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Date: 10/14/04

To: Dr. Rolland A. Schmitten

From: David Allison

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COMMENTS:

Re: petition to protect deep-sea coral + sponge habitat

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Oct 14, 2004

VIA FACSIMILE AND UNITED STATES MAIL

Dr. Rolland A. Schmitten,
Director, Office of Habitat Conservation
NOAA National Marine Fisheries Service
F/HC
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Silver Spring, MD 20910
FAX (301) 427-2572

RE: Notice of receipt of rulemaking petition to protect deep-sea coral and sponge habitat and request for comments (*69 Fed. Reg. 53043 (August 31, 2004)*)

Dear Dr. Schmitten:

Thank you for the opportunity to submit further comments concerning Oceana's rulemaking petition to protect deep-sea coral and sponge habitat. Oceana is an international advocacy organization, with over 200,000 active supporters worldwide, that is dedicated to restoring and protecting the world's oceans. Oceana actively participates in rulemakings to designate and protect Essential Fish Habitat (EFH) and Habitat Area of Particular Concern (HAPC) in several fishery management regions. In fact, Oceana actively supported the recent measure approved by the New England and Mid-Atlantic councils to protect coral and sponge habitat in the North Atlantic waters off New England; Oceana has been a chief advocate for protecting sensitive deep-sea coral habitats in the North Pacific and Pacific; and Oceana testified in support of extending the protections for the Oculina Banks off Atlantic Florida.

Oceana was heartened by the positive tone of over 26,000 public comments received by your office in response to your first request for comments about Oceana's petition. Comments from the public, from industry, and from the councils acknowledged that many deep-sea corals are extremely long-lived, slow-growing, and fragile, and are consequently highly vulnerable to bottom-tending mobile fishing gears, especially to what NOAA calls "destructive bottom trawling".[1] For these reasons, the commenters joined with over 1,000 scientists around the world, with the United Nations Environment Programme, and with the Pew Oceans Commission, in support of the protection of deep-sea coral communities and other fragile benthic habitats.

Oceana would like to praise some other positive developments for deep-sea coral protection in United States waters since the first public comments on this petition. Oceana applauds the

[1] http://www.coris.noaa.gov/about/deep/deep.html

unanimous decisions of the New England and Mid-Atlantic Councils to close Oceanographer and Lydonia Canyons on the southern slope of Georges Bank to trawlers targeting monkfish, and to reduce the permissible size of roller/rockhopper gear in that fishery in ten other canyons in the Mid-Atlantic. Oceana urges the Fisheries Service to approve the protections expeditiously, in time for them to take effect in the 2005 monkfish fishery.

Despite this good news, Oceana is concerned that the closures only apply to the monkfish fishery. It only takes a few trawls in an area of corals that take decades or even centuries to recover from mechanical disturbance to flatten the area and remove the vitality that such living habitat brings to the wider marine ecosystem. Even a single trawl is enough to cause long-term, potentially permanent damage to many of these organisms. Thus closures to trawling targeting one type of fish and not others does not provide comprehensive protection for these areas and the ecosystems that depend on them. The monkfish trawl closures are designed to stop the monkfish fishery from expanding into the deep-sea canyons as traditional Georges Bank monkfish grounds become less and less lucrative. The canyons should be closed to all types of bottom-tending mobile-fishing gear, including bottom trawls and dredges (see petition for complete definition), for all fisheries, to protect against other fisheries expanding into the canyons. Trawlers may or may not be using such gears in these areas right now, but expansion is likely in the future as shallow water stocks continue to dwindle. Furthermore, closing sensitive areas that are not currently being fished would also have no short-term economic impact on communities that rely on fishing for their livelihoods.

For these reasons, Oceana and over 99.9 percent of respondents to the first request for public comments believe that known deep-sea coral and sponge concentrations should be immediately designated HAPC and permanently protected from bottom trawling. However, clarification of some elements may help a few respondents better understand the specific content and spirit of the petition, and Oceana appreciates the opportunity to do so.

Concern 1. The Oceana petition fails to take into account social and economic impacts of coral protection. Closure of all grounds not fished in the last three years is irrational and unsupported.

Oceana Response 1. Oceana's petition was designed from the outset as the most effective and quickest way to get protections for deep-sea coral and sponge concentrations while having minimal adverse effect on the short-term interests of the fishing industry. It freezes the current trawling footprint to prevent trawling from destroying areas that have not yet been explored and protects a few known coral and sponge areas which are either already closed to bottom trawling (Oculina Banks) or into which large-scale trawling has not yet expanded. Thus, there will be little economic loss from closing the areas to protect corals and sponges.

In fact, the very purpose of the petition is to ensure that important and vulnerable marine habitat is not destroyed as we are beginning to appreciate more fully its importance for the wider ecosystem. Fisheries rely on the entire ecosystem's health for their continuing sustainability, so protecting vulnerable and ancient habitat now makes both short- and long-term economic sense. As it could take just a few passes of a trawl to destroy these areas

forever, any short-term gain by fishing in them is eclipsed by the long-term losses. The petition is fully in the spirit of the recommendations of the United States Commission on Ocean Policy and Pew Oceans Commission, and the stated objectives of NOAA and the Fisheries Service to move towards ecosystem based management for fisheries resources.

Concern 2. The Oceana petition short-circuits legally-required decision-making and notice and comment processes under NEPA and APA. Regional councils are the proper fora and FMPs the appropriate means to raise these concerns.

Oceana Response 2. Oceana's petition does not short-circuit legally-required decision-making processes. The petition is a statutorily-mandated part of the agency decision-making process that should result in a rulemaking carried out consistent with the requirements of NEPA, the APA, and any other controlling law. Furthermore, the petition contemplates that the regional councils will implement permanent protections for deep-sea corals through the fishery management plan process (although it requests that the agency ensure those protections are enacted, pursuant to the Secretary's statutory powers and duties, if the Councils do not timely act).

Concern 3. EFH is only for managed species, and there needs to be evidence that the EFH protection measure will have more benefits than costs. It is unclear whether corals are EFH.

Oceana Response 3. This concept, which is unsupported by the Magnuson-Stevens Act and the Final EFH regulations, but is adopted by many regional councils, is at the heart of why this petition is necessary.

Federal regulations require the fishery councils to base their recommendations for EFH designation on the "best scientific information available" and to interpret available ecological, environmental, and fisheries information "in a risk-averse fashion to ensure that adequate areas are identified" and protected.[2] Requiring studies to demonstrate a fish stock's "critical dependency" on deep-water corals asks for more than the law requires, and has been used as a reason for inaction.

Even though research on the biology and ecological significance of deep sea corals is largely in its infancy, the importance of deep-sea corals as fish habitat has been reported in several studies to date. It is known that fish are attracted to coral communities to enhance their feeding opportunities, to hide from predators, and for their use as nursery areas.[3] These functions are crucial to individual species' survival and the long-term sustainability of fish populations and fisheries.

Studies described in the Oceana petition demonstrate the importance of many different types of deep-water corals for myriad fish, including commercially and recreationally important species. Further studies back up this earlier research. For example, commercially valuable

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[2] Final Regulations for Essential Fish Habitat, 50 C.F.R. §600.815(a)(1)(iv)(A)(2002).
[3] e.g see Husebo *et al.* 2002, Krieger and Wing 2002 in petition

redfish, ling, and tusk in Norwegian waters are more abundant and larger in *Lophelia* coral than non-coral habitat, and tusk is most likely linked to the reefs by feeding behavior.[4] Research in the vicinity of *Lophelia* reefs off the southeastern United States also indicated a greater abundance of deep-sea fishes, including commercially important species, closer to the *Lophelia* reefs than on soft bottom sea bed at comparable depths.[5] Research on corals in Canada also confirms previous work in Alaska that found gorgonians provide important habitat functions for different species of the genus *Sebastes* (rockfish in Alaska, redfish in Canada and New England). The researchers note that a "reduced abundance of gorgonian corals in the Northeast Channel may represent a threat to the local redfish population."[6]

Concern 4. North Pacific EFH process is already driven by best available scientific information and the petition would simply pull the best scientists away from the court mandated process.

Oceana Response 4. The petition to protect deep-sea coral and sponge habitat in the North Pacific was clearly warranted given the apparent intent of NMFS and the North Pacific Fishery Management Council to proceed on a minimal course of action to protect coral and sponge habitat.

The Sustainable Fisheries Act requires NMFS to describe and identify EFH; minimize to the extent practicable adverse effects on EFH by fishing; and identify other actions to encourage the conservation and enhancement of such habitat. If the law is the direction, science is the compass that sets the course. For habitat destruction, the National Academy of Sciences, National Research Council, 2002 report *The Effects of Trawling & Dredging on Seafloor Habitat* states that bottom trawling reduces the complexity and biodiversity of seafloor habitat and is especially harmful in areas of corals and sponges. The Academy recommends three management measures to mitigate the destructive impacts of bottom trawling: closures, gear modifications, and effort reduction.

NOAA fisheries prepared a Draft EIS for EFH to address the effects of groundfish fisheries on fish habitat in Alaskan waters. The models and analysis developed during the draft EIS for essential fish habitat showed that continuing trawling on Alaskan fish habitat would result in marked reductions of living substrate and hard corals. For example, in Aleutian Island shallow water habitat, which accounts for 50% of Atka mackerel habitat in Alaska, hard corals would be reduced 30-40%.[7] Tanner crabs would experience a 15-20% loss of living structure across 70% of their habitat, while 35% of the hard corals would be lost in 60% of yelloweye rockfish habitat.[7]

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[4] Husebo *et al.* 2002 in petition

[5] George, R.Y., 2004. "*Lophelia* bioherms and lithoherms as fish habitats on the Blake Plateau: Biodiversity and Sustainability." 2004 ICES Science Conference, Vigo, Spain: September 22-25.

[6] Mortensen et al. 2003. "Effects of Fisheries on Deepwater Gorgonian Corals in the Northeast Channel, Nova Scotia." American Fisheries Society Symposium.

[7] DEIS (Table B.2-8) "Long-term Effect Indices (LEI in % Reduction) for Fishing Effects on Benthic Habitat Features of Alaska Marine Waters by Habitat Type")

Yet, despite the predicted losses of coral, sponge, and other living structure, NMFS asserted that no effect of fishing had more than a minimal and temporary effect on fish habitat. As such, the North Pacific Fishery Management Council has thus far adopted a Preferred Alternative of status quo, clearly setting the stage for a "do-nothing" approach to protecting coral and sponge habitat.

A strong scientific body contested the agency's conclusion and raised concern about the intended course of action.

The Center of Independent Experts (CIE) reviewed the work by NMFS. Part of NOAA's strategic plan calls for an ever-stronger Science Quality Assurance Program, to this end NMFS seeks outside peer review to ensure scientific quality. The CIE is the formalized body that provides this quality assurance for NMFS. A CIE panel comprised of internationally recognized experts with expertise in benthic ecology, fisheries oceanography, fishery biology, fisheries assessment, fishing gear technology, and biophysical modeling reviewed the Alaskan region habitat models and conclusions. The panel stated that is premature to conclude that the current level and pattern of fishing activity has minimal or temporary effects on the habitat and the capacity of managed species to remain above threshold biomass levels.[8] The panel also stated that levels of coral, sponge and bryozoan bycatch in Alaskan trawl fisheries were a matter of concern, that the recovery rate of sponge habitat may be greatly underestimated, that inadequate consideration was given to localized habitat impacts, and that massive and irreversible damage to some habitats (e.g. coral and sponge gardens) may occur before mitigation could be implemented.[8] Finally, the panel recommended that a precautionary approach needs to be applied because of the large uncertainties in our knowledge of the links between habitat and the life stages of the various fish species.[8]

It is clear that the draft EIS failed to adequately address impacts on coral and sponge habitat and that the current preferred alternative will result in continued destruction of these habitats. As such, this petition is not only an appropriate, but also the best way to accomplish necessary protections of these vulnerable habitats, and is supported by the best available science.

The Center of Independent Experts' conclusion that precautionary management measures are necessary for sensitive habitats applies with equal force in the Pacific region, where, as in the North Pacific, the agency and Council do not appear to be on a course that will result in the necessary protections. To date, the agency has not incorporated all available data, particularly data concerning structure-forming megafaunal invertebrates, into all management alternatives to minimize the adverse effects of fishing on EFH. Further, as in the North Pacific, the tools the Fisheries Service has developed to address its EFH obligations have been roundly criticized by scientists. Among its many criticisms, the Pacific Council's own Science and Statistical Committee "does not recommend use of the current EFH fishing impacts model for

[8] Drinkwater, K. 2004. Summary Report, Review on Evaluation of Fishing Activities That May Adversely Affect Essential Fish Habitat (EFH) in Alaska, Draft of Appendix B. http://www.fakr.noaa.gov/habitat/cie/review.htm

risk assessment, or in the development and evaluation of management alternatives."[9] It is unclear whether the agency and Council will use appropriate measures to assess and mitigate the adverse effects of fishing on EFH, and whether appropriate precaution will be used to interpret the science and make management decisions. Accordingly, this petition is not only an appropriate, but also the best way to accomplish necessary protections of vulnerable habitats, and is supported by the best available science.

In summary, sustainable management depends on the recognition that fishing can seriously affect the ecosystem upon which the fishing industry depends. Recent council actions to protect deep-sea corals off New England and the Mid-Atlantic are a significant step in this direction. The New England and Mid-Atlantic Councils' unanimous votes for these protections showed that good science can lead to good policies that protect the ocean and its wildlife, while allowing fishermen to continue to fish. However, protecting a combined area of 150 square miles in one region of United States waters is but one small drop in the bucket.

Oceana's HAPC petition takes exactly that same science-based approach and protects areas like Oceanographer and Lydonia Canyons in all United States waters. It then ensures that other areas that are as yet untouched by bottom trawlers stay intact until we better know their place in the marine ecosystem and their importance for fisheries. Oceana once again urges the Secretary to initiate the rulemaking proposed by Oceana as the best way to provide immediate protection for deep-sea coral and sponge ecosystems in United States waters.

Sincerely,

FOR

David L. Allison, Director
Oceana Campaign to Stop Destructive Trawling

[9] Review of Fishing Impacts on Groundfish Essential Fish Habitat – A Report of the SSC Economics and Groundfish Subcommittees, Final Draft, July 22, 2004 at 7.