



ESSENTIAL FISH HABITAT

Background on the EFH Regulations January 2002

The Sustainable Fisheries Act of 1996

The Magnuson-Stevens Fishery Conservation and Management Act provides the national framework for conserving and managing U.S. fishery resources. In 1996, Congress made significant revisions to the Magnuson-Stevens Act to end overfishing, reduce bycatch, and protect habitat. In particular, the 1996 amendments (known as the Sustainable Fisheries Act) required that fishery management plans identify as essential fish habitat (EFH) those areas that are necessary to fish for their basic life functions.



EFH Proposed Rule

NOAA Fisheries published an advance notice of proposed rulemaking (ANPR) in the *Federal Register* on November 8, 1996, to solicit comments to assist NOAA Fisheries in developing an approach for the proposed regulations. NOAA Fisheries published a second ANPR on January 9, 1997, to announce the availability of the "Framework for the Description, Identification, Conservation, and Enhancement of Essential Fish Habitat" (Framework) and to solicit additional public comment. The Framework provided a detailed outline for the proposed regulations. NOAA Fisheries held 15 public meetings, briefings, and workshops across the nation during the public comment period on the Framework and issued a proposed rule on April 23, 1997.

EFH Interim Final Rule

NOAA Fisheries held an additional 6 public meetings and numerous briefings nationwide during the comment period on the proposed rule, and issued an interim final rule on December 19, 1997, which took effect on January 20, 1998. NOAA Fisheries decided to issue the regulations as an interim final rule for two reasons. First, NOAA Fisheries wished to provide an additional comment period to allow another opportunity for affected parties to provide input prior to the development of a final rule. Second, NOAA Fisheries determined that it would be advantageous to implement the EFH provisions of the Magnuson-Stevens Act for a period of time via interim final regulations, which would afford an opportunity to gain experience adding EFH information to fishery management plans and carrying out consultations and coordination with Federal and state agencies whose actions may adversely affect EFH. NOAA Fisheries planned to use the additional comments and experience implementing the interim final rule to identify necessary changes in the final rule. The comment period on the interim final rule closed on March 19, 1998.

EFH Final Rule

On November 8, 1999, NOAA Fisheries reopened the comment period to announce its intention to proceed with development of a final rule and to request additional public comments on four specific issues: how to improve the regulatory guidance on the identification of EFH; how to improve the regulatory guidance on minimizing the effects of fishing on EFH; whether the final rule should provide additional guidance on using existing environmental reviews to satisfy EFH consultation requirements; and whether to revise in the final rule the requirement for Federal agencies to prepare EFH Assessments as part of the EFH consultation process. In total,

NOAA Fisheries provided five separate public comment periods for this rulemaking totalling 270 days. NOAA Fisheries also held numerous public meetings and briefings to explain the EFH requirements for interested parties and to solicit their input. Based on the comments received, as well as NOAA Fisheries' experience implementing the interim final rule, NOAA Fisheries identified a number of improvements that would clarify and simplify the regulations. NOAA Fisheries incorporated those changes in the final rule.

The Future of EFH

Although NOAA Fisheries has finalized the EFH rule, it recognizes that there remains a great deal of interest in the EFH regulations from various stakeholders. There is a diversity of opinions on the best way to integrate habitat and ecosystem considerations into fishery management. NOAA Fisheries is actively evaluating these issues, and will continue to work with stakeholders to use the best available scientific information regarding habitat and ecosystem principles in fishery management decisions. For example, NOAA Fisheries will hold a workshop in the coming months to examine the concepts underlying ecosystem-based approaches to marine resource management, followed by a second workshop in the early summer of 2002 to develop technical guidelines for implementing an ecosystem-based approach to fishery management. NOAA Fisheries also is developing new environmental impact statements that will reexamine the EFH sections of many FMPs. NOAA Fisheries will evaluate the efficacy of the EFH final rule in light of these activities and will apply the lessons learned as appropriate. If further changes to the EFH regulations are warranted, NOAA Fisheries will propose changes through an appropriate public process.



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