

# The Final Rule for Essential Fish Habitat

How Does It Improve  
the EFH Regulations?



NOAA / National Marine Fisheries Service  
Office of Habitat Conservation

# Comment Periods for the EFH Regulations

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- Advance Notice of Rulemaking (11/8/96): 30 days
- Advance Notice of Rulemaking (1/9/97): 30 days
- Proposed Rule (4/23/97): 75 days
- Interim Final Rule (12/17/97): 90 days
- Interim Final Rule (11/8/99): 45 days

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**TOTAL: 270 DAYS**



# Public Comments on the EFH Regulations

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- **NMFS held more than 20 public meetings and workshops to solicit public comments**
- **NMFS received approximately 3,600 written comments (~3,300 on the interim final rule)**
- **Commenters included Fishery Management Councils, Federal agencies, state agencies, fishery groups, environmental groups, non-fishing industry groups, other non-governmental organizations, academicians, citizens groups, and numerous individuals**



# EFH Interim Final Rule

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- **Subpart J: Guidelines to Councils for EFH sections of fishery management plans**
- **Subpart K: Procedures for consultation, coordination, and recommendations**
- **Published in the *Federal Register* December 19, 1997**
- **Became effective January 20, 1998**



# EFH Final Rule

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- **Same overall structure as the interim final rule**
- **Published in the *Federal Register* January 17, 2002**
- **Effective February 19, 2002**



# EFH Designations

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- **Clearer guidance for presenting and analyzing habitat information for managed species**
  - Better organization of the rule separates the discussion of general habitat information from the guidance on how to analyze that information and determine the limits of EFH
- **Eliminated the requirement to describe EFH in tables**
  - Final rule encourages FMPs to summarize available habitat information, but gives Councils more flexibility to decide how

# EFH Designations (continued)

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- **New requirement for the text descriptions of EFH to refer to geographic boundaries**
  - Ensures clear geographic reference points
- **New guidance saying the boundaries of EFH should be static**
  - FMPs should explain any variability in habitat usage patterns
- **More flexible guidance for designating EFH when pertinent information is sparse**
  - Allows Councils to use all available distribution data and not just systematic presence/absence sampling data
- **New guidance saying Councils should not designate EFH if there is no information on a given species or life stage**
  - Interim final rule was silent on this point, leaving Councils uncertain as to how to deal with a complete absence of information

# EFH Designations (continued)

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- **Clearer guidance for using available information to designate the highest value habitats as EFH**
  - Says Councils should use Level 2 through 4 information to identify EFH as the habitats supporting the highest relative abundance; growth, reproduction, or survival rates; and/or production rates
  - Eliminates provision that said intermediate and low value habitats may also be considered essential
- **New guidance suggesting that FMPs explain the analysis conducted to distinguish EFH from all habitats potentially used by a species**
  - Helps make EFH designations more defensible and easier to understand



## EFH Designations (continued)

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- Clearer guidance for designating EFH for groups or assemblages of species, rather than species-by-species
  - Allows flexibility when a number of species have similar habitat requirements, as long as Councils provide scientific justification
- Clearer guidance regarding the size of EFH relative to “critical habitat” for managed species that are also listed under the Endangered Species Act
  - Says EFH will normally (versus always) be greater than or equal to aquatic areas that have been identified as “critical habitat”

# EFH Mapping

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- **New requirement for FMPs to include maps that display, within the constraints of available information, the geographic locations of EFH or the geographic boundaries within which EFH is found**
  - Mapping was encouraged but not required in the interim final rule
- **New guidance suggesting that FMPs should include maps of Habitat Areas of Particular Concern**
  - Mapping HAPCs will make it easier to focus conservation efforts on those areas



# Evaluation of Fishing Impacts to EFH

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- **Expanded guidance on the information FMPs must contain to evaluate whether and how fishing activities adversely affect EFH**
  - Provides more specific guidelines for Councils on the type of information that should be included
- **New guidance suggesting that Councils list existing management actions that minimize adverse effects of fishing on EFH**
  - Advises Councils to describe the specific benefits of any existing management measures that help to meet the statutory requirement for FMPs to minimize adverse effects to the extent practicable



# Minimizing Fishing Impacts

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- **Clearer standard for when Councils must act to minimize adverse effects of fishing on EFH**
  - Explains that FMPs must address any adverse effect that is more than minimal and not temporary in nature
- **New guidance for examining alternatives**
  - States that FMPs should identify a range of options that could be taken to address adverse effects and should adopt any new measures that are necessary and practicable



# Minimizing Fishing Impacts (continued)

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- **New requirement for FMPs to explain the reasons for Council conclusions regarding the past and/or new actions that minimize to the extent practicable the adverse effects of fishing on EFH**
  - Helps ensure FMPs document the basis for final actions
- **Clearer guidance for determining whether it is practicable to minimize adverse effects from fishing**
  - Provides a simpler and more concise standard



# Additional Simplifications

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- **Streamlined guidance for evaluating cumulative impacts of fishing and non-fishing activities and for identifying actions to encourage conservation and enhancement of EFH**
  - Provides more concise and realistic guidance
- **More succinct guidance for addressing EFH research and information needs**
  - Clarifies and simplifies the description of this portion of FMPs
- **Clearer guidance for the review and revision of EFH components of FMPs**
  - Clarifies that EFH provisions should be revised as warranted based on periodic reviews of available information



# Other Items Affecting the Councils

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- **Streamlined process for written NMFS EFH recommendations to Councils**
  - Avoids duplication with the Council process by omitting requirements for NMFS to make its draft recommendations available for public review and to hold public meetings
- **Simpler procedures for NMFS-Council coordination on EFH consultation issues**
  - Omits requirement to involve Councils in all consultations; instead NMFS and Councils coordinate to identify actions of mutual concern



# EFH Consultation Procedures

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- **Better organization of the regulations for EFH consultations**
  - Clarifies the different options available to Federal agencies to fulfill the consultation requirements
- **Clearer description of the actions requiring consultation**
  - Consultation is not required for actions that were completed prior to the approval of EFH designations by the Secretary
  - Consultation is required for renewals, reviews, or substantial revisions of Federal actions if the renewal/review/revision may adversely affect EFH
  - Consultation is required for emergency Federal actions that may adversely affect EFH, but may be completed after-the-fact if consultation on an expedited basis is not practicable





# EFH Consultation Procedures (continued)

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- **Streamlined procedures for General Concurrences**
  - Makes it easier for NMFS to waive case-by-case consultation for actions with minor effects on EFH
- **More guidance for conducting programmatic consultations**
  - Makes it easier for Federal agencies to consult at the program (rather than project) level
- **More opportunity for one Federal agency to consult on behalf of other agencies**
  - Streamlines consultation for activities that require multiple Federal actions (permits, funding, etc.)
- **More flexibility for agencies to use a non-Federal representative**
  - Allows designated representatives to conduct any type of consultation



# EFH Consultation Procedures (continued)

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- **Clearer description of the requirements for EFH Assessments prepared by Federal agencies**
  - Simplifies the list of required contents and emphasizes that for relatively simple actions the assessment may be very brief
- **Simpler agency response requirement**
  - If a Federal agency agrees with NMFS' EFH Conservation Recommendations, the final rule eliminates the requirement for the agency to provide its statutorily mandated response at least 10 days before taking final action
- **Narrower definition of anadromous species**
  - Limits the Council commenting requirement to apply only to anadromous species managed under an FMP



# Benefits of the EFH Final Rule for Councils, NMFS, Other Agencies, and the Public

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- Clearer guidance
- More efficient procedures
- Simpler to understand

