

MEMORANDUM

TO: Council, SSC, and AP Members

FROM: Clarence G. Pautzke
Executive Director

ESTIMATED TIME
2 HOURS

DATE: April 13, 1998

SUBJECT: Essential Fish Habitat

ACTION REQUIRED

- (a) Initial review of essential fish habitat amendments.
- (b) Initial review of Cape Edgcumbe Pinnacle closure option.

BACKGROUND

(a) Essential Fish Habitat Amendments

The Magnuson-Stevens Act amendments emphasized the importance of habitat protection to healthy fisheries and strengthening the ability of the National Marine Fisheries Service (NMFS) and the Councils to protect and conserve habitat of finfish, mollusks, and crustaceans. This habitat is termed essential fish habitat (EFH), and is broadly defined to include "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity". The Councils are required to amend their fishery management plans by October 1998 to:

- identify and describe EFH for species managed under a fishery management plan;
- describe adverse impacts to that habitat from fishing activities;
- describe adverse impacts to that habitat from non-fishing activities; and
- recommend conservation and enhancement measures necessary to help minimize impacts, protect, and restore that habitat.

Once the FMPs are amended with this EFH information, NMFS and the Councils can be more proactive in protecting habitat areas by alerting other federal and state agencies about areas of concern. Federal agencies engaging in activities that may adversely affect EFH must consult with NMFS regarding those activities. NMFS and the Council may make suggestions on how to mitigate any potential habitat damage. The Council will be required to comment on any project that may affect salmon habitat or habitat of any other anadromous fish (smelt, steelhead, etc.). However, the interim final rule encourages coordination between NMFS and the Councils, and may allow for the Council to delegate the consultation process to NMFS.

At this meeting, the Council will make an initial review of the analysis to amend all fishery management plans (groundfish, scallops, crab, and salmon) to include definitions of EFH. Final review of the EFH amendments is

scheduled for June, 1998. The alternatives proposed to be analyzed in the EA/RIR for these amendments are the following:

Alternative 1: Status quo.

Alternative 2: (*Preliminary NMFS Recommendation*) EFH is defined as all habitat within a general distribution for a species life stage, for all information levels. This area is a subset of a species range.

Alternative 3: EFH is defined as a subset of all habitat within a general distribution [e.g., areas of known concentration] in the case of level 2 information or greater for a species life stage. For level 0 and 1 information, EFH is defined as all habitat within a general distribution for a species life stage.

An executive summary of the analysis is attached at Item C-2(a).

Item C-2(b) contains NMFS's recommendations for identification and description of EFH for the Council's FMP species. NMFS is requesting comments through April 27, 1998.

(b) Cape Edgecumbe Pinnacle Closure

Included in the draft analysis is an option to implement a no fishing closure to address potential impacts of fishing gear on habitat. A 4 square mile pinnacle area off Sitka has been proposed as a no fishing area to protect habitat important for juvenile rockfish and lingcod. Tory O'Connell (ADF&G) will be on hand to show an underwater video of the pinnacle area, and discuss the need for this action.

Executive Summary

This Environmental Assessment/Regulatory Impact Review (EA/RIR) addresses alternatives to protect and conserve habitat of finfish, mollusks, and crustaceans. The Magnuson-Stevens Act mandates that any FMP shall describe and identify essential fish habitat (EFH) for the fishery, minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat.

Essential fish habitat has been broadly defined by the Act to include "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity". The Councils are required to amend their fishery management plans by October 1998 to:

- identify and describe EFH for species managed under a fishery management plan;
- describe adverse impacts to that habitat from fishing activities;
- describe adverse impacts to that habitat from non-fishing activities; and
- recommend conservation and enhancement measures necessary to help minimize impacts, protect, and restore that habitat.

Once the FMPs are amended with this EFH information, NMFS and the Councils can be more proactive in protecting habitat areas by alerting other federal and state agencies about areas of concern. Federal agencies engaging in activities that may adversely affect EFH must consult with NMFS regarding those activities. NMFS and the Council may make suggestions on how to mitigate any potential habitat damage. The Council will be required to comment on any project that may affect salmon habitat or habitat of any other anadromous fish (smelt, steelhead, etc.). However, the interim final rule encourages coordination between NMFS and the Councils, and may allow for the Council to delegate the consultation process to NMFS.

The alternatives proposed to be analyzed in the EA/RIR for these amendments are the following:

Alternative 1: Status Quo. The FMPs would not be amended to meet Magnuson Act requirements (Section 303) for required provisions of FMPs. This is not a viable alternative.

Alternative 2: EFH is defined as all habitat within a general distribution for a species life stage, for all information levels. This area is a subset of a species range.

Alternative 3: EFH is defined as a subset of all habitat within a general distribution [e.g., areas of known concentration] in the case of level 2 information or greater for a species life stage. For level 0 and 1 information, EFH is defined as all habitat within a general distribution for a species life stage.

Option 1 (applicable to Alternatives 2 and 3): Prohibit all fishing on the Cape Edgecumbe pinnacles. To minimize to the extent practicable adverse effects caused by fishing, a no-fishing area would be implemented for a 4 nautical mile² pinnacle area off Cape Edgecumbe, Sitka, which contains habitat important for juvenile rockfish and lingcod.

The consequences of the No Action Alternative are that a program for the conservation and management of EFH in Alaska would not be implemented. Agency decision-makers would not be able to avail themselves of information on the importance of certain habitats to marine fisheries, and their decisions regarding actions that could adversely affect EFH might not give adequate consideration to the need for conservation of particular habitats. Fish populations may remain threatened by habitat loss, and additional fish populations would most likely become threatened as habitat loss continued.

All of the options and alternatives to the status quo would be expected to benefit marine and anadromous fish populations, and provide for improved long-term productivity of the fisheries.

The pinnacle area identified by option 1 provides habitat for spawning, breeding, feeding, growth, and growth to maturity for a variety of species and is extremely productive, in part due to its physical oceanography. Closure of this area will allow a vital ecosystem to maintain at natural levels in an area surrounded by heavy fishing pressure. This closure would also protect the fragile nature of this rare habitat, and prevent the harvest or bycatch of these species during critical portions of their life history.

None of the alternatives are expected to have a significant impact on endangered, threatened, or candidate species, and none of the alternatives would affect takes of marine mammals. Actions taken to define EFH will not alter the harvest of groundfish, crab, scallops, or salmon.

None of the alternatives is expected to result in a "significant regulatory action" as defined in E.O. 12866.

None of the alternatives are likely to significantly affect the quality of the human environment, and the preparation of an environmental impact statement for the proposed action is not required by Section 102(2)(C) of the National Environmental Policy Act or its implementing regulations.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

AGENDA C-2(b)
APRIL 1998

April 3, 1998

RECEIVED
APR - 8 1998

N.P.F.M.C.

Clarence Pautzke, Executive Director
North Pacific Fishery Management Council
605 West 4th Ave., Suite 306
Anchorage, AK 99501

Clarence
Dear Mr. Pautzke:

In accordance with the interim final rule to implement the essential fish habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act, the National Marine Fisheries Service (NMFS) has developed draft recommendations for the identification of EFH for each of the five fishery management plans (FMPs) developed by the North Pacific Fishery Management Council. The draft recommendations, including a description of the process used in developing the draft recommendation and NMFS' rationale for the recommendations, are attached. NMFS is distributing these draft recommendations to solicit Council comments and public comments on the NMFS draft EFH recommendations. In order to assist public dissemination of these draft recommendations, I ask that you please distribute this letter and attached document to the appropriate individuals and organizations prior to the April Council meeting. The NMFS draft recommendations are a "work in-process" for which we will accept Council and public comments through April 27, 1998. After receiving Council and public comments, NMFS will revise the draft recommendations as appropriate and forward final NMFS recommendations for the identification of EFH to the Council by May 6, 1998.

To briefly summarize the attached draft recommendations, NMFS preliminarily recommends that EFH be defined as all habitat within a general distribution for an FMP-managed species life stage. This area is a subset of a species range. NMFS also recommends that EFH not be defined for a level 0 species life stage when no information is available upon which to draw an inference of general distribution. Draft EFH definitions in text are supported by tables on habitat associations, biological attributes, and reproductive traits. Additionally, maps for each FMP which are based on this recommendation are contained in section 7 of the draft environmental assessment and regulatory impact review (EA/RIR) for the EFH amendments to the five FMPs. This draft NMFS recommendation corresponds to alternative 2 of the draft EFH EA/RIR.

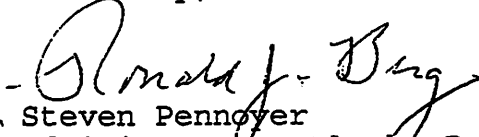


The EFH Technical Teams recommended using general distribution to define EFH to the Alaska Region EFH Core Team. The NMFS members of the Alaska Region EFH Core Team recommended using general distribution to describe EFH to myself and the Regional Science and Research Director. NMFS has adopted the recommendations of the Technical Teams and the NMFS members of the Alaska Region EFH Core Team as its draft EFH recommendation to put forward for public review and comment. The rationale used by each of the Technical Teams to support its recommendation is included in each of the Technical Team reports. The rationale used by the NMFS members of the Core Team is located in section 7 of the draft EFH EA/RIR. The basis for the draft NMFS EFH recommendation is drawn from the reports of the Technical Teams, from the information prepared by the Alaska EFH Core Team and contained in the draft EFH EA/RIR, and from the attached document, NMFS Draft Recommendations and Overview of Process for Developing Draft Recommendations for the Identification and Description of Essential Fish Habitat for Species of the Fishery Management Plans of the North Pacific Fishery Management Council.

Drafts of EFH documents (such as Technical Team Reports and Preliminary Habitat Assessments) were sent to your office as they became available. Electronic versions of documents were e-mailed to Dave Witherell.

Should you need any additional information, please contact Cindy Hartmann at the regional office (907-586-7585). Thank you for the support you, and your staff, have provided this effort. I look forward to discussing our draft EFH recommendation at the April Council meeting.

Sincerely,

for 
Steven Pennoyer
Administrator, Alaska Region

Attachments

cc: EFH Core Team
Jim Balsiger
Steve Zimmerman

**NMFS Draft Recommendations
and
Overview of Process for Developing Draft Recommendations
for the
Identification and Description
of Essential Fish Habitat
for
Species of the Fishery Management Plans
of the
North Pacific Fishery Management Council**

This document contains the NMFS draft recommendations for the identification and description of essential fish habitat (EFH) for species of the fishery management plans (FMPs) of the North Pacific Fishery Management Council (NPFMC). This document also provides NMFS endorsements of other components of the EFH FMP amendment requirements as provided in the interim final rule to implement the EFH provisions of the Magnuson-Stevens Fishery Conservation and Management Act (62 Fed. Reg. 66531; December 19, 1997). It is intended to provide reviewers with: (1) an orientation to the set of documents that form the basis of the NMFS draft recommendations; (2) the NMFS draft EFH recommendations and preliminary endorsements; and (3) an explanation of key concepts underpinning the rationale of the NMFS draft recommendations.

Development of Draft EFH Recommendations

The NMFS draft EFH recommendations are based on a comprehensive set of documents. The first of these documents are the habitat assessments/descriptions developed by a Technical Team assigned to each NPFMC FMP:

- Preliminary Essential Fish Habitat Assessment Report for the Groundfish Resources of the Bering Sea and Aleutian Islands Regions
- Preliminary Essential Fish Habitat Assessment Report for the Groundfish Resources of the Gulf of Alaska Region
- Preliminary Essential Fish Habitat Assessment Report for the Bering Sea and Aleutian Islands King and Tanner Crabs
- Preliminary Essential Fish Habitat Assessment Report for the Scallop Fisheries off the Coast of Alaska
- Salmon Habitat Descriptions for the EFH Assessment for the Salmon Fisheries in the EEZ off the Coast of Alaska

These habitat assessments include habitat and life history information for each species or species group managed under the five NPFMC FMPs. Each habitat assessment also identifies important prey species, research needs, and habitat areas of particular concern (except for the scallop habitat assessment).

Each Technical Team also prepared a summary report on its recommendations for the identification and description of EFH. (The scallop Technical Team's summary report is included in the *Preliminary Essential Fish Assessment Report for the Scallop Fisheries Off the Coast of Alaska*). These summary reports are what constitute the second set of EFH supporting documents. These documents are titled:

- Recommendations for Identification and Description of Essential Fish Habitat for the Groundfish Resources of the Gulf of Alaska, Bering Sea, and Aleutian Islands Region
- Summary of Crab Technical Team Approach and Comments To Identify Essential Fish Habitat for the Bering Sea and Aleutian Islands King and Tanner Crabs
- Essential Fish Habitat Assessment Report for the Salmon Fisheries in the EEZ off the Coast of Alaska

Fishing and non-fishing threats, and recommendations for conservation and management measures to mitigate adverse impacts on habitat for FMP-managed species or species groups, are included in either the habitat assessments, summary reports or in the *Draft Environmental Assessment and Regulatory Impact Review for Essential Fish Habitat* (Draft EFH EA/RIR) (March 24, 1998).

The Alaska Region Core Team for Essential Fish Habitat reviewed the Technical Team reports and modified or added to them to define EFH and summarize information. The NMFS members of the Alaska Region Core Team for Essential Fish Habitat prepared draft recommendations for the identification and description of EFH for each of the five FMPs, along with recommendations for habitat areas of particular concern and research needs. These draft recommendations are entitled *Preliminary DRAFT Report on Identification and Description of Essential Fish Habitat for Species of the Fishery Management Plan of the North Pacific Fishery Management Council*. This report is included in Section 7 of the DRAFT EA/RIR.

The information listed above was sent to the Council on or before March 26, 1998, so it could be incorporated into the draft EFH EA/RIR. Draft descriptions on EFH definitions for all FMP-managed species are included in Section 7.0 of the draft EFH EA/RIR. It was noted that this information was "not the official NMFS draft recommendation".

The Draft EFH EA/RIR incorporated the information available from the Technical Teams and Core Team and in some cases added to this information. Sections in the Draft EFH EA/RIR that relate to requirements in the EFH Interim Final Rule include: Section 1.2, Alternatives Considered; Section 1.3, Description and Identification of EFH; Section 1.4, Information on the Proposed Cape Edgecumbe Pinnacle Closure; Section 7, Draft Reports on EFH Definitions; Section 8.0, Habitat Information for GOA and BSAI Forage Fish; Section 10 Identification of Non-Fishing Threats to EFH; Section 11, Identification of Fishing Threats to

EFH; Section 12, Cumulative Impacts Analysis; Section 13, Identification of Research Needs for EFH in the Alaska Region; Section 14, Habitat Areas of Particular Concern; and Section 15, Conservation and Enhancement Measures.

Explanation of Key Concepts and Supporting Rationale for the Draft Recommendations

In terms of process, the formation of the recommendations was guided by the application of a four-tiered typology of information, and the development of a definition of "general distribution" suitable for serving as the basis for identifying EFH.

Levels of Information

NMFS guidelines provide a typology of information (Level 1 to 4) for classifying the level of information available on the distribution of a life stage. The Alaskan Technical Teams deemed it necessary to also define a "Level 0" information as a subset of Level 1. Level 0 is intended to define a level of knowledge less than Level 1, which requires presence/absence data sufficient for applying analyses of frequency of occurrence. Level 0 information is defined by the groundfish Technical Teams as: "No systematic sampling has been conducted for this species and life stage; may have been caught opportunistically in small numbers during other surveys". The BSAI crab Technical Team used the same definition for Level 0, except specified "research" surveys.

In general, Level 0 classification was used in the following situations:

- a) some information on a species' life stage upon which to infer general distribution;
- b) no information on the life stage, but some information on a similar species or adjacent life stages from which to infer general distribution; or
- c) no information on the actual species' life stage and no information on a similar species or adjacent life stages.

Thus, in some cases EFH for a species life stage was inferred using Level 0 information, (a) and (b). However, EFH was not inferred in cases where no information was available on the actual species' life stage and no information was available on a similar species or adjacent life stages. (Please note that some of Technical Team's definition of Level 0 may differ slightly as a result of how they applied the concept relative to available information on that FMP species.)

Using "General Distribution" as the Basis for Identifying EFH

In summary, the Technical Teams determined that information of Levels 0 and 1 was available for most life stages. Information of Level 2 was generally available for adult life stages. Higher levels of information (Levels 3 & 4) were available for some life stages of salmon in some regions of Alaska. From this information, the Technical Teams provided estimates of the general distributions and known concentrations for their respective species. The determination of general distribution and known concentration were done independently by

each Technical Team. In each case, a general distribution of a species' life stage was defined as a subset of its current and historic range, and as the geographic area containing most of the individuals across all seasons. Thus, general distribution is not a proxy for, but rather a subset of range, and varies in size depending on the species. When defining EFH the Core Team looked at all life stages of all FMP-managed species. From these life history traits, the Alaska Region Core Team found the overall distribution to be all waters – marine, estuarine, and riverine to the headwaters of freshwater systems. To avoid defining EFH to be inclusive of all waters, the NMFS members of the Alaska Region Core Team narrowed the definition of EFH to a general distribution. General distribution would be where most of the individuals would be found, not the species range. This general distribution denotes those areas where one would reasonably expect to find (high probability) a certain life stage of that species, given some inference from a similar habitat or species characteristic. General distribution encompasses approximately 95 percent of the total population. Known concentrations were defined only for life stages for which Level 2 knowledge is available. (Level 2 information was only available for certain adult stages in the case of groundfish and shellfish, and certain stages for salmon).

The estimation of general distribution varied among Technical Teams in regard to the level of information. For life stages with information Level 0, (a) and (b), the Salmon and Groundfish Technical Teams inferred general distribution when some information was available upon which to make an inference. However, general distribution was not inferred for life stages when there was no information on the life stage itself and no information on adjacent life stages or similar life stages of similar species. Thus, for some Level 0 life stages, general distribution is not provided.

The methods for determining the salmon and groundfish general distributions and known concentrations are indicated in the respective Technical Team recommendation reports. While differing slightly in process due to differences in type of data sources and habitat, the results are similar in degree of inclusiveness for similar amounts of information.

The Crab and Scallop Technical Teams at this time have made no inference of general distribution for life stages with Level 0 information. While the lesser degree of inference is due in large part to lack of information from similar species or adjacent life stages, a lesser degree of inclusiveness exists at all levels of information for Crab and Scallop compared to the Salmon and Groundfish Team recommendations.

"Known Concentration" Information Inadequate to Define EFH

The NMFS members of the Alaska Region Core Team considered the alternatives of using general distribution or known concentrations to define EFH for species' life stages for which Level 2 information is available. A principal concern was that using known concentrations alone to designate EFH would not ensure that adequate areas were protected as EFH. Specific

reasons discussed by the NMFS members of the Alaska Region Core Team in support of this conclusion are the following:

- * Areas of known concentrations based on current information do not adequately address unpredictable annual differences in spatial distributions of a life stage, nor changes due to long-term shifts in oceanographic regimes.

Annual differences in distribution of high concentrations of adults, particularly for pelagic or semi-demersal species (e.g., pollock, Pacific cod) occur and are unpredictable. Within the last 20 years, from which most data have been obtained, long-term changes in concentrations have been observed in Alaska groundfish. The spawning distribution of Gulf of Alaska pollock has changed dramatically since the 1970s. Relative distribution of the Alaska sablefish stock between the Bering Sea, Aleutian Islands, and the Gulf of Alaska has cycled since the late 1970s.

Habitat productivity for salmon also varies cyclically with natural long-term disturbance regimes, so that a particular watershed may have low productivity after an event such as a major flood, followed by a period of higher productivity. Locations of salmon concentrations in freshwater, estuarine, and marine habitats may change unpredictably, so that current areas of known concentration would not adequately cover required habitat. Regime shifts in ocean conditions also cyclically affect salmon distribution and survival.

- * All habitats occupied by a species contribute to production at some level. Although contributions from individual locations may be small, collectively they can account for a significant part of total production. For example, fisheries for coho and pink salmon depend on the cumulative production from thousands of small streams that are widely distributed across coastal Alaska.
- * A stock's long-term productivity is based on both high and low levels of abundance, and the entire general distribution may be required during times of high abundance. For example, salmon use a broader range of freshwater habitat during periods of high abundance. The broad range and diversity of salmon habitats must be conserved to provide for periods of abundance, as well as to avoid severely reduced production during poor years.
- * Survey information, upon which descriptions of known concentrations are primarily based, is limited to certain seasons (chiefly summer), while the general distribution is based on the best available scientific information, as well as fishery and local knowledge of a life stage.
- * No discrete basis exists, or no threshold is defined to distinguish between known concentrations and general distribution of a species' life stage.

- * Observed concentrations or densities do not necessarily reflect all habitat required to maintain healthy stocks within the ecosystem.
- * From a science perspective, no rationale exists to identify areas outside of a known concentration as non-essential for maintaining healthy production levels. Substantial rationale exists however, to justify an inclusive definition of EFH using general distribution.

The advice in the NMFS guidelines to use risk-averse and ecosystem approaches and the best scientific information available suggests that the general distribution should be used to designate EFH necessary to maintain healthy stocks and ecosystems and sustain productive fisheries. While areas of known concentration are identified for some life stages, the NMFS members of the Alaska Core Team recommended that EFH for a life stage be defined as the general distribution as provided in the respective Technical Team reports. Note that for some Level 0 life stages, general distribution is not provided. The Core Team also recommended that general distribution not be inferred for a life stage if information on the life stage itself and information on adjacent life stages or similar life stages of similar species is not available. Cases where no information exists on the actual species' life stage and no information exists on a similar species or adjacent life stages from which to infer a general distribution were considered to be research priorities.

NMFS agrees with the conclusions of the NMFS members of the Alaska Region Core Team concerning the use of general distribution rather than known concentration to define EFH and has adopted their rationale as the basis for the NMFS draft recommendation.

NMFS DRAFT EFH RECOMMENDATIONS

The documents and explanations listed above comprise the basis of the NMFS draft EFH recommendations and preliminary endorsements that follow.

Draft Recommendation for Identification and Description of EFH

The NMFS draft recommendation for identification and description of EFH is that EFH be defined as all habitat within a general distribution for a species life stage for all information levels, with the exception that EFH not be defined for a Level 0 species life stage when no information is available upon which to draw an inference of general distribution. General distribution of a species life stage is a subset of a species life stage range. The NMFS draft recommendation for the identification and description of EFH corresponds to Alternative 2 of the draft EFH EA/RIR. The textual description of EFH (including tables) for each species' life stage when applying this draft recommendation is included in sections 7.1 through 7.5 of the draft EFH EA/RIR. The habitats described in the text are shown within general distributions on maps for species' life stages with Level 1 and 2 information. For those species with Level 2 information, known concentrations are also drawn on the maps within the general distribution; however NMFS preliminarily recommends that EFH be defined as the adult's

general distribution. No maps of general distribution are provided for those life stages with Level 0 information. For more information concerning this recommendation, please refer to the draft EFH EA/RIR for a discussion of Alternative 2 and the discussion contained in this document under the heading "Explanation of Key Concepts and Supporting Rationale for the Draft Recommendations."

Draft Recommendation for Habitat Areas of Particular Concern

The NMFS members of the Alaska Region Core Team identified and recommended the following general types of habitat areas of particular concern (HAPC) for all FMP-managed species:

1. Nearshore areas of intertidal and estuarine habitats with submerged vegetation, rock, and other substrates that may provide food and rearing for juvenile groundfish, salmon, and shellfish; spawning or mating areas for adults of some crab and groundfish species (e.g., Atka mackerel, yellowfin sole, red king crab); and migration route areas for adult and juvenile salmon; and that are sensitive to natural or human-induced environmental degradation, especially in urban areas and in other areas adjacent to intensive human-induced developmental activities. Examples include areas such as eelgrass beds, submerged aquatic vegetation, emergent vegetated wetlands, and certain intertidal zones. Many of these areas are unique and rare, and have a high potential to be affected by shore-based activities. The coastal zone is under the most intense development pressure, and estuarine and intertidal areas are limited in comparison with the areal scope of other marine habitats.
2. Offshore areas with substrates of high micro-habitat diversity which serve as cover for groundfish and shellfish. These can be areas with rich epifaunal communities (e.g., coral, anemones, bryozoans, etc.) or with large particle size (e.g., boulders, cobble). Complex habitat structures are considered most readily impacted by fishing activities.
3. Freshwater and estuarine habitat used for migration, spawning, and rearing of anadromous fish, especially in urban areas and in other areas adjacent to intensive human-induced developmental activities.

In identifying specific habitat areas of particular concern within the above general habitat types the Core Team recommends that consideration should be given to the following criteria:

- the importance of the ecological function provided by the habitat;
- the extent to which the habitat is sensitive to human-induced environmental degradation;
- whether, and to what extent, development activities are, or will be, stressing the habitat; and
- the rarity of the habitat type.

For example, in applying these criteria a eelgrass bed would be considered a HAPC if it were threatened by development activities.

NMFS preliminary recommends the general types of habitat areas of particular concern listed above as well as those identified by the Technical Teams and those included in section 14.4 of the draft EFH EA/RIR, be identified as habitat areas of particular concern within the five NPFMC FMPs. In identifying specific HAPC these habitats would be evaluated against how they meet the four criteria (ecological function, sensitivity, stress on the habitat, and rarity).

Draft Recommendation on Research and Information Needs

The Alaska Region EFH Core Team has developed a draft strategic framework with which to evaluate activities in the Alaska Region with respect to attaining NMFS habitat goals. To determine where investment of funds and resources should be placed, the framework considers the relative progression or status of the respective FMP species groups in terms of knowledge of habitat requirements, habitat management, and condition of habitat. Briefly, the framework identifies activities that would address the Level 0 life stages where they are likely to occur in habitat at risk; identifies the means to improve management and compatibility of human activities that affect the critical freshwater habitat of salmon; and identifies ways to evaluate and minimize effects of NMFS managed fisheries on EFH. Although a formal framework application has not been performed, the NMFS members of the Alaska Region Core Team recommended the research needs identified for each FMP by the Technical Teams (summarized in Sections 13.2, 13.3, 13.4 and 13.5 of the DRAFT EFH EA/RIR) and the following research needs:

1. Surveys and studies of nearshore pelagic and benthic areas are needed to determine their use by a variety of species, including Atka mackerel, Pacific cod, pollock, rockfish, sablefish, octopus, flatfishes, salmon, crabs, scallops, and juveniles and larvae of all species and forage species considered in NPFMC FMPs.
2. In salmon freshwater habitat, knowledge and management tools are needed for use in conserving or restoring habitat areas of particular concern.
3. Information on habitat distribution, in conjunction with fish distribution, is needed to determine species' habitat requirements and utilization. Information on the extent and distribution of complex habitat types susceptible to bottom fishing will greatly improve the ability to evaluate the potential of a fishery to physically alter bottom habitat and evaluate proposed measures to minimize impacts on EFH. To acquire this information, the Core Team recommends increased support to acquire information on detailed bottom topography and bottom type distribution on the continental shelf and slope.

4. Research necessary to raise the level of information known on a species life stage from level 0 or 1 to level 2 or higher.

Individual Technical Team reports indicate specific management, habitat, and ecological requirements that correspond to research needs in areas at risk. NMFS preliminarily recommends that these research needs, as well as those identified in the EFH habitat assessments, EFH summary documents and section 13 of the draft EA/RIR, be included in the EFH FMP amendments and pursued by NMFS to enhance knowledge of EFH.

Draft Recommendation on Conservation and Enhancement Measures to Mitigate Adverse Impacts on EFH

NMFS preliminarily recommends that the proposed closure of the Cape Edgecumbe Pinnacle be implemented with the EFH amendments to the FMPs. A description of and need for the closure is contained in the draft EFH EA/RIR at sections 1.4, 2.2, and 3.2.

Preliminary Endorsement of Identified Fishing and Non-Fishing Threats and Cumulative Impacts Analysis of these Activities

A description and identification of fishing and non-fishing threats is included in the draft EFH EA/RIR at Sections 11 and 10, respectively. A cumulative impacts analysis of these activities is included in the draft EFH EA/RIR at Section 12. NMFS preliminarily endorses the statements made and conclusions reached concerning fishing and non-fishing threats and the cumulative impacts of those activities presented in the draft EFH EA/RIR.

Draft Recommendation for Review and Revision of EFH Components of FMPs

NMFS preliminarily recommends that the NPFMC and NMFS review the EFH components of each FMP once every five years after the implementation of the EFH amendments.

Preliminary Endorsement of Identification of Important Prey Species

Prey species are identified in the individual species reports in the Technical Team habitat assessments where the information was available. Section 8.0 of the draft EFH EA/RIR also discusses important prey species for forage fish and several species of GOA and BSAI groundfish. NMFS preliminarily endorses the statements made and conclusions reached concerning important prey species presented in the Technical Team habitat assessments and the draft EFH EA/RIR.



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

Office of General Counsel
P.O. Box - 21109
Juneau, Alaska 99802-1109

April 21, 1998

MEMORANDUM FOR: Members of the North Pacific Fishery Management Council

THROUGH:

Lisa Lindeman *Lisa S. Lindeman*
Regional Attorney, Alaska Region

FROM:

GCAK - Lauren M. Smoker *Lauren M. Smoker*

SUBJECT:

EFH designations and non-FMP managed species

Background

In December 1997, GCAK provided a legal opinion to the members of the Alaska Region Essential Fish Habitat (EFH) Core Team. At that time, the Core Team was preparing habitat assessments for all species managed by a Council fishery management plan (FMP). These habitat assessments would form the basis of EFH recommendations and EFH FMP amendment development. In preparing the habitat assessments for species of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands Area (BSAI) groundfish FMPs, the Core Team asked whether species listed under the prohibited species and nonspecified species categories were "managed" under the groundfish FMPs such that EFH must be described and identified for these species. A legal opinion specifically tailored to answer this narrow issue was prepared. The conclusion of the opinion was that species listed under the prohibited and nonspecified species categories were not "managed" by the groundfish FMPs; therefore, those species were not within either of the groundfish FMP's fishery management unit (FMU). Regulation at 50 C.F.R. 600.805(b) states that EFH must be described and identified for only those species within an FMP's FMU and that EFH must not be described and identified for species outside an FMP's FMU. Given these findings, I informed the Core Team that there was no requirement to define and identify EFH for the species listed under the prohibited species and nonspecified species categories of the GOA and BSAI groundfish FMPs. I emphasize groundfish FMPs because many of the species listed as prohibited species under the groundfish FMPs are managed under another Council FMP that will describe and identify EFH.

When the opinion was presented at the February Council meeting, some members of the public and the Council expressed concern that this interpretation would exclude certain species from EFH designation, namely Pacific halibut, Pacific herring and GOA crab species. Two questions arose during the discussion: (1) should the EFH statutory provisions of the Magnuson-Stevens Act be interpreted to include not only FMP managed species managed but also non-FMP managed species and (2) could an FMP be amended to include certain species within FMP management solely for the purpose of describing and identifying EFH for those species?



Scope of Statutory Authority

Comments similar to those raised at the February Council meeting concerning the agency's interpretation of EFH scope were submitted to NMFS and addressed in the interim final rule establishing the EFH regulatory guidelines (62 Fed. Reg. 66531, December 19, 1997). Several commenters criticized NMFS for not requiring Councils to describe and identify EFH for all fish species inhabiting the geographic jurisdiction of a Council, and suggested that such a limitation is not supported by the Magnuson-Stevens Act; others suggested that EFH be described and identified for all major fisheries, even those not in an FMP. (See 62 Fed. Reg. at 66534.) Commenters stated that Councils should be able to describe and identify EFH of non-managed species in order to protect habitats that are affected by fishing for a managed species. NMFS responded to the comments as follows:

NMFS continues to maintain that the Magnuson-Stevens Act requires Councils to describe and identify EFH for only those species managed under an FMP. According to section 303(a)(7) of the Magnuson-Stevens Act, EFH provisions are required components of an FMP. Therefore, it is appropriate to describe and identify EFH only for those species managed in the FMP. However, the Magnuson-Stevens Act does not preclude Councils from identifying habitat of a fishery resource under its authority. Section 305(b)(3) describes the Councils' commenting responsibilities for activities that may affect such habitat. In the rule, NMFS points out that Councils have the option to describe and identify habitats (not EFH) and institute management measures to protect species (and their habitats) that are not managed under FMPs. This is currently done by some Councils. However, the habitats of species not managed under a Federal FMP would not be considered EFH for the purposes of consultation.

NOAA General Counsel concurs in this interpretation. Based on the Council's request, we reexamined the legislative history for the Sustainable Fisheries Act (U.S. Code Administrative and News Service, Senate Report No. 104-276, at 4078, 4090, and 4097-98) and floor statements reported in the Congressional Record, as well as the statutory language of the Magnuson-Stevens Act. We were unable to locate any statements that would support a more expansive interpretation of the scope of the EFH provisions.

Habitat assessments for Pacific halibut, Pacific herring and GOA crab species were prepared. These habitat assessments are included in section 9 of the draft EFH EA/RIR and, if approved by the Council and the Secretary, will become part of the EFH FMP amendments. Given the interpretation presented above, the habitat described in these assessments will not be designated EFH for these species. Even without EFH designation, the Council has the authority under section 303 of the Magnuson-Stevens Act to institute management measures to protect these non-FMP managed species (and their habitats) when fishing activities of an FMP managed species adversely affect a non-FMP managed species or its habitat.

Development or amendment of FMPs solely to define and identify EFH for species not currently managed by an FMP

FMPs are developed or amended in order to provide for conservation and management of a species or species group that is in need of conservation and management to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the species or species group. Such conservation and management measures must be consistent with the national standards and other provisions of the Magnuson-Stevens Act, regulations implementing recommendations of international organizations, and any other applicable law.

A discussion on development or amendment of an FMP to manage a new species should focus initially on whether a non-FMP species or species group is in need of conservation and management in Federal waters. Eventual designation of EFH flows from the initial Council decision that an FMP should be developed or amended in order to protect, restore or promote the long-term health and stability of a species or species group and to prevent overfishing of that species or species group. Therefore, should the Council determine that a species not currently managed by an FMP is in need of conservation and management, an FMP may be developed or amended to include the species (with the exception of Pacific halibut¹) within FMP management. As an FMP managed species, EFH would also need to be designated in the development of the amendment process. However, the Council could not develop or amend an FMP to include a species not currently managed by an FMP solely for the purpose of EFH designation.

Using GOA crab species as an example, the Council's first step would be a determination that there is inadequate conservation and management of GOA crab species in the Federal waters of the GOA to prevent overfishing or to protect, restore, or promote the long-term health and stability of GOA crab stocks. If this determination is based on inadequate protection of GOA crab species' habitat, the Council would have to explain why current crab fishing practices are detrimental to the species' long-term health and stability and that without Federal management, the Council is unable to protect GOA crab species and their habitat in Federal waters from crab fishing practices. This focus on crab fishing practices would be necessary for a new or amended FMP because the Council currently possesses the authority to protect GOA crab species' habitat in Federal waters from any adverse effects of groundfish fishing under the GOA groundfish FMP and may amend the scallop or salmon FMPs to provide authority for such regulations if scallop or salmon fishing poses threats to GOA crab species' habitat. If the Council determines that there are inadequate conservation and management measures for GOA crab species' in Federal waters, the Council may wish to develop or amend an FMP that defers management of GOA crab species to the maximum extent practicable to the State of Alaska. Such a deferral would require

¹Pacific halibut is an internationally managed species and under the jurisdiction of the International Pacific Halibut Commission. While the Council may develop regulations governing the halibut fishery in its portion of Convention waters (such as regulations to protect Pacific halibut habitat from adverse groundfish fishing effects), the regulations must be in addition to and not in conflict with regulations adopted by the IPHC.

a review of the new or amended FMP and State of Alaska GOA crab management measures for consistency with the national standards, other Magnuson-Stevens Act provisions and other applicable laws.

The Council also could develop or amend an FMP to manage a marine animal or plant that provides habitat for other fish species. The South Atlantic, Gulf of Mexico and Caribbean Councils have coral FMPs that manage coral because of its value as habitat for other fish species, such as reef fish. Should the North Pacific Council determine that there are inadequate measures to protect eelgrass, for example, in Federal waters, the Council may develop or amend an FMP to conserve and manage eelgrass based on its habitat value to FMP and non-FMP species.

As stated above, the Council continues to possess the authority to protect Pacific halibut, Pacific herring and GOA crab species' or their habitat in Federal waters from any adverse effects of groundfish fishing under the groundfish FMPs and may amend the scallop or salmon FMPs to provide authority for such regulations if scallop or salmon fishing poses threats to any of these species or their habitats. Furthermore, after the EFH amendments are approved by the Secretary, the Council will have the ability to comment on impacts on Pacific halibut, Pacific herring or GOA crab species' habitats when Federal or State activities may adversely affect EFH for a similarly located FMP managed species.

Conclusions

As stated in the preamble to the interim final rule on EFH guidelines and as summarized above, NMFS interprets the Magnuson-Stevens Act as requiring Councils to describe and identify EFH for only those species managed under an FMP. We were unable to locate any legislative history or floor statements for the Sustainable Fisheries Act that would support a more expansive interpretation of the scope of the EFH provisions. Therefore, we reaffirm our opinion that the Council must describe and identify EFH only for those species managed in the FMP and that habitat for non-FMP species may be identified in an FMP but must not be designated EFH.

As for question 2, FMPs are developed or amended in order to provide for conservation and management of a species or species group in need of conservation and management to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the species or species group. Development or amendment of an FMP should focus initially on whether a non-FMP species or species group is in need of conservation and management in Federal waters. Designation of EFH flows from the initial Council decision that an FMP should be developed or amended in order to protect, restore or promote the long-term health and stability of a species or species group and to prevent overfishing of that species or species group. Therefore, the Council could not develop or amend an FMP to include a species not currently managed by an FMP solely for the purpose of EFH designation. The lack of EFH designation for non-FMP managed species does not preclude the Council from instituting management measures to protect non-FMP managed species and their habitats from adverse

effects of fishing for FMP managed species. Additionally, after the EFH amendments are approved by the Secretary, the Council will have the ability to comment on impacts on Pacific halibut, Pacific herring or GOA crab species' habitats when Federal or State activities may adversely affect EFH for a similarly located species.

cc: GCF - Margaret F. Hayes
Jane Hannuksela
Marian Macpherson
GCSE - B. Michael McLemore
NMFS AK Region - Cindy Hartmann

Sitka, AK
December, 10, 1997

Bill Paden, Chairman
Sitka Fish & Game Advisory Committee
610 Etolin St.
Sitka, AK 99835

RECEIVED
MAR 9 1998

Dear Bill,

We the undersigned Sitka residents and Sitka members of the Alaska N.P.F.M.C Marine Conservation Council would like to go on record as supporting the following proposal from the Alaska Dept. of Fish & Game to the North Pacific Fishery Management Council and the Alaska Board of Fisheries.

Brief Statement of Proposal: To prevent over fishing of ground fish species and to create a ground fish refuge by closing a small area of pinnacles off Cape Edgecumbe to commercial and sport fishing for ground fish, halibut, and lingcod. This area is very small (four square nautical miles) but is comprised of two volcanic necks that have extremely high diversity and density of ground fish. The area to be closed is inside the following box: 56 55.5' N x 135 54'W and 56 57'N and 135 54'W and 56 57'N x 135 57'W.

Though from diverse professional backgrounds, including commercial and guided sport fishing, we all feel that this is a timely and appropriate measure to protect a small and unique area and it's resident sea life.

We urge the Sitka Fish & Game Advisory Committee, The Alaska Board of Fisheries, and the North Pacific Fishery Management Council to approve this proposal.

Sincerely,

Steve Fish Steve Fish

John Murray John Murray

Bill Foster Bill Foster

Bob Purvis Bob Purvis

Sheri Mayo Sheri Mayo

Noel Johnson Noel Johnson

Page Else Page Else

Helen Drury Helen Drury

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TONY KNOWLES, GOVERNOR

DEPARTMENT OF FISH AND GAME

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Board Support Section

April 20, 1998

Richard Lauber
 Chairman
 North Pacific Fishery Management Council
 605 W. 4th Avenue
 Suite 306
 Anchorage, AK 99835

Dear Mr. Lauber:

The Alaska Board of Fisheries recently implemented a regulation to prohibit fishing for groundfish in the area know as "the Pinnacles" off Cape Edgecumbe, Kruzof Island. The BOF vote was unanimous in support of this proposal. The fish habitat in this area is unique and supports an abundant and diverse assemblage of groundfish species. Three regulations were adopted that in concert have closed the area to all commercial, sport, guided-sport, and subsistence harvest of state-managed groundfish, including lingcod and rockfishes. The regulations are as follows:

Subsistence:

5 AAC 01.725. WATERS CLOSED TO SUBSISTENCE FISHING. (a)

(b) Groundfish may not be taken for subsistence purposes in the waters off Cape Edgecumbe enclosed by a box defined as 56° 55.5' N. lat., 56° 57' N. lat., 135° 54' W. long., and 135° 57' W. long.

Commercial:

5 AAC 28.150. CLOSED WATERS IN EASTERN GULF OF ALASKA AREA.

(c) Groundfish may not be taken in the waters off Cape Edgecumbe enclosed by a box defined as 56° 55.5' N. lat., 56° 57' N. lat., 135° 54' W. long., and 135° 57' W. long.

Sport:

Sitka Area Saltwater Exceptions:

The Pinnacles: the waters off Cape Edgecumbe enclosed by a box defined as 56° 55.5' N. lat., 56° 57' N. lat., 135° 54' W. long., and 135° 57' W. long. are closed to fishing for bottomfish- including lingcod and rockfish.

In order for these closures to have an impact, and to ensure protection of this valuable and unique habitat, we strongly encourage the North Pacific Fisheries Management Council to approve passage of the Plan Team proposal to close this area to all federally managed species including halibut. Prompt action on this vote is essential if a full closure is to be in place before the start of the summer fishing season.

Thank you for your consideration of this request.

Sincerely,

John White / Laf

Dr. John White, Chairman
 Alaska Board of Fisheries

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