

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, MD 20910



THE DIRECTOR

RECEIVED

JAN 22 2002

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PFMC

Mr. Jim Lone
Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place
Portland, Oregon 97220-1384

Dear Mr. Lone:

Enclosed please find a copy of the final rule implementing the essential fish habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act. The final rule becomes effective February 19, 2002, and supersedes the EFH interim final rule that was published in the *Federal Register* on December 19, 1997. The final rule is the result of an extraordinarily thorough public rulemaking process that included five separate comment periods and more than 20 public meetings and workshops. During a total of 270 days of open public comments, the National Marine Fisheries Service (NMFS) received approximately 3,600 written comments on the EFH regulations. The final rule benefitted greatly from written comments and verbal testimony. I hope you will agree that the result is much clearer guidance and more efficient procedures for Fishery Management Councils, NMFS, other agencies, and the public.

The final rule retains the same overall structure as the interim final rule. Subpart J of 50 CFR part 600 contains guidelines to assist Councils in developing the EFH components of fishery management plans (FMPs). Subpart K of 50 CFR part 600 contains procedures for coordination, consultations, and recommendations for Federal and state agency actions that may adversely affect EFH. The final rule includes numerous clarifications, simplifications, and editorial improvements intended to make the regulations easier to use.

Under Subpart J, Councils must identify in FMPs EFH for each life stage of each managed species. Councils should organize information on the habitat requirements of managed species using a four-tier approach based on the type of information available. Councils must identify as EFH those habitats that are necessary to the species for spawning, breeding, feeding, or growth to maturity. Councils must describe EFH in text and must provide maps of the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found. Councils should identify EFH that is especially important ecologically or particularly vulnerable to degradation as "habitat areas of particular concern" to provide additional focus for conservation efforts. Councils must evaluate the potential adverse effects of fishing activities on EFH, and FMPs must include management measures that minimize adverse effects to the extent practicable. Councils also must identify other activities that may adversely affect EFH and recommend actions to reduce or eliminate these effects.

Although the changes do not constitute substantial revisions to the guidelines contained in the interim final rule, some of the clarifications and explanations in Subpart J of the final rule result in minor changes to the Secretary's interpretation of the mandatory contents of FMPs. Existing FMP EFH provisions were approved (or in some cases partially approved) by the Secretary pursuant to the interim final rule. Councils are not required to develop immediate amendments to those FMPs to address any changes in regulatory guidelines pursuant to this final rule. To the extent that changes to approved FMPs are necessary to meet the standards of the final rule, Councils should incorporate those changes during the next regular review and revision of FMP EFH provisions (such as the EFH environmental impact statements that most Councils are now preparing). Section 600.815(a)(9) of the final rule states that Councils should conduct such reviews as recommended by the Secretary, but at least once every five years.

Two procedural changes in the final rule affect the Councils directly. First, the final rule streamlines the procedure for NMFS to provide recommendations and information to Councils regarding the EFH components of FMPs, in consultation with participants in the fishery, as required by section 305(b)(1)(B) of the Magnuson-Stevens Act. Under the interim final rule, NMFS was required to provide draft recommendations to a Council in writing, make the draft recommendations available for public review, and hold at least one public meeting before providing final recommendations to the Council. This procedure proved to be confusing and duplicative with the existing Council process for FMP development and public comment. The final rule simplifies this process by allowing NMFS to obtain public input via the normal Council process and provide only one set of written EFH recommendations.

Second, the final rule eliminates the requirement for NMFS to consult with the appropriate Council(s) prior to issuing a General Concurrence. General Concurrences are the mechanism whereby NMFS examines a category of Federal actions that are similar in nature, similar in their effects on EFH, and will cause no more than minimal adverse effects to EFH individually or cumulatively. Once NMFS issues a General Concurrence, the Federal agency is not required to consult with NMFS on each individual action covered by the General Concurrence. The requirement for Council consultation was intended to ensure good coordination, but it proved to be a hindrance to issuing General Concurrences promptly for actions that are truly minor. The final rule states that after completing a General Concurrence, NMFS will provide a copy to the appropriate Council(s) and will make the General Concurrence available to the public. NMFS can always revise or revoke a General Concurrence if Council or public review suggests such action is warranted.

Staff from the NMFS Office of Habitat Conservation would be pleased to brief the full Council and/or appropriate Council committees on all of the changes to the EFH regulations. If you would like to arrange such a briefing, please contact Jon Kurland, our national EFH Coordinator, or Korie Johnson at 301-713-2325.

Sincerely,



William T. Hogarth, Ph.D.
Assistant Administrator for Fisheries

Enclosure