



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

October 21, 2024

To: Memorandum to File

From: Michael Barron, Deepwater Horizon Gulf Restoration Office

Subject: Regulatory Compliance Determination for Proposed Updates to the Project: Pensacola Community Maritime Park Public Fishing Marina from the Florida Trustee Implementation Group's Restoration Plan #2: Habitat Projects on Federally Managed Lands; Sea Turtles; Marine Mammals; Birds; and Provide and Enhance Recreational Opportunities

Under the Endangered Species Act (ESA) Section 7(a)(2), each Federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species, or destroy/adversely modify designated critical habitat. If a Federal agency determines that a Federal action will have no effect on ESA-listed species or designated critical habitat, then the Federal agency is not required to consult with the US Fish and Wildlife Service (USFWS) for purposes of ESA. This memo does not include any information or effects determinations for protected species under the jurisdiction of the National Marine Fisheries Service.

Based on our review of the project materials provided, we have determined that the updates proposed to the project: Pensacola Community Maritime Park Public Fishing Marina from the Florida Trustee Implementation Group's Restoration Plan and Environmental Assessment #2: Habitat Projects on Federally Managed Lands; Sea Turtles; Marine Mammals; Birds; and Provide and Enhance Recreational Opportunities will have no impact on any Federally threatened or endangered species as the project location is in an area where none of these species of concern are located. Therefore, no further consultation is required at this time.

Should any 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.

Attachment (1)

Attachment 1

Biological Evaluation Form

Deepwater Horizon Oil Spill Restoration

U.S. Fish and Wildlife Service & National Marine Fisheries Service

This Biological Evaluation (BE) form will be filled out by the Implementing Trustee and used by the U. S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA) 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), and Bald and Golden Eagle Protection Act (BGEPA). Section 106 of the National Historic Preservation Act (NHPA) review can be started by submitting this form to the online NHPA Submission Portal (<https://www.fws.gov/doid/web/compliance-reviews>).

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

U.S Fish and Wildlife Service: Michael Barron at michael_barron@fws.gov

National Marine Fisheries Service (NMFS): Christy Fellas at christina.fellas@noaa.gov

A. Project Identification

Federal Action Agency (one or more):

USFWS ☒ NOAA ☒ Environmental Protection Agency (EPA) ☐ U.S. Department of Agriculture (USDA) ☐

Implementing Trustee(s): Florida Fish and Wildlife Conservation Commission

Contact Name: Gareth Leonard Phone: 850-617-9452 Email: gareth.leonard@myfwc.com

Project Name: Pensacola Community Maritime Park Public

Fishing Marina DIVER ID# 281 Trustee Implementation

Group (TIG): Florida TIG Restoration Plan # 2

Name of Person Completing this Form: Amy Raker/Gareth Leonard

Name of Project Lead: Gareth Leonard

Date Form Completed: October 2024

Date Form Updated: Click here to enter text.

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:

N/A

C. Project Location

I. State and County/Parish of action area

Pensacola Community Maritime Park, Pensacola, Escambia County, Florida. The project area consists of + 0.3 acres located within Township 2S, Range 30W, Section 44, USGS Pensacola, FL quadrangle at an elevation of 10’ AMSL.

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>] Approximate center of action area: 30.403392°N, -87.219595°W (see figures below).

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 are required and should be added to the same Sharepoint folder location as the BE form. Examples of such supporting documentation include, but are not limited to:

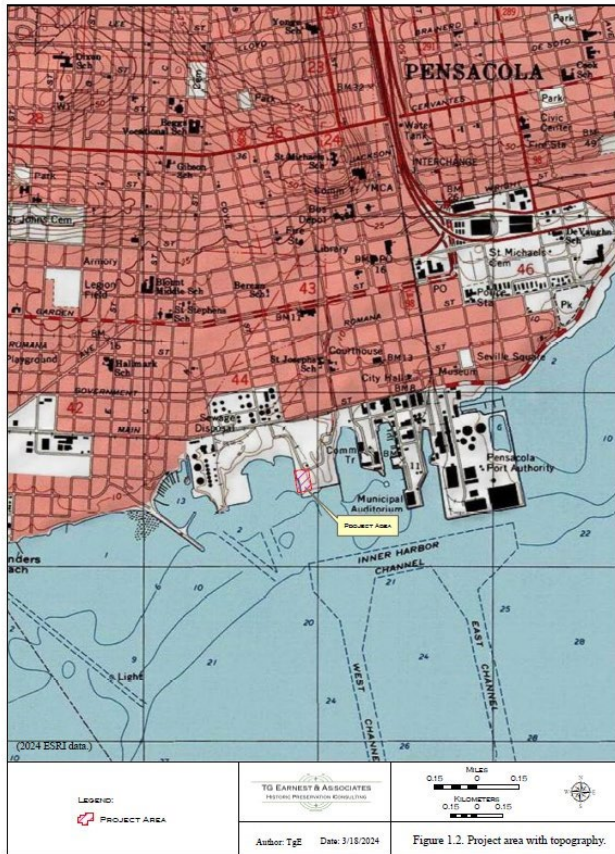
- Plan view of design drawings

- 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 overlayed

- GIS Files to include ARCGIS, KMZ, CAD, or other GIS files are required (WGS 84) for projects with a field component; all files should be polygons and not polylines



1.3



1.4

D. Existing Compliance Documentation

National Environmental Policy Act (NEPA) Documents

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

YES ☒

NO ☐

Examples:

- TIG Restoration Plan/Environmental Assessment or Environmental Impact Statement (draft or final)
- U.S. Army Corps of Engineers (USACE) programmatic NEPA analysis
- USACE Clean Water Act individual permit for the project
- NEPA analysis provided by a federal agency that gave approval, funding or authorization

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: Permit Number and Type: Click or

tap here

to enter text

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: Click here to enter text.

If yes to any question above, please provide details in the text box (i.e. link to/name of the NEPA document, year, lead federal agency, Point of Contact, 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. Any documentation or information provided will help move the project forward.

Complete National Environmental Policy Act analysis for the original project activities is included in the Florida Trustee Implementation Group's (TIG) Restoration Plan 2 and Environmental Assessment.

<https://www.fws.gov/doiddata/dwh-ar/documents/4004/DWH-ARZ009338.pdf>

The NEPA analysis for the proposed additional elements can be found in the Florida TIG's *Evaluation of Changes to the 'Pensacola Community Maritime Park Public Fishing Marina' Project*.

The original *Pensacola Community Maritime Park Public Fishing Marina* project's Biological Evaluation Form can be found here <https://www.fws.gov/doiddata/dwh-ar-documents/4008/DWH-ARZ009719.pdf>

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.

Pensacola Maritime Community Park sits on the north end of Pensacola Bay in the Inner Harbor. The Inner Harbor is

bound to the west by Bayou Chico, the east by the Pensacola Bay Bridge, and the south by the City of Gulf Breeze. Water depths in the Inner Harbor are generally shallow (seven feet or less), except within the dredged West and East Approach Channels. The project location is tidally influenced with about a 1.2-foot difference between mean high water and mean low water. The marina site sits within Federal Emergency Management Agency designated Flood Zone VE, with a flood elevation of 10 to 11 feet. The project site sits on a part of Pensacola Bay that is listed as 303d impaired waterbody for nutrients (Florida Department of Environmental Protection [FDEP], 2020). No project activities will occur in the marine environment.

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.

N/A

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.

The project includes running power and water utilities to the newly constructed Pensacola Community Maritime Park marina from existing utilities located in the road right of way, just east of the marina. The work entails digging a trench, running the utilities from the road to the marina, and then running the power and water to the marina slips. All work is upland work. In 2023, the City completed construction of project activities as approved in the RP2/EA, i.e., the public fishing marina with three floating piers and kayak launch; educational information; and monofilament recycling bins. Adjacent areas are highly developed with a mixture of commercial and residential areas. The project is next to a park that contains greenspace, an amphitheater, and a sports stadium (all built since 2010).

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.

No project activities will occur in the marine environment.

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.

No project activities will occur in the marine environment.

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.

No project activities will occur in the marine environment.

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.).

All project activities will occur on upland areas, all of which have been previously developed. Based on U.S. Geological Survey's (USGS; 2016) National Land Cover Database, Pensacola Community Maritime Park's land cover is a mix of barren land (31) and developed spaces ranging from open

space (21) to high-intensity development (24). The uplands were formed by the introduction of dredged spoil material from Pensacola Bay. All vegetation is modern ornamental shrubs, landscaped live oaks, and lawn grasses.

g. Soils and Sediments

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

The entire project area uplands were formed by the introduction of dredged spoil material from Pensacola Bay.

Mapped soils consist entirely of Arents - Urban Land Complex (USDA 2023). These soils are comprised of altered marine deposits relocated as dredged material to form uplands for development. The nature of mapped soils indicates an extremely low probability of encountering cultural resources. It was communicated to the field crew by Adrienne Walker (City of Pensacola Historic Preservation Planner) that the soil used to build the wharf in which the project area is located are from dredge spoil.

h. Land Use

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

Pensacola Community Maritime Park is currently developed and used for recreation. No change in land use is expected as part of this project.

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 for more information, see <http://www.nmfs.noaa.gov/pr/sars/region.htm>

No project activities will occur in the marine environment.

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.

The City of Pensacola has requested that the Florida TIG allow it to run power and water utilities to the newly constructed marina. In 2023, the City completed construction of project activities as approved in the RP2/EA, i.e., the public fishing marina with three floating piers and kayak launch; educational information; and monofilament recycling bins. The additional utilities are requested to further enhance the marina. Underground utilities will run to the marina from existing utilities located in the road right of way, just east of the marina. The work entails digging a trench, running the utilities from the road to the marina, and then running the power and water to the marina slips. All work is upland work. See Evaluation of Changes to the 'Pensacola Community Maritime Park Public Fishing Marina' Project.

There is no proposed demolition of existing structures. Avoidance of trees and habitat are proposed, but any unavoidable tree removal or structure removal would require materials to be removed from the site via trucks. Shortterm disturbances to terrestrial soils and substrates may occur as a result of construction and site preparation activities. However, the impacts would be localized to < 0.3 acres.

During construction, visitors may experience impacts since the project and staging area could be inaccessible depending on the project activity. There may also be elevated noise and human activity that may disrupt air quality, biological resources like wildlife and vegetation, and soundscapes. Dust and erosion should not exceed minor levels since the area is sandy and flat. Best management practices for erosion (stormwater runoff control, etc.) can be implemented if needed.

Any benefits caused by this project will be long-term and would primarily affect visitor use experience and recreation resources.

II. *Construction Schedule (What is the anticipated schedule for major phases of work? Include duration of in-water work.)*

Construction of the utilities would be completed within 6 months. Post-construction monitoring of recreational use for the marina would occur for 2 years post-construction.

III. *Specific In-Water and/or Terrestrial Construction Methods*

Please check yes or no for the following questions related to in-water work and overwater structures

<i>Does this project include in-water work?</i>	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
<i>Does this project include terrestrial construction?</i>	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
<i>Does this project include construction of an overwater structure?</i>	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
<i>Will fishing be allowed from this overwater structure?</i>	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
<i>Will wildlife observation be allowed from this overwater structure?</i>	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
<i>Will boat docking be allowed from this overwater structure?</i>	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>

If this is a fishing pier, please provide the following information: public or private access to pier, estimated number

of people fishing per day, plan to address hook and line captures of protected species, specific operating hours/open 24 hours, artificial lighting of pier (if any), number of fish cleaning stations, and number of pier attendants (if any).

N/A

Construction: Provide a detailed account of construction methods. It is important to include step-by-step descriptions of how demolition or removal of structures is conducted and if any debris will be moved and how. Describe how construction will be implemented, what type and size of materials will be used and if machines will be used, manual labor, or both. Indicate if work will be done from upland, barge, or both.)

iii. Use of "Dock Construction Guidelines"? <https://media.fisheries.noaa.gov/dam-migration/dockkey2002.pdf>

iv. Type of decking: Grated – 43% open space; Wooden planks or composite planks – proposed spacing?

v. Height above Mean High Water (MHW) elevation?

vi. Directional orientation of main axis of dock?

vii. Overwater area (sq ft)?

Underground utilities will run to the marina from existing utilities located in the road right of way, just east of the marina. The work entails digging a trench, running the utilities from the road to the marina, and then running the power and water to the marina slips. Implementation of this project could include use of heavy construction equipment, such as bulldozers, trucks, backhoes, tractor trailers, cranes, small excavators, forklifts, small power tools, generators, small trucks, and hand tools. Construction vehicles and equipment would enter the site from the nearby road. Only land-based construction would occur. Vehicles and staging equipment would utilize previously existing roads, parking areas, and disturbed areas.

a. *Pilings & Sheetpiles: If this project includes installation of pilings or sheets, please provide answers to questions 1-11 listed below*

1. Method of pile installation	N/A
2. Material type of piles used	N/A
3. Size (width) of piles/sheets	N/A
4. Total number of piles/sheets	N/A
5. Number of strikes for each single pile	N/A
6. Number of strikes per hour (for a single pile)	N/A
7. Expected number of piles to be driven each day	N/A
8. Expected amount of time needed to drive each pile (minutes of driving activities)	N/A
9. Expected number of sequential days spent pile driving	N/A
10. Whether pile driving occurring in-water or on land	N/A
11. Depth of water where piles will be driven	N/A

- b. *Marinas and Boat Slips (Describe the number and size of slips and if the number of new slips changes from what is currently available at the project. Indicate how many are wet slips and how many are dry slips. Estimate the shadow effect of the boats - the area (sqft) beneath the boats that will be shaded.)*

N/A

- c. *Boat Ramp (Describe the number and size of boat ramps, the number of vessels that can be moored at the site (e.g., staging area) and if this is a public or private ramp. Indicate the boat trailer parking lot capacity, and if this number changes from what is currently available at the project.)*

N/A

- d. *Shoreline Armoring (This includes all manner of shoreline armoring (e.g., riprap, seawalls, jetties, groins, breakwaters, etc.). Provide specific information on material and construction methodology used to install the shoreline armoring materials. Include linear footage and square footage. Attach a separate map showing the location of the shoreline armoring in the action area.*

N/A

- e. *Dredging or digging (Provide details about dredge type (hopper, cutterhead, clamshell, etc.), maximum depth of dredging, area (ft²) to be dredged, volume of material (yd³) to be produced, grain size of material, sediment testing for contamination, spoil disposition plans, and hydrodynamic description (average current speed/direction)). If digging in the terrestrial environment, please describe fully with details about possible water jetting, vibration methods to install pilings for dune walk-over structure, or other methods. If using devices/methods/turtle relocation dredging to relocate sea turtles, then describe the methods here.*

N/A

- f. *Blasting (Projects that use blasting might not qualify as "minor projects," and a Biological Assessment (BA) may need to be prepared for the project. Arrange a technical consultation meeting with NMFS Protected Resources Division to determine if a BA is necessary. Please include explosive weights and blasting plan.)*

N/A

- g. *Artificial Reefs (Provide a detailed account of the artificial reef site selection and reef establishment decisions [i.e., management and siting considerations, stakeholder considerations, environmental considerations, long term maintenance plan (periodic clean-up of lost fishing gear/debris)], deployment schedule, materials used, deployment methods, as well as final depth profile and overhead clearance for vessel traffic. For additional Information and detailed guidance on artificial reefs, please refer to the artificial reef program websites for the particular state the project will occur in.*

N/A

- h. *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> No project activities will occur in the marine environment.

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

E
f
f
e
c
t
s
t
o
E
F
H

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.

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

N/A

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

N/A

Will this project have adverse effects on EFH?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
If yes, please describe what type of adverse effects your project will cause to EFH in the text box below:	

N/A

H. NOAA ESA Species and Critical Habitat and Effects Determination Requested

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

☒ This project occurs in a location that does not contain any listed NOAA 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 that may be found in the action area. Species that do not currently occur in the action area (but are listed on county species lists) do not need to be listed in drop downs. For species not included in the drop down menu please add manually to the table.

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 the ESA Section 7 Mapper at:
<https://noaa.maps.arcgis.com/apps/webappviewer/index.html?id=b184635835e34f4d904c6fb741cfb00d>

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

Species and/or Critical Habitat	CH Unit (if applicable)	Location (Sea turtles and Gulf Sturgeon only)	Determinations (see definitions below)	For "No Effect", please select justification.
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.

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 H. 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 H.

Species and/or Critical Habitat	CH Unit (if applicable)	Location (Sea turtles and Gulf Sturgeon only)	Determinations (see definitions below)	For “No Effect”, please select justification.
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

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 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.

N/A

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 reinstate 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:

- ☐ NMFS Protected Species Construction Conditions (2021)¹
- ☐ NMFS Measures for Reducing the Entrapment Risk to Protected Species¹
- ☐ NMFS Vessel Strike Avoidance Measures (2021)¹
- ☐ USFWS Standard Manatee In Water Conditions (2011)² and Appropriate State Manatee Conditions³

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

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)

N/A

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,

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

² <https://www.fws.gov/media/2011-standard-manatee-construction-conditions-water-work>

³ Contact USFWS representative for appropriate documents

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.

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.

N/A

L. Marine Mammals

I. The Marine Mammal Protection Act (MMPA) 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>

N/A

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 ⁴
<input type="checkbox"/>	NMFS Protected Species Construction Conditions (2021) ⁵
<input type="checkbox"/>	NMFS Measures for Reducing the Entrapment Risk to Protected Species (2012) ³
<input type="checkbox"/>	NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (2021) ³
<input type="checkbox"/>	NMFS Reproducing and posting outreach signs: Dolphin Friendly Fishing Tips sign, Don't Feed Wild Dolphins sign ⁶

If not listed above, please describe any additional BMPs or conservation measures that may be implemented for marine mammals. N/A

M. Bald Eagles (Bald and Golden Eagle Protection Act)

Are bald eagles present in the action area? ☐ NO ☒ YES

Whether Bald Eagles are present or not, the following conservation measures should be implemented to protect eagles or in the case that previously unknown eagles are documented:

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.

⁴ <https://www.fisheries.noaa.gov/topic/marine-life-viewing-guidelines>

⁵ <https://www.fisheries.noaa.gov/southeast/consultations/regulations-policies-and-guidance>

⁶ <https://www.fisheries.noaa.gov/southeast/consultations/protected-species-educational-signs>

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.

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

Louisiana, Mississippi, Alabama, Florida – (404) 679-7070 or by email: 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 the following website and implement the appropriate measures to the extent practicable:

<https://www.fws.gov/library/collections/avoiding-and-minimizing-incidental-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 and updated Appendix A (2023). 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](#). Review the document here on Sharepoint: [NMFS ESA PDCs](#)

YES	NO	ACTIVITY
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Marsh Creation, Maintenance, or Enhancement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Living Shorelines Construction Maintenance, or Expansion
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Removal of Fishing Gear and Other Marine Debris
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Oyster Reefs Creation, Maintenance, or Enhancement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Pile-Supported Structures, including Non-fishing Piers, Anchored Buoys, and In-water Sign Posts
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Artificial Reefs Construction, Maintenance, or Expansion

<input type="checkbox"/>	<input checked="" type="checkbox"/>	Boat Ramps Installation, Repair, Replacement, or Removal
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Water Management Outfall Structures and Associated Endwalls Installation, Repair, Replacement or Removal
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Establishing or Restoring SAV
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Scientific Surveys or Research Projects and the Installation, Repair, or Removal of Equipment

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

Phone: 813-816-2732

USFWS ESA § 7 Consultation

Michael Barron, Department of the Interior

Email: michael_barron@fws.gov

Phone: 251-421-7030

NHPA Consultation

Benjamin Frater, Department of the Interior

Email: benjamin_frater@fws.gov

Phone: 404-314-8815