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EFH Update

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The Sustainable Fisheries Act (Public Law 104-297) reauthorized and amended the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) in October 1996, declaring that “a national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation’s fishery resources.”

Essential Fish Habitat and Dredging

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires Federal agencies to consult with the National Marine Fisheries Service (NMFS) and consider NMFS’ Conservation Recommendations for any action they authorize, fund, or undertake that may adversely affect designated essential fish habitat (EFH). Because of the nature of dredging activities, it is likely that most dredging in estuarine, coastal, or ocean waters will require EFH consultation. To make EFH consultations effective and efficient, NMFS is working with other Federal agencies at both the regional and headquarters levels to streamline consultation procedures and increase awareness of the habitat needs of the species that support U.S. recreational and commercial fisheries.

Why is EFH consultation necessary? In amending the Magnuson-Stevens Act in 1996, Congress observed 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.” Additionally, one of the stated purposes of the Magnuson-Stevens Act is “to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.” EFH consultation ensures that Federal actions specifically account for potential impacts to the habitats that support federally managed fisheries.

When is an EFH consultation necessary? EFH consultation is triggered when a Federal agency determines that an action it authorizes, funds, or undertakes may adversely affect EFH. The consultation begins when the action agency provides notice of the action and an analysis of potential effects on EFH - the EFH Assessment - to NMFS.

Do state port authorities, a port’s tenants, or other privately operated port facilities need to consult with NMFS? No. Consultation is required between Federal agencies and NMFS for actions that may adversely affect EFH, such as issuing permits to dredge or dispose of dredged material. The Federal action agency is required to initiate consultation, submit an EFH Assessment, and respond to EFH Conservation Recommendations developed by NMFS. For dredging projects, the responsibility to consult with NMFS rests primarily with the U.S. Army Corps of Engineers (Corps), although the Corps may ask a project sponsor to provide information for the consultation. The U.S. Environmental Protection Agency also may need to consult when performing dredging related activities, such as designating ocean disposal sites or establishing environmental criteria for evaluating disposal options.

What is an EFH Assessment?

An EFH Assessment is a written evaluation of a proposed activity’s effects on EFH. Depending on the complexity of the dredging action, it may be as brief as a paragraph or as long as several pages. The EFH Assessment provides the information NMFS needs to determine if there will be adverse impacts and to develop EFH Conservation Recommendations.

An EFH Assessment must contain:

1. A description of the proposed action;
2. An analysis of the effects of the proposed action on EFH, the managed species and associated species;
3. The action agency’s views regarding the effects of the action on EFH; and
4. Proposed mitigation, if applicable.

For an example of an EFH Assessment for a major channel deepening project visit:

“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 United States.”

Doesn't the EFH consultation duplicate other environmental assessments?

No. Other environmental reviews typically do not specifically evaluate potential impacts to federally managed species of fish and their habitats. To streamline the consultation process, NMFS is working with other Federal agencies to combine EFH consultations with existing environmental reviews under the National Environmental Policy Act, Clean Water Act, and other laws. To promote efficiency, the EFH Assessment can be included as a section of the documents that are already required under other environmental reviews. This integration has been very successful.

How is EFH Consultation Being Conducted for Dredging Actions?

NMFS and the U.S. Army Corps of Engineers (Corps) have established findings (i.e., agreements) that detail how EFH consultation can be combined with existing environmental review procedures. Findings exist with 20 Corps districts and headquarters and encompass all areas where EFH would need to be considered for dredging projects. These findings allow the Corps to use National Environmental Policy Act documents and/or the Section 10/404 regulatory review process to satisfy the EFH consultation requirements. These agreements obligate NMFS to provide EFH Conservation Recommendations within existing public review periods, thus preventing project delays.

Where and how is EFH designated? The Magnuson-Stevens Act required NMFS and the regional Fishery Management Councils (Councils) to designate EFH for all major life stages of all federally managed species of finfish and shellfish. Based on the best scientific information available, the Councils and NMFS designated EFH as a subset of the geographic range of most managed species. For the purpose of knowing if EFH is within the area of a specific dredging project, it is important to remember that the mosaic of all EFH designations covers nearly all coastal waters (including state waters), most of the Exclusive Economic Zone, and freshwater streams supporting federally managed species of salmon. EFH is encountered so broadly because over 700 species are managed under the Magnuson-Stevens Act.

Does EFH give NMFS any control over dredging activities? The Magnuson-Stevens Act does not authorize NMFS to regulate dredging actions. NMFS EFH Conservation Recommendations are not binding. Furthermore, the designation of EFH does not confer any automatic restrictions on dredging or dredged material disposal. When commenting on other agencies' actions, NMFS makes recommendations that would reduce habitat loss and degradation for federally managed fishery resources. Action agencies consider this advice, along with other factors, when making a final decision on individual actions. NMFS recommendations may be incorporated into project design or permit conditions set by the Corps.

What if the Federal action agency does not accept NMFS' EFH Conservation Recommendations? NMFS strives to make recommendations that are reasonable and necessary to protect fish habitats. It is the Federal agency's responsibility to evaluate the recommendations to determine whether they are practical and serve the overall public interest. If an action agency does not accept NMFS' recommendations, the agency must provide NMFS with a written explanation, including the scientific justification for any disagreements with NMFS over anticipated effects of the action and the appropriateness of proposed mitigation measures.

How has EFH impacted dredging projects? NMFS has commented on the habitat impacts of dredging projects since 1970. EFH has improved coordination between NMFS and the Federal agencies involved in dredging activities. The availability of habitat information, through the descriptions of EFH, effectively focuses the review process. The designation of EFH allows NMFS to craft conservation recommendations specifically to minimize impacts to habitats of federally managed species. NMFS handles most EFH consultations for dredging projects through an abbreviated consultation that is combined with an existing environmental review procedure.

EFH Glossary

Abbreviated consultation allows NMFS to quickly determine whether, and to what degree, a Federal action may adversely affect EFH. This type of consultation applies to Federal actions that will not have substantial adverse impacts on EFH, but may warrant minor modifications to minimize adverse effects on EFH.

Adverse effect is any impact which reduces quality and/or quantity of EFH. This may include direct, indirect, site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

Conservation Recommendations refer to recommendations provided by NMFS on actions that would adversely affect EFH. NMFS' recommendations are suggested measures to avoid, minimize, or mitigate adverse effects.

Essential Fish Habitat (EFH) is those waters and substrate necessary to fish for spawning, feeding, breeding, or growth to maturity.

Finding is NMFS' determination that an existing environmental review process can be used to satisfy the EFH consultation requirements.

Fishery Management Council is one of eight regional councils established by the Magnuson-Stevens Act to develop fishery management plans for Federally managed fish species. The Councils are required to describe and identify EFH within fishery management plans.