

PACIFIC FISHERY MANAGEMENT COUNCIL

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August 13, 2004

Mr. Roland A. Schmitten
Director, Office of Habitat Conservation
National Marine Fisheries Service, F/HC
1315 East-West Highway
Silverspring, MD 20901

Dear Mr. Schmitten:

The Pacific Fishery Management Council (Council) appreciates the opportunity to comment on the Oceana petition to protect deep sea coral and sponge habitat. Because the Council's authority covers only West Coast fisheries, our comments will focus on the effects of implementing Oceana's proposals on West Coast fisheries.

The *Federal Register* notice lists eight specific requests for rule making. Of these, two (requests 2 and 5) involve designating areas as Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPC). Amendment 11 of the *Pacific Coast Groundfish Fishery Management Plan* (Groundfish FMP) designated the entire U.S. Exclusive Economic Zone (EEZ) off Washington, Oregon, and California as EFH for groundfish; therefore, all deep sea coral and sponge habitat within the West Coast EEZ was protected as such. Subsequent to a September 14, 2000 U.S. District Court order (No 99-982) in the *America Oceans Campaign* (now Oceana) v. *Daley* case, the National Marine Fisheries Service (NMFS) was enjoined from implementing the EFH provisions of the Groundfish FMP until a new Environmental Assessment (EA) or Environmental Impact Statement (EIS) on groundfish EFH was completed. NMFS is in the process of completing an EIS, which will address how West Coast groundfish EFH and HAPC are designated and protected. Therefore, it seems premature, if not a violation of the court order, to designate any EFH at this time.

Two requests (4 and 6) involve bycatch monitoring and observer programs to set limits on deep sea coral and sponge habitat bycatch. A Programmatic Bycatch EIS is also being completed by NMFS to address bycatch issues in the West Coast groundfish fishery. Again, it seems premature to regulate these aspects of fisheries prior to completion of this EIS effort.

Two requests (1 and 8) involve identification and mapping of deep sea coral and sponge habitat and increasing the funding associated with such efforts. The Pacific Council believes research and mapping are useful tools for better managing our nation's oceans and supports increased funding to achieve these objectives.

One request (7) involves increasing enforcement and penalties for fishery violations. The Council supports the objective of increased enforcement as it applies to all aspects of fishery management.

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One request (3) involves a ban on bottom trawling gear in areas that have been closed to such gear for three years. This request goes beyond the stated objective of protecting deep sea coral and sponge habitat. On the West Coast, Rockfish Conservation Areas (RCAs) have been closed to bottom trawling for three years; however, they are comprised of approximately 92% soft bottom areas, which would likely not support high concentrations of deep water coral and sponges. These areas will likely be closed at least through 2006, but for a stated purpose of reducing rockfish catches, not protecting deep sea coral and sponge habitat. It would not be appropriate to unilaterally close them now to protect habitat, since their status can be reviewed with adequate time for notice and comment subsequent to the completion of the EFH and bycatch EIS process.

The request to permanently close all areas not fished within the last three years by bottom-tending mobile gear to bottom trawling is excessive and unnecessary. It appears to be a direct attempt to eliminate one fishery sector without any mitigation or alternatives for participants or the processor component of the industry, something the Council has consistently opposed.

To summarize, much of what is requested in the petition is either already in effect, contrary to the spirit of a court order (to which Oceana is a party), and/or being addressed in the EFH EIS and the Programmatic Bycatch EIS. For NMFS to act unilaterally to designate EFH and HAPC prior to completion of the EIS process would violate those processes. In any event, if NMFS was to take such actions, they would clearly need to complete a separate EIS in order to comply with the National Environmental Policy Act, which would be redundant and wasteful. In addition, current management restrictions prohibiting the use of large footrope trawl gear have eliminated a substantial portion of trawl impacts on hard bottom substrates where coral and sponges generally occur. The trawl RCA has also put much of the West Coast EEZ off limits to bottom trawl gear, providing extensive habitat protection. We agree that deep sea coral and sponge habitat is valuable in its own right, as well as for its ecological function, and that some areas of high concentration may deserve designation as HAPC. Because it is likely the RCA will remain in effect through at least 2006, there should be adequate time to address HAPCs subsequent to completion of the EIS process.

With the exception of the requests for additional research, mapping, and enforcement, we find little merit in the petition, and urge NMFS to reject the petition, based on the arguments above. Thank you again for providing the Council with the opportunity to comment on this petition.

Sincerely,



D.O. McIsaac, Ph.D.

Executive Director

CAT:kla

c: Mr. Steve Copps
Council Members
Groundfish Advisory Subpanel
Groundfish Management Team
Habitat Committee