



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Southeast Regional Office

9721 Executive Center Drive North  
St. Petersburg, Florida 33702

March 31, 1999

Colonel William L. Conner  
District Engineer, New Orleans District  
Department of the Army, Corps of Engineers  
Post Office Box 60267  
New Orleans, Louisiana 70160

Dear Colonel Conner:

Staff of the National Marine Fisheries Service (NMFS) and the New Orleans District (NOD) have met to discuss Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). This letter concerns the District's planning and operations activities subject to provisions of the National Environmental Policy Act (NEPA). The EFH regulations (50 CFR 600.920) specify that after discussion with a Federal action agency, the NMFS may make a finding that an agency's review processes are adequate, or can be modified, to satisfy EFH consultation requirements.

The regulations under Section 600.920(e)(3) enable the NMFS to find that existing consultation/environmental review procedures satisfy the MSFCMA consultation requirement. To meet the requirement, the existing 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 section 600.920 (g); and, 3) NMFS must have made a finding pursuant to section 600.920(e)(3) that the existing process satisfies the requirements of section 305(b)(2) of the MSFCMA.

### **Timely Notification**

The NOD's NEPA process, involving the preparation of environmental assessments and impact statements and your coordination associated with operational activities, provides the NMFS with timely notification of proposed actions. NOD's public review process generally provides 30 to 90 days before the NOD's final decision on a project.

### **EFH Assessment**

Our staffs have agreed that draft NEPA documents prepared by the NOD could be modified to contain sufficient information to satisfy the requirements in Section 600.920(g). For purposes of an EFH assessment the documents would include: 1) a description of the proposed action; 2) an analysis of individual and cumulative effects on EFH, Federally managed fisheries, and associated species such as major prey species, including affected life history stages; 3) the NOD's views regarding effects; and, 4) proposed mitigation, if applicable. The draft documents could incorporate such information by reference to a NEPA document prepared for a similar or related action, supplemented



with any relevant new project specific information. Incorporation of information by reference meets EFH consultation requirements provided the proposed action involves similar adverse impacts to EFH in the same geographic area or similar ecological setting, and the referenced document has been provided to NMFS.

In some cases the NOD prepares notices prior to NEPA document preparation. Project notices could be modified to reference EFH assessments to be contained in the companion environmental documents.

### **Finding**

The NMFS finds that your agency's NEPA process for Federal works activities can be used to satisfy the consultation requirements of the MSFCMA. Specifically, notification of potential impacts on EFH will occur when the NOD sends NMFS a draft NEPA document or project notification. Impact on EFH will be addressed in the draft documents, in a section or chapter titled "EFH", or by reference to companion documents. The EFH discussion may reference pertinent information on the affected environment and environmental consequences where they are provided in other sections, chapters, or companion documents. The information must be easily found, and should include both an identification of affected EFH and an assessment of impacts.

### **MSFCMA Coordination Process/Activities**

Within the specified public comment period, NMFS will provide the NOD with a written project evaluation which will include EFH conservation recommendations, when appropriate. NMFS will provide such recommendations as a part of our overall project comments. When EFH issues are raised, they will be contained in a separate section titled "EFH Conservation Recommendations."

Under Section 305(b)(4)(B) of the MSFCMA, the NOD has a statutory requirement to respond in writing within 30 days to the NMFS recommendations. If the NOD will not be able to complete a signed Finding of No Significant Impact (FONSI), Record of Decision (ROD), or other final action within 30 days of receiving NMFS EFH Conservation Recommendations, the NOD should provide NMFS with an interim written response within 30 days. The NOD should then provide a detailed response at least 10 days prior to taking final action (e.g., signing a FONSI or ROD).

If an NOD decision is inconsistent with NMFS EFH conservation recommendations, NMFS will endeavor to resolve any such issues at the field level wherever possible. However, 50 CFR 600.920(j)(2) allows the NOAA Assistant Administrator for Fisheries to request a meeting with a Department of the Army headquarters official to discuss the proposed action and opportunities for resolving any disagreements.

The overall consultation process is briefly outlined in enclosure 1. Also, to assist you in document preparation, I have included, as enclosure 2, a summary of information necessary for an EFH assessment.

**Conclusion**

If you agree with the procedures described in this finding, a response letter to that effect is requested. Please contact Mr. Rickey Ruebsamen, the Southeast Region's EFH coordinator, at 727/570-5317, if you have any questions or wish to discuss this finding.

Sincerely,

*Rickey A. Ruebsamen*

*to*  
Andreas Mager, Jr.  
Assistant Regional Administrator

Enclosures



DEPARTMENT OF THE ARMY

NEW ORLEANS DISTRICT, CORPS OF ENGINEERS

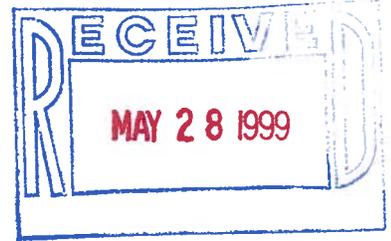
P.O. BOX 60267

NEW ORLEANS, LOUISIANA 70160-0267

REPLY TO  
ATTENTION OF:

MAY 25 1999

Planning, Programs, and  
Project Management Division  
Environmental Planning and  
Compliance Branch

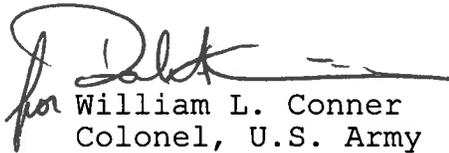


Mr. Andreas Mager, Jr.  
Assistant Regional Administrator  
Southeast Regional Office  
National Marine Fisheries Service  
9721 Executive Center Drive North  
St. Petersburg, Florida 33702

Dear Mr. Mager:

This is in response to your letter of March 31, 1999 (enclosed), concerning the U.S. Army Corps of Engineers, New Orleans District's planning and operations activities, subject to the Essential Fish Habitat (EFH) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). The New Orleans District's staff and your agency's staff have worked together to modify our existing National Environmental Policy Act process in order to satisfy the EFH requirements of the MSFCMA. The procedures detailed in your letter are acceptable to the New Orleans District. We appreciate your staff's coordination to assure that the New Orleans District understands its responsibilities and will comply with the MSFCMA.

Sincerely,

  
for William L. Conner

Colonel, U.S. Army  
District Engineer

LTC, EN  
ACTING COMMANDER

Enclosure