

GUIDE TO EFH CONSULTATIONS

Introduction:

The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) set forth the Essential Fish Habitat (EFH) provisions to identify and protect important habitats of federally managed marine and anadromous fish species. Federal agencies which fund, permit, or undertake activities that may adversely affect EFH are required to consult with the National Marine Fisheries Service (NMFS) regarding the potential effects of their actions on EFH, and respond in writing to NMFS' recommendations.

Wherever possible, NMFS is utilizing existing interagency coordination processes to fulfill EFH consultations with federal agencies. These existing coordination procedures include the National Environmental Policy Act (NEPA), Endangered Species Act, Clean Water Act, and Fish and Wildlife Coordination Act. Use of these existing processes will allow for continued efficient project review by NMFS and the other federal agencies.

Although the federal action agency is ultimately responsible for complying with the EFH Consultation requirements of the MSFCMA, the agency may designate a non-federal representative to conduct an abbreviated consultation or prepare an EFH Assessment. Generally this means that a permit applicant or consultant prepares the required EFH Assessment. Applicants and consultants should only begin preparation of an EFH assessment after receiving guidance from the federal action agency, regarding the scope and level of effort appropriate for the assessment. This will insure that the assessments submitted to NMFS are adequate and complete. The remainder of this web page is designed to provide additional information on the EFH Consultation process and to assist federal agencies and their non-federal representatives in the preparation of an EFH Assessment. The EFH consultation process is described in more detail in the implementing regulations at 50 CFR 600

Types of EFH Consultations:

There are basically two types of consultations, abbreviated and expanded. The type of consultation necessary depends upon the magnitude of the adverse effect on EFH. Abbreviated consultations are used when a proposed project will have less than substantial adverse impact on EFH. Expanded consultations are used when the adverse impact on EFH may be substantial.

EFH Consultation Requirements:

Regardless of consultation type, there are four required components to an EFH Consultation as outlined below:

- **Notification** - The federal agency must notify NMFS regarding a proposed action that may adversely affect EFH. The notification will typically be in the form of a Public Notice (PN), Draft Environmental Assessment (EA), or Draft Environmental Impact Statement (EIS).

Examples of Public Notices

- [Example 1](#)
- [Example 2](#)
- [Example 3](#)

- **EFH Assessment** - This is a written assessment of the effects of the action on EFH. The EFH Assessment will typically be incorporated within the notification document (PN or EA) or submitted as a separate document in cases where an expanded

consultation is required.

An EFH Assessment must contain the following four sections:

1. A description of the proposed action.
2. An analysis of the potential adverse effect of the action on EFH, and managed species.
3. The federal agency's conclusions regarding the effects of the action on EFH, and the managed species. The agency's views will usually determine the type of consultation. Examples of agency determinations are as follows: A) no adverse effect to EFH (no consultation required); B) minimal adverse effect or less than substantial adverse effect to EFH (abbreviated consultation can be conducted); or C) substantial adverse effect to EFH (expanded consultation required).
4. Proposed mitigation, if applicable.

Other information may also be appropriate to include in the assessment such as: the results of an on-site inspection to evaluate habitat and site specific effects of the project; the views of recognized experts on the habitat or species that may be affected; a review of pertinent literature and relevant information; an analysis of alternatives to the proposed action including those alternatives that avoid or minimize the adverse effects on EFH.

The level of detail contained within the EFH Assessment should be commensurate with the degree of adverse impact to EFH.

Examples of EFH Assessments

- [*EFH Assessment Worksheet \(Rich Text Format Document\)*](#)
- [*Assessment 1*](#)
- [*Assessment 2*](#)
- [*Assessment 3*](#)
- [*Assessment 4: Expanded; April 2001*](#)
- [*Assessment 5*](#)

EFH Conservation Recommendations - After receipt of the completed EFH Assessment, NMFS will provide EFH Conservation Recommendations to the federal agency detailing measures that can be taken by that agency to conserve EFH.

Examples of EFH Conservation Recommendations

- [*Consultation 1*](#)
- [*Consultation 2*](#)
- [*Consultation 3*](#)

Agency Response - Within 30 days of receiving NMFS' recommendations, the federal agency must provide a detailed written response to NMFS. The response must include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH. In the case where a response is inconsistent with NMFS' recommendations, the federal agency must explain its reasons for not following the recommendations, including the scientific justification for any disagreements with NMFS over the anticipated effects of the proposed action and the measures needed to minimize, mitigate or offset such effects.

Examples of Response Letters

- [Example 1](#)
- [Example 2](#)

Tools to Prepare an EFH Assessment:

The first step in preparing an EFH assessment is to determine the species and life stages for which EFH may be impacted by the action. This information is summarized geographically (based upon a grid of 10 minute longitude by 10 minute latitude square or by specific estuaries) in [Guide to EFH Designations](#) from Maine to Virginia. Once the list of EFH species has been determined for the project area, the [Guide to EFH Descriptions](#) will provide the official EFH description for each species. These descriptions will allow the applicant to determine whether or not the location of the proposed activity is actually within or adjacent to EFH for the listed species. Once the action agency determines which EFH species and habitats are of concern for the proposed action, the action agency can then conduct the required analysis of the effects of the proposed action on EFH. In cases where a non-federal designee is preparing the EFH assessment, preparation of the assessment should only begin after receiving guidance from the federal action agency, in consultation with NMFS, on the appropriate scope and level of effort.

Other Important Links:

[EFH SOURCE DOCUMENTS](#) 

[FINIDNGS LETTERS FOR USE OF EXISITNG REVIEW PROCEDURES](#)

[EFH GENERAL CONCURRENCE LETTERS](#)

[EFH REGULATIONS \(50 CFR PART 600\)](#)

[Army Corps of Engineers Regulatory Programs](#)

[New England District](#)

[New York District](#)

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