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 April 6, 2023

To: Memorandum to File

From: Michael Barron, Deepwater Horizon Gulf Restoration Office

Subject: No Effect Determination for Open Ocean Trustee Implementation Group's Restoration Plan #3: Birds Project: Seabird Bycatch Reduction in Northwest Atlantic Fisheries

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 U.S. Fish and Wildlife Service (Service) 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.

We have reviewed the project materials provided (see attached Biological Evaluation Form) for the proposed project entitled: "Seabird Bycatch Reduction in Northwest Atlantic Fisheries" from the draft Open Ocean Trustee Implementation Group's Restoration Plan #3: Birds. Based on our evaluation, we have determined that the project will have No Effect on any listed species. Should the project be modified in a way that could adversely impact species or habitats, this determination will be reevaluated as appropriate.

We have also reviewed the proposed project for impacts to bald eagles (*Haliaeetus leucocephalus*) in accordance with the Bald and Golden Eagle Protection Act of 1940 as amended (16 U.S.C. 668-668c) and impacts to migratory birds in accordance with the Migratory Bird Treaty Act of 1918 as amended (16 U.S.C. 703-712 and determined that take would be avoided, and best management practices will be followed. In accordance with the Marine

Mammal Protection Act of 1972 as amended (16 U.S.C. 1361-1383b, 1401-1406, 1411-1421h), no marine mammals under the jurisdiction of the Service will be impacted.

We have also reviewed the proposed project for consistency with the Coastal Barrier Resources Act of 1982 (16 U.S.C. 3501-3510) and determined that the project will not be implemented in any System Units.

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 (1)

Attachment 1

Biological Evaluation Form

Deepwater Horizon Oil Spill Restoration

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

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

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

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

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

A. Project Identification

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

Implementing Trustee(s): **U.S. Department of the Interior; National Oceanic and Atmospheric Administration**

Contact Name: **Ashley Mills** Phone: 812-756-2712 Email: Ashley_mills@fws.gov

Project Name: **Seabird Bycatch Reduction in Northwest Atlantic Fisheries**

DIVER ID# TIG: Open Ocean TIG Restoration Plan # RP3/EA

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 ☒ ☒ Engineering & Design ☐

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

C. Project Location

I. State and County/Parish of action area

This project would occur within the Northwest Atlantic Canadian and United States Exclusive Economic Zones (EEZ) (up to 200 nautical miles offshore).

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] An approximate project centroid is 43.565619 °N, 64.310593 °W.

The general project location is within the U.S. EEZ waters in the Northeastern U.S. and Atlantic Canada waters.

Figure 1. The general spatial extent of Northeast and Mid-Atlantic trawl fisheries (Source: https://www.fisheries.noaa.gov/resource/map/southern-new-england-mid-atlantic-winter-flounder-trawl-gearaccountability-measure)

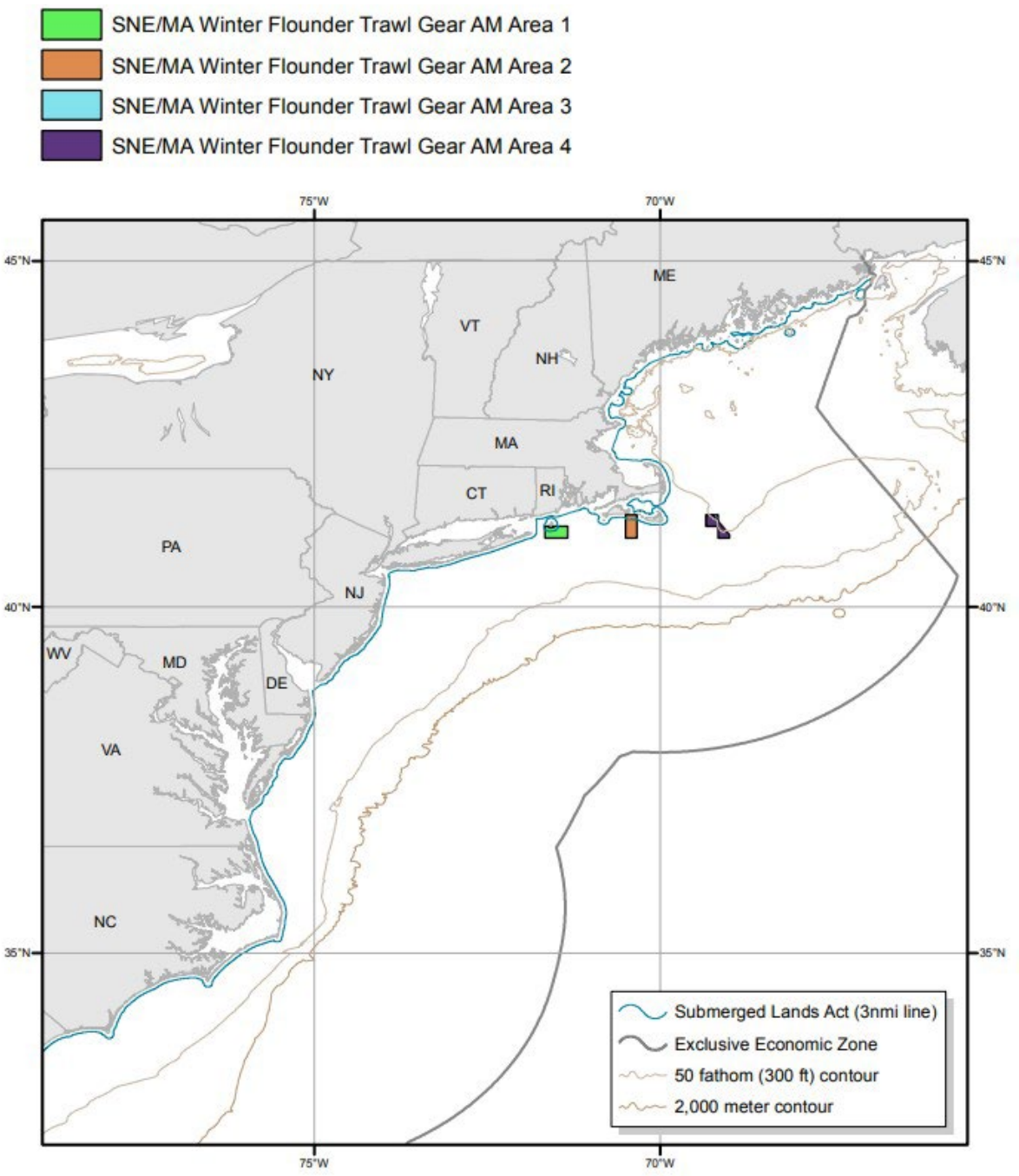
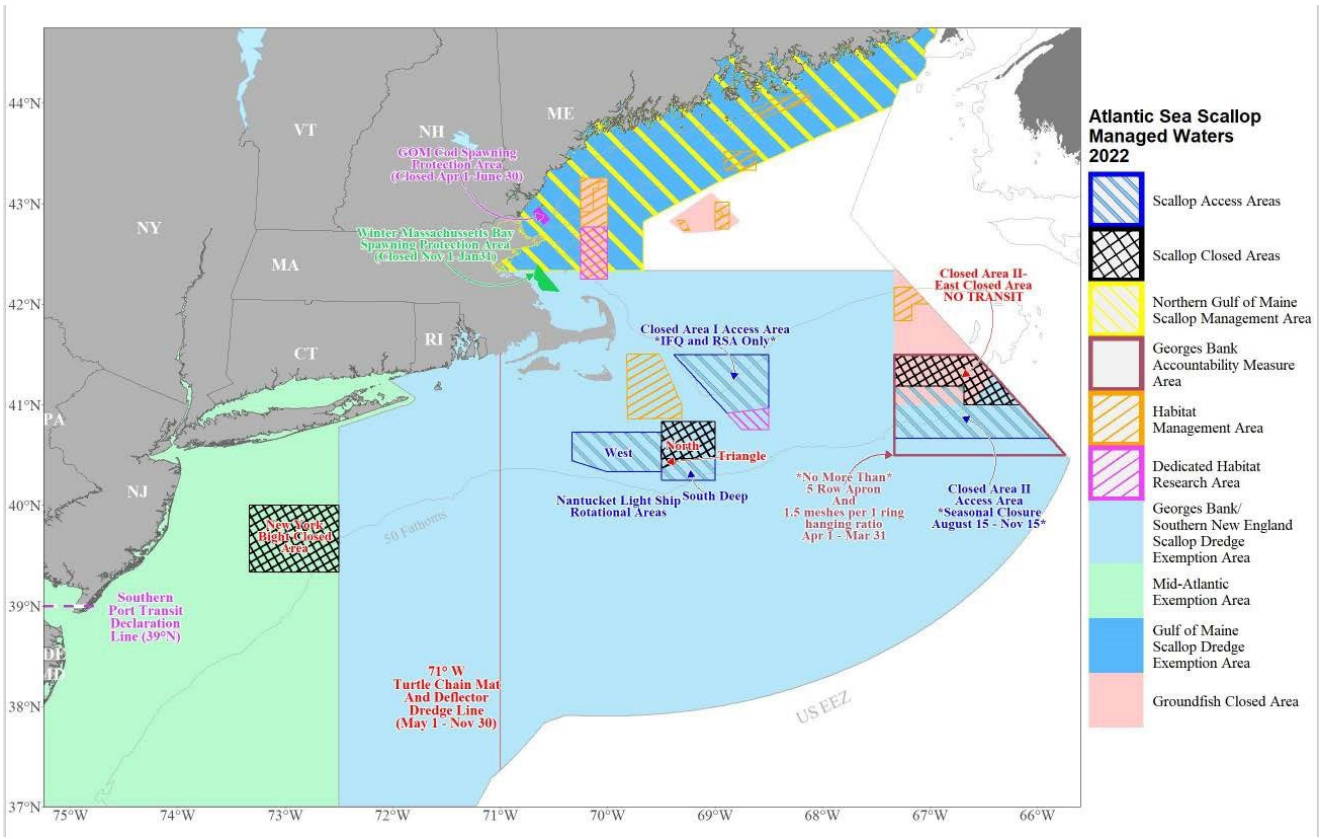


Figure 2. The spatial extent of Northeast and Mid-Atlantic scallop fisheries, including current closed areas (Source: [https://www.fisheries.noaa.gov/resource/map/atlantic-sea-scallop-managed-waters-fishing-year-2022)](https://www.fisheries.noaa.gov/resource/map/atlantic-sea-scallop-managed-waters-fishing-year-2022)

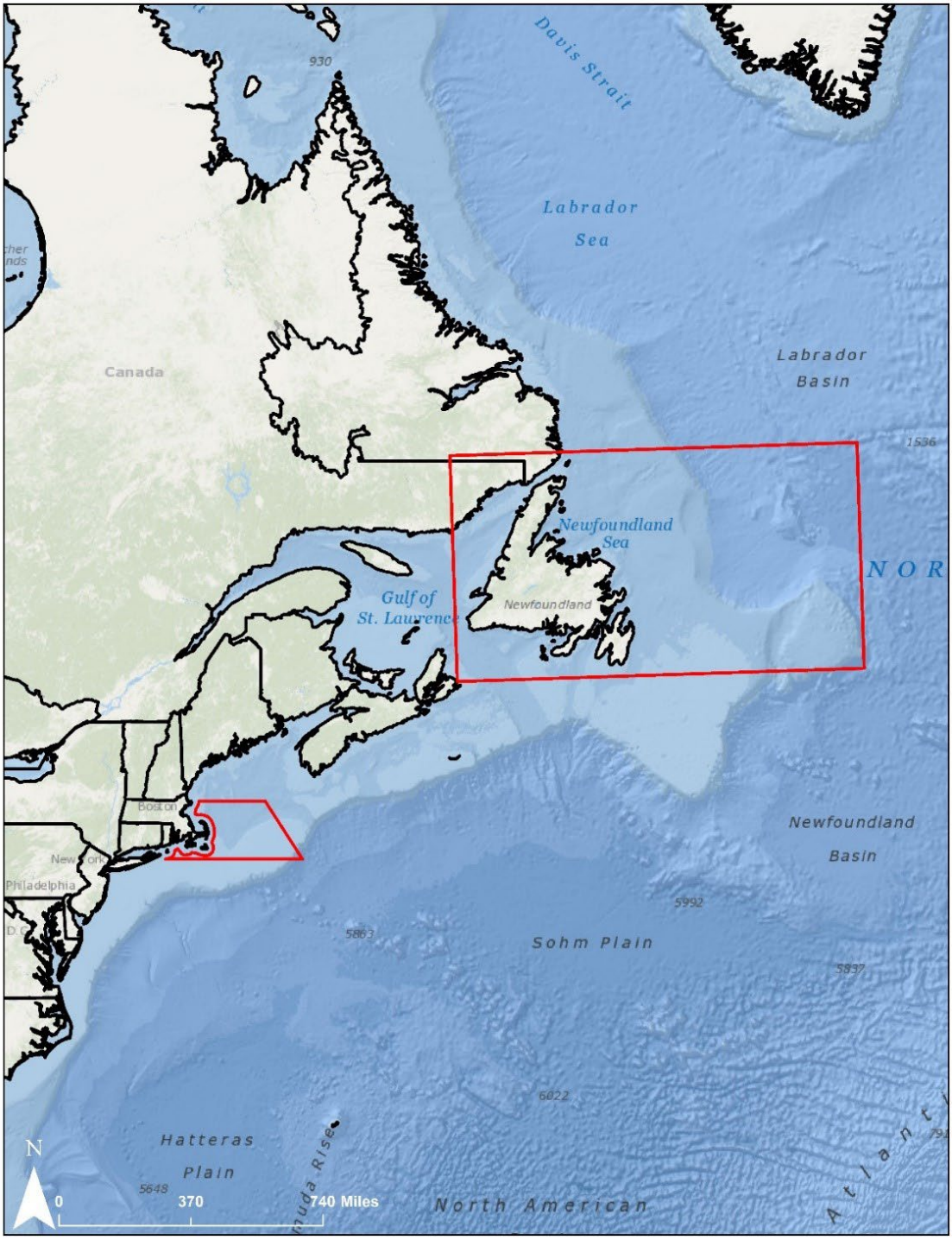


III. Maps and Drawings

Please insert any maps, aerial photographs, or design drawings here or attach to the end of this 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

Figure 3. Seabird Bycatch Reduction in Northwest Atlantic Fisheries: General Project Location (Source: OO TIG RP3)



D. Existing Compliance Documentation

NEPA Documents

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

project?

YES☒ NO☐

Examples:
-TIG Restoration Plan/EA or EIS (draft or final)
-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: NMFS ESA Consult No. F/NER/2012/01956

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:

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

Existing U.S. groundfish fishery (including the use of gillnet) impacts have been analyzed under the consolidated Fishery Management Plan, Environmental Impact Statement, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis for the Northeast Multi-Species Fishery (FMP) (New England Fishery Management Council [NEFMC] 1985) and recent amendments (see: https://www.nefmc.org/management-plans/northeast-multispecies). Implementation of the FMP has undergone Endangered Species Act Section 7 consultations with the National Oceanic and Atmospheric Administration (NOAA) (National Marine Fisheries Service 2013).

Please see below for recent NEPA documents for specific U.S. fisheries:

1. **Gillnet and Trawl**: https://s3.us-east-1.amazonaws.com/nefmc.org/210809_Groundfish_A23_FEIS_final_submission_corrected_220107_220113_124340.pdf
2. **Scallop**: https://s3.amazonaws.com/nefmc.org/210813-Amendment-21-Final-Submission.pdf

3. **Pelagic Longline**: https://media.fisheries.noaa.gov/2022-05/Final%20Amendment%2013%20to%20the%202006%20Consolidated%20Atlantic%20Highly%20Migratory%20Sp ecies%20Fishery%20Management%20Plan.pdf
4. **Purse Seine**: https://s3.us-east-1.amazonaws.com/nefmc.org/Herring-A8-FEIS.FINAL_191007_135918.pdf

If new gear types or methods are proposed to be tested as part of this project it may require additional regulatory review. This will be evaluated once the gear types and methods for the pilot projects are determined.

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

Name of Person Completing this Form: Nadia Martin, IEc
Name of Project Lead: Ashley Mills, USFWS
Date Form Completed: 2/24/2023
Date Form Updated: Click here to enter text.

E. Description of Action Area

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

a. Waterbody & Wetlands

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

Primary project activities involve establishing partnerships, conducting workshops, engaging with local fisherman and stakeholders for outreach and education, and collecting and analyzing data to design pilot tests for bycatch reduction practices. Many of these activities will be conducted from existing facilities on land.

Vessel-based activities would include pilot studies conducted in the northeastern Atlantic, off the coast of New England and Canada, and may include baiting practice modifications (Cape Cod, MA), visual site deterrents, gear switching and modification, and soak time modifications (Newfoundland). Pilot studies would be conducted in waters where commercial fishing vessels would be permitted and already operating in U.S. and Canadian waters for Cape Cod-based groundfish and Newfoundland cod and herring.

The spatial extent of the targeted fisheries are shown in Figures 1 and 2, and the extent of this project's activities is shown in Figure 3.

Exact project locations would be identified through associated modeling efforts.

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. In-water project areas are in the marine environment.

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 – project would occur in the marine environment.

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. Pilot studies would be conducted from vessels operating in water with depths sufficient to avoid any potential impacts to seagrass and other marine vegetation.

d.

N/A. Pilot studies would be conducted in water depths sufficient to avoid any potential impacts to mangroves and
other intertidal vegetation.

e. Corals

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

Deep sea corals may occur in the project area (see https://www.nefmc.org/library/omnibus-deep-sea-coralamendment). Impacts to deep sea corals from U.S. fisheries potentially included in this project (gillnet, trawl, scallop, pelagic longline, and purse seine) have been evaluated by NMFS and the NEFMC in the Omnibus Deep-Sea Coral Amendment Including a Final Environmental Assessment (NEFMC 2020). Pilot studies would be conducted in waters where commercial fishing vessels would be permitted and already operating in U.S. and Canadian waters for Cape Codbased groundfish and Newfoundland cod and herring.

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. All land-based activities will be conducted from existing facilities. No upland habitat will be

impacted.

g. Soils and Sediments

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

N/A – project would occur in the marine environment.

h. Land Use

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

N/A – project would occur in the marine environment.

i. Marine Mammals

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

Dolphins	YES☒	NO☐
Whales	YES☒	NO☐
Manatees	YES☐	NO☒

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

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 would reduce the risk of mortality for northern gannets (*Morus bassanus*), great shearwaters (*Ardenna gravis*), and other seabirds by reducing bycatch in northeastern U.S. and Atlantic Canadian commercial fisheries through cooperative implementation of bycatch reduction strategies and improved understanding of seabird bycatch.

The project would be conducted in phases, as described below:
Phase 1: ○ **Pilot test preliminary bycatch reduction practices** in the Cape Cod-based groundfish and Newfoundland cod and herring gillnet fisheries. The Cape Cod pilot would focus on baiting practice modifications designed by local fisherfolk and stakeholders, while the Newfoundland pilot would focus on visual site deterrents, gear switching and modification, and soak time (i.e., the length of time that

lines remain in the water) modifications near northern gannet colonies;

- **Prioritize bycatch reduction strategies through hotspot modeling** to identify potential bird bycatch hotspots within northwest Atlantic waters and inform the location and scale of bycatch reduction strategies undertaken in Phase 2;
- **Establish and expand partnerships with commercial fisheries** to gather local knowledge regarding interactions with birds during fishing operations. This could include workshops and surveys. Information gathered would be used to identify additional bycatch reduction strategies and data collection that would be tested in Phase 2.

In Phase 2: ○ **Pilot test additional bycatch reduction strategies** based on new information and partnerships developed during Phase 1. This second phase pilot tests would include at least two additional bycatch reduction strategies in cooperation with one or more of the following types of fishing practices: PLL, trawl, gillnet in either U.S. or Canadian fisheries;

- **Conduct field studies** to gather local knowledge regarding interactions with birds during fishing operations. This could include tagging, handling, or capturing birds that have been injured to better understand the various fisheries interactions; and,
- **Expand awareness and voluntary use of the most effective bycatch reduction strategies from Phase 1.** This would include outreach activities such as development and distribution of educational materials, workshops and presentations, and trainings to encourage voluntary adoption of the bycatch reduction strategies by commercial fisherfolk.

The DWH oil spill had a large impact on northern gannets and great shearwaters. However, restoration options to benefit these species, which spend most of their lives in the marine environment and nest at a small number of remote locations for short durations, are limited. Reducing incidental mortality experienced at sea, such as commercial fisheries bycatch, can help restore these injured species. During the nonbreeding season (spring through fall in the northern hemisphere), great shearwaters are most numerous in waters of New England and Atlantic Canada, with some migrating through the Gulf (Carboneras et al. 2020). All of the western hemisphere's northern gannets breed in Atlantic Canada, including a number that winter in the Gulf, and they are abundant in New England and Atlantic Canada during both fall and spring migration (Nisbet et al. 2013).

During migration and 'wintering' periods, northern gannets and great shearwaters utilize offshore waters of the northern U.S. Atlantic coastline for feeding and resting. Individuals are attracted by concentrations of fish, frequently interacting with commercial fishing operations. Such interactions can lead to direct mortality as birds become ensnared by fishing gear while diving in pursuit of the same fish targeted by fishing vessels. Bycatch of northern gannets and great shearwaters has been reported in pelagic and nearshore gillnet, trawl, PLL, and other fisheries.

The proposed project would work with fisheries that pose a bycatch risk to seabirds to identify areas and times when seabird interactions are most intense and conduct voluntary practices to reduce bycatch. It would incorporate education, training, and outreach and use a partnership approach with fisheries. In addition to quantifying efficacy of the bycatch reduction strategies, pilot performance criteria would include that target catch levels would be maintained and/or catch efficiency would be improved (e.g., less time lost to removal of non-target bycatch, fewer lost bait, and reductions in damage to fishing

gear). Ensuring that bycatch reduction strategies would not affect yield is critical to ensure voluntary adoption by fisherfolk at larger scales to address seabirds lost in the DWH spill. The results of the project would be shared broadly through direct engagement by partners and used to promote voluntary adoption of bycatch reduction strategies across the regions where the injured species are at risk.

Any bycatch reduction strategies that are proposed for pilot tests during Phase 1 and 2 will be evaluated for compliance needs at the time the details and methods are known. It is possible that proposed work of the pilot tests may require an exempted fishing permit, ESA consultation or other approvals.

II. *Construction Schedule (What is the anticipated schedule for major phases of work? Include duration of in-water work.)* The project would take 6 years to complete. Years 1 to 3 would include planning, pilot testing preliminary bycatch reduction strategies, hotspot modeling, and identification of partnerships and new bycatch reduction practices. Years 4 to 6 would include pilot testing of additional bycatch reduction strategies, and expansion of the most effective Phase 1 bycatch reduction strategies.

Annually, the following operation times are regulated for U.S. fisheries that would be included:

1. **Gillnet**: this fishery operates year-round, with a peak from May – July;
2. **Trawl**: this fishery operates year-round, with a peak from May – July;
3. **Scallop**: this fishery operates year-round with seasonal peaks. landings are generally higher April – August;
4. **Pelagic Longline**: this fishery operates year-round, with some sectors peaking May – September;
5. **Purse Seine**: this fishery operates year-round but more abundant during summer months (May - October) when herring is distributed through the Gulf of Maine and at night.

Project activities could be conducted at any time during the regulated season for each fishery.

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

N/A

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

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

c. *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

d. *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

e. *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

f. *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

g. *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

h. *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

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

Project activities would involve vessel-based pilot studies involving predominantly gillnet, and potentially trawl, long-line, and other fisheries gear; however, this project would utilize existing commercial fishing partners' activities to evaluate the effectiveness of bycatch reductions measures. This project would not result in any increase in use or deployment of fishing gear.

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

Impacts to EFH from U.S. fisheries potentially included in this project (gillnet, trawl, scallop, pelagic longline, and purse seine) have been evaluated by NMFS and the NEFMC in the Omnibus Essential Fish Habitat Amendment 2: Options and Alternatives to Minimize the Effects of Fishing on EFH (NEFMC, 2012). Pilot studies would be conducted in waters where commercial fishing vessels would be permitted and already operating in U.S. and Canadian waters for Cape Cod-based groundfish and Newfoundland cod and herring. No additional impacts would be anticipated.

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.	

Impacts to EFH from U.S. fisheries potentially included in this project (gillnet, trawl, scallop, pelagic longline, and purse seine) have been evaluated by NMFS and the NEFMC in the Omnibus Essential Fish Habitat Amendment 2: Options and Alternatives to Minimize the Effects of Fishing on EFH (NEFMC, 2012). Pilot studies would be conducted in waters where commercial fishing vessels would be permitted and already operating in U.S. and Canadian waters for Cape Codbased groundfish and Newfoundland cod and herring. No additional impacts would be anticipated.

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.
☐

☒ESA effects have been accounted for under an existing consultation.
There are existing ESA consultations for various fisheries in the NE/Atlantic Region:
It is possible that pilot tests proposed as part of this project would propose new methods/gear

not currently analyzed. This will be evaluated at the time the details of the pilot tests are available, and any further ESA reviews needed will be done at that time.

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: http://sero.nmfs.noaa.gov/protected_resources/section_7/threatened_endangered/Documents/gulf_of_mexico.pdf.

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 H. 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 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 listed in the firs 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.
☒

☐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.

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 G. If sea turtles on land may be affected include them in the table here. If sea turtles in water may be affected include them in the NMFS table above in Section G.

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.**
Roseate tern			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 I or J.

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

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

Roseate terns could be present within the project area (USFWS 2022); however, based on their foraging behavior, they are unlikely to be impacted by this type of fishing activity.

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

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

- ☐ **USFWS Standard Manatee In Water Conditions**
- ☐ **NMFS Protected Species Construction Conditions (2021)[1]**
- ☐ **NMFS Measures for Reducing the Entrapment Risk to Protected Species[1]**
- ☐ **NMFS Vessel Strike Avoidance Measures (2021)[1]**

Additional BMPs or Conservation Measures

For NMFS, There are existing ESA consultations for various fisheries in the NE/Atlantic Region: https://repository.library.noaa.gov/view/noaa/30648

It is possible that pilot tests proposed as part of this project would propose new methods/gear not currently analyzed. This will be evaluated in the future at the time the details of the pilot tests are available, and any further ESA reviews needed will be done at that time.

All BMPs outlined in relevant FMPs and EIS for the U.S. fisheries potentially included in this project (gillnet, trawl, scallop, pelagic longline, and purse seine) would be followed during vessel-based pilot studies.

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

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.

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.

L. Marine Mammals

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

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

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

estuarine waters? ☒NO ☐YES

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

NO	YES	ACTIVITY
☒	☐	*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

Marine mammals may occur in the project area. The marine mammals listed for the western north Atlantic, Canadian east coast, and Nova Scotia in the National Marine Fisheries Service (NMFS) 2020 Stock Assessment Report with the potential to occur in the project areas are the north Atlantic right whale, humpback whale, fin whale, sei whale, minke whale, blue whale, sperm whale, dwarf sperm whale, pygmy sperm whale, killer whale, pygmy killer whale, false killer whale, northern bottlenose whale, Cuvier's beaked whale, Blainville's beaked whale, Gervais beaked whale, Sowerby's beaked whale, True's beaked whale, melon-headed whale, Risso's dolphin, pilot whale, Atlantic white-sided dolphin, white-beaked dolphin, common dolphin, Atlantic spotted dolphin, pantropical spotted dolphin, striped dolphin, Fraser's dolphin, rough-toothed dolphin, Clymene dolphin, spinner dolphin, and common bottlenose dolphin (NMFS 2021). Impacts to marine mammals from U.S. fisheries potentially included in this project (gillnet, trawl, scallop, pelagic longline, and purse seine) have been evaluated by NMFS and the NEFMC in the consolidated Northeast Multi-Species FMP (NEFMC, 1985) and recent amendments (see https://www.nefmc.org/management-plans/northeast-multispecies). Pilot studies would be conducted in waters where commercial fishing vessels would be permitted and already operating in U.S. and Canadian waters for Cape Cod-based groundfish and Newfoundland cod and herring.

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[2]

☐	NMFS Protected Species Construction Conditions (2021)[3]
☐	NMFS Measures for Reducing the Entrapment Risk to Protected Species (2012)[3]
☐	NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (2021)[3]

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

[3] 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[4]

All BMPs outlined in relevant FMPs and EIS for the U.S. fisheries potentially included in this project (gillnet, trawl, scallop, pelagic longline, and purse seine) would be followed during vessel-based pilot studies.

M. Bald Eagles

☒NO ☐YES

If YES, the following conservation measures should be implemented:

1.

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 this website and implement the appropriate measures to the extent practicable:
https://www.fws.gov/birds/management/project-assessment-tools-and-guidance.php
☐NO ☐YES

If NO, please explain:

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

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

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

NO	YES	ACTIVITY
☒	☐	**Oyster Reef Creation and Enhancement**

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

☒	☐	**Marine Debris Removal**
☒	☐	**Construction of Living Shorelines**

☒	☐	**Marsh Creation and Enhancement**
☒	☐	**Construction of Non-Fishing Piers**

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: 727-551-5714

USFWS ESA § 7 Consultation
Michael Barron, Department of the Interior
Email: michael_barron@fws.gov Phone: 251-421-7030

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