



March 20, 2012

Dan Wolford, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon, 97220-1384

RE: Groundfish EFH, Item I-6

Dear Chairman Wolford and Council Members:

I am writing on behalf of the Association of Monterey Bay Area Governments (AMBAG), which represents 18 cities and 3 counties in the Monterey Bay region. AMBAG was the lead agency representing local interests during the designation process for the Monterey Bay National Marine Sanctuary (MBNMS). AMBAG has consistently and constructively commented on MBNMS issues, in part due to its role in the creation of the sanctuary and the sanctuary's vital influence in the region. In particular, AMBAG was interested in how NOAA, the federal agency, would manage issues that arose, important to our communities and stakeholders.

One such issue was the agreement between NOAA and local fishermen, stating that the new sanctuary would not regulate fishing activities, or otherwise threaten their livelihoods. In light of this agreement, the AMBAG Board of Directors voted on December 8, 2006 (and repeatedly confirmed) the following positions on MBNMS Management/Action Plans:

“Bottom Trawling effects on Benthic Habitats Action Plan: AMBAG recommends that any data that the sanctuary develops be presented to the appropriate fishery management agencies for their consideration and action. AMBAG would not support the sanctuary changing its Designation Document to regulate this fishery even in the event that the appropriate fishery management agencies decline to act on the sanctuary's behalf.”

And,

“Marine Protected Areas Action Plan: AMBAG recommends that sanctuary actions which effect fishing include the following statement: ‘any zones or regulations proposed by the sanctuary which effect fishing would only occur if they are the result of a cooperative effort with the fishing and/or the aquaculture communities and they have the support of those communities’“.

Regarding the Groundfish Essential Fish Habitat review process being considered by the Pacific Fishery Management Council, AMBAG would ask that the Monterey Bay National Marine Sanctuary's involvement be consistent with the above AMBAG positions and in agreement with the local fishermen.

Thank you for your kind attention to AMBAG's positions regarding the Essential Fish Habitat review. We look forward to working cooperatively with the Pacific Fishery Management Council, NOAA, the MBNMS and AMBAG's local fishing communities.

Sincerely,

A handwritten signature in cursive script that reads "Stephany E. Aguilar". The signature is written in black ink and is positioned above the printed name.

Stephany E. Aguilar



March 26, 2012

Mr. Dan Wolford, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220

RE: Agenda Item I.6, Groundfish Essential Fish Habitat Review

Dear Chairman Wolford and Council Members:

Please accept the following comments regarding the groundfish Essential Fish Habitat (EFH) five-year review on behalf of the Natural Resources Defense Council (NRDC), Oceana, and Ocean Conservancy. Our organizations participated in the development of current habitat management measures and we view the five-year review as an important opportunity to incorporate new information that has been released since the original 2005 decision on EFH. Since that time, there has been a tremendous effort by scientists to expand our knowledge of sensitive habitats, which has produced a wealth of new information relevant to EFH. It is crucial that this new information be incorporated into EFH regulations, and the five-year review process provides the vehicle for doing so. As both a practical and legal matter, the success of the Council's approach to groundfish EFH management will depend on the extent to which the Council continues to use the best available scientific information to update management measures in an adaptive management framework. In this light, please accept these comments on various procedural aspects of the EFH five-year review that are currently before the Council.

1. Background

The identification of groundfish habitat and management measures that minimize the adverse effects of fishing on habitat is of the utmost importance for the long-term health of the California Current marine ecosystem, as well as for maintaining sustainable fisheries. Pacific Coast groundfish are particularly reliant on benthic structural habitats, some of which can be damaged by fishing gear. Ultimately, fishing practices that damage fish habitat can have serious, unintended consequences of diminishing the productivity of the target species that depend on these habitats for feeding, protection from predators, reproduction, and growth to maturity.

In the early to mid 2000s, the Council engaged in a significant effort to collect the best information on habitat available at the time. Based on the information gathered, in 2005 the Council closed an

extensive (but unused) area to bottom trawling and established a series of EFH Conservation Areas to protect identified sensitive habitats from trawling. While the Council's 2005 decision was based on the best available information, there was broad recognition at that time that management measures could and would be improved in the future as additional information emerged. The Council is now engaged in a review process to assess the newly-available data, and modify management measures accordingly. Several procedural issues relating to the review are up for decision by the Council at this meeting.

2. Conflict of Interest Procedures

First, we urge the Council to select the "No recusal" Option (Option 2) from the Essential Fish Habitat Review Committee's (EFHRC) discussion document on conflict of interest, which states that all Committee members may participate in all aspects of the EFH Review. See April 2012 Briefing Book, Agenda Item I.6.b, EFHRC Report at 7.

Our understanding based on Council Operating Procedure 22 is that the EFHRC in its current form was developed to be an advisory body to the Council to help complete various aspects of the EFH five-year review, including compiling information, reviewing the contents of proposals for modifications to EFH, and potentially developing its own recommended proposals for modifying EFH. These tasks are intended to help the Council determine whether changes to EFH are warranted, and to contribute to the scoping of potential changes to EFH. As such, the composition of the EFHRC necessarily extends beyond a narrow technical group, and includes various stakeholders. Stakeholders with a range of interests were included to represent a diversity of perspectives as well as provide unique expertise. For these reasons, exclusion of any particular Committee member from certain aspects of the review—even where such Committee member may have an interest in the outcome—would undermine the purpose of the EFHRC.

For perspective, currently there is no prohibition on Council members or other advisory committees to the Council from voting on their own proposals, or proposals generated by their organizations. It would therefore be inconsistent to apply a different standard for conflict of interest rules to the EFHRC. It is particularly illogical to apply a stricter standard to the EFHRC than to the Council, since the EFHRC is not a decision-making body but rather an advisory body simply providing recommendations.

Placing recusal requirements on EFHRC members would also yield a nonsensical result: the EFHRC is charged with coming up with its own proposal for protecting habitat, therefore under the suggested conflict of interest rules, the whole committee would have to recuse itself and would be unable to evaluate its own proposal.

In the event that the Council chooses to apply some version of recusal to the EFHRC, at a minimum, authorship conflicts should not be held to a higher standard than financial conflicts. Indeed, financial conflicts are generally regarded as the primary concern underlying conflict-of-interest principles—the goal being to avoid situations where a decision-maker stands to gain or lose financially from a proposal before him or her. See, e.g., National Academies Policy on Committee Composition and Balance and Conflicts of Interest (2003).

Finally, if the Council does choose to apply recusal procedures to the EFHRC, we would expect such a change to be made by amending COP 22, and we would expect the Council to also establish consistent recusal procedures for its own members and all Council advisory committees, on all topics.

3. EFHRC Timeline and Data Availability

We support the EFHRC's proposed revisions to the EFH review schedule, provided that all relevant data compiled in the Phase I report (bathymetry, observer data, effort data, and so forth, including the GIS files associated with maps presented in the report) are made available publicly prior to the issuance of the RFP in September 2012. The initial rationale for the schedule established by the Council in September 2010 was to provide sufficient time for NMFS and the EFHRC to compile, review, and make available publicly the key relevant data to inform potential modifications to EFH. Since the Council's three-phase process laid out in COP 22 relies heavily on proposals received from the public, it is critical that the public have access to the relevant data prior to the issuance of the RFP. We acknowledge that due to various circumstances the data gathering process has taken longer than initially conceived, and understand the need to revise the EFH review schedule, but emphasize the need for all data to be released publicly prior to the issuance of the RFP.

We are also concerned that neither the Council nor the EFHRC has yet issued a formal request to the individual states for logbook data from trawl locations. The release of individual haul data (trawl tracks) is apparently at the discretion of individual states, not NOAA. Accordingly, in April 2011, the Council endorsed an EFHRC request for data from state fishery management agencies on the "spatial footprint" of trawl fisheries from logbook information at the finest scale available. See April 2011 Briefing Book, Agenda Item I.3.a, Supplemental Attachment 4. However, rather than following the Council's instructions and requesting these data from the states, the EFHRC instead had Council Executive Director Don McIsaac write a letter to NOAA General Counsel and the Pacific States Marine Fisheries Commission asking about confidentiality issues related to the data. This occurred in fall 2011, and no response has been received to date. Given that the Council relied heavily on individual trawl track location data provided by the three west coast states in its final decision regarding EFH management measures in 2005, the Council should immediately request this information from the states to prevent further delays and ensure that all the key relevant information is made available. These data are especially important for the EFH review process, as fine-scale presentation of trawl effort data will allow EFH revisions to minimize displaced revenue in the fishery while meeting the legal mandate of minimizing adverse impacts to EFH.

4. Draft Request for Proposals and the Role of the EFHRC

After reviewing the EFHRC's draft Request for Proposals (RFP) as presented in the briefing book, we conclude that it captures the relevant considerations and provides adequate clarity to the public in terms of the information that is expected to be included in proposals. However, the RFP clearly indicates that the EFHRC will not be performing its own independent analysis of the proposals, but rather simply reviewing the analysis contained in the proposals. See April 2012 Briefing Book, Agenda Item I.6.b, EFHRC Report at 4. In other words, the EFHRC's ability to evaluate the biological and socioeconomic consequences of proposed management changes will depend solely on the proposal authors; the EFHRC will not be able to run its own analyses should the proposal authors provide insufficient documentation or mere assertions of impacts.

In making its decision, the Council will rely on the review and recommendations of the EFHRC. If the EFHRC is unable to conduct analysis of the proposals, and confidential data necessary to accurately analyze proposals is not available to proposal authors, the Council will be in the unfortunate position of deciding whether to move forward with modifications to EFH without the best available information—instead relying on the assertions of the proposers without independent analysis. This is a serious

problem, as the Council needs to have a consistent and accurate means of evaluating potential proposals based on the best available scientific information. We strongly suggest the Council ask NMFS and/or the Groundfish Management Team to work with the EFHRC to provide independent analysis of proposals.

Thank you for considering these comments, and we look forward to working closely with the Council and the EFHRC in the coming months to ensure a comprehensive and deliberate EFH review.

Sincerely,



Ben Enticknap
Pacific Project Manager
Oceana
222 NW Davis Street, Suite 200
Portland, OR 97209



Kaitilin Gaffney
Pacific Program Director
Ocean Conservancy
725 Front Street, Suite 201
Santa Cruz, CA 95060



Seth Atkinson
Oceans Program Attorney
Natural Resources Defense Council
111 Sutter Street, 20th Floor
San Francisco, CA 94104