



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

Deepwater Horizon Gulf Restoration Office  
341 Greeno Road North, Suite A  
Fairhope, Alabama 36532

In Reply Refer To:  
FWS/R4/DH NRDAR

Memorandum

September 27, 2023

To: Memorandum to File

From: Michael Barron, Deepwater Horizon Gulf Restoration Office

Subject: Regulatory Compliance Determinations for Open Ocean Trustee Implementation Group's Restoration Project: Evaluating the Cumulative Impacts of Multiple Stressors on Cetaceans - Phase 2 field work

Based on our review of Biological Evaluation (Attachment 1), the compliance determinations for the project proposed for implementation by the Open Ocean Trustee Implementation Group: Evaluating the Cumulative Impacts of Multiple Stressors on Cetaceans - Phase 2 field work are indicated below, and the appropriate conservation measures will be implemented. This memo does not include any information or effects determinations for protected species under the jurisdiction of the National Marine Fisheries Service.

Project Title	BGEPA (USFWS)	MBTA (USFWS)
Evaluating the Cumulative Impacts of Multiple Stressors on Cetaceans - Phase 2 field work	NT	NT

*NT – No Take*

We have also determined that the Coastal Barrier Resources Act of 1982 (16 U.S.C. 3501) is not applicable for this project.

Should the project be modified in a way that could adversely impact species or habitats, this determination will be reevaluated as appropriate.

If you have questions or concerns regarding this action, please contact Michael Barron, Fish and Wildlife Biologist, at 251-421-7030 or [michael\\_barron@fws.gov](mailto:michael_barron@fws.gov).

Attachments (1)

**Attachment 1**  
**Biological Evaluation Form**  
***Deepwater Horizon Oil Spill Restoration***  
**U.S. Fish and Wildlife Service & National Marine Fisheries Service**

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This form will be filled out by the Implementing Trustee and used by the regulatory agencies. The form will provide information to initiate informal Section 7 consultations under the Endangered Species Act (ESA) and may be used to document a No Effect determination or to initiate pre-consultation technical assistance.

It is recommended that this form also be completed to inform and evaluate additional needs for compliance with the following authorities: Migratory Bird Treaty Act (MBTA), Marine Mammal Protection Act (MMPA), Coastal Barrier Resources Act (CBRA), Bald and Golden Eagle Protection Act (BGEPA) and Section 106 of the National Historic Preservation Act (NHPA).

Further information may be required beyond what is captured on this form. Note: if you need additional space for writing, please attach pages as needed.

For assistance, please contact the compliance liaisons USFWS: Michael Barron at michael\_barron@fws.gov  
NMFS: Christy Fellas at christina.fellas@noaa.gov

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**A. Project Identification**

Federal Action Agency(one or more):USFWS  NOAA  EPA  USDA

Implementing Trustee(s): National Oceanic and Atmospheric Administration (NOAA)

Contact Name: Thomas Dolan Phone: 727-351-3318 Email: thomas.dolan@noaa.gov

Project Name: Evaluating the Cumulative Impacts of Multiple Stressors on Cetaceans - Phase 2 field work

DIVER ID# 217 TIG: Open Ocean TIG Restoration Plan # MAIP 03

**B. Project Phase**

Please choose the box which best describes the project status, as proposed in this BE form, check ALL that apply:

Construction/Implementation  Planning/Conceptual  Engineering & Design

If “Engineering & Design” was selected, please describe the level of design that has been completed and is available for review:

[Click here to enter text.](#)

### **C. Project Location**

#### **I. State and County/Parish of action area**

The project will take place in U.S. Federal waters within the Gulf of Mexico

#### **II. Latitude/Longitude for action area (Decimal degrees and datum [e.g., 27.71622°N, 80.25174°W NAD83] [online conversion: <https://www.fcc.gov/encyclopedia/degrees-minutes-seconds-tofrom-decimal-degrees>]**

[Click here to enter text.](#)

#### **III. Maps, Drawings, and GIS Data**

**Please insert any maps, aerial photographs, or design drawings here or attach to the end of this BE form. GIS files may be added to the same folder location as where this BE is filed on Sharepoint .** Examples of such supporting documentation include, but are not limited to:

- Plan view of design drawings

- Aerial images of project action area and surrounding area, showing state or regional scale

- Map of project area with elements proposed (polygons showing proposed construction elements)

- Map of action area with critical habitat units or sensitive habitats overlaid

- GIS Files to include ARCGIS, KMZ, CAD, or other GIS files are required (WGS 84) for projects with a field component

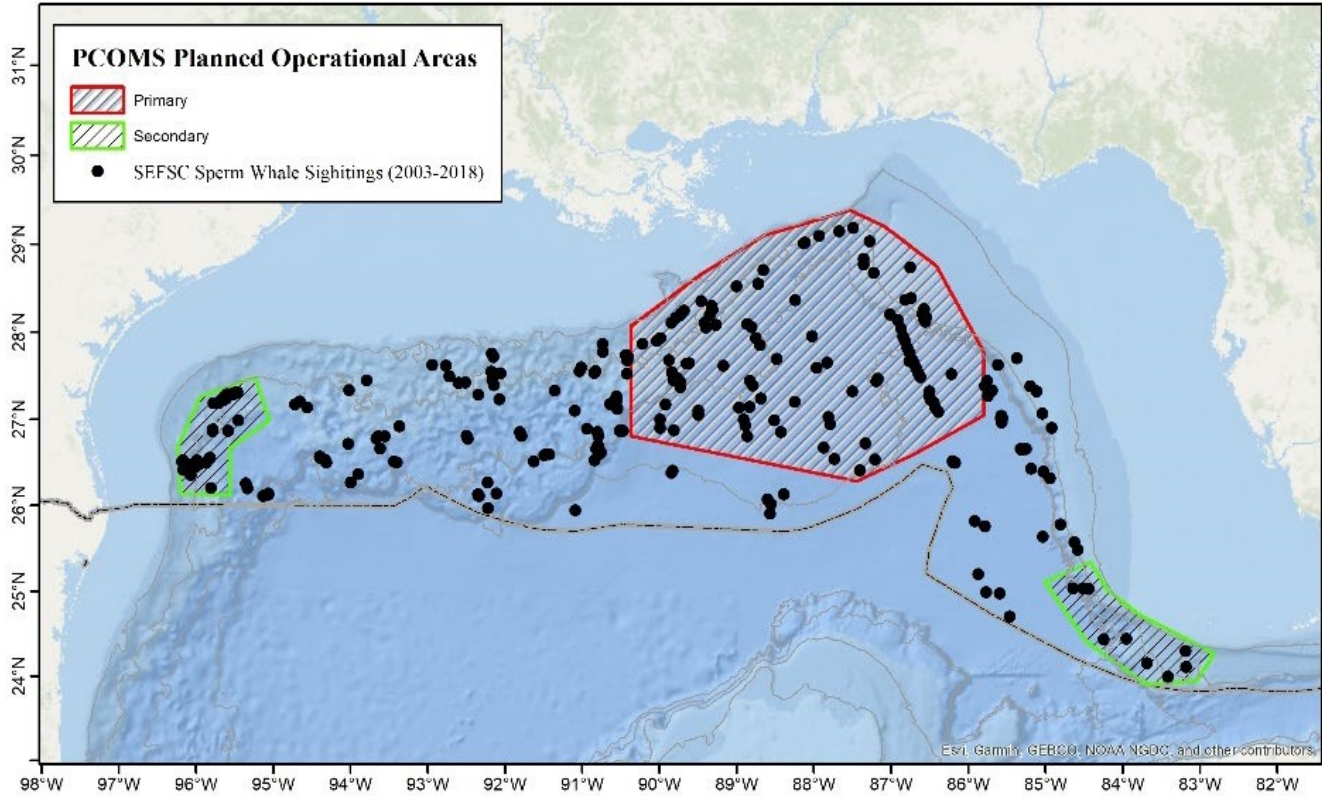


Figure 1. Planned operational areas for fieldwork for the project. The project will focus on sperm whale habitat in U.S. waters of the Gulf of Mexico, which is approximately bounded by the 300 meter (m) depth contour to the north and the EEZ to the south. Primary and secondary focal activity areas are indicated by red- and green-bordered polygons, respectively, and most activity will take place in deeper (>800 m) waters within these areas. Recovery of tags may require transit through other areas. The EEZ boundary is indicated by a gray line.

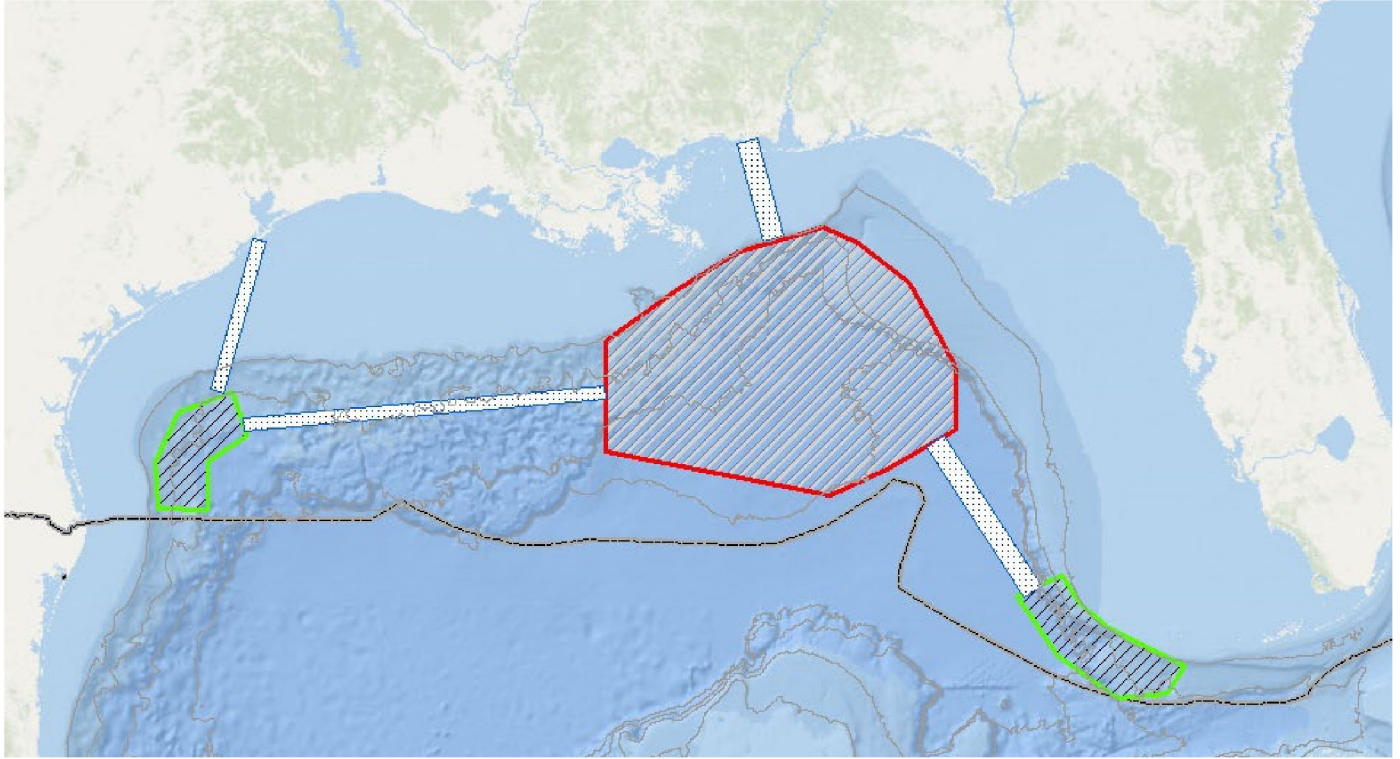


Figure 2. Planned operational areas for fieldwork for the project. Red and green areas are the same operational areas as shown above in Figure 1. White dotted lines indicate the areas of transit between areas and from the ports of Galveston, TX and Pascagoula, MS.

**D. Existing Compliance Documentation**

**NEPA Documents**

Are there any **existing** draft or final NEPA analyses (not PDARP/PEIS) that cover all or part of this project?

YES

NO

**Permits**

Have any federal permits been obtained for this project, if so which ones and what is the permit number(s)?

YES  NO  Permit Number and Type: ESA/MMPA Permit from NMFS to Take Protected Species for Scientific Purposes (No. 21938-03)

Have any federal permits been applied for but not yet obtained, if so which ones and what is the permit number(s)?

YES  NO  Permit Number and Type: The current permit expires in May 2024. The Science Center expects to either extend the current permit or have a successor permit in place prior to its expiration. The new permit will include all activities contemplated

for this project.

If yes to any question above, please provide details in the text box (i.e. link to the NEPA document, or name of the document, year, lead federal agency, POC, copy of the permit or permit application, etc.). This is needed to check for consistency of the project scope across different sources and to facilitate the NEPA analysis. If you do not have a link, email the documents to the TIG representative for the Trustee designated as lead federal agency for the restoration plan.

NEPA Analysis in the original Monitoring and Adaptive Management Activity Implementation Plan: [https://www.gulfspillrestoration.noaa.gov/sites/default/files/2019-08%2000\\_MAM%20Activities%20Plan\\_03\\_Cetacean\\_Cumulative\\_Stressors\\_final.pdf](https://www.gulfspillrestoration.noaa.gov/sites/default/files/2019-08%2000_MAM%20Activities%20Plan_03_Cetacean_Cumulative_Stressors_final.pdf)

Any documentation or information provided will be very helpful in moving your project forward.

Name of Person Completing this Form: Thomas Dolan

Name of Project Lead: Lance Garrison

Date Form Completed: 06/02/2023

Date Form Updated: [Click here to enter text.](#)

### **E. Description of Action Area**

*Provide a description of the existing environment (e.g., topography, vegetation type, soil type, substrate type, water quality, water depth, tidal/riverine/estuarine, hydrology and drainage patterns, current flow and direction), and land uses (e.g., public, residential, commercial, industrial, agricultural). Describe all areas that may be directly or indirectly affected by the action. If critical habitat (CH) is not designated in the area, then describe any suitable habitat in the area.*

#### **a. Waterbody & Wetlands**

*If applicable. Name the body of water, including wetlands (freshwater or estuarine), on which the project is located. If applicable, please describe water quality, depth, hydrology, current flow, and direction of flow.*

Project activities will take place in surface waters in sperm whale habitat in the northern Gulf of Mexico. This includes the area approximately bounded by the 300 m isobath (minimum depth) and the U.S. EEZ. This area overlaps part of the Rice's whale core distribution area. Most activities will take place over deeper water (>800 m), but tag retrieval may require the vessel to operate in shallower water.

*Does the project area include a river or estuary?*

YES       NO

*If yes, please approximate the navigable distance from the project location to the*

marine environment. [Click or tap here to enter text.](#)

#### b. Existing Structures

*If applicable. Describe the current and historical structures found in the action area (e.g., buildings, parking lots, docks, seawalls, groynes, jetties, marina). If known, please provide the years of construction.*

N/A

#### c. Seagrasses & Other Marine Vegetation

*If applicable. Describe seagrasses found in action area. If a benthic survey was done, provide the date it was completed and a copy of the report. Estimate the species area of coverage and density. Attach a separate map showing the location of the seagrasses in the action area.*

N/A

#### d. Mangroves

*If applicable. Describe the mangroves found in action area. Indicate the species found (red, black, white), the species area of coverage in square footage and linear footage along project shoreline. Attach a separate map showing the location of the mangroves in the action area.*

N/A

#### e. Corals

*If applicable. Describe the corals found in action area. If a benthic survey was done, provide the date it was completed and a copy of the report. Estimate the species area of coverage and density. Attach a separate map showing the location of the corals in the action area. [Click here to enter text.](#)*

Mesophotic and deep water coral communities occur in the benthos within the action area. However, the project's activities will be limited to surface waters and will not affect benthic communities.

#### f. Uplands

*If applicable. Describe the current terrestrial habitat in which the project is located (e.g. pasture, forest, meadows, beach and dune habitats, etc.).*

N/A

#### g. Soils and Sediments

*If applicable. Indicate topography, soil type, substrate type.*

N/A

#### h. Land Use



If applicable. Indicate existing or previous land use activities (agriculture, dredge disposal, etc).

N/A

#### i. Marine Mammals

Please select the following marine mammals that could be present within the project area:

Dolphins YES  NO

Whales YES  NO

Manatees YES  NO

If applicable. Indicate and describe the species found in the action area. Use NMFS' Stock Assessment Reports (SARs) for more information, see <http://www.nmfs.noaa.gov/pr/sars/region.htm>

Marine mammals recorded in NMFS stock assessment report for this action area in the GOM include: Rice's whale (*Balaenoptera ricei*), sperm whale (*Physeter microcephalus*), Cuviers beaked whale (*Ziphius cavirostris*), Blainville's beaked whale (*Mesoplodon densirostris*), Gervais' beaked whale (*Mesoplodon europaeus*), common bottlenose dolphin (*Tursiops truncatus truncatus*), Atlantic spotted dolphin (*Stenella frontalis*), pantropical spotted dolphin (*Stenella attenuate*), striped dolphin (*Stenella coeruleoalba*), spinner dolphin (*Stenella longirostris*), rough-toothed dolphin (*Steno bredanensis*), Clymene dolphin (*Stenella clymene*), Fraser's dolphin (*Lagenodelphis hosei*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), dwarf sperm whale (*Kogia sima*), pygmy sperm whale (*Kogia breviceps*), Melon-headed whale (*Peponocephala electra*), Risso's dolphin (*Grampus griseus*), and short-finned pilot whale (*Globicephala macrorhynchus*).

## **F. Project Description**

I. Describe the Proposed Action/Project Objectives: What are you trying to accomplish and how with this project? Describe in detail the construction equipment and methods\*\* needed; long term vs. short term impacts; duration of short term impacts; dust, erosion, and sedimentation controls; restoration areas; if the project is growth-inducing or facilitates growth; whether the project is part of a larger project or plan; and what permits will need to be obtained.

Attach a separate map showing project footprint, avoidance areas, construction accesses, staging/laydown areas.

\*\*If construction involves overwater structures, pilings and sheetpiles, boat slips, boat ramps, shoreline armoring, dredging, blasting, artificial reefs or fishery activities, list the method here, but complete the next section(s) in detail.

Phase 1 of the project (model development) is ongoing. This BE form is evaluating the field work proposed for Phase 2.

The intention of this action is to better quantify morphometric relationships, field metabolic

rates, and other parameters related to sperm whale bioenergetics, physiology, and behavior. Activities will include up to 60 sea days using a NOAA Office of Marine and Aviation Operations vessel (probably the Gordon Gunter). These are 60 new sea days to complete project work, not part of an existing cruise.

Activities may include any of the following:

1. Approach up to 100 sperm whales via manned surface vessel without contact.
2. Approach up to 60 sperm whales via manned surface vessel to place implantable or suction-cup based tags.
3. Approach up to 60 sperm whales via manned surface vessel to collect biopsy samples.
4. Approach up to 100 sperm whales via unmanned aerial vehicle (UAV) for photogrammetry.

Recovery of tags may require transit of the Rice's whale core distribution area.

While sperm whales are the focal species for these activities, *Stenella* species (e.g., pan-tropical spotted dolphins) may also be approached for identification, photogrammetry, and/or biopsy sampling if the opportunity arises.

Opportunistic sampling may include:

1. Approach up to 20 *Stenella* sp. via manned surface vessel to collect biopsy samples.
2. Approach up to 20 *Stenella* sp. via UAV for photogrammetry.

This project does not involve construction.

i. *Fishery Activities (Describe any use of gear that could entangle or capture protected species. This includes activities that may enhance fishing opportunities (e.g. fishing piers) or be fishery/gear research related (e.g. involve trawl gear, gillnets, hook and line gear, crab pots etc)).*

N/A

## **G. NOAA Essential Fish Habitat (EFH)**

*If applicable, describe any designated Essential Fish Habitat within the project area in the text box and answer the questions below about habitat effects, conversions or benefits. If there is no EFH in your project area, enter N/A in the box below and move to section F.*

*Depending on the effects of your project, EFH consultation with NMFS may be required:*

<https://www.fisheries.noaa.gov/southeast/consultations/essential-fish-habitat-consultations-southeast>

The action area overlaps EFH for shrimp defined as waters and substrates extending from Grand

Isle, Louisiana to Pensacola Bay, Florida between depths of 100 and 325 fathoms. In particular, this would include the portion of that habitat that is between 300 m and 524.75 m (325 fathoms) deep.

The action area overlaps EFH for coral.

The action area overlaps EFH for Gulf of Mexico Pelagics and Highly Migratory Species.

*In this table, please use checkboxes to indicate which EFH eco-region(s) and habitat zone(s) in which the project is located. For more information about EFH Eco Regions see the references here:*

<https://noaasdd.sharepoint.com/:f:/s/tcover/Euupi2PMtXdEqQtJSdKyq-wBdyb42ubMUUbMy7QsijqK7A?e=oYqSsb>

<https://portal.gulfcouncil.org/EFHreview.html>

<u>Gulf of Mexico EFH Eco-Region</u>	<u>Estuarine</u>	<u>Nearshore</u>	<u>Offshore</u>
<b>Eco-Region 1: South Florida</b> <i>(Florida Keys north to Tarpon Springs, Florida)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Eco-Region 2: North Florida</b> <i>(Tarpon Springs, Florida, north and west to Pensacola Bay, Florida)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Eco-Region 3: East Louisiana, Mississippi, and Alabama</b> <i>(Pensacola Bay, Florida, west to the Mississippi River Delta)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Eco-Region 4: East Texas and West Louisiana</b> <i>(Mississippi River Delta west and south to Freeport, Texas)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Eco-Region 5: West Texas</b> <i>(Freeport, Texas south to the U.S./Mexico border)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Effects to EFH**

*In this section, please indicate if your project has effects on EFH, either beneficial or adverse. For example, whether the project creates, improves, removes or converts habitat. Please describe the types of habitats that will be affected by the project, including number of acres.*

<i>Will this project affect EFH?</i>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<i>If no, please proceed to section X. (For example, your project is wholly upland or includes only desktop analysis tasks)</i>	
<i>If yes, please proceed to additional boxes below.</i>	

Vessel presence and traffic could increase in the action area as a result of the proposed action. The presence of the vessel is not expected to cause observable changes in the behavior and/or presence of pelagic or highly migratory fish resources and associated EFH.

Vessel presence and whale tagging activities will take place in surface waters and will not affect the water column below the surface or the benthos; therefore, coral and shrimp EFH will not be affected by the action.

<i>Will this project have beneficial effects to EFH?</i>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<i>If yes, please describe how your project will have beneficial effects the text box below:</i>	



Choose an item.		Choose an item.	Choose an item.	Choose an item.
Choose an item.		Choose an item.	Choose an item.	Choose an item.
		Choose an item.	Choose an item.	Choose an item.
		Choose an item.	Choose an item.	Choose an item.
		Choose an item.	Choose an item.	Choose an item.

### Determination Definitions

Please make the appropriate choice in the drop down menus for both species and designated critical habitat listed in the first column.

**NE = no effect.** This determination is appropriate when the proposed action will not directly, indirectly, or cumulatively impact, either positively or negatively, any listed, proposed, candidate species or designated/proposed critical habitat.

**NLAA = may affect, not likely to adversely affect.** This determination is appropriate when the proposed action is not likely to adversely impact any listed, proposed, candidate species or designated/proposed critical habitat or there may be beneficial effects to these resources. Response requested is concurrence with the not likely to affect determination. This conclusion is appropriate when effects to the species or critical habitat will be wholly beneficial, discountable, or insignificant. Beneficial effects are contemporaneous positive effects without any adverse effects to the species or habitat. Insignificant effects relate to the size of the impact, while discountable effects are those that are extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur. If the Services concur in writing with the Action Agency's determination of "is not likely to adversely affect" listed species or critical habitat, the section 7 consultation process is completed.

**LAA = may affect, likely to adversely affect.** This determination is appropriate when the proposed action is likely to adversely impact any listed, proposed, candidate species or designated/proposed critical habitat. Response requested for listed species is formal consultation for action with a likely to adversely affect determination, with a biological opinion as the concluding document. This conclusion is reached if any adverse effect to listed species or critical habitat may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not discountable or insignificant. In the event the overall effect of the proposed action is beneficial to the listed species or critical habitat, but may also cause some adverse effect on individuals of the listed species or segments of the critical habitat, then the determination is "likely to adversely affect." Any LAA determination requires formal section 7 consultation and will require additional information.

### I. USFWS Species and Critical Habitat and Effects Determination Requested

*If your project occurs in a location that does not contain any listed USFWS species or designated Critical Habitats, please check the box below. If this box is checked, you may skip Section I and proceed to Section J.*

This project occurs in a location that does not contain any listed USFWS species or designated Critical Habitats.

ESA effects have been accounted for under an existing consultation.

1. List all species, critical habitat, proposed species and proposed critical habitat **generated by IPaC** that may be found in the action area. For species not included in the drop down menu please add manually to the table. The IPaC website can be found here: <https://ipac.ecosphere.fws.gov/>.

2. Attach a separate map identifying species/critical habitat locations within the action area. For information on species and critical habitat under NMFS jurisdiction, visit: [http://sero.nmfs.noaa.gov/protected\\_resources/section\\_7/threatened\\_endangered/Documents/gulf\\_of\\_mexico.pdf](http://sero.nmfs.noaa.gov/protected_resources/section_7/threatened_endangered/Documents/gulf_of_mexico.pdf).

If Gulf sturgeon in riverine/freshwater waters may be affected, include them in the table here. If Gulf Sturgeon in marine waters may be affected include them in the NMFS table above in Section G. If sea turtles on land may be affected include them in the table here. If sea turtles in water may be affected include them in the NMFS table above in Section G.

<b>Species and/or Critical Habitat</b>	<b>CH Unit (if applicable)</b>	<b>Location (Sea turtles and Gulf Sturgeon <u>only</u>)</b>	<b>Determinations (see definitions below)</b>	<b>For “No Effect”, please select justification.</b>
West Indian Manatee		Choose an item.	May Affect, Not Likely to Adversely Affect	Choose an item.
Piping Plover		Choose an item.	No Effect	Species does not occur within action area
Red Knot		Choose an item.	No Effect	Species does not occur within action area
Green Sea Turtle		Terrestrial	No Effect	Species does not occur within action area
Hawksbill Sea Turtle		Terrestrial	No Effect	Species does not occur within action area
Kemp's Ridley		Terrestrial	No Effect	Species does not occur within action area
Leatherback Sea Turtle		Terrestrial	No Effect	Species does not occur within action area
Loggerhead Sea Turtle		Terrestrial	No Effect	Species does not occur within action area
Eastern Black Rail		Choose an item.	No Effect	Species does not occur within action area
Gulf Sturgeon		Riverine/Freshwater	No Effect	Species does not occur within action area

Monarch Butterfly		Choose an item.	No Effect	Species does not occur within action area
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## Determination Definitions

Please make the appropriate choice in the drop down menus for both species and designated critical habitat

**NE = no effect.** This determination is appropriate when the proposed action will not directly, indirectly, or cumulatively impact, either positively or negatively, any listed, proposed, candidate species or designated/proposed critical habitat.

**NLAA = may affect, not likely to adversely affect.** This determination is appropriate when the proposed action is not likely to adversely impact any listed, proposed, candidate species or designated/proposed critical habitat or there may be beneficial effects to these resources. Response requested is concurrence with the not likely to affect determination. This conclusion is appropriate when effects to the species or critical habitat will be wholly beneficial, discountable, or insignificant. Beneficial effects are contemporaneous positive effects without any adverse effects to the species or habitat. Insignificant effects relate to the size of the impact, while discountable effects are those that are extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur. If the Services concur in writing with the Action Agency's determination of "is not likely to adversely affect" listed species or critical habitat, the section 7 consultation process is completed.

**LAA = may affect, likely to adversely affect.** This determination is appropriate when the proposed action is likely to adversely impact any listed, proposed, candidate species or designated/proposed critical habitat. Response requested for listed species is formal consultation for action with a likely to adversely affect determination, with a biological opinion as the concluding document. This conclusion is reached if any adverse effect to listed species or critical habitat may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not discountable or insignificant. In the event the overall effect of the proposed action is beneficial to the listed species or critical habitat, but may also cause some adverse effect on individuals of the listed species or segments of the critical habitat, then the determination is "likely to adversely affect." Any LAA determination requires formal section 7 consultation and will require additional information.

## J. Effects of the Proposed Project to the Species and Actions to Reduce Impacts

*NOTE: Species selected as "No Effect" with justification in tables above do not need to be addressed in Section I or J.*

I. *Explain the potential beneficial and adverse effects to each species listed above. Describe what, when, and how the species will be impacted and the likely response to the impact. Be sure to include direct, indirect, and cumulative impacts and where possible, quantify effects.*

*If species are present (or potentially present) and will not be adversely affected describe your rationale. If species are unlikely to be present in the general area or action area, explain why. This justification provides documentation for your administrative record, avoids the need for additional correspondence regarding the species, and helps expedite review.*

Click here to enter text.

II. Explain the actions to reduce adverse effects to each species listed above. For each species for which impacts were identified, describe any Conservation Measures and/or BMPs that will be implemented to avoid or minimize the impacts. Conservation Measures and/or BMPs are designed to avoid or minimize effects to listed species and critical habitats or further the recovery of the species under review. Conservation Measures and/or BMPs are considered part of the proposed action and their implementation is required. Any changes to, modifications of, or failure to implement these conservation measures may result in a need to reinitiate this consultation.

**Frequently Recommended Conservation Measures and BMPs: This checklist provides standard practices recommended by NMFS and USFWS. Please select any BMPs that will be implemented:**

- |                                     |  |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <b>USFWS Standard Manatee In Water Conditions</b>                                      |
| <input type="checkbox"/>            | <b>NMFS Protected Species Construction Conditions (2021)<sup>1</sup></b>               |
| <input type="checkbox"/>            | <b>NMFS Measures for Reducing the Entrapment Risk to Protected Species<sup>1</sup></b> |
| <input checked="" type="checkbox"/> | <b>NMFS Vessel Strike Avoidance Measures (2021)<sup>1</sup></b>                        |

**Additional BMPs or Conservation Measures**

Chapter 6 of the PDARP included an important appendix (6.A) of best practices, see information starting on page 6-173. [http://www.gulfspillrestoration.noaa.gov/sites/default/files/wp-content/uploads/Chapter-6\\_Environmental-Consequences\\_508.pdf](http://www.gulfspillrestoration.noaa.gov/sites/default/files/wp-content/uploads/Chapter-6_Environmental-Consequences_508.pdf)

Use the box below to indicate which best management practices or conservation measures you'll be using in your project (that were not listed in Section I above)

**ESA Species under NMFS jurisdiction**

The project will implement all measures and recommendations stated in NMFS Permit 21938-03 and any subsequent extension or update to the permit.

**Manatees**

West Indian manatee may be present in the nearshore areas where vessels transit for this project. USFWS Standard Manatee In-Water Conditions will be followed. As such, this project may affect but is not likely to adversely affect West Indian manatee.

**K. Effects to Critical Habitats and Actions to Reduce Impacts**

*NOTE: Species selected as "No Effect" with justification in table do not need to be addressed in Section I or J.*

I. Explain the potential beneficial and adverse effects to critical habitat listed above. Describe what, when, and how the critical habitat will be impacted and the likely response to the impact. Be sure to include direct, indirect, and cumulative impacts to physical and biological features, and where possible, quantify effects (e.g. acres of habitat, miles of habitat).

Describe your rationale if designated or proposed critical habitats are present and will not be adversely affected.

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<sup>1</sup> <https://www.fisheries.noaa.gov/southeast/consultations/regulations-policies-and-guidance>



N/A

II. Explain the actions to reduce adverse effects to critical habitat listed above. For critical habitat for which impacts were identified, describe any conservation measures (e.g. BMPs) that will be implemented to avoid or minimize the impacts. Conservation measures are designed to avoid or minimize effects to listed species and critical habitats or further the recovery of the species under review.

Conservation measures are considered part of the proposed action and their implementation is required. Any changes to, modifications of, or failure to implement these conservation measures may result in a need to reinitiate this consultation.

[Click here to enter text.](#)

### L. Marine Mammals

I. The Marine Mammal Protection Act prohibits the taking (including disruption of behavior, entrapment, injury, or death) of all marine mammals (e.g., whales, dolphins, manatees). However, the MMPA allows limited exceptions to the take prohibition if authorized, such as the incidental (i.e., unintentional but not unexpected) take of marine mammals. The following questions are designed to allow the Agencies to quickly determine if your action has the potential to take marine mammals. If the information provided indicates that incidental take is possible, further discussion with the Agencies is required.

Is your activity occurring in or on marine or estuarine waters?  NO  YES

If yes, is your activity likely to cause large-scale, ecosystem level impacts to the quality (e.g. salinity, temperature) of marine or

estuarine waters?  NO  YES

II. If Yes, describe activities further using checkboxes. Does your activity involve any of the following:

NO	YES	ACTIVITY
<input checked="" type="checkbox"/>	<input type="checkbox"/>	a) Use of active acoustic equipment (e.g., echosounder) producing sound below 200 kHz
<input checked="" type="checkbox"/>	<input type="checkbox"/>	b) In-water construction or demolition
<input checked="" type="checkbox"/>	<input type="checkbox"/>	c) Temporary or fixed use of active or passive sampling gear (e.g., nets, lines, traps; turtle relocation trawls)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	d) In-water Explosive detonation
<input checked="" type="checkbox"/>	<input type="checkbox"/>	e) Aquaculture
<input checked="" type="checkbox"/>	<input type="checkbox"/>	f) Restoration of barrier islands, levee construction or similar projects
<input checked="" type="checkbox"/>	<input type="checkbox"/>	g) Fresh-water river diversions
<input checked="" type="checkbox"/>	<input type="checkbox"/>	h) Building or enhancing areas for water-related recreational use or fishing opportunities (e.g. fishing piers, bridges, boat ramps, marinas)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	i) Dredging or in-water construction activities to change hydrologic conditions or connectivity, create breakwaters and living shorelines, etc.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	j) Conducting driving of sheet piles or pilings
<input checked="" type="checkbox"/>	<input type="checkbox"/>	k) Use of floating pipeline during dredging activities

III. If you checked “Yes” to any of the activities immediately above or the activity could impact the quality of marine or estuarine waters, please describe the nature of the activities in more detail or indicate which section of the form already includes these descriptions. See the NOAA Acoustic Guidance for more information: <http://www.nmfs.noaa.gov/pr/acoustics/faq.htm>

Click here to enter text.

IV. *Frequently Recommended BMPs for marine mammals (manatees are covered in Section I above): This checklist provides standard BMPs recommended by NOAA. Please select any BMPs that will be implemented:*

<input type="checkbox"/>	NMFS Southeast U.S. Marine Mammal and Sea Turtle Viewing Guidelines <sup>2</sup>
<input type="checkbox"/>	NMFS Protected Species Construction Conditions (2021) <sup>3</sup>
<input type="checkbox"/>	NMFS Measures for Reducing the Entrapment Risk to Protected Species (2012) <sup>3</sup>
<input checked="" type="checkbox"/>	NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (2021) <sup>3</sup>
<input type="checkbox"/>	NMFS Reproducing and posting outreach signs: Dolphin Friendly Fishing Tips sign, Don’t Feed Wild Dolphins sign <sup>4</sup>

If not listed above, please describe any additional BMPs or conservation measures that may be implemented for marine mammals. **The project will implement all measures and recommendations stated in Permit 21938-03 and any subsequent permit or extension.**

### M. Bald Eagles

Are bald eagles present in the action area?  NO  YES

If YES, the following conservation measures should be implemented:

1. If bald eagle breeding or nesting behaviors are observed or a nest is discovered or known, all activities (e.g., walking, camping, clean-up, use of a UTV, ATV, or boat) should avoid the nest by a minimum of 660 feet. If the nest is protected by a vegetated buffer where there is *no* line of sight to the nest, then the minimum avoidance distance is 330 feet. This avoidance distance shall be maintained from the onset of breeding/courtship behaviors until any eggs have hatched and eaglets have fledged (approximately 6 months).
2. If a similar activity (e.g., driving on a roadway) is closer than 660 feet to a nest, then you may maintain a distance buffer as close to the nest as the existing tolerated activity.
3. If a vegetated buffer is present and there is no line of sight to the nest and a similar activity is closer than 330 feet to a nest, then you may maintain a distance buffer as close to the nest as the existing tolerated activity.
4. In some instances, activities conducted at a distance greater than 660 feet of a nest may result in disturbance. If an activity appears to cause initial disturbance, the activity shall stop and all individuals and equipment will be moved away until the eagles are no longer displaying disturbance behaviors.

<sup>2</sup> <https://www.fisheries.noaa.gov/topic/marine-life-viewing-guidelines>

<sup>3</sup> <https://www.fisheries.noaa.gov/southeast/consultations/regulations-policies-and-guidance>

<sup>4</sup> <https://www.fisheries.noaa.gov/southeast/consultations/protected-species-educational-signs>

Will you implement the above measures?  NO  YES

If these measures cannot be implemented, then you must contact the Service's Migratory Bird Permit Office.  
Texas – (505) 248-7882 or by email: [permitsR2MB@fws.gov](mailto:permitsR2MB@fws.gov)  
Louisiana, Mississippi, Alabama, Florida – (404) 679-7070 or by email: [permitsR4MB@fws.gov](mailto:permitsR4MB@fws.gov)

### **N. Migratory Bird Treaty Act**

In accordance with the Migratory Bird Treaty Act of 1918 as amended (16 U.S.C. 703-712), will this project cause the take of any birds covered under this act?  NO  YES

If YES, please explain and indicate if the pertinent permits will be or have been obtained:

Project proponent will review the appropriate BMPs and CMs found at this website and implement the appropriate measures to the extent practicable:

<https://www.fws.gov/library/collections/avoiding-and-minimizing-incident-take-migratory-birds>

NO  YES

If NO, please explain:

### **O. Request Approval for Use of NMFS PDCs for This Project**

Complete this section only if your project qualifies for streamlined ESA consultation under the ESA Framework Programmatic Biological Opinion completed by NMFS on February 10, 2016.

To be eligible for streamlined ESA consultation with NMFS, you must implement all Project Design Criteria (PDCs) applicable to your project. Check "yes" for PDC categories that apply to the proposed project, and [request PDC checklist from NMFS](#).

NO	YES	ACTIVITY
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Oyster Reef Creation and Enhancement</b>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Marine Debris Removal</b>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Construction of Living Shorelines</b>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Marsh Creation and Enhancement</b>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Construction of Non-Fishing Piers</b>

### **P. Submitting the BE Form**

**We request that all BE forms and consultation materials be placed on Sharepoint for review.**

Upon receipt, we will conduct a preliminary review and provide any comments and feedback, including any requests for modifications or additional information.

If modifications or additional information is necessary, we will work with you until the Biological Evaluation form is considered complete. Once complete, we will use the Biological Evaluation form to initiate appropriate consultations.

Questions may be directed to:

**NMFS ESA § 7 Consultation**

Christy Fellas, National Oceanic Atmospheric Administration

Email: [Christina.Fellas@noaa.gov](mailto:Christina.Fellas@noaa.gov)

Phone: 727-551-5714

**USFWS ESA § 7 Consultation**

Michael Barron, Department of the Interior

Email: [michael\\_barron@fws.gov](mailto:michael_barron@fws.gov)

Phone: 251-421-7030