

Report on NPFMC EFH Committee meeting

June 2001 Agenda C-4 Supplemental

Committee: Linda Behnken (chair), Gordon Blue, Ben Enticknap, John Gauvin, Earl Krygier, Michael Payne, Michelle Ridgway, Heather McCarty
Staff: NMFS- Jeanne Hanson, Cindy Hartmann
NPFMC- Cathy Coon, Jane DiCosimo

The Essential Fish Habitat (EFH) Committee met for the first time on May 30th to address the needs for upcoming work on the EFH Environmental Impact Statement (EIS). This was an organizational meeting to identify the role the committee will have in formulating alternatives for the EIS document. Specific goals of the committee were discussed in regards to the National Marine Fisheries Service (NMFS) scoping process, creating alternatives for Council review, and a timeline to accomplish the work.

The function of the committee will be to serve as a steering committee to facilitate input to NMFS on the EFH EIS. The committee will aid in developing alternatives based on significant issues identified from the scoping process and aid NMFS in reviewing preliminary draft alternatives they have developed.

The committee received background material from NMFS on EFH, the litigation summary, regulations and requirements for both the Magnuson Stevens Act (MSA) and the National Environmental Policy Act (NEPA). NMFS presented a 2-year timeline to complete the EIS document.

The committee was concerned about legal processes required by NEPA and other federal regulations; it was agreed that we will forward some questions to NOAA General Council (GC) to gain clarity on important issues and to avoid legal problems as we proceed.

The committee discussed the specified function of their tasks and set goals and a timeline to deliver alternatives for Council review in October 2001. Significant issues for development of alternatives will be compiled based on the comments received during the NMFS scoping process. The next meeting scheduled for August 13 & 14th will review the NMFS preliminary draft summary of scoping comments. The goal of the meeting will be to develop preliminary alternatives. An additional meeting may be held in September (18th via teleconference) if additional reviews are needed prior to the October Council meeting.

Additionally, the committee discussed roles of a set of technical committees for the EIS document and what type of composition that could be composed of. Each Fishery Management plan (FMP) would have a technical team. One committee member suggested the technical teams provide an opportunity for scientists to work with fishermen on innovative approaches to habitat conservation

DRAFT

May Minutes of the NPFMC EFH Committee

May 30, 2001 Anchorage, AK
Federal Building 10:30-5pm

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Introduction: The committee and staff introduced themselves, the Chair gave a brief overview on the role of the committee. The initial role of this group is to be a steering committee to help the scoping process to bring together the industry, the public, and conservation groups to craft a broad set of alternatives for the agency to analyze in the EIS document. It will be a means to facilitate the involvement of the NPFMC.

Review of Agenda: Michael Payne (NMFS) presented an agenda that addressed background on EFH issues, the litigation summary, and functions of the committee that would aid NMFS with the EIS process.

Background:

History of EFH

Cindy Hartman (NMFS) presented an overview of status of the EFH process.

1996 Magnuson Stevens Act- how EFH began

Definition of Essential Fish Habitat has been broadly defined by the Act to include “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity” (MSA, 1996).

1996 MSA - EFH impacts etc., measures to reduce impacts, non-fishing impacts

1997 Clarence Pautkze and Rich Marasco tasked NPFMC, NMFS and ADF&G staff to address EFH issues following the guidance on the proposed rule (interim rule; amendment shall include the level of information by life history stage for FMP species in assessing EFH).

1998 April Draft NMFS Recommendation to Council, June Final Recommendations to Council September NPFMC Draft Environmental Assessment 55/55/8/5/5 to SOC

1999 SOC approval of NPFMC EFH Amendments: January 20, 1999 Initiation of AOC lawsuit brought five councils including the North Pacific into the litigation process.

2000 September Judge ruled: initiated negotiation of settlement agreement between plaintiffs and defendants, still ongoing as of May 2001

Rulings: No MSA violation

NEPA violation:

- Range not sufficiently broad : too few alternatives were considered
- Insufficient analysis of fishing impacts on habitat
- No analysis of alternatives to reduce and minimize to the extent practicable impacts

2001 May Subsequent to the settlement agreement, NMFS Alaska region has initiated the EFH EIS process, which involves, a timeline, public scoping meetings, Council review and NMFS analysis of alternatives developed during the scoping period.

- Notice of Intent for Scoping meets are in the federal register
- Meeting dates and times have been announced for June and will be in Kodiak, Dutch Harbor, Anchorage, Seattle, Juneau, Sitka

(MP) clarified what constitutes an EIS and the difference from an EA. The findings of the EA will determine whether an EIS needs to be initiated. An EA has two potential findings based upon biological, environmental sensitivity, the human environment, community impacts, economic impacts (usually in RIR/IRFA format).

- a) Action results in significant positive or negative effects on the human environment
- b) No significant effects on the human environment - then FONSI

The finding of no significance results in a finding of no significant impact (FONSI) and EIS is not necessary, and therefore concludes the NEPA process. Should the finding of the EA is significant effects then a preparation of an EIS is required to more fully assess the impacts on the proposed action. The initial EFH EA was based on no real analysis, but on a review of prior management actions to protect habitat (i.e. area closures).

The technical difference between an EIS and EA is the EIS is a more thorough assessment of effects, which requires a longer period of time for analysis and public comment.

Cindy Hartmann noted that Councils have played different roles for developing EFH amendments. The Caribbean and Gulf Councils are contracting and leading on EIS, the other 3 are NMFS lead, since FMP was for SOC approval and the Councils defendants in the lawsuit.

NEPA regulations:

NMFS staff Jeanne Hanson and Cindy Hartman as to this process provided a summary. Steve Davis (NMFS) came in and gave an overview of NEPA in how it was utilized for the Groundfish SEIS NOI, Purpose and Need. Steve Davis (NMFS) presented information on the NEPA process and how it was followed in the SEIS. Mike Payne noted that the SEIS for groundfish is planning doc, not action forcing, decision making - no rule making, rules or council action may use alternatives and may not - requires more analysis and process. EIS's are analytical documents. Records of decisions are action forcing documents. A Record of Decision follows completion of a Final EIS and considers the comments on the Final EIS.

PROCESS of NEPA for EFH SEIS

- 1) Timeline - this shows the whole process described to plaintiffs as approximately 2 years
- 2) Notice of Intent - published in Fed Reg.
- 3) Public comment
- 4) Scoping - NPFMC is part of public, other input also accepted to generate the issues
- 5) Alternatives are developed based on significant issues.

The committee continued to discuss the NEPA and other issues:

- EFH mandate
- NMFS Implementation
- Interim Rule, EFH Guidance, EFH Amendments, Consultative Process, Effects of Fishing Research.
- HAPC as a more narrowed focus within EFH mandate (separate protection measures)
- Keeping the EFH EIS separate from the Groundfish SEIS limitations on alternatives
- Decisions by SOC or NPFMC concerning adopting alternatives
- How SEIS and EIS actions fit together in regards to gear restrictions
- How best to quantify effects of fishing on habitat

Time line:

NMFS Alaska region handed out a 2 year time line to address the EFH EIS. In refinement of the role of the committee, the committee made an informal timeline in order to have a document for Council review at the October meeting that would have some potential alternatives based on scoping meetings, NMFS summary of these meetings, and identification of pertinent categories for review.

Formation of technical teams:

The committee discussed roles of a set of technical committees for the EIS document and what type of membership that could be composed of. Each Fishery Management plan (FMP) would have a technical team. One committee member suggested the technical teams be a vision for scientist to work with fishermen on innovative approaches to habitat conservation.

Cindy Hartman (NMFS) gave an overview on how the core team and technical teams worked during the last EFH document, and what their compositions were. The Technical teams for each of the FMP were previously composed of NMFS, F&G, plan team, Council staff. Some of the members of the technical teams were on the EFH core team.

The committee discussed the importance of scientists working with fishermen to on order to promote innovation, provide for germination of new ideas, and consult of the practical application of the technical teams suggested approaches to habitat protection.

Committee Recommendation:

1. Begin soon, to get on top academic and scientific adviser's schedules.
2. Include knowledgeable industry members (active)
3. Involve outside thinkers to promote fresh ideas
4. Bring together technical experts and fishermen
5. Request from SSC some guidance in formulating these teams

The question arose of who is appointing these committees, Linda Behnken and Michael Payne will speak with NPFMC chairman David Benton.

Next Meeting Date: August 13 & 14th in Sitka. Linda Behnken will check for room availability w the NRSRAA. Additionally there is a tentative teleconference scheduled for September 18th if desired for reviewing the draft scoping report and alternatives. It is the understanding of the committee that Ms. Behnken will remain chair of the committee.

Legal Questions:

The committee is concerned about legal processes required by NEPA; it was agreed that we will forward some questions to NOAA GC to gain clarity on important issues in order to avoid legal problems as we proceed.

- Is the EFH EIS an action-forcing document?
Comments: Jane DiCosimo thinks it is critical to identify in your scoping report and presentation that there are two choices for the EFH EIS development: action forcing document that results in changes to the FMPs or as a non action-forcing document that takes a programmatic approach that will result in a trailing analysis for implementation.
- What about the interplay between the SEIS and EFH EIS?
- What is the degree of socio-economic analysis that's needed for the EIS? RIR/IRFA as separate documents or one.
- Guidance on MSA definition of EFH? Definition or designation? Are we limited by the guidance document or interim final rule?
- Can the secretary take an alternative out of the EIS?

Next Steps:

- Committee members will support scoping process
- Kodiak meeting put the word out to constituents or other interested parties.
- Additional requests were for a '10 top' hit list of web sites and other published background information on EFH for committee and public, staff (Cindy Hartman/C. Coon) will compile this annotated bibliography.
- Think of formats on technical teams, composition, function, and nomination by Council or NMFS.

List of EFH Committee handouts:

- EFH Committee members
- NMFS Agenda
- Essential Fish Habitat Status report: Litigation Summary Michael Payne April 11, 2001
Memorandum for Regional Administrators from William Hogarth
-Guidance for Developing EIS for EFH per AOC v. Daley- Court Order
- Department of Commerce/ NOAA
- 50 CFR Part 679 DRAFT
- Draft Outline- Report of Fishing Gear Effects on EFH from SEIS
- Summary of BSAI Amendment 55- Essential Fish Habitat
- Draft- EIS. Dept. of Commerce/ NOAA NMFS Environmental Assessment and Industry of No Significant Impacts for Magnuson Act Provisions: EFH
- American Oceans Campaign Plaintiffs v. William Daley

Abbreviations used by EFH committee:

EFH Essential Fish Habitat

MSA Magnuson Stevens Act

Also known as Magnuson Stevens Fisheries Conservation and Management Act

NMFS National Marine Fisheries Service

EIS Environmental Impact Statement

EA Environmental Assessment

SEIS- Supplemental Environmental Impact Statement

NPFMC North Pacific Fishery Management Council

HAPC- Habitat Areas of Particular Concern

FONSI- finding of no significant impact

RI/IRFA – regulatory impact review / initial regulatory flexibility act

SOC- Secretary of Commerce

AOC American Oceans Campaign

AMCC Alaska Marine Conservation

Participant initials:

LB- Linda Behnken (chair)

GB-Gordon Blue

BE- Ben Enticknap,

JG-John Gauvin

EK -Earl Krygier

MP -Michael Payne

MR -Michelle Ridgway,

HM -Heather McCarty

NMFS- JH Jeanne Hanson, CH Cindy Hartmann

NPFMC- CC Cathy Coon, JDC Jane DiCosimo