

NOAA Fisheries Policy Directives – Managing Marine Ecosystems

Protected Resources and Habitat Conservation – An overview of all policies relevant to the NEFMC Program Review is provided, along with the purpose and goals (if available). The date listed after each policy is the original implementation date, and all policies with a description have been renewed unless otherwise noted. Full copies of all policies are available online from NOAA Fisheries: <https://www.fisheries.noaa.gov/national/laws-and-policies/policy-directive-system>

02 - Protected Resources

- **02-102 Notice of Policy on Applying the Definition of Species Under the ESA to Pacific Salmon (10/21/1991)**
- **02-103 Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the ESA (2/07/1996)**
- ***02-104 Notice of Policy for Conserving Species Listed or Proposed for Listing Under the ESA While Providing and Enhancing Recreational Fisheries Opportunities (6/03/1996)**
 The Fish and Wildlife Service and the National Marine Fisheries Service (Services) have adopted a policy that will address the conservation needs of species listed, or proposed to be listed, under the Endangered Species Act of 1973, as amended (ESA) while providing for the continuation and enhancement of recreational fisheries. This policy identifies measures the Services will take to ensure consistency in the administration of the ESA between and within the two agencies, promote collaboration with other Federal, State, and Tribal fisheries managers, and improve and increase efforts to inform nonfederal entities of the requirements of the ESA while enhancing recreational fisheries. This policy meets the requirements set forth in Section 4 of Executive Order 12962, Recreational Fisheries.

 The Council is not specifically mentioned in the FR Notice, though they inherently are a coordinating entity.
- **02-105 Final Policy for Candidate Conservation Agreements with Assurances (6/17/1999)**
- **02-106 Safe Harbor Policy (6/17/1999)**
- **02-107 Endangered and Threatened Wildlife and Plants: Definition of Harm (12/9/1999)**
- **02-108 Policy Regarding Controlled Propagation of Species Listed under the ESA (9/20/2000)**
- **02-109 Policy for Evaluation of Conservation Efforts When Making Listing Decisions (3/28/2003)**
- **02-110 Endangered Species Act (7/05/2010)**
 - 02-110-01 **NMFS Endangered and Threatened Species: Listing and Recovery Priority Guidelines (6/15/1990)**
 - 02-110-02 **Guidance on Designating Critical Habitat (3/19/1992)**
 - 02-110-03 **Recovery Planning Guidance (10/01/2004)**
 - 02-110-06 **Endangered Species Petition Management Guidance (7/01/1996)**

- 02-110-07 [Habitat Conservation Planning and Incidental Take Permit Processing Handbook \(11/04/1996\)](#)
- 02-110-08 [Habitat Conservation Plan Assurances \("No Surprises"\) Rule \(2/23/1998\)](#)
- 02-110-09 [Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities under Section 7 of the ESA \(3/01/1998\)](#)
- 02-110-11 [Availability of a Final Addendum to the Handbook for Habitat Conservation Planning and Incidental Take Permitting Process \(6/01/2000\)](#)
- 02-110-12 [Delegation of Authority for Section 7 Consultations Under ESA \(12/15/2005\)](#)
- 02-110-13 [Improvement Plan for Section 7 Consultations Under the ESA \(12/15/2005\)](#)
- *02-110-14 [Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic Ocean and Gulf of Mexico Fisheries \(10/04/2007\)](#)
 The Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic and Gulf of Mexico Fisheries (Strategy) is a component of the larger NOAA's National Marine Fisheries Service's North Atlantic and Gulf of Mexico sea turtle conservation program. The primary emphasis of the Strategy is to reduce sea turtle bycatch in North Atlantic and Gulf of Mexico state and federal fisheries.

 The overarching goals of the Strategy are to:
 - Conserve and recover sea turtles
 - Address inconsistencies across fisheries of concern with regard to bycatch reduction
 - Improve information to support decision making
 - Ensure that federal and state fisheries are conducted consistent with the ESA
- 02-110-15 [5-Year Review Guidance \(7/01/2006\)](#)
- 02-110-16 [Post-Delisting Monitoring Plan Guidance \(8/2008\)](#)
- 02-110-17 [Inter-Agency MOA Regarding Oil Spill Planning and Response Activities under the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan and the ESA \(12/16/2004\)](#)
- 02-110-18 [Guidance for Treatment of Climate Change in NMFS Endangered Species Act Decisions \(09/27/2016\)](#)
- 02-110-19 [ESA Harass Definition \(12/21/16\)](#)
- 02-110-20 ["No Effect" Determinations \(1/13/2017\)](#)
- 02-110-21 [Process for Post-Interaction Mortality Determinations of Sea Turtles Bycaught in Trawl, Net, and Pot/Trap Fisheries \(3/23/17\)](#) – N/A
- 02-201 [Policy to Establish a Standardized Procedure Concerning the Processing of Applications for Permits and the Suspension of Activities Pursuant to Existing Permits Issued under the MMPA \(6/06/1975\)](#)

- **02-203 Policy Regarding Applications for Permits to Approach, Harass and Feed Atlantic Bottlenose Dolphins for Public Display (8/29/1990)**
- **02-204 Marine Mammal Protection Act (7/05/2010)**
 - **02-204-01 Guidelines for Preparing Stock Assessment Reports Pursuant to the 1994 Amendments to the MMPA (2/22/2016)**
- **02-238 Process for Distinguishing Serious from Non-Serious Injury of Marine Mammals (1/27/2012)**
 - **02-238-01 Process for Injury Determinations (1/27/2012)**
- **02-301 MOAs/MOUs/Cooperative Agreements/Inter-Agency Cooperative Placeholder (8/01/1974)**
 - **02-301-01 MOU b/w US F&WS and NMFS Regarding Jurisdictional Responsibilities and Listing Procedures Under the ESA of 1973 (8/28/1974)**
 - **02-301-02 MOU b/w US F&WS and NMFS on Defining Roles in the Joint Administration of ESA as to Marine Turtles (7/18/1977)**
 - **02-301-05 MOA b/w the Northeast Regions of US F&WS and NMFS Concerning the Anadromous Atlantic Salmon (3/13/1994)**
 - **02-301-06 Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy for the Ecosystem Approach to the ESA (7/01/1994) – N/A**
 - **02-301-07 Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy on Information Standards Under the ESA (7/01/1994)**
 - **02-301-08 Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy for Peer Review in ESA Activities (7/01/1994)**
 - **02-301-09 Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy on Recovery Plan Participation and Implementation under the ESA (7/01/1994)**
 - **02-301-10 Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy for ESA Section 9 Prohibitions (7/01/1994)**
 - **02-301-11 Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy Regarding the Role of State Agencies in ESA Activities (7/01/1994)**
 - **02-301-17 MOA b/w the US Navy, US Coast Guard, US Army Corps Of Engineers and NMFS for the Conservation of the Northern Right Whale (1/20/1996)**
 - **02-301-18 MOA b/w the First Coast Guard District and NMFS Concerning Cooperative Efforts to Protect Marine Species Protected under the MMPA and ESA (4/30/1996)**

- 02-301-21 [MOA b/w Coast Guard Atlantic Area and NMFS to Safeguard Marine Species \(12/31/1998\)](#)
- 02-301-22 [MOA b/w the EPA, US F&WS and NMFS Regarding Enhanced Coordination under the Clean Water Act and ESA \(1/18/2001\)](#)
- 02-301-23 [MOU on the Conservation and Management of Marine Turtles and Their Habitats of the Indian Ocean and South-East Asia \(7/25/2001\)](#)
- 02-301-24 [Inter-Agency MOA Regarding Oil Spill Planning and Response Activities Under the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan and the ESA \(6/13/2002\)](#)
- 02-301-25 [Inter-Agency MOA Regarding Oil Spill Planning and Response Activities Under the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan and the ESA: A Guidebook \(6/13/2002\)](#)
- 02-303 [Taking of Atlantic Bottlenose Dolphins \(5/05/1990\)](#)
- 02-304 [Policy on the Consideration of Hatchery-Origin Fish in Endangered Species Act Listing Determinations for Pacific Salmon and Steelhead \(7/01/2005\)](#)
- 02-305 [Delegation of Authority for Appointment of Recovery Team Members Under the ESA \(11/20/2006\)](#)
- 02-306 [Delegation of Authority for Review and Renewal of Section 6 Agreements under the ESA \(3/28/2008\)](#)
- 02-307 [Delegation of Authority for LOAs for Responses to Marine Mammal Stranding Events \(12/10/2003\)](#)
- 02-308 [Marine Mammal Health and Stranding Response Program \(3/09/2012\)](#)
 - 02-308-01 [NMFS Facility Standards for Rehabilitating ESA-listed species \(3/14/2012\)](#)
 - 02-308-02 [NMFS Placement Process for Non-Releasable Marine Mammals \(3/14/2012\)](#)
- 02-309 [Ocean Noise Policy \(11/22/16\)](#)
 - 02-309-01 [Ocean Noise Procedure \(11/22/2016\)](#)

03 - Habitat Conservation and Restoration

- **03-101 Habitat Conservation Policy (11/25/1983)**

NOAA issues a policy for NMFS, which provides a focus for NMFS' habitat conservation activities, while at the same time integrating habitat conservation considerations through major programs and activities of the agency. This policy also encourages greater participation by the Regional Fishery Management Councils, the states and others in habitat conservation matters. This action is necessary in order to focus its habitat conservation activities on those species for which NMFS is primarily responsible or which are the subject of a NMFS program.

Other relevant sections: Implementation Strategies 3(a) – Regional Fishery Management Councils (Pg. 53145)

- **03-201 Essential Fish Habitat (12/27/2005)**

It is the policy of NOAA Fisheries Office of Habitat Conservation to ensure the conservation and enhancement of essential fish habitat (EFH) in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) and other relevant authorities and guidance promulgated by Congress, NOAA and other Federal agencies.

- *03-201-01 **Assessment of Impacts of Fishery Management Actions on Essential Fish Habitat**

(8/25/1999)

This memorandum clarifies NMFS' responsibilities under the Magnuson-Stevens Fishery Conservation and Management Act and Essential Fish Habitat regulations to assess the impacts of fishery management actions on EFH and to conduct EFH consultations, if required. NMFS must analyze impacts of EFH and comply with the EFH consultation requirements for every fishery management action taken under authority of the Magnuson-Stevens Act for which a final decision has yet to be made.

- 03-201-02 **Programmatic EFH Consultation with Army Corps of Engineers on New and Modified Nationwide Permits (9/21/1999)**

- 03-201-04 **Guidance on EFH Conservation Recommendations (7/13/2000)**

- 03-201-05 **Guidance for Integrating MSFCMA EFH Consultations with ESA Section 7 Consultations (1/01/2001)**

The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA)(16 U.S.C. 1801 et seq.) require the identification of Essential Fish Habitat (EFH) for Federally managed fishery species and the implementation of measures to conserve and enhance this habitat. The MSA requires Federal agencies to consult with the National Marine Fisheries Service (NMFS) on activities that may adversely affect EFH (MSA section 305(b)(2))¹. There are many situations where designated EFH overlaps with the habitat (including critical habitat) of species listed as threatened or endangered under the Endangered Species Act (ESA). Thus, a proposed Federal action could affect both a listed species and its designated critical habitat and adversely affect EFH, necessitating consultation under both section 7 of the ESA and section 305(b)(2) of the MSA. Because of this dual obligation, the Federal action agency and NMFS can find efficiencies by integrating EFH and ESA consultations.

Once NMFS has reviewed the EFH Assessment and analyzed possible adverse effects to EFH resulting from the proposed action, NMFS must develop EFH Conservation Recommendations (MSA section 305(b)(4)(A)). These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. EFH Conservation Recommendations will not include actions beyond the statutory authority of the Federal action agency (50 CFR 600.925(a)). Fishery Management Councils (Councils) may also comment on actions that may adversely affect EFH (MSA section 305(b)(3)). Thus, it may be necessary for NMFS to coordinate with the Council(s) regarding NMFS' EFH Conservation Recommendations.

- 03-201-06 **Regional Council Approaches to the Identification and Protection of Habitat Areas of**

Particular Concern (5/01/2001)*

The 1996 Amendments to the Magnuson-Stevens Fishery Conservation and Management Act focused increased attention on the importance of habitat protection to achieving sustainable fisheries. Congress stated in the Act, “one of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats” (16 U.S.C. 1801). Based on this finding, Congress required Councils to describe and identify essential fish habitat (EFH), defined as those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity, and mandated that regional Fishery Management Councils (Councils) minimize to the extent practicable the adverse effects of fishing on EFH and identify other actions to conserve and enhance EFH.

The National Marine Fisheries Service (NMFS) developed regulations (50 CFR 600 Subpart J; 62 FR 665531) to guide Councils in the implementation of the EFH provisions. The EFH regulations encourage Councils to identify Habitat Areas of Particular Concern (HAPCs) within areas designated as EFH to focus conservation priorities on specific habitat areas that play a particularly important role in the life cycles of federally managed fish species.

This report identifies the areas designated as HAPCs in each region, analyzes different Council approaches to HAPC designations, summarizes Councils’ progress with respect to HAPCs subsequent to the initial designations, and offers recommendations for future HAPC designations. The purpose of this report is to share information and allow each Council (and interested stakeholders) to benefit from others’ experiences with HAPCs.

Other relevant sections: A) Initial Council HAPC Designations, B) New England Fishery Management Council (Pgs. 7-8), C) Council HAPC Next Steps (Pg. 12), D) Recommendations for the Future Use of HAPCs (Pgs. 13-14)

- 03-201-07 **Further Guidance on Combined EFH and ESA Consultations (6/29/2001)**
- 03-201-10 **National Finding for use of ESA Section 7 Consultation Process to Complete EFH Consultations (2/28/2001)**

- 03-201-11 **Guide to EFH Consultations (12/16/2004)**

The Department of Commerce’s guidelines for implementing the EFH coordination and consultation provisions of the MSA are at 50 CFR 600.905 - 930. These guidelines provide definitions and procedures for satisfying the EFH consultation requirements, that include the use of existing environmental review processes, General Concurrences, programmatic consultations or individual EFH consultations (i.e., abbreviated, expanded) when an existing process is not available. The EFH guidelines also address coordination with the Fishery Management Councils (Councils), NOAA Fisheries EFH Conservation Recommendations to Federal and state agencies, and Council comments and recommendations to Federal and state agencies.

Purpose: This document was developed to provide additional guidance on the procedures that have been developed to assist NOAA Fisheries and other Federal agencies in addressing the EFH coordination and consultation requirements established by MSA and the EFH consultation guidelines. This document also establishes a consistent, efficient approach to conducting consultations.

Other relevant section: 6. Coordination with Fishery Management Councils (Pg. 6.1)

- 03-201-13 **Finding with MMS Regarding EFH Consultations (3/12/2002)**
- 03-201-14 **Finding with EPA regarding EFH consultations (5/25/2001)**
- 03-201-15 **Guidance to Refine Description and Identification of EFH (10/30/2006)**

The description and identification of essential fish habitat (EFH) establishes the nature and geographic extent of habitat necessary for managed fish so that management actions can be taken to conserve such habitat thereby supporting sustainable fisheries and their contribution to a healthy ecosystem. Describing

and identifying EFH is not an end unto itself; rather, it is the basis for subsequent actions to conserve EFH. Thus, all consultations and conservation measures for fishing and non-fishing activities hinge on the quality and precision of EFH identifications and descriptions. Loosely described EFH can lead to inconsistent or broad interpretation about adverse impacts to EFH and can result in unnecessary controversy about how best to avoid or reduce those impacts. In addition, habitat areas of particular concern (HAPCs) offer a powerful tool for NMFS and the Councils to identify priority areas within EFH for conservation thereby refining the implementation of the EFH management authorities.

Thus, the purpose of this document is to provide guidance to 1) achieve the most refined and precise EFH identifications and descriptions possible using the best available science and 2) maximize the utility of HAPCs as a tool for focusing conservation effort by increasing the consistency and clarity of HAPC descriptions and identification process. The following guidance supplements the EFH regulatory guidelines (50 CFR 600.920) and replaces the "EFH Technical Guidance" (January 2001) and recommendations contained in the May 2001 "Regional Council Approaches to the Identification and Protection of Habitat Areas of Particular Concern *(03-201-06)"

- **03-401 Anadromous Fish Policy (12/16/2004)**
 - 03-401-02 Interagency Task Force Report on FERC Noticing Procedures in Hydroelectric Licensing (5/05/2000)
 - 03-401-03 Interagency Task Force Report on NEPA Procedures in FERC Hydroelectric Licensing (5/22/2000)
 - 03-401-04 Guidelines to Consider for Participating in the Alternative Licensing Process (12/08/2000)
 - 03-401-05 Anatomy of Trackable and Enforceable License Conditions (12/08/2000)
 - 03-401-06 Coordination of FERC Licensing and ESA (12/08/2000)
 - 03-401-07 Interagency Task Force Report on Improving Coordination Of ESA Section 7 Consultation with the FERC Licensing Process (12/08/2000)
 - 03-401-08 Interagency Task Force Report on Agency Recommendations, Conditions, and Prescriptions under Part I of the Federal Power Act (12/08/2000)
 - 03-401-09 Interagency Task Force Report on Improving the Studies Process in FERC Licensing (12/08/2000)
 - 03-401-10 Resource Agency Procedures for Conditions and Prescriptions in Hydropower Licenses; Interim Final Rule (11/17/2005)
 - 03-401-11 National Marine Fisheries Service National Gravel Extraction Guidance (6/25/2005)