

DRAFT LETTER

April 5, 2004

Mr. Rolland A. Schmitten, Director  
Office of Habitat Conservation  
NOAA Fisheries  
F/HC - EFH ANPR  
1315 East-West Highway  
Silver Spring, Maryland 20910

Re: Proposed rulemaking regarding essential fish habitat guidelines

Dear Mr. Schmitten:

The Pacific Fishery Management Council (Council) takes this opportunity to comment on the Advance Notice of Proposed Rulemaking addressing potential revisions to the essential fish habitat (EFH) guidelines. Our comments support a continuation of a strong EFH policy to protect our fishery resources.

The existing EFH guidelines provide NOAA Fisheries and the Council the only means to act proactively through consultation with other agencies to protect the habitat needed by their managed resources. The Council believes that collaborative and proactive efforts to conserve habitat will help avoid future species listings and overfishing designations.

The Council appreciates the existing guidance provided by NOAA Fisheries on Habitat Areas of Particular Concern (HAPCs) and thinks that designation of HAPCs should be further encouraged and supported to focus consultations most effectively. We also believe that the EFH consultation process is not cumbersome or unreasonable, especially as it can be included as a part of other consultations (e.g. Endangered Species Act, National Environmental Policy Act). The consultation process will in fact be greatly eased by the GIS-based information that is now being developed by most of the Councils and that will soon be available online to other federal agencies and the public at large.

The Council does not advocate any major revisions to the EFH guidelines. We suggest the following changes to make the guidelines more effective in protecting and improving productivity of fish habitat.

1. The action agencies now determine when they may have adverse impacts and need to consult. The rule should better define adverse effects to clarify and strengthen the triggering mechanism and requirements for consultation.
2. Federal agencies are supposed to respond in writing within 30 days as to their proposed actions to address recommendations provided by NOAA Fisheries or the Council. This statutory requirement is not consistently or frequently adhered to. Please consider strengthening the guidelines by adding non-compliance penalties.
3. We recommend you ask for the use of best available scientific data when designating EFH. The Level 1 through Level 4 considerations are not particularly realistic given the state of our fishery knowledge and research capabilities. Councils and NOAA Fisheries normally have only Level 1 and some Level 2 information. We recommend NOAA Fisheries "mine" existing survey data to assure that relative abundance and productivity information is used in the EFH designations.
4. The Council urges clarification of the "practicability" standard.

5. The Council urges you to maintain current guidance for habitat protection to assure priority is always given to avoidance of impacts rather than minimization or mitigation of impacts. This concern is especially important in areas designated as HAPCs and in areas of EFH that provide habitat important to stocks that are listed under the ESA or that are rebuilding, have low fecundity, sporadic recruitment, or are long-lived. Mitigation for unavoidable impacts should be located in the vicinity of the impact, if possible, and should focus on restoring ecosystem functions that have been adversely impacted.
6. The Council supports and emphasizes the need to maintain and strengthen the section regarding degraded or inaccessible aquatic habitats (600.815 (a) (F)). We recommend the rules allow designation of EFH (or potential EFH) in historic habitat areas where there is reasonable potential for restoration of important ecosystem functions. There are proposals in both estuarine and riverine environments (such as the Cargill salt ponds in San Francisco Bay, or above dams such as Iron Gate on the Klamath, Round Butte on the Deschutes, Hells Canyon on the Snake River, and Chief Joseph on the Columbia), where restoration is planned or where passage could be a requirement of FERC relicensing. Without such consideration, important options for restoring habitat could be lost. For example, failure to designate EFH above currently impassable dams could be used as an argument not to provide restoration above those dams.

Thank you for the opportunity to comment. We strongly support the existing EFH rules and requirements for consultation. The rule takes a proactive approach to protecting, enhancing, and conserving EFH to avoid species declines and listings. We look forward to working with you and your staff on any potential guideline revisions. Please feel free to contact us if you have any questions.

Sincerely,

Donald K. Hansen  
Chairman