



Essential Fish Habitat – Alaska Fact Sheet

I. Background

In 1996, Congress added new habitat conservation provisions to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the federal law that governs U.S. marine fisheries management. The Magnuson-Stevens Act mandated the identification of **essential fish habitat (EFH)** for managed species as well as measures to conserve and enhance the habitat necessary to fish to carry out their life cycles. The Magnuson-Stevens Act encourages cooperation among NMFS, the Council, fishing participants, Federal and state agencies, and others to conserve and enhance EFH.

II. What is EFH?

The Magnuson-Stevens Act defines EFH as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity" (16 U.S.C. 1802(10)). NMFS further interprets EFH in the guidelines under 50 CFR 600, Subparts J and K.

III. The EFH Mandate

Section 305(b)(2)-(4) of the Magnuson-Stevens Act outlines a process for NMFS and the Council to comment on activities proposed by **Federal** or State agencies that may have an **adverse effect** on EFH. Specifically, Federal agencies are required to consult with NMFS on any action authorized, funded, or undertaken that may adversely affect EFH. The Council may comment on and make recommendations to NMFS and other Federal or state agencies that may affect EFH for fishery resources under its authority.

The EFH Consultation process begins with a determination of 'adverse' effect by the Federal action agency. If the Federal agency determines the action would have adverse effects, then the Federal agency is required to prepare an **EFH Assessment**. After receiving an EFH Assessment, NMFS must provide the Federal agency with **EFH Conservation Recommendations**, if applicable. The process may use a general concurrence or a programmatic, abbreviated, or expanded consultation procedure.

EFH Conservation Recommendations are advisory. However, within 30 days of receiving NMFS's EFH Conservation Recommendations, the Federal agency must provide a detailed response to NMFS that includes the measures proposed to avoid, mitigate, or offset the impact on EFH. If the Federal agency chooses not to adopt NMFS's EFH Conservation Recommendations, it must explain its reasons for not following the recommendations.

IV. Terminology

Federal action is any action authorized, funded, undertaken, or proposed to be authorized, funded, or undertaken by a Federal agency (16 U.S.C. 1855(b)(2)).

Adverse effect is any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to benthic organisms, prey species and their habitat, and other ecosystem components. Adverse effects may be site- specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions (50 CFR 600.910(a)).

NMFS provides **EFH Conservation Recommendations** to a Federal or state agency regarding measures that can be taken by that agency to conserve EFH. EFH Conservation Recommendations may be provided as part of an EFH consultation or may be provided by NMFS to any Federal or state agency whose actions would adversely affect EFH (50 CFR 600.925).

EFH Consultation satisfies the Federal agency consultation and response requirements of section 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act. NMFS makes EFH Conservation Recommendation under section

305(b)(4)(A) of that Act. When completed, an EFH consultation generally consists of:

- 1) Federal agency notifies NMFS of an action that may adversely affect EFH; 2) Federal agency provides an EFH Assessment to NMFS; 3) NMFS makes EFH Conservation Recommendations to the Federal agency; and 4) the Federal agency's response to any NMFS's EFH Conservation Recommendations.

General Concurrence is a process for federal actions that may adversely affect EFH, but for which no further consultation is generally required because NMFS has determined, through an analysis of that type of action, that it will likely result in no more than minimal adverse effects individually and cumulatively (50 CFR 600.920(g)).

Programmatic Consultation allows NMFS to develop EFH Conservation Recommendations that cover all projects / actions implemented under a particular federal program (50 CFR 600.920(j)).

Abbreviated Consultation allows NMFS to quickly make recommendations for federal actions that are not likely to have substantial adverse impacts on EFH but that may need slight modifications to minimize adverse effects on EFH (50 CFR 600.920(h)). Once NMFS receives the EFH Assessment from the Federal agency, NMFS must respond in writing within 30 days.

Expanded Consultation allows maximum opportunity for NMFS and the Federal agency to work together in the development of EFH Conservation Recommendations that would minimize the proposed action's adverse impacts on EFH. This type of consultation is used for proposed Federal actions that would likely result in substantial adverse impacts to EFH (50 CFR 600.920(i)). Once NMFS receives an EFH Assessment from the Federal agency, NMFS must respond within 60 days.

EFH Assessment is a written assessment of the effects of a proposed Federal action on EFH (50 CFR 600.920(e)). Federal agencies must provide NMFS with an EFH Assessment for any action that may adversely affect EFH, except for those activities covered by a General Concurrence. An EFH Assessment must contain:

- 1) a description of the proposed action,
- 2) an analysis of the adverse effects of the action on EFH and managed species,
- 3) the Federal agency's conclusions regarding the effects of the action on EFH, and,
- 4) proposed mitigation, if applicable.

If appropriate, the EFH Assessment should also include the items listed at 50 CFR 600.920(e)(4). The level of detail in an EFH Assessment should be commensurate with the potential impacts to EFH.

V. Contact Information

- Send all **EFH consultation requests** to nmfs.akr.habitat@noaa.gov
- Contact **Charlene Felkley** charlene.felkley@noaa.gov for EFH consultation information.
- Visit our website at <https://www.fisheries.noaa.gov/region/alaska#habitat>