DRAFT
EFH COMMITTEE MINUTES
NSRAA Building Sawmill Creek Road
Sitka, AK May 15-17, 2002

Committee Members present: Linda Behnken (chair), Stosh Anderson (vice-chair), Heather McCarty, Scott Smiley, Ben Enticknap, Ted Meyers, John Gauvin, Earl Krygier, Glenn Reed, Michele Ridgway. Gordon Blue on paternity leave.

Agency staff present: Cathy Coon (NPFMC), David Witherell (NPFMC), Cindy Hartmann (NMFC-HCD), John Lepore (NOAA-GC), Matthew Eagleton (NMFS-HCD), John Olson (NMFS-HCD), Jeff Fujioka (NMFS-ABL), Craig Rose (NMFS-AFSC).

Public: Thorn Smith, Jason Brune, John Merculief, Char Kirkwood, Dorthy Childers, Brent Paine, Paul MacGregor, Donna Parker, Karen Dearlove, Ken Stump, Whit Sheard, Martin Robards, Geoff Shester, Tom Malony, Simeon Swetzof, Sandra Moller, and Ginny Fay.

The EFH Committee met on May 15-17th in Sitka. The intent of the meeting was to finalize fishery descriptions, receive reports from Committee workgroups, review detailed descriptions of EFH & HAPC designation alternatives, and discuss potential HAPC sites and types for the EIS analysis. A draft agenda was distributed prior to the meeting.

Stosh Anderson (vice- chair) addressed the group on the meeting process for HAPC proposals. He noted that there was not a public call for proposals on HAPC sites. Rather the Committee was tasked with selecting specific HAPC sites to be included in the HAPC designation alternatives. However, because members of the public came with HAPC proposals, the Committee will consider these along with the Committee proposals.

The Committee motioned to approve the minutes from the last meeting. *Motion approved 9-1*.

The Committee discussed the concept of adaptive management in terms of designating HAPCs and mitigation measures. The Committee reiterated their commitment that where applicable, mitigation tools should be reviewed over time to validate their effectiveness in achieving the objectives of the HAPC designation. In other words, adaptive management should be an integral component of any mitigation measures adopted.

Joint Protocol Committee: The Committee wanted the following items to be brought forth to the Protocol Committee: 1) cross representation of EFH/MPA committees. 2) ADF&G Advisory committees to review EFH, HAPC, and MPAs as they are being developed. 3) Communication between agencies on projects and proposals being considered for action.

EFH timeline and staff tasking: The Committee reviewed a new NMFS time line that incorporates the Committee and Council process into the deadlines (see attached C-2 (a)(1)). The Committee requested NMFS to let them know the name(s) of the socio economic sub contractor(s) when identified, and which portions of the analysis Foster-Wheeler will be conducting under their original agreement. The Committee discussed the staff tasking prior to the October Council meeting. The Committee requested that initial draft reports be available to the Committee before the August teleconference, and finalized drafts 1 week prior to the September Committee meeting. These reports will include:

1) EFH Alternatives - Matt Eagleton and John Olson, NMFS, HCD (leads)
   This task involves developing prototypes for 9 species for each EFH alternative. Jeff Fujioka and other AFSC scientists will develop a further explanation of the ecosystem alternative and a prototype example (the prototype example may not be available for the October Council meeting).

2) Fishery Impacts Analysis

a) Fishery Descriptions and Evaluation of impacts- Cathy Coon, NPFMC (lead)
This task involves updating the fishery descriptions, developing fishing intensity maps by fishery and habitat type, evaluation of habitats and EFH general distribution in the EEZ, and, writing non-FMP fishery descriptions (state fisheries).

b) Initial Evaluation of Fisheries - Craig Rose NMFS, AFSC, RACE (lead) and Jeff Fujioka, NMFS, AFSC, ABL. This task involves completing the fishery evaluation model and running it for each fishery and cumulatively for all fisheries.

3) Evaluation of HAPC Proposals - Cindy Hartmann, NMFS, HCD (lead) .
Staff will evaluate the HAPC proposals based on the four considerations in the final rule.

4) HAPC stake holder process- A white paper will be developed for a methodology for a long term or on-going public process to incorporate HAPC site/ type proposals. Cathy Coon (lead)

Staff Reports: Council and NMFS staff were requested to provide reports on EFH and HAPC designation alternatives, along with HAPC criteria for this Committee meeting. Staff provided discussion papers on these topics and presented them to the Committee. For both the EFH and HAPC designation alternatives, some slight changes were suggested to the Committee to modify the draft designation alternatives based on additional information.

I. EFH Designation Alternatives :

In December 2001, the Council adopted a preliminary set of alternatives to describe and identify EFH. The following discussion provides additional details of the preliminary alternatives and offers supplementary alternatives, which have surfaced during the initial analysis. NPFMC and NMFS staff will be working on a partial analysis, which includes a prototype of 9 species, for all alternatives for EFH designation between June and October 2002. The EFH Final Rule provides guidance for those fish species in each fishery management unit for the 5 FMP's. The EFH alternatives adopted back in December were as follows:

Alternative 1 - No Action - No EFH Designation
EFH would not be designated. This alternative would not be consistent with the Magnuson Stevens Fishery Conservation Management Act (MSFCMA). It is not the status quo. However, according to the Department of Justice (see January 22, 2001, Hogarth memo), it is the no action alternative and must be considered as an alternative. The resulting action of this alternative would result in changing the FMP's from the current EFH amendment measures.

Alternative 2 - Status Quo; EFH EA is not updated
Under the status quo alternative EFH would be designated on a species by species basis for a species life stage, based on the general distribution of that species life stage. Status quo is described in the Environmental Assessment for fishery management plan Amendments 55/55/8/5/5, January 1999.

Alternative 3 - Status Quo; update current EFH descriptions
Under the status quo alternative EFH would be designated on a species by species basis for a species life stage, based on the general distribution of that species life stage. Status quo is described in the Environmental Assessment for fishery management plan Amendments 55/55/8/5/5, January 1999.

Alternative 4 - Species Based
Define EFH using the highest level of information available for each species by lifestage. This alternative would specify EFH designations in accordance with the criteria established in the final rule (*updated from interim final rule). This approach would dictate that EFH be designated on the basis of the highest level of information available.

Level 1 - EFH is general distribution and its associated habitat.
Level 2 - EFH is known concentrations and its associated habitat.
Level 3 - EFH is the habitat contributing to the survival, reproduction, and growth of a species.
Level 4 - EFH is the habitat with the highest biological productivity.

Initially, the concept was to describe EFH: (A) for each species by life stage (B) for species groups based on taxonomic grouping. Scientist's advice suggests that statistical techniques such as a cluster analysis done only on taxonomically related groups (e.g. sculpin or rockfish species) not phyletically unrelated species (e.g. coral, ray and Irish lord), could be an appropriate method for Option B.

Alternative 5 - Ecosystem / Habitat Based

This alternative would specify EFH designations relative to classification of habitat types occurring in the region and the assemblages of species and lifestages associated with them. Describe species association within strata, which may lead to finer habitat definitions.

1. Describe range of physical characteristics of bottom from available information, if any.
2. Construct species life stage by habitat type index (to satisfy the requirement of a species by species EFH description, required by the Final Rule). An ecosystem model for each region could be developed.

Alternative 6 – Core Area or area known to be crucial to the production of a species

Designation of EFH for this alternative is limited to those core areas known to be crucial to the production of species or species groups. Each phase is based on our level of understanding of the relationship between habitat and productivity. Under this alternative, we would need to know the link between habitat and fish productivity (i.e., level 4 information). Since we do not have the data to tie fish productivity with habitat, we need to find a mechanism to assess a core area. The difficulty is using fisheries observer/survey data supplemented with limited habitat-research data as a proxy for fish habitat. Due to the limited information on fish habitat it is difficult to evaluate EFH in this manner.

At this meeting, staff had suggested that the Core Approach to be slightly changed to capture a core area as highest 10% (or some representative percentage) of CPUE.

Alternative 7 – EFH Designation would only apply to Federal Waters within the EEZ (3-200 miles).

EFH would be described and identified in waters of the EEZ. Specifically to our region, the inner boundary of the EEZ is a line coterminous with the seaward boundary of the coastal State of Alaska. Thus, this zone is from 3 nautical miles (*nm*) from any point of land to 200 *nm* (3-200nm).

NMFS staff noted that in many part of SE Alaska, federal waters area exist well inside the offshore State water designations. Many inner passages and straits which span over 6 miles from shore to shore form "pockets" of federal water, such as Stephens Passage, Frederick Sound, Chatham Strait and Glacier Bay.

Committee Discussion on EFH Designation Alternatives:

Motion: The EFH Committee recommends to the Council that staff move ahead with the analysis relative to EFH designation alternatives and adopt the slightly modified alternatives for EFH designation Alternatives 1,2,3,4,5, and 7 (see above). Alternative 6 would be dropped. Initially Alternative 6 (core approach) had a lot of appeal, but virtually no species have the level 4 information necessary for this alternative. The Committee discussed staff's recommendation of using the survey CPUE data (highest 10%) to define a core area for a species and felt this designation would end up with a result that differs from the initial concept. An analysis using only survey data has

limitations to define a 'core area' for a species because it could result in an inappropriate designation of EFH by failing to identify all areas that are core to that species. The concern was based on the fact that survey locations (both longline and trawl) are limited from areas that are too "rough" to fish because of boulders, snags, or other potential gear problems. In essence, the results of a high survey CPUE for a species such as rockfish wouldn't necessarily account for it's true core area because rocky habitats are not sampled. Additionally the survey is conducted seasonally, and that can create a problem with the perceived distribution of a species year round. The Committee noted that dropping this alternative would not reduce the range or contrast between alternatives since the original alternative 6 concept is encompassed in level 4 of alternative 4.

There would be one modification to alternative 4 as follows:

Alternative 4 - Species Based

Define EFH using the highest level of information available for each species by lifestage. This alternative would specify EFH designations in accordance with the considerations established in the final rule (*updated from interim final rule). This approach would **dictate** that EFH be designated on the basis of the highest level of information available.

> Suboption: This approach would **allow** that EFH be designated on the basis of the highest level of information available.

The reason for adding a suboption for alternative 4 is that although an information level about a species at a certain lifestage may increase, there may be merit in maintaining a larger EFH designation.

The Committee recommends these revised EFH alternatives to keep a high level of contrast for the analysis to illustrate the range of differences. *Motion passes 9-1*

II. HAPC Designation Alternatives :

In November 2001, the EFH Committee developed a set of alternatives for HAPC designation. Staff had recommended simplifying the alternatives for practical and analytical reasons. After the staff presentation the Committee drafted and agreed on the following working definitions and revised alternatives:

> **HAPC sites are defined as specific geographic locations, identified on a chart, that meet the considerations established in the regulations, and are designated to address identified problems for FMP species and achieve clear, specific management objectives.**
>
> **Further, HAPC type designations are used to focus research priorities, such as ascertaining ecological links between habitat and FMP species, etc. Our intent is that the type designation alone does not invoke mitigation measures.**

Alternative 1: No Action. Under this alternative there would be no designation of HAPC in the region.

Alternative 2: Status quo (types). HAPC would remain as defined and adopted under amendments 55/55/8/5/5: living substrates in shallow waters, living substrates in deep waters, and freshwater areas used by anadromous fish.

Alternative 3: Site- based concept. Individual sites meeting one or more of the considerations and selected to address an identified problem may be designated HAPC sites for managed species. It does not allow for designation of types of habitat but constrains HAPC designation to explicitly geographically defined sites or locations, such as a particular seamount.

Alternative 4: Type/site based concept. This alternative establishes HAPCs as individual sites selected as subsets of HAPC types for managed species. This is done as a two step process:
Step A) Types are selected based on the regulatory considerations.
Step B) Sites are selected as a subset of types to address an identified problem and management action is applied to achieve specific management objectives.

Alternative 5. Species core area
This alternative starts with the assumption that the data available on the distribution and abundance of an FMP species (and other species important to FMP species) is one of the factors that provides an indication of areas in which to examine the link between habitat and productivity. The Committee notes that HAPC core areas will only be designated, as reliable information on the link between habitat and productivity becomes available.

As more information on the interaction between habitat and FMP species/ecosystem productivity becomes available, HAPC could be refined to a core habitat that could be a type or a site that may be a bottleneck or key habitat. At low levels of information we start with species distribution and abundance, filter it through the four considerations and if one or more applies, HAPC may apply. As more information becomes available HAPC could be refined to a core habitat that could be a site designated to achieve specific management objectives.

III. Updates on fishery description:

Fishery descriptions were updated and the revised draft from the March Committee meeting is on the Council web site. Additional revisions will be made by October. The intent of staff is to clarify any language, and finish the descriptions by adding figures to illustrate gear type.

IV. Evaluation Methodology:

The regulations require that each fishery management plan contain an evaluation of potential adverse effects of each fishing activity on each type of habitat found within EFH. Fishery management plans must describe each fishing activity, review and discuss all available relevant information and provide conclusions regarding how each fishing activity affects EFH.

A subcommittee was formed to weave the concepts of minimum and temporary into a methodology to analyze the adverse impacts of fisheries. The workgroup developed several possible ways to assess the effects of fishing on habitat. The SSC will review staffs proposed impact analysis methodology during the June 2002 Council meeting. Staff will try complete the evaluation and present it to the Committee in September.

Jeff Fujioka Auke Bay Lab, described a model he is working on to assess fishery impacts. It is based on a differential equation model which incorporates fishery impacts as well as the recovery rate of the habitat.
Craig Rose gave a report on a methodology for summarizing distribution of fishing intensity, (his example looked at bottom trawl effort), and calculated area swept in proportion to the entire area available. This methodology could be incorporated for describing fishing intensity by gear type and fishery, and incorporated into the gear impact analysis for understanding cumulative impacts of all fisheries.

Committee members expressed concern over using an evaluation method that is not fully transparent. Some of the concerns were based on that fact that many people don't have the skills to understand a model, such as differential equations, especially the numeric determination of inputs and outputs to describe "adverse" impacts. The Committee also discussed that a more complex quantitative model would still suffer from the same data limitation that hinders the simplified approach described by Council staff. The overall lack of quantitative data on almost everything except the intensity of fishing for observed fisheries would still involve the same subjective calls on gear effects etc. where objective data are not available. There will be data limitations with either a transparent public model or a more rigorous quantitative methodology.

V. Summary of "to the extent practicable":

John Lepore provided the following summary: To provide the Committee with a legal and practical interpretation of this guidance John described the dictionary definition of 'practicable' which is "capable of being executed or done, or feasible". John referred to 50 CFR sec. 600.815(a)(2)(iii) for an explanation for the phrase "to the extent practicable." It states:

(iii) Practicability. In determining whether it is practicable to minimize an adverse effect from fishing, Councils should consider the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation, consistent with national standard 7. In determining whether management measures are practicable, Councils are not required to perform a formal cost/benefit analysis.

A cost/benefit "type" analysis, seems to be the methodology suggested to determine what is practicable, although a "formal" cost/benefit analysis is specifically not required by the regulations. Use of best available information is required under the national standards, and national standard 7, which is specifically mentioned in the regulations, provides that "conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication."

One Committee member reported to the Committee on another source for the intent of Congress on the meaning "to the extent practicable". That information came from the House Congressional Record on the intent of Congress for the Sustainable Fisheries Act of 1996. The language in the Congressional Record not only supported NOAA GC's interpretation of the use of the language in statutes, but it also elaborated on other issues such as not using the new conservation mandates of the Act to reallocate fishing opportunities or ban fishing gears.

VI. Rationalization discussion paper:

The subgroup reported on their draft discussion papers regarding rationalization as a mitigation tool to protect habitat. A final report will be available by the August teleconference. In summary, the Committee felt that although rationalization is not typically a tool for mitigating or preventing fishery impacts a rationalized fishery can provide management options that protect habitat. The group provided examples of specific fisheries which have been rationalized (pollock- AFA/ IFQ sablefish & halibut) or could benefit from them (Bering Sea crab, and rock sole).

Motion: Michele Ridgway moves that Committee members provide their comments to authors of the workgroup and copy other members of that 4 person working group along with Cathy Coon of Council staff by May 30th. Authors will then provide revisions for the Committee by August meeting. John Gauvin will be the lead and will finalize the final document. *Motion carries 9-1.*

VII. Public Testimony on HAPC nomination of sites/ types and public process:

Community Input: Sandra Moller (*Aleut Enterprise*) and Simeon Swetzof (*City of St. Paul*) testified that they had not developed HAPC proposals since there was not a call for public proposals. However they felt it critical that small communities be incorporated in making habitat conservation decisions that effect the sustainability of resources and that could affect local economies. They requested the Committee relay their concerns to the Council emphasizing that it is necessary to have community participation in the EFH and HAPC processes.

Non-fishing interests: Jason Brune (*Resource Development Council*). Noted that the Committee has focused a lot on fishing interests however it's important not to ignore non-fishing interests: Timber, oil and gas, mining, home construction, and community development could be impacted by the EFH regulations. It is essential to have the HAPC definitions and process in place before HAPC proposals are considered into the recommended alternatives.

Environmental interests: Public HAPC proposals included:
Prince William Sound Forage Fish Spawning & Nursery Habitat: Montague Island, Green Island and Gravina Bay (The Ocean Conservancy) ;
Yakutat for recovery of Tanner and Dungeness Crab stocks (Ginny Fay/Tom Maloney City of Yakutat);
Aleutian Island region corals and sponge protection (Oceana);
Pollock Spawning grounds on the Bering Sea " Green belt" HAPC type including the Continental Shelf-Break/Upper Slope pelagic habitat (Ken Stump);

VIII. Committee Discussion of HAPC:

The Committee proposed several additional HAPC sites/ types, and NMFS introduced some suggested sites that could be further refined from their examples of HAPC considerations. These included:

Nearshore and shallow waters of Alaska as a HAPC type (Smiley)
Long lived slow growing biotic assemblages at the continental shelf break as a HAPC type (Smiley).
Coral patches off Cape Ommaney and Dixen Entrance (Reed)
Sitka Pinnacles (Behnken, Council staff)
Aleutian Islands Management Area Fish & Coral Protection (Ridgway);
Prince William Sound Herring Spawning (Ridgway)
Albatross pinnacle for juvenile rockfish (Enticknap);
Bering Sea shelf/ edge for Bering Sea snow crab (Zhemchug) (Enticknap);
Kodiak Crab Habitat for King and Tanner crab rebuilding (Enticknap);
Pinnacles and Seamounts (HAPC type) (Enticknap);

The Committee struggled with how to deal with the proposals offered by the public and Committee members. It was noted that there are likely other public that would be interested in providing proposals. Some Committee members felt it would be difficult to assign all the HAPC proposals to one or the other of the HAPC designation alternatives. The suggestion was made to list all HAPC proposals and have them be considered through a different process, along with any others that may be received. Examples of potential HAPC sites could be developed by the Committee and staff and included in the EIS as part of the alternatives if necessary.
A **motion** was put on the table to receive all proposals submitted to the Council and or EFH Committee prior to July 15 for preliminary screening by staff (using the considerations from the final rule, and methodology provided in the technical guidance) for further consideration by the Committee at the August/September meetings. In September, the Committee would select HAPC (sites/types) proposals for inclusion in the EFH SEIS (understanding that these are recommendations to the Council, who chooses the final ones to include in the SEIS). There was no objection to the motion. A second **motion** (Gauvin) was made recommending that the Council develop a form for HAPC proposals and make that form available to the public through the Council website HAPC form should include:

1. Name the proposer and organization.
2. Description of the problem or objective addressed in the proposal.
3. Describe the HAPC consideration addressed by the proposal.
4. Details on the area or type of area proposed (with chart or map showing geographic location).
5. HAPC alternative most closely utilized in the proposal (optional).
6. The nature and extent of fishing and non-fishing activities occurring in this site or type (to the extent known).
7. Other supporting materials (data, references, etc.).
8. Identification of potential mitigation measures, and potential impacts to habitat and current users of the area..
9. Will designation of this HAPC area require coordination with the State, and has a similar proposal been made to the Alaska Board of Fisheries?
10. Who will benefit/ who will be hurt.

The Committee's intent is to prioritize the HAPC proposals, so that a few top priority HAPC sites and types can be included in the EFH SEIS. It was understood that the SEIS would also contain a process to consider and incorporate other HAPC sites/types in the future. The Committee would be willing to develop this process later this year, after the October meeting.

Two questions arose from the HAPC discussion and were addressed by John Lepore NOAA GC.

1) **Can HAPC's address the concepts of benthic and pelagic?** John Lepore directed the Committee to 50 CFR sec. 600.10. EFH is defined as *those waters and substrates necessary for spawning, breeding and growth to maturity*. The term waters includes all aquatic areas which would include pelagic (or the middle of the water column). The term substrates indicates the bottom which is synonymous to benthic.

2) **Can EFH or HAPC's be designated for non FMP species?** John Lepore referred to 50 CFR sec. 600.805(b)(1), which states that "[a]n EFH in an FMP must include all fish species in a fishery management unit (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 purposes of sections 303(a)(7) and 305(b) of the Magnuson-Stevens Act." Habitat areas of particular concern (HAPC), according to 50 CFR 600.815(a)(8), are to be designated "within EFH." Therefore, EFH (and consequently HAPC, which is a subset of EFH) can only be designated for species in the FMU for an FMP. According to 50 CFR sec. 300.10, the FMU is the "fishery or that portion of the fishery identified in an FMP relevant to the FMPs objectives." Each FMP would have its own FMU as defined. Accordingly, EFH (and consequently HAPC) cannot be designated for species not in the FMU; however, 50 CFR sec. 600.815(a)(7) provides that "actions that reduce the availability of the major prey species, either through direct harm and capture, or through adverse impacts to the prey species' habitat that are known to cause a reduction in the population of the prey species, may be considered adverse effects on EFH if such actions reduce the quality of EFH." David Witherell, clarified that in the first EFH amendment package there was information on habitat and maps of non FMP species including halibut and GOA crab. Even though it wasn't required under the MSFCMA provisions it was nice to have a complete picture of all species within a region. Would it be possible for non FMP species to be labeled as areas of special concern within the document. Counsel advised yes it would be possible to address the non-FMP species for completeness, but they would have no legal designation.

IX. Committee schedule.

In closing, Stosh reviewed the upcoming meeting schedules and agendas. On August 27, at 9:00 am AK time, the EFH Committee will meet by teleconference to review staff reports on the fishery impact evaluations. The EFH Committee will meet in Kodiak on September 16-18 (8:30am - 5 pm) at the Fish Tech Center to develop alternatives for mitigation measures.