

**Gulf of Mexico Fishery Management Council
Habitat Policy**

1/30/02

Habitat Policy and Procedures:

1. Policy:

Because all species are dependent on the quantity and quality of their essential habitats, it is the policy of the Gulf of Mexico Fishery Management Council (Council) to:

Protect, restore, create, and otherwise improve Essential Fish Habitats (EFH) upon which commercial and recreational marine fisheries depend and to improve their productive capacity for the benefit of present and future generations. (For purposes of this policy, and consistent with the Magnuson-Stevens Fishery Conservation and Management Act (M-SFCMA) and implementing regulations, EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. For the purpose of interpreting the definition of EFH: (1) 'waters' include aquatic areas and their associated physical, chemical, and biological properties that are used by fish, and may include aquatic areas historically used by fish where appropriate; (2) substrate includes sediment, hardbottom, structures underlying the waters, and associated biological communities; (3) 'necessary' means the habitat required to support a sustainable fishery and the managed species' contributions to a healthy ecosystem; and (4) 'spawning, breeding, feeding, or growth to maturity covers a species' full life cycle.)

This policy shall be supported by three policy objectives which are to:

- a. Maintain the diversity and productive capacity of habitats in a quantity needed to sustain managed fisheries and their food base.
- b. Restore and rehabilitate the productive capacity of habitats that have already been degraded.
- c. Create productive habitats where increased fishery productivity will benefit society.

Consistent with the intent of the Magnuson-Stevens Fishery Conservation and Management Act, the Council shall assume an aggressive role in the protection and enhancement of habitats important to managed species and their food base. It shall actively enter federal and state decision-making processes where proposed actions may otherwise compromise the productivity of fishery resources of concern to the Council.

2. Council Habitat Responsibilities:

a. Council committee structure and roles

1. Habitat Protection Committee

The Habitat Protection Committee (HPC) is an established committee of the Council and is comprised of Council members. The HPC monitors activities within the Council's jurisdictional area to determine both the negative and positive impacts of activities to EFH or managed fisheries and recommends appropriate actions or responses for consideration by the Council. The HPC is supported by three Habitat Protection Advisory Panels (HPAP).

2. Habitat Protection Advisory Panels

The Council has established three HPAPs with broad-based participation from representative constituencies within each of the major geographic areas of the Gulf region. The advisory panels serve the following geographical areas: (1) Florida/Alabama, (2) Mississippi/Louisiana, and, (3) Texas.

The principal role of the HPAPs is to assist the Council, through the HPC in implementing the EFH mandates of the M-SFCMA, in attempting to maintain and increase optimum conditions within the habitats and ecosystems supporting the marine fishery resources of the Gulf of Mexico. Under this charge, the HPAPs assist the Council in:

- a. Identifying activities which may adversely or positively affect EFH (from the freshwater tidal boundary to the seaward boundary of the Exclusive Economic Zone), especially Habitat Areas of Particular Concern;
- b. Assessing the potential impacts to EFH and associated species (direct and indirect) and actions required to ameliorate negative impacts or realize positive impacts;
- c. Generating public awareness of EFH and fish habitats and impacts upon them;
- d. Identifying and recommending mitigation, restoration, and habitat creation opportunities; and,
- e. Encouraging more active and stronger habitat protection, restoration, and conservation activities.

The HPAPs serve as a first alert system for the HPC and Council to inform them of proposed development projects and other activities that may adversely impact or substantially benefit managed Gulf species and EFH. For those proposed activities for which the potential impacts meet the Council's criteria for taking action, a HPAP, or elements thereof, may be convened to advise the Council on impacts, propose courses of action, and identify mitigation, restoration, and habitat creation opportunities. The HPAPs also review policy issues on environmental protection and provide guidance to the Council. The HPAPs, at the call of the Council Chairman, periodically provide advice to the Council on its policies and procedures for addressing its EFH responsibilities and other environmental affairs through the HPC.

3. EFH Review:

The Council submitted to the National Marine Fisheries Service (NMFS) a generic EFH Amendment for all of the Council fishery management plans (FMP) that describes and identifies EFH for the fisheries under the Council's jurisdiction, identifies threats to EFH and dependent fisheries, and discusses potential management measures to avoid and minimize adverse impacts to EFH. The EFH Amendment was based on guidelines promulgated by the Secretary of Commerce as an Interim Final Rule under 50 CFR part 600, subpart J (62 FR 66551 - 66555). The EFH Amendment identified EFH and measures to minimize to the extent practicable adverse effects on EFH caused by fishing and other actions to encourage the conservation and enhancement of EFH. The EFH Amendment was partially approved by the Secretary of Commerce on February 8, 1999.

As specified in the M-SFCMA and as a result of the partial approval of the EFH Amendment, a new standard for review of coastal development activities has been placed on the Council. The M-SFCMA specifies 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 EFH, of a fishery resource under its authority.

In addition, all Council-prepared FMPs and amendments and modifications thereto shall include a description and identification of impacts to EFH from fishing activities or other proposed fishery management actions. These documents shall identify measures to minimize adverse effects to the extent practicable and increase opportunities to restore EFH.

4. Guidelines for Assessing Proposed Activities:

The following factors will be considered by the HPC in making an assessment of the proposed activities:

- a. The extent to which the activity, individually and cumulatively, would directly affect EFH identified in the Council's Generic EFH Amendment;
- b. 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;
- c. The degree to which the activity would indirectly affect the production of fishery resources by altering the physical environment that determines their distribution, affects their essential food base, or otherwise alters their EFH;
- d. The extent of any adverse impact that can be avoided through project modification or other safeguards;
- e. The existence of alternative sites available to reduce unavoidable project impacts;
- f. The extent to which the activity requires a water-dependent location if dredging or filling wetlands is involved; and,
- g. The project's or activity's conformance with mitigation guidelines as defined in the 1990 Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army concerning the determination of mitigation that is consistent with mitigation policies established under the Council on Environmentally Quality Implementing Regulations (40 CFR Part 1508.20), and the Section 404(b)(1) Guidelines (40 CFR Part 230) that indicate that compensatory mitigation may only be authorized for purposes of complying with Section 10/404 when adverse impacts are unavoidable.

5. Criteria to Define Significant Projects:

The HPC shall consider the following criteria in selecting significant projects for review and action:

- a. Those projects that have a significant direct adverse impact on EFH and the ecological processes that sustain EFH or fisheries for which FMPs have been or are being developed by the Council;
- b. Development activities having a direct or indirect adverse impact on any Habitat Area of Particular Concern;

- c. Projects having a significant, adverse, non-direct impact on these fisheries or their EFH;
 - d. Projects that may be precedent setting;
 - e. Projects for which individual impacts may be minor but which contribute to a cumulatively significant loss or degradation of EFH or the productive capacity of fisheries managed by the Council; and,
 - f. Projects that offer significant opportunities to restore or create EFH.
6. Habitat Procedures:
- a. Project Review and Coordination

To ensure ample and appropriate opportunity for the Council to influence the decision making process of federal agencies for the conservation of EFH, the Council will work cooperatively with the various federal agencies. As specified at 50 CFR §600.930(a), this will be accomplished by the Council establishing procedures for reviewing actions that may adversely or positively affect EFH.

The Council will coordinate closely with the NMFS, federal, state, and other habitat partners to identify actions that may affect EFH, to develop comments and EFH conservation recommendations to federal and state agencies, and to provide EFH information to federal and state agencies. While the Council will work cooperatively with NMFS and others, it has the authority to act independently.

The Council's comments will apply the activity based conservation recommendations contained in Section 7.0 of the Council's EFH Amendment. These are a generalized set of environmentally sound engineering and management practices that should be employed when an action may significantly and adversely affect EFH.

If a project appears to have significant negative or positive impacts on EFH, the Habitat Support Specialist will notify the Executive Director and the HPC Chairman who will, in consultation with the Council Chairman, then decide if the project warrants Council attention. Concurrently, for projects that will have significant adverse impacts to EFH and federally managed fisheries, NMFS will transmit a report to the appropriate agency with a copy to the Council. That report will contain an assessment of project impacts, EFH conservation recommendations, and a statement of the Council's preliminary concurrence with the views and recommendations of NMFS. The statement of concurrence also

will advise the agency of its responsibility to provide a substantive response to comments of the Council. The concurrence statement follows.

During the development of the NMFS position statement, the Council has been assessing data supplied by NMFS and other sources relative to this project. Under a formal procedure with NMFS, the Council has requested that we notify you of their preliminary concurrence with our views and recommendations as they relate to this project. Authority for the Council to comment on this project is provided under Sections 305 (b)(2-4) of the M-SFCMA. Therefore, any responses or correspondence regarding our EFH, conservation recommendations, pursuant to procedures established by the NMFS Interim Final Rules (50 CFR Sections 600.905 - 600.930), also should be sent to the Council. Correspondence should be addressed to the Council at the following address:

Executive Director
Gulf of Mexico Fishery Management Council
3018 U.S. Highway 301 North, Suite 1000
Tampa, Florida 33619-2266

Following a decision that separate Council action should be taken, NMFS will be notified and a letter to the appropriate agency containing the Council's views and recommendations will be prepared as described below. Criteria used to define a significant project is contained in the Council's Habitat Policy and Responsibilities statement. Project review and evaluation shall proceed as follows:

1. The Habitat Support Specialist shall forward copies of public notices for federal projects, permits, and licenses that significantly affect fisheries to Council members followed by special briefings, as appropriate, and any NMFS position statements, as developed. When deemed appropriate, the staff shall request state and other Federal agency assessments (position statements) of project impacts and forward them to the Council;
2. If feasible within the Council's meeting schedule, the HPC shall develop a letter of Council comments on projects that would have a significant adverse or positive effect on EFH, then forward it to the Council for adoption and communication to the appropriate agency;
3. If time or meeting constraints do not allow the Council to develop a letter of comments on a project, the HPC shall develop comments by meeting or conference call meeting. If time constraints would not allow such a meeting, the Habitat Support Specialist in consultation with the HPC Chairman, Council Chairman, and Executive Director will develop a draft letter of Council comments and provide copies to the HPC for review. The final letter

will be signed by the Council Chairman and communicated to the appropriate agency, with copies concurrently provided to Council members, NMFS, and appropriate Habitat AP(s).

4. Council staff or members may testify at public hearings, as needed;
5. Council may hold public hearings, as appropriate; and,
6. Federal agencies must provide detailed responses to NMFS and the Council within 30 days following receipt of EFH conservation recommendations. If a federal agency's decision is inconsistent with Council's recommendations, the Council may request the Assistant Administrator of NMFS to further review the agency's decision and involve the Council in any interagency discussions to resolve disagreements.

b. Consultation on Proposed General Concurrences

A General Concurrence represents a consultation process that addresses specific types of actions that require no further consultation because impacts would be minimal, either individually or cumulatively. As required by the NMFS regulations, projects for which a federal agency makes a request to NMFS for a General Concurrence will be coordinated with the Council prior to NMFS making a final determination (50 CFR §600.920[f][3]). In addition, prior to providing a written statement of General Concurrence, NMFS will provide an opportunity for public review through the Council or by other means. Through an agreement with NMFS or the federal agency responsible for tracking the effects on EFH of actions under General Concurrences (50 CFR §600.920[f][2][C][ii]), the Council will annually request information on the nature and number of actions, an analysis of impacts on EFH, and the federal agency's conclusions regarding the magnitude of such effects.

7. Coastal Wetland Management Policy:

The Gulf of Mexico Fishery Management Council (Council) defines coastal wetlands as forested and non-forested habitats, mangroves, and all marsh islands (including portions of barrier islands) that are exposed to tidal activity. Included in forested wetlands are hardwood hammocks, mangrove swamps, spoil banks, cypress-tupelo gum swamps, and bottomland hardwoods. Non-forested wetlands include fresh, brackish, and salt marshes. These areas directly contribute to the high biological productivity of coastal waters by input of detritus and nutrients, by providing nursery and feeding areas for shellfish and finfish, and by serving as habitat for many birds and other animals. Realizing the ecological importance of coastal wetlands in the estuaries of the Gulf of Mexico, and as Essential Fish Habitat for or impacting the

fishery resources that the Council manages or that are within the Council's jurisdiction, it is the policy of the Council to:

Promote the conservation, maintenance, and restoration of healthy coastal wetlands to sustain and enhance a diversity of marine resources.

This policy shall be supported by the following objectives.

- a. Coastal wetland management should be directed towards sustaining the diversity and productivity of indigenous marine resources utilizing the area.
- b. Coastal wetland management should promote the long-term health and productivity of wetland habitats for the marine species utilizing the area.
- c. Coastal wetlands should generally not be impounded, although it is recognized that this may be necessary at times to control adverse impacts resulting from natural or human-induced hydrologic changes.
- d. Coastal wetland management should strive to balance the benefits to all forms of indigenous marine resources and plant communities currently utilizing the area.
- e. Permitting or management plans for wetland activities should include sufficient detail to determine potential effects on marine fisheries. It should also include provisions for monitoring and/or mitigation to ensure the objectives of the plan are being met, and that non-target resources are not unacceptably impacted.
- f. Coastal wetland management activities should provide adequate ingress and egress for marine species.
- g. Coastal wetland management activities should allow adequate nutrient and sediment exchange as well as other important physical and chemical interactions with adjacent areas.
- h. The Council supports the necessary planning and implementation to ensure adequate freshwater inflows to sustain coastal wetlands.

8. Mariculture Policy:

Recognizing that mariculture presents both potential benefits as well as potential negative impacts, it is the policy of the Council to encourage environmentally responsible mariculture; the Council encourages consideration of the following guidelines:

a. Exotics:

The Council recommends that native species receive priority as candidate culture species. Exotics should be used only after thorough investigation has demonstrated no detrimental impacts on native species. The Council opposes use of non-native species in mariculture systems unless demonstrated it has no detrimental impacts on native species.

b. Habitat:

To ensure that mariculture activities are environmentally responsible, the following considerations should be made with respect to habitat in that:

1. Existing shoreline, bottom, and open-water habitats should be protected from physical alterations or degradation;
2. Ingress and egress of native wild organisms in natural and public waters should not be impeded by physical or water quality barriers; and
3. Navigation in natural or public waters should not be impeded.

c. Research and Monitoring:

The Council recommends the mariculture industry demonstrate, in part, its stewardship of Gulf waters by:

1. Actively educating its member institutions about necessary regulations and permits;
2. Actively participating in cooperative research and monitoring to improve the understanding of mariculture's relationship to coastal and marine ecosystems; and
3. Participating in cooperative research to enhance knowledge of cultured species.

d. Location, Design, and Operation:

Mariculture operations should be located, designed and operated to reduce, prevent, or eliminate adverse impacts to estuaries, marine habitats and native fishery stocks. These impacts that cannot be eliminated must be fully mitigated in-kind.

Conditions should be maintained to sustain healthy, diverse, native-biological communities without the production of nuisance, toxic, or oxygen-demanding conditions.

Standard operating procedures should contain methods to prevent escapement, accidental transport, or release of cultured organisms.

e. Water Quality:

Mariculture facilities should be operated in such a manner that minimizes impacts to the local environment by utilizing water conservation practices and discharging effluent that protects existing designated use of receiving water.

Mariculture facilities are responsible for developing, implementing, and monitoring best management practices to conserve water and improve effluent water quality.

f. Disease Control:

Mariculture activities should have procedures established that:

1. Prevent the importation or spread of pathogens or parasites;
2. Minimize impacts of disease outbreaks if they occur; and
3. Eliminate disease problems wherever possible.

9. Submerged Aquatic Vegetation Policy:

The Gulf of Mexico Fishery Management Council (Council) defines submerged aquatic vegetation (SAV) as rooted vascular plants that, except for some flowering structures, live and grow below the water surface. Realizing the ecological importance of SAV to the ecosystem, and as Essential Fish Habitat for or impacting the fishery resources that the Council manages or that are within the Council's jurisdiction, it is the policy of the Council to:

Protect, restore, create, and otherwise improve SAV habitat in the Gulf of Mexico and adjacent estuaries and achieve a net gain in SAV distribution and abundance within these regions.

This policy shall be supported by the following objectives.

- a. Conserve existing SAV beds and prevent further loss due to degradation of water quality, physical damage to the plants, or disruption to the local sedimentary environment.
- b. Strongly endorse and support actions affecting water and habitat quality that will result in restoration of SAV.
- c. Endorse and support propagation and transplant efforts to restore and expand the acreage of SAV necessary to support fisheries in the Gulf of Mexico.
- d. Promote planning and education efforts that incorporate SAV as an integral part of the coastal ecosystem and link the habitat with the fishery resource.
- e. Work within state and federal regulatory processes to decrease or eliminate impacts to SAV.
- f. Promote SAV research and monitoring.

10. Freshwater Inflow Policy:

The Gulf of Mexico Fishery Management Council (Council) defines freshwater inflow as the amount of freshwater entering estuaries in order to maintain the salinity, nutrient, and sediment regimes that support healthy and productive estuaries and their essential fish habitat (EFH). Estuaries are coastal, semi-enclosed bodies of water that have a free connection with the open sea and where freshwater meets and mixes with seawater. Coastal estuaries typically include wetlands and open bay waters in which nutrients from river inflows, adjacent runoff, and the sea support a productive community of plants and animals. The Gulf of Mexico estuaries serve as nursery grounds for marine organisms, and approximately 98% of commercially and recreationally important species are estuarine-dependent at some point in their life cycle. Sufficient freshwater inflow is necessary to: (1) dilute sea water and create a series of gradients, where salinity increases progressively with distance toward the sea and away from the mouths of rivers; (2) transport nutrients to the coast and then distribute them into estuaries, where they fuel production of fish, shrimp, and other organisms; and (3) carry and distribute sediment into estuaries to maintain their shallow-water characteristics and native submerged and emergent vegetation. Water withdrawals, dams, diversions¹, construction and maintenance of navigation channels, and other activities, including those that are located far upstream, can affect estuarine and nearshore habitats, including EFH. Realizing the

¹The use of the term diversion in this policy is not intended to discourage introduction of freshwater for the purposes of restoration of wetlands, marshes, estuaries, or other forms of EFH, or other benefits or values as deemed appropriate by the Council.

ecological importance of freshwater inflow to maintenance of the estuaries and the role of estuaries in maintaining healthy fishery resources, the Council has a keen interest in maintaining adequate freshwater inflow to estuaries. The Council also has the authority under the Magnuson-Stevens Fishery Conservation and Management Act to comment on and request consultation as provided in the Act if activities would adversely affect EFH. Consequently, it is the policy of the Council to:

Ensure an ample supply of freshwater inflow, applied at the appropriate times, so as to maintain appropriate salinity regimes and concentrations of nutrients and sediments to sustain the function and productivity of estuaries and their EFH.

This policy shall be supported by the following objectives:

- a. Identify activities that pose a threat to freshwater inflow sources and have the potential to adversely affect estuarine and nearshore habitats, including EFH.
- b. Support river basin water management plans and development projects that consider the freshwater needs of estuaries and, to the extent practicable, do not include water withdrawals, dams, diversions, construction and maintenance of navigation channels, or other activities that will adversely affect estuarine and nearshore habitats, including EFH.
- c. Support river basin water management plans and development projects that consider the timing of freshwater discharges to estuaries and ensure that water releases mimic the natural hydrologic cycles, to the extent practicable, except where habitat needs require special management practices.
- d. Support river basin water management plans and development projects that consider the freshwater needs of estuaries and, to the extent practicable, do not include activities that cause too much freshwater to be released, as happens during water releases to minimize anticipated flooding, thereby adversely affecting estuarine, and nearshore habitats, including EFH.
- e. Restore and maintain adequate freshwater inflow to estuaries where estuarine, and nearshore habitats, including EFH have been adversely affected by water withdrawals, dams, diversions, construction and maintenance of navigation channels, or other activities.
- f. Consider that evaporation from reservoirs created by dams and weirs may constitute water diversion for the purposes of this policy if estuarine, and nearshore habitats, including EFH would be adversely affected.