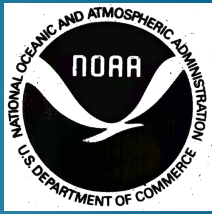


EFH Consultations with NOAA Fisheries



Why consult?

Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires:

- Federal agencies to consult with NOAA Fisheries on all actions or proposed actions that they authorize, fund or undertake that *may adversely affect* EFH. This includes actions in both State and Federal waters.
- State agencies are not required to consult, but NOAA Fisheries can provide EFH conservation recommendations on state actions through existing or new coordination procedures.

Under the MSA, each Council:

- May comment on or make recommendations to NOAA Fisheries and any Federal or State agency concerning any activity or proposed activity authorized, funded or undertaken that may affect the habitat, including EFH, of a fishery resource under its authority; and
- Shall comment on and make recommendations on any such activity is likely to substantially affect the habitat, including EFH, of any anadromous fishery resource under its authority.

What is Essential Fish Habitat (EFH)?

“essential fish habitat” means 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 and *aquatic areas historically used by fish*, where appropriate (e.g. potential utilization areas).
- “Substrate” includes sediment, hard bottom, structures underlying waters and associated biological communities.

What is an “adverse effect”?

“...any impact which reduces quality and/or quantity of EFH.”

1. Indirect (e.g. loss of prey, reduction in fecundity)
2. Direct (e.g. contamination or physical disruption)
3. Individual, cumulative, or synergistic

How do Federal agencies consult with NOAA Fisheries?

(50 CFR 600.920)

Can be consolidated with existing environmental review procedures if:

1. The existing process provides NOAA Fisheries with timely notification of actions that may adversely affect EFH;
2. Notification includes an assessment of impacts that meets the requirements for an EFH assessment;
3. NOAA Fisheries must have made a finding that the existing process satisfies the EFH consultation process

If no finding, the default is the timeline in the EFH final rule – 30-days for most consultations

Types of Consultations

- General Concurrence - similar in nature, minimal adverse individually and cumulatively.
- Abbreviated Consultation – most common type, 30-day review clock, EFH conservation recommendations can alleviate adverse effects.
- Expanded Consultation – larger, more complex projects, substantial adverse effects, 60-day review clock.
- Programmatic Consultations – comprehensive approach, can include large number of individual actions, funding programs or large scale planning efforts,

After the EFH crs are issued:

(50 CFR 600.920(k)(1))

- Within 30 days after receiving an EFH CR from NOAA Fisheries the federal agency, or its non-federal designee must respond in writing and describe measures proposed by the agency to avoid, minimize, or offset the impacts of the action on EFH.
- If the response is inconsistent with the EFH CR recommendations, the Federal agency, or its non-federal designee must explain its reasons for not following NOAA Fisheries' recommendations.
- If a decision is inconsistent with NOAA Fisheries' EFH CR, the NOAA Assistant Administrator for Fisheries may request a meeting with the head of the action agency to discuss the proposed action and opportunities for resolving any disagreements. (50 CFR 600.920(j)(2))

Numbers

- Nationally, about 6000 requests per year including early coordination/technical assistance requests.
- Numbers vary by region
- Most consultations are with Corps Regulatory, but also Corps Civil Works, DOD, and FHWA
- Common project types: dredging, filling, docks, transportation and shoreline stabilization

The numbers do not tell the whole story.

- Consultations vary in level of effort required and activities vary by region.

Priority Setting

- Triage
 - Large, and sometimes controversial projects
 - High ecological value habitats or species– SAV, corals, mangroves, complex bottom, salmon
 - Potential for long-term effects
 - Connection to other consultations

These often include port development and navigation, energy, infrastructure, hydroelectric and DOD projects.

It is not just about EFH



Striped bass
Photo: NE Aquarium



Oysters and blue crabs
Photo: Chesapeake Bay Foundation



Alewives
Photo: ifc.org

Other NOAA trust resources are also considered - diadromous species, shellfish, crustaceans, forage species, etc.



Hard clam
Photo: NY DEC



Bay anchovy
Photo: panix.com



Horseshoe crab
Photo: PBS.org