MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence Pautzke
Executive Director

DATE: September 24, 2001

SUBJECT: Essential Fish Habitat (EFH)

ESTIMATED TIME
3 HOURS

ACTION REQUIRED

(a) Receive scoping summary and EFH Committee Report.
(b) Update on final guidelines from NMFS.
(c) Consider next steps in developing Environmental Impact Statement.

(a) EFH Committee Report

In June 1999, several environmental and fishing groups challenged the scope and substance of the environmental assessment (EA) prepared for the EFH Amendments 55/55/8/5/5 (*American Oceans Campaign et.al.v. Daley*, Civ. No. 99-982 (D.D.C. September 14, 2000)). On September 14, 2000, the U.S. District Court issued an opinion finding the EA insufficient in scope and analytical substance and requiring National Marine Fisheries Service (NMFS) to prepare an analysis that is legally sufficient under NEPA. Therefore, NMFS is re-evaluating the EFH components originally developed as part of Amendments 55/55/8/5/5. The SEIS will supersede the EA previously prepared in support of Amendments 55/55/8/5/5. NMFS draft timeline schedules the preliminary draft SEIS for review in June 2002, and the final draft in August 2002.

The Council appointed an EFH Committee in May 2001, to work with NMFS and Council staff to develop alternative(s) for the SEIS, and review the draft documents before publication. The primary Council issue is to submit revised FMP amendments that: standardize an analytical approach to quantify, to the extent practicable, the impact of fishing activities on EFH for each of the FMPs; indicate how much habitat is needed to achieve MSY or some comparable metric of fisheries sustainability for each FMP; describe how much is currently being fished, and how much is protected already; and finally, consider options for designating EFH other than the status quo. The EFH Committee met for the second time on August 13-14th to address the needs for upcoming work on the EFH EIS, review comments received by NMFS, and identify major issues raised in the scoping process. Minutes are attached as item C-6(a). At an upcoming meeting (date TBA), the EFH Committee will review the NMFS list of significant issues, and begin to develop alternatives for analysis of EFH designation, HAPC designation, and measures to mitigate effects of fisheries on EFH.

NMFS held public scoping meetings during June 2001 and accepted written comments in response to its intent to prepare an SEIS, and to determine the issues of concern and the appropriate range of management alternatives to be addressed in the SEIS. The comments were addressed under three topics: 1) to describe and identify EFH and potential Habitat Area of Particular Concern (HAPC) designations, 2) to minimize to the extent practicable the adverse effects of fishing on EFH, and 3) to identify other actions to encourage the conservation and enhancement of EFH. NMFS habitat conservation division released a Draft Summary of the Scoping Comments (item C-6(b)) from the written comments on September 21, 2001.

(b) Update on the EFH final guidelines from NMFS

The EFH final guidelines have been sent to the Office of Management and Budget for review. Staff expects these guidelines to be published in the Federal Register within the next few weeks.

(c) Consider next steps in developing EIS

At this meeting, the Council may discuss the next steps for EIS development. Unresolved issues include developing a purpose and need statement, development of alternatives, tasking and analytical content, and timeline for completion. Staff will be on hand to discuss these issues.

AGENDA C-6(a)
OCTOBER 2001

DRAFT Minutes of the NPFMC EFH Committee
August 13-14, 2001 Sitka, AK
NSRAA

Committee: Linda Behnken (chair),Ben Enticknap, John Gauvin, Michael Payne, Michelle Ridgway, Heather McCarty, Scott Smiley, Glenn Reed.

Staff: NMFS- Cindy Hartmann, Lauren Smoker
NPFMC- Cathy Coon, David Witherell
Additional participants included Dan Falvey Lon Hockmeister, and Ellen Hall.

The second meeting of the Essential Fish Habitat (EFH) Committee was held on August 13-14th to address the needs for upcoming work on the EFH EIS. Specific goals of this meeting were to identify significant issues from scoping, and develop alternatives based on these significant issues. A meeting was set for September 18 & 19th in Sitka to review the NMFS list of significant issues as well as formulate those of the committee, based on the issues identified from this meeting. Deliver a status report and any alternatives to the Council during the October 2001 meeting. Additionally the committee will want to review the draft EFH EIS prior to public review.

1. Introduction: At the onset of this meeting there were the additions of two committee members Glenn Reed and Scott Smiley. Introductions were made of the entire group and a recap of what the committees role was iterated.

2. Review of Agenda: Linda Behnken presented an agenda (*attached*).

3. Approval of Minutes from last Meeting: Reviewed on the 13th and approved on the 14th. The revised final minutes will be posted on the NPFMC website. The chair asked for any opening questions and comments from the committee.

Opening Questions/Comments:

- Questions as to the participation of Atkison and Canter(A&C). Prior to the meeting Heather suggested that the involvement of either of these NEPA experts could be beneficial. However their schedules did not allow their participation. A contract would need to be developed to allow their participation in future committee meetings. Michael Payne would like input on what stage their review should be incorporated into the NMFS timeline.
- John Gauvin requested we get professional advice from NEPA experts on how large the range of alternatives of the analysis should be to meet the NEPA

deficiencies identified by the court.

- Cindy Hartmann mentioned that there is a RFQ out for a contractor to aid in preparation of the EFH EIS.
- Scott Smiley commented he was concerned that comments were lacking in scientific input for valid alternatives. He was concerned that the committee might be required to craft alternatives out of the universe of comments made in the scoping session because, in his estimation, the comments received did not adequately reflect the science surround what is known about how fishing effects EFH. How to incorporate the lack of information into the policy.
- John Gauvin questioned how the analysis of gear effects within the DRAFT programmatic groundfish SEIS will be incorporated into this document since the previous is still under review (i.e. effects of trawling). John wants the committee to show caution in templating our alternatives based on that uncompleted document.
- Scott Smiley, in regards to the summary of effects of trawling in the programmatic SEIS, noted that most of the studies on effects of trawling were not directly relevant to Alaska waters. Alaskan cooler temperature water were much more difficult to manage in a 2D or spatial sense in terms of time/area closures. For example EFH could move for a species or species/life stage with changing environmental factors.
- Glenn Reed expressed interest in an inventory of what's been done in the previous EFH draft , what out of that is acceptable and what else needs to be incorporated into the document to make it comply with NEPA and other regulations.
- Gauvin added that an assessment of more current information needs to be incorporated into this coming document.
- Ben Enticknap discussed the need to evaluate the impacts of different gears on sea floor habitats. The committee discussed that there should be cooperation between the different regions/Councils to share information on how to evaluate the effects of fishing gears. Cindy Hartmann was requested to give an agency summary on how the different regions are evaluating gear impacts both through research and incorporation in their EISs. Additionally the committee agreed that it would suit this analysis if we could construct a way to quantitatively analyze gear effects in the North Pacific through new research as well as from the literature.

4. Discussion of Legal Questions and General Issues

New questions (NQ) and those brought up at the last Council committee meeting

✓ <u>Agency determination of doing an EIS vs. EA</u>

Lauren Smoker reviewed the agency's decision on completing an EIS rather than an EA for this action. Although the court did not specify that an EIS had to be prepared, NOAA GC advised and the agency determined that preparation of an EIS was prudent given the significance criteria contained in CEQ regulations at 40

C.F.R. 1508.27(b) and NOAA's NAO 216-6. The lack of data and high levels of uncertainty admitted in the original EA undermines a conclusion of no significant impacts, and therefore the use of an EA and the ability to reach a finding of no significant impact. Some of the criteria used to determine significance that appear applicable to this action include:

- whether the action contains highly uncertain impacts or involves unique or unknown risks
- whether the action may affect unique characteristics within the geographic area
- whether the action is likely to be highly controversial from a scientific or socio-economic standpoint
- whether the action may be reasonably expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat

Lauren noted that it would be unlikely for a court to direct an agency into one type of document over another.

Dave Witherell pointed out that in terms of an actual analysis the differences between an EA and an EIS is a formal scoping process.

✓ Is the EFH EIS an action-forcing document?
Yes. CEQ regulations at 40 C.F.R. 1502.1 state that "the primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing program and actions of the Federal government."

✓ What is the interplay between the programmatic SEIS and the EFH EIS?
Lauren Smoker noted that the two documents analyze different actions and while there is some overlap, neither document is looking at the same action. For example, the programmatic SEIS is taking a broad examination of all aspects of the groundfish FMPs, including its impacts on habitat. However, the programmatic SEIS is not looking at all of the various Magnuson-Stevens Act EFH components, such as the description and identification of EFH. In contrast, the EFH EIS will not be looking at all aspects of the groundfish FMPs, such as impacts on marine mammals, but will focus on the description and identification of EFH and HAPCs, and impacts of fishing.

✓ What is the appropriate scope of the EFH EIS?
The committee discussed several components of this question. First, there was a question on the agency's decision to redefine EFH since the litigation focused on fishing impacts. Second, the lawsuit only challenged the GOA and BSAI groundfish EFH amendments so why is the agency preparing EISs on all of the EFH amendments (groundfish, scallop, salmon and BSAI crab)? Finally, there was a question of whether the committee would look at non-fishing impacts on EFH?

Lauren Smoker explained that the court's decision was not limited to the legal adequacy of the analyses of fishing impacts. The court's decision on the NEPA analyses addressed the analytical and informational deficiencies of the EAs as to the impacts of the proposed action – whether to implement the EFH amendments with all its parts – and the alternatives to the proposed action, not just the impacts of fishing activities. Furthermore, the analyses in the EAs were not limited just to fishing impacts; rather, they purported to analyze all of the impacts of implementing the EFH amendments, including the description and identification of EFH, impacts from non-fishing activities, etc. Finally, because the EA prepared by NMFS and the NPFMC for the EFH Amendments covered all five Alaska FMP amendments, the deficiencies found with the EA concerning the groundfish amendments also extended to the scallop, salmon and BSAI crab EFH amendments. Therefore, NOAA GC advised and the agency determined that the new NEPA documents need to parallel the scope of the old NEPA documents.

The committee noted that clarification is necessary concerning the Council's intent to have the committee look at both fishing and non-fishing impacts. Lauren Smoker noted that cumulative impacts, including those from non-fishing, will be addressed in the EIS.

✓ <u>Can the Secretary take an alternative out of the EIS?</u>
Lauren Smoker noted that it is unlikely that the Secretary would remove an alternative from the analysis. Alternatives examined in an EIS should represent an adequate range of reasonable alternatives. If there are alternatives that were considered but not analyzed further either because they were found to be unreasonable or the impacts of the alternative are encompassed within the range of alternatives, the analysis should contain a discussion that explains why these alternatives were considered but dropped from further consideration.

During this discussion, it became apparent that the question the committee had wanted to pose to NOAA GC was whether the Secretary could select his own alternative and possibly override the alternative identified by the Council as its preferred alternative. Lauren Smoker stated that typically EISs (or SEISs) accompany FMP and regulatory amendments that are subject to the Magnuson-Stevens Act provisions at 16 U.S.C. 1854, meaning that, under the MSA, NMFS is only allowed to approve, disapprove, or partially approve an FMP or regulatory amendment. Because the preferred alternative in the NEPA document is the proposed action in the FMP/regulatory amendment and proposed rule, if NMFS has a consistency problem with the FMP/reg amendment, NMFS disapproves the FMP/reg amendment in whole or in part and remands it back to the Council with recommendations on how the Council can fix the identified problem. NMFS does not substitute its preferred action for that submitted by the Council. Smoker told the committee that she had never before been faced with the question of what NMFS could or would do if it was a purely NEPA process.

In other words, if NMFS is not under the approval/disapproval constraints of the MSA, could NMFS substitute the preferred alternative identified by the Council and contained within the final SEIS with another alternative that the agency believes is more reasonable in the ROD? Smoker told the committee members that she thought that in a purely NEPA action (i.e. no MSA FMP or regulatory amendments involved), NMFS has the authority to make its own decision in the ROD and could select an alternative that was not the alternative preferred by the Council. However, Smoker noted that Council recommendations are not treated lightly and that in examining Council actions, the agency's usual role is to determine whether the action is consistent with applicable law, not to substitute the agency's judgment for that of the Council. Smoker said that she would follow up on this question at the next committee meeting.

✓ What is the degree of socio-economic analysis that's needed for the EIS?
Both Council and agency staff at the meeting stated that the analysis would be the same as an EA (an analysis that satisfies NEPA, E.O. 12866 and Regulatory Flexibility Act requirements).

✓ NQ: Do the negotiations between plaintiffs and NMFS affect the process that's going on? What is driving the current time schedule?
Lauren Smoker stated that the federal government can't discuss the current settlement agreement. However, she stated that the agency cannot circumvent the public process in settlement negotiations. NMFS staff stated that developing an EFH EIS in two years (the current time line) was prudent after a hard look at the facts. Glenn Reed wanted the Committee to convey to the Council that there is concern that this private process (settlement negotiations) may diminish the public process and wanted to keep the plaintiffs informed on the progress the committee is taking.

✓ NQ: Does there need to be a separate EIS for each of the 5 FMPs or just 1?
The January 22, 2001, guidance memo from William Hogarth directs NMFS, Alaska Region, to address the EFH provisions of all 5 of our FMPs. The Agency indicated (M. Payne) that the current intent was for 1 SEIS for all FMPs but that difficulties may arise in preparing one SEIS when you are dealing with such diverse species.

✓ NQ: What type of interagency cooperation will there be for EFH designation (Ben Enticknap)?
NMFS will seek the cooperation of ADF&G and other interested agencies.

✓ NQ: Who takes the lead on this document NPFMC or NMFS (Heather McCarty)?
The Alaska Region currently has the lead in document preparation but intends to have substantial involvement by the Council, including Council staff and the EFH Committee.

5. Summary of actions by other Regional Councils: Cindy Hartmann
see attached summary sheets. Actions of all Councils are similar although wording from websites and NOI's may be a little different. (See attachment A)

Tuesday August 14, 2001

6. Review Mission Statement:
Revised mission statement for the EFH Committee 8/14/01 as follows:

It is the Council's intent that the EFH Committee act as a steering committee for the EFH EIS process. The Committee's overarching goal is to facilitate input by the industry, conservation community, Council, and general public to the EFH EIS process. More specifically, the Committee will assist in identifying:

1. The 'significant issues' used to develop and evaluate proposed alternatives;
2. The alternatives for describing, identifying, and protecting EFH:
3. The means of determining possible fishery impacts on habitat;
4. and Interpreting existing information for development and analysis of alternatives;
5. The alternatives for mitigating fishing gear impacts on habitat;
6. Alternative criteria and approaches that could be used to designate and manage HAPC areas; and
7. Identify and prioritize future research needs.

Additionally, the committee will assist the agency with appointing and working with technical teams.

7. Discussion of "Significance"

Cindy Hartmann distributed a sheet of How to identify significant issues as background material. The following are major categories of the information she distributed:

Steps in Issue Development

1. Identify Issues
2. Define and Clarify Issues
3. Organize/group issues
4. Identify significant issues
5. Identify units of measure.

Additionally, there were blank worksheets to work through a public comments to pull out significant issues. The committee worked through one example Thorn Smith's as a group, and were asked to fill out the worksheet for all sets of comments and bring back their identified significant issues

for Tuesday's discussion. We also had a review of NEPA in order to determine how to best have a broad range of alternatives. The group decided to keep track of issues other than those that are formulated as alternatives as an end product i.e.. non-fishing impacts.

8. Review scoping comments

The committee went over each of the scoping comments. Both the worksheets that Cindy Hartmann passed out as well as the original letters were utilized to pick out issues and the group determined that at this time we would only identify the main issues from all of the comments, and come back to them and go through and determine the significance based on EFH and the Magnuson Stevens Act. It was decided that there was insufficient time for the committee to decide which issues were significant from the committee's perspective among those identified by the public in the 'scoping' session. The committee agree to schedule another meeting prior to the October NPFMC meeting to prioritize the issues from the scoping session.

Major issues identified included can be placed into the following broad categories: Each of these need to go through the 'significance' criteria test prior to be encapsulated into an alternative.

* Process
* How to define EFH
* How to define HAPC
* Socio Economic Impacts
* Existing Regulatory Mechanisms
* Management Alternatives
* Gear Alternatives
* NEPA document type
* Non-fishing impacts
* Research
* Subsistence
* Comments on Species
  [Scallops, Groundfish, Crabs, Salmon, Other]

9. Develop list of Significant Issues identified by scoping process

The committee decided that during the next 2 day meeting the major issues would be distributed and significant issues identified out of the public scoping comments. The committee would also get advice from GC if the range of the significant issues was broad enough to develop into book ends for alternatives, and what the procedure was to create a broad enough selection of alternatives to meet the mandates of the court.

10. Discuss additional Issues or Alternatives to present to Council

*Suggested by NMFS in scoping process
*Developed in groundfish SEIS
*Based on past management actions
*Other

During the discussion of the public comments, a brief discussion arose among committee

members of suggested alternatives in the upcoming document.

John Gauvin suggested a two tier approach to determine the range of alternatives. A criteria line would be established and tow separate ranges of alternatives would be developed in analysis for each side of the line as follows:

Criterion Line: Is there a:

A) Problem with a managed species e.g. overfishing or stock decline?

B) Scientific evidence of an ecosystem problem with stocks related to benthic habitat ?

In the case where there is neither a problem with the managed stocks or with benthic habitat on the ecosystem, then the range of alternatives for analysis would be as follows: Areas open to fishing to include re-opening of areas currently closed to limiting fishing to the areas it is currently allowed. The consideration of re-opening areas currently closed would be based on the rationale that spreading fishing out over a wider area which could reduce intensity of fishing and decrease potential for negative impacts on benthic habitat. Re-analysis of existing closure areas would be based upon the limiting closure areas to the actual types of substrates that the management closure was designed to protect, e.g. crab habitat closures reduced to the subset of substrates that are actually deemed to be vulnerable crab habitat.

In the case where a problem is identified and we are on the other side of the citerion line, then the range of alternatives for the analysis is restricting fishing to the areas where it actually occurs to restricting fishing by full closures around some habitat types or a conservative percentage of representative habitat types closed to fishing.

Linda Behnken suggested an alternative that would following a habitat based approach for defining EFH additionally a HAPC based approach. This approach could have the following identification of 3 factors: 1) vulnerability 2) ecological function 3) rarity or uniqueness.

Other types of alternative composition included the following.

- ✓ Issue - over capitalized fisheries, create more habitat effect to catch TAC, Alternative could be to decapitalize fisheries through buy-back equitable rights based. This could be a stand-alone measure or addition to any EFH measure.
- ✓ Consider a species assemblages approach to EFH designations.
- ✓ Look at how other regions approached EFH designation
- ✓ Limit geographic extent of fishing areas beyond current (year__) footprint until spatial habitat are mapped at a sufficiently fine resolution and impacts of fishing methods on habitat ecological functions are known. Expansion of fishing area can occur following implementation of a tier habitat protection prioritization system (addressing burden of proof), precautionary approach/ mgt. Management data needs and socioeconomic concerns.

11. Review Timeline for EFH EIS Process

NMFS handout. The committee has a discussion on difficult it would be to meet the two

year timeline for all aspects of a full EIS project. Specifically in light of not completing the task of identifying significant issues it would be difficult to create with draft alternative(s), or review the agency's draft alternatives to present to the Council in October. Components of the timeline would need to be modified.

Draft Agenda
Essential Fish Habitat Committee
August 13-14, Sitka

Monday August 13: 12:30-5:00pm

1. Introductions
2. Approve Minutes from last meeting
3. Scoping Overview/ Background Information if needed
4. Summary of actions by other Regional Councils
5. Review scoping comments

Tuesday August 14: 8:00am-5:00pm

1. Review Mission Statement
2. Discussion of "Significance"
3. Develop list of Significant Issues identified by scoping process
4. Discuss additional Issues or Alternatives to present to Council
   - *Suggested by NMFS in scoping process
   - *Developed in groundfish SEIS
   - *Based on past management actions
   - *Other
5. Other Issues/ Questions
   - *Council vs. Agency lead on EFH EIS
   - *Appointment of FMP Technical Teams
   - *Selection of Preferred Alternative - who takes lead??
   - *Other
6. Review Timeline for EFH EIS Process

7. Schedule next meeting.

NMFS and Council's Efforts for Completion of Essential Fish Habitat (EFH) Supplemental Environmental Impact Statements (EIS's)

Region / Council	Process to be Used	Species of Concern	Comment Period	Action or Scope of EIS
Northeast Region / New England Fishery Management Council (NEFMC)	Use the SEISs for Multispecies Amendment 13 and Scallop Amendment 10, plus do a separate EIS to address EFH for monkfish, herring, and salmon NMFS preparing SEIS(s).	16 groundfish species managed through the Northeast multispecies complex 1 species is managed under the Atlantic Sea Scallop FMP Atlantic herring monkfish Atlantic salmon	Groundfish and Scallops Comments accepted through April 4, 2001. One scoping meeting held on February 22, 2001 NOI published February 1, 2001. FR notice to extend comment period published March 3, 2001. Herring, Monkfish and Salmon Scoping scheduled for 9/3/01 - 11/2/01. One scoping meeting planned . NOI expected 9/3/01.	Action: "NMFS is considering the need to revise EFH designations for groundfish and scallops based upon any available new scientific information, and is considering potential designations of Habitat areas of Particular Concern." "NMFS will consider a range of alternatives to minimize adverse effects of fishing activities on EFH." Quotes from scoping document available at: http://www.nmfs.noaa.gov/habitat/habitatprotection/scoping_document.htm For additional information see: Federal Register/Vol. 66, No. 22/Thursday, February 1, 2001/Proposed Rules and Federal Register/Vol. 66, No. 43/Monday, March 5, 2001/Proposed Rules

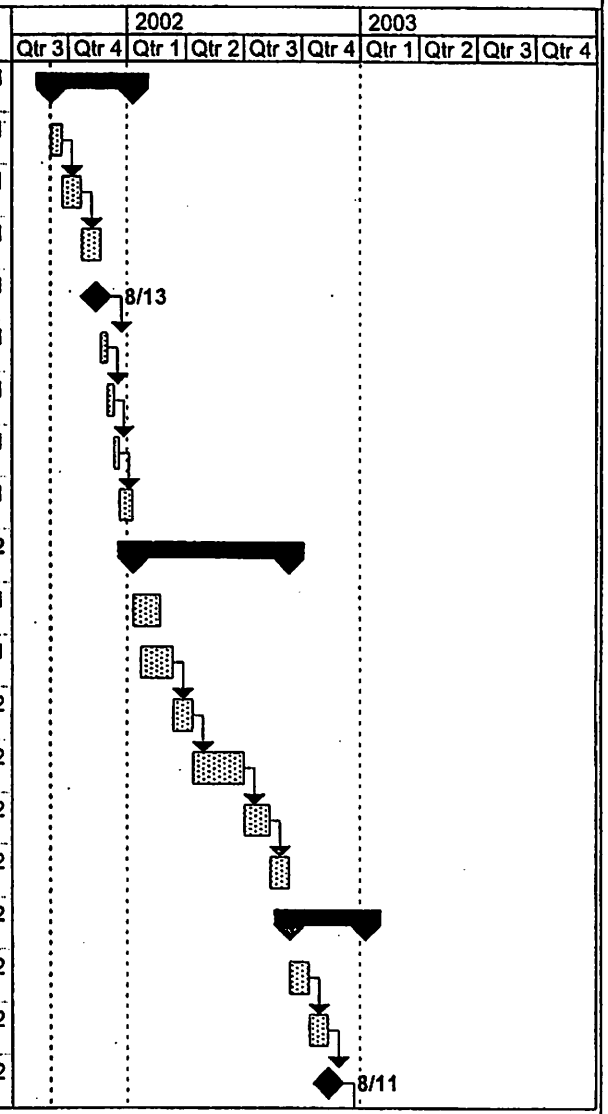
Attachment A

Southeast Region/Caribbean Fishery Management Council (CFMC)	One SEIS to address EFH for all species . EFH Generic Amendment Caribbean Council preparing SEIS.	FMPs for Spiney lobster; shallow water reef fish; coral and reef associated invertebrates; and Queen conch.	Comments accepted through June 27, 2001. 10 scoping meetings held in June, 2001. NOI published March 19, 2001. Meeting notice published June 4, 2001.	"The SEIS would evaluate alternatives to the designation of EFH and habitat areas of particular concern (HAPCs) for the fisheries and fishery resources under the Council's jurisdiction." "The SEIS also would evaluate the environmental impacts associated with such EFH and HAPC designations and with measures needed to mitigate impacts related to both fishing and non-fishing activities." Quotes from: Federal Register/Vol. 66, No. 53/Monday, March 19, 2001/Notices
Southeast Region /Gulf of Mexico Eishery Management Council (GMFMC)	One SEIS to address EFH for all species. EFH Generic Amendment Gulf of Mexico Council preparing SEIS.	FMPs for Coral reef resources; coastal migratory pelagics; red drum; reef fish; spiny lobster; and stone crab.	Comments accepted through June 30, 2001. 7 scoping meetings held in June 2001. NOI published March 19, 2001. Meeting Notice published June 8, 2001.	"The SEIS would evaluate alternatives to the designation of EFH and habitat areas of particular concern (HAPCs) for the fisheries and fishery resources under the Council's jurisdiction." "The SEIS also would evaluate the environmental impacts associated with such EFH and HAPC designations and with measures needed to mitigate impacts related to both fishing and non-fishing activities." Quotes from: Federal Register/Vol. 66, No. 53/Monday, March 19, 2001/Notices
Northwest Region / Pacific Fishery Management Council (PFMC)	Comprehensive EIS for the groundfish fishery to assess the impacts of Federal management of the Pacific Coast groundfish fishery on the human environment. NMFS preparing EIS.	82 species managed under the Pacific Coast Groundfish FMP	Comments accepted through June 30, 2001. Five scoping meetings held in May and June, 2001. NOI published April 10, 2001	"The scope of the EIS will include issues related to the conduct of the fishery, including the effects of the groundfish fishery on essential fish habitat (EFH)." Quote from: Federal Register/Vol. 66, No. 69/Tuesday, April 10, 2001/Proposed Rules

Alaska Region/ North Pacific Fishery Management Council (NPFMC)	Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Groundfish of the Gulf of Alaska; Bering Sea/Aleutian Islands King and Tanner Crabs; Scallop Fishery Off Alaska; and Salmon Fisheries in the EEZ Off Alaska One SEIS or multiple SEISs will be prepared. NMFS preparing SEIS(s).	Pollock, Pacific cod, Greenland turbot, arrowtooth flounder; yellowfin, rock, rex and flathead sole; other, shallow and deep water flatfish, sablefish, Pacific ocean perch; northern, shortraker, rougheye, thronyhead, yelloweye, and pelagic shelf rockfish, Atka mackerel; other species, squid, sculpins, skates, sharks, octopus; forage fish species, smelts and other forage fish; blue, red, golden and scarlet king crab; tanner, snow, grooved and triangle crab; chinook, chum, coho, pink, and sockeye salmon; weathervane, pink, spiny and rock scallops	Comments accepted through July 21, 2001. Seven scoping meetings held in June, 2001. NOI published June 6, 2001.	The proposed action to be addressed in the SEIS is the development of the mandatory EFH provisions of the affected FMPs as described in section 303(a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and based on the guidance in 50 CFR part 600 subpart J. The following three types of actions will be specifically analyzed: (1) Identify and describe EFH for managed species; (2) identify HAPCs within EFH; and (3) minimize, to the extent practicable, adverse effects on EFH caused by fishing. The scope of the new SEIS will cover all the required EFH components of FMPs. Quotes from: Federal Register/Vol. 66, No. 109/Wednesday, June 6, 2001/Proposed Rules
F/HC, NMFS Headquarters Office of Habitat Conservation	Coordination and oversight of the NEPA process for all five Councils Jon Kurland, Program Manager			

NMFS Alaska Region
Draft Timeline - EFH EIS

ID	Task Name	Duration	Start	Finish
1	**Scoping**	**129 days**	**Mon 6/4/01**	**Wed 10/10/01**
2	Publish NOI and Hold Scoping Meetings	18 days	Mon 6/4/01	Thu 6/21/01
3	Public Comment Period	30 days	Fri 6/22/01	Sat 7/21/01
4	Prepare Preliminary Draft Scoping Summary Report	30 days	Sun 7/22/01	Mon 8/20/01
5	NPFMC EFH Steering Committee Review of PDSSR	2 days	Mon 8/13/01	Tue 8/14/01
6	Review of PDSSR: HQ;Region;NPFMC	10 days	Tue 8/21/01	Thu 8/30/01
7	Prepare Draft Scoping Summary Report	11 days	Fri 8/31/01	Mon 9/10/01
8	NMFMC EFH Steering Committee review of DSSR	8 days	Tue 9/11/01	Tue 9/18/01
9	Public Review of DSSR	22 days	Wed 9/19/01	Wed 10/10/01
10	**Prepare Preliminary Draft EIS**	**243 days**	**Thu 10/11/01**	**Tue 6/11/02**
11	Develop Premilinary Draft Alternatives	42 days	Thu 10/11/01	Wed 11/21/01
12	NPFMC and Public Comment on Preliminary Draft Alternatives	51 days	Mon 10/22/01	Tue 12/11/01
13	Finalize Draft Alternatives and Work Assignments	31 days	Wed 12/12/01	Fri 1/11/02
14	Do Analysis and Write Draft Sections	79 days	Sat 1/12/02	Mon 4/1/02
15	Compile, Print & Distribute PDEIS for Internal and Council Review	40 days	Tue 4/2/02	Sat 5/11/02
16	Review of Preliminary DEIS by Agencies and NPFMC	31 days	Sun 5/12/02	Tue 6/11/02
17	**Prepare Draft EIS**	**121 days**	**Wed 6/12/02**	**Thu 10/10/02**
18	Review and Incorporate Agencies and NPFMC Comments	31 days	Wed 6/12/02	Fri 7/12/02
19	DEIS to GSA for Printing	30 days	Sat 7/13/02	Sun 8/11/02
20	DEIS Complete	0 days	Sun 8/11/02	Sun 8/11/02



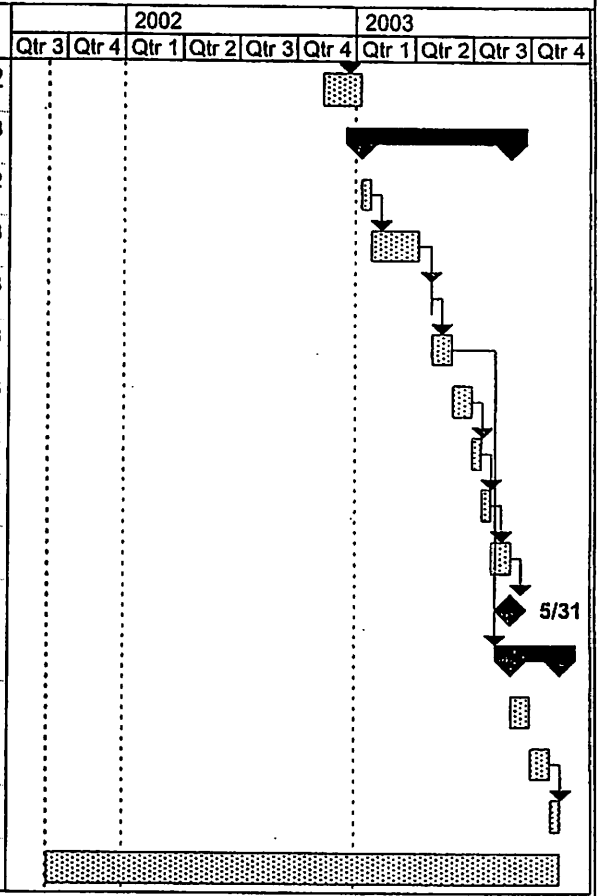
Project: cindy's dates
Date: Fri 6/1/01

Task
Split
Progress
Milestone
Summary
Rolled Up Task
Rolled Up Split
Rolled Up Milestone
Rolled Up Progress
External Tasks
Project Summary

NOTE: Broken into Quaters per FY Starting Oct 01

NMFS Alaska Region
Draft Timeline - EFH EIS

ID	Task Name	Duration	Start	Finish
21	DEIS Public Comment Period and Hearings	60 days	Mon 8/12/02	Thu 10/10/02
22	**Final EIS**	**233 days**	**Fri 10/11/02**	**Sat 5/31/03**
23	Consolidate and Assign DEIS Comments to Staff	15 days	Fri 10/11/02	Fri 10/25/02
24	Integrate Response and Prepare Draft FEIS	74 days	Sat 10/26/02	Tue 1/7/03
25	Prepare Response to Comments	1 day	Mon 1/27/03	Mon 1/27/03
26	Agency/Council Internal Review Period	32 days	Tue 1/28/03	Fri 2/28/03
27	Assemble Comments and Revise Draft FEIS	31 days	Sat 3/1/03	Mon 3/31/03
28	Final Agency/Council Review of Draft FEIS	15 days	Tue 4/1/03	Tue 4/15/03
29	Incorporate Final Comments	15 days	Wed 4/16/03	Wed 4/30/03
30	FEIS to GSA for Printing	31 days	Thu 5/1/03	Sat 5/31/03
31	FEIS Out	0 days	Sat 5/31/03	Sat 5/31/03
32	**Review and ROD**	**76 days**	**Sun 6/1/03**	**Fri 8/15/03**
33	Public Review of FEIS	30 days	Sun 6/1/03	Mon 6/30/03
34	Review Final Comments	31 days	Tue 7/1/03	Thu 7/31/03
35	Develop and Issue ROD	15 days	Fri 8/1/03	Fri 8/15/03
36	Total EIS Timeline	802 days	Mon 6/4/01	Fri 8/15/03



Project: cindy's dates
Date: Fri 6/1/01

Task
Split
Progress
Milestone
Summary
Rolled Up Task
Rolled Up Split
Rolled Up Milestone
Rolled Up Progress
External Tasks
Project Summary

NOTE: Broken into Quaters per FY Starting Oct 01

DRAFT

SCOPING SUMMARY REPORT

ESSENTIAL FISH HABITAT ENVIRONMENTAL IMPACT STATEMENT

September 26, 2001

Lead Agency: National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Alaska Region
Juneau, Alaska

Responsible Official: James W. Balsiger
Regional Administrator

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1.0 DESCRIPTION AND BACKGROUND OF THE PROPOSED ACTION

Amendments to the Magnuson-Stevens Act in 1996 set forth new mandates for NMFS and Regional Fishery Management Councils (Regional Councils) to identify and protect important marine and anadromous fish habitat. The Regional Councils, with assistance from NMFS, were required to delineate EFH for all managed species. EFH is defined in the Magnuson-Stevens Act as "...those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." In response to the amended Magnuson-Stevens Act and based on guidelines for the EFH contents of FMPs (50 CFR part 600 subpart J), the North Pacific Fishery Management Council (Council) completed preparation of the following five EFH FMP amendments in 1998: Amendment 55 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Amendment 55 to the FMP for Groundfish of the Gulf of Alaska; Amendment 8 to the FMP for the King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands; Amendment 5 to the FMP for Scallop Fisheries Off Alaska; and Amendment 5 to the FMP for the Salmon Fisheries in the EEZ Off the Coast of Alaska (Amendments 55/55/8/5/5). These EFH FMP amendments were reviewed and approved by the Secretary of Commerce and took effect on January 20, 1999 (64 FR 20216). These FMP amendments identified EFH for over 130 managed species.

1.1 Purpose and Need for the Action

In June 1999, several environmental and fishing groups challenged the scope and substance of the environmental assessment (EA) prepared for Amendments 55/55/8/5/5 (American Oceans Campaign et al. v. Daley, Civ. No. 99-982 (D.D.C.)). On September 14, 2000, the U.S. District Court issued an opinion finding the EA insufficient in scope and analytical substance and requiring NMFS to prepare an analysis that is legally sufficient under NEPA. Therefore, NMFS is re-evaluating the EFH components originally developed as part of Amendments 55/55/8/5/5. This SEIS will supersede the EA previously prepared in support of Amendments 55/55/8/5/5.

The proposed action(s) to be addressed in the SEIS is the development of the mandatory EFH provisions of the affected FMPs as described in section 303(a)(7) of the Magnuson-Stevens Act and based on the guidance in 50 CFR part 600 subpart J. The following three types of actions will be specifically analyzed: (1) Identify and describe EFH for managed species; (2) identify HAPCs within EFH; and (3) minimize, to the extent practicable, adverse effects on EFH caused by fishing. The scope of the new SEIS will cover all of the required EFH components of FMPs.

2.0 PUBLIC SCOPING MEETINGS

A principal objective of the scoping and public involvement process is to identify a reasonable range of management alternatives that, with adequate analysis, will delineate critical issues and provide a clear basis for both distinguishing between those alternatives and selecting a preferred alternative.

The public scoping meeting were held as follows:

Monday, June 4, 2001, from 7-9 p.m., at the Fishery Industrial Technology Center, 118 Trident Way, Kodiak, AK.

Friday, June 8, 2001 - Unalaska - City Hall, Council Chambers, 245 Raven Way, 4 to 8 p.m., Unalaska, AK;

Monday, June 11, 2001 - Anchorage - Z. J. Loussac Library, public conference room, level 1, 3600 Denali Street, 2:30 to 6:30 p.m., Anchorage, AK;

Tuesday, June 19, 2001 - Seattle - Alaska Fisheries Science Center, room 2079, 7600 Sand Point Way NE, 1:30 to 5:30 p.m., Seattle, WA;

Wednesday, June 20, 2001 - Juneau - Federal Building, room 445, 709 W. 9th Street, 2 to 5:30 p.m. and Centennial Hall Convention Center, Egan Room, 101 Egan Drive, 7 to 9 p.m., Juneau, AK; and

Thursday, June 21, 2001 - Sitka - Harrigan Centennial Hall, Maksoutoff Room, 330 Harbor Drive, 2 to 5:30 and 7 to 9 p.m., Sitka, AK.

2.1 EIS Scoping-Other Government Involvement

NMFS will work with the North Pacific Fishery Management Council (NPFMC) throughout the development of the SEIS. The Council has formed an EFH EIS Committee that will help keep the Council an integral part of the NEPA process for EFH (SEE 3.0). Council staff will assist in the development of the SEIS. The public will be able to provide oral and written comments on EFH at Council meetings.

3.0 SUMMARY OF COMMENTS AND ISSUES ADDRESSED IN WRITTEN COMMENTS RECEIVED DURING SCOPING ON THE EFH EIS

On August 23-24, the EFH EIS Committee of the NPFMC met to analyze and review the comments received on the scoping process for developing alternatives for the determination of EFH and the effects of fishing analyses on EFH. The Committee reviewed all the comments received and identified the key issues raised in each of the comments. In some cases the committee made a call as to whether they thought the issue was significant (Y/N). Generally if an issue led to an alternative it was considered significant. Unfortunately there was insufficient time to complete the process of determination of significance. The committee pulled all of the relevant public comment out of the comment letters and planned to have a later meeting to finalize which issues they thought were significant from the committees perspective and which issues they would recommend in determining the range of alternatives for the analysis. See August Minutes of the NPFMC EFH Committee for more details.

The comments generally focused on one or more of each of the three following areas: comments and significant issues regarding the identification and description or characterization of EFH (Section 3.1); comments on measures or alternatives to be considered on, the effects of fishing on EFH and measures to be taken to protect EFH (Section 3.2); and comments and significant issues on the process by which NMFS is reconsidering EFH and conducting a NEPA analyses to examine the effects of fishing on EFH (Section 3.3).

Under each of these three broad categories there were general comments and many significant issues raised that need to be considered as NMFS and the NPFMC re-examine EFH and the effects of fishing on EFH. These significant issues can be identified in the following text as the indented paragraphs which begin with a bullet. When several comments or significant issues were identified under one topic area, they were grouped together under a bolded subheading. For example, many commenters stated that EFH is too broadly defined or provided a comment to this effect and remarked how the definition should be re-focused or more narrowly characterized. As a result, this topic is the first subheading under Section 4.2.1 "Comments and Significant Issues Regarding the Identification and Description or Characterization of EFH." At least eight comments or significant issues were identified on this topic. At least one statement was made on this issue in nearly 50 percent of the comments received. Each of the eight significant issues are broken out into individual "bullets" under this subheading. Also, there were many instances where a significant issue might be appropriate under more than one of the three major categories of comments received. For example redefining EFH more narrowly to comport with the definition of HAPCs might also be considered a method in which to minimize the effects of fishing on EFH, as well as a method to redefine EFH. In all cases, a comment/issue was placed under only one subheading. Otherwise, we would end up with a duplication of comments throughout the report. In the specific case of HAPCs, there is one subheading in Section 4.2.2 that focuses on comments received regarding HAPCs. Comments and issues are only identified in this Draft Summary Scoping Report. They are not responded to at this time.

3.1 COMMENTS AND ISSUES REGARDING THE IDENTIFICATION AND DESCRIPTION, AND CHARACTERIZATION, OF ESSENTIAL FISH HABITAT

General Comments Under this Subheading

- Several commenters believed that the designation and protection of Essential Fish Habitat (EFH) should be focused on promoting ecosystem health and enhancing sustainable fisheries. They believed that these two objectives are fundamental to the Magnuson-Stevens Act, and specific to the EFH provisions of the Sustainable Fisheries Act.

- Several commenters referred back to the Amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) in 1996. They continued by recognizing the integral link between habitat, healthy fish populations and sustainable fisheries, Congress defined EFH as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." In addition to laying the congressional framework for EFH, the MSA also mandates that the regional councils take action to ensure the conservation and enhancement of essential fish habitat. They further stated that the EIS must advance the designation of EFH as well as examine options to minimize the deleterious effects of fishing on EFH

- Many commenters agreed that the SEIS should also include existing information on habitat types in the North Pacific and Bering Sea, gear impact assessments from published literature, the status of ecosystem health in various Gulf, Bering Sea and Aleutian Island regions, and socioeconomic data on industry sectors and fishing communities

- Several commenters believed the support and enhancement of sustainable fisheries and the promotion of ecosystem health should be fundamental to the EFH process. They further stated that the Agency [NMFS] should focus on identifying a broad range of alternatives for protecting habitat, determining the need for additional fishing restrictions by evaluating the health and diversity of the surrounding ecosystem. The EIS for EFH should incorporate all existing information on habitat types and fishing gear habitat impacts (differentiating between various gear types and including information from the Groundfish PSEIS). Additionally, the EIS management alternatives should be designed to accomplish specific objectives with a meaningful resolution of scale and a at minimum cost to the industry. Finally, they continued to support the active involvement of fishermen and fishery managers in the HAPC/EFH process to ensure management actions are well informed by local knowledge.

- Some commenters specifically favored a stakeholder process whereby local input was provided throughout the development of the EIS.

- Other commenters supported an ecosytem approach to the designation of EFH ,to further the scientific knowledge of managed fish species, benthic and pelagic habitats, and their ecological relationships.

- The precautionary principle was mentioned many times. Most commenters indicated that NMFS must evaluate the effects of fishing on habitat, and take precautionary measures to protect sensitive habitat areas. They further stated that NMFS should move beyond single species management by looking at whole ecological marine communities and their long-term benefits for productive and diverse fisheries.

- Many commenters thought NMFS should consider a management approach that uses tools such as MPAs, HAPCs, gear conversion, and spatial and temporal fishing closures in conjunction with good science and community input.

The EFH Definition is Too Broad

- Many commenters believed that the criteria for designation of EFH is overly broad. They recommended that whatever criteria is used for designation of EFH, that recognition be given to habitat that plays a "truly essential" role to fish populations and that sufficient scientific justification exists to allow meaningful analysis.

- One commenter believed that the most important issue is the definition of EFH and urged the agency to adopt a definition of EFH that can be applied to specific geographic locations that are critical to the survival and reproduction of a target species

- There were several concerns regarding modifications or "working definitions" to the current definition of EFH: Recognizing the broad language in the section of the Magnuson-Stevens Act that defines EFH, the commenters stated that there will undoubtedly be consideration of the establishment of a working definition of EFH. This was, in part, already attempted when the Council and NMFS developed a plan amendment to consider protection for certain areas referred to as "habitat areas of particular concern" (hereafter HAPC). While there may be a legitimate need to create a working definition of EFH and some of the existing work on HAPC may be useful, we are concerned that proceeding down this path is not without significant pitfalls that should be recognized up front. While impractical to some extent, the current broad definition of EFH accurately reflects the lack of scientific data and information of how fish use habitat and how to prioritize habitat types and features in terms of meaningful concepts such as productivity etc.

- Given the existing Magnuson-Stevens Act definition of EFH, many commenters indicated that it is difficult to dismiss any marine habitat from the EFH designation. They continued that "quite likely, every part of the ocean contributes to the "spawning, rearing, or feeding" of marine fish species". They further stated that clearly other strategies for

designating EFH could be entertained (such as a habitat-based, rather than fishery-based approach), but the actual designation seems less important than the management decisions made in response to the designation.

- Several commenters indicated that given the broad interpretation of EFH by NMFS, i.e, If all habitat is considered "essential," then further criteria must be developed to discriminate between various habitat types in order to dictate appropriate management strategies. Although this level of discrimination may be more appropriate at the HAPC level, considering habitat categories as an alternative to the existing EFH designation could provide a useful exercise and result in a more meaningful use of the EFH term.

- It should be re-emphasized that many commenters focused on the issue of limiting EFH to those areas that are "truly essential" to fish stocks and to activities that directly affect marine or estuarine environments within the purview of the FMPs. Land based development, wetlands dredge and fill permits, upstream discharges governed by the Clean Water Act and all other non-marine and estuarine activities should be excluded from NMFS review. These commenters further stated that this program was intended by Congress to be a streamlined, voluntary, information-sharing process focused only on the most important fish habitat. Instead, it has evolved into a confusing, prescriptive regulatory program that encompasses all marine, coastal, estuarine and significant inland waters.

- Similarly, one commenter stated that each alternative should include explanations of why each area has been identified as EFH. This would include a detailed evaluation of marine habitat within the Exclusive Economic Zone to see if it meets a test of being truly essential.

- Several other commenters stated that the designation of EFH should include the identification of all managed species' general distribution and core habitat areas.

- Several commenters stated that in the identification of EFH, areas should be ranked according to importance and priority [for protection]. However, these areas should not be exceed 20 percent of the fishing grounds.

EFH Should Focus on Marine Habitats Only

- Many commenters representing non-fishing concerns stated that the SEIS must identify and describe EFH through specific criteria that limits its extent to offshore marine or estuarine environments that are truly essential for fish. (The interim final regulations consider all habitat capable of sustaining fish as EFH, including inland waters far from the ocean.). They further stated that the EIS must identify and describe EFH through specific criteria that limits the extent of the program to marine or estuarine environments within the Exclusive Economic Zone. An overly broad approach on EFH unnecessarily

impacts a wide range of fishing and nonfishing entities and activities with NMFS consultation.

Do Not Rely Soley on CPUE Data as Designation Criteria

- Many comments focused on the sole use of CPUE data to identify EFH. Generally, they agreed with the comments of the SSC [June 2001, NPFMC meeting] that "using fishery dependent CPUE data to define which habitats constitute EFH is inappropriate because areas of high CPUE may reflect regulations, availability, fishable bottom, temporary aggregations, etc. rather than habitat critical to particular life stages." The commenters concurred with the SSC that "technical and scientific expertise is needed in developing new concepts for defining EFH and defining what habitats are essential to each species and in determining the effects of fishing on these habitats, including effects of gear types other than bottom trawls."

Alternatives for Designating EFH and Mitigating Impacts Should be Non-Allocative

- Several commenters indicated that only non-allocative alternatives should be considered. They further stated that there is a very public effort by some to favor some fishing gears over others. The commenters believed that alternatives should be designed to minimize reallocative gains to existing participants. The most effective and fair way to accomplish this is to consider reallocation in the context of a rights-based fishery where an individual's historical catch rights would be retained, and would be able to be fished by vessels with allowable gear. This would make consideration of alternatives more allocation-neutral and would allow for fair treatment for those forced to exit or reduce participation in the fishery because of gear specific closures.

- Another comment also emphasized that only "non-allocative"alternatives should be considered when determining alternatives for minimizing impacts to EFH or for designating EFH.

- One commenter stated that 'the EFH EIS process is an open invitation to gear wars in which the industry will attempt to reallocate access to the resource through claimed environmental salubrity, real or imagined".

Status Quo EFH Description is Adequate

- One commenter supported the status-quo, NPFMC approach in designating EFH for its groundfish species. They suggested that this is a precautionary approach that is consistent with the EFH Interim Final Rule and has been approved by NMFS. Existing EFH designations should not be significantly modified unless the best scientific information available supports such a modification. Presently, it is unclear whether NMFS and the NPFMC have obtained additional data to refine these EFH designations, consistent with

the process outlined in the EFH Interim Final Rule. They further stated that significant modification of EFH would take considerable time and resources and would divert the NPFMC from addressing the primary reason for the preparation of these SEISs - to assess the effects of fishing on fish habitat and the marine environment and identify and implement measures to minimize these effects.

- Another commenter favored the status-quo on any designation until impacts of such designation can be considered.

- A couple of commenters believed that we should remain at status quo until we have better management tools, or a research program that would direct us to a different designation of EFH from that already in place.

- Several commenters recommended a range of alternatives based on a different interpretation on the scientific baseline about what is known about trawling and the applicability of existing information to the trawl fisheries off Alaska than the one used for Section 3.2 of the draft groundfish PSEIS. We [commenters] feel that there is no deficiency in the status quo measures to protect EFH off Alaska.

- Another commenter took a different approach and disagreed with previous commenters on "status quo" stating that "in the past [i.e., status quo], NMFS and the NPFMC have not taken a precautionary approach in its management of these fisheries toward protection of the marine environment or the protection of fish habitat. Instead, both NMFS and the NPFMC have repeatedly delayed taking anticipatory conservation action claiming inadequate science of a casual relationship between fishing practices, habitat damage or destruction, and effects on a commercially-managed fish species." The commenter continued further by stating that the NPFMC and NMFS failed to properly analyze and fully disclose known and predictable enviornmental effects of proposed actions and reasonsable alternatives, in both required environmental analyses under NEPA or in FMP amendments. Rarely, has NMFS or the NPFMC properly considered or implemented measures for the primary purpose of habitat protection. They further stated that management measures, like harvest incentives to low-impact gears, gear modifications to reduce the ability of gears to access sensitive habitats, and area-based gear management to protect important habitats from other gears, seem intuitiative, but, as of yet, still remain to be implemented. Such an approach, combined with the present policy of allowing fishing to occur throughout state and federal waters (with the exception of effort and bycatch limitations), is the anthesis of precautionary and poses a serious risk to EFH and the marine environment.

Ecosystem Approach to Designating and Identifying EFH

- Many commenters favored and advocated an ecosystem approach to designating and identifying EFH. One commenter recommended that NMFS examine the document

entitled "Ecoregion-Based Conservation in the Bering Sea: Identifying Important Areas for Biodiversity Conservation." and consider protecting the areas considered in that document as unique ecoregions within the region.

- These commenters continued by stating their belief that humans need to be included in the Ecosystem Formula: Genuine ecosystem-based management must incorporate people as a legitimate part of the ecosystem. As required under NEPA, the environmental impacts on the "relationship" of humans to the resource must be included in the environmental impact assessment. Neither NMFS nor the NPFMC may simply ignore issues such as sustained participation of fishing communities or the goal of achieving optimal yield. After all, one of the purposes of the M-S Act's conservation mandate is to sustain long-term harvests of fisheries resources. The commenter(s) support the inclusion of the "human relationship to the resource" as part of the environmental impact assessment

- Several comments focused on ecosystem "links" and the protection of food webs. One commenter stated that "sealions are linked to a stable and growing herring stock. All efforts must be quickly organized to sustain and enhance this vital link of the ocean ecosystem". NMFS assumes that the comment supports the analyses of a ecosystem-food web approach to protecting EFH.

- Several commenters generally did not support the inclusion of alternatives that, on their face, do not seek to minimize the potential adverse effects on the human relationship to the resource as required under NEPA and the Magnuson Stevens Act. They further stated that alternatives that do not meet this test are a waste of time for both the analysts and the public.

- Many commenters favored an ecosystem approach to defining EFH that identified habitat associations, species distribution and ecosystem mechanics, accounting for the species' various life stages and habitat requirements for reproduction, growth, dispersal, adult distribution, and trophic interactions. However, they recognized that, in many cases, present scientific knowledge is not advanced enough to detail all these components. This is not a minimum standard to ascertain before EFH is designated, but a goal to strive toward. It is necessary to further biological research while using the best current information to identify EFH. As the scientific understanding of habitat associations and species distributions progresses, EFH can be reassessed

Zero-Risk Approach to Designating and Managing Effects of Fisheries on EFH

- Several commenters did not support a zero-risk approach to designating EFH or to fisheries management. They stated that under that approach, the burden of proof would shift to the fisheries management system to prove that fishing activities do not have adverse impacts on the resource or the ecosystem before they could be authorized.

3.2 COMMENTS ON MEASURES OR ALTERNATIVES TO BE CONSIDERED TO PROTECT ESSENTIAL FISH HABITAT

General Comments

- Several comments focused on general Recommendations for a gear impacts assessment on EFH.stating that the Magnuson-Stevens Act and the EFH Interim Final Rule require that fishery management councils and NMFS minimize adverse effects on EFH from fishing activities to the extent practicable. The commenter stated that according to the EFH Interim Final Rule, "adverse effect" means "any impact which reduces quality and/or quantity of EFH. Adverse effects may include direct (e.g. contamination or physical disruption), indirect (e.g. loss of prey, or reduction in species fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions." They continued that it states that "fishing activities that adversely affect EFH may include "physical, chemical, or biological alterations of the substrate, and loss of, or injury to, benthic organisms, prey species and their habitat, and other components of the ecosystem.". The commenter concluded by stating that the Councils should minimize adverse effects if there is evidence that a fishing practice is having an identifiable adverse effect on the EFH.

- One commenter stated that "In no way will an EFH assessment alone address the requirements of NEPA, as NEPA requires a much broader analysis of the effects of fishing on the marine environment." Consistent with these requirements, the commenters "urged" NMFS and the NEFMC to include a full analysis of the effects of fishing on EFH and the environment and not rely heavily on prior EFH analyses and NEPA analyses. Prior environmental and EFH analyses are inadequate. This assessment must include a full and objective analysis of both environmental and EFH impacts for each gear used in these fisheries and must be based on the best scientific information available. Most importantly, the analysis should focus mainly on applying existing scientific data to predict the short and long-term effects of each fishing gear on each designated EFH in the affected area of each fishery. Where data is limited, the SEIS must evaluate whether that information can be obtained, and how long it may take to obtain necessary information. More importantly, the SEIS must evaluate the risk of environmental harm caused by continuing existing fishing practices until that information is available.

Effects of Specific Gear Types on EFH, Gear Conversion or Modification and Gear Incentives as Means to Minimize Effects of Gear on EFH

- Several commenters focused on gear modification or conversion as a means to to reduce effects of gears to habitat. They suggested that rockhopper and roller maximum diameter size restrictions be evaluated by NMFS and the NPFMC, and a maximum diameter size

limit on rockhopper and roller gear in the groundfisheries be implemented for the purpose of preventing trawling in the most complex habitats.

- Parallel components to the identification of EFH are research of the effects of fishing gear on habitat and mitigation of those effects in sensitive habitat areas. Several comments focused on the mitigation of the effects of fishing gear. They stated that this should include habitat restoration and protection but emphasized that habitat protection does not require a prohibition on all fishing. Rather, it means a prohibition or modification of fishing practices that harm essential fish habitats

- Several comments suggested that once EFH and HAPCs are identified, steps should be taken to protect these sites from damaging fishing practices. In areas identified to exhibit ecosystem stress or direct and lasting damage to EFH from fishing practices, measures must be taken to alleviate these effects. Alternatives to consider for the protection of EFH are: Status quo or no net increase in fishing effort, Gear Modification, Gear Restrictions/ Allocations to promote gear conversion, Closures to all or a significant amount of bottom fishing (for the protection of benthic habitat), or Full Area Closures (for the protection of pelagic and benthic habitats)

- One commenter referenced Alternative 5 in the DPSEIS which focuses explicitly on reducing the adverse effects of bottom trawling on benthic habitats through the use of area restrictions, gear allocations, gear restrictions, and gear modifications. The DPSEIS predicts dramatic declines in the catch of coral and sponges under Alternative 5 but an increase in the catch of anemones, sea pens and sea whips, due primarily to an increased effort by the use of longline gear (DPSEIS 4.7-14: 4.7- 24).

- One commenter recommended that NMFS develop an alternative in the EFH EIS, similar to Alternative 5 in the DPSEIS, should weigh the potential benefits of increasing gear conversion to pots. This may alleviate some unintended increases of the bycatch of HAPC biota as predicted with longline gear. They stated that a shift to pelagic trawls may alleviate damage to benthic habitats, but it is important to consider that pelagic trawls often contact the seafloor, damaging habitat with dragging footropes. They also stated that unobserved habitat damage and species mortality needs to be considered when assessing gear impacts. For example, gear impact analysis should evaluate; practices that reduce habitat complexity, unobserved mortality of both commercially viable species and other marine life valuable to the ecosystem, and damage to habitat and epifaunal species from sediment suspension and distribution

- Several commenters recognized that it is important to delineate between various gear types and intensity of effort. This includes consideration of the degrees of impact within a gear type (fishing methods and gear modifications) and the impact between different gear types, from jigs and trolling to bottom trawling and dredging. It was suggested by several commenters that some habitat areas cannot sustain healthy fish populations with certain fishing practices and intensities, but can sustain gear types that have less impact

- One comment was particularly concerned about the adverse effects of mobile gear on sea floor habitats and stated that the effects of bottom trawling include direct damage to sensitive habitat areas by crushing corals and sponges, overturning boulders, or suspending sediments, toxins, and nutrients into the water column by plowing and scraping the sea floor They stated that the protection of EFH from fishing impacts must consider the direct and indirect impacts on marine communities by both benthic and pelagic trawls.

- One comment stated that we should analyze the impact that foreign longlining and trawling had on all identified EFH and HAPC in the GOA and BSAI.

- Several comments stated that trawl fleet need to be reduced and more controlled. The comment(s) targeted a reduction of the larger, more powerful vessels.

- One comment focused on crab populations stating that it is important to recognize that major crab populations in the Bering Sea and Gulf of Alaska have collapsed (red king crab, bairdi tanner, and opilio crab). Therefore, the EFH EIS must look closely at the effects of bottom trawling on crab habitat. The commenter continued on by stating that the Bristol Bay Pot Sanctuary was closed to trawling from 1959 until the early 1980's. This Sanctuary protected important habitat for red king crab as well as halibut. The development of the domestic trawl fleet for cod and other bottomfish may have played a role in the inability of red king crab to recover to precollapse levels. The EFH EIS must look at nearterm, longterm, direct, indirect, and cumulative effects of bottom trawling on crab habitat.

- Another commenter stated that both fisheries [groundfish fisheries] continue to predominately rely on bottom-tending mobile gears that dramatically disturb and alter tens of thousands of square natuical miles of seafloor habitats annually off the coast of Alaska. Certain EFH, like Pacific cod EFH and rockfish EFH, are clearly being adversely affected. Allowing such fishing practices throughout Federal and state waters exposes many other EFH to adverse effects by these fishing practices. This commenter continued by stating that "as required by both NEPA and the Magnuson-Stevens Act, NMFS must identify a full range of alternatives to miniminze the effects of these fisheries on EFH and the environment. NMFS and the NPFMC must identify and implement a full range of measures to sufficiently protect EFH from the effects of fishing gears.

- One commenter focused on harvest incentives for low-impact gear use emphasizing the distinction between mobile gears (high impact) and fixed gears (less impact). They believe that NMFS and the NPFMC must reexamine its dependence on bottom-tending mobile gears and utilize existing fishing practices that have low-impacts to EFH and the environment. For species, like rockfish and Pacific cod, where fixed fishing gear is an alternative to bottom-tending mobile gear, trawl gear should be prohibited from targeting

those species. In cases where there are no alternatives to using trawl gear, trawl gear must not be permitted to use rockhopper gear or large roller gear, or chafing gear, as these gear modifications allow trawlers to target, and destroy, important complex habitats. The commenter also believed that the NPFMC should analyze the use of incentives such as allowing exemptions in sensitive habitat areas if a particular fishing practice or gear type is shown not to be detrimental to habitat. Further, the Council should create incentives for fishermen to voluntarily switch from habitat-disrupting gears to more low-impact gears, such as hook and line and pots

- Other commenters also recommended a conversion from bottom trawling to lower impact gears to lessen the footprint on the ecosystem

- One commenter stated that given the size of the Bering Sea pollock fishery and importance of squid to protected marine mammals (northern fur seal, sperm whale) as well as the endangered short-tailed albatross and other non-breeding albatrosses that forage in these waters, a year-round pelagic trawl closure area would provide effective protection to squid and benefit other pollock predators who converge on these variable but predictable "hotspots" of high productivity in areas of strong, persistent upwelling over the continental slope or shelf break, at the boundaries of different water masses, at the heads of marine canyons or edges of gullies.

Habitat Areas of Particular Concern

- Many comments focused on the designation of Habitat Areas of Particular Concern (HAPCs). One commenter stated that in categorizing habitat and identifying HAPC, they believed that the following factors need to be taken into consideration: vulnerability or resilience to disturbance; ecological function; and, rarity or uniqueness. The commenter further stated that these three categories follow the HAPC guidelines currently under development by the NPFMC. Examples of each habitat type include: gorgonian corals (recognized as highly vulnerable to disturbance), the Bering Sea ice edge (an ecologically productive area critical to the productivity of a large geographic region), and the Sitka Sound Pinnacles.

- Two commenters offered opinions on approaches to managing HAPCs by stating that once an area is identified as a HAPC, management alternatives should be evaluated in the context of ecosystem health and diversity under current fishing practices. If the ecosystem within and immediately surrounding a HAPC is robust, management alternatives should be limited to status quo or a policy of no net increase in impacts (from fishing gear or other sources) until additional information indicates the need for more precautionary measures. If signs of ecosystem stress are apparent, either in targeted fish species or other ecosystem components, then alternatives should include: gear modifications (e.g., limits on pot lifts, net size and longline sets, reduced frequency of impact, prohibition of on-bottom trawling, etc.), gear zones (e.g., Alternative 5, PSEIS:

restricting high impact gear to less vulnerable habitat) and closures to all groundfish or bottom fishing. Where negative impacts of a certain gear type are known and alternative gear types are available to harvest a given species in a HAPC, management measures should mandate either an immediate or a phased-in transition to the lower impact gear.

- Several comments supported the creation of a systematic and effective HAPC designation process. They stated that it is likely that habitats exist in each region that meet at least one of the criteria for HAPC designation (1) the habitat provides an important ecological function; (2) the habitat is sensitive to human-induced environmental degradation; (3) development activities are, or will be, stressing the habitat type; or (4) the type of habitat is rare. The commenter further stated that Councils should be required to identify HAPCs in their EFH amendment or, at least, provide proposed research measures that the Council will take that are necessary to identify areas as HAPC.

- One commenter suggested that designating a habitat type as HAPC will call attention to the important properties and functions of such habitats and will also include a minimum set of protections to protect these sensitive habitat types. They continued on by stating that the NPFMC should identify HAPCs for all groundfish, even though many EFH designations remain based on Level 1 data - distribution and abundance data. They stated that one approach the NPFMC can take is to designate, as HAPCs, those areas within a species' EFH that have historically contained the highest abundance levels of a particular stock. High abundance of fish in these areas provides sufficient evidence to meet the first HAPC criteria- that these habitats provide some important ecological benefits. Such areas likely represent core range areas for a particular species and likely contain those habitat characteristics that provide maximum value for a fish species.

- One commenter supported efforts to identify and designate HAPC in a precautionary manner. Of course, adequate measures must be implemented along with the HAPC designation to ensure they actually protect the sensitive habitat within the HAPC.

- One commenter recommended that Habitat Areas of Particular Concern be used as an additional tool for the protection and designation of EFH. HAPCs are areas of EFH that require added protection from deleterious effects. They [commenter] emphasized that HAPCs are not stand-alone measures to protect habitat and species associations, but a component of a much larger area that is carefully managed for essential fish habitat and a healthy, diverse ecosystem

- One commenter emphasized that HAPCs should be subsets of the total essential habitat needed to support healthy fish populations, and not be considered all that is required for EFH.

- One commenter requested HAPC designation for the Knik area stating that proposed activities in the upper inlet pose risks greater than can be accomodated with mitigation measures.

- One commenter indicated that one "issue of concern" that needed to be brought to the attention of NMFS was the resolution of scale in designing HAPC areas and management measures appropriate to those areas. The technology exists to define habitat areas in very specific terms, outlining canyons or pinnacles where corals exist, or specific shell hash beds essential to juvenile crab. The commenter (and others) stated that they cannot accept closing twenty nautical mile blocks because a corner of that block contains coral when the technology exists to accomplish habitat protection with far less disruption to the industry. Facilitating enforcement is poor rationale for imposing unnecessary costs on the industry. HAPC areas should be designed to accomplish clearly defined habitat objectives with the least disruption to local fishing fleets.

The Use of the Precautionary Principle and Uncertainty in Habitat Management

- Many comments focused on the issue of precautionary management. One general comment indicated that fisheries managers in the North Pacific face the obstacle of uncertainty when assessing stock biomass and assigning catch limits. The use of precautionary management has generally been applied to reducing fishing mortality. Now fisheries managers must expand precautionary management to incorporate the uncertainties of managing for the ecological relationships of target species and their habitat requirements. This will entail incorporating the biological requirements of not only target species, but those of associated species as well, including upper and lower trophic animals. Precautionary habitat management should be viewed in an ecosystem context that considers species interactions, environmental changes and scientific uncertainty.

- One commenter stated that to develop a means for assessing habitat in the face of uncertainty, it will be wise to use inferential information regarding habitat value. Habitat value can be inferred from species diversity, abundance or rarity, physical structures, sediment types, depth and temperature gradients, and physical processes such as ocean currents, gyres and upwelling. EFH must be analyzed beyond presence/absence data from trawl surveys and catch data.

- One commenter stated that it is clear that a precautionary strategy for habitat management is needed as researchers study the effects of fishing on EFH. The commenter stated that "to avoid making errors that may cause long-term damage to habitat or a decline in species abundance and diversity, managers must take heightened precaution to ensure protection of habitat and species assemblages. To do this, quantitative thresholds of uncertainty should be implemented that weigh potential economic and ecological costs against present understanding of the effects of fishing on habitat and species diversity." For example, when considering a fisheries plan to allow trawling for flatfish in the Bering Sea, managers need to consider lost economic opportunities that may occur due to the break down of ecological functions of damaged habitat, or future regulations that would

limit fishing due to the decline of another target species, such as tanner crab. The impact of one fishery may adversely affect other fisheries by damaging habitat or endangering other target species.

- With regards to uncertainty, one commenter stated that determining the levels of uncertainty should not be arbitrary but have clear and quantifiable standards for assessing fishing impacts, current scientific knowledge of the target species, and knowledge of other ecosystem components that may be affected by the fishery.

- One comment stated that the NPFMC should develop a Precautionary Management Approach to protecting EFH in Groundfish Amendment 10 and Scallop Amendment 13.

- One comment stated that a precautionary management approach to protecting EFH in both groundfish fishery management plans is consistent with the prevalent themes of sustainability and risk-averse management in the Magnuson-Stevens Act in protecting EFH, preventing overfishing, and achieving optimum yield. The commenter also stated that "it is consistent with the requirements of the EFH Interim Final Rule. As NMFS has stated in its response to comments [on the Interim Final Rule}, "care should be exercised in the face of inadequate information or overfished stocks to guard against habitat losses or alterations that may prove significant to the long-term productivity of the species."

- One comment stated that a precautionary approach is also consistent with sound conservation principles adopted by the United States in its signing the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea (U.N. Agreement) relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

- One commenter stated that a precautionary approach should include the following four components: (1) preventative action to protect habiats should be taken in advance of scientific proof of casuality; (2) the proponent of an activity, rather than the public, should bear the burden of proof of showing that a fishing practice or gear will not result in environmental harm; (3) a reasonable range of alternatives, including a no-action alternative (for new activities) should be considered when there may be evidence of harm caused by an activity (required already under NEPA); and (4) for decision making to be precautionary, it must be open, informed, and democratic and must include all potentially affected parties, including indirect stakeholders. The commenter stated that such an approach has been adopted by the US and numerous individual states in their regulation of practices where data is limited as to effects on the environment.

- One commenter stated that the NPFMC should also adopt a precautionary management approach toward EFH management in both the Groundfish and Scallop FMPs.

- Several comments indicated that the precautionary approach would: (1) minimize adverse

effects to EFH and the environment via timely implementation of protective measures rather than exacerbate environmental harm by delaying necessary conservation measures; (2) reduce the risk of serious or irreversable harm to certain habitats; and (3) foster innovation among resource users which would likely lead toward less-impact fishing practices and reduced waste.

- One commenter stated that the draft groundfish PSEIS admits there is currently a lack of scientific information on the linkage between potential or observed habitat effects off Alaska and ecosystem function and fisheries productivity [Page 4.7-39 of the PSEIS states: "In conclusion, the linkage between fishing and habitat characteristics is not known with great precision for Alaskan fisheries. The absence of fish stocks below their minimum stock size thresholds (Section 4.4) implies that the status quo fishery has not had significant impacts on the productivity of stocks in the BSAI and GOA. (SEIS page 4.7-39)"]. The commenters suggests that this admission reflects the fact that there is no real evidence that there is a problem with the current measures in place to protect EFH in the North Pacific. It is undoubtedly true that all fishing gears that tend bottom somehow modify benthic habitat and in some cases the effects have been described. That some sorts of changes associated with fishing can be detected off Alaska does not mean the changes are necessarily "big" or "bad" for the ecosystem. For example, it is not clear whether the observed small differences between unfished and heavily fished areas in the Bering Sea (as cited in McConnaughey et al. 2000) are ecologically significant. Furthermore, it may ultimately be more important to estimate effect sizes and use these to determine the levels of fishing intensity that may be sustainable for a given habitat. For this reason, we are concerned about taking steps that may not be warranted. Further, we [commenters] are concerned that there is no scientifically credible way to correlate observed or hypothetical effects with the resulting potential downstream reduction in ecosystem function or fishery productivity. The commenters recommended that NMFS proceed cautiously with the process of considering changes in the existing management regime to protect EFH off Alaska. This caution is also recognized in the Magnuson Stevens Act's requirement to minimize effects of fishing on EFH "to the extent practicable." Poorly conceived measures may actually concentrate fishing effort, possibly creating problems that did not exist before. This precaution needs to be explicitly built into proposed management measures, particularly where the health of fish stocks does not suggest any deficiency in the existing habitat protections in the groundfish fisheries off Alaska. Further, if it is deemed that additional measures must be considered for implementation, experimental designs and controls should be incorporated to gain information on the efficacy of such measures, therein avoiding some of the problems encountered in dealing with the sea lion issue.

- Similarly, a commenter stated that "due to the absence of scientific research off Alaska or anywhere else, comparative studies of effects of different fishing gears on fish habitat are not available. This fact is clearly acknowledged in the draft groundfish PSEIS. Despite this, some environmental groups and a few industry groups are likely to recommend analysis of proposals based on the supposed "differential impacts" of fixed gears relative

to mobile fishing gears. If such differential impacts have not been evaluated scientifically, this analytical process needs to employ safeguards to prevent arbitrary determinations and unjustified actions. This matter is of great concern because we have observed a double standard in the draft PSEIS when it comes to application of a precautionary approach. For instance, the PSEIS proposes options to greatly restrict trawling, and much of the rationale for taking this action revolves around what may or may not be known about trawl effects. In this situation, the precautionary approach is used as an argument to impose extensive restrictions on trawling in order to be "risk averse." By comparison, the PSEIS openly admits that scientific studies of the effects of fixed gears are not available and no studies of comparative effects have ever been undertaken. Despite this, the PSEIS somewhat arbitrarily proposes options to increase fishing allocations to fixed gears with virtually no recognition of the unknowns or adherence to the need to be precautionary in face of limitations in scientific information. In consideration of available evidence, we feel that a reasonable and fair standard needs to be applied for the use of the precautionary approach regarding effects of all types of fishing gear. Given the path taken in the PSEIS, we would like to avoid making the same mistakes for this action. They further recommended that "until a better scientific foundation is available, a reasonable and fair standard of precaution should be adopted to evaluate effects of all options and all bottom tending fishing gears. Such a standard promotes fairness in this process, keeps the process focused on habitat protection rather than allocation, and is the most scientifically defensible course of action. Further, the mandate to minimize habitat effects of fishing gear to the extent practicable implies that a balance between economic and social concerns and habitat benefits must be made in the application of an approach to being precautionary. The "practicable" test is particularly important for the fisheries off Alaska because fish stocks are healthy and there is no evidence of a habitat problem."

NMFS Should Review and Analyze Existing Measures Taken to Protect Habitat

- One commenter was concerned that once productive and diverse marine habitat areas are now so altered, that the original species complex no longer exists in its former abundance. This emphasizes the need for a baseline when considering an effects analyses.

- Several commenters indicated that the North Pacific Fishery Management Council (NPFMC) has had a comprehensive policy on habitat protection since 1988, long before passage of EFH requirements. The objectives of this policy are to maintain the current quantity and productive capability of habitats and to restore and rehabilitate habitats previously degraded. Consistent with that policy the Council has taken several measures to protect habitat including measures to protect crab habitat and other habitat protections that have resulted in the year round closure of approximately 20 percent of the BSAI and GOA fishing grounds to trawling. Some of these commenters further stated that, in addition, the Council has implemented seasonal fishing restrictions to protect herring, crab and salmon, and has prohibited the commercial sale of sponges and coral and closed

the Cape Edgecomb pinnacles to all fishing.

- Another commenter re-emphasized this point by stating that several comments stated that the NPFMC, in conjunction with NMFS, has taken a number of actions over the years to protect habitat. For example, the implementation in 1998 of a no trawl zone east of 140 degrees West Longitude. The Southeast Alaska Trawl Closure was enacted 1) to protect sensitive habitat from the impact of trawling and, 2) to protect and enhance fishing opportunities for the community-based fisheries of Southeast. The commenter maintained that the health of the Southeast ecosystem and the socioeconomic health of the Southeast fisheries bear testimony to the effectiveness of this closure. A second closure to all bottom fishing on the Sitka Pinnacles was also designed to achieve a very specific objective and excluded only those gear types necessary to achieve the management objective. Of perhaps most importance was the statement that, in the above cases, the management actions were successful because they both relied on clearly defined objectives, good data, appropriate resolution of scale, involvement of local stakeholders, and differentiation between gear types. The commenter strongly recommend these guidelines be adopted by NMFS for future HAPC actions.

- One commenter stated that for purposes of mitigation [NMFS should] identify all current areas that are closed to trawling, to be analyzed [as actions already taken to protect EFH].

- Several commenters recommended that NMFS include all protective measures now in place when determining whether more measures need to be taken to protect habitat.

- One commenter suggested that existing protected areas were developed for a variety of purposes. They protect some species some of the time and by default protect some habitat types. Scientific analysis and peer review is needed to determine the extent and effectiveness of current protection.

- Another commenter, however, stated that status quo and past management efforts focused on effort reductions and protected species bycatch - not on habitat protection. While effort controls implemented during this time may have some incidental benefit to habitat, it is unlikely to expect that they "minimize EFH impacts " because existing management measures were not designed for habitat protection nor for minimizing a particular threat to habitat. The commenter continued by stating that the lack of a focused management effort to reduce impacts by fishing to habitat is seen in both fishery management plans by : (1) no comprehensive approach to protect adequate portions of all marine habitat types; (2) minimal use of area-based gear restrictions and restriction on gear modifications for the purpose of protecting fish habitat; (3) minimal use of incentives to promote low-impact fixed gears; and (4) a continued "open-ocean" policy for trawling in areas known to contain complex habitats and/or sensitive benthic megafauna like sponges and deep-sea corals; and (5) a lack of any protections to offshore marine habitats and deep-sea canyons.

- The commenter continued by stating that in passing the 1996 Sustainable Fisheries Act, Congress agreed that fishery managers must make protecting marine habitats from fishing and non-fishing activities a priority in their management of fisheries nationwide. They continued by stating that both NMFS and the NPFMC have continued to take minimal steps to protect EFH in the North Pacific from fishing practices occurring in both ground fisheries. The commenter continued to state that NMFS, therefore, must take sufficient action in both of its ground fisheries to ensure that these fisheries are managed properly to minimize their potential negative effects on EFH and the marine environment. NMFS must take an aggressive approach to protect EFH and the marine environment by implementing measures, including no-take marine reserves, area-based gear restrictions, and other gear modifications, to effectively accomplish this goal. The commenter continued by stating that the NPFMC has taken numerous actions in the past that promoted expansion of bottom trawling into areas that were previously closed prior to the 1980s. These actions, while promoting the growth of American fleets, had significant impacts to sensitive habitats, known to be essential to crab, salmon and other groundfish species. Furthermore, the NPFMC has continuously postponed taking action based on existing scientific evidence of significant disturbance to habitats by bottom-tending mobile gears with claims that more scientific research was necessary. When new technologies developed that potentially threatened marine habitats, i.e. "rockhopper gear," "chafing gear" or "rock chains," the Council took little to no action to restrict these developments

- Several commenters believed that relying solely on existing measures [measures in place] is unlikely to minimize fishing effects to EFH. They urged NMFS and the Council to identify and analyze the environmental benefits of a broad range of alternatives to minimize the effects of fishing gears on EFH.

Marine Protected Areas, Marine Reserves and Marine Refugia as a Means to Protect EFH

- One commenter stated that Marine protected areas (MPAs) are becoming increasingly mentioned as a valuable management tool to protect marine areas from damaging fishing practices, pollution or development. In addition to protecting species and habitat within the designated area, MPAs can have positive ecological effects outside of their boundaries by acting as productive nurseries and fueling species distribution at juvenile and larval life stages. Permitted activities within the MPA may also benefit from ecological conservation measures

- One comment stated that the designation of MPAs should be considered both as a means to protect EFH and HAPCs from damaging fishing practices and as a way to sustain commercial fishing. They further stated that the waters off the coast of Alaska already have a number of places that meet the definition of an MPA, which range from the Bristol Bay Red King Crab Savings Area to the large Southeast trawl closure, to the Sitka

Pinnacles and Steller sea lion critical habitat areas. With the exception of the Southeast trawl closure, current year round closures do not include a wide range of habitat types and depths necessary to protect the range of managed species. Proposed MPAs for the conservation of EFH and HAPCs should be established with explicit objectives on an appropriate scale, using the best available data

- Another commenter believed that there is strong scientific justification for protecting key EFH in a network of marine reserves. The commenter paraphrased a 1998 report to Congress [the Ecosystem Principles Advisory Panel to NMFS] recommending that fishery managers consider and evaluate the potential benefits of marine protected areas for promoting ecosystem-based management. The panel pointed out that such protected areas can range in size and degrees of protection. Prohibitions in some areas may remain in effect year round, while in others they could restrict activity only during certain times; for example, when fish are spawning

- The same commenter stated that there "is compelling scientific evidence that marine reserves conserve both biodiversity and fisheries, and could help replenish the seas" and "marine reserves work and they work fast. It is no longer a question of whether to set aside fully protected areas in the ocean, but where to establish them." They cited the results of a three-year study which underscored the effectiveness of marine reserves in protecting not only fish but also fisheries. The study found that after just two years of protection, marine reserves produced results that were both startling and consistent. Among them: Fish population densities were an average 91% higher; Biomass was 192% higher; Average size of organisms was 31% higher; and Species diversity was 23% higher; Furthermore, the size and abundance of exploited species increased in areas adjacent to the reserves because "reserves serve as natural hatcheries, replenishing populations regionally by larval spillover beyond reserve boundaries."

- One commenter recommended that NMFS establish a timely process for identification of a network of marine reserves in the Bering Sea. The same commenter stated that, unfortunately, fully protected marine reserves are often perceived by the fishing community as locking up the seas and limiting fishing opportunities. Thus, they are often vigorously resisted. They concluded, however, by stating that "Protection of EFH in a network of marine reserves will be essential to achievement of the most worthy goal in marine conservation".

- One commenter stated that the only pelagic areas in the North Pacific currently afforded some level of protection from groundfish fisheries are portions of the designated Steller sea lion at-sea foraging habitats in the Shelikof Strait and parts of the Sea lion conservation area (SCA) off the eastern Aleutian Islands. Both areas are major pollock spawning grounds. They further state that NMFS' current Programmatic Supplemental Environmental Impact Statement (PSEIS) acknowledges that existing trawl closure areas do not encompass pelagic habitats. They state that there are generally no area restrictions

in the deeper waters that encompass the outer continental shelf and upper slope of the central and western Gulf Of Alaska (GOA) and Bering Sea – Aleutian Islands.

- One commenter stated that the "Horseshoe" area near Unimak Pass, Pribilof Canyon (south of St. George Island) and Zhemchug Canyon (northwest of St. Paul Island) would make ideal pelagic MPAs. The productive upwelling zones contain shelf-break bathymetry and are major fishery target areas as well as areas of high squid bycatch. These are also foraging areas for albatross, murres, kittiwakes, puffins, auklets, etc. They further stated that the area encompassing the "Horseshoe" near Unimak Pass is also in designated Steller sea lion aquatic foraging habitat and is a major migratory route and foraging ground for many species of marine mammals and birds. Pribilof Canyon, south and west of the Pribilof Islands, is prime northern fur seal and seabird foraging habitat. They concluded by stating that pelagic protection zones would accomplish multiple goals for mammal, seabird and fish habitat conservation, and would reduce bycatch of species such as squid which occur primarily in these areas

- One commenter supported the development of Marine Wildnerness Areas. As described the commenter would support the designation of a network of marine refuges that encompass the major representative habitats found in coastal and offshore areas off the North Pacific coast. They stated that presently, no such extensive network of marine reserves exist in the North Pacific or nationwide; they are long overdue, and managers should quickly proceed to develop them in all major habitat types. Such areas are necessary for the protection of overexploited rockfish stocks, protect sensitive habitats, to protect marine diversity and regional ecosystem processes, and to act as a buffer against significant environmental damage due to commercial fishing and other fishing practices. Marine refuges can also be used for baseline areas for comparative habitat and marine diversity studies.

- One commenter cited a study that noted that concentration[s] of fishing fleets in patchy, relatively discrete areas of enhanced productivity concentrates the associated ecological impacts of fishing – e.g., localized depletion, bycatch, lost gear, discard wastes, disturbance, ship strikes. Given the persistent and predictable features of upwelling zones over shelf breaks, submarine canyons, seamounts, gullies, boundaries of water masses, etc.. Therefore, they supported creation of pelagic no-fishing marine reserves for these areas as a tool to ensure conservation of pelagic species and fishery resources.

- One commenter suggested designing artificial reefs to enhance habitat.

- One comment indicated that "the strong concordance between nekton species assemblages and water column properties provides an effective foundation for the design of large-scale dynamic MPAs defined by water column properties."

- Finally, several commenters stated that year-round closures should be considered actions

of last resort.

- Concerns were expressed in at least two comments regarding the ecosystem effects of harvesting of kelp and herring on trophic webs and prey availability, especially salmon.

The Need for Better and More Complete Observer Coverage

- One commenter stated that nearly 1,000 species are caught as bycatch in the North Pacific, many of which are poorly documented and their ecological value is poorly understood. Observer coverage could be modified to more closely monitor habitat identification. However, it is crucial to recognize that although bycatch may be a strong indicator of habitat damage, many other fishing gear effects are not observed from the deck of a ship

3.3 COMMENTS ON THE PROCESS BY WHICH NMFS IS RECONSIDERING EFH AND CONDUCTING A NEPA ANALYSIS TO EXAMINE THE EFFECTS OF FISHING ON EFH

Involve Stakeholders in the Process

- Some comments supported an active involvement of coastal community stakeholders to identify measures that have a direct economic benefit to individuals and businesses that are dependent on the fishing fleet. They further stated that community based involvement recognizes the diverse interests and high expectations of all participants, such as harvesters, processors, residents and consumers

- Hold stakeholder meetings when designating EFH

- Essential Fish Habitat regulations should encourage NPFMC to continue stakeholder meetings to identify Habitat Areas of Particular Concern. The commenter recommended that conservation efforts in localized areas involve open discussion between fisheries managers, scientists and community citizens. We [commenter] support the continuation of stakeholder meetings as described in the NPFMC discussion paper, "The Stakeholder Process and Identification of Habitat Areas of Particular Concern" (dated May 31, 2001).

- One comment stated that the SEIS should incorporate the knowledge and experience of both fishermen and local area managers, establishing a process to ensure that local stakeholders participate fully in the designation and design of management alternatives for EFH and HAPC.

Research Recommendations and The Need for An Expanded Research Effort

- Several comments simply stated that better research is needed to provide and improve stock assessments, fish habitat and behavior research.

- One commenter was also concerned with the use of survey trawls for assessing species composition and abundance. Although this sampling methodology has proven successful for determining species presence, it inadvertently damages sensitive habitats. They encouraged greater use of alternative methods to identify habitat such as research submersibles, sonar and benthic sleds

- One commenter recommended the establishment of habitat research areas. The commenter supported efforts to implement a system of habitat research areas to further our knowledge of the effects of fishing on EFH. Habitat research areas can facilitate research necessary for: (1) quantifying the value of protected areas to recovering fish stocks, (2) assessing the benefits of protected areas to fish and fisheries, (3) identifying other ecosystem functions; and (4) establishing baselines for fished and unfished areas. Habitat research areas can also provide information on recovery rates of various benthic habitats from mobile fishing gear. They cite the EFH IFR which specifically recognized the benefits of research areas and suggested that Councils consider creating such research areas to provide necessary information for habitat protection. Also, the EFH Interim Final rule recommends the creation of research closure areas and other measures to assess the effects of fishing equipment on EFH. They conclude by stating that it is essential that the environmental effects of a network of habitat research areas are fully evaluated in this proposed EIS and immediate measures are taken to implement such areas in both groundfish FMPs..

- Another stated that given that there is a lack of data for Alaska fisheries, the SEIS should include recommendations to increase scientific research/data in support of the fishery management requirements of the FCMA.

- Many general comments stated that conservation measures must be based on the best scientific information

- Other comments also supported that the SEIS should include recommendations to increase scientific research/data in support of the fishery management requirements of the Fishery Conservation and Management Act. There are a number of problems with attempting to prioritize protections for certain types of habitat without guidance from a body of scientific information to help apply systematic criteria for which types of protections to prioritize and what form protections should take. The NPFMC's SSC has attempted to point out the potential problems here in their February 2000 minutes which state: "The SSC is concerned that the current document is focusing on isolated habitat concerns without any strong connections drawn to resultant fish productivity." They go on to stress, among other concerns, the need for "process oriented research that establishes the connections between habitat and fish production". We would like to echo

these concerns and make sure that the analysis properly addresses the lack of an established scientific foundation regarding the ways in which fish use habitat, how much habitat is needed, the degree to which it can be modified before productivity is affected, and what types of protections make the most sense. Lacking this information, we certainly run the risk of protecting the substrates and fauna that we like the most or feel the most connection to when the productivity of fish species may not be best addressed by that approach

- The process should be required to incorporate experimental designs and controls into any measures to protect EFH that may flow from a redefinition of EFH, or into any further measures to minimize, to the extent practicable, effects of fishing gear on EFH. If such measures had been explicitly incorporated into the existing fish habitat protections by the NPFMC, we would probably be a lot closer to knowing what types of measures are beneficial and what measures have little or no effect and why.

The EIS Should Look at Impacts from Non-Fishing Entities when Examining Effects of Action

- One comment stated that the SEIS should examine the direct, indirect economic and social effects of EFH designations on non-fishing entitites as well as the fishing industry, Alaska Natives, and specifically ensure conformity with ANSCA section 2(b) which requires maximum participation of Alaska Natives in decision-making affecting their rights and property.

- The SEIS must limit conservation measures recommended for fishing and nonfishing entities to those truly necessary to supplement stipulations already in place under existing regulatory controls to protect essential fish habitat. The SEIS must list all existing regulatory mechanisms that are already available to protect habitat and explain in detail why EFH regulations do not duplicate each.

- Several commenters stated that habitat needed protection from chemical, physical, biological alternation of water quality from land based industry, dissolved oxygen depletion: physical obstructions, impediments of chemical or mineral nutrient movement (like silica); causes of excessive siltation, or scouring, concentrated dumping of organic or inorganic substance causing putrification, suffocation or toxicity; damanging fishing methods or equipment like benthic trawling.

- One comment stated that the SEIS must limit identification of nonfishing activities to those with direct and significant effects on EFH. (The current approach considers a universe of activities throughout a broad spectrum of inland areas that may threaten EFH. This approach goes beyond the original intent of Congress.)

- The SEIS must identify and evaluate in detail all nonfishing activities that may be

affected by EFH. Only activities with significant and direct identifiable effects on EFH should fall under scrutiny. The current approach identifies a broad spectrum of inland areas as EFH and considers a wide range of activities in those areas as actions that may threaten EFH. This approach over steps the bounds of reasonable regulation and is inconsistent with the intent of Congress.

- The SEIS must limit conservation measures recommended for fishing and nonfishing activities to those truly necessary to supplement requirements already in place under existing regulatory controls to protect essential fish habitat

- One commenter focused on the impact EFH regulations could have on non-fishing entities, given its application to inland areas far from the ocean and an overly broad definition which considers all habitat capable of sustaining fish as EFH. All activities in the vicinity of such waters could be impacted by the broad scope of the emerging EFH program. However, we are looking to the SEIS process to address our concerns and refocus the program on marine waters and habitat that is truly "essential."

Questions Regarding NEPA Process, EIS v. EA, and Transparency of Process

- Many commenters focused on their concerns regarding the process of development of an analysis for this action. One commenter stated that "Just as in the Steller sea lion legal debacle, NMFS is once again trying to reach a settlement with the plaintiffs while at the same time trying to conduct a public process and analysis that complies with the Magnuson Stevens Act and NEPA. This seriously undermines the legitimacy of the process for development of the analysis. At a minimum, ongoing private negotiation between NMFS and the plaintiffs creates an uneven playing field for the public who deserve a thorough, scientifically balanced, and equitable process for an analysis. In the worst case scenario, it jeopardizes an industry, which is dependent on the resource for its livelihood. As NMFS has demonstrated with sea lions, the agency sometimes appears willing to propose just about any solution to settle a lawsuit, even if the scientific foundation is weak and even though it may involve near total economic destruction of the fishing industry." The commenters recommended that NMFS discontinue all negotiations with plaintiffs, deal directly with the judge on all issues, including timing for completion of the analysis, and concentrate solely on addressing the NEPA deficiencies in the analysis for its original EFH plan.

- Regarding the NEPA process and the development of an EIS vs. and EA for EFH, several commenters believe that NMFS is over-reacting to the decision in AOC v. Daley. NMFS should revise the EA and not draft an EIS. According to the commentor great amounts of scientific data are lacking and unlikely to become available in near future. Therefore, preparation of an EIS puts the Council and the agency on a slippery slope of unusual mucosity and will open a Pandora's box of rhetoric and sesquipedality masquerading as science

- One commenter supported the idea that NMFS should reconsider their NEPA process. Because no draft or final EIS was prepared by NMFS before the proposed SEIS, they believed that NMFS should first prepare a draft EIS, followed by a final EIS.

- One comment asked "Why is NMFS setting out to do an EIS in lieu of an EA?" Their understanding is that, at the direction of headquarters, NMFS has opted to prepare an EIS. This decision was apparently based on criteria relating to the significance of the action and the anticipation that it would be controversial. We [the commenters] think this is ill advised. The Judge's opinion merely establishes that the original EFH EA was deficient in terms of NEPA standards of analysis. NMFS appears to be bargaining away the public process in an effort to try to satisfy plaintiffs. The commenter recommended that the original EA analysis should be revamped to address NEPA requirements. The relative significance and degree of controversy associated with the action should be no greater than before when an EA was sufficient -- the EA analysis just needs to be more comprehensive. If the original plan amendment had been rejected on the grounds that it did not meet M-S Act standards, then perhaps an EIS would be justified, but that was not the case. Further, if a new EA analysis leads to a conclusion that the preferred measures to protect EFH are not adequate (in the original plan these were status quo measures) and the new measures involve impacts of greater significance or controversy, then the new EA analysis could be expanded to an EIS.

- Commenters did not understand why an EIS is required based on court decision that concluded that the EAs prepared for the EFH amendments were inadequate to determine whether an EIS was necessary. Many stated that "No where in the decision does the judge conclude that an EIS is necessary". They further stated that this is reminiscent of the agencies decision to write a new Biological Opinion with a whole new suite of restrictions instead of simply justifying the restrictions it had in place as requested by the Judge (in Greenpeace v. Daley). They ask that the decision to proceed with an EIS be reconsidered.

- Several commenters believe that the decision to proceed with an EIS v. and EA may be the direct result of secret talks [with the plaintiffs] and a subversion of the public process. They ask that all confidential negotiations with plaintiffs cease.

- Not all comments concerning the type of NEPA document were in opposition to an EIS. Some commenters supported the more detailed analysis that would result by doing an EIS. For example, the Alaska Marine Conservation council stated: "We look forward to the development of the EFH EIS, and further participation with NMFS in teh future."

NPFMC Staff Should Complete the NEPA Process-Not NMFS Staff

- Several commenters believed that the NMFS staff were not objective and should not

complete the EIS. They suggested that steps should be taken to ensure the objectivity of NMFS staff involved with the development of the EFH EIS. They believed that NMFS' draft groundfish Programmatic Supplemental Environmental Impact Statement (hereafter "PSEIS") currently out for public review suffers from a failure to incorporate a scientifically balanced assessment of what is known about effects of trawling off Alaska. The PSEIS fails to incorporate the best available data and scientific information; this may bode poorly for getting a sound and objective analysis for the EFH action. By nature of its "programmatic" reach, the baseline in the PSEIS is supposed to supply a foundation of the best available scientific information for management actions. In our view, the recent draft PSEIS adopted an approach that is not generally supported by scientific studies or other reviews of the general effects of trawling and particularly the effects of trawling off Alaska. Further, the relevance of the scientific baseline adopted for the PSEIS to trawling off Alaska is very questionable given the relative intensity of trawling, the types of substrates fished, the depths at which trawling occurs, and the specific types of trawl gears (otter trawls) used. The commenters were concerned that a similar unbalanced approach will pervade the development of the EFH EIS.

- Consideration should be given to tasking the staff of the North Pacific Fishery Management Council with the lead role in the preparation of the analysis for this EFH action. The Council staff has great familiarity with the measures already in place to protect EFH and staff has expertise in fisheries biology and benthic ecology as it relates to EFH. Furthermore, Council staffers are knowledgeable about competing management objectives and mandates (such as bycatch reduction and sea lion protections) that affect the practicability of further actions to restrict fishing to protect EFH. Lastly, the Council staff has a proven track record for producing comprehensive and scientifically balanced analyses. They ask that the responsibility for development of the EFH alternatives and analysis be removed from the agency and turned over to Council staff as has been done in other regions

- The same commenters as above, however, also recommended that NMFS directly involve the agency's scientists who are researching habitat and habitat effects in the analytical team used for this action.

- Several commenters recommended that the full involvement of the NPFMC's Science and Statistical Committee be incorporated into all phases of the development of the EFH EIS is also indispensable.

- Another comment was that NMFS engage a team of objective and allocationally neutral scientists for the preparation of the EFH EIS analysis and the development of management options would also be a good way to proceed. Members for such a team could be selected from the list of university researchers who are engaged in the publication of peer-reviewed scientific research on EFH and the effects of fishing thereon.

- Many people were concerned regarding the process NMFS will take to develop management alternatives to "minimize, to the extent practicable, effects of fishing gears on EFH"

Consideration of all other Applicable Laws and Regulations

- Several comments emphasized the need for NMFS to consider other appropriate laws when examing mitigation to impacts on EFH. One commenter specifically referred to the E.O. dated May 18, 2001, entitled 'Actions Concerning Regulations that Significantly affect energy supply, distribution or use". That EO requires agencies promulgating regulations to prepare a Statement of Energy Effects relating to any action that may have "any adverse effects on energy supply...", for submission to the Office of Management and Budget. The commenter recommended that NMFS prepare this analysis based on the most recent Outer Continental Shelf oil and gas leasing program document.

- The SEIS must list all existing regulatory controls that are already available to protect essential habitat and explain in detail why EFH regulations do not duplicate each. Existing regulatory mechanisms include the Clean Water Act, Coastal Zone Management Act, Endangered Species Act, and state and local forest practices, mining, and land use laws and regulations. The approach of identifying a broad range of conservation measures to a wide array of fishing and nonfishing activities largely duplicates existing regulatory requirements.

- A comment re-emphasized that all of the alternatives and the effects of specific recommendations are required to comply with the Regulatory Flexibility Act, as well as NEPA requirements and the Fishery Conservation and Management Act (FCMA) standards for fishery management plans. The FCMA standards require conservation and management measures be based upon the best scientific information available and, where practicable, minimize costs and avoid unnecessary duplication.

The Completion of the EIS should Await the Completion of the Interim Regulations

- Several stated that completion of the SEIS should await revision of the NMFS EFH interim final regulations and guidelines by the new Administration. Completing the EFH amendments to the fishery management plans in advance of that reform will likely require revisions to the process later, and is likely to lead to further disagreement and confusion. Therefore, we [the commenters] urge NMFS not to proceed further with EFH amendments to FMPs or further implementation of the EFH program until after revised final regulations and guidelines are issued.

Questions on "What is Adverse Modification"?

- Several questions were asked on Adverse Modification: How is the Council defining an "adverse effect" to a particular type of EFH? What level of short- or long-term loss of these essential habitat components reaches the level of "adverse effect?" How is the Council's definition of "adverse effect" consistent with the Magnuson-Stevens Act and implementing regulations? Is the Council's definition sufficiently precautionary in terms of protecting EFH or are there other more protective definitions? Is a fishing gear resulting in "adverse effects" to a particular EFH? If yes, then which EFH are "adversely affected" and how so? What are the alternatives available to minimize this "adverse effect?" Which of these alternatives are "practicable" to implement? How is the Council determining whether an alternative is "practical?" How is this approach consistent with the Magnuson-Stevens Act and implementing regulations? If a measure is not presently practicable, would it be practicable if phased in, or implemented to occur at a set date in the future? If a gear may be resulting in an "adverse effect" to EFH, are there any precautionary measures that can be taken to minimize the risk of potential "adverse effects" to EFH?What information is necessary to determine the risk of an "adverse effect" to a particular EFH? When will research provide such information? Can that information ever be obtained? The commenter concluded by stating that clear answers to these questions will promote understanding among interested stakeholders as to the approach the Council has taken to protect EFH, consistent with the requirements of the Magnuson-Stevens Act and the EFH Interim Final Rule.

Economic and Cost Analyses

- One commenter stated that the SEIS must examine in detail the direct and indirect economic and social effects of EFH designations, as well as recommended conservation measures, on nonfishing entities, the fishing industry and local communities. These effects may include additional delays, requests and costs resulting from EFH consultations. Costs include those borne by federal, state and local agencies, and private applicants required to conduct and/or pay for impact analysis and other requirements for obtaining federal authorization or funding.

- Conservation measures must minimize costs and duplication.

- The SEIS must evaluate in detail the direct and indirect economic and social effects of EFH designations, as well as recommended conservation measures on nonfishing entities, the fishing industry and local communities. These effects may include additional delays, requests and costs resulting from EFH consultation. Costs include those incurred by federal, state and local agencies, and private applicants required to conduct and/or pay for impact analysis and other requirements for obtaining federal authorization or funding.

- Another comment stated that the M-S Act and NEPA demand that managers balance economic and social considerations and the benefits of food production to consumers (along with additional considerations for the human environment) against the potential benefits of increased protection of EFH. The problem is how to do this when adverse habitat effects are not demonstrable in our region and scientific findings on effects

elsewhere are often highly dependent on how the studies were conducted. Further, linkages between habitat effects and productivity are not established, and economic and social data to assess what is practicable is rather deficient. Some will insist that the potential benefits of protections always outweigh the costs, but this is difficult for our fisheries, and is inconsistent with the requirements of the M-S Act

- NMFS should establish a framework for standards of scientific and any "non-scientific" information that the public may want to insert into the analysis. Define how the concept of "adequate precaution" will be applied to information about the effects of all fishing gears in the analytical process.

- Analyze for expectable continued "utilization" to date and apply value (net benefit) to the continued use of identified grounds [protective areas]

3.4 SUMMARY OF SUGGESTED ALTERNATIVES THAT WERE RECEIVED IN SCOPING COMMENTS

[Note: these alternatives were neither developed by NMFS nor the EFH EIS Committee established by the NPFMC. Rather these alternatives or suggestions for features that should be considered when drafting alternatives, were recommended from the public and received by NMFS during the comment period on the Scoping Process. They do not reflect a decision as to what alternatives will be evaluated in the EFH EIS but are suggestions that be considered in the development of those alternatives. In addition, section 3.2 contains comments on measures or alternatives to be considered to protect EFH.

- One commenter recommended that the EFH SEIS should include the following alternatives:
  1. status quo
  2. no net increase in impacts
  3. appropriate gear modifications
  4. elimination of high impact gear/transition to lower impact gear and
  5. closures to all bottom fishing

- One commenter recommended that NMFS develop an alternative in the EFH EIS, similar to Alternative 5 in the DPSEIS and should weigh the potential benefits of increasing gear conversion to pots.

- One commenter questioned how the EIS process can adequately evaluate the effects of fishing gear on EFH and minimize and, to the extent practicable, the effects of fishing gears on EFH when very little information is currently available, especially on fixed gears. An alternative should be included lthat specifies that no additional protective measures will be taken until adequate scientific information is available.

- One commenter stated that significant issues to consider relative to each alternative should include the ecosystem health and diversity, the vulnerability of each HAPC to disturbance, and the socioeconomic impacts to fishing fleets and fishing communities.

- One commenter recommended the status-quo and suggested using existing alternatives. They stated that the Court did not ask that the agency develop an EIS, it asked only that it build a better rationale for what it did in the EA including the expansion of the analysis to include options that were explored in the past when the Council and NMFS developed the existing set of management measures to protect fish and crab habitat. Limit alternatives in the analysis to include only exploration of past actions taken by the Council

- NMFS and the NPFMC should reconsider existing closed areas. Currently, approximately 20% of the BSAI and GOA fishing grounds is closed to bottom trawling. A reasonable alternative would be to rank the importance of designated EFH and if additional areas are identified, priority be given to the areas that are most essential, with a limit not to exceed 20% of the fishing grounds

- In order to meet the requirements of NEPA, one commenter strongly urged that NMFS develop a comprehensive conservation alternative in its PSEIS based on an ecosystem approach to groundfish management. A major component of this alternative should be to examine all major options for protecting essential fish habitat. With less than 1 percent of our oceans provided permanent protection, the commenter believed this issue is of paramount importance if we are to achieve the desired balance between marine biodiversity conservation, economically viable fisheries and thriving coastal communities.

- One commenter proposed the following alternatives:
(1) implementing a maximum diameter size limit for all groundgear used in the groundfishery on trawl nets no greater than 4"; and
(2) implementing a maximum diameter size limit for all groundgear used in the groundfishery on trawl nets no greater than 8".

- One commenter recommded that year-around closure of areas should be considered actions of last resort. Alternatives that include gear-modifications and seasonal closures such as are currently done with salmon and herring "savings areas" should be made as specific as possible. Broad brush approaches to closing fishing grounds could unnecessarily limit the fishing community's ability to meet other important management goals such as bycatch avoidance and reduction of interactions with Steller sea lions

- Several commenters recommended a range of alternatives for restricting areas open to trawling from something less restrictive than the current no-trawl areas to an option where trawling is limited to the total of the areas where it currently actually occurs. An adequate experimental design would be incorporated into the measures developed within

this range

- For the purpose of managing essential fish habitat, one commenter proposed that an alternative incorporate the components of Alternative 5 from the Alaska Groundfish Fisheries Draft Programmatic Supplemental Environmental Impact Statement (DPSEIS). This alternative is specifically designed to "protect and restore essential fish habitat and accrue benefits to marine ecosystems, while providing for sustainable groundfish fisheries." The concepts and tools of this alternative could be extended to all FMPs for EFH.

- One commenter recommended that NMFS take a reasonably precautionary approach based on a balanced interpretation of the existing scientific information on trawl effects as it applies to Alaska, the current health of groundfish stocks under the status quo management regime, and the proven ability of the current management regime to adjust to new peer reviewed scientific findings in the future. The less restrictive end of the range of alternatives would incorporate a recognition that a portion of the areas currently closed to trawling for habitat protection and for crab protection are, in all probability, not all made up of substrates that are vulnerable to negative effects from trawling (e.g. parts of Bristol Bay currently included in the Bristol Bay Nearshore Closure Area). The habitat protection benefit of this end of the range is that it would beneficially spread trawling over a larger area than currently occurs and thus reduce trawling intensity compared to the status quo. This is based on an interpretation of the scientific information on trawl effects as described above. The underlying principle is the recognition that trawl effects range from no observable effect to an observed effect that varies depending on factors such as type of substrate, degree of ambient natural disturbance, specific type of trawl gear used, and other factors. A decrease in the intensity of trawling in areas open to trawling could further ensure that trawling does not create adverse effects. Likewise, we feel that the more restrictive end of the range we suggest for the analysis is scientifically supportable and adequately precautionary given a reasonable interpretation of the science of effects of trawling as it applies to Alaska.

Cindy Hartmann NMFS C-6 Oct 2001

Summary of EFH Scoping Comments

NEPA type document

- Address the NEPA deficiencies in the analysis
- NMFS should first prepare a draft EIS, followed by a final EIS.
- Complete SEIS after revision of the NMFS interim final regulations and Federal guidelines
- Proceed with identifying/ protecting both EFH and HAPCs through the EIS process

Process

- Conducting public scoping simultaneously with settlement negotiations does not follow process; involve all stakeholders
- NPFMC Council. should develop EFH alternatives
- Select preferred alternatives using National Standards
- Limit alternatives to include only exploration of past actions taken by the Council.
- Use an ecosystem approach
- Proceed cautiously when considering changes in the existing management regime; poorly conceived measures may actually concentrate fishing effort
- Analyze the impact of bycatch, longlining, and bottom trawling in developing alternatives
- Include physical, biological, and chemical disturbances in analysis of fishing gear
- Include a wide range of alternatives, including total closures, rotating or seasonal closures, selective use of fishing gear, conversion to less damaging gear, monitoring programs, and status quo.
- Include only non-fishing activities with significant and direct identifiable effects on EFH
- Ensure conformity with ANCSA section 2(b), which requires maximum participation of Alaska Natives in decision-making affecting their rights or property

- Proponent of an activity should bear the burden of proof showing that a fishing practice or gear will not result in environmental harm

Define EFH

- Include one or more alternatives that limit EFH to habitat that is a) truly necessary for Council managed fishery species; and b) within the Council's jurisdiction
- EFH designations should take into account Executive Order requiring agencies promulgating regulations to prepare a "Statement of Energy Effects"
- Limit the extent of EFH to marine or estuarine environments within the EEZ that are truly essential for fishery species
- Consider habitat categories as an alternative to the existing EFH designation
- Include identification of a managed species' general distribution and core habitats
- Adopt a definition of EFH that will identify the importance of that habitat to a species, and can be applied to specific geographic locations critical to the survival and reproduction of a target species
- Using fishery-dependent CPUE data to define habitats constituting EFH may reflect regulations, availability, temporary aggregations, etc. rather than habitat critical to particular life stages
- Recognize U.S. coastal and marine waters in WWF's Priority Areas for Biodiversity Conservation in the Bering Sea as EFH
- Incorporate the biological requirement of associated species as well as target species, including upper and lower trophic animals (ex. sea lions, herring, and kelp)
- Rank the importance of designated EFH, and if additional areas are identified, priority should be given to the areas that are most essential, with a limit not to exceed 20% of the fishing grounds

Define HAPC

- Designate as HAPCs those areas within a species' EFH that have historically contained the highest abundance levels of a particular stock

- In categorizing habitat and identifying HAPC, consider vulnerability or resilience to disturbance; ecological function; and rarity or uniqueness
- Design HAPCs to clearly accomplish defined habitat objectives with the least disruption to local fishing fleets
- Expand HAPCs to include pelagic EFH

Research

- Include existing published information on habitat types, gear impact, socioeconomic data
- Develop recommendations or alternatives after evaluating the existing management and scallop observer data, Turk Thesis
- Include recommendations to increase scientific research/data in support of the fishery management requirements of the FCMA
- Incorporate experimental designs/controls
- Improve the available stock assessment, fish habitat, and behavior research for target species.
- Where data are limited, evaluate whether that information can be obtained, and how long it may take
- Seek out expert, unbiased advice and initiate research to correctly identify and rank the importance of EFH

Socioeconomics

- Implement quantitative thresholds of uncertainty that weigh potential economic and ecological costs against present understanding of the effects of fishing on habitat and species diversity
- Evaluate in detail the direct and indirect economic and social effects on non-fishing entities of the designation of EFH, activities that adversely affect EFH, and recommended conservation measure
- Examine in detail the direct and indirect economic and social effects of EFH designations on Alaska Natives
- Identify/evaluate all non-fishing activities effected by EFH under each alternative

Mitigation alternatives

- Identify refuges or non-harvest areas that encompass major representative habitats to sustain and maintain biological diversity
- Consider designating the Southeast trawl closure area and Sitka Pinnacles as MPAs or HAPC, as appropriate
- Install artificial reefs to enhance habitat
- Reduce the trawl fleet, targeting larger, more powerful vessels.
- Evaluate and implement a maximum diameter size limit on rockhopper and rollergear in the ground fisheries
- Design alternatives to minimize reallocative gains to existing participants
- Consider year-around closure of areas as a last resort
- HSCC does not support the inclusion of any EFH alternatives in which zero-risk is a goal or in which the fishery is assumed to cause adverse impacts
- Include an alternative that specifies no additional protective measures will be taken until scientific information shows that fixed gear has no impact or less impact than trawl gear
- Limit conservation measures to those truly necessary to supplement stipulations already in place