

PROPOSED HABITAT POLICY

Recognizing that all species are dependent on the quantity and quality of their essential habitats, it is the policy of the North Pacific Fishery Management Council to:

Conserve, restore, and develop habitats upon which commercial, recreational and subsistence marine fisheries depend, to increase their extent and to improve their productive capacity for the benefit of present and future generations. (For purposes of this policy, habitat is defined to include all those things physical, chemical, and biological that are necessary to the productivity of the species being managed.)

This policy shall be supported by three policy objectives which are to:

- (1) Maintain the current quantity and productive capacity of habitats supporting important commercial, recreational and subsistence fisheries, including their food base. (This objective will be implemented using a guiding

principle of NO NET HABITAT LOSS).

- (2) Restore and rehabilitate the productive capacity of habitats which have already been degraded.
- (3) Create and develop productive habitats where increased fishery productivity will benefit society.

The Council shall assume an aggressive role in the protection and enhancement of habitats important to marine and anadromous fish. It shall actively enter Federal decision-making processes where proposed actions may otherwise compromise the productivity of fishery resources of concern to the Council.

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Council Habitat Responsibilities

The Council, through its Habitat Committee, will assist in the development of each fishery management plan to insure that:

(1) Habitat significant to the species or species group to be managed as well as its prey, where information is available, is adequately defined in the plan, and

(2) The most recent and substantive information regarding habitat considerations and issues is incorporated into the fishery management plan at the earliest possible stage of the plan.

(3) Recommendations to responsible agencies be included in the plan which identify habitat improvement or changes in Federal policies, which are necessary to achieve the objectives of the plan.

The Habitat Committee will review those proposed habitat alterations, policy, or other human actions which may have a significant adverse impact on those fisheries addressed in the Council's plans and under the authority of the FCMA. After review of such proposals and finding that significant adverse impacts could occur, the Committee may file or present the Council's position to the Federal agency(s) responsible. Council action could include: (1) oppose the proposed action, (2)

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suggest project modifications, or (3) seek full compensation for unavoidable fishery losses.

The Council may also recommend changes in the Federal statutes and their implementing regulation to protect marine fishery resources and their habitats in water development projects and policy.

Guidelines

As a guide for determining the need for Council involvement, the Habitat Committee and the Council staff will consider the following:

(1) The extent to which the proposed activity could directly affect the production of fishery resources or their essential food base (e.g., as a result of dredging, wetland filling, pollution loading, restricting access, etc.);

(2) The existence of alternative sites lower in productivity, ecological importance, or fisheries related conflicts than associated with the proposed project location;

(3) The extent to which man-induced perturbations could be avoided through project modification(s) or other safeguards (e.g., piling support instead of fill, and construction timing windows);

(4) The extent to which the activity could affect the

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accessibility of fishery resources;

(5) The extent to which precedent could be set in relation to existing or potential cumulative impacts of similar or other developments in the proposed project area;

(6) The extent to which the proposed activity could indirectly affect the production of fishery resources (e.g., alteration of circulation, salinity regimes, detrital or nutrient export, etc.);

(7) The extent to which the activity requires a waterfront location if dredging or filling of coastal wetlands is involved.

Project Review Process

(1) Information on proposed Federal projects or actions and their related habitat issues will be received by the Council staff from several sources. For example, the National Marine Fisheries Service (NMFS), Alaska Region, will forward the Council staff descriptive information such as copies of public notices of significant projects proposed for federal authorization or proposed Federal policy. NMFS will also provide special briefings, NMFS position statements, and other appropriate support as needed. Also, the Council staff may request and will receive information from other State and Federal agencies, the private sector, and special interest groups.

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(2) Information (including public notices) received and screened by the Council staff will be forwarded to the Habitat Committee.

(3) Significant projects shall be selected by the Habitat Committee for Council consideration if:

(a) The Habitat Committee concludes that a proposed Federal action or project may have significant fishery related impacts; or

(b) The Council or Council staff notifies the Habitat Committee of a Federal action or project they deem significant and deserving formal Council consideration

(4) The Habitat Committee shall develop a draft Council position and forward it to the Council for their action. The following are examples of appropriate Council actions:

(a) The Council shall object to proposed Federal projects or actions that could have significant adverse effects on fisheries for which the Council has management responsibility. The Council shall convey their objections, concerns, and recommendations directly to the appropriate Federal regulatory agency. (b) The Council staff or members may testify at public hearings, as needed.

(c) The Council may hold public hearings, as

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appropriate.

(5) The Habitat Committee shall report on its actions, at Council meeting as needed.

Criteria to Define Significant Projects

Significant projects could include:

(1) Projects that may directly affect (e.g., catch, marketability, management options, etc.) fisheries or habitat for which the Council has a management or research interest;

(2) Projects which could affect habitat important to species managed under the FCMA, or habitat important to species upon which managed species are dependent for food;

(3) Projects that may be precedent-setting, highly controversial, or proposed in unique or critical habitat areas; and

(4) Projects that could have a substantial indirect impact on water circulation patterns, nutrient production and export, saltwater intrusion, freshwater inflow, availability of nursery areas, migration corridors, and overwintering areas, etc.

PACIFIC FISHERY MANAGEMENT COUNCIL

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HABITAT POLICY (Adopted March 12, 1986)

The Council will be guided by the principle that there should be no net loss of the productive capacity of marine, estuarine, and freshwater habitats which sustain commercial, recreational, and native fisheries beneficial to the nation. Within this policy, the Council will assume an aggressive role in the protection and enhancement of marine and anadromous fish habitat.

HABITAT COMMITTEE ISSUE REVIEW GUIDELINES (As Amended July 9, 1986)

1. All issues must have a significant impact on Council managed fisheries. This may include habitat policy issues of regional or national scope as well as effects of specific projects or resource developments.
2. Direct presentation of issues to the committee should be at the request of the Council or coordinated with the appropriate individual fishery management entities. Private individuals or organizations may submit requests directly to the Habitat Committee but any Council action will require approval of the full Council.
3. All issues submitted to the screening subcommittee must have sufficient supporting information to allow clear identification of the issue and to permit an evaluation of the need for Council support.

PFMC
7/23/86

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HABITAT POLICY

Recognizing that all species are dependent on the quantity and quality of their essential habitats, it is the policy of the Mid-Atlantic Fishery Management Council to:

Conserve, restore and develop habits upon which commercial and recreational marine fisheries depend, to increase their extent and to improve their productive capacity for the benefit of present and future generations. (for the purposes of this Policy, "HABITAT" is defined to include all those things, physical, chemical and biological that are necessary to the productivity of the species being managed.)

This policy shall be supported by three policy objectives which are to:

- (1) Maintain the current quantity and productive capacity of habitats supporting important commercial and recreational fisheries, including their food base. (This objective will be implemented using a guiding principle of NO NET HABITAT LOSS).
- (2) Restore and rehabilitate the productive capacity of habitats which have already been degraded.
- (3) Create and develop productive habitats where increased fishery productivity will benefit society.

The Council shall assume an aggressive role in the protection and enhancement of habitats important to marine and anadromous fish. It shall actively enter Federal decision-making processes where proposed actions may otherwise compromise the productivity of fishery resources of concern to the Council.

COUNCIL HABITAT RESPONSIBILITIES

The Council will assist in the development of each fishery management plan to insure that:

- (1) Habitat significant to the species to be managed as well as its prey (where information is available) is adequately defined in the plan, and
- (2) Recommendations to responsible agencies are included in the plan which identify habitat improvement or changes in Federal policies, which are necessary to achieve the objectives of the plan.

The Council will review those proposed habitat alterations, policy or other human actions which may have a significant adverse impact on those fisheries addressed in the Council's proposals and finding that adverse impacts will occur, the Council may file or present the Council's position to the Federal agency(s) responsible for the action which could (1) oppose the proposed action, (2) suggest project modifications or (3) seek full compensation for unavoidable fishery losses.

The Council may also recommend changes in the Federal statutes and their implementing regulations to protect marine fishery resources and their habitats in water development projects and policy.

GUIDELINES

The following guidelines could assist the Council in making its assessment of the proposed actions:

- (1) The extent to which the activity would directly affect the production of fishery resources or their essential food base (e.g., as a result of dredging, filled marshland, pollution, reduced access, etc.);
- (2) The extent to which precedent would be set in relation to existing or potential cumulative impacts of similar or other developments in the project area;
- (3) The extent to which the activity would indirectly affect the production of fishery resources (e.g., alteration of circulation, salinity regimes, detrital export, etc.);

- (4) The extent of any adverse impact that can be avoided through project modification or other safeguards (e.g., piers in lieu of channel dredging);
- (5) The existence of alternative sites available to reduce unavoidable project impacts; and
- (6) The extent to which the activity requires a waterfront location if dredging or filling wetlands is involved.

Project Review Process

- (1) Significant projects shall be selected by Council using the following criteria:
 - (a) Judgment that significant adverse effects may occur; or
 - (b) Notification by the Council or staff of significant projects that should be considered.
- (2) NMFS shall forward copies of public notices of significant Federally authorized projects or policy immediately to Council staff followed by special briefings, as appropriate, or by NMFS position statements, as developed.
- (3) Council staff, when appropriate, shall catalog notices and forward copies to the Council. The staff shall request state and other Federal assessments (position statements) of project impact and forward them to the Council.
- (4) When appropriate, Council shall develop a Council position.
 - (a) The Council may file adverse comments or recommended project modifications to reduce environmental damage with the Federal construction or regulatory agency (COE, FERC, etc.).
 - (b) Council staff or members may testify at public hearings, as needed.
 - (c) Council may hold public hearings, as appropriate.
- (5) The Council shall report on its actions at Council meetings as needed.

Criteria to Define Significant Projects

- (1) Projects that may directly affect fisheries or habitat for which the Council has a management or research interest.
- (2) Projects which significantly affect habitat important to species managed under the MFCMA or important to species upon which managed species are dependent for food.
- (3) Projects that may be precedent-setting or in unique or critical habitat areas.
- (4) Projects having a substantial or significant indirect impact on surface water flow, detritus export, saltwater intrusion, isolating nursery areas, etc.
- (5) Highly "controversial" projects, i.e., those which generate much publicity, strong opinions from user of the affected resource.

**GULF OF MEXICO FISHERY MANAGEMENT COUNCIL
HABITAT POLICY AND PROCEDURES**

September 17, 1987

1. Policy

Recognizing that all species are dependent on the quantity and quality of their essential habitats, it is the policy of the Gulf Fishery Management Council to:

Protect, restore, and improve habitats upon which commercial and recreational marine fisheries depend, to increase their extent and to improve their productive capacity for the benefit of present and future generations. (For purposes of this policy, habitat is defined to include all those things physical, chemical, and biological that are necessary to the productivity of the species being managed).

This policy shall be supported by three policy objectives which are to:

- (1) Maintain the current quantity and productive capacity of habitats supporting important commercial and recreational fisheries, including their food base.

(This objective may be accomplished through the recommendation of no loss and minimization of environmental degradation of existing habitat).

- (2) Restore and rehabilitate the productive capacity of habitats which have already been degraded.
- (3) Create and develop productive habitats where increased fishery productivity will benefit society.

The Council shall assume an aggressive role in the protection and enhancement of habitats important to marine and anadromous fish. It shall actively enter federal decision-making processes where proposed actions may otherwise compromise the productivity of fishery resources of concern to the Council.

2. Procedures**2.1 Council Habitat Responsibilities**

The Gulf Council is required to include in FMPs and amendments developed after January 1, 1987, readily available information regarding the significance of habitat to the fishery and assessment as to the effects which changes to that habitat may have upon the fishery. It is the responsibility of each fishery management committee of the Gulf Council to insure that this requirement is met for the FMPs and amendments that it develops.

The Gulf Council may comment on, or make recommendations concerning, any activity undertaken, or proposed to be undertaken, by any state or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction. Within 45 days after receiving such a comment or recommendation from a Council, a Federal agency must provide a detailed response, in writing, to the Council regarding the matter. Responsibility for identifying activities and developing comments or recommendations for Gulf Council approval is placed on the Habitat Protection Committee, working in close cooperation with the National Marine Fisheries Service and other Federal and state agencies.

2.2 Guidelines for Assessing Proposed Activities

The following guidelines will be used by the Habitat Protection Committee in making its assessment of the proposed activities and determining whether Gulf Council comment is appropriate:

- (1) The extent to which the activity would directly affect the production of fishery resources referencing the required habitat identification and assessment contained in FMPs and amendments;
- (2) The extent to which precedent would be set in relation to existing or potential cumulative impacts of similar or other developments in the project area;
- (3) The extent to which the activity would indirectly affect the production of fishery resources by altering the physical environment determining their distribution or affecting their essential food base;
- (4) The extent of any adverse impact that can be avoided through project modification or other safeguards;
- (5) The existence of alternative sites available to reduce unavoidable project impacts; and,
- (6) The extent to which the activity requires a waterfront location if dredging or filling wetlands is involved.

2.3 Project Review Process

Projects shall be selected by the Habitat Protection Committee for consideration by the Council on the basis of judgment that significant adverse effects may occur. The Habitat Protection Committee may identify activities through its members, Council staff, the Habitat Protection Advisory Panel or other organizations as well as notification from NMFS. The review process shall proceed as follows:

- (1) NMFS shall forward copies of public notices for Federal projects, permits, and licenses which significantly affect fisheries to Council staff followed by special briefings, as appropriate, and by NMFS position statements, as developed;

- (2) Council staff shall forward copies of the notices, briefing materials, and NMFS position statements to the Habitat Protection Committee. When deemed appropriate, the staff shall request state and other Federal agency assessments (position statements) of project impact and forward them to the Habitat Committee;
- (3) Habitat Protection Committee shall develop a Council position in opposition to those projects which, in the Council's opinion, are not in the public interest, including those providing for mitigation, which cannot demonstrate a water dependent use and where habitat loss is unavoidable, and forward it to the Council for adoption and communication to the appropriate agency;
- (4) Council staff or members may testify at public hearings, as needed; and,
- (5) Council may hold public hearings, as appropriate.

2.4 Criteria to Define Significant Projects

The Habitat Protection Committee shall consider the following criteria in selecting significant projects for review:

- (1) Those projects that have a significant direct impact on fisheries for which Fishery Management Plans (FMPs) have been or are being developed by the Council;
- (2) Projects having a significant nondirect impact on these fisheries; and,
- (3) Highly controversial projects affecting these fisheries.

"Significant projects" are defined within the working relationship between the Council and NMFS in the project review procedure. The Council relies upon NMFS, as its principal federal agency partner, to notify the Council of proposed projects posing a significant fishery habitat threat.

Those activities NMFS feels would seriously impact fisheries resources are recommended for denial or major modification along with wording to alert the Corps of Engineers (COE) that NMFS may potentially refer the action to a higher COE authority for review if the recommendations are not followed. These actions are considered "significant" in terms of involvement by the Gulf Council, and are referred to the Council for review.

The Habitat Protection Committee may identify activities through its members, Council staff, or the Habitat Protection Advisory Panel that it feels are significant. In that case, the Council staff alerts NMFS that the Habitat Committee has declared a project to be significant and requests that the review process be initiated for that project.

2.5 Habitat Protection Advisory Panel

The Gulf Council has established a Habitat Protection Advisory Panel with broad-based participation from the political entities and public who are affected in each of the major geographical areas of the Gulf regions. The advisory panel consists of three subpanels, each serving a specific geographical area as follows: (1) Florida/Alabama; (2) Mississippi/Louisiana; and, (3) Texas.

The principal role of the advisory subpanels is to assist the Council in attempting to maintain the optimum conditions within the habitats and ecosystems supporting the marine fishery resources of the Gulf of Mexico. Under this charge, the subpanels assist the Council in:

- (1) Identifying those activities which may adversely affect the habitats or ecosystems;
- (2) Assessing the potential impacts (direct and indirect) and actions required to ameliorate these impacts;
- (3) Generating public awareness of these impacts;
- (4) Suggesting mitigating opportunities;
- (5) Encouraging more active and stronger Corps of Engineers enforcement activities; and,
- (6) Improving public awareness of wetland value.

The advisory subpanels serve as a first alert system to call to the attention of the Council proposed development projects and other activities which may adversely impact the Gulf marine fisheries and ecosystems. For those proposed activities for which the potential impacts meet the Council's criteria for taking action, a subpanel, or elements thereof, may be convened to advise the Council on impacts, proposed courses of action, and mitigating opportunities. An entire subpanel may be convened for projects with major detrimental impacts to formulate a common strategy to ameliorate this impact. The subpanels review policy issues on environmental protection and provide guidance to the Council. The subpanels, at the call of the Council Chairman, periodically provide advice to the Council on its policies and procedures for addressing environmental affairs.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 National Marine Fisheries Service

P.O. Box 21668
 Juneau, Alaska 99802

AGENCY	DATE TO	INITIAL
Exec. Dir.		1
Deputy Dir.		
Admin. Off.		
Exec. Sec.		
Staff Asst. 1		
Staff Asst. 2		
Staff Asst. 3		
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Adv. Typist		

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July 5, 1988

Clarence Pautzke, Executive Director
 North Pacific Fishery Management Council
 605 W. 4th Ave., Room 306
 P.O. Box 103136
 Anchorage, Alaska 99510-7006

Dear Clarence:

At the June meeting of the North Pacific Fishery Management Council it was decided to send the draft Habitat Policy out for public review, to discuss it at the Directors' meeting, and to return the package for additional consideration during the September meeting. The Council also directed you to work with National Marine Fisheries Service (NMFS) and develop the background information needed for an informed public review.

Enclosed is the NMFS contribution to a transmittal package for the draft Habitat Policy. We have also enclosed a floppy disc with the draft package under the filename HABITAT.POL. We have attempted to include all the information requested by the Council, and have obtained a review by our headquarters staff. Should you need additional assistance, call upon Nancy Goell (FTS, 673-5353) or Ted Meyers (FTS or Comm., 907-586-7235).

Sincerely,

James W. Brooks
 James W. Brooks
 Acting Director, Alaska Region

cc:

- F/NWC - Aron
- F/PR - Foster
- F/AKR1 - Evans
- F/PR2 - Goell
- F/AKR2 - Faris
- F/PR3 - Hall
- AKGC - O'Connor
- F/NWR5 - Tuttle



Draft Habitat Policy
Public Review Package
June 1988 Council Meeting

The North Pacific Fishery Management Council (NPFMC) is considering the adoption of a Habitat Policy consistent with that operational under six other Fishery Management Councils (Councils) and responsive to authority and direction conveyed in the 1986 amendments to the Magnuson Fishery Conservation and Management Act (FCMA). That policy is presented below for public review and comment. Included in this package are a summary of the history and status of this Habitat Policy, the draft Habitat Policy, and supporting information on the types of procedures needed to implement the policy.

The NPFMC will consider adoption of a Habitat Policy during the September Council meeting after reviewing the responses to this public comment opportunity. Should the Council choose to adopt a Habitat Policy, a Habitat Committee would be established to implement the policy. One of the first duties of the Habitat Committee would be to develop procedures and selection criteria to ensure that Council habitat actions related to the 1986 amendments are directed toward those fishery habitat issues having the potential to significantly affect fisheries within the Council's jurisdiction.

History and Status of the Habitat Policy

Efforts to integrate habitat considerations into the fishery management process go back to the inception of the FCMA in 1976. The language of the FCMA directs the Councils to recommend management plans for commercial and recreational species of fish occurring in the Fishery Conservation Zone (later changed to the Exclusive Economic Zone) throughout the range of the species. Some believed this directive gave the Councils authority to consider fishery related habitat issues within the territorial sea and further inland even though the Councils clearly did not have jurisdiction within State waters. Although some efforts were made to address significant fishery habitat issues, the Councils and the National Marine Fisheries Service (NMFS) concentrated largely on ocean harvest during the first decade of FCMA implementation.

In 1983 the NMFS adopted a National Habitat Conservation Policy, uniting its FCMA authority with its advisory responsibilities and authority under the Fish and Wildlife Coordination Act (FWCA) and the National Environmental Policy Act (NEPA). The Habitat Policy provides guidance to the agency regarding its interactions with the Councils and other Federal and State agencies. It also focuses NMFS's habitat conservation efforts on specific habitat problems affecting FCMA fishery resources, marine mammals, and

endangered marine species. Although the NMFS's policy notifies other agencies and the Councils of NMFS intent, it does not clarify the Councils' role regarding fishery related habitat issues.

In 1986 the Congress amended the FCMA, essentially codifying elements of the NMFS Habitat Conservation Policy, and giving the Fishery Management Councils new authority and responsibility to include "readily available" habitat information in all fishery management plans. The Amendments direct the Councils, with guidance from NMFS, to evaluate the effect that changes in habitat may have on managed fisheries.

Additionally, the 1986 amendments gave the Councils the opportunity to recommend habitat management measures for ongoing and proposed Federal or State activities which could adversely affect fishery resources for which they have management responsibility. Federal agencies are required to respond specifically and substantively to a Council's recommendations within 45 days. The Amendments also encourage the Councils to monitor state activities and to comment on those that could adversely affect Council managed fishery resources.

As the Councils moved to implement the new habitat options and

directives in the FCMA amendments, the NMFS issued operational guidelines to help Councils prepare habitat sections for inclusion in fishery management plans.

Also in 1986, an effort was begun to establish national consistency and strengthen the Councils' ability to address habitat issues by drafting a Habitat Policy. The major objective of the policy is to:

"Conserve, restore, and develop habitats upon which commercial, recreational, and subsistence marine fisheries depend, to increase their extent and to improve their productive capacity for the benefit of present and future generations."

This objective is to be implemented using a guiding principle of No Net Habitat Loss.

To date the Habitat Policy has been adopted by the New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean, and the Western Pacific Fishery Management Councils. All have also adopted a series of framework documents, tailored to the needs of each region. They include an outline of Council Habitat Responsibilities, Guidelines for determining the need for Council

involvement, a Project Review Process, and Criteria to Define Significant Projects. The Pacific Council had previously adopted a similar Habitat Policy with an objective of No Net Habitat Loss.

Some of the Councils have begun to use the Policy to address specific habitat issues. For example, the Gulf of Mexico Council, long concerned with the alteration and loss of fishery habitat in their region, recently held a public hearing to consider the biological and economic effects on shrimp and redfish resources from the proposed widening and deepening of the Houston Ship Channel and the disposal of the resulting dredged material. In addition, the Gulf Council continues to monitor federal and state activities and comments substantively on issues which may adversely affect fisheries. Citing their authority under the recent amendments to the FCMA, the Council recently requested a more substantive reply from the Army Corps of Engineers after concluding the Corp's initial response was inadequate.

The New England and Mid Atlantic Councils have filed joint positions in opposition to the continuation of the dumping of sewage sludge and acid wastes at the 106-mile deepwater dump site, located off the coast of New York and New Jersey. They

have asked that the NMFS immediately implement an action plan to gather information on the environmental consequences of sewage sludge disposal on the edge of the continental shelf. When requested by Congressional Committees, their representatives have also testified as to the need for legislation to control ocean dumping.

The Pacific Council's Salmon Fishery Management Plan is a model document in terms of its habitat section. It includes positive habitat objectives and an appendix describing present habitat conditions, the economic value of the fishery, and effects of ongoing activities on fishery production. Some of the objectives are: (1) to assure Pacific salmon receive equal treatment with other purposes of water and land resource development, (2) to facilitate vigorous implementation of federal and state programs to restore salmon stocks, (3) to encourage diligent enforcement of local, state, and federal land use and water development laws, and (4) to seek legislative remedies to laws that inadequately protect habitat.

All of these are examples of how Councils are moving forcefully to integrate habitat concerns into the fishery management process and to conserve and protect habitat vital to the continued productivity of the fisheries for which they have management

responsibility.

Adoption of the same Habitat Policy by all Fishery Management Councils will establish national consistency, and strengthen the Councils' effectiveness in working with Federal and State agencies on regulated activities that could affect important fishery resources. In response to this national effort and the opportunities provided by the FCMA amendments of 1986, the NPFMC is considering adoption of the Habitat Policy stated below.

It is important to note, however, that the decision of how and when to address habitat issues would rest solely with the individual Council. The NPFMC would, therefore, make the judgment of how best to use this new authority and opportunity granted it under the new amendments to the FCMA. This judgement and its supporting guidelines and procedures will be addressed later should the Habitat Policy be adopted.

The success of this new process depends upon its implementation. Successful implementation would likely involve a cooperative effort between the council, fishermen, fishing industry, scientific community, and federal and state agencies. Both the NMFS Alaska Region and Headquarters staff would assist the

NPFMC's efforts to address significant habitat issues by providing the information required to make equitable decisions that balance production of fisheries resources with other appropriate uses.