

GROUND FISH ESSENTIAL FISH HABITAT ENVIRONMENTAL IMPACT STATEMENT

At the September 2004 meeting, the Council considered a preliminary range of alternatives developed by the Ad Hoc Essential Fish Habitat (EFH) Environmental Impact Statement (EIS) Oversight Committee for evaluation in the Groundfish EFH EIS. The Council adopted a somewhat altered range of alternatives and forwarded them for analysis in a draft EIS (DEIS) (The analysis of the range of alternatives is contained in Agenda item E.7.b, a preliminary DEIS.)

The Council task at this meeting is to select preferred alternatives from the range of alternatives adopted at the September meeting. The alternatives are grouped in four categories: alternatives to (1) designate EFH, (2) designate habitat areas of particular concern (HAPCs), (3) mitigate fishing impacts to EFH, and (4) implement habitat-related research and monitoring initiatives. In order to select a single comprehensive preferred alternative, the Council should, at a minimum, choose one alternative from each of the four categories just described. However, the alternatives in categories 2, 3, and 4 are not mutually exclusive. Therefore, the Council could choose any number of alternatives from within each of these categories as preferred, without necessarily causing conflicts or inconsistencies. The Council also needs to consider the relationship between each set of alternatives. The choice of an EFH designation alternative may determine which alternatives can be chosen from the set of HAPC alternatives and the set of impact mitigation alternatives. HAPCs must occur within designated EFH, and mitigation measures are primarily directed at areas designated EFH.

It should be kept in mind that the preparation of this EFH EIS stems from a 2000 court order in *AOC v. Daley*, which required several councils, including the Pacific Council, to prepare EISs to evaluate the effects of fishing and identify measures to mitigate those impacts, to the extent practicable, for their fishery management plans (FMPs). (Only the Council's Pacific Groundfish FMP was affected by this order.) A subsequent joint stipulation and order, as amended, sets out various requirements that NMFS must satisfy in preparing the EIS and a time line for its completion. The order requires NMFS to identify one or more preferred alternatives in both the draft and final EIS. Furthermore, according to this stipulation, NMFS will propose to the Council that an alternative specified by the plaintiffs be adopted and fully analyzed in the DEIS. Plaintiffs will provide to NMFS their alternatives as a "specific fishery management action" before the Council meeting at which the alternatives are adopted for analysis in the DEIS.¹ It also stipulates that NMFS must publish the DEIS by February 11, 2005. A required public comment period shall end on May 11, 2005. The Final EIS (FEIS) must be published by December 9, 2005, and the record of decision (ROD) published on February 28, 2006. NMFS must approve any FMP amendment or implementing regulations by May 6, 2006. (These dates are reflected in time lines presented at previous Council meetings.) Finally, the order states that the Ad Hoc Groundfish Habitat Technical Review Committee (Habitat TRC) will provide a technical review of the range of alternatives adopted by

1/ At the September 2004 meeting, the Council adopted Impacts Minimization Alternative 13, identified as the plaintiffs' alternative, as part of the preliminary range of alternatives to be analyzed in the EIS.

the Council for analysis in the DEIS. The Habitat TRC is scheduled to meet in early December 2004 for this purpose. This could result in some modification of the alternatives. For example, the extent of EFH designated under an alternative, based on criteria described therein, could change, because of data updates or model changes recommended by the Habitat TRC. Substantial changes to the alternatives or their predicted impacts are not anticipated, however.

In selecting preferred alternatives, the Council should be aware of some of the limitations of the analysis in the preliminary DEIS. Although identified in Chapter 2, the DEIS contains no description or analysis of Impacts Minimization Alternative 13, the plaintiffs' (Oceana) alternative. A letter from Oceana (included under Agenda Item E.7.d, Public Comment), briefly describes their comprehensive alternative and explains why a more detailed description and impact analysis was not available for inclusion in the briefing materials. They indicate that additional information and analysis is to be provided to the Council at the November meeting. The Nature Conservancy and Environmental Defense have provided information (see Agenda Item E.7.d, Public Comment) they believe the Council will find useful in evaluating Impacts Minimization Alternative 11, which establishes a no-trawl zone on the central California coast and associated privately funded buyout of fishing permits. They note that they have not yet got access to all of the information they would need to provide a full analysis or to work with NMFS staff in fully developing and analyzing this alternative. Analysis is also still pending for some of the other alternatives in the preliminary DEIS. For example, most of the HAPC Alternatives show analysis pending in Chapter 4 of the document. However, the California Artificial Reef Enhancement Program (CARE) has provided a report (see E.7.d) in support of HAPC Alternative 8, designating areas around oil production platforms.

To conclude, in making a decision on preferred alternatives while balancing sound decision-making on this issue with the terms set out in the joint stipulation and order, the Council could formulate an approach by considering the following options:

- Select preferred alternatives in all four categories of alternatives. The Council would have to consider the relevance of any omissions or shortcomings in the preliminary DEIS analysis if this course were followed.
- Select preliminary preferred alternatives in all four categories of alternatives, based on the rationale used by the North Pacific Council in their EFH DEIS, published in January 2004 (see Agenda Item E.7, Attachment 1), which allows for later reconsideration.
- Select preferred alternatives from some of the categories while deferring a decision on preferred alternatives for the remaining categories. The Council could then take up this decision in the March-June time frame. This may not fully satisfy the requirement in the joint stipulation and order to identify a preferred alternative or alternatives in the DEIS, so the Council would have to weigh this against their ability to make an informed choice of alternatives at this meeting.
- Defer the choice of preferred alternatives until the March-June time frame. Although this course of action would provide the greatest opportunity for informed decision-making, based on a fully developed and distributed DEIS, it clearly would not satisfy the requirement in the joint stipulation and order for the DEIS to identify a preferred alternative or alternatives. Therefore, in order to comply with the joint stipulation NMFS would have to choose a preferred alternative or alternatives for inclusion in the DEIS.

If the Council were to consider deferring some or all decisions until the March-June time frame, the

timing of Council action during this period should be considered. A decision at the March meeting, which would fall during the public comment period for the DEIS, would allow the public to be informed of their decision. A decision at the June meeting, after the public comment period has closed, would allow the public to fully comment on which alternatives should be identified as preferred. The North Pacific EFH EIS model has the advantage of informing the public of the likely course of action, through the identification of preliminary preferred alternatives, while allowing the Council to fully consider public comment on those preliminary decisions. Using this approach, the Council would have the opportunity to revisit their decision at the June 2005 Council meeting, after the public comment period closed. It is important to note that any selection or confirmation of a preferred alternative during the March-June time frame could only concern the alternatives analyzed in the DEIS. New alternatives, not previously analyzed in the DEIS, could not be introduced during this period without a strong expectation of recirculating the DEIS (40 CFR 1502.9). This could be difficult, given the requirement to publish an FEIS by December 9, 2005.

Council Action:

Adopt preferred alternatives for draft EIS analysis and, if appropriate, further refine the range of alternatives included in the DEIS.

Reference Materials:

1. Agenda Item E.7.a, Attachment 1: Description of Decision Process for the North Pacific Council EFH EIS.
2. Agenda Item E.7.b, NMFS Report - EFH EIS: Pacific Groundfish Essential Fish Habitat Preliminary Draft EIS.
3. Agenda Item E.7.d, Public Comment (California Artificial Reef Enhancement Program, Oceana, The Nature Conservancy).

Agenda Order:

- a. Agenda Item Overview
 - b. NMFS Report
 - c. Reports and Comments of Advisory Bodies
 - d. Public Comment
 - e. **Council Action:** Adopt Preferred Alternatives for Draft EIS Analysis and, if Appropriate, Further Refine the Range of Alternatives Included in the DEIS
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PFMC
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