

April 2, 2004

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

Office of Habitat Conservation

APR 6 2004

Received

Dear Mr. Schmitten:

I am writing on behalf of the American Cetacean Society of Monterey Bay in California. These are our comments on the Advanced Notice of Proposed Rulemaking (ANPR) regarding the Essential Fish Habitat (EFH) guidelines published in the *Federal Register* on February 25, 2004. In summary, EFH guidelines should not be changed at this time. Concerns with the EFH program can and should be resolved through better implementation of EFH guidelines. Current guidelines are sufficient to identify EFH, determine the effects of fishing activities on EFH, and protect EFH from the adverse effects of fishing and non-fishing activities. Rather than revise the guidelines, we recommend that NMFS revise and reissue its EFH Technical Guidance.

The current NMFS process for EFH reflects the intent of Congress, is flexible enough, and can succeed. Prior to the inclusion of the EFH requirements in the MSA, fish habitat was not adequately protected from destruction due to human activities. Congress added the EFH requirements to the MSA in 1996 in order to specifically protect marine fish habitat. One purpose of the MSA is "to promote the protection of essential fish habitat in the review of projects conducted under federal permits, licenses, or other authorities that affect or have the potential to affect such habitat" (16 U.S.C. 1801(b)(7)). In addition, NMFS has made great efforts to minimize the complexity and streamline the EFH consultation process. NMFS has followed the Regulatory Flexibility Act requirements in developing the EFH guidelines. The Regulatory Flexibility Act does not require that conservation benefits outweigh economic costs, rather it requires that cost analyses be conducted and that the least expensive alternative that still meets MSA legal requirements is chosen.

A broad scope of EFH is necessary to protect fisheries. The reason that the area designated as EFH is broad is that marine species have more than one life stage, and each life stage may depend on a different habitat. The combined geographic distributions of the several hundred species that are managed in federal fisheries require protection of much of the U.S. EEZ. In addition, the scientific data is currently lacking on habitat-specific growth and survival, as well as productivity by habitat type. Designated areas are large to compensate for the poor resolution on specific habitat needs. These areas can, and should, be refined as the research progresses, but we can not afford to wait for scientific certainty to protect our threatened fisheries.

Protection of habitat for fish populations is critical to their long-term health and it's the law. Non-mandatory guidelines would likely weaken necessary protection. Additionally, the EFH provisions in the Magnuson-Stevens Fishery Conservation and Management Act (MSA) are mandatory. Therefore, converting the EFH guidelines to guidelines and making the program advisory in nature would be inconsistent with the law and inappropriate.

Don't weaken the review process. Because EFH is critical to the survival of marine fish populations, Congress required that all federally conducted, funded, or authorized activities that "may adversely affect" EFH be specifically reviewed in order "to promote the protection of EFH." This is a clear legal mandate, that NMFS does not have the legal authority to modify. Requiring that a "significance threshold" be met before implementing EFH consultation procedures is not consistent with the law and would undercut EFH protection efforts. However, NMFS has made a good faith effort to streamline the consultation process so that activities with minimal impacts may be covered under expedited review procedures. In addition, we suggest that NMFS and the regional councils make better use of habitat areas of particular concern as a way to focus consultation activities.

The legal definition of EFH was created to protect the entire life cycle of managed fish species. The guidelines must apply to the areas where the fish live during all of their life stages. For many species that includes coastal and estuarine waters. Therefore, EFH guidelines must apply where the fish are found, even in state waters.

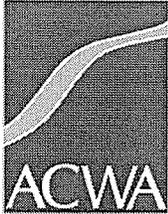
In conclusion, we are very concerned that this additional ANPR will further undermine NMFS' EFH protection efforts by creating uncertainty regarding the agency's commitment to the program. Congress should not revise the EFH guidelines; concerns about the program can be addressed through better implementation of the existing guidelines.

Thank you for considering our comments.

Sincerely,



Carol B. Maehr
Conservation Chair
American Cetacean Society
of Monterey Bay



Association of California Water Agencies

Leadership Advocacy Information Since 1910

April 26, 2004

Office of Habitat Conservation

APR 30 2004

Received

Mr. Rolland A. Schmitten
Director, Office of Habitat Conservation
NOAA - National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3282

Re: ACWA Comments on NOAA's Proposed Consideration of Revisions to Essential Fish Habitat Guidelines, 68 Fed. Reg. 69070

Dear Mr. Schmitten,

ACWA appreciates the opportunity to comment on NOAA's Advance Notice of Proposed Rulemaking on Revision of Essential Fish Habitat (EFH) guidelines. We are pleased that NMFS is reconsidering the EFH program, and these comments are submitted to encourage reconsideration.

ACWA is part of a coalition concerned about the manner in which the essential fish habitat provisions in the Magnuson-Stevens Fishery Conservation and Management Act have been implemented by NOAA/NMFS. We encourage a new rulemaking which addresses the concerns which have been raised about it over the years, particularly by interests in the non-fishing sector.

Today, enforcement of EFH goes well beyond the intentions in the Act by extending the program to all marine, coastal, and estuarine waters of the U.S., and very extensive inland habitat for anadromous species, including upland terrestrial areas. Such an all-encompassing definition has rendered the term "essential" virtually meaningless. The EFH program seems to apply everywhere, and to virtually all habitat. The definition and procedures for identification and consultation need to be narrowed in scope, and clarified for marine areas such as those identified in the "habitat areas of particular concern" provisions of the current regulations.

Under the current regulations, nearly all habitat for managed species, including vast areas of inland and coastal habitat that are already subject to other protections against adverse impact, are being identified as "essential." A full spectrum of non-fishing as well as fishing activities are in turn being identified as having potential effects on this habitat and have thus become subject to burdensome EFH consultation requirements. There is no "significance" threshold included in the current regulations for triggering such consultation, which has resulted in a volume of thousands of EFH consultations being conducted during the first few years of the EFH program.

In addition, the current regulations still contain numerous mandatory procedures and other requirements that are not needed to comply with Magnuson-Stevens. The regulations allow EFH consultation to be coordinated with other regulatory procedures, but still require specific written EFH assessments and additional procedures that do not add any meaningful habitat protection. Rather than take advantage of existing consultation and decisionmaking procedures, NMFS has created its own new, redundant and burdensome procedure that results in the inefficient use of agency resources and delay in decisionmaking.

These definitions need to be clarified, and mandatory provisions eliminated to allow NMFS, fishery management councils, action agencies, and other affected parties to carry out EFH identification and consultation in more focused and flexible ways.

Finally, fishery management councils, which oversee EFH elements in fishery management plans, have been established specifically for the purpose of regulating fishing, and they are dominated by fishing interests. The councils have no expertise in non-fishing activities, do not seek or provide significant representation of municipal water supply agencies such as ours and do not have any accountability to non-fishing interests. The fishery management plan documents that have been produced by the councils thus far show a lack of understanding regarding coastal and inland areas or the protective mechanisms already in place under water resource management laws and regulations, forest practice statutes, coastal zone management programs, and other law. Clearly, the scope of fishery council responsibility should be limited to marine areas and activities within those areas.

Any new rulemaking should provide for an EFH program that can function without imposing new and redundant burdens on resource utilization activities. The current regulations do not efficiently and effectively serve the purposes of the 1996 EFH amendments to the Magnuson-Stevens Fisheries Conservation and Management Act. They are not practicable for NMFS to implement, and they impose requirements that are unnecessarily broad, complex and costly for the non-fishing sector.

We look forward to working with you further, to obtain a balanced approach to protecting truly essential fish habitat, without unduly impeding agency decisionmaking or resource utilization activities. Thank you for considering these comments, and please contact our Washington Office at 202.434.4760 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. K. Hall', written over a horizontal line.

STEPHEN K. HALL

Executive Director

SPORT FISHING

THE MAGAZINE OF SALTWATER FISHING

Doug Olander, Editor-In-Chief

460 N. Orlando Ave., Suite 200, Winter Park, FL 32789

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

Office of Habitat Conservation

APR 26 2004

Received

Dear Mr. Schmitt:

I am writing to comment on the Advanced Notice of Proposed Rulemaking (ANPR) regarding the Essential Fish Habitat (EFH) guidelines published in the Federal Register on February 25, 2004. The EFH guidelines should not be changed at this time. Concerns with the EFH program can and should be resolved through better implementation. The current guidelines are sufficient to identify EFH, determine the effects adverse of fishing activities on EFH, and protect EFH from the adverse effects of fishing and non-fishing activities. I would like to respond to some of the standard industry criticisms of the EFH guidelines.

The current NMFS process for protecting EFH reflects the intent of Congress, it is flexible, and can succeed. Prior to the inclusion of the EFH requirements in the Magnuson-Stevens Fishery Conservation and Management Act (MSA), fish habitat was not adequately protected from damage and destruction due to human activities. Congress added the EFH requirements to the MSA in 1996 specifically to protect marine fish habitat.

A broad scope of EFH is necessary to protect fisheries. The total area currently identified as EFH is broad because marine species have more than one life stage, and each life stage may depend on a different habitat. The combined geographic distributions of the nearly 1,000 species that are managed in federal fisheries require protection of much of the U.S. EEZ. In addition, there is limited scientific data is on habitat-specific growth and survival, as well as productivity by habitat type. Designated areas are large to compensate for the poor resolution on specific

habitat needs. These areas can, and should, be refined as the research progresses, but we cannot afford to wait for scientific certainty to protect threatened fish habitat.

Protection of habitat for fish populations is critical to their long-term health and it is the law. The EFH provisions in the MSA are mandatory. Therefore, converting the EFH guidelines to non-mandatory guidelines and making the program advisory in nature would be inconsistent with the law and would weaken protections for EFH.

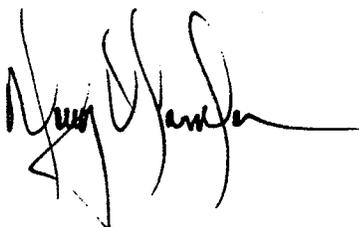
Do not weaken the review process. Because EFH is critical to the survival of marine fish populations, Congress required that all federally conducted, funded, or authorized activities that "may adversely affect" EFH be specifically reviewed in order "to promote the protection of EFH." This is a clear legal mandate, that NMFS does not have the legal authority to modify. Requiring that a "significance threshold" be met before protecting EFH is not consistent with the law and would undercut EFH protection efforts. However, NMFS has made a good faith effort to streamline the protection process so that activities with minimal impacts may be covered under expedited review procedures.

The legal definition of EFH was created to protect the entire life cycle of managed fish species. The guidelines must apply to the areas where the fish live during all of their life stages. For many species, that includes coastal, riverine and estuarine waters. Therefore, EFH guidelines must apply where the fish are found, even in state waters.

In conclusion, I am very concerned that this additional ANPR will further undermine NMFS's EFH protection efforts by creating uncertainty regarding the agency's commitment to the program. NMFS should not revise the EFH guidelines; concerns about the program can be addressed through better implementation of the existing guidelines.

Thank you for considering my comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Olander", with a long horizontal flourish extending to the right.

Doug Olander



**SIERRA
CLUB**
FOUNDED 1892

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

Office of Habitat Conservation

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I am writing to comment on the Advanced Notice of Proposed Rulemaking (ANPR) regarding the Essential Fish Habitat (EFH) guidelines published in the Federal Register on February 25, 2004.

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1) The current NMFS process for protecting EFH reflects the intent of Congress, it is flexible, and can succeed. Prior to the inclusion of the EFH requirements in the Magnuson-Stevens Fishery Conservation and Management Act (MSA), fish habitat was not adequately protected from damage and destruction due to human activities. Congress added the EFH requirements to the MSA in 1996 specifically to protect marine fish habitat.

2) A broad scope of EFH is necessary to protect fisheries. The total

area currently identified as EFH is broad because marine species have more than one life stage, and each life stage may depend on a different habitat. The combined geographic distributions of the nearly 1,000 species that are managed in federal fisheries require protection of much of the U.S. EEZ. In addition, there is limited scientific data on habitat-specific growth and survival, as well as productivity by habitat type. Designated areas are large to compensate for the poor resolution on specific habitat needs. These areas can, and should, be refined as the research progresses, but we cannot afford to wait for scientific certainty to protect threatened fish habitat.

3) Protection of habitat for fish populations is critical to their long-term health and it is the law. The EFH provisions in the MSA are mandatory. Therefore, converting the EFH guidelines to non-mandatory guidelines and making the program advisory in nature would be inconsistent with the law and would weaken protections for EFH.

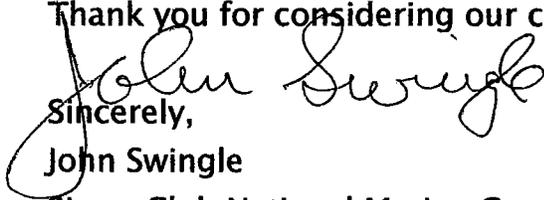
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The legal definition of EFH was created to protect the entire life cycle of managed fish species. The guidelines must apply to the areas where the fish live during all of their life stages. For many species, that includes coastal, riverine and estuarine waters. Therefore, EFH guidelines must apply where the fish are found, even in state waters.

In conclusion, I am very concerned that this additional ANPR will further

undermine NMFS EFH protection efforts by creating uncertainty regarding the agency's commitment to the program. NMFS should not revise the EFH guidelines; concerns about the program can be addressed through better implementation of the existing guidelines.

Thank you for considering our comments.

Sincerely,

John Swingle

Sierra Club National Marine Committee

Marine Fish Conservation Network Board of Advisors



Robert A. Maynard
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EMAIL: RMaynard@perkinscoie.com

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April 26, 2004

By 1st Class U.S. Mail and Facsimile—(301) 427-2570

Mr. Rolland A. Schmitten
Director, Office of Habitat Conservation
NOAA National Marine Fisheries Service
F/HC 1315 East-West Highway
Silver Spring, MD 20910

**Re: Reopened Comment Period--Advance Notice of Proposed Rulemaking,
68 Fed. Reg. 69070 (December 11, 2003); Consideration of Revision of
Essential Fish Habitat ("EFH") Guidelines**

Dear Mr. Schmitten:

This letter is submitted in response to the reopening of the comment period announced at 69 Fed. Reg. 8615 (February 25, 2004) for the above-referenced advance notice of proposed rulemaking (ANPR), on behalf of Idaho and Valley Counties, Idaho; Okanogan County, Washington; and the Alaska Forest Association and Intermountain Forest Association.

We have already submitted comments in response to the ANPR, in a January 23, 2004 letter. The February 25, 2004 Federal Register notice does not indicate a need to resubmit these comments. For the reasons set out in our prior letter, we simply again urge the National Marine Fisheries Service ("NMFS") to proceed now with issuing a proposed rule to reform the regulations to a much more focused, simple, and less costly and burdensome approach to EFH identification and consultation.

We have reviewed copies of the comments received by NMFS during the initial ANPR comment period. Many of them support changes in the regulations

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Perkins Coie LLP (Perkins Coie LLC in Illinois)

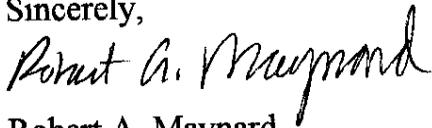
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Mr. Rolland A. Schmitten
April 26, 2004
Page 2

comparable to what we advocate, and all of them appear to advocate some change in the EFH program. Although some suggest that modifications occur through NMFS "technical guidance" or other means besides rulemaking, we do not believe that is the proper course for the agency to consider or implement adjustments under the Magnuson-Stevens Act, Administrative Procedure Act and other law.

Thank you again for the opportunity to comment in response to the ANPR. We continue to look forward to NMFS issuing a proposed revision of the EFH regulations for comment and will remain keenly interested in a revision that fully responds to our concerns.

Sincerely,



Robert A. Maynard

RAM:ll



2501 M STREET NW, SUITE 300 WASHINGTON, DC 20037 202.833.3900 WWW.OCEANA.ORG

April 22, 2004

VIA FACSIMILE AND FIRST CLASS UNITED STATES MAIL

Mr. Rolland A. Schmitten
Director
Office of Habitat Conservation
NOAA Fisheries
F/HC - EFH ANPR
1315 East-West Highway
Silver Spring, MD 20910
(301) 427-2570

Re: Advance notice of proposed rulemaking; consideration of revision to Essential Fish Habitat (EFH) guidelines; reopening of the comment period, 69 Fed. Reg. 8615 (Feb. 25, 2004).

Dear Mr. Schmitten:

Oceana thanks you for the opportunity to provide additional comments concerning the Advanced Notice of Proposed Rulemaking (ANPR) for the Essential Fish Habitat (EFH) regulations.

In general, the current EFH regulations are appropriate and adequate for the identification of EFH, determining the effects of fishing activities on EFH, and protecting EFH from the adverse effects of fishing and non-fishing activities. The regulations should not be changed at this time. Most of the concerns with the EFH program can be resolved through better implementation of EFH regulations, not changing the regulations themselves. Rather than revising the regulations, Oceana recommends that NMFS revise and reissue its EFH Technical Guidance.

Oceana addresses below the major issues raised by others during the comment period for the EFH ANPR of December 11, 2003:

- **Comment: Reduce the scope of the EFH regulations.**

Some groups commented that the scope of EFH is too broad, encompasses too much area to be useful, and unnecessarily impacts fishing and non-fishing activities. Some groups also stated that EFH should only apply to federal marine waters and not coastal or upland waters.

Mr. Rolland A. Schmitten

April 22, 2004

Page 2 of 3

Response: The scope of EFH is appropriate. The reason that the area designated as EFH is so broad is that marine species have more than one life stage, and each life stage potentially develops within a different habitat. Combine the geographic distributions for each of the several hundred species that are managed in federal fisheries and vast areas of the EEZ will be covered. In addition, the scientific data is lacking on habitat-specific growth and survival, as well as productivity by habitat type, so designated areas are large to make up for the poor resolution on specific habitat needs. These areas can, and should, be refined as the research progresses.

In addition, the legal definition of EFH is meant to protect the entire life cycle of managed fish species. Since many fish species spawn, grow, and mature in coastal and estuarine waters, the regulations must apply to the areas where the fish live out all of their life stages. Therefore, EFH regulations must apply where the fish are found, even in state waters.

- **Comment: Change the EFH regulations from mandates to guidelines.**

Some groups commented that the EFH regulations should not be mandatory, but instead should be advisory and provide guidelines to help councils comply with the EFH mandates.

Response: The EFH provisions in the Magnuson-Stevens Fishery Conservation and Management Act (MSA) are mandatory. Therefore, conversion of the EFH regulations to guidelines and making the program advisory in nature would be inconsistent with the law and inappropriate. More importantly, protection of habitat for fish populations is critical to their long-term health.

- **Comment: Eliminate EFH consultation overlaps with other federal laws.**

Some commenters argued that EFH consultations are excessively burdensome. They contend that activities that go through review procedures under the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), section 404 of the Clean Water Act, and other federal environmental protection statutes should not also have to undergo an EFH assessment or consultation.

Response: Prior to the inclusion of the EFH requirements in the MSA, fish habitat was not adequately protected from destruction due to human activities. Congress added the EFH requirements to the MSA in 1996 in order to specifically protect marine fish habitat. One purpose of the MSA is "to promote the protection of essential fish habitat in the review of projects conducted under federal permits, licenses, or other authorities that affect or have the potential to affect such habitat" (16 U.S.C. 1801(b)(7)). In addition, NMFS has made great efforts to minimize the complexity and streamline the EFH consultation process.

Mr. Rolland A. Schmitten

April 22, 2004

Page 3 of 3

- **Comment: Minimize the costs of EFH protection on non-fishing interests.**

Some groups commented that there are significant and detrimental economic impacts that EFH designations and resultant consultations have on the activities of non-fishing interests. They suggest that economic impacts be weighed against species benefits in determining whether mitigation measures are warranted.

Response: NMFS has followed the Regulatory Flexibility Act requirements in developing the EFH regulations. The Regulatory Flexibility Act does not require that conservation benefits outweigh economic costs, rather it requires that cost analyses be conducted and that the least expensive alternative that still meets MSA legal requirements is chosen.

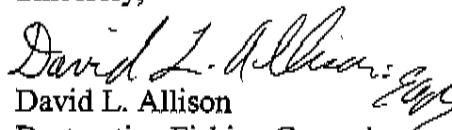
- **Comment: Narrow the scope of EFH consultations.**

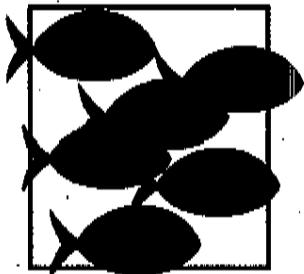
Some comments recommended that EFH consultation procedures should only be necessary if a particular action exceeds a certain "significance threshold."

Response: Because EFH is critical to the survival of marine fish populations, Congress required that all federally conducted, funded, or authorized activities that "may adversely affect" EFH be reviewed in order "to promote the protection of EFH." This is a clear legal mandate, that NMFS does not have the legal authority to modify. Requiring that a "significance threshold" be met before implementing EFH consultation procedures is not consistent with the law and would undercut EFH protection efforts. However, NMFS has made a good faith effort to streamline the consultation process so that activities with minimal impacts may be covered under expedited review procedures. In addition, we suggest that NMFS and the regional councils make better use of habitat areas of particular concern as a way to focus consultation activities.

In conclusion, Oceana is very concerned that this additional ANPR will further undermine NMFS' EFH protection efforts by creating uncertainty regarding the agency's commitment to the program. Congress should not revise the EFH regulations. Concerns about the program can be addressed through better implementation of the existing regulations.

Sincerely,


David L. Allison
Destructive Fishing Campaign
Director



**The
Marine
Fish
Conservation
Network**

"... To Protect, Restore, and Conserve Marine Fish."

April 25, 2004

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

Dear Mr. Schmitter:

I am writing on behalf of the Marine Fish Conservation Network to again provide you with comments on the Advanced Notice of Proposed Rulemaking (ANPR) regarding the Essential Fish Habitat (EFH) regulations published in the *Federal Register* on February 25, 2004.

As we said in our earlier comments for this ANPR, we feel that the current EFH regulations are appropriate and adequate for the identification of EFH, determining the effects of fishing activities on EFH, and protecting EFH from the adverse effects of fishing and non-fishing activities. The regulations should not be changed at this time. Most of the concerns with the EFH program can be resolved through better implementation of EFH regulations, not changing the regulations themselves. Rather than revising the regulations, we recommend that NMFS revise and reissue its EFH Technical Guidance.

We would like to address the major issues raised by others during the comment period for the EFH ANPR of December 11, 2003:

- **Comment: Reduce the scope of the EFH regulations.**

Some groups commented that the scope of EFH is too broad, encompasses too much area to be useful, and unnecessarily impacts fishing and non-fishing activities. Some groups also stated that EFH should only apply to federal marine waters and not coastal or upland waters.

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network@conservefish.org
www.conservefish.org

04/26/2004 12:00PM

EEZ will be covered. In addition, the scientific data is lacking on habitat-specific growth and survival, as well as productivity by habitat type, so designated areas are large to make up for the poor resolution on specific habitat needs. These areas can, and should, be refined as the research progresses.

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Response: NMFS has followed the Regulatory Flexibility Act requirements in developing the EFH regulations. The Regulatory Flexibility Act does not require that conservation benefits outweigh economic costs, rather it requires that cost analyses be conducted and that the least expensive alternative that still meets MSA legal requirements is chosen.

- **Comment: Narrow the scope of EFH consultations.**

Some comments recommended that EFH consultation procedures should only be necessary if a particular action exceeds a certain "significance threshold."

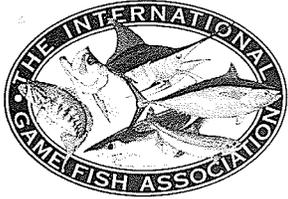
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In conclusion, we are very concerned that this additional ANPR will further undermine NMFS' EFH protection efforts by creating uncertainty regarding the agency's commitment to the program. NMFS should not revise the EFH regulations; concerns about the program can be addressed through better implementation of the existing regulations. Thank you for considering our comments.

Sincerely,



Lee R. Crockett
Executive Director



International Game Fish Association

Fishing Hall of Fame & Museum

300 Gulf Stream Way, Dania Beach, Florida 33004 U.S.A.

Phone: (954) 927-2628 • Fax: (954) 924-4299 • Museum Fax: (954) 924-4220

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Guy Harvey, Ph.D.
Ruben Jaen
George G. Matthews
John L. Morris
K. Neil Patrick
Ray Scott
Bill Shedd
Stephen Sloan
Donald J. Tyson
John F. Willits
Joan Salvato Wulff

Past Chairmen

Michael Lerner
William K. Carpenter
Elwood K. Harry
George G. Matthews
Michael J. Levitt

Trustee Emeritus

Pierre Clostermann

April 9, 2004

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

Office of Habitat Conservation

APR 19 2004

Received

Dear Mr. Schmitten:

We are writing to comment on the Advanced Notice of Proposed Rulemaking (ANPR) regarding the Essential Fish Habitat (EFH) guidelines published in the *Federal Register* on February 25, 2004. The EFH guidelines should not be changed at this time. Concerns with the EFH program can and should be resolved through better implementation. The current guidelines are sufficient to identify EFH, determine the effects adverse of fishing activities on EFH, and protect EFH from the adverse effects of fishing and non-fishing activities. We would like to respond to some of the standard industry criticisms of the EFH guidelines.

The current NMFS process for protecting EFH reflects the intent of Congress, it is flexible, and can succeed. Prior to the inclusion of the EFH requirements in the Magnuson-Stevens Fishery Conservation and Management Act (MSA), fish habitat was not adequately protected from damage and destruction due to human activities. Congress added the EFH requirements to the MSA in 1996 specifically to protect marine fish habitat.

A broad scope of EFH is necessary to protect fisheries. The total area currently identified as EFH is broad because marine species have more than one life stage, and each life stage may depend on a different habitat. The combined geographic distributions of the nearly 1,000 species that are managed in federal fisheries require protection of much of the U.S. EEZ. In addition, there is limited scientific data on habitat-specific growth and survival, as well as productivity by habitat type. Designated areas are large to compensate for the poor resolution on specific habitat needs. These areas can, and should, be refined as the research progresses, but we cannot afford to wait for scientific certainty to protect threatened fish habitat.

Page 2
April 9, 2004

Protection of habitat for fish populations is critical to their long-term health and it is the law. The EFH provisions in the MSA are mandatory. Therefore, converting the EFH guidelines to non-mandatory guidelines and making the program advisory in nature would be inconsistent with the law and would weaken protections for EFH.

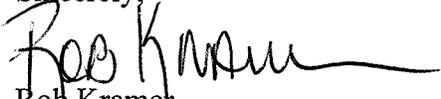
Do not weaken the review process. Because EFH is critical to the survival of marine fish populations, Congress required that all federally conducted, funded, or authorized activities that “may adversely affect” EFH be specifically reviewed in order “to promote the protection of EFH.” This is a clear legal mandate, that NMFS does not have the legal authority to modify. Requiring that a “significance threshold” be met before protecting EFH is not consistent with the law and would undercut EFH protection efforts. However, NMFS has made a good faith effort to streamline the protection process so that activities with minimal impacts may be covered under expedited review procedures.

The legal definition of EFH was created to protect the entire life cycle of managed fish species. The guidelines must apply to the areas where the fish live during all of their life stages. For many species, that includes coastal, riverine and estuarine waters. Therefore, EFH guidelines must apply where the fish are found, even in state waters.

In conclusion, we are very concerned that this additional ANPR will further undermine NMFS’s EFH protection efforts by creating uncertainty regarding the agency’s commitment to the program. NMFS should not revise the EFH guidelines; concerns about the program can be addressed through better implementation of the existing guidelines.

Thank you for considering my comments.

Sincerely,


Rob Kramer
President



*Conserving Ocean Fish and Their Environment
For Over 30 Years*

April 23, 2004

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

Re: Advanced Notice of Proposed Rulemaking (ANPR) regarding the Essential Fish Habitat (EFH) Guidelines

Dear Rollie,

The National Coalition for Marine Conservation (NCMC) does not support changes to NOAA Fisheries' Essential Fish Habitat Guidelines at this time. We believe any concerns regarding the EFH program are issues of implementation and therefore can and should be resolved through improving the implementation process.

As one who worked in the mid-1990s to add the current EFH provisions to the Magnuson Act, it's my view that the current NOAA Fisheries Guidelines reflect the intent of Congress, which was recognition that habitat degradation is the greatest single long-term threat to sustainable fisheries and that fishery managers should use whatever means are available to the to stem the tide of habitat loss. If there is a failing in this regard, it is that the councils and NOAA have not been as aggressive as they should be, especially with respect to fishing gear impacts on benthic habitats. Weakening of the guidelines is not the answer and would, in fact, be contrary to the intent of the law.

Also, as one highly involved with promoting a broader ecosystem-based approach to managing fisheries – a goal we share with NOAA Fisheries – it is critical that identification of EFH be broad-based in order to capture the full range of habitats vital to managed species at each stage of their life cycle but also habitats vital to associated species, such as key prey. As you know, we are only beginning to comprehend the extent of the linkages between species and their environment (physical, biological and chemical). To narrow EFH protections to only those areas

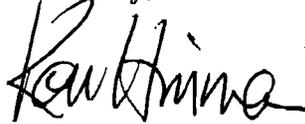
where direct cause-and-effect can be quantified - as we've heard proposed - would needlessly and recklessly put potentially important habitats at risk.

Finally, while we appreciate that resources are limited and that priorities must be set, that does not mean that the present process should be replaced with one whereby adverse impacts on certain designated EFH are deemed insignificant and denied full protection of the law. Streamlining of the review process, such as the agency has already undertaken, is the answer, not changes to the guidelines.

In sum, and to reiterate our main point, we urge NMFS not to revise the EFH Guidelines now, but rather to seek ways of addressing outstanding problems through better implementation of the existing guidelines.

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Hinman". The signature is written in a cursive, somewhat stylized font.

Ken Hinman
President



700 W. WASHINGTON
BOX 1623, BOISE, IDAHO 83701
PHONE: (208) 345-9126
FAX: (208) 345-0379

Office of Habitat Conservation

APR 7 2004

Received

31 March 2004

Mr. Rolland A. Schmitten
Director, Office of Habitat Conservation
NOAA National Marine Fisheries Service
F/HC 1315 East-West Highway
Silver Spring, MD 20910

Re: Advance Notice of Proposed Rulemaking, 68 Fed. Reg. 69070 (December 11, 2003); Consideration of Revision of Essential Fish Habitat ("EFH") Guidelines

Dear Mr. Schmitten:

This letter is submitted in response to the above-referenced advance notice of proposed rulemaking (ANPR) on behalf of the Idaho Association of Counties (IAC). The IAC represents all forty-four counties in Idaho.

We fully support revision of the current regulations in order to adequately protect fishery resources in a workable and reasonable manner. Revisions need to allow for a simplified and less costly method for essential fish habitat identification and consultation to ensure protection of species and in order to allow all to participate in the process of establishing EFH. Additionally, meaningful revisions should create a process that does not unnecessarily and unfairly burden non-fishing communities and businesses while protecting fish habitat. The current regulations are not practicable for NMFS to implement, as well as imposing requirements that are grossly and unnecessarily broad, complex, duplicative and costly for local governments, businesses, and citizens.

The ANPR also seeks comment on what parts of the regulations should be revised, how and why. We agree with a letter that was sent to you by Robert A. Maynard, the legal representative of various plaintiffs in the lawsuit Idaho County et al. v. Evans et al., No. CV 02-80-C-EJL (D. Idaho) that concerns EFH issues. Mr. Maynard, in his January 23, 2004 letter, outlines what he views as necessary changes to the regulations and why those changes are necessary. Below is a summary:

- 1) Delete or revise the definition of EFH in the regulations and the vague "ecosystem" approach to EFH identification that it incorporates in 50 C.F.R. §§ 600.10, 600.810 and related provisions. These go far beyond the EFH definition in the FCMA and what is truly essential habitat. The definition and procedures for identification and consultation spawned by it need to be eliminated or narrowed and clarified to limit EFH to marine areas such as those identified in the "habitat areas of particular concern" ("HAPC") provisions of the current regulations.

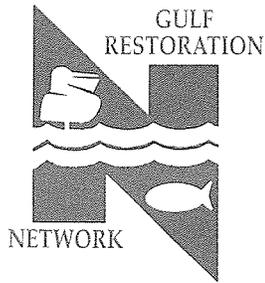
- 2) Convert the regulations to true guidelines rather than mandates. Although the ANPR characterizes the regulations as guidelines for EFH identification and consultation, the regulations still contain numerous mandatory procedures and other requirements that are not needed to comply with the FCMA. These mandatory provisions should be eliminated to allow NMFS, fishery management councils, action agencies, and other affected parties the flexibility to carry out EFH identification and consultation in more focused and flexible ways.
- 3) Eliminate duplication of EFH consultation with other existing procedures that apply to nonfishing activities. The current regulations allow EFH consultation to be coordinated and combined with other procedures, but still require completion of discrete written EFH assessments and other extra procedures that are not needed to protect habitat. As a leading example, when Endangered Species Act section 7 procedures are completed for an activity with potential effects on a fish population that is managed under the FCMA, those procedures more than adequately protect against any adverse impacts on habitat, and should be deemed to meet EFH requirements without the need for further EFH assessment or consultation.
- 4) Otherwise simplify and narrow the scope of EFH identification and consultation procedures. Under the current regulations, nearly all habitat for managed species, including vast areas of inland and coastal habitat that are already subject to procedures and other protections against adverse impact, are being identified by the fishery management councils and NMFS as "essential." A full spectrum of non-fishing as well as fishing activities are in turn being identified as having potential effects on this habitat and being subjected to burdensome EFH consultation requirements. There is no "significance" threshold included in the current regulations for triggering this consultation. NMFS has repeatedly sought from Congress additional funding to carry out EFH functions. This comes at a time when the agency does not have adequate staff and funds to complete its Endangered Species Act consultation and other responsibilities.
- 5) Otherwise limit the scope of fishery management council EFH responsibility to offshore marine areas and activities within those areas. Fishery management councils are dominated by fishing interests and they have a more than full plate addressing fishery regulation issues in the offshore marine areas for which they have responsibility. They have no substantial expertise, ability, or need to address non-fishing activity effects on coastal or inland fish habitat, already regulated under numerous other federal, state, and local laws. The current regulations do not provide non-fishing entities with a meaningful voting voice in council EFH functions. In any case, the non-fishing sector generally does not have the resources to participate in arduous fishery management council meetings and other proceedings, on top of other regulatory and business imperatives.

Thank you for the opportunity to comment in response to the ANPR. We look forward to your comprehensive review of the essential fish habitat guidelines and would hope that it results in meaningful revision to address our concerns listed above. Please contact me if you should desire further information.

Sincerely,

A handwritten signature in black ink that reads "Daniel G. Chadwick". The signature is written in a cursive style with a large, prominent initial "D".

Daniel G. Chadwick, Executive Director
Idaho Association of Counties



Working to Protect and Preserve the Gulf of Mexico

338 Baronne Street, Suite 200 · New Orleans, LA 70112
Mailing Address: P.O. Box 2245 · New Orleans, LA 70176
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www.gulfrestorationnetwork.org

April 6, 2004

Received

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

APR 13 2004
Office of Habitat Conservation

Dear Mr. Schmitten:

The Gulf Restoration Network (GRN) is an alliance of fifty groups committed to uniting and empowering people to protect and restore the resources of the Gulf region, forever protecting it for future generations. The GRN has members in all five Gulf of Mexico states. We are very concerned with attempts to alter current EFH regulations and write to provide you with our comments on the Advanced Notice of Proposed Rulemaking (ANPR) regarding the Essential Fish Habitat (EFH) regulations published in the *Federal Register* on February 25, 2004.

In general, the GRN feels that the current EFH regulations are appropriate and adequate for identifying EFH, determining the effects of fishing activities on EFH, and protecting EFH from the adverse effects of fishing and non-fishing activities. The GRN opposes changes in these regulations. We believe that any concerns with regard to the EFH program can be resolved through better implementation of the EFH regulations.

The GRN has the following response to the major issues raised during the comment period for the EFH ANPR of December 11, 2003:

- **The scope of the EFH regulations should not be reduced**

We disagree with those groups that contend that the scope of EFH is too broad, encompasses too much area to be useful, and unnecessarily impacts fishing and non-fishing activities. The current scope of EFH is appropriate. The area designated as EFH is broad because marine species have more than one life stage, and each life stage potentially develops within a different habitat. Combining the geographic distributions for each of the several hundred species that are managed in federal fisheries results in designation of vast areas of the EEZ.

In addition, designated habitat areas are large to make up for the poor resolution on specific habitat needs. Habitat areas can, and should, be refined as research progresses.

Similarly, it is simply not possible to adequately define EFH without including coastal and estuarine areas. The legal definition of EFH is meant to protect the entire life cycle of managed fish species. Since many fish species spawn, grow, and mature in coastal and estuarine waters, the regulations must apply to those areas.

- **The EFH regulations should not be changed to make the program advisory.**

The GRN also disagrees with those who assert that the EFH regulations should not be mandatory, but instead should be advisory and provide guidance to help councils comply with the EFH mandates. The EFH provisions in the Magnuson-Stevens Fishery Conservation and Management Act (MSA) are mandatory in nature. Conversion of the EFH program to be advisory in nature would be inconsistent with the law and inappropriate. More importantly, protection of habitat for fish populations is critical to their long-term health and must be addressed.

- **EFH consultation is crucial, even when it overlaps with other federal laws.**

The GRN disputes current assertions that EFH consultations are excessively burdensome, particularly when activities are already undergoing review procedures under other federal environmental protection statutes. Prior to the inclusion of the EFH requirements in the MSA, fish habitat was simply not adequately considered in analyses of environmental impacts of proposed activities under other environmental statutes. Congress added the EFH requirements to the MSA in 1996 in order to specifically protect marine fish habitat particularly in regard to projects conducted under federal permits, licenses, or other authorities that affect or have the potential to affect such habitat” (16 U.S.C. 1801(b)(7)). NMFS has made great efforts to minimize the complexity and streamline the EFH consultation process, thereby reducing any burden imposed on activities’ proponents.

- **Change in the EFH regulations simply to minimize the costs of EFH protection on non-fishing interests is not justified.**

We would argue that, in reality, instances in which EFH designations and resultant consultations have had significant and detrimental economic impacts on the activities of non-fishing interests are rare. Moreover, NMFS has followed the Regulatory Flexibility Act requirements in developing the EFH regulations, requiring that cost analyses be conducted and that the least expensive alternative that still meets MSA legal requirements be chosen.

- **The scope of EFH consultations should not be narrowed.**

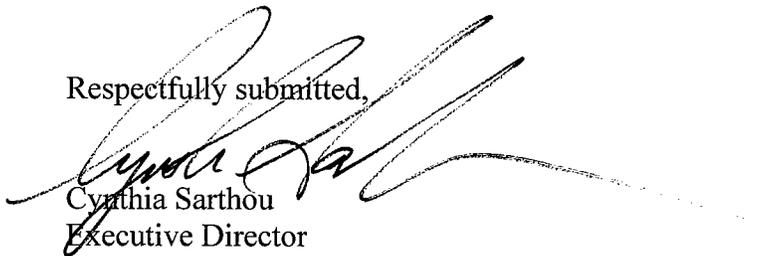
EFH consultation procedures should continue to require consultations whenever an action impacts EFH, not merely when a particular action exceeds a certain “significance threshold.” Congress requires that all federally conducted, funded, or authorized activities that “may adversely affect” EFH be reviewed in order “to promote the protection of EFH” because

EFH is critical to the survival of marine fish populations. The legal mandate is clear, and NMFS does not have the legal authority to modify that mandate. Requiring that a “significance threshold” be met before implementing EFH consultation procedures is not consistent with the law and would undercut EFH protection efforts.

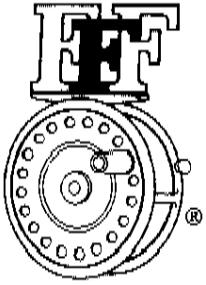
Moreover, requiring a “significance threshold” for individual actions ignores the potential cumulative impact of numerous actions that may not individually be considered “significant.” NMFS has made a good faith effort to streamline the consultation process so that activities with minimal impacts fall under expedited review procedures.

In conclusion, the GRN is very concerned that this additional ANPR will undermine NMFS’ EFH protection efforts by creating uncertainty regarding the agency’s commitment to the program. We oppose any NMFS revision of the EFH regulations; concerns about the program should be addressed through better implementation of the existing regulations.

Respectfully submitted,



Cynthia Sarthou
Executive Director



FEDERATION OF FLY FISHERS™

Conserving - Restoring - Educating Through Fly Fishing

International Fly Fishing Center

215 East Lewis Street

Livingston, MT 59047

(406) 222-9369

e-mail: iffc@fedflyfishers.org

April 26, 2004

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

Dear Mr. Schmitten:

I am writing to comment on the Advanced Notice of Proposed Rulemaking (ANPR) regarding the Essential Fish Habitat (EFH) guidelines published in the *Federal Register* on February 25, 2004. The EFH guidelines should not be changed at this time. Concerns with the EFH program can and should be resolved through better implementation. The current guidelines are sufficient to identify EFH, determine the effects adverse of fishing activities on EFH, and protect EFH from the adverse effects of fishing and non-fishing activities. I would like to respond to some of the standard industry criticisms of the EFH guidelines.

The current NMFS process for protecting EFH reflects the intent of Congress, it is flexible, and can succeed. Prior to the inclusion of the EFH requirements in the Magnuson-Stevens Fishery Conservation and Management Act (MSA), fish habitat was not adequately protected from damage and destruction due to human activities. Congress added the EFH requirements to the MSA in 1996 specifically to protect marine fish habitat.

A broad scope of EFH is necessary to protect fisheries. The total area currently identified as EFH is broad because marine species have more than one life stage, and each life stage may depend on a different habitat. The combined geographic distributions of the nearly 1,000 species that are managed in federal fisheries require protection of much of the U.S. EEZ. In addition, there is limited scientific data on habitat-specific growth and survival, as well as productivity by habitat type. Designated areas are large to compensate for the poor resolution on specific habitat needs. These areas can, and should, be refined as the research progresses, but we cannot afford to wait for scientific certainty to protect threatened fish habitat.



Protection of habitat for fish populations is critical to their long-term health and it is the law. The EFH provisions in the MSA are mandatory. Therefore, converting the EFH guidelines to non-mandatory guidelines and making the program advisory in nature would be inconsistent with the law and would weaken protections for EFH.

Do not weaken the review process. Because EFH is critical to the survival of marine fish populations, Congress required that all federally conducted, funded, or authorized activities that “may adversely affect” EFH be specifically reviewed in order “to promote the protection of EFH.” This is a clear legal mandate, that NMFS does not have the legal authority to modify. Requiring that a “significance threshold” be met before protecting EFH is not consistent with the law and would undercut EFH protection efforts. However, NMFS has made a good faith effort to streamline the protection process so that activities with minimal impacts may be covered under expedited review procedures.

The legal definition of EFH was created to protect the entire life cycle of managed fish species. The guidelines must apply to the areas where the fish live during all of their life stages. For many species, that includes coastal, riverine and estuarine waters. Therefore, EFH guidelines must apply where the fish are found, even in state waters.

In conclusion, I am very concerned that this additional ANPR will further undermine NMFS’s EFH protection efforts by creating uncertainty regarding the agency’s commitment to the program. NMFS should not revise the EFH guidelines; concerns about the program can be addressed through better implementation of the existing guidelines.

Thank you for considering my comments.

Sincerely,



Kiza K. Gates
Conservation Coordinator
Federation of Fly Fishers
conserve@fedflyfishers.org



ENVIRONMENTAL DEFENSE

finding the ways that work

April 26, 2004

Office of Habitat Conservation

Rolland A. Schmitten, Director
Office of Habitat Conservation
NOAA National Marine Fisheries Service
F/HC, 1315 East-West Highway
Silver Spring, MD 20910.

MAY 3 2004

Received

RE: Supplementary Comments on Advance Notice of Proposed Rulemaking (ANPR)
addressing potential revisions to the essential fish habitat (EFH) guidelines

Dear Dr. Schmitten:

Please enter these comments of Environmental Defense into the public record for the above referenced matter, to supplement those submitted 26 January 2004. In our earlier comments we stated very strong support for maintaining and enhancing the overall strength and effectiveness of the EFH program nationally and in the regions. We continue to endorse the expansion of resources committed to that task.

In this addendum, we address NOAA's failure to identify and protect EFH for anadromous species managed through interstate fishery management plans (FMPs). That failure has created a serious hurdle to the recovery of those important, federally-managed species, and constitutes a key weakness in the development of ecosystem-based management programs for the US East Coast.

The Magnuson Stevens Fishery Conservation and Management Act of 1996 (codified at 16 USC 1855) requires the Secretary to work with relevant fishery management councils to describe and identify EFH in federal FMPs, and to identify and where practicable minimize significant negative effects on designated EFH.

The law does not limit that requirement to council-based FMPs. FMPs of the Atlantic States Marine Fisheries Commission (ASMFC) are authorized by federal law (the Atlantic Coastal Fisheries Cooperative Management Act), and are inarguably federal FMPs – for which EFH determinations are therefore required.

Moreover, the law requires that councils

shall comment on and make recommendations to the Secretary and any Federal or State agency concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat, including essential fish habitat, of an anadromous fishery resource under its authority 104-297(b)(3)(B)

Dr. Rollie Schmitten
April 26, 2004
Page 2

The final regulations implementing this section of the law makes plain that the "under its authority" wording clearly includes those fishes not covered by council-adopted FMPs, but which make use of waters under their management authority.

Some parties contend that 104-297(b)(3)(B) applies only to anadromous fishes covered by council-developed FMPs (e.g. Atlantic and Pacific salmon), interpreting the difference between "may" in (A) and "shall" in (B) only as a higher level of duty for anadromous species. However, those species are already covered by existing EFH requirements and programs. Moreover, NOAA does not require councils to comment on activities that pose significant threats to EFH for council-developed anadromous species FMPs – the only other possible (if far-fetched) reading of that language.

In addition, the ASMFC lacks the authority to implement a parallel EFH program, its excellent but voluntary habitat programs notwithstanding. Although it might be possible to provide EFH-type authority to the ASMFC in the future, the full responsibility for formal designation and then protection of EFH for ASMFC-managed anadromous species now stands with NOAA.

The need is great. East Coastal fishery ecosystems cannot be sustained -- much less restored -- without adequate attention to the productivity of anadromous species not managed by council-developed plans. Anadromous species are not only key prey, but also key predators, in all significant estuaries of the East Coast. The Magnuson-Stevens Sustainable Fishery Act requires that predator-prey relationships and the needs of ecosystems be taken into account, and, therefore, that the key spawning and nursery habitats of those fishes be protected.

We specifically request that you work with the ASMFC, and with the relevant regional councils, to complete the identification and designation of EFH and Habitat Areas of Particular Concern (HAPCs) for all anadromous species on the Atlantic Coast. We request, further, that your office expand the level of resources and overall commitment to protection of EFH and HAPCs for all anadromous species, both council- and commission-managed.

Sincerely,



Douglas N. Rader, Ph.D.
Senior Scientist



Sally McGee
Conservation Advocate



Michelle A. Duval
Staff Scientist



April 15, 2004

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

Re: 69 Federal Register 8615-16

Dear Mr. Schmitten:

Defenders of Wildlife is a non-profit conservation organization dedicated to the protection of all native wild animals and plants in their natural communities. On behalf of our nearly one million members and supporters, we submit the following comments on the Advanced Notice of Proposed Rulemaking (ANPR) regarding the Essential Fish Habitat (EFH) regulations published by the National Marine Fisheries Service (NMFS) in the *Federal Register* on February 25, 2004.

We feel that the current EFH regulations are a significant step forward in marine conservation and provide a much needed framework for identifying EFH, for determining the effects of fishing activities on EFH, and for protecting EFH from the adverse effects of fishing and non-fishing activities. The current NMFS process for protecting EFH reflects the intent of Congress. Congress added the EFH requirements to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) in 1996 specifically to protect marine fish habitat from damage and destruction due to human activities. We believe any effort to weaken the EFH regulations would be incompatible with Congress' intent in amending the MSA.

The substance of the present EFH guidelines reflects a movement towards the incorporation of ecologically realism into fisheries management, a trend that is absolutely necessary to ensure the long-term viability of targeted and bycaught fish stocks and the broader marine ecosystem. As the NMFS states in the EFH final rule, "The fact that the Magnuson-Stevens Act directs the Councils to address the degradation and loss of EFH from both fishing and non-fishing activities through conservation and enhancement measures further reflects support for the ecosystem-based management of marine and anadromous fisheries. Ecosystem management encourages sustainable resource use and recognizes the uncertainties inherent in management and the need to make risk-averse decisions."

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www.defenders.org

The broad scope of the EFH is necessary to protect fisheries and is appropriate according to the assigned definition of essential fish habitat. In order to truly conserve fish and their habitat, Congress defined EFH as “those waters and substrate necessary for spawning, breeding, feeding, or growth to maturity.” They went on to specify that “[t]his covers all periods of a fish’s lifecycle”. Each life stage potentially develops within a different habitat. For many species, these essential areas include coastal, riverine and estuarine waters. Combining the geographic distribution for each of the several hundred species that are managed in federal fisheries, vast areas of the EEZ will be covered. Hence, since the legal definition of EFH was written to protect the fish’s entire life cycle, the guidelines must apply to the areas where the fish live during all of their life stages, including state waters. The fact that the areas designated by the regional fisheries councils are geographically large does not diminish the validity of these areas as “essential,” it merely reinforces the intricacies of the marine ecosystem and the need for the ecosystem approach to deal with the complex life cycles of aquatic species. In light of the conservation objectives of the MSA, and the variety and complex life cycles of the species it protects, the designation of large areas as EFH is both legitimate and necessary.

Mandatory EFH guidelines are necessary to preserve fish. Protection of habitat for fish populations is critical to their long-term health, and it is the law. The EFH provisions in the Magnuson-Stevens Fishery Conservation and Management Act (MSA) are mandatory. Converting the EFH guidelines to non-mandatory guidelines and making the program advisory in nature would be inconsistent with the MSA and would put fish stocks at greater risk. As the Pew Ocean Commission’s recent report on the state of America’s Oceans points out, “Marine life and vital coastal habitats are straining under the increasing pressure of our use. We have reached a crossroads where the cumulative effect of what we take from, and put into, the ocean substantially reduces the ability of marine ecosystems to produce the economic and ecological goods and services that we desire and need. What we once considered inexhaustible and resilient is, in fact, finite and fragile.” (“America’s Living Oceans”, Executive Summary). Now, more than ever, we need to take the stewardship of our oceans seriously, and the most effective way to do this is through mandatory conservation regulations such as the EFH provisions.

EFH consultation is a necessary complement to already existing environmental laws and gives added protections to fish and their habitat. Prior to the inclusion of the EFH requirements in the MSA, fish populations and their habitat were not adequately protected from destruction due to fishing and non-fishing human activities. Congress added the EFH requirements to the MSA in 1996 in order to specifically protect marine fish habitat and conserve fish populations. One purpose of the MSA is “to promote the protection of essential fish habitat in the review of projects conducted under federal permits, licenses, or other authorities that affect or have the potential to affect such habitat” (16 U.S.C. 1801(b)(7)). These regulations are needed to give marine fish habitat the conservation focus that it sorely needs.

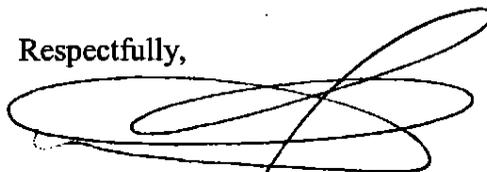
Economic impacts are adequately taken into account. NMFS has followed the Regulatory Flexibility Act requirements in developing the EFH regulations. The Regulatory Flexibility Act does not require that conservation benefits outweigh economic costs, rather it requires that cost analyses be conducted and that the least expensive alternative that still meets MSA legal requirements be chosen.

We are strongly against the weakening of the review process. Because EFH is critical to the survival of marine fish populations, Congress required that all federally conducted, funded, or authorized activities that "may adversely affect" EFH be specifically reviewed in order "to promote the protection of EFH." This is a clear legal mandate, that NMFS does not have the legal authority to modify. Requiring that a "significance threshold" be met before implementing EFH consultation procedures to protect EFH is inconsistent with the law and would undercut EFH protection efforts. However, NMFS has made a good faith effort to streamline the consultation process so that activities with minimal impacts may be covered under expedited review procedures.

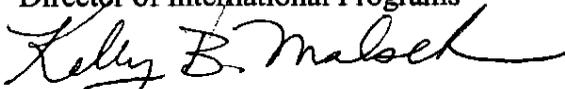
In addition to NMFS' focus on EFH, we also suggest that NMFS and the regional councils give added conservation attention to Essential Fish Habitat designated as habitat areas of particular concern (HAPC) as a way to improve protections for the areas that need it most. But consultation of HAPC should not be a substitute for full consultation of EFH.

In conclusion, we are very concerned that the proposals set forth in the February 25th notice would substantially undermine NMFS' EFH protection efforts and be incompatible with NMFS' statutory obligations under the MSA. The EFH is an important tool for the effective management of our marine resources. Rather than seeking to weaken the EFH guidelines, NMFS should focus on implementing the current guidelines and determining ways that the guidelines can be improved to further the important fishery conservation goals and objectives established by Congress. Thank you for considering our comments.

Respectfully,



William Carroll Muffett
Director of International Programs



Kelly B. Malsch
Legal Coordinator



COLUMBIA RIVER
CRAB FISHERMAN'S ASSOC.
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Ilwaco, WA 98624

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

12 April 2004

Office of Habitat Conservation

APR 19 2004

Received

Dear Mr. Schmitt:

The Columbia River Crab Fisherman's Association generally supports Marine Fish Conservation Network's submission of comment on EFH; we are writing to provide you with additional comments on the Advanced Notice of Proposed Rulemaking (ANPR) regarding the Essential Fish Habitat (EFH) regulations published in the *Federal Register* on February 25, 2004.

CRCFA (Columbia River Crab Fisherman's Association) would like to comment on **Essential Fish Habitat (EFH)**. Our association believes that to have a viable fishery, be it salmon, ground fish, pelagic, or non FMP species such a Dungeness crab, abundant quantity and quality habitat is extremely important to maintaining the fishery and the viability of the overall coastal fishing community.

Threats to EFH and species yields come in many forms. Four areas of concern which need additional attention are:

- 1) Fresh water entering the ocean, our TMDL's are in need of review, too much algae bloom is occurring negatively affecting bottom substrate
- 2) Prevention of oil spills needs more attention
- 3) Radiation leaks from Hanford or other sources
- 4) Dredging activity & burial of prime habitat

Fresh water entering the ocean is a heavy contributor to primary productivity. The interface zones between ocean and fresh water support productive nursery areas for many species. The Columbia River is a good example. This river drains and area of about 260,000 square miles and supplies 75% of all fresh water entering the Pacific Ocean between Cape Flattery and San Francisco. The outside edge of Peacock Spit is a premier ground fish and crab nursery which should be protected. Continuing to ignore the needs of non-plan species is not acceptable. Fifteen percent of juvenile flatfish recently tested showed cancerous tumors, probably caused by continual contact with polluted substrate. Recent EPA biologic testing of Columbia River sediments failed the 80% survival test. Salmon juveniles are testing very positive for PAH concentrations. The warning signs of excessive TMDL's are present everywhere & need immediate review related to EFH.

Oil spills similar to Exxon Valdez in Alaska and Eklof Marine in Rhode Island devastate fisheries and EFH. The harvesters of the areas never get adequate compensation for their losses associated with oil spills; therefore, it is paramount that prevention of spills become an integral part of EFH Protection. Most oil entering the Columbia River is by tug and barge. Recently there have been a number of near miss accidents. Accident prevention should be addressed. Wave

intensification of 1.7 X since 1985 has dramatic adverse accident potential ramifications. Over-mounding of dredge disposal sites has a significant potential to destroy thousands of miles of EFH and this needs to be included in the protections offered under the necessary provisions.

Radiation leaks that enter the ground water could eliminate all viable fisheries within hundreds and miles of the coast. Pressure must be brought to bare on the nuclear industry to prevent any possibility of an accident.

Dredging operations have negative impacts to habitat and fisheries. Currently the US Army Corps of Engineers are entertaining the idea of changing their disposal methods. They want to go from pin point (very small areas) to broad based dispersal (large area) disposal. Nationally untold numbers of square miles of habitat, some of it essential, will be buried. Locally, Dredge Disposal Deepwater and Site E expansion Sites at the Columbia River are in the center of the bottom fish nursery and very productive crab ground. NOAA Fisheries failed to comment on habitat alterations affecting NON PLAN species as a part of the consultation process. EFH protections MUST also include these non plan species in any and all consultations.

CRCFA has taken issue with the Corps on these types of expansions and has filed suit in Federal Court to prevent destruction of habitat that we believe essential to future productivity of the crab fishery. Woody debris litters the areas deeper than about 60 feet and provides protection and essential habitat of young of the year and small juvenile crab and bottom fish. If the corps is allowed to bury the woody area it will be disastrous to juvenile survival rates. Where was NOAA Fisheries, why was it necessary for private enforcement of our laws?

Crab is the highest dollar commercial species in Washington and Oregon and does not have an FMP. The Sustainable Fisheries Act of 1996, Public Law 104-267 must provide for Essential Fish Habitat protection of valuable species not covered by FMP. CRCFA advocates including Dungeness crab for EFH protection as soon as possible. Responsible management cannot continue to overlook crab and other non-plan species. State jurisdiction of Dungeness crab does not relieve duties of NOAA Fisheries to help in protection of EFH.

CRCFA, all crab fishermen, and many coastal communities from Washington to California will benefit immensely when Dungeness crab EFH is considered. Crab is the last small boat fishery left in the Northwest capable of sustaining local communities and it deserves all the protection available to it.

Thank you for considering the issues brought forward today.

Sincerely,

A handwritten signature in cursive script that reads "Dale Beasley". The signature is written in black ink and is positioned above the printed name and title.

Dale Beasley
CRCFA



CAPE COD
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May 6, 2004

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

Dear Mr. Schmitt:

The Cape Cod Commercial Hook Fishermen's Association is a 501(c)3 non-profit organization with over 300 members who make their living as commercial fishermen and another 3000 concerned coastal citizens. We are writing to comment on the Advanced Notice of Proposed Rulemaking (ANPR) regarding the Essential Fish Habitat (EFH) guidelines published in the *Federal Register* on February 25, 2004. The EFH guidelines should not be changed at this time. Concerns with the EFH program can and should be resolved through better implementation. The current guidelines are sufficient to identify EFH, determine the effects adverse of fishing activities on EFH, and protect EFH from the adverse effects of fishing and non-fishing activities. This is not the time to change the regulations.

The provisions to protect habitat as implemented currently by NMFS are adequate to identify and address habitat issues. The regulations provide enough flexibility so as not to hamper the agency in implementation. The process should continue to take a broad view of essential fish habitat and protect fish through their entire life cycle, even in State managed waters. The habitat review process should not be weakened as NMFS currently has the flexibility it needs to consider activities with minimal habitat impacts.

In conclusion, we worry that this additional ANPR will further undermine NMFS's EFH protection efforts by creating uncertainty regarding the agency's commitment to protecting habitat. NMFS should not revise the EFH guidelines; concerns about the program can be addressed through better implementation of the existing guidelines. Changes in EFH provisions should be considered when the Magnusson-Stevens Fishery Conservation Act is revised, not through this ANPR.

On behalf of the more than 3000 members of the CCCHFA, thank you for considering our concerns.

Sincerely,

Peter Baker
Campaign Director

BAY-DELTA URBAN COALITION

Mr. Rolland A. Schmitten
Director, Office of Habitat Conservation
NOAA - National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3282

**Re: Consideration of Revision of Essential Fish Habitat
Guidelines, 68 Fed. Reg. 69070 (December 11, 2003)**

Dear Mr. Schmitten:

The Bay-Delta Urban Coalition (BDUC) is an organization of the largest urban water agencies in California, serving water to over 25 million customers. The focus of our efforts concerns the Bay-Delta region of California, and the comprehensive state-federal planning and management process known as CALFED. For several years, we have been concerned about the manner in which the essential fish habitat provisions in the Magnuson-Stevens Fishery Conservation and Management have been implemented by NOAA/NMFS, and both our organization and its individual members have voiced these concerns in the past. We are pleased that NMFS is now proposing to reconsider the EFH program, and we strongly encourage a new rulemaking which addresses the concerns which have been raised about it over the years, particularly by interests as we are, in the non-fishing sector.

These comments are submitted in response to the Advance Notice of Proposed Rulemaking (ANPR); Consideration of Revision of Essential Fish Habitat (EFH) Guidelines 68 Fed. Reg. 69070 (December 11, 2003). The following comments are submitted to provide specific guidance for future rulemaking.

* The Bay Delta Urban Coalition includes: Alameda County Water District, Coachella Valley Water District, Contra Costa Water District, Central Coast Water Authority, East Bay Municipal Utility District, Los Angeles Department of Water and Power, Metropolitan Water District of Southern California, Municipal Water District of Orange County, San Diego County Water Authority, San Francisco Public Utilities Commission, Santa Clara Valley Water District, Solano County Water Agency.

March 8, 2004

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As envisioned by NMFS, EFH goes well beyond the information and coordination intentions in the Act, primarily by extending the program to all marine, coastal, and estuarine waters of the United States, and very extensive inland habitat for anadromous species, including upland terrestrial areas. Such an all-encompassing definition has rendered the term "essential" virtually meaningless. The EFH program seems to apply everywhere, and to virtually all habitat. The definition and procedures for identification and consultation need to be narrowed in scope, and clarified for marine areas such as those identified in the "habitat areas of particular concern" provisions of the current regulations.

Under the current regulations, nearly all habitat for managed species, including vast areas of inland and coastal habitat that are already subject to other protections against adverse impact, are being identified as "essential." A full spectrum of non-fishing as well as fishing activities are in turn being identified as having potential effects on this habitat and have thus become subject to burdensome EFH consultation requirements. There is no "significance" threshold included in the current regulations for triggering such consultation, which has resulted in a volume of thousands of EFH consultations being conducted during the first few years of the EFH program.

In addition, the current regulations still contain numerous mandatory procedures and other requirements that are not needed to comply with the MSFCMA. The regulations allow EFH consultation to be coordinated with other regulatory procedures, but still require specific written EFH assessments and additional procedures that do not add any meaningful habitat protection. Rather than take advantage of existing consultation and decisionmaking procedures, NMFS has created its own new, redundant and burdensome procedure that results in the inefficient use of agency resources and delay in decisionmaking.

These definitions need to be clarified, and mandatory provisions eliminated to allow NMFS, fishery management councils, action agencies, and other affected parties to carry out EFH identification and consultation in more focused and flexible ways.

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Page 3

Finally, fishery management councils, which oversee EFH elements in fishery management plans, have been established specifically for the purpose of regulating fishing, and they are dominated by fishing interests. The councils have no expertise in non-fishing activities, do not seek or provide significant representation of municipal water supply agencies such as ours and do not have any accountability to non-fishing interests. The fishery management plan documents that have been produced by the councils thus far show a lack of understanding regarding coastal and inland areas or the protective mechanisms already in place under water resource management laws and regulations, forest practice statutes, coastal zone management programs, and other law. Clearly, the scope of fishery council responsibility should be limited to marine areas and activities within those areas.

Any new rulemaking should provide for an EFH program that can function without imposing new and redundant burdens on resource utilization activities. The current regulations do not efficiently and effectively serve the purposes of the 1996 EFH amendments to the Magnuson-Stevens Fisheries Conservation and Management Act. They are not practicable for NMFS to implement, and they impose requirements that are unnecessarily broad, complex and costly for the non-fishing sector.

We look forward to working with you further, to obtain a balanced approach to protecting truly essential fish habitat, without unduly impeding agency decisionmaking or resource utilization activities.

Thank you for considering these comments. Please contact me if you have any questions.

Sincerely,



Guy R. Martin
On behalf of the Bay-Delta Urban Coalition
607 Fourteenth Street, NW
Suite 800
Washington, DC 20005



April 26, 2004

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

Dear Mr. Schmitten,

The American Sportfishing Association (ASA) appreciates the opportunity to comment on the Essential Fish Habitat (EFH) guidelines used to determine and identify areas that need to be designated as critical for fisheries habitat. The American Sportfishing Association is a non-profit trade organization whose members include fishing tackle manufacturers, boat builders, tackle retailers, fish and wildlife agencies, angler organizations, and the outdoor media.

The ASA recognizes that habitat destruction is among the most critical threats to our sustainable fisheries. We must protect and restore habitat to the fullest extent while also allowing reasonable access for recreational anglers. After review of the guidelines, the ASA has three specific concerns.

1. The guidelines should better define those areas that are truly essential fish habitat. Each Fishery Management Plan (FMP) is required to summarize all available information for each managed species. This data includes distribution, abundance, reproduction, growth, survival, and productivity of the managed species. All of this information is important in determining critical habitats. But critical habitat utilized by several species is one way to identify the most essential of fish habitats.
2. The National Marine Fisheries Service must do a better job to protect fish habitat while striving to ensure public access to fishery resources. Essential Fish Habitat can be protected with a variety of measures which may include time and area closures. However, before an area is closed and public access restricted all possible management techniques should be considered.
3. The National Marine Fisheries Service should develop clear conservation goals and performance measures to evaluate EFH progress. These should be evaluated regularly and regulation adjusted accordingly through an open public process.

The ASA believes it is essential to sustainable fisheries to protect the habitat where fish spend their lives. Proper management techniques and focusing on what is truly essential can provide the means to properly restore fish habitat. Please contact me if you have any questions.

Sincerely,

Gordon Robertson
Vice President

AMERICAN SPORTFISHING ASSOCIATION

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04/26/2004 04:53PM



ALASKA OCEANS PROGRAM

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March 25, 2004

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

Dear Mr. Schmitten:

As members of the Marine Fish Conservation Network and concerned conservation groups, we are writing to provide you with comments on the Advanced Notice of Proposed Rulemaking (ANPR) regarding the Essential Fish Habitat (EFH) regulations published in the *Federal Register* on February 25, 2004.

In general, we feel that the current EFH regulations are appropriate and adequate for the identification of EFH, determining the effects of fishing activities on EFH, and protecting EFH from the adverse effects of fishing and non-fishing activities. The regulations should not be changed at this time. Most of the concerns with the EFH program can be resolved through better implementation of EFH regulations, not changing the regulations themselves. Rather than revising the regulations, we recommend that NMFS revise and reissue its EFH Technical Guidance.

We would like to address the major issues raised by others during the comment period for the EFH ANPR of December 11, 2003:

- **Comment: Reduce the scope of the EFH regulations.**
 Some groups commented that the scope of EFH is too broad, encompasses too much area to be useful, and unnecessarily impacts fishing and non-fishing activities. Some groups also stated that EFH should only apply to federal marine waters and not coastal or upland waters.

Response: The scope of EFH is appropriate. The reason that the area designated as EFH is so broad is that marine species have more than one life stage, and each life stage potentially develops within a different habitat. Combining the geographic distributions for each of the several hundred species that are managed in federal fisheries, and vast areas of the

EEZ will be covered. In addition, the scientific data is lacking on habitat-specific growth and survival, as well as productivity by habitat type, so designated areas are large to make up for the poor resolution on specific habitat needs. These areas can, and should, be refined as the research progresses.

In addition, the legal definition of EFH is meant to protect the entire life cycle of managed fish species. Since many fish species spawn, grow, and mature in coastal and estuarine waters, the regulations must apply to the areas where the fish live out all of their life stages. Therefore, EFH regulations must apply where the fish are found, even in state waters.

- **Comment: Change the EFH regulations from mandates to guidelines.**

Some groups commented that the EFH regulations should not be mandatory, but instead should be advisory and provide guidelines to help councils comply with the EFH mandates.

Response: The EFH provisions in the Magnuson-Stevens Fishery Conservation and Management Act (MSA) are mandatory. Therefore, conversion of the EFH regulations to guidelines and making the program advisory in nature would be inconsistent with the law and inappropriate. More importantly, protection of habitat for fish populations is critical to their long-term health.

- **Comment: Eliminate EFH consultation overlaps with other federal laws.**

Some commenters argued that EFH consultations are excessively burdensome. They contend that activities that go through review procedures under the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), section 404 of the Clean Water Act, and other federal environmental protection statutes should not also have to undergo an EFH assessment or consultation.

Response: Prior to the inclusion of the EFH requirements in the MSA, fish habitat was not adequately protected from destruction due to human activities. Congress added the EFH requirements to the MSA in 1996 in order to specifically protect marine fish habitat. One purpose of the MSA is "to promote the protection of essential fish habitat in the review of projects conducted under federal permits, licenses, or other authorities that affect or have the potential to affect such habitat" (16 U.S.C. 1801(b)(7)). In addition, NMFS has made great efforts to minimize the complexity and streamline the EFH consultation process.

- **Comment: Minimize the costs of EFH protection on non-fishing interests.**

Some groups commented that there are significant and detrimental economic impacts that EFH designations and resultant consultations have on the activities of non-fishing interests. They suggest that economic impacts be weighed against species benefits in determining whether mitigation measures are warranted.

Response: NMFS has followed the Regulatory Flexibility Act requirements in developing the EFH regulations. The Regulatory Flexibility Act does not require that conservation benefits outweigh economic costs, rather it requires that cost analyses be conducted and that the least expensive alternative that still meets MSA legal requirements is chosen.

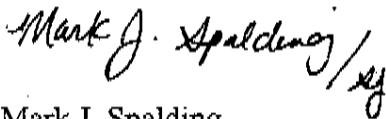
- **Comment: Narrow the scope of EFH consultations.**

Some comments recommended that EFH consultation procedures should only be necessary if a particular action exceeds a certain "significance threshold."

Response: Because EFH is critical to the survival of marine fish populations, Congress required that all federally conducted, funded, or authorized activities that "may adversely affect" EFH be reviewed in order "to promote the protection of EFH." This is a clear legal mandate, that NMFS does not have the legal authority to modify. Requiring that a "significance threshold" be met before implementing EFH consultation procedures is not consistent with the law and would undercut EFH protection efforts. However, NMFS has made a good faith effort to streamline the consultation process so that activities with minimal impacts may be covered under expedited review procedures. In addition, we suggest that NMFS and the regional councils make better use of habitat areas of particular concern as a way to focus consultation activities.

In conclusion, we are very concerned that this additional ANPR will further undermine NMFS' EFH protection efforts by creating uncertainty regarding the agency's commitment to the program. Congress should not revise the EFH regulations; concerns about the program can be addressed through better implementation of the existing regulations. Thank you for considering our comments.

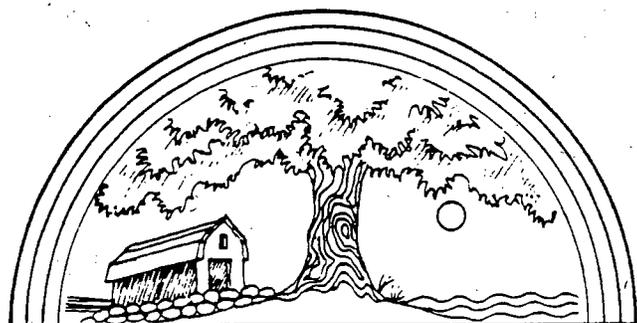
Sincerely,



Mark J. Spalding
Senior Program Officer
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308 G Street, Suite 219
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Office of Habitat Conservation

APR 6 2004



Timberlake Farm

Received

April 1, 2004

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

Dear Mr. Schmitten:

I am writing on behalf of the staff of the Center for Education, Imagination, and the Natural World in Whitsett, NC. These are our comments on the Advanced Notice of Proposed Rulemaking (ANPR) regarding the Essential Fish Habitat (EFH) guidelines published in the *Federal Register* on February 25, 2004. In summary, EFH guidelines should not be changed at this time. Concerns with the EFH program can and should be resolved through better implementation of EFH guidelines. Current guidelines are sufficient to identify EFH, determine the effects of fishing activities on EFH, and protect EFH from the adverse effects of fishing and non-fishing activities. Rather than revise the guidelines, we recommend that NMFS revise and reissue its EFH Technical Guidance.

The current NMFS process for EFH reflects the intent of Congress, is flexible enough, and can succeed. Prior to the inclusion of the EFH requirements in the MSA, fish habitat was not adequately protected from destruction due to human activities. Congress added the EFH requirements to the MSA in 1996 in order to specifically protect marine fish habitat. One purpose of the MSA is "to promote the protection of essential fish habitat in the review of projects conducted under federal permits, licenses, or other authorities that affect or have the potential to affect such habitat" (16 U.S.C. 1801(b)(7)). In addition, NMFS has made great efforts to minimize the complexity and streamline the EFH consultation process. NMFS has followed the Regulatory Flexibility Act requirements in developing the EFH guidelines. The Regulatory Flexibility Act does not require that conservation benefits outweigh economic costs, rather it requires that cost analyses be conducted and that the least expensive alternative that still meets MSA legal requirements is chosen.

A broad scope of EFH is necessary to protect fisheries. The reason that the area designated as EFH is broad is that marine species have more than one life stage, and each life

stage may depend on a different habitat. The combined geographic distributions of the several hundred species that are managed in federal fisheries require protection of much of the U.S. EEZ. In addition, the scientific data is currently lacking on habitat-specific growth and survival, as well as productivity by habitat type. Designated areas are large to compensate for the poor resolution on specific habitat needs. These areas can, and should, be refined as the research progresses, but we can not afford to wait for scientific certainty to protect our threatened fisheries.

Protection of habitat for fish populations is critical to their long-term health and it's the law. Non-mandatory guidelines would likely weaken necessary protection. Additionally, the EFH provisions in the Magnuson-Stevens Fishery Conservation and Management Act (MSA) are mandatory. Therefore, converting the EFH guidelines to guidelines and making the program advisory in nature would be inconsistent with the law and inappropriate.

Don't weaken the review process. Because EFH is critical to the survival of marine fish populations, Congress required that all federally conducted, funded, or authorized activities that "may adversely affect" EFH be specifically reviewed in order "to promote the protection of EFH." This is a clear legal mandate, that NMFS does not have the legal authority to modify. Requiring that a "significance threshold" be met before implementing EFH consultation procedures is not consistent with the law and would undercut EFH protection efforts. However, NMFS has made a good faith effort to streamline the consultation process so that activities with minimal impacts may be covered under expedited review procedures. In addition, we suggest that NMFS and the regional councils make better use of habitat areas of particular concern as a way to focus consultation activities.

The legal definition of EFH was created to protect the entire life cycle of managed fish species. The guidelines must apply to the areas where the fish live during all of their life stages. For many species that includes coastal and estuarine waters. Therefore, EFH guidelines must apply where the fish are found, even in state waters.

In conclusion, we are very concerned that this additional ANPR will further undermine NMFS' EFH protection efforts by creating uncertainty regarding the agency's commitment to the program. Congress should not revise the EFH guidelines; concerns about the program can be addressed through better implementation of the existing guidelines.

Thank you for considering our comments.

Sincerely,

The Center for Education, Imagination, and the Natural World
at Timberlake Farm

1501 Rock Creek Dairy Rd
Whitsett, NC 27377

(336) 449-0612 TBLK1501@aol.com