

13.0 APPENDICES

Appendix A. SAFMC Proposed Process for Reviewing/Commenting on Projects Affecting Essential Fish Habitat.

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:

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, etc.);
3. The extent to which the activity would directly affect the production of fishery resources (e.g., alteration of water circulation patterns, salinity regimes, detrital export, etc.);
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:

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.

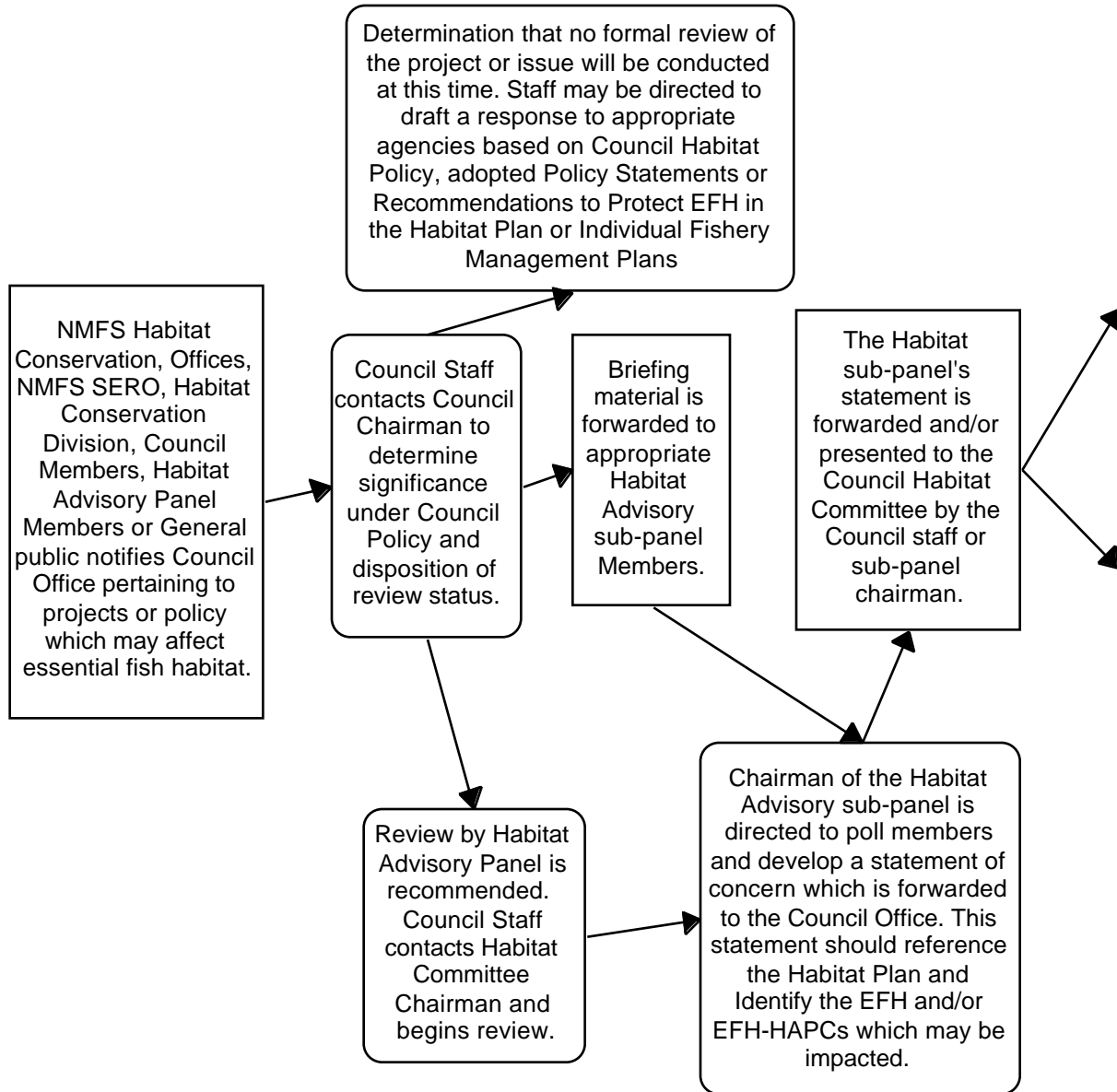
EFH Recommendations and Policy Statements:

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.

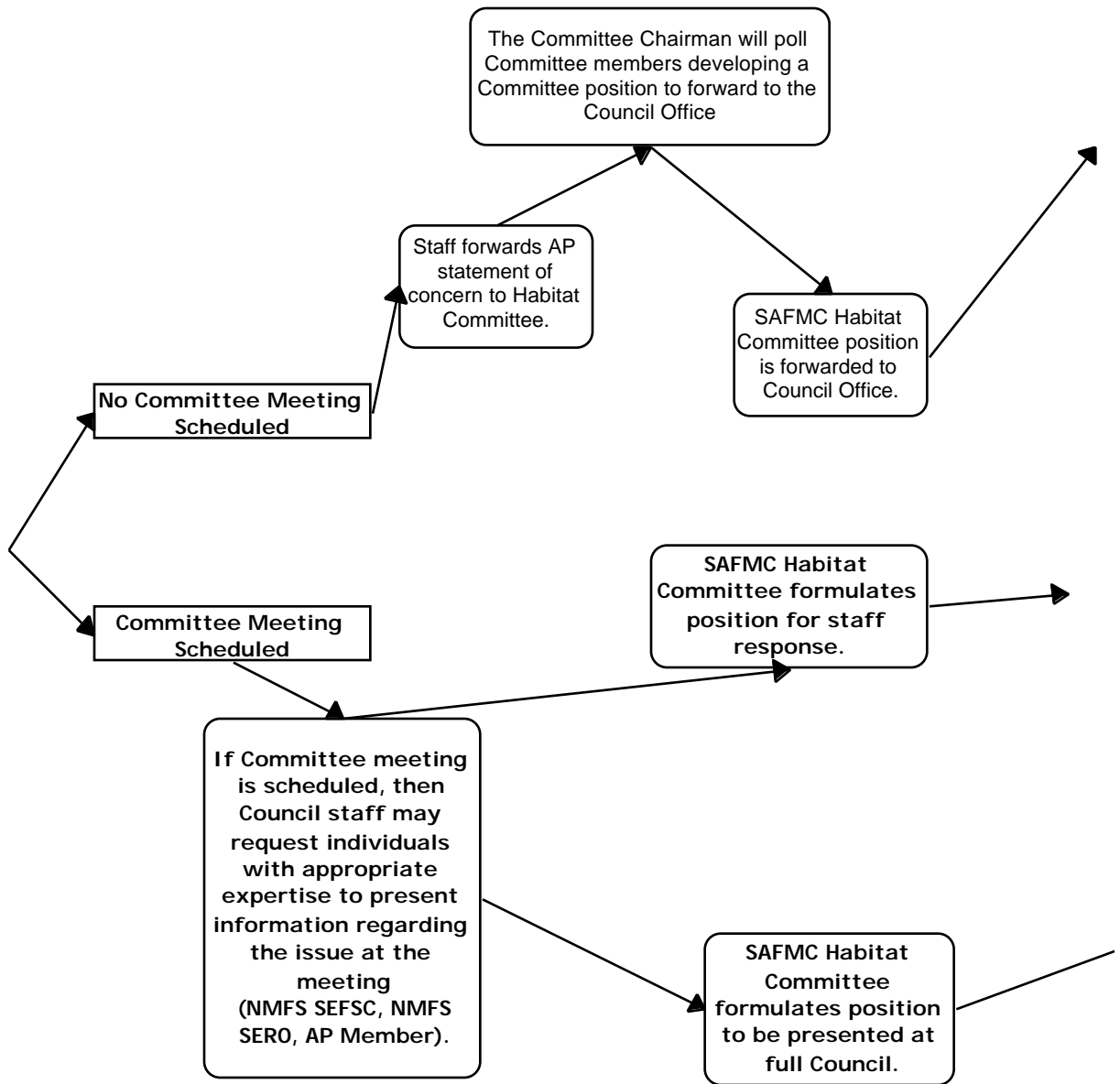
The Council has established a process for the development of habitat policy statements for specific habitats and activities. Given the abbreviated nature of many project comment periods, the Council uses the adopted Council habitat policies to be used when commenting to the permitting agency and a formal 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.

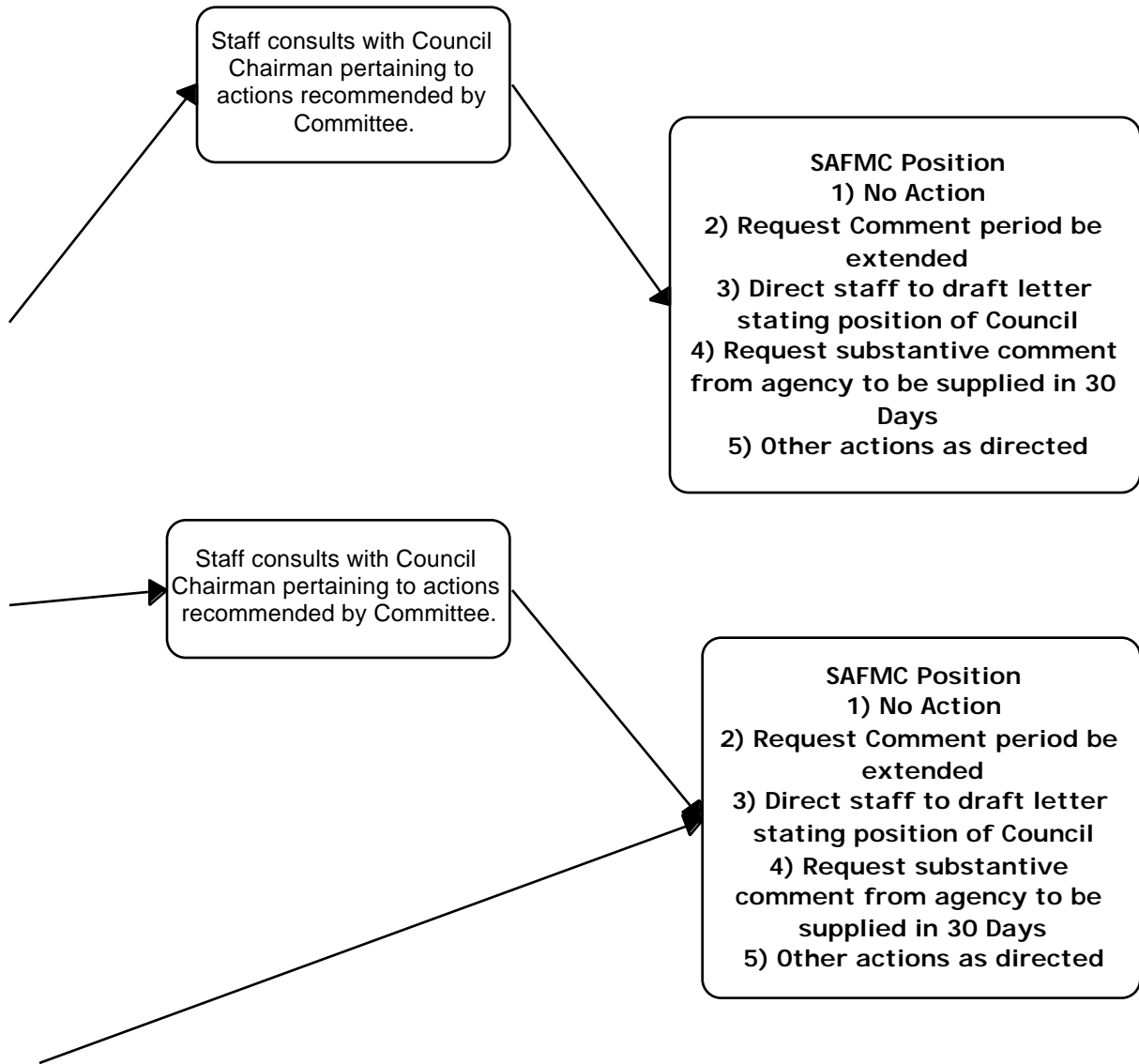
SAFMC Essential Fish Habitat and Environmental Protection:
Project/Review Procedures (Approved 9/98)



SAFMC Essential Fish Habitat and Environmental Protection:
Project/Review Procedures (Approved 9/98)



SAFMC Essential Fish Habitat and Environmental Protection:
Project/Review Procedures (Approved 9/98)



Appendix B. EIS Comment and Response.

Comment

One comment on the Habitat EIS/SEIS was received from Mr. David Hefflebower in a letter dated July 19, 1998 (attached). Mr. Hefflebower points out that the prohibition on all fishing within the experimental closed area would impact his business by \$1,600,000 per year based on a rejection of just over 50% in the number of sport fish boats in his marina facility. He questioned the enforcement justification and the research used to justify the proposed action.

Response

Based on recommendations from the Habitat and Coral Advisory Panels and the Habitat Committee, the Council concluded additional regulations on gears other than those in the calico scallop fishery are not necessary to enforce the no fishing provision of the experimental closed area. A voluntary vessel monitoring system will be implemented on a portion of the rock shrimp vessels and 100% of the calico scallop vessels will be required to have a vessel monitoring system. These additional regulations, more public education, and more enforcement effort will adequately prevent fishing within the closed area.



OLD PARK INVESTMENTS, INC

1936 HarborTown Drive • Ft. Pierce, Florida 34946

561-466-7300

Fax 561-489-2676

South Atlantic Fisheries Management Council
One Southpark Circle, Suite 306
Charleston, South Carolina 29407-4699

7-10-98

Ref: Attached Requests for Comments
Attached Letter of Comment
EIS/SEIS Comments
Commonly Known as: Offshore Surface fishing restrictions Ft. Pierce to Sebastian

Gentlemen;

I am providing my letter of comment which was provided Prior to the Locally held meeting and at the Meeting in Ft. Pierce. I have no reason to change our thoughts as a result of the meeting and am providing the letter of comment at this time.

Sincerely;
Harbor Town Marina Ft. Pierce


David Hefflebower Owner

Enclosures; Letter requesting Comments
Dept of Commerce describing areas affected and and proposed action
Harbor Town Marina letter

RECEIVED
JUL 22 1998
SOUTH ATLANTIC FISHERY
MANAGEMENT COUNCIL



OLD PARK INVESTMENTS, INC.

561-466-7300

Andrew J. Kemmerer, Regional Director
National Marina Fisheries Service
9721 Executive Center Dr. North
St. Petersburg, Fla. 33702

5-22-98

Re; Trolling Restrictions 150'--350' Ft. Pierce, Florida area

Sir,

I have been reviewing your plan and stated reasons for the restriction for this Ft. Pierce area.

I come to the conclusion that ' If you can stop all fishing in the area then it will be easier or at least possible to enforce the bottom fishing restrictions' .

This is faulty reasoning when you consider the economic impact with most sport fishing vessels coming to this area from as far away as Tampa, Ocala, Okeechobee and the Palm Beaches plus the local vessel owners. At our marina alone we have nearly 400 Sport vessels and work on hundreds more annually at our Boatyard facility. We have a direct payroll of well over 100 in the Marina.

The Vessel owners with their social activities i.e. friends staying at local motels, eating in the restaurants of the community, purchasing fuel and in other ways utilizing their vessels in a recreational manner. Our business, located in the Port of Ft. Pierce, will be cut by the percentage of the Sport Fish boats in the facility, which at this time is just over 50% and calculates to business reduction of \$1,600,000.00 per year when your proposed action could occur.

The fishing area from just South of the Ft. Pierce to just North of Sebastian is the most productive area along the coast.

I question the research that you are relying on to make such a proposal.

As our people fish most areas we always encourage a 'Catch and Release' action which is preserving our own area without your help. Your record of 'improving' an area is not always thought out and is, in our opinion, foisted upon the area for other reasons as alleged in the first paragraph of this letter.

Please send me prior to the public hearing in Ft. Pierce, your studies that indicate definite benefits from such an action. As a further request please answer directly whether or not this is, an action to help enforcement of the bottom fishing ban.

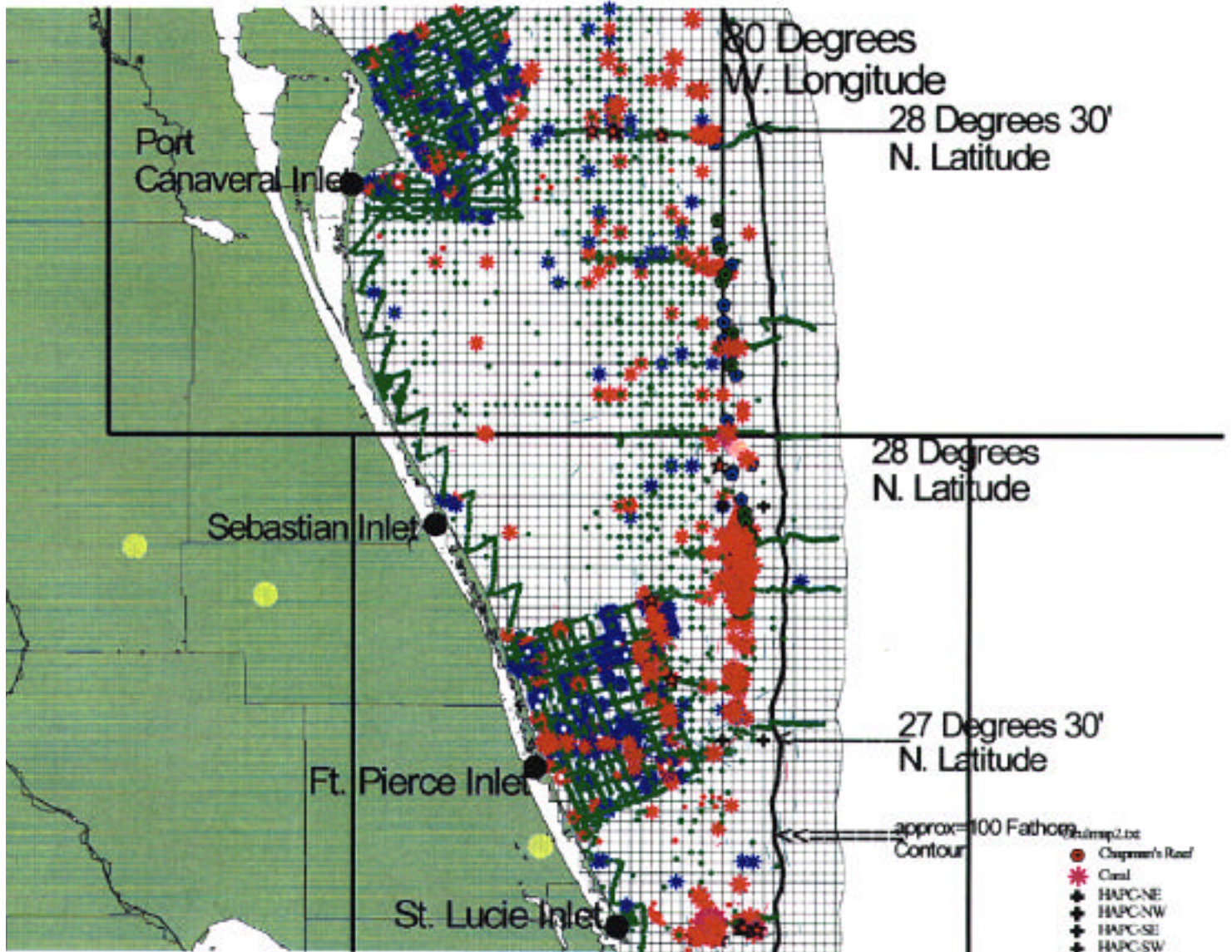
Awaiting your very early response, and request the opportunity to speak at the Public Hearing June 25, 1998 in Ft. Pierce.

Sincerely;
Harbor Town Marina


David Hefflebower, President

Appendix C. Oculina/Hard Bottom Distribution and Satellite Oculina Coral HAPCs.

South Atlantic Bight Oculina/Hard Bottom Distribution



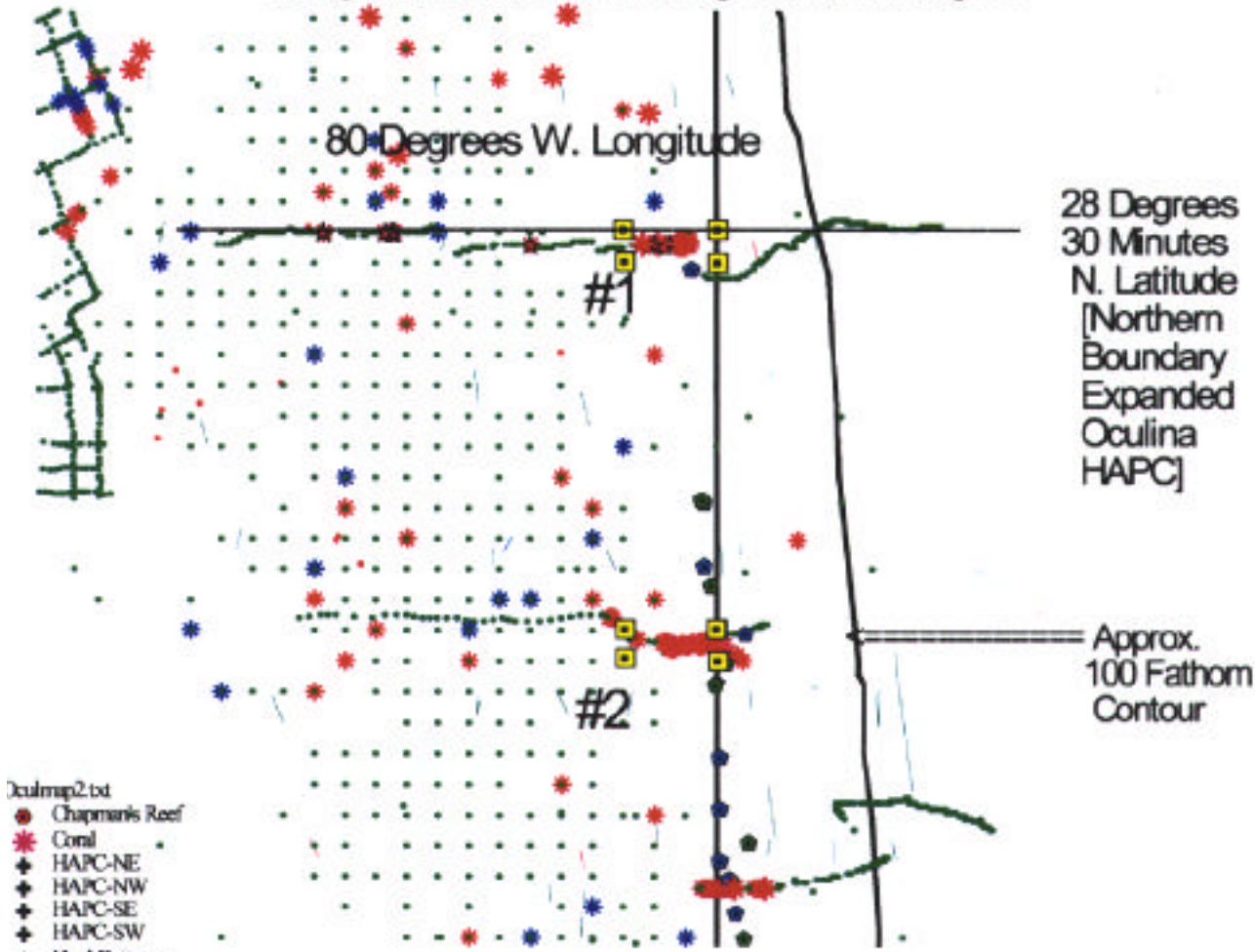
Data sources:
 SEAMAP Bottom Mapping Project (FMRI 1996).
 Perkins T., (FDEP pers. comm. 1996).
 Collection data from Reed et al., 1974-1979.
 Data from Harbor Branch Institute submersibles in:
 Reed, J.K., 1980 Bulletin of Marine Science 30: 667-677.
 Hoskin, C.M., J.C. Grier, and J.K. Reed, 1983.
 Reed, J.K. 1992.
 Unpublished data, J.K. Reed 1995.
 (Photo-transsects: Harbor Branch Institute - Avert, Stanton and Reed)
 Avert et al., 1977.
 Gilmore, R.G. and R.S. Jones 1992.
 Gilmore, R.G. 1996. Chapman Cruise 95-03 (67).
 Chapman Cruise reports 95-01 (66) and 97-01 (78).



- Chapman's Reef
- * Coral
- ◆ HAPC-NE
- ◆ HAPC-NW
- ◆ HAPC-SE
- ◆ HAPC-SW
- ★ Hard Bottom
- Hard/Coral
- ★ Hoskins Reef-O
- ★ Jeffs Reef
- Module-Chapman's
- Module-Jeffs
- Module-Sebastian
- ★ Oculina
- Oculina Pinnacle
- Pinnacle
- ★ Rick's Reef
- ◆ Sebastian Pinnacles
- Sceptle Reef
- ★ Thompsons Reef-O
- Raw Sample Points
- Hardbottom
- Artificial Reef
- Hard Artificial
- Possible Hardbottom
- No Hardbottom
- Undetermined
- Raw Sample Transects
- Hardbottom
- Artificial Reef
- Hard Artificial
- Possible Hardbottom
- No Hardbottom
- Regions

Appendix C. Oculina Coral/Hard Bottom Distribution and Satellite Oculina Coral HAPCs.

Satellite Oculina Coral HAPC #1
 28 Degrees 29 Min. N. Latitude 80 Degrees W. Longitude
 28 Degrees 29 Min. N. Latitude 80 Degrees 3 Min. W. Longitude
 28 Degrees 30 Min. N. Latitude 80 Degrees W. Longitude
 28 Degrees 30 Min. N. Latitude 80 Degrees 3 Min. W. Longitude



- Oculmap2.txt
- Chapman's Reef
 - * Coral
 - ◆ HAPC-NE
 - ◆ HAPC-NW
 - ◆ HAPC-SE
 - ◆ HAPC-SW
 - ★ Hard Bottom
 - Hard/Coral
 - Hoskins Reef-O
 - ★ Jeff's Reef
 - Module-Chapman's Reef
 - Module-Jeff's
 - Module-Sebastian
 - * Oculina
 - Oculina Pinnacle
 - Pinnacle
 - ★ Rick's Reef
 - Sebastian Pinnacles
 - Steeple Reef
 - * Thompson's Reef-O
- Raw Sample Points
- * Hardbottom
 - Artificial Reef
 - Hard Artificial
 - Possible Hardbottom
 - No Hardbottom
 - Undetermined
- Raw Sample Transects
- ~ Hardbottom
 - ~ Artificial Reef
 - ~ Hard Artificial
 - ~ Possible Hardbottom
 - ~ No Hardbottom
- Regions

Satellite Oculina Coral HAPC #2
 28 Degrees 17 Min. N. Latitude 80 Degrees W. Longitude
 28 Degrees 17 Min. N. Latitude 80 Degrees 3 Min. W. Longitude
 28 Degrees 16 Min. N. Latitude 80 Degrees W. Longitude
 28 Degrees 16 Min. N. Latitude 80 Degrees 3 Min. W. Longitude



Appendix D. Proposed Rule.

Billing Code: 3510-22-

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. ; I.D.]

RIN: 0648-

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Essential Fish Habitat (EFH) for Species in the South Atlantic;
Amendment 4 to the Fishery Management Plan for Coral, Coral Reefs,
and Live/Hard Bottom Habitats of the South Atlantic Region (FMP)

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

ACTION: Proposed rule, request for comments.

SUMMARY: We, i.e., NMFS, propose to increase the size of the
Oculina Bank Habitat Area of Particular Concern (HAPC) and to
establish two satellite HAPCs. Our intent is to protect,
conserve, and enhance EFH.

DATES: If you submit written comments on this proposed rule, they
must be received on or before [insert date 45 days after date of
publication in the FEDERAL REGISTER].

ADDRESSES: You may obtain copies of the Habitat Plan and the EFH
Amendment, which includes Amendment 4 to the FMP, a Draft
Supplemental Environmental Impact Statement (DSEIS), a Regulatory
Impact Review, and a Social Impact Assessment/Fishery Impact
Assessment, from the South Atlantic Fishery Management Council,

Appendix D. Draft Proposed Rule.

One Southpark Circle, Suite 306, Charleston, SC 29407-4699;
phone: 843-571-4366; fax: 843-769-4520.

You may submit written comments on the proposed rule to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 727-570-5305.

SUPPLEMENTARY INFORMATION: The South Atlantic Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The FMP and its implementing regulations at 50 CFR 622 manage the fishery for coral, coral reefs, and live/hard bottom habitat of the South Atlantic.

The Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act, requires the Council in its FMPs to describe and identify EFH, 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 intent of this requirement is to provide a basis for the Council to protect, conserve, and enhance EFH by amendments to its FMPs, when appropriate, and to coordinate, consult, or provide recommendations on Federal and state activities that may adversely affect EFH.

50 CFR 600.10 defines EFH as follows:

Essential fish habitat (EFH) means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. For the purpose of interpreting the definition of essential fish habitat: 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; substrate includes sediment, hard bottom, structures underlying the waters, and associated biological communities; necessary

means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species' full life cycle.

The Council may identify EFH that is judged to be particularly important to the long-term productivity of populations of one or more managed species, or to be particularly vulnerable to degradation, as an HAPC. Such designation helps provide additional focus for conservation efforts. EFH-HAPCs may be identified based on the following criteria: (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 type; and (4) the rarity of the habitat type.

The Council prepared and submitted a Habitat Plan, which serves as a source document for habitat data, and a Comprehensive Amendment addressing Essential Fish Habitat in Fishery Management Plans of the South Atlantic Region (EFH Amendment). The EFH Amendment proposes EFH and EFH-HAPCs for species in all of the Council's fishery management plans. It also establishes a procedure to allow for rapid modification to definitions of Essential Fish Habitat (EFH) or establishment of new, or modification of existing, Essential Fish Habitat-Habitat Areas of Particular Concern (EFH-HAPCs) or Coral HAPCs. This adjustment procedure allows the Council to add or modify EFH or coral related measures through a streamlined public review process. As such,

measures that have been identified could be implemented or adjusted at any time during the year.

The EFH Amendment proposes changes in the current regulations only as they apply to the fishery for coral, coral reefs, and live/hard bottom habitat of the South Atlantic.

Expansion of the Oculina Bank HAPC

The EFH Amendment contains Amendment 4 to the Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region. As contained in Amendment 4, we propose to expand the boundaries of the current Oculina Bank HAPC to encompass an area bounded on the north by 28°30' N. lat., on the south by 27°30' N. lat., on the east by the 100-fathom (183-m) contour, as shown on the latest edition of NOAA chart 11460, and on the west by 80°0' W. long.; and two additional satellite areas, the first is bounded on the north by 28°30' N. lat., on the south by 28°29' N. lat., on the east by 80°0' W. long., and on the west by 80°3' W. long., and the second is bounded on the north by 28°17' N. lat., on the south by 28°16' N. lat., on the east by 80°0' W. long., and on the west by 80°3' W. long.

The current boundaries of the Oculina Bank HAPC were established in the final rule to implement the original FMP (49 FR 29607, July 23, 1984). In the Oculina Bank HAPC, we prohibit fishing with a bottom longline, bottom trawl, dredge, pot, or trap and a fishing vessel may not anchor, use an anchor and chain, or use a grapple and chain.

Subsequently, we prohibited fishing for snapper-grouper in the Oculina Bank HAPC (59 FR 27242, May 26, 1994). The purpose

was to evaluate the benefits of marine reserves. In effect, an experimental closed area was established for snapper-grouper with the same boundaries as the Oculina Bank HAPC implemented in the original FMP.

Under Amendment 4 to the FMP, we propose to expand only the Oculina Bank HAPC--the experimental closed area would not be expanded and its restrictions on snapper-grouper fishing would not be changed or expanded. The proposed expanded Oculina Bank HAPC would coincide with the current closed area for rock shrimp, in which trawling for rock shrimp is prohibited.

Expansion of the Oculina Bank HAPC is necessary to protect the *Oculina* coral concentrations contained in the area of expansion. *Oculina* coral, a slow growing, delicate stony coral, is easily damaged by bottom tending gear, anchoring, etc. *Oculina* coral provides important habitat for snapper-grouper species and for rock shrimp and calico scallop spawning stock.

Availability of the Habitat Plan and EFH Amendment

You will find specifications of EFH and HAPCs and additional background and rationale for the expansion of the Oculina Bank HAPC in the Habitat Plan and the EFH Amendment, which includes Amendment 4 to the Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region. We announced availability of the Habitat Plan and EFH Amendment in the Federal Register (63 FR *****, October **, 1998). We must receive written comments on Amendment 4 by [insert date]. In the final rule, we will address all comments on Amendment 4 or on this

proposed rule that are received during their respective comment periods.

Clarity of this Rule

E.O. 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

Classification

At this time, we have not determined that Amendment 4 is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, we will take into account the data, views, and comments we receive from you during the comment period.

The Council prepared a DSEIS for Amendment 4. We published a notice of its availability on July 17, 1998 (63 FR 98-19120). The comment period ended on August 24, 1998. The environmental

impacts described in the DSEIS are summarized as follows:

Expanding the *Oculina* Bank HAPC to include the *Oculina* coral and the hard bottom/soft coral habitat within the area north of the current *Oculina* Bank HAPC boundary and in two satellite areas will provide additional protection for essential fish habitat. It will reduce the gear related impact of the rock shrimp and calico scallop fisheries on live/hard bottom and coral habitat by eliminating trawl gear from being used in the expanded area. It would also eliminate damage from other fishing gear which contacts the bottom.

Trawl damage occurs from direct contact with live/hard bottom, including *Oculina* coral. *Oculina* is only known to be distributed in bank formation south of 29° N. latitude. Therefore, loss of this essential snapper grouper habitat will be prevented and the biological integrity enhanced.

There is concern that repetitive trawling of the limited fishable bottom over the years has and may continue to impact the benthic habitat and the fishery resources it sustains. Therefore, additional benefits that will come with protecting these habitats is protection of a portion of the rock shrimp and calico scallop spawning stock. This will help the fishery recover in years when recruitment is low due to poor environmental conditions.

We received one comment on the Habitat DSEIS specific to the proposed total ban on fishing within the experimental closed area. The comment pointed out that the prohibition on all fishing within the experimental closed area would impact the commenter's business by \$1,600,000 per year based on a reduction of just over 50% in

the number of sport fishing boats in his marina facility. He questioned the enforcement justification and the research used to justify the proposed action. The council also received many public hearing comments and written comments on this issue that concurred with the above objection to the action that were not specific to the DSEIS review period.

Subsequently, based on recommendations from the Habitat and Coral Advisory Panels and the Habitat Committee the Council concluded additional regulations prohibiting all fishing in the experimental closed area were not warranted. A voluntary NMFS/industry vessel monitoring system will be implemented on a portion of the rock shrimp vessels and 100% of the calico scallop vessels will be required to have a vessel monitoring system (Calico Scallop FMP). We believe these additional regulations, better public education, and cooperation between NMFS enforcement and industry will adequately prevent fishing activities that impact habitat within the experimental closed area.

The SEIS is included in the Amendment. We announced availability of the SEIS in the Federal Register on October *****, 1998 (63 FR *****). The environmental impacts in the SEIS are essentially unchanged from the DSEIS.

We have determined that this proposed rule is not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

Fisheries affected by this rule include the rock shrimp and calico scallop trawl fisheries. Currently, the area we propose to add to the HAPC is closed to trawling for rock shrimp (with the exception of the two small satellite HAPC areas). The two satellite areas are small and consist of *Oculina* pinnacles that are not preferred trawling sites according to the Rock Shrimp Advisory Panel. There should be no further impacts on the rock shrimp fishery.

It is estimated that about 25 calico scallop vessels currently participate in this fishery. Based on input from the Calico Scallop Advisory Panel and other available data, the regulations are not likely to result in a change in annual gross revenues of more than 5 percent. It is clear that the impacts will be minimal based on input from the affected individual businesses. All of the firms expected to be impacted by the rule are small entities and hence there is no differential impact.

The analyses of economic impacts of the proposed action indicate it will not have a significant impact on the exvessel revenues of calico scallop vessels. Input from the Calico Scallop Advisory Panel would suggest that no entities would be forced out of business.

The conclusion is that small businesses will not be significantly affected by the proposed rule. Hence, the determination is made the proposed rule will not have a significant impact on a substantial number of small business entities and an Initial Regulatory Flexibility Analysis (IRFA) is not required. (The full details of the economic analyses conducted

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for the proposed rule are contained in the RIR under the heading "Economic Impacts" in Section 4. of the Amendment.)

Accordingly, we did not prepare a regulatory flexibility analysis.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated:

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For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.2, the definition of "You" is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

You means any person, unless the context clearly indicates otherwise.

3. In § 622.35, paragraph (g) is removed and paragraph (c) is revised to read as follows:

§ 622.35 South Atlantic EEZ seasonal and/or area closures.

* * * * *

(c) Oculina Bank--(1) HAPC. The Oculina Bank HAPC encompasses an area bounded on the north by 28°30' N. lat., on the south by 27°30' N. lat., on the east by the 100-fathom (183-m) contour, as shown on the latest edition of NOAA chart 11460, and on the west by 80°0' W. long.; and two additional satellite areas, the first is bounded on the north by 28°30' N. lat., on the south by 28°29' N. lat., on the east by 80°0' W. long., and on the west by 80°3' W. long., and the second is bounded on the north by 28°17' N. lat., on the south by 28°16' N. lat., on the east by 80°0' W. long., and on the west by 80°3' W. long.

In the Oculina Bank HAPC, you may not:

(i) Use a bottom longline, bottom trawl, dredge, pot, or trap.

(ii) If aboard a fishing vessel, anchor, use an anchor and chain, or use a grapple and chain.

(iii) Fish for rock shrimp or calico scallops, or possess rock shrimp or calico scallops in or from the area on board a fishing vessel.

(2) Experimental closed area. Within the Oculina Bank HAPC, the experimental closed area is bounded on the north by 27°53' N. lat., on the south by 27°30' N. lat., on the east by 79°56' W. long., and on the west by 80°00' W. long. You may not fish for South Atlantic snapper-grouper complex species in the experimental

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closed area and may not retain South Atlantic snapper-grouper complex species in or from the area. You must release immediately any South Atlantic snapper-grouper complex species taken incidentally in the experimental closed area by hook-and-line gear by cutting the line without removing the fish from the water.

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