



NEPA Essential Fish Habitat Guidance

Introduction

Pursuant to 23 United States Code 327 and the implementing Memorandum of Understanding (MOU) executed on XX, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP). MaineDOT's assumption includes all highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA responsibilities or NEPA Assignment includes responsibility for environmental review, interagency consultation, and approval of NEPA actions. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for essential fish habitat and provides the process for identifying and determining the appropriate level of coordination that is required.

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855) requires that Essential Fish Habitat (EFH) be identified for all federally managed fisheries. EFH is defined as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." The National Marine Fisheries Service (NMFS) has regulatory authority over this act. The act further requires projects that are funded, permitted, or implemented by federal action agencies to consult with NMFS regarding potential adverse impacts to EFH (50 CFR 600.905-600.930) for the purpose of conserving and enhancing EFH.

On August 28, 2012, and in accordance with 50 CFR 600.920(c), the Federal Highway Administration (Maine Division) designated MaineDOT as their non-Federal representative to conduct EFH consultation with NMFS. The designation was granted exclusively to staff biologists working in the MaineDOT Environmental Office. This will remain in place for projects not under the NEPA assignment program.

MaineDOT Biologists are responsible for assessing, ensuring compliance, and directly consulting NMFS under NEPA Assignment. EFH information is provided to and discussed with the Team Leader. This information is incorporated into the overall NEPA decision.

1.0 Essential Fish Habitat Initial Project Question and Documentation

The following question is required to be answered by the MaineDOT Biologist:

1. Is Essential Fish Habitat Present?

MaineDOT Biologist screens projects using the EFH screening layer, [EFH Mapper](#), and other stream information.

A Yes response to Question 1 indicates the project will require an effects assessment (go to 2.0). A No response concludes the EFH assessment. All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

2.0 Essential Fish Habitat Assessment

If there is no in-water work, then no EFH consultation is necessary, and the Biologist will document a "No Effect" in the ProjEx database.



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Once it has been determined that the proposed project is within EFH and includes in-water work, the MaineDOT Biologist and Team Leader will work with the Project Manager to assess avoidance measures or alternatives to the project. The MaineDOT Biologist will conduct an assessment of the effects and determine the consultation level.

An adverse effect determination indicates the project will require consultation with NMFS (go to 3.0). 50 CFR 600.910(a) defines adverse effect as “any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, and biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species, and their habitat, and other ecosystem components if such modifications reduce the quality and/or quantity of EFH”.

Effect	Consultation Level with NMFS	Timing
No Adverse Effect	None	N/A
Adverse Effect-Not Substantial (as defined in EFH Regulation)	Abbreviated	NMFS must respond in writing within 30 days of EFH Assessment submittal (50 CFR 600.920(h)(4))
Adverse Effect-Substantial (as defined in EFH Regulation)	Expanded	NMFS must respond in writing within 60 days of EFH Assessment submittal (50 CFR 600.920(h)(4))

A no adverse effect concludes the EFH assessment. All actions will be processed and documented in MaineDOT’s ProjEx database and MaineDOT’s Environmental CPD e-file.

3.0 Essential Fish Habitat Coordination, Review and Approval

The MaineDOT Biologist will prepare an EFH Assessment based on the consultation level and submit to NMFS for consultation. The mandatory contents of an EFH Assessment include:

1. A description of the proposed action,
2. An analysis of the potential adverse effects of the action on EFH and the managed species,
3. The Federal agency’s conclusion regarding the effects of the action on EFH,
4. Proposed mitigation, if applicable (per 50 CFR 600.920(e)(3))

The MaineDOT Biologist will use the checklist on pages 29-36 of the [FHWA/NMFS Consultation Process Guide for Transportation Actions in the NMFS Great Atlantic Region \(April 2018\)](#) as a guide for information to submit as part of the EFH consultation. The MaineDOT Biologist will also follow Section IV - EFH Assessment on pages 42-45 of the guide for the preparation of EFH assessments (abbreviated and expanded).

Conservation recommendations from NMFS are advisory, but MaineDOT will consider and incorporate those it deems appropriate. MaineDOT must respond to NMFS recommended conservation recommendations within 30 days of receipt of any conservation recommendations (50 CFR 600.920(k)(1), indicating the conservation measures that will and will not be implemented. Any recommendations not accepted by MaineDOT will be discussed with NMFS. Under NEPA Assignment, the NMFS recommendations will be reviewed and responded to by the MaineDOT Environmental Office Senior



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Environmental Manager.

All conservation measures accepted will be documented, tracked in ProjEx, and complied with by the MaineDOT Environmental Office.

NEPA will not be approved until the EFH consultation is complete.

All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file with species, effect, consultation, and document information.

4.0 Links

Magnuson-Stevens Fishery Conservation and Management Act [16 USC 1855](#)

EFH Part K [50 CFR 600.905-600.930](#)

EFH Consultation worksheet for abbreviated consultation

<https://media.fisheries.noaa.gov/2021-08/EFHWorksheet-fillable%20form-aug%202021-final.pdf>

FHWA Programmatic EFH Consultation

[https://media.fisheries.noaa.gov/dam-migration/fhwa_programmatic_efh_consultation_april_2018_\(2\).pdf](https://media.fisheries.noaa.gov/dam-migration/fhwa_programmatic_efh_consultation_april_2018_(2).pdf)

EFH Consultation Process Guide

[FHWA/NMFS Consultation Process Guide \(noaa.gov\)](#)

Programmatic Consultations (contains Consultation Guide, BMPs, EFH Memo, Programmatic EFH Consultation, Fillable Verification Form)

<https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/programmatic-consultations>

EFH Mapper https://www.habitat.noaa.gov/apps/efhmapper/?page=page_3