

1. The authority citation for part 4 continues to read as follows:

**Authority:** R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

2. Section 4.350 is amended by revising paragraphs (b), (c)(3) and (c)(6) to read as follows:

**§ 4.350 Authority and scope.**

\* \* \* \* \*

(b) Whenever requested to do so by the Project Director, an administrative judge shall determine such heirs by applying inheritance laws in accordance with the White Earth Reservation Settlement Act of 1985 as amended, notwithstanding the decedent may have died testate.

(c) \* \* \*

The term *Project Director* means the Superintendent of the Minnesota Agency, Bureau of Indian Affairs, or other Bureau of Indian Affairs official with delegated authority from the Minneapolis Area Director to serve as the federal officer in charge of the White Earth Reservation Land Settlement Project.

\* \* \* \* \*

(6) The term *administrative judge* means an administrative judge or an administrative law judge, attorney-advisor, or other appropriate official of the Office of Hearings and Appeals to whom the Director of the Office of Hearings and Appeals has redelegated his authority, as designee of the Secretary, for making heirship determinations as provided for in these regulations.

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3. Section 4.352 is amended by revising the address provided for the "Minnesota Agency, Bureau of Indian Affairs" in paragraph (b)(2) to read as follows:

**§ 4.352 Determination of administrative judge and notice thereof.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \* Minnesota Agency, Bureau of Indian Affairs, Room 418, Federal Building, 522 Minnesota Avenue, NW, Bemidji, Minnesota 56601-3062.

\* \* \* \* \*

Dated: February 19, 1999.

**John Berry,**

*Assistant Secretary—Policy, Management and Budget.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[I.D. 103098C]

**Fisheries of the Gulf of Mexico; Generic Essential Fish Habitat Amendment**

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

**ACTION:** Notice of agency decision.

**SUMMARY:** NMFS announces the partial approval of the Generic Essential Fish Habitat (EFH) Amendment (Gulf EFH Amendment) to the Fishery Management Plans (FMPs) of the Gulf of Mexico. The Gulf EFH Amendment was submitted by the Gulf of Mexico Fishery Management Council (Council).

**DATES:** This agency decision is effective February 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Barnette, 727-570-5305.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment. On November 9, 1998, NMFS published a notice of availability (NOA) of the Gulf EFH Amendment to the Gulf of Mexico FMPs and requested public comments through January 8, 1999 (63 FR 60287).

On February 8, 1999, after considering comments received, NMFS partially approved the Gulf EFH Amendment. NMFS determined that approval was warranted for the amendment, except for sections on the identification of EFH for managed species and the assessment of fishing impacts on EFH. NMFS approved the identification of EFH for 26 selected species and the coral complex, but did not approve the identification of EFH for the remaining species under management. In addition, NMFS approved the assessment of impacts on EFH from the use of three types of fishing gear (trawls, recreational fishing gear, and traps/pots), but determined that an assessment of the impact on EFH by the other gears used

in the Gulf of Mexico should be considered in subsequent amendments as more information becomes available.

**Comments and Responses**

Twelve commenters responded during the comment period for the Gulf EFH Amendment.

*Comment 1:* Several commenters requested an extension of the comment period past January 8, 1999, based on their belief that they could not finish their comments on this lengthy amendment within the 60-day period.

*Response:* Section 304(a) of the Magnuson-Stevens Act limits the comment period to 60 days and provides no authority to extend it. Furthermore, due to a statutory deadline of 30 days after the end of the NOA comment period for action on the Gulf EFH Amendment, NMFS was unable to grant an extension to the comment period.

*Comment 2:* Four commenters commented on issues regarding the scope of review within the EFH document. All four groups found fault, to varying degrees, with portions of the recommendations to minimize impacts of identified threats from non-fishing activities. The commenters stated that many of the recommendations were inappropriate, based on current EFH designation, and did not take into account current permitting regulations or restrictions from other agencies. One commenter cited, for example, that the Council's recommendation for a prescribed cut-off depth for oil rig structure removal does not take into consideration the Rigs-to-Reefs program (allocation of disposed oil rigs for an artificial reef program). Additionally, three commenters disagreed with the broad EFH description, claiming that the description detracts from the benefits of the EFH designation process; they claimed that by designating as EFH, collectively, all Gulf of Mexico waters from the shoreline to the EEZ, EFH is not unique. They stated that by broadly encompassing all waters, this description seriously threatens future activities currently in compliance with the law within the region.

*Response:* NMFS believes the Council's recommendations in the Gulf EFH Amendment to minimize adverse effects from non-fishing related activities have been misinterpreted. The recommendations referenced in the comments were intended by the Council as general guidance only. Due to time and resource constraints, the Council opted for a broad range of recommendations to serve as general guidance for any future actions. NMFS supports this decision by the Council.

Specific cases will be reviewed and considered during any necessary EFH consultation. Decisions regarding specific potential interaction with EFH (e.g., Rigs-to-Reefs utilization) will be made, as appropriate, during the EFH consultation process. Furthermore, recognizing the limitations of available habitat information, NMFS agrees with the Council's broad designation of EFH.

*Comment 3:* One commenter noted that vegetated wetlands conservation was not adequately addressed in the Gulf EFH Amendment.

*Response:* NMFS disagrees with this comment. The Gulf EFH Amendment adequately identified activities that may have the potential to negatively impact coastal wetlands, including vegetated wetlands, and contained recommendations to minimize those impacts (section 7.2). The Council will consider further information for inclusion in future FMP amendments when available. Public review of, and comment on, this information will occur during the development of future amendments.

*Comment 4:* One commenter stated that section 6.2 (Identification of Non-Fishing Related Activities That May Adversely Affect EFH) should be rejected in favor of ranking EFH threats by severity.

*Response:* NMFS believes that section 6.2 is adequate. Due to time constraints and the need to amend the FMPs to identify EFH, the ranking of threats and the establishment of a systematic approach to addressing those threats must await future FMP amendments.

*Comment 5:* Two commenters stated that the approval of the recommendations within the Gulf EFH Amendment regarding oil and gas permit consultation would burden NMFS and, in turn, cause time delays and cost overruns for hydrocarbon exploration and production.

*Response:* NMFS intends to initiate new consultation processes only where no existing process is available to conduct the EFH consultation process required by section 305(d) of the Magnuson-Stevens Act. In the case of oil and gas exploration and development, NMFS believes that there are adequate mechanisms already in place to accommodate any needed EFH consultations. The environmental impact assessment and review

procedure under the National Environmental Policy Act is the most likely existing process that will be used. NMFS does not intend to increase the time or complexity needed to complete the environmental impact and review procedures already in place. Therefore, NMFS disagrees with these comments.

*Comment 6:* Several commenters noted that assessments of the impact on EFH of all allowable fishing gear types and activities in the Gulf of Mexico, including Habitat Areas of Particular Concern, were not covered in section 6.1 of the Gulf EFH Amendment (Fishing Activities That May Adversely Affect EFH). These commenters suggested that section 6.1 should be rejected until adequate assessments are provided.

*Response:* NMFS partially approved section 6.1. NMFS approved the assessment of the impacts of trawls, recreational fishing, and traps/pots on EFH; however, NMFS did not approve the assessment of the impact on EFH of other gear types and fishing in general. NMFS agrees that fishery-related EFH impacts are important issues that need to be better addressed. Currently, the scientific information base in the Gulf of Mexico lacks the necessary detail on fishing-related impacts on EFH to support a more complete assessment. Fishing-related impacts on EFH can and will be properly addressed in future amendments, as information becomes available.

*Comment 7:* Several commenters claimed that the Gulf EFH Amendment failed to assess cumulative impacts on EFH in the Gulf of Mexico. The commenters claimed that, as a result, section 6.3 of the Gulf EFH Amendment was inadequate and should be rejected.

*Response:* NMFS believes that section 6.3 is adequate and based on the best scientific information that is currently available. NMFS agrees that cumulative EFH impacts are important and need to be better addressed. Currently, the scientific information base in the Gulf of Mexico lacks the necessary detail on cumulative impacts on EFH to assess them more fully. These impacts can and will be properly addressed in future amendments, as information becomes available.

*Comment 8:* Three commenters claimed that the amendment failed to include any conservation or

management measures to prevent, mitigate, or minimize identified adverse fishing impacts on EFH.

*Response:* Current FMPs for Gulf of Mexico fisheries in Federal waters already contain many management measures to reduce fishing-related impacts on habitat. NMFS believes that the current scientific information base in the Gulf of Mexico lacks the necessary detail to determine the practicality of additional management measures. The need for additional management measures to reduce fishing-related impacts on EFH can and will be properly addressed in future amendments, as information becomes available. Future research on fishing-related impacts on EFH will form the basis for future identification of additional mitigating measures.

*Comment 9:* Three commenters noted that there was a lack of an assessment of regional habitat information/research needs or current regional habitat data gaps within the Gulf EFH Amendment. The commenters stated that the information provided was inadequate and failed to meet the necessary requirements, and, thus, should be rejected.

*Response:* NMFS agrees that a section regarding comprehensive research needs in the Gulf of Mexico EFH Amendment is desirable. A general research needs section was included in the amendment and provides adequate guidance for developing specific regional research activities. NMFS agrees, however, that a research schedule is needed in the future. The Council can address this need in subsequent FMP amendments.

*Comment 10:* A commenter indicated that the Gulf EFH Amendment must include a revision of the Council's Statement of Practices and Procedures.

*Response:* Revision of the Council's Statement of Practices and Procedures is outside the scope of the Gulf EFH Amendment and was not necessary for its approval. Therefore, NMFS disagrees with this comment.

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

Dated: March 12, 1999.

**Rolland A. Schmitt,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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