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 November 6, 2024

To: Memorandum to File

From: Michael Barron, Deepwater Horizon Gulf Restoration Office

Subject: Regulatory Compliance Determinations for Restoration Projects Proposed in the Alabama Trustee Implementation Group's Restoration Plan #4: Wetlands Coastal Nearshore Habitats, Nutrient Reduction, Birds, Oysters and Recreational Use

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. This memo also addresses other statues that may apply.

Based on our review of the project materials provided, the compliance determinations for six of the projects proposed for implementation in the Alabama Restoration Plan and Environmental Assessment #4: Wetlands Coastal Nearshore Habitats, Nutrient Reduction, Birds, Oysters and Recreational Use are indicated below:

Project Title	Endangered Species Act	Marine Mammal Protection Act	Bald and Golden Eagle Protection Act	Migratory Bird Treaty Act	Coastal Barrier Resources Act
Puppy Creek – Juniper Creek-Big Creek Nutrient Reduction	NA	NA	NE-NT	NE-NT	NA
Stewardship of Coastal Alabama Beach Nesting Bird Habitat	R-SC	NA	NE-NT	NE-NT	R-SC
Improving Resilience for Oysters by Linking Brood Reefs and Sink Reefs (Large-scale) – Component 4 – Mid-lower Mobile Bay, AL	CEC	CEC	NE-NT	NE-NT	NA
Oyster Grow-Out and Restoration Reef Replacement – 5 Year Continuation	R-SC	R-SC	NE-NT	NE-NT	NA
Bayfront Park Restoration and Improvement Phases IIa and IIb	R-SC	NA	NE-NT	NE-NT	NA
Laguna Cove Little Lagoon Natural Resource Protection – Large Scale Amenities	R-SC	NA	NE-NT	NE-NT	NA

R-SC – Required-Separate Consultation; NA – Not Applicable; NE-NT – No Effect-No Take; CEC – Covered By Existing Consultation

Please note that the conclusion reached for the Puppy Creek-Juniper Creek-Big Creek Nutrient Reduction project is contingent upon the United Stated Department of Agriculture completing their internal processes to determine if any threatened or endangered species are present in the action area and completing their own consultation for the project.

There is one additional project in this Restoration Plan: Lower Perdido Islands Habitat Restoration Phase II. Consultation for this project has been completed and documented separately.

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.

Attachments (6)

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): USDA

Contact Name: Craig Johnson Phone: 000-000-0000 Email: craig.b.johnson@usda.gov

Project Name: Puppy Creek – Juniper Creek-Big Creek Nutrient Reduction

DIVER ID# Click to enter text Trustee Implementation Group (TIG):

Alabama TIG Restoration Plan # RP4/EA

Name of Person Completing this Form: Madison Reckman

Name of Project Lead: Craig Johnson

Date Form Completed: 04/09/2024

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:

Click here to enter text.

C. Project Location

I. State and County/Parish of action area

Puppy Creek and Juniper Creek – Big Cedar Creek watersheds in Mobile County, Alabama.

II. Latitude/Longitude for action area (Decimal degrees and datum [e.g., 27.71622°N, 80.25174°W NAD83)

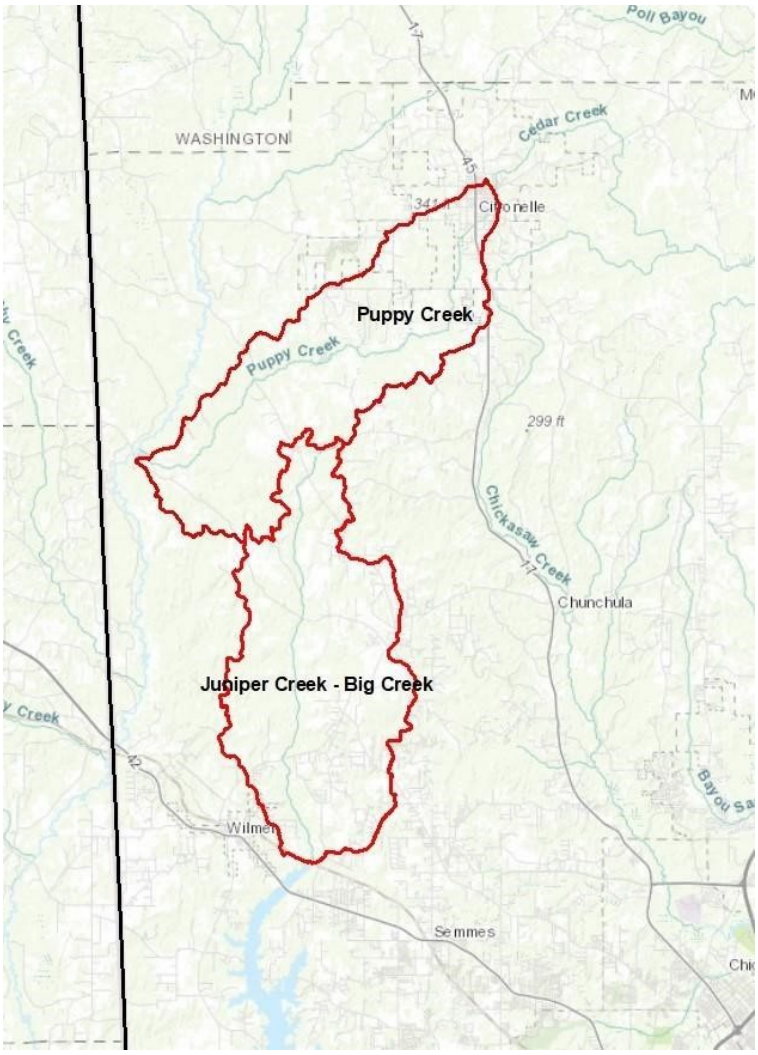
[online conversion: https://www.fcc.gov/encyclopedia/degrees-minutes-seconds-tofrom-decimal-degrees]

30° 58' 21.219", -88° 19' 37.0524" – this point is centrally located in the watershed and does not represent a specific action area.

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



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: Click 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. N/A

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.

Puppy Creek (Hydrologic Unit Code [HUC] 031700080205) is a low gradient stream located in Southern Pine Plains & Hills ecoregion. Juniper Creek-Big Creek (Hydrologic Unit Code [HUC] 031700080502) is also a low gradient stream near Fairview. Juniper Creek lies within the Upper Big Creek Subwatershed of the Escatawpa River Basin.

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.

The point at which Puppy Creek drains into the Escatawpa River is situated roughly 40 miles north of Grand Bay. The point at which Juniper Creek and Big Creek conjoin and drain into Big Creek Lake is situated roughly 28 miles north of Grand Bay.

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.

Both Puppy Creek watershed and Juniper Creek-Big Creek watershed are largely comprised of forests and agricultural croplands. A very small portion of both watersheds is residential and commercial.

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.

N/A

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.).

Large areas of forests and grasslands dominate the Puppy Creek and Juniper Creek-Big Creek watersheds. Puppy Creek has one urban area associated with the City of Citronelle situated at the northeast end of the watershed.

g. Soils and Sediments

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

The main soil area that encompasses the watershed is coastal plain. The Coastal Plain covers the southern two-thirds of Alabama, which was formed from marine deposits when oceans periodically covered this part of Alabama. Landscapes of the Coastal Plain vary from flatlands to rolling hills. These well drained soils on flatter hilltops, terraces, and bottomlands can be productive farmland for an array of crops. Typical Coastal Plain soils have sand topsoil and clayey subsoil. The soil is highly weathered, low in plant nutrients, and acidic. Surface soil colors range from a light brown in sandy soils to a bright red where iron oxides coat the soil particles. Darker surface soil colors are often related to an accumulation of organic matter. Subsoil colors can be yellow or gray if poorly drained (wet most of the year), to bright red where soils are well-drained.

h. Land Use

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

The Puppy Creek watershed is 59% forest, 16% shrub/scrub, 11% pasture/hay, 3% cultivated crops, 3% woody wetlands, 5% developed and 1% open water. The Juniper Creek-Big Creek watershed is 66.4% forest, 18.4% pasture, 11.4% cropland, 3.5% transitional and 0.1% low residential.

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

N/A

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 primary goal of the nutrient reduction project is to improve water quality by reducing nutrient and sediment loading. The health of the Gulf of Mexico depends upon the health of its estuaries, and the health of those coastal waters is influenced by land uses in the watersheds of its tributaries. In the five Gulf States, over 80 percent of the acreage is in private ownership (USDA-NRCS 2014) and is used for forestry and agriculture. This watershed-scale project would restore water quality impacted by the DWH oil spill by reducing nutrients and the sediments carrying them into coastal waters. Runoff from cropland, grassland, forest, and urban sources contributes nutrients and sediments to coastal Gulf waters that adversely affect their health. While agricultural and forested lands are not the sole contributors (and in many instances, not the leading contributors) of nutrients to coastal waters, there are opportunities to address this resource concern at these sources within the Puppy Creek and Juniper Creek-Big Cedar Creek watersheds. We are making significant strides with conservation planning and practice implementation. Contracts have been awarded to 38 landowners. The project spans over 20,400 acres. One-hundred and eight (108) conservation practices have been implemented that

either help to avoid, control, or trap nutrients within Weeks Bay and Fowl River watersheds. Extending our efforts to upstream watersheds would provide opportunities to work with landowners in the Gulf Coast region to address nutrient and sediment runoff at the source.

The USDA would provide outreach and technical assistance to voluntary participants (private landowners), especially on acres within the watersheds where conservation measures would have the greatest potential to improve water quality, to develop conservation plans and implement nutrient reduction-related conservation practices. The project proposes to implement clusters of conservation practices within the smallest watershed practicable with the goal of making a discernable difference in water quality at the watershed level. Examples of conservation practices include erosion and sediment control practices such as cover crops, conservation tillage, and field borders. Although cattle production is not the primary agricultural industry in the watershed, livestock exclusion from stream, wetlands, and drainage ways would be a priority conservation measure.

While the targeted approach described here is expected to reduce pollution and hydrologic degradation, implementation of conservation practices depends on landowner participation and, therefore, outreach is a key component of the overall effort. The proposed conservation practices would reduce nutrient and sediment losses from the landscape, reduce nutrient and sediment loads to streams and downstream receiving waters, and reduce water quality degradation in watersheds that could provide benefits to coastal watersheds and marine resources.

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

The project would be implemented over five years, with the first year consisting mainly of landowner outreach and planning. Implementation of the conservation plans would begin in year two and continue through year four. The project has been organized into four phases for implementation: 1) Conservation planning (landowner outreach, environmental evaluation) 2) Engineering and Design 3) Implementation 4) Monitoring

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

Does this project include in-water work?	YES☒	NO☐
Does this project include terrestrial construction?	YES☒	NO☐
Does this project include construction of an overwater structure?	YES☐	NO☒
Will fishing be allowed from this overwater structure?	YES☐	NO☒
Will wildlife observation be allowed from this overwater structure?	YES☐	NO☒
Will boat docking be allowed from this overwater structure?	YES☐	NO☒

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)?*

Construction work for this project will primarily take place upland in the form of implementing grade stabilization and water control structures as well as streambank and shoreline protection. Implementing grade stabilization structures would include soil excavation, grading and the installation of berms, riprap and hard structures. Structures for water control would be installed in a water managements system that conveys water, controls the direction of rate of flow, maintains a desired water surface elevation or measures water. This would include grading, reshaping, and planting of stream banks, ponds, lakes, and other aquatic systems. The stabilization and protection of streambanks and shorelines would include grading, reshaping, and planting of native vegetation to prevent erosion after bank regarding.

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

11. Depth of water where piles will be driven	

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
The EFH Mapper hosted by NOAA Fisheries was reviewed and the project area was found to have no EFH communities as well as no Habitat Areas of Particular Concern (HAPC).

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

Gulf of Mexico EFH Eco-Region	Estuarine	Nearshore	Offshore
Eco-Region 1: **South Florida** (*Florida Keys north to Tarpon Springs, Florida*)	☐	☐	☐
Eco-Region 2: **North Florida** (*Tarpon Springs, Florida, north and west to Pensacola Bay, Florida*)	☐	☐	☐
Eco-Region 3: East Louisiana, Mississippi, and Alabama (*Pensacola Bay, Florida, west to the Mississippi River Delta)*	☐	☐	☐
Eco-Region 4: **East Texas and West Louisiana** (*Mississippi River Delta west and south to Freeport, Texas)*	☐	☐	☐
Eco-Region 5: **West Texas** (*Freeport, Texas south to the U.S./Mexico border)*	☐	☐	☐

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.

Will this project affect EFH?	YES☐ NO☒
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.	

Will this project have beneficial effects to EFH?	YES☐ NO☐
If yes, please describe how your project will have beneficial effects the text box below:	

Will this project have adverse effects on EFH?	YES☐ NO☐
If yes, please describe what type of adverse effects your project will cause to EFH in the text bow below:	

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.		
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.	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.

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.**

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.

As the implementation of this project involves future federal actions, the United States Department of Agriculture (USDA), employs standard protocol procedures for nutrient reduction projects. As per these protocols, USDA evaluates specific proposals from qualified landowners, determines potential impacts to federally listed species and/or their Critical Habitats, and conducts the necessary consultations at a later date.

As provided in 50 CFR 402.16, consultation must be reinitiated if (1) take occurs, or (2) new information reveals effects of the action not previously considered, or (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat in a manner or to an extent not previously considered, or (4) if a new species is listed or critical habitat designated that may be affected by the action.

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.*

N/A

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 Species[1]**

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

☐ **NMFS Vessel Strike Avoidance Measures (2021)[1]**

☐ **USFWS Standard Manatee In Water Conditions (2011)[2] and Appropriate State Manatee Conditions[3]**

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, 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.

[2] https://www.fws.gov/media/2011-standard-manatee-construction-conditions-water-work [3] Contact USFWS representative for appropriate documents

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
☒	☐	*a) Use of active acoustic equipment (e.g., echosounder) producing sound below 200 kHz*
☒	☐	*b) In-water construction or demolition*
☒	☐	*c) Temporary or fixed use of active or passive sampling gear (e.g., nets, lines, traps; turtle relocation trawls)*
☒	☐	*d) In-water Explosive detonation*
☒	☐	*e) Aquaculture*
☒	☐	*f) Restoration of barrier islands, levee construction or similar projects*
☒	☐	*g) Fresh-water river diversions*
☒	☐	*h) Building or enhancing areas for water-related recreational use or fishing opportunities (e.g. fishing piers, bridges, boat ramps, marinas)*
☒	☐	*i) Dredging or in-water construction activities to change hydrologic conditions or connectivity, create breakwaters and living shorelines, etc.*
☒	☐	*j) Conducting driving of sheet piles or pilings*
☒	☐	*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:*

☐	NMFS Southeast U.S. Marine Mammal and Sea Turtle Viewing Guidelines[3]
☐	NMFS Protected Species Construction Conditions (2021)[4]
☐	NMFS Measures for Reducing the Entrapment Risk to Protected Species (2012)[3]
☐	NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (2021)[3]

[3] https://www.fisheries.noaa.gov/topic/marine-life-viewing-guidelines

[4] https://www.fisheries.noaa.gov/southeast/consultations/regulations-policies-and-guidance

☐	NMFS Reproducing and posting outreach signs: Dolphin Friendly Fishing Tips sign, Don't Feed Wild Dolphins sign[5]

If not listed above, please describe any additional BMPs or conservation measures that may be 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 project 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.
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

[5] https://www.fisheries.noaa.gov/southeast/consultations/protected-species-educational-signs

☐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
☐	☐	**Marsh Creation, Maintenance, or Enhancement**
☐	☐	**Living Shorelines Construction Maintenance, or Expansion**
☐	☐	**Removal of Fishing Gear and Other Marine Debris**
☐	☐	**Oyster Reefs Creation, Maintenance, or Enhancement**
☐	☐	**Pile-Supported Structures, including Non-fishing Piers, Anchored Buoys, and In-water Sign Posts**
☐	☐	**Artificial Reefs Construction, Maintenance, or Expansion**
☐	☐	**Boat Ramps Installation, Repair, Replacement, or Removal**
☐	☐	**Water Management Outfall Structures and Associated Endwalls Installation, Repair, Replacement or Removal**
☐	☐	**Establishing or Restoring SAV**
☐	☐	**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

Attachment 2

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): ADCNR and USDOI

Contact Name: Jaime Miller Phone: (251) 621-1216 Email: Jaime.Miller@dcnr.alabama.gov

Project Name: Stewardship of Coastal Alabama Beach Nesting Bird Habitat Phase II

DIVER ID# Click to enter text Trustee Implementation Group (TIG):

Alabama TIG Restoration Plan # RP4

Name of Person Completing this Form: Madison Reckman

Name of Project Lead: Jaime Miller

Date Form Completed: 4/8/2024
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:

Click here to enter text.

C. Project Location

I. State and County/Parish of action area Mobile and Baldwin Counties, Alabama.

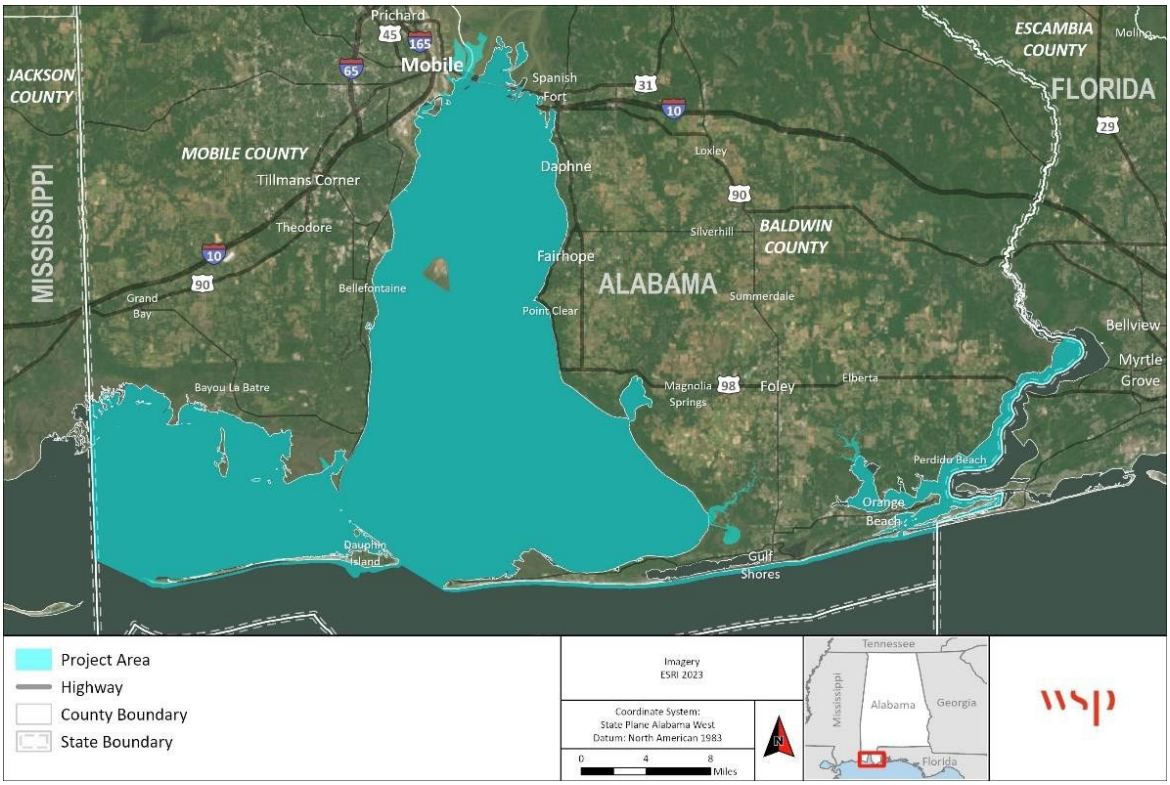
II. Latitude/Longitude for action area (Decimal degrees and datum [e.g., 27.71622°N, 80.25174°W NAD83)

[online conversion: https://www.fcc.gov/encyclopedia/degrees-minutes-seconds-tofrom-decimal-degrees] N/A

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



The project would occur throughout coastal Alabama with conducted targeted predator management activities specifically occurring in Bon Secour NWR, the City of Orange Beach, and lands recently acquired on the West end of Dauphin Island, AL.

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: Click 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.
Restoration Plan: Alabama Trustee Implementation Group Final Restoration Plan III/Environmental Assessment (Final RPIII/EA).

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.

The project would occur in coastal habitats throughout Alabama including locations in the vicinity of Mobile Bay and the Gulf of Mexico.

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.

The project is immediately adjacent to both estuarine and marine habitats.

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.

There are many structures and developments that exist on the Alabama coast. Structures within proposed initial target project areas for stewardship and restoration activities could include parking lots, roadways, and numerous visitor amenities (e.g., Gulf State Park and BSNWR).

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.

Common Submerged Aquatic Vegetation (SAV) species that occur within Baldwin and Mobile counties include wigeongrass (Ruppia maritime), American wild celery (Vallisneria americana), shoal grass (Halodule wrightii), southern naiad (Najas guadalupenis), slender pondweed (Potamogeton pusillus) and Eurasian watermilfoil (Myriophyllum spicatum). No construction activities are proposed for this project.

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.

N/A

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.).

Upland habitats within the action area could include pine savana, coastal scrub/shrub, salt marshes, freshwater and estuarine wetlands, beach and dune habitats, and developed urban areas.

g. Soils and Sediments

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

Sediment within the project area is quartz-dominated, fine sand. Large amounts of sediment-nearly five million metric tons-are carried into Mobile Bay every year. About 33% of it remains in the delta at the mouth of the Mobile River, 50% of it settles in Mobile Bay, and the remaining 15% makes its way into the Gulf. The sediments of Mobile Bay are uniform with mud dominating the estuary except for a thin margin where some sand is present. Clay minerals are the primary grain type with montmorillonite being dominant. The other clays present are kaolinite and illite. The total organic carbon content is high throughout; some areas have concentrations we all above 2% by weight.

h. Land Use

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

The Alabama Coast is both residential and commercial with a large portion of it being recreational, being comprised of wildlife management and refuge areas as well as public beaches.

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

Common marine mammal species in coastal Alabama include West Indian Manatee (*Trichechus manatus*) and Common Bottlenose Dolphin (*Tursiops truncatus*).

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.*

This project works to improve the status of those beach nesting bird species of conservation concern through the continuation of efforts set forth in the *Stewardship of Coastal Alabama Beach Nesting Bird Habitat* project funded through Restoration Plan III.

Stewardship of Coastal Alabama Beach Nesting Bird Habitat – Phase II would continue and expand upon restoration by reducing human disturbance to and predation of nests and chicks of coastal nesting bird species injured by the oil spill, thereby increasing productivity of those species. These techniques have been identified as restoration approaches likely to provide both direct and indirect benefits to birds by the DWH Trustees in the Strategic Framework for Bird Restoration Activities (DWH Trustees 2016). This proposed five-year project would complement the work of similar initiatives in the Gulf of Mexico in Florida, Mississippi, Louisiana, and Texas. ADCNR would be the lead implementing Trustee, with DOI as a co-implementing trustee.

The program consists of five components that work together to reduce stressors that impact coastal bird populations while also providing information to support future restoration decision-making. Specific activities and target locations may vary from year to year based on a

number of factors including, but not limited to: where nesting occurs, what management activities are most successful at each area, and where project implementers are able to gain access (some nesting areas may be located in private property and will require authorization from landowners to access). This project does not include any in-water activities. Project components are as follows:

1. **Conduct stewardship activities to reduce human disturbances that contribute to nest failure.** Human disturbance is of particular concern for beach nesting birds in Coastal Alabama due to the popularity of Alabama's beaches for recreational activities. This disturbance often leads to seasonal nest or colony abandonment in local areas, resulting in egg loss and chick mortality. Reducing anthropogenic disturbance at important nesting areas effectively reduces human disturbance of nesting sites. Project implementers will erect symbolic (temporary post and rope) and/or exclusionary fencing (e.g. electric fencing, metal or vinyl mesh) around nesting areas prior to the start of the nesting season to reduce human ingress and disturbance. While on site, implementers would also work to educate and guide beachgoers to stay away from sensitive nesting areas. Implementers may also engage the public by providing opportunities to view nesting areas through a spotting scope, allowing the public to observe adults incubating eggs and/or feeding small, flightless chicks from a safe distance. These activities serve to encourage protective behavior by the public, further reducing disturbance. While the primary contacts with the public will occur during outreach and signage activities, funding will also be used to support the enforcement of law and local ordinances aimed at protecting nesting beach bird species.
2. **Conduct targeted, coordinated predator management activities.** Site-specific predator management strategies (i.e. trapping and euthanasia) can help increase bird productivity where predators are among the primary causes of nest or fledgling mortality. Funding would support implementation of these activities within Bon Secour NWR, the City of Orange Beach, and lands recently acquired on the West end of Dauphin Island, AL.
3. **Conduct monitoring in support of adaptive management at project sites to determine nesting and fledging success.** Monitoring critical nesting sites, assessing nest success, and determining breeding densities provides insight into the status of Alabama breeding populations for the least tern (*Sternula antillarum*), black skimmer (*Rynchops niger*), snowy plover (*Charadrius nivosus*), and Wilson's plover (*Charadrius wilsonia*), all of which are listed as Alabama Species of Conservation Concern. Nesting activity, nest success, brood success and predator activity will be monitored following previously established protocols that facilitate consistent data collection across similar projects in the Gulf region. In addition to bird numbers and breeding productivity, monitoring will also assess habitat quality, degree of predator activity, extent of human disturbance, and number of people reached with outreach and education activities. These data can serve as a bioindicator of coastal ecosystem health and population effects from human-induced threats, as well as from natural disturbances such as hurricanes, flooding, or

storm surge. In addition, special attention will be given to the proximity of nests, eggs, chicks, and adults outside of posted project areas. Project implementers will coordinate routinely to discuss adaptive management of posted areas (e.g., shifting or expanding a posted area).

4. **Deploy decoys or protective measures.** Species-specific decoys will be deployed to attract target bird species to suitable nesting areas (e.g., lower risk of human disturbance or predation). In some cases, species are nesting in areas of high human traffic or predation, which increases the likelihood of failure. Deploying decoys to areas that are not currently used for nesting, but that are deemed suitable habitat, could encourage target species to use habitat that experiences reduced stressors associated with nest or fledgling mortality. Electric fencing may be deployed when feasible and has been shown to be effective at protecting plover nests from predation by mesopredators. Decisions regarding specific deployment locations will be made in coordination with ADCNR and DOI prior.
5. **Conduct habitat and nesting area enhancements.** Activities such as removing vegetation and installing/distributing shell hash has been shown to be beneficial to several beach nesting species, including least tern and black skimmer. Decisions regarding specific locations and actions will be made in coordination with ADCNR and DOI prior to implementation of this work.

II. *Construction Schedule (What is the anticipated schedule for major phases of work? Include duration of in-water work.)* This project would not include construction elements.

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

Does this project include in-water work?	YES☐	NO☒
Does this project include terrestrial construction?	YES☐	NO☒
Does this project include construction of an overwater structure?	YES☐	NO☒
Will fishing be allowed from this overwater structure?	YES☐	NO☒
Will wildlife observation be allowed from this overwater structure?	YES☐	NO☒
Will boat docking be allowed from this overwater structure?	YES☐	NO☒

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)?*

N/A

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

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 N/A

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

Gulf of Mexico EFH Eco-Region	Estuarine	Nearshore	Offshore
Eco-Region 1: South Florida (*Florida Keys north to Tarpon Springs, Florida*)	☐	☐	☐
Eco-Region 2: North Florida *(Tarpon Springs, Florida, north and west to Pensacola Bay, Florida*)	☐	☐	☐
Eco-Region 3: East Louisiana, Mississippi, and Alabama *(Pensacola Bay, Florida, west to the Mississippi River Delta)*	☐	☐	☐
Eco-Region 4: East Texas and West Louisiana *(Mississippi River Delta west and south to Freeport, Texas)*	☐	☐	☐
Eco-Region 5: West Texas *(Freeport, Texas south to the U.S./Mexico border)*	☐	☐	☐

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.

Will this project affect EFH?	YES☐ NO☒
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.	

This project is limited to stewardship and monitoring activities therefor it will not benefit nor adversely affect EFH.

Will this project have beneficial effects to EFH?	YES☐ NO☒
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☐ NO☒
If yes, please describe what type of adverse effects your project will cause to EFH in the text bow 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.		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.
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.

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.**
Alabama Beach Mouse	Units 1,2,3,4 and 5	Choose an item.	May Affect, Not Likely to Adversely Affect	Choose an item.
Alabama Beach Mouse CH			No Effect	See Section K
Alligator Snapping Turtle		Choose an item.	No Effect	Species does not occur within action area
Black Pinesnake		Choose an item.	No Effect	No suitable habitat i action area
Eastern Black Rail		Choose an item.	May Affect, Not Likely to Adversely Affect	Choose an item.
Eastern Indigo Snake		Choose an item.	No Effect	No suitable habitat i action area
Gopher Tortoise		Choose an item.	No Effect	No suitable habitat i action area
Northern Long-Eared Bat		Choose an item.	No Effect	No suitable habitat i action area
Piping Plover	Units AL-1, AL-2, AL-3	Choose an item.	May Affect, Not Likely to Adversely Affect	Choose an item.
Piping Plover CH			No Effect	See Section K
Perdido Key Beach Mouse	PKBM-1		May Affect, Not Likely to Adversely Affect	
Perdido Key Beach Mouse CH			No Effect	See Section K
Red Knot			May Affect, Not Likely to Adversely Affect	
Tricolored Bat			No Effect	No suitable habitat i action area
West Indian Manatee			No Effect	No suitable habitat i action area
Green Sea Turtle		Terrestrial	May Affect, Not Likely to Adversely Affect	
Hawksbill Sea Turtle		Terrestrial	No Effect	Species does not occur within action area
Kemp's Ridley Sea Turtle		Terrestrial	May Affect, Not Likely to Adversely Affect	
Leatherback Sea Turtle		Terrestrial	No Effect	Species does not occur within action area
Loggerhead Sea Turtle	LOGG-T-AL-01 LOGG-T-AL-02 LOGG-T-AL-03	Terrestrial	May Affect, Not Likely to Adversely Affect	

Loggerhead Sea Turtle CH			No Effect	See Section K
Gulf Sturgeon	Unit 8	Riverine/freshwater	No Effect	No suitable habitat i action area
Gulf Sturgeon CH			No Effect	See Section K
Monarch Butterfly			No Effect	No suitable habitat i action area

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.

The Stewardship of Coastal Alabama Beach Nesting Bird Habitat project would implement conservation measures that have the potential to directly and indirectly impact species that are situated near project activities. The increased human presence associated with monitoring activities and implementing exclusionary fencing that could include electric, metal or vinyl mesh around nesting areas could potentially disturb any nearby nesting species. Additionally, conducting nest area enhancements that would include removing vegetation could potentially negatively impact species within the area that may utilize the vegetation as habitat or for cover.

Ultimately, stewardship and predator management activities would result in short and long-term beneficial impacts on piping plover, eastern black rail and red knot by reducing human disturbances. However, implementing fencing, signage and conducting monitoring and data collection will involve an increase in human presence around nesting areas which could cause brief disturbances to bids utilizing the area. Additionally, removing vegetation could potentially negatively impact the rufa red knot as well as the eastern black rail as both species require vegetation cover.

Green, Kemp's Ridley, and Loggerhead Sea turtles are known to nest on Alabama beaches and could be present in areas where project activities would occur. Nesting sea turtles could be temporarily disturbed by increased human presence during stewardship activities, however, every effort would be made to avoid disturbances to nesting sea turtles. Hatchlings would not likely be affected because stewardship activities would be conducted during the day, while hatchlings typically emerge at night. Predator management may result in long-term, beneficial impacts to nesting sea turtles due to the removal of predators, potentially including but not limited to coyote and red fox.

Additionally, the Alabama Beach Mouse and Perdido Key Beach Mouse are known to nest and occur on Alabama beaches, therefore, they could potentially be impacted during monitoring and data collection activities. Both species of mice are nocturnal, meaning the burrow during the day and forage at night to avoid predation by larger animals, therefore, short and long-term adverse impacts are not likely.

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.*

In order to reduce adverse effects to birds species listed above, mechanical treatment activities including plant removal will be avoided during the nesting, brood rearing, and flightless molt periods. If vegetation clearing must take place, a qualified biologist will inspect for active eastern black rail nests to avoid impacting any nesting birds. If no active nests are found, the vegetation will be removed, however if nests are found, the vegetation will be removed after the nest successfully fledges. All individuals working on the project will be provided with information in support of general awareness of present threated and endangered birds to help personnel avoid birds and their critical or otherwise important habitats. If avoidance is not possible, standard surveys will be conducted to determine if the habitat is supporting any individuals or presence can be assumed. Leash or "no pet" policies in critical or important habitats will be enforced to minimize disturbances.

If a sea turtle (either adult or hatchling) is observed, personnel will maintain a distance of 200 feet and will notify the sea turtle monitoring program. Personnel will allow the turtle to leave the area of its own volition. Additionally, activities would be conducted during the day, as to not disturb hatchlings which typically emerge at night.

Personnel will avoid storing or staging project equipment and debris in a manner or location where it could be colonized by mice. The utilization of vehicles within the dune system will be avoided as to not disturb or trample any beach mice or their habitat. Any vegetation that damaged or removed during project implementation will be replaced with appropriate native plants in the same location to minimize erosion and provide a food source for beach mice.

If any of the above species are encountered, personnel will cease actions until the species have vacated the action area of their own volition.

Therefore, with the implementation of these measures, the project will have an insignificant affect on these species.

As provided in 50 CFR 402.16, consultation must be reinitiated if (1) take occurs, or (2) new information reveals effects of the action not previously considered, or (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat in a manner or to an extent not previously considered, or (4) if a new species is listed or critical habitat designated that may be affected by the action.

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)[6]**
- ☐ **NMFS Measures for Reducing the Entrapment Risk to Protected Species[1]**
- ☐ **NMFS Vessel Strike Avoidance Measures (2021)[1]**
- ☐ **USFWS Standard Manatee In Water Conditions (2011)[7] and Appropriate State Manatee Conditions[3]**

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)

All individuals working on the project will be provided information in support of general awareness of piping plover and red knot presence and means to avoid birds and their critical or

[6] https://www.fisheries.noaa.gov/southeast/consultations/regulations-policies-and-guidance

[7] https://www.fws.gov/media/2011-standard-manatee-construction-conditions-water-work [3] Contact USFWS representative for appropriate documents

otherwise important habitats.

If a sea turtle (either adult or hatchling) is observed, a distance of 200 feet will be remained between the sea turtles and personnel and the sea turtle monitoring program will be notified. The sea turtle will be allowed to leave the area of its own volition.

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.

Impacts to habitat within the project area would be limited to temporary disturbance from increased human presence as project staff monitor and collect data. The project's effects on any critical habitat would be negligible because stewardship activities will not result in the destruction or adverse modification of any primary biological features of the habitat.

Stewardship activities could benefit Piping Plover critical habitat by limited potential human disturbances. These activities could indirectly benefit loggerhead sea turtle nesting habitat as well as Perdido Key beach mouse habitat which has some overlap with piping plover critical habitat in Baldwin County. Project activities could additionally provide long-term beneficial impacts to Alabama beach mouse critical habitat through decreasing human disturbances.

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.

The goal of the Stewardship of Coastal Alabama Beach Nesting Bird Habitat program is to enhance coastal Alabama bird populations through stewardship, restoration, and research activities. The project is not expected to result in adverse impacts to piping plover, loggerhead, Perdido Key beach mouse or Alabama beach mouse critical habitats. The project will not result in the destruction or adverse modification of any primary constituent elements (PCEs) or physical and biological features (PBFs). Therefore, the project will have no effect on any critical habitat.

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
☐	☐	*a) Use of active acoustic equipment (e.g., echosounder) producing sound below 200 kHz*
☐	☐	*b) In-water construction or demolition*
☐	☐	*c) Temporary or fixed use of active or passive sampling gear (e.g., nets, lines, traps; turtle relocation trawls)*
☐	☐	*d) In-water Explosive detonation*
☐	☐	*e) Aquaculture*
☐	☐	*f) Restoration of barrier islands, levee construction or similar projects*
☐	☐	*g) Fresh-water river diversions*
☐	☐	*h) Building or enhancing areas for water-related recreational use or fishing opportunities (e.g. fishing piers, bridges, boat ramps, marinas)*
☐	☐	*i) Dredging or in-water construction activities to change hydrologic conditions or connectivity, create breakwaters and living shorelines, etc.*
☐	☐	*j) Conducting driving of sheet piles or pilings*
☐	☐	*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:*

☐	NMFS Southeast U.S. Marine Mammal and Sea Turtle Viewing Guidelines[8]
☐	NMFS Protected Species Construction Conditions (2021)[9]
☐	NMFS Measures for Reducing the Entrapment Risk to Protected Species (2012)[3]

[8] https://www.fisheries.noaa.gov/topic/marine-life-viewing-guidelines

[9] https://www.fisheries.noaa.gov/southeast/consultations/regulations-policies-and-guidance

☐	NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (2021)[3]
☐	NMFS Reproducing and posting outreach signs: Dolphin Friendly Fishing Tips sign, Don't Feed Wild Dolphins sign[10]

If not listed above, please describe any additional BMPs or conservation measures that may be 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 project 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.
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:

[10] https://www.fisheries.noaa.gov/southeast/consultations/protected-species-educational-signs

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
☐	☐	**Marsh Creation, Maintenance, or Enhancement**
☐	☐	**Living Shorelines Construction Maintenance, or Expansion**
☐	☐	**Removal of Fishing Gear and Other Marine Debris**
☐	☐	**Oyster Reefs Creation, Maintenance, or Enhancement**
☐	☐	**Pile-Supported Structures, including Non-fishing Piers, Anchored Buoys, and In-water Sign Posts**
☐	☐	**Artificial Reefs Construction, Maintenance, or Expansion**
☐	☐	**Boat Ramps Installation, Repair, Replacement, or Removal**
☐	☐	**Water Management Outfall Structures and Associated Endwalls Installation, Repair, Replacement or Removal**
☐	☐	**Establishing or Restoring SAV**
☐	☐	**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

Attachment 3

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): Alabama Department of Conservation and Natural Resources (ADCNR)
Contact Name: Jaime Miller Phone: 251-621-1216 Email: Jaime.Miller@dcnr.alabama.gov
Project Name: Improving Resilience for Oysters by Linking Brood Reef and Sink Reefs (Large-Scale) – Component 4 – Midlower Mobile Bay, AL

DIVER ID# Click to enter text Trustee Implementation Group (TIG):
Alabama TIG Restoration Plan # RP4
Name of Person Completing this Form: Gabriella Benacquisto
Name of Project Lead: Jaime Miller
Date Form Completed: 4/16/2024
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:

Engineering and design has commenced. The initial project has been approved and completed.

C. Project Location

I. State and County/Parish of action area

Mobile and Baldwin Counties, Alabama.

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 locations: Brookley Reef 30.60002° N 88.0418° W; Hollinger's Island Reefs 30.52773° N

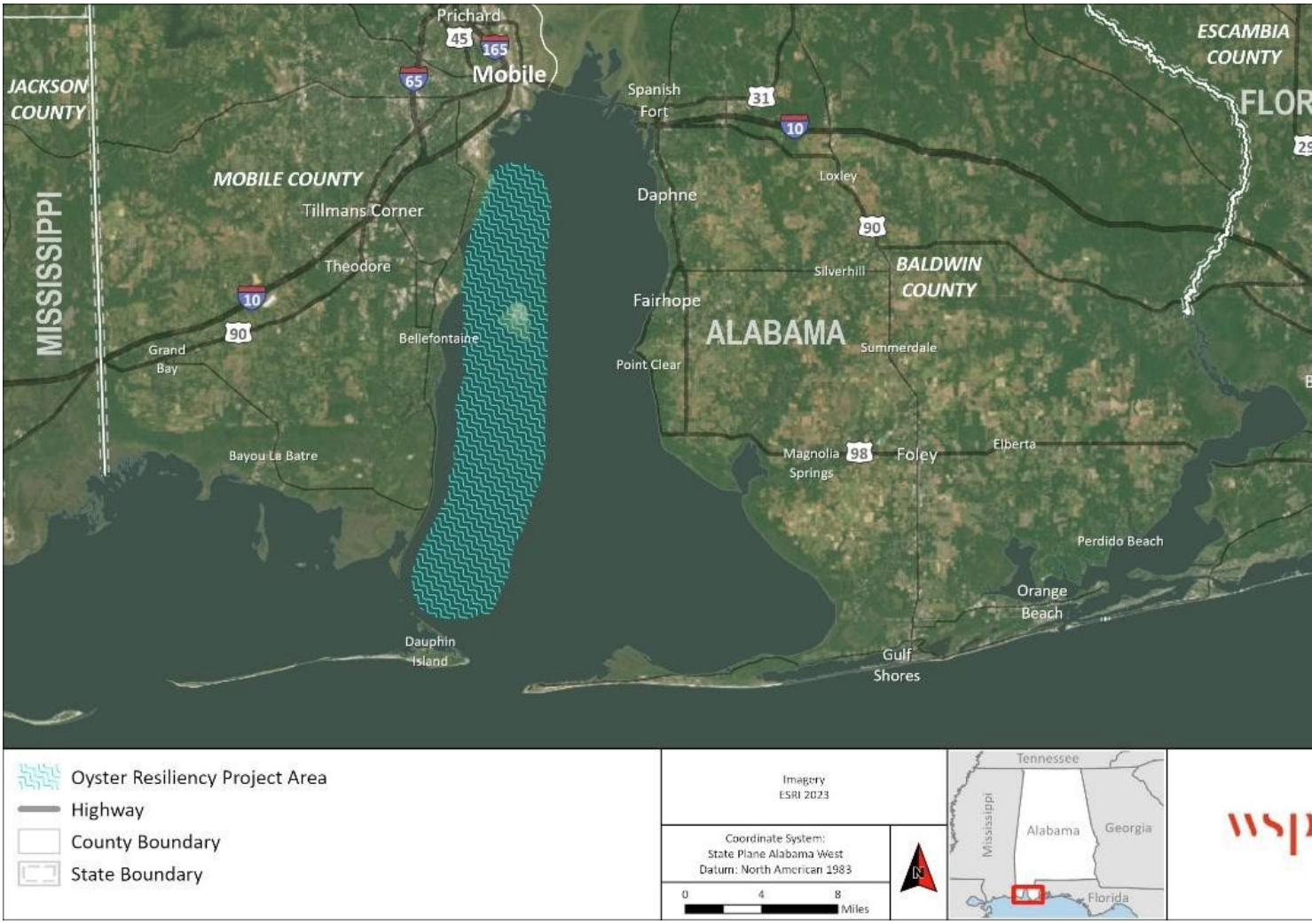
88.04412°W; Denton Reef 30.40903°N 88.06483° W; Buoy Reef 30.3271°N 88.1117°W

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



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: USACE Section 404 Nationwide Permit SAM2012-1009-DEM.

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.

NEPA analysis for this project is included in the Final Restoration Plan that was published by RW TIG in September 2021. The ALTIG proposed to expand the scope of the project for the Alabama component, adding funds to increase the number of reef sites in AL. This is analyzed in AL RP4.

NMFS ESA consultation, Regionwide TIG RP1: https://www.fws.gov/doiddata/dwh-ar-documents/3908/DWHARZ009811.pdf
NMFS EFH determination, Regionwide TIG RP1: https://www.fws.gov/doiddata/dwh-ar-documents/3908/DWHARZ009821.pdf
NMFS MMPA determination, Regionwide TIG RP1: https://www.fws.gov/doiddata/dwh-ar-documents/3908/DWHARZ010189.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.

Lower and Mid Portions of the western shore of Mobile Bay. The Alabama waters where the

project is proposed are predominantly estuarine, receiving freshwater inputs from the Mobile-Tensaw Delta via Mobile Bay, and marine inputs from the Gulf of Mexico.

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.

The Gulf of Mexico is the nearest marine environment that is approximately 7.7 miles from the southernmost bound of the project and approximately 24 miles from the northern boundary of the project.

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.

All sites within the action area would be located in open water away from existing structures.

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.

Seagrasses (e.g., shoal grass, turtle grass, widgeon grass) and other Submerged Aquatic Vegetation (SAV) species (e.g., Eurasian milfoil, southern naiad, water stargrass, etc.) occur in portions of Mobile Bay. The most recent SAV inventory of Mobile Bay was completed in 2015. Based on the findings of the final SAV inventory report, no SAV is present in the action area.

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.

N/A

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.

Substrates in the project area consist of sand/shell bottom and mud/soft bottom.

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

Marine mammals potentially occurring in the project area include the West Indian Manatee (Trichechus manatus) and Common Bottlenose Dolphin (Tursiops truncatus).

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 objective of this project is to increase abundance and long-term resiliency of oysters through the creation of a network of subtidal and nearshore reefs linked by larval transport. This project will increase oyster abundance, spawning stock and improve habitat by

restoring a network of oyster reefs at multiple sites across habitat and salinity gradients using a variety of substrates and/or reef configurations.

The Improving Resilience for Oysters by Linking Brood Reefs and Sink Reefs (Large-scale) was approved by the Regionwide Trustee Implementation Group (RWTIG) in the RWTIG RP I/EA. The Alabama component of the regionwide project included construction of new reefs or supplementation to existing reef areas at two or more sites on the western shore portions of mid-lower Mobile Bay, over an approximately 15-square-mile area. The AL TIG proposes to expand the scope of this project for the Alabama component by adding funds to the already approved regionwide project in order to increase the number of reef sites in the previously analyzed areas in Alabama.

Brood reefs will be built with large, high-relief material that will still permit harvesting based on limited harvest technique(s). Based on the best available science, the reefs will be sited in such a way that larvae produced on the brood reefs will drift toward the commercially harvestable reefs. The project will construct up to 30 acres of new oyster reefs. Cultch materials may include natural oyster shell or an alternative substrate such as crushed limestone. Oyster shell cultch would be seasoned prior to deployment to minimize adverse impacts to water quality. Limestone cultch is generally free of fine particulates and does not typically require washing or aging prior to deployment. ADCNR typically uses #3 (1.5 – 3 inches) or #4 (1 – 2.5 inches) aggregate limestone for cultch planting. The specific type, size, and depth of cultch material will be selected based on existing substrate type, localized wave action, and other site-specific characteristics as well as resource availability. It is anticipated that contractor(s) selected to construct the new reefs will transport cultch by push boat and barge to the site and deploy the material off the deck, placing it into reef configurations using skid steers, excavator shovels, or highpressure water hoses.

To increase resilience, reefs will be placed along a salinity gradient based on site conditions. Given the annual variation in salinity, spawning success may vary from year to year within a site. Furthermore, where possible, constructing reefs along an intertidal-subtidal gradient will increase the likelihood of restoring the population linkage between reefs that were disrupted by the spill. Reefs will be constructed at a height to keep oysters out of hypoxic bottom waters and where possible, reefs will be constructed on suitable hard substrate that currently do not support oysters. Water depth in the action area generally ranges from approximately 7 – 12 feet. If the restoration site is not naturally colonized by spat, other methods will be used such as remote spat setting or the transfer of adult oysters to the site.

Short Term Impacts: Short term impacts would include noise, temporary increases in turbidity, and visual disturbances associated with construction of reef areas.

Long Term Impacts: Long term impacts would include potentially increased oyster abundance and recruitment in Alabama waters.

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

The project implementation methodology and timing would be the same as that outlined in the RWTIG RP I/EA. Construction is expected to occur over 1-2 years.

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

Does this project include in-water work?	YES☒	NO☐
Does this project include terrestrial construction?	YES☐	NO☒
Does this project include construction of an overwater structure?	YES☐	NO☒
Will fishing be allowed from this overwater structure?	YES☐	NO☒
Will wildlife observation be allowed from this overwater structure?	YES☐	NO☒
Will boat docking be allowed from this overwater structure?	YES☐	NO☒

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)?*

Site selection and pre-deployment monitoring include hand dredging, cane pole sounding, and/or SCUBA quadrat sampling. Baseline data will include an estimate of juvenile and adult oyster density as well as existing cultch prior to construction. Restored reef sites will be constructed with the use of marine barges to transport cultch material and construction equipment such as excavators to place the material into reef configurations. Construction will include a contractor acquiring, transporting, and deploying cultch material on areas and in configurations as determined by Alabama Marine Resources Division staff. It is

anticipated selected contractor(s) will transport cultch by push boat and barge to the site and deploy the material off the deck using skid steers, excavator shovels, or high-pressure water hoses. High pressure water hoses may only be used to distribute shell onto control plots. Side scanning of reef areas will be performed after cultch deployment. Post-deployment monitoring of sites may include the use of hand dredging, cane pole sounding, and/or SCUBA quadrat sampling.

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

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

This project is an expansion of the oyster project approved under the Regionwide TIG and the previous NMFS EFH determination dated June 7, 2021. Therefore, no further consultation on effects to EFH is necessary.

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

Gulf of Mexico EFH Eco-Region	Estuarine	Nearshore	Offshore
Eco-Region 1: South Florida (*Florida Keys north to Tarpon Springs, Florida*)	☐	☐	☐
Eco-Region 2: North Florida	☐	☐	☐
(Tarpon Springs, Florida, north and west to Pensacola Bay, Florida)			
Eco-Region 3: East Louisiana, Mississippi, and Alabama *(Pensacola Bay, Florida, west to the Mississippi River Delta)*	☐	☐	☐
Eco-Region 4: East Texas and West Louisiana *(Mississippi River Delta west and south to Freeport, Texas)*	☐	☐	☐
Eco-Region 5: West Texas *(Freeport, Texas south to the U.S./Mexico border)*	☐	☐	☐

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.

Will this project affect EFH?	YES☐ NO☐
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.	

Will this project have beneficial effects to EFH?	YES☐ NO☐
If yes, please describe how your project will have beneficial effects the text box below:	

Will this project have adverse effects on EFH?	YES☐ NO☐
If yes, please describe what type of adverse effects your project will cause to EFH in the text bow below:	

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.

Streamlined ESA consultation completed in 2021 (SERO-2015-00013, SER-2015-17459)

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.**

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.
ESA effects are partially covered under an existing consultation (NO: 2021-I-1471, Date: 09/14/2021).

*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.**
West Indian Manatee		Choose an item.	No Effect	Covered by existi ESA consultation
Gulf Sturgeon (T)		Riverine/Freshwater	No Effect	Species does not occur within action area

Rufa Red Knot		Choose an item.	No Effect	Species does not occur within action area
Piping Plover			No Effect	Species does not occur within action area
Eastern Black Rail			No Effect	Species does not occur within action area
Tricolored Bat		Choose an item.	No Effect	Species does not occur within action area
Northern Long-eared Bat		Choose an item.	No Effect	Species does not occur within action area
Loggerhead Sea Turtle		Terrestrial	No Effect	No suitable habitat i action area
Kemp's Ridley Sea Turtle		Terrestrial	No Effect	No suitable habitat i action area
Monarch Butterfly		Choose an item.	No Effect	No suitable habitat i action area
Alabama Red-bellied Turtle		Choose an item.	No Effect	No suitable habitat i action area
Alligator Snapping Turtle			No Effect	Species does not occur within action area
Black Pinesnake			No Effect	Species does not occur within action area
Eastern Indigo Snake			No Effect	Species does not occur within action area
Gopher Tortoise			No Effect	Species does not occur within action area

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.

Any marine gulf sturgeon occurring within the project area during construction would experience short-term, minor, adverse impacts. However, sturgeon are mobile marine species and would likely avoid project activities, suggesting that transitory routes would not be impeded. Given that the proposed project is occurring entirely within a marine environment, gulf sturgeons occurring in riverine/freshwater environments will not be impacted.

The presence of project-related vessels and equipment and construction activities could temporarily disturb marine mammals, including the west Indian manatee and sea turtles such as kemp's ridley sea turtle, loggerhead sea turtle and green sea turtle. However, these highly mobile species would likely be able to utilize other habitats during project construction. If individuals did enter construction areas, activities would halt until they leave the site. Boat operators associated with the projects would also follow the NOAA NMFS Southeast Region's Vessel Strike Avoidance Measures and Reporting for Mariners, which also would minimize potential harm. The combination of mobility, the implementation of BMPs, and the short duration of construction activities suggest that the alternatives are unlikely to have adverse effects on these taxa. In addition, neither sea turtle nesting habitat nor designated or proposed critical habitat would be impacted by this alternative as these are not located in the proposed project area.

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.*

During in-water work, all personnel associated with the project will be instructed about the potential presence of manatees, manatee speed zones, and the need to avoid collisions with and injury to manatees. All work, equipment, and vessel operation will cease if a manatee is spotted within a 50-foot radius of the active work area. Personnel will be encouraged to use sunglasses with polarized lenses to improve the likelihood of seeing manatees on and below the water's surface. The Monarch Butterfly is currently a candidate species, but the proponent does not wish to engage in a conference at this time.

As provided in 50 CFR 402.16, consultation must be reinitiated if (1) take occurs, or (2) new information reveals effects of the action not previously considered, or (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat in a manner or to an extent not previously considered, or (4) if a new species is listed or critical habitat designated that may be affected by the action.

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)**[11]
- ☒ **NMFS Measures for Reducing the Entrapment Risk to Protected Species**[1]
- ☒ **NMFS Vessel Strike Avoidance Measures (2021)**[1]
- ☒ **USFWS Standard Manatee In Water Conditions (2011)**[12] **and Appropriate State Manatee Conditions**[3]

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)

Click here to enter text.

[11] https://www.fisheries.noaa.gov/southeast/consultations/regulations-policies-and-guidance

[12] https://www.fws.gov/media/2011-standard-manatee-construction-conditions-water-work [3] Contact USFWS representative for appropriate documents

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.

No critical habitat has been identified within the project area.

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
☒	☐	*a) Use of active acoustic equipment (e.g., echosounder) producing sound below 200 kHz*
☒	☐	*b) In-water construction or demolition*

☒	☐	*c) Temporary or fixed use of active or passive sampling gear (e.g., nets, lines, traps; turtle relocation trawls)*
☒	☐	*d) In-water Explosive detonation*
☒	☐	*e) Aquaculture*
☒	☐	*f) Restoration of barrier islands, levee construction or similar projects*
☒	☐	*g) Fresh-water river diversions*
☒	☐	*h) Building or enhancing areas for water-related recreational use or fishing opportunities (e.g. fishing piers, bridges, boat ramps, marinas)*
☒	☐	*i) Dredging or in-water construction activities to change hydrologic conditions or connectivity, create breakwaters and living shorelines, etc.*
☒	☐	*j) Conducting driving of sheet piles or pilings*
☒	☐	*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:*

☐	NMFS Southeast U.S. Marine Mammal and Sea Turtle Viewing Guidelines[13]
☒	NMFS Protected Species Construction Conditions (2021)[14]
☒	NMFS Measures for Reducing the Entrapment Risk to Protected Species (2012)[3]
☒	NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (2021)[3]
☐	NMFS Reproducing and posting outreach signs: Dolphin Friendly Fishing Tips sign, Don't Feed Wild Dolphins sign[15]

If not listed above, please describe any additional BMPs or conservation measures that may be be implemented for marine mammals. Best practices that would be implemented to avoid or minimize impacts from the proposed project include: USFWS Standard Manatee Conditions

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 project eagles or in the case that previously unknown eagles are documented:

[13] https://www.fisheries.noaa.gov/topic/marine-life-viewing-guidelines
[14] https://www.fisheries.noaa.gov/southeast/consultations/regulations-policies-and-guidance
[15] https://www.fisheries.noaa.gov/southeast/consultations/protected-species-educational-signs

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.

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
☐	☐	**Marsh Creation, Maintenance, or Enhancement**
☐	☐	**Living Shorelines Construction Maintenance, or Expansion**
☐	☐	**Removal of Fishing Gear and Other Marine Debris**
☐	☐	**Oyster Reefs Creation, Maintenance, or Enhancement**
☐	☐	**Pile-Supported Structures, including Non-fishing Piers, Anchored Buoys, and In-water Sign Posts**
☐	☐	**Artificial Reefs Construction, Maintenance, or Expansion**
☐	☐	**Boat Ramps Installation, Repair, Replacement, or Removal**
☐	☐	**Water Management Outfall Structures and Associated Endwalls Installation, Repair, Replacement or Removal**
☐	☐	**Establishing or Restoring SAV**
☐	☐	**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

Attachment 4

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): Alabama Department of Conservation and Natural Resources
Contact Name: Jaime Miller Phone: 251-621-1216 Email: Jaime.Miller@dcnr.alabama.gov
Project Name: Oyster Grow-Out and Restoration Reef Placement – 5 Year Continuation DIVER ID# Click to enter text Trustee Implementation Group (TIG): Alabama TIG Restoration Plan # RP4
Name of Person Completing this Form: Gabriella Benacquisto
Name of Project Lead: Jaime Miller
Date Form Completed: 4/16/2024
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:

Click here to enter text.

C. Project Location

I. State and County/Parish of action area

Alabama coastal waters including Mississippi Sounds and Bon Secour Bay

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]

Point aux Pins site: 30.375747°, -88.312770°; Sullivan Bayou site: 30.368304°, -88.220170°; Bon Secour Bay site: 30.253341°, -87.799806°

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

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: Click 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.

NEPA analysis: Alabama Trustee Implementation Group Draft 2017 Restoration Plan II/Environmental Assessment (Draft RP II/EA) and Draft Restoration Plan IV/Environmental Assessment (RP IV/EA).

Existing NMFS ESA 2018 consultation: SER-2018-19260 available at: https://www.fws.gov/doiddata/dwh-ar-documents/1809/DWH-ARZ003623.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.

All Alabama coastal waters (Mobile Bay, Bon Secour Bay, Mississippi Sound, Perdido Bay, and all subembayments and connecting waters)

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 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.

All sites within the action area would be located in open water away from existing structures, with the exception of existing living shoreline structures, where oysters may be placed after grow-out. Existing living shoreline structures within the action area are located at various locations parallel to the shorelines of Mobile Bay, Bon Secour Bay, Mississippi Sound, and Portersville Bay.

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.

Seagrasses and other SAV occurs within northern Mobile Bay, Grand Bay, Mississippi Sound, and Perdido Bay. Oyster grow-out sites would not be located within SAV habitats.

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.

N/A

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.).

Potential sites would be located within open water habitats. Therefore, there are no upland habitats within the action area.

g. Soils and Sediments

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

Substrates in the project area consist of sand/shell bottom and mud/soft bottom.

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

Marine mammals potentially occurring in the project area include the West Indian Manatee (Trichechus manatus) and Common Bottlenose Dolphin (Tursiops truncatus).

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 Oyster Grow Out and Restoration Reef Placement – Phase II (5 Year) Project proposes to fund the continuation of the work conducted by The Auburn University Marine Extension and Research Center for the original Oyster Grow Out and Restoration Reef Placement project. Phase II of this project would evaluate nutrient concentrations, assess substrate conditions, evaluate oyster recruitment potential, evaluate larval distribution patterns, and install up to 15 dense spawning aggregate structures over a five year period in the Mississippi Sound and Bon Secour Bay, identifying and prioritizing future restoration reef locations (including nearshore living shorelines and intertidal reefs), and monitoring the success in terms of oyster survival and reproduction of both the grow-out areas and restoration sites to determine effective techniques to increase the sustainability of oyster populations in Alabama. This project will build upon other efforts by the Alabama Coastal Foundation's Oyster Shell Recycling Program, the Mobile Bay Oyster Gardening effort, and their recent projects that have demonstrated successful plantings, and subsequent spawning of advanced stocker sized oysters in Mobile Bay and Mississippi Sound.

Short Term Impacts: Short term impacts would include noise, vibration, temporary increases in turbidity, and visual disturbances associated with pile driving, boat traffic, construction of grow-out sites, and placement of oysters.

Long Term Impacts: Long term impacts would include potentially increased oyster abundance and recruitment in Alabama waters.

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

The proposed project would last for a total duration of approximately five years. Each site would be installed in one day, depending on weather, and would be setup to produce oysters after approximately 6 months. Monitoring would be conducted for the entire duration of the project (approximately five years).

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

Does this project include in-water work?	YES☒	NO☐
Does this project include terrestrial construction?	YES☐	NO☒
Does this project include construction of an overwater structure?	YES☒	NO☐
Will fishing be allowed from this overwater structure?	YES☐	NO☒
Will wildlife observation be allowed from this overwater structure?	YES☐	NO☒
Will boat docking be allowed from this overwater structure?	YES☐	NO☒

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?*

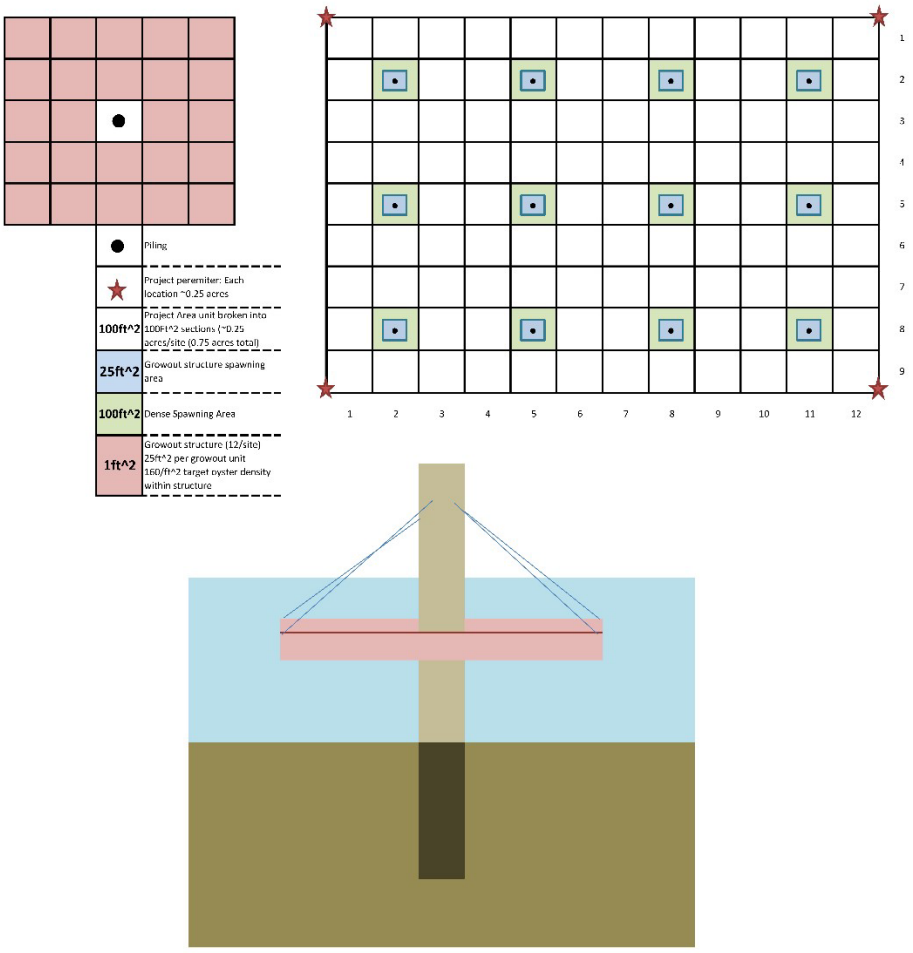
vi. *Directional orientation of main axis of dock?*

vii. *Overwater area (sq ft)?*

Overwater structures would be limited to oyster grow out structures, which consist of oyster cages attached to ropes or cables suspended between a dozen wooden pilings. Installation of each site would take around one day to complete. Each of the three oyster grow-out structures would occupy around 0.5 acres. The structure would not be suitable for docking, or any use other than growing cage-reared oysters.

At each grow-out site, 12"-diameter, tapered wood pilings pushed into the sediment in order to

support ropes or cables that hold the suspended oyster baskets. Each grow out site would be approximately 0.5 acres, and 12-20 total pilings per site would be installed to support grow-out installation.



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	Pushing/vibratory
2. Material type of piles used	wood
3. Size (width) of piles/sheets	12’ diameter
4. Total number of piles/sheets	Approximately 55
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	Estimated 3-12 piles per day
8. Expected amount of time needed to drive each pile (minutes of driving activities)	Estimated 15-60 minutes per pile
9. Expected number of sequential days spent pile driving	Estimated 1-4 days

10. Whether pile driving occurring in-water or on land	In water
11. Depth of water where piles will be driven	Estimated 4-8 feet

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.*

The project does not propose to construct any new artificial reefs. However, this project would

complement other oyster restoration projects in Alabama by providing 1-year old oysters for placement on existing reefs, living shorelines, or cultched areas, starting one year after project installation. Care would be taken to not place the grow out areas in close proximity to any existing oyster reef.

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

The EFH Mapper hosted by NOAA Fisheries was reviewed and the project area was found to have EFH for:

- Atlantic Sharpnose Shark (Gulf of Mexico Stock) (Juvenile/Adult, Neonate)
- Blacktip Shark (Gulf of Mexico Stock) (Juvenile/Adult, Neonate)
- Bonnethead Shark (Gulf of Mexico Stock) (Juvenile/Adult, Neonate)
- Bull Shark (Juvenile/Adult, Neonate)
- Coastal Migratory Pelagics (All life stages)
- Finetooth Shark (all life stages)
- Red Drum (all life stages)
- Reef Fish (43 Species) (all life stages)
- Balistidae - Triggerfishes Gray triggerfish (Balistes capriscus)
- Carangidae - Jacks Greater amberjack (Seriola dumerili) Lesser amberjack (Seriola fasciata) Almaco jack (Seriola rivoliana) Banded rudderfish (Seriola zonata)
- Labridae - Wrasses Hogfish (Lachnolaimus maximus)
- Lutjanidae – Snappers (all life stages) Queen snapper (Etelis oculatus) Mutton snapper (Lutjanus analis)
  Schoolmaster (Lutjanus apodus) Blackfin snapper (Lutjanus buccanella) Red snapper (Lutjanus campechanus) Cubera snapper (Lutjanus cyanopterus) Gray (mangrove) snapper (Lutjanus griseus) Dog snapper (Lutjanus jocu) Mahogany snapper (Lutjanus mahogoni) Lane snapper
  (Lutjanus synagris) Silk snapper (Lutjanus vivanus) Yellowtail snapper (Ocyurus chrysurus) Wenchman (Pristipomoides aquilonaris) Vermilion snapper (Rhomboplites aurorubens)

- Malacanthidae - Tilefishes Goldface tilefish (Caulolatilus chrysops) Blackline tilefish (Caulolatilus cyanops) Anchor tilefish (Caulolatilus intermedius) Blueline tilefish (Caulolatilus microps) (Golden) Tilefish (Lopholatilus chamaeleonticeps)
- Serranidae - Groupers Dwarf sand perch (Diplectrum bivittatum) Sand perch (Diplectrum formosum) Rock hind (Epinephelus adscensionis) Speckled hind (Epinephelus drummondhayi) Yellowedge grouper (Epinephelus flavolimbatus) Red hind (Epinephelus guttatus), Goliath grouper (Epinephelus itajara)
  Red grouper (Epinephelus morio) Misty grouper (Epinephelus mystacinus) Warsaw grouper
  (Epinephelus nigritus) Snowy grouper (Epinephelus niveatus) Nassau grouper (Epinephelus striatus) Marbled grouper (Epinephelus inermis) Black grouper (Mycteroperca bonaci) Yellowmouth grouper (Mycteroperca interstitialis) Gag (Mycteroperca microlepis) Scamp (Mycteroperca phenax) Yellowfin grouper (Mycteroperca venenosa)
- Shrimp (4 species) (all life stages) Brown shrimp (Penaeus aztecus), White shrimp (Penaeus setiferus) Pink shrimp (Penaeus duorarum) Royal red shrimp (Pleoticus robustus)
- Spinner Shark (Neonate)

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

Gulf of Mexico EFH Eco-Region	Estuarine	Nearshore	Offshore
Eco-Region 1: South Florida	☐	☐	☐
(*Florida Keys north to Tarpon Springs, Florida*)			
Eco-Region 2: North Florida *(Tarpon Springs, Florida, north and west to Pensacola Bay, Florida)*	☐	☐	☐
Eco-Region 3: East Louisiana, Mississippi, and Alabama *(Pensacola Bay, Florida, west to the Mississippi River Delta)*	☐	☒	☐
Eco-Region 4: East Texas and West Louisiana *(Mississippi River Delta west and south to Freeport, Texas)*	☐	☐	☐
Eco-Region 5: West Texas *(Freeport, Texas south to the U.S./Mexico border)*	☐	☐	☐

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.

Will this project affect EFH?	YES☒ NO☐
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.	

See below.

Will this project have beneficial effects to EFH?	YES☒ NO☐
If yes, please describe how your project will have beneficial effects the text box below:	

In the long term, the oyster grow-out project would improve water quality through the filter feeding activity of oysters.

Will this project have adverse effects on EFH?	YES☒ NO☐
If yes, please describe what type of adverse effects your project will cause to EFH in the text bow below:	

Project activities could create short-term adverse impacts to EFH which could include turbidity impacts and benthic habitat disturbances. Potential adverse impacts to managed species are anticipated to be limited to minor and localized impacts. Short-term, minor, direct adverse impacts could include displacement, injury, or mortality to managed species as a result of in water work.

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 l Critica Habitat	**CH Unit** (if applicable)	**Location** (Sea turtles and Gulf Sturgeon **only**)	**Determinations** (see definitions below)	**For "No Effect", please select justification.**
Loggerhead Sea Turtle (T)		Marine	May Affect, Not Likely to Adversely Affect	Choose an item.
Kemp's Ridley Sea Turtle (E)		Marine	May Affect, Not Likely to Adversely Affect	Choose an item.
Green Sea Turtle (T)		Marine	May Affect, Not Likely to Adversely Affect	Choose an item.
Gulf Sturgeon (T)		Marine	May Affect, Not Likely to Adversely Affect	Choose an item.
Gulf Sturgeon CH	Unit 8		May Affect, Not Likely to Adversely Affect	
Giant Manta Ray			May Affect, Not Likely to Adversely Affect	

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.**
West Indian Manatee		Choose an item.	May Affect, Not Likely to Adversely Affect	
Alabama Beach Mouse			No Effect	No suitable habitat i action area
Alabama Beach Mouse CH	Units 1,2,3,4 and 5		No Effect	No suitable habitat i action area
Perdido Key Beach Mouse			No Effect	Species does not occur within action area
Perdido Key Beach Mouse CH	PKBM-1		No Effect	Species does not occur within action area
Gulf Sturgeon (T)		Riverine/Freshwater	No Effect	No suitable habitat i action area
Gulf Sturgeon CH	Unit 8		No Effect	No suitable habitat i action area
Piping Plover		Choose an item.	No Effect	No suitable habitat i action area
Piping Plover CH	Units AL-1, AL-2, AL-3		No Effect	No suitable habitat i action area

Rufa Red Knot		Choose an item.	No Effect	No suitable habitat i action area
Eastern Black Rail			May Affect, Not Likely to Adversely Affect	
Eastern Indigo Snake		Choose an item.	No Effect	No suitable habitat i action area
Black Pinesnake			No Effect	No suitable habitat i action area
Gopher Tortoise			No Effect	No suitable habitat i action area
Tricolored Bat		Choose an item.	No Effect	No suitable habitat i action area
Northern Long-eared Bat		Choose an item.	No Effect	No suitable habitat i action area
Green Sea turtle		Terrestrial	No Effect	No suitable habitat i action area
Loggerhead Sea Turtle		Terrestrial	No Effect	No suitable habitat i action area
Loggerhead Sea Turtle CH	LOGG-T-AL-01 LOGG-T-AL-02 LOGG-T-AL-03		No Effect	No suitable habitat i action area
Hawksbill Sea Turtle		Terrestrial	No Effect	No suitable habitat i action area
Leatherback Sea Turtle		Terrestrial	No Effect	No suitable habitat i action area
Alligator Snapping Turtle			No Effect	No suitable habitat i action area
Alabama Red-Bellied Turtle		Choose an item.	No Effect	No suitable habitat i action area
Kemp's Ridley Sea Turtle		Terrestrial	No Effect	No suitable habitat i action area
Monarch Butterfly		Choose an item.	No Effect	No suitable habitat i action area

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.

Implementation of the project would result in short-term, minor impacts on some ESA-listed species that could occur within the project vicinity, including all sea turtle species, Gulf sturgeon, West Indian manatee, and eastern black rail. Potential impacts would include noise, vibration, temporary increases in turbidity, and visual disturbances associated with pile driving and boat and vehicle traffic during construction of grow-out sites, as well as human presence for the 5-year project duration. Most species would likely avoid the area during construction, but any individuals that are displaced due to noise would likely return to the area upon completion of construction activities or use other suitable habitats nearby. Oyster grow-out sites would not be placed in seagrass beds or SAV habitats, but noise associated with construction activities could temporarily disturb sea turtles or manatees that may be foraging in nearby habitats, Gulf sturgeon could be similarly disturbed by noise and turbidity during construction, if present in the action area.

The project sites would be located in water, so upland habitats would not be directly affected. However, shorebirds and wading birds such as the ESA-listed eastern black rail could be temporarily affected by noise during project construction, causing them to be displaced to other suitable habitat nearby.

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.*

The grow-out areas would be sited to avoid potential habitat for species. Construction activities to install the grow-out area would occur during summer in advance of a November supply of oyster spat, avoiding the October to March period when piping plover are likely present at their wintering habitat in the Mississippi Sound. During in-water work, all personnel associated with the project will be instructed about the potential presence of manatees, manatee speed zones, and the need to avoid collisions with and injury to manatees. All work, equipment, and vessel operation will cease if a manatee is spotted within a 50-foot radius of the active work area. Personnel will be encouraged to use sunglasses with polarized lenses to improve the likelihood of seeing manatees on and below the water's surface. Therefore, with the implementation of these measures, the impacts to any species listed above will be insignificant.

As provided in 50 CFR 402.16, consultation must be reinitiated if (1) take occurs, or (2) new information reveals effects of the action not previously considered, or (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat in a manner or to an extent not previously considered, or (4) if a new species is listed or critical habitat designated that may be affected by the action.

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)[16]
☒	**NMFS Measures for Reducing the Entrapment Risk to Protected Species[1]**
☒	**NMFS Vessel Strike Avoidance Measures (2021)[1]**
☒	**USFWS Standard Manatee In Water Conditions (2011)[17] and Appropriate State Manatee Conditions[3]**

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)

Additional measures that would be implemented to avoid or minimize impacts to marine mammals include: Sea Turtle and Protected Species Construction Conditions. These measures are described in the PDARP (Appendix 6.A), as noted in Section N.

Measures to reduce the effects of installing the pile driving include:

1) Installing the support pilings by pushing them into the sediment without using a vibratory hammer or an impact hammer, in order to minimize noise and associated disturbance to wildlife.

2) Installing the Point aux Pins site, which is in proximity to Gulf sturgeon critical habitat, during the summer when the species is likely not present (May 1 and September 30).

3) Employing noise abatement measures, if necessary, such as bubble curtains or temporary noise attenuation piles.

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.

The Bayou Sullivan and Bon Secour sites are not located within critical habitat for any ESA-listed

[16] https://www.fisheries.noaa.gov/southeast/consultations/regulations-policies-and-guidance

[17] https://www.fws.gov/media/2011-standard-manatee-construction-conditions-water-work [3] Contact USFWS representative for appropriate documents

species.

The Point aux Pins grow-out site would be located within Gulf sturgeon critical habitat, although the site selected is not likely to provide suitable habitat for the species due to its close proximity to the shoreline. In this critical habitat, the primary constituent elements required by Gulf Sturgeon include: (1) Abundant prey items, such as such as amphipods, lancelets, polychaetes, gastropods, ghost shrimp, isopods, molluscs and/or crustaceans for

subadult and adult life stages; (2) Water quality, including temperature, salinity, pH, hardness, turbidity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages; (3) Sediment quality, including texture and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages; (4) Safe and unobstructed migratory pathways necessary for passage within and between riverine, estuarine, and marine habitats.

The substrate in the proposed Point aux Pins grow-out site is soft-bottom and Gulf sturgeon are suction feeders, which extract prey from soft, sandy bottoms. The construction of the grow-out sites would not alter the substrate to a degree that would potentially influence Gulf sturgeon foraging. Furthermore, the small size of the project, and the limited number of supporting pilings would not affect the movement of any Gulf sturgeon that potentially utilize the area. Lastly, the oyster grow-out project would improve water quality through the filter feeding activity of oysters.

Underwater noise, vibration, and temporary increases in turbidity during pile driving could result in short term direct or indirect adverse effects to Gulf sturgeon critical habitat at the Point aux Pins grow-out site.

All potential impacts would be temporary, and the project is not likely to result in adverse effects to Gulf Sturgeon critical habitat.

The new dense spawning areas are to be determined but will be located outside of Gulf sturgeon critical habitat, within Mobile Bay, AL.

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.

Measures that would be implemented to avoid or minimize impacts to marine mammals include Measures for Reducing Entrapment Risk to Protected Species. These measures are

described in the PDARP (Appendix 6.A), as noted in Section N. Care would be taken to minimize impacts to essential fish habitat (EFH). However, since sand/mud bottom and water column habitats could be affected, an assessment of any potential impacts and consultation with NFMS would be conducted.

The following project design criteria would be implemented to minimize any possible adverse impacts from the project on Gulf Sturgeon critical habitat: - Cultch material, oyster shells, or spat would be free of debris and contaminants; - Fresh shell would be been properly aged or quarantined before being deployed; - Spat and other project material would be transported and placed in a manner to minimize disturbance of sediment; - Methods would be employed to avoid turbidity; - A spill prevention and response plan would be developed; - Design and materials used would avoid entanglement and entrapment risks for Gulf Sturgeon, sea turtles, bottlenose dolphin, West Indian manatee, or other protected species; and - A monitoring plan is included and final reports would be submitted to NMFS. The following project design criteria would be implemented to minimize any possible adverse impacts from the project on Gulf Sturgeon critical habitat: - Cultch material, oyster shells, or spat would be free of debris and contaminants; - Fresh shell would be been properly aged or quarantined before being deployed; - Spat and other project material would be transported and placed in a manner to minimize disturbance of sediment; - Methods would be employed to avoid turbidity; - A spill prevention and response plan would be developed; - Design and materials used would avoid entanglement and entrapment risks for Gulf Sturgeon, sea turtles, bottlenose dolphin, West Indian manatee, or other protected species; and - A monitoring plan is included and final reports would be submitted to NMFS.

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
☒	☐	*a) Use of active acoustic equipment (e.g., echosounder) producing sound below 200 kHz*
☐	☒	*b) In-water construction or demolition*

☒	☐	*c) Temporary or fixed use of active or passive sampling gear (e.g., nets, lines, traps; turtle relocation trawls)*
☒	☐	*d) In-water Explosive detonation*
☐	☒	*e) Aquaculture*
☒	☐	*f) Restoration of barrier islands, levee construction or similar projects*
☒	☐	*g) Fresh-water river diversions*
☒	☐	*h) Building or enhancing areas for water-related recreational use or fishing opportunities (e.g. fishing piers, bridges, boat ramps, marinas)*
☒	☐	*i) Dredging or in-water construction activities to change hydrologic conditions or connectivity, create breakwaters and living shorelines, etc.*
☐	☒	*j) Conducting driving of sheet piles or pilings*
☒	☐	*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

At each of the grow-out sites, 12 to 20 12"-diameter, tapered wood pilings would be installed in order to support the suspended oyster baskets. Each oyster grow-out site would be approximately 0.5 acres. The construction of each grow-out area would result in temporary increases in noise and turbidity that would impact some marine and estuarine fauna, such as bottlenose dolphin.

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:*

☐	NMFS Southeast U.S. Marine Mammal and Sea Turtle Viewing Guidelines[18]
☒	NMFS Protected Species Construction Conditions (2021)[19]
☒	NMFS Measures for Reducing the Entrapment Risk to Protected Species (2012)[3]
☒	NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (2021)[3]
☐	NMFS Reproducing and posting outreach signs: Dolphin Friendly Fishing Tips sign, Don't Feed Wild Dolphins sign[20]

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

N/A

[18] https://www.fisheries.noaa.gov/topic/marine-life-viewing-guidelines

[19] https://www.fisheries.noaa.gov/southeast/consultations/regulations-policies-and-guidance

[20] https://www.fisheries.noaa.gov/southeast/consultations/protected-species-educational-signs

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 project 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.
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
☐	☐	**Marsh Creation, Maintenance, or Enhancement**
☐	☐	**Living Shorelines Construction Maintenance, or Expansion**
☐	☐	**Removal of Fishing Gear and Other Marine Debris**
☒	☐	**Oyster Reefs Creation, Maintenance, or Enhancement**
☒	☐	**Pile-Supported Structures, including Non-fishing Piers, Anchored Buoys, and In-water Sign Posts**
☐	☐	**Artificial Reefs Construction, Maintenance, or Expansion**
☐	☐	**Boat Ramps Installation, Repair, Replacement, or Removal**
☐	☐	**Water Management Outfall Structures and Associated Endwalls Installation, Repair, Replacement or Removal**
☐	☐	**Establishing or Restoring SAV**
☐	☐	**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

NMFS ESA PDC Checklist

Please complete the checklist for each category that applies your project (sections 3 - 12). This checklist must accompany the BE form that demonstrates how all PDCs will be met to be eligible to use the PDC streamlined ESA process. Review the detailed PDCs on sharepoint: NMFS ESA PDCs

How to fill out this form

1. Ensure your project meets all PDCs in Sections 1 and 2. All boxes must be checked. If the PDC does not apply to your project, use N/A. Please use the Additional Information column to provide information or notes about your project and the PDC.

2. Equivalent status. If your project is close to the PDCs as written, and provides equivalent protection to the ESA-listed species as implementation of the PDC, you may provide an explanation of how the variance fits within the analysis and "not likely to adversely affect" determination in the Additional Information column. This information will be evaluated by NMFS to determine whether the effects are equivalent.

All projects must meet the general PDCs in Sections 1 and 2

1. General PDCs Applicable to All Activities

Project Meets PDC?	Project Design Criteria (NMFS PDARP BiOP Amendment 1, updated 2023)	Additional Information
☐ Yes ☐ Equivalent ☒ N/A	PDC 1: Projects located in smalltooth sawfish critical habitat that would result in any loss of either the red mangrove PBF or the shallow (MHWL to -3 ft MLLW), euryhaline water PBF of that critical habitat are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☒ N/A	PDC 2: Projects located in Gulf sturgeon critical habitat that would result in any loss of the abundant prey PCE, water quality PCE, sediment quality PCE, or the unobstructed migratory pathways PCE for that critical habitat (further described in Section 4.2.8.6.2 of the 2016 Opinion) are **not eligible** for the streamlined informal consultation process.	New dense spawning areas are still to be determined; however, they will **not** be located within Gulf Sturgeon critical habitat.
☐ Yes ☐ Equivalent ☒ N/A	PDC 3: Projects that use seismic surveys, low frequency sonar, explosions, or seismic air guns are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☒ N/A	PDC 4: Any project in Florida Bay that includes queen conch in the project action area is **not eligible** for the streamlined informal consultation process.	

2. General PDCs Applicable to all Activities

<table>
<tr><th>Project Meets PDC?</th><th>Project Design Criteria
(NMFS PDARP BiOP Amendment 1, updated 2023)</th><th>Additional Information</th></tr>
<tr><td>☒ Yes
☐ Equivalent
☐ N/A</td><td>PDC 5: As appropriate to the project, and where applicable, all projects must comply with the following guidance documents (or most up-to-date version), including the procedures for monitoring for, and reporting interactions with, ESA-listed species:
NMFS (2021a) Protected Species Construction Conditions
NMFS (2021b) Vessel Strike Avoidance Measures and Reporting for Mariners.
NMFS (2012) Measures for Reducing Entrapment Risk to Protected Species.
For projects in Florida ONLY:
USACE and NMFS (2017) Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat.</td><td></td></tr>
<tr><td>☒ Yes
☐ Equivalent
☐ N/A</td><td>PDC 6: All structures, materials, and installation methods, including turbidity control measures, shall be designed and deployed to prevent entanglement and entrapment of ESA-listed species.</td><td></td></tr>
<tr><td>☒ Yes
☐ Equivalent
☐ N/A</td><td>PDC 7: All structures, materials, and installation methods, including turbidity control measures, shall not impede movement of ESAlisted species between shoreline and open water or otherwise block passage of ESA-listed species.</td><td></td></tr>
<tr><td>☒ Yes
☐ Equivalent
☐ N/A</td><td>PDC 8: In-water lines (rope, chain, and cable) must be stiff, taut, and non-looping, with no excess/loose line in the water, and any flexible in-water lines, such as nylon rope or any lines that could loop or tangle, must be enclosed in a plastic or rubber sleeve/tube to add rigidity and prevent the line from looping and tangling.</td><td></td></tr>
<tr><td>☐ Yes
☐ Equivalent
☒ N/A</td><td>PDC 9: For work conducted at night within view of sea turtle nesting beaches, no artificial lighting from in-water activities shall be visible at night from sea turtle nesting beaches during nesting season
Table 1. Sea Turtle Nesting Season<table><tr><th>Location</th><th>Species</th><th>Nesting Season</th></tr><tr><td>MS, LA, AL and northern FL (Escambia to Pasco Counties)</td><td>Loggerhead sea turtles</td><td>May 1 to October 31</td></tr><tr><td>MS, LA, AL and northern FL (Escambia to Pasco Counties)</td><td>Green sea turtles</td><td>May 15 to October 31</td></tr><tr><td>MS, LA, AL and northern FL (Escambia to Pasco Counties)</td><td>Leather back sea turtles</td><td>May 1 to September 30</td></tr><tr><td>Southern FL (Pinellas to Monroe Counties)</td><td>Loggerhead sea turtles</td><td>April 24 to October 31</td></tr><tr><td>Southern FL (Pinellas to Monroe Counties)</td><td>Green sea turtles</td><td>May 15 to October 31</td></tr><tr><td>Monroe County FL</td><td>Hawksbill sea turtles</td><td>June 1 to December 31</td></tr><tr><td>Texas</td><td>Kemp's ridley sea turtles</td><td>May 1 to September 30</td></tr></table></td><td></td></tr>
</table>

☐ Yes ☐ Equivalent ☒ N/A	PDC 10: For work conducted at night within view of sea turtle nesting beaches, any support vessels transiting at night within view of sea turtle nesting beaches during nesting season (see table above), lighting will be limited to the minimal lighting necessary to comply with USCG (2023) and OSHA (2023) requirements.	All work completed for this project will be conducted during daytime hours.

3. PDCs Applicable to Marsh Creation, Maintenance or Enhancement

Project Meets PDC?	Project Design Criteria (NMFS PDARP BiOP Amendment 1, updated 2023)	Additional Information
☐ Yes ☐ Equivalent ☐ N/A	PDC 11: Marsh creation, maintenance, or enhancement through freshwater or sediment diversions for the purpose of land-building, are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 12: Marsh creation, maintenance, or enhancement projects that involve the use of hopper dredges are **not eligible** for the streamlined informal consultation process, unless the dredging was the subject of a previous consultation with NMFS resulting in a biological opinion (such as the SARBO (NOAA, 2020)).	
☐ Yes ☐ Equivalent ☐ N/A	PDC 13: Marsh creation, maintenance, or enhancement projects with dredge borrow sites either located within one mile offshore of beaches that are used by nesting sea turtles or would result in any loss of the PBF, PCE, or essential features of either loggerhead sea turtle nearshore reproductive critical habitat or the green sea turtle proposed Florida (FL01) or Texas (TX01) critical habitat, are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 14: Material used for march creation and enhancement shall not contain trash, debris or toxic pollutants.	

4. PDCs Applicable to Living Shorelines Construction, Maintenance, or Expansion

Project Meets PDC?	Project Design Criteria (NMFS PDARP BiOP Amendment 1, updated 2023)	Additional Information

☐ Yes ☐ Equivalent ☐ N/A	PDC 15: Living shorelines either located within one mile offshore of beaches that are used by nesting sea turtles or would result in any loss of the PBF, PCE, or essential features of either loggerhead sea turtle nearshore reproductive critical habitat or the green sea turtle proposed Florida (FL01) or Texas (TX01) critical habitat, are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 16: Living shorelines that involve the use of hopper dredges are **not eligible** for the streamlined informal consultation process, unless the hopper dredging has been the subject of a previous consultation with NMFS resulting in a biological opinion (such as the SARBO (NOAA, 2020)).	
☐ Yes ☐ Equivalent ☐ N/A	PDC 17: Living shorelines must have 5 ft gaps at least every 75 ft in length, as measured parallel to the shoreline and at the sea floor, to allow for tidal flushing and species movement.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 18: Living shoreline structures can only be constructed out of the following materials: oyster shell (loose or bagged), clean rock/boulders (material may be contained in metal baskets or cages), live mangroves, biologs, coir, or other organic materials, pre-fabricated units, such as reefballs or other similar structures	
☐ Yes ☐ Equivalent ☐ N/A	PDC 19: Open-bottom pre-fabricated modules must have a top opening sufficiently large to allow a sea turtle to escape, and have no additional modules, discs, or other materials blocking in any way, the top opening of the modules. Approved open-bottom modules include: • Three-sided modules where each side of the top opening is at least 36-in in length along its edge. • Four or more sided modules where each side of the top opening is at least 40-in in length along its edge. • Modules with a round top opening with a diameter of at least 40-in. Oval openings are not allowed unless a 40-in diameter circle space can fit within the oval.	

5. PDCs Applicable to Removal of Derelict Fishing Gear and Other Marine Debris

Project Meets PDC?	Project Design Criteria (NMFS PDARP BiOP Amendment 1, updated 2023)	Additional Information
☐ Yes ☐ Equivalent ☐ N/A	PDC 20: To avoid harassment of ESA-listed species, aerial debris surveys shall not be conducted below 1,000 ft altitude for any type of piloted aircraft.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 21: Derelict marine gear and debris removal projects that would result in any loss of either the PBF or PCE of the loggerhead sea turtle critical habitat Sargassum habitat unit or the Essential Features or attributes of the proposed green sea turtle critical habitat Sargassum habitat unit are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 22: Projects involving the removal of derelict fishing gear and other marine debris either located within one mile offshore of beaches that are used by nesting sea turtles or would result in any loss of the PBF, PCE, or essential features of either loggerhead sea turtle nearshore reproductive critical habitat or the green sea turtle proposed Florida (FL01) or Texas (TX01) critical habitat, during sea turtle nesting season are **not eligible** for the streamlined informal consultation process. *Table 1. Sea Turtle Nesting Season* Location / Species / Nesting Season MS, LA, AL and northern FL (Escambia to Pasco Counties) — Loggerhead sea turtles — May 1 to October 31 MS, LA, AL and northern FL (Escambia to Pasco Counties) — Green sea turtles — May 15 to October 31 MS, LA, AL and northern FL (Escambia to Pasco Counties) — Leather back sea turtles — May 1 to September 30 Southern FL (Pinellas to Monroe Counties) — Loggerhead sea turtles — April 24 to October 31 Southern FL (Pinellas to Monroe Counties) — Green sea turtles — May 15 to October 31 Monroe County FL — Hawksbill sea turtles — June 1 to December 31 Texas — Kemp's ridley sea turtles — May 1 to September 30	
☐ Yes ☐ Equivalent ☐ N/A	PDC 23: Projects located in the FGBNMS are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 24: Projects that would result in any loss of the Essential Feature or attributes of that Essential Feature (prey, water quality, sound) of the proposed Rice's whale critical habitat are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 25: Projects that use trawling as a means of marine debris removal are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 26: Removal of marine debris shall require visual confirmation (e.g., divers, swimmers, and camera) that the item can be removed without causing significant damage to marine natural resources.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 27: If an item cannot be entirely removed without causing harm to surrounding coral (ESA-listed or non-listed), the item will be disassembled and removed to the greatest extent practicable without damaging the surrounding coral.	

☐ Yes ☐ Equivalent ☐ N/A	PDC 28: Monofilament debris will be carefully cut loose from coral (ESAlisted or non-listed) so as not to cause further harm. Under no circumstance will lines be pulled through coral because this could cause breakage of coral.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 29: Marine debris shall be lifted straight up and not be dragged through seagrass beds, coral, or hard bottom habitats.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 30: Debris and trash shall be properly disposed in appropriate on-shore facilities, in accordance with applicable federal and state requirements.	

6. PDCs Applicable to Oyster Reefs Creation, Maintenance or Enhancement

Project Meets PDC?	Project Design Criteria (NMFS PDARP BiOP Amendment 1, updated 2023)	Additional Information
☐ Yes ☐ Equivalent ☒ N/A	PDC 31: The creation, maintenance of enhancement of oyster reefs either located within on mile offshore of beaches that are used by nesting sea turtle or would result in any loss of the PBF, PCE, or essential features of either loggerhead sea turtle nearshore reproductive critical habitat or the green sea turtle proposed Florida (FL01) or Texas (TX01) critical habitat, during sea turtle nesting season are **not eligible** for the streamlined informal consultation process.	There would be no impacts to nesting sea turtles as a result of this project.
☒ Yes ☐ Equivalent ☐ N/A	PDC 32: Cultch material shall be free of debris and contaminants.	
☒ Yes ☐ Equivalent ☐ N/A	PDC 33: Fresh shell shall be aged or quarantined at an upland location for not less than 6 months before deployment.	
☒ Yes ☐ Equivalent ☐ N/A	PDC 34: During deployment, cultch material shall be placed in a manner minimizing the disturbance of surrounding sediments.	

Table 1. Sea Turtle Nesting Season

Location	Species	Nesting Season
MS, LA, AL and northern FL (Escambia to Pasco Counties)	Loggerhead sea turtles	May 1 to October 31
MS, LA, AL and northern FL (Escambia to Pasco Counties)	Green sea turtles	May 15 to October 31
MS, LA, AL and northern FL (Escambia to Pasco Counties)	Leather back sea turtles	May 1 to September 30
Southern FL (Pinellas to Monroe Counties)	Loggerhead sea turtles	April 24 to October 31
Southern FL (Pinellas to Monroe Counties)	Green sea turtles	May 15 to October 31
Monroe County FL	Hawksbill sea turtles	June 1 to December 31
Texas	Kemp's ridley sea turtles	May 1 to September 30

7. PDCs Applicable to Pile Supported Structures including Non-Fishing Piers, Anchored Buoys and In-water Sign Posts

Project Meets PDC?	Project Design Criteria (NMFS PDARP BiOP Amendment 1, updated 2023)	Additional Information
☐ Yes ☐ Equivalent ☒ N/A	PDC 35: Projects that include installation of steel piles driven by impact hammers are **not eligible** for the streamlined informal consultation process.	Material type of piles being used will be wood.
☐ Yes ☐ Equivalent ☒ N/A	PDC 36: Projects that include installation of more than 10 concrete piles per day, driven by impact hammer, are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☒ N/A	PDC 37: Projects that include installation of any piles larger than 24 inches in diameter driven by impact hammer are **not eligible** for the streamlined informal consultation process.	Size (width) of piles will be 12 inches in diameter.
☐ Yes ☐ Equivalent ☒ N/A	PDC 38: Projects either located within one mile offshore of beaches that are used by nesting sea turtles or would result in any loss of the PBF, PCE, or essential features of either loggerhead sea turtle nearshore reproductive critical habitat or the green sea turtle proposed Florida (FL01) or Texas (TX01) critical habitat, are **not eligible** for the streamlined informal consultation process.	Nesting sea turtles will not be impacted as a result of this project as there will be no loss of the PBF, PCE, or essential features of any nesting sea turtle habitat.
☐ Yes ☐ Equivalent ☒ N/A	PDC 39: Projects that include anchored buoys located within the proposed Rice's whale critical habitat are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☒ N/A	PDC 40: Projects that include anchored buoys that would result in any loss of either the PBF or PCE of the loggerhead sea turtle critical habitat *Sargassum* habitat unit or the Essential Features or attributes of the proposed green sea turtle critical habitat *Sargassum* habitat unit are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☒ N/A	PDC 41: Projects that include anchored buoys located in the FGBNMS are **not eligible** for the streamlined informal consultation process.	This project is taking place within Mobile Bay, AL.
☐ Yes ☐ Equivalent ☒ N/A	PDC 42: Other than ATONs (pile-supported signs and anchored buoys), new or expanded structures in either located within one mile offshore of beaches that are used by nesting sea turtles or would result in any loss of the PBF, PCE, or essential features of either loggerhead sea turtle nearshore reproductive critical habitat or the green sea turtle proposed Florida (FL01) or Texas (TX01) critical habitat are **not eligible** for the streamlined informal consultation process.	

☐ Yes ☐ Equivalent ☒ N/A	PDC 43: Floating or mid-water fish aggregation devices (FAD) are not eligible for the streamlined informal consultation process.	
☒ Yes ☐ Equivalent ☐ N/A	PDC 44: Upon completion of marine events, to the maximum extent practical, the site must be restored to pre-construction conditions.	

☒ Yes ☐ Equivalent ☐ N/A	PDC 45: Any anchor chain or other tackle of an anchored buoy will include flotation to ensure there is no contact between the anchor chain or line and the marine bottom.	
☐ Yes ☐ Equivalent ☒ N/A	PDC 46: All non-fishing piers and floating docks must be clearly marked to prohibit fishing and the presence of fish cleaning stations.	
☐ Yes ☐ Equivalent ☒ N/A	PDC 47: For piers, boardwalks or docks constructed on, or adjacent to, sea turtle nesting beaches, any permanent lighting shall be long wavelength, mounted as low to the deck as possible and fully shielded (i.e., sea turtle friendly).	

8. PDCs Applicable to Artificial Reefs Construction, Maintenance or Expansion

Project Meets PDC?	Project Design Criteria (NMFS PDARP BiOP Amendment 1, updated 2023)	Additional Information
☐ Yes ☐ Equivalent ☐ N/A	PDC 48: Artificial reefs either located within one mile offshore of beaches that are used by nesting sea turtles or would result in any loss of the PBF, PCE, or essential features of either loggerhead sea turtle nearshore reproductive critical habitat or the green sea turtle proposed Florida (FL01) or Texas (TX01) critical habitat are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 49: Artificial reefs that would result in any loss of either the PBF or PCE of the loggerhead sea turtle critical habitat *Sargassum* habitat unit or the Essential Features or attributes of the proposed green sea turtle critical habitat *Sargassum* habitat unit are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 50: Projects located in the FGBNMS are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 51: Floating or mid-water FAD are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 52: High relief artificial reefs that include complex structures or materials likely to accumulate fishing monofilament, ropes, nets or other marine debris that could entangle ESA-listed species are **not eligible** for the streamlined informal consultation process. Complex artificial reef structures or material include any vessel, aircraft, decommissioned oil rig, bridge span, metal tower, or similar secondary use material. High relief artificial reefs are any reef that extends 7 ft or higher than the seafloor and that has a footprint greater than 200 ft^2 (individually or collectively). Reefs that are constructed of natural rock, concrete rubble with no exposed rebar or medal, or prefabricated artificial reef modules are excluded from the definition of high-relief artificial reef material, regardless of their dimensions. Low-relief artificial reef material is considered to be less than these dimensions (less than 7 ft from the seafloor and a horizontal footprint of less than 200 ft^2).	
☐ Yes ☐ Equivalent ☐ N/A	PDC 53: Projects that use explosives to deploy reef material are not eligible for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 54: Projects that would result in any loss of the Essential Feature or attributes of that Essential Feature (prey, water quality, sound) of the proposed Rice's whale critical habitat are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 55: Artificial reef materials shall be clean and free from asphalt, creosote, petroleum, other hydrocarbons and toxic residues, loose free-floating material, or other deleterious substances.	

☐ Yes ☐ Equivalent ☐ N/A	PDC 56: No artificial reef materials shall be deployed until a benthic assessment of the bottom conditions has been accomplished by diver or submersible video camera. The inspection of the deployment area may occur at the time of deployment but no more than 1 year prior to deployment.	
☐ Yes ☐ Equivalent	PDC 57: A deployment buffer of at least 200 ft between the deployment of artificial reef materials and any submerged marine	
☐ N/A	resources, including seagrasses, macroalgae, hard or soft coral (including coral reefs), sponges, or oysters shall be maintained. If materials are off-loaded from a barge or placed in areas that may generate turbidity (e.g., areas with fines or muck), a 500 ft buffer is required.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 58: All artificial reef materials and structures will be selected, designed, constructed, and deployed to create stable and durable marine habitat.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 59: All individual artificial reef component shall be of sufficient weight in-water to not move from the site after deployment and will weigh more than 500 pounds, with the exception of materials deployed directly by authorized county or state programs in lowenergy environments (e.g., prefabricated modules, Reef Ball, “Bay Ball,” or “Mini-Bay Ball” in shallow estuaries or bays).	
☐ Yes ☐ Equivalent ☐ N/A	PDC 60: Only the following reef materials may be used for artificial reefs eligible for the streamlined informal consultation process: o Prefabricated artificial reef modules composed of ferrous-alloy metals, aluminum-alloy metals, concrete, rock, or a combination of these materials. o Natural rock boulders. o Pre-cast concrete material, such as culverts, stormwater junction boxes, power poles, railroad ties, jersey barriers, or other similar concrete material. o Clean steel. o Concrete bridge or large building demolition materials such as slabs or piles with all steel reinforcement rods cut at the base of the concrete so no rebar or metal protrudes from the concrete.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 61: Open-bottom pre-fabricated reef modules must have a top opening sufficiently large to allow a sea turtle to escape, and have no additional modules, discs, or other materials blocking in any way, the top opening of the modules. Approved open-bottom modules include: o Three-sided modules where each side of the top opening is at least 36-in in length along its edge. o Four or more sided modules where each side of the top opening is at least 40-in in length along its edge. o Modules with a round top opening with a diameter of at least 40-in. Oval openings are not allowed unless a 40-in diameter circle space can fit within the oval.	

9. PDCs Applicable to Boat Ramps Installation, Repair, Replacement or Removal

Project Meets PDC?	Project Design Criteria (NMFS PDARP BiOP Amendment 1, updated 2023)	Additional Information
☐ Yes ☐ Equivalent ☐ N/A	PDC 62: New or expanded boat ramps that would either directly impact beaches used by nesting sea turtles or would result in any loss of the PBF, PCE, or essential features of either loggerhead sea turtle nearshore reproductive critical habitat or the green sea turtle proposed Florida (FL01) or Texas (TX01) critical habitat, are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 63: New or expanded boat ramps that will include more than 300 trailered vehicle parking spaces are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 64: All commercial or public boat ramps must have NMFS educational signs (NMFS, 2023a) posted in a visible location(s) that: ○ alert boaters of ESA-listed species in the area susceptible to vessel strikes or hook-and-line captures. ○ include contact information for ESA-listed species and marine mammal stranding networks and encounter databases.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 65: At all commercial and public boat ramps, monofilament recycling bins must be installed and maintained for the life of the facility in working order and emptied frequently so that they do not overflow.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 66: Water depth at the end of the ramp must be deep enough to minimize sediment resuspension from prop wash of boats using the ramp.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 67: For all facilities constructed within view of sea turtle nesting beaches, any permanent lighting of the facilities shall be wildlife-friendly, long wavelength, mounted as low to the ground or deck as possible, and fully shielded from view of the nesting area.	

10. PDCs Applicable to Water-Management Outfall Structures and Associated Endwalls Installation, Repair, Replacement, and Removal

Activities eligible for the streamlined informal consultation process include:

- Installation, repair, replacement, extension, and removal of existing metal or concrete pipes, culverts, or other drainage conveyance structures that discharge storm water, surface water, or connect existing water bodies.

- Installation of new outfall structures to connect two existing water bodies to improve water flow and quality or restore hydrology.
- Installation of metal manatee grates.

Project Meets PDC?	Project Design Criteria (NMFS PDARP BiOP Amendment 1, updated 2023)	Additional Information
☐ Yes ☐ Equivalent ☐ N/A	PDC 68: Projects that would either directly impact beaches used by nesting sea turtles, or would result in any loss of the PBF, PCE, or essential features of either loggerhead sea turtle nearshore reproductive critical habitat or the green sea turtle proposed Florida (FL01) or Texas (TX01) critical habitat, are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 69: Projects that involve freshwater or sediment diversions for the purpose of land-building are not eligible for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 70: All outfall discharge shall be designed and implemented to prevent erosion and scour.	

11. PDCs Applicable to Establishing or Restoring SAV

Project Meets PDC?	Project Design Criteria (NMFS PDARP BiOP Amendment 1, updated 2023)	Additional Information
☐ Yes ☐ Equivalent ☐ N/A	PDC 71: Projects that include sediment placement and/or a dredging component with fill material sourced using hopper dredging are **not eligible** for the streamlined informal consultation process, unless the hopper dredging has been the subject of a previous consultation with NMFS resulting in a biological opinion (such as the SARBO (NOAA, 2020)).	
☐ Yes ☐ Equivalent ☐ N/A	PDC 72: Projects that include sediment placement and/or dredging component with fill material sourced from Gulf sturgeon critical habitat are **not eligible** for the streamlined informal consultation process.	

☐ Yes ☐ Equivalent ☐ N/A	PDC 73: Projects requiring in-water work during sea turtle nesting season in waters either located within one mile offshore of beaches that are used by nesting sea turtles or would result in any loss of the PBF, PCE, or essential features of either loggerhead sea turtle nearshore reproductive critical habitat or the green sea turtle proposed Florida (FL01) or Texas (TX01) critical habitat, are **not eligible** for the streamlined informal consultation process. *Table 1. Sea Turtle Nesting Season* Location / Species / Nesting Season MS, LA, AL and northern FL (Escambia to Pasco Counties) — Loggerhead sea turtles — May 1 to October 31 MS, LA, AL and northern FL (Escambia to Pasco Counties) — Green sea turtles — May 15 to October 31 MS, LA, AL and northern FL (Escambia to Pasco Counties) — Leather back sea turtles — May 1 to September 30 Southern FL (Pinellas to Monroe Counties) — Loggerhead sea turtles — April 24 to October 31 Southern FL (Pinellas to Monroe Counties) — Green sea turtles — May 15 to October 31 Monroe County FL — Hawksbill sea turtles — June 1 to December 31 Texas — Kemp's ridley sea turtles — May 1 to September 30	
☐ Yes ☐ Equivalent ☐ N/A	PDC 74: Bird stakes should not be used in areas where additional nutrients may be detrimental to seagrass.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 75: Exclusion cages to protect seagrass can only be used on a temporary basis, for a period not to exceed 4 months.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 76: Exclusion cages must be securely fastened or anchored to the substrate to prevent detachment. Exclusion cages must be removed in the event that a storm approaches whose strength could dislodge or move the exclusion cages.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 77: Exclusion cages must be constructed of firm, taut materials that do not include any loose mesh, thin twistable wire, or rope that could present an entanglement risk to ESA-listed species.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 78: Seagrass collection from donor sites must be conducted in a manner that is not detrimental to the existing seagrass bed.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 79: Signs placed in seagrass areas must be sized and installed in a manner that prevents the loss of seagrasses	

12. PDCs Applicable to Scientific Surveys and Research Projects and the Installation, Repair or Removal of Equipment

Project Meets PDC?	Project Design Criteria (NMFS PDARP BiOP Amendment 1, updated 2023)	Additional Information
☐ Yes ☐ Equivalent ☐ N/A	PDC 80: To avoid harassment of listed species, aerial surveys shall not be conducted below 1,000 ft altitude for any type of piloted aircraft.	

☐ Yes ☐ Equivalent ☐ N/A	PDC 81: Projects that permanently alter hard bottom habitat (e.g., the devices are installed by drilling) are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 82: Projects that include anchored buoys located within the proposed Rice's whale critical habitat are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 83: Scientific surveys or research projects requiring in-water work during sea turtle nesting season either located within one mile offshore of beaches that are used by nesting sea turtles or would result in any loss of the PBF, PCE, or essential features of either loggerhead sea turtle nearshore reproductive critical habitat or the green sea turtle proposed Florida (FL01) or Texas (TX01) critical habitat are **not eligible** for the streamlined informal consultation process. ***Table 1. Sea Turtle Nesting Season*** Location / Species / Nesting Season MS, LA, AL and northern FL (Escambia to Pasco Counties) / Loggerhead sea turtles / May 1 to October 31 MS, LA, AL and northern FL (Escambia to Pasco Counties) / Green sea turtles / May 15 to October 31 MS, LA, AL and northern FL (Escambia to Pasco Counties) / Leather back sea turtles / May 1 to September 30 Southern FL (Pinellas to Monroe Counties) / Loggerhead sea turtles / April 24 to October 31 Southern FL (Pinellas to Monroe Counties) / Green sea turtles / May 15 to October 31 Monroe County FL / Hawksbill sea turtles / June 1 to December 31 Texas / Kemp's ridley sea turtles / May 1 to September 30	
☐ Yes ☐ Equivalent ☐ N/A	PDC 84: Projects that include anchored buoys that would result in any loss of either the PBF or PCE of the loggerhead sea turtle critical habitat *Sargassum* habitat unit or the Essential Features or attributes of the proposed green sea turtle critical habitat *Sargassum* habitat unit are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 85: Projects located in the FGBNMS are **not eligible** for the streamlined informal consultation process.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 86: Upon completion of data acquisition, all in-water equipment structure or fills associated with that research (e.g., anchors, buoys, and lines) must be removed and the site must be restored to pre-construction conditions.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 87: Research equipment, including lines and anchors, shall be inspected and the required maintenance must be performed at least twice a year.	
☐ Yes ☐ Equivalent ☐ N/A	PDC 88: Research equipment shall be inspected following storm events that may have moved or dislodged the structure to ensure that equipment and anchors are still in place and have not moved to areas, or in a manner, that could impact ESA-listed species or critical habitat.	

Attachment 5

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): Alabama Department of Conservation and Natural Resources
Contact Name: Jaime Miller Phone: 251-621-1216 Email: Jaime.Miller@dcnr.alabama.gov
Project Name: Bayfront Park Restoration and Improvement Phase IIA-IIB
DIVER ID# Click to enter text Trustee Implementation Group (TIG):
Alabama TIG Restoration Plan # RP4
Name of Person Completing this Form: Gabriella Benacquisto
Name of Project Lead: Jaime Miller
Date Form Completed: 4/16/2024
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:

Click here to enter text.

C. Project Location

I. State and County/Parish of action area

15961 Dauphin Island Parkway, Mobile, Mobile County, Alabama

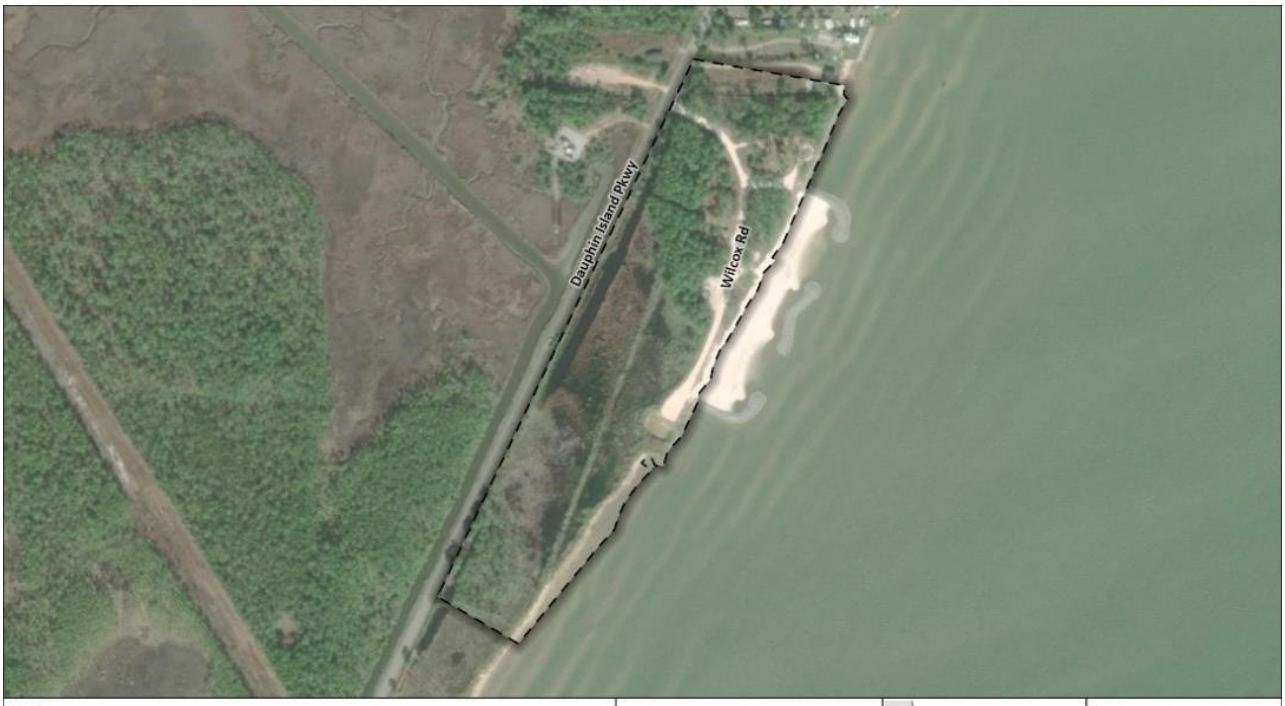
II. Latitude/Longitude for action area (Decimal degrees and datum [e.g., 27.71622°N, 80.25174°W NAD83)

[online conversion: https://www.fcc.gov/encyclopedia/degrees-minutes-seconds-tofrom-decimal-degrees] 30.357 °N; 88.117 °W NAD83

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



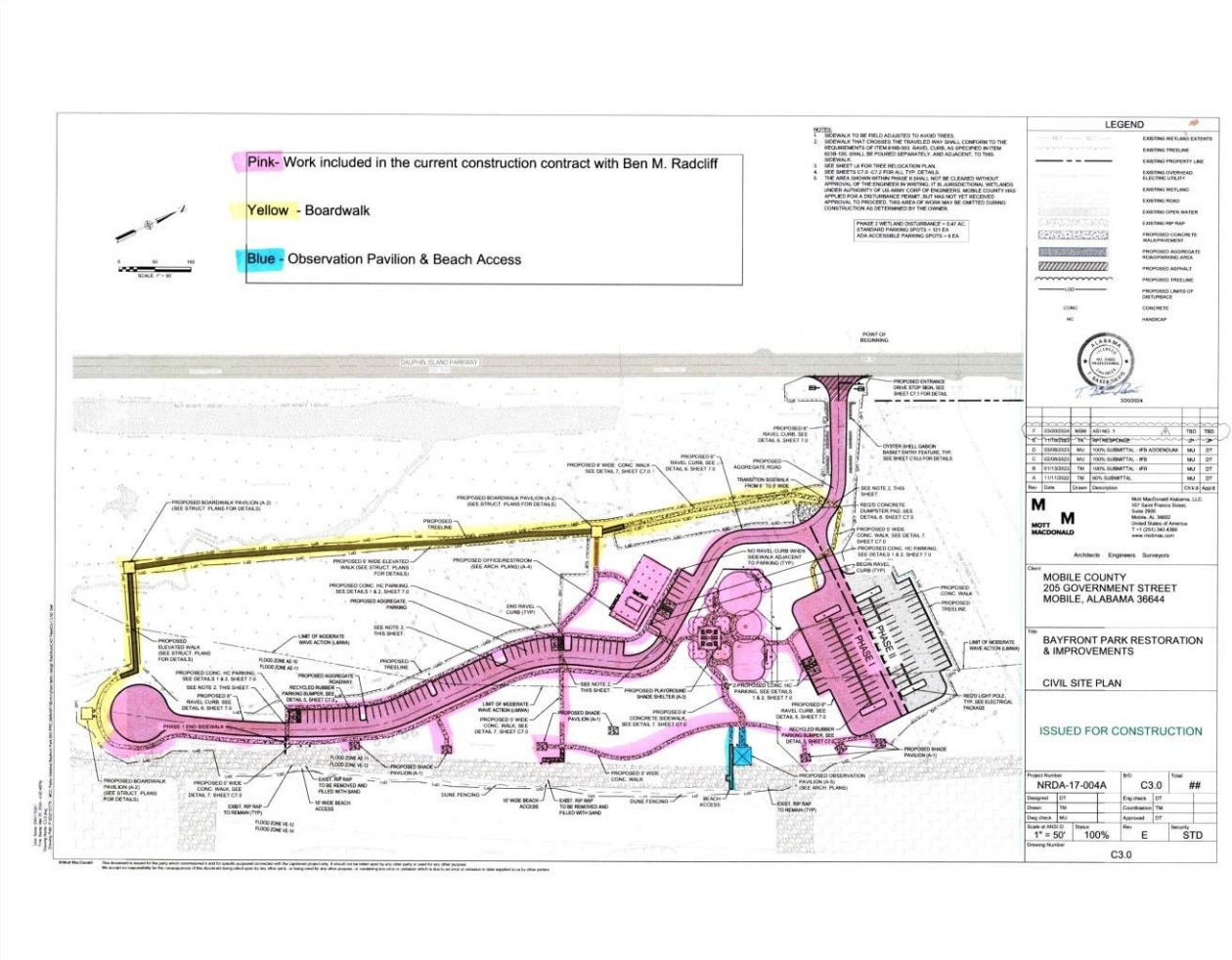
Bayfront Park Restoration and Improvements Project

Imagery: ESRI 2022

Coordinate System:
State Plane Alabama West
Datum: North American 1983

0 200 400
US Feet

wsp



The pink highlighted portions of the above figure have already been completed. The yellow and blue highlighted portions have not been completed but are being proposed and analyzed under the Restoration Project IV/Environmental

Assessment. All construction shown in the figure above and discussed in this biological evaluation lies within the already analyzed footprint and was approved under the existing consultation. No new work is being proposed.

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: Click 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.

This project was initially analyzed in the AL TIG Restoration Project III/Environmental Assessment. ESA effects have been partially accounted for under an existing USFWS consultation (NO: 2019-I-1343, Date: 01/14/2020) as well as a NMFS consultation (NO: SERO-2019-03563, Date: 02/25/2020).

NMFS ESA consultation: https://www.fws.gov/doiddata/dwh-ar-documents/2608/DWH-ARZ004012.pdf
NMFS EFH consultation: https://www.fws.gov/doiddata/dwh-ar-documents/2608/DWH-ARZ004856.pdf MMPA determination: https://www.fws.gov/doiddata/dwh-ar-documents/2608/DWH-ARZ008728.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.

Located in Mobile County on Dauphin Island Parkway, Bayfront Park is an approximately 20-acre park with public access to Mobile Bay and other public amenities, such as a playground, picnic areas, and restrooms. The park is owned, maintained, and staffed by the Mobile County Commission and currently receives more than 300 visitors on weekends and more than 1,200

visitors per week during the peak summer months. Recreational activities currently supported at this site include biking, playground use, fishing and crabbing, picnicking, walking, exercising, paddle sports such as kayaking, and bird watching.

Approximately 50 percent of the park is classified as estuarine wetland. Upland portions of the action area consist of developed open space, and pine flatwoods that provide limited habitat for wildlife due to framentation and nearby development. Soils in the action area are comprised of poorly drained Axis and Handsboro soils and Stallings (gulf)-Bayou complex soils. The Mobile Bay shoreline consists of unconsolidated sandy substrate. Mobile Bay was listed on the ADEM 2014 303(d) list of impaired waters, but through the implementation of management and monitoring plans, as well as volunteer programs, it has been removed from the 2018 303(d) list of impaired waters and overall water quality has improved.

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.

The project area is located along the western shore of Mobile Bay and contains approximately 10 acres of estuarine wetlands. Approximately 50 percent of the park is classified as estuarine wetland. The Mobile Bay shoreline consists of unconsolidated sandy substrate. Mobile Bay was listed on the ADEM 2014 303(d) list of impaired waters, but through the implementation of management and monitoring plans, as well as volunteer programs, it has been removed from the 2018 303(d) list of impaired waters and overall water quality has improved.

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.

Bayfront Park is located along the western shore of Mobile Bay and is approximately 4 miles from the Gulf of Mexico.

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.

Existing structures at Bayfront Park include a parking area, a boardwalk, restroom facilities, a playground, and picnic areas.

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.

The project area includes salt marsh habitat along its coastal boundary. No seagrasses occur in the action area.

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.

N/A

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.).

Upland portions of the action area consist of developed open space and pine flatwoods habitat.

g. Soils and Sediments

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

Soils in the action area are comprised of poorly-drained Axis and Handsboro soils and Stallings (gulf)-Bayou complex soils. The Mobile Bay shoreline consists of unconsolidated sandy substrate.

h. Land Use

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

The action area is a 20-acre park with public access to Mobile Bay and other public amenities, such as a playground, picnic areas, and restrooms. The park is owned, maintained, and staffed by the Mobile County Commission and currently receives more than 300 visitors on weekends and more than 1,200 visitors per week during the peak summer months. Recreational activities currently supported at this site include biking, playground use, fishing and crabbing, picnicking, walking, exercising, paddle sports such as kayaking, and bird watching.

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

Marine mammals that may occur in the project area include West Indian Manatee (Trichechus manatus) and Common Bottlenose Dolphin (Tursiops truncatus).

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.*

This project proposes to increase the funding allocated to Bayfront Park Restoration and Improvement— Phases IIa and IIb Project to account for increases in the cost of construction of the amenities, specifically the planned boardwalk and boardwalk pavilions.

The increase in funds aims to complete the originally planned construction elements that was approved in RP III with no additional construction being proposed and no expansion beyond the original footprint. Consultation for this project has been completed and covered both Phase IIa and IIb of the project. USFWS (NO: 2019-I-1343, Date: 01/14/2020) and NMFS (NO: SERO-2019-03563, Date: 02/25/2020). Species that were not covered in these consultations are addressed below.

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

Planning, engineering, and design for this project has been included in a previous phase and is currently in progress. A construction, engineering, and inspection contract will be procured to obtain an engineering consultant to assist with bidding and project management. Construction will be completed in accordance with all applicable local, state, federal, and coastal compliance requirements and is expected to take place over 24 months.

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

Does this project include in-water work?	YES☐ NO☒

Does this project include terrestrial construction?	YES☒	NO☐
Does this project include construction of an overwater structure?	YES☐	NO☒
Will fishing be allowed from this overwater structure?	YES☐	NO☒
Will wildlife observation be allowed from this overwater structure?	YES☐	NO☒
Will boat docking be allowed from this overwater structure?	YES☐	NO☒

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)?*

No overwater structures would be constructed during the proposed Phase II of the project. Any overwater structures that may be proposed in future phases of the project would undergo the appropriate environmental review process at that time.

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	
2. Material type of piles used	
3. Size (width) of piles/sheets	
4. Total number of piles/sheets	
5. Number of strikes for each single pile	
6. Number of strikes per hour (for a single pile)	
7. Expected number of piles to be driven each day	
8. Expected amount of time needed to drive each pile (minutes of driving activities)	
9. Expected number of sequential days spent pile driving	

10. Whether pile driving occurring in-water or on land	
11. Depth of water where piles will be driven	

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
This project was previously reviewed under the AL TIG Restoration Project III/Environmental Assessment and aims to complete the previously approved project with additional funding.

EFH consultation was previously completed and still remains in effect. See section D for a link to the completed EFH consultation.

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

Gulf of Mexico EFH Eco-Region	Estuarine	Nearshore	Offshore
Eco-Region 1: **South Florida** (*Florida Keys north to Tarpon Springs, Florida*)	☐	☐	☐
Eco-Region 2: **North Florida** (*Tarpon Springs, Florida, north and west to Pensacola Bay, Florida*)	☐	☐	☐
Eco-Region 3: East Louisiana, Mississippi, and Alabama (*Pensacola Bay, Florida, west to the Mississippi River Delta)*	☒	☐	☐
Eco-Region 4: **East Texas and West Louisiana** (*Mississippi River Delta west and south to Freeport, Texas)*	☐	☐	☐
Eco-Region 5: **West Texas** (*Freeport, Texas south to the U.S./Mexico border)*	☐	☐	☐

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.

Will this project affect EFH?	YES☒ NO☐
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.	

Will this project have beneficial effects to EFH?	YES☐ NO☒
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☒ NO☐
If yes, please describe what type of adverse effects your project will cause to EFH in the text bow below:	

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.

ESA effects for this project are partially covered under an existing consultation (NMFS No: SERO-2019-03563, Date: 02/25/2020). Giant manta ray determination is below.

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.**
Gulf Sturgeon (T)		Marine	No Effect	Covered by existi ESA consultation
Loggerhead Sea Turtle (T)		Marine	No Effect	Covered by existi ESA consultation
Green Sea Turtle (T)		Marine	No Effect	Covered by existi ESA consultation

Kemp's Ridley Sea Turtle (E)		Marine	No Effect	Covered by existi ESA consultation
Giant Manta Ray (T)		Choose an item.	No Effect	No suitable habitat action area

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.

ESA effects for this project are partially covered by an existing consultation (NO: 2019-I-1343, Date: 01/14/2020).

*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.**
Gulf Sturgeon (T)		Riverine/Freshwater	No Effect	No suitable habitat i action area
Eastern Black Rail			May Affect, Likely to Adversely Affect	
Piping Plover		Choose an item.	No Effect	No suitable habitat i action area
Red Knot		Choose an item.	May Affect, Likely to Adversely Affect	Choose an item.
West Indian Manatee			No Effect	Covered by existi ESA consultation
Eastern Indigo Snake			No Effect	No suitable habitat i action area
Tricolored Bat			No Effect	No suitable habitat i action area
Northern Long-eared Bat			No Effect	No suitable habitat i action area
Alabama Red-Bellied Turtle			May Affect, Not Likely to Adversely Affect	
Green Sea Turtle		Terrestrial	No Effect	No suitable habitat i action area
Loggerhead Sea Turtle		Terrestrial	No Effect	No suitable habitat i action area
Kemp's Ridley Sea Turtle		Terrestrial	No Effect	No suitable habitat i action area
Alligator snapping turtle			May Affect, Not Likely to Adversely Affect	
Monarch Butterfly			No Effect	No suitable habitat i action area

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.

Replacing playground equipment with a new pavilion, completing civil work such as a crushed aggregate access road would result in temporary disturbances to species from noise and the presence of construction equipment. Noise and the presence of construction equipment and crews necessary for improvements to the park entrance, access road, walkways, and parking areas would temporarily disturb wildlife. Although most of the work proposed for this project will take place within already disturbed/developed areas, some of the work includes an increase in disturbed areas. Although the Alabama red bellied turtle and the alligator snapping turtle are both predominantly freshwater turtles, both also occur in brackish waters of bays or bayous adjacent to marine environments. Therefore, if present, both species could potentially experience minor impacts from noise, increased human disturbance and mechanical activities that could disrupt their habitat.

Birds utilizing the area, including rufa red knot and eastern black rail, could also experience the same minor impacts from noise and increased human disturbance. Disturbing vegetated areas could additionally disturb the eastern black rail as it requires dense herbaceous vegetation for nesting. Impacts would not be noticeable over the long term because the majority of the project area has been previously disturbed. Species that may occur in the project area are accustomed to frequent nearby human presence and noise from the existing high levels of visitor use. The low-impact design of the new development would further limit disturbances to these species over the long term. No habitat that my be usable by any species listed above will be removed. Overall, the project is expected to have minor short- and long-term impacts on rare and protected species.

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.*

NMFS Protected Species Construction Conditions (2021) would be implemented to mitigate potential adverse impacts to rare and protected species in the project area. Additionally, all personnel working on the project will be provided with information in support of general awareness of present threatened and endangered species and their critical habitats as to help avoid protected species. Personnel will avoid storing or staging equipment and debris in a manner or location where it could impact protected species and their habitats. If either the Alabama red bellied turtle or the alligator snapping turtle are observed while work is occurring, project activities will cease until the turtle has vacated the area at its own volition. The Monarch butterfly is currently a candidate species and the proponent does not wish to engage in a conference at this time. Therefore, with the implementation of these measures, the project will have an insignificant affect on these species.

As provided in 50 CFR 402.16, consultation must be reinitiated if (1) take occurs, or (2) new information reveals effects of the action not previously considered, or (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat in a manner or to an extent not previously considered, or (4) if a new species is listed or critical habitat designated that may be affected by the action.

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)**[21]
- ☒ **NMFS Measures for Reducing the Entrapment Risk to Protected Species**[1]

[21] https://www.fisheries.noaa.gov/southeast/consultations/regulations-policies-and-guidance

☒ **NMFS Vessel Strike Avoidance Measures (2021)[1]**

☐ **USFWS Standard Manatee In Water Conditions (2011)[22] and Appropriate State Manatee Conditions[3]**

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)

Click here to enter text.

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.

The action area does not contain critical habitat for any listed species.

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

[22] https://www.fws.gov/media/2011-standard-manatee-construction-conditions-water-work [3] Contact USFWS representative for appropriate documents

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
☐	☐	*a) Use of active acoustic equipment (e.g., echosounder) producing sound below 200 kHz*
☐	☐	*b) In-water construction or demolition*
☐	☐	*c) Temporary or fixed use of active or passive sampling gear (e.g., nets, lines, traps; turtle relocation trawls)*
☐	☐	*d) In-water Explosive detonation*
☐	☐	*e) Aquaculture*
☐	☐	*f) Restoration of barrier islands, levee construction or similar projects*
☐	☐	*g) Fresh-water river diversions*
☐	☐	*h) Building or enhancing areas for water-related recreational use or fishing opportunities (e.g. fishing piers, bridges, boat ramps, marinas)*
☐	☐	*i) Dredging or in-water construction activities to change hydrologic conditions or connectivity, create breakwaters and living shorelines, etc.*
☐	☐	*j) Conducting driving of sheet piles or pilings*
☐	☐	*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

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:*

☐	NMFS Southeast U.S. Marine Mammal and Sea Turtle Viewing Guidelines[23]
☒	NMFS Protected Species Construction Conditions (2021)[24]
☒	NMFS Measures for Reducing the Entrapment Risk to Protected Species (2012)[3]
☒	NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (2021)[3]

[23] https://www.fisheries.noaa.gov/topic/marine-life-viewing-guidelines

[24] https://www.fisheries.noaa.gov/southeast/consultations/regulations-policies-and-guidance

☐	NMFS Reproducing and posting outreach signs: Dolphin Friendly Fishing Tips sign, Don't Feed Wild Dolphins sign[25]

If not listed above, please describe any additional BMPs or conservation measures that may be be implemented for marine mammals. Implementation of the USFWS Standard Manatee Conditions for In-Water Work or Events in Alabama would avoid or minimize potential impacts to manatees. Implementation of NMFS Southeast Region's Measures for Reducing Entrapment Risk to Protected Species and Vessel Strike Avoidance Measures would further reduce potential impacts to marine mammals.

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 project 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.
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

[25] https://www.fisheries.noaa.gov/southeast/consultations/protected-species-educational-signs

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
☐	☒	**Marsh Creation, Maintenance, or Enhancement**
☐	☒	**Living Shorelines Construction Maintenance, or Expansion**
☐	☒	**Removal of Fishing Gear and Other Marine Debris**
☐	☒	**Oyster Reefs Creation, Maintenance, or Enhancement**
☐	☒	**Pile-Supported Structures, including Non-fishing Piers, Anchored Buoys, and In-water Sign Posts**
☐	☒	**Artificial Reefs Construction, Maintenance, or Expansion**
☐	☒	**Boat Ramps Installation, Repair, Replacement, or Removal**
☐	☒	**Water Management Outfall Structures and Associated Endwalls Installation, Repair, Replacement or Removal**
☐	☒	**Establishing or Restoring SAV**
☐	☒	**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

Attachment 6

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): Alabama Department of Conservation and Natural Resources
Contact Name: Jaime Miller Phone: 251-621-1216 Email: Jaime.Miller@dcnr.alabama.gov
Project Name: Laguna Cove Little Lagoon Natural Resource Protection Small Scale Amenities DIVER ID# Click to enter text Trustee Implementation Group (TIG): Alabama TIG Restoration Plan # RP4
Name of Person Completing this Form: Gabriella Benacquisto
Name of Project Lead: Jaime Miller
Date Form Completed: 4/15/2024
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:

Click here to enter text.

C. Project Location

I. State and County/Parish of action area

Baldwin County, Alabama

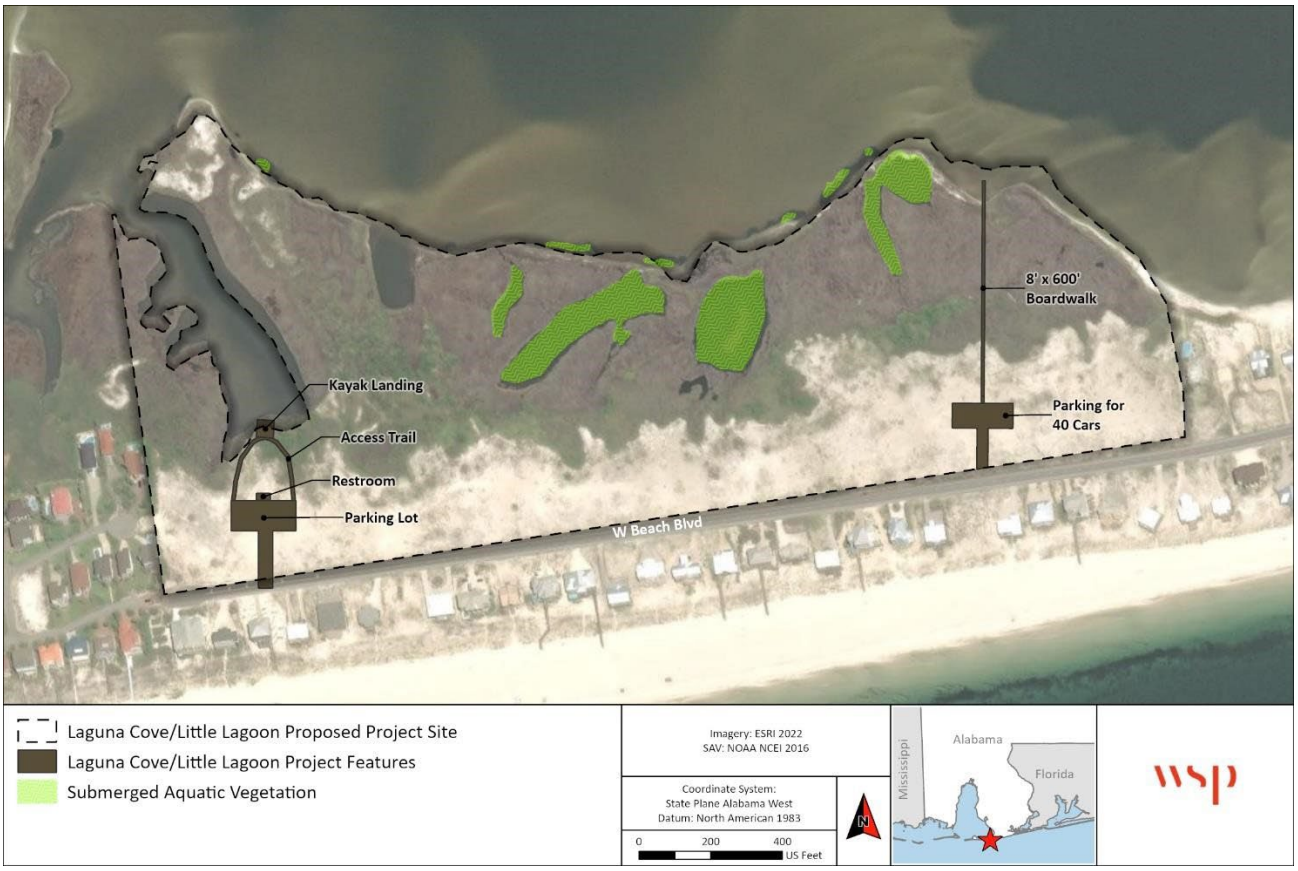
II. Latitude/Longitude for action area (Decimal degrees and datum [e.g., 27.71622°N, 80.25174°W NAD83)

[online conversion: https://www.fcc.gov/encyclopedia/degrees-minutes-seconds-tofrom-decimal-degrees] 30.233861°N; 87.793858°W NAD83

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



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: Click 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.

This project was initially analyzed in the AL TIG Restoration Project I/Environmental Assessment.

Additionally, ESA effects have been accounted for under an existing NMFS consultation (NO: SER-2017-18533) and is partially covered under an existing USFWS consultation (Control Number: 2017-F-0531, Date: 08/16/2017).
NMFS consultation from 2018: https://www.fws.gov/doiddata/dwh-ar-documents/1238/DWH-ARZ003753.pdf NMFS EFH determination: https://www.fws.gov/doiddata/dwh-ar-documents/1238/DWH-ARZ000436.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.

Little Lagoon
tidal marsh wetlands (27.11 acres)

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 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.

The site contains shoal grass (Halodui wrightii). Total coverage is unknown.

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.

N/A

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.).

The project area contains approximately 26 acres of upland habitats that include include low elevation dune habitat and maritime forests.

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

Marine mammals potentially occurring in the project area include West Indian Manatee (Trichechus manatus) and Common Bottlenose Dolphin (Tursiops truncatus).

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 Laguna Cove Little Lagoon Natural Resource Protection Project, which included land acquisition and public access improvements, was selected for implementation by the AL TIG in RP I/EIS. Laguna Cove consists of two undeveloped tracts of land, totaling approximately 53 acres near Little Lagoon in Gulf Shores, Southwest Baldwin County, Alabama. As planned in RP I/EIS, Alabama Department of Conservation and Natural Resources (ADCNR) State Parks Division successfully purchased the 53-acre property from the Erie Meyer Foundation and transferred the property to the City of Gulf Shores. The City of Gulf Shores then developed the plans for the public access improvements outlined in the RP I/EIS. These improvements included parking (including Americans with Disabilities Act (ADA)-accessible parking), a bathhouse and fishing pier, boardwalk, kayak launch, ADA-accessible restrooms, and sea turtle-friendly lighting. The City of Gulf Shores requested bids for the remaining amenities and all bids came back higher than the project budget. The AL TIG is now revisiting the project and considering allocating additional funds to complete some level of the public access improvements.

For this small-scale budget increase, the AL TIG is analyzing an increase to the original project budget to construct the parking, boardwalk, kayak launch, ADA-accessible restrooms, and sea turtle-friendly lighting. The bathhouse and fishing pier are not proposed for completion under this small-scale alternative. Because the AL TIG has used all of the originally allocated funds under the Provide and Enhance Recreational Opportunities restoration type, the AL TIG proposes using earned interest funds for this project. ADCNR would continue to be the implementing trustee for this project.

Informal consultation under ESA Section 7 was initiated with USFWS for the Laguna Cove Project in November of 2016. Formal consultation was then initiated in March of 2017 with the

Service providing a Biological Opinion (BO) for the project to ADCNR in July of 2017.

Project activities described above are covered under the existing consultations that were previously completed with USWFS and NMFS, see section D for details.

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

Planning and E&D would take approximately six months, permitting and consultation would take approximately a year, and construction (including in-water work) would take approximately 6 months.

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

Does this project include in-water work?	YES☒	NO☐
Does this project include terrestrial construction?	YES☒	NO☐
Does this project include construction of an overwater structure?	YES☒	NO☐
Will fishing be allowed from this overwater structure?	YES☒	NO☐
Will wildlife observation be allowed from this overwater structure?	YES☒	NO☐
Will boat docking be allowed from this overwater structure?	YES☐	NO☒

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).

See below.

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)?*

iii. Boardwalk construction will be in accordance with all
necessary guidelines iv. Wooden decking
v. The pile-supported pier would be elevated in compliance with required permits and would be at least as tall as its width vi. North-south
vii. Approximately 8,550 square feet (boardwalk and fishing pier)

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	Impact hammer, vibratory hammer, or jetting methods.
2. Material type of piles used	wood
3. Size (width) of piles/sheets	10,12, and or 14 inch
4. Total number of piles/sheets	About 242
5. Number of strikes for each single pile	Unknown
6. Number of strikes per hour (for a single pile)	Unknown
7. Expected number of piles to be driven each day	Unknown
8. Expected amount of time needed to drive each pile (minutes of driving activities)	Unknown
9. Expected number of sequential days spent pile driving	Unknown
10. Whether pile driving occurring in-water or on land	both
11. Depth of water where piles will be driven	Unknown

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.)*

The project would include a kayak launch. This public launch would be used for non-motorized boats only and would allow for the launch of boat at a time. Therefore, no boat trailer parking would be required.

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

EFH effects were reviewed during AL TIG restoration plan #1 and determined that no further EFH consultation was necessary: https://www.fws.gov/doiddata/dwh-ar-documents/1238/DWH-ARZ000436.pdf

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

Gulf of Mexico EFH Eco-Region	Estuarine	Nearshore	Offshore
Eco-Region 1: South Florida (*Florida Keys north to Tarpon Springs, Florida*)	☐	☐	☐
Eco-Region 2: North Florida *(Tarpon Springs, Florida, north and west to Pensacola Bay, Florida*)	☐	☐	☐
Eco-Region 3: East Louisiana, Mississippi, and Alabama *(Pensacola Bay, Florida, west to the Mississippi River Delta)*	☒	☐	☐
Eco-Region 4: East Texas and West Louisiana *(Mississippi River Delta west and south to Freeport, Texas)*	☐	☐	☐
Eco-Region 5: West Texas *(Freeport, Texas south to the U.S./Mexico border)*	☐	☐	☐

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.

Will this project affect EFH?	YES☐ NO☐
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☐ NO☐
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☐ NO☐
If yes, please describe what type of adverse effects your project will cause to EFH in the text bow below:	

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.

Existing consultation tracking number for the Laguna Cove project is SER-2017-18533.

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.**

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.

This project is partially covered under an existing consultation (Control Number: 2017-F-0531, Date:
08/16/2017).

*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.**
Alabama beach mouse		Choose an item.	No Effect	Covered by existi ESA consultation
Gulf Sturgeon (T)		Riverine/Freshwater	No Effect	Covered by existi ESA consultation
Piping Plover		Choose an item.	No Effect	Covered by existi ESA consultation
Red Knot		Choose an item.	No Effect	Covered by existi ESA consultation
West Indian Manatee			No Effect	Covered by existi ESA consultation
Eastern Indigo Snake			No Effect	Covered by existi ESA consultation

Tricolored Bat			No Effect	No suitable habitat i action area
Northern Long-eared Bat			No Effect	No suitable habitat i action area
Green Sea turtle		Terrestrial	No Effect	Covered by existi ESA consultation
Loggerhead Sea Turtle		Terrestrial	No Effect	Covered by existi ESA consultation
Kemp's Ridley Sea Turtle		Terrestrial	No Effect	Covered by existi ESA consultation
Eastern Black Rail			May Affect, Not Likely to Adversely Affect	
Monarch Butterfly			No Effect	No suitable habitat i action area

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.

ESA effects for this project are covered by an existing consultation conducted in 2017 (Control Number: 2017-F0531, 08/16/2017), however, the following species were not covered under the previous consultation: Tricolored Bat, Northern Long-Eared Bat, and Eastern Black Rail.

The protected eastern black rail may be temporarily impacted by noise during construction activities, if present in the construction area. Increased visitor use at the sites may result in increased disturbances to these species over the long term. All individuals working on the project will be provided with information in support of general awareness of eastern black rail presence and habitat. If a bird is encountered, project participants will cease activities and not continue until the birds vacate the area of their own volition. No rail habitat will be removed.

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.*

Areas of suitable eastern black rail habitat will not be subjected to water management practices that would alter traditional water levels or the seasonally normal drying patterns and rates. Additionally, the introduction of contaminants, fertilizers, or herbicides into marsh wetlands will be avoided, especially compounds that could adversely alter the diversity and number of invertebrates, or that could substantially change the composition of marsh vegetation. Lastly, in kind mitigation will take place for any lost or damaged habitat. Therefore, with the implementation of these measures, the project will have an insignificant affect on this species.

As provided in 50 CFR 402.16, consultation must be reinitiated if (1) take occurs, or (2) new information reveals effects of the action not previously considered, or (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat in a manner or to an extent not previously considered, or (4) if a new species is listed or critical habitat designated that may be affected by the action.

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)**[26]

[26] https://www.fisheries.noaa.gov/southeast/consultations/regulations-policies-and-guidance

☒ **NMFS Measures for Reducing the Entrapment Risk to Protected Species**[1]

☐ **NMFS Vessel Strike Avoidance Measures (2021)**[1]

☐ **USFWS Standard Manatee In Water Conditions (2011)**[27] **and Appropriate State Manatee Conditions**[3]

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)

Click here to enter text.

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.

Potential effects to critical habitat is covered under an existing consultation (Control Number: 2017-F-0531, Date: 08/16/2017).

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.

Effects to critical habitat is covered under an existing consultation (Control Number: 2017-F-0531, Date: 08/16/2017).

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

[27] https://www.fws.gov/media/2011-standard-manatee-construction-conditions-water-work [3] Contact USFWS representative for appropriate documents

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
☒	☐	*a) Use of active acoustic equipment (e.g., echosounder) producing sound below 200 kHz*
☐	☒	*b) In-water construction or demolition*
☒	☐	*c) Temporary or fixed use of active or passive sampling gear (e.g., nets, lines, traps; turtle relocation trawls)*
☒	☐	*d) In-water Explosive detonation*
☒	☐	*e) Aquaculture*
☒	☐	*f) Restoration of barrier islands, levee construction or similar projects*
☒	☐	*g) Fresh-water river diversions*
☐	☒	*h) Building or enhancing areas for water-related recreational use or fishing opportunities (e.g. fishing piers, bridges, boat ramps, marinas)*
☒	☐	*i) Dredging or in-water construction activities to change hydrologic conditions or connectivity, create breakwaters and living shorelines, etc.*
☐	☒	*j) Conducting driving of sheet piles or pilings*
☒	☐	*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

In-water construction would result in temporary increases in water turbidity. Appropriate BMPs such as silt curtains would be implemented to minimize impacts. These actions are further discussed in Section D. Potential impacts to bottlenose dolphins may occur from visitors illegally feeding bottlenose dolphins off the pier and in surrounding waterways. This could lead to potentially deadly entanglements in rod and reel fishing gear and additional potential impacts because bottlenose dolphins become accustomed to free handouts and start seeking bait/catch off fishing gear as a food source. Additional potential impacts on bottlenose dolphins may also occur during in-water construction activities and may result in potential entrapment of the animals.

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:*

☐	NMFS Southeast U.S. Marine Mammal and Sea Turtle Viewing Guidelines[28]
☒	NMFS Protected Species Construction Conditions (2021)[29]
☒	NMFS Measures for Reducing the Entrapment Risk to Protected Species (2012)[3]
☐	NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (2021)[3]
☒	NMFS Reproducing and posting outreach signs: Dolphin Friendly Fishing Tips sign, Don't Feed Wild Dolphins sign[30]

If not listed above, please describe any additional BMPs or conservation measures that may be be implemented for marine mammals. All in-water work would comply with the Alabama Standard Manatee Construction Conditions. The project would incorporate the NMFS Measures for Reducing Entrapment Risk to Protected Species. Educational signs and outreach materials including NMFS' "Dolphin Friendly Fishing and Viewing Tip" signs and "Don't Feed Wild Dolphins" would be placed at the beginning/entrance of the pier and any flat surfaces at regular intervals along the pier. NMFS' marine mammal and sea turtle pier surface placards would be installed at regular intervals along the pier. Monofilament fishing line recycling bins would be placed at regular intervals along the pier to prevent fishing line entanglements to marine wildlife. Bins would be emptied routinely.

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 project 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.
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.

[28] https://www.fisheries.noaa.gov/topic/marine-life-viewing-guidelines
[29] https://www.fisheries.noaa.gov/southeast/consultations/regulations-policies-and-guidance
[30] https://www.fisheries.noaa.gov/southeast/consultations/protected-species-educational-signs

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
☐	☐	**Marsh Creation, Maintenance, or Enhancement**
☐	☐	**Living Shorelines Construction Maintenance, or Expansion**
☐	☐	**Removal of Fishing Gear and Other Marine Debris**
☐	☐	**Oyster Reefs Creation, Maintenance, or Enhancement**
☐	☐	**Pile-Supported Structures, including Non-fishing Piers, Anchored Buoys, and In-water Sign Posts**
☐	☐	**Artificial Reefs Construction, Maintenance, or Expansion**
☐	☐	**Boat Ramps Installation, Repair, Replacement, or Removal**
☐	☐	**Water Management Outfall Structures and Associated Endwalls Installation, Repair, Replacement or Removal**
☐	☐	**Establishing or Restoring SAV**

☐	☐	**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