



New England Fishery Management Council

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David V.D. Borden, *Chairman* | Paul J. Howard, *Executive Director*

July 28, 2004

Dr. William T. Hogarth
Assistant Administrator for Fisheries
NOAA/National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

RE: Oceana petition to designate deep-sea corals and sponges as EFH

Dear Bill:

Thank you for the opportunity to comment on the Oceana petition to protect deep-sea coral and sponge habitat. The New England Fishery Management Council (Council) agrees with the petitioners that habitat protection is a high priority in terms of stewardship of the nation's fishery resources. The Council is dedicating significant resources to the development of an omnibus habitat amendment, which will amend all FMPs under its jurisdiction. This omnibus amendment will provide the most comprehensive and practical opportunity for protection of a range of habitat types potentially including deep-sea corals. Deep-sea corals and sponges are not commercially harvested in the Northeast U.S. in the EEZ, and it remains uncertain whether deep-sea corals serve as Essential Fish Habitat (EFH) for federally managed species.

The 1996 amendments to the Magnuson-Stevens Fishery Management and Conservation Act set forth a number of new mandates for the National Marine Fisheries Service (NMFS) and Councils to identify and protect important marine and anadromous fish habitat. The Councils, with assistance from NMFS, are required to delineate "essential fish habitat" (EFH) for all federally-managed species under the Council's jurisdiction. Additionally, per the EFH final rule (67 FR 2348), "the Magnuson-Stevens Act does not preclude Councils from identifying habitat (other than EFH) of a fishery resource under its authority even if the species is not managed under a fishery management plan (FMP). Council action to protect the habitats of managed or *non-managed species* (emphasis added) is limited to protecting habitats from fishing activities." To date, the Council has begun to incorporate the protection of deep-sea corals into FMP actions where appropriate (e.g. Monkfish Amendment 2). However, the Council's primary purpose of addressing habitat in the SFA is to provide for one of the nation's overall marine resource management goals - maintaining sustainable fisheries.

The Council's comments are confined to the list of eight specific requests outlined in the *Federal Register* notice seeking comments on the petition for rulemaking.

Request #1: Identify, map, and list all known sponge areas containing high concentrations of deep-sea coral and sponge habitat

The Council agrees with the petitioner that identifying, mapping and listing all known areas of deep-sea coral and sponge habitats is a worthy endeavor, agency resources permitting.

Request #2: Designate all known areas containing high concentrations of deep-sea coral and sponge habitat as both EFH and "habitat areas of particular concern" (HAPC) and close these HAPCs to bottom trawling

The Secretary of Commerce and NMFS should not grant the request in the petition because the action should take place within the framework of the Council process. Under the right circumstances and with appropriate scope, the Council may support including deep-sea corals and sponges in the management units of our FMPs or a separate management unit species list within the EFH Omnibus Amendment or as a stand-alone FMP. Within this context, it is possible that the Council could develop management rules and develop measures to prevent adverse impacts from fishing.

Whether deep-sea corals or sponges are EFH or should be designated as HAPCs (based on definitions and roles) is a valid issue. For the Northeast U.S., one might consider branching octocorals above ~330 m as EFH for redfish (*Sebastes* species). However, currently in the Northeast U.S., there is little evidence to support the petitioners' view that deep-sea corals are essential habitat to managed species, most of which, with the exception of redfish, live at depths shallower than deep-sea corals. Given that deep-sea corals are relatively rare over a wide geographic area, but may be significant in selected areas, and scientific work has suggested there are functionally equivalent habitats that are much more widespread, the role deep-sea corals and sponges play in regulating populations of fish species may be minimal (see Auster, P.J. *in press*. Are deep-water corals important habitats for fishes? In: A. Freiwald and J.M. Roberts (eds.) Deep-water Corals and Ecosystems, Springer, New York). However, deep-sea corals and sponges may have a significant presence in selected areas and may play a habitat role that is meaningful for certain species. At this time, we do not yet know the geographic extent of corals. Corals cannot be ruled out as possible important EFH in settings such as submarine canyons. There may be places where corals provide the only structure for redfish because "functionally equivalent" habitats are not present.

As stated by Michael Kaiser of Woods Hole Oceanographic Institute (WHOI) in an editorial in *Science* (June 11, 2004), of the scientific studies cited by the petitioner, none demonstrates a critical dependence of any fish on the presence of deep-water corals. In the petition, much is made of two recent studies of deep-water corals off Norway and the Gulf of Alaska. Nevertheless, in the Norwegian study, only the abundance of redfish was significantly higher in the coral habitat compared to adjacent areas that were commercially fished. Even for redfish, the paper recognized that it was unlikely that the coral habitat had an important role in the provision of food. Although undocumented, it is conceivable that deep-sea corals may play a role as a refuge, or some other function. Both studies simply demonstrate that fish and other biota tend to aggregate around structures on the seabed similar to the function provided by artificial reefs. The impact of removing such structures on factors other than food (e.g. survival, reproduction, etc.) is unclear.

The Council is currently in the process of reviewing all of its EFH designations and the scientific information supporting those designations. Specifically, the EFH source document for redfish (and all other Council-managed species not recently updated) is under review and revision by the NMFS and the NEFSC. If new scientific evidence supports the designation of deep-sea corals as EFH for any of its managed species, the Council will consider this new scientific information during the EFH designation review and will act accordingly. However, it is critical that NMFS allow the Councils to deal with this issue within its public process.

Habitat areas of particular concern are described in the regulations as subsets of EFH which are rare, particularly susceptible to human-induced degradation, especially ecologically important, or located in an environmentally stressed area. Designated HAPCs are not automatically afforded any additional regulatory protection under the Act; however, federal projects with potential adverse impacts to HAPCs will be more carefully scrutinized during the consultation process. Because deep-sea corals and sponges are not federally managed species and no EFH must be designated, designating coral areas as HAPCs that are defined as subsets of designated EFH is not practicable at this time.

Request #3: Identify all areas not fished within the last three years with bottom-tending mobile fishing gear, and close these areas to bottom trawling

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Request #4: Monitor bycatch to identify areas of deep-sea coral and sponge habitat that are currently fished, establish appropriate limits or caps on bycatch of deep-sea coral and sponge habitat, and immediately close areas to bottom trawling where these limits or caps are reached, until such time as the areas can be mapped, identified as EFH and HAPC, and permanently protected

An analysis of fishing effort in the Northeast U.S. conducted by the Council as part of the development of Amendment 2 to the Monkfish FMP (DSEIS currently in the public review process) shows that there is little or no fishing in areas of known deep-sea corals. However, this analysis did not include all effort including effort from the lobster fishery, red crab fishery, longline fishery, etc. Additionally, the analysis did not contain an examination of "exploratory effort" but there may be some fishing vessels considering the use of deep-sea gillnets. Also, there is no strong evidence that interactions are high. The current fishing data we have (VTR fishing locations from 1995-2001 by gear type) do not overlap significantly with the deep-sea corals found in the deep canyons. Additionally, the VTR and limited VMS data we have is not accurate or expansive enough data to determine where fishing by all gears has actually occurred. In our region, there is no evidence that fishing interaction with coral is significant, at least in the deep canyons we have identified as having concentrations of coral. Further, presence/absence data do not exist for the Northeast U.S. Instead, we have data on the known concentrations of deep-sea corals (presence). Therefore, we cannot assume to know where deep-sea corals are not, but rather, only where various researchers have mapped some concentrations.

Request #5: Establish a program to identify new areas containing high concentrations of deep-sea coral and sponge habitat through bycatch monitoring, surveys, and other methods, designate these newly discovered areas as EFH and HAPC, and close them to bottom trawling

We encourage the NMFS to collect and analyze benthic samples of species not federally-managed, including deep-sea corals and sponges, to provide the Council the best available science and written recommendations necessary for the Council to satisfy our EFH requirements

under the SFA. The Council is currently moving forward with implementing our HAPC designation process through the EFH Omnibus Amendment. We encourage the petitioner, at the appropriate time, to respond to the Request For Proposals (RFP) with ideas and suggestions for specific HAPC designations for species managed by the Council.

Request #6: Enhance monitoring infrastructure, including observer coverage, vessel monitoring systems, and electronic logbooks for vessels fishing in areas where they might encounter high concentrations of deep-sea coral and sponge habitat (including encountering HAPC)

The Council believes that NMFS should invest in enhancing the monitoring and observing infrastructure in all of the Northeast fisheries. However, sponge and coral data are but one of many types of information necessary to ensure that the Council is able to accurately predict the amount of fishery resources that are available for a given stock of federally-managed species. With this in mind, the Council supports NMFS' efforts to gather comprehensive information to improve understanding of the Northeast shelf ecosystem.

If researchers find that deep-sea corals and sponges occur primarily on the ocean slope and that their presence on the Northeast shelf in fishing areas is marginal, then the case for rarity or scarcity is diminished. That is, the importance of deep-sea corals and sponges on the fringes of their range may be limited and protecting marginal areas may be impracticable.

Request #7: Increase enforcement and penalties to prevent deliberate destruction of deep-sea coral and sponge habitat and illegal fishing in already closed areas

We are concerned that the petitioner is suggesting that illegal fishing in closed areas is causing destruction of deep-sea coral and sponge. The fishing activities permitted by the SFA and managed by the Council are conducted in a manner to satisfy the National Standards in the SFA. The Council and its stakeholders and interested parties take very seriously the closed areas established by the Council to either achieve National Standard 1 goals or to protect vulnerable EFH. Severe penalties for closed area violations already are in place.

Request #8: Fund and initiate research to identify, protect, and restore damaged deep-sea coral and sponge habitat.

The Council encourages NMFS, or a private entity, to fund and initiate comprehensive research to identify deep-sea coral and sponge habitat in the U.S. and to allow the far more comprehensive habitat actions underway through the Council to continue. The Council agrees with the petitioners insofar as it has also identified deep-sea corals as needing protection from the potential adverse impacts of fishing. Fishery management councils have the mandate and authority to manage living marine resources in the EEZ, and may, if appropriate, develop a deep-sea coral and sponge management plan. Even though little fishing activity occurs in areas with deep-sea corals and sponges, it could occur in the future and there are many other potential marine activities (or even terrestrial ones) that could have an adverse impact on a living marine resource. Currently, the Council is pursuing deep-sea coral protection through its amendment to the Monkfish FMP. One of the Council's preferred habitat alternatives in the draft amendment focuses on protecting known deep-sea coral beds. As such, the Council is proceeding in a precautionary fashion by considering alternatives that would restrict the range of the fishery to avoid known deep-sea coral areas.

Conclusion

The EFH mandates of the Magnuson-Stevens Act integrate fisheries and habitat management by stressing the ecological relationships between federally-managed fishery resources and the environments upon which they depend. Regions of the U.S. where coral or coral-dependent species are commercially or recreationally harvested, where coral is federally-managed through an FMP and for which EFH is designated may be appropriate places for fishing restrictions to ensure that the EFH of those species are protected. However, this is not currently the case in the jurisdiction of the New England Fishery Management Council. Nonetheless, the Council is in the forefront of protection of marine habitats in terms of the proportion of area it has closed for the protection of essential fish habitat. The Council will continue to move forward in protecting EFH of federally managed species that is especially vulnerable from the impacts of fishing gear. Again, thank you for the opportunity to comment on this important topic. Please feel free to contact Executive Director, Paul Howard with any questions.

Sincerely,



David V.D. Borden
Chairman

cc: Ms. Patricia Kurkul
Mr. Lou Chiarella
Dr. John Boreman
Council Chairman and EXD