


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver   
Executive Director

ESTIMATED TIME 6 HOURS
---------------------------

DATE: November 27, 2004

SUBJECT: Essential Fish Habitat (EFH)/Habitat Areas of Particular Concern (HAPC)

**ACTION REQUIRED**

- a) Review Alternative 5B options analysis; finalize alternatives
- b) Review HAPC Process, and consider revisions as necessary
- c) Update on proposed Dixon Entrance HAPC area, action as necessary

**BACKGROUND**

Alternative 5b areas with 200 mt limit

In June, the Council added several suboptions for the Aleutian Islands portion of Alternative 5b of the EFH EIS as follows:

1. The original Alternative 5b open areas for bottom trawling with coral and sponge bycatch caps and TAC reductions (as currently analyzed in the EFH EIS).
2. Revised open areas and modifications based on Oceana's April 29<sup>th</sup> letter to the NPFMC with:
  - a. No bycatch caps for corals/sponges, and no TAC reductions for any groundfish;
  - b. Including coral/sponge bycatch caps and TAC reductions for Atka mackerel and rockfish TACs.
3. Open areas where the cumulative bottom trawl groundfish catch is greater than or equal to 200 mt, based on observer data for 1991-2003. This option would also remove coral/sponge bycatch caps and TAC reductions for all groundfish.

During the October meeting the Council provided further direction on the third suboption. Fishing industry representatives commented that the third option currently would not encompass many of the trawled areas to be designated as open because the observer data are based on end positions only. The Council recommended the trawl groups and fishermen provide their recommendations on the boundaries for the open areas, to staff, based on specific trawl tracts encompassing start and end positions prior to the December meeting. Staff will discuss the preliminary analysis of these areas (shown as C-4(a)) At this meeting, the Council will finalize the

alternative /options for the Aleutian Islands portion of Alternative 5b so that staff can complete the analysis prior to final Council action on the EFH EIS, scheduled for February 2005.

### HAPC Process

In October, the Council requested that staff revise the HAPC proposal (Appendix J EFH EIS) to incorporate the joint plan teams' recommendations. The revisions of the HAPC process are attached as Item C-4(b), and a copy of the joint plan teams recommendations are attached as Item C-4(c).

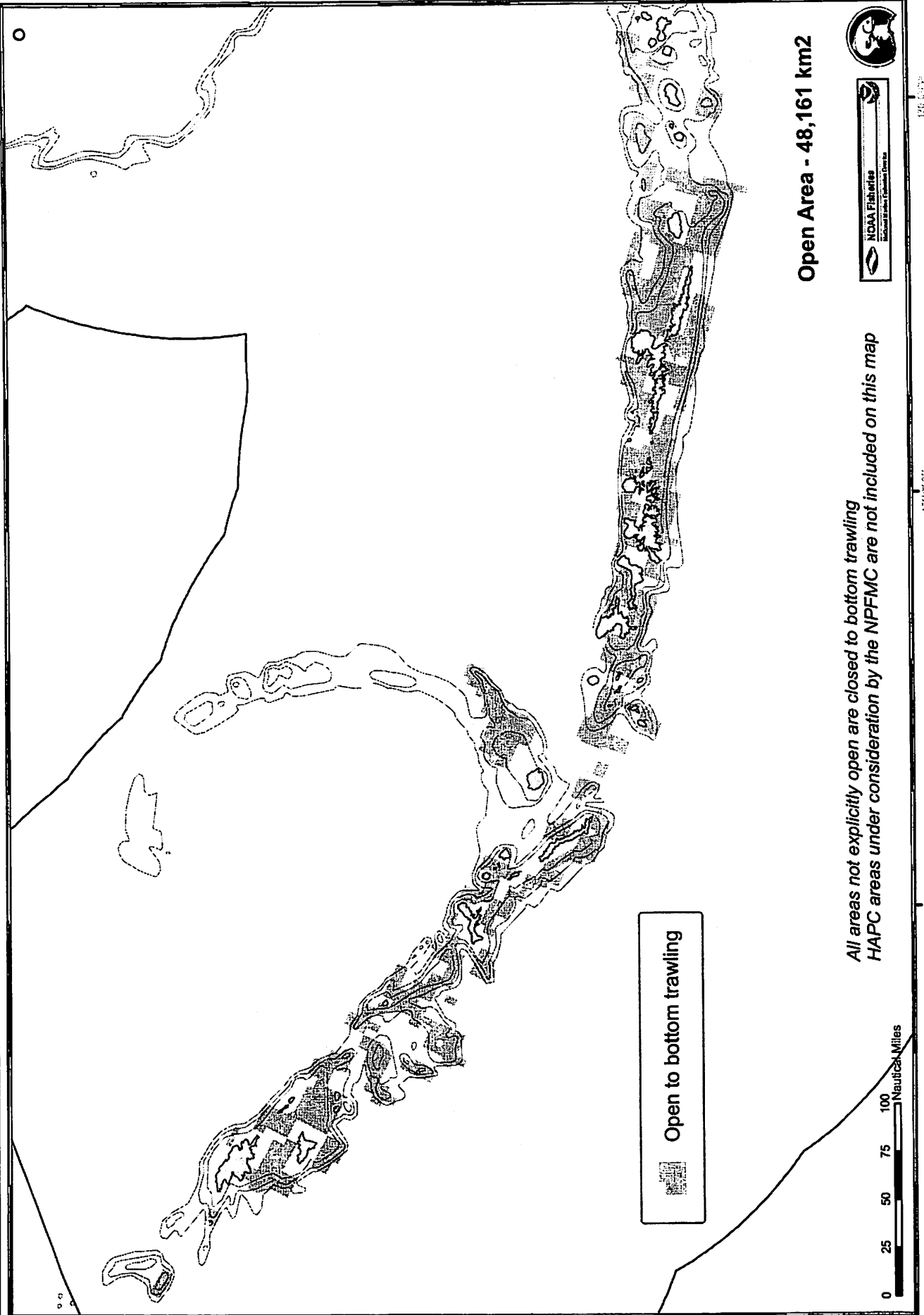
### Update on proposed Dixon Entrance HAPC area

In October, the Council voted to release for public review a draft HAPC EA/ RIR that evaluates the possible designation and management of HAPCs for Gulf of Alaska corals, Aleutian Islands corals, and seamounts in the Exclusive Economic Zone. Subsequently, NMFS and Council staff discovered that one of the proposed HAPCs, located at Dixon Entrance, lies partially in a disputed zone over which both the US and Canada claim jurisdiction (see the attached map Item C-4(d)).

NMFS has coordinated this issue with Council staff, NOAA General Counsel, the Coast Guard, and the Department of State. Several potential options have emerged: (1) the Council could carve out the portion of the proposed HAPC that lies in undisputed US waters and proceed to designate it as an HAPC; (2) the Council could drop the Dixon Entrance HAPC proposal; (3) the Council and NMFS could initiate a request for Canada to develop corresponding regulations for the area (which would require further coordination with the Department of State); or (4) the U.S./Canada fisheries enforcement agreement could be revised to add a provision that the U.S. would enforce any prohibitions concerning bottom gear in the HAPC in the disputed area, regardless of the nationality of the fishing vessel (which would require agreement from the Coast Guard, Department of State, and Canada).

The Department of State is interested in the Council's action on this issue and the potential implications for future negotiations with Canada over the maritime boundary and fisheries enforcement. A representative from the Department of State plans to attend the December Council meeting to address this issue and answer questions.

**EFH EIS Alternative 5b - Industry Proposal Revised**



**Open Area - 48,161 km<sup>2</sup>**

**Open to bottom trawling**

*All areas not explicitly open are closed to bottom trawling  
HAPC areas under consideration by the NPFMC are not included on this map*



1:50,000

1:75,000

1:60,000

**Appendix J**  
**Proposed HAPC Identification Process**

**Prepared by**

**Staff**

**North Pacific Fishery Management Council**

**Revised November 2004**

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## **ACRONYMS AND ABBREVIATIONS**

ADF&G Alaska Department of Fish and Game

AP Advisory Panel

Council North Pacific Fishery Management Council

EFH essential fish habitat

EIS environmental impact statement

FMP Fishery Management Plan

HAPCs habitat areas of particular concern

NEPA National Environmental Policy Act

NGO non-governmental organization

NMFS National Marine Fisheries Service

NOAA National Oceanic and Atmospheric Administration

SSC Scientific and Statistical Committee

## J.1 Introduction

In June 1998, the North Pacific Fishery Management Council (Council) identified several habitat types as HAPCs within essential fish habitat (EFH) amendments 55/55/8/5/5. Habitat types, rather than specific areas, were identified as HAPCs because little information was available regarding specific habitat locations. These HAPC types included the following:

1. Areas with living substrates in shallow waters (e.g., eelgrass, kelp, and mussel beds)
2. Areas with living substrates in deep waters (e.g., sponges, coral, and anemones)
3. Freshwater areas used by anadromous fish (e.g., migration, spawning, and rearing areas)

The history of North Pacific Council HAPC designations is provided in Chapter 2 of the EFH environmental impact statement (EIS). In April 2001, the Council formed the EFH Committee to facilitate industry, conservation community, Council, and general public input into the EFH EIS process. The committee worked cooperatively with Council staff and the National Marine Fisheries Service (NMFS) to identify alternative HAPC criteria, as well as approaches that could be used to designate and manage HAPC areas. The Committee aided in formulating the HAPC designation alternatives referred to in Chapter 2 and developed recommendations for a HAPC process.

This appendix summarizes the process that will be used to identify HAPC sites, consistent with the HAPC approach chosen through action #2 of this EIS. The Council may modify this HAPC process over time, as warranted.

The schedule of decision-making and initiation of the HAPC process is as follows. In October 2003, the Council chose a preliminary preferred alternative for a HAPC approach (i.e., HAPCs will be site-based and the three HAPC types listed above will be rescinded). The Council has adopted a process to identify HAPCs based on the options contained in this appendix. This process will enable the Council to decide whether to provide additional focus for HAPCs (add additional criteria; identify priority habitats for HAPC consideration), decide how often proposals for HAPCs will be solicited from the public, and decide on a stakeholder review process.

## J.2 HAPC Considerations and Priorities

The Council will call for HAPC nominations through a proposal process that will be focused on specific sites consistent with HAPC priorities designated by the Council. The Council may designate HAPCs as habitat sites and, management measures, if needed, would be applied to a habitat feature or features in a specific geographic location. The feature(s), identified on a chart, would have to meet the considerations established in the regulations and would be developed to address identified problems for FMP species. They would have to meet clear, specific, adaptive management objectives. Evaluation and development of HAPC management measures, where management measures are appropriate, will be guided by the EFH Final Rule.

### J.2.1 HAPC Considerations

HAPCs are those areas of special importance that may require additional protection from adverse effects. Regulations at 50 CFR 600.815(a)(8) provide that “FMPs should identify specific types or areas of habitat within EFH as habitat areas of particular concern based on one or more of the following considerations:

- (i) The importance of the ecological function provided by the habitat.
- (ii) The extent to which the habitat is sensitive to human-induced environmental degradation.
- (iii) Whether, and to what extent, development activities are, or will be, stressing the habitat type.
- (iv) The rarity of the habitat type.”

The NPFMC will consider HAPCs that meet at least two of the four HAPC considerations above, and rarity will be a mandatory criterion of all HAPC proposals.

### J.2.2 HAPC Priorities

The Council will set priorities at the onset of each HAPC proposal cycle.

The Council recommended that the priorities for the 2003 HAPC process focus on sites within two specific priority areas:

1. Seamounts in the EEZ, named on NOAA charts, that provide important habitat for managed species.
2. Largely undisturbed, high-relief, long-lived hard coral beds, with particular emphasis on those located in the Aleutian Islands, which provide habitat for life stages of rockfish or other important managed species.

Nominations were based on best available scientific information and included the following features:

1. Sites must have likely or documented presence of FMP rockfish species.



2. Sites must be largely undisturbed and occur outside core fishing areas.

### J.3 HAPC Process

The HAPC process will be initiated when the Council sets priorities, and a subsequent request for HAPC proposals is issued. Any member of the public may submit a HAPC proposal. Potential contributors may include fishery management agencies, other government agencies, scientific and educational institutions, non-governmental organizations, communities, and industry groups.

#### J.3.1 Call for proposals

A call for proposals will be announced during a Council meeting, and will be published in the Federal Register, as well as advertised in the Council newsletter. Scientific and technical information on habitat distributions, gear effects, fishery distributions, and economic data should be made easily accessible before issuing a call for proposals. For example NMFS' Alaska Region website has a number of valuable tools for assessing habitat distributions, understanding ecological importance, and assessing impacts. Information on EFH distribution, living substrate distribution, fishing effort, catch and bycatch data, gear effects, known or estimated recovery times of habitat types, prey species, and freshwater areas used by anadromous fish is provided in the EFH EIS. The public will be advised of the rating criteria with the call for proposals.

##### J.3.1.1 Contents of Proposals

The format for a HAPC proposal should include the following:

- Provide the name of proposer, address, and affiliation
- Provide a title for the HAPC proposal and a single, brief paragraph concisely describing the proposed action.
- Identify the habitat and FMP species that the HAPC proposal is intended to protect.
- State the purpose and need.
- Describe whether and how the proposed HAPC addresses the four considerations set out in the final EFH regulations.
- Define the specific objectives for this proposal.
- Propose solutions to achieve these objectives (how might the problem be solved?).
- Establish methods of measuring progress towards those objectives.
- Define expected benefits of the proposed HAPC; provide supporting information/data, if possible.
- Identify the fisheries, sectors, stakeholders, and communities to be affected by establishing the proposed HAPC (who would benefit from the proposal; who would it harm?) and any information you can provide on socioeconomic costs.
- Provide a clear geographic delineation for the proposed HAPC (written latitude and longitude reference point and delineation on an appropriately scaled National Oceanic and Atmospheric Administration [NOAA] chart).
- Provide the best available information and sources of such information to support the objectives for the proposed HAPC (citations for common information or copies of

uncommon information).

### J.3.2 Proposal Cycle

HAPC proposals will be solicited every 3 years on the same schedule as the regular plan or regulatory amendment schedule.

## J.4 Proposal Screening and Review Process

### J.4.1 Initial Screening

Council staff will screen proposals to determine consistency with Council priorities, HAPC criteria, and general adequacy. Staff will present a preliminary report of the screening results to the Council. The Council will determine which the proposals will be forwarded to the next review step. The Council may forward selected proposals for scientific, socioeconomic and enforcement review.

### J.4.2 Review Process

**J.4.2.1 Scientific Review:** . The Council will refer selected proposals to the plan teams (Gulf of Alaska groundfish, Bering Sea groundfish, Bering Sea crab, scallop, and salmon). The teams will evaluate the proposals for ecological, socioeconomic, management, and for practicability. Staff will provide the plan teams a set of tables and materials to evaluate the proposals during each cycle.

#### Scientific Uncertainty:

There will always be some level of scientific uncertainty in the design of proposed HAPCs and how they meet their stated goals and objectives. Some of this uncertainty may arise because the public will not have access to all relevant scientific information. Recognizing time and staff constraints, however, the staff cannot be expected to fill all the information gaps of proposals. The Council will have to recognize data limitations and uncertainties and weigh precautionary strategies for conserving and enhancing HAPCs while maintaining sustainable fisheries. The review panels may highlight available science and information gaps that may have been overlooked or are not available to the submitter of the HAPC proposal.

**J.4.2.2 Socioeconomic review:** Proposals will be reviewed by NPFMC or agency economists for socioeconomic impact. The Magnuson-Stevens Act states that EFH measures are to minimize impacts on EFH “to the extent practicable,” so socioeconomic considerations have to be balanced against expected ecological benefits at the earliest point in the development of measures. NMFS’ final rule for developing EFH plans states specifically that FMPs should “identify a range of potential new actions that could be taken to address adverse effects on EFH, include an analysis of the practicability of potential new actions, and adopt any new measures that are necessary and practicable.” (50 CFR 600.815(a)(2)(ii)). In contrast to a process where the ecological benefits of EFH or HAPC measures are the singular initial focus and a later step is used to determine

practicability, this approach would consider practicability simultaneously.

Proposals should also be rated as to whether they identify affected fishing communities and the potential effects on those communities, employment, and earnings in the fishing and processing sectors and the related infrastructure, to the extent such information is readily available to the public. Management and enforcement will also need representation in the review to evaluate general management cost and enforceability of individual proposals.

**J.4.2.3 Enforcement review:** Proposals will be reviewed by the NPFMC enforcement committee.

### J.4.3 Evaluation of Candidate HAPCs

The reviewers will rank the proposals using a system like the matrix illustrated in Table J.1 and provide their recommendations to the Council.

In the NPFMC Environmental Assessment of Habitat Areas of Particular Concern (NPFMC 2000), proposed HAPC types and areas were evaluated using a ranking system that provided a relative score to the proposed HAPCs by weighing them against the four considerations established in the EFH Final Rule. One additional column was added to the matrix and would score the level of socioeconomic impact: the lower the impact, the higher the score. The Data Level column was modified to be Level and Certainty of Data to reflect not only the amount of data available, but also the scientific certainty of the information supporting the proposal. A written description should accompany the scoring so it is clear what data, scientific literature, and professional judgments were used in determining the relative score.

**Table J-1.** Evaluation Matrix of Proposed HAPC Types and Areas, with Sample Proposals for Illustration Only

Proposed HAPC area	Data Level	Data Certainty	Sensitivity	Exposure	Rarity	Ecological Importance	Socioeconomic impact level
Seamounts and Pinnacles	1	1	Medium	Medium	High	Medium	Low
Ice Edge	3	1	Low	Low	Low	High	Low
Continental Shelf Break	3	2	Medium	Medium	Low	High	Medium
Biologically Consolidated Sediments	1	3	Low	Medium	Low	Unknown	Unknown

#### **J.4.4 Council assessment of proposal reviews**

Staff will provide to the Council a summary of the technical, socioeconomic, and enforcement reviews.

#### **J.4.5 Council Selection of HAPC Proposals for Analysis**

The Council will recommend whether HAPC designation and any management measures are warranted for analysis. The Council may modify the suggested management measures.

##### **J.4.5.1 Stakeholder Input**

The Council may set up a stakeholder process, as appropriate, to obtain additional input on proposals.

##### **J.4.5.2 Technical Review**

The Council may obtain additional technical reviews as needed from scientific, socioeconomic, and management experts.

##### **J.4.5.3 Public Comment on NEPA Analysis**

The Council will receive a summary of public comments and take final action on HAPC selections and management alternatives.

##### **J.4.5.4 Council Action**

Each proposal received and/or considered by the Council would have one of three possible outcomes:

1. The proposal could be accepted, and the concept from the proposal would be analyzed in a NEPA document for HAPC designation.
2. The proposal could be used to identify an area or topic requiring more research, which the Council would request from NMFS or another appropriate agency.
3. The proposal could be rejected.

## LITERATURE CITED

- ADF&G 2002. Marine Protected Areas in Alaska: Recommendations for a Public Process. Alaska. Department of Fish and Game Division of Commercial Fisheries. Juneau, AK.
- Auster, P.J. 2001. Defining Thresholds for Precautionary Habitat Management Actions in a Fisheries Context. *North American Journal of Fisheries Management* 21: 1-9.
- NPFMC, 2000. Draft Environmental Assessment/Regulatory Impact Review. Habitat Areas of Particular Concern. North Pacific Fishery Management Council. Anchorage, AK.
- Roberts, C.M. et al. 2003. Application of Ecological Criteria in Selecting Marine Reserve and Developing Reserve Networks. *Ecological Applications*. 13(1): S215-S228.

### Excerpts from the Joint Plant Teams Report on the 2003 HAPC review process

The Plan Teams' reviews of the HAPC proposals were to include additional support from experts on enforcement and economic issues. Due to the limited time available to review these proposals, comments on these aspects were not specifically addressed during the meeting and are not represented in this report. It was the Plan Teams' understanding that separate reports from agency personnel regarding these aspects were being prepared for Council review.

The Teams generally expressed appreciation to be included in the process of establishing useful HAPC designations. This issue is important and can have far-reaching consequences for developing innovative management strategies. The Council requested comments from the Teams about the effectiveness of this style of review process.

The Teams' felt that more input on writing the "directions for reviewers" and on criteria might have helped alleviate some ambiguity.

The Teams' discussed the pros and cons of establishing a smaller subset of plan team members assigned specifically to a HAPC review workgroup (along with a number of experts). Many plan team members felt that could be more efficient than requesting that all members of all Plan Teams participate in the full review process. Such a workgroup could then report back to the full Plan Team their findings similar to other working groups (e.g., "Other species" working group, Crab overfishing working group). However, other plan team members discussed that the inclusion of all Team members brought together diverse experiences and expertise and provided for a more comprehensive review. This was felt to be constructive initially and served to raise the level of general understanding about habitat issues to those involved in FMP implementations (where these types of concerns have not traditionally played a large role). The Teams' acknowledged that time and opportunity to involve additional expertise from outside of the plan teams would have been beneficial in the process.

An evaluation of the level of data utilized in the proposal as well as the level of scientific uncertainty inherent in that data would be useful in this review.

Citations should be submitted in full for these proposals such that reviewers could pursue these citations if necessary to evaluate their relevance. Grey literature should be accessible and would assist reviewers.

A general habitat inventory should be made available. If this is unavailable, it should be a priority for agency work. This would serve a number of purposes, one of which would be to provide a uniform basis for evaluating HAPC sites.

As noted above under "Plan Team concerns," it was difficult to evaluate proposals in a consistent manner according to established criteria. Also, there was a lack of time available to debate and discuss a number of critical concepts and measures.

The Teams struggled with the notion in many proposals that HAPC sites that lack information should be designated HAPC *first*, and then evaluated for refinements and further research to determine if the designation was appropriate. Since HAPC are discretionary tools for Council use, a HAPC designation should be based on information that is currently available rather than on speculation. That said, perhaps HAPC proposals that fit this description should fall into a separate research priority category. This would provide the Council with a subset of sites that may not fit the HAPC criteria, but may reflect a higher priority research area.

Several sites proposed were areas already closed to trawling, hence the question of how to treat the Council's priority on "stress" was raised. Since Council guidance did not specify the type of fishing activity, the Teams interpreted any fishing activity (e.g., fixed gear such as longline and pots) in considering the degree of stress.

Additional data concerns centered on the determination of extent of relative fishing pressure by proposal area. This was notably difficult for reviewers to assess given only the information provided in the proposal though it was noted that some additional information was provided by staff. While it was noted that confidentiality issues may be problematic, it was suggested that in the future catch data be provided in some aggregated form such as within statistical areas.

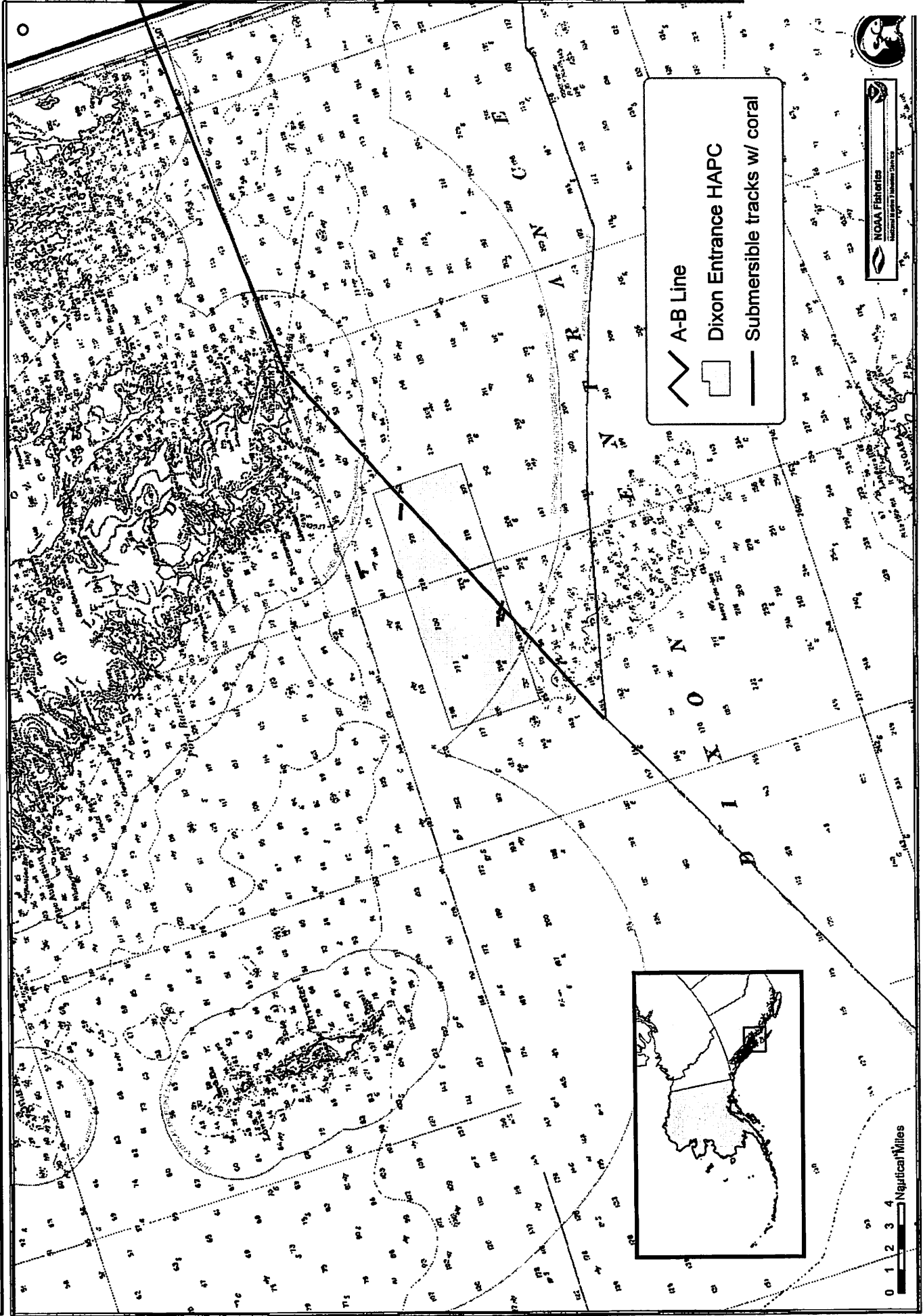
The number of proposals and limited time to review them did not leave sufficient time to discuss important concepts like the size of buffers around areas, maintaining habitat types as well as connected groups of habitat types, and the overall management objectives for HAPCs.

The Teams noted that the same sites were identified in a number of proposals, but varying levels of scientific information were utilized for each site. There should be consistent availability of data for proposed sites such that it would then raise the levels of information available for use by all proposers and therefore increase the quality and consistency of all proposals. Mixing of sites within proposals made them difficult to evaluate (i.e. pinnacles and seamounts). Proposers could likely have done a much better job in their respective proposals had they been advised to separate out these conflicting and sometimes confusing mixtures of areas and habitat types.

Finally evaluating individual HAPC sites (regardless of who proposed them) rather than evaluating duplicative sites by individual proposal would have been more beneficial and increased the utility of proposal review. The Plan Teams understand that during this review this was not necessarily feasible under the time constraints and thus the Teams evaluated each proposal individually. However it is the Teams understanding that it is the individual sites and relative merits thereof that will eventually be evaluated in any forthcoming analysis.

The rating criteria were evidently not established until after the proposals had been submitted, meaning that proposers had no way of knowing the full range of information that would be required to rate their respective proposals.

Dixon Entrance HAPC with A-B Line on NOAA Chart 17400



0 1 2 3 4 Nautical Miles





# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

BOARD OF FORESTRY

November 29, 2004

Stephanie Madsen, chair  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, Alaska 99501-2252

Re: EFH EIS Treatment of Non-Fishing Activities

Dear Ms. Madsen:

The Alaska Board of Forestry would like to convey its disappointment over the proposed response from the National Marine Fisheries Service (NMFS) to our April 12, 2004 comments on NMFS' draft environmental impact statement (EIS) on the Essential Fish Habitat program in Alaska.

Our prior comments (attached) expressed our deep concern over the reliance on outdated research in the EIS Appendix G. The appendix fails to take into account the effectiveness of modern best management practices (BMPs). The EIS clearly favors unilateral imposition of new "conservation recommendations," rather than working with the Board of Forestry on the implementation and (if necessary) improvement of existing BMPs.

At the North Pacific Fishery Management Council's October meeting, NMFS proposed a response to public concerns over Appendix G. The proposed response cures none of the deficiencies in the draft EIS. Therefore, the Board respectfully requests that NMFS reconsider that response and transform Appendix G into a useable management guide that is coordinated with existing regulatory programs. Specifically, the Board of Forestry urges NMFS to make the following changes to the final EIS.

- Revise and narrow the "Recommended Conservation Measures" for silviculture and log transfer facilities (LTFs) so that these measures clearly adopt the best management practices for state and private land in Alaska contained in the Alaska Forest Resources and Practices Act (FRPA). The FRPA standards are the product of extensive scientific and public review, and were recently updated. The final EIS should not authorize or recommend any conservation measures for state and private land in Alaska that differ from, add to, or conflict with the BMPs under the FRPA. This limitation should be stated unambiguously in the EIS.
- Revise the description of the environmental impacts of modern forestry to take the effectiveness of modern BMPs into account, and discard the outdated research included in the draft EIS. Past practices that are mitigated or prohibited by current BMPs should not be included in the description of silvicultural impacts in the final EIS. At a minimum, these practices should never be discussed in the present tense, as though they were still occurring.

AGENDA C-4  
Supplemental  
DECEMBER 2004

FRANK H. MURKOWSKI, GOVERNOR

550 West 7<sup>th</sup> Avenue, Suite 1450  
Anchorage, AK 99501

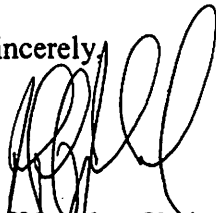
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- Revise the discussion of LTF impacts to reflect the findings of the Alaska Department of Environmental Conservation's adjudication of the LTF general permits. NMFS has been provided with the hearing officer's decision in that adjudication, along with the entire adjudicatory record. Unfortunately, the EIS continues to make claims regarding leaching, oxygen depletion, and fisheries impacts that were rejected in the adjudication on the basis of an overwhelming record.

In summary, we ask that the Council emphasize to NMFS the importance of relying on the Alaska Forest Resources and Practices Act to address upland forestry issues. Industry and agency participants in the forestry sector believe that the incursion of the EFH program into onshore forestry activities will result in wasteful bureaucratic overlap, and will frustrate an existing regulatory structure that has taken decades to build.

We appreciate your consideration of our concerns. Adopting the suggestions made by the Board of Forestry would be a step towards avoiding that result. Larry Hartig will represent the Board at the Council's December 6 meeting in Anchorage, and will be available in person to answer any questions the Council may have on the Board's concerns and recommendations.

Sincerely,



Jeff Jantke, Chair  
Alaska Board of Forestry

Cc: James Balsiger, NMFS  
Jack DiMarchi, BOF Mining Organization representative  
Larry Hartig, BOF Recreational Organization representative  
Ron Wolfe, BOF Alaska Native Corporation representative  
Craig Lindh, BOF Professional Forester  
Bill Oliver, BOF Commercial Fishermen's Organization representative  
Rick Rogers, BOF Forest Industry Trade Association representative  
Rick Smeriglio, BOF Environmental Organization representative  
Matt Cronin, BOF Professional Fish or Wildlife Biologist

Att: April 13, 2004 comments from Board of Forestry to NMFS

# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

BOARD OF FORESTRY

FRANK H. MURKOWSKI, GOVERNOR

550 West 7<sup>th</sup> Avenue, Suite 1450  
Anchorage, AK 99501

April 12, 2004

James W. Balsiger  
Alaska Regional Administrator  
National Marine Fisheries Service  
PO Box 21668  
Juneau, AK 99802-1668

RE: Comments to Draft EIS, Essential Fish Habitat

Dear Mr. Balsiger:

The Alaska Board of Forestry is a nine-member board established by AS 41.17.041, members of which are appointed by the Governor. This is a diverse board composed of representatives of commercial fishing, mining and forest industries; environmental and recreation organizations; an Alaska Native corporation; non-governmental biologist and forestry professionals, and the state forester (serving in a non-voting ex officio capacity). The board is responsible for coordinating the monitoring of the implementation and effectiveness of the Alaska Forest Resources and Practices act (FRPA), regulations and best management practices.

The Board seeks to reach consensus in all its actions under the purview of the FPRA. In 1990, this consensus approach among the diverse interests succeeded in winning adoption of major FRPA amendments that balanced the competing interests, and provided the model and mode for the present Board. The FRPA is tailored to the various forest types in Alaska, and recognizes the various goals of public and private landowners. The following comments to the January 2004 draft EIS for Essential Fish Habitat Conservation in Alaska (DEIS) represent such a consensus.

In December of 2003 the Board provided input to Jon Kurland regarding the failure of the preliminary DEIS to recognize FRPA as an existing regulatory framework designed to protect essential fish habitat from adverse effects of silvicultural activities. We applaud the efforts to address these shortcomings in the DEIS as revised, however we continue to have concerns with respect to the presentation of information in Appendix G and the ultimate use of that document by NMFS in making recommendations through the EFH consultation process. Lack of coordination with the existing FRPA framework will lead to confusion and duplication of regulatory efforts.

The stated purpose of Appendix G to the DEIS is to "aid NMFS' biologists reviewing proposed projects as they consider potential impacts that may adversely affect EFH and to provide consistent and substantiated EFH consultation recommendations." Given this intended use considerable refinement will be required to maintain an up to date objective document, which provides the guidance for consistent and substantiated EFH recommendations.

*"Develop, Conserve and Enhance Natural Resources for Present and Future Alaskans"*

While making these recommended refinements to Appendix G are important, we also strongly suggest a collaborative working relationship between NMFS, and the Board of Forestry. We urge you to recognize that the FRPA is an existing structure for regulating forest management and minimizing impact on fish habitat. The FRPA and its regulations set riparian buffers and establish mandatory BMPs for timber harvesting, road construction, road maintenance, and reforestation to protect water quality. The FRPA is also the standard for compliance with federal Coastal Zone and Clean Water Act requirements in Alaska.

The Board of Forestry, state regulatory agencies, and the regulated forest industry have demonstrated a willingness to adapt the FRPA standards as new knowledge has been developed. NMFS would do well to work with the board in maintaining an up to date state of knowledge with respect to appropriate forest practices and BMP implementation. If Appendix G is a static document that fails to acknowledge changes to our understanding of the interaction between forest practices and habitats, NMFS biologists will continue to fall behind the curve in providing the consistent and substantiated EFH recommendations that Appendix G advocates.

In implementing the EFH consultation process NMFS should also be careful not to add redundancy or conflicting recommendations to agencies that are already engaged in protecting EFH through the FRPA program. NMFS should consider compliance with the FRPA as satisfying any otherwise applicable requirement of the EFH program. The EPA has long recognized FRPA as the appropriate vehicle to deliver an effective 319 program, and NMFS would do well to look to this cooperative model as an effective vehicle for protecting important fish habitat.

We appreciate the opportunity to provide you with our input on this important process.

Sincerely,

Jeff Jahnke, Chair  
Alaska Board of Forestry

Jack DiMarchi, Mining Organization representative  
Larry Hartig, Recreational Organization representative  
Adrian LeCornu, Alaska Native Corporation representative  
Craig Lindh, Professional Forester  
Bill Oliver, Commercial Fishermen's Organization representative  
Rick Rogers, Forest Industry Trade Association representative  
Rick Smeriglio, Environmental Organization representative  
Chris Stark, Professional Fish or Wildlife Biologist

Cc: Stephanie Madsen, Chair, NPFMC

Enclosures: FPRPA Statutes  
FRPA Regulations  
2003 Division of Forestry Annual Report (Section on FRPA)

We recommend the following refinements to Appendix G section 2.1.2 Silviculture:

1. Recognize the diverse forest ecosystems of Alaska. Of the BMP's referred to in Appendix G, only the FRPA standards are tailored to the unique ecological and operating conditions in each region.
2. Recognize the various interests and rights of public and private land ownerships. By referencing Tongass Land Management Plan (TLMP) and the Chugach Land Management Plan (CLMP) as guidance standards to protect EFH, the DEIS is incorporating standards that consider social, political, aesthetic, and other considerations that may be applicable to National Forest Lands but go well beyond the NMFS mandate to provide consultation on EFH protection. TLMP and CLMP represent those land manager's prerogatives in managing National Forest Lands and are not appropriate to apply to EFH consultations elsewhere.
3. As drafted Appendix G fails to recognize state of the knowledge with respect to effectiveness monitoring of forest practices in Alaska. In section 2.1.2 of Appendix G there are 11 literature citations, which are on average 17 years old. Five of these are two decades old or older. A significant shortcoming of using old studies is that many of these do not reflect the practices currently employed in silvicultural operations. Many of the references to the effects of silvicultural operations on LWD and stream temperature are based on harvest practices without the riparian buffers mandated by the current FRPA. A document intended to provide NMFS biologists with a current state of knowledge with which to make informed, consistent and substantiated EFH consultation recommendations should be more up to date, consistent with current state of knowledge, and recognize current regulatory requirements and industry practices.

We have attached a bibliography prepared by the Alaska Department of Natural Resources, Division of Forestry which is a much better summary of the current understanding of the effects of regulated forest practices on EFH resources. We urge you to incorporate this document into Appendix G by reference.

4. The reference in Appendix G to deforestation is inappropriate in the silvicultural discussion. Silviculture by its definition includes the culture of a new forest following harvest and FRPA mandates reforestation. The only exceptions to mandatory reforestation are site-specific waivers issued due to advanced tree mortality (salvage operations), and where the landowner is intentionally converting the site to a non-forestry use. In the latter case the effects of deforestation would be more appropriate in other sections of Appendix G where land use conversions to non-forest are likely to occur, such as agricultural use and urban/suburban development.
5. Where the draft EIS describes impacts from forestry that would violate the FRPA, it should be clear that such effects will not occur if the FRPA guidelines are adhered to. Actual compliance rates with the FRPA are high (averaging over 90%). The Department of Natural Resources has – and uses – the authority to cite violators, issue stop work orders, and assess civil fines. In addition, the state successfully pursued criminal penalties against a violator in 2003. Copies of the FRPA statutes (AS 17.10-950), the regulations (11AAC 95.185-255) are enclosed, along with statistics for forest practices activities in 2003.



UNITED STATES DEPARTMENT  
National Oceanic and Atmospheric Administration AGENDA C-4  
National Marine Fisheries Service Supplemental  
P.O. Box 21668 DECEMBER 2004  
Juneau, Alaska 99802-1668

December 2004

RECEIVED  
DEC - 2 2004

N.P.F.M.C.

Stephanie Madsen, Chair  
North Pacific Fishery Management Council  
605 W 4<sup>th</sup> Avenue, Suite 306  
Anchorage, Alaska 99501-2252

Dear Ms. Madsen:

Per the Council's request, enclosed please find a brief issue paper regarding the discussion in the Essential Fish Habitat Environmental Impact Statement (EFH EIS) of activities other than fishing that may adversely affect EFH. The National Marine Fisheries Service is continuing to revise the EIS in response to public comments in anticipation of final Council action at the February 2005 meeting.

Sincerely,

James W. Balsiger  
Administrator, Alaska Region

Enclosure



## **Background Information on the Discussion of Non-Fishing Threats to EFH in the Environmental Impact Statement for EFH Identification and Conservation in Alaska**

Prepared for the North Pacific Fishery Management Council  
by the National Marine Fisheries Service, Alaska Region  
November 30, 2004

### **Legislative and Regulatory Background**

In 1996 Congress added new habitat conservation provisions to the Magnuson-Stevens Fishery Conservation and Management Act. Section 303(a)(7) of the amended Magnuson-Stevens Act required that every fishery management plan (FMP) describe and identify Essential Fish Habitat<sup>1</sup> (EFH) for federally managed species, minimize to the extent practicable the adverse effects of fishing on EFH, and identify other actions to encourage the conservation and enhancement of EFH. The 1996 amendments to the Magnuson-Stevens Act also directed the Secretary to develop by regulation guidelines to assist the Fishery Management Councils in developing the EFH components of FMPs. The National Marine Fisheries Service (NMFS) issued an interim final rule with such guidelines in 1997 and a final rule in 2002.

The EFH regulations at 50 CFR 600.815(a)(4) specify that "FMPs must identify activities other than fishing that may adversely affect EFH" and "For each activity, the FMP should describe known and potential adverse effects to EFH." The regulations also specify that "FMPs must identify actions to encourage the conservation and enhancement of EFH, including recommended options to avoid, minimize, or compensate for the adverse effects identified... especially in habitat areas of particular concern" (50 CFR 600.815(a)(6)).

In addition, Section 305(b) of the Magnuson-Stevens Act requires federal agencies to consult with the Secretary regarding all actions or proposed actions permitted, funded, or undertaken by the agency that may adversely affect<sup>2</sup> EFH. The EFH regulations establish procedures for EFH coordination, consultations, and recommendations regarding such actions, including non-fishing activities (50 CFR Part 600, Subpart K).

When it added the EFH provisions to the Magnuson-Stevens Act, Congress found that "One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations

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1 EFH means "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." "Waters" include aquatic areas and their associated physical, chemical, and biological properties. "Substrate" includes sediment underlying the waters. "Necessary" means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem. "Spawning, breeding, feeding, or growth to maturity" covers all habitat types utilized by a species throughout its life cycle. (50 CFR 600.10)

2 Adverse effect means any impact that reduces the quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species, and their habitat, as well as and other ecosystem components. Adverse effects may be site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions. (50 CFR 600.910(a))

should receive increased attention for the conservation and management of fishery resources of the United States” (16 U.S.C. 1801(a)(9)). Congress also stated that a purpose of the amended Magnuson-Stevens Act is “to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat” (16 U.S.C 1801(b)(7)).

## **Implementation Background**

To address the new EFH requirements, the Council amended its five FMPs in 1998. The Secretary, acting through NMFS, approved the Council’s EFH FMP amendments in January 1999. In the spring of 1999, a coalition of seven environmental groups and two fishermen’s associations filed suit in the United States District Court for the District of Columbia to challenge NMFS’ approval of EFH FMP amendments prepared by the Gulf of Mexico, Caribbean, New England, North Pacific, and Pacific Fishery Management Councils (*American Oceans Campaign [AOC] et al. v. Daley et al.*, Civil Action No. 99-982-GK). The focus of the *AOC v. Daley* litigation was whether NMFS and the Council had adequately evaluated the effects of fishing on EFH and taken appropriate measures to mitigate adverse effects. In September 2000, the court upheld NMFS’ approval of the EFH amendments under the Magnuson-Stevens Act, but ruled that the environmental assessments (EAs) prepared for the amendments violated the National Environmental Policy Act (NEPA). The court ordered NMFS to complete new and thorough NEPA analyses for each EFH amendment in question.

NMFS issued a draft Environmental Impact Statement (EIS) in January 2004 as required by the court order. The EIS reexamines the effects of fishing on EFH, presents a wider range of alternatives, and provides a more thorough analysis of potential impacts than the EA approved in 1999. The court did not limit its criticism of the 1999 EA solely to the section that considered the effects of fishing on EFH, so the EIS also reexamines options for identifying EFH and identifying activities other than fishing that may adversely affect EFH.

## **Purpose of Appendix G to the EFH EIS**

Appendix G to the EFH EIS fulfills the requirement to describe non-fishing activities that may have adverse effects on EFH and identify actions to encourage the conservation and enhancement of EFH. Non-fishing activities can adversely affect the quantity or quality of EFH for species managed by the Council. Such activities may include dredging, filling, discharges, and actions that contribute to nonpoint source pollution. Appendix G provides an introductory description of each activity, identifies potential adverse impacts, and suggests general conservation measures that would help minimize and avoid adverse effects of non-fishing activities on EFH.

Non-fishing activities are subject to a variety of regulations and restrictions under federal, state, and local laws designed to limit environmental impacts. Many of these existing requirements help to avoid or minimize adverse effects to aquatic habitats, including EFH. The conservation recommendations contained in Appendix G are rather general and may overlap with certain existing standards for specific development activities. Nevertheless, the



recommendations highlight practices that can help to avoid and minimize adverse effects to EFH. During EFH consultations between NMFS and other agencies, NMFS strives to provide reasonable and scientifically based recommendations that account for restrictions imposed under various state and federal laws by agencies with appropriate regulatory jurisdiction. NMFS will not recommend that state or federal agencies take actions beyond their statutory authority, and NMFS' EFH conservation recommendations are not binding.

The conservation measures discussed in Appendix G should be viewed as options to avoid, minimize, or compensate for adverse impacts and promote the conservation and enhancement of EFH. Ideally, non-water-dependent actions should not be located in EFH if such actions may have adverse impacts on EFH. Activities that may result in significant adverse effects on EFH should be avoided where less environmentally harmful alternatives are available. If there are no alternatives, the impacts of these actions should be minimized. Environmentally sound engineering and management practices should be employed for all actions that may adversely affect EFH. If avoidance or minimization is not practicable, or will not adequately protect EFH, compensatory mitigation should be considered to conserve and enhance EFH.

During interagency consultations, NMFS evaluates potential impacts of non-fishing activities and develops appropriate conservation recommendations. Because adverse effects to EFH can be direct, indirect, and cumulative, NMFS biologists must consider and analyze these interrelated impacts. Consequently, it is not unusual for particular impacts to be overlooked or discounted during a consultation. In addition to fulfilling the requirements for revising the FMPs, Appendix G will be useful to NMFS biologists reviewing proposed projects as they consider potential impacts to EFH. The document should also be useful for federal action agencies undertaking EFH consultations, especially in preparing the EFH assessments that are a required part of interagency consultation.

The conservation recommendations included in Appendix G are a series of site-specific measures that can be undertaken by the action agency to avoid, offset, or mitigate impacts to EFH. All of the suggested measures are not necessarily applicable to any one project or activity. NMFS may develop more detailed or different recommendations based on project specific considerations before or during EFH consultations, and would communicate those to the appropriate agency. The recommendations provided in Appendix G represent a short menu of the types of measures that can contribute to the conservation of EFH. These recommendations are not binding on any action agency or permit applicant.

In response to public comments on the draft EFH EIS, NMFS is revising Appendix G to ensure that it reflects the best available information specific to Alaska. The revisions will clarify that non-fishing activities are subject to a variety of regulatory requirements that help to reduce threats to EFH. The revisions will also clarify that the conservation recommendations are advisory and should be followed to the extent practicable, recognizing that many non-fishing activities have unavoidable consequences for EFH.

## Groundfish Forum

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AGENDA C-4  
Supplemental  
DECEMBER 2004

December 1, 2004

Ms. Stephanie Madsen, Chairman  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Ave.  
Anchorage, AK 99501  
FAX: 907-271-2817

RE: Aleutian Island Trawl Industry's AI 5b proposal

Dear Madame Chair:

On November 10<sup>th</sup>, 2004, I forwarded an electronic chart to NMFS indicating the fishing areas that Aleutian Islands trawlers feel should be included in their version of an AI 5b "open area" alternative. The chart includes the areas where non-pelagic trawling has occurred extensively based fishermen's plotter records and in some cases vessel logbook data. While I had hoped that the historically fished areas could be more precisely delineated in the chart I put together, as you will see below I encountered numerous difficulties putting this information together in an efficient manner.

A primary problem in this endeavor was the inherent challenge of matching tow track data (with varying levels of spatial resolution) to catch records stored in various formats at fishing company offices and on vessels. I also experienced technical issues such as incompatible plotter formats, plotter programs with varying capabilities for spatial resolution, different levels of accessibility of logbook and plotter data between vessels, and varying levels of in-house technical capabilities with plotting or record keeping software and filing systems. Below I elaborate on these issues to help the Council understand the nature of the information I used, the process I undertook to compile this information, and the judgment calls that I sometimes had to make. These judgments involved deciding whether an area represented a historically important fishing area when a precise assignment of catch to a specific area was not possible or when data gaps were encountered.

The task:

As you will recall, my project was to compile confidential tow track and paper logbook information to address problems with the NMFS' charts indicating open areas based on haulback positions for observer catch records. Upon seeing NMFS' charts in October, Aleutian Islands trawlers felt there were the obvious shortcomings in NMFS' charts indicating spatial blocks meeting the 200 ton cumulative catch threshold. From the outset, it is important to keep in mind that the same method of assigning catch based on haulback positions was used to fashion Oceana's 5b proposals as well.

At the Sitka meeting, Dave Fraser and I received considerable feedback from skippers who examined the charts representing the suite of AI 5b open area proposals. Upon seeing the charts depicting areas that would remain open under Oceana's "modified" 5b proposal (which was supposedly attempting to better define where trawlers fish), skippers continued to have major concerns that Oceana's new and old 5b proposals would still drastically reduce their fishing areas and their ability to prosecute trawl fisheries in

the Aleutian chain. What was a bigger surprise, however, was that NMFS' charts depicting the trawl industry's 5b proposal had overlooked large portions of fishing areas as well.

As was obvious from the industry plotter data we showed to the Council in October, numerous, and in some cases expansive, fished areas were not incorporated into the open blocks. As NMFS' analysts reported to the Council, those charts were based on haulback positions alone because for most of the period of interest, NMFS haul-by-haul data includes only the haulback positions. For the recent years where trawl start positions are included in NMFS' NORPAC database, it was clear from NMFS' presentation that many hauls are not contained within the set of qualifying 6-by-6 minute blocks in NMFS' charts. NMFS also presented some examples of recent tows for which the agency has both haulback and start point positions. This showed some impossibly long tows indicating that not all of the start or end position data in the NORPAC database are accurate. Hence, it was clear that the official data are not necessarily the best available data for the purpose of defining a legitimate set of open areas.

To remedy this situation, the Council asked the AI trawl industry to compile available plotter tracks and logbook information and essentially revise its open area sub-alternative under AI 5b. Toward this end and with respect to the available time, I did my best to compile the information while respecting the industry's concern over the confidentiality of their tow tracks and fishing locations from haul by haul position data in logbooks. To address confidentiality concerns, I had to visit separately with skippers from different companies because they were not comfortable with reviewing their tow track and logbook information in front of their competitors.

AI trawl industry' proposed open area:

The chart I sent to NMFS essentially started with NMFS' October 2004 200-ton qualified blocks chart indicating the qualifying "open areas" based on 6-by-6 minute spatial blocks with more than 200 tons of non-pelagic trawl catch from 1991-2003. To those qualifying blocks, areas were added where I felt there was considerable trawling activity and catch during the period of interest. In some cases, the additions to the open area were generated from confidential industry tow track data. In other cases, the added areas were based on individual vessel logbook information reflecting start and end points of tows for fishing activities from 1991-2003. In those cases, the spatial resolution of the data was considerably lower thus making it impossible to add portions of 6 x 6 blocks or diagonal portions of blocks along bathymetric lines.

While it would have been preferable to start with a blank chart and overlay everyone's tow tracks to create the most precise and efficient common fished area, this was simply not possible given what I had to work with. Simply put, not everyone has their plotter data, there are actually several formats of plotters and different technical capabilities for spatial resolution, not to mention a long list of other issues affecting the ability to reach back into fishing history when some plotters used well into the late 1990s did not even allow for archiving of more than a few hundred positions.

The use of logbook records of haulbacks and set positions also has limitations. In the Aleutian Islands, fishing follows complex bathymetry and fishing almost never occurs in straight lines, yet straight lines are assumed by connecting start and end points. Additionally, latitude and longitude positions are rounded off to the nearest minute in the NORPAC data NMFS used to assign catches to qualifying blocks.

After re-assessing the workload roughly one week into this exercise, I decided that I needed to be practical and start with NMFS' charts of the existing 200-ton qualifying blocks. From there, I asked skippers to identify areas that they fished that were not included on the 200 ton qualifying block charts based on their plotter and/or logbook data. I also asked them to identify any 200-ton qualified blocks that are simply not

areas they fished. Some such areas were identified in the process and thus dropped from the industry's "open area".

Next, I visited with skippers individually to see their tow tracks and logbook information used for the areas they added to the 200-ton block charts. Once I was satisfied that the added areas were based on significant and verifiable fishing effort that likely met the Council's 200 ton threshold, I checked off the areas to be added to the master chart. For the Council's information, I have included on the last page of this letter the list of vessels for which I reviewed plotter or logbook data.

Given that tow track data does not report how much was caught and logbook information does not reveal the actual towing path, judgment calls were unfortunately necessary in some cases. The rule of thumb I used was that if a vessel or set of vessels repeatedly towed an area, it was extremely likely that the cumulative catch exceeded 200 tons, so I looked to the logbook information for verification where possible. In the case that the fishing occurred directly adjacent to 200-ton qualified blocks, the determination to include these areas was rather straightforward given that they were essentially part of the effort that comprised the fishing associated with the qualified blocks. However, in the cases where the fishing occurred with no proximate or adjacent qualified blocks on NMFS' original 200-ton charts, my determination of whether to include the area relied on the relative amount of fishing from the tow tracks and the degree to which haulback and start position data from the logbooks corresponded to the tow tracks. It is important to keep this in mind as the Council considers the proposed open area I put together for the AI trawl industry proposal.

To evaluate some of the more enigmatic areas where considerable fishing has apparently occurred from the tow track information but no qualifying blocks were found in NMFS' 200-ton qualifying block charts, we had a meeting on November 22<sup>nd</sup> with NMFS' Alaska Region GIS specialist and representatives of the NMFS Observer Division. The Observer Division is currently evaluating some examples of catch records supplied by skippers and we are working with the Observer Division to hopefully resolve some of these discrepancies. For vessels with less than 100 percent observer coverage, gaps in catch records on a spatially specific basis are not unexpected. For 100 percent coverage vessels, however, we are interested in seeing whether catch records in some cases may have been assigned to the incorrect locations or have been otherwise misclassified in the industry's records or NMFS' database.

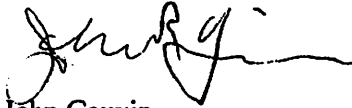
From my perspective, I agreed to undertake this plotter and logbook data exercise to make the industry's AI 5b sub-alternative as spatially reflective of the historically trawled area as possible. The Council will likely want to verify the information used to craft our proposed non-pelagic trawl open area, therefore all of the industry parties involved in this process have agreed to make their information available for verification in an appropriate venue and process. However, they feel this should occur without compromising the confidentiality of the tow track and logbook catch position data. One possible model that we discussed could be for the Council to set up a review process whereby skippers or company representatives show their plotter and logbook data to NMFS' analysts or some sort of committee of NMFS officials, Council staff, or even possibly Council members as the Council sees fit.

Lastly, I would like to once again thank the Council for the opportunity it provided October for us to attempt to use industry's plotter and logbook data to address the problems with NMFS' charts depicting the open area for the AI industry's 5b proposal. Our original intent in stepping forward with an industry proposal was to use the basic idea that Oceana had put forward of keeping AI trawl fisheries to historically fished areas while research and mapping of corals and sponges in the Aleutian Islands takes place over the coming years. For this reason, I feel the AI trawl industry supports this basic concept of an open area for the Aleutian Islands. This support, however, is contingent upon whether the area remaining open to non-

pelagic trawling actually reflects where trawlers fish. Additionally, our support for an open area proposal does not extend to the proposed TAC reductions, coral and sponge bycatch caps, and other bells and whistles that would reduce the open area.

We hope the information we have provided is useful to the Council's consideration of the trawl industry's AI 5b sub-alternative. We certainly recognize the unique nature of the information we have used to delineate our proposed open area and we look forward to working with the Council to undertake a reasonable verification process for this information.

Sincerely,



John Gauvin  
(on behalf of Groundfish Forum and all AI non-pelagic trawlers)

List of vessels for which plotter and/or logbook data were used for delineating this AI trawl industry proposal for an "open area":

Ocean Storm; Muir Milach; Tracy Anne; Katy Anne; Alaska Ranger; Alaska Spirit; Sea Freeze Alaska; Ocean Peace; Seafisher; Alaska Voyager; Alaska Juris; Unimak Enterprise; American #1; U.S. Enterprise; Alaska Warrior

**PUBLIC TESTIMONY SIGN-UP SHEET FOR  
AGENDA ITEM C-4 EFH/HAPC**

	NAME (PLEASE PRINT)	AFFILIATION
1 ✓	Jon Wawrenchuk	Oceana
2 ✓	JOHN GAUVIN	GROUND FISH FORUM
3 ✓	Ben Enticknap	AMCC
4 ✓	WHIT SHEARD	TAC
5 ✓	Dave Wood	US Seafoods
6 3 ✓	DONNA PARKER	ARCTIC STORM
7 ✓	Dave Fries	Alutian Cod Marketing Assoc
8 ✓	Heather D. McLarty	MCA
9 ✓	SANDRA MOLLER	ALEUT ENTERPRISE
10	GLENN REED	PSPA
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PASSED 3 ✓

NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.



C-4 handout  
 Pub Test. 12/12/04  
 Dave Fraser 9:10am



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

*Delivered via facsimile (907) 586-4675 and First Class Mail*

October 21, 2002

David Benton, Chairman  
 North Pacific Fishery Management Council  
 605 West 4<sup>th</sup> Avenue, Suite 306  
 Anchorage, AK 99501-2252

Dear Chairman Benton,

As you know, Oceana is concerned about known adverse impacts to Essential Fish Habitat (EFH), particularly the impact of bottom trawl gear on corals and sponges in the Aleutian Islands. As you know, National Oceanic and Atmospheric Administration (NOAA) Fisheries and the North Pacific Fishery Management Council (NPFMC) have already designated corals and sponges as Habitat Areas of Particular Concern (HAPC), a subset of EFH with high conservation priority. We hope the Council develops alternatives that protect this EFH while maintaining fishing opportunities in areas where appropriate. To this end, we have advocated the participation of various stakeholders, including fishermen, local communities, tribal governments, and conservation groups in the development of these alternatives and we commend the Council for forming these stakeholder meetings. However, as we have expressed to the National Marine Fisheries Service (NMFS), stakeholders must have access to all relevant information about fisheries, habitat, and the interactions between them in order for a stakeholder process to be successful. To date, this information has not been provided at a sufficient level of detail.

Furthermore, the current range of alternatives is insufficient for the Aleutian Islands. Both NMFS scientists, including those on the EFH Team, and the 2001 Draft Programmatic-Supplemental Environmental Impact Statement have identified adverse impacts to coral and sponge habitat in the Aleutian Islands that are more than minimal and more than temporary. Since these impacts have been identified, an adequate range of alternatives should include EFH mitigation for the Aleutian Islands in every alternative. This way, the public and the decision makers can consider a broad range of ways to protect EFH in the Aleutians.

The two current alternatives for the Aleutian Islands do not include options with significant or even adequate precaution. They both aim to mitigate adverse impacts only in areas of high relative concentrations of gorgonian corals, sponges, and *Boltonia*. This approach ignores the fact that there is a serious information gap in the geographic distribution of these habitat species. This clearly is not precautionary with regard to



David Benton  
October 21, 2002  
Page 2 of 3

habitat areas that have not been identified yet. Also, the exclusion of other species of corals from consideration is a serious mistake considering that all coral species are HAPC. According to NMFS habitat scientist Jon Heifetz, many coral species besides gorgonian corals may be as long-lived, sensitive, and important habitat for FMP fish species. These other types of corals include hydrocorals, cup corals, black corals, and soft corals.

Oceana has consistently attempted to participate in the EFH EIS at the Committee and the Council level. We have developed an approach that is precautionary, incorporates research, maintains fishing opportunities, and mitigates major identified adverse impacts to EFH. The Council has not yet included this alternative in the EIS.

The purpose of an Environmental Impact Statement is to inform the public and the decision makers about the environmental consequences of various approaches to accomplishing a specific objective, in this case the mitigation of adverse impacts to EFH. As you are aware, the EIS process is meant to contain a wide range of alternatives from low precaution to the highest level of precaution. Through analysis of the alternatives, both decision makers and the public can view the environmental and socioeconomic impacts of each alternative and decide which alternatives are reasonable and which approach best accomplishes the objectives. Without having done this analysis of the alternative Oceana has put forward, the process established by the Council is not truly inclusive and does not meet the dual intentions of the National Environmental Policy Act: public participation and the consideration of all reasonable alternatives. For these reasons, and the fact that NMFS has proffered no reasonable justification for the exclusion from analysis of our proposed Aleutian Islands component of an alternative, Oceana feels it is unacceptable for NMFS to exclude this alternative at this time.

Therefore, Oceana is asking both NMFS and the NPFMC to include the following proposal in the range of alternatives for the EFH EIS to mitigate adverse impacts on Essential Fish Habitat in the Aleutian Islands:

- A moratorium on bottom trawling in the Aleutian Islands region in all areas where coral and sponge and other sensitive essential fish habitat areas may possibly occur. To provide fishing opportunities for the trawl fleet in the interim, ~~a series of small, tow-specific open areas with limited bottom trawling would be allowed.~~ These areas would be specific tows recommended by fishing interests and/or areas where NMFS data shows historically high fishing effort with minimal coral or sponge bycatch. Upon completion of mapping in a specific area, all areas not containing corals, sponges, or other sensitive essential fish habitat would be reopened to bottom trawling, while areas containing these habitats would remain closed to bottom trawling.
- Prohibit all bottom tending gear in small specific known areas of high coral and sponge concentration and/or reef-like habitat.




David Benton  
October 21, 2002  
Page 3 of 3

- Set bycatch caps on corals and sponges for all fisheries in the Aleutians that reduce over time to target levels.
- Request that NMFS, ADF&G, NPRB, the University of Alaska, and perhaps other research institutions initiate a 3- to 5-year comprehensive research project to determine how best to allow fishing opportunities while protecting the health of the marine ecosystem by:
  - Mapping the geographic distribution of corals, sponges, and other sensitive essential fish habitat in the Aleutian Islands region,
  - Further studying the ecological functions of corals and sponges and the associations and distributions of commercial species like rockfish,
  - Measuring the effects of all gear types used to catch groundfish on corals and sponges,
  - Identifying specific areas where respective gear types may be allowed, and
  - Submitting to the North Pacific Fishery Management Council an annual progress report regarding status of the research.
- Require NMFS to complete Annual Habitat Assessment Reports (similar to SAFE reports) that evaluate the effectiveness of EFH mitigation over time;
- Require Vessel Monitoring Systems and 100% of all catch and bycatch observed, counted, and reported by fisheries observers for all vessels with potential impacts to corals and sponges. Observers would identify corals and sponges to the lowest practicable taxonomic level.

We realize this is not easy, but it would be irresponsible to discard meaningful alternatives without analysis. While Oceana appreciates the opportunity to work with the Council and NMFS, it is imperative that the Council and NMFS maintain a public process that is both informed and inclusive. Oceana continues to be willing to work with other stakeholders to develop a broad range of alternatives for analysis in the EFH EIS.

We are asking the Council to assist and urge NMFS in providing all relevant data to stakeholders; include mitigation measures for the Aleutian Islands in all alternatives; and to include the specific alternative that Oceana has been proposing for several months.

Sincerely,



Jim Ayers  
Director, North Pacific Region  
Oceana