

permit under § 679.4(f) and taking deliveries of CDQ or PSQ from vessels groundfish CDQ fishing as defined at § 679.2 or taking deliveries from vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing must have at least one lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section present at all times while CDQ is being received or processed. The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24-hour period, and the CDQ observer is required to sample no more than 9 hours in each 24-hour period.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[I.D. 100698A]

RIN 0648-AL40

#### Fisheries of the Exclusive Economic Zone Off Alaska; Amendments for Addressing Essential Fish Habitat (EFH) Requirements

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of approval of fishery management plan amendments.

**SUMMARY:** NMFS announces approval of the following fishery management plan (FMP) amendments: Amendment 55 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Amendment 55 to the FMP for Groundfish of the Gulf of Alaska; Amendment 8 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands; Amendment 5 to the FMP for Scallop Fisheries off Alaska; and Amendment 5 to the FMP for the Salmon Fisheries in the Exclusive Economic Zone (EEZ) off the Coast of Alaska (Amendments 55/55/8/5/5). These amendments describe and identify EFH in Alaska, and risks to that habitat, for groundfish, scallops, salmon, and king and Tanner crabs.

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Federal agencies must consult with NMFS,

acting for the Secretary of Commerce (Secretary), on any activity, or proposed activity, authorized, funded, or undertaken, that may adversely affect EFH. This action is necessary to promote the protection and conservation of habitat used by FMP species at crucial stages of their life cycles. It is intended to promote the goals and objectives of these FMPs.

**DATES:** The amendments were approved on January 20, 1999.

**ADDRESSES:** Copies of Amendments 55/55/8/5/5 and the environmental assessment (EA) prepared for the amendments are available from the North Pacific Fishery Management Council, 605 West 4<sup>th</sup> Ave., Suite 306, Anchorage, AK 99501-2252; telephone 907-271-2809.

**FOR FURTHER INFORMATION CONTACT:** Cindy Hartmann, 907-586-7312, or Nina Mollett, 907-586-7492.

**SUPPLEMENTARY INFORMATION:** NMFS manages the U.S. groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) and the Gulf of Alaska under the FMPs for groundfish in their respective management areas. With Federal oversight, the State of Alaska (State) manages the commercial king crab and Tanner crab fisheries in the BSAI, and the scallop and salmon fisheries off Alaska, under the FMPs for those fisheries. The North Pacific Fishery Management Council (Council) prepared these FMPs in accordance with the Magnuson-Stevens Act. Regulations implementing the FMPs appear at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

The following EFH reports, which are referenced in the amendments, are also available from the Council (see Addresses):

1. Essential Fish Habitat Report for the Groundfish Resources of the Bering Sea and Aleutian Islands, April 1, 1998.
2. Essential Fish Habitat Report for the Groundfish Resources of the Gulf of Alaska Region, April 1, 1998.
3. Essential Fish Habitat Report for the King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands, March 31, 1998.
4. Essential Fish Habitat Report for the Salmon Fisheries in the EEZ off the Coast of Alaska, March 31, 1998.
5. Essential Fish Habitat Report for the Scallop Fisheries off the Coast of Alaska, March 31, 1998.

A Notice of Availability (NOA) of Amendments 55/55/8/5/5, which described the proposed action and solicited comments from the public through December 21, 1998, was

published in the **Federal Register** on October 22, 1998 (63 FR 56601). Eleven letters were received within the 60-day comment period. They are summarized and responded to here.

After review of the amendments and comments received, the Administrator, Alaska Region, NMFS (Regional Administrator), determined that Amendments 55/55/8/5/5 are consistent with the Magnuson-Stevens Act and other applicable laws and approved the amendments on January 20, 1999. These FMP amendments became effective on approval. No regulatory changes are necessary to implement these FMP amendments.

#### Background

The Magnuson-Stevens Act mandates increased consideration of fish habitat in the process of managing and conserving the Nation's fisheries. Section 303(a)(7) of the Magnuson-Stevens Act requires all FMPs to describe and identify EFH, which it defines as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." In addition, FMPs must minimize adverse effects on EFH caused by fishing and identify other actions to conserve and enhance EFH.

As required by section 305(b) of the Magnuson-Stevens Act, NMFS published regulatory guidelines on December 19, 1997 (62 FR 66531, codified at 50 CFR part 600), to assist regional fishery management councils in their task of describing and identifying EFH, identifying adverse impacts on EFH, and identifying actions to conserve and enhance EFH. In accordance with these procedural guidelines, the Regional Administrator submitted draft EFH recommendations to the Council on April 3, 1998, for review and public comment. These draft recommendations were based on habitat assessment reports drafted by four technical teams, consisting of Federal and State biologists, working in cooperation with the Alaska Regional EFH Core Team, whose members were appointed by the NMFS Deputy Regional Administrator. NMFS submitted its final recommendations for the EFH amendments at the Council's June 1998 meeting. The Council adopted the recommended EFH amendments at that time. The Council submitted the amendments for Secretarial review on October 5, 1998. NMFS published an NOA for Amendments 55/55/8/5/5 on October 22, 1998 (63 FR 56601). The contents of the amendments were provided in the NOA and will not be repeated here. On January 20, 1999, the

Regional Administrator approved the five amendments.

### EFH Consultation Requirements for Federal Agencies

Section 305(b)(2) of the Magnuson-Stevens Act requires each Federal agency to consult with the Secretary with respect to any action it has authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, that may adversely affect any EFH identified under the Magnuson-Stevens Act. On December 19, 1997 (62 FR 66531), NMFS established procedures under 50 CFR part 600, subpart K, for implementing the requirements of the Magnuson-Stevens Act for other agencies to coordinate and consult with NMFS, and to consider NMFS' recommendations for EFH conservation.

Effective January 20, 1999, Federal agencies must consult with the Secretary with respect to actions that may adversely affect EFH identified and described in Amendments 55/55/8/5/5. NMFS must provide conservation and enhancement recommendations on any action that would adversely affect EFH, and the Federal action agency must provide a detailed, written response to NMFS within 30 days of receiving the EFH recommendations.

### Response to Comments

Eleven letters were received on Amendments 55/55/8/5/5 during the 60-day comment period ending December 21, 1998. Six letters were from non-fishing industry groups, three were from environmental organizations, one was from the State, and one was from the U.S. Coast Guard.

*Comment 1.* The scope of the EFH definition is too broad. Specific features should be identified for EFH designation. Instead, the definition in the amendments encompasses nearly all existing and potential fresh and saltwater habitat within and offshore Alaska. It includes all Alaska coastal and inland river, stream, and lake systems in which any of the five salmon species has been documented to occur.

Because the EFH area is so large, NMFS may not be able to adequately review and provide conservation recommendations on all Federal and State actions that might adversely affect EFH. The failure to rank or prioritize "truly essential" habitat areas is the logical equivalent of concluding that no habitat is essential.

According to one comment, the broadness of the definitions could invite third party lawsuits by "radical environmentalist groups."

*Response:* NMFS recommended a broad definition of EFH to the Council, and most of the other NMFS regions arrived at similar definitions. These definitions are consistent with a conservative approach to managing the fishery. NMFS considered the alternative of using known concentrations to define EFH for species' life stages for which Level 2 or higher information is available. At Level 2, quantitative data are available for the habitats occupied by a species or life history stage. This alternative was rejected, as explained in NMFS' Final Recommendations to the Council (May 11, 1998), for the following reasons:

1. Areas of known concentrations, based on current information, do not adequately address unpredictable annual differences in spatial distributions of a life stage, nor changes due to long-term shifts in oceanic regimes.

2. All habitats occupied by a species contribute to production at some level. Although contributions from individual locations may be small, collectively they can account for a significant part of total production. For example, fisheries for coho and pink salmon depend on the cumulative production from thousands of streams that are widely distributed across coastal Alaska.

3. A stock's long-term productivity is based on high and low levels of abundance. A broad range and diversity must be conserved to provide for periods of abundance, and to avoid severely reduced production during poor years. For example, high concentrations of rock sole were found in only two discrete areas of the southeastern Bering Sea during the early 1980s, but were found throughout regions with 100-m water depth during the mid-1990s, a period of much higher abundance.

4. The advice in the NMFS guidelines is to use the best scientific information available in a risk-averse fashion, employing an ecosystem approach. This suggests that, unless the information indicates otherwise, the more inclusive general distribution should be used to designate EFH. Observed concentrations do not necessarily reflect all the habitat required to maintain healthy stocks within the ecosystem.

From a scientific perspective, identifying areas outside of a known concentration as non-essential for maintaining healthy production levels would require extensive knowledge of habitat-related linkages to productivity and the ecosystem. Based on such knowledge, making a determination that portions of habitat encompassed by a general distribution definition are non-

essential might be possible. However, NMFS does not have the information to make such a determination at this time.

5. In the case of juvenile and adult life stages of salmon in marine waters, scientists, through research and observation, have determined that salmon are distributed over a large expanse of the Pacific Ocean, Gulf of Alaska, Bering Sea, and Chukchi Sea, from the shoreline to beyond the limit of the U.S. EEZ. The fish actually require a much larger area than earlier had been expected. They require a broad geographical distribution of habitat to obtain the prey species needed for their growth, and to obtain the diversity necessary so that they can withstand changing environmental conditions.

NMFS disagrees that it will not be able to afford habitat protection with this broad definition and that it will not be able to adequately review and provide conservation recommendations on Federal and State agency actions. The process of providing such review will be incorporated into existing processes whenever possible, and will ensure that concerns are raised when an action is proposed that may have adverse impacts on EFH.

*Comment 2.* No basis exists in the Magnuson-Stevens Act for addressing habitat outside the EEZ regulatory authority of the Council (extending 3–200 nautical miles from shore), and therefore the EFH amendments exceed the scope of the Magnuson-Stevens Act.

*Response:* The Magnuson-Stevens Act requires the regional fishery management councils to describe and identify EFH based on all life stages of the species managed in their FMPs, with no limitations placed on the geographic location of EFH. Since provisions in statutes are not presumed to apply extraterritorially, NMFS has determined that waters beyond the U.S. EEZ are not to be identified as EFH. None of the Alaska EFH FMPs extend EFH seaward of the EEZ.

EFH may be in State and/or Federal waters, depending on a species' biological requirements. Identifying coastal and inland State waters as EFH authorizes NMFS to consult on actions that may adversely affect EFH, and to provide conservation recommendations. The description and identification of EFH in State waters does not authorize NMFS to regulate activities in these areas. The Magnuson-Stevens Act requires NMFS to work closely with other agencies and groups to ensure the conservation and enhancement of EFH in State and Federal waters.

*Comment 3:* No basis exists in the Magnuson-Stevens Act for the regional fishery management councils to address

non-fishing interests. The 1996 amendments to the Magnuson-Stevens Act do not authorize the promulgation of standards and regulations that affect non-fishing entities. The amendments exceed the authority of the Magnuson-Stevens Act by affecting resource management disciplines for which Council members do not have the required expertise. The affected industries have no representation on the Council.

*Response:* One of the stated purposes of the 1996 amendments to the Magnuson-Stevens Act is to promote the protection of EFH through the review of projects conducted under Federal permits, licenses, or other authorities that affect EFH, or have the potential to affect it (16 U.S.C. 1801(b)(7)). The Magnuson-Stevens Act does not limit review of projects to fishing activities, but also includes non-fishing activities. Additional evidence of the intent of the Magnuson-Stevens Act to include non-fishing activities is in 16 U.S.C. 1855(b)(3), which states that councils may comment on and make recommendations to the Secretary and to any Federal or state agency concerning any activity authorized or proposed that may affect the habitat of a fishery resource under the council's authority.

Furthermore, the Magnuson-Stevens Act requires that councils identify, in their FMPs, potential adverse impacts to EFH and measures that will encourage the conservation and enhancement of EFH. Amendments 55/55/8/5/5, in compliance with the Magnuson-Stevens Act, identify both fishing and non-fishing activities that may adversely affect EFH for those species.

The regulatory relationship of NMFS to non-fishing interests is not the same as it is to fishing interests. NMFS regulates fishing activities in the EEZ, whereas EFH recommendations to a Federal agency on its non-fishing activities are advisory. Amendments 55/55/8/5/5 do not authorize NMFS or the Council to regulate non-fishing activities. The amendments identify and describe EFH for FMP-managed species, and Federal agencies are required to consult with NMFS on activities that may adversely affect EFH for those species. If the Secretary makes EFH conservation recommendations concerning an action that has been determined as likely to cause adverse impacts to EFH, the responsible Federal agency is required to consider the recommendations and respond in writing within 30 days of receiving them.

NMFS does not anticipate that approval of Amendments 55/55/8/5/5

will substantively alter NMFS' interactions with other Federal agencies. NMFS currently provides comments and conservation recommendations for non-fishing activities under various legislative mandates, including the Rivers and Harbors Act, the Clean Water Act, the National Environmental Policy Act (NEPA), the National Fish and Wildlife Coordination Act, the Federal Power Act, and others.

In response to the comment about Council expertise to handle EFH requirements under the Magnuson-Stevens Act, councils may comment on and make recommendations to the Secretary and any Federal or state agency on any activity that is, or is proposed to be, authorized, funded, or undertaken that, in the view of the Council, may affect EFH of a managed species. The Secretary appoints members of regional councils, including the North Pacific Fishery Management Council, on the basis of their expertise and knowledge of the fishery resources of their geographic area. The current structure of the councils is sufficient to meet the EFH consultation requirements of the Magnuson-Stevens Act. The Council and its staff have the requisite expertise to judge whether an action may have adverse impacts on EFH and to make recommendations regarding those impacts.

*Comment 4.* The amendments do not go far enough in meeting the EFH requirements of the Magnuson-Stevens Act in that they fail to adequately analyze adverse effects from fishing, fail to devise adequate conservation measures to minimize such effects, and fail to undertake an adequate cumulative impacts analysis. Additionally, specific habitat areas of particular concern (HAPCs) should have been identified. NMFS and the Council stopped too soon by broadly listing types of HAPCs, but not by identifying specific places where these types of habitats exist. Because of these failings, the relevant portions of the amendments should be disapproved.

*Response:* NMFS has determined that these amendments meet statutory and regulatory requirements for incorporating information identifying EFH and potential adverse effects on EFH from fishing activities. NMFS agrees that impacts from fishing, measures to mitigate adverse impacts from fishing, and determining cumulative impacts to EFH are all important components of the amendments. These components will be expanded in future amendments to incorporate new information as it becomes available.

NMFS disagrees that parts of the amendments should be disapproved while further analysis is conducted and further mitigation measures developed. The amendments meet the EFH requirements, and by adopting them now, NMFS can address environmental concerns sooner than a partial approval would allow. NMFS and the Council have collated existing information, identified data gaps, and laid the groundwork for an ongoing process of further research. As further research is completed, the Council and NMFS will amend the FMPs to reflect new information, and it will be possible to undertake a more complex cumulative impacts analysis.

NMFS has recommended to the Council that the subject FMP amendments be considered a starting point, not an endpoint. Research on the effects of different kinds of fishing gear, mapping to better identify sensitive habitat, and additional analysis of cumulative impacts should be continued and strengthened, along with development of measures to mitigate harmful effects on habitat.

The FMPs have already set into motion the process of ensuring that understanding and protection of EFH will continue. The FMPs now require that (1) the annual review of existing and new EFH information be conducted during the annual Stock Assessment and Fishery Evaluation Report, (2) the Council utilize its annual FMP amendment cycle to solicit proposals on HAPCs and/or conservation and enhancement measures to minimize potential impacts from fishing, and (3) a complete review of all EFH components of each FMP be conducted once every 5 years.

NMFS will continue to work with the Council, as budget and staffing constraints allow, to identify HAPCs, and to further refine the criteria for identification of sites (see the EA, section 11.2). In the summer of 1998, the Council sought public proposals for HAPCs. The Council received six proposals, and the Council has requested technical support from NMFS to analyze some of them. The scientific fieldwork necessary to support HAPC designations cannot be conducted instantaneously; it will require a period of years. That is why NMFS developed criteria for identifying HAPCs, rather than attempting at this time, with insufficient information, to specify them geographically.

*Comment 5:* The EA is inconsistent with national standard 2 of the Magnuson-Stevens Act, which requires that conservation and management measures be based upon the best

scientific information available. The EFH amendments do not take into account the requirements of the Alaska Forest Resources and Practices Act and other protective laws and measures that must be followed by developers. The EA does not appear to recognize recent research and literature documenting the effectiveness of such practices.

In particular, Amendment 5 to the salmon FMP identifies all resource development projects, large and small, as "non-fishing related activities that may adversely affect EFH" and as "non-fishing threats to EFH." However, none of the references provided in support of identification of potential non-fishing threats to salmon EFH is less than 10 years old.

Regarding Amendments 55 and 55 to the two groundfish FMPs, commentors assert that current protective management practices are ignored in reaching conclusions regarding potential adverse effects on EFH. Such activities as timber harvests and impoundments are identified as potential threats to EFH for marine species such as groundfish, which do not use freshwater or estuary habitat. Again, few of the references listed as support for these generic conclusions are less than 10 years old.

*Response:* Scientists from NMFS's Alaska Fisheries Science Center were included in the development of the EFH amendments, and the description and identification of EFH is based on their knowledge of the current available science. Some of these NMFS scientists are noted for their expertise on logging issues and have been primary authors on research that led to the adoption of current forest practices legislation in Alaska. They are aware of current forest practices statutes and standards, including the Alaska Forest Resources and Practices Act and the Tongass Timber Reform Act, and they used this knowledge in identifying non-fishing activities that may affect EFH and in identifying conservation and enhancement measures.

Potential threats to habitat exist even with current forest management practices. The absence of some current literature citations in the EA and the salmon EFH amendment language may have been an oversight. However, including those citations would not affect the amendments' identification and description of EFH and the potential threats to it. The substantive information from that literature was considered in the development and approval of Amendments 55/55/8/5/5, and their omission from the list of cited literature is not sufficient grounds for disapproval of the amendments.

NMFS disagrees with the comment that groundfish do not use freshwater or estuarine habitat. Marine species such as eulachon, capelin, herring, sandlance, crab, sablefish, juvenile rockfish, Pacific cod, and English sole utilize freshwater and/or estuarine habitat during some part of their life cycles. Upland development activities may impact EFH for these species, and identifying such potential threats in the groundfish and crab FMPs is, therefore, relevant.

NMFS views the identification and description of EFH and the development of measures to safeguard it as an evolving process, and will continue to use the best available science to make improvements in the EFH amendments to the FMPs. To that end, the FMPs will be updated to include any important citations that may have been inadvertently omitted. Information on current industry standards and practices, such as those required by the Alaska Forest Resources and Practices Act, will be more explicitly incorporated into the non-fishing threats sections of the FMPs.

*Comment 6:* The EA is inconsistent with national standard 7 of the Magnuson-Stevens Act, which requires that conservation and management measures, where practicable, minimize costs and avoid unnecessary duplication. The inter-agency consultations required for activities that might affect EFH add a redundant layer of bureaucracy to the regulatory process with which non-fishing industries must already comply. The process will be cumbersome and unworkable, and unnecessary costs will accrue to a huge range of non-fishing entities. One letter stated, "This creates yet another program that, as best we can tell, adds nothing and duplicates other Federal and State programs all designated to protect habitat and water quality."

*Response:* Because the EA is an analytical document prepared under NEPA, it does not have to be consistent with national standard 7 of the Magnuson-Stevens Act. NMFS has determined that the EFH amendments are consistent with the Magnuson-Stevens Act, including national standard 7. Inter-agency consultations on Federal or State activities that may adversely affect EFH are required by the Magnuson-Stevens Act; they are not an optional aspect of the EFH amendments for any of the eight regional fishery management councils. Section 305(b)(2) of the Magnuson-Stevens Act states: "Each Federal agency shall consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or

undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act."

Existing Federal statutes, such as the Fish and Wildlife Coordination Act, the Endangered Species Act, and NEPA, already require consultation or coordination between NMFS and other Federal agencies. The EFH consultations will not be duplicative, as they will be subsumed to the greatest extent possible under an existing review process and within existing process time frames. The regulatory guidelines at 50 CFR part 600 suggest that NMFS be consulted as early as possible in project planning so that appropriate conservation measures can minimize the potential for adverse effects to EFH. The EFH amendments contain conservation recommendations that are appropriate for many Federal actions, and they can also serve as guidelines that should be considered during project planning.

NMFS does not agree that the EFH requirements merely add redundancy to an already overburdened regulatory system. The Sustainable Fisheries Act of 1996, amending the Magnuson-Stevens Act, was adopted after years of public criticism that the Federal Government was failing in its responsibility to adequately protect the Nation's fishery resources from unacceptable stock decreases due to overfishing and habitat degradation. The EFH requirements were meant to address the second of those concerns.

*Comment 7:* The EFH amendments fail to meet NEPA and Regulatory Flexibility Act (RFA) requirements. The EA is inadequate as a NEPA document, as it contains the unsupported conclusion that modification or relocation of non-fishing activities may result in short-term costs to users, but will result in long-term benefits to the economy. The assertion in the EA that the action proposed "is simply to describe and identify EFH for FMP species, which in and of itself will have no economic impact," is erroneous. The costly and delay-generating EFH consultation process will have significant socioeconomic, physical, and biological effects, which must be addressed in order to comply with NEPA. The effects on the human environment of the pervasive and cumbersome EFH program reflected in the proposed amendments are potentially huge and should be addressed in an Environmental Impact Statement.

Furthermore, the amendments do not incorporate any analysis of impacts on small entities and are not in compliance with the RFA and applicable executive orders.

*Response:* The analytical requirements of the RFA apply only to regulatory actions for which notice and comment rulemaking is required under the Administrative Procedure Act or other statute. If the action does not require notice and comment rulemaking, no further analysis is needed. Because there was no requirement for a proposed rule to implement Amendments 55/55/8/5/5, the analytical requirements of the RFA did not apply. During the EFH consultation process, NMFS will provide EFH conservation recommendations to other Federal or State agencies. The action agency will consider the recommendations in its decision making process and then decide whether it will impose any requirements on the entity seeking a permit or license. That is the point at which the action agency might be required to prepare an RFA analysis.

NMFS disagrees with the comment concerning the adequacy of the EA prepared for the EFH amendments. As stated in the EA, the EFH FMP amendments describe and identify EFH for all FMP-managed species off Alaska and include discussions of impacts on EFH from fishing and non-fishing activities, EFH research and information needs, and review and revision schedules for EFH components of the FMPs. These discussions, as approved, will be incorporated into the five Alaska FMPs. The EFH FMP provisions that were approved have no regulatory effect on fishing or non-fishing interests. A Finding of No Significant Impact for the EFH amendments is appropriate.

NMFS also disagrees with the commenter's predictions of costly delays. As previously mentioned in the response to Comment 6, EFH consultations will in most cases be combined with existing consultations that are required by NEPA and by other laws. NMFS recognizes that changes to a Federal action agency's proposal as a result of an EFH recommendation may generate costs or require additional analyses under such applicable Federal laws as NEPA or the RFA. However, the coordination, consultation, and recommendation process itself will not automatically impose additional restrictions, because NMFS' EFH conservation recommendations are not mandatory, and because NMFS has no authority to stop a project based on adverse effects on EFH.

*Comment 8:* The amendments include no apparent meaningful threshold of significance or way of gauging the likelihood of adverse effect on EFH, which would enable the Council, NMFS, and non-fishing entities to focus on activities with the potential for substantial harm to Council-managed fisheries. Blanket presumptions subject all types of coastal and inland developments or land use activities to cumbersome EFH consultations.

*Response:* "Adverse effects," as defined at § 600.810 of this title, means any impact which reduces the quality and/or quantity of EFH. Adverse effects may include, for example, direct effects through contamination or physical disruption, indirect effects such as loss of prey or reduction in species fecundity, and site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions. Only actions which have a reasonably foreseeable adverse effect require consultation. Thus, NMFS must comment on Federal or State actions that take place within riparian areas or hydrological basins only if they have a reasonably foreseeable impact on EFH. Furthermore, the regulations provide for streamlined consultation procedures, such as general concurrences and abbreviated consultations, that may be used when the activities at issue do not have the potential to cause substantial adverse effects on EFH.

*Comment 9:* NMFS should not finalize these amendments until the interim final rule is finalized. Amending FMPs to incorporate EFH in advance of that action would require redoing the process later, and would likely lead only to further disagreement and confusion in the meantime.

*Response:* The interim final rule has the effect of a final rule. As mentioned in the response to Comment 4, Amendments 55/55/8/5/5 all require periodic reviews of new and existing EFH information. Any updates necessary after the rule is finalized can be accomplished through this review process.

*Comment 10:* The State expressed "guarded support" of the amendments, but was concerned about the lack of information about the scope and mechanics of EFH coordination and consultations.

*Response:* NMFS has held meetings with representatives of several State agencies to work out procedures for

coordination on EFH consultations, and will continue to schedule meetings as needed.

*Comment 11:* The U.S. Coast Guard commented that it will evaluate its activities for possible impacts once HAPCs are identified.

*Response:* NMFS will provide the U.S. Coast Guard with technical guidance on EFH consultation procedures.

*Comment 12:* NMFS is to be commended for tackling a difficult task by compiling and organizing the information contained in the amendments. The commentors support the goal of conserving and enhancing essential fish habitat, and were generally complimentary in terms of the hard work that went into the development of the EFH FMPs despite reservations covered in preceding comments and responses.

*Response:* NMFS appreciates constituent support in this important and challenging endeavor, and looks forward to working with all parties to make improvements.

*Comment 13:* The requirement in the NOA that comments be received by NMFS by the end of the comment period, and not simply postmarked by then, is unfair.

*Response:* NMFS understands that the EFH amendments and EA were lengthy and may have been difficult to review thoroughly within the 60-day comment period. In accordance with the Magnuson-Stevens Act requirements at section 304(a), NMFS must affirmatively approve, disapprove, or partially approve an FMP or FMP amendment within 30 days of the end of a comment period. NMFS typically needs the full 30 days to review public comments received and to complete the internal review and decision making process, particularly when the FMP or FMP amendment is complex and lengthy, as was the case with Amendments 55/55/8/5/5. NMFS asks that comments be received by the end of the comment period, so that they can be reviewed and considered during the decision making process.

Dated: April 20, 1999.

**Gary C. Matlock,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

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