

loading, and unloading, should be considered where these items affect overall costs.

29. Section 101-40.303-3 is revised to read as follows:

§ 101-40.303-3 Equitable distribution of traffic among carriers.

When more than one mode of transportation or more than one carrier within a mode can provide equally satisfactory service at the same aggregate cost and all modes are equally fuel efficient, the traffic should be distributed as equally as practicable among the modes and among the carriers within the modes. When socially or economically disadvantaged carriers and women-owned carriers are among the eligible competing carriers, positive action will be taken to include such carriers in the equitable distribution of traffic.

30. Section 101-40.303-4 is revised to read as follows:

§ 101-40.303-4 Most fuel efficient mode.

When more than one mode can satisfy the service requirements of a specific shipment at the same lowest aggregate delivered cost, the mode determined to be the most fuel efficient should be selected. In determining the most fuel efficient mode, consideration should be given to such factors as use of the carrier's equipment in "turn around" service, proximity of carrier equipment to the shipping activity, and ability of carrier to provide the most direct service to the destination points.

31. Section 101-40.304 is amended by revising paragraph (a) and by removing paragraph (d) to read as follows:

§ 101-40.304 Description of property for shipment.

(a) Each shipment shall be described on the bill of lading or other shipping document as provided in the applicable tender offered to the Government by the carrier or as provided in the agreement negotiated with the carrier by the Government or in accordance with the carrier's tariff. Trade names such as "Foamite" or "Formica" or general terms such as "vehicles," "furniture," or "Government supplies," shall not, unless specifically negotiated with the carrier by the Government, be used as bill of lading descriptions.

* * * * *

§ 101-40.305-1 [Removed and Reserved]

§ 101-40.305-2 [Removed and Reserved]

32. Sections 101-40.305-1 and 101-40.305-2 are removed and reserved.

33. Section 101-40.305-3 is revised to read as follows:

§ 101-40.305-3 Negotiations by executive agencies.

Executive agencies are authorized to negotiate with carriers in establishing or modifying rates, charges, classification ratings, services, and rules or regulations for freight transportation.

34. Section 101-40.306 is revised to read as follows:

§ 101-40.306 Rate tenders to the Government.

Under the provisions of sections 10721 (rail) and 13712 (motor) of the ICC Termination Act of 1995 (49 U.S.C. 10721 and 13712), common carriers are permitted to submit tenders to the Government which contain transportation rates and/or charges for accessorial services that are lower than those published in tariffs applicable to the general public; and the Government may solicit from carriers offers to provide transportation and accessorial services at rates and/or charges lower than those published in tariffs applicable to the general public. Rate tenders may be applied to shipments made by the Government on behalf of foreign governments. In addition, rate tenders may be applied to shipments other than those made by the Government provided the total benefits accrue to the Government; that is, provided the Government pays the charges or directly and completely reimburses the party that initially pays the freight charges. (Interpretation of Government Rate Tariff for Eastern Central Motor Carriers Association, Inc., 332 I.C.C. 161 (1968).)

35. Section 101-40.306-2 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 101-40.306-2 Required shipping documents and annotations.

(a) To qualify for transportation under section 10721 or 13712, property must be shipped by or for the Government on:

* * * * *

36. Section 101-40.306-3 is revised to read as follows:

§ 101-40.306-3 Distribution.

Each agency receiving rate tenders shall promptly submit two copies (including at least one signed copy) to the General Services Administration, Office of Transportation Audits (FW), Washington, DC 20405.

37. Section 101-40.306-4 is revised to read as follows:

§ 101-40.306-4 Bill of lading endorsements.

To ensure application of Government rate tenders to all shipments qualifying for their use, bills of lading covering the shipments shall be endorsed with the

applicable tender or quotation number and carrier identification; e.g., "Section 13712 quotation, ABC Transportation Company, Tender No. 143." In addition, where commercial bills of lading are used rather than Government bills of lading, the commercial bills of lading shall be endorsed in conformance with the provisions set forth in § 101-40.306-2(a). (For specific regulations covering transportation generated under cost-reimbursement type contracts, see 48 CFR 47.104-3.)

Dated: December 17, 1996.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

[FR Doc. 97-10514 Filed 4-22-97; 8:45 am]

BILLING CODE 6820-34-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 961030300-7090-03; I.D. 120996A]

RIN 0648-AJ30

Magnuson Act Provisions; Essential Fish Habitat (EFH)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to issue regulations containing guidelines for the description and identification of essential fish habitat (EFH) in fishery management plans (FMPs), adverse impacts on EFH, and actions to conserve and enhance EFH. The regulations would also provide a process for NMFS to coordinate and consult with Federal and state agencies on activities that may adversely affect EFH. The guidelines are required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The purpose of the rule is to assist Fishery Management Councils (Councils) in fulfilling the requirements set forth by the Magnuson-Stevens Act to amend their FMPs to describe and identify EFH, minimize adverse effects on EFH, and identify other actions to conserve and enhance EFH. The coordination and consultation provisions would specify procedures for adequate consultation with NMFS on activities that may adversely affect EFH.

DATES: Written comments on the proposed rule must be received on or before May 23, 1997.

ADDRESSES: Comments should be sent to the Director, Office of Habitat Conservation, Attention: EFH, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282. Copies of the Technical Assistance Manual, previous advance notices of proposed rulemaking (ANPR), draft environmental assessment (EA) and finding of no significant impact (FONSI), and "Framework for the Description, Identification, Conservation, and Enhancement of Essential Fish Habitat" (Framework) are available. (see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Lee Crockett, NMFS, 301/713-2325.

SUPPLEMENTARY INFORMATION: A copy of the ANPRs, Framework, proposed regulation, draft EA and FONSI, and Technical Assistance Manual are available via the NMFS Office of Habitat Conservation Internet website at: <http://kingfish.ssp.nmfs.gov/rschreib/habitat.html> or by contacting one of the following NMFS Offices:

Office of Habitat Conservation,

Attention: EFH, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3282; 301/713-2325.

Northeast Regional Office, Attention: Habitat and Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930; 508/281-9328.

Southeast Regional Office, Attention: Habitat Conservation Division, 9721 Executive Center Drive North, St. Petersburg, FL 33702; 813/570-5317.

Southwest Regional Office, Attention: Habitat Conservation Division, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802; 310/980-4041.

Northwest Regional Office, Attention: Habitat Conservation Branch, 525 N.E. Oregon St., suite 500, Portland, OR 97232; 503/230-5421.

Alaska Regional Office, Attention: Protected Resources Management Division, 709 West 9th Street, Federal Bldg., room 461, P.O. Box 21668, Juneau, AK 99802-1668; 907/586-7235.

Related Documents

Concurrent with publication of this proposed rule, NMFS will make available "Technical Guidance to Implement the Essential Fish Habitat Requirements for the Magnuson-Stevens Act." This manual provides supplemental information for developing EFH recommendations and FMP amendments. The document is intended to be updated regularly as new

and innovative methods are available in habitat identification and mapping. The Technical Guidance Manual is based on and will contain similar detail to that included in the Framework. The draft manual is available for comment and may be obtained from any NMFS office listed in the **SUPPLEMENTARY INFORMATION** section.

Background

This rulemaking is required by the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq*) as reauthorized by the Sustainable Fisheries Act, signed into law on October 11, 1996. It mandates that the Secretary of Commerce (Secretary) shall, within 6 months of the date of enactment, establish guidelines by regulation to assist the Councils to describe and identify EFH in FMPs (including adverse impacts on such habitat) and to consider actions to conserve and enhance such habitat. These proposed regulations would establish a process for Councils to identify and describe EFH, including adverse impacts to that habitat, per the requirements of the Magnuson-Stevens Act. The Magnuson-Stevens Act also requires that the Secretary, in consultation with fishing participants, provide each Council with recommendations and information regarding each fishery under that Council's authority to assist it to identify EFH, the adverse impacts on that habitat, and actions that should be considered to conserve and enhance that habitat. The proposed regulation would establish procedures to carry out this mandate. Councils must submit FMP amendments containing these new provisions by October 11, 1998.

In addition, the Magnuson-Stevens Act requires that Federal agencies consult with the Secretary on any activity authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, that may adversely affect EFH. The Secretary must respond with recommendations for measures to conserve EFH. The Secretary must provide recommendations to states as well. The regulation would also establish procedures to implement these consultative requirements.

This regulation proposes to address ecosystem considerations in fishery management. Through the 1996 Magnuson-Stevens Act reauthorization, FMPs are now required to describe and identify EFH used by managed fishery resources. In addition, FMPs are required to identify actions to ensure conservation and enhancement of EFH.

In developing this rule, NMFS published two ANPRs. The first,

published in the **Federal Register** on November 8, 1996 (61 FR 57843), solicited comments to assist NMFS in developing a framework for the proposed guidelines. The second ANPR was published on January 9, 1997 (62 FR 1306). That ANPR announced the availability of the Framework. The Framework was developed to provide a detailed outline for the regulations and to serve as an instrument to solicit public comments. The document was made available to the public for comment from January 9, 1997, through February 12, 1997. During that time, NMFS held fifteen public meetings, briefings, and workshops across the nation. Eighty-eight comments were received via mail or fax, and numerous comments were received during the public meetings. NMFS considered those comments in developing the proposed regulations. In addition to the regulations, a Technical Guidance Manual is available (see **SUPPLEMENTARY INFORMATION**) to provide further details on how the Councils will identify EFH for managed species and develop amendments to their FMPs.

Relation to Other Laws

The Magnuson-Stevens Act establishes expanded requirements for habitat sections of FMPs and requires consultation between the Secretary and Federal and state agencies on activities that may adversely impact EFH for those species managed under the Act. It also requires the Federal action agency to respond to comments and recommendations made by the Secretary and Councils. For the purpose of consultation on activities that may adversely affect EFH, the description of EFH included in the FMP would be determinative of the limits of EFH. Mapping of EFH would be required in the proposed regulations to assist the public and affected parties to learn where EFH is generally located. However, due to anticipated data gaps and the dynamic nature of physical and biological habitat characteristics, maps would be used as supplementary information during the consultation process.

The Fish and Wildlife Coordination Act (FWCA) provides a mechanism for the Secretary to comment to other Federal agencies on activities affecting any living marine resources. Under the FWCA, Federal agencies are required to consult with the Secretary on habitat impacts from water development projects. The Secretary is not, however, required to consult with Federal agencies on all activities that may adversely affect habitat of managed species, nor are agencies required to

respond to Secretarial comments under the FWCA. The FWCA will continue to allow the Secretary to comment and make recommendations on Federal activities that may adversely affect living marine resources and their habitat, even if such habitat is not identified as EFH.

The Endangered Species Act (ESA) definition of "critical habitat" to describe habitats under its authority includes areas occupied by the species at the time of listing, as well as those unoccupied areas that are deemed "essential for the conservation of a species." The EFH regulations would specify that, for species listed under ESA, EFH will always include critical habitat. EFH may be broader than critical habitat if restoration of historic habitat areas is feasible, and more habitat is necessary to support a sustainable fishery. Because the statutory definition of EFH includes the full life cycle of species, including growth to maturity, EFH will also be broader than critical habitat where marine habitats have not been included in the identification of critical habitat (e.g., for anadromous salmonids listed under the ESA).

Coordination with Interested Parties

NMFS would closely coordinate the development of EFH recommendations with the appropriate Councils, fishing participants, interstate fisheries commissions, Federal agencies, state agencies, and other interested parties.

Relation Between EFH and State-Managed Waters

Many species managed under the Magnuson-Stevens Act spend some part of their life cycle in state waters (in most states 0–3 miles offshore) as well as Federal waters (generally 3–200 miles offshore). Because the statutory definition of EFH covers the entire life cycle of a species, EFH may be identified within both Federal and state waters. Therefore, the consultation provisions for activities that may adversely affect EFH may require the Secretary to consult on activities in both Federal and state waters. Councils may also comment on activities in both Federal and state waters. The requirement for Councils to institute management measures to minimize adverse effects of fishing, however, would only address those fishing activities that occur in Federal waters.

Summary of Principal Comments

The public comments focused on eight issues. A summary of these issues and the NMFS response follows.

Issue 1: Species of fish for which the Councils must describe and identify EFH. NMFS received comments suggesting that EFH should be described and identified for only those species managed by a Council in a FMP. Other interpretations suggested that "fish" includes all species inhabiting the geographic jurisdiction of a Council. The latter interpretation could include species not currently managed, but considered important by the Council. NMFS concludes that Councils should describe and identify EFH for only those species managed under an FMP. According to the Magnuson-Stevens Act, EFH can only be designated through an amendment to an FMP. The Council would not be precluded from identifying the habitat required by other species not covered in an FMP and taking steps to protect it. To the extent that such habitat requirements enhance the ecosystem approach to FMPs, the Councils would be encouraged to identify such habitat. However, those habitats of currently non-managed species would not be considered EFH.

Issue 2: Timing of the development of EFH recommendations by NMFS. Some commentors suggested that EFH for all species within a fishery management unit must be completed simultaneously. Other commentors suggested that EFH be described for only those species whose catch is a significant component of the fishery. NMFS has concluded that the law requires the Councils to identify EFH for all managed species within its jurisdiction within the Act's EFH amendment period. The Technical Guidance Manual suggests several ways that Councils may perform this task more efficiently.

Issue 3: Identification of EFH for prey species. Some comments suggested that EFH be identified for all prey species, as opposed to just the predominant prey species. Other comments suggested that identification of EFH for prey species was unnecessary because their habitat requirements are covered by the range of EFH for the managed species. NMFS has concluded that the habitat of prey species would not be included as EFH for managed species. Rather, Councils would identify the major prey species for the species managed under the FMP, and would describe the habitat of significant prey species to help in determining if there are activities that would adversely affect their habitat. This analysis would be included in the "adverse effects" section of the EFH FMP amendment, rather than the description and identification of EFH section. The Councils should consider loss of prey habitat as an adverse effect on a managed species.

Issue 4: Interpretation of what habitat is "necessary" for spawning, breeding, feeding, and growth to maturity. In the Framework, NMFS interpreted "necessary" to mean the amount of habitat needed to support a target production level which included, at a minimum, maximum sustainable yield of the fishery plus other ecological benefits such as being prey for other living marine resources. Many commentors were concerned that this connection was too narrow and suggested that either it not be included in the guidelines, thereby coupling EFH only to feeding, breeding, and growth to maturity, or expanding the definition. NMFS has concluded that the goal of linking "necessary" to production is appropriate, however, this objective has now been defined as the production necessary to support a sustainable fishery and a healthy ecosystem.

Issue 5: Intent of the EFH amendments in relation to fishing. NMFS received comments that clarification is needed regarding fishing in areas identified as EFH. NMFS has now clarified that the intent is not to preclude fishing in areas identified as EFH. Rather, the intent is to refine the Council's and NMFS' abilities to manage fishing activities by taking into account the increasing knowledge and understanding of the importance of habitat, and taking actions to minimize adverse impacts from fishing, to the extent practicable.

Many comments requested guidance on how the Councils would determine when a fishing activity has an adverse impact requiring action. NMFS has provided additional guidance on this concern by proposing to require an assessment of the impacts of all gear types used in the EFH. The assessment would consider closure areas for research to evaluate impacts. The Councils would act to prevent, mitigate, or minimize any adverse impacts from fishing, to the extent practicable, if there is evidence that a fishing practice is having a substantial adverse impact on EFH based on the assessment.

Issue 6: Interpretation of "to the extent practicable". No guidance was provided in the Framework on the exact meaning of the phrase. Some commentors expressed concern that a lack of guidance risked no additional actions being taken by Councils. Others expressed the opinion that the impacts of fishing were already known, and suggested closure areas to protect sensitive habitats. Cost-benefit analysis was also suggested. NMFS has provided additional guidance within the proposed rule. The regulation states that in determining whether minimizing an

adverse impact from fishing is practicable, Councils should consider: (1) Whether, and to what extent, the fishing activity is adversely impacting the marine ecosystem, including the managed species; (2) the nature and extent of the adverse effect on EFH; and (3) whether the cost to the fishery is reasonable.

Issue 7: NMFS' interpretation of "substrate." Commentors suggested it be modified to include artificial reefs and shipwrecks as EFH. NMFS agrees with this modification and clarifies that artificial reefs and shipwrecks could be identified as EFH.

Issue 8: Notification of projects under general concurrence. Several comments were received on general concurrences, suggesting that if no notification is required for projects that fall within a general concurrence category, NMFS would be unable to track the cumulative effects of these categories of activities. NMFS continues to state in the regulation that no notice of those actions covered by a general concurrence would be required, but only if a process is in place by the action agency to adequately assess cumulative impacts.

Comments were also received concerning opportunities for public review of general concurrences prior to final approval and implementation. Commentors were concerned that general concurrences could be established that would exempt specific activities from the consultation process without an opportunity for public review. NMFS has provided in the regulations that it would use public Council meetings, or other means, to provide opportunities for public comment on general concurrences prior to formalization. If Council review is not available, NMFS would provide other reasonable means for public review.

Compliance Requirements

While the Magnuson-Stevens Act requires Federal agencies to consult with NMFS on activities that may adversely affect EFH and respond to NMFS' recommendations, the Act did not place direct requirements for compliance with conservation and enhancement recommendations provided by NMFS. The procedures identified in the regulations however, outline a method for cooperation and coordination between agencies, and options for dispute resolution should this become necessary.

Classification

NMFS has prepared a draft environmental assessment that discusses the impact on the

environment as a result of this rule. A copy of the environmental assessment is available from NMFS (see **SUPPLEMENTARY INFORMATION**).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule would establish guidelines for Councils to identify and describe EFH, including adverse impacts, and conservation and enhancement measures. The proposed regulation requires that the Councils conduct assessments of the effects of fishing on EFH within their jurisdiction. Should Councils establish regulations on fishing as a result of the guidelines and assessments of fishing gear, that action may affect small entities and could be subject to the requirement to prepare a regulatory flexibility analysis at that time. Finally, the consultation procedures establish a process for NMFS to provide conservation recommendations to Federal and state action agencies. However, because compliance with NMFS' recommendations are not mandatory, any effects on small businesses would be speculative. As a result, a regulatory flexibility analysis for this proposed rule was not prepared. This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

For purposes of Executive Order 12612, the Assistant Administrator for Fisheries has determined that this proposed rule does not include policies that have federalism implications sufficient to warrant preparation of a Federalism Assessment. This proposed rule establishes circumstances and procedures for consultations between the states and NMFS or the Councils in situations where state action may adversely impact EFH in state waters. The proposed rule states that, in such circumstances, NMFS or the Councils would furnish the state with EFH conservation recommendations. NMFS' recommendations are not mandatory, and the states are not required to expend funds in a way not of their own choosing.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing.

Dated: April 17, 1997.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

For the reasons stated in the preamble, 50 CFR part 600 is proposed to be amended as follows:

PART 600—MAGNUSON ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 600.10 is amended by adding the definition for "Essential fish habitat", in alphabetical order, to read as follows:

§ 600.10 Definitions.

* * * * *

Essential fish habitat means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. For the purpose of interpreting the definition of essential fish habitat: "waters" includes aquatic areas and their associated physical, chemical, and biological properties that are used by fish, and may include areas historically used by fish where appropriate; "substrate" includes sediment, hard bottom, structures underlying the waters, and associated biological communities; "necessary" means the habitat required to support a sustainable fishery and a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species' full life cycle.

* * * * *

3. A new subpart is added to part 600 to read as follows:

Subpart I—Essential Fish Habitat (EFH)

Sec.

600.805 Purpose and scope.

600.810 Contents of Fishery Management Plans.

600.815 Coordination and consultation on actions that may adversely affect EFH.

§ 600.805 Purpose and scope.

(a) *Purpose.* This subpart provides guidelines for the description, identification, conservation, and enhancement of, and adverse impacts to, EFH. These guidelines provide the basis for Councils and the Secretary to use in adding the required provision on EFH to an FMP, i.e., description and identification of EFH, adverse impacts on EFH (including minimizing, to the extent practicable, adverse impacts from fishing), and other actions to conserve and enhance EFH. This subpart also

includes procedures to implement the consultation requirements for all Federal and state actions that may adversely affect EFH.

(b) *Scope.* An EFH provision in an FMP must include all fish species in the FMU. An FMP may describe, identify, and protect the habitat of species not in an FMU; however, such habitat may not be considered EFH for the purposes of sections 303(a)(7) and 305(b) of the Magnuson Act.

§ 600.810 Contents of Fishery Management Plans.

(a) *Mandatory contents*—(1) *Habitat requirements by life history stage.* FMPs must describe EFH in text and with tables that provide information on the biological requirements for each life history stage of the species. These tables should summarize all available information on environmental and habitat variables that control or limit distribution, abundance, reproduction, growth, survival, and productivity of the managed species. Information in the tables should be supported with citations.

(2) *Description and identification of EFH*—(i) *Information requirements.* (A) An initial inventory of available environmental and fisheries data sources relevant to the managed species should be useful in describing and identifying EFH. This inventory should also help to identify major species-specific habitat data gaps. Deficits in data availability (i.e., accessibility and application of the data) and in data quality (including considerations of scale and resolution; relevance; and potential biases in collection and interpretation) should be identified.

(B) To identify EFH, basic information is needed on current and historic stock size and on the geographic range of the managed species. Information is also required on the temporal and spatial distribution of each major life history stages (defined by developmental and functional shifts). Since EFH should be identified for each major life history stage, data should be collected on the distribution, density, growth, mortality, and production of each stage within all habitats occupied by the species. These data should be obtained from the best available information, including peer-reviewed literature, data reports and “gray” literature, data files of government resource agencies, and any other sources of quality information.

(C) The following approach should be used to gather and organize the data necessary for identifying EFH. Information from all levels will be useful in identifying EFH, and the goal of this procedure should be to include

as many levels of analysis as possible within the constraints of the available data. Councils should strive to obtain data sufficient to describe habitat at the highest level of detail (i.e., Level 4).

(1) *Level 1: Presence/absence distribution data are available for some or all portions of the geographic range of the species.* At this level, only presence/absence data are available to describe the distribution of a species (or life history stage) in relation to existing and potential habitats. Care should be taken to ensure that all habitats have been sampled adequately. In the event that distribution data are available for only portions of the geographic area occupied by a particular life history stage of a species, EFH can be inferred on the basis of distributions among habitats where the species has been found and on information about its habitat requirements and behavior.

(2) *Level 2: Habitat-related densities of the species are available.* At this level, quantitative data (i.e., relative densities) are available for the habitats occupied by a species or life history stage. Because the efficiency of sampling gear is often affected by habitat characteristics, strict quality assurance criteria are required to ensure that density estimates are comparable among habitats. Density data should reflect habitat utilization, and the degree that a habitat is utilized is assumed to be indicative of habitat value. When assessing habitat value on the basis of fish densities in this manner, temporal changes in habitat availability and utilization should be considered.

(3) *Level 3: Growth, reproduction, or survival rates within habitats are available.* At this level, data are available on habitat-related growth, reproduction, and/or survival by life history stage. The habitats contributing the most to productivity should be those that support the highest growth, reproduction, and survival of the species (or life history stage).

(4) *Level 4: Production rates by habitat are available.* At this level, data are available that directly relate the production rates of a species or life history stage to habitat type, quantity, quality, and location. Essential habitats are those necessary to maintain fish production consistent with a sustainable fishery and a healthy ecosystem.

(ii) *EFH determination.* (A) The information obtained through the analysis in paragraph (a)(2)(i) of this section will allow Councils to assess the relative value of habitats. Councils should apply this information in a risk-averse fashion, erring on the side of inclusiveness to ensure adequate protection for EFH of managed species.

If only Level 1 information is available, EFH is everywhere a species is found. If Levels 2 through 4 information is available, habitats valued most highly through this analysis should be considered essential for the species. However, habitats of intermediate and low value may also be essential, depending on the health of the fish population and the ecosystem.

(B) If a species is overfished or recovering from a population decline, all habitats used by the species should be considered essential in addition to certain historic habitats that are necessary to support the recovery of the population and for which restoration is feasible.

(C) EFH will always be greater than or equal to the “critical habitat” for any managed species listed as threatened or endangered under the Endangered Species Act.

(D) Where a stock of a species is considered to be healthy and sufficient information exists to determine the necessary habitat to support the target production goal, then EFH for a species should be a subset of all existing habitat for the species.

(E) Ecological relationships among species, and between the species and their habitat, require, where possible, that an ecosystem approach be used in determining the EFH of a managed species or species assemblage. The extent of the EFH should be based on the judgment of the Secretary and the appropriate Council(s) regarding the quantity and quality of habitat that is necessary to maintain a managed species or species assemblage at a target production goal that supports a sustainable fishery and a healthy ecosystem. Councils must establish target production goals for the fish species in the FMU of an FMP as a goal of the FMP. In determining a target production goal that supports a sustainable fishery and a healthy ecosystem, the Secretary and the appropriate Council(s) should consider: the prey requirements of the managed species; the extent to which the managed species is prey for other managed species or marine mammals; the production necessary to support a sustainable fishery; and other ecological functions provided by the managed species. If degraded or inaccessible habitat has contributed to the reduced yields of a species or assemblage, and in the judgment of the Secretary and the appropriate Council(s), the degraded conditions can be reversed through such actions as improved fish passage techniques (for fish blockages), improved water quality or quantity measures (removal of contaminants or

increasing flows), and similar measures that are feasible, then EFH should include those habitats that would be essential to the species to obtain increased yields.

(iii) *EFH Mapping Requirements.* The general distribution and geographic limits of EFH for each life history stage should be presented in FMPs in the form of maps. Ultimately, these data should be incorporated into a geographic information system (GIS) to facilitate analysis and presentation. These maps may be presented as fixed in time and space but they should encompass all appropriate temporal and spatial variability in the distribution of EFH. If the geographic boundaries of EFH change seasonally, annually, or decadal, these changing distributions should be represented in the maps. Different types of EFH should be identified on maps along with areas used by different life history stages of the species. The type of information used to identify EFH should be included in map legends, and more detailed and informative maps should be produced as more complete information about population responses (e.g., growth, survival, or reproductive rates) to habitat characteristics becomes available. Where the present distribution or stock size of a species or life history stage is different from the historical distribution or stock size, then maps of historical habitat boundaries should be included in the FMP, if known. The EFH maps are a means to visually present the EFH described in the FMP. If the maps and information in the description of EFH varies, the description is ultimately determinative of the limits of EFH.

(3) *Non-fishing related activities that may adversely affect EFH—(i) Identification of adverse effects.* FMPs must identify activities that have potential adverse effects on EFH quantity and quality. Broad categories of activities may include, but are not limited to: dredging, fill, excavation, mining, impoundment, discharge, water diversions, thermal additions, runoff, placement of contaminated material, introduction of exotic species, and the conversion of aquatic habitat that may eliminate, diminish, or disrupt the functions of EFH. If known, an FMP should describe the EFH most likely to be affected by these activities. For each activity, the FMP should describe the known or potential impacts to EFH. These descriptions should explain the mechanisms or processes that cause expected deleterious effects and explain the known or potential impacts on the habitat function.

(ii) *Cumulative impacts analysis.* To the extent practicable, FMPs should identify and describe those activities that can influence habitat function on an ecosystem or watershed scale. This analysis should include a description of the ecosystem or watershed, the role of the managed species in the ecosystem or watershed, and the impact on the ecosystem or watershed of removal of the managed species. An assessment of the cumulative and synergistic effects of multiple threats, including natural adverse effects (such as storm damage or climate-based environmental shifts), and an ecological risk assessment of the managed species' habitat should also be included. For the purposes of this analysis, cumulative impacts are impacts on the environment that result from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions, regardless of who undertakes such actions. Cumulative impacts can result from individually minor, but collectively significant actions taking place over a period of time.

(iii) *Mapping adverse impacts.* The use of a GIS or other mapping system to analyze and present these data in an FMP is suggested for documenting impacts identified under paragraph (a)(3)(i) of this section and required when the analysis in paragraph (a)(3)(ii) of this section is conducted.

(iv) *Conservation and enhancement.* FMPs should include options to minimize the adverse effects identified pursuant to paragraphs (a)(3)(i) and (ii) of this section and identify conservation and enhancement measures. Generally, non-water dependent actions should not be located in EFH. Actions not in EFH but that may result in significant adverse effects on EFH should be avoided if less environmentally harmful alternatives are available. If there is no alternative, these actions should be minimized. If avoidance and minimization will not adequately protect EFH, mitigation to conserve and enhance EFH will be recommended. These recommendations may include, but are not limited to:

(A) *Avoidance and minimization of adverse impacts on EFH.* Environmentally sound engineering and management practices (e.g., seasonal restrictions, dredging methods, and disposal options) should be employed for all dredging and construction projects. Disposal of contaminated dredged material, sewage sludge, industrial waste or other materials in EFH should be avoided. Oil and gas exploration, production, transportation, and refining activities in EFH should be

avoided, where possible, and minimized and mitigated if unavoidable.

(B) *Restoration of riparian and shallow coastal areas.* Restoration measures may include: Restoration of functions of riparian vegetation by reestablishing endemic trees or other appropriate native vegetation; restoration of natural bottom characteristics; removal of unsuitable material from areas affected by human activities; and replacement of suitable gravel or substrate to stream areas for spawning.

(C) *Upland habitat restoration.* This may include measures to control erosion, stabilize roads, upgrade culverts or remove dikes or levees to allow for fish passage, and the management of watersheds.

(D) *Water quality.* This includes use of best land management practices for ensuring compliance with water quality standards at state and Federal levels, improved treatment of sewage, and proper disposal of waste materials.

(E) *Watershed analysis and subsequent watershed planning.* This should be encouraged at the local and state levels. This effort should minimize depletion/diversion of freshwater flows into rivers and estuaries, destruction/degradation of wetlands, and restoration of native species, and should consider climate changes.

(F) *Habitat creation.* Under appropriate conditions, habitat creation may be considered as a means of replacing lost EFH. However, habitat creation at the expense of other naturally functioning systems must be justified (e.g., marsh creation with dredge material placed in shallow water habitat).

(4) *Fishing activities that may adversely affect EFH.—(i)* Adverse effects from fishing may include physical disturbance of the substrate, and loss of and injury to, benthic organisms, prey species and their habitat, and other components of the ecosystem.

(ii) FMPs must include management measures that minimize adverse effects on EFH from fishing, to the extent practicable, and identify conservation and enhancement measures. The FMP must contain an assessment of the potential adverse effects of all fishing gear types used in waters described as EFH. Included in this assessment should be consideration of the establishment of research closure areas and other measures to evaluate the impact of any fishing activity that physically alters EFH.

(iii) Councils must act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent

practicable, if there is evidence that a fishing practice is having a substantial adverse effect on EFH, based on the assessment conducted pursuant to paragraph (a)(4)(ii).

(iv) In determining whether it is practicable to minimize an adverse effect from fishing, Councils should consider whether, and to what extent, the fishing activity is adversely impacting the marine ecosystem, including the fishery; the nature and extent of the adverse effect on EFH; and whether the benefit to the EFH achieved by minimizing the adverse effect justifies the cost to the fishery.

(5) *Options for managing adverse effects from fishing.* Fishing management options may include, but are not limited to:

(i) *Fishing gear restrictions.* These options may include, but are not limited to: limit seasonal and areal uses of trawl gear and bottom longlines; restrict net mesh sizes, traps, and entanglement gear to allow escapement of juveniles and non-target species; reduce fish and shellfish traps set near coral reefs and other hard bottoms; limit seasonal and areal uses of dredge gear in sensitive habitats; prohibit use of explosives and chemicals; restrict diving activities that have potential adverse effects; prohibit anchoring of fishing vessels in coral reef areas and other sensitive areas; and prohibit fishing activities that cause significant physical damage in EFH.

(ii) *Time/area closures.* These actions may include, but are not limited to: closing areas to all fishing or specific gear types during spawning, migration, foraging and nursery activities; and designating zones to limit effects of fishing practices on certain vulnerable or rare areas/species/life history stages.

(iii) *Harvest limits.* These actions may include, but are not limited to, limits on the take of species that provide structural habitat for other species assemblages or communities and limits on the take of prey species.

(6) *Prey species.* Loss of prey is an adverse effect on a managed species and its EFH; therefore, FMPs should identify the major prey species for the species in the FMU and generally describe the location of prey species' habitat and the threats to that habitat. Adverse effects on prey species may result from fishing and non-fishing activities.

(7) *Identification of vulnerable habitat.* FMPs should identify vulnerable EFH. In determining whether a type of EFH is vulnerable, Councils should consider:

(i) The extent to which the habitat is sensitive to human-induced environmental degradation.

(ii) Whether, and to what extent, development activities are, or will be, stressing the habitat type.

(iii) The rarity of the habitat type.

(8) *Research and information needs.* Each FMP should contain recommendations, preferably in priority order, for research efforts that the Councils and NMFS view as necessary for carrying out their EFH management mandate. The need for additional research is to make available sufficient information to support a higher level of description and identification of EFH under paragraph (a)(2)(i) of this section. Additional research may also be necessary to identify and evaluate actual and potential adverse effects on EFH, including, but not limited to direct physical alteration; impaired habitat quality/functions; or indirect adverse effects such as sea level rise, global warming and climate shifts; and non-gear fishery impacts. The Magnuson-Stevens Act specifically identifies the effects of fishing as a concern. The need for additional research on the effects of fishing gear on EFH should be included in this section of the FMP. If an adverse effect is identified and determined to be an impediment to reaching target long-term production levels, then the research needed to quantify and mitigate that effect should be identified in this section.

(9) *Review and revision of EFH components of FMPs.* Each Council and NMFS are expected to periodically review the EFH components of FMPs. Each EFH FMP amendment should include a provision requiring review and update of EFH information and preparation of a revised FMP amendment if new information becomes available. The schedule for this review should be based on an assessment of both the existing data and expectations when new data will become available. Such a review of information should be conducted as recommended by the Secretary, but at least once every five years.

(b) *Optional components.* An FMP may include a description and identification of, and contain management measures to protect, the habitat of species under the authority of the Council, but not contained in the FMU. However, such habitat may not be considered EFH.

(c) *Development of EFH recommendations.* After reviewing the best available scientific information, and in cooperation with the Councils, participants in the fishery, interstate commissions, Federal agencies, state agencies, and other interested parties, NMFS will develop written recommendations for the identification

of EFH for each FMP. Prior to submitting a written EFH identification recommendation to a Council for an FMP, the draft recommendation will be made available for public review and at least one public meeting will be held. NMFS will work with the affected Council(s) to conduct this review in association with scheduled public Council meetings whenever possible. The review may be conducted at a meeting of the Council committee responsible for habitat issues or as a part of a full Council meeting. After receiving public comment, NMFS will revise its draft recommendations, as appropriate, and forward written recommendation and comments to the Council(s).

§ 600.815 Coordination and consultation on actions that may adversely affect EFH.

(a) *General—(1) Scope.* One of the greatest long-term threats to the viability of the Nation's fisheries is the decline in the quantity and quality of marine, estuarine, and other riparian habitats. These procedures address the coordination and consultation requirements of sections 305(b)(1)(D) and 305(b)(2-4) of the Magnuson-Stevens Act. The consultation requirements of the Magnuson-Stevens Act provide that: Federal agencies must consult with the Secretary on all actions, or proposed actions, authorized, funded, or undertaken by the agency, that may adversely affect EFH; and the Secretary and the Councils provide recommendations to conserve EFH to Federal or state agencies. EFH conservation recommendations are measures recommended by the Councils or NMFS to a Federal or state agency to conserve EFH. Such recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH resulting from actions or proposed actions authorized, funded, or undertaken by that agency. The coordination section requires the Secretary to coordinate with, and provide information to, other Federal agencies regarding EFH. These procedures for coordination and consultation allow all parties involved to understand and implement the consultation requirements of the Magnuson-Stevens Act.

(2) *Coordination with other environmental reviews.* Consultation and coordination under sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act may be consolidated, where appropriate, with interagency coordination procedures required by other statutes, such as the National Environmental Policy Act, the Fish and Wildlife Coordination Act, the

Clean Water Act, Endangered Species Act, and the Federal Power Act, to reduce duplication and improve efficiency. For example, a Federal agency preparing an environmental impact statement (EIS) need not duplicate sections of that document in a separate EFH assessment, provided the EIS specifically and fully evaluates the effects of the proposed action on EFH, notes that it is intended to function as an EFH assessment, is provided to NMFS for review, and meets the other requirements for an EFH assessment contained in this section. NMFS comments on these documents will also function as its response required under section 305(b)(4) of the Magnuson-Stevens Act.

(3) *Designation of Lead Agency.* If more than one Federal or state agency is involved in an action (e.g., authorization is needed from more than one agency), the consultation requirements of sections 305(b)(2–4) of the Magnuson-Stevens Act may be fulfilled through a lead agency. The lead agency must notify NMFS in writing that it is representing one or more additional agencies.

(4) *Conservation and enhancement of EFH.* To further the conservation and enhancement of EFH, in accordance with section 305(b)(1)(D) of the Magnuson-Stevens Act, NMFS will compile and make available to other Federal and state agencies information on the locations of EFH, including maps and/or narrative descriptions. Federal and state agencies empowered to authorize, fund, or undertake actions that could adversely affect EFH should contact NMFS and the Councils to become familiar with the designated EFH, and potential threats to EFH, as well as opportunities to promote the conservation and enhancement of such habitat.

(b) *Council comments and recommendations to Federal and state agencies—(1) Establishment of procedures.* Each Council should establish procedures for reviewing activities, or proposed activities, authorized, funded, or undertaken by state or Federal agencies that may affect the habitat, including EFH, of a species under its authority. Each Council may identify activities of concern by: directing Council staff to track proposed actions; recommending that the Council's habitat committee identify activities of concern; entering into an agreement with NMFS to have the appropriate Regional Director notify the Council of activities that may adversely impact EFH; or by similar procedures. Federal and state actions often follow specific timetables which may not

coincide with Council meetings. Councils should consider establishing abbreviated procedures for the development of Council recommendations.

(2) *Early involvement.* Councils should provide comments and recommendations on proposed state and Federal activities of interest as early as practicable in project planning to ensure thorough consideration of Council concerns by the action agency.

(3) *Coordination with NMFS.* The Secretary will develop agreements with each Council to facilitate sharing information on actions that may adversely affect EFH and in coordinating Council and NMFS responses to those actions.

(4) *Anadromous fishery resources.* For the purposes of the consultation requirement of section 305(b)(3)(B) of the Magnuson-Stevens Act, an anadromous fishery resource under a Council's authority is an anadromous species where some life stage inhabits waters under the Council's authority.

(c) *Federal agency consultation—(1) Interagency coordination.* Both Federal and state agencies are encouraged to coordinate their actions with NMFS to facilitate the early identification of potential adverse effects on EFH. This will allow consideration of measures to conserve and enhance EFH early in the project design. The consultation requirements of sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act differ for Federal and state agencies. Only Federal agencies have a mandatory statutory requirement to consult with NMFS regarding actions that may adversely affect EFH, pursuant to section 305(b)(2) of the Magnuson-Stevens Act. NMFS is required under section 305(b)(4) to provide EFH recommendations regarding both state and Federal agency actions that could adversely affect EFH (see § 600.810(a)(3) for further guidance on actions that could adversely affect EFH). Both Federal and state agencies are encouraged to develop agreements (or modify existing agreements) with NMFS to meet the consultation requirements in a manner to increase efficiency and to fully meet the requirements of the EFH provisions.

(2) *Designation of non-Federal representative.* A Federal agency may designate a non-Federal representative to conduct an abbreviated consultation or prepare an EFH assessment by giving written notice of such designation to NMFS. If a non-Federal representative is used, the Federal action agency remains ultimately responsible for compliance with sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act.

(3) *General Concurrence—(i) Purpose.* The General Concurrence process identifies specific types of Federal actions that may adversely affect EFH, but for which no further consultation is generally required because NMFS has determined, through an analysis of that type of action, that it will likely result in minimal adverse effects individually and cumulatively. General Concurrences may be national or regional in scope.

(ii) *Criteria.* (A) For Federal actions to qualify for General Concurrence, NMFS must determine, after consultation with the appropriate Council(s), that the actions meet all of the following criteria:

(1) The actions must be similar in nature and similar in their impact on EFH.

(2) The actions must not cause greater than minimal adverse effects on EFH when implemented individually.

(3) The actions must not cause greater than minimal cumulative adverse effects on EFH.

(B) Categories of Federal actions may also qualify for General Concurrence if they are modified by appropriate conditions that ensure the actions will meet the criteria in paragraph (c)(3)(ii)(A) of this section. For example, NMFS may provide General Concurrence for additional actions contingent upon project size limitations, seasonal restrictions, or other conditions.

(iii) *General Concurrence development.* A Federal agency may request a General Concurrence for a category of its actions by providing NMFS with a written description of the nature and approximate number of the proposed actions, an analysis of the effects of the actions on EFH and associated species and their life history stages, including cumulative effects, and the Federal agency's conclusions regarding the magnitude of such effects. If NMFS agrees that the actions fit the criteria in paragraph (c)(3)(ii) of this section, NMFS, in consultation with the Council(s), will provide the Federal agency with a written statement of General Concurrence that further consultation is not required, and that preparation of EFH assessments for individual actions subject to the General Concurrence is not necessary. If NMFS determines that individual actions that fall within the General Concurrence would adversely affect EFH, NMFS will notify the Federal agency that abbreviated or expanded consultation is required. If NMFS identifies specific types of Federal actions that may meet the requirements for a General Concurrence, NMFS may initiate and complete a General Concurrence.

(iv) *Notification and further consultation.* NMFS may request notification for activities covered under a General Concurrence if NMFS concludes there are circumstances under which such activities could result in more than a minimal impact on EFH, or if it determines that there is not a process in place to adequately assess the cumulative impacts of activities covered under the General Concurrence. NMFS may require further consultation for these activities on an individual action. Each General Concurrence should establish specific procedures for further consultation.

(v) *Public review.* Prior to providing a Federal agency with a written statement of General Concurrence for a category of Federal actions, NMFS will provide an opportunity for public review through the appropriate Council(s), or other reasonable opportunity for public review.

(vi) *Revisions to General Concurrences.* NMFS will periodically review and revise its findings of General Concurrence, as appropriate.

(4) *EFH Assessments—(i) Preparation requirement.* Federal agencies (or designated non-Federal representatives) must complete an EFH assessment for any action that may adversely affect EFH, except for those activities covered by a General Concurrence. Where appropriate, Federal agencies may combine requirements for environmental documents such as Endangered Species Act Biological Assessments pursuant to 50 CFR part 402 or National Environmental Policy Act documents and public notices pursuant to 40 CFR part 1500, with their EFH Assessment. This document must include all of the information required in paragraph (c)(4)(ii) of this section and the requirements for other applicable environmental documents to be considered a complete assessment.

(ii) *Mandatory contents.* The assessment must contain:

(A) A description of the proposed action.

(B) An analysis of the effects, including cumulative effects, of the proposed action on EFH and the managed and associated species, including their life history stages.

(C) The Federal agency's conclusions regarding the effects of the action on EFH.

(iii) *Additional information.* If appropriate, the assessment should also include:

(A) The results of an on-site inspection to evaluate the habitat and the site-specific effects of the project.

(B) The views of recognized experts on the habitat or species that may be affected.

(C) A review of pertinent literature and related information.

(D) An analysis of alternatives to the proposed action, including alternatives that could avoid or minimize adverse effects on EFH.

(E) Proposed mitigation.

(F) Other relevant information.

(iv) *Incorporation by reference.* The assessment may incorporate by reference a completed EFH Assessment prepared for a similar action, supplemented with any relevant new project specific information, provided the proposed action involves similar impacts to EFH in the same geographic area or a similar ecological setting. It may also incorporate by reference other relevant environmental assessment documents. These documents must be provided to NMFS.

(5) *Abbreviated consultation procedures—(i) Purpose.* Abbreviated consultation allows NMFS to quickly determine whether, and to what degree, a Federal agency action may adversely affect EFH. The abbreviated consultation process is appropriate for Federal actions that would adversely affect EFH when, in NMFS' judgment, the adverse effect(s) of such actions could be alleviated through minor modifications to the proposed action.

(ii) *Notification by agency.* The Federal agency must notify NMFS and the appropriate Council in writing as early as practicable regarding proposed actions that may adversely affect EFH. Notification will facilitate discussion of measures to conserve the habitat. Such early consultation must normally occur during pre-application planning for projects subject to a Federal permit or license, and during preliminary planning for projects to be funded or undertaken directly by a Federal agency.

(iii) *Submittal of EFH Assessment.* The Federal agency must submit a completed EFH assessment to NMFS for review in accordance with paragraph (c)(4) of this section. If either the Federal agency or NMFS believes expanded consultation will be necessary, the Federal agency must initiate expanded consultation concurrently with submission of the EFH Assessment. Federal agencies will not have fulfilled their consultation requirement under paragraph (a)(1) of this section until timely notification and submittal of a complete EFH Assessment.

(iv) *NMFS response.* NMFS must respond in writing as to whether it concurs with the findings of the assessment. NMFS' response shall

indicate whether expanded consultation is required. If additional consultation is not necessary, NMFS' response must include any necessary EFH conservation recommendations to be used by the Federal action agency. NMFS will send a copy of its response to the appropriate Council.

(v) *Timing.* The Federal action agency must submit its complete EFH Assessment to NMFS as soon as practicable, but at least 60 days prior to a final decision on the action, and NMFS must respond in writing within 30 days. If notification and the EFH Assessment are combined with other environmental reviews required by statute, then the statutory deadline for those reviews apply to the submittal and response. If NMFS and the Federal action agencies agree, a compressed schedule will be used in cases where regulatory approvals cannot accommodate 30 days for consultation, or to conduct consultation earlier in the planning cycle for proposed actions with lengthy approval processes.

(6) *Expanded consultation procedures—(i) Purpose.* Expanded consultation is appropriate for Federal actions that would result in substantial adverse effects to EFH and/or require more detailed analysis to enable NMFS to develop EFH conservation recommendations.

(ii) *Initiation.* Expanded consultation begins when NMFS receives a written request from a Federal action agency to initiate expanded consultation. The Federal action agency's written request must include a completed EFH Assessment in accordance with paragraph (c)(4) of this section. Because expanded consultation is required for activities that may potentially have substantial adverse impacts on EFH, Federal action agencies are encouraged to provide the additional information identified under paragraph (c)(4)(iii) of this section. Subject to NMFS's approval, any request for expanded consultation may encompass a number of similar individual actions within a given geographic area.

(iii) *NMFS response.* NMFS will:

(A) Review the EFH Assessment, any additional information furnished by the Federal agency, and other relevant information.

(B) Conduct a site visit, if appropriate, to assess the quality of the habitat and to clarify the impacts of the Federal agency action.

(C) Evaluate the effects of the action on EFH, including cumulative effects.

(D) Coordinate its review of the proposed action with the appropriate Council.

(E) Formulate EFH conservation recommendations and provide the recommendations to the Federal action agency and the appropriate Council.

(iv) *Timing.* The Federal action agency must submit its complete EFH Assessment to NMFS as soon as practicable, but at least 120 days prior to a final decision on the action, and NMFS must conclude expanded consultation within 90 days of submittal of a complete Assessment unless extended by NMFS with notification to the Federal action agency. If notification and the EFH Assessment are combined with other statutorily required environmental reviews, then the statutory deadlines for those reviews apply to the submittal and response. NMFS and Federal action agencies may agree to use a compressed schedule in cases where regulatory approvals cannot accommodate a 60 day consultation period.

(v) *Best scientific information.* The Federal action agency must provide NMFS with the best scientific information available, or reasonably accessible during the consultation, regarding the effects of the proposed action on EFH.

(vi) *Extension of consultation.* If NMFS determines that additional data or analysis would provide better information for development of EFH conservation recommendations, NMFS may request additional time for its expanded consultation. If NMFS and the Federal action agency agree to an extension, the Federal action agency must provide the additional information to NMFS, to the extent practicable. If NMFS and the Federal action agency do not agree to extend consultation, NMFS must provide EFH conservation recommendations to the Federal action agency using the best scientific data available to NMFS.

(7) *Responsibilities of Federal action agency following receipt of EFH conservation recommendations—(i) Federal action agency response.* Within 30 days after receiving an EFH conservation recommendation (or at least 10 days prior to final approval of the action, if a decision by the Federal agency is required in less than 30 days), the Federal action agency must provide a detailed response in writing to NMFS and the appropriate Council. The response must include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH. In the case of a response that is inconsistent with the recommendations of NMFS, the Federal action agency must explain its reasons for not following the recommendations, including the

scientific justification for any disagreements with NMFS over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects.

(ii) *Dispute resolution.* After receiving a Federal action agency response that is inconsistent with the recommendations of NMFS, the Assistant Administrator may request a meeting with the head of the Federal action agency, as well as any other agencies involved, to discuss the proposed action and opportunities for resolving any disagreements. Memoranda of agreement with Federal action agencies will be sought to further define such dispute resolution processes.

(8) *Supplemental consultation.* A Federal action agency must resume consultation with NMFS following either abbreviated or expanded consultation if the agency substantially revises its plans for the action in a manner that may adversely affect EFH or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations. Additionally, where Federal oversight, involvement, or control over the action has been retained or is authorized by law, the Federal action agency must resume consultation if new EFH is designated that may be adversely affected by the agency's exercise of its authority.

(d) *NMFS recommendations to state agencies—(1) Establishment of Procedures.* Each Region should establish procedures for identifying actions or proposed actions authorized, funded, or undertaken by state agencies that may adversely affect EFH, and for identifying the most appropriate method for providing EFH conservation recommendations to the state agency.

(2) *Coordination with Federal consultation procedures.* When an activity that may adversely affect EFH requires authorization or funding by both Federal and state agencies, NMFS will provide the appropriate state agencies with copies of EFH conservation recommendations developed as part of the Federal consultation procedures in paragraph (c) of this section.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970415091-7091-01; I.D. 033197D]

RIN 0648-AJ88

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper Grouper Fishery Off the Southern Atlantic States; Black Sea Bass Pot Fishery; Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: This notice announces that the South Atlantic Fishery Management Council (Council) is considering whether there is a need to impose additional management measures limiting entry into the commercial pot fishery for black sea bass in the exclusive economic zone (EEZ) off the southern Atlantic states, and, if there is a need, what management measures should be imposed. If the Council determines that there is a need to impose additional management measures, it may initiate a rulemaking to do so. Possible measures include the establishment of a limited entry program to control participation or effort in the commercial pot fishery for black sea bass. If a limited entry program is established, the Council is considering [insert date of publication in the Federal Register], as a possible control date. Consideration of a control date is intended to discourage new entry into the fishery based on economic speculation during the Council's deliberation on the issues.

DATES: Comments must be submitted by May 23, 1997.

ADDRESSES: Comments should be directed to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; Fax: 803-769-4520.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, 813-570-5305.

SUPPLEMENTARY INFORMATION: The black sea bass fishery in the EEZ off the southern Atlantic states is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the Council and is implemented through regulations at 50