

## GROUND FISH ESSENTIAL FISH HABITAT (EFH) ENVIRONMENTAL IMPACT STATEMENT (EIS) – FINAL PREFERRED ALTERNATIVE

At the November 2005 Council meeting, the Council identified a range of alternatives to be included in the Pacific Groundfish Fishery Management Plan (FMP) Essential Fish Habitat (EFH) Designation and Minimization of Adverse Impacts Draft Environmental Impact Statement (DEIS). They also identified preliminary preferred alternatives to be identified in the EFH DEIS. National Marine Fisheries Service (NMFS) prepared the EFH DEIS pursuant to a settlement agreement in *AOC v. Daley*, which established a timeline for completing the EIS process and finalizing any FMP amendment and regulations necessary to implement the preferred alternative. In accordance with this timeline NMFS released the DEIS on February 11, 2005, triggering a public comment period that ended on May 11, 2005.

Attachment 1 provides a summary of the alternatives included in the DEIS, noting by check mark those the Council preliminarily chose as preferred. The alternatives are grouped in four categories: alternatives to (1) designate EFH, (2) designate habitat areas of particular concern (HAPC), (3) mitigate fishing impacts to EFH, and (4) implement habitat-related research and monitoring initiatives.

At this meeting the Council needs to choose a comprehensive final preferred alternative. The final preferred alternative will be included in the final EIS, which according to the schedule referenced above, must be released by December 9, 2005. In order to select a final preferred alternative, the Council, at a minimum, needs to choose one alternative from each of the four categories just described. (Consistent with the National Environmental Policy Act [NEPA], a No Action Alternative is included in each of the four categories of alternatives. Choosing no action would keep the current definitions, designations, and mitigation measures in place.)

### Selection of a Final Preferred Alternative

Under the first category, alternatives to designate EFH, the Council chose two preliminary preferred alternatives; it is noteworthy that these alternatives are mutually exclusive. In the second category, alternatives to designate HAPC, the Council chose four preliminary preferred alternatives. These alternatives are not mutually exclusive and any combination of alternatives could be chosen for the final preferred alternative. In the third category, measures to mitigate adverse impacts, the Council chose 15 preliminary preferred alternatives. Two of these are sub-options—C.4.1 and C.4.2—which are mutually exclusive because they apply the same measures to different gear categories. Furthermore, Alternatives C.12, C.13, and C.14 identify the same set of geographic areas, which would be closed to different gear categories. Taken in their entirety, these alternatives are mutually exclusive; however the Council could combine elements of these alternatives—for example, by identifying specific areas to be closed to different gear categories—in crafting their final preferred alternative. The other preliminary preferred alternatives are not mutually exclusive. In the fourth category, research and monitoring, the Council did not identify preliminary preferred alternatives.

In choosing final preferred alternatives in each category, the Council first may need to consider the relationship among the categories of alternatives. HAPC must occur within designated EFH, and mitigation measures are primarily directed at areas designated EFH. For example, if

the Council chose Alternative A.2, defining EFH as waters in depths  $\leq 3,500$ , this would preclude designating HAPC occurring at greater depths (see Habitat Table 4-4 in the DEIS). If necessary, a practical solution would be to modify the EFH designation component of the preferred alternative so that any HAPC areas not part of EFH are simultaneously designated EFH. By the same token, components of the impacts mitigation measures alternatives fall outside of the area that would be designated EFH under all the alternatives except for Alternative A.1, no action (see Habitat Table 4-5 in the DEIS). In formulating a final preferred alternative the Council may wish to request guidance on whether the EFH guidelines established by NMFS allow mitigation measures to be applied to the part of the Exclusive Economic Zone outside of the area designated EFH.

There are two other issues the Council should consider when formulating the final preferred alternative. The first issue is the latitude the Council has in choosing alternatives other than the preliminary preferred alternative as part of the final preferred alternatives. The preliminary preferred alternative concept is derived from the approach used by the North Pacific Fishery Management Council in their groundfish EFH EIS. It is clear the Pacific Council can reaffirm the preliminary preferred alternatives as the preferred alternatives or select different preferred alternatives. The second issue is the Council's ability to modify and/or combine alternatives found in the DEIS to develop their final preferred alternative. This may be done as long as the resulting alternative is reasonably similar to the alternatives in the DEIS such that the predicted impacts of the final preferred alternative falls within the range of impacts predicted for the alternatives found in the DEIS. One example would be to choose one of the preliminary preferred EFH designation alternatives but modify it to identify additional area as EFH. Another example, alluded to above, would be to combine elements in the impact mitigation alternatives, such as the number, configuration, and applicability of closed areas.

#### Agency Reports and Public Comment

The Washington Department of Fish and Wildlife also included a report for inclusion the briefing materials (Agenda Item C.3.b, WDFW Report), which summarizes their analysis of Alternative C.12 using trawl logbook set point data. It also proposes including Washington State waters, which are currently closed to bottom trawl and groundfish-directed fixed gear, as an HAPC designation under the final preferred alternative. The Environmental Protection Agency (EPA) also submitted comments on the DEIS, as mandated under NEPA and Section 309 of the Clean Air Act. These are included under Agenda Item C.3.b, USEPA Comments. A letter from the NOAA National Marine Sanctuary Program makes recommendations on the adoption of alternatives that would also further sanctuary program goals, noting the need for a modification of Alternative A.2, the EFH designation alternative they recommend the Council adopt.

NMFS and the Council received a large volume of public comment on the DEIS. The great majority of this, 39,637 messages, was emails or postcards sent to NMFS with substantively identical comments. Representative examples of these comments have been included in the briefing materials.

The public comments are divided into two sections. Public Comment 1 contains comments submitted by organizations. This includes a description of Revised Alternative C.12 submitted by Oceana. Alternative C.12 was originally submitted by Oceana for Council consideration under the terms of the settlement agreement referenced above. The Revised Alternative C.12 contains reconfigurations of the closed areas described in the DEIS for this alternative. The

Scientific and Statistical Committee was asked to review the methodology used by Oceana to identify areas of biogenic habitat included in Alternative C.12 and Revised Alternative C.12 and their report is attached (see Agenda Item C.3.c, SSC Report). Another public comment, submitted by the Fishermen's Marketing Association, contains a proposal that is a variation on the closed areas proposed under Alternative C.12. The Association terms this the Trawl Industry Proposal, based on consultations with industry representatives.

Public Comment 2 contains comments submitted by individuals. These comments represent a diversity of views ranging from general support or opposition to the implementation of EFH measures to specific recommendations on which alternatives to choose or modifications to those alternatives.

**Council Action: Adopt a Final Preferred Alternative.**

Reference Materials:

1. Agenda Item C.3.a, Attachment 1: Summary of the Alternatives in the Groundfish Essential Fish Habitat DEIS.
2. Agenda Item C.3.b, WDFW Report: Washington Department of Fish and Wildlife Summary Analysis of Trawler-Proposed and Oceana-Proposed Bottom Trawl Closed Areas Using 2003 West Coast Trawl Logbook Data.
3. Agenda Item C.3.b, USEPA Comments.
4. Agenda Item C.3.b, National Marine Sanctuary Letter.
5. Agenda Item C.3.c, SSC Report: Scientific and Statistical Committee Report on Groundfish Essential Fish Habitat Environmental Impact Statement – Final Preferred Alternative.
6. Agenda Item C.3.c, HC Report: Habitat Committee Report on the Groundfish Essential Fish Habitat Environmental Impact Statement.
7. Agenda Item C.3.c, GMT Report: Groundfish Management Team Report on Essential Fish Habitat Environmental Impact Statement.
8. Agenda Item C.3.d, Public Comment 1: Public Comment Received From Organizations.
9. Agenda Item C.3.d, Public Comment 2: Public Comment Received From Individuals.

Agenda Order:

- a. Agenda Item Overview
- b. Agency and Tribal Comments
- c. Reports and Comments of Advisory Bodies
- d. Public Comment
- e. **Council Action:** Adopt a Final Preferred Alternative

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