

# CHAPTER 11 ESSENTIAL FISH HABITAT (EFH)

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# 11. ESSENTIAL FISH HABITAT (EFH)

## 11-1 OVERVIEW

This chapter contains guidelines for interagency coordination with the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) also referred to as NOAA Fisheries, for Essential Fish Habitat (EFH) consultations. Amendments to the ***Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA)*** in 1996 set forth a new mandate for NMFS and regional Fishery Management Councils (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 the act, published in 1997 (***50 CFR Sections 600.805-600.930***) and finalized on January 17, 2002, specify that Fishery Management Plan (FMP) amendments be prepared to describe and identify Essential Fish Habitat. The rules also established procedures to promote the protection of EFH through interagency coordination. ***Section 305 (b)(2)*** of the ***MSFCMA*** states that Federal agencies are required to consult with NMFS regarding projects that fund, permit or carry out activities that may adversely affect EFH. Essential Fish Habitat consultations are only required for Federal or federally-funded projects as well as projects requiring a Federal action such as needing a Federal permit.

This chapter integrates the EFH process with the ***National Environmental Policy Act (NEPA)*** process within the FDOT PD&E phase of a project. NMFS has made a finding pursuant to ***50 CFR Section 600.920(e)***, that EFH consultation requirements can be incorporated into the existing PD&E process. This finding is stated in a ***November 19, 1999 letter to FHWA*** as well as a finding specific to Florida pursuant to ***50 CFR Section 600.920(c)*** in a ***July 19, 2000 letter to FHWA and FDOT***.

To satisfy the ***MSFCMA*** FDOT determines potential involvement with designated Essential Fish Habitat and associated Habitat Areas of Particular Concern (HAPC) for the project. Areas designated as EFH are defined as "...those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity" according to the ***MSFCMA***.

If EFH will be affected by the project an ***Essential Fish Habitat Assessment*** will be prepared by the District as a supplemental technical report and incorporated into the Categorical Exclusion (CE), Environmental Assessment (EA), Environmental Impact Statement (EIS), or State Environmental Impact Report (SEIR) if applicable.

In response to the ***EFH Assessment*** NMFS and the appropriate FMC may provide recommendations. These recommendations may be accepted by the FDOT and incorporated into the project documentation. A response to NMFS and FMC recommendations is required within 30 days of receiving NMFS recommendations. When an agreement has been reached, this information is incorporated in the CE, EA, SEIR or EIS. If unresolved issues exist, FDOT (in cooperation with the Federal lead

agency) must explain its reasons for not following the recommendations in a response to NMFS and in the appropriate environmental document.

## 11-2 PROCEDURE

### 11-2.1 Advance Notification

During the Planning Phase of the Efficient Transportation Decision Making (ETDM) process, the proposed project is entered into the Environmental Screening Tool (EST) Planning Screen by the ETDM Coordinator (See Chapter 4 of the ***ETDM Planning and Programming Manual***). The Purpose and Need for the project is identified, and logical termini are located on a GIS based map. The Advance Notification (AN) package is distributed electronically as part of the programming screening event on the EST (Part 1, Chapter 3 Advance Notification).

EFH information is included in the Essential Fish Habitat Potential section of the ***AN Fact Sheet*** and includes the results of GIS analysis for the Coastal and Marine issue using available GIS data and applicable maps. If the project went through a Planning Screen this section will also include a summary of agency comments, and if available, a list of permits that may be required and a list of technical studies needed. The AN should identify the proximity of the proposed action to marine fishery habitats and identify any potential impact to EFH including areas designated as HAPCs. Additional known information on EFH may be added to the "Other Project Documents" section of the ***AN Fact Sheet***. This may include information collected from Fishery Management Plans (FMPs) from regional Fishery Management Councils (FMC's) and NMFS and from literature review and contacts.

### 11-2.2 Determination of Involvement

FDOT will begin to determine the project's involvement with EFH from information included in the Final ***Programming Screen Summary Report***. A good starting point is to review Environmental Technical Advisory Team (ETAT) comments and degree of effect determinations for the "Coastal and Marine" and "Wetlands" issues in the Final ***Programming Screen Summary Report***. It may be helpful to also review ETAT comments on other issues such as "Wildlife and Habitat" and "Water Quality and Quantity". Comments provided by NMFS are especially important. The Final ***Programming Screen Summary Report*** "List of Technical Studies" section may state specifically that an ***EFH Assessment*** is needed. Other sections of the Final ***Programming Screen Summary Report***, such as the "General Project Commitments" and "Permits" sections, may be useful.

Information from FMPs, FMCs, NMFS and from literature review and contacts described in Section 11-2.2.1 and Figures 11.2 and 11.3 will also aid with this process. The NMFS may respond to the AN in the "AN Feedback Summary" section of the Final ***Programming Screen Summary Report*** that includes specifics on impacted species. It is **important** to contact the applicable agency to confirm their recommendations made during the EST screening events and to ensure that all issues are addressed.

### 11-2.2.1 Fishery Management Plans (FMPs)

Information on EFH within the project area can be gathered from regional Fishery Management Councils and NMFS. Two councils cover areas within the State of Florida; the Gulf of Mexico Fishery Management Council and the South Atlantic Fishery Management Council. See Figure 11.2 for contact information. Each council has lists of Managed Species and EFH identified in their jurisdictional area and specific Fishery Management Plans 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 11.2). Essential Fish Habitat information from these organizations is also available online (Figure 11.3)

Fishery Management Plans explain the physical, biological, and chemical characteristics of EFH and include information on species life history stages, maps with delineated boundaries 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.

Fishery Management Plans also provide information on Habitat Areas of Particular Concern (HAPCs), habitats or habitat associations which are rare, particularly susceptible to human-induced degradation, especially ecologically important, or located in an environmentally stressed area. The HAPCs are identified by the Fishery Management Councils and will be specifically discussed and addressed during the EFH consultation process (see Section 11.2.4.1). HAPC information is also available in individual FMPs.

### 11-2.2.2 Request for Abbreviated Managed Species List

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. Once the abbreviated list is compiled it is recommended that the District send a letter to NMFS, requesting confirmation of project specific identification of EFH. Requests should be sent to the appropriate Habitat Conservation Division Florida Office listed in Figure 11.4. An example request letter is shown in Figure 11.5. The confirmed abbreviated list can then be used to begin the **EFH Assessment** (Section 11-2.4.1.1). NMFS confirmation of the abbreviated list will help expedite the **EFH Assessment**.

The request of 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, use the abbreviated list compiled by the District to begin the **EFH Assessment**.

In some instances NMFS responds to the AN with adequate information about the species involved in the project. In this case the listed species in the AN Feedback Summary section of the Final **Programming Screen Summary Report** response can

be used to begin the **EFH Assessment** and an abbreviated list may not need to be requested.

### 11-2.3 Actions Taken after Determination of No Involvement

If FDOT determines that a proposed action will not adversely affect EFH, no consultation with NMFS is required.

If the District determines that a project will not affect Essential Fish Habitat then include the following standard statement in the final environmental document:

*This project is not located within, and/or will not adversely affect areas identified as Essential Fish Habitat; therefore, an Essential Fish Habitat consultation is not required.*

If NMFS receives information regarding a FDOT federally funded 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 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.

### 11-2.4 Actions Taken After Determination of Involvement

If the District determines that a project may adversely affect Essential Fish Habitat, then:

1. Prepare an **Essential Fish Habitat Assessment** as described in Section 11-2.4.1.
2. Notify NMFS with a letter requesting consultation and provide the **EFH Assessment**. The assessment may be a stand alone document or incorporated into the final document.
3. A response to NMFS Conservation Recommendations must be sent within the required timeline (Section 11-2.4.1.2).
4. Document the results in the final document.

#### 11-2.4.1 Essential Fish Habitat Consultations

The negotiated procedure for conducting EFH consultations is specified in the July 19, 2000, finding among NMFS, FHWA, and FDOT. It is recommended that the Districts consult the NMFS's document **Essential Fish Habitat Consultation**

**Guidance** for detailed information on consultations. In general, EFH consultation procedures must fulfill the following criteria:

1. The existing process must provide NMFS with timely notification of actions that may adversely affect EFH.
2. Notification must include an assessment of impacts of the proposed action as discussed in **50 CFR Section 600.920(e)**.
3. NMFS must have made a finding pursuant to **Section 600.920(e)(3)** that the existing process satisfied the requirements of **Section 305(b)(2)** of the **MSFCMA**.

Project specific consultations may be abbreviated or expanded depending on what degree the action may adversely impact EFH. This determination 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. Abbreviated consultations should be used when impacts are expected to be minor and **EFH Assessments** for such projects should contain only brief information on EFH, impacts and cumulative effects. Abbreviated consultation is initiated when NMFS receives the **EFH Assessment** and a written request for consultation.

Expanded consultations will be implemented when impacts result in substantial adverse effects. A detailed **EFH Assessment** should be prepared for projects that are expected to have substantial adverse effects. If the FDOT determines that an expanded consultation is not necessary, and NMFS does not concur, then NMFS can request expanded consultation with the FDOT in writing.

#### **11-2.4.1.1 Essential Fish Habitat Assessment**

An **Essential Fish Habitat Assessment** is a report of potential adverse effects and if necessary, measures to counter those effects. The District must prepare an **EFH Assessment** if the proposed project may adversely affect EFH. An **EFH Assessment** will need to be completed if there are potential adverse effects to EFH, regardless of environmental document classification. This includes all Programmatic CE's, Type 1 CE's, Type 2 CE's, EA's and EIS's. An **EFH Assessment** will also need to be completed for a SEIR if a Federal action is needed, such as a Federal permit.

**EFH Assessments** must contain:

1. A project need/description of the proposed action,
2. Identification of EFH, HAPC(s), and managed species that may be affected. An analysis of the effects, including indirect and cumulative effects, of the action on EFH, HAPC(s), the managed species, and associated species by life history stage,

3. Proposed measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH, and
4. FDOT's determination regarding the effects of the action on EFH

If FDOT is pursuing an expanded consultation, the assessment should also include the results of on-site inspections, the views of experts on the species affected or their habitat, literature review, an analysis of alternatives to the proposed action and other relevant information. More detail on suggested contents and examples of **EFH Assessments** are included in NMFS's document - **Preparing EFH Assessments: A Guide for Federal Action Agencies**.

Information for completion of the **EFH Assessment** should be gathered for species on the Abbreviated Managed Species List (Section 11-2.2.2.) using FMP's as explained in Section 11-2.2.1. General information is available from contacts on Figure 11.2. 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 action on EFH and FDOT's determination of effects should be clearly stated within the assessment. It is recommended that the **EFH Assessment** be concluded with avoidance and minimization measures, the following of best management practices, and mitigation strategies, if needed.

Completed **EFH Assessments** should be sent to the appropriate NMFS Habitat Conservation Division Florida Office (Figure 11.4) at least 60 days prior to a final decision on the action.

#### **11-2.4.1.2 Response to EFH Conservation Recommendations**

Once the NMFS receives the **EFH Assessment** they will prepare EFH conservation recommendations, as appropriate. Recommendations may include measures to avoid, minimize, mitigate, or offset adverse effects on EFH. This procedure must be in accordance with the following timelines as mandated by the **MSFCMA**. If NMFS has recommendations they are required to send them to FDOT and FHWA within 30 days of receiving the **EFH Assessment**. NMFS may be satisfied with the **EFH Assessment** and not provide any recommendations, however they will usually send a response letter. FDOT in return is required to respond to NMFS recommendations within 30 days. If the signed Finding of No Significant Impact (FONSI), Record of Decision (ROD), or other final action that includes DOT's response to recommendations cannot be completed in 30 days and/or DOT does not yet have a response to the recommendations then an interim response should be sent to NMFS before the specified deadline. A sample interim response letter is shown in Figure 11.6. Once an interim response is provided, a detailed written response should be available 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, mitigating or offsetting the impact of the proposed activity on EFH.

If the response is inconsistent with the NMFS EFH conservation recommendations, FDOT must explain its reasons for not following the

recommendations, including the scientific justification for disagreements with NMFS over the anticipated effects of the action or measures needed to avoid, minimize, mitigate or offset such effects. NMFS will endeavor to resolve issues at the regional level whenever possible. The NOAA Assistant Administrator for Fisheries can request a meeting with the appropriate FHWA headquarter official to discuss the proposed action and the opportunity to resolve disagreements per **50 CFR 600.920(k)(2)**.

### **11-2.5 Documentation**

The Class of Action Determination (Part 1, Chapter 2) was determined during the final stages of the Programming Screen. Upon completion of the Class of Action Determination and approval by FHWA (or other Lead Federal Agency), the document selected will be a Type 2 CE, an EA, or an EIS depending on the level and anticipated significance of the total project involvement.

When the Class of Action (COA) Determination (Part 1, Chapter 2) requires a Type 2 CE, EA, SEIR or DEIS the document will be prepared and processed as described in Part 1, Chapters 5, 6, 8, and 10 and should include the following standard statement:

*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] or [will not have] adverse effects to Essential Fish Habitat. A response to Conservation Recommendations has been sent to the National Marine Fisheries Service, thus concluding consultation.*

The **EFH Assessment** and associated consultation correspondence should be included as a technical report for CE's, EA/FONSI's and EIS's. The NMFS recommendations, as well as FDOT's response are to be included in the Appendix of the EA, EIS, and attached to the **EFH Assessment**.

### **11-2.6 Reevaluation**

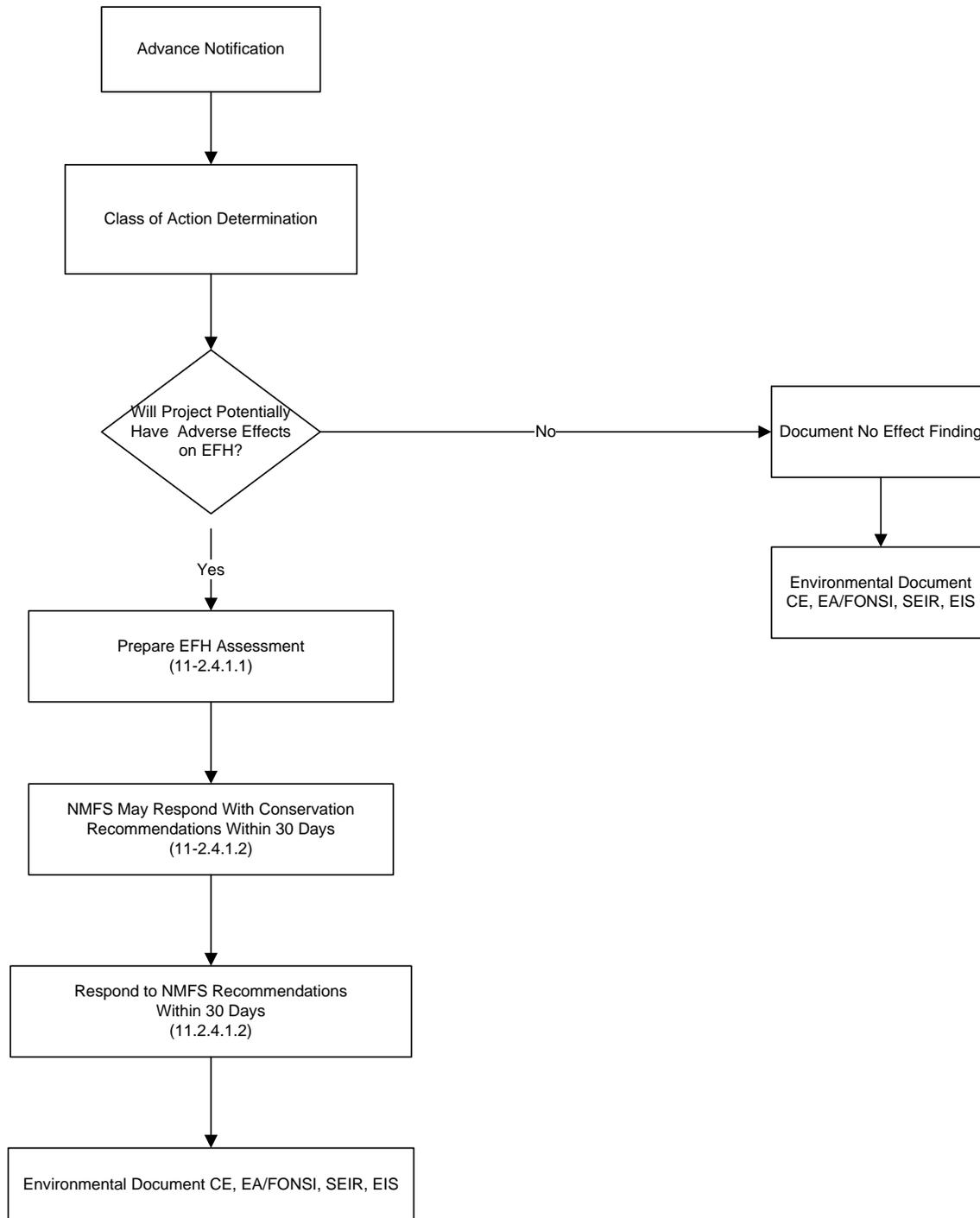
If EFH impacts or mitigation strategies change during phases following PD&E, then these changes will be documented in the appropriate reevaluation or document as per Part 1, Chapter 13. Commitments and coordination should be contained in the Mitigation Status and Commitment Compliance section of the Project Reevaluation document.

### **11-2.7 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 11.7.

### 11-3 REFERENCES

1. 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
2. 50 CFR Sections 600.805-600.930
3. Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA)
4. Essential Fish Habitat Findings. July 19, 2000 letter to George Hadley of FHWA and Joshua Boan of FDOT from NMFS' Rickey Ruebsamen
5. Essential Fish Habitat Findings. November 19, 1999 letter to Kenneth Wykle of FHWA from Dr. Andrew Kemmerer , Director of NMFS Office of Habitat Conservation
6. National Marine Fisheries Service. February 2004. Preparing Essential Fish Habitat Assessments: A Guide for Federal Action Agencies. V1.
7. National Marine Fisheries Service. April 2004. Essential Fish Habitat Consultation Guidance. NMFS Office of Habitat Conservation, Silver Spring, MD  
<http://www.nmfs.noaa.gov/habitat/habitatprotection/pdf/efh/EFH%20Consultation%20Guidance%20v1-1.pdf>
8. NMFS web site:  
<http://www.nmfs.noaa.gov/habitat/habitatprotection/efh/>



**FIGURE 11.1 Essential Fish Habitat Process**

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

2203 N. Lois Avenue, Suite 1100  
Tampa , FL 33607  
(813) 348-1630  
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  
Fax. (843) 769-4520  
<http://www.safmc.net>

***NMFS Southeast Region***

National Marine Fisheries Service (NMFS)  
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  
<http://www.sefsc.noaa.gov/>

**Contact for questions and general EFH guidance:**

National Marine Fisheries Service (NMFS)  
Southeast Fisheries Science Center (SEFSC)  
Panama City Laboratory  
3500 Delwood Beach Road  
Panama City, FL 32408  
Phone: (850)234-6541  
Fax: (850) 235-3559  
<http://www.sefscpanamalab.noaa.gov>

**FIGURE 11.2 Fishery Management Councils and NMFS Contact Information**

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

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 11.3 Information Sources and Websites (continued)**

**EFH information links:**

**General:**

NOAA EFH Information

<http://www.nmfs.noaa.gov/habitat/habitatprotection/efh/>

NOAA Office of Habitat Conservation

<http://www.nmfs.noaa.gov/habitat/index.html>

**Gulf of Mexico:**

Gulf States Marine Fishery Commission EFH site

<http://www.gsmfc.org/efh.html>

EFH Research and EFH maps

<http://galveston.ssp.nmfs.gov/research/fisheryecology/efh/index.html>

<http://www.nmfs.noaa.gov/habitat/habitatprotection/profile/gulfcouncil.htm>

**South Atlantic:**

<http://www.nmfs.noaa.gov/habitat/habitatprotection/profile/southatlanticcouncil.htm>

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

<http://www.nefsc.noaa.gov/magact/index.html> or <http://www.nmfs.noaa.gov/sfa/magact/>

**FIGURE 11.3 Information Sources and Websites**

***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  
(727) 824-5317

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

Brandon Howard  
National Marine Fisheries Service  
Habitat Conservation Division  
400 N Congress Avenue, Suite 120  
West Palm Beach, Florida 33401  
(561) 616-8880 Extension 210

Turnpike projects should follow the geographic district that the project is located in.

**FIGURE 11.4 Habitat Conservation Division Contacts by FDOT District**

(Date)

Mr./Ms. \_\_\_\_\_  
Title  
Department of Commerce  
NMFS  
Address

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

**SUBJECT: Request for EFH Assessment Assistance**  
Project title and limits  
Financial Project ID: xxxxxx xx xx  
Federal Project ID: xx-xxx-xxxx-(x)  
County: \_\_\_\_\_

The Florida Department of Transportation is proposing...[Project need and description should be added and match the AN.]

Attached to this correspondence is an abbreviated list of federally managed species and their EFH, as determined by FDOT as potentially adversely affected by the proposed project. The 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 indicate 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.  
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 yours,

Name  
Title

Attachments: Location Map  
Abbreviated species and habitat list

Cc: FHWA, CEMO  
Preparer if different from the signee  
Project File

**FIGURE 11.5 Sample Letter Request for Abbreviated List**

(Date)

Mr./Ms. \_\_\_\_\_  
Title  
Department of Commerce  
NMFS  
Address

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

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

The Florida Department of Transportation is proposing... Project need and description should be added and match the AN.

The Florida Department of Transportation does not currently have a response to the NMFS Essential Fish Habitat Conservation Recommendations received from (commenter) in a letter dated (date). Please accept this letter as an interim response within the 30 day time period requested by NMFS for Essential Fish Habitat consultation. 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 yours,

Name  
Title

Cc: FHWA  
CEMO  
Preparer if different from signee  
Project File

**FIGURE 11.6 Sample Interim Response 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)

Brandon Howard  
Habitat Conservation Division  
National Marine Fisheries Service  
400 North Congress Avenue, Suite 120  
West Palm Beach, FL 33401  
561-616-8880 x 210 (direct)  
561-615-6959 (fax)  
727-512-6781 (cell)  
[Brandon.Howard@noaa.gov](mailto:Brandon.Howard@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)  
727-512-6782 (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

---

<sup>1</sup> Atlantic Coast staff may be moving to a new office in the Atlantic Coast by 2006. Thus, this address and direct phone line may change. However, the cell phone will remain the same.

**FIGURE 11.7 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

## **FIGURE 11.7 Emergency Consultation Procedures**

<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:	

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