



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

November 29, 2002

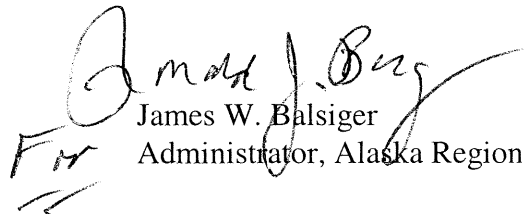
David Benton, Chairman
North Pacific Fishery Management Council
605 West 4th Street, Suite 305
Anchorage, Alaska 99501-2252

Dear Dave,

During its October meeting, the Council adopted a problem statement and criteria to guide the development of the Essential Fish Habitat (EFH) Environmental Impact Statement (EIS). As you may recall, NOAA General Counsel expressed concern that some of the specific language in the draft problem statement and criteria did not directly comport with similar provisions in the EFH regulations. The Council decided to include language in the problem statement that stresses the need for compliance with the Magnuson-Stevens Act, as well as language stating that the criteria would only be addressed as practicable. Given those caveats, NOAA General Counsel advised that the problem statement and criteria were legally acceptable. Their rationale was that the modifying language did not bind the Council to address more than the required factors, and that adoption of a problem statement and criteria by the Council cannot supercede the applicable statutory and regulatory requirements for the EIS. Nevertheless, inconsistencies between the Council's language and the applicable regulations could lead to confusion for the public as well as the staff preparing the EIS.

To reduce the potential for misunderstandings, the National Marine Fisheries Service recommends that the Council either drop the problem statement and criteria or modify them to be fully consistent with the Magnuson-Stevens Act and the EFH regulations. We will be prepared to suggest alternative language during the December Council meeting.

Sincerely,


James W. Balsiger
Administrator, Alaska Region



November 29, 2002

Jon Kurland

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cc: Records

Cindy Hartmann

Jon Kurland

John Lepore