

August 13, 2004

Rolland A. Schmitten,
Director, Office of Habitat Conservation
NOAA National Marine Fisheries Service
F/HC, 1315 East-West Highway
Silver Spring MD 20910

Re: Oceana's Rulemaking Petition Regarding Deep-sea Coral and Sponges

Dear Rolland:

Our company, Muir Milach Inc., operates the FV Muir Milach and we are active stakeholders in the Aleutian Island groundfish trawl fishery as well as other groundfish and crab fisheries off Alaska and the Pacific Coast. We recommend you reject Oceana's emergency rule-making petition and allow the North Pacific Fishery Management Council (NPFMC) to complete its ongoing process of analysis and decision on Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPC). The extensive, public EFH and HAPC process has had full stakeholder input, and includes options based on proposals by Oceana.

Oceana's petition would eliminate the public input required by NEPA which Oceana has strongly supported at the Council. The Magnuson-Stevens Fishery Conservation and Management Act (MSA) fishery management structure is built on a foundation of transparent action, with extensive opportunities for stakeholder involvement. That foundation will be seriously eroded if you declare an emergency and usurp the ongoing process.

Our company supports the more extensive specific comments submitted by the Marine Conservation Alliance in a letter dated August 11, 2004 addressed to Commerce Secretary Evans.

Additionally, we would like to offer comments on the eight specific measures upon which Oceana is requesting rulemaking.

Oceana's Eight Rulemaking Requests

We believe that many of these items are budget issues that are not appropriately addressed through rulemaking. Some items are redundant within their own list; others are certainly redundant with existing management actions of the agency.

Item 1- "Mapping coral"

There is ongoing coral mapping happening in the Aleutians. We support expansion of this research, while recognizing that this research is expensive and must compete with other NMFS budget priorities. Establishing a research budget is not the appropriate subject of a rulemaking petition.

Item 2- "Designating known high concentrations of coral as EFH/HAPC and closing bottom trawl"

The term "high concentrations" is inherently subjective. The best information on the relative concentrations of coral comes from submarine video recordings. This information is being utilized in the NPFMC's ongoing HAPC process. The alternatives being considered in that process include closure to bottom trawl and other bottom tending gear. Evidence gathered on the submarine dives indicate damage to corals by fixed gear types. This information needs to be weighed in considering appropriate management measures.

Item 3- “Identify all areas not fished for 3 years”

One of the sets of alternatives (5B) in the NPFMC’s EFH analysis includes closing un-trawled areas in the Aleutians as a precautionary measure. The core of Alt. 5B may be appropriate as a management measure in the Aleutian Islands because of its unique bathymetry, the nature of the bottom trawl fisheries that occur there, and the aggregating behaviours of the species that are the primary bottom trawl targets (Atka mackerel, rockfish, and P. cod). The approach makes no sense when exported to the Bering Sea or GOA which have very different topography, a wider variety of target species, and where aggregations of fish are determined more by water temperature and less by the topography.

In any case three years is too short a time frame for discriminating between fished and un-fished areas, particularly where the intent is to protect relatively undisturbed coral. The determination of what constitutes a “fished” area involves analysis of logbook, observer, and VMS data. It also involves determining the appropriate scale of boundaries (i.e.: do you use the end points of a haul from logbook data, or the actual swept area of a trawl track from the vessels plotting software, or the rough approximation of the track from VMS fixes at 20 minute intervals). Dealing with these issues is not a simple task, it must be done iteratively using GIS analysis at the appropriate scales (i.e.: presenting observer data on navigational charts at a 1:300,000 scale at a minimum in workshops with the skippers in the fishery under consideration.)

Item 4- “Monitor bycatch, establish caps”

Coral and sponge bycatch are currently monitored by the observer program in Aleutian Island trawl fisheries. However, that does not constitute a basis for establishing coral PSC caps.

Under any of the 5B approaches being considered by the NPFMC, the vast majority of the AI management area (including of the ‘fishable’ area as defined in the DEIS) would be closed to bottom trawling, providing a high degree of protection for coral and sponge habitat. The ‘open’ areas are being left ‘open’ in part based on the idea that whatever effect has already occurred which is unlikely to be reversible, although the open areas remain productive from the perspective of populations of managed species.

The proposed bycatch caps are based on extrapolated observer data involving sampling for a relatively rare occurrence during a period years when precise estimation of absolute bycatch amounts was not a high priority of the observer program. The extrapolation of past observer data may result in unrealistic caps, especially when combined with a different level of prioritization of coral and sponge bycatch monitoring in the future.

The average annual bycatch of bryozoans and corals, combined, for all Aleutian Islands bottom trawl fisheries was 19.4 metric tons. This was caught while harvesting an average of 61,200 metric tons of fish per year (a bycatch rate of 0.03%).

The average annual bycatch of sponges for all Aleutian Islands bottom trawl fisheries was 85.3 metric tons (a bycatch rate of 0.14%).

Extrapolation of bycatch amounts from basket sampling is bound to result in wide variances in the estimates of bycatch which could close a fishery even though there was no significant difference from the historic average. The cost of caps will exceed the benefits.

Additional closure areas within the fished/open area share the problem of being identified based on historic observer data involving extrapolation from basket samples when precise estimation of bycatch amounts of coral, bryozoans and sponge was not a priority of the observer program.

To the extent that small ‘hot spots’ may exist within the fished areas, at this time there is no evidence that these areas represent a large or important portion of the overall abundance of coral and sponge habitat. If late research indicates that a subset of the open area does represent an important portion of the overall amount of coral garden habitat, these hotspots could be candidates for HAPC consideration based on focused research and mapping to investigate whether there are high concentrations of coral and to map out appropriate closure areas if needed.

This element is a redundant protection for coral and sponge that has the potential to result in large costs to the fleet, with very minimal gain to the habitat, if closures are triggered based on extrapolated data.

Item 5- “Identify new coral areas and close them to bottom trawl”

This item is a redundant restatement of items 1 &2.

Item 6- “Enhance monitoring, observers, VMS, and logbooks”

The North Pacific groundfish fisheries have been on the leading edge of utilizing observers, VMS, and logbooks (including electronic logbook with real time data transmission). We have long supported good monitoring as an essential part of sustainable fisheries management. In the context of Aleutian Island fisheries, this element of the petition is redundant.

Item 7- “Increase enforcement”

We support good enforcement, and believe that combined with the VMS and observer elements of the monitoring program, that NMFS enforcement has and excellent capability of detecting any illegal fishing in closed areas. In the context of Aleutian Island fisheries, this element of the petition is redundant.

Item 8- “Fund research”

This item is essentially a restatement of item 1 and a portion of item 5. We support funding of research, while recognizing that this research is expensive and must compete with other NMFS budget priorities. We would encourage Oceana to provide matching funds for such research. Establishing a research budget is not the appropriate subject of a rulemaking petition.

Immediate Action

Oceana asserts (p. 4 of its petition) that “We [Oceana] have sufficient data and information about certain areas...to designate and protect the areas immediately.”

The NPFMC has made it clear that it fully intends to act expeditiously on the best available scientific information, it is utilizing that information to determine which of several alternatives best address the concerns in the purpose and needs statements for EFH and HAPC. Oceana has recently requested the NPFMC include a different version of their own proposal (5B) to protect coral and sponge habitat in the Aleutian Islands. Presumably they have modified their proposal based on new information and analysis that has become available through the ongoing EFH process. There is no reason to believe that the specific actions requested in the Oceana petition are either the only or the best actions to achieve goals of EFH and HAPC.

Oceana's petition includes an Appendix 2 listing "pinnacles" in Alaskan waters and suggests immediate closures pending further research. The "pinnacle" proposal lacks merit, and utilizes vague and poorly applied criteria for defining pinnacles.

This proposal is like throwing mud at the wall to see what sticks. For example what might appear as three "pinnacles" on a 1:1,126,321 scale chart, look entirely different on a 1:300,000 scale chart. The three "pinnacles" are the high points of a 15 mile long ridge that is over a mile in width. If one plotted a 120 fathom contour around these features, they would look much more like three gentle hills on Vashon Island in Puget Sound. Oceana has provided no evidence that there is any special value to any to sites lumped under the term "pinnacle."

Conclusion

NMFS, the Alaska Department of Fish and Game, the NPFMC's staff and its Scientific and Statistical Committee (SSC), have applied the best scientific information available in making decisions in the EFH and HAPC processes. Oceana wants to toss that work aside in favor of an emergency decision with no stakeholder input other than its own.

Oceana's request for rulemaking creates redundant effort for ongoing processes, and places an unnecessary demand on finite staff resources. Additionally, many of the eight specific rulemaking requests are budgeting issues and not appropriately dealt with through rulemaking.

We urge you to dismiss the petition and apply the necessary resources to completion of the transparent public process mandated by the MSA.

Sincerely yours,

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