

## **PART 2, CHAPTER 17**

# **ESSENTIAL FISH HABITAT**

### **TABLE OF CONTENTS**

17.1	OVERVIEW .....	17-1
17.2	PROCEDURE .....	17-2
17.2.1	Determination of Level of Assessment.....	17-2
17.2.1.1	Projects Qualifying for ETDM Screening .....	17-2
17.2.1.2	Projects Not Qualifying for ETDM Screening.....	17-3
17.2.1.3	Request for Abbreviated Managed Species List.....	17-3
17.2.1.4	Fishery Management Plans .....	17-3
17.2.2	Actions Taken if no EFH Assessment Needed.....	17-4
17.2.3	Actions Taken if EFH Assessment is Required or NMFS Comments Need to be Addressed .....	17-4
17.2.3.1	Essential Fish Habitat Consultation .....	17-5
17.2.3.1.1	Essential Fish Habitat Assessment.....	17-6
17.2.3.1.2	EFH Conservation Recommendations .....	17-7
17.2.4	Documentation .....	17-8
17.2.5	Commitments .....	17-9
17.2.6	Re-evaluation .....	17-9
17.2.7	Emergency Consultation .....	17-9
17.3	REFERENCES.....	17-10
17.4	FORMS .....	17-10
17.5	HISTORY .....	17-10

## LIST OF FIGURES

Figure 17-1 Essential Fish Habitat Process .....	17-11
Figure 17-2 Fishery Management Councils and NMFS Contact Information .....	17-12
Figure 17-3 Information Sources and Websites .....	17-13
Figure 17-4 Habitat Conservation Division Contacts by FDOT District .....	17-15
Figure 17-5 Sample Letter Request for Confirmation of Abbreviated List .....	17-16
Figure 17-6 Sample Technical Memo Essential Fish Habitat Assessment Cover Sheet .....	17-17
Figure 17-7 Sample Interim Response Letter.....	17-18
Figure 17-8 Sample Response to Conservation Recommendations Letter.....	17-19
Figure 17-9 Emergency Consultation Procedures.....	17-20

## PART 2, CHAPTER 17

### ESSENTIAL FISH HABITAT

#### 17.1 OVERVIEW

Pursuant to **23 United States Code (U.S.C.) § 327** and the implementing Memorandum of Understanding (MOU) executed on May 26, 2022, the Florida Department of Transportation (FDOT) has assumed and Federal Highway Administration (FHWA) has assigned its responsibilities under the **National Environmental Policy Act (NEPA)** for highway projects on the State Highway System (SHS) and Local Agency Program (LAP) projects off the SHS (**NEPA** Assignment). In general, FDOT's assumption includes all highway projects in Florida which source of federal funding comes from FHWA or which constitute a federal action through FHWA. **NEPA** Assignment includes responsibility for environmental review, interagency consultation and other activities pertaining to the review or approval of **NEPA** actions. Consistent with law and the MOU, FDOT will be the Lead Federal Agency for highway projects with approval authority resting in the Office of Environmental Management (OEM).

This chapter provides guidelines for Essential Fish Habitat (EFH) consultations with the National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS), also referred to as NOAA Fisheries. According to the **Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA)**, areas designated as EFH are "...those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." [**16 U.S.C. § 1802(10)**]. The **MSFCMA (16 U.S.C. § 1801 et. seq.)** created regional Fishery Management Councils (FMCs) "responsible for the fisheries that require conservation and management in their region" and are required to "develop and amend Fishery Management Plans" (FMP). FMPs also provide information on Habitat Areas of Particular Concern (HAPC) within EFH areas.

In 1996 the **MSFCMA** was amended and set forth a mandate for NMFS and regional FMCs to identify and protect important marine and anadromous (species born in fresh water that migrate to the ocean to mature, and then return to fresh water to spawn) fish habitat, and to establish means for designating EFH. Rules to implement the EFH provisions of this Act, [**50 Code of Federal Regulations (CFR) §§ 600.805 - 600.930**], specify that FMP amendments be prepared to describe and identify EFH. The rules also establish procedures to promote the protection of EFH through interagency coordination. **Section 305 (b)(2)** of the **MSFCMA [16 U.S.C. § 1855(b)(2)]** states that federal agencies are required to consult with NMFS regarding projects that fund, permit or carry out activities that may adversely affect EFH. An adverse effect "means any impact that reduces quality and/or quantity of EFH" (**Preparing Essential Fish Habitat Assessments: A Guide for Federal Action Agencies. V1, 2004**). EFH consultations are required for federal projects as well as projects requiring a federal action (e.g., a federal permit), when such project may adversely affect EFH.

NMFS made a finding pursuant to **50 CFR § 600.920(e)** that EFH consultation requirements can be incorporated into the existing **NEPA** document created through the

Project Development and Environment (PD&E) process. This chapter integrates the EFH coordination and consultation process with the PD&E process for both federal and state Environmental Documents. NMFS has designated FDOT to conduct EFH consultations in Florida pursuant to **50 CFR § 600.920(c)** as memorialized in a **July 19, 2000 letter to FHWA and FDOT**.

To satisfy the **MSFCMA** FDOT determines potential involvement with designated EFH and HAPCs for the project. If EFH may be adversely affected by the project, an **EFH Assessment** will be prepared (see [Section 17.2.3.1.1](#)) and summarized in the Environmental Document.

## 17.2 PROCEDURE

### 17.2.1 Determination of Level of Assessment

#### 17.2.1.1 Projects Qualifying for ETDM Screening

Projects that qualify for screening are evaluated through the Efficient Transportation Decision Making (ETDM) Environmental Screening Tool (EST) (see [Part 1, Chapter 2, Class of Action Determination for Federal Projects](#) for a list of qualifying projects). Preliminary EFH information can be found in the **Programming Screen Summary Report**, within the Environmental Technical Advisory Team (ETAT) comments for the “Coastal and Marine” and “Wetlands and Surface Waters” issues. It may also be helpful to review ETAT comments on “Protected Species and Habitat” and “Water Resources” as well as “General Project Recommendations” and “Anticipated Permits”.

Comments provided by NMFS are especially important. The “Technical Studies Anticipated” section of the **Programming Screen Summary Report** should state if an **EFH Assessment** is needed. NMFS should provide a list of the federally-managed species that the assessment should address. Generally, NMFS will assign a “no involvement” degree of effect for projects that do not have a direct or indirect effect. Projects that only have indirect effects will generally be assigned a “minimal” degree of effect in the EST. These two scenarios generally do not require an **EFH Assessment**. If EFH may be adversely affected by a project, the NMFS will request an **EFH Assessment** which will be prepared following the procedure in [Section 17.2.3](#).

Information from FMPs, FMCs, and from literature review and contacts described in [Figure 17-2](#) and [Figure 17-3](#) serve as reference material for involvement determinations.

As a project advances into PD&E, it is important to address ETAT comments received during the EST screening event. FDOT may contact NMFS to discuss ETAT comments and FDOT course of action to address their comments (See [ETDM Manual, Topic No. 650-000-002](#)).

### 17.2.1.2 Projects Not Qualifying for ETDM Screening

For projects that do not qualify for screening through the EST (see [Part 1, Chapter 2, Class of Action Determination for Federal Projects](#) for a list of qualifying projects) coordination with NMFS is still required for federal projects or projects requiring a federal action (e.g., a federal permit) that may involve EFH. To determine the level of evaluation for these projects, perform a review of FMPs, FMCs and literature to develop an Abbreviated Managed Species List and coordinate with NMFS as noted in [Section 17.2.1.1](#). If NMFS indicates that an **EFH Assessment** is not required, follow the procedure in [Section 17.2.2](#). If NMFS indicates that an **EFH Assessment** is required, follow the procedure in [Section 17.2.3](#). The **EFH Assessment** review and resulting project evaluation and Conservation Recommendations (when provided) would be handled during the permitting process (e.g., for Non-Major State Actions).

### 17.2.1.3 Request for Abbreviated Managed Species List

NMFS responds during the ETDM process with adequate information about the species involved in the project such that an **EFH Assessment** can begin when appropriate. In this case the species identified in the **Programming Screen Summary Report** response can be used to begin the **EFH Assessment**, and an abbreviated list may not need to be requested.

For instances where NMFS has not provided adequate information to begin the **EFH Assessment** or for projects that did not go through EST, it is recommended that Districts create their own abbreviated lists using the Managed Species Lists available from the regional FMC and NMFS, as well as identify EFH for those species (see [Section 17.2.1.2](#)). NMFS also has an interactive EFH Mapper to assist in identifying EFH (see [Figure 17-3](#) for the link). Once an abbreviated list is compiled, it is recommended that the District send a letter (which may be sent via e-mail) to NMFS requesting confirmation. Requests should be sent to the appropriate Habitat Conservation Division Florida Office listed in [Figure 17-4](#). A sample request letter is included in [Figure 17-5](#). The confirmed abbreviated list can then be used to begin the **EFH Assessment** ([Section 17.2.3.1.1](#)). NMFS confirmation of the abbreviated list will help expedite the **EFH Assessment**.

The request to confirm an abbreviated list is not an official procedure for EFH consultation and NMFS is not required to respond. If NMFS does not respond to the request within 10 days, the District may use the abbreviated list compiled using the Managed Species Lists to begin the **EFH Assessment**.

### 17.2.1.4 Fishery Management Plans

Information on EFH within the project area can be gathered from regional FMCs and NMFS. Two councils cover areas within the State of Florida: the Gulf of Mexico FMC and the South Atlantic FMC. See [Figure 17-2](#) for contact information. Each council has lists of Managed Species and EFH identified within their jurisdictional area and specific FMPs for the species they manage. NMFS' Southeast Regional Office also has FMPs and Managed Species Lists for highly migratory species, which they manage. The NMFS

Southeast Regional Office can be contacted for more site-specific information ([Figure 17-2](#)). EFH information from these organizations is also available online ([Figure 17-3](#)).

FMPs explain the physical, biological, and chemical characteristics of EFH and include information on species life history stages, species range maps as well as information on potential threats and recommended conservation and enhancement measures. The amount of information available for EFH determinations will vary depending on the species that may be affected.

FMPs also provide information on HAPC, which are habitats or habitat associations identified within EFH that are rare, particularly susceptible to human-induced degradation, especially ecologically important, or located in an environmentally stressed area. These areas are identified by the FMCs in their respective FMPs and will be discussed and addressed during the EFH consultation process (see [Section 17.2.3.1](#)).

### 17.2.2 Actions Taken if no EFH Assessment Needed

If the project is located outside of areas where **MSFCMA** applies, an **EFH Assessment** is not required and consultation with NMFS is not required.

For projects located in areas where the **MSFCMA** could apply, but the project will either have no involvement with EFH or no adverse effect on EFH, it should be addressed in the Environmental Document as follows:

1. For Type 1 Categorical Exclusions (CE) include supporting information in the project file (i.e., GIS data analysis, technical memo, site visit, knowledge of the area).
2. For Type 2 CEs mark the appropriate selections on the **Type 2 Categorical Exclusion Determination Form** and add supporting documentation to the form and project file.
3. For Environmental Assessments (EAs), Environmental Impact Statements (EISs) or State Environmental Impact Reports (SEIRs) add the following statement to the Environmental Analysis section as appropriate:

*This project has been coordinated with NMFS and there is no involvement with, or adverse effect on Essential Fish Habitat; therefore, Essential Fish Habitat consultation and preparation of an Essential Fish Habitat Assessment are not required.*

### 17.2.3 Actions Taken if EFH Assessment is Required or NMFS Comments Need to be Addressed

NMFS will provide comments during the ETDM process for projects with potential direct effects on EFH and may comment regarding indirect effects (e.g., stormwater from a bridge over a river that would flow into a nearby estuary). These comments should be addressed during the PD&E process, but an **EFH Assessment** is only required when

specifically requested by NMFS or when FDOT determines that a project may adversely affect EFH.

If the District determines that a project may adversely affect EFH and/or an assessment was requested by NMFS in the **Programming Screen Summary Report**, then:

1. Prepare an **EFH Assessment** as described in [Section 17.2.3.1.1](#).
2. Request consultation with NMFS and provide the **EFH Assessment**.
3. NMFS will provide a written project evaluation which may include EFH Conservation Recommendations.
4. Respond to NMFS Conservation Recommendations, if provided, within the required timeline ([Section 17.2.3.1.2](#)).
5. Summarize the results in the final Environmental Document.

If NMFS receives information regarding an FDOT project that may adversely affect EFH and FDOT has not initiated EFH consultation, then NMFS may inform FDOT of the **MSFCMA** requirement to consult and ask FDOT to initiate EFH consultation. FDOT is not required to agree to NMFS's request; however, NMFS is required by the **MSFCMA** to provide EFH Conservation Recommendations, and FDOT is required to respond to these recommendations in writing regardless of whether FDOT initiated consultation.

### 17.2.3.1 Essential Fish Habitat Consultation

Consultation is initiated when NMFS receives an **EFH Assessment** and a written request for consultation, which is submitted by the District. The negotiated procedure for conducting EFH consultations is specified in the **July 19, 2000, finding among NMFS, FHWA, and FDOT**. The key components to the consultation process include preparation of an **EFH Assessment** which is provided to NMFS, proposed Conservation Recommendations by NMFS, and agency response to Conservation Recommendations. It is recommended that the Districts refer to the NMFS's document **EFH Consultation Guidance Version 1.1 (April 2004)** for detailed information on consultations.

EFH consultation is expected to be completed during the PD&E phase. In some instances, consultation cannot be completed at this project phase, especially if NMFS does not have enough information (i.e., project details may not yet be available) to concur with (or not concur with) the effect of the project on EFH. In these situations, the Districts should coordinate with OEM. Together OEM and the District will determine the appropriate course of action to advance the project. When consultation cannot be completed during the PD&E phase, the Environmental Document should include a summary of the consultation to date, the reasons why it cannot be completed, documentation that NMFS agrees to complete consultation prior to construction, and any other information that may provide reasonable assurance the requirements will be fulfilled consistent with **23 CFR § 771.133**. In these instances, a statement similar to the following is included in the Environmental Document:

*Based on coordination with the National Marine Fisheries Service to comply with Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), FDOT commits to reinitiate consultation and provide information necessary to complete consultation on the [insert name of specie(s)] prior to advancing the project to construction. FDOT's commitment is intended to provide reasonable assurance, per 23 CFR § 771.133, that requirements of the MSFCMA are able to and will be met prior to construction and this approach is affirmed by the National Marine Fisheries Service. The status of this commitment will be updated in any subsequent project re-evaluations.*

Commitments made during this coordination should be included in the Commitments section of the Environmental Document. An update to the commitment(s) must be provided in subsequent project Re-evaluations and in the **Project Commitment Record (PCR)**.

### 17.2.3.1.1 Essential Fish Habitat Assessment

An **EFH Assessment** is an analysis of a project's potential adverse effects on EFH and if necessary, measures to avoid, minimize, or mitigate those effects. An **EFH Assessment** is completed if there are potential adverse effects to EFH on federal projects or for projects that require a federal action (e.g., a federal permit), regardless of Class of Action. Coordination may be needed with NMFS while preparing the **EFH Assessment**.

The **EFH Assessment** should be included as a section of the **Natural Resources Evaluation (NRE)** instead of a stand-alone document. The **NRE** documents project effects on protected species and habitat, wetland, and EFH resources and can be provided to NMFS as an **EFH Assessment**.

The **EFH Assessment** section of the **NRE** must contain:

1. Identification of EFH, HAPC(s), and managed species that may be affected. An analysis of the effects, including indirect and cumulative effects, of the project on EFH, HAPC(s), the managed species, and associated species by life history stage,
2. Proposed measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH, and
3. FDOT's determination regarding the effects of the project on EFH.

For projects that do not require an **NRE** per the [Natural Resources Evaluation Outline and Guidance](#), the District will prepare the **EFH Assessment** as a technical memo and should use the **Technical Report Cover Page, Form No. 650-050-38**. See example of cover page shown in [Figure 17-6](#).

The level of detail required for project specific consultations varies depending on the degree the project may adversely impact EFH. This level of detail is based on project specific conditions such as ecological importance or sensitivity of the area, type and extent of EFH that would be impacted, and the type of activity proposed.



A detailed **EFH Assessment** should be prepared for projects that are expected to have substantial adverse effects. A detailed assessment should include the results of on-site inspections, the views of experts on the affected species or their habitat, literature review, an analysis of alternatives to the proposed project and other relevant information. More detail on suggested contents and examples of **EFH Assessments** are included in NMFS's guidance document, **Preparing Essential Fish Habitat Assessments: A Guide for Federal Action Agencies (February 2004)**. If FDOT determines that a detailed **EFH Assessment** is not necessary, and NMFS does not agree, then NMFS can request additional information from FDOT in writing.

Information for the **EFH Assessment** should be gathered for species included in the **Programming Screen Summary Report** or on the Abbreviated Managed Species List ([Section 17.2.1.3](#)) using FMPs as explained in [Section 17.2.1.2](#). General information is available from contacts listed on [Figure 17-2](#). It may be useful to include a table of species and EFH that may be affected. The best available information must be used to determine the effects of the proposed project on EFH. FDOT's determination of effects should be clearly stated in the assessment. It is recommended that the **EFH Assessment** be concluded with the use of best management practices, avoidance and minimization measures, and mitigation strategies, if needed.

The District must submit the draft **NRE** including the **EFH Assessment** to OEM for review. After comment resolution with OEM, the District submits the final **NRE** to the appropriate agencies for coordination/consultation.

Completed **EFH Assessments** should be sent to the appropriate NMFS Habitat Conservation Division Florida Office ([Figure 17-4](#)) at least 60 days prior to a final decision on the proposed project or at least 90 days prior if substantial adverse impacts are anticipated.

### 17.2.3.1.2 EFH Conservation Recommendations

Once the NMFS receives the **EFH Assessment**, it will prepare a written project evaluation (either letter, memo, or e-mail) with EFH Conservation Recommendations, as appropriate. Conservation Recommendations, which are non-binding (i.e., discretionary), may include measures to avoid, minimize, or mitigate adverse effects on EFH. Unless a shorter timeframe is agreed to, this coordination must comply with the timelines mandated by the **MSFCMA**. FDOT is required to respond to NMFS Conservation Recommendations within 30 days of receipt explaining how FDOT will proceed. If the signed Finding of No Significant Impact (FONSI), Record of Decision (ROD), or other final action that includes FDOT's response to Conservation Recommendations cannot be completed in 30 days and/or FDOT does not yet have a response to the Conservation Recommendations then an interim response should be sent to NMFS before the specified deadline. Sample letters are shown in [Figure 17-7](#) and [Figure 17-8](#). A detailed written response should be submitted to NMFS at least 10 days prior to taking final action (e.g., signing a FONSI or ROD). The response should include a description of measures proposed by FDOT for avoiding or mitigating the impact of the proposed activity on EFH. The response should also include the following statement:

*The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by the Florida Department of Transportation (FDOT) pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding dated May 26, 2022 and executed by the Federal Highway Administration and FDOT.*

If the response is inconsistent with the NMFS EFH Conservation Recommendations, FDOT must explain its rationale for not implementing the NMFS's proposed Conservation Recommendations, including the scientific justification for the anticipated effects of the project and/or measures needed to avoid, minimize, or mitigate such effects. The NOAA Assistant Administrator for Fisheries can request a meeting with the Director of OEM to discuss the proposed project and the opportunity to resolve disagreements per **50 CFR § 600.920(k)(2)**.

If updates to the **NRE** are needed, new information can be added in the form of an addenda and included in the project file. The **NRE** itself should not be revised to reflect the new information. Any new agency coordination/consultation letters should be included in the Environmental Document.

## 17.2.4 Documentation

The documentation required for each type of Environmental Document is outlined below:

**Type 1 CE** - A Type 1 CE may involve EFH providing the documentation demonstrates the proposed project has no significant effects. For these projects, include a summary of EFH assessment, agency coordination and compensation for impacts (as appropriate) in the **Type 1 Categorical Exclusion Checklist ([Part 1, Chapter 2, Class of Action Determination for Federal Projects](#))**. If an **EFH Assessment** was prepared it should be included in the project file. Agency coordination letters are also included in the project file, while concurrence letters are attached to the checklist.

**Type 2 CE, EA, or EIS** - The Environmental Document will be prepared and processed as described in **[Part 1, Chapter 5, Type 2 Categorical Exclusion](#); [Chapter 6, Environmental Assessment](#); or [Chapter 8, Draft Environmental Impact Statement](#)**, and should include the following statement in the Essential Fish Habitat section of the Environmental Document, when an EFH Assessment is required:

*An EFH Assessment has been prepared and consultation has been completed in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). It has been determined that this project [will have] [will not have] adverse effects to Essential Fish Habitat.*

**SEIR** - The SEIR will be prepared and processed as described in **Part 1, [Chapter 10, State, Local, or Privately Funded Project Delivery](#)**, and should include the following statement in the Essential Fish Habitat section of the Environmental Document, when an EFH Assessment is required:

*An EFH Assessment has been prepared and technical assistance with the National Marine Fisheries Service (NMFS) has occurred in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA).*

The **EFH Assessment** section of the **NRE** and associated consultation or technical assistance correspondence should be summarized in the Environmental Document and the final **NRE** (with any addenda) and should be retained in the project file. See [Part 2, Chapter 16, Protected Species and Habitat](#) for additional guidance on preparing the **NRE**.

When NMFS provides Conservation Recommendations these, as well as FDOT's responses, are included in the Appendix of the Type 2 CE, EA or EIS and made an addendum to the **EFH Assessment** section of the **NRE**.

### **17.2.5 Commitments**

Any Conservation Recommendations considered for inclusion as commitments in the Environmental Document must be coordinated with the appropriate FDOT offices to ensure each commitment is feasible. The District should consult with District management prior to making Conservation Recommendations a commitment. Commitments related to EFH made by FDOT over the course of project development should be documented according to [Procedure No. 650-000-003, Project Commitment Tracking](#) (see [Part 2, Chapter 22, Commitments](#)). These commitments should also be included in the Commitments section of the Environmental Document.

### **17.2.6 Re-evaluation**

The following information must be documented in a Re-evaluation when applicable per [Part 1, Chapter 13, Re-evaluations](#):

1. Changes in impacts to EFH;
2. Changes in mitigation strategies;
3. Changes in EFH designation; and
4. Results of surveys, continued coordination, or other commitments which must be met prior to advancing the project to the next phase.

### **17.2.7 Emergency Consultation**

Consultation is required for emergency federal actions that may adversely affect EFH. These actions may include hazardous material clean-up, response to natural disasters, or actions to protect public safety. FDOT should contact NMFS early in emergency response planning, however consultation may occur after-the-fact if not practicable before the emergency action. **NOAA's NMFS Emergency EFH/ESA section 7 Consultation Procedures for FDOT Projects** is provided in [Figure 17-9](#).

## 17.3 REFERENCES

Essential Fish Habitat Findings. July 19, 2000 letter to George Hadley of FHWA and Joshua Boan of FDOT from NMFS' Rickey Ruebsamen.

[https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/efh-finding-among-nmfs-fhwa-fdot-2000-0719.pdf?sfvrsn=cb9f6689\\_0](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/efh-finding-among-nmfs-fhwa-fdot-2000-0719.pdf?sfvrsn=cb9f6689_0)

First Renewal of the Memorandum of Understanding Between FHWA and FDOT Concerning the State of Florida's Participation in the Surface Transportation Project Delivery Program Pursuant to 23 U.S.C. § 327, May 26, 2022.

[https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/nepa\\_assign/fdot-327-first-renewal-mou-for-comment.pdf?sfvrsn=202c70b4\\_2](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/nepa_assign/fdot-327-first-renewal-mou-for-comment.pdf?sfvrsn=202c70b4_2)

FDOT, Natural Resources Evaluation Outline and Guidance.

<https://www.fdot.gov/environment/protected-species-and-habitat>

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA)

<https://media.fisheries.noaa.gov/dam-migration/msa-amended-2007.pdf>

NMFS. September 2003. EFH: New Marine Fish Habitat Conservation Mandate for Federal Agencies. NMFS Habitat Conservation Division, Southeast Regional Office. St. Petersburg, FL

NMFS. February 2004. Preparing Essential Fish Habitat Assessments: A Guide for Federal Action Agencies. V1

NMFS. April 2004. Essential Fish Habitat Consultation Guidance. V1.1 NMFS Office of Habitat Conservation, Silver Spring, MD.

<https://repository.library.noaa.gov/view/noaa/4187>

NMFS web site: [http://sero.nmfs.noaa.gov/habitat\\_conservation/index.html](http://sero.nmfs.noaa.gov/habitat_conservation/index.html)

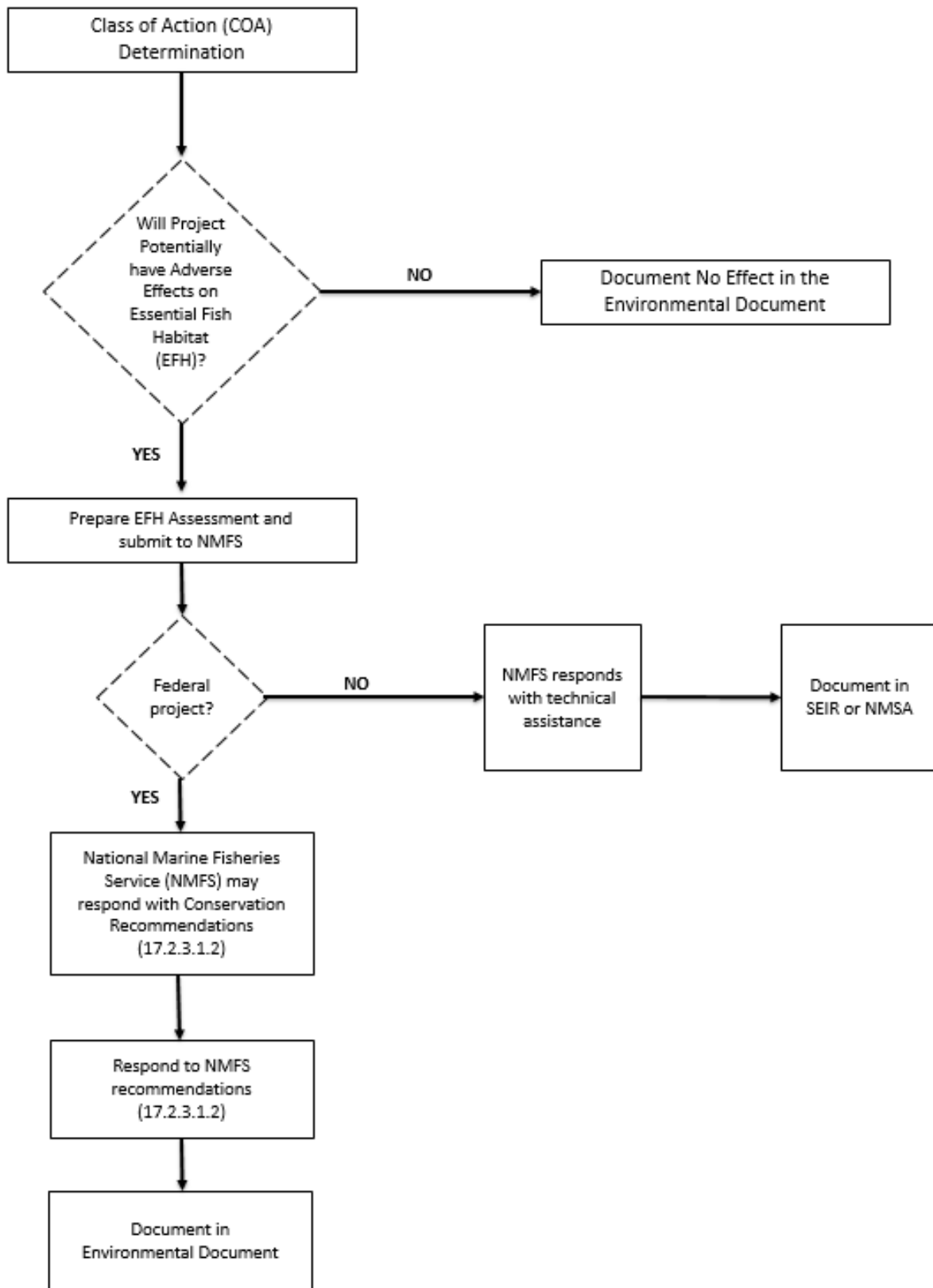
Title 50 CFR §§ 600.805 - 600.930. <https://ecfr.io/Title-50/pt50.12.600>

## 17.4 FORMS

[Technical Report Cover Page, Form No. 650-050-38](#)

## 17.5 HISTORY

8/19/2004, 11/26/2007, 8/15/2016, 6/14/2017: NEPA Assignment and re-numbered from Part 2, Chapter 11, 1/14/2019, 7/1/2020



**Figure 17-1 Essential Fish Habitat Process**

***Gulf of Mexico Fishery Management Council***

2203 N. Lois Avenue, Suite 1100  
Tampa, FL 33607  
(813) 348-1630  
(888) 833-1844 – Toll Free  
Fax (813) 348-1711 <http://www.gulfcouncil.org>

***South Atlantic Fishery Management Council***

4055 Faber Place Drive, Suite 201  
North Charleston, SC 29405  
(843) 571-4366  
(866) SAFMC-10 – Toll Free  
Fax. (843) 769-4520  
<http://www.safmc.net>

***NMFS Southeast Region***

NOAA Fisheries Service Southeast Regional Office (SERO)  
263 13<sup>th</sup> Avenue South  
St. Petersburg, FL 33701  
(727) 824-5317  
<http://sero.nmfs.noaa.gov/>

National Marine Fisheries Service (NMFS)  
Southeast Fisheries Science Center (SEFSC)  
75 Virginia Beach Drive  
Miami, FL 33149  
(305) 361-4200

<https://www.sefsc.noaa.gov/>

**Figure 17-2 Fishery Management Councils and NMFS Contact Information**

**EFH information links:**

**General:**

[http://sero.nmfs.noaa.gov/habitat\\_conservation/index.html](http://sero.nmfs.noaa.gov/habitat_conservation/index.html)

NOAA Office of Habitat Conservation

<http://www.habitat.noaa.gov/>

Within this site there are the following helpful links:

<http://www.habitat.noaa.gov/protection/efh/habitatmapper.html>

<https://www.fisheries.noaa.gov/national/habitat-conservation/essential-fish-habitat>

**NOAA Fisheries Southeast Regional Office Habitat Conservation Division**

[http://sero.nmfs.noaa.gov/habitat\\_conservation/index.html](http://sero.nmfs.noaa.gov/habitat_conservation/index.html)

**Gulf of Mexico:**

Gulf States Marine Fishery Commission EFH site

<http://www.gsmfc.org/index.php>

EFH Research and EFH maps

<https://www.fisheries.noaa.gov/resource/map/essential-fish-habitat-mapper>

**South Atlantic:**

<http://safmc.net/>

***Magnuson-Stevens Fishery Conservation and Management Act. Public Law 94-265 as amended through October 11, 1996***

<https://www.fisheries.noaa.gov/resource/document/magnuson-stevens-fishery-conservation-and-management-act>

**Figure 17-3 Information Sources and Websites**

### **Scientific Literature Review:**

Dobrzynski, Tanya and Korie Johnson. May 2001. Regional Council Approaches to the Identification and Protection of Habitat Areas of Particular Concern. NOAA/NMFS Office of Habitat Conservation. Silver Spring, MD

Gulf of Mexico Fishery Management Council. October 1998. Generic Amendment for addressing EFH requirements in the following fishery management plans of the Gulf of Mexico. Tampa, FL

Gulf of Mexico Fishery Management Council. 1998. Public hearing draft generic amendment for addressing EFH requirements in the following fishery management plans of the Gulf of Mexico: Shrimp Fishery of the Gulf of Mexico, United States Waters; Red Drum Fishery of the Gulf of Mexico; Reef Fish Fishery of the Gulf of Mexico; Coastal Migratory Pelagic Resources (Mackerels) in the Gulf of Mexico and South Atlantic; Stone Crab Fishery of the Gulf of Mexico; Spiny Lobster in the Gulf of Mexico and South Atlantic, Coral and Coral Reef of the Gulf of Mexico (includes environmental assessment). Gulf of Mexico Fishery Management Council. Tampa, FL

\* Stone Crab is no longer federally managed. Management was transferred to the State of Florida.

National Marine Fisheries Service. 1998. Highly migratory species essential fish habitat pre-draft materials for the highly migratory species fishery management plan amendment. National Marine Fisheries Service. Silver Spring, MD

National Marine Fisheries Service. February 2002. Essential Fish Habitat: A Marine Fish Habitat Conservation mandate for Federal Agencies. Gulf of Mexico Region. NMFS Habitat Conservation Division, Southeast Regional Office. St. Petersburg, FL

National Marine Fisheries Service. September 2003. Essential Fish Habitat: New Marine Fish Habitat Conservation Mandate for Federal Agencies. NMFS Habitat Conservation Division, Southeast Regional Office. St. Petersburg, FL

South Atlantic Fishery Management Council. 1998. Final habitat plan for the South Atlantic region: Essential Fish habitat requirements for Fishery Management Plans of the South Atlantic fishery Management Council: The Shrimp Fishery Management Plan, The Red Drum Fishery Management Plan, The Snapper Grouper Fishery Management Plan, The Coastal Migratory Pelagics Fishery Management Plan, The Golden Crab Fishery Management Plan, The Spiny Lobster Fishery Management Plan, The Coral, Coral Reefs, and Live/Hard Bottom Habitat Fishery Management Plan, The Calico Scallop Fishery Management Plan. South Atlantic Fishery Management Council. Charleston, SC

South Atlantic Fishery Management Council. April 2002. Final Essential Habitat Plan. Charleston, SC

### **Figure 17-3 Information Sources and Websites (Page 2 of 2)**



***FDOT Districts 1, 2 (Gulf Coast only), 3, and 7***

David Rydene  
National Marine Fisheries Service  
Habitat Conservation Division  
263 13<sup>th</sup> Avenue South  
St. Petersburg, Florida 33701  
(813) 727-5379  
David.Rydene@noaa.gov

***FDOT Districts 2 (Atlantic Coast only), 4, 5 and 6***

Jen Schull  
National Marine Fisheries Service  
Habitat Conservation Division  
400 N Congress Avenue, Suite 110  
West Palm Beach, Florida 33401  
(561) 249-1652  
Jennifer.Schull@noaa.gov

Turnpike projects should default to project's geographic district location.

**Figure 17-4 Habitat Conservation Division Contacts by FDOT District**

(Date)

Mr./Ms. \_\_\_\_\_

Title

National Marine Fisheries Service

Habitat Conservation Division

Address

Dear Mr./Ms. \_\_\_\_\_:

**SUBJECT: Request for EFH Assessment Assistance**

Project title and limits

Financial Management Number: xxxxxx xx xx

Federal Project ID: xx-xxx-xxxx-(x)

County: \_\_\_\_\_

The Florida Department of Transportation (FDOT) is proposing...[Project need and description should be added.]

Attached to this correspondence is an abbreviated list of federally managed species and their EFH, as identified by FDOT as potentially being adversely affected by the proposed project. This list was developed from the \_\_\_\_\_ Fisheries Management Council and NMFS Federally Managed Species Lists, Fishery Management Plans, and associated habitat maps.

The FDOT requests that you confirm which species should be included in an EFH Assessment for this project and add information on any project specific issues that may need to be addressed in the assessment. Please place a "check mark" next to the appropriate species on the attached list(s), and return to the FDOT so that a complete and accurate EFH Assessment can be prepared. We would appreciate the courtesy of a reply within 10 days.

If you have any questions or concerns, please feel free to contact me at \_\_\_\_\_. Thank you in advance for your assistance in this matter.

Sincerely,

Name

Title

Attachments: Location Map

Abbreviated species and habitat list

Cc:

Preparer if different from the signee

Project File

**Figure 17-5 Sample Letter Request for Confirmation of Abbreviated List**

Essential Fish Habitat Assessment

Florida Department of Transportation

District X

Project Title

Limits of Project

County, Florida

Financial Management Number: XXXXX-X

ETDM Number: XXXXXX

Date

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by the Florida Department of Transportation (FDOT) pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding dated May 26, 2022 and executed by the Federal Highway Administration and FDOT.

**Figure 17-6 Sample Technical Memo Essential Fish Habitat Assessment Cover Sheet**

(Date)

Mr./Ms. \_\_\_\_\_  
Title  
National Marine Fisheries Service  
Address

Dear Mr./Ms. \_\_\_\_\_:

**SUBJECT: Interim Response to Conservation Recommendations**  
Project title and limits  
Financial Management Number: xxxxxx xx xx  
Federal Project ID: xx-xxx-xxxx-(x)  
County: \_\_\_\_\_

The Florida Department of Transportation (FDOT) is in receipt of the NMFS' Essential Fish Habitat Conservation Recommendations received from (commenter) in a letter dated (date). Please accept this as an interim response within the 30 day time period requested by NMFS for Essential Fish Habitat consultation. At this time FDOT is considering your Conservation Recommendations for the XXX project. FDOT will respond in detail within the final environmental document (CE, EA, EIS), or via a letter to NMFS, at least 10 days before the final agency action.

Sincerely,

Name  
Title

Cc:

Preparer if different from signee  
Project File

**Figure 17-7 Sample Interim Response Letter**

(Date)

Mr./Ms. \_\_\_\_\_  
Title  
National Marine Fisheries Service  
Address

Dear Mr./Ms. \_\_\_\_\_:

**SUBJECT: Response to Conservation Recommendations**  
Project title and limits  
Financial Management Number: xxxxxx xx xx  
Federal Project ID: xx-xxx-xxxx-(x)  
County: \_\_\_\_\_

The Florida Department of Transportation is in receipt of the NMFS' Essential Fish Habitat Conservation Recommendations received from (commenter) in a letter dated (date). Please accept this letter as a response to NMFS Essential Fish Habitat consultation Conservation Recommendations.

*[Add project specific responses including a description of measures proposed by FDOT for avoiding, mitigating or offsetting the impact of the proposed activity on EFH.]*

Please note the environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by the Florida Department of Transportation (FDOT) pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding dated May 26, 2022 and executed by the Federal Highway Administration and FDOT.

If you have any questions please feel free to contact me at\_\_\_\_\_.

Sincerely,

Name  
Title

Cc:

Preparer if different from signee  
Project File

**Figure 17-8 Sample Response to Conservation Recommendations Letter**

**NOAA's National Marine Fisheries Service (NMFS)  
Emergency EFH/ESA section 7 Consultation Procedures for FDOT Projects**

**Criteria:** A bridge or road that has been washed-out and needs to be fixed/built immediately to prevent a life-threatening condition and loss of property.

1. Contact the Gulf or Atlantic NMFS Environmental Technical Advisory Team (ETAT) member representative immediately to get approval. NMFS staff will contact their immediate supervisor in NMFS Habitat Conservation Division (HCD) for approval of an emergency EFH consultation; and either the Protected Species Team Leader (Bob Hoffman) or PRD-Assistant Regional Administrator (David Bernhart) for an emergency section 7 consultation approval.

**Atlantic Coast<sup>1</sup>**  
(District 2, 5, 4, & 6)

Jen Schull  
Habitat Conservation Division  
National Marine Fisheries Service  
400 North Congress Avenue,  
Suite 110  
West Palm Beach, FL 33401  
561-249-1652 (direct)  
561-429-4168 (fax)  
[Jennifer.Schull@noaa.gov](mailto:Jennifer.Schull@noaa.gov)

**Gulf Coast**  
(District 1, 2, 3, & 7)

David Rydene, Ph.D.,  
Habitat Conservation Division  
National Marine Fisheries Service  
263 13<sup>th</sup> Ave South  
St. Petersburg, FL 33701  
727-824-5317 (main)  
727-824-5300 (fax)  
727-824-5379 (direct)  
813-992-5730 (cell)  
[David.Rydene@noaa.gov](mailto:David.Rydene@noaa.gov)

*Please note: An approval for an emergency EFH consultation does not constitute an approval for emergency section 7 consultation on ESA-listed species and vice versa.*

2. If approved, immediately provide the following information via fax or email:
  - Name and phone number of FDOT's Contact person/project manager
  - Complete description of the work
  - Location of the project
  - Pre-construction pictures
  - Date
  - Time

**Figure 17-9 Emergency Consultation Procedures**

3. If a “take” occurs, immediately contact NMFS Law Enforcement (LE) Hotline: 1-800-853-1964 and provide the following additional information:

- Name and phone number of the contact person
- Date
- Time
- Location
- Brief description of the location
- Brief description of the species
- Water temperature
- Pictures of the species and location

The above information could be documented on NMFS LE Chain of Custody (COC) form in the “Description of Evidence/Property” Box or noted as an attachment to the COC (see attachment).

*Note: If a LE Special agent cannot arrive at the scene immediately, take lots of pictures of the species, place the species and/or plug sample of the species in a freezer unless told otherwise by LE dispatcher.*

4. After the project is finished, a complete, detailed report must be provided within 30 days to NMFS. The report should include the following:

- Detailed construction activities
- List of BMPs implemented
- List of protective and conservation measures for ESA-listed species implemented
- Pre- and post-construction pictures
- Pre-and post-construction conditions
- Final construction design
- Effects analysis of the construction activities to the habitat and listed species
- An account of impacted EFH, and ESA-listed species
- Post-construction monitoring plan that includes habitat, fish, and water quality surveys/report.
- Mitigation plan to offset unavoidable impacts

<b>CHAIN OF CUSTODY RECORD</b> 3/8/05				CASE CONTROL NO.
DATE/TIME OF SEIZURE:	DUTY STATION:		EVIDENCE/PROPERTY SEIZED BY:	
SOURCE OF EVIDENCE/PROPERTY (Person and/or Location) ( ) TAKEN FROM; ( ) RECEIVED FROM; ( ) FOUND AT:		DEFENDANT/COMPANY NAME:		
REMARKS:				
ITEM NOs:	DESCRIPTION OF EVIDENCE/PROPERTY (include Seizure Tag Numbers and any serial numbers):			
ITEM NOs:	FROM: (PRINT NAME, AGENCY)	RELEASE SIGNATURE:	RELEASE DATE:	DELIVERED VIA: ( ) U.S.MAIL ( ) IN PERSON ( ) OTHER:
	TO: (PRINT NAME, AGENCY)	GAINING SIGNATURE:	DATE :	
ITEM NOs:	FROM: (PRINT NAME, AGENCY)	RELEASE SIGNATURE:	RELEASE DATE:	DELIVERED VIA: ( ) U.S.MAIL ( ) IN PERSON ( ) OTHER:
	TO: (PRINT NAME, AGENCY)	GAINING SIGNATURE:	DATE:	

**Figure 17-9 Emergency Consultation Procedures (Page 3 of 3)**