



NOAA FISHERIES SERVICE



The Habitat Protection Division works with the NMFS regions, other NOAA offices, Federal agencies, environmental groups, industry sectors, and other partners to understand natural habitat trends and avoid, minimize, and mitigate human impacts to marine, coastal, and riverine habitats.

Essential Fish Habitat Consultations

The 1996 Magnuson Stevens Act refined the focus of fisheries management by emphasizing the need to protect fish habitat. The Act requires that fishery management plans identify as essential fish habitat (EFH) "...those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." "Waters" include aquatic areas and their associated physical, chemical, and biological properties that are 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 the managed species' contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species' full life cycle.

Consultation process

The Magnuson Stevens Act outlines a process by which NOAA Fisheries consults with other federal agencies to avoid or minimize the adverse impacts of federal actions to EFH. The procedures for EFH consultation are outlined at 50 CFR 600.920 in the EFH final rule and require:

- (1) federal agencies to notify NOAA Fisheries regarding a proposed action that may adversely affect EFH;
- (2) federal agencies to provide an EFH Assessment of the action and consult with NOAA Fisheries if they determine their actions may adversely affect EFH for federally managed species of fish;
- (3) NOAA Fisheries to provide EFH Conservation Recommendations to avoid, minimize, mitigate or otherwise offset adverse effects on EFH; and
- (4) federal action agencies to respond to those recommendations in writing, and if the action agency disagrees with NOAA Fisheries' advice, it must explain why.

Where appropriate, EFH consultation and coordination should be consolidated with interagency consultation, coordination, and environmental review procedures required by other statutes (such as the National Environmental Policy Act, the Fish and Wildlife Coordination Act, the Clean Water Act, and the Federal Power Act).

Non-federal Actions that may adversely affect EFH

State Agencies: State agencies are not required to consult with NOAA Fisheries or respond to any EFH Conservation Recommendations NOAA Fisheries provides. However, NOAA Fisheries is still required by the Magnuson Stevens Act to make EFH Conservation Recommendations to state agencies if their actions would adversely impact EFH.

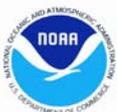
Private Landowners: Private landowners have NO responsibilities to consult with NOAA Fisheries. Consultation is required ONLY if the project is funded, permitted, or authorized by a federal agency and the project may adversely affect EFH. In that case, the consultation with NOAA Fisheries will be undertaken by the appropriate federal action agency.

Types of Consultations

The EFH final rule provides for five types of consultations for agency actions that may adversely affect EFH. These consultations range in level of detail, and the selection of a particular approach for handling EFH consultation depends on the nature and scope of the actions that may adversely affect EFH.

- **Existing Procedures**
EFH consultation can be combined with existing environmental review procedures, such as those used under the National Environmental Policy Act and the Endangered Species Act, to streamline the consultation requirements of the Magnuson-Stevens Act and avoid duplication with other environmental reviews.
- **Programmatic Consultation**
Federal agencies and NOAA Fisheries may consult on a programmatic basis (i.e., on a group of similar actions that fall within a program). In most cases, when EFH Conservation Recommendations are accepted by the action agency, no further consultation will be required.
- **General Concurrence**
A General Concurrence identifies specific types of federal actions that may adversely affect EFH, but for which no further consultation will generally be required. In order to issue a general concurrence, NOAA Fisheries must determine that the actions do not cause greater than minimal adverse effects on EFH, either individually or cumulatively.
- **Abbreviated Consultation**
Abbreviated consultation is only completed if no General Concurrence, programmatic consultation, or existing environmental review process is available or appropriate for the federal action. Abbreviated consultation is performed for those projects that may have an adverse effect on EFH, but that effect will not be substantial.
- **Expanded Consultation**
Expanded consultation should be completed when no General Concurrence, programmatic consultation, or existing environmental review process is available or appropriate for the federal action, and that action may result in substantial adverse effects on EFH. Procedures for expanded consultation allow for more detailed analysis of effects and more time for NOAA Fisheries to coordinate with the action agency and develop EFH Conservation Recommendations.

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NOAA Habitat Program
Conserving Habitats for the Future

<http://www.nmfs.noaa.gov/habitat/habitatprotection/efh/>