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# Agency - Council Communications and EFH Consultations

May 18, 2016  
Jeanne Hanson  
Matthew Eagleton

# Council Role in Commenting on Actions that May Affect EFH



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- Under Section 305(b)(3) of the MSA, Councils may comment on any action that may affect the habitat, including EFH, of a fishery resource under Council authority, and must comment if in the view of the Council the action is likely to substantially affect the habitat, including EFH, of an anadromous fishery resource under Council authority.
- The EFH regulations at 50 CFR 600.930(a) state that each Council should establish procedures for reviewing federal or state agency actions that may adversely affect the habitat, including EFH, of a species under its authority.

# Role of Council cont.



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- The regulations note that a Council could direct Council staff to track proposed actions, recommend that a Council committee identify actions of concern, or enter into an agreement with NMFS to have NMFS notify the Council of actions of concern.
- In Alaska, we have followed the latter approach, with NMFS Habitat Conservation Division staff informing North Pacific Fishery Management Council staff about pending actions that may be of particular interest to the fishing industry and/or that may affect habitats of direct concern to the Council.

# North Pacific Fishery Management Council

Eric A. Olson, Chairman  
Chris Oliver, Executive Director



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April 13, 2012

Dr. James W. Balsiger  
Administrator, Alaska Region  
National Marine Fisheries Service  
PO Box 21668  
Juneau, AK 99802-1668

Dear Dr. Balsiger:

At the last several meetings, the Council has discussed whether there is a need to formalize its role in the Essential Fish Habitat (EFH) consultation process that is undertaken by NMFS. The Council understands it has an opportunity, and in some instances a statutory obligation, to comment on actions by Federal agencies that may affect habitats of direct concern to the Council. The current practice, whereby NMFS consults informally with the Council or Council staff when potential issues of interest arise, has been effective to date. In order to ensure that activities that are of relevance to the Council are brought to their attention in a timely fashion, however, and not overlooked, the Council has adopted a formal policy for EFH consultation. As part of the policy, the Council has requested the establishment of a structured process for regular reports from NMFS, and has identified specific criteria that can be used to guide the agency in determining whether an activity is likely to be of particular interest to the Council. The Council's policy is described below.

## Process for Council involvement in the EFH consultation process

The Council requests regular reports from NMFS on EFH consultations that may be of interest to the fishing industry, and/or that may affect habitats of direct concern to the Council. The Council Chair and the Executive Director will identify a consistent schedule for requesting these reports from NMFS. The reports should focus on major consultations, with a brief summary of routine activities with minor effects on EFH. For activities that may have major effects on EFH, to the extent possible, NMFS should provide advance notice to the Council of these pending activities, so that the Council can choose whether or not to engage directly in the consultation. The following criteria should be used to guide the agency in determining whether the activity is likely to be of particular interest to the Council:

- The extent to which the activity would adversely affect EFH;
- The extent to which the activity would adversely affect Habitat Areas of Particular Concern or other areas established by the Council to protect sensitive habitat features;
- The extent to which the activity would be inconsistent with measures taken by the Council to minimize potential adverse effects of fishing on EFH; and
- The extent to which the activity would conflict with Council-managed fishing operations.

The Council will aim to provide its input during appropriate public comment periods. The Council notes that the vast majority of EFH consultations undertaken by NMFS are not actions on which the Council would feel the need to comment. This EFH consultation policy is not



*intended to create an additional clearance requirement (and potential for delay) in the permit process, rather it is intended to ensure that activities that are of relevance to the Council are brought to the Council's attention in a timely fashion and not overlooked.*

*The Council also encourages NMFS to report on their involvement in other non-fishing activities, outside of those that are covered under the EFH consultations, which may be of interest to the Council.*

We look forward to working with you and the Assistant Regional Administrator for the Habitat Conservation Division, to establish a regular schedule and format for these EFH consultation reports. Dana Evans will be our primary point of contact for this issue.

Sincerely,

Chris Oliver  
Executive Director

cc: Jon Karlund

# Summary of Process



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## **The Council requests:**

- Regular reports from NMFS on EFH consultations that may be of interest to the fishing industry, and/or that may affect habitats of direct concern to the Council.
- Identify a consistent schedule for requesting these reports from NMFS.
- Focus on major consultations, with a brief summary of routine activities with minor effects on EFH.
- For activities that may have major effects on EFH, to the extent possible, NMFS will provide advance notice to the Council of these pending activities; so that the Council can choose whether or not to engage directly in the consultation.



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# Summary of Process cont.

The following criteria should be used to guide the agency in determining whether the activity is likely to be of particular interest to the Council:

- The extent to which the activity would adversely affect EFH
- The extent to which the activity would adversely affect Habitat Areas of Particular Concern or other areas, established by the Council, to protect sensitive habitat features;
- The extent to which the activity would be inconsistent with measures taken by the Council to minimize potential adverse effects of fishing on EFH; and
- The extent to which the activity would conflict with Council-managed fishing operations.



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# Summary of Process cont.

- Aim to provide input during appropriate public comment periods.
- Not create an additional clearance requirement (or potential for delay) in the permit process. Rather, intended to ensure that activities of relevance to the Council are brought to their attention in a timely fashion and not overlooked.
- Encourages NMFS to bi-annually report on involvement in other non-fishing activities as part of a scheduled Council Meeting.
- NMFS has been meeting this need through reporting of activities during NMFS “B Reports.”

\*Note: The vast majority of EFH consultations undertaken by NMFS are not actions on which the Council would need to comment on.



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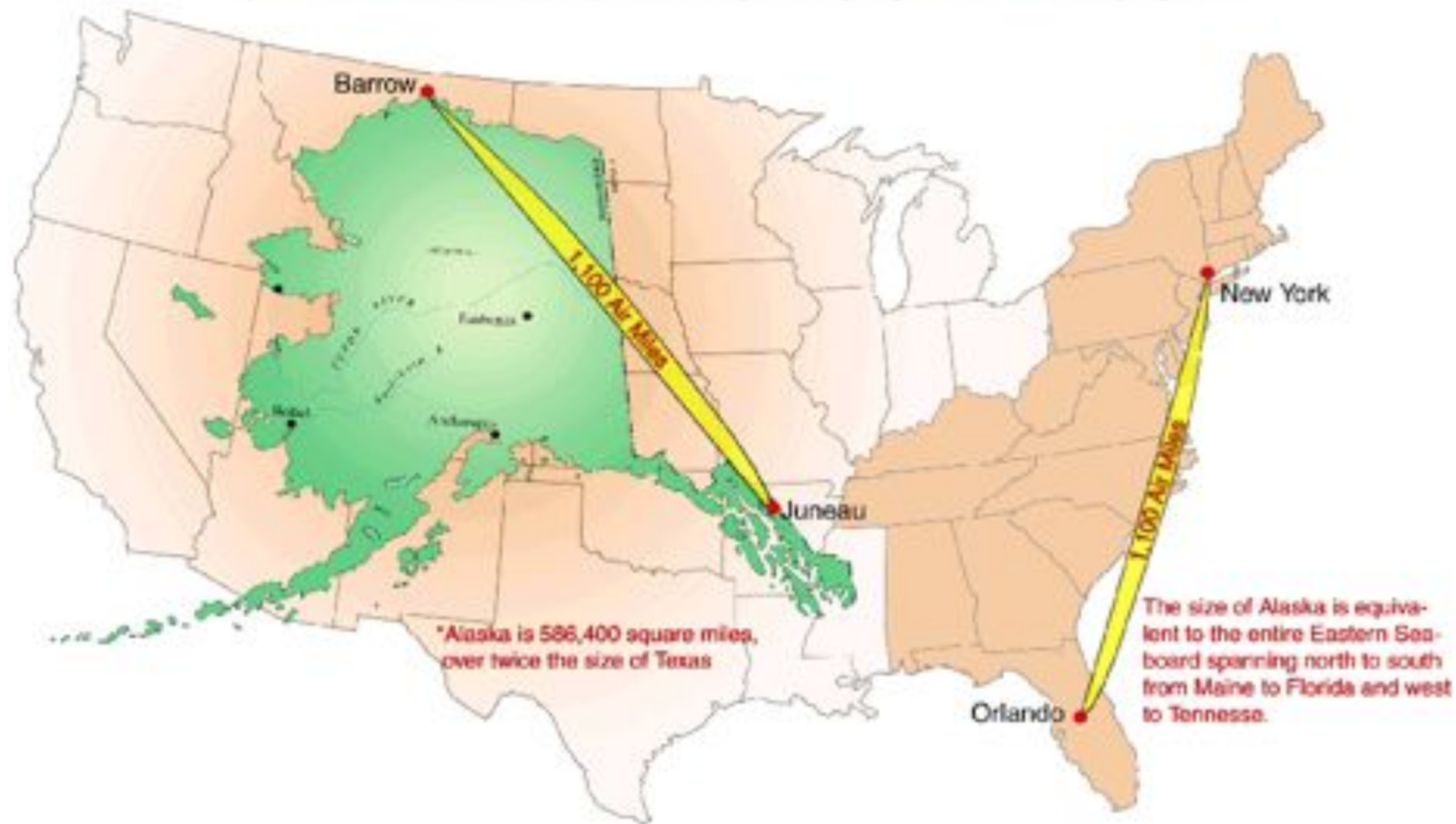
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# EFH Review and Non Fishing Activities

- As required by the MSA and the EFH regulations (50 CFR 600.815(a)(4)), the Council's FMPs shall include information about activities other than fishing that may adversely affect EFH, as well as recommendations to avoid or minimize adverse effects. In AKR, this commonly termed as the Non-Fishing Activities document.
- This information is updated in conjunction with EFH 5-year Review. The document serves as an appendix to all NPFMC FMPs.
- Also, NMFS habitat biologists use the document as a reference in reviewing proposed actions for potential impacts to EFH and when considering possible ways to avoid or minimize adverse effects.



# SIZE AND DISTANCE COMPARISON





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# Examples of Projects in Alaska With Council Interest and Input

- Marine mining
- Oil & gas
- Seafloor cables
- Naval exercises

