

*State action* means any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by a state agency.

(b) *Word usage.* The terms “must”, “shall”, “should”, “may”, “may not”, “will”, “could”, and “can”, are used in the same manner as in § 600.305(c).

**§ 600.915 Coordination for the conservation and enhancement of EFH.**

To further the conservation and enhancement of EFH in accordance with section 305(b)(1)(D) of the Magnuson-Stevens Act, NMFS will compile and make available to other Federal and state agencies, information on the locations of EFH, including maps and/or narrative descriptions. NMFS will also provide information on ways to improve ongoing Federal operations to promote the conservation and enhancement of EFH. Federal and state agencies empowered to authorize, fund, or undertake actions that may adversely affect EFH are encouraged to contact NMFS and the Councils to become familiar with areas designated as EFH, and potential threats to EFH, as well as opportunities to promote the conservation and enhancement of such habitat.

**§ 600.920 Federal agency consultation with the Secretary.**

(a) *Consultation generally—(1) Actions requiring consultation.* Pursuant to section 305(b)(2) of the Magnuson-Stevens Act, Federal agencies must consult with NMFS regarding any of their actions authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken that may adversely affect EFH. EFH consultation is not required for completed actions, e.g., issued permits. Consultation is required for renewals, reviews, or substantial revisions of actions. Consultation on Federal programs delegated to non-Federal entities is required at the time of delegation, review, and renewal of the delegation. EFH consultation is required for any Federal funding of actions that may adversely affect EFH. NMFS and Federal agencies responsible for funding actions that may adversely affect EFH should consult on a programmatic level, if appropriate, with respect to these actions.

(2) *Appropriate level of consultation.* (i) NMFS and other Federal agencies may conduct consultation at either a programmatic or project-specific level. Federal actions may be evaluated at a programmatic level if sufficient information is available to develop EFH conservation recommendations and address all reasonably foreseeable adverse effects to EFH. Project-specific consultations are more appropriate when critical decisions are made at the project implementation stage, or when sufficiently detailed information for the development of EFH conservation recommendations does not exist at the programmatic level.

(ii) If, after a Federal agency requests programmatic consultation, NMFS determines that all concerns about adverse effects on EFH can be addressed at a programmatic level, NMFS will develop EFH conservation recommendations that cover all projects implemented under that program, and no further EFH consultation will be required. Alternatively, NMFS may determine that project-specific consultation is needed for part or all of the program's activities, in which case NMFS may develop some EFH conservation recommendations at a programmatic level, but will also recommend that project-specific consultation will be needed to complete the EFH consultation requirements. NMFS may also determine that programmatic consultation is not appropriate, in which case all EFH conservation recommendations will be deferred to project-specific consultations.

(b) *Designation of lead agency.* If more than one Federal agency is responsible for a Federal action, the consultation requirements of sections 305(b)(2–4) of the Magnuson-Stevens Act may be fulfilled through a lead agency. The lead agency must notify NMFS in writing that it is representing one or more additional agencies.

(c) *Designation of non-Federal representative.* A Federal agency may designate a non-Federal representative to conduct an abbreviated consultation or prepare an EFH Assessment by giving written notice of such designation to NMFS. If a non-Federal representative