

Fishery Conservation and Management

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employ or enter into contracts for the services of an individual or organization to serve as a convener or facilitator for an FNP established under § 600.755, or may use the services of a government employee to act as a convener or a facilitator for such an FNP.

(b) *Councils.* For an FNP proposed and established by one or more Councils approved expenses shall be paid out of the Council's operating budget.

(c) *Expenses of FNP members.* Members of an FNP shall be responsible for their own expenses of participation in such an FNP, except that NMFS or the Council may, in accordance with section 7(d) of FACA, pay for a member's reasonable travel and per diem expenses, and a reasonable rate of compensation, if:

(1) Such member certifies a lack of adequate financial resources to participate in the FNP.

(2) The Council or NMFS determines that such member's participation in the FNP is necessary to assure an adequate representation of the member's interest.

(d) *Administrative support.* The Council or NMFS shall provide appropriate administrative support to an FNP including technical assistance.

§ 600.758 Preparation of report.

(a) At the conclusion of the negotiations, an FNP may submit a report. Such report shall specify:

(1) All the areas where consensus was reached by the FNP, including, if appropriate, proposed conservation and management measures.

(2) Any other information submitted by members of the FNP.

(b) Upon receipt of the report, the Council or NMFS shall publish such report in the FEDERAL REGISTER for public comment.

§ 600.759 Use of report.

A Council or NMFS may, at its discretion, use all or a part of a report prepared in accordance with § 600.758 in the development of conservation and management measures. Neither a Council nor NMFS, whichever is appropriate, is required to use such report.

§ 600.760 Fishery Negotiation Panel lifetime.

(a) An FNP shall terminate upon either:

(1) Submission of a report prepared in accordance with § 600.758; or

(2) Submission of a written statement from the FNP to the Council or NMFS that no consensus can be reached.

(b) In no event shall an FNP exist for longer than 1 year from the date of establishment unless granted an extension. Upon written request by the FNP to the Council or NMFS, and written authorization from the Council or NMFS (whichever is appropriate), the Secretary may authorize an extension for a period not to exceed 6 months. No more than one extension may be granted per FNP.

Subpart J—Essential Fish Habitat (EFH)

SOURCE: 67 FR 2376, Jan. 17, 2002, unless otherwise noted.

§ 600.805 Purpose and scope.

(a) *Purpose.* This subpart provides guidelines for Councils and the Secretary to use in adding the required EFH provisions to an FMP, i.e., description and identification of EFH, adverse effects on EFH (including minimizing, to the extent practicable, adverse effects from fishing), and actions to conserve and enhance EFH.

(b) *Scope*—(1) *Species covered.* An EFH provision in an FMP must include all fish species in the fishery management unit (FMU). An FMP may describe, identify, and protect the habitat of species not in an FMU; however, such habitat may not be considered EFH for the purposes of sections 303(a)(7) and 305(b) of the Magnuson-Stevens Act.

(2) *Geographic.* EFH may be described and identified in waters of the United States, as defined in 33 CFR 328.3, and in the exclusive economic zone, as defined in § 600.10. Councils may describe, identify, and protect habitats of managed species beyond the exclusive economic zone; however, such habitat may not be considered EFH for the purposes of sections 303(a)(7) and 305(b) of the Magnuson-Stevens Act. Activities that

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may adversely affect such habitat can be addressed through any process conducted in accordance with international agreements between the United States and the foreign nation(s) undertaking or authorizing the action.

§ 600.810 Definitions and word usage.

(a) *Definitions.* In addition to the definitions in the Magnuson-Stevens Act and § 600.10, the terms in this subpart have the following meanings:

Adverse effect means any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

Council includes the Secretary, as applicable, when preparing FMPs or amendments under sections 304(c) and (g) of the Magnuson-Stevens Act.

Ecosystem means communities of organisms interacting with one another and with the chemical and physical factors making up their environment.

Habitat areas of particular concern means those areas of EFH identified pursuant to § 600.815(a)(8).

Healthy ecosystem means an ecosystem where ecological productive capacity is maintained, diversity of the flora and fauna is preserved, and the ecosystem retains the ability to regulate itself. Such an ecosystem should be similar to comparable, undisturbed ecosystems with regard to standing crop, productivity, nutrient dynamics, trophic structure, species richness, stability, resilience, contamination levels, and the frequency of diseased organisms.

Overfished means any stock or stock complex, the status of which is reported as overfished by the Secretary pursuant to section 304(e)(1) of the Magnuson-Stevens Act.

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(b) *Word usage.* The terms “must”, “shall”, “should”, “may”, “may not”, “will”, “could”, and “can” are used in the same manner as in § 600.305(c).

§ 600.815 Contents of Fishery Management Plans.

(a) *Mandatory contents—(1) Description and identification of EFH—(i) Overview.* 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. FMPs should explain the physical, biological, and chemical characteristics of EFH and, if known, how these characteristics influence the use of EFH by the species/life stage. FMPs must identify the specific geographic location or extent of habitats described as 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.

(ii) *Habitat information by life stage.* (A) Councils need basic information to understand the usage of various habitats by each managed species. Pertinent information includes the geographic range and habitat requirements by life stage, the distribution and characteristics of those habitats, and current and historic stock size as it affects occurrence in available habitats. FMPs should summarize the life history information necessary to understand each species' relationship to, or dependence on, its various habitats, using text, tables, and figures, as appropriate. FMPs should document patterns of temporal and spatial variation in the distribution of each major life stage (defined by developmental and functional shifts) to aid in understanding habitat needs. FMPs should summarize (e.g., in tables) all available information on environmental and habitat variables that control or limit distribution, abundance, reproduction, growth, survival, and productivity of the managed species. The information should be supported with citations.

(B) Councils should obtain information to describe and identify EFH from the best available sources, including peer-reviewed literature, unpublished