



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XD138]

#### Atlantic Highly Migratory Species; Essential Fish Habitat 5-Year Review

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; notice of intent.

**SUMMARY:** NMFS announces the availability of the Final Atlantic Highly Migratory Species (HMS) Essential Fish Habitat (EFH) 5-Year Review (Final HMS EFH 5-Year Review) and intent to initiate Amendment 17 to the 2006 Consolidated HMS Fishery Management Plan (FMP) to modify HMS EFH descriptions and designations. The purpose of the Final HMS EFH 5-Year Review is to gather relevant new information and determine whether modifications to existing EFH descriptions and designations are warranted, in compliance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and implementing regulations. NMFS has determined that modifications to EFH descriptions and designations are warranted.

**DATES:** The Final HMS EFH 5-Year Review will be available on [*INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER*]. Data contributions for inclusion in Draft Amendment 17 to the 2006 Consolidated HMS FMP must be received by [*INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** Electronic copies of information related to the Final HMS EFH 5-Year Review, including the Final HMS EFH 5-Year Review, may be obtained on the HMS Management Division website at: <https://www.fisheries.noaa.gov/action/essential-fish-habitat-5-year-review-0>.

Please submit data contributions via email to [NMFS.SF.HMSEFH@noaa.gov](mailto:NMFS.SF.HMSEFH@noaa.gov) with the subject “Atlantic HMS Amendment 17 Data.” See the **SUPPLEMENTARY INFORMATION** section for additional details on data contributions.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Cudney, [jennifer.cudney@noaa.gov](mailto:jennifer.cudney@noaa.gov), at 727-824-5399, or Ann Williamson, [ann.williamson@noaa.gov](mailto:ann.williamson@noaa.gov), at 301-427-8503.

**SUPPLEMENTARY INFORMATION:** Atlantic HMS fisheries (tunas, billfish, swordfish, and sharks) are managed under 2006 Consolidated HMS FMP and its amendments pursuant to the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and consistent with the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). HMS implementing regulations are at 50 CFR part 635.

The Magnuson-Stevens Act includes provisions concerning the identification and conservation of EFH (16 U.S.C. 1801 *et seq.*). EFH is defined in 50 CFR 600.10 as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” NMFS must identify and describe EFH, minimize to the extent practicable the adverse effects of fishing on EFH, and identify other actions to encourage the conservation and enhancement of EFH (§ 600.815(a)). EFH maps are presented online in the NMFS EFH Mapper (<https://www.habitat.noaa.gov/apps/efhmapper/>). The most recently available EFH shapefiles may be downloaded from the EFH Data Inventory (<https://www.habitat.noaa.gov/protection/efh/newInv/index.html>). Federal agencies that authorize, fund, or undertake actions that may adversely affect EFH must consult with NMFS, and NMFS must provide conservation recommendations to Federal and state agencies regarding any such actions (§ 600.815(a)(9)).

Under the current 2006 Consolidated HMS FMP as amended, NMFS uses a two-phase process to review and consider updates to HMS EFH. Phase 1 includes the development of a draft 5-year review, the public comment process, and the publication of

a final 5-year review. Phase 1 is initiated approximately 5 years after publication of the last HMS EFH review and update of HMS EFH (i.e., Amendment 10 to the 2006 Consolidated HMS FMP (Amendment 10) (82 FR 42329, September 7, 2017)). This final 5-year review document constitutes the last part of Phase 1. If no new information is found to warrant updating all or certain components of HMS EFH, then we may choose to retain the previously designated HMS EFH. However, if updates are warranted, we would initiate Phase 2 of this process, which may include an action to implement the recommended updates. The type of follow-up action depends on the outcomes of the 5-year review (i.e., whether it is a simple update, or if it requires an FMP amendment or rulemaking).

EFH 5-year reviews evaluate published scientific literature, unpublished scientific reports, information solicited from interested parties, and previously unavailable or inaccessible data. NMFS announced the initiation of this review and solicited information for this review from the public in a **Federal Register** notice on April 5, 2022 (87 FR 19667). The initial public review/submission period ended on June 6, 2023. NMFS released the Draft HMS 5-Year Review and solicited public comments on the draft in a **Federal Register** notice on May 4, 2023 (88 FR 28531). The public comment period for the Draft HMS EFH 5-Year Review ended on July 3, 2023.

The final document, developed as part of Phase 1, considers fishing effects, non-fishing effects, environmental changes, and management changes for all HMS, which include tunas (bluefin, bigeye, albacore, yellowfin, and skipjack), sharks, swordfish, and billfishes (blue marlin, white marlin, sailfish, roundscale spearfish, and longbill spearfish). It analyzes new information and data not previously included in recent updates to Atlantic HMS EFH, or has become available since publication of our previous EFH action (Amendment 10).

NMFS analyzed the information gathered through the EFH review process in this final 5-year review and determined that revision of EFH is warranted. As such, NMFS will initiate Phase 2, which will include the development of Amendment 17 to the 2006 Consolidated HMS FMP. In reviewing literature since 2017, new data and scientific information emerged for certain HMS that warrant revision to those species' EFH geographic boundaries. For other HMS, new data and scientific information were either unavailable or it was determined that the new data and scientific information did not warrant revisions to their EFH geographic boundaries. However, in Amendment 17, NMFS will also review and, if necessary, update EFH boundaries based on data added to existing EFH datasets (*e.g.*, observer, survey, and tag/recapture databases) since publication of the previous 5-year review in 2015 and/or Final Amendment 10 in 2017.

The 5-year review process (including public comment) has indicated that updates to the methodology used to designate EFH geographic boundaries are appropriate. The current EFH methodology was first applied in Amendment 1 to the 2006 Consolidated HMS FMP in 2009, and HMS EFH geographic boundaries have not been updated using this methodology since Amendment 10. Minor technical changes to the kernel density estimation methodologies will be implemented to reduce bias that results from how multiple, discrete datasets are combined into one composite data structure. This 5-year review also identified a method to compare oceanographic data to point data, in order to derive a series of habitat metrics for each species and environmental variable. This information can be used to increase the specificity of EFH text descriptions for species, if appropriate.

The Final HMS EFH 5-Year Review analyzed whether updates to analyses concerning fishing and non-fishing activities, including impacts of climate change, were warranted. New scientific information concerning adverse effects of fishing on EFH was not identified. NMFS therefore recommends that no substantive changes be made to the

evaluation of those effects included in the 2017 EFH review and update. However, the 2017 EFH review and update included a spatial analysis of observer data to evaluate bottom longline interactions with coral. This analysis should be updated in Phase 2 to incorporate any new information that might be available from the observer program.

As part of this 5-year review process, NMFS analyzed the scientific literature to identify new activities that could adversely affect EFH and to determine whether updates to previously analyzed activities that adversely affect EFH were warranted. NMFS did not identify scientific information suggesting the need to include new activities (*i.e.*, those not previously analyzed) that adversely affect EFH in the HMS FMP. However, there was new scientific information on many of the previously analyzed activities which could be incorporated into the FMP. Additionally, potential new actions to encourage conservation and enhancement of EFH adversely affected by marine sand and minerals mining, aquaculture, and renewable energy production were identified.

As part of this 5-year review process, NMFS analyzed the scientific literature to identify information relevant to Habitat Areas of Particular Concern (HAPC). NMFS did not identify scientific information or data suggesting that existing HAPCs should be changed or removed. However, it is likely that NMFS will reevaluate EFH boundaries for the species in Phase 2 based on the availability of seven more years of published literature, data and other information since publication of the previous 5-year review in 2015 and/or Final Amendment 10 in 2017. Existing boundaries of HAPCs may also need to be evaluated and changed to ensure they fall within any adjustments of HMS EFH. Based on the results of this 5-year review, NMFS recommends further consideration of a new HAPC for white sharks in the New York Bight.

As Phase 2 of this process, Amendment 17 to the 2006 Consolidated HMS FMP, will consider all 10 EFH components, including individual species EFH descriptions, EFH conservation and enhancement recommendations for fishing and non-fishing effects

on EFH, and identification of HAPCs, as well as scientific feedback and public comment. NMFS is seeking data contributions for Phase 2 of the EFH review process, the development of Draft Amendment 17 to the 2006 Consolidated HMS FMP. Data contributions will be considered for inclusion in analyses used to update HMS EFH boundaries, and should include the following information: species name, date and time, geographic location information, tag information (if any), length, weight, sex, and life stage information.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: April 12, 2024.

**Everett Wayne Baxter,**

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*National Marine Fisheries Service.*

[FR Doc. 2024-08263 Filed: 4/17/2024 8:45 am; Publication Date: 4/18/2024]