

## 9.0 APPENDIX 1 – SCOPING COMMENTS

Scoping is the first phase in preparing a Fishery Management Plan (FMP), FMP Amendment, Environmental Impact Statement, or Environmental Assessment associated with a proposed rulemaking. During the scoping process, the public is given the opportunity to consider and comment on the proposed action(s) and related issues. In Amendment 1 to the Consolidated HMS FMP, NMFS is re-examining areas identified as HMS EFH in light of new information that has become available since EFH was originally delineated in the 1999 FMP, and will modify the boundaries, if warranted. In doing so, NMFS will develop and examine a range of alternatives for action, but may also consider the option of maintaining the current EFH boundaries, if appropriate. Comments received during the scoping process are summarized below. Verbal comments received during the joint scoping and HMS Advisory Panel meeting held on March 15, 2007, are also included. In addition, two written comments were received and are summarized below.

The comments offered at the scoping meeting generally fall into four broad categories: data considerations, extent of EFH, impacts on EFH, and Habitat Areas of Particular Concern (HAPCs).

### **Data Considerations**

Comment 1: NMFS is using fish encounter data to define EFH. Encounter data, however, is not weighted by the amount of fishing effort. Areas with less fishing effort may also be important EFH. Also, if a species is declining in abundance, then designating EFH by encounter rates would result in EFH decreasing over time when EFH identification would be even more critical. Pelagic EFH exists in space and time and NMFS needs to look at seasonal variations, as well.

Comment 2: NMFS needs to adjust data for differences in fishing effort. Presence-absence data is prone to clumping due to effort. There are data clumps off Daytona Beach, Florida because a lot of sharks are being caught there. For blacktip, NMFS shows EFH in the northern Gulf of Mexico. The entire area from Mobile Bay to central Louisiana is not just EFH but a fish ecosystem unique to North America that is highly productive for finfish and crustaceans. Is there another direction we should be heading that is away from EFH and maybe toward something like the ecosystem approach?

### **Extent of EFH**

Comment 3: EFH is too broadly defined. The definition has not changed since 1998. Recreational and commercial fisheries see EFH as forage base and nursery areas, and the areas should thus be narrowed down. There is a concern that EFH may encompass overly large areas.

Comment 4: The 10 mile buffer zones for coastal and 20 for pelagics are wide areas, particularly if one considers coastal species on the shelf. Off the coast of Florida a 10-20

nautical mile buffer would put you in Bahamian waters. Therefore, the buffers may be too large.

Comment 5: Are warm water eddies EFH? Recreational fishermen fish warm water eddies because they are legitimate ecosystems. If one has to fish 10 miles away from these, it won't work. Buffer zones are being proposed to established boundaries.

Comment 6: EFH needs to be defined to a certain area. Does that include bottom habitat? Is EFH a specific area that has latitude/longitude coordinates? If so, eddies wouldn't be EFH, as they are moving columns of water.

Comment 7: I have experience with winter flounder EFH with Federally permitted projects. The supposed consultation involves the local field office saying "no." My experience is that the person implementing will not care about "notes." They will only consult the map. There is a cascade of effects that I don't think people who originally wrote the EFH guidelines intended. It does affect marina operations. I know you can't ignore Congress and we can't be rid of EFH, but it seems there are misnomers going around. The true EFH is a species' essential area, its HAPC; everything else is its range. NMFS should make the EFH as small as possible, because despite the best intentions, one has no idea how it will be extrapolated and implemented by an agency.

Comment 8: There is a proposal by several environmental groups to establish 15 Marine Protected Areas (MPAs), which are best fishing areas (e.g., Stellwagen Bank, Jeffries Ledge). We are constantly fighting Stellwagen Bank; it is worrisome that someone will take any excuse to close it out.

### **Impacts on EFH**

Comment 19: NMFS should include predator-prey relationships in the FMP. Loss of prey species can have an adverse affect on EFH. It can degrade feeding habitat. This would be effective if NMFS issues guidance to the Councils on how they should manage, for example, squid and herring for bluefin tuna (BFT). For BFT and swordfish, identifying key prey species is important, but the management of prey species falls to the Councils. The Councils need guidance from NMFS, which should provide more information on predator-prey relationships.

Comment 10: Make it clear in the FMP Amendment that the greatest benefit to establishing EFH is requiring major projects to consult with NMFS. It is good to hear that NMFS is not focusing on fishing data that affect fishermen.

Comment 11: How does something get labeled EFH? The South Atlantic Fishery Management Council (SAFMC) has asked you to complement their closures and ban bottom longline (BLL) gear. One SAFMC closure is off North Carolina, and it shows where people have been fishing with BLL. Doesn't there have to be some type of data to be able to ban gear in those different areas? There should be a biological reason to ban gear. These areas that you have labeled as EFH are the whole range for fishing, and I am concerned they will

be banned in the same way – without a biological reason. It appears the SAFMC was on a “fishing expedition.” We need to revisit banning BLL.

Comment 12: The SAFMC minutes might imply that there are some people who were on a “fishing expedition.” But it has been more about inquiry, looking for information, exploring alternatives, and there are different opinions. Complementary measures were asked because of impact of BLL in those areas.

Comment 13: You said there were no problems with access, even if the area was deemed EFH. If you find a certain area is a spawning area, then how will this affect harvest and rulemaking?

Comment 14: Sargassum is EFH, and I pass through it all the time. It is a little scary because that particular EFH is not the bottom.

Comment 15: Sargassum was identified as EFH by the SAFMC, and the result was to allow very limited harvesting. But no one is prevented from taking boats through it, or fishing around it, which is why it was designated and protected in the first place, so people could continue to use it as prime fishing grounds. We need to find out what needs to be protected and what impacts we can control and those we cannot.

### **Habitat Areas of Particular Concern**

Comment 16: EFH can be meaningful for spawning grounds. There is new research available that indicates spawning in the western Gulf of Mexico. The western Gulf should be raised to a HAPC for BFT.

Comment 17: I support the recommendation that BFT spawning grounds in the Gulf of Mexico be considered HAPC. The northwestern Gulf is a discrete area in space and time for spawning. The status of stock is well known. More scrutiny on fishing impacts on that spawning stock would be well worth the effort.

Comment 18: EFH for adult BFT in the 1999 HMS FMP is incomplete. The Gulf of Mexico EFH should be expanded to include all waters within the U.S. Exclusive Economic Zone that are off the continental shelf and west of 86W longitude. We also recommend that this area be classified as a HAPC, as this region meets the requirements for the strongest designation as a HAPC under the EFH regulations. Establishing these spawning grounds as HAPC is necessary to identify this area as critically important to the long-term productivity of the western BFT population, which is in need of additional levels of protection from adverse impacts.

Comment 19: Are you considering EFH in terms of Mid- and South Atlantic Councils and Atlantic states? Are HAPCs being defined according to the New England Council? Will you incorporate this into the document? New England developed a HAPC package laying out elements that need to be incorporated for HAPC designations. NMFS is taking a top down approach to seeing what is in existence and what others have done in terms of protecting those areas; this is an area we should consider because this is where these animals reside.

Instead we should try to marry bottom up and top down information instead of deciding on whether 10 mile buffers are appropriate.

### **Shark EFH**

Comment 20: There are only 19 of 22 large coastal sharks and 6 of 7 small coastal sharks profiled in the July 2006 HMS FMP text. At the very least, all managed sharks should be included in the EFH update, even if NMFS has little or no knowledge of certain species of sharks.