

MEMORANDUM FOR: Regional Administrators, NMFS  
F/SF - Gary Matlock

FROM: F - Penelope D. Dalton

SUBJECT: Assessment of Impacts of Fishery Management  
Actions on Essential Fish Habitat

This memorandum clarifies NMFS' responsibilities under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and Essential Fish Habitat (EFH) regulations to assess impacts of fishery management actions on EFH and to conduct EFH consultations, if required.

NMFS must analyze impacts on EFH and comply with the EFH consultation requirements for every fishery management action taken under the authority of the Magnuson-Stevens Act for which a final agency decision has not yet been made. An agency action is final when the Assistant Administrator or other authorized official signs a decision memorandum or other appropriate document to signify concurrence with the Regional Administrator's recommendation to implement the action. I strongly encourage the use of mechanisms such as Programmatic Consultations (PC) and letters of General Concurrence (GC) already set forth in the EFH regulations that can reduce compliance workloads. F/HC and F/SF are developing the framework to identify those actions suitable for a PC or GC. Until NMFS conducts PCs or issues GCs for fishery management actions, each agency action must analyze the impacts of the proposed action in the context of the fishery as a whole on all EFH in the affected area. If adverse effects are identified, an EFH consultation must be conducted at the appropriate level of detail.

For those fishery management actions that have been submitted to NMFS by a Council, the regional Sustainable Fisheries Division (SF) should review the proposed action and assess whether the

proposed action in the context of the fishery as a whole may have an adverse impact on EFH. If SF determines there will not be an adverse impact, then a separate determination to that effect must appear in the decision memorandum, or information memo if a decision memo is not required, submitted to Headquarters. The basis for such a determination must be written and included in the administrative record. If SF determines that the proposed action in the context of the fishery as a whole may have an adverse impact on EFH, then a separate determination to that effect must appear in the decision memo, or information memo if a decision memo is not required, and SF must initiate an EFH consultation with the regional Habitat Conservation Division (HC). Evidence of compliance with all EFH consultation requirements must appear in the administrative record and must be referenced in the decision memorandum, or information memorandum if a decision memorandum is not required, for the action.

In each case, the analysis of adverse impacts on EFH must consider the impacts of the proposed action in the context of the fishery as a whole, on EFH identified for any species in the area affected by the action, whether EFH has been identified under the FMP authorizing the action or another FMP.

Shortly, F/HC and F/SF will begin to work with the Regions to develop further guidance on integrating compliance with EFH requirements into the Council process. EFH determinations are attached to provide guidance and to achieve a consistent approach to complying with EFH requirements.

I appreciate your commitment to use our EFH mandate to improve fishery management.

Attachment

bcc: F/SF-Morehead/George Darcy/Rebecca Lent  
F/HC-Kemmerer/Mayer/Bigford/Kurland/Lopez/Hill  
GCF-Hayes/Hannuksela/O'Brien/J.Williams  
F/HC2:TBigford:8/25/99:pua:fn:g:\hc\efh\efh consultations-ras

## **Guidance on EFH Language for Classification Sections and Decision Memorandum Determinations Sections**

### **Classification Sections of Proposed and Final Rules**

The Magnuson-Stevens Act and the EFH regulations do not require a statement on EFH to appear in the classification sections of proposed and final rules. Therefore, no classification language is needed.

### **Determinations Section of a Decision Memorandum**

#### **Essential Fish Habitat (EFH)**

**Option 1 -- No adverse impact on EFH:** The area affected by the proposed action in the [insert name] fishery has been identified as EFH for [list all of the FMP(s) or the managed species, as appropriate, including those in other management units]. The proposed action in the context of the fishery as a whole will not have an adverse impact on EFH; therefore, an EFH consultation is not required. {Describe with succinct specificity the basis for this determination either here or in a memorandum included in the administrative record. If a separate memorandum is used, insert the following here: "The basis for this determination is described in a memorandum dated [insert date]." The memorandum should be submitted as part of a complete package for Secretarial review.}

**Option 2 - Abbreviated Consultation:** The area affected by the proposed action in the [insert name] fishery has been identified as EFH for [list all of the FMP(s) or the managed species, as appropriate, including those in other management units]. The proposed action in the context of the fishery as a whole may have an adverse impact on EFH. Because the potential adverse impact on EFH is not substantial, NMFS conducted an abbreviated EFH consultation pursuant to 50 CFR 600.920(h) and prepared an EFH Assessment that incorporates all of the information required in 50 CFR 600.920(g)(2). [If NMFS or the Council prepared the EFH Assessment as part of a NEPA or other document, identify that document here.] In a memorandum dated [insert date], the responsible NMFS regional Habitat Conservation Division provided recommendations on the proposed action that would conserve EFH. The NMFS regional Sustainable Fisheries Division responded to these recommendations in a memorandum dated [insert date]. [These memoranda should be submitted as part of a complete package for Secretarial review.] [NOTE - If the Councils are designated as official representatives of NMFS, a Council could be the one to respond if action has not yet been submitted.]

**Option 3 -- Expanded Consultation:** The area affected by the proposed action in the [insert name] fishery has been identified as EFH for [list all of the FMP(s) or the managed species, as appropriate, including those in other management units]. The proposed action in the context of the fishery as a whole may have a substantial adverse impact on EFH. As a result, NMFS conducted an expanded EFH consultation pursuant to 50 CFR 600.920(i) and prepared an EFH Assessment that incorporates all of the information required in 50 CFR 600.920(g)(2). [If the EFH Assessment was prepared as part of a NEPA or other document, identify that document here.] In a memorandum dated [insert date], the responsible NMFS regional Habitat Conservation Division provided recommendations on the proposed action that would conserve EFH. The NMFS regional Sustainable Fisheries Division responded to these recommendations in a memorandum dated [insert date]. These memoranda should be submitted as part of a complete package for Secretarial review. [NOTE - The Council could be the one to respond if action has not yet been submitted.]

**Option 4 -- General Concurrence:** The area affected by the proposed action in the [insert name] fishery has been identified as EFH for [list all of the FMP(s) or the managed species, as appropriate, including those in other management units]. This action falls within the scope of the General Concurrence issued on [insert date] for [insert type of fishery actions]. As a result, no further EFH consultation is required.

**Option 5 -- Programmatic Consultation:** The area affected by the proposed action in the [insert name] fishery has been identified as EFH for [list all of the FMP(s) or the managed species, as appropriate, including those in other management units]. This action falls within the scope of the Programmatic Consultation for the [insert the name of the program] conducted on [insert date]. NMFS has followed the recommendations in the Programmatic Consultation. No further EFH consultation is required.