



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

April 8, 2005

Carol Goularte
District Ranger
Sitka Ranger District
204 Siginaka Way
Sitka, AK 99835

RE: Sitka Ranger District Access and Travel Management Assessment (TMA)
Environmental Assessment (EA) Planning Comments

Dear Ms. Goularte:

The National Marine Fisheries Service (NMFS) has reviewed the March, 2005 United States Forest Service (USFS) public notice for the referenced project, and offers the following comments.

The USFS proposes to change the ways in which National Forest system roads are managed and used in the Sitka Ranger District. The EA public comment announcement summarized impacts to anadromous stream crossings and incorporated appropriate road classifications for the proposed changes to the National Forest system roads within the Sitka Ranger District. NMFS concurs with the proposed classifications insofar as they categorize roads according to levels of use and environmental impact. However, we recommend that your environmental analyses further consider the impacts of off highway vehicles (OHVs) to sensitive areas (wetlands, streams and unstable soils) adjacent to roads where OHV users have access. Will this type of access be restricted, and if so, how will this be monitored and enforced? If this type of access is not restricted, what are the potential impacts to anadromous fisheries resources? OHVs have the potential to damage aquatic and riparian vegetation, cause erosion and siltation from stream bank destabilization, disturb salmonid spawning beds from mechanical destruction and compaction of gravels, and spread invasive plants (see Texas Chapter of the American Fisheries Society overview at <http://www.sdafs.org/tcafs/content/orvpol.htm> . The proposed road classifications may adversely affect essential fish habitat (EFH) under the Magnuson-Stevens Fishery Conservation and Management Act, and warrant preparation of an EFH assessment, as discussed below.

Essential Fish Habitat:

NMFS and USFS have agreed upon a process for integrating EFH consultation into the National Environmental Policy Act process (enclosure). Preparation of an EFH assessment is triggered when a USFS action may adversely affect EFH. Interagency discussions and meetings precede publication of the EA. For any action that may



adversely affect EFH and not covered by a General Concurrence or Programmatic Consultation, the USFS will provide NMFS with a written EFH assessment of the effects of that action on EFH, which is preferably integrated into the EA. The EFH assessment must contain:

1. A description of the proposed action.
2. An analysis of the potential adverse effects of the action on EFH and the managed species.
3. The USFS's conclusions regarding effects on EFH.
4. A discussion of proposed mitigation, if applicable.

NMFS will respond to the EFH assessment within the established comment period (typically 30 days), in writing, as to whether it concurs with the findings of the EFH Assessment. In addition, NMFS may recommend EFH conservation recommendations, ask for additional analysis, or request expanded consultation. If NMFS provides EFH conservation recommendations, the USFS must provide a written response within 30 days of receiving the recommendations. If the USFS is not able to respond fully within 30 days, the USFS will send a preliminary response.

Information Resources and Needs:

Anadromous Species:

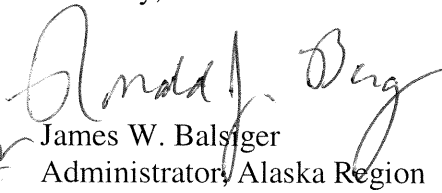

The Alaska Department of Fish and Game's anadromous waters catalog should be consulted regarding anadromous fish streams and lakes that occur at or near the road corridors and ferry terminals for the project.

Wetlands, and Nearshore Habitats:

NMFS recommends that you work with the U.S. Army Corps of Engineers in locating jurisdictional wetlands.

We hope these comments are helpful and look forward to working with you to provide the information and analysis needed for a comprehensive and useful EA. If you have any questions, please contact Linda Shaw at 907-586-7510.

Sincerely,


For  James W. Balsiger
Administrator, Alaska Region

Enclosure: USFS and NOAA Fisheries Service EFH Finding, finalized June 23, 2000

United States
Department of
Agriculture

Forest
Service

Alaska Region

P.O. Box 21628
Juneau, AK 99802-1628

File Code: 2600/1950

Date: JUN 23 2000

Mr. James Balsiger
Administrator, Alaska Region
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802-1668

Dear Mr. Balsiger:

Thank you for your letter of May 1 transmitting the Essential Fish Habitat Consultation Process between our two agencies. We accept the process and will begin implementing it immediately.

If you have any questions regarding the process in the future, please contact Cherie Shelley of EP staff at (907) 586-8855, or Ron Dunlap of WFEW staff at (907) 586-8772.

Sincerely,



RICK D. CABLES
Regional Forester

cc:
Forest Supervisors
Frederick Norbury, EP
Wini Kessler, WFEW



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

May 1, 2000

Rick D. Cables
Regional Forester
USDA Forest Service
P.O. Box 21668
Juneau, AK 99802

Dear Mr. Cables:

Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) requires that all federal agencies consult with the Secretary (National Marine Fisheries Service, NMFS) on all actions, or proposed actions, authorized, funded, or undertaken by the agency, that may adversely affect EFH. The EFH regulations, 50 CFR Section 600.920(e)(1), enable Federal agencies to use existing consultation/environmental review procedures to satisfy the MSFCMA consultation requirements if the existing procedures meet the following criteria: 1) the existing process must provide NMFS with timely notification of actions that may adversely affect EFH (600.920(e)(i)); 2) notification must include an assessment of impacts of the proposed action (600.920(g)); and 3) NMFS must have made a finding pursuant to section 305(b)(2) of the MSFCMA.

After multiple meetings between NMFS and the United States Department of Agriculture Forest Service (FS) staff, a procedure was developed to incorporate the EFH consultation process into the existing National Environmental Policy Act (NEPA) process. NMFS appreciates the efforts of Ron Dunlap and Geneen Granger in developing this process. This process was developed using the MSFCMA, the EFH Interim final rule, the NMFS November 1999 EFH Consultation Guidance, the FS Policy and Procedures Handbook 1909.15, and Chapter 1950 of the 1900 FS manual. The NMFS rule and guidance document can be accessed at: <http://www.nmfs.gov/habitat/efh>. NMFS, Alaska Region, EFH descriptions and maps, can be accessed at: <http://www.fakr.noaa.gov/efh>.

NMFS finds that the NEPA process used by the FS may be used to satisfy the consultation requirements of the MSFCMA provided the FS and NMFS adhere to the process in the attached document.



This process has some changes from the draft sent from James A. Caplan to Steven Pennoyer dated December 20, 1999. The changes are meant to offer further clarification and should have no contextual differences from the earlier draft. If you agree with the procedures described in the attachment to this document titled, Magnuson-Stevens Fisheries Conservation and Management Act: Essential Fish Habitat (EFH) Consultation Process between the USDA Forest Service, Alaska Region and the National Marine Fisheries Service, Alaska Region, please indicate your agreement in writing. If you have any questions, please contact Cindy Hartmann (907) 586-7585.

Sincerely,



Steven Pennoyer
Administrator, Alaska Region

Enclosure

cc: Ron Dunlap, FS
Geneen Granger, FS
Michael Payne
NMFS Alaska Region HCD Staff
Jon Kurland, F/HC

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Enclosures

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April 21, 2000

CAM Cindy Hartmann

Distribution List for HCD Alaska Staff:

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**MAGNUSON-STEVENS FISHERIES CONSERVATION and MANAGEMENT
ACT: ESSENTIAL FISH HABITAT (EFH) CONSULTATION PROCESS
between the USDA FOREST SERVICE, ALASKA REGION
and the
NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION**

EFH CONSULTATION PROCESS, USING NEPA PROCEDURES

The EFH consultation process outlined below will be followed on all actions or proposed actions, authorized, funded or undertaken by the FS that "may adversely effect EFH" which are not covered by a General Concurrence, or a Programmatic Consultation (50 CFR 600.920 (a)(1)). Adverse effect means any impact which reduces quality and/or quantity of EFH (50 CFR 600.910 (a)).

A. Environmental Impact Statements (EIS)

1. Notification:

EISs have extensive public involvement efforts which will involve NMFS from the earliest stages should an action affect or be located in EFH. Notification for the purposes of the EFH consultation, will occur when NMFS receives a draft EIS with an EFH Assessment (50 CFR 600.920(h)(3)). This will initiate consultation as required by 50 CFR 600.920(g).

2. EFH Assessment:

The DEIS will include an assessment of the impacts of the proposed action on EFH in a chapter or section titled "EFH Assessment" (50 CFR 600.920 (g)(1)).

The EFH assessment will include 1) a description of the proposed action; 2) an analysis of individual and cumulative effects of the action on EFH, the managed species, and associated species such as major prey species, including affected life history stages; 3) the FS's views regarding effects on EFH; and 4) a discussion of proposed mitigation, if applicable.

3. NMFS EFH conservation recommendations:

NMFS will respond within the established comment period (typically 45 days), in writing, as to whether it concurs with the findings of the EFH Assessment. In addition, NMFS may recommend EFH conservation recommendations, ask for additional analysis, or request expanded consultation (50 CFR 600.920 (h)(4)).

4. Forest Service Response:

If NMFS simply concurs with the FS EFH Assessment and proposed mitigation, consultation is ended and the FS need not respond to NMFS. If NMFS provides EFH conservation recommendations the FS must provide a written response to the NMFS, within 30 days after receiving NMFS recommendations. If the Forest Service is not able to respond fully within 30 days, the FS will send a preliminary response to NMFS. The official response can be sent later or be in the FEIS Response to Comments Appendix.

5. Dispute Resolution:

Potentially conflicts should be identified and handled prior to the publication of the Draft EIS whenever possible. If a FS decision is inconsistent with NMFS EFH conservation recommendations NMFS will endeavor to resolve any such issues at the field level if possible, typically in a meeting between the Habitat Conservation Division Director and the Regional Forester or between the Alaska Regional Administrator and the Alaska Regional Forester. If issues cannot be resolved to NMFS satisfaction, 50 CFR 600.920 (j) (2) allows the NOAA Assistant Administrator for Fisheries to request a meeting with the FS Chief to discuss the proposed actions and opportunities for resolving disagreements.

B. Environmental Assessments (EA)

1. Notification:

Although NMFS and the FS typically coordinate early in project planning, notification for the purposes of the EFH consultation, will occur when NMFS receives a draft EA with an EFH Assessment (50 CFR 600.920 (h)(3)). This will initiate consultation as required by 50 CFR 600.920(g).

2. EFH Assessment:

If a proposed action "may adversely effect EFH" and is not covered by a General Concurrence or a Programmatic Consultation, the FS will provide NMFS with a written assessment of the effects of the proposed action on EFH. Draft EAs on these actions will include an EFH assessment in a chapter or section titled "EFH Assessment" (50 CFR 600.920 (g)(1)). This will initiate consultation as required by 50 CFR 600.920(g).

The EFH assessment will include 1) a description of the proposed action; 2) an analysis of individual and cumulative effects of the action on EFH, the managed species, and associated species such as major prey species, including affected life history stages; 3) the FS's views regarding effects on EFH; and 4) a discussion of proposed mitigation, if applicable.

3. NMFS EFH conservation recommendations:

NMFS will respond within the established comment period (typically 30-days), in writing, as to whether it concurs with the findings of the EFH Assessment. In addition, NMFS may recommend EFH conservation recommendations, ask for additional analysis, or request expanded consultation.

4. Forest Service Response:

If NMFS simply concurs with the FS EFH Assessment and proposed mitigation, consultation is ended and the FS need not respond to NMFS. If NMFS provides EFH conservation recommendations the FS must provide a written response to the NMFS, within 30 days after receiving NMFS recommendations. If the Forest Service is not able to respond fully within 30 days, the FS will send a preliminary response to NMFS. The official response can be sent later or be in the FEIS Response to Comments Appendix.

5. Dispute Resolution:

Potential conflicts should be identified and handled prior to the publication of the Draft EIS whenever possible. If a FS decision is inconsistent with NMFS EFH conservation recommendations NMFS will endeavor to resolve any such issues at the field level if possible, typically in a meeting between the Habitat Conservation Division Director and the Regional Forester or between the Alaska Regional Administrator and the Alaska Regional Forester. If issues cannot be resolved to NMFS satisfaction, 50 CFR 600.920 (j) (2) allows the NOAA Assistant Administrator for Fisheries to request a meeting with the FS Chief to discuss the proposed actions and opportunities for resolving disagreements.

C. Categorical Exclusions

By their definition, CEs "do not individually or cumulatively have a significant effect on the human environment" (40 CFR 1508.4). However, actions covered by CEs must be evaluated to determine whether they may adversely affect EFH and need a consultation with NMFS (50 CFR 600.920 (a)(1)). The Forest Service should make this determination and may wish to document this determination and the rationale for this determination in the Decision Memo for the CE or in the project file.

The Forest Service will notify NMFS of all CEs through the quarterly forest Schedule of Proposed Actions. NMFS may review these schedules and request consultation of any they determine might have an adverse effect on EFH.

Table 1: Time Periods for EFH Notification and Consultation

SCOPING/PUBLIC INVOLVEMENT	OFFICIAL COMMENT PERIOD and NMFS RESPONSE	RESPONSES and PREPARING FEIS	DECISION DOCUMENT
<p>Environmental Impact Statement: 1-3 years average</p> <p>40 CFR 1501.7 Scoping (a)(1): <i>Invite the participation of affected Federal agencies.</i></p> <p>During this time, interagency meetings and discussions should identify any EFH concerns which should be handled before publication of the DEIS.</p>	<p>Draft EIS: 45 days minimum</p> <p>40 CFR 1503.1 Inviting comments. (a)(1) <i>Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved.</i> FSH 1909.15, 23.2, 4: <i>Allow a minimum of 45 days for comments on an EIS.</i></p> <p>If the Forest Service determines that the proposed action "may adversely affect EFH" and is not covered by a General Concurrence or Programmatic Consultation, an EFH assessment will be completed and published in the DEIS in a section titled "EFH Assessment." NMFS shall respond to the EFH assessment within this 45-day comment period.</p>	<p>FEIS: 45 days or enough so that the decision is not made prior to 90 days after DEIS</p> <p>40 CFR 1506.10(b) <i>No Decision on the proposed action shall be made... until the later of the following dates: (1) ninety days after publication of the notice .. for a DEIS.</i></p> <p>FS will respond, in writing within 30 days of receipt of NMFS' comments and at least 10 days before the final decision .</p>	<p>ROD</p> <p>36 CFR 215.9: <i>45-day appeal period if there has been an expression of interest.</i></p> <p>The 45-day appeal period gives additional time for resolution.</p>
<p>Environmental Assessment: 1-12 months average</p> <p>40 CFR 1501.7 Scoping (a)(1): <i>Invite the participation of affected Federal agencies.</i></p> <p>During this time, interagency meetings and discussions should identify any EFH concerns which should be handled before publication of the EA.</p>	<p>EA: 30-day comment period</p> <p>36 215.6(a) Comment Period. The Responsible Official shall accept comments ... for 30 days ...</p> <p>If the Forest Service determines that the proposed action "may adversely affect EFH" and is not covered by a General Concurrence or Programmatic Consultation, an EFH assessment will be completed and published in the Draft EA in a section titled "EFH Assessment." NMFS shall respond to the EFH assessment within this 30-day comment period.</p>	<p>Response to Comments appendix and Decision Notice/FONSI</p> <p>There is no regulation on the minimum time between end of comment period and decision for EAs. The Forest Service will respond in writing, within 30 days of receipt of NMFS' comments and at least 10 days before the decision.</p>	<p>Decision Notice/FONSI</p> <p>36 CFR 215.9: <i>45-day appeal period if there has been an expression of interest.</i></p> <p>The 45-day appeal period gives additional time for resolution.</p>

Categorically Excluded Action: 1 week-6 months average	No comment period.	No response to comments.	Decision Memo
<p>FSH 1909.15, 30.3, 3: <i>Scoping is required on all proposed actions, including those that would appear to be categorically excluded. If scoping indicates that extraordinary circumstances are present and it is uncertain that the proposed action may have a significant effect on the environment, prepare an EA. If scoping indicates that the proposed action may have a significant environmental effect, prepare an EIS.</i></p> <p>During this period any adverse effects to EFH should be identified. Any project proposed to be a CE with an adverse effect to EFH would require a EFH assessment and a EFH consultation with NMFS.</p>	<p>The one category of CE that required a comment period (timber sales) has been eliminated due to court action.</p> <p>If an action "may adversely affect EFH" then the EFH consultation procedures for EAs will be followed.</p>	<p>If an action "may adversely affect EFH" then the EFH consultation procedures for EAs will be followed.</p>	<p>CEs are not appealable.</p>
<p>If a CE has a "may adversely affect EFH" determination, then there would be a full 60 days for comments and response to comments.</p>			