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Habitat Conservation and Restoration
HABITAT CONSERVATION POLICY
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Habitat Conservation; Policy for National Marine Fisheries Service (NMFS)

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

National Oceanic and Atmospheric Administration

[Docket No. 31028-211]

Habitat Conservation; Policy for National Marine Fisheries Service (NMFS)

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of effective NMFS habitat conservation policy.

SUMMARY: NOAA issues a policy for the National Marine Fisheries Service (NMFS) which provides a focus for NMFS' habitat conservation activities, while at the same time integrating habitat conservation considerations throughout the major programs and activities of the Agency. The policy also encourages greater participation by the Regional Fishery Management Councils, the States and others in habitat conservation matters. This action is necessary in order to allow NMFS to focus its habitat conservation activities on those species for which NMFS is primarily responsible or which are the subject of a NMFS program. The effect of this policy will be to make NMFS' habitat conservation activities more responsive to the goals and objectives of the Agency as set forth in the NMFS Strategic Plan, and to allow priorities to be set and defended.

EFFECTIVE DATE: November 21, 1983.

FOR FURTHER INFORMATION CONTACT: Herbert L. Blatt, Chief, Policy Group, NMFS, 202-653-7551, or Kenneth R. Roberts, Chief, Habitat Conservation Division, NMFS 202-634-7490.

SUPPLEMENTARY INFORMATION:

Background

The NMFS has primary Federal responsiblity for the conservation, management, and development of living marine resources and for the protection of certain marine mammals and endangered species under numerous Federal laws. The Agency also has responsibilities to the U.S. commercial and marine recreational fishing industry, including fishermen, and to the States and the general public. These responsibilities are inherent in NMFS' mission which is "To achieve a continued optimum utilization of living marine resoures for the benefit of the Nation." NMFS is vitally concerned about the habitats that support living marine resources since the well-being of these resources and the fishing industry depends upon healthy and productive habitats.

The U.S. commercial and marine recreational fishing industry makes an important contribution to the Nation's economy. The commercial fishing segment of the industry produces food and industrial goods that contribute $7 billion annually to the gross national product. Including fishing vessels and shoreside businesses, the commercial fishing segment employs nearly 300,000 persons. Marine recreational fishing provides opportunities for recreation as well as a substantial quantity of food for 15 to 20 million anglers in the United States. Catch by marine recreational fishermen accounts for an estimated 30 to 35 percent of the total U.S. finfish harvest used for food. Expenditures by these fishermen, the value of associated industries (such as tackle, boat, and trailer manufacturers, and the party and charter boat industries), and the value of the recreational fishing experience itself are significant components of the U.S. economy. Direct expenditures by marine recreational fishermen are estimated to be at least $5 billion annually, not to mention the indirect economic impacts generated from these expenditures.

Marine mammals and endangered species are also important to the Nation in terms of their domestic and international significance—aesthetic, recreational, ecological and economic.

Coastal and estuarine areas and their associated wetlands are vitally important as spawning and nursery grounds for both commercial and marine recreational fishery resources. Approximately two-thirds of our important fishery resources depend upon these areas which also serve as habitat for many species of marine mammals and endangered species. However, population shifts to coastal areas and associated industrial and municipal expansion have accelerated competition for use of the same habitats. By 1990, 75 percent of the U.S. population will live within 50 miles of the coastlines. Increasing efforts to develop new or alternate sources of energy are further stressing important living marine resource habitats. As a result, these habitats have been substantially reduced and continue to suffer the adverse effects of dredging, filling, coastal construction, energy development, pollution, waste disposal, and other human-relatd activities. In the case of wetlands, from 1954 to 1978 there was a average annual loss of 104,000 acres which was a ten-fold annual increase in acreage lost between 1780 and 1954.

Recognizing the importance of habitat to the management and conservation of living marine resources, NMFS proposed a new habitat conservation policy for the Agency. The notice of proposed policy, published in the **Federal Register** on July 19, 1983 (no. 139), at 48 FR 32847, solicited public comments.

Response to Public Comments

During the comment period, twenty-five letters were received from other Federal agencies, State governments, Regional Fishery Management Councils, and organizations representing millions of citizens. The commenters, in general, supported the proposed policy, stating it is long overdue and commending the approach. However, certain of the commenters had specific concerns which are set forth below along with NMFS' response.

Policy

Comment: Implicit in the goal and mission statement of NMFS is the assumption that populations concerned would be usable. This should be clarified.

Response: NMFS agrees that the policy should make clear that the habitat conservation activities of the agency are to maintain or enhance the capability of the environment to, among other things, produce fish and shellfish that are safe and wholesome. The wording has been amended accordingly.

Comment: Several commenters caution against too narrowly defining scope of policy. It should signify the need to give priority attention to those species for which direct managment presently is Agency responsibility and it should *clearly* state that NMFS has stewardship responsibility for all living marine resources under Federal jurisdiction.

Response: NMFS does not believe the language needs modification. While NMFS has overall responsibilty for living marine resources, it is necessary to focus NMFS' habitat conservation activities on those resources over which it can influence management regimes throughout the range of the species. NMFS' activities with respect to one species could benefit other species that depend on a particular habitat.

Policy Framework

Comment: Suggest clarifying paragraph 1, Policy Framework, to indicate NMFS also has management responsibility for species for which no Fishery Management Plans are planned, such as squid or herring in the Gulf of Mexico. This could be accomplished by rewording clause "(1) covered or to be covered" to "(1) covered or subject to being covered."

Response: For clarity, NMFS agrees to suggested change.

Implementation

Comment: The coordination mechanism for policy's implementation is not described. It is also not clear how interested public and conservation groups will be able to interact and have input into this important decision.

Response: The coordination mechansim will be developed by each region, following national guidelines, during the implementation phase. It is expected that NMFS Regional and Center Directors will discuss their programs with their constituents in order to make determinations with respect to priorities.

Comment: In Implementation Strategy No. 4, second sentence, urge addition of "artificial impoundments" to list of activities which have potential for habitat degradation.

Response: NMFS agrees to this addition.

Comment: Under Implementation Strategy No. 7, suggest policy cover catadromous as well as anadromous species.

Response: Suggestion refers to NMFS' involvement in fresh water. While catadromous species are not excluded, NMFS intends to focus on anadromous species.

Comment: Implementation Strategy No. 3(a) implies that fishermen may be a threat to fishery habitats. Statement should be clarified to address possible conditions under which fishing poses a threat to habitat.

Response: Under certain conditions, fishermen can cause damage to habitats, e.g., bottom gear fishing, vessel discharges, etc. The Regional Fishery Management Councils may deal with such under the Magnuson Fishery Conservation and Management Act (Magnuson Act), but may not control actions by others. There was no intention to single out fishermen as a threat to habitat as they realize the importance of healthy habitats and are beneficiaries of such.

Comment: Implementation Strategy No. 3(a) states that Fishery Management plans should include "proposal of measures to preserve, protect and restore habitat." Should be clarified to indicate range of "measures" which could be implemented. Should also indicate that no measures may be required in many fisheries where habitat issues are not significant.

Response: The range of measures is intentionally left up to each Regional Fishery Management Council, depending on needs of the fishery. The Councils will have the same prerogatives regarding habitat conservation that they have with respect to any other management measure contained in the Fishery Management Plans. The language of 3(a) has been modified to indicate that measures will be proposed only where appropriate.

Role of Regional Fishery Management Councils

Comment: Implementation Strategy No. 3(a) imposes strict requirements on the Regional Fishery Management Councils above and beyond the requirements of the Magnuson Act. Talk of a partnership between NMFS and the Councils is contradicted by a clear threat to disapprove Fishery Management Plans that do not meet requirements proposed by NMFS. Moreover, this strategy is an attempt to reduce the responsibilities of the Councils assigned by Congress.

Response: Implementation Strategy No. 3(a) strengthens, not weakens or reduces, the role of the Councils regarding habitat conservation. This strategy does not impose requirements beyond the Magnuson Act, since habitat is an important element in fishery management.

Comment: It would be appropriate to refine the planning and implementation strategies to assure the Councils a partnership level role in any actions taken under the policy once it is implemented. If workshops to further develop the policy format are being considered, the Councils would appreciate an opportunity to participate.

Response: The Councils are intended to have an important partnership role and NMFS expects to contact them from time to time during policy implementation planning and development.

Comment: Minimum Fishery Management Plan descriptions called for could impose an impractical burden on plan development. For example, 80% of salmon catch in Alaska includes fish from habitat areas outside Alaska. The Councils are conscious of importance of habitat and need to protect it, but the Councils are not in a position to carefully review the work of everyone on the coasts and oceans and assess or restate the assessments of other agencies which do monitor the impact those actions may have on the environment.

Response: NMFS believes an erroneous impression was created by wording in Implementation Strategy No. 3(a) which stated "The Regional Fishery Management Councils should address habitat considerations in their Fishery Management Plans, where applicable, based on the best available information *from all sources which can be coordinated by NMFS/NOAA.*" The underlined words have been deleted to make clear the Councils will be obliged to review only information made available to them by NMFS/NOAA and others during their plan deliberations. This will be an evolutionary process and will not impose an impractical burden on the Councils in plan development. NMFS will work closely with the Councils to make them aware of habitat conservation matters they might need to consider.

Comment: Several commenters stated that Implementation Strategy No. 3 outlines the development of a potentially powerful framework for building a constructive partnership between the Councils and NMFS for habitat conservation. Although the Councils presently may become as involved in maintenance of habitat as their authorities allow, they have played a minor role in habitat conservation to date. If this strategy is to be implemented successfully, NMFS will have to be highly responsive to Council needs with technical assistance and information delivered both timely and adequately. Parhaps Implementation Strategies Nos. 1 and 2 should make an even stronger reference to development of research priorities and programs in response to Council needs.

Response: NMFS expects that Implementation Strategy No. 3(b) will result in NMFS providing the Councils with needed information and support. Again, this will be an evolutionary process so as not to place an undue burden on the Councils. The products resulting from implementation of Strategies Nos. 1 and 2 will provide the basis for the information provided to the Councils.

Comment: Suggest following change in Implementation Strategy No. 3(a), second paragraph: "Where appropriate, existing FMPs *should* be amended to meet these standards."

Response: NMFS agrees to recommended change.

Comment: Caution against over reliance on Councils as their desires may not always lead to non-overfishing or non-resource exploitation policies that NMFS supports in conjunction with wetlands protection and fisheries management.

Response: NMFS has every confidence that the Councils, in partnership with NMFS, will not undertake actions that will lead to overfishing or over exploitation of the resource.

NMFS' Role Vis-a-Vis Regional Fishery Management Councils and States

Comment: Several commenters believe that a number of statements within the policy convey the impression that NMFS intends to inject itself into an

active role of fishery management in the Fishery Conservation Zone (which is the responsibility of the Regional Councils) and within the territorial seas (which is under States' jurisdictions). Overall conclusiom is that the policy, as written, suggests the intention of assigning to NMFS a role in fishery management which heretofore has ben filled by the Councils and concerned coastal States.

Response: The policy recognizes a partnership between NMFS and the Councils under the Magnuson Act and does not create any greater role for NMFS or the Councils than that which is currently required under the Act. The policy is not intended to usurp the Council's responsibilities. It provides the bsis for considering habitat during the Councils' development of Fishery Management Plans. Moreover, the policy does not provide for NMFS' intervention in State management of State resources in State waters. It indicates that NMFS and the Councils have an interest in conservation of the habitats of species managed under the Magnuson Act.

Comment. The policy should provide for recognition of States' roles in habitat conservation and for more definitive mechanisms for working with States in this regard. Several opportunities exist: (a) Under Implementation Strategy No. 1. Regional Directors should include State programs in their inventory of strategies to address habitat issues. There should be formal consultation with, and opportunity for comment by, States prior to adoption of regional habitat protection plans; (b) existing grant programs should recognize the validity of habitat conservation matters; and (c) procedures for NMFS' coordination with the States regarding Fish and Wildlife Coordination Act reviews should be adopted.

Response: Implementation of the policy will be in full recognition of States' roles in habitat conservation. The policy in no way evisions a reduction of State activities. It is expected that States will be consulted during planning and implementation. It is expected that NMFS' grant programs, as well as other programs, will consider habitat as part of the integration process.

Interactions With Other Agencies

Comment: One State commented that the Corps of Engineers has been traditionally recognized as the Federal agnecy for coastal habitat protection. The Corps' working relationship with coastal States is a long proven process. Implementation of the policy will add another layer of Federal involvement to what is already in place.

Response: The policy does not provide for replacement of the Corps of Engineers or any other agencies having interests in habitat conservation. NMFS, under the Fish and Wildlife Coordination Act, will continue to provide recommendatons to the Corps regarding its issuance of permits for construction which could have an impact on living marine resources. The Corps will continue to make final decisions on issuance of permits.

Comment: Several commenters stated that NMFS should coordinate its habitat conservation programs not just with other elements of NOAA, but also with other key Federal and State agencies which have interests in or responsibilities for habitat conservation

Response: In this regard, NMFS has every expectation of building in other Federal and State agencies. Implementation Strategy No. 6 specifically addresses this concern.

Comment: Suggest development of interagency memorandum between NMFS and the Fish and Wildlife Service, perhaps with Army involved also, to remove duplication of effort when commenting on Corps of Engineers water resource projects and permit applications.

Response: If needed, such a memorandum could be one of many provided for in Implementation Strategy No. 6.

Benefit of Proposed Policy to Other Wildlife

Comment: Recommend inserting at appropriate place, language that states that migratory birds will benefit from policy.

Response: NMFS agrees. Language has been added to reflect that implementation of the policy will be beneficial to other wildlife resources, including migratory birds.

Impact of Energy Development

Comment: Quoting a statement in the Background section that coastal habitats "have been substantially reduced and continue to suffer the adverse effects of . . . energy development . . .," one commenter suggested that unless NMFS could fully document the statement, it should be deleted.

Response: The impacts of energy development on living marine resource habitats were listed along with impacts of other human-related activities such as dredging, filling, coastal construction, pollution and waste disposal. In the case of wetlands, actual loss figures were quoted from *The Coastal Almanac for 1980—The Year of the Coast* (Ringold and Clark, 1980).

Predator-Prey and Ecosystem Relationships

Comment: Recommend adding language that specifically addresses the predator-prey relationship.

Response: The proposed policy implicitly recognized the importance of prey species which support species of importance to man. However, for clarity, the policy has been revised to specifically recognize the importance of the predator-prey relationship by using the language recommended by several of the commenters.

Comment: Several commenters stated that marine life is part of an aquatic ecosystem where food and nutrient sources are so interwoven as to make precise determination of relationships between managed and non-managed species extremely difficult. Proposed policy seems not to provide explicit credence to value of ecosystems in maintaining diversity of species.

Response: The importance of ecosystem planning and research is clearly recognized and dealt with in Implementation Strategies Nos. 1 and 2. This matter is also addressed in the amendment to the policy with respect to the predator-prey relationship.

Funding/Resources

Comment: Several commenters stated that for effective implementation of the policy, an adequate funding base for habitat research and conservation activities must be maintained. Moreover, while delegation of authority to States may be appropriate, lack of money may prevent it from working properly.

Response: Implementation of the policy is not premised upon an increase in funding, but better utilization of funds available. Recognizing that State and local governments also face budget constraints, NMFS expects they will set priorities regarding utilization of resources. The Federal Government will help to the extent it can, such as acting as a catalyst.

Comment: The policy would demand a redirection of NMFS' effort. With no mention of funding for increase in habitat conservation effort, development programs and interests must necessarily diminish as environmental protection programs and emphasis expand.

Response: Although the policy is not intended to significantly diminish specific programs, NMFS cannot forecast the effect on such programs with adoption of the policy. NMFS will deal with the direction of habitat conservation and other activities during its strategic planning efforts.

Research

Comment: Applaud scientific/research thrust, but would like to see requirement for sharing research findings with a variety of non-Federal organizations concerned with habitat conservation.

Response: Implementation Strategy No. 2 has been amended to clearly reflect NMFS' obligation to disseminate information to the public.

Comment: NMFS' role in research activities should receive greater emphasis than is implied in proposed policy statement.

Response: Implementation Strategies Nos. 1, 2 and 3(b) reflect NMFS' desire to give greater emphasis to habitat research activities.

International Habitat Activities

Comment: Regarding NMFS' participation in international habitat activities in support of obligations of the U.S. under international agreements, it occurs that negotiations with foreign nations who are seeking fishing rights in U.S. waters, may offer opportunities for international habitat protection activities. Foreign nations with the best habitat protection records might be given preferential treatment in the fisheries allocation process.

Response: The policy does not preclude this suggestion. NMFS will bring it to the attention of the Department of State with which NMFS cooperates in making allocation determinations. Implementation Strategy No. 6 recognizes the need for interagency cooperation and agreements.

For the reader's benefit, the modified Statement of Policy follows.

Policy Framework

Traditionally, the habitat conservation activities of NMFS have been based primarily on the policies developed in response to the Fish and Wildlife Coordination Act (FWCA) and the National Environmental Policy Act (NEPA). These laws give NMFS an important advisory role, primarily with respect to reviewing and commenting on proposed Federal projects, licenses, permits, etc. which could affect living marine resources. Because of this advisory role, NMFS' habitat conservation activities have been determined largely by the policies, actions, and deadlines of others. For the most part, these activities have dealt primarily with general concerns of habitat loss and degradation and not with specific habitat problems relating to the species of living marine resources for which NMFS has primary management responsibilities, i.e. species (1) covered or subject to being covered under Fishery Management Plans developed under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and (2) assigned to NMFS under the Marine Mammal Protection Act and the Endangered Species Act. Within this framework these activities have been successful in carrying out the objectives of the FWCA and NEPA. However, evolving mission and programs require the Agency to focus its activities on habitats important to the species referred to above.

In addition to the need for a change resulting from the foregoing, a number of events have occurred that give NMFS the opportunity to enhance substantially its overall role in habitat conservation. These include opportunities to use all of NMFS' legislative authorities to take an active role in habitat conservation and to ensure that it is appropriately considered in all of NMFS' programs, and opportunities to make the program more effective through strategic planning. Additional events include changing Federal and State roles under Administration policies and reduced Federal budgets.

Although NMFS' past role in habitat conservation was largely determined by the FWCA and NEPA, significant recent legislation, particularly the Magnuson Act gives NMFS broader authority and more opportunities for achieving habitat conservation objectives. This Act also provides comprehensive authority to integrate habitat conservation throughout the Agency's conservation, management, and development programs. This can be accomplished through the Agency's strategic planning process which is the mechanism for setting priorities based on NMFS' resources and responsibilities.

Changes in traditional Federal and State roles are expected to occur as a result of sorting out responsibilites among Federal, State, and local governments and shifting decisionmaking and responsibility for a variety of policy, budgetary, and regulatory matters to State and local governments. Implementation of this policy will give State and local governments more control over activities that may be more appropriately conducted at those levels and, as a consequence, reduce direct Federal expenditures and involvement.

With respect to living marine resources and their habitats, the sorting out of responsibilities between State and Federal governments is complex. Generally, the States have overall responsibility within their inland and coastal waters (0–3 miles from shore) for management of living marine resources with the exception of marine mammals and endangered species. NMFS has been assigned the Federal management responsibility, in partnership with the Regional Fishery Management Councils, for fishery resources in the U.S. Fishery Conservation Zone (generally 3–200 miles). However, the Magnuson Act recognizes a need for management throughout the range of the species. Moreover, many of the species of living marine resources for which NMFS is responsible spend a portion of their life cycles in habitats primarily located in State waters such as rivers, wetlands, and estuaries. Many of these common property resources cross State as well as international boundaries. Therefore, consistent with the Magnuson Act, NMFS clearly has a role with respect to certain living marine resource habitats located in State, interstate and international waters. NMFS also has a long history of cooperation and interaction with the States on State/Federal fisheries activities under number authorities other than the Magnuson Act.

Policy

Habitat conservation activities will be responsive to the mission and programs of NMFS. The goal of NMFS' habitat conservation activities will be to maintain or enhance the capability of the environment to ensure the survival of marine mammals and endangered species and to maintain fish and shellfish populations which are used, or are important to the survival and/or health of those used, by individuals and industries for both public and private benefits—jobs, recreation, safe and wholesome food and products.

NMFS will direct its habitat conservation activities to assist the Agency in (1) meeting its resource management, conservation, protection, or development responsibilities contained in the Magnuson Fishery Conservation and Management Act, the Marine Mammal Protection Act, and the Endangered Species Act; and (2) carrying out its responsibilities to the U.S. commercial and marine recreational fishing industry, including fishermen, and the States pursuant to programs carried out under other authorities.

Since most of NMFS' programs under its broad mandates are influenced by habitat considerations, habitat conservation will be considered and included in the Agency's decisionmaking in all of its programs. NMFS will bring all of its authorities to bear in habitat conservation. These authorities include those which give NMFS an active, participatory role and those, particularly the Fish and Wildlife Coordination Act, which give NMFS an advisory role.

In carrying out its programs, NMFS' activities will be conducted in a fashion designed to achieve necessary, orderly coastal development in a timely fashion, while the renewability and productivity of the Nation's living marine resources are maintained or, where possible, enhanced. This action will also benefit other wildlife resources, such as migratory birds.

Also, NMFS will use its scientific capabilities to carry out the research necessary to support its habitat conservation objectives.

Implementation

Implementation of the policy will be governed by general Federal policies such as the multiple use of coastal areas. Also, implementation will be governed by the principle that the Federal Government has an obligation to conserve the habitats of living marine resources for which it has primary management responsibility or which are the subject of NMFS program, whether such habitats are under State or Federal jurisdiction. This will require close cooperation and coordination by NMFS with other NOAA elements, Federal and State agencies, the Regional Fishery Management Councils, and the commercial and recreational fishing constituencies. It is particularly important that NMFS and the States work cooperatively to define their respective roles with each directing its habitat conservation activities according to its responsibilities and capabilities.

While this policy emphasizes NMFS' domestic habitat conservation responsibilities, it does not preclude NMFS' participation in international habitat activities in support of obligations of the U.S. under international agreements. International habitat issues will continue to be addressed on a case-by-case basis depending upon the demands of the United States under the provisions of the governing treaty or convention.

Implementation Strategies

In consultation with its Regions and Centers, NMFS' Central Office will prepare guidance for the policy implementation recognizing that each Region has unique resource and/or development issues that require flexibility in addressing particular problems. The following implementation strategies will be used.

1. Each Region, working with the appropriate Center, and the Central Office, will establish a formal planning and coordinating mechanism to implement this policy on a continuing basis. At a minimum, this mechanism will be use to: (1) Identify the living marine resources of importance and the major habitat threats to these resources; (2) enumerate the identified habitat issues in order of priority; (3) develop strategies to address these issues; and (4) oversee the integration of habitat considerations throughout all NMFS' programs. To accomplish the purposes of this planning and coordinating mechanism, NMFS will call on the Assistant Administrators of other elements of NOAA (e.g., Office of Ocean and Coastal Resource Management, Office of Oceanography and Marine Services), the States, the Regional Fishery Management Councils and others, as appropriate. The results of this mechanism will be incorporated into the objectives and subobjectives of NMFS' Strategic Plan as well as the performance contracts of its employees.

2. NMFS Research Centers will conduct environmental and ecological research, including long-term studies necessary to implement this policy. Research efforts will be coordinated with other elements of NOAA (e.g., National Ocean Service), the States and others, as appropriate. Research results will provide an integral part of the informational basis for MNFS' activities related to its conservation, management, protection, and/or development responsibilities. The needs of NMFS' decisionmakers will be the essential consideration in determining research priorities. Specific research objectives and activities will be determined through Regional and Center collaboration using the planning and coordinating mechanism described previously. Dissemination of information to the public is and will remain one of NMFS' major objectives.

3. Since the opportunities afforded by the Magnuson Act are important factors in developing and adopting this policy, in the future NMFS will rely to a greater degree on its partnership with the Regional Fishery Management Councils in habitat conservation as it affects those fisheries subject to Fishery Management Plans developed by the Councils. The Councils provide a unique mix of representatives from the commercial and recreational fishing industries, conservation groups, State and Federal Governments, and the general public. Under this partnership, NMFS will assist the Councils to the extent possible.

(a) The Regional Fishery Management Councils should address habitat considerations in their Fishery Management Plans, where applicable, based on the best available information. While threats to fishery habitat posed by sources other than fishermen are not subject to regulation under the Magnuson Act, an adequate description of the fishery, its maximum sustainable yield, or its optimum yield may require significant discussion of important habitat and threats to it.

At a minimum, Fishery Management Plans should include identification and descriptions of habitat requirements and habitats of the stock(s) comprising the management unit; assessment of the condition of these habitats, to the extent possible, as they relate to the continued abundance and distribution of the species; identification, where possible, of causes of pollution and habitat degradation; description of programs to protect, restore, preserve and enhance the habitat of stock(s) from destruction or degradation; and, where appropriate, proposal of measures intended to preserve, protect, and restore habitat determined to be necessary for the life functions of the stock(s). Failure to describe adequately the condition of the fishery habitat and any likely changes to it may raise questions under several of the national standards and under section 303(a)(1) of the Magnuson Act. Where appropriate, existing Fishery Management plans should be amended to meet these standards.

(b) NMFS must be prepared to respond to the Councils in an agreed upon time when support or information is requested. Section 304(e) of the Magnuson Act authorizes NMFS to acquire the basic knowledge necessary to meet the Councils' needs. Equally important, NMFS will establish a mechanism to systematically consider and follow up on the Councils' recommendations for habitat conservation. If Councils' recommendations are not accepted, NMFS will notify them of the reasons. If Councils' recommendations are accepted, NMFS will adopt them and keep the Councils informed on a continuing basis regarding the results of actions taken to implement the recommendations. If the Secretary does not have the authority to carry out the Councils' recommendations, the Secretary will submit the recommendations to the authorities having jurisdiction over the matter.

4. NMFS will continue to use procedures and options available under the FWCA and other advisory authorities to influence decisions about important habitats identified by NMFS. These activities will include addressing decisions regarding dredge and fill projects, OCS oil and gas development, ocean dumping, water diversion, artificial impoundments, energy facility

siting, water quality degradation, and removal or degradation of tidal and intertidal wetlands.

5. NMFS will work closely with the States, the Interstate Marine Fisheries Commissions, and the Regional Fishery Management Councils to ensure that State/Federal Fishery Management Plans and the Councils' Fishery Management Plans are fully coordinated with regard to living marine resource habitat conservation. This coordination can be served through the Coastal Zone Management, or State/Federal Action plan process which could also provide mechanisms for sharing responsibilities and costs.

6. Since other Federal, State and local agencies are involved in living marine resource habitat matters, NMFS will support existing or new interagency operating arrangements to help define and assign appropriate roles and responsibilities. These arrangements may be informal or formal.

7. NMFS will focus its freshwater habitat activities on anadromous species. This does not preclude NMFS' involvement in a freshwater project if the project could adversely affect living marine resources for which NMFS has primary management responsibility or which are the subject of a NMFS program.

8. Where possible, NMFS will become more actively involved with governmental agencies and private developers during preapplication or early planning stages. This involvement will allow NMFS to better anticipate problems, identify alternatives for achieving objectives, reduce possibility of conflict, and minimize adverse effects on living marine resources and their habitats. In the case of essential public interest projects where practical alternatives are unavailable, NMFS will recommend measures to mitigate habitat losses. Also, when appropriate, NMFS will recommend habitat enhancement measures including rehabilitation.

9. As habitat considerations are integrated across all program lines, each major program office of NMFS will review its authorizing legislation and implementing regulations in conjunction with the Office of General Counsel to determine if these adequately provide for consideration of habitat. Legislative or regulatory changes will be recommended as needed.

10. Recognizing NOAA's broad responsibilities for ocean management, NMFS will continue to cooperate with other NOAA program elements in environmental activities conducted by these elements and will emphasize those activities affecting living marine resources for which NMFS has primary responsibility. NMFS will also seek assistance from other NOAA elements with expertise in areas relating to living marine resources and their habitats.

11. During the implementation of the Federal regulatory reform processes, NMFS, particularly its Central Office, will actively review and participate in the development of evolving Federal and State laws, regulations, policies and actions (e.g., Section 404 of the Clean Water Act) that affect habitats of species for which NMFS has primary management responsibility or which are the subject of a NMFS program to ensure that habitat conservation is appropriately considered.

12. To generate greater interest in perpetuating healthy living marine resource habitats, NMFS will emphasize greater communication of its habitat conservation activities to its constituency. This includes commercial and marine recreational fishing interests, academia, environmental groups, coastal residents, marine-oriented industries, the general public, and the Congress.

Dated: November 21, 1983.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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