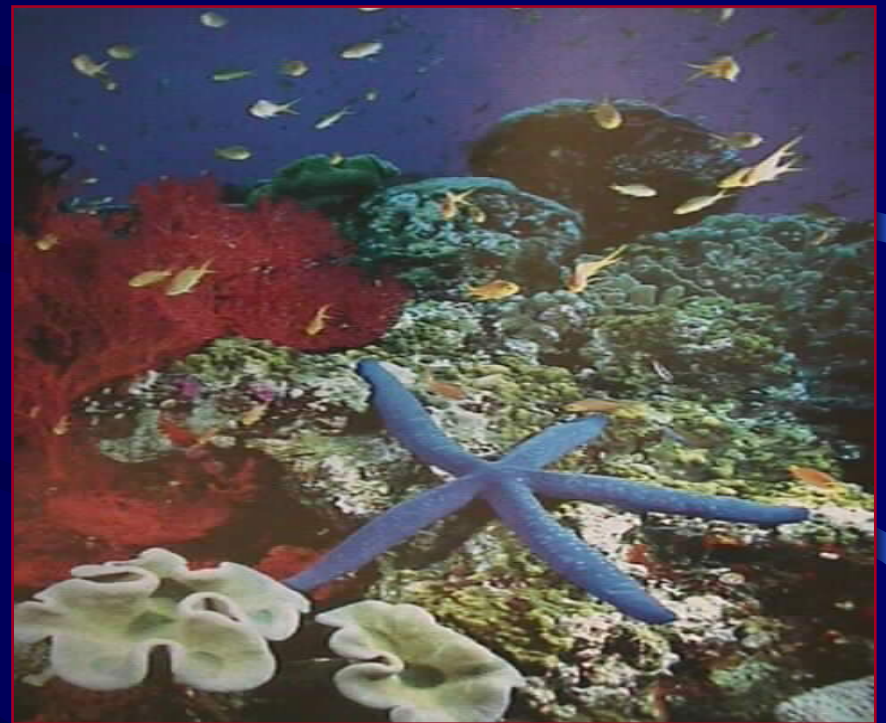
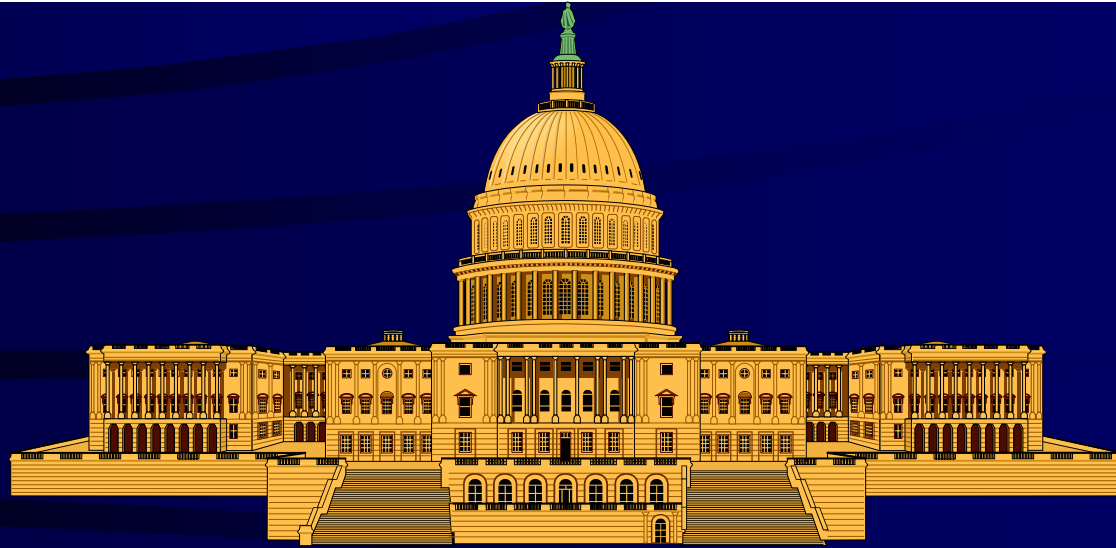


Essential Fish Habitat





In 1996, Congress sought to increase the attention that fisheries managers and other coastal zone users pay to fish habitat by amending the Magnuson-Stevens Fishery Conservation and Management Act to include **Essential Fish Habitat** provisions.

The EFH Mandate

Congress stated that:

One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats.

Habitat considerations should receive increased attention for the conservation and management of fishery resources of the U.S.

16 U.S.C. s. 1801(a)(9) (1999).



Identification of EFH

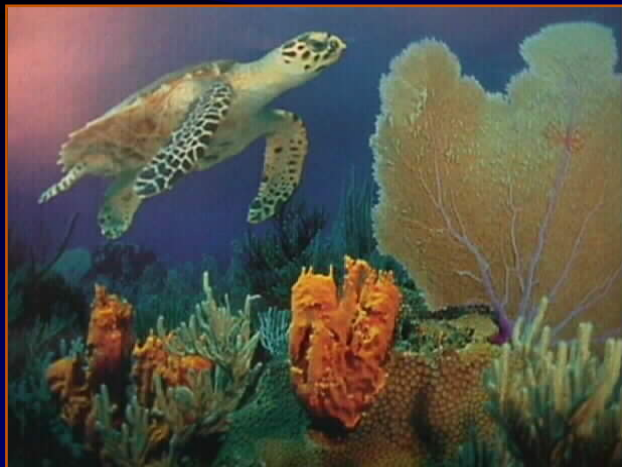


The first objective was to identify those areas that are Essential Fish Habitat.

Essential Fish Habitat is defined as:

“those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.”

16 U.S.C. s. 1802(10)
(1999).



National Marine Fisheries Service Guidance describes the breadth of the definition:

*For the purpose of interpreting the definition of EFH:
“waters” includes 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; “necessary” means the habitat
required to support a sustainable fishery and a healthy
ecosystem; and “spawning, breeding, feeding, or growth
to maturity” covers a species’ full life cycle.*

Congress directed Councils to identify EFH by October, 1998. To do this, Councils ascertained data on stock size and distribution, including each major life history stage within all habitats of the managed species.

The resulting maps show:



Overall Presence of species:
Geographic Area



Presence of Species at
Level of Water
Column



Presence of Species in
Time of Season or Year



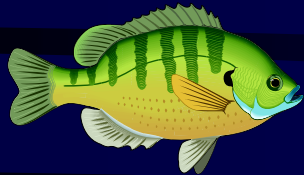
Each Life History Stage of the
species

Habitat in the Gulf of Mexico

What does this mean for the Gulf of Mexico and Mississippi Sound? Because Gulf fishes rely upon both estuarine and open waters during their lives, the Mississippi Sound, bayous and estuaries are included as EFH.

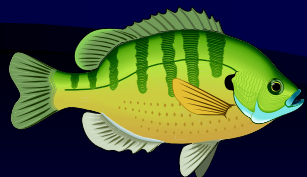


Congress also mandated Regional Fisheries Councils to



Identify Adverse Impacts

Such as fishing gear, coastal development
nonpoint source pollution



Pinpoint conservation and enhancement measures

Such as habitat restoration, water quality
efforts and gear restrictions

To complete the EFH objectives, Congress directed the Secretary of Commerce and the NMFS to assist in the **identification, conservation, and enhancement of**



EFH
through
consultation
with Fishery
Management
Councils and
Federal
Agencies.

The EFH Consultation Process

Federal Agency Plans
Action that will
Adversely Impact
EFH



Federal Agency
Conducts EFH
Impact Analysis



NMFS & Councils
Comment on
Analysis



Federal Agency
Responds to
Comments
within 30 days;
with Rationale if
it Plans to
Continue Project



Project Continues

Critiques of the EFH process include:



Lack of Scientific Information



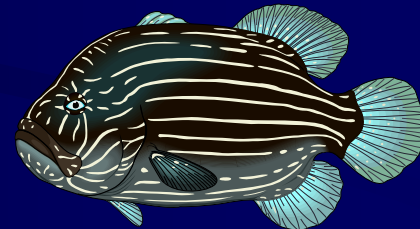
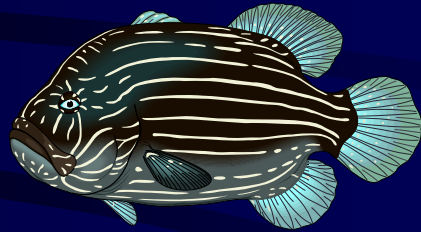
Limited Implementing Authority



Uncertain Future

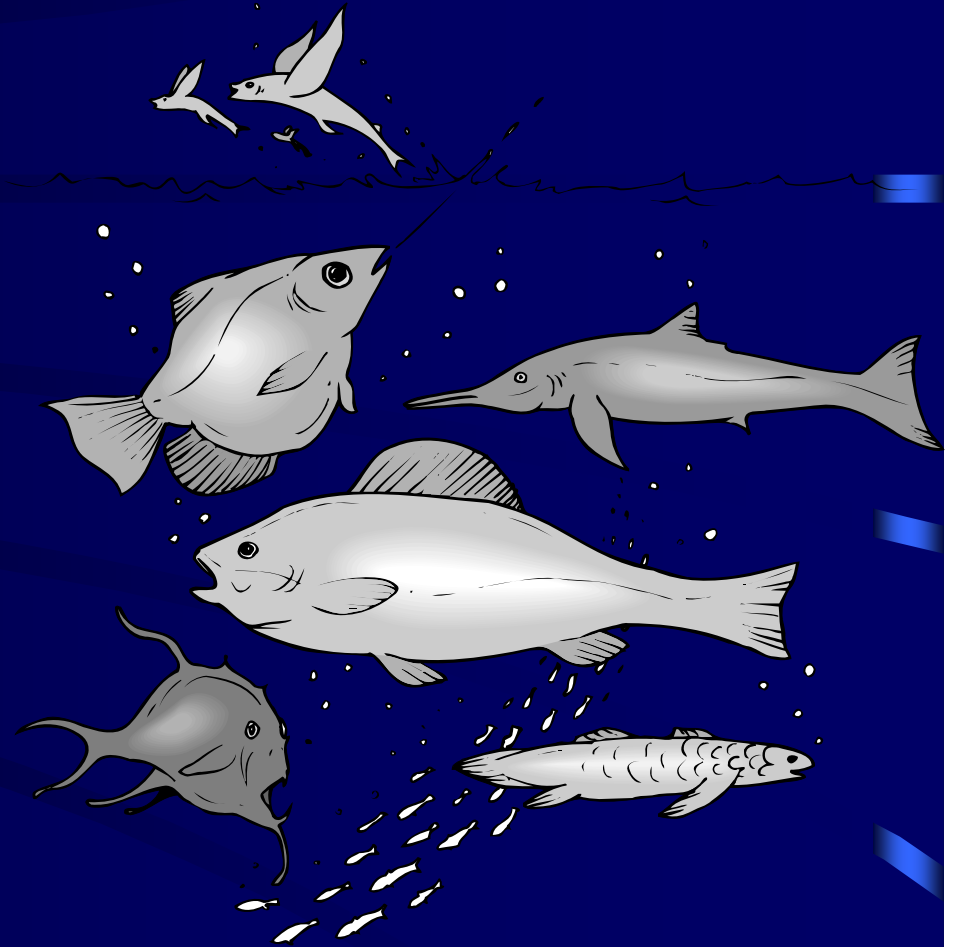
Lack of Scientific Information

The breadth of the EFH mandate demands the best science available but much of the necessary research has yet to be completed.

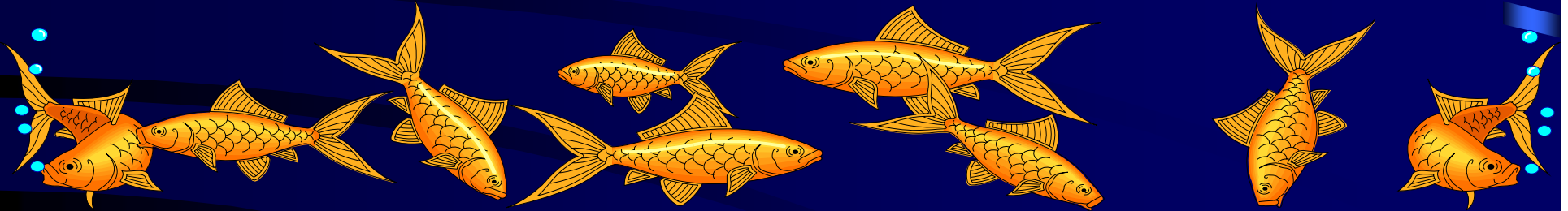


The Caribbean Council moved forward even without complete science. It recognized the large gaps in the data but noted that it had **taken action throughout its history to protect habitats even in the absence of complete data sets or**

Congress
directed the
Councils to
update EFH as
research becomes
available and
scientific
methods
improve.



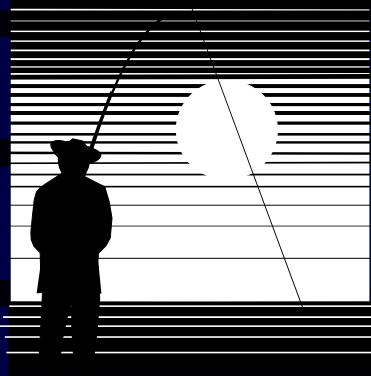
The NMFS acknowledged the potential lack of information and directed Councils to “err on the side of inclusiveness. . . .”



As a result, the Gulf Council identified the entire Gulf of Mexico as EFH.

Limited Implementing Authority

Even though the EFH provisions call for attention to *all* adverse impacts on EFH, the NMFS and the Councils do not have authority to regulate coastal development activities, only fishing-related activities.



This factor has left the fishing community concerned about being targeted by EFH regulations . . .

And the environmental community concerned over impacts on EFH from development pressures going unchecked.



This conflict has resulted in the first lawsuit regarding EFH: Environmental groups, led by Earthjustice Legal Defense Fund, have filed suit against NMFS and Councils claiming that 4 EFH amendments are inadequate for, among other reasons, failing to decrease impacts

Complaints have been filed in the Federal District Court of the District of Columbia and the case is pending.



Uncertain Future

According to Ron Baird of NOAA,

“EFH is the most significant piece of environmental legislation since the Clean Water Act of 1972.”

However, the future of EFH is still uncertain .

EFH still faces



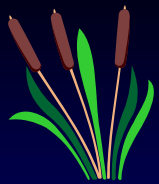
Budgetary limits

Congressional appropriations for EFH research are limited.



Pending Lawsuit

The lawsuit may influence future regulatory actions.



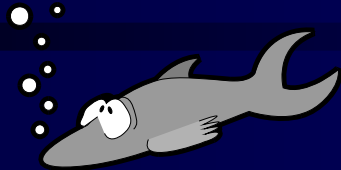
Reliance on Science:

Continued Identification of EFH

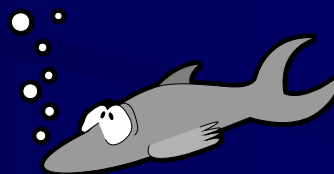
NMFS and Councils must update the identification of EFH as science improves.

For more information. . .

Contact *Kristen Fletcher* at the Sea Grant Legal Program at 662-915-7775 or kfletch@olemiss.edu .



Contact the *Gulf Council* at 1-888-833-1844 or gulfcouncil@gulfcouncil.org .



Visit the Legal Program *Coastal Links Page* for links to the NMFS EFH page, Council pages, and other coastal information.

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