



# essential fish habitat *fact & fiction*

What's "essential fish habitat"? It's the waters and bottom (such as sand, sea grass, or coral) that are necessary to a species'

spawning, breeding, feeding, or growth to maturity—its full life cycle. Fish habitat loss or degradation is always serious, and sometimes contributes to a species' being overfished.

The new Magnuson–Stevens Fishery Conservation and Management Act requires

NOAA Fisheries to identify essential fish habitat for federally managed marine fish, and federal agencies must consult with NOAA Fisheries about actions that could damage that habitat. But as with many new laws, there are misunderstandings about who is affected and how. Landowners, developers, and other nonfishing interests want to know what they will be required to do under this new law intended to make fisheries a more robust part of the U.S. economy. It's time to clear up the misunderstandings.

## The Process

*Don't these consultations duplicate other environmental review processes?*

No, because there's still only one federal review for a project that will affect the fisheries resources, and the essential fish habitat consultation is a piece of it. Federal permits—such as those from the Corps of Engineers or Environmental Protection Agency—are needed for many kinds of alteration and already require consultation with NOAA Fisheries to comply with various statutes (although until the Magnuson–Stevens act, not specifically to protect fish habitat). Now, however, if the permitting agency decides a project may affect essential fish habitat, it requests a consultation with NOAA Fisheries, which may coordinate with the pertinent Fishery Management Council. The permitting agency must then make an initial assessment of how the permitted activity may affect that habitat and must respond to any recommendations provided by NOAA Fisheries or the Councils.

*But doesn't this make the permitting process even longer?*

Generally, no. Most essential fish habitat consultations require little or no additional time, for several reasons. First, NOAA Fisheries consultations happen where they're faster and more efficient—at the regional level. Second, consultations are being merged with reviews required under the Endangered Species Act, National Environmental Policy Act, Clean Water Act, Coastal Zone Management Act, and other laws. Third, because essential fish habitat has now been identified for most federally managed fishery resources, a lot of habitat information is readily available. And many consultations can be done on a broad, programmatic scale. By addressing all reasonably foreseeable adverse effects from a type of action on a habitat, proposed activities can be "lumped" to bypass individual (project-specific) consultations.

## The Participants

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*Is it true that private landowners don't need a consultation for most changes to their property?*

Absolutely! A consultation is required only if the project is funded or authorized by a federal agency (that is, if it needs a federal permit) or if it may harm essential fish habitat. The vast majority of private land activities don't fit in this category, but if a consultation is needed, the federal agency—and not the landowner—will initiate it.

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*Then who has to do essential fish habitat consultations?*

Just the federal government. Before any federal agency proceeds with an activity that may injure fish habitat, such as dredging or filling, it must consult with NOAA Fisheries. When an agency doesn't initiate a consultation, NOAA Fisheries must still provide recommendations for projects it learns of.

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*What about state agencies?*

State agencies don't have to consult with NOAA Fisheries on essential fish habitat. But if NOAA Fisheries identifies actions that may damage essential fish habitat, it's required to provide conservation recommendations to the state.

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*Don't these consultations extend to projects everywhere in the country?*

Definitely not. The consultations are primarily for the nation's coastal areas, although an upstream or inland action could affect fish habitat. The bottom line is that if a proposed action doesn't affect essential fish habitat, a consultation isn't necessary and won't be requested.

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## The Products

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*Is essential fish habitat the same thing as the Endangered Species Act's "critical habitat"?*

Not at all. "Critical habitat" applies only to the relatively few species listed under the ESA (for example, some Pacific salmon), and most such critical habitat is probably also essential fish habitat. But the Magnuson-Stevens Act works to keep resources healthy up front. Offsetting the impact of human activities on fish habitat will help prevent the need to list new fish species under the Endangered Species Act.

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*Don't these "recommendations" have the same effect as regulations?*

No. Essential fish habitat recommendations aren't binding, although federal agencies must now give them due consideration in the decision-making process. Our experience to date shows that once agencies and developers understand how their project may harm fish habitat, they find ways to minimize damage. So in recommending alternative actions, NOAA Fisheries tries to define clearly the species affected and the specific biological or ecological consequences of the adverse activity.

Let's take as an example a request for permission to dredge a channel in a muddy area near eelgrass beds. Eelgrass is used in early spring by spawning and juvenile winter flounder, a federally managed species, but since the channel itself isn't in the eelgrass beds, this shouldn't present a problem. However, the dredging could stir up large amounts of mud and bottom debris that might smother winter flounder eggs and juveniles in the nearby eelgrass. So in this case, NOAA Fisheries would recommend not dredging during the spring months when winter flounder are spawning and eggs are developing.

But here's an important point: projects are often determined to have no discernible effect whatever on federally managed species, or may actually benefit habitat. And habitat enhancement is specifically encouraged by the Magnuson-Stevens Act.

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## The Public's Voice

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*Can you be sure that nonfishing interests will be heard in the consultation process?*

Yes, because the Magnuson-Stevens Act specifically provides for active participation by affected interests, through the Fishery Management Councils. If you're concerned about essential fish habitat, getting on Councils' habitat mailing lists is a must. You'll find out about meetings and public reviews of consultation recommendations, and get a chance to voice your opinions. The Councils and regional NOAA Fisheries Habitat Offices can also inform you about proposed actions that may affect fish habitat, and tell you how to comment. Finally, the habitat staff at each NOAA Fisheries regional office welcomes questions about the essential fish habitat process and specific consultations. Contacts are listed on the back page.



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### **Northeast Region**

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## **Regional Fishery Management Councils**

### **New England Council**

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### **Mid-Atlantic Council**

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### **Gulf of Mexico Council**

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