

**Overview of the Interagency Consultations on Actions that
May Adversely Affect Essential Fish Habitat in Alaska**

Prepared for the North Pacific Fishery Management Council
by the National Marine Fisheries Service
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As part of the North Pacific Fishery Management Council's Essential Fish Habitat (EFH) consultation policy, the Council requested regular reports from the National Marine Fisheries Service (NMFS) on EFH consultations that may be of interest to the fishing industry, and/or that may affect habitats of direct concern to the Council. NMFS's reports focus on major consultations, with a brief summary of routine activities with minor effects on EFH and provide advance notice for those activities that could have major effects on EFH, so that the Council can decide whether to consult on the activity.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) provides a role for Fishery Management Councils in commenting on federal or state agency actions that would affect fish habitat. Under section 305(b)(3)(A) of the MSA, Councils may comment on and make recommendations to the Secretary and any federal or state agency concerning any activity or proposed activity authorized, funded, or undertaken by the agency that, in the view of the Council, may affect the habitat, including EFH, of a fishery resource under its authority. In addition, under section 305(b)(3)(B) of the MSA, Councils must provide such comments and recommendations concerning any activity that, in the view of the Council, is likely to substantially affect the habitat, including EFH, of an anadromous fishery resource under Council authority. The EFH regulations at 50 CFR 600.930(a) state that each Council should establish procedures for reviewing federal or state actions that may adversely affect the habitat, including EFH, of a species under its authority.

As part of the EFH consultation policy, the Council identified the following criteria to guide NMFS in determining whether an activity is likely to be of particular interest to the Council:

- The extent to which the activity would adversely affect EFH;
- The extent to which the activity would adversely affect Habitat Areas of Particular Concern or other areas established by the Council to protect sensitive habitat features;
- The extent to which the activity would be inconsistent with measures taken by the Council to minimize potential adverse effects of fishing on EFH; and
- The extent to which the activity would conflict with Council-managed fishing operations.

Every year the NMFS Alaska Region receives in the range of 100 to 200 non-fishing actions proposed by Federal and State agencies that have the potential to affect living marine resources. The review of hundreds of actions is not feasible due to limited staff; therefore, the Habitat Conservation Division (HCD) focuses reviews on only those activities that may adversely affect

EFH. In a typical year the actions include a wide range of activities such as harbor redevelopment, navigation dredging, offshore disposal of materials, pollutant discharges, coastal construction, mining, forestry, oil and gas exploration, Naval training exercises, hydropower development, and transportation infrastructure projects (highways, bridges, airport expansions, etc.).

Federal action agencies include the U.S. Army Corps of Engineers (USACE), the Environmental Protection Agency (EPA), the Bureau of Ocean Energy and Management (BOEM), the Bureau of Land Management, the Federal Energy Regulatory Commission (FERC), the Federal Highway Administration, the Federal Aviation Administration, the U.S. Forest Service, and others. State action agencies include Alaska Department of Natural Resources, Alaska Department of Transportation and Public Facilities, and Alaska Department of Environmental Conservation.

NMFS published the *Impacts to Essential Fish Habitat from Non-Fishing Activities in Alaska*¹ to inform decision makers and the public on activities that may affect EFH, summaries of potential effects on fish habitat, and possible EFH Conservation Recommendations to conserve healthy fish stocks and their habitat. The Council and its Scientific and Statistical Committee reviewed this report during the Council's most recent EFH 5-Year Review. NMFS habitat biologists use the non-fishing report as a reference, along with information from many other sources, when reviewing proposed actions for potential impacts to EFH and when considering possible ways to avoid or minimize adverse effects. Federal action agencies also use this report as a reference when preparing the EFH Assessments they provide to NMFS as a part of EFH consultations.

During EFH consultations between NMFS and other agencies, NMFS strives to provide reasonable and scientifically based recommendations for reducing the loss and degradation of habitats that sustain Council managed species. The consultations serve to inform agencies with relevant jurisdiction about potential consequences of their actions for EFH and ways to minimize adverse effects to Alaska's valuable fishery resources. NMFS's EFH conservation recommendations are non-binding, as specified by the MSA. However, if the Federal agency does not follow NMFS's recommendations, the MSA requires that Federal agencies describe the measures they propose for avoiding, mitigating, or offsetting the impact of the activity on habitat.

NMFS habitat biologists are effective at avoiding or minimizing impacts to EFH during pre-consultation coordination with project proponents and action agencies. NMFS staff provides written comments at various stages of projects including: project scoping, project permitting, during environmental impact statement comment periods, and at other times as requested. The

¹ Limpinsel, D. E., Eagleton, M. P., and Hanson, J. L., 2017. *Impacts to Essential Fish Habitat from Non-Fishing Activities in Alaska*. EFH 5 Year Review: 2010 through 2015. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-F/AKR-14, 229p. Available at ftp://ftp.library.noaa.gov/noaa_documents.lib/NMFS/TM_NMFS_AFKR/TM_NMFS_FAKR_14.pdf

formal EFH consultation occurs with the Federal agency provides NMFS with an EFH Assessment prepared under 50 CFR 600.920(e). NMFS then has 30 or 60 days to complete the EFH consultation. Additionally, NMFS looks for efficiencies by conducting consultations at the programmatic level. NMFS posts all EFH consultation letters on the NMFS Alaska Region webpage at <https://alaskafisheries.noaa.gov/habitat/efh-consultation>.

HCD is engaging with other Federal agencies on the following proposed projects —

- Seismic survey in the Beaufort Sea to acquire 3D geophysical data by mapping subsurface geological structures for potential oil and gas prospects (BOEM)
- Pebble Mine Prospect (USACE/EPA)
- 2019 Beaufort Sea Oil and Gas Lease Sale (BOEM)
- Alaska Liquefied Natural Gas Project (FERC)
- Barrow Storm Erosion (USACE)
- GCI Fiber Optic Cable (USACE)
- Harbor Construction/ Dredging Consultations (Nome, Whittier, St. George, Dutch Harbor, Petersburg, Sandpoint) (USACE)
- Norton Sound Large Placer Mine (Alaska Department of Environmental Conservation)
- Safety Sound Placer Mine Dredging (USACE)
- Transboundary Mines (EPA, U.S. Department of State)

So far in 2018, we completed EFH consultations on—

- Aquatic farm for Pacific oysters in Sitka (Alaska Department of Natural Resources).
- Arctic Research Activities in the Beaufort Sea to be conducted from June, 2018 to December, 2021 (Office of Naval Research). Activities will include experiments to assess the effects of the changing Arctic environment on acoustic propagation and oceanography and to test the feasibility of using a field of active acoustic sources as navigation aids to unmanned vehicles that will collect oceanographic and ice data under ice covered conditions.
- Reconstruction of the Petroleum and Cement Terminal for the Anchorage Port Modernization Program (USACE). The applicant proposes to erect 203 permanent and 44 temporary large-diameter piles to support a new terminal structure. The piles are to be erected in nearshore and intertidal substrate and waters using high impact and vibratory hammers over a one-year period.
- Permit for the Kensington Mine 2018 - 2022 Mineral Exploration which will permit Coeur Alaska, Inc. to drill exploratory holes near the Kensington Gold Mine for five years (U.S. Forrest Service).
- Alaska Groundfish Fisheries Harvest Specifications for 2018 and 2019 (NMFS Sustainable Fisheries).

In 2017, we completed EFH consultations on—

- Construction of the Liberty Drilling and Production Island to recover petroleum reserves from three federal leases in the Beaufort Sea (BOEM).

- Nanushuk Project to produce commercial quantities of liquid hydrocarbons in the applicant’s State of Alaska oil and gas leasehold by operating from a site east of the Colville River Delta; to process hydrocarbons on or near the drill sites; and to transport sales-quality oil through a new export pipeline to the Trans-Alaska Pipeline System (USACE).
- Statewide general permit for discharges from aquaculture facilities in Alaska (Alaska Department of Environmental Conservation). The permit places limits on the types and amounts of pollutants that can be discharged from these facilities, outlines best management practices to which the facility must adhere, and requires effluent and receiving water monitoring.
- Development projects such as the Ketchikan Airport ferry terminal, Kivalina evacuation route, Cordova Oil Spill Response Facility Project, private docks and residential developments (USACE).
- Donlin Gold Project open pit mine, processing plant, and waste rock and tailings storage facilities (USACE).
- Highway and road construction and fish passage (Alaska Department of Transportation and Public Facilities).
- Alaska Pollutant Discharge Elimination System general permit for seafood processors that discharge seafood waste to coastal and freshwater systems (Alaska Department of Environmental Conservation).

EFH 5-year Review Update

Since the Council took final action in April 2017, we’ve finalized, or collaborated with the Alaska Fisheries Science Center to finalize, a number of technical memos as part of EFH 5-year review that supports the Council’s EFH amendments to its Fishery Management Plans—

- Essential Fish Habitat 5-year Review Summary Report, 2010 through 2015 (ftp://ftp.library.noaa.gov/noaa_documents.lib/NMFS/TM_NMFS_AFKR/TM_NMFS_AKR_15.pdf)
- Impacts to Essential Fish Habitat from Non-Fishing Activities in Alaska (ftp://ftp.library.noaa.gov/noaa_documents.lib/NMFS/TM_NMFS_AFKR/TM_NMFS_AKR_14.pdf)
- Habitat Assessment Prioritization for Alaska Stocks (<https://www.afsc.noaa.gov/Publications/AFSC-TM/NOAA-TM-AFSC-361.pdf>)
- Alaska Essential Fish Habitat Research Plan: A Research Plan for the National Marine Fisheries Service’s Alaska Fisheries Science Center and Alaska Regional Office (<https://www.afsc.noaa.gov/Publications/ProcRpt/PR2017-05.pdf>)

Additionally, scientists from the Alaska Fisheries Science Center have published the following technical memos and a journal article that support the Council’s EFH amendments—

- Model-based essential fish habitat definitions for Aleutian Island groundfish species (<https://www.afsc.noaa.gov/Publications/AFSC-TM/NOAA-TM-AFSC-360.pdf>)

- Model-based essential fish habitat definitions for Bering Sea groundfish species (<https://www.afsc.noaa.gov/Publications/AFSC-TM/NOAA-TM-AFSC-357.pdf>)
- Model-based essential fish habitat definitions for Gulf of Alaska groundfish species (<https://www.afsc.noaa.gov/Publications/AFSC-TM/NOAA-TM-AFSC-373.pdf>)
- LAMAN, E. A., C. N. ROOPER, K. TURNER, S. ROONEY, D. W. COOPER, and M. ZIMMERMANN. 2017. Using species distribution models to describe essential fish habitat in Alaska. *Can. J. Fish. Aquat. Sci.* Early online. <https://doi.org/10.1139/cjfas-2017-0181>

EFH Research

Each year, we provide funding to the Alaska Fisheries Science Center to conduct scientific research to elevate EFH information for Alaska fish and crab species from Level 1 (distribution) and Level 2 (habitat-related densities) to Level 3 (habitat-related growth, reproductive, or survival rates) and to improve our understanding and ability to map juvenile habitat. New to the Alaska EFH Research Plan for 2017-2022 is a strategy to entertain multi-year science investigations in the North Pacific. The multi-year approach attempts to give some certainty that funds may be more readily available as a proposed project develops from start-up to directed research to conclusion.

For 2018, we've provided funds for the following research projects—

- Developing a novel approach to estimate habitat-related survival rates for early life history stages using individual-based models (year 1 of 2)
- Optimal overwintering thermal habitat of juvenile walleye pollock from the Bering Sea and Gulf of Alaska (year 2 of 3)
- Essential habitat of flatfish early life stages in the Chukchi Sea (year 2 of 3)
- A unified nearshore catch database to refine juvenile EFH models and maps for Alaska
- Is nearshore habitat essential to overwintering YOY Pacific cod?
- Spatial variation in early juvenile flatfish growth and condition in relation to thermal phases in the eastern Bering Sea shelf
- Age effects on thermal habitat requirements on commercial flatfishes



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 affect** to 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 effect, 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 responds to 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

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