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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648-XF559

Fisheries of the Exclusive Economic Zone Off Alaska; Essential Fish Habitat Amendments

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

ACTION: Notification of agency decision.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the approval of Amendment 115 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area, Amendment 105 to the FMP for Groundfish of the Gulf of Alaska, Amendment 49 to the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs, Amendment 13 to the FMP for the Salmon Fisheries in the EEZ Off Alaska, and Amendment 2 to the FMP for Fish Resources of the Arctic Management Area, (collectively Amendments). These Amendments revise the FMPs by updating the description and identification of essential fish habitat (EFH), and updating information on adverse impacts to EFH based on the best scientific information available. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMPs, and other applicable laws.

DATES: The amendments were approved on May 31, 2018.

ADDRESSES: Electronic copies of the Amendments, maps of the EFH areas, the Environmental Assessment (EA), and the Final EFH 5-year Summary Report (Summary Report) prepared for this action may be obtained from *www.regulations.gov*. The Summary Report is also available at *ftp://ftp.library.noaa.gov/noaa_documents.lib/NMFS/TM_NMFS_AFKR/TM_NMFS_FAKR_15.pdf*. The 2017 Impacts to Essential Fish Habitat from Non-fishing Activities in Alaska Report (Non-fishing Effects Report) is available at *ftp://ftp.library.noaa.gov/noaa_documents.lib/NMFS/TM_NMFS_AFKR/TM_NMFS_FAKR_14.pdf*. Stone (2014) is available at *https://spo.nmfs.noaa.gov/pp16.pdf*.

FOR FURTHER INFORMATION CONTACT: Megan Mackey, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notification in the **Federal Register** announcing that the amendment is available for public review and comment.

The Notification of Availability for the Amendments was published in the **Federal Register** on March 5, 2018 (83 FR 9257), with a 60-day comment period that ended on May 4, 2018. NMFS received five comments during the public comment period on the Notification of Availability for the Amendments. NMFS is not disapproving any part of these amendments in response to these comments. NMFS

summarized and responded to these comments under **Comment and Responses**, below.

NMFS determined that the Amendments are consistent with the Magnuson-Stevens Act and other applicable laws, and the Secretary of Commerce approved the Amendments on May 31, 2018. The March 5, 2018, Notiication of Availability contains additional information on this action. No changes to Federal regulations are necessary to implement the Amendments.

The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq*. Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600, 679, and 680. Section 303(a)(7) of the Magnuson-Stevens Act requires that each FMP describe and identify EFH, minimize to the extent practicable the adverse effects of fishing on EFH, and identify other measures to promote the conservation and enhancement of EFH. The Magnuson-Stevens Act defines EFH as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." Implementing regulations at § 600.815 list the EFH contents required in each FMP and direct regional fishery management councils to conduct a complete review of all EFH information at least once every five years (referred to here as "the 5-year review").

The Council developed the Amendments as a result of new information available through the 5-year review that began in 2014 (2015 5-year review) and adopted the Amendments in April 2017. The 2015 5-year review is the Council's third review of EFH in the FMPs. Prior 5-year reviews were conducted in 2005 and 2010. The Council recommended amendments to the description and identification of EFH in the FMPs with

new information and improved mapping as described in the Summary Report for the 2015 5-year review (see **ADDRESSES**). The Council also recommended updates to EFH information based on the best available information in the Summary Report. The Council recommended updates to EFH for all FMPs except for the FMP for the Scallop Fishery off Alaska because no new information is available to update EFH descriptions for scallops.

The Amendments make the following changes to the FMPs:

hAmendment 115 to the FMP for Groundfish of the Bering Sea and Aleutian Island Management Area and Amendment 105 to the FMP for Groundfish of the Gulf of Alaska (Amendments 115/105) update the EFH descriptions for all managed species and update the identification of EFH for those managed species for which new population density or habitat suitability information is available. Sections 4.2.1 and 5.2.1 of the EA (see **ADDRESSES**) list the EFH updates that will be made for each species and life stage. Amendments 115/105 also update information in Appendix F to each FMP on adverse impacts to EFH based on the best scientific information available in the Summary Report (see **ADDRESSES**).

.Amendment 49 to the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs updates the EFH descriptions for all managed species and updates the identification of EFH for those managed species for which new population density or habitat suitability information is available. Section 6.2.1 of the EA (See **ADDRESSES**) lists the EFH updates that will be made for each species and life stage. Amendment 49 also updates information in Appendix F to the FMP on adverse impacts to EFH based on

the best scientific information available in the Summary Report (see **ADDRESSES**).

.Amendment 13 to the FMP for the Salmon Fisheries in the EEZ Off Alaska (Salmon FMP) replaces Appendix A, "Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPC)," with a new Appendix A based on the best available information in the Summary Report (see **ADDRESSES**). Amendment 13 to the Salmon FMP updates the marine EFH descriptions for all salmon species and updates the identification of marine EFH for each species and life stage for which new population density or habitat suitability information is available. Section 7.2.1 of the EA (see **ADDRESSES**) lists the EFH updates that will be made for each species and life stage. Amendment 13 also updates information in Appendix A on adverse impacts to EFH based on the best scientific information available in the Summary Report (see **ADDRESSES**).

.Amendment 2 to the FMP for Fish Resources of the Arctic Management Area updates the EFH descriptions for all managed species for which new information is available, and updates the identification of EFH for snow crab. Section 8.2.1 of the EA (See **ADDRESSES**) lists the EFH updates that will be made for each species and life stage. Amendment 2 also updates information in Appendix C on non-fishing impacts to EFH based on information available in the Non-fishing Effects Report (see **ADDRESSES**).

Comments and Responses

During the public comment period for the Notification of Availability for the Amendments, NMFS received five unique comments from five members of the public on

the Amendments. NMFS received one comment that was not relevant to the Amendments. NMFS is not disapproving any part of these amendments in response to these comments. NMFS' responses to these comments are presented below.

Comment 1: Two commenters expressed general support for this action.

Response: NMFS acknowledges these comments.

Comment 2: Amendment 13 to the Salmon FMP, Appendix A, is inconsistent with the requirement to use the best science information available. It also fails to recognize adverse effects to salmon EFH, including recreational fishing, and does not include scientific reports that document adverse effects to salmon EFH.

Response: Appendix A to the Salmon FMP incorporates the best scientific information available from the Summary Report and the Non-fishing Effects Report (see **ADDRESSES**). The required information from the EFH final rule is also included in Appendix A.

Regarding the effects of recreational fishing on EFH, recreational fishing falls under non-Magnuson-Stevens Act (MSA) fishing activities that may adversely affect EFH (50 CFR 600.815(a)(3)). The regulations require FMPs to identify any fishing activities that are not managed under the Magnuson-Stevens Act that may adversely affect EFH, including fishing managed by state agencies or other authorities. NMFS identified and addressed those activities in Section 2.3 of the Summary Report (see **ADDRESSES**). Section 2.3 of the Summary Report notes that the effects of non-Magnuson-Stevens Act fishing activities are covered within the discussion of fishing

effects on habitat in the 2005 EFH EIS and remain valid. Therefore, the Summary Report does not provide additional analysis of the effects of non-MSA fishing activities on EFH.

Comment 3: The EA failed to use the best scientific information available. The EA did not use predictive habitat models, failed to disclose adverse impacts of fishing on EFH for FMP species whose EFH includes corals and slow-growing habitat features, and is not sufficiently precautionary.

Response: This comment can be divided into issues related to analysis of fishing impacts (Fishing Effects (FE) model) and issues related to the assessment of fishing activities that adversely affect EFH.

The FE model and how it was used to understand the effects of fishing on EFH is fully described in the EA in Appendix 7 (*The Fishing Effects Model Description*, see **ADDRESSES**).

Regarding the analysis of fishing impacts, the FE model incorporated a published, peer-reviewed literature review (see Grabowski *et al*. (2014) in Appendix 7 of the EA; see **ADDRESSES**) to estimate impact and recovery parameters, which included studies of fishing gear interactions with 26 categories of geological and biological substrates. NMFS is aware that information exists in the literature that provides additional information on the age of sensitive habitat types, including corals and sponges. The Grabowoski *et al*. literature review included at least 10 Alaska-specific references.

The recovery times specified in the FE model are the average time to recovery, when about 50 to 60 percent of the features are expected to have recovered from a potential fishery impact. The recovery projected by the FE model is intended to reflect

both the distribution of damage (not all features are completely removed or killed) and the variable time to recovery consistent with the limited literature available. The recovery times projected by the FE model are similar to those in the published peer review literature (Rooper (2011))[1], which noted that mortality of 67% of the coral biomass at a site would recover to 80% of the original biomass after 34 years in the absence of further damage or removals.

The FE model includes an assessment of "long-lived species" habitat in cobble/boulder habitat deeper than 300 meters. The FE model accounts for corals, including sea pens, in mud and sand environments. Coral and other long-lived species are included in depths shallower than 300 meters as the "coral/seapen" feature. They are attributes of the sand and mud habitat categories regardless of depth. The FE model notes that based on a review of fishing activities in 2015, over 94 percent of area contacted by fishing gear was in sand and mud habitats. Sponge were a feature of all sediment types with the exception of mud, at all depths.

Predictive models were not used in the FE model because the distribution of both biological and geological features were linked to sediment types rather than specific features. The FE model accounts for both biological and geological features.

In April 2017, the SSC agreed with the conclusions of the FE model and agreed that, given current understanding of stock delineations, the effects of fishing on the EFH of fisheries species managed by the Council are minimal and temporary. The SSC also

1 Rooper, C.N., Wilkins, M.E., Rose, C.S. and Coon, C., 2011. Modeling the impacts of bottom trawling and the subsequent recovery rates of sponges and corals in the Aleutian Islands, Alaska. *Continental Shelf Research*, *31*(17), pp.1827-1834.

recognized that this FE model is the first of its kind and will benefit from continued research to refine the parameterization of the FE model. Currently the New England Fishery Management Council is working to modify the FE model to integrate fisheries data specific to New England.

Regarding the assessment of more than minimal and not temporary in nature, the EFH regulations instruct the Council to act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable, if there is evidence that a fishing activity adversely affects habitats that are necessary for spawning, breeding, feeding, or growth to maturity in a manner that is more than minimal and not temporary in nature (provide citation to regulation). Previous Council EFH reviews used the minimum stock size threshold (MSST) to determine if adverse effects were occurring. The Center of Independent Experts criticized this determination process during the 2010 5-year EFH review. In April 2016, the SSC recommended the EFH workgroup develop criteria for evaluating the impact of fishing effects on EFH in response to the review by the Center of Independent Experts. In response, an assessment was presented to the Council's crab and groundfish plan teams as well as the SSC at the Council's October 2016 meeting (*http://npfmc.legistar.com/gateway.aspx?M=F&ID=fc25a8ed-e85d-4579-a24b-860688bf3974.pdf*). The results from this assessment are incorporated in the FE model.

Stock assessment authors used the methodology developed by the EFH workgroup to assess the effects of fishing on the EFH of each Council-managed stock. The stock assessment authors evaluated the quantitative evidence for potential links between habitat impacts and a series of metrics representing spawning, feeding, breeding,

and growth to maturity (see section 10.3.7 of the Summary Report; see **ADDRESSES**). The SSC concurred with the assessment authors' findings that no stocks needed mitigation review at this time, but noted that if a more than minimal and not temporary impact had been detected, the process provided a clear avenue for research leading to a species-specific mitigation plan.

Comment 5: NMFS should include all fishing impacts (including recreational fishing), non-fishing impacts, impacts to coastal watersheds, a discussion of climate change, and address cumulative impacts in Appendix A to the Salmon FMP. In addition, NMFS should coordinate with state and local agencies when making decisions impacting EFH for salmon in Alaska.

Response: The effects of fishing on salmon EFH are addressed in Section A.4 of Appendix A to the Salmon FMP. See also NMFS' response to Comment 4 above regarding the FE model analysis. NMFS analyzed non-fishing impacts (including watersheds and wetlands, and a discussion of climate change) in the Non-fishing Effects Report (see **ADDRESSES**). This report is referred to in Appendix A to the Salmon FMP. NMFS' response to Comment 3 above addresses the effects of recreational fishing on EFH.

Cumulative impacts are addressed in Section A.6 of Appendix A. The cumulative effects of fishing and non-fishing activities on EFH were considered in the 2005 EFH EIS, but available information was not sufficient to assess how the cumulative effects of fishing and non-fishing activities influence the function of EFH on an ecosystem or watershed scale. The Non-fishing Effects Report contains additional information on the

potential cumulative impacts of non-fishing activities. For fishing impacts to EFH, the FE model provides an assessment of cumulative effects from fishing activities. Cumulative impacts are considered throughout the Summary Report.

Regarding coordination with the state and other agencies, NMFS works closely with the Council, which includes state and Federal agency representatives as well as industry representatives in a collaborative decision-making process for managing Federal fisheries. Coordination and consultation on EFH is required by section 305(b) of the Magnuson-Stevens Act. However, this consultation does not supersede the regulations, rights, interests, or jurisdictions of other Federal or state agencies. The Magnuson-Stevens Act requires NMFS to make conservation recommendations to Federal and state agencies regarding actions that may adversely affect EFH. These EFH conservation recommendations are advisory, not mandatory, and may include measures to avoid, minimize, mitigate, or otherwise offset the potential adverse effects to EFH. Within 30 days of receiving NMFS' conservation recommendations, Federal action agencies must provide a detailed response in writing. The response must include measures proposed for avoiding, mitigating, or offsetting the impact of a proposed activity on EFH. State agencies are not required to respond to EFH conservation recommendations. If a Federal action agency chooses not to adopt NMFS' conservation recommendations, it must provide an explanation. Examples of Federal action agencies that permit or undertake activities that may trigger EFH consultation include, but are not limited to, the U.S. Army Corps of Engineers, the Environmental Protection Agency, Bureau of Ocean Energy Management, the Federal Energy Regulatory Commission, and the Department of the

Navy. The Non-fishing Effects Report contains non-binding recommendations for reasonable steps that could be taken to avoid or minimize adverse effects of non-fishing activities on EFH.

Authority: 16 U.S.C. 1801 *et seq*.

Dated: June 28, 2018.

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