


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver 
Executive Director

ESTIMATED TIME 1 HOUR

SUBJECT: Essential Fish Habitat

ACTION REQUIRED

- (a) Receive EFH committee report
- (b) SSC to review gear impact analysis

BACKGROUND

EFH committee report

The Council appointed an EFH Committee in May 2001, to work with NMFS and Council staff to develop alternatives for EFH & HAPC designation, and alternatives to minimize adverse effects of fishing. The Council will adopt final alternatives for analysis at its October meeting. A preliminary draft of the Supplemental Environmental Impact Statement (SEIS) will be ready for initial review in April 2003.

The EFH committee met May 15th-17th in Sitka. The purpose of the meeting was to review draft reports on: fishery descriptions, modifications to the EFH & HAPC designation alternatives, definition of "to the extent practicable," fishery impacts analysis, and concept of rationalization as a mitigation tool. Additionally the committee discussed preliminary recommendations for the Council on HAPC proposals for analysis in the EIS. The draft schedule for the SEIS is attached as Item C-2 (a). Draft minutes will be distributed at the meeting.

The committee will have a teleconference the third week of August to review staff reports on preliminary analysis on HAPC & EFH designation, HAPC sites and types as examples to include in the HAPC designation alternatives analysis, and the findings of the effects of fishing. They will then meet in Kodiak, at the Fisheries Technology Center, on September 16-18th. The intent of the meeting will be to finalize recommendations on the designation alternatives for EFH and HAPC, finalize alternatives for mitigation, discuss the public process for HAPC proposals, and receive an update on the Council Board of Fish Joint Protocol Committee.

SSC Review

The SSC will review a report from staff on a proposed methodology for the fishery impact analysis.

DRAFT SCHEDULE
for the
Essential Fish Habitat SEIS
EFH Committee and Council participation
 Revised 5/14/02 by Council/NMFS staff

Date ¹	Agency/Group	Action
May 15-17, 2002 Sitka	EFH Committee	Finalize fishery descriptions, review updated descriptions of EFH & HAPC designation alternatives, and move initial recommendation for HAPC site designations, discuss fishery evaluation methodology and rationalization.
June 3-10, 2002 Dutch Harbor	Council	Progress report to Council, SSC approves methodology for impacts analysis.
August 19, 2002	Council/NMFS HCD/NMFS AFSC staff	Draft progress reports sent to committee on EFH & HAPC designation, fishery impact assessment and HAPC proposal evaluation.
August 26 or 27, 2002	EFH Committee	EFH Committee teleconference to review staff draft reports (Alternatives, HAPC proposal evaluation, fishery effects analysis)
September 9, 2002	Council/ NMFS HCD/NMFS AFSC staff	Staff reports sent to EFH Committee with recommendations on EFH and HAPC alternatives, proposed HAPC's, and results of fishery effects analysis.
September 15 - 19, 2002 Kodiak	EFH Committee	Committee meeting to review staff reports and make recommendations for Council
September 30-October 7, 2002 Seattle	Council	Progress report to Council - Committee recommendations to Council- Council adopts final EFH and HAPC designation alternatives including site specific HAPC's, and alternatives to mitigate the effects of fishing.
October 15, 2002 through March 7, 2002	Council/NMFS staff Contractor - FWEC	Effects Analysis, writing, EIS compilation
March 17, 2003	NMFS/Council	Preliminary Draft EIS sent to Council and Committee

¹ Specified dates are no-later-than dates. Actions may be completed before these dates.

March 24 - 27 (last week) 2003	EFH Committee	Review Preliminary Draft and make recommendation to Council on Initial Action (preferred alternative)
March 32 - April 8, 2003 Anchorage	Council	Initial Action: Council reviews preliminary Draft SEIS, receives public testimony and selects preliminary preferred alternative(s).
April-June, 2003	Council/NMFS staff Contractor - FWEC	Make revisions as needed. Final internal review.
July 1, 2003	Council/NMFS staff Contractor - FWEC	Complete Draft SEIS. Print DSEIS.
July 15, 2003	NMFS-Region	Submit copies of Draft SEIS to HQ.
July 24, 2003	NMFS-HQ	File Draft SEIS with EPA.
August 1, 2003 ²	EPA	Publish NOA for Draft SEIS; begin 90-day public comment period. ³
August 1 through October 31, 2003	Public	Public comment period (92 days). Note: A 90 day public comment period is required by the settlement agreement (Joint Stipulation and Order).
November 3-26, 2003	NMFS-Region Contractor- FWEC	Summarize public comments.

² The following dates are specified in the Joint Stipulation and Order (Settlement Agreement between the Plaintiffs and Defendants, December 5, 2001). Specified tasks may be accomplished sooner than these dates, but may not be accomplished later than these dates:

June 6, 2001 - Notice of Intent to Prepare EIS Published in the Federal Register
 June 6 - July 21, 2001 - Scoping Period
 August 1, 2003 - Draft EIS Published
 August 1 - October 31, 2003 - Draft EIS Public Comment Period
 June 1, 2004 - Issuance of Final EIS
 August 13, 2004 - Issuance of Record of Decision

“NMFS will approve an FMP amendment and implementing regulations no later than 24 months after the date of the ROD, unless the Secretary subsequently determines that such other action is no longer necessary. “

Early December, 2003	EFH Committee	Review DSEIS and make final recommendations
December 8-15, 2003 ³	Council	Final Action: Council reviews comments on Draft SEIS, receives additional testimony, adopts preferred alternative.
January-February, 2004	Council/NMFS Contractor-FWEC	Revise SEIS as needed to put in final form: draft FMP amendment text; draft proposed rules.
March, 2004 ⁴	NMFS-Region	Review/sign off on proposed FMP amendments/rule package; Final SEIS.
April 2, 2004	NMFS-Region	Submit Final SEIS to HQ.
April 8, 2004	NMFS-HQ	File Final SEIS with EPA.
April 9, 2004	Council/NMFS	Transmit proposed FMP amendments/rule package to HQ starting formal Secretarial review under MSA.
April 16, 2004	EPA/NMFS-HQ	EPA publishes NOA for Final SEIS beginning public comment Final SEIS; NMFS publishes NOA for FMP amendments beginning 60-day public comment period on FMP amendments required by MSA.
April 16-June 15, 2004	Public	Public comment period on Final SEIS and proposed FMP amendments.
May 3, 2004	NMFS-HQ	Publish NOA for proposed rules to implement FMP amendments if approved; start 45-day comment period.

³ An ESA consultation would likely be needed on the Council's preferred alternative. If a consultation were done on the preliminary preferred alternative(s), re-consultation may be necessary if the Council's preliminary and final actions are different.

⁴ This assumes that the preferred alternative selected by the Council would result in FMP amendments and implementing regulations which may not be the case.

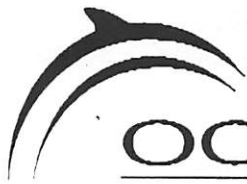
AGENDA C-2 (a)

July 15, 2004 ⁵	NMFS-HQ	Secretarial approval/disapproval decision on FMP amendments and ROD on Final SEIS.
September 2004	NMFS-Region/HQ	Publish final implementing rules.

⁵ The earliest a ROD could be produced is 30 days after April 16, 2004, under this schedule, but may be after that date to accommodate MSA schedule on proposed FMP amendments. This draft schedule is designed to culminate in a ROD and approval/disapproval decision on the same day, four weeks ahead of the Stip-mandated date of August 13, 2004.

RECEIVED

MAY 23 2002



OCEANA

N.P.F.M.C.

175 SOUTH FRANKLIN STREET, SUITE 418 JUNEAU, ALASKA 99801 907.586.4050 WWW.OCEANA.ORG

May 21, 2002

Mr. Chris Oliver
North Pacific Fisheries Management Council
605 W 4th Ste 306
Anchorage, AK 99501-2252

Dear Mr. Oliver,

Thank you for your April 24 response to our letter requesting that the Council take immediate action to protect coral and sponge communities in the Aleutian Archipelago. We appreciate that you forwarded our April 8 letter to the EFH committee, the North Pacific Research Board, and the Council SSC and we have submitted a proposal to the EFH Committee to protect coral and sponge in the Aleutians as a Habitat Area of Particular Concern. We commend the efforts you mentioned that the Council has taken that directly or indirectly protect corals and sponges and the attention being paid to these issues by the Council process.

We are pleased that the Council has designated living substrates (including corals and sponges) as habitat areas of particular concern (HAPC) as a first step in the process of protecting these vulnerable habitat-forming species. The management measure to prohibit a directed fishery from forming on these HAPC biota protected a significant amount of coral and sponge. It is important to remember, however, that this management measure does not address corals or sponges that are removed, destroyed, or damaged by bottom fishing gear targeting other species. We have worked with the EFH Committee to address this issue and have made our position clear in our HAPC proposal that we submitted to the Committee.

The rationale you gave for tabling the proposal for closure areas for Gorgonian coral protection was that the Council needed to incorporate additional information from stakeholders. Additionally, you mentioned that work on marine protected areas was put on hold while Council staff responded to the EFH lawsuit. We are sympathetic to the limitations of budget and staff, and we would like to point out that the average reported bycatch of coral and sponge in the Aleutians is over 133,000 kg per year. Every year that goes by before the Council acts on this issue, this high level of long-term damage leaves less of this important, slow-recovering habitat for future generations. While the Council has taken a precautionary approach to many conservation issues, it is clearly not precautionary to allow this level of habitat destruction during the interim period while the Council is obtaining information from stakeholders.

PRINTED WITH
CHLORINE BLEACH FREE

Oceana
May 21, 2002

With regard to our proposal for immediate conservation actions in the Aleutian Islands, you mention that we should be aware of other measures implemented for the 2002 fisheries. You are correct that these measures afford corals and sponges protection in the Aleutian Archipelago and we commend the Council for these conservation actions. However, these measures are by nature temporary and do not afford corals and sponges the long-term protection required by these long-lived, slow growing species. Therefore, adequate protection for coral and sponge affected by the measures requires that the Council make these measures permanent.

Additionally, there is significant coral and sponge habitat outside the areas affected by the other measures. It is equally important to consider management measures to protect coral and sponge habitats in all areas where they likely occur, not just in areas affected by the current measures.

Regarding a comprehensive management program, you make it clear that this is beyond the Council's purview and resources. However, there is much more the Council can do in addition to forwarding our letter to the North Pacific Research Board (NPRB) and the Council's Scientific and Statistical Committee. For example, you mention the Council may vote to send its own letter to the NPRB regarding research needs. If the Council is truly concerned with the coral and sponge protection, we propose that the Council vote to send a letter to the National Marine Fisheries Service and the NPRB requesting a comprehensive research plan specifically on coral and sponge habitats in the Aleutian Archipelago and other important areas throughout the Exclusive Economic Zone.

Again, we are thankful and cognizant of the conservation actions the Council has taken to protect coral and sponge habitats throughout Alaskan waters and we strongly urge the Council to take further precautionary measures to adequately protect coral and sponge in the Aleutian Archipelago for the long-term.

Sincerely,



Jim Ayers
Oceana
175 South Franklin Street, Suite 418
Juneau, AK 99801



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May 22, 2002

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MAY 22 2002

N.P.F.M.C

TO: David Benton, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

CC: James W. Balsiger, Administrator, Alaska Region
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

RE: Aleutian coral and sponge protection, Draft Programmatic Groundfish SEIS, and moratorium on directed pollock fishing in the Aleutians.

Dear Chairman Benton:

Dave

First of all, thank you for considering our proposal dated April 8, 2002 to protect coral and sponge ecosystems in the Aleutian Archipelago. We received a helpful letter from Chris Oliver responding to our request for Council action. In addition to our response letter dated May 21, 2002, we participated in the EFH Committee meeting from May 15-17, 2002, and submitted to the Committee a proposal for designation and management of coral and sponge in the Aleutians as a Habitat Area of Particular Concern (HAPC). We strongly urge the Council to take immediate conservation action to protect and maintain the health of the Aleutian ecosystem, while maintaining fishing opportunities that provide a strong economic livelihood for Alaska families.

Oceana respectfully recommends a three-prong approach:

- Immediately prohibit gear types known to cause substantial long-term damage to coral and sponge in areas of known coral and sponge concentrations, and as more areas become known, close those areas;
- Set a conservative prohibited species cap for coral and sponge habitat, closing fisheries once they exceed a specified bycatch of these HAPC biota to the extent sufficient to prevent fishing effort from moving into previously undiscovered coral and sponge habitat areas; and
- Initiate a comprehensive seafloor research and mapping program with fishers and local communities to develop long-term management measures that minimize adverse impacts of fishing on the seafloor and provide for the economic sustainability of fishing communities.



CHLORINE BLEACH FREE

Oceana
May 22, 2002

We are pleased that the Committee accepted our HAPC proposal for analysis and review by NMFS and Council staff this summer. We strongly urge the Council to take immediate precautionary action on this issue in cooperation with the State of Alaska and include our HAPC proposal in the EFH Environmental Impact Statement.

Second, with regard to the Revised Draft Programmatic Supplemental Environmental Impact Statement, Oceana is looking forward to continued involvement in the public process. However, our concern is that there is not enough emphasis on habitat protection measures (such as the Aleutian Island Special Management Area) included among all the alternatives. It is crucial that strong habitat protection measures are included in all the alternatives so that no matter which alternative or combination of alternatives is chosen, the end result includes a comprehensive habitat protection program.

Lastly, let us take this opportunity to urge the Council to continue and extend indefinitely the closure of the Aleutian Archipelago to directed pollock fishing as proposed in Alternative 2 of the draft EA/RIR/IRFA on the Sea Lion trailing amendments. The Council Executive Director, Chris Oliver, stated in his letter of April 24, 2002, "[The Aleutian Island] closures are likely to provide considerable protection for corals and sponges in the western Aleutians". At the recent EFH Committee meeting, pollock fishermen confirmed that pelagic trawl gear contacts the seafloor with impacts to benthic living substrate. In addition to the habitat impacts of pollock trawling, pollock also play an important role in the marine ecosystem, and there is no data showing that lifting the moratorium will do anything other than exacerbate the current problems in the Aleutian Islands region.

The Council must actively manage North Pacific fisheries using an ecosystem-based approach, with the moratorium on directed pollock fishing as one example of the type of necessary measures. A decision to lift the fishing moratorium would be irresponsible and have significant legal ramifications. We again encourage the Council to take the appropriate action regarding this matter with the hope that continued ecosystem-based fisheries management does not require legal action.

Thank you for your attention to these issues and we look forward to continuing to work with the Council.

Sincerely,



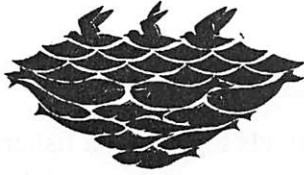
Jim Ayers
Director, Oceana North Pacific Office
175 South Franklin Street, Suite 418
Juneau, AK 99801

PUBLIC TESTIMONY SIGN-UP SHEET FOR AGENDA ITEM C-2 EFH

PLEASE SIGN ON THE NEXT BLANK LINE.
LINES LEFT BLANK WILL BE DELETED.

	NAME	AFFILIATION
1.	HEATHER McCARTY	CBS PA
2.	JOHN GAUVIN	GFF
3.	GLENN REED	PSPA
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PLEASE PRINT



Alaska Marine Conservation Council

Box 101145, Anchorage Alaska 99510
(907) 277-5357 • (fax) 277-5975
amcc@akmarine.org • www.akmarine.org

Ben C-2
Enticknap

June 1, 2002

TO: David Benton, Chairman
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

RE: Agenda Item C-2: Essential Fish Habitat

Dear Chairman Benton:

The Alaska Marine Conservation Council (AMCC) wishes to convey our support of the North Pacific Fishery Management Council's approach in developing the Essential Fish Habitat Supplemental Environmental Impact Statement (EFH EIS), and highlight a few issues discussed during the EFH Committee meeting in Sitka, May 15-17. As you know AMCC is represented on the Council's EFH Committee. It is our view, through our participation with the Committee, that this process is being conducted in a fair and transparent manner, inclusive of all committee members and the public who wish to participate.

Defining Minimal and Temporary:

The final regulations on EFH state, "Councils must act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable, if there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature..."¹ During the EFH Committee meeting, Council staff and National Marine Fisheries Service scientists presented approaches for evaluating whether or not a fishery or compilation of fisheries has an impact on essential fish habitat that is more than "minimal" and not "temporary".

We feel that any model for evaluating fishery effects must consider impacts at a localized scale. For example, it is possible that only a relatively small percentage of rockfish habitat in the Aleutians is damaged by trawl gear each year. However within the area that is damaged, the impacts to rockfish habitat and other associated species may be extremely significant. Additionally, impacts occurring year after year may result in the systematic degradation of long-lived, living habitats like coral forests, sponges or sea-whip beds. These models must take into account the cumulative effects of fishing impacts in the past, present and the foreseeable future. Finally, these fishery evaluation models should be considered only as a

¹ Federal Register/ Vol. 67, No 12/ January 17, 2002/ Rules and Regulations pg 2378

"Adverse effect means any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components..." pg 2379

guide to focus the attention of the Council when considering the effects of different fisheries on habitat, not a rule that exempts or condemns a fishery based on its score in the model.

Tools for mitigation:

The Council has been using a range of management tools over the years to achieve particular objectives such as time/ area closures, harvest limits, and fishing equipment restrictions. The National Research Council² (NRC) recommends integrating a balanced combination of tools to alleviate the effects of trawling and dredging on seafloor habitats, dependent upon the specifics of the habitat and the fishery. The tools recommended by the NRC include fishing effort reductions, modifications of gear design or gear type, and the establishment of closed areas. AMCC encourages you to maintain this suite of tools and use them to achieve EFH objectives.

In addition to traditional management measures to minimize or prevent habitat damage, the EFH Committee discussed fisheries rationalization as a potential mitigation tool. Ending the race for fish allows fishermen new ways to optimize fishing operations while minimizing habitat impacts. Rationalization, however, should not be considered a de facto mitigation tool. It should be considered as an EFH mitigation tool only if habitat conservation elements are built into the design of the rationalization program and that the Council requires these elements be implemented when allocating quotas to fish.

Habitat Areas of Particular Concern:

Habitat Areas of Particular Concern (HAPC) are a subset of EFH that require additional attention based on the habitat's ecological function, rarity, sensitivity, or exposure to anthropogenic disturbances. The EFH Committee received approximately twenty HAPC proposals from committee members, agency, and the public. This proved to be an extremely valuable opportunity for people to present what in their mind constitutes a HAPC type or site and what, if any, management measures should be applied. AMCC feels that the Committee made the correct decision to review the presented proposals at a subsequent meeting and determine at that time which proposals it will forward to Council. The Committee also developed a draft format for standardizing any future proposals.

In light of the massive expanse of the Gulf of Alaska, eastern Bering Sea and Aleutian Islands, plus extensive public interest in habitat conservation, it should not be surprising that many proposals were received. We urge the Council to keep this an ongoing public process, through the Council's EFH Committee and regular Council meetings, allowing ample opportunity for public involvement in designing HAPCs and habitat protection alternatives for inclusion in the EFH SEIS. We appreciate the Council's intent to establish an ongoing public process for reviewing HAPC proposals after the SEIS has been finalized.

² National Research Council 2002. Effects of Trawling and Dredging on Seafloor Habitat. National Academy Press, Washington D.C. pg 4.

Recommendation:

The United States Congress is currently in the process of reauthorizing the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act). AMCC urges the Council to write Congress a letter that outlines the public process initiated for the development of EFH designation and mitigation alternatives. We feel that at this juncture of the Council's work and present reauthorization of the Magnuson Act, it would be valuable to express to Congress the process this Council is undertaking – including the EFH Committee's work, habitat protection measures taken in the past and those being considered presently – to uphold the standards of the Magnuson Act.

Sincerely,



Ben Enticknap
Fisheries Project Coordinator

1. The Council accepts the EFH Committee's recommended changes to the EFH and HAPC designation alternatives as outlined in the May 15- 17 EFH Committee meeting draft minutes.
2. The Committee in developing mitigation alternatives, would be aided by the formulation of a 'STRAWMAN' prepared by the staff prior to the August meeting. The committee will use the 'STRAWMAN' as a starting point for developing mitigation alternatives for the October Council meeting.
3. The Council directs staff (within the SEIS analysis) to describe how each HAPC designation alternative would apply to each of the following four example HAPC: pinnacles and seamounts, gorgonian corals, Bristol Bay Red King Crab habitat (or similar species habitat), and shelf break. The EFH Committee should develop example mitigation measures for each case to help with understanding what the alternatives might do.
4. After the October Council meeting and before the April 03 Council Meeting the Council recommends that the EFH committee develop a process for the public to interact with the Council to develop, and amend HAPC designation.
5. The Council expresses its intent to the public that there will be no call for HAPC proposals until a process has been established by the NPFMC.

No objection

Motion 2.

1. With reference to the May 15-17 draft EFH Committee minutes, the Council adopts the EFH Committee's suggestion that the following items be brought to the attention of the Joint Protocol Committee: 1) cross representation of Council EFH and ADF&G MPA Committees; 2) ADF&G Advisory committees ^{and affected regions} to review EFH, HAPC, and MPAs within each region as they are being developed; 3) communications between agencies on projects and proposals being considered for action.
2. That the Council will write a letter based on public testimony from AMCC Ben Enticknap's language from June 1, 2002 stating (p3):

Item

Item

The United States Congress is currently in the process of reauthorizing the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act). The Council requests the Chair to write Congress a letter that outlines the public process initiated for the development of EFH designation and mitigation alternatives. We feel that at this juncture of the Council's work and present reauthorization of the Magnuson Act, it would be valuable to express to Congress the process this Council is undertaking.

37

DRAFT
EFH COMMITTEE MINUTES
NSRAA Building Sawmill Creek Road
Sitka, AK May 15-17, 2002

Committee Members present: Linda Behnken (chair), Stosh Anderson (vice-chair), Heather McCarty, Scott Smiley, Ben Enticknap, Ted Meyers, John Gauvin, Earl Krygier, Glenn Reed, Michele Ridgway. Gordon Blue on paternity leave.

Agency staff present: Cathy Coon (NPFMC), David Witherell (NPFMC), Cindy Hartmann (NMFC-HCD), John Lepore (NOAA-GC), Matthew Eagleton (NMFS-HCD), John Olson (NMFS-HCD), Jeff Fujioka (NMFS-ABL), Craig Rose (NMFS-AFSC).

Public: Thorn Smith, Jason Brune, John Merculief, Char Kirkwood, Dorthy Childers, Brent Paine, Paul MacGregor, Donna Parker, Karen Dearlove, Ken Stump, Whit Sheard, Martin Robards, Geoff Shester, Tom Malony, Simeon Swetzof, Sandra Moller, and Ginny Fay.

The EFH Committee met on May 15-17th in Sitka. The intent of the meeting was to finalize fishery descriptions, receive reports from Committee workgroups, review detailed descriptions of EFH & HAPC designation alternatives, and discuss potential HAPC sites and types for the EIS analysis. A draft agenda was distributed prior to the meeting.

Stosh Anderson (vice- chair) addressed the group on the meeting process for HAPC proposals. He noted that there was not a public call for proposals on HAPC sites. Rather the Committee was tasked with selecting specific HAPC sites to be included in the HAPC designation alternatives. However, because members of the public came with HAPC proposals, the Committee will consider these along with the Committee proposals.

The Committee motioned to approve the minutes from the last meeting. *Motion approved 9-1.*

The Committee discussed the concept of adaptive management in terms of designating HAPCs and mitigation measures. The Committee reiterated their commitment that where applicable, mitigation tools should be reviewed over time to validate their effectiveness in achieving the objectives of the HAPC designation. In other words, adaptive management should be an integral component of any mitigation measures adopted.

Joint Protocol Committee: The Committee wanted the following items to be brought forth to the Protocol Committee: 1) cross representation of EFH/MPA committees. 2) ADF&G Advisory committees to review EFH, HAPC, and MPAs as they are being developed. 3) Communication between agencies on projects and proposals being considered for action.

EFH timeline and staff tasking: The Committee reviewed a new NMFS time line that incorporates the Committee and Council process into the deadlines (see attached C-2 (a)(1)). The Committee requested NMFS to let them know the name(s) of the socio economic sub contractor(s) when identified, and which portions of the analysis Foster-Wheeler will be conducting under their original agreement. The Committee discussed the staff tasking prior to the October Council meeting. The Committee requested that initial draft reports be available to the Committee before the August teleconference, and finalized drafts 1 week prior to the September Committee meeting. These reports will include:

1) EFH Alternatives - Matt Eagleton and John Olson, NMFS, HCD (leads)

This task involves developing prototypes for 9 species for each EFH alternative. Jeff Fujioka and other AFSC scientists will develop a further explanation of the ecosystem alternative and a prototype example (the prototype example may not be available for the October Council meeting).

2) Fishery Impacts Analysis

a) Fishery Descriptions and Evaluation of impacts- Cathy Coon, NPFMC (lead)

This task involves updating the fishery descriptions, developing fishing intensity maps by fishery and habitat type, evaluation of habitats and EFH general distribution in the EEZ, and, writing non-FMP fishery descriptions (state fisheries).

b) Initial Evaluation of Fisheries - Craig Rose NMFS, AFSC, RACE (lead) and Jeff Fujioka, NMFS, AFSC, ABL. This task involves completing the fishery evaluation model and running it for each fishery and cumulatively for all fisheries.

3) Evaluation of HAPC Proposals - Cindy Hartmann, NMFS, HCD (lead) .

Staff will evaluate the HAPC proposals based on the four considerations in the final rule.

4) HAPC stake holder process- A white paper will be developed for a methodology for a long term or on-going public process to incorporate HAPC site/ type proposals. Cathy Coon (lead)

Staff Reports: Council and NMFS staff were requested to provide reports on EFH and HAPC designation alternatives, along with HAPC criteria for this Committee meeting. Staff provided discussion papers on these topics and presented them to the Committee. For both the EFH and HAPC designation alternatives, some slight changes were suggested to the Committee to modify the draft designation alternatives based on additional information.

I. EFH Designation Alternatives :

In December 2001, the Council adopted a preliminary set of alternatives to describe and identify EFH. The following discussion provides additional details of the preliminary alternatives and offers supplementary alternatives, which have surfaced during the initial analysis. NPFMC and NMFS staff will be working on a partial analysis, which includes a prototype of 9 species, for all alternatives for EFH designation between June and October 2002. The EFH Final Rule provides guidance for those fish species in each fishery management unit for the 5 FMP's. The EFH alternatives adopted back in December were as follows:

Alternative 1 - No Action - No EFH Designation

EFH would not be designated. This alternative would not be consistent with the Magnuson Stevens Fishery Conservation Management Act (MSFCMA). It is not the status quo. However, according to the Department of Justice (see January 22, 2001, Hogarth memo), it is the no action alternative and must be considered as an alternative. The resulting action of this alternative would result in changing the FMP's from the current EFH amendment measures.

Alternative 2 - Status Quo: EFH EA is not updated

Under the status quo alternative EFH would be designated on a species by species basis for a species life stage, based on the general distribution of that species life stage. Status quo is described in the Environmental Assessment for fishery management plan Amendments 55/55/8/5/5, January 1999.

Alternative 3 - Status Quo: update current EFH descriptions

Under the status quo alternative EFH would be designated on a species by species basis for a species life stage, based on the general distribution of that species life stage. Status quo is described in the Environmental Assessment for fishery management plan Amendments 55/55/8/5/5, January 1999.

Alternative 4 - Species Based

Define EFH using the highest level of information available for each species by lifestage. This alternative would specify EFH designations in accordance with the criteria established in the final rule (*updated from interim final rule). This approach would dictate that EFH be designated on the basis of the highest level of information available.

Level 1 - EFH is general distribution and its associated habitat.

Level 2 - EFH is known concentrations and its associated habitat.

Level 3 - EFH is the habitat contributing to the survival, reproduction, and growth of a species.

Level 4 - EFH is the habitat with the highest biological productivity.

Initially, the concept was to describe EFH: (A) for each species by life stage (B) for species groups based on taxonomic grouping. Scientist's advice suggests that statistical techniques such as a cluster analysis done only on taxonomically related groups (e.g. sculpin or rockfish species) not phyletically unrelated species (e.g. coral, ray and Irish lord), could be an appropriate method for Option B.

Alternative 5 - Ecosystem / Habitat Based

This alternative would specify EFH designations relative to classification of habitat types occurring in the region and the assemblages of species and lifestages associated with them. Describe species association within strata, which may lead to finer habitat definitions.

1. Describe range of physical characteristics of bottom from available information, if any.
2. Construct species life stage by habitat type index (to satisfy the requirement of a species by species EFH description, required by the Final Rule). An ecosystem model for each region could be developed.

Alternative 6 – Core Area or area known to be crucial to the production of a species

Designation of EFH for this alternative is limited to those core areas known to be crucial to the production of species or species groups. Each phase is based on our level of understanding of the relationship between habitat and productivity. Under this alternative, we would need to know the link between habitat and fish productivity (i.e., level 4 information). Since we do not have the data to tie fish productivity with habitat, we need to find a mechanism to assess a core area. The difficulty is using fisheries observer/survey data supplemented with limited habitat-research data as a proxy for fish habitat. Due to the limited information on fish habitat it is difficult to evaluate EFH in this manner.

At this meeting, staff had suggested that the Core Approach to be slightly changed to capture a core area as highest 10% (or some representative percentage) of CPUE.

Alternative 7 – EFH Designation would only apply to Federal Waters within the EEZ (3-200 miles).

EFH would be described and identified in waters of the EEZ. Specifically to our region, the inner boundary of the EEZ is a line coterminous with the seaward boundary of the coastal State of Alaska. Thus, this zone is from 3 nautical miles (*nm*) from any point of land to 200 *nm* (3-200*nm*).

NMFS staff noted that in many part of SE Alaska, federal waters area exist well inside the offshore State water designations. Many inner passages and straits which span over 6 miles from shore to shore form “pockets” of federal water, such as Stephens Passage, Frederick Sound, Chatham Strait and Glacier Bay.

Committee Discussion on EFH Designation Alternatives:

Motion: The EFH Committee recommends to the Council that staff move ahead with the analysis relative to EFH designation alternatives and adopt the slightly modified alternatives for EFH designation Alternatives 1,2,3,4,5, and 7 (see above). Alternative 6 would be dropped. Initially Alternative 6 (core approach) had a lot of appeal, but virtually no species have the level 4 information necessary for this alternative. The Committee discussed staff’s recommendation of using the survey CPUE data (highest 10%) to define a core area for a species and felt this designation would end up with a result that differs from the initial concept. An analysis using only survey data has limitations to define a ‘core area’ for a species because it could result in an inappropriate designation of EFH by failing to identify all areas that are core to that species. The concern was based on the fact that survey locations (both longline and trawl) are limited from areas that are too “rough” to fish because of boulders, snags, or other potential gear problems. In essence, the results of a high survey CPUE for a species such as rockfish wouldn’t necessarily account for it’s true core area because rocky habitats are not sampled. Additionally the survey is conducted seasonally, and that can create a problem with the perceived distribution of a species year round. The Committee noted that dropping this alternative would not reduce the range or contrast between alternatives since the original alternative 6 concept is encompassed in level 4 of alternative 4.

There would be one modification to alternative 4 as follows:

Alternative 4 - Species Based

Define EFH using the highest level of information available for each species by lifestage. This alternative would specify EFH designations in accordance with the considerations established in the final rule (*updated from interim final rule). This approach would dictate that EFH be designated on the basis of the highest level of information available.

Suboption: This approach would allow that EFH be designated on the basis of the highest level of information available.

The reason for adding a suboption for alternative 4 is that although an information level about a species at a certain lifestage may increase, there may be merit in maintaining a larger EFH designation.

The Committee recommends these revised EFH alternatives to keep a high level of contrast for the analysis to illustrate the range of differences. *Motion passes 9-1*

II. HAPC Designation Alternatives :

In November 2001, the EFH Committee developed a set of alternatives for HAPC designation. Staff had recommended simplifying the alternatives for practical and analytical reasons. After the staff presentation the Committee drafted and agreed on the following working definitions and revised alternatives:

HAPC sites are defined as specific geographic locations, identified on a chart, that meet the considerations established in the regulations, and are designated to address identified problems for FMP species and achieve clear, specific management objectives.

Further, HAPC type designations are used to focus research priorities, such as ascertaining ecological links between habitat and FMP species, etc. Our intent is that the type designation alone does not invoke mitigation measures.

Alternative 1: No Action. Under this alternative there would be no designation of HAPC in the region.

Alternative 2: Status quo (types). HAPC would remain as defined and adopted under amendments 55/55/8/5/5: living substrates in shallow waters, living substrates in deep waters, and freshwater areas used by anadromous fish.

Alternative 3: Site-based concept. Individual sites meeting one or more of the considerations and selected to address an identified problem may be designated HAPC sites for managed species. It does not allow for designation of types of habitat but constrains HAPC designation to explicitly geographically defined sites or locations, such as a particular seamount.

Alternative 4: Type/site based concept. This alternative establishes HAPCs as individual sites selected as subsets of HAPC types for managed species. This is done as a two step process:

Step A) Types are selected based on the regulatory considerations.

Step B) Sites are selected as a subset of types to address an identified problem and management action is applied to achieve specific management objectives.

Alternative 5. Species core area

This alternative starts with the assumption that the data available on the distribution and abundance of an FMP species (and other species important to FMP species) is one of the factors that provides an indication of areas in which to examine the link between habitat and productivity. The Committee notes that HAPC core areas will only be designated, as reliable information on the link between habitat and productivity becomes available.

As more information on the interaction between habitat and FMP species/ecosystem productivity becomes available, HAPC could be refined to a core habitat that could be a type or a site that may be a bottleneck or key habitat. At low levels of information we start with species distribution and abundance, filter it through the four considerations and if one or more applies, HAPC may apply. As more information becomes available HAPC could be refined to a core habitat that could be a site designated to achieve specific management objectives.

III. Updates on fishery description:

Fishery descriptions were updated and the revised draft from the March Committee meeting is on the Council web site. Additional revisions will be made by October. The intent of staff is to clarify any language, and finish the descriptions by adding figures to illustrate gear type.

IV. Evaluation Methodology:

The regulations require that each fishery management plan contain an evaluation of potential adverse effects of each fishing activity on each type of habitat found within EFH. Fishery management plans must describe each fishing activity, review and discuss all available relevant information and provide conclusions regarding how each fishing activity affects EFH.

A subcommittee was formed to weave the concepts of minimum and temporary into a methodology to analyze the adverse impacts of fisheries. The workgroup developed several possible ways to assess the effects of fishing on habitat. The SSC will review staffs proposed impact analysis methodology during the June 2002 Council meeting. Staff will try complete the evaluation and present it to the Committee in September.

Jeff Fujioka Auke Bay Lab, described a model he is working on to assess fishery impacts. It is based on a differential equation model which incorporates fishery impacts as well as the recovery rate of the habitat. Craig Rose gave a report on a methodology for summarizing distribution of fishing intensity, (his example looked at bottom trawl effort), and calculated area swept in proportion to the entire area available. This methodology could be incorporated for describing fishing intensity by gear type and fishery, and incorporated into the gear impact analysis for understanding cumulative impacts of all fisheries.

Committee members expressed concern over using an evaluation method that is not fully transparent. Some of the concerns were based on that fact that many people don't have the skills to understand a model, such as differential equations, especially the numeric determination of inputs and outputs to describe "adverse" impacts. The Committee also discussed that a more complex quantitative model would still suffer from the same data limitation that hinders the simplified approach described by Council staff. The overall lack of quantitative data on almost everything except the intensity of fishing for observed fisheries would still involve the same subjective calls on gear effects etc. where objective data are not available. There will be data limitations with either a transparent public model or a more rigorous quantitative methodology.

V. Summary of "to the extent practicable":

John Lepore provided the following summary: To provide the Committee with a legal and practical interpretation of this guidance John described the dictionary definition of 'practicable' which is "capable of being executed or done, or feasible". John referred to 50 CFR sec. 600.815(a)(2)(iii) for an explanation for the phrase "to the extent practicable." It states:

(iii) Practicability. In determining whether it is practicable to minimize an adverse effect from fishing, Councils should consider the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation, consistent with national standard 7. In determining whether management measures are practicable, Councils are not required to perform a formal cost/benefit analysis.

A cost/benefit "type" analysis, seems to be the methodology suggested to determine what is practicable, although a "formal" cost/benefit analysis is specifically not required by the regulations. Use of best available information is required under the national standards, and national standard 7, which is specifically mentioned in the regulations, provides that "conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication."

One Committee member reported to the Committee on another source for the intent of Congress on the meaning "to the extent practicable". That information came from the House Congressional Record on the intent of Congress for the Sustainable Fisheries Act of 1996. The language in the Congressional Record not only supported NOAA GC's interpretation of the use of the language in statutes, but it also elaborated on other issues such as not using the new conservation mandates of the Act to reallocate fishing opportunities or ban fishing gears.

VI. Rationalization discussion paper:

The subgroup reported on their draft discussion papers regarding rationalization as a mitigation tool to protect habitat. A final report will be available by the August teleconference. In summary, the Committee felt that although rationalization is not typically a tool for mitigating or preventing fishery impacts a rationalized fishery can provide management options that protect habitat. The group provided examples of specific fisheries which have been rationalized (pollock- AFA/ IFQ sablefish & halibut) or could benefit from them (Bering Sea crab, and rock sole) .

Motion: Michele Ridgway moves that Committee members provide their comments to authors of the workgroup and copy other members of that 4 person working group along with Cathy Coon of Council staff by May 30th. Authors will then provide revisions for the Committee by August meeting. John Gauvin will be the lead and will finalize the final document. *Motion carries 9-1.*

VII. Public Testimony on HAPC nomination of sites/ types and public process:

Community Input: Sandra Moller (*Aleut Enterprise*) and Simeon Swetzof (*City of St. Paul*) testified that they had not developed HAPC proposals since there was not a call for public proposals. However they felt it critical that small communities be incorporated in making habitat conservation decisions that effect the sustainability of resources and that could affect local economies. They requested the Committee relay their concerns to the Council emphasizing that it is necessary to have community participation in the EFH and HAPC processes.

Non-fishing interests: Jason Brune (*Resource Development Council*). Noted that the Committee has focused a lot on fishing interests however it's important not to ignore non-fishing interests: Timber, oil and gas, mining, home construction, and community development could be impacted by the EFH regulations. It is essential to have the HAPC definitions and process in place before HAPC proposals are considered into the recommended alternatives.

Environmental interests: Public HAPC proposals included:

Prince William Sound Forage Fish Spawning & Nursery Habitat: Montague Island, Green Island and Gravina Bay (The Ocean Conservancy) ;

Yakutat for recovery of Tanner and Dungeness Crab stocks (Ginny Fay/Tom Maloney City of Yakutat);

Aleutian Island region corals and sponge protection (Oceana);

Pollock Spawning grounds on the Bering Sea " Green belt" HAPC type including the Continental Shelf-Break/Upper Slope pelagic habitat (Ken Stump);

VIII. Committee Discussion of HAPC:

The Committee proposed several additional HAPC sites/ types, and NMFS introduced some suggested sites that could be further refined from their examples of HAPC considerations. These included:

Nearshore and shallow waters of Alaska as a HAPC type (Smiley)

Long lived slow growing biotic assemblages at the continental shelf break as a HAPC type (Smiley).

Coral patches off Cape Ommaney and Dixen Entrance (Reed)

Sitka Pinnacles (Behnken, Council staff)

Aleutian Islands Management Area Fish & Coral Protection (Ridgway);

Prince William Sound Herring Spawning (Ridgway)

Albatross pinnacle for juvenile rockfish (Enticknap);

Bering Sea shelf/ edge for Bering Sea snow crab (Zhemchug) (Enticknap);

Kodiak Crab Habitat for King and Tanner crab rebuilding (Enticknap);

Pinnacles and Seamounts (HAPC type) (Enticknap);

The Committee struggled with how to deal with the proposals offered by the public and Committee members. It was noted that there are likely other public that would be interested in providing proposals. Some Committee members felt it would be difficult to assign all the HAPC proposals to one or the other of the HAPC designation alternatives. The suggestion was made to list all HAPC proposals and have them be considered through a different process, along with any others that may be received. Examples of potential HAPC sites could be developed by the Committee and staff and included in the EIS as part of the alternatives if necessary.

A **motion** was put on the table to receive all proposals submitted to the Council and or EFH Committee prior to July 15 for preliminary screening by staff (using the considerations from the final rule, and methodology provided in the technical guidance) for further consideration by the Committee at the August/September meetings. In September, the Committee would select HAPC (sites/types) proposals for inclusion in the EFH SEIS (understanding that these are recommendations to the Council, who chooses the final ones to include in the SEIS). There was no objection to the motion. A second **motion** (Gauvin) was made recommending that the Council develop a form for HAPC proposals and make that form available to the public through the Council website HAPC form should include:

1. Name the proposer and organization.
2. Description of the problem or objective addressed in the proposal.
3. Describe the HAPC consideration addressed by the proposal.
4. Details on the area or type of area proposed (with chart or map showing geographic location).
5. HAPC alternative most closely utilized in the proposal (optional).
6. The nature and extent of fishing and non-fishing activities occurring in this site or type (to the extent known).
7. Other supporting materials (data, references, etc.).
8. Identification of potential mitigation measures, and potential impacts to habitat and current users of the area..
9. Will designation of this HAPC area require coordination with the State, and has a similar proposal been made to the Alaska Board of Fisheries?
10. Who will benefit/ who will be hurt.

The Committee's intent is to prioritize the HAPC proposals, so that a few top priority HAPC sites and types can be included in the EFH SEIS. It was understood that the SEIS would also contain a process to consider and incorporate other HAPC sites/types in the future. The Committee would be willing to develop this process later this year, after the October meeting.

Two questions arose from the HAPC discussion and were addressed by John Lepore NOAA GC.

1) **Can HAPC's address the concepts of benthic and pelagic?** John Lepore directed the Committee to 50 CFR sec. 600.10. EFH is defined as *those waters and substrates necessary for spawning, breeding and growth to maturity*. The term waters includes all aquatic areas which would include pelagic (or the middle of the water column). The term substrates indicates the bottom which is synonymous to benthic.

2) **Can EFH or HAPC's be designated for non FMP species?** John Lepore referred to 50 CFR sec. 600.805(b)(1), which states that "[a]n EFH in an FMP must include all fish species in a fishery management unit (FMU). An FMP may describe, identify, and protect the habitat of species not in an FMU; however, such habitat may not be considered EFH for purposes of sections 303(a)(7) and 305(b) of the Magnuson-Stevens Act." Habitat areas of particular concern (HAPC), according to 50 CFR 600.815(a)(8), are to be designated "within EFH." Therefore, EFH (and consequently HAPC, which is a subset of EFH) can only be designated for species in the FMU for an FMP. According to 50 CFR sec. 300.10, the FMU is the "fishery or that portion of the fishery identified in an FMP relevant to the FMP's objectives." Each FMP would have its own FMU as defined. Accordingly, EFH (and consequently HAPC) cannot be designated for species not in the FMU; however, 50 CFR sec. 600.815(a)(7) provides that "actions that reduce the availability of the major prey species, either through direct harm and capture, or through adverse impacts to the prey species' habitat that are known to cause a reduction in the population of the prey species, may be considered adverse effects on EFH if such actions reduce the quality of EFH." David Witherell, clarified that in the first EFH amendment package there was information on habitat and maps of non FMP species including halibut and GOA crab. Even though it wasn't required under the MSFCMA provisions it was nice to have a complete picture of all species within a region. Would it be possible for non FMP species to be labeled as areas of special concern within the document. Counsel advised yes it would be possible to address the non-FMP species for completeness, but they would have no legal designation.

IX. Committee schedule.

In closing, Stosh reviewed the upcoming meeting schedules and agendas. On August 27, at 9:00 am AK time, the EFH Committee will meet by teleconference to review staff reports on the fishery impact evaluations. The EFH Committee will meet in Kodiak on September 16-18 (8:30am - 5 pm) at the Fish Tech Center to develop alternatives for mitigation measures.