

Essential Fish Habitat Consultations



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Presentation Overview

- Why do we care?
- Introduction to the Magnuson-Stevens Fishery Conservation and Management Act and Fish and Wildlife Coordination Act
- Consultation process
- Discussion & Questions



Photo Credit: Jenny Thacker.

Fish Habitat & Sustainable Fisheries/ Commerce

- Habitat conservation is a component of fishery management
- Sustainable fisheries consist of closed areas, limits on days at sea, gear restrictions
- Habitat conservation is an agency priority
- Habitats:
 - Provide food for marine organisms to grow and survive.
 - Provide shelter for marine life to hide from predators.
 - Serve as critical breeding and spawning grounds.



Economic benefits of Healthy Habitats

- [Support more than 28 million jobs](#) nationwide through recreation, tourism, commercial activities, and more.
- Are essential to more than [75 percent of our nation's commercial fish catch](#) and 80 to 90 percent of the recreational fish catch.
- Support [more than \\$8.8 trillion in economic output](#), nearly half of the nation's gross domestic product. Tourism and recreation employs close to 2.5 million people and [contributes approximately \\$143 billion in gross domestic product](#) to the economy each year.
- Can reduce the damage caused by hurricanes, storms, and tides, saving vulnerable coastal communities [more than \\$23 billion each year](#).



Photo Credit: Dave O'Brien.

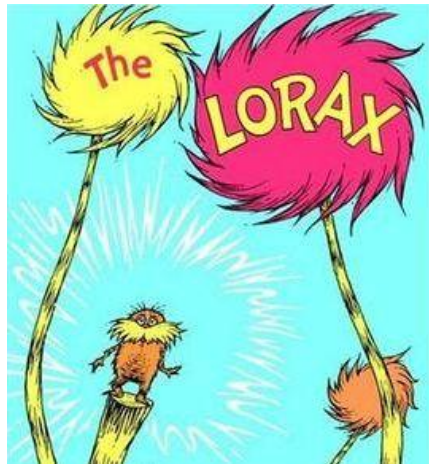
NOAA Fisheries

NOAA's Mission: Science, Service & Stewardship

- To conserve and manage coastal and marine ecosystems and resources

NOAA Fisheries (NMFS)

- Responsible for the stewardship of the nation's ocean resources and their habitat
- Protect and restore habitat & maintain coastal ecosystems



NMFS is the nation's federal trustee for the conservation and management of marine, estuarine, and anadromous fishery resources

What is EFH?

*“...those **waters** and **substrate** necessary to fish for spawning, breeding, feeding, or growth to maturity.”*

“**Waters**” include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and aquatic areas historically used by fish

“**Substrate**” includes sediment, hard bottom, structures underlying waters and associated biological communities.



Why Consult?

Magnuson-Stevens Fishery Conservation and Management Act (MSA):



Requires federal agencies to consult with NOAA Fisheries on all actions or proposed actions that they authorize, fund, or undertake that *may adversely affect* EFH. This includes actions in both state and federal waters. Encourage conservation and enhancement of EFH, through avoidance, minimization and mitigation of adverse effects.



Contents of 1996 Omnibus Habitat Amendment

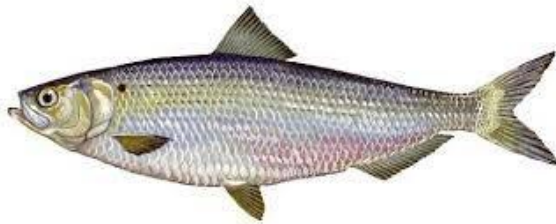
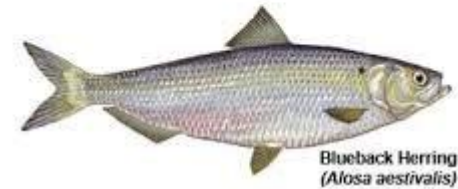
- Habitat descriptions for each federally-managed species (through FMC's);
- Consultation requirements for Federal agencies.

Why Consult?

Fish and Wildlife Coordination Act (FWCA):

Requires federal agencies to consult with us for activities that affect, control, or modify waters of any stream or bodies of water, to minimize the adverse impacts of such actions on fish and wildlife resources and habitat.

(Generally incorporated into other federal permit, license, or review requirements, but before MSA it was the primary regulation by which we provided recommendations e.g., EFH consultation).



What is an “adverse effect”?

“...any **impact** which **reduces quality and/or quantity** of EFH.”

Projects in water typically will have some adverse effect, which is one reason why we establish programmatic consultations.

1. Direct (e.g., contamination or physical disruption)
2. Individual, cumulative, or synergistic
3. Indirect (e.g., loss of prey, reduction in fecundity, velocity changes creating scour in sensitive habitats)



However... it is not just EFH



Striped bass
Photo: NE Aquarium



Oysters and blue crabs
Photo: Chesapeake Bay Foundation



Alewives
Photo: ifc.org

Under the Fish and Wildlife Coordination Act (FWCA), other NOAA trust resources are also considered - prey species, diadromous species, shellfish, crustaceans, forage species, etc.



Hard clam
Photo: NY DEC



Bay anchovy
Photo: panix.com



Horseshoe crab
Photo: PBS.org

Fish and Wildlife Coordination Act (FWCA)

- Pre-dates MSA, addresses impacts to fish and wildlife and provides for improvement of these resources
- Requires federal agencies to consult with us for *activities that affect, control, or modify waters of any stream or bodies of water*, to minimize the adverse impacts of such actions on fish and wildlife resources and habitat.



Striped bass
Photo: NE Aquarium



Horseshoe crab



Bay anchovy
Photo: panix.com



Hard clam
Photo: NY DEC

EFH consultation process

WHEN

- Federal action affecting EFH – undertaken, funded, or permitted

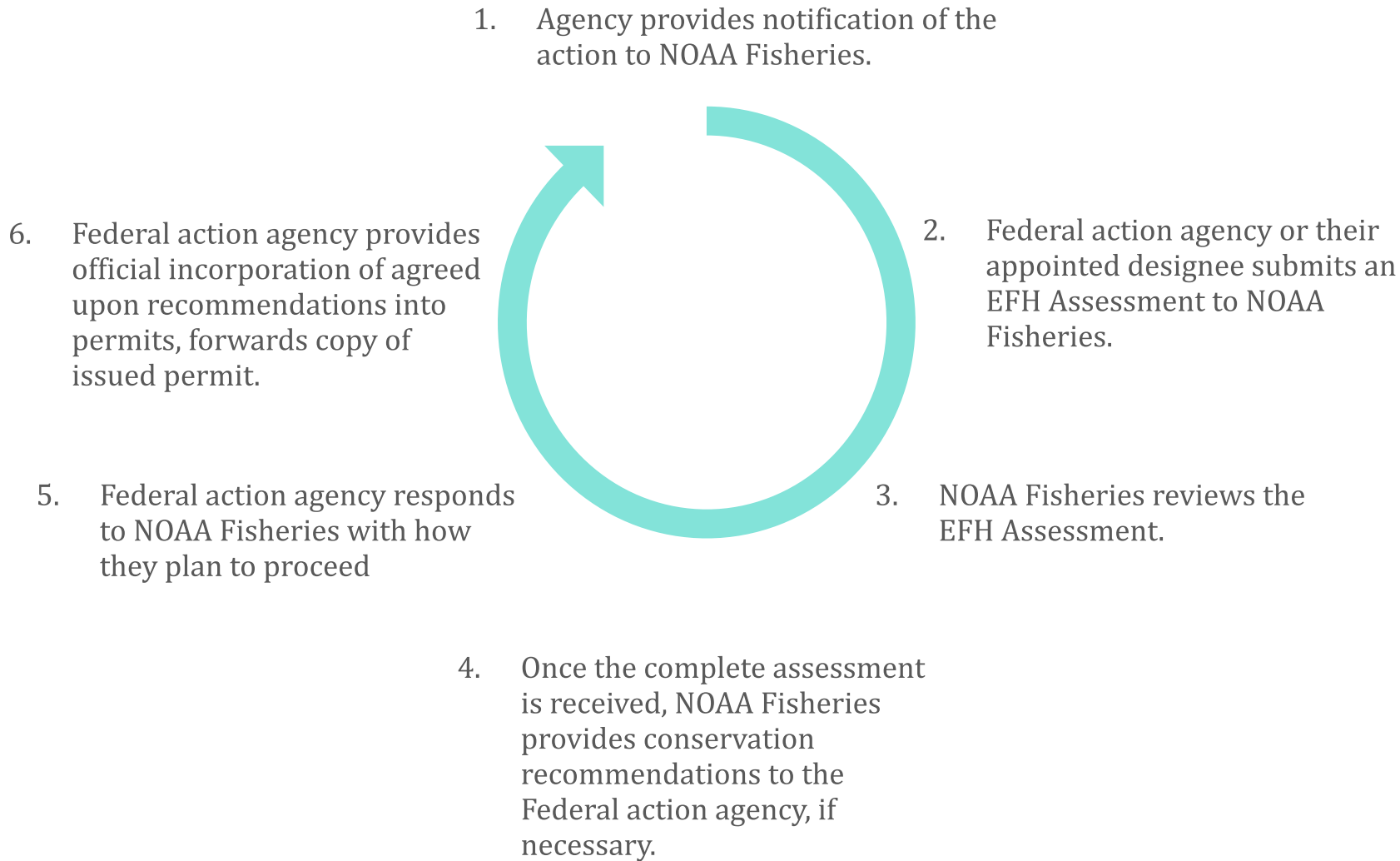
HOW

- General concurrence, programmatic, individual, or expanded consultation
- EFH assessment – description of action, assessment of impacts

WHY

- Provide EFH conservation recommendations to avoid, minimize, and mitigate for impacts to EFH
- To support the functions and values of habitats.

Consultation steps



Types of EFH Consultations

- **General Concurrence**: Specific types of federal actions that will likely result in no more than minimal adverse effects on EFH, and for which no further consultation is required
- **Programmatic Consultations**: May include all or some activities of a program and incorporate multiple individual actions that may adversely affect EFH into one consultation
- **Abbreviated Consultation**: Don't qualify for GC but do not have the potential to cause substantial adverse effects on EFH
- **Expanded Consultation**: Additional coordination required; action would result in substantial adverse effects on EFH. MSA Final Rule: "maximum opportunity for NMFS and the Federal agency to work together to review the action's impacts on EFH and to develop EFH Conservation Recommendations."

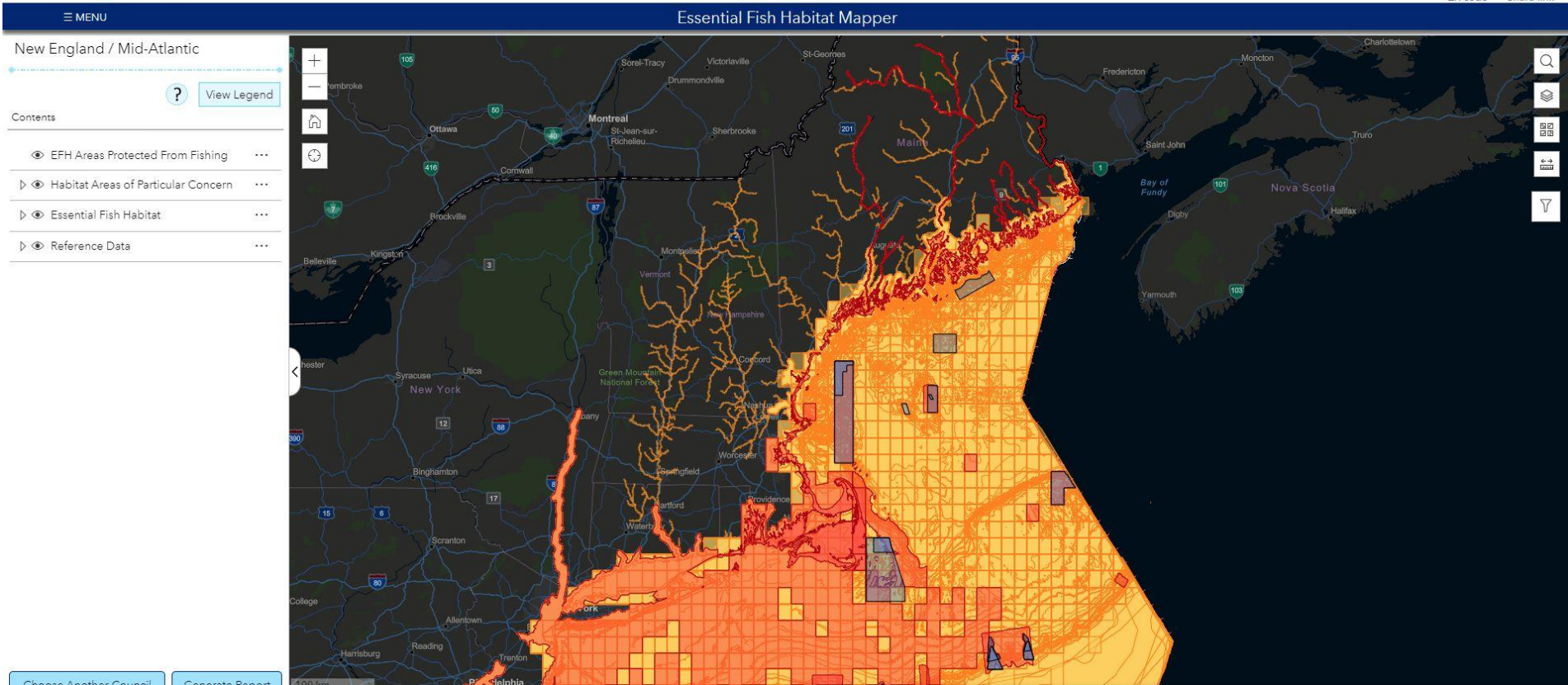
EFH Mapper & other resources

[Omnibus Essential Fish Habitat Amendment 2 Volume 2: EFH and HAPC Designation Alternatives and Environmental Impacts](#)

Clicking on an area will provide a link to the EFH text description- these can be used to generate EFH Assessments.



QR code Share link



Resources for Consultations

- [NOAA Fisheries Greater Atlantic Regional Fisheries Office Essential Fish Habitat \(EFH\) Assessment & Fish and Wildlife Coordination Act \(FWCA\) Consultation Worksheet \(Update pending\)](#)
- Guidance for the “NOAA Fisheries Greater Atlantic Regional Fisheries Office Essential Fish Habitat (EFH) Assessment & Fish and Wildlife Coordination Act (FWCA) Consultation Worksheet August 2021 rev.”
- [Omnibus Essential Fish Habitat Amendment 2 Volume 2: EFH and HAPC Designation Alternatives and Environmental Impacts](#)
- [NOAA Fisheries/FHWA Best Management Practices \(BMPs\) Manual for Transportation Actions in the Greater Atlantic Region](#)



NOAA Technical Memorandum NMFS-NE-209

Impacts to Marine Fisheries Habitat from Nonfishing Activities in the Northeastern United States

NAE-2023-



US Army Corps of Engineers
New England District

Maine General Permit
Essential Fish Habitat (EFH) Determination Sheet

Applicant:

Application Number: NAE-2023-
Corps Project Manager:

Project Location:

Project Description:

ESSENTIAL FISH HABITAT (EFH):

EFH Present: [Choose an item.](#)

EFH PA: ACTIVITY # 3. PILE-SUPPORTED STRUCTURES, FLOATS AND LIFTS

Activities that require individual EFH consultation:

1. Structures (piers, ramps, floats, etc.) in tidal SAV or ≥ 150 LF over salt marsh waterward of MHW.
2. New public, community, government, or commercial boating facilities; or expansions of existing facilities within intertidal or tidal SAV.

Conservation recommendations for all other activities not identified above:

1. The lowermost part of the floats should be ≥ 18 inches above the substrate at all times*.
2. Structures shall have $\geq 1:1$ height/width ratio** over salt marsh.
3. Docks, piers, ramps, or floats are not located within 25 feet of tidal SAV.
4. Compensatory mitigation should be provided for impacts to tidal SAS.

EFH conservation considerations

- Ensure surveys and plans provide necessary information to consult.
- Identify fishery habitat functions/services early in process using available tools
- Identify direct and indirect effects on fishery habitat, including alterations of hydrology as a result of the proposed project.
- Assess & consider the cumulative impact from past, current, and reasonably foreseeable future projects that impact aquatic habitats via federal, state, and local resource management and permitting processes.
- Avoid & minimize impacts to essential fish habitat, Habitat Areas of Particular Concern & Special Aquatic Sites (ie. SAV, mudflat).
- Mitigate for loss of habitat, clearly identify the process by which mitigation will occur.



Photo credit: J. Harris

Thank you & questions



EFH Assessment: (50 CFR 600.920(e))

Federal agencies must prepare a written assessment of any action that requires consultation. The *EFH Assessment* must include:

1. A description of the proposed action;
2. An analysis of the effects of the action on EFH and associated species;
3. The federal agency's views regarding the effects of the action on EFH;
4. A discussion of proposed mitigation, if applicable.

Additional information may be necessary for large or complex projects that have the potential for greater adverse effects to EFH, including:

- (i) The results of on-site inspections to evaluate the habitat and site specific effects of the project;
- (ii) The views of recognized experts on habitats/species that may be affected;
- (iii) A review of pertinent literature and related information;
- (iv) An analysis of alternatives to the action that could avoid or minimize adverse effects on EFH.

EFH Assessment: (50 CFR 600.920(k))

- Within *30 days* after receiving an EFH conservation recommendation, federal action agency must respond in writing and describe measures proposed by the agency to avoid, minimize, or offset the impacts of the action on EFH.
- Such a response must be provided **at least 10 days prior to final approval of the action** if the response is inconsistent with any conservation recommendations, unless we have agreed to alternative time frames for the response.
- If the response is inconsistent with the EFH conservation recommendations, federal action agency must explain its reasons for not following the recommendations including justification (scientific justification should be provided to support disagreements over the anticipated effects of the action and the measures needed to avoid, minimize, mitigate, or offset such effects).