPC. Alternative B.9 provides for such reviews in a streamlined process for designating new HAPC.

Alternatives to Minimize Adverse Fishing Impacts to EFH

The proposed alternatives for minimizing adverse fishing impacts on EFH include gear modifications, area closures and fishing effort reductions. Alternative C.2 includes three options for

Depth-based Gear Restrictions. Alternative C.2.2 would prohibit the use of large footrope trawl gear throughout the EEZ and prohibit all fixed gear shoreward of 100 fm north of 40°10' N latitude and 150 fm south of 40°10' N and consequently would be the most protective of EFH. We recommend that Alternative C.2.2 be selected as the preferred alternative.

Alternative C.3 (Close Sensitive Habitat) includes four options all based on sensitivity and recovery indices developed as part of the fishing impact model component of the comprehensive risk assessment. Of the four options, Alternative C.3.4 would provide the most protection, however, because of the limitations and inaccuracies of the data utilized in this modeling effort, there is a potential that some sensitive habitats might not be protected under this alternative. Therefore, we have concerns with these proposed alternatives.

Alternative C.4 (Prohibit Geographic Expansion of Fishing) has two options which generally cover the same geographic area. However, Alternative C.4.1 prohibits fishing in areas that were not trawled between 2000 and 2002, leaving some 10 minute blocks westward of the 2000m contour vulnerable to fisheries impacts. In addition, Alternative C.4.2 accounts for all bottom-tending gear and addresses the lack of geo-referenced fishing effort data for fixed-gear fisheries. Therefore, we recommend that that Alternative C.4.2 be selected as the preferred alternative.

Despite the prohibition of krill fishing in Washington, Oregon and California waters and the lack of a krill fishery in Council managed waters, we believe Alternative C.5 (Prohibit a Krill Fishery) would be a good preventative measure to protect this important prey species and its habitat. We understand that the Council has elected to address this issue by incorporating krill as a management unit species in the Coastal Pelagic Species FMP, potentially eliminating the need for Alternative C.5. The EIS should discuss if incorporating krill as a Coastal Pelagic Species in the FMP would be as effective as Alternative C.5 and which process could be implemented in the shortest amount of time. If both processes are equally protective of krill, the least time consuming process should be implemented.

Alternative C.6 (Close Hotspots) would prohibit trawling in habitat that has a high probability of being EFH for a large number of groundfish based on the HSP modeling analyses. Because of the limitations and inaccuracies of the data utilized in the HSP modeling, there is a potential that some EFH might not be protected under this alternative. Alternative C.2.2 would prohibit trawling and all fixed gear over a larger geographic area including the area that would be protected by Alternative C.6. Therefore, we recommend selecting Alternative C.2.2 as the preferred alternative instead of Alternative C.6.

Alternative C.7 (Close Areas of Interest) calls for closing the areas of interest designated under Alternative B.7 to fishing either to bottom trawling (Alternative C.7.1) or to all bottom-contacting activities (Alternative C.7.2). These areas of interest would be based on various HSP sensitivity values depending on gear types. While we recommend that Alternative C.7.2 be given preference above C.7.1 as it would protect more EFH from impacts by fishing gear, we have concerns that some areas might not be protected due to the limitations and inaccuracies in the data utilized in the HSP analyses.

Alternative C.8 (Zoning Fishing Activities) would limit the use of bottom-tending gear to specified zones where the agency determines that such activities can be conducted without altering or destroying a significant amount of habitat. Bottom tending fishing gear would be prohibited in all areas deeper than the 2,000 m contour along the continental slope extending to the maximum westward range of groundfish EFH. There would be a five-year transition period to gear specific zones for the remaining area inside the 2,000 m contour, which would remain open to bottom-tending fishing gear.

During the five-year transition period, NMFS would conduct research to delineate zones where specified fishing activities would be permitted. Alternative Option C.8.1 would establish fishing zones for bottom-contact trawls, dredges, and similar bottom-tending mobile fishing gear. Other bottom-contacting gear including bottom longlines, traps, and pots would not be restricted. Alternative Option C.8.2 would establish fishing zones for all bottom-contacting gear types including bottom longlines, traps, and pots. This alternative would include a gear modification and substitution program that cooperatively involves fishers in the design and testing of new gear. The western boundary of the geographic area covered by Alternative C.8 would be dependent on the Identification and Description EFH alternative selected. If the Alternative A.1 (No Action) Identification and Description EFH were selected, the western boundary of Alternative C.8 would be the boundary of the EEZ.

Alternative C.8 in combination with Alternative A.1 would provide a protective approach westward of the 2000 m contour and control fishing activities within the 2000 m through the establishment of fishing zones that would not be significantly impacted by various bottom contact gear types. While we support the adaptive management approach and the inclusion of fishers in the gear research aspects of the program, the EIS does not provide information on how the NMFS will define 'significant' when determining the amount of habitat that can be altered or destroyed under this alternative. The EIS states that the best scientific information available will be utilized for determining whether unavoidable adverse impacts would be minimal and temporary, however, it does not discuss if the HSP model inputs or other information will be used to make these determinations. It is recommended that the EIS provide additional information on potential approaches for determining the significance of habitat impacts under this alternative.

We support the selection of Gear Restriction Alternative C.9 (all options) as a preferred alternative and believe that all the options should be combined into a single alternative. We also support Alternatives C.10 (Central California No-Trawl Zones), and C.11 (Relax Gear Endorsement Requirements). Alternatives C.12 (Close Ecological Important Areas to Bottom Trawl), C.13 (Close Ecological Important Areas to Bottom-Contacting Gear), and C.14 (Close Ecologically Important Areas to Fishing) are variations of the Comprehensive Collaborative Mitigation Alternative. While Alternatives C.12 and C.13 would restrict trawl fishing and bottom contact gear fishing in these ecologically important areas, they would be left vulnerable to some fisheries impacts. Therefore, we recommend that Alternative C.14 be selected as the preferred alternative.

Research and Monitoring Alternatives

Currently, there is limited data on the distribution of groundfish species and their associated habitats, and habitat-specific productivity. In addition, habitat-specific densities are only available for a few species. We agree that there is a critical need for comprehensive, detailed and accurate information on benthic habitats and associated groundfish assemblages on spatial scales relevant to fisheries management and habitat production. Core nursery grounds and spawning areas need to be identified and protected and there is a need to better understand the relationship between climatic events and abundance, growth, spawning success and survival of groundfish species.

We support the Research and Monitoring alternatives that will obtain information that will better define and minimize impacts to EFH. Including all fishing vessels in the Expanded Logbook Program Alternative (Alternative D.2.1) would provide the largest amount of data for updating and increasing the precision and accuracy of the model inputs used for identifying and minimizing EFH. We acknowledge the added economic impacts expanding the Vessel Monitoring System (VMS) Program (Alternative D.3) would have on fishers. However, the EIS is clear that minimizing impacts to EFH will increase enforcement needs and the VMS program could be utilized to address some of these needs. In addition,

combining VMS, logbook and observer data would result in a more complete picture of fishing activities and VMS data with a higher resolution track line of trawl and fixed gear sets would be a significant benefit. Finally, we support the Research Reserve System (Alternative D.4) as a means of better understanding the effects of fishing on habitat. The EIS is clear that additional information is needed regarding the length of time needed for habitat features and functions to cover from fisheries impacts. Alternative D.4 provides a mechanism to obtain such information.

Fisheries Economic Assessment Model

The EIS needs to provide additional information on the Fisheries Economic Assessment Model. Specifically, the EIS should include a detailed description of the model, the assumptions used in the model and the process that was utilized to rectify the model with groundfish fishery economic data. While the EIS discusses potential economic impacts to fishers, processors and fishing communities based on this model, it also needs to discuss the uncertainty of these predicted economic impacts and how the model, originally developed for the limited entry trawl sector, has been adapted to project economic impacts in all groundfish fisheries.

Environmental Justice

While we agree that the geographic scope of the EIS results in some difficulties in identifying and determining if low income or minority populations will be disproportionately impacted by the proposed actions, we believe that the EIS would benefit from additional discussion on how it obtained meaningful public participation from low income and minority populations that may be impacted by the proposed action. The information presented in Appendix E demonstrates that some areas have higher minority and low income populations than others. For example, The Hispanic Population by State, Port Group, County and Port data presented in Appendix E shows that the percentage of the population in Santa Barbara that is Hispanic (54.28%) is higher than any other area. The EIS should discuss what measures were taken to assure that the Hispanic population in the Santa Barbara area was afforded the opportunity for meaningful participation in the process for the proposed action. In particular, the EIS should describe what was done to target the Hispanic communities of Santa Barbara, whether materials regarding the proposed action were translated into Spanish, and if there were translators present during public meetings held in the Santa Barbara area. In addition, the EIS should describe what feedback was received from the Santa Barbara Hispanic communities and how that was incorporated into the decisions for the proposed action.

The EIS should describe what was done to inform all low income and minority communities about the proposed action and the potential impacts in will have on their communities (notices, mailings, fact sheets, briefings, presentations, exhibits, tours, news releases, translations, newsletters, reports, community interviews, surveys, canvassing, telephone hotlines, question and answer sessions, stakeholder meetings, and on scene information), what input was received from the communities, and how that input was utilized in the decisions that were made regarding the proposed action.

U.S. Environmental Protection Agency Rating System for Draft Environmental Impact Statements Definitions and Follow-Up Action*

Environmental Impact of the Action

LO – Lack of Objections

The U.S. Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC – Environmental Concerns

EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO – Environmental Objections

EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU – Environmentally Unsatisfactory

EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 – Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 – Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 – Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.