



- [Fishing Permits](#)
- [Habitat Conservation](#)
- [Grants](#)
- [Fisheries](#)
- [Environmental Analyses](#)
- [Endangered Species](#)
- [Marine Mammals](#)
- [Site Map](#)

This site
 All of NMFS

- [Home](#)
- [Divisions/Branches](#)
- [What We Do](#)
- [Fishery Bulletins](#)
- [Fishery Quotas](#)
- [Fishery Regulations](#)
- [News/Media](#)
- [National Employee Locator](#)
- [FOIA Information Public Records Request](#)

Habitat Conservation Division

ESSENTIAL FISH HABITAT > Frequently Asked Questions

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- [How is Essential Fish Habitat authorized?](#)
- [What is the definition of Essential Fish Habitat \(EFH\)?](#)
- [What is a Habitat Area of Particular Concern \(HAPC\)?](#)
- [What fish species are covered under EFH?](#)
- [Why is so much habitat designated as EFH?](#)
- [Who designates areas as "EFH"?](#)
- [Who must undertake an EFH consultation?](#)
- [What is meant by "adversely affect"?](#)
- [Are private landowners required to undertake and EFH consultation for projects on private land?](#)
- [Are states required to consult with NOAA Fisheries Service?](#)
- [Do all activities proposed in an EFH area require consultation?](#)
- [Are there specific procedures to use for consultation?](#)
- [What are the contents of an EFH Assessment?](#)
- [Can EFH Assessments be combined with other federal consultations or environmental review processes?](#)
- [After a federal agency consults, what must NOAA Fisheries Service do?](#)
- [What is required of the federal action agency once it has received EFH Conservation Recommendations from NOAA Fisheries Service?](#)
- [Are federal agencies required to accept NOAA Fisheries Service EFH Conservation Recommendations?](#)
- [Are consultations required for actions that occur outside a designated EFH area?](#)
- [If EFH overlaps with critical habitat under the Endangered Species Act \(ESA\), do two individual consultations have to be considered?](#)
- [Are there penalties for federal agencies that do not consult with NOAA Fisheries Service?](#)

How is Essential Fish Habitat authorized?

- The Magnuson-Stevens fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), established a new requirement to describe and identify "essential fish habitat" (EFH) in each federal fishery management plan. NOAA Fisheries Service issued [EFH regulations](#) in January 2002.

[TOP](#)

What is the definition of Essential Fish Habitat (EFH)?

- EFH is defined in the Magnuson-Stevens Act as "...*those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.*" The rules promulgated by the NMFS in 1997 and 2002 further clarify EFH with the following definitions: **waters** - aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; **substrate** - sediment, hard bottom, structures underlying the waters, and associated biological communities; **necessary** - 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** - stages representing a species' full life cycle.

[TOP](#)

What is a Habitat Area of Particular Concern (HAPC)?

- Habitat Areas of Particular Concern (HAPC) are described in the rules as subsets of EFH which are rare, particularly susceptible to human-induced degradation, especially ecologically important, or located in an environmentally stressed area. HAPCs are not afforded any additional regulatory protection under the Magnuson-Stevens Act; however, federal actions with potential adverse impacts to HAPC will be more carefully scrutinized during the consultation process and will be subject to more stringent EFH conservation recommendations.

[TOP](#)

What fish species are covered under EFH?

- Only species in a fishery management unit managed under a federal fishery management plan (FMP) are covered.

Fishery Management Plans (FMP) of the Southeast U.S. and Species in Fishery Management Units

Gulf of Mexico FMPs	South Atlantic FMPs	Caribbean FMPs	Secretarial FMPs
Shrimp (6)	Shrimp (5)	Reef Fish (80)	Highly Migratory Species (Tunas, Billfish, Swordfish, and Sharks)
Red Drum (1)	Snapper/Grouper (73)	Queen Conch (13)	
Reef Fish (42)	Dolphin/Wahoo (3)	Spiny Lobster (1)	
Stone Crab (2)	Sargassum (2)	Coral & Coral Reef	

Coastal Migratory Pelagics(7)	Golden Crab (1)
Spiny Lobster (2)	Coastal Migratory Pelagic (5)
Coral & Coral Reefs	Spiny Lobster (1)
	Coral, Reef & Hardbottom

[TOP](#)

Why is so much habitat designated as EFH?

- Although EFH designations can appear to be very expansive, encompassing most of the coastal waters and EEZ (Exclusive Economic Zone), it is important to realize that maps of all currently identified EFH in US waters comprise the aggregate of many separate EFH designations for hundreds of managed species (see table above), each with two to four distinct life stages and seasonal differences in habitat requirements, and many with EFH designated as only bottom habitats or only surface waters. For individual species or life stages, EFH is generally a subset (often 50 to 70 per cent) of the total available habitat.

[TOP](#)

Who designates areas as "EFH"?

- Fishery Management Councils determine which areas will be designated as EFH. The Councils will prepare written descriptions and maps of EFH, and include them in fishery management plans (FMPs) or FMP amendments. This information will be available to federal agencies as well as the general public, and will be used to determine if a federal action occurs within, or impacts an area designated as EFH. For species which can not be effectively managed by a Regional Fishery Management Council, such as highly migratory species which have a broad geographic range, the Secretary of Commerce through NOAA Fisheries Service will prepare a FMP which will identify EFH for those species.

[TOP](#)

Who must undertake an EFH consultation?

- The Magnuson-Stevens Act requires federal agencies to consult with NOAA Fisheries Service when any activity proposed to be permitted, funded, or undertaken by a federal agency may have adverse effects on designated EFH.

[TOP](#)

What is meant by "adversely affect"?

- The EFH rules define an adverse affect as "**any impact which reduces quality and/or quantity of EFH . . . [and] may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site-specific or habitat wide impacts, including individual, cumulative, or synergistic consequences of actions.**"

[TOP](#)

Are private landowners required to undertake and EFH consultation for projects on private land?

- Private landowners have no new responsibilities to consult with NOAA Fisheries Service. Only if the project is funded, permitted, or authorized by a federal agency and the project may adversely affect EFH is consultation with NOAA Fisheries Service required. Even then, it is the federal agency, not a private landowner, that is responsible for consulting with NOAA Fisheries Service.

[TOP](#)

Are states required to consult with NOAA Fisheries Service?

- States are not required to consult. However, if NOAA Fisheries Service receives information about a state action that would adversely affect EFH, NOAA Fisheries Service is required to provide EFH Conservation Recommendations to the state agency. States are not required to initiate consultation with NOAA Fisheries Service, nor are they required to respond to NOAA Fisheries Service's recommendations.

[TOP](#)

Do all activities proposed in an EFH area require consultation?

- Activities proposed to occur in areas identified as EFH do not automatically require consultations. Consultations are triggered only when the proposed action may adversely affect EFH, and then, only proposed federal actions require consultation.

[TOP](#)

Are there specific procedures to use for consultation?

- Yes, but NOAA Fisheries Service will use existing environmental review processes when possible. NOAA Fisheries Service may use a Programmatic Consultation or General Concurrence to address categories of actions with similar impacts to EFH. If none of these options are appropriate, NOAA Fisheries Service will conduct an individual consultation. As part of that consultation, the federal agency must provide NOAA Fisheries Service with a written assessment of the effect of that action on EFH. This assessment is known as an "EFH Assessment".

[TOP](#)

What are the contents of an EFH Assessment?

- An EFH Assessment is a review of the proposed project and its potential impacts to EFH. As set forth in the rules,

EFH Assessments must include: (1) a description of the proposed action; (2) an analysis of the effects, including cumulative effects, of the action on EFH, the managed species, and associated species by life history stage; (3) the Federal agency's views regarding the effects of the action on EFH; and (4) proposed mitigation, if applicable. If appropriate, as may be the case with proposals that could result in large impacts to EFH, the assessment should also include the results of an on-site inspection, the views of recognized experts on the habitat or species affected, a literature review, an analysis of alternatives to the proposed action, and any other relevant information.

[TOP](#)

Can EFH Assessments be combined with other federal consultations or environmental review processes?

- Yes, NOAA Fisheries Service strongly encourages efforts to streamline the consultation process. EFH consultations should be consolidated, where appropriate, with interagency consultation, coordination, and environmental review procedures required by other statutes such as the National Environmental Policy Act (NEPA), Fish and Wildlife Coordination Act, Clean Water Act, Endangered Species Act (ESA), and Federal Power Act. EFH consultation requirements can be satisfied using existing review procedures provided: 1) NOAA Fisheries Service approves this approach in advance; 2) the existing procedures provide NOAA Fisheries Service with timely notification of actions that may adversely affect EFH; and, 3) the notification meets requirements for EFH Assessments. For example, an environmental assessment prepared under NEPA may incorporate an EFH Assessment.

[TOP](#)

After a federal agency consults, what must NOAA Fisheries Service do?

- Once consultation is initiated, NOAA Fisheries Service must provide EFH Conservation Recommendations within the established timeframes if it finds that the proposed actions would adversely impact EFH. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH and are to be provided to the action agency in a timely manner. The Magnuson-Stevens Act also authorizes fishery management councils (FMCs) to comment on federal and state projects, and directs FMCs to comment on any project that may substantially impact EFH.

[TOP](#)

What is required of the federal action agency once it has received EFH Conservation Recommendations from NOAA Fisheries Service?

- Within 30 days after receiving a conservation recommendation from NOAA Fisheries Service, the federal agency is required to provide a detailed written response to NOAA Fisheries Service and the appropriate fishery management council. This response must include a description of the measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH.

[TOP](#)

Are federal agencies required to accept NOAA Fisheries Service EFH Conservation Recommendations?

- No. EFH Conservation Recommendations are advisory and non-binding to the federal action agency. However, in the case of a response from a federal agency that is inconsistent with the NOAA Fisheries Service recommendations, the federal agency must explain in writing its reasons for not following the recommendations. Under these circumstances, the NOAA Assistant Administrator for Fisheries may request a meeting with the head of the federal action agency, as well as any other agencies involved, to discuss the proposed action and opportunities for resolving any disagreements.

[TOP](#)

Are consultations required for actions that occur outside a designated EFH area?

- The Magnuson-Stevens Act requires consultation for all actions that may adversely affect EFH without distinguishing between actions within or outside of EFH areas. Federal activities occurring outside EFH which have an adverse impact on EFH do require consultation.

[TOP](#)

If EFH overlaps with critical habitat under the Endangered Species Act (ESA), do two individual consultations have to be considered?

- Though EFH Assessments have their own information requirements, federal agencies are encouraged to incorporate an EFH Assessment into documents prepared for other purposes such as ESA Biological Assessments, NEPA documents, or public notices.

[TOP](#)

Are there penalties for federal agencies that do not consult with NOAA Fisheries Service?

- No. NOAA Fisheries Service has no regulatory authority to enforce compliance with the EFH provisions of the Magnuson-Stevens Act. However, if NOAA Fisheries Service becomes aware of a proposed action for which EFH consultation was not initiated, we may request consultation be initiated or provide EFH Conservation Recommendations based on the available information.

[TOP](#)

[Home](#) · [Privacy Policy](#) · [Disclaimer](#) · [About Us](#) · [Information Quality](#) · [Contact Us](#) ·

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