U.S. DEPARTMENT OF COMMERCE/NOAA
NATIONAL MARINE FISHERIES SERVICE
SILVER SPRING, MARYLAND

FINAL ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT FOR MAGNUSON-STEVENS ACT PROVISIONS; ESSENTIAL FISH HABITAT (EFH)

[62 FR pages 66531-66559, December 19, 1997]

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EXECUTIVE SUMMARY

This Environmental Assessment (EA) addresses the National Environmental Policy Act (NEPA) requirements for the National Marine Fisheries Service (NMFS)'s regulations containing guidelines and procedures to implement the essential fish habitat (EFH) requirements of the Magnuson-Stevens Act as reauthorized and amended by the Sustainable Fisheries Act.

The purpose of the regulations (Appendix E) is to assist Fishery Management Councils (Councils) in fulfilling the Magnuson-Stevens Act requirements to amend their Fishery Management Plans (FMPs) to address EFH considerations. The regulations contain guidelines for the description and identification of essential fish habitat (EFH), including adverse impacts on EFH, and consideration of actions to conserve and enhance EFH. The regulations also establish processes for coordination and consultation between NMFS, the Councils, and Federal and state agencies on activities that may adversely affect EFH.

Three alternatives were considered during the preparation of the new regulations. The Preferred Alternative will implement the EFH regulations for those species managed under a FMP. Implementation of this alternative will result in improved conservation of habitat essential to those managed species, and will benefit the fish populations and the commercial and recreational fisheries associated with the managed species. Whereas, the No Action Alternative would not implement the EFH provisions of the Act, and therefore would not result in improved conservation and management of habitat essential to the nation's marine fisheries. The third alternative considered would implement the EFH regulations for all species occurring in the Exclusive Economic Zone. This alternative would be beyond the capability of NMFS and the Councils to implement given current staffing and funding, and therefore could not be relied upon to result in improved fish habitat conservation.

1.0 PURPOSE AND NEED

1.1 Need

Living marine resources constitute valuable and renewable natural resources. Fishery resources contribute to the food supply, economy, welfare, and health of the nation and provide recreational opportunities. Fishing, both commercial and recreational, is a major source of employment and contributes significantly to the economy of the nation. Currently, certain stocks of fish have declined to the point where their survival is threatened. Other stocks of fish have been so substantially reduced in number that they could become similarly threatened as a consequence of increased fishing pressure, the inadequacy of fishery resource conservation and management practices and controls, or habitat losses that have resulted in a diminished capacity to support existing fishing levels. A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to ensure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation's fishery resources. Congress addressed these fish habitat needs via the EFH provisions of the Magnuson-Stevens Act.

1.2 Purpose

The Magnuson-Stevens Act requires the Councils, by October 11, 1998, to submit to the Secretary of Commerce (Secretary) FMP amendments with information on EFH, including the identification of adverse impacts on EFH, and measures that may be taken to conserve and enhance EFH. Any new FMPs submitted for approval to the Secretary after October 11, 1998 must also contain EFH information. The Councils are directed to minimize, to the extent practicable, the adverse impacts of fishing on EFH. The Councils are also directed to make recommendations, to Federal and state agencies whose actions affect EFH, that will enable those agencies to conserve EFH. NMFS is required to provide guidance by regulation to the Councils on how to describe and identify EFH. NMFS is also required to provide EFH conservation recommendations to Federal and state agencies whose actions may adversely affect EFH. Federal agencies are directed to consult with NMFS for any action that may adversely affect EFH, and to respond in writing to any EFH conservation recommendation provided by NMFS or a Council.

The purpose of the EFH regulations is to advise the Councils, as required by the Magnuson-Stevens Act, on how to identify, conserve, and enhance EFH. The regulations also set forth how NMFS will meet the requirement to recommend conservation and enhancement measures to Federal or state agencies whose actions could adversely affect EFH. Furthermore, the regulations describe how Federal agencies should use existing consultation procedures or the consultation procedures described in the regulation to fulfill the requirement that Federal agencies consult with NMFS with respect to actions that may adversely affect EFH.

2.0 BACKGROUND

2.1 The Magnuson Fishery Conservation and Management Act

The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801-1882; Pub. L. 94-265, as amended; also known as the Magnuson Act) was signed into law on April 13, 1976, after several years of debate on the merits of, and various approaches to, extended fisheries jurisdiction. On March 1, 1977, fisheries resources within 200 miles of all U.S. coasts (later know as the Exclusive Economic Zone, or EEZ) came under Federal jurisdiction, and a multifaceted regional management system began allocating harvesting

rights, with priority given to domestic enterprises. Exclusive Federal management authority was vested in NMFS.

Under provisions of the Magnuson Act, eight Regional Fishery Management Councils were established for the New England, Mid-Atlantic, South Atlantic, Caribbean, Gulf of Mexico, Pacific, Western Pacific, and North Pacific regions. Regulations relating to Regional Council activities and operations are published in 50 CFR Parts 600.105 - 130 and 600.205 - 245. The eight Councils prepare FMPs in conformance with national standards published in 50 CFR Part 600.305 - 340. An environmental assessment or environmental impact statement is prepared for every FMP. After public hearings and NEPA review, revised FMPs and draft regulations are submitted to the Secretary for approval. Regulations are published in the Federal Register to implement approved plans. Completed plans may be amended and revised through similar procedures. Currently, there are 39 FMPs for various fish and shellfish resources, with additional plans in various stages of development (see appendices D and E). Some plans are created for individual or a few closely related species (e.g., FMPs for red drum, northern anchovy, shrimp). Others are developed for larger species assemblages inhabiting similar habitat (e.g., FMPs for Gulf of Alaska groundfish, reef fish). Many of the implemented plans have undergone subsequent amendment, and some have been developed and implemented jointly by two Councils. In addition, Pub. L. 101-627 amended the Magunson Act to give the Secretary the responsibility for preparing FMPs for Atlantic highly migratory species, such as sharks, billfish, and tuna. The regulations implementing individual FMPs are published in 50 CFR Parts 625 through 685.

The Magnuson Act, as amended through November 28, 1990, contained limited language on fishery habitats. Section 303 (a)(7) required that each FMP include readily available information regarding the significance of habitat to the fishery, and an assessment of the effects of changes to that habitat upon the fishery. Section 302(i) provided that each Council may comment on and make recommendations concerning any activity undertaken, or proposed to be undertaken, by a state or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction. Section 302(i) also required that each Council comment on and make recommendations concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat of an anadromous fishery resource under its jurisdiction. The Magnuson Act further mandated that within 45 days after receiving a comment or recommendation from a Council, a Federal agency had to provide a detailed response, in writing, to the Council regarding the matter.

The Magnuson Act was renamed the Magnuson-Stevens Act in a 1996 appropriations bill.

2.2 The Sustainable Fisheries Act Amendments to the Magnuson-Stevens Act

The Sustainable Fisheries Act, which amended the Magnuson-Stevens Act, was signed into law on October 11, 1996. Provisions related to fishery habitat include a mandate that the Councils shall, by October 11, 1998, amend each FMP to include a description of EFH (defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity), including adverse impacts on EFH, and actions that may be taken to conserve EFH. The Magnuson-Stevens Act directs each Council to minimize, to the extent practicable, adverse effects of fishing upon EFH. Each Federal agency is required to consult with the Secretary regarding actions that may adversely affect EFH. The use of existing consultation, coordination, and environmental review procedures is encouraged to fulfill this requirement. The Magnuson-Stevens Act reiterates that the Councils may, or in the case of

anadromous fisheries, must comment on Federal or state actions that affect fishery habitat, including EFH. Federal agencies are required to respond in writing within 30 days of receiving EFH conservation recommendations from NMFS or the Councils. The Magnuson-Stevens Act further requires that the Secretary shall, within six months of the date of enactment, establish guidelines, by regulation, to assist the Councils in the description and identification of EFH in FMPs (including adverse impacts on such habitat) and in the consideration of actions to ensure the conservation and enhancement of such habitat.

3.0 ALTERNATIVES

3.1 Preferred Alternative - Implement EFH for Managed Species

The preferred alternative is to implement the regulation (Appendix E) for all species managed by the Councils under a FMP. The regulations state that Councils must identify, in FMPs or amendments, the habitats used by all life history stages of each managed species in their fishery management units. Habitats that are judged to be necessary to the species for spawning, breeding, feeding or growth to maturity (with respect to maintaining a sustainable fishery and a healthy ecosystem) will be described and identified as EFH. These areas must be described in narratives (text and tables) and identified geographically (in text and maps) in the FMP. The amount of data available to identify EFH varies from species to species, so the level of detail with which EFH can be identified may also vary. Mapping of EFH is required to maximize the ease with which the information can be shared with the public, affected parties, and Federal and state agencies. EFH that is judged to be particularly important to the long-term productivity of populations of one or more managed species, or to be particularly vulnerable to degradation, may be identified as "habitat areas of particular concern (HAPC)" to help provide additional focus for conservation efforts. After describing and identifying EFH, Councils should assess all fishing-related activities that occur in or affect EFH, and consider management measures appropriate to minimize those practices that are detrimental to EFH and the fishery. Additionally, Councils are encouraged to identify proactive means to further the conservation and enhancement of EFH. Councils are also directed to examine other (non-fishing) sources of adverse impacts that may be affecting the quantity or quality of EFH, and to consider actions to reduce or eliminate the adverse effects.

The regulations establish procedures for implementing the coordination, consultation, and commenting requirements of the Magnuson-Stevens Act. Coordination between NMFS and the Councils is encouraged in the identification of threats to EFH and in the development of appropriate EFH conservation recommendations to Federal or state agencies. Either existing coordination procedures, such as NEPA, or the procedures established by the regulation shall be used to fulfill the requirement that Federal agencies consult with NMFS on actions that may adversely affect EFH. Consultations may be conducted on a programmatic and/or project-specific level. In cases where effects from an action will be minimal, both individually and cumulatively, a general concurrence (GC) procedure has been developed to simplify the Federal consultation requirements. Actions covered under a GC will not require further consultation, except when the minimal effect standard may be exceeded. When NMFS or a Council provide EFH conservation recommendations to a Federal agency, that agency must respond in writing within 30 days. That response must include a description of measures proposed by the agency for conserving EFH. The regulations also provide for further, higher level, review of Federal agency decisions that are inconsistent with NMFS or Council recommendations.

3.2 No Action Alternative

The No Action Alternative consists of continuing current Federal and state habitat conservation programs, without implementation of the EFH provisions of the Magnuson-Stevens Act. Currently, FMPs contain varying amounts of information on marine fish habitat. However, since most Federal and state agencies are unaware of the existence of FMPs, or their contents, the agencies often make decisions to alter fish habitat without the benefit of information on the potential effects to fish habitat.

The Councils and NMFS provide habitat conservation recommendations to Federal and state agencies under a number of consultation and environmental review processes, including NEPA, the Fish and Wildlife Coordination Act, the Endangered Species Act, the Federal Power Act, and others. NMFS reviews and comments annually on thousands of Federal activities that could adversely affect fish habitat. However, without synthesized information on which habitats are of greatest importance to fisheries, it is difficult to prioritize the numerous opportunities to provide habitat conservation recommendations to Federal and state agencies. Furthermore, with the exception of NEPA, current consultation processes between NMFS and Federal agencies do not require a response by the action agency, as does the Magnuson-Stevens Act. Consequently, it is difficult to gauge the effectiveness of NMFS comments on Federal actions that may adversely affect fish habitat. The No Action alternative would not satisfy the requirements of the Magnuson-Stevens Act, because no other program exists to accomplish the various integrated components of the EFH provisions.

3.3 Third Alternative - Implement EFH for All Species Regulated Under the Magnuson-Stevens Act

Under the Magnuson-Stevens Act, any fish species occurring in the EEZ may be subject to regulation by NMFS and the Councils. Therefore, implementing EFH regulations for all species occurring in the EEZ was considered. This alternative would substantially increase the number of species for which EFH is identified, from the 400-500 species currently managed under the existing FMPs, to more than a thousand species that occur in the EEZ. This alternative would therefore result in a greater proportion of the aquatic environment being identified as EFH. Implementation of the coordination, consultation, and commenting provisions of the rule for this alternative would result in a greater number of EFH conservation recommendations to Federal and state agencies required of NMFS and the Councils, and a greater number of consultations required of Federal agencies. This alternative would be difficult to implement because the Magnuson-Stevens Act states that EFH will be identified through amendments to Federal FMPs, yet no FMPs exist for non-managed species. This alternative would be beyond the capability of NMFS and the Councils to implement given current staffing and funding, and therefore could not be relied upon to result in improved fish habitat conservation.

4.0 AFFECTED ENVIRONMENT

4.1 Physical Environment

Because of the large variability in the fish species managed under the Magnuson-Stevens Act, the areas identified as EFH will encompass a wide range of aquatic habitats. For example: streams and rivers supporting anadromous fish species; marine and estuarine habitats, such as seagrass beds, coral reefs, tidal marshes, coastal wetlands, submerged aquatic vegetation, cobble with attached fauna, dense mud and clay burrows; and oceanic banks and continental shelf or slope areas extending to the 200-mile EEZ; all have the potential to be identified as EFH for one or more fish species. Aquatic areas that do not currently support fish, but that have historically supported fish, and that could support fish if restored, may also be identified as EFH. Geographically, EFH will likely be identified in all states with a marine coastline. Overall, the environment directly affected by the regulations is likely to be primarily marine and estuarine habitat in the United States. Some of the species managed under the Magnuson-Stevens Act are anadromous fish, such as salmon, which spend most of their lives in the marine environment, but migrate to fresh water streams for spawning. For these species, it is likely that EFH will be identified in some fresh water streams in coastal and inland states.

The affected environment will be a subset of the habitat currently or historically used by fish managed under the Magnuson-Stevens Act. Marine, estuarine, and freshwater environments in coastal states are most likely to be affected, although environments in inland states that are important to anadromous fish may also be affected. Many of these habitats are already adversely affected by urban/suburban development and agriculture. Fish populations managed under the Magnuson-Stevens Act will be affected by the regulations when EFH receives increased protection or is restored. Appendices D and E contain a list of FMPs and a map indicating appropriate regions.

The fish habitat that could be affected by the regulations is, in some cases, already adversely affected by development, agriculture, pollution, and many other activities that have decreased the habitat's ability to support fish species. For example, it has been estimated that the lower 48 states of the United States have lost 53% of the 215 million acres of the inland and coastal wetlands that existed in pre-colonial times. Agriculture was responsible for 87% of the wetland loss from 1954 to 1974 (Tiner, 1984), but more recent estimates suggest that more wetlands are now being lost to urban development than to agriculture (Brady and Flather, 1994). This trend is significant because urban development tends to be concentrated in coastal areas. In fact, the rate of wetland loss to development is currently three times higher in coastal states than in inland states. Estuarine wetlands make up only 5% of the wetlands in the coterminous United States, with 78% of those estuarine wetlands occurring in the southeast United States. Approximately half of the Nation's estuarine wetlands have been lost since pre-colonial times (Dahl et al., 1991). Rates of coastal wetland loss have slowed substantially from the 45 thousand acres a year that occurred between 1954 and 1974 (Tiner, 1984), to approximately 20 thousand acres a year during the late 1980's and early 1990's (Brady and Flather, 1994). Approximately 90% of that loss is occurring in the southeast United States, in states like Louisiana, Alabama, Florida and North Carolina.

Submerged aquatic vegetation (SAV) is another type of important fish habitat that has suffered significant losses. Large areas of Florida, where SAV was once abundant, have suffered declines. Lake Worth, North Biscayne Bay, Indian River Bay, and, most recently, Florida Bay, have experienced, or are currently experiencing massive die-offs of SAV. In the Mid-Atlantic, the Chesapeake Bay contains a diverse assemblage of SAV. Historically, more than 200,000 acres of SAV grew along the shoreline of the Chesapeake Bay. However, SAV abundance has declined sharply since the early 1970's so that only 38,000 acres were documented for all species in 1984. Fortunately, conservation efforts and improvements in Chesapeake Bay water quality have led to a recent increase in Bay SAV.

In the case of riverine habitat, which is particularly important to anadromous fish, habitat loss has resulted from loss of fish access, water pollution, inadequate flow, and physical destruction of habitat. On the Pacific coast there are well-known examples of fisheries resources damaged by loss of access to habitat and degradation of available habitat. In California's Central Valley, dam construction has reduced the amount of fish habitat from over 6,000 miles of original stream habitat to less than 300 miles of habitat. In the Columbia River basin, 11 dams have been constructed on the main stem Columbia River, and several more on the Snake River. The Elwha River, which originates on Washington's Olympic Peninsula in Olympic National Park, originally supported five species of Pacific salmon and four other species of anadromous fish. In 1912 and 1927, two dams were constructed less than five miles from the mouth of the Elwha, confining the salmon and other anadromous species to the lowest reaches of the river, where the habitat is very degraded (California Department of Fish and Game, 1993 and California Advisory Committee on Salmon and Steelhead Trout, 1988).

Activities determined to have an adverse impact on EFH may be redirected and concentrated in other areas such as uplands or aquatic areas not identified as EFH. Through this process, the regulation could indirectly affect almost any part of the coastal watershed of the United States, although the areas most likely to be affected by redirected activities are coastal areas where activities likely to adversely affect EFH occur.

4.2. Socioeconomics

The commercial fishing industry harvested 4.5 million metric tons of fish and shellfish in 1995. This catch was worth $3.8 billion dockside (NMFS, 1996). In 1988, commercial fishing employed over 274,000 fishers and 90,000 shore workers. Commercial fishing is an important part of the economies of many states, but is of particular importance in Alaska (whose fisheries are the most productive in the country), Louisiana (second in productivity), the Pacific northwest (where salmon stocks are imperiled), and the New England states (where many local economies have been adversely affected by the decline of the codfish and haddock fisheries). The fishing industry includes large businesses, such as factory trawlers, and small businesses, such as individual, self-employed fishermen. Although some parts of the fishing industry are thriving, many fish stocks are currently overfished, and there is a general sense among fishers and fishery managers that commercial fishing faces some serious challenges in the decades to come.

Recreational fishing provides significant social, cultural, and economic benefits to American society, and is the second most popular form of outdoor recreation in the United States (swimming being first). Fishing provides an introduction to the aquatic environment, and an opportunity to develop an appreciation for natural resource conservation and the importance of habitats. Recreational fishing contributes significantly to the nation's economy.

The 1991 Economic Impact of Sport Fishing in the United States (American Sportfishing Association, 1991) estimated anglers spent $24 billion on tackle, equipment, food, lodging, and other goods and services related to fishing. These expenditures provided jobs for 1.3 million people and generated $2.1 million in Federal income tax revenue. The recreational fishing industry is thriving, but many species popular with recreational fishers are currently overfished or declining due to habitat loss from pollution and other forms of human impact.

5.0 ENVIRONMENTAL CONSEQUENCES

5.1 Consequences of the Preferred Alternative - EFH Regulations for Managed Species

5.1.1 Effects on Fish Habitat

The goal of the regulations is to improve the conservation and management of EFH by providing information and conservation recommendations to Federal agencies, state agencies, and other entities whose actions may adversely affect EFH. The achievement of this goal depends on individual decisions made by the Councils, Federal agencies, and state agencies. It is not possible to predict the site specific nature of those decisions. Therefore, the consequences of this alternative can only be addressed in a general sense. NEPA documentation prepared for individual FMP EFH amendments or for individual proposed actions to affect EFH will fully address the environmental consequences of site specific activities.

The synthesis and publication of information on EFH and EFH conservation recommendations provided by NMFS or the Councils should strongly encourage avoidance of activities that may adversely affect fish habitat in these areas. For example, development projects that may adversely impact EFH may be set back further from the coast, provide vegetated buffers or alternate methods to treat surface runoff, relocate away from the area identified EFH or incorporate other actions to reduce their detrimental effects. EFH conservation recommendations may advise the use of environmentally sound engineering and management practices (e.g., seasonal restrictions, specific dredging methods, and disposal options) for all dredging and construction projects. EFH conservation recommendations may suggest the restoration of riparian and coastal areas through re-establishing endemic trees or other appropriate native vegetation, and restoring natural bottom characteristics. Upland restoration measures such as erosion control, road stabilization, upgrading culverts, removal or modification of the operating procedures of dikes or levees to allow fish passage may be recommended as necessary to protect EFH. EFH conservation recommendations may also advise against alteration of the natural hydrology of rivers and estuaries, except to restore degraded habitat. If implemented by the action agencies, EFH conservation recommendations provided by a Council or NMFS will improve the conservation of important aquatic habitats and the associated ecosystem.

Council FMP amendments to protect EFH may exclude fishing techniques that may cause physical disturbance of the substrate, loss of and/or injury to benthic organisms, loss of prey species and/or their habitat, and changes to other components of the ecosystem. These amendments may also establish research closure areas to evaluate the impact of any fishing activities on EFH or establish marine reserves to protect

certain habitat from adverse fishing impacts. All of the actions will have a beneficial effect on fish habitat and the associated ecosystems.

5.1.2 Effects on Fish Populations

The EFH requirements were included in the Magnuson-Stevens Act because scientific evidence indicates that habitat loss or degradation has compounded, and in some cases magnified, the effects of increased fishing pressures. The net effect has been a decline in many of the nation's important fish stocks. Protection from further adverse impacts and restoration of degraded EFH, where feasible, should reduce some of the stress on populations, and fishery stocks should stabilize or regain some lost productivity. Evidence from boreal, temperate, and tropical regions of the world support the theory that if habitat degradation is halted or minimized, and biological integrity is restored, associated fish populations will increase both inside the protected areas and outside. This prediction is supported by more than 250 peer-reviewed articles on recovery dynamics of marine fishery reserves (areas protected from further impacts) in studies around the world. Additional benefits that would be expected from adequate levels of habitat protection include: the restoration of the population age (or size) structure, conservation of genetic diversity in the population, development or maintenance of greater diversity in trophic structure and greater assurance of the availability of alternate trophic pathways; increased resilience for the populations to withstand both natural and anthropogenic stresses; and greater stability in both the populations or assemblages and the fishery catch.

5.1.3 Effects on Fisheries

Detrimental effects of the regulations on fisheries are expected to be temporal in nature, with any short term losses more than balanced out by long term gains in the fishery. The long term expectation of the Magnuson-Stevens Act's EFH mandate is that declining trends in fish stocks can be halted or reversed by minimizing adverse impacts to EFH, and by restoring lost habitats or access to habitats, where feasible, along with the other management measures. Protecting the quality and quantity of EFH should increase survival potentials of managed fishery species, and increase biological productivity of both the ecosystem and the stocks of managed species dependent on the components of that ecosystem. Increases in stock abundance and fish sizes should result in increased economic return and stabilization of interannual variations in catch, as well as provide increased resistance to episodic disturbance events.

The most likely short term consequence to the fishing participants, both commercial and recreational, would be the relocation of fishing effort, if scientific evidence suggests that particular fishing methods or gear types are adversely affecting the quantity or quality of habitat necessary to one or more life stage of a managed species. Restrictions to minimize these adverse effects could be either seasonal, annual, or permanent. For the duration of the restriction, fishers who have traditionally used that method or area may need to increase their search or travel distance to find other suitable fishing grounds, or they may need to invest in gears more appropriate for use in the identified EFH. There may be individual fishing participants for whom the net effect of reducing adverse impacts on EFH is negative, either because no relocation of effort is possible or because the cost of acquiring new gear is prohibitive, which could cause the participant to withdraw from the industry. Overall, short term economic losses should be compensated by future increases in catch levels and increased stability in the fishery.

5.1.4 Other Environmental Effects

The implementation of these regulations should not produce any unavoidable adverse environmental impacts. These regulations are intended to protect the environment by controlling adverse physical and biological impacts on the habitat of living marine resources. There may be some changes in the patterns of resource use in order to avoid activities that degrade coastal waters and habitats. These changes, such as directing dredged material disposal away from critical coastal areas, would not result in any unavoidable adverse environmental impacts.

The overall purpose of these regulations is to conserve, protect, and restore coastal waters, and thus to enhance the long-term health of all living marine resources. These regulations will not result in any short- term uses of the environment that may reduce long-term productivity. Short-term uses of the environment may have to be modified in response to the implementation of specific EFH conservation recommendations or fishery management measures. For example, disturbance to spawning areas may be restricted to non-spawning seasons. This may result in short-term costs to the users, but will result in long-term benefits to the economy and environment through the conservation, preservation, and restoration of living marine resources and their habitats.

These regulations will not cause any irreversible or irretrievable commitment of resources as a result of their implementation. EFH will be identified in FMP amendments which may be subsequently revised.

5.2 Consequences of the No Action Alternative

The consequences of the No Action Alternative are that a national program for the conservation and management of EFH would not be implemented, and the ongoing loss of fish habitat would continue. Agency decision-makers would not be able to avail themselves of information on the importance of certain habitats to marine fisheries, and their decisions regarding actions that could adversely affect EFH might not give adequate consideration to the need for conservation of particular habitats. Fish populations currently threatened by habitat loss would continue to decline, and additional fish populations would most likely become threatened as habitat loss continued. Commercial and recreational fishers dependent on declining fisheries would continue to experience lost revenues and increased uncertainty.

5.3 Consequences of the Third Alternative - Identifying EFH for All Species Subject to Regulation Under the Magnuson-Stevens Act

Identifying EFH for all species in the EEZ, as opposed to just those species managed under an FMP, would increase the amount of aquatic habitat identified as EFH. For example, anadromous species in the southeast United States are not currently managed under Federal FMPs, so identifying EFH for these non-managed species would mean including riverine habitats that would not be so identified if EFH identification was confined to the habitat necessary for species managed by a Federal FMP.

Although identifying additional areas as EFH might seem advantageous for overall aquatic habitat conservation, in reality, the additional area identified as EFH and additional workload resulting from increased consultation and

conservation recommendations would dilute the effectiveness of the EFH initiative. NMFS and the Councils would not be able to effectively prioritize the development of conservation recommendations for proposed actions to alter fish habitat. Attempting to implement the Magnuson-Stevens Act EFH regulations for non-managed species would reduce the Councils' and NMFS's ability to improve the conservation of habitats important to managed species.

6.0 COORDINATION WITH OTHERS

In developing this regulation, NMFS published two Advance Notices of Proposed Rulemaking (ANPR). 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, published on January 9, 1997, (62 FR 1306), announced the availability of the "Framework for the Description, Identification, Conservation, and Enhancement of Essential Fish Habitat" (Framework). The Framework served as a detailed outline for the regulation, and as an instrument to solicit public comments. The public comment period for the Framework closed February 12, 1997. During the comment period, NMFS held 15 public meetings, briefings, and workshops across the nation. Eighty-eight comments were received via mail or fax, and numerous others were received during the public meetings.

A proposed rule was published in the Federal Register on April 23, 1997. A draft Environmental Assessment was also made available at that time. The public comment period was extended twice, closing on July 8, 1997. Six regional public meetings and numerous briefings were held during the comment period to explain the proposed rule and solicit public comments by all interested parties. NMFS received 224 comments via mail or fax. A number of changes were made to the final regulation in response to comments received. In addition to the regulation, a Technical Assistance manual is available to provide further details on how the Councils will identify EFH for managed species and amend their FMPs.

Over half of the comments received during the public notice process came from conservation/environmental groups and non-fishing industry groups. The other comments came from a wide variety of groups, including governmental agencies, user groups, academicians, and the general public. The comments ranged from strongly supportive to opposed. Many of the individuals and conservation groups were supportive of the proposed rule, but recommended changes to expand its scope or to strengthen the protection of fish habitat. State and Federal agencies were concerned about jurisdictional matters, i.e., how the proposed rule would affect their activities. A few fisheries groups voiced strong reservations about the proposal, while others were generally supportive. Numerous comments from non-fishing industry interests were uniformly opposed to the proposed rule. Their most common comments were that NMFS has no authority to comment on non-fishing related activities, and that EFH should not be identified in state waters. Councils were generally supportive of the proposal, but expressed concerns about the amount of work that would be required to implement the EFH regulation. The preamble of the regulation addresses in more detail the comments received during this extensive public review and comment process (see Appendix E).

7.0 LIST OF PREPARERS

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FINDING OF NO SIGNIFICANT IMPACT

In compliance with the National Environmental Policy Act (NEPA), an Environmental Assessment has been prepared for the regulations implementing the requirements of the Magnuson-Stevens Act to describe, identify, conserve, and enhance Essential Fish Habitat (EFH). NEPA documentation will be undertaken for each Fishery Management Plan to fully address site specific affects of EFH implementation. The environmental review process led me to conclude that this action will not have a significant effect on the human environment. Therefore, an Environmental Impact Statement is not required by Section 102 (2) (C) of NEPA or its implementing regulations. A copy of the environmental assessment and supporting documentation are available from the Office of Habitat Conservation, National Marine Fisheries Service, Silver Spring, MD 20910.

Date: _____

Signature: _____

APPENDICES

APPENDIX A - APPLICABLE ENVIRONMENTAL LAWS AND COMPLIANCE

Clean Air Act, 15 U.S.C. 792, 42 U.S.C. 215 note, 1857-1858a, 4362, 7401-7672; 49 App. 1421, 1430; 50 App. 456

Activities under this regulation will not result in an increase in the discharge of air pollutants.

Clean Water Act, 33 U.S.C. 1151 *et seq.*

Activities under these regulations will not result in a change in the discharge of water pollutants.

Coastal Zone Management Act (CZMA), 16 U.S.C. 1451-1464

Activities under these regulations will be consistent to the maximum extent practicable with the approved state CZMA programs. These determinations will be made prior to implementation of site specific actions within individual State programs.

Endangered Species Act, 7 U.S.C. 136; 16 U.S.C. 460l-9, 460k-1, 668dd, 715i, 715a, 1362, 1371-1372, 1402, 1531-1544

Activities under these regulations will not have an detrimental affect on any Federally listed species or their habitats. Informal consultation has been completed with NMFS and the U.S. Fish and Wildlife Service.

Fish And Wildlife Conservation Act, 16 U.S.C. 2901-2912

Activities under these regulations will encourage the conservation of non-game fish and wildlife.

Fish And Wildlife Coordination Act, 16 U.S.C. 661-666c

Activities under these regulations will have a positive affect on fish and wildlife resources. Coordination has taken place with NMFS and the U.S. Fish and Wildlife Service.

Magnuson Fishery Conservation And Management Act 16 U.S.C. 1801 *et seq.*

Activities under these regulations will have a positive affect on fish resources. Coordination has taken place with the appropriate Councils.

Marine Mammal Protection Act 16, U.S.C. 1361-1326, 1371-1384 note, 1386-1389, 1401-1407, 1411-1418, 1421-1421h

Activities under these regulations will not have an adverse affect on marine mammals. Informal consultation has been completed with the appropriate offices within NMFS.

Migratory Bird Conservation Act, 16 U.S.C. 715 to 715r

Activities undertaken in accordance with these regulations are not inconsistent with the activities mandated by the Migratory Bird Conservation Act. In fact, migratory birds are likely to benefit from the preservation of habitat used by both fish and migratory birds, and the anticipated increase in fish populations.

National Environmental Policy Act, 42 U.S.C. 4321, 4331-4335, 4341-4347

An Environmental Assessment has been prepared and environmental review has occurred under this Act. NEPA documents prepared for individual actions undertaken pursuant to the EFH regulations and the Magnuson-Stevens Act will fully address all NEPA requirements, including consideration of implementation alternatives and mitigation measures for each EFH FMP amendment.

National Fishing Enhancement Act of 1984, 33 U.S.C. 2101 note, 2102-2106

Activities under these regulations may result in the creation of artificial reefs. NMFS will suggest that any reefs created in response to these regulations conform to the National Artificial Reef Plan.

Regulatory Flexibility Act, 5 U.S.C. 601-612

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 rule would not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

APPENDIX B - EXECUTIVE ORDERS AND COMPLIANCE

Executive Order Number 11514 (34 FR 8693) - Protection And Enhancement Of Environmental Quality

An Environmental Assessment has been prepared and environmental coordination has taken place as required by NEPA.

Executive Order Number 11990 (42 FR 26961) - Protection Of Wetlands

The activities under these regulations will help to ensure the protection of wetlands and the service that they provide.

Executive Order Number 12866 (58 FR 51735) - Executive Regulatory Planning and Review

This regulation has been determined to be not significant for the purposes of E.O. 12866. Each amendment to an existing FMP and all new FMPs will contain detailed analyses of the benefits and costs of the management programs under consideration, to ensure compliance with E.O. 12866.

Executive Order Number 12612 (52 FR 41685) - Federalism

For purposes of Executive Order 12612, the Assistant Administrator for Fisheries has determined that this regulation does not include policies that have federalism implications sufficient to warrant preparation of a Federalism Assessment.

Executive Order Number 12962 (60 FR 30769) - Recreational Fisheries

The activities under these regulations will help to ensure the protection of recreational fisheries and the services that they provide.

APPENDIX C - FISHERY MANAGEMENT PLANS

1. Fishery Management Plan for Atlantic Sea Scallops (New England Fishery Management Council)

2. American Lobster Fishery Management Plan (New England Fishery Management Council)

3. Fishery Management Plan for the Northeast Multi-species Fishery (New England Fishery Management Council)

4. Atlantic Salmon Fishery Management Plan (New England Fishery Management Council)

5. Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries (Mid-Atlantic Fishery Management Council)

6. Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (Mid-Atlantic Fishery Management Council)

7. Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (Mid-Atlantic Fishery Management Council)

8. Fishery Management Plan for Atlantic Bluefish (Mid-Atlantic Fishery Management Council)

9. Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (South Atlantic Fishery Management Council)

10. Atlantic Coast Red Drum Fishery Management Plan (South Atlantic Fishery Management Council)

11. Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (South Atlantic Fishery Management Council)

12. Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region (South Atlantic Fishery Management Council)

13. Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region (South Atlantic Fishery Management Council).

14. Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (Gulf of Mexico Fishery Management Council; joint with South Atlantic Council)

15. Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Gulf of Mexico Fishery Management Council; joint with South Atlantic Council)

16. Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico (Gulf of Mexico Fishery Management Council)

17. Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (Gulf of Mexico Fishery Management Council)

18. Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (Gulf of Mexico Fishery Management Council)

19. Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Gulf of Mexico Fishery Management Council)

20. Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Gulf of Mexico Fishery Management Council)

21. Fishery Management Plan for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands (Caribbean Fishery Management Council)

22. Fishery Management Plan for the Shallow Water - Reeffish Fishery of Puerto Rico and the U.S. Virgin Islands (Caribbean Fishery Management Council)

23. Fishery Management Plan for Corals and Reef Associated Invertebrates of Puerto Rico and the U.S. Virgin Islands (Caribbean Fishery Management Council)

24. Fishery Management Plan for the Queen Conch Resources of Puerto Rico and the United States Virgin Islands (Caribbean Fishery Management Council)

25. Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (Pacific Fishery Management Council)

26. Northern Anchovy Fishery Management Plan (Pacific Fishery Management Council)

27. Fishery Management Plan for the Groundfish Fishery off Washington, Oregon, and California (Pacific Fishery Management Council)

28. Fishery Management Plan for Crustaceans Fisheries of the Western Pacific Region (Western Pacific Fishery Management Council)

29. Fishery Management Plan for the Precious Corals Fishery of the Western Pacific Region (Western Pacific Fishery Management Council)

30. Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Western Pacific Fishery Management Council)
31. Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Western Pacific Fishery Management Council)

32. Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (North Pacific Fishery Management Council)

33. Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175 Degrees East Longitude (North Pacific Fishery Management Council)

34. Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (North Pacific Fishery Management Council)

35. Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan (North Pacific Fishery Management Council)

36. Fishery Management Plan for the Scallop Fishery off Alaska (North Pacific Fishery Management Council)

37. Fishery Management Plan for Atlantic Swordfish (Secretarial Fishery Management Plan)

38. Fishery Management Plan for Atlantic Billfishes (Secretarial Fishery Management Plan)

39. Fishery Management Plan for Atlantic Sharks (Secretarial Fishery Management Plan)

(map of FMPs)

APPENDIX E - REGULATIONS

DEPARTMENT OF COMMERCE National Oceanic and Atmospheric Administration
50 CFR Part 600
[DocketNo.XXXXXXXX; I.D. 120996A]
RIN 0648-AJ30

Magnuson-Stevens Act Provisions; Essential Fish Habitat (EFH)

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

ACTION: Final rule.

NOTE: THE FINAL REGULATIONS ARE CURRENTLY IN CLEARANCE. THE ATTACHED COPY IS NOT THE FINAL VERSION, BUT ANY CHANGES MADE TO THIS VERSION FOR EDITORIAL OR CLARIFICATION PURPOSES WILL NOT CHANGE THE ENVIRONMENTAL IMPACTS OF THE REGULATIONS.