

# Appendix D

## National Marine Fisheries Service (NMFS)

### Agency Operating Agreement (AOA)

#### February 09, 2004

José Abreu, P.E. Secretary Florida Department of Transportation	Date	James E. St. John Florida Division Administrator Federal Highway Administration	Date	William T. Hogarth Ph.D. Assistant Administrator for Fisheries National Marine Fisheries Service	Date
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### Introduction

The ETDM process is designed to accomplish the streamlining objectives identified in Section 1309 of the Transportation Efficiency Act for the 21st Century. The ETDM Process creates linkages between land use, transportation, and environmental resource planning initiatives, through early, interactive agency involvement. In implementing the ETDM process, all ETAT agencies are responsible for reviewing and commenting on transportation improvements consistent with their respective agencies statutory and regulatory authority. Process objectives include effective/timely decision making without comprising environmental quality, full and early public and agency participation, integrating NEPA reviews with issuance of project permitting and implementing meaningful dispute resolution mechanisms. The results of the ETDM process include concurrent actions and approvals, interactive planning, efficiency gained from technology, and ultimately better transportation decisions. The tables below identify the information available from the project's purpose and need, to technical reports and environmental documents. The tables also identify the agency's review responsibilities from project planning through compliance with NEPA and permit approvals, to construction and maintenance. The tables have been divided into three basic phases of a transportation project: planning, programming, and project development. Program and project efficiency is gained by two environmental screening events that occur at the transportation planning and programming phases. The Planning and Programming Screens apply only to major capacity improvement projects, including roadway widenings, new roadways, new rail systems and bridge projects.

### Planning Screen

In Metropolitan Planning Organization (MPO) areas, the Planning Screen will occur on capacity improvements contained in the Long Range Transportation Needs Plan and prior to the development of the MPO Long Range Transportation Plan with the exception of the Florida Intrastate Highway System (FIHS) facilities. FIHS facilities will be screened during the development of the FIHS Cost Feasible Plan for both the MPO and non-MPO areas. FDOT staff are responsible for uploading the FIHS project information into the ETDM Database.

The table below identifies the information available to the NMFS during the Planning Screen (via the ETDM database). The table also addresses FHWA/FDOT and the NMFS ETAT representative review and coordination responsibilities. The review will take place on the interactive ETDM Web site and all comments will be entered directly into the ETAT review database.

ETDM Database (MPO, FDOT, FGDL)	FHWA/FDOT Responsibilities	NMFS Responsibilities
<ul style="list-style-type: none"> <li><input type="checkbox"/> Purpose and Need</li> <li><input type="checkbox"/> Project limits and logical termini</li> <li><input type="checkbox"/> Mobility Alternatives</li> <li><input type="checkbox"/> NMFS plans and programs</li> <li><input type="checkbox"/> Demographics (Community Impact Assessment)</li> <li><input type="checkbox"/> GIS Data Sets:               <ul style="list-style-type: none"> <li>– USFWS Strategic Habitat Conservation</li> <li>– USFWS Habitat and Land Cover</li> <li>– USFWS Biodiversity Hot Spots</li> <li>– USFWS Critical Wildlife</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> In MPO areas, assist in developing the Purpose and Need Statement and establishing logical termini</li> <li><input type="checkbox"/> In non-MPO areas, FDOT in consultation with FHWA establishes Purpose and Need Statement and logical termini.</li> <li><input type="checkbox"/> In MPO and non-MPO areas, establish Purpose and Need for FIHS projects</li> <li><input type="checkbox"/> Ensure project information is</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Review and comment on Purpose and Need for project</li> <li><input type="checkbox"/> Review and comment on logical termini</li> <li><input type="checkbox"/> Review and comment on mode choice and mobility alternatives (demand management, transit, highways)</li> <li><input type="checkbox"/> Review and comment on order of magnitude of impact</li> <li><input type="checkbox"/> Identify significant environmental resource issues</li> <li><input type="checkbox"/> Input agency plans and programs that</li> </ul>

**Appendix D**  
**National Marine Fisheries Service (NMFS)**  
**Agency Operating Agreement (AOA)**  
**February 09, 2004**

ETDM Database (MPO, FDOT, FGDL)	FHWA/FDOT Responsibilities	NMFS Responsibilities
<ul style="list-style-type: none"> <li>Designations</li> <li>– USFWS Priority Wetlands Habitat</li> <li>– USFWS Management Areas</li> <li>– FNAI Element Occurrence</li> <li>– CARL Projects</li> <li>– National Wetlands Inventory polygons</li> <li>– 100 Year Flood Plains</li> <li>– TNC Ecological Resource Conservation Areas</li> <li>– Potential habitat for species</li> <li>– Species locations (FNAI and WILDOBS)</li> <li>– Ecosystem Management Areas</li> <li>– Streams with 303(d) impaired waters</li> <li>– Wetlands</li> <li>– Areas targeted for habitat conservation</li> <li>– Historical/Archaeological Sites</li> <li>– Areas within coastal barrier resource area</li> <li>– FDEP Watershed Planning &amp; Coordination Water Quality Data</li> <li>– US Census Bureau, Census Block Groups, 1990</li> <li>– Coastal Zone Construction Control Line (per FDEP)</li> <li>– Best available Aerial Photos or DOQQs</li> <li><input type="checkbox"/> Secondary and Cumulative Impact GIS Data Sets: <ul style="list-style-type: none"> <li>– Existing Land Use Map</li> <li>– Future Land Use Map</li> <li>– Maps of approved population and employment projections by TAZ or Census Tract data</li> <li>– Density and growth maps</li> <li>– Location and type of approved developments, including DRIs (Regional Planning Council or Local Governments)</li> <li>– Delineated urban service area boundaries (MPO or Local Planning Agency)</li> <li>– Existing and future roadway network, Needs Plan (MPO or FDOT)</li> </ul> </li> </ul>	<p style="text-align: center;">available for ETAT review</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> ETDM Coordinator will consult and resolve project issues, where feasible</li> <li><input type="checkbox"/> Produce the Planning Summary Report which will comprise the following key components: <ul style="list-style-type: none"> <li>– Project Description</li> <li>– Purpose and Need statement</li> <li>– Agency comments, issues and recommendations for potential direct impacts</li> <li>– System-wide GIS mapping depicting social, cultural, and natural resources</li> <li>– Potential secondary and cumulative impact issues and recommendations</li> <li>– Summary of public involvement comments</li> </ul> </li> <li><input type="checkbox"/> The Planning Summary Report will be made available to the ETAT and the public representatives through the ETDM Web site</li> </ul>	<p style="text-align: center;">affect the project area</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Identify need for future agency involvement and anticipated agency coordination and consultation</li> <li><input type="checkbox"/> Identify resource management policies, goals and objectives</li> <li><input type="checkbox"/> Identify recommended course of action to preserve and protect resources</li> <li><input type="checkbox"/> Evaluate potential secondary and cumulative impacts</li> <li><input type="checkbox"/> Provide Project Recommendations</li> <li><input type="checkbox"/> Submit comments electronically within 45 calendar days of notification</li> </ul>

**Appendix D**  
**National Marine Fisheries Service (NMFS)**  
**Agency Operating Agreement (AOA)**  
**February 09, 2004**

ETDM Database (MPO, FDOT, FGDL)	FHWA/FDOT Responsibilities	NMFS Responsibilities
<ul style="list-style-type: none"> <li>- Location of existing and proposed public lands and conservation easements (WMDs or RPC)</li> <li>- Existing and proposed Mitigation Areas (Resource Agencies)</li> <li>- Defined neighborhoods (MPO or Local Government)</li> </ul>		

**Programming Screen**

The Programming Screen will be performed annually on bridge projects contained in the Annual Bridge Repair and Replacement Report and on major capacity improvement projects contained in the MPO's list of priority projects prior to inclusion into FDOT's Five-Year Work Program with the exception of the FIHS facilities. The FIHS facilities for MPO and non-MPO areas will be screened during FDOT's development of the FIHS Ten-Year Plan. FDOT staff will be responsible for uploading the FIHS project information into the ETDM database. Major capacity improvements and bridge projects located on the State Highway System in rural areas will also undergo review prior to inclusion into FDOT's Five-Year Work Program.

The Programming Screen begins the Intergovernmental Coordination and Review (ICAR) process, which begins what was formerly the Advance Notification (AN) process. The ICAR process applies only to major transportation capacity improvement projects (as described in the Master Agreement) that are subject to the EDTM process. The ICAR process is initiated by the FDOT District Office by notifying all ETAT members that the Programming Screen has been uploaded with project related information and is ready for ETAT review. Distribution of the Programming Screen ICAR notice is accomplished by FDOT utilizing the Environmental Screening Tool(EST). Once all ETAT members, including central units of State government, which may have plans, programs or projects affected by the proposed transportation action have received the electronic notice, they begin their review of the proposed transportation action by viewing the Programming Screen and providing technical advice, assistance and comment.

ETDM Database (MPO, FDOT,FGDL)	FHWA/FDOT Responsibilities	NMFS Responsibilities
<ul style="list-style-type: none"> <li><input type="checkbox"/> Intergovernmental Coordination and Review Process</li> <li><input type="checkbox"/> Coastal Zone Consistency Determination</li> <li><input type="checkbox"/> LGCP Consistency</li> <li><input type="checkbox"/> Goals of the State</li> <li><input type="checkbox"/> Clean Air Act Conformity Designation</li> <li><input type="checkbox"/> NMFS plans and programs</li> <li><input type="checkbox"/> Demographics (Community Impact Assessment)</li> <li><input type="checkbox"/> GIS Data Sets: <ul style="list-style-type: none"> <li>- USFWS Strategic Habitat Conservation</li> <li>- USFWS Habitat and Land Cover</li> <li>- USFWS Biodiversity Hot Spots</li> <li>- Critical Wildlife Designations (FWC)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Distribute ICAR to agencies including all ETAT representatives</li> <li><input type="checkbox"/> Determine Level of NEPA Environmental Documentation (Class of Action Determination)</li> <li><input type="checkbox"/> Publish Notice of Intent for EIS</li> <li><input type="checkbox"/> Establish an interdisciplinary project team</li> <li><input type="checkbox"/> Consult with NMFS on Section 7 as necessary</li> <li><input type="checkbox"/> Consult on essential fish habitat</li> <li><input type="checkbox"/> Produce Programming Summary Report which</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Review and comment on ICAR</li> <li><input type="checkbox"/> NMFS assigns project manager</li> <li><input type="checkbox"/> NMFS becomes Cooperating Agency, as appropriate</li> <li><input type="checkbox"/> Agree through formal documentation on adequacy of corridor-wide resource inventory</li> <li><input type="checkbox"/> Review and comment on project impacts: quantity and types of wetlands, protected species</li> <li><input type="checkbox"/> Identify need for Section 7 Consultation</li> <li><input type="checkbox"/> Identify need for essential fish habitat consultation</li> <li><input type="checkbox"/> Review and comment on Class of Action</li> <li><input type="checkbox"/> Initiate agency analysis of the project concepts and possible typical</li> </ul>

**Appendix D**  
**National Marine Fisheries Service (NMFS)**  
**Agency Operating Agreement (AOA)**  
**February 09, 2004**

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<ul style="list-style-type: none"> <li>- USFWS Priority Wetlands Habitat</li> <li>- Fish and Wildlife Conservation Commission Management Areas</li> <li>- FNAI Element Occurrence</li> <li>- CARL Projects</li> <li>- National Wetlands Inventory polygons</li> <li>- 100 Year Flood Plains</li> <li>- TNC Ecological Resource Conservation Areas</li> <li>- Potential habitat for species</li> <li>- Species locations (FNAI and WILDOBS)</li> <li>- Ecosystem Management Areas</li> <li>- Streams with 303(d) impaired waters</li> <li>- Wetlands</li> <li>- Areas targeted for habitat conservation</li> <li>- Areas within coastal barrier resource area</li> <li>- FDEP Watershed Planning &amp; Coordination Water Quality Data</li> <li>- Best available Aerial Photos or DOQQs</li> </ul>	<p>will comprise the following key components:</p> <ul style="list-style-type: none"> <li>- Project Description</li> <li>- Purpose and Need statement</li> <li>- Class of Action Determination</li> <li>- System-wide mapping depicting social, cultural, and natural resources</li> <li>- Agency comments, issues, and recommendations for potential direct impacts</li> <li>- Preliminary outline of the Project Development scope</li> <li>- Dispute resolution issues</li> <li>- Summary of public involvement comments</li> </ul> <p><input type="checkbox"/> The Programming Summary Report will be made available to the ETAT representatives through the ETDM Web site</p>	<p>sections</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Identify all permitability issues and general mitigation needed based on the statutory responsibility of the NMFS</li> <li><input type="checkbox"/> Perform project scoping activities based on review of ETDM databases and project information and identifying required technical studies prior to the beginning of the project development phase</li> <li><input type="checkbox"/> Review and comment on summary of community issues, and public concerns</li> <li><input type="checkbox"/> Participate in dispute resolution, if necessary, to assist the ETDM Coordinator in identifying solutions to project concerns. Participate in ETAT Review Committee, as needed, to review and resolve conflicts at an informal local level</li> <li><input type="checkbox"/> Submit comments electronically within 45 calendar days of notification</li> </ul>

**Project Development Documentation**

During project development, the NMFS will assist the FDOT in compliance with the Endangered Species Act, Essential Fish Habitat (EFH) provisions within the Magnuson-Stevens Fishery Conservation and Management Act, and the Fish and Wildlife Coordination Act to satisfy NEPA and permit issues and concerns so that the resultant approvals are acceptable to all parties and received concurrently.

For federally funded major transportation capacity improvement projects, which do not individually or cumulatively have a significant environmental effect on the human and natural environment, a Categorical Exclusion (CE) will be prepared and made available for review by the NMFS ETAT representative. The CE level of conceptual engineering, environmental analysis and public involvement will be documented in technical support studies and be of sufficient detail to support the CE determination. For those major transportation capacity improvement projects that do not qualify for a Categorical Exclusion, an Environmental Assessment or Environmental Impact Statement will be completed, in compliance with the CEQ regulations implementing NEPA and 23 CFR 771. Non-federally funded major transportation capacity improvement projects requiring a State Environmental Impact Report (SEIR) will follow the same process used for federal documents.

**Appendix D**  
**National Marine Fisheries Service (NMFS)**  
**Agency Operating Agreement (AOA)**  
**February 09, 2004**

The table below identifies the reports and coordination responsibilities for FDOT, FHWA and the NMFS ETAT representative. Project development studies or environmental documents may require the development and maintenance of a project web site. The ETDM interactive database will have links to the project development web sites for agencies to continue their electronic reviews.

FDOT	FHWA	NMFS ETAT Reviews
<b>Preliminary Alternatives Analyses</b>		
<ul style="list-style-type: none"> <li><input type="checkbox"/> Develop and analyze alternatives</li> <li><input type="checkbox"/> Assess major impacts of all alternatives</li> <li><input type="checkbox"/> Consult with NMFS regarding potential impacts and Best Management Practices (BMPs) for mitigation</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Participate in development of alternatives</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Review and comment on preliminary alternatives and analysis</li> <li><input type="checkbox"/> Accept alternatives under consideration</li> </ul>
<b>Technical Reports</b>		
<ul style="list-style-type: none"> <li><input type="checkbox"/> Complete technical studies as defined by ETAT and scope of services, such as: <ul style="list-style-type: none"> <li>– Wetland Evaluation Report (WER)</li> <li>– Cultural Resource Assessment (CRA)</li> <li>– Endangered Species Biological Assessment (ESBA)</li> <li>– Essential Fish Habitat Assessment</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Reviews ESBA and provide to NMFS</li> <li><input type="checkbox"/> In consultation with NMFS, determine need for formal Section 7 consultation.</li> <li><input type="checkbox"/> Consult on essential fish habitat</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Review and comment on ESBA and other technical reports</li> <li><input type="checkbox"/> Provide technical assistance, as needed</li> <li><input type="checkbox"/> Complete informal Section 7 consultation and provide comments within 30 calendar days of receipt of ESBA</li> <li><input type="checkbox"/> If required, complete formal Section 7 consultation within 90 calendar days and issue Biological Opinion within 45 calendar days</li> <li><input type="checkbox"/> Complete consultation on essential fish habitat, and provide recommendations as needed</li> <li><input type="checkbox"/> For projects determined to be CEs, permits will be issued upon completion and acceptance of technical studies and issuance of Location and Design Acceptance (LDCA)</li> </ul>
<b>EA/DEIS</b>		
<ul style="list-style-type: none"> <li><input type="checkbox"/> Incorporate ESBA and EFH Assessment into Environmental Document</li> <li><input type="checkbox"/> Complete EA/DEIS and submit to NMFS for review</li> <li><input type="checkbox"/> Apply for project permits</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Review and approve EA/DEIS with comments incorporated (30 calendar days)</li> <li><input type="checkbox"/> Publish Notice of availability of DEIS in Federal Register</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Review and comment on draft EA or DEIS</li> <li><input type="checkbox"/> Review and comment on Section 404 compatibility for each alternative</li> <li><input type="checkbox"/> Provide reviews within 30 calendar days of receipt of information</li> </ul>

**Appendix D**  
**National Marine Fisheries Service (NMFS)**  
**Agency Operating Agreement (AOA)**  
**February 09, 2004**

FDOT	FHWA	NMFS ETAT Reviews
<b>Public Hearing</b>		
<ul style="list-style-type: none"> <li><input type="checkbox"/> Identify opportunities, constraints and feasibility of Joint Public Notice and Hearing, if appropriate</li> <li><input type="checkbox"/> Hold Public Hearing</li> <li><input type="checkbox"/> Prepare transcript and certification</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Attend hearing and participate as necessary</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Attend joint public hearing and participate as necessary or conduct simultaneous public hearing for obtaining concurrent permits/NEPA approval and /or issue formal public notice</li> <li><input type="checkbox"/> Provide technical assistance on public hearing topics to satisfy permitting requirements</li> </ul>
<b>FONSI/FEIS</b>		
<ul style="list-style-type: none"> <li><input type="checkbox"/> Document decisions in FONSI and FEIS</li> <li><input type="checkbox"/> Complete FONSI/FEIS and submit to NMFS for review</li> <li><input type="checkbox"/> Respond to comments</li> <li><input type="checkbox"/> Obtain project permits concurrent with NEPA approval</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Review FEIS or FONSI</li> <li><input type="checkbox"/> Approve FONSI or FEIS</li> <li><input type="checkbox"/> Publish notice of FEIS availability in FR</li> <li><input type="checkbox"/> Issue Record of Decision</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Review FONSI or FEIS and comment within 30 or 45 calendar days respectively of receipt regarding NEPA and permit compliance, as needed.</li> </ul>
<b>Final Design</b>		
<ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental reevaluation and consultation with NMFS and FHWA on any major design modifications</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Approve Environmental Reevaluation</li> <li><input type="checkbox"/> Participate in reviews to monitor implementation of EA or FEIS commitments</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Consult with FDOT on design modification and project mitigation measures to assure commitment compliance with EA/FONSI or FEIS</li> </ul>
<b>Construction and Maintenance</b>		
<p>For those projects not subject to 373.4137, F.S., the following applies:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Monitor implementation of mitigation measures as required by permit</li> <li><input type="checkbox"/> Correct deficiencies found as required by permit</li> <li><input type="checkbox"/> Prepare periodic reports on mitigation activities and provide to resource agencies</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Monitor implementation and status of mitigation efforts and sites, as appropriate</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Review periodic reports, field reviews and consult with FDOT on mitigation success, as necessary</li> </ul>

**Appendix D**  
**National Marine Fisheries Service (NMFS)**  
**Agency Operating Agreement (AOA)**  
**February 09, 2004**

### **Engineering Information**

The level of engineering detail required to obtain permits during the NEPA process is a critical element in the new ETDM Process. In the new ETDM process both NEPA documents and permit applications will be developed using conceptual engineering information supported by required technical studies. An important efficiency of the ETDM process is the development, through interagency coordination and consultation, of one set of engineering and environmental data to satisfy both the NEPA process and the Federal and State regulatory environmental permitting process, concurrently; thereby, eliminating duplication and delay and maintaining production schedules.

Utilizing one set of engineering and environmental data and concurrent processing, and with the specified information provided below, permits will be issued by the permitting agencies which provide special conditions outlining the estimated water quality, water quantity, and floodplain encroachment volumes required to meet agency technical review requirements.

### **Permits Obtained during Project Development**

The level of conceptual engineering and project information to be supplied during the Project Development phase is sufficient to meet the State Permit Agencies (WMD/FDEP) requirements for “reasonable assurance” that state water resources, and interest criteria are protected. This will be accomplished through early involvement and interagency coordination and consultation. By providing this information to the permit agencies earlier in the project development phase and applying for construction permits during the Project Development phase, FDOT will be able to request and receive the WRP or ERP contained in Chapter 373, Part IV, F.S., Sovereign Submerged Lands contained in Chapter 253, F.S., and Coastal Construction Control Line permits contained in Chapter 62B-33, F.A.C. The issuance of the Water Quality Certification will then allow the Federal permit agencies such as the Corps of Engineers and the U.S. Coast Guard to issue their respective permits concurrent with NEPA. The duration of each permit will be of sufficient length to allow the FDOT to complete the necessary project production phases and begin construction, (i.e. ten years or longer).

### **Environmental Reevaluation and Permits**

Each project is reevaluated, in consultation with FHWA, by FDOT, prior to advancing to the next phase of project development. During the reevaluation phase consultation with permit and resource agencies will occur where major design changes effecting the permit have occurred, or where permits, whose effective date may expire prior to project construction have been identified and a time extension in permit duration is needed that will allow for construction to be completed, or where commitments are being implemented or require change.

11-19-99 HQ DRAFT

Mr. Kenneth R. Wykle  
Administrator  
Federal Highway Administration  
Department of Transportation  
400 Seventh St., S.W.  
Washington D.C. 20590

Dear Mr. Wykle:

I am writing to document discussions between Federal Highway Administration (FHWA) and National Marine Fisheries Service (NMFS) headquarters and regional offices regarding the *essential fish habitat* (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act. The Magnuson-Stevens Act requires Federal agencies such as FHWA to consult with the Secretary of Commerce regarding any action or proposed action authorized, funded or undertaken by the agency that may adversely affect EFH identified under the Act. The purpose of this letter is for NMFS to make an official finding that the environmental assessment process used by FHWA to review projects under the National Environmental Policy Act (NEPA) can be used to meet the EFH consultation requirements. I also wish to recognize and thank you for the efforts of FHWA staff who contributed to the development of this finding.

In the 1996 reauthorization of the Magnuson-Stevens Act, our Nation's primary statute for the development and sustainable use of marine fisheries, Congress called for heightened consideration of fish habitat in resource management decisions. Congress established the EFH provisions to accomplish this goal and defined EFH to include "*those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.*" Following extensive public participation, an Interim Final Rule implementing the EFH provisions was published on December 19, 1997 (62 Federal Register 66531). As described in Subpart J of that rule, the law required each regional fishery management council to amend its fishery management plans (FMPs) to describe EFH for all life stages of each managed species, identify potential adverse impacts from both fishing and non-fishing activities, and recommend actions to conserve and enhance EFH. To date 40 FMPs have been approved to identify EFH for over 600 managed species with three additional plans under review or in development for approval in the coming year. The FMP amendment process designated EFH as some subset of the total range of every managed species, including state and Federal waters. EFH is found throughout the U.S. exclusive economic zone, in coastal waters within the territorial sea, and inland for the freshwater spawning areas of managed anadromous species.

In addition to the EFH designation provisions, the Magnuson-Stevens Act requires NMFS to work with state and Federal agencies to minimize adverse impacts of any activities that could affect EFH. Subpart K of the Interim Final Rule outlines procedures for Federal agencies to consult with NMFS on activities proposed, authorized, funded, or undertaken that may adversely affect EFH, individually or cumulatively. As part of that process, Federal agencies should submit

to NMFS an assessment of potential adverse impacts and conservation measures to counter those impacts. That assessment, and related discussions, should occur during the review period prior to decisions on permits, funding, or any final action. Please note that if FHWA determines that a proposed action will not adversely affect EFH no consultation with NMFS is required. NMFS is committed to a strict schedule to ensure that these exchanges can be completed during your review cycles wherever possible and to use existing processes to satisfy EFH consultation requirements where appropriate.

### **Incorporation of EFH Consultation into Individual FHWA Project Reviews**

The authority for NMFS to find that existing process satisfy EFH requirements is found in the EFH regulations (50 CFR 600.920). Staff from both NMFS and FHWA have met on several occasions in developing this national finding. We have discussed the notification and information needs of EFH consultation and the types of projects that might require abbreviated or expanded consultation. We agreed that draft NEPA documents prepared by FHWA can be modified to contain sufficient information to satisfy the EFH regulatory requirements.

Section 600.920(e)(3) of the EFH regulations enables NMFS to find that existing consultation/environmental review procedures can be used to satisfy the EFH consultation requirements if the existing procedures meet 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 §600.920(g); and,
- 3) NMFS must have made a finding pursuant to §600.920(e)(3) that the existing process satisfies the requirements of the Magnuson-Stevens Act.

With respect to the first criterion above, FHWA's NEPA process for assessing projects that may adversely affect EFH provides NMFS with timely notification in that public notice of a proposed project is generally provided at least 60 days before the FHWA's final decision on the project. With respect to the second criterion, FHWA project documentation generally does not include a specific assessment of the effects of the proposed action on fish habitat. However, in discussions with NMFS staff, FHWA has agreed to implement at the regional and state level the process described below. This process will allow EFH Assessments to be incorporated into FHWA public notices, or other draft decision documents, as appropriate. Based on the implementation of the process described below at the regional and state levels, NMFS finds that the FHWA NEPA process can be used to satisfy the requirements of §305(b)(2) of the Magnuson-Stevens Act.

### **Summary of EFH Consultation Process for FHWA Individual Project Reviews**

At the regional or state level, NMFS and FHWA staff will meet to develop specific findings tailored to regional local procedures. As part of developing those findings, NMFS and FHWA will discuss the information needs for EFH consultation, whether abbreviated or expanded consultation is appropriate, and the types of projects that might require expanded consultation.

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### **1) Determination**

FHWA will determine whether or not a proposed action may adversely affect EFH. The appropriate NEPA document or notice will contain language reflecting that determination.

### **2) Notification**

FHWA will provide NMFS with timely notification of actions that may adversely affect EFH. Wherever possible NMFS should have at least 60 days notice prior to a final decision on an action, or at least 90 days if the action would result in a substantial adverse impact to EFH. These time frames will allow NMFS to develop EFH conservation recommendations. Notification of potential impacts on EFH will occur when FHWA send NMFS a draft NEPA document, a project notification, or a separate request for consultation prior to initiating formal NEPA action.

### **3) EFH Assessment**

a) For those projects requiring only abbreviated consultation, the FHWA project notification will include an EFH Assessment containing brief information on EFH and impacts. The EFH Assessment will also address cumulative effects if such information is available.

b) For those projects that require expanded consultation, FHWA will provide NMFS with a detailed EFH Assessment. The EFH regulations state that expanded consultation must be used for projects that would result in substantial adverse effects to EFH (50 CFR 600.920(i)). Additionally, if NMFS believes that expanded consultation is required for a particular project, NMFS should inform FHWA of this conclusion at the earliest opportunity, such as in pre-application meetings and no later than the close of the public notice comment period. For those projects requiring expanded consultation, the FHWA will provide NMFS with information on impacts to EFH in a more-detailed EFH Assessment. The EFH Assessment will be provided to NMFS in a time frame sufficient to allow NMFS to develop EFH conservation recommendations (generally 30 days, but no greater than 60 days).

The EFH Assessment may be a separate document or it may be a component of another document, as long as the EFH Assessment is clearly identified. An EFH Assessment 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. It may also incorporate by reference other relevant assessment documents. The EFH Assessment will also address cumulative effects if such information is available. If appropriate, FHWA

may incorporate the EFH Assessment into a draft environmental assessment (EA) or draft environmental impact statement (EIS). If the EFH Assessment is not part of the draft EA or EIS, EFH should still be addressed in the final EA or EIS by summarizing the EFH Assessment, NMFS EFH conservation recommendations, and the FHWA response.

c) If, upon receiving notification (or in pre-application consultation), NMFS concludes that a project has the potential for substantial adverse impacts on EFH, NMFS will so inform FHWA and request that FHWA conduct expanded EFH consultation and provide a detailed EFH Assessment. If a public comment period for the project has already begun, NMFS may request an extension of the comment period to allow time for FHWA to provide the EFH Assessment, and for NMFS to develop EFH conservation recommendations. If FHWA does not agree to provide a more detailed EFH Assessment, NMFS will provide EFH conservation recommendations based on whatever information has been provided.

#### **4) EFH Conservation Recommendations**

Within the public notice comment period, or within 30 (for abbreviated consultation) or 60 (for expanded consultation) days of receiving an EFH Assessment, NMFS will provide EFH conservation recommendations, if NMFS determines that the action would adversely affect EFH. The EFH conservation recommendations will be provided as comments on the public notice, EA, EIS, or other document containing the EFH Assessment. In its comments NMFS will clearly identify the EFH conservation recommendation.

#### **5) Response**

Under §305(b)(4)(B) of the Magnuson-Stevens Act, FHWA has a statutory requirement to respond in writing within 30 days to NMFS EFH conservation recommendations. FHWA will respond to NMFS EFH conservation recommendations in either a letter, the statement of findings, or the final EA or EIS, at least 10 days before final agency action is taken. If FHWA will not make a decision within 30 days of receiving NMFS EFH conservation recommendations, FHWA should provide NMFS with a letter within 30 days to that effect, and indicate when a response will be provided. FHWA will then respond in detail in the final EA, EIS, or letter to NMFS, at least 10 days before the final agency action, to allow time for dispute resolution if necessary.

The FHWA response must include a description of measures proposed by FHWA for avoiding, mitigating or offsetting the impact of the proposed activity on EFH, as required by the above statutory provision and 50 CFR 600.920(j). If the response is inconsistent with the NMFS EFH conservation recommendations, FHWA 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.

#### **6) Dispute Resolution**

If a FHWA decision is inconsistent with NMFS EFH conservation recommendations, NMFS will endeavor to resolve any such issues at the field level wherever possible, typically between the NMFS Assistant Regional Administrator for Habitat Conservation and the state-specific FHWA Division Administrator. However, 50 CFR 600.920(j)(2) allows the NOAA Assistant Administrator for Fisheries to request a meeting with a FHWA headquarters official to discuss the proposed action and opportunities for resolving any disagreements.

#### **Finding**

With the implementation of the process described above, NMFS finds that the FHWA NEPA environmental assessment process can be used to satisfy the requirements of §305(b)(2) of the Magnuson-Stevens Act. NMFS regional offices and FHWA regional or state offices should develop additional findings to tailor this process to local procedures. If you agree with the procedures described in this finding, please indicate your agreement in writing.

NMFS remains willing to work with FHWA in implementing the EFH consultation requirements, and in developing general concurrences and programmatic consultations, as appropriate, for certain types of activities. Please contact Thomas Bigford, Habitat Protection Division Chief, at (301) 713-2325 x180, if you have any questions.

Sincerely,

Andrew J. Kemmerer, Ph.D.  
Director  
Office of Habitat Conservation

Stephanie - FYI



U. S. DEPARTMENT OF TRANSPORTATION

Federal Highway Administration  
Florida Division  
227 N. Bronough Street, Suite 2015  
Tallahassee, Florida 32301  
(850) 942-9650

RECEIVED  
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MAR 10 2003

February 28, 2003

IN REPLY  
REFER TO: HPR-FL

Doctor Roy E. Crabtree  
Regional Administrator  
National Marine Fisheries Service  
9721 Executive Center Drive, North  
St. Petersburg, FL-33702

Dear Dr. Crabtree:

Subject: Designation of a Non-Federal Representative to Conduct Informal  
Consultation Under Section 7 of the Endangered Species Act

Section 7 of the Endangered Species Act of 1973, as amended, requires Federal agencies to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species, or result in the destruction or adverse modification of a critical habitat of such species.

In implementing Section 7, 50 CFR 402.08 provides an opportunity for a Federal agency to designate a non-Federal representative to conduct informal consultation or prepare a biological assessment. Based on these provisions, we hereby designate the Florida Department of Transportation to conduct informal endangered species consultation on behalf of our office.

If you have any questions, please do not hesitate to contact Mr. George Hadley at (850) 942-9650, extension 3011.

Sincerely,

*George B Hadley*

For: James E. St. John  
Division Administrator

cc: Mr. Leroy Irwin, FDOT (MS-37)

# CHAPTER 11 ESSENTIAL FISH HABITAT (EFH)

## TABLE OF CONTENTS

11-1 OVERVIEW .....	11-1
11-2 PROCEDURE.....	11-2
11-2.1 Advance Notification.....	11-2
11-2.2 Determination of Involvement.....	11-2
11-2.2.1 Fishery Management Plans (FMPs).....	11-3
11-2.2.2 Request for Abbreviated Managed Species List .....	11-3
11-2.3 Actions Taken after Determination of No Involvement.....	11-4
11-2.4 Actions Taken After Determination of Involvement.....	11-4
11-2.4.1 Essential Fish Habitat Consultations.....	11-5
11-2.4.1.1 Essential Fish Habitat Assessment.....	11-4
11-2.4.1.2 Response to EFH Conservation Recommendations.....	11-6
11-2.5 Documentation .....	11-7
11-2.6 Reevaluation .....	11-7
11-2.7 Emergency Consultation .....	11-7
11-3 REFERENCES .....	11-8

## LIST OF FIGURES

FIGURE 11.1 Essential Fish Habitat Process.....	11-9
FIGURE 11.2 Fishery Management Councils and NMFS Contact Information .....	11-10
FIGURE 11.3 Information Sources and Websites (continued).....	11-11
FIGURE 11.4 Habitat Conservation Division Contacts by FDOT District .....	11-13
FIGURE 11.5 Sample Letter Request for Abbreviated List .....	11-14
FIGURE 11.6 Sample Interim Response Letter .....	11-15
FIGURE 11.7 Emergency Consultation Procedures .....	11-16

# 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**

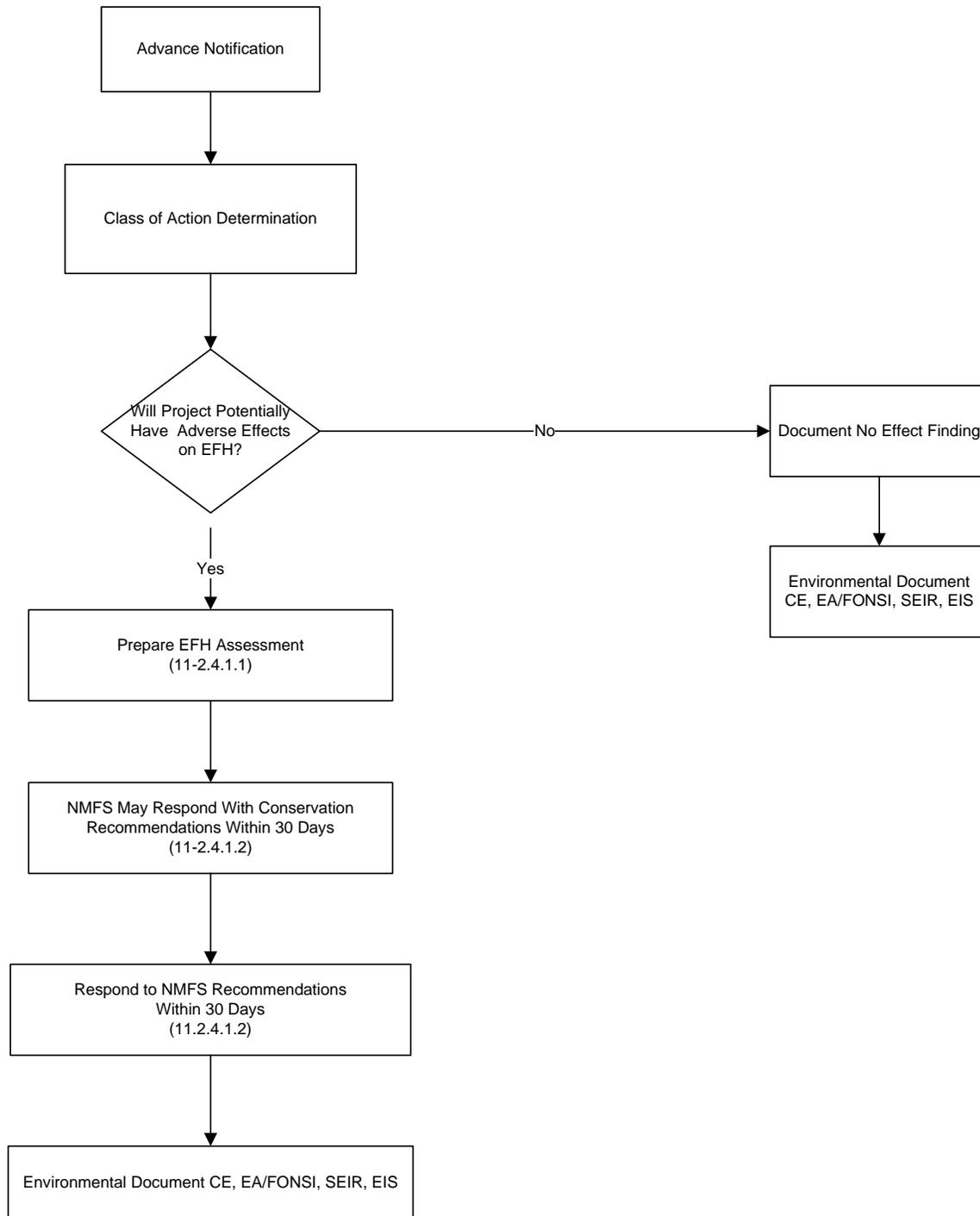
If EFH impacts or mitigation strategies change during phases following PD&E, then these changes will be documented in the appropriate reevaluation or document as per Part 1, Chapter 13. Commitments and coordination should be contained in the Mitigation Status and Commitment Compliance section of the 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  
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561-616-8880 x 210 (direct)  
561-615-6959 (fax)  
727-512-6781 (cell)  
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*Gulf Coast*  
(District 1, 2, 3, & 7)

David Rydene, Ph.D.,  
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263 13<sup>th</sup> Ave South  
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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

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<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:	

**FIGURE 11.7 Emergency Consultation Procedures**