

Appendix N. SAFMC Project and Policy Review Process and NMFS 1997 Project Review and Habitat Activities Summary (Source: SAFMC 1992 and NMFS 1998).

**SAFMC EFH Policy and Procedures:
(Approved 9/98)**

SAFMC Responsibilities For Essential Fish Habitat and Environmental Protection:

On January 20, 1998, the Guidelines for implementing the essential fish habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) became effective [50 CFR Part 600 (Docket No. 961030300-7238-04; I.D. 120996A)RIN 0648-AJ30]. The guidelines are intended to assist Fishery Management Councils (Councils) and the Secretary of Commerce (Secretary) in describing and identifying EFH in fishery management plans (FMPs), including identification of adverse impacts from both fishing and non-fishing activities on EFH, and identification of actions required to conserve and enhance EFH. The guidelines also detail procedures that the Secretary (acting through the NMFS), other Federal agencies, state agencies, and the Councils will use to coordinate, consult, or provide recommendations on Federal and state activities that may adversely affect EFH.

Established policies and procedures of the SAFMC provide the framework for coordination with NMFS, and other habitat partners in the south Atlantic region to conserve and enhance essential fish habitat. New and expanded responsibilities contained in the MSFCMA are being met by modifying the Council's established procedures for reviewing Federal or state actions that may adversely affect the EFH of a managed species. The Council actively comments on non-fishing projects or policies that may impact essential fish habitat. In response to an earlier amendment to the Magnuson Act, the Council adopted a habitat policy and procedure document that established a four state Habitat Advisory Panel and adopted a comment and policy development process. Pursuant to §600.930 of the final interim rule implementing the EFH provisions of the MSFCMA, the Council is modifying the existing review process to address the new EFH mandate. The Habitat Policy serves as the foundation of the Council's commitment to conserve, and manage our nations fishery resources and the essential fish habitat they depend upon.

SAFMC Essential Fish Habitat and Environmental Protection Policy:

In recognizing that managed species are dependent on the quantity and quality of their essential fish habitats, it is the policy of the SAFMC to protect, restore, and develop essential fish habitat upon which species fisheries depend; to increase the extent of their distribution and abundance; and to improve their productive capacity for the benefit of present and future generations. For purposes of this policy: **“essential fish habitat” is defined as those waters and substrate necessary to fish for spawning, breeding, or growth to maturity; “waters” include aquatic areas and their associated physical, chemical, and biological properties that are used by fish, and may include areas historically used by fish; “substrate” includes sediment, hard bottom, structures underlying the waters, and associated biological communities; and “necessary” means the habitat required to support a sustainable fishery and a healthy ecosystem.**

The objectives of the SAFMC policy will be accomplished through the recommendation of no net loss or significant environmental degradation of existing essential fish habitat. A long-term objective is to support and promote a net-gain of essential fish habitat through the restoration and

rehabilitation of the productive capacity of essential fish habitats that have been degraded, and the creation and development of productive essential fish habitats where increased fishery production is probable. The SAFMC will pursue these goals at state, Federal, and local levels. The Council shall assume an aggressive role in the protection and enhancement of habitats important to species, and shall actively enter Federal, decision-making processes where proposed actions may otherwise compromise the productivity of fishery resources of concern to the Council.

EFH in Fishery Management Plans:

The Council, pursuant to the MSFCMA Section 303(7)(a) Contents of Fishery Management Plans Required Provisions is mandated to "...describe and identify essential fish habitat based on the guidelines established by the Secretary under Section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;"

To address this mandate, SAFMC staff, through consultation with a Species Plan Development Team, Species Committee, NMFS SERO Habitat Conservation Division and NMFS SEFSC, will insure that:

1. Essential fish habitat for a species to be managed, where information is readily available, is defined at the earliest possible stage of the fishery management plan development process. This information will be incorporated into the Habitat Plan which serves as a habitat source document for all Fishery Management Plans; and
2. Recommendations to the responsible agencies, are included in the plan which identify habitat improvements or changes in Federal policies, which are desirable to achieve the objectives of the plan (e.g. habitat policy statements for an essential fish habitat type or activity impacting essential fish habitat).

The SAFMC Habitat Plan, presents a detailed description of the southeast ecosystem by habitat type specifying EFH for managed species or species complexes. The Habitat Plan, pursuant to the guidelines, also considers designation of Essential Fish Habitat-Habitat Areas of Particular Concern (EFH-HAPCs) where identified for managed species. The following criteria are considered when determining whether a type, or area of EFH is an essential fish habitat-habitat area of particular concern: (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; and (3) whether, and to what extent, development activities are, or will be, stressing the habitat type. A coral HAPC process under the coral plan already exists and differs somewhat from the process recommended in the EFH guidelines. The Habitat Plan also includes information on anadromous and catadromous species and the habitat they depend upon to provide the Council with information on which to develop comments on projects impacting that habitat.

In addition to describing EFH, the Habitat Plan also identifies non-fishing related activities that have the potential to adversely affect EFH quantity or quality. The Habitat Plan presents available information describing the ecosystem and the dependence of managed species on the ecosystem as well as available information on how fishing and non-fishing activities influence habitat function. An assessment of the cumulative and synergistic effects of multiple threats, including the effects of natural stresses (such as storm damage or climate-based environmental shifts), and an assessment of the ecological risks resulting from the impact of

those threats on the managed species habitat is included. General conservation and enhancement recommendations are included in the Habitat Plan to be used by the Council, NMFS, and other habitat partners in commenting on actions impacting EFH. These include but are not limited to recommending the enhancement of rivers, streams, and coastal areas, protection of water quality and quantity, recommendations to local and state organizations to minimize destruction/degradation of wetlands, restore and maintain the ecological health of watersheds, and replace lost or degraded EFH.

Project and Policy Review:

The SAFMC, through its Habitat and Environmental Protection Committee, may review, comment on or make recommendations on those proposed habitat alterations, policy or other human actions which may have an adverse impact on those fisheries addressed in the Council's plans and or under the authority of the MFCMA. The Magnuson-Stevens Fishery Conservation and Management Act, Public Law 104-208 reflects the new Secretary of Commerce and Fishery Management Council authority and responsibilities for the protection of essential fishery habitat. The Act specifies that 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.

Additional provisions specify that the Council: may comment on and make recommendations to the Secretary and any Federal or State agency concerning any activity authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any Federal or State agency that, in the view of the Council, may affect the habitat, including essential fish habitat, of a fishery resource under its authority; and shall comment on and make recommendations to the Secretary and any Federal or State agency concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat, including essential fish habitat, of an anadromous fishery resource under its authority. Within 30 days after receiving a recommendation, a Federal agency shall provide a detailed response in writing to the Council and the Secretary regarding the matter. The response shall include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on such habitat. In the case of a response that is inconsistent with the recommendations of the Secretary, the Federal agency shall explain its reasons for not following the recommendations.

Additional terms in the Act specify provisions for commenting on activities impacting essential fish habitat. If the Secretary receives information from the Council or Federal or State agency or determines from other sources that an action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any State or Federal agency would adversely affect any essential fish habitat identified under this Act, the Secretary shall recommend to such agency measures that can be taken by such agency to conserve such habitat. Within 30 days after receiving a recommendation, a Federal agency shall provide a detailed response in writing to any Council commenting and the Secretary regarding the matter. The response shall include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on such habitat. In the case of a response that is inconsistent with the recommendations of the Secretary, the Federal agency shall explain its reasons for not following the recommendations.

SAFMC Project Review Process:

The following procedures are supplemented by the Council review procedures diagram which follows:

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1. NMFS Habitat Conservation Division field personnel shall forward copies of public notices of permit requests for significant state or federally authorized or federally permitted projects immediately to Council staff followed by special briefings, as appropriate, or by NMFS position statements, as developed.
2. Significant projects may also be selected by the Habitat Committee or Council members, and Council staff or Habitat Advisory Panel members for consideration by the Council.
3. Council staff when deemed appropriate, request state and other federal assessments (position statement) of project impact for these projects as soon as developed and forward to the committee.
4. The SAFMC Habitat and Environmental Protection Advisory Panel shall, when called upon by the Council chairman, review proposed actions and provide expert testimony.
5. The Habitat Committee shall develop a position to be forwarded to the Council for consideration. The Committee, given time constraints, may also take action with concurrence of the Council chairman.
6. The Council shall file comments of concern or recommended project modifications to reduce environmental damage with the federal construction or regulatory agency (COE, FERC, etc.).
 - a. Committee members, Advisory Panel members and Council staff may testify at public hearings, at the request of the Council Chairman.
 - b. Request clarification from COE and regulatory agencies, as needed.
7. The Committee shall report on its actions, at Council meetings as needed.

Criteria Used to Define Significant Projects:

1.
 - a. any activity that in the view of the Council may affect the essential fish habitat of a fish (any fishery, any stock of fish, any species of fish and any habitat of fish) under its jurisdiction (jurisdiction- geographical area of authority);
 - b. any activity that in the view of the Council is likely to substantially affect the essential fish habitat of an anadromous fishery resource under its jurisdiction.
2. Projects that may be precedent setting or in critical or unique habitat areas.
3. Projects that may, in the view of the NMFS SERO Habitat Conservation Division personnel, USFWS or EPA be elevated to Washington (pursuant to the Clean Water Act, National Environmental Policy Act, etc.) and require headquarters action. In addition, projects that may, in the view of the Council should be elevated to Washington and require NMFS, USFWS, or EPA headquarters action.

SAFMC Habitat and Environmental Protection Committee Assessment Guidelines for Proposed Actions:

The following will serve as guidance to the Committee in making its assessment of potential adverse impacts of proposed actions.

1. The extent to which precedent would be set in relation to existing or potential cumulative impacts of similar or other developments in the project area;
2. The extent to which the activity would directly affect the production of the fishery resources (e.g., alteration of hydrologic regimes, alteration of water circulation patterns, salinity regimes, detrital export, etc.);
3. The extent to which the activity would directly affect the essential fish habitat of fishery resources;
4. The Council follow mitigation guidelines as defined in the Federal guidance document for the establishment, use and operation of mitigation banks which is consistent with mitigation policies established under the Council on Environmental Quality Implementing Regulations (CEQ regulations) [40 CFR Part 1508.20], and the Section 404(b)(1) Guidelines (Guidelines) [40 CFR Part 230] which indicates the use of credits may only be authorized for purposes of complying with Section 10/404 when adverse impacts are unavoidable.
5. The extent of any adverse impact that can be avoided through project modification or other safeguards (e.g., piers in lieu of channel dredging, bridging in lieu of filling);
6. The existence of alternative sites available to reduce unavoidable project impacts, and;
7. The extent of which the activity is water dependent.

In addition, the Council will cooperatively work with NMFS and other State, Federal and regional habitat partners to apply the activity based conservation recommendations contained in Section 5.3 of the Habitat Plan. These are a generalized set of environmentally sound engineering and management practices that should be employed when an action might significantly and adversely affect EFH.

SAFMC Habitat and Environmental Protection Advisory Panel:

The SAFMC recognizing the importance of and dependence on habitat, by fishery stocks under its jurisdiction will establish a Habitat and Environmental Protection Advisory Panel to aid in the implementation of its habitat policy.

Habitat Advisory Panel Structure and Function:

The SAFMC Advisory Panel will consist of four sub-panels which will be the functional components that will, when requested by the Council Chairman, review proposed actions or policy affecting habitat.

The SAFMC shall establish, at its discretion, a Habitat Advisory Panel to advise the Habitat Committee concerning:

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1. Proposed activities which may have adverse effects upon the fishery resources or the essential fish habitat for which the SAFMC has management responsibility; and
2. Habitat issues at the state, regional, or national level which may be of concern to the Council.

Habitat Advisory Panel members serve as the Council's habitat contacts and professionals in the field. The Advisory Panel is structured and functions differently than other panels. The Panel is made up of four state sub-panels each having representatives from the state marine fisheries agency, the U S Fish and Wildlife Service, state coastal zone management agency, conservationist, commercial fisherman, and recreational fishermen. In addition to the state representatives, at large members on the overall panel include representatives from EPA Region IV, NMFS Southeast Fisheries Center, NMFS SERO, Atlantic States Marine Fisheries Commission, and NMFS Habitat Conservation Division Headquarters. This body functions as a whole or as sub-panel depending on the scope of the issue. The Panel serves to provide the Council with both expert recommendations on activities being considered for permitting as well as guidance in development of Habitat policy statements. With guidance from the Panel, the Council, has developed and approved policies on; oil and gas exploration, development and transportation; dredging and dredge material disposal; submerged aquatic vegetation, and ocean dumping. These are included in Section 5 of the Habitat Plan under recommendations to protect EFH.

Coordination with State, Federal and Regional Habitat Partners:

In order to foster cooperation and efficient management of fishery resources and their habitats, the SAFMC will work closely and cooperatively with its member states, the Atlantic States Marine Fisheries Commission, other regional Councils, State fishery agencies, State coastal zone management agencies, USFWS, EPA, and recreational and commercial fisherman in identifying, describing and protecting EFH in the south Atlantic region through the development and application of the recommendations contained in the SAFMC Habitat Plan.

EFH Recommendations and Policy Statements:

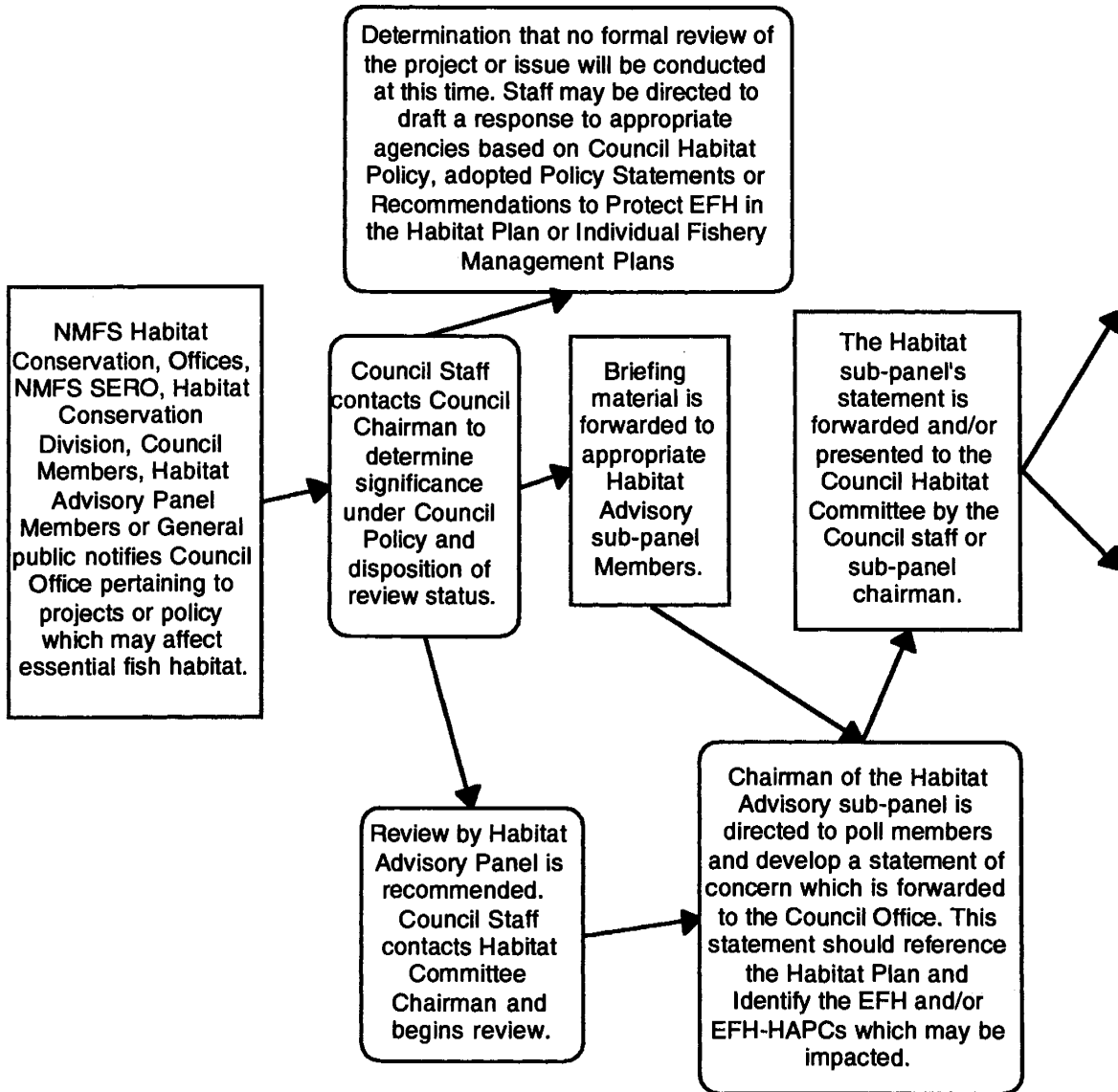
The Council's habitat policy statements and recommendations to protect EFH are presented in the Habitat Plan to provide NMFS, State, other Federal and regional habitat partners guidance and additional rationale to conserve and protect EFH in the south Atlantic region. Additionally, as new information and methodologies become available, the Council will revise existing policies and recommendations or develop a new policy statement to address the issue.

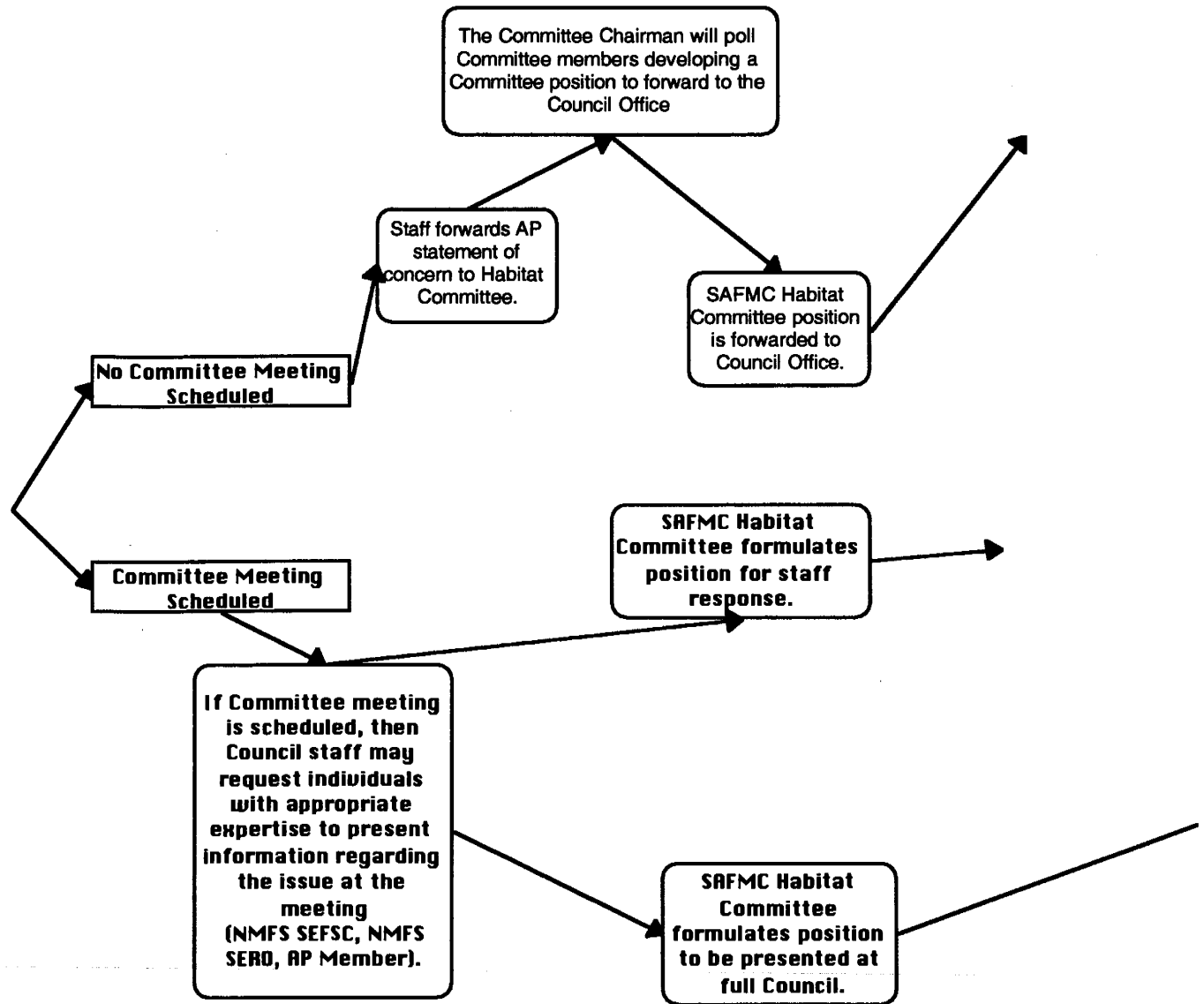
The Council has established a process for the development of habitat policy statements for specific habitats and activities. Given the abbreviated nature of many project comment periods, the Council uses the adopted Council habitat policies to be used when commenting to the permitting agency and a formal review of the project is not possible, or not necessary.

The SAFMC has developed specific guidance in the form of policy statements for activities occurring in submerged aquatic vegetation and for dredging and dredged material disposal (including use of Ocean Dredged Material Disposal Sites, offshore and nearshore underwater berm creation, maintenance dredging and sand mining for beach renourishment, and open water disposal); and oil and gas exploration, transportation, and development. The policies contain detail, including detailed descriptions of the resources involved, a discussion of potential impacts to those resources, and identification of provisions that should be implemented or

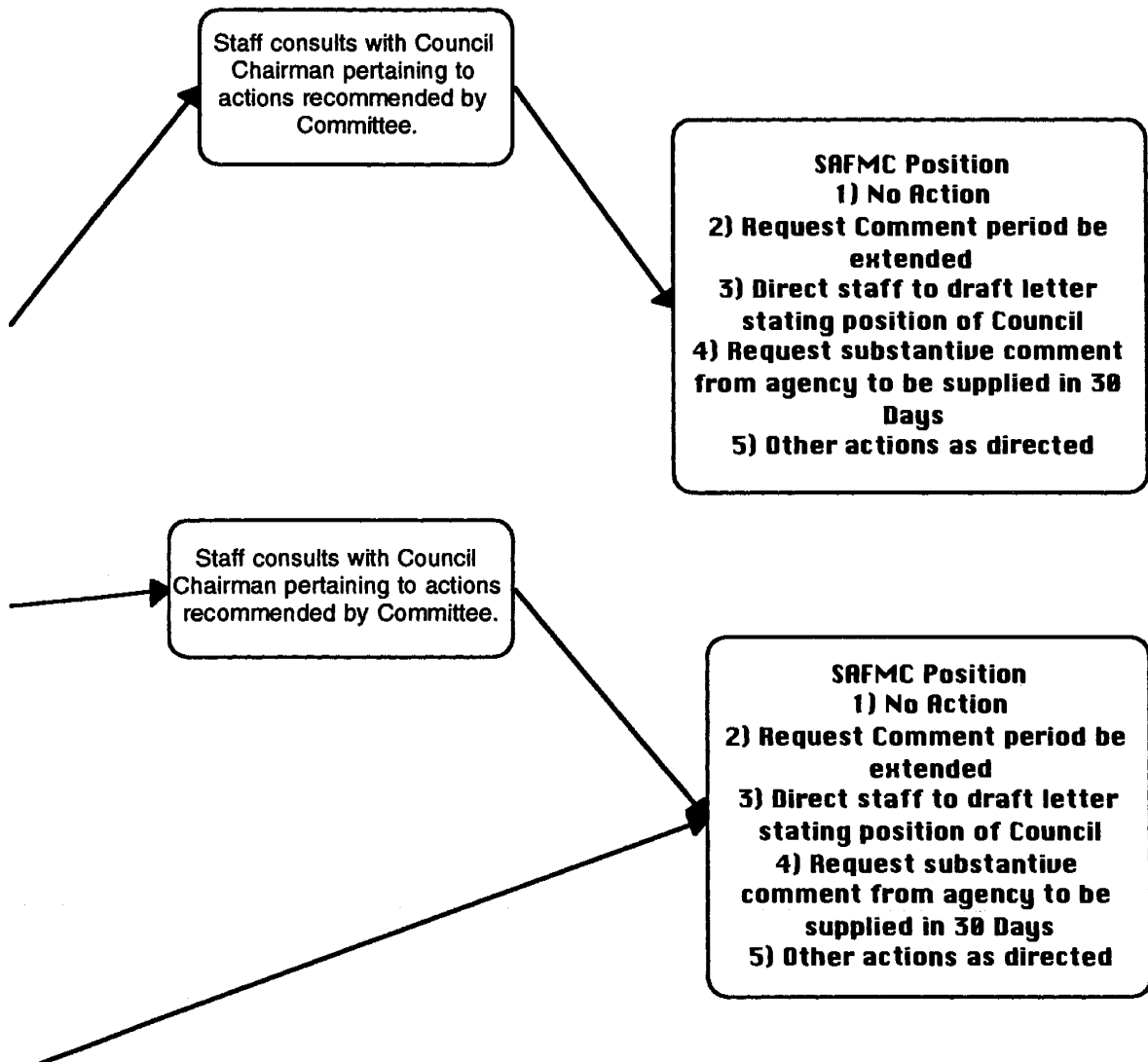
considered to protect EFH. The Council encourages other parties commenting on projects to cite these recommendations when commenting on permits that impact EFH or EFH-(Habitat Areas of Particular Concern) HAPCs as defined in the Habitat Plan.

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Project/Review Procedures (Approved 9/98)



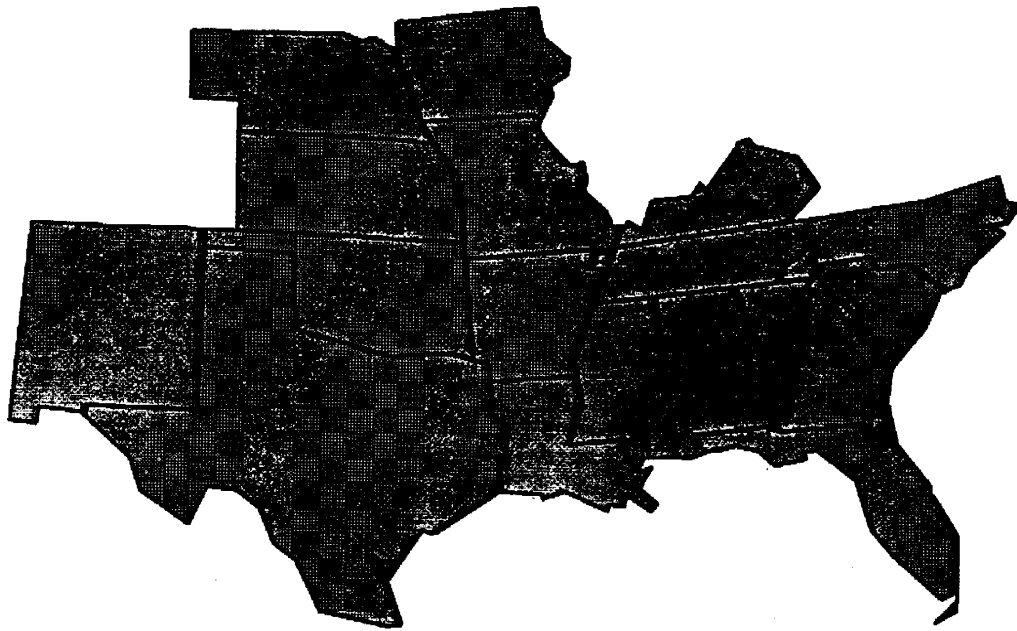


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Habitat Protection Accomplishments

Fiscal Year 1997



U.S. Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Habitat Conservation Division
Southeast Region



EXECUTIVE SUMMARY

The National Marine Fisheries Service's (NMFS) National Habitat Plan (NHP), Strategic Plan, and Habitat Conservation Policy call for improved protection of fisheries habitats. The Agency's mission is to protect, conserve, restore, and create habitats and ecosystems vital to self-sustaining populations of living marine resources under National Oceanic and Atmospheric Administration (NOAA)/NMFS stewardship. The NMFS commits to protect and conserve habitats from human-induced degradation; restore degraded habitats; and to create habitats with greater value than at present. Effort will also be expended to maintain current partners and to form new partnerships to help with program success; to provide the best possible science to guide the NMFS in its efforts; to inform constituents and the general public of accomplishments related to habitat conservation as well as the importance of healthy productive habitats to meet the ever-expanding recreational and commercial needs for fish and shellfish; and to develop realistic proposals that will allow the NMFS to carry out its mission.

Within the NMFS Southeast Region (SER), the Habitat Conservation Division (HCD) has the responsibility for conducting habitat protection programs. These programs are highlighted in this report along with the general and specific activities and accomplishments for fiscal year 1997 (FY97). This report further serves to provide information on our efforts to meet the objectives of the SER plan for implementing the NHP. The SER uses various statutory authorities found in Federal laws (see discussion under the section on Habitat Protection Accomplishments). Activities during FY97 focused on individual consultations involving Federal regulatory programs, pre- and post-application planning, Federal projects affecting habitat, National Environmental Policy Act (NEPA) consultations, watershed planning, partnerships and coordination with others (e.g., Fishery Management Councils), coordination between science and management, outreach efforts as possible, and a heightened involvement in habitat restoration, enhancement, creation, and preservation activities.

The front-line habitat conservation requirements are achieved principally through the efforts of HCD personnel stationed at five branch offices in various locations throughout the SER. Acting under authority of various Federal laws and statutes, field personnel interact directly with Federal, state, and local officials, and with private citizens seeking to perform work in coastal waters of the southeast. Through consultative services involving field inspections, meetings, public hearings, and document review, biologists provide recommendations for sequentially avoiding, minimizing, and offsetting adverse impacts to habitat. During the year we accomplished the following.

- The NMFS conducted 291 preapplication consultations for proposed water development projects. We believe this process to be especially useful in protecting fisheries habitat because potential permit applicants usually have not invested heavily in project plans. They are therefore often more amenable to accepting recommendations from resource agencies aimed at reducing environmental impact. The process also allows the NMFS to deal with the

regulated public in a forum that is less adversarial than when project plans have been developed and advertised for public review. The amount of habitat that can be involved in this process is substantial. During FY97, 63 of the 291 preapplication consultations we held involved more than 5,784 acres of fishery habitat.

- The NMFS reviewed 5,914 individual proposals to develop in wetlands. Most of these activities (about 64 percent and 2 percent, respectively) were found to either pose no significant threat to fishery resources or were deferred to other agencies. Many of the projects with minimal environmental impact resulted as a consequence of preapplication planning. About 12 percent were of concern because they involved substantial environmental impact. These projects required modification or denial of Federal authorization to protect fisheries resources. Over 22 percent of the review opportunities could not be accommodated because of manpower and funding constraints.
- Federal water development projects include construction and maintenance of Federal navigation channels, beach erosion and hurricane protection, flood control, port expansion and deepening, and other similar actions. The Corps of Engineers (COE) is the principal Federal agency in the coastal zone for the planning, design, and implementation of such projects. Environmental review is conducted by the COE, Fish and Wildlife Service (FWS), Environmental Protection Agency (EPA), NMFS, and state natural resource agencies. The NMFS's review of Federal projects is conducted largely in connection with provisions of the Fish and Wildlife Coordination Act (FWCA); however, other statutes such as the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) and NEPA also apply. These laws encourage our review and input with respect to anticipated impacts and means by which adverse impacts can be avoided and offset. The HCD reviewed 104 Federally constructed or sponsored projects during the year.
- The NEPA requires preparation of an Environmental Impact Statement (EIS) for major Federal actions having significant effects on the human environment. The NMFS reviews these documents to ensure that they adequately address impacts to fishery resources and to provide recommendations on least damaging alternatives. The review process can be a powerful tool for the NMFS in its advocacy role on behalf of fishery resources and their habitat. The NMFS comments must be considered and addressed by the lead Federal agency. If NMFS views are not adequately considered, NEPA provides for an appeals process that allows the issue to be mediated at higher organizational levels. During FY97, 73 such consultations occurred.
- The NMFS participated in numerous activities associated with mitigation planning and habitat restoration that are unrelated to other habitat restoration programs and activities addressed in this report. The majority of these opportunities are related to Federal regulatory programs. The NMFS devoted considerable effort in planning for mitigation bank development, mitigation guideline development, and general mitigation planning. Activities related to the Coastal Wetland Planning Protection and Restoration Act (CWPPRA) continue to be a major habitat restoration activity in the Southeast. This year was extremely active in this arena of the

habitat program and substantial accomplishments are evident in all parts of the habitat program. We conservatively estimate that we interacted on proposals this year that will preserve, enhance, restore, or create more than 157,796 acres of fisheries habitat. This includes 23,610 acres associated with mitigation banks and 65,000 acres of NMFS-sponsored restoration projects under the CWPPRA program.

- The National Estuary Program (NEP) is a comprehensive, multi-agency evaluation, planning, and action oriented initiative for preserving, protecting, and restoring the aquatic resources within entire estuarine ecosystems. The EPA is the lead Federal agency. The NMFS represented NOAA and provided technical assistance. Estuary programs in effect and requiring effort include: Galveston Bay and Corpus Christi Bay, Texas; Barataria-Terrebonne Bays Complex, Louisiana; Tampa Bay, Sarasota Bay, Indian River, and Charlotte Harbor, Florida; Mobile Bay, Alabama; and Albemarle-Pamlico Sound, North Carolina.
- Both the NOAA and NMFS have responsibilities related to habitat protection in the Southeast, and these responsibilities are often intertwined. The NMFS SER also performs actions directly for NOAA and NMFS Headquarters. Consequently, coordination and cooperation among these entities is essential and forms a large share of the habitat protection activities undertaken during the year.
- Outreach efforts included formal and informal presentations, production of reports and informational materials, and publication of research and management related material for peer and public use. Information requests by private, local, state, and Federal entities were answered. The NMFS disseminated habitat information through presentations at scientific and management meetings, journal publications, poster sessions, classroom and organization lectures, and interaction with environmental groups and the media.

