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Habitat Conservation and Restoration
Essential Fish Habitat Policy

Guidance to Refine the Description and Identification of Essential Fish Habitat

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SUMMARY OF REVISIONS:

Renewed with minor edits to address grammar, formatting, and a typographical error in January 2024. This initial directive was put into effect on October 30, 2006.

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I. Introduction[1]

Since the initial implementation efforts in 1998 by NMFS and Fishery Management Councils of essential fish habitat provisions (EFH) of the Magnuson-Stevens Fishery Conservation and Management Act, the Office of Habitat Conservation (OHC) has been aware of criticisms regarding the breadth of EFH descriptions and identifications. The criticisms have come informally, from a wide range of stakeholders, and formally, via lawsuits and complaints from Congress. In 2002, OHC initiated an internal evaluation of the existing methods and processes for EFH description and identification. In 2004, OHC published an "Advanced Notice of Proposed Rule-making" offering the public an opportunity to comment formally on all aspects of the EFH regulatory guidelines, including those portions pertaining to the description and identification of EFH.

As a result of these efforts, NMFS determined that altering the existing EFH regulatory guidelines was not necessary. However, NMFS determined that additional guidance regarding a variety of issues, including the description and identification of EFH and habitat areas of particular concern (HAPCs), would be beneficial. Following is one product of these evaluation efforts: "Guidance to Refine the Identification and Description of Essential Fish Habitat."

[1] The language in the Introduction and Objective of procedure 03-201-15 was originally conveyed via Memorandum entitled *Guidance to Refine the Description and Identification of Essential Fish Habitat* from Patricia A. Montanio to NMFS Regional Administrators on October 30, 2006.

II. Objective

The purpose of this guidance is to 1) achieve the most refined and precise EFH descriptions and identifications possible using the best available science, and 2) maximize the utility of HAPCs as a tool for focusing conservation effort by increasing the consistency and clarity of HAPC descriptions. Specifically, this guidance document will refine EFH by doing the following:

- Encouraging the use of clearer and more consistent habitat classification terms;
- Encouraging the description of EFH in maps that are more useful for the public and managers;
- Preventing over-expansive interpretations of EFH by clarifying the role of prey species as a habitat component of EFH;
- Preventing overly expansive EFH identifications and descriptions by:
    - Explicitly discouraging the identification of broad geographic areas (such as the EEZ) as EFH for a single species or life stage
    - Emphasizing the need to distinguish EFH from all habitats potentially used by a species
    - Encouraging the use of thresholds to limit EFH to a portion of the habitats potentially used by a species
- Providing additional guidance on the use of HAPCs as a management tool to focus EFH conservation efforts.

III. Guidance

I. PURPOSE

The description and identification of essential fish habitat (EFH) establishes the nature and geographic extent of habitat necessary for managed fish so that management actions can be taken to conserve such habitat thereby supporting sustainable fisheries and their contribution to a healthy ecosystem.

Describing and identifying EFH is not an end unto itself; rather, it is the basis for subsequent actions to conserve EFH. Thus, all consultations and conservation measures for fishing and nonfishing activities hinge on the quality and precision of EFH identifications and descriptions. Loosely described EFH can lead to inconsistent or broad interpretation about adverse impacts to EFH and can result in unnecessary controversy about how best to avoid or reduce those impacts. In addition, habitat areas of particular concern (HAPCs) offer a powerful tool for NMFS and the Councils to identify priority areas within EFH for conservation thereby refining the implementation of the EFH management authorities.

Thus, the purpose of this document is to provide guidance to 1) achieve the most refined and precise EFH identifications and descriptions possible using the best available science and 2) maximize the utility of HAPCs as a tool for focusing conservation effort by increasing the consistency and clarity of HAPC descriptions and identification process. The following guidance supplements the EFH regulatory guidelines (50 CFR 600.920) and replaces the “EFH Technical Guidance” (January 2001) and recommendations contained in the May 2001 “Regional Council Approaches to the Identification and Protection of Habitat Areas of Particular Concern”.

II. REFINING TEXT DESCRIPTIONS AND MAPS OF EFH

II. A. Describing EFH in terms of geographic area and habitat characteristics

It is not enough to simply identify the area that encompasses the geographic extent of EFH. The particular habitat characteristics essential to managed fish and contained or presumed to be contained in that area must also be described, because it is the habitat and its characteristics that are the EFH. As stated in the EFH regulatory guidelines, "[Fishery Management Plans] FMPs must describe and identify EFH in text that clearly states the habitats or habitat types determined to be EFH for each life stage of the managed species." (50 CFR 600.815 (a)(1)). In determining adverse impacts to EFH, NMFS and other federal agencies must consider impacts to the habitat, not just the identified area.

Clearly described habitat characteristics that comprise EFH will refine EFH, because clear descriptions will improve the public and managers' understanding of the scope of EFH and the potential impacts to that habitat. The following suggestions should be considered when describing EFH in FMPs:

1. The description of habitats and habitat types should be as explicit as possible and clearly labeled in a discrete section of the FMP as "EFH identifications and descriptions". The text descriptions of EFH are "ultimately determinative of the limits of EFH". Managers and the public need to be able to easily distinguish the EFH descriptions and identifications from background habitat information used to support those descriptions.

2. One way to achieve the above is to provide a general EFH text description for the fishery in a section of the FMP labeled "EFH identifications and descriptions". More detailed text descriptions of EFH for each species and life stage could be provided in tables or some other format that clearly and concisely identifies habitat types and characteristics that the Council has deemed essential for each species and lifestage. Avoid using vague descriptions of EFH and its characteristics. When using this approach, these tables may need to be supported by more lengthy narrative justifications and life history information. However, such supporting narrative documentation should not be confused with the EFH identifications and descriptions.

3. Because the EFH text descriptions ultimately determine the nature and geographic extent of EFH, terms that describe habitat characteristics must be used consistently. During a consultation, managers and the public need to be able to point to the FMP as the justification for making a determination about potential adverse effects to EFH. Using a consistent habitat classification terminology throughout the FMPs will improve the clarity of the EFH descriptions, thereby refining the public's and manager's understanding of the nature and geographic extent of EFH. For example, if "rocky cobble" is important to adult and juvenile life stages, the same term should be used for both. It would be confusing to use "rocky cobble" for adults and "cobbly rock" for juveniles. In addition, terms used to describe habitat should be defined and explained to ensure that managers and the public understand the pertinent habitats and habitat characteristics to address during a consultation. For example, it is not sufficient to simply identify rocky cobble habitat as EFH in a table. Rocky cobble should be described in the FMP so that the public and managers can better understand whether or not their actions would adversely affect such habitat and thus EFH.

4. In addition to EFH text description, EFH must be depicted in maps (50 CFR 600.815(a)(1)). It is not necessary that each species and each life stage be depicted on separate maps.

However, maps should depict and contain all the EFH boundaries at a scale that enables the public and managers to understand the location of EFH for each species and life stage for consultation purposes.

II. B. Treatment of prey species

The definition of EFH in the regulatory guidelines acknowledge that prey, as part of "associated biological communities", may be considered a component of EFH for a species and/or lifestage (50 CFR 600.10). However, including prey in EFH identifications and descriptions has considerable implications for the overall scope of EFH when those prey are considered during the EFH consultation process. It is important that prey do not become a vehicle for overly expansive interpretations of EFH descriptions. To avoid this pitfall, the following suggestions should be considered when including prey in an EFH description:

1. Prey species alone should not be described as EFH. Instead, prey should be included in EFH descriptions as a component of EFH (along with others components such as depth, temperature, sediment type).

2. If the FMP identifies prey as a component of EFH, the FMP should specify those prey species and how their presence "makes the waters and substrate function as feeding habitat" (50 CFR 600.815(a)(7)).

3. While prey may be considered a component of EFH, prey habitat should not be identified as EFH in FMPs unless prey habitat is also EFH for a managed species. Identifying prey habitat as EFH could be viewed as over-extending the scope of EFH which should consist of habitat necessary for the managed species (50 CFR Preamble). However prey species habitat should be discussed in the FMP (52 CFR 600.815 (a)(7)).

One example of an EFH text description that illustrates the above suggestions might be: EFH for life stage A of species X is bottom habitats in depths of 50-200 meters that are composed of sand and sandy mud where prey species (list principal types) are generally found.

III. REFINING GEOGRAPHIC EXTENT OF EFH

In addition to describing habitat types, the EFH descriptions, as stated in the EFH regulatory guidelines, must identify the geographic extent of EFH. FMPs must include maps of the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found (50 CFR 600.815 (a)(1). The text descriptions for the geographic extent of EFH must include boundaries such as longitude and latitude, isotherms, isobaths, political boundaries, and major landmarks. (50 CFR 600.815(a)(1)(iv)(B)). The EFH regulatory guidelines provide considerable flexibility for determining how these geographic boundaries are determined but make clear that EFH should be distinguished from all habitats potentially used by a species (50 CFR 600.815 (a)(1)(iv)(A)). Thus, the EFH regulatory guidelines provide clear direction that it is not appropriate to identify wide swaths of the ocean and nearshore areas as EFH for a single species or life stage without considerable justification. The following should be considered when distinguishing EFH from all habitat potentially used by a species:

1. Describing a broad geographic area (the entire EEZ) as EFH for a single species or lifestage should be avoided.

2. Even when only Level 1 (Presence/Absence) information is available, every effort should be made such that the EFH is distinguished from all habitats potentially used by a species.

3. The boundaries containing EFH should be static. (50 CFR 600.815 (a)(1)(iv)(B)).

4. Using thresholds that limit EFH to a portion of all habitats potentially used by a species should be considered and justified, with the following in mind:
    a. All information (levels 1-4) that would highlight the most important portions of habitat for a fishery should be evaluated regardless of the analytical tool or model being used. The higher the level of information available for the species, the more justifiable it is to use a more restrictive threshold and the smaller the geographic extent of EFH should be.
    b. EFH of overfished species or species with reduced yields as a result of degraded or inaccessible habitat may warrant broader thresholds than would be necessary for healthy stocks (50 CFR 600.815(a)(1)(iv)(C) and 50 CFR 600.815(a)(1)(iv)(F)).

IV. HAPCS AS A PRIORITIZATION TOOL TO REFINE EFH CONSERVATION

The EFH regulatory guidelines encourage Councils to identify HAPCs as specific types or areas of habitat within those areas already identified and described as EFH using one or more of the following considerations (50 CFR 600.815(8)):

1. The importance of the ecological function provided by the habitat.
2. The extent to which the habitat is sensitive to human-induced environmental degradation.
3. Whether and to what extent development activities are or will be stressing the habitat.
4. The rarity of the habitat type.

The purpose of identifying HAPCs is to focus conservation efforts on localized areas within EFH that are vulnerable to degradation or are especially important ecologically for managed fish. Although federal agencies must still consult on activities that may adversely affect EFH, HAPCs are a management tool that could be used to inform the public of areas where fishing and/or nonfishing actions could receive increased scrutiny from NMFS regarding impacts to EFH. HAPCs can also be used to target areas for area-based research. The following recommendations are intended to improve the consistency in how HAPCs are identified and maximize their utility as a management tool.

1. HAPCs should be identified using a process that maximizes public input, allows for a systematic evaluation of existing HAPCs, and can be built upon and be responsive to any HAPC identification needs. Example approaches that have successfully been used within the context of the existing FMP process include
    a. using framework procedures that allow for the establishment of new or modification of existing HAPCs through a cyclical or streamlined review process, and
    b. providing opportunities for public participation beyond the normal NEPA and MSA processes such as using a “request for proposals” which provides a structured process for the nomination and scientific review of potential HAPCs.

2. Areas designated as HAPCs should be based on at least one of the four HAPC criteria provided in the EFH regulatory guidelines (50 CFR 600.815(8)).

3. The description of each potential HAPC should state the purpose of identifying a particular HAPC and how that identification will focus conservation efforts by
    a. addressing adverse effects of fishing on habitat,
    b. addressing non-fishing impacts on habitat, and/or
    c. setting aside areas for habitat research

4. Actions should be identified to encourage the conservation and enhancement of HAPCs including recommendations to avoid, minimize, or compensate for adverse effects from fishing and/or non-fishing activities. HAPCs are not required to have any specific management measures. However, such measures may need to be considered to achieve the stated goals and objectives of the HAPC. If management measures are developed for HAPCs, the FMP should include a description of
    a. the initial assessment determining whether or not fishery management measures were considered appropriate,
    b. any management measures considered during the analysis, and
    c. those management measures selected for the HAPC that would contribute to efforts to minimize adverse effects from fishing to the extent practicable

5. Descriptions of individual HAPCs in FMPs should include
    a. a thorough discussion of the analysis that occurred during the HAPC designation process;
    b. a detailed description of the physical, chemical, and biological characteristics of the HAPC, as well as its geographic location;
    c. a description of the link between HAPC designations and the biological and ecological needs of a particular management unit (assemblage), species, or life stage;
    d. the rationale for why a specific area deserves special designation as a HAPC based on the four criteria found in the EFH Regulations and any additional priority issues identified by the Council for fishery conservation and management; and
    e. a description of any monitoring and/or evaluation frameworks that may be called for to determine the effectiveness of the HAPC in achieving stated objectives.

6. HAPCs should be discrete areas with clearly defined geographic boundaries. Councils should strive to use geographically specific information to identify HAPCs. The description of each HAPC should include geographic coordinates (latitude/longitude), area size for each HAPC in text or tables, and a map of the HAPC depicting its location. In circumstances where there is not sufficient information on the spatial distribution of habitat features comprising an HAPC, a thorough qualitative description of the HAPC boundaries should be provided. The identification of specific areas with geographically explicit boundaries will clarify where priority conservation action should be applied for both fishing and non-fishing management actions.