

PACIFIC FISHERY MANAGEMENT COUNCIL

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EXECUTIVE DIRECTOR
Donald O. McIsaac

CHAIRMAN
Donald Hansen

June 1, 2004

Dr. William T. Hogarth
Assistant Administrator for Fisheries
United States Department of Commerce
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Re: Essential Fish Habitat Five-Year Review

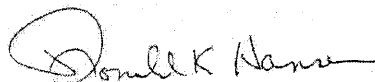
Dear Dr. Hogarth:

Thank you for your letter of April 30, 2004 regarding review of the essential fish habitat (EFH) sections of our fishery management plans (FMPs).

As you know, the Pacific Fishery Management Council (Council) has FMPs for Pacific Coast groundfish, salmon, highly migratory species, and coastal pelagic species. Of these, only the EFH section of the coastal pelagic species FMP is due for review at this time. The EFH section of the Pacific Coast groundfish FMP was recently the subject of a litigation settlement, and National Marine Fisheries Service is currently developing an environmental impact statement that addresses EFH for groundfish. The salmon FMP was amended to include EFH less than five years ago, and the highly migratory species FMP was approved last year.

I will provide your letter to the Council when it meets later this month. At that time, the Council will discuss review of the EFH provisions of the coastal pelagic species FMP during its consideration of future workload planning.

Sincerely,



Donald K. Hansen
Chairman

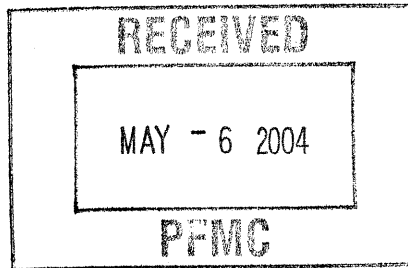
JDG:
cc: Regional administrators



~~RG. EFH~~

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

APR 30 2004



Mr. Donald K. Hansen
 Chairman, Pacific Fishery Management Council
 7700 NE Ambassador Place
 Portland, Oregon 97220-1384

Dear ^{Don} Mr. Hansen:

Many of the Fishery Management Plans (FMPs) and FMP amendments completed in 1998 and 1999 to comply with the essential fish habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) are due for review. In some cases, this review has begun (i.e., through the development of EFH environmental impact statements [EIS] for those fisheries subject to the Joint Stipulation and Order in *American Oceans Campaign v. Evans*). In others, work has yet to begin. Provided below is information, presented as a series of questions and answers, on the EFH five-year review process. Appended is a list of all the EFH amendments and their status relative to the five-year review.

Why does the review need to be conducted every five years?

As you are aware, Section 305(b)(1) of the MSA requires the Secretary to develop a schedule to review the EFH portions of FMPs. The agency, through the EFH regulatory guidelines, (50 CFR 600.815 (a)(10)), has determined that such reviews should be conducted at least once every five years.

Specifically, the EFH regulatory guidelines state:

Councils and NMFS should periodically review the EFH provisions of FMPs and revise or amend EFH provisions as warranted based on available information. FMPs should outline the procedures the Council will follow to review and update EFH information. The review of information should include, but not be limited to, evaluating published scientific literature and unpublished scientific reports; soliciting information from interested parties; and searching for previously unavailable or inaccessible data. Councils should report on their review of EFH information as part of the annual Stock Assessment and Fishery Evaluation (SAFE) report prepared pursuant to 600.315(e). A complete review of all EFH information should be conducted as recommended by the Secretary, but at least once every five years.

In addition, National Standard 2 of the MSA requires that conservation measures, including those for EFH, be based on the "best scientific information available" (16 U.S.C. §1851(a)(2)). Clearly, since 1998, NOAA and others have conducted considerable research, management analysis, and mapping that provide new information about the distribution of fish and their habitats, the ecological relationships between managed species and their habitats, and the effects of fishing on those habitats. We also have obtained new information about habitat types, such as deep sea corals, for which we had very little knowledge when many of the original EFH FMP

THE ASSISTANT ADMINISTRATOR
 FOR FISHERIES



amendments were approved. The information used to develop the original EFH FMP amendments will need to be reviewed to ensure new data is accounted for in accordance with National Standard 2.

Regulations and policies under the National Environmental Policy Act (NEPA) also supports the regular review of information supporting agency action. In interpreting the NEPA regulations (40 CFR Parts 1500-1508), the Council on Environmental Quality (CEQ) indicates that if an EIS is more than five years old, or if there is significant new circumstances or information relevant to environmental concerns, the EIS should be reexamined to determine if preparation of an EIS supplement is necessary (*Forty Most Asked Questions Concerning CEQ's NEPA Regulations*).

Similarly, NOAA's NEPA policy states that "where an EIS has been completed on a previous management plan or plan amendment and that EIS or SEIS is more than five (5) years old, the RPM [Responsible Program Manager] should review the EIS to determine if a new EIS or SEIS should be prepared (NAO 216-6)." As indicated by CEQ and NOAA, reviews of prior environmental analyses should be conducted regularly to ensure current information is being considered when making agency decisions. This rationale also applies to the information used to support EFH management decisions in our FMPs.

What benefit does the five-year review provide?

The primary benefit of the five-year review is to ensure EFH management decisions continue to be based on sound science and law. A periodic review of the supporting analyses and data of EFH management measures will determine whether our decisions are consistent with current knowledge or need to be amended to reflect advances in the field. The review will allow species' distributions and habitat associations to be updated with new data and will provide an opportunity to further refine EFH descriptions. Improvements in mapping and modeling capabilities show promise for being powerful tools in refining EFH descriptions and improving EFH consultations. By incorporating new scientific data and methods into EFH management, our decisions will be consistent with MSA mandates and other legal standards of review that often are used to evaluate our decisions.

What do the five-year reviews need to include, and what process should be used?

The five-year reviews should include a review of the information used to support Council and agency decisions in FMPs that: 1) identify and describe EFH, 2) minimize adverse effects of fishing, 3) identify Habitat Areas of Particular Concern, and 4) take any other action to encourage the conservation and enhancement of EFH. Please use the procedures described in the EFH regulatory guidelines on how to conduct five-year reviews (50 CFR 600.815 (a)(10)). If necessary, NMFS' Office of Habitat Conservation, in coordination with Fishery Management Council staff, will develop additional technical guidance on how to conduct the five-year reviews. The results of your review will determine whether amending the NEPA document(s) or FMP(s) will be necessary to ensure the best available science is used to support EFH management decisions.

Whom do I contact for additional information?

If you or your staff has questions or concerns about how to proceed, please contact Karen Abrams, the National EFH Coordinator, at (301) 713-4300 ext. 149. In addition, the Habitat Conservation Division within the Regional Office will be available to answer questions

related specifically to your FMPs.

I recognize that undertaking any major review of fisheries policy is time-consuming and staff intensive. In the case of EFH reviews, not only will we be responding to both statutory and regulatory requirements, but we will be producing a product that ensures our management decisions are supported by the best scientific information available. I urge you to begin the five-year review process, if you have not done so already. By May 30, 2004, please review the enclosed list and provide a status report on your progress and plans for completing the five-year EFH review.

I appreciate your support for the EFH process and look forward to working with the Pacific Fishery Management Council during the five-year review.

Sincerely,



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

Enclosure

cc: Regional Administrators

Schedule for Review of EFH Amendments

Fishery Management Council	FMP and Amendments	Secretarial Decision and Date	Estimated 5 Year Secretarial Review Date	Status of 5 Year Review
Highly Migratory Species (HMS)	Atlantic Billfish	approved 4/15/1999	4/15/2004	Review has begun
	Atlantic HMS	approved 4/15/1999	4/15/2004	Review has begun
New England FMC	Atlantic Salmon	approved 3/8/1999	3/8/2004	Partially through 5/31/2004 regulations that may develop from an EIS resulting from the <i>AOC v Evans</i> lawsuit, partially through Omnibus amendment in 2004/2005
	Northeast Multi-species	approved 3/8/1999	3/8/2004	(see above)
	Sea Scallop	approved 3/8/1999	3/8/2004	(see above)
	Atlantic Herring	approved 10/27/1999	10/27/2004	(see above)
	Monkfish	approved 4/22/1999	4/22/2004	(see above)
Mid-Atlantic FMC	Atlantic Bluefish	approved EFH designations 7/29/99; disapproved "fishing impacts on EFH"	Must approve minimization of fishing gear impacts section; EFH designation review 7/29/2004	Remedied as part of Amendment 2, amendment recently initiated

	Atlantic Surfclam and Ocean Quahog	approved EFH designations 4/28/1999; disapproved "fishing impacts on EFH"	Must approve minimization of fishing gear impacts section; EFH designation review 4/28/2004	Remedied as part of Amendment 13 for Surf Clams and Ocean Quahogs, FEIS will soon be completed
	Atlantic Mackerel, Squid, and Butterfish	approved EFH designations 4/28/1999; disapproved "fishing impacts on EFH"	Must approve minimization of fishing gear impacts section; EFH designation review 4/28/2004	Remedied as part of Amendment 9 for Squid, Mackerel, and Butterfish, DEIS to be completed this summer
	Atlantic Flounder, Scup, and Black Seabass (BSB)	approved EFH designations 4/28/1999; disapproved "fishing impacts on EFH"	Must approve minimization of fishing gear impacts section; EFH designation review 4/28/2004	Remedied as part of Amendment 13 for flounder, Scup, and BSB, currently under secretarial review
	Spiny Dogfish	approved 9/29/1999	9/29/2004	To be determined
	Tilefish	approved 5/10/2001	5/10/2006	Future additional work will be determined by outcome of pending lawsuit regarding lack of EFH protection measures
South-Atlantic FMC	Snapper-Grouper	approved 6/3/1999 (amendment 10)	6/3/2004	Review underway
	Atlantic Coast Red Drum	approved 6/3/1999 (amendment 1)	6/3/2004	Review underway
	Atlantic Shrimp Fishery	approved 6/3/1999 (amendment 3)	6/3/2004	Review underway
	Atlantic Coral, Coral Reefs, and Live/Hard Bottom Habitats	approved 6/3/1999 (amendment 4)	6/3/2004	Review underway
	Atlantic Golden Crab	approved 6/3/1999 (amendment 1)	6/3/2004	Review underway

SAFMC / GMEMC	Coastal Migratory Pelagic Resources	approved 6/3/1999 (amendment 5)	6/3/2004	Review underway
Gulf of Mexico FMC	Coral and Coral Reefs	approved EFH designations for 26 selected species and coral complex, and gear impacts for three gears 2/8/99; disapproved remaining species and gear impacts of other fishing gears	Review approved EFH designations and gear impacts 2/8/2004; Must approve other EFH designations and gear impacts	Through 6/25/2005 regulations that may develop from an EIS resulting from <i>AOC v Evans</i> lawsuit
	Gulf of Mexico Red Drum	(see above)	(see above)	(see above)
	Gulf of Mexico Stone Crab	(see above)	(see above)	(see above)
	Gulf of Mexico Shrimp Fishery	(see above)	(see above)	(see above)
	Reef Fish Resources	(see above)	(see above)	(see above)
Caribbean FMC	Spiny Lobster	approved 17 selected species and corals for Caribbean EFH Amendment 2/18/1999; disapproved EFH sections of all other species.	Review approved EFH designations 2/18/2004; Must approve EFH sections for all other species.	Through 6/25/2005 regulations that may develop from an EIS resulting from the <i>AOC v Evans</i> lawsuit
	Shallow Water Reeffish	(see above)	(see above)	(see above)
	Queen Conch	(see above)	(see above)	(see above)
	Corals and Reef Associated Invertebrates	(see above)	(see above)	(see above)
Pacific FMC	Commercial and Recreational West Coast Salmon Fisheries	approved 9/27/2000 (amendment 14)	9/27/2005	To be determined

	Northern Anchovy / Coastal Pelagics	approved 6/10/1999 (amendment 8)	6/10/2004	To be determined
	Pacific Coast Groundfish	approved 3/3/1999 (amendment 11)	3/3/2004	Through 5/2006 regulations that may develop from an EIS resulting from the <i>AOC v Evans</i> lawsuit
Western Pacific FMC	Western Pacific Crustaceans	approved 2/3/1999 (amendment 10)	2/3/2004	To be determined
	Western Pacific Precious Corals	approved 2/3/1999 (amendment 4)	2/3/2004	To be determined
	Bottomfish and Seamount Groundfish	approved 2/3/1999 (amendment 6)	2/3/2004	To be determined
	Western Pacific Pelagics	approved 2/3/1999 (amendment 8)	2/3/2004	To be determined
	Coral Reef Ecosystems	approved 6/14/2002	6/14/2007	To be determined
North Pacific FMC	Groundfish of the Gulf of Alaska	approved 1/20/1999 (amendment 55)	1/20/2004	Through 8/13/2006 regulations that may develop from an EIS resulting from the <i>AOC v Evans</i> lawsuit
	Salmon Fishery in the EEZ off the Coast of Alaska	approved 1/20/1999 (amendment 5)	1/20/2004	(see above)
	Groundfish Fishery of the Bering Sea and Aleutian Islands Area	approved 1/20/1999 (amendment 55)	1/20/2004	(see above)

	Bering Sea/Aleutian Islands King and Tanner Crab	approved 1/20/1999 (amendment 8)	1/20/2004	(see above)
	Scallop Fishery off Alaska	approved 1/20/1999 (amendment 5)	1/20/2004	(see above)