



US Army Corps
of Engineers®

12504-SPD
REGULATORY PROGRAM
ESSENTIAL FISH HABITAT (EFH)
PROCEDURES



South Pacific
Division

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1.0 Purpose. The purpose of this document is to outline the framework for conducting Essential Fish Habitat (EFH) consultation with the National Oceanic Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS).

2.0 Applicability. This process applies to all proposed Regulatory actions by South Pacific Division (SPD) subordinate Districts that may adversely affect EFH, as identified under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), and for which there is no applicable NMFS-issued General Concurrence or Programmatic Consultation.

3.0 References.

MSFCMA, 16 U.S.C. §§ 1801 et seq.

50 C.F.R. Subpart K – EFH Coordination, Consultation and Recommendations (§§ 600.905-930).

[12500-SPD, Regulatory Program Signature Authority.](#)

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4.0 Related Procedures.

- 4.1 [U.S. Army Corps of Engineers \(ACOE\) San Francisco, Sacramento and Los Angeles Districts - Programmatic EFH Consultation for activities covered under NLAA ESA Programmatic \(pdf\)](#)
- 4.2 [U.S. Army Corps of Engineers \(ACOE\) Los Angeles District - Programmatic Consultation \(pdf\)](#)
- 4.3 [U.S. Army Corps of Engineers \(ACOE\) Los Angeles District - General Concurrence \(pdf\)](#)
- 4.4 [U.S. Army Corps of Engineers \(ACOE\) San Francisco District – EFH Consultation For Construction and Maintenance of Overwater Structures \(pdf\)](#)
- 4.5 [U.S. Army Corps of Engineers \(ACOE\) San Francisco District - EFH Consultation for Operations & Maintenance Dredging in the San Francisco Area & associated dredged material placement \(In cooperation with USEPA Region IX\) \(pdf\)](#)
- 4.6 [U.S. Army Corps of Engineers \(ACOE\) San Francisco District - 2011 Long Term Management Strategy Final Agreement \(pdf\)](#)

5.0 Definitions.

Adverse effect - any impact which reduces the quality and/or quantity of essential fish habitat. 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, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions. (50 C.F.R. § 600.810)

Essential fish habitat (EFH) - those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity (Section 3(10) of the MSFCMA, 16 U.S.C. § 1802(10)). For the purpose of interpreting the definition of essential fish habitat: “Waters” include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; “substrate” includes sediment, hard bottom, structures underlying the waters, and associated biological communities; “necessary” means the habitat required to support a sustainable fishery and the managed species’ contribution to a healthy ecosystem; and “spawning, breeding, feeding, or growth to maturity” covers a species’ full life cycle. EFH is described by the Councils in amendments to Fishery Management Plans, and is approved by the Secretary of Commerce acting through NMFS. (50 C.F.R. § 600.10)

EFH Conservation Recommendation - a recommendation provided by NMFS to a Federal or state agency pursuant to Section 305(b)(4)(A) of the MSFCMA, 16 U.S.C. § 1855(b)(4)(A) regarding

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measures that can be taken by that agency to conserve EFH. EFH Conservation Recommendations may be provided as part of an EFH consultation with a Federal agency, or may be provided independently by NMFS to any Federal or state agency whose actions would adversely affect EFH.

Federal action - any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by a Federal agency. (50 C.F.R. § 600.910; See also Section 305(b)(2) of the MSFCMA, 16 U.S.C. § 1855(b)(2))

Finding - a determination by NMFS that an existing or modified consultation/coordination process satisfies the Federal agency consultation requirements of Section 305 of the MSFCMA, 16 U.S.C. § 1855.

See [Glossary](#) for further QMS definitions and acronyms.

6.0 Responsibilities.

District Regulatory Program personnel are responsible for following the process outlined in Paragraph 7 of this document.

7.0 Procedures.

Section 305(b)(2) of the MSFCMA, 16 U.S.C. § 1855(b)(2), requires each Federal agency to consult with the Secretary of Commerce with respect to any action authorized, funded, or undertaken or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any EFH identified under the Act. Generally, EFH consultation consists of a Federal agency notifying NMFS regarding an action that may adversely affect EFH (50 C.F.R. § 600.920(a)(3)) and providing NMFS with an EFH Assessment [50 C.F.R. § 600.920(e)], NMFS providing EFH Conservation Recommendations to avoid and/or minimize adverse effects to EFH (Section 305(b)(4)(A) of the MSFCMA, 16 U.S.C. § 1855(b)(4)(A)), and the Federal agency responding to NMFS' EFH Conservation Recommendations (50 C.F.R. § 600.920(k)(1)).

7.1 EFH Assessment

7.1.1 An EFH Assessment provides an analysis of the effects of the action on EFH, which is prepared by the District. The level of detail in an EFH Assessment should be commensurate with the complexity and magnitude of the potential adverse effects of the action. Mandatory contents are: a description of the proposed action; an analysis of the potential adverse effects of that action on EFH and the managed species; the Federal action agency's conclusions regarding the effects of the action on EFH; and proposed mitigation, if applicable. If appropriate, the assessment should also include: the results of on-site inspections; the views of recognized experts on affected habitat or fish species; a review of pertinent literature; an alternatives analysis; and any other relevant information. (50 C.F.R. § 600.920 (e)).

7.1.2 The District shall complete the EFH Assessment worksheet provided in Attachment 1. If the District determines that the proposed action will not cause substantial adverse effects on EFH, this worksheet can be used as an EFH Assessment. If the action may cause substantial adverse effects on

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EFH, then a more thorough discussion of the action and its impacts in a separate EFH Assessment will need to be prepared by the District. The completed worksheet should be forwarded to the NMFS for review.

7.1.3 When preparing a more detailed EFH Assessment, the District may incorporate information by reference to another EFH Assessment prepared for a similar action, supplemented with any relevant new project specific information, provided that the proposed action involves similar impacts to EFH in the same geographic area or a similar ecological setting, and provided that a copy of the prior EFH Assessment is attached to facilitate review by NMFS. A detailed EFH Assessment may also incorporate or append other relevant assessment documents.

7.2 Notification

7.2.1 In instances where the District has preliminarily determined that the action will not have a substantial adverse effect on EFH, notification for the purpose of EFH consultation can be accomplished by including in the District's Public Notice, Letter of Permission Notice to the Resource Agencies, pre-construction notice, Section 7 ESA consultation letter, or by email transmission to the appropriate NMFS office, the following statement, "This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act," and attaching the completed EFH Assessment worksheet.

7.2.2 In instances where the District has preliminarily determined that the action will have a substantial adverse effect on EFH, the District will initiate consultation by notifying NMFS by letter and attaching the completed EFH Assessment worksheet and a detailed EFH Assessment that expands upon the analysis revealed in the worksheet.

7.3 District Response to NMFS' EFH Conservation Recommendations

7.3.1 If no EFH comments are received, or a "no objection" letter is received from NMFS during the comment period, EFH consultation is concluded.

7.3.2 Under Section 305(b)(4)(B) of the MSFCMA, 16 U.S.C. § 1855(b)(4)(B), the District must provide a detailed response in writing to NMFS within 30 days after receiving EFH Conservation Recommendations. Such a response must be provided at least 10 days prior to final approval of the action if the response is inconsistent with any of NMFS' EFH Conservation Recommendations, unless the District and NMFS have agreed to use alternative time frames for the District's response. The District's detailed response must include a description of measures proposed for avoiding, mitigating, or offsetting the impact of the activity on EFH, as required by Section 305(b)(4)(B) of the MSFCMA, 16 U.S.C. § 1855(b)(4)(B) and 50 C.F.R. § 600.920.

- If the District is not expected to render a permit decision within 30 days of receiving the EFH Conservation Recommendations, the District may provide NMFS an interim written response within 30 days. This interim response letter should indicate that the District has received NMFS' EFH Conservation Recommendations, will consider them fully, has not yet made a decision on the application, but will provide a final response as promptly as possible. Because of the time required to

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fully consider the merits of permit issuance, interim responses may be sent immediately after receiving EFH comments and/or recommendations.

- If an interim response is sent to NMFS, the District must then provide a detailed response at least 10 days prior to rendering a permit decision.

7.3.3 In the case of a District response that is inconsistent with NMFS’ Conservation Recommendations, the District must explain its reasons for not following the recommendations, including the scientific justification for any disagreements with NMFS over the anticipated effects of the action or the measures needed to avoid, minimize, mitigate, or offset such effects.

7.3.4 To promote efficiency, a District may respond to NMFS EFH Conservation Recommendations in a single letter that discusses numerous projects. For example, a District may wish to send NMFS one response monthly that covers all EFH Conservation Recommendations provided during the preceding 30 days.

7.4 District Decision Inconsistent with NMFS’ EFH Conservation Recommendations

If a District decision is inconsistent with NMFS’ EFH Conservation Recommendations, NOAA Assistant Administrator for Fisheries may request a meeting with HQUSACE to discuss the proposed action and opportunities for resolving any disagreements. To the greatest extent possible, District Commanders should endeavor to resolve any disagreements with the NMFS’ Regional Administrator.

8.0 Records and Measurements.

8.1 Records

All documents listed in Paragraph 7 are to be filed in the corresponding project files in accordance with [ES-QMS140, “Records Management.”](#)

Type	Description	Responsible Office	Location	Record Media	Retention	Disposition
R	Permits, authorization letters, consultation letters, public notices, EFH worksheets, supporting documents	Regulatory Divisions within SPD Districts	Project file folders in filing cabinets Regulatory Divisions within SPD Districts	P	7 years	Send to records holding

8.2 Measurement

The SPD Regulatory Program Manager and District Regulatory management personnel at SPK, SPL, and SPN will periodically inspect project files to ensure compliance with this guidance by all Regulatory Program personnel.

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9.0 Attachments.

[9.1 Attachment 1 - NOAA National Marine Fisheries Service, Southwest Regional Office EFH Assessment Worksheet for Corps of Engineers South Pacific Division](#)

10.0 Flow Chart.

None.

ATTACHMENT 1

NOAA NATIONAL MARINE FISHERIES SERVICE SOUTHWEST REGIONAL OFFICE EFH ASSESSMENT WORKSHEET FOR CORPS OF ENGINEERS SOUTH PACIFIC DIVISION

Introduction:

The Magnuson-Stevens Fishery Conservation and Management Act mandates that federal agencies conduct an EFH consultation with NOAA's National Marine Fisheries Service (NMFS) regarding any of their actions authorized, funded, or undertaken that may adversely effect essential fish habitat (EFH). An adverse effect means any impact that reduces the 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 to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

This worksheet has been designed to assist the U.S. Army Corps of Engineers (Corps) in determining whether an EFH consultation is necessary, and developing the needed information should a consultation be required. This worksheet will lead you through a series of questions that will provide an initial screening to determine if an EFH consultation is necessary, and help you assemble the needed information for determining the extent of the consultation required. The information provided in this worksheet may also be used to develop the required EFH Assessment.

Consultation through NMFS regarding other NOAA-trust resources (e.g. recreational fish species and their habitats, important estuarine and/or marine ecosystem components) may also be necessary if a proposed action results in adverse impacts. In addition, consultation with NMFS may be required if a proposed action impacts marine mammals or threatened and endangered species for which we are responsible. Staff from our Southwest Regional Office, Protected Resources Division should be contacted regarding potential impacts to marine mammals or threatened and endangered species.

Instructions for Use:

An EFH Assessment must be submitted by the Corps to NMFS as part of the EFH consultation. An EFH Assessment must include the following information:

- 1) A description of the proposed action.
- 2) An analysis of the potential adverse effects of the action on EFH, and the managed species.
- 3) The Corps' conclusions regarding the effects of the action on EFH.
- 4) Proposed mitigation if applicable.

In some cases, this worksheet can be used as an EFH Assessment. If the Corps determines that the action will not cause substantial impacts to EFH, then this worksheet may suffice. However, there

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may be some instances in which impacts are less than substantial, but still require additional analysis. In those instances, NMFS will request in writing the specific information necessary to complete the consultation. If the action may cause substantial adverse effects on EFH, then a more thorough discussion of the action and its impacts in a separate EFH Assessment will be necessary. The completed worksheet should be forwarded to the NMFS Southwest Regional Office, Habitat Conservation Division (HCD) for review.

The information contained on the HCD website (http://swr.nmfs.noaa.gov/hcd/HCD_webContent/EFH/index_EFH.htm) will assist you in completing this worksheet.

EFH ASSESSMENT WORKSHEET FOR CORPS OF ENGINEERS

PROJECT NAME: _____ DATE: _____

PROJECT/FILE NO.: _____

LOCATION: _____

PREPARER: _____

CONTACT INFO: _____

Step 1. Use the Habitat Conservation Division EFH webpage to evaluate whether the proposed action is in or adjacent to EFH for those species that may occur in the vicinity of the proposed action.

1. INITIAL CONSIDERATIONS		
EFH Designations	Yes	No
Is the action located in or adjacent to Coastal Pelagic Species EFH?		
Is the action located in or adjacent to Pacific Coast Groundfish EFH?		
Is the action located in or adjacent to Pacific Coast Salmon EFH?		
Is the action located in or adjacent to Highly Migratory Species EFH?		
If you answered no to all questions above, then EFH consultation is not required - go to Step 5. If you answered yes to any of the above questions proceed to Step 2 and complete remainder of the worksheet.		

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Step 2. In order to assess impacts, it is critical to know the habitat characteristics of the site before the activity is undertaken. Use existing information, to the extent possible, in answering these questions. Please note that, there may be circumstances in which new information must be collected to appropriately characterize the site and assess impacts.

2. SITE CHARACTERISTICS	
Site Characteristics	Description
Is the site intertidal, subtidal, or water column?	
What are the sediment characteristics?	
Is Habitat Area of Particular Concern (HAPC) designated at or near the site? If so what type, size, characteristics?	
Is there submerged aquatic vegetation (SAV) at or adjacent to project site? If so describe the spatial extent.	
What is typical salinity and temperature regime/range?	
What is the normal frequency of site disturbance, both natural and man-made?	
What is the area of proposed impact (work footprint & far afield)?	

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Step 3. This section is used to describe the anticipated impacts from the proposed action on the physical/chemical/biological environment at the project site and areas adjacent to the site that may be affected.

3. DESCRIPTION OF IMPACTS			
Impacts	Y	N	Description
Nature and duration of activity(s)			
Will benthic community be disturbed?			
Will SAV be impacted?			
Will sediments be altered and/or sedimentation rates change?			
Will turbidity increase?			
Will water depth change?			
Will contaminants be released into sediments or water column?			
Will tidal flow, currents or wave patterns be altered?			
Will ambient salinity or temperature regime change?			
Will water quality be altered?			

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Will ambient noise levels be altered?			
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Step 4. This section is used to evaluate the consequences of the proposed action on the functions and values of EFH as well as the vulnerability of the EFH species and their life stages. Assessment of EFH impacts should be based upon the site characteristics identified in Step 2 and the nature of the impacts described within Step 3. The [EFH](#) descriptions on our website should be used during this assessment to determine the ecological parameters/preferences associated with each species listed and the potential impact to those parameters.

4. EFH ASSESSMENT			
Functions and Values	Y	N	Describe habitat type, species and life stages to be adversely impacted
Will functions and values of EFH be impacted for:			
Spawning			
Nursery			
Forage			
Shelter			
Will impacts be temporary or permanent?			
Will minimization measures be used?			

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Will compensatory mitigation be used?			
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Step 5. This section provides the Corps' determination on the degree of impact to EFH from the proposed action. The EFH determination also dictates the type of EFH consultation that will be required with NMFS.

5. DETERMINATION OF IMPACT	
	Federal Agency's EFH Determination
Overall degree of adverse effects on EFH (not including compensatory mitigation) will be: (check the appropriate statement)	There is no adverse effect on EFH EFH Consultation is not required
	The adverse effect on EFH is not substantial. This is a request for an abbreviated EFH consultation. This worksheet is being submitted to NMFS to satisfy the EFH Assessment requirement.
	The adverse effect on EFH is substantial. This is a request for an expanded EFH consultation. A detailed written EFH assessment will be submitted to NMFS expanding upon the impacts revealed in this worksheet.

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