



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**

*National Marine Fisheries Service*

*P.O. Box 21668*

*Juneau, Alaska 99802-1668*

November 29, 2002

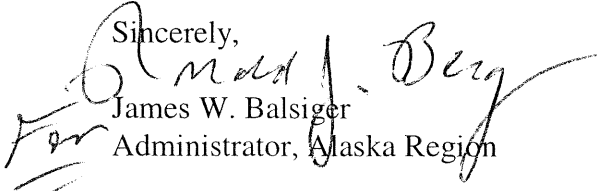
Ben Enticknap  
Fisheries Project Coordinator  
Alaska Marine Conservation Council  
Box 101145  
Anchorage, Alaska 99510

Dear Mr. Enticknap:

Thank you for your recent letter to Jon Kurland and me regarding the problem statement and criteria adopted by the North Pacific Fishery Management Council for the Essential Fish Habitat (EFH) Environmental Impact Statement (EIS). You are correct that some of the specific language in the problem statement and criteria does not directly comport with similar provisions in the EFH regulations. As you may recall, NOAA General Counsel raised this issue during the October Council meeting. The Council decided to include language in the problem statement that stresses the need for compliance with the Magnuson-Stevens Act, as well as language stating that the criteria would only be addressed as practicable. Given these caveats, NOAA General Counsel advised that the problem statement and criteria were legally acceptable. Their rationale was that the modifying language did not bind the Council to address more than the required factors, and that adoption of a problem statement and criteria by the Council cannot supercede the applicable statutory and regulatory requirements for the EIS. Nevertheless, inconsistencies between the Council's language and the applicable regulations could lead to confusion for the public as well as the staff preparing the EIS. I am sending a separate letter to the Council to clarify this point.

You also raised concerns about the EFH mitigation alternatives adopted by the Council. You suggested that Alternative 5 be modified to benefit a broader array of epifauna species, and that the alternatives address currently fished areas in addition to protecting areas with low fishing effort. Jon Kurland has advised the EFH Committee that the range of alternatives must include alternatives that are distinct from one another and substantively different from the status quo, so that the resulting analysis can compare and contrast the effects of the alternatives. He also advised the EFH Committee that at least some of the alternatives should include management areas designed to reduce adverse effects in areas that currently are fished, as well as to provide protection for relatively undisturbed habitats. During its November 4-6, 2002 meeting, the EFH Committee heeded that advice and agreed on several specific alternatives. The Committee dropped Alternative 5, but included measures in Alternatives 3 and 4 that would protect habitats with a variety of emergent epifauna in both fished and unfished areas.

The National Marine Fisheries Service appreciates your active involvement in the difficult work associated with this analysis. Please contact Jon or me if you have further questions or concerns.

Sincerely,  
  
James W. Balsiger  
For Administrator, Alaska Region



November 29, 2002

Jon Kurland

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cc: Records  
NPFMC  
Cindy Hartmann  
Jon Kurland  
John Lepore