



**NOAA  
FISHERIES**

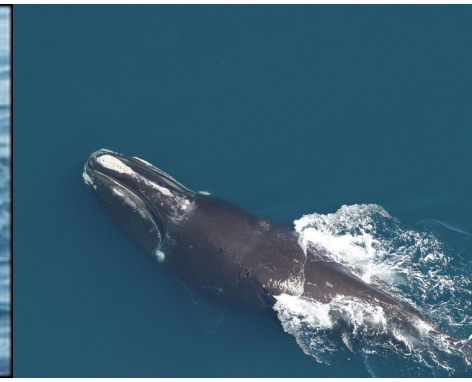
# NMFS Consultations for Offshore Wind

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Habitat and Ecosystems Services Division  
and Protected Resources Division

May 3, 2022

# Outline

- Key messages
- Agency roles in process
- EFH consultation process
- ESA consultation process
- Consultation timeline and dependencies
- Common causes of delays and how to help avoid them
- Key Takeaways



# Key Messages

- Project timeline is designed to facilitate compliance with numerous statutes, including but not limited to MSA/EFH, NEPA, MMPA and ESA
- The procedures and timelines set out in each statute are all different and are driven by the procedures and substantive analysis required to comply with the applicable statutes and their regulations
- Getting these timelines to mesh is extremely difficult because of all of the procedural and substantive complexities and interdependencies
- Getting the overall Project timeline right and ensuring it is followed are critical for efficient, sound, defensible decisions and successful and timely project development
- Ensuring timely, robust, reviews of offshore wind projects that accurately analyze the effects to our trust resources is a high priority for NMFS

# Roles and Responsibilities Related to Offshore Wind

NMFS role defined by statutory mandates provided by Congress

## Advice, comments, and recommendations

- National Environmental Policy Act (NEPA)
- Magnuson-Stevens Fishery Conservation and Management Act (MSA)
- Fish and Wildlife Coordination Act (FWCA)

## Section 7 Consultation/Biological Opinion/Incidental Take Statement

- Endangered Species Act (ESA)

## Incidental Take Authorization

- Marine Mammal Protection Act (MMPA)

## Scientific Support

- Ensure informed management decisions based on best available science
- Address impacts on scientific surveys and advice

# Interdependencies of Agency Roles



## Consulting and Cooperating Agency

- NEPA and consultation documents reviewed concurrently
- Documents must be consistent
- EIS used to inform consultation under FWCA

## Cooperating and Adopting Agency

- NMFS will use BOEM's EIS to fulfill NEPA obligations under the MMPA
- NEPA document and MMPA application must be consistent



## Consulting and Adopting Agency

- ESA consultation covers all project actions
- NMFS authorizations under the MMPA requires consultation

# EFH Consultation Process





# Magnuson-Stevens Fishery Conservation & Management Act

The MSA establishes a national program to:

- promote domestic commercial and recreational fishing
- promote the protection of habitats essential to fishery resources

NMFS's strategic goals in implementing the MSA include maximizing fishing opportunities while ensuring the sustainability of fisheries and fishing communities



# MSA Sec. 305(b): Essential Fish Habitat

- Federal Agencies must consult with NMFS on any action or proposed action that may adversely affect Essential Fish Habitat (EFH)
- EFH is defined as waters and substrate necessary to fish for:
  - spawning
  - breeding
  - feeding, or
  - growth to maturity
- EFH is designated in Fishery Management Plans adopted by regional Fishery Management Councils





# EFH Consultation



## **Federal action agency notifies NMFS of a proposed activity that may adversely affect EFH and submits an EFH Assessment**

- NOAA determines the EFH Assessment is complete and initiates EFH consultation

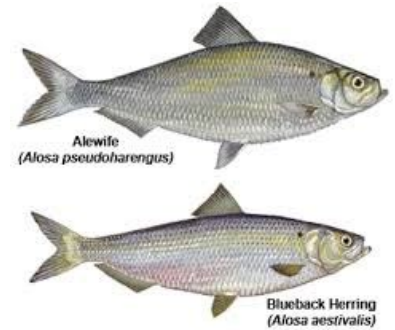
## **NMFS reviews the complete EFH Assessment**

- Provides EFH Conservation Recommendations in 30-60 days
- Recommendations to avoid, minimize, or offset the adverse effect

## **Action agency responds in writing to NMFS within 30 days**

- Describes measures to be implemented to address impacts, or explanation of why recommendations not followed

# Fish and Wildlife Coordination Act



- Requires federal agencies to consult when a proposed action modifies any natural stream or body of water
- Federal agencies must consider effects on fish and wildlife and provide for improvement of these resources
- Consultation is done concurrently with the EFH consultation
- NMFS evaluates effects and make recommendations
- Action agency response to recommendations not mandated



**American Lobster**  
*Homarus americanus*

# EFH Assessment

- **Outlined on our website:** *“Information Needs to Assess Essential Fish Habitat Impacts from Offshore Wind Energy Projects Along the U.S. Atlantic” (September 2021)*
- Working with BOEM on EFH Assessment Template for OSW Projects
- Must assess impacts that would occur from a range of design parameters
- Analysis of the adverse effects on designated EFH, including site-specific effects of the project, and measures to avoid, minimize, or offset such effects
- **Information Required**
  - Description of the proposed action
  - Analysis of the effects of the action
  - The federal agency’s views regarding the effects of the action
  - Analysis of alternatives to proposed action
  - Discussion of proposed mitigation
  - Review of pertinent literature and related information
  - Views of recognized experts
  - Results of site inspection to evaluate habitat and site-specific effects



# Recommendations for Mapping Fish Habitat

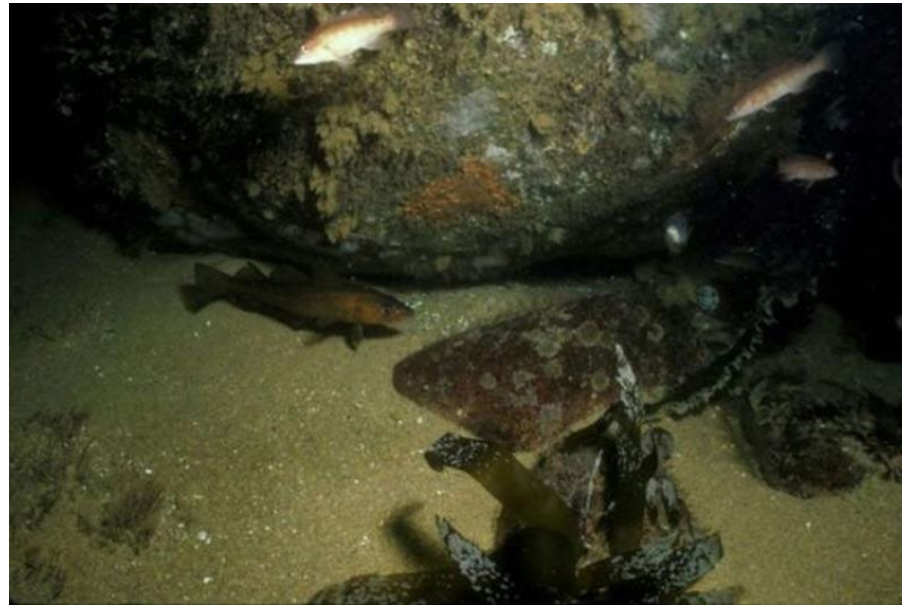
- Developed to ensure adequate data to complete consultation
- Intended to supplement BOEM's benthic survey guidance
- Helps ensure consistency among projects
- Considers surveys already ongoing for offshore wind
- Focuses on using acoustic data to identify areas for targeted sampling
- Need sufficient targeted sampling to accurately delineate and characterize habitat at the scale of fish habitat

**National Marine Fisheries Service Greater Atlantic Fisheries Office  
Habitat Conservation and Ecosystem Services Division**

**Recommendations for Mapping Fish Habitat  
March 2021**

The following information provides recommended steps for mapping seafloor habitat to ensure the information collected for offshore wind development projects is sufficient for BOEM to meet requirements for the Essential Fish Habitat (EFH) consultation under the Magnuson Stevens Fishery Conservation and Management Act. This information is not intended to replace BOEM's existing guidance, but rather to clarify and supplement guidance provided through [BOEM Benthic Survey Guidelines](#).

# EFH Milestones



# EFH Milestone 1

## NOAA Initially Contacted Regarding EFH Consultation

- BOEM contacts NOAA to request an EFH consultation by submitting an EFH assessment

## Information needed from BOEM:

- Written request for EFH consultation
- Draft EFH Assessment
- Preliminary DEIS and supporting documents



## Next Steps

- NMFS responds to BOEM within 60 days with written comments and requests additional information



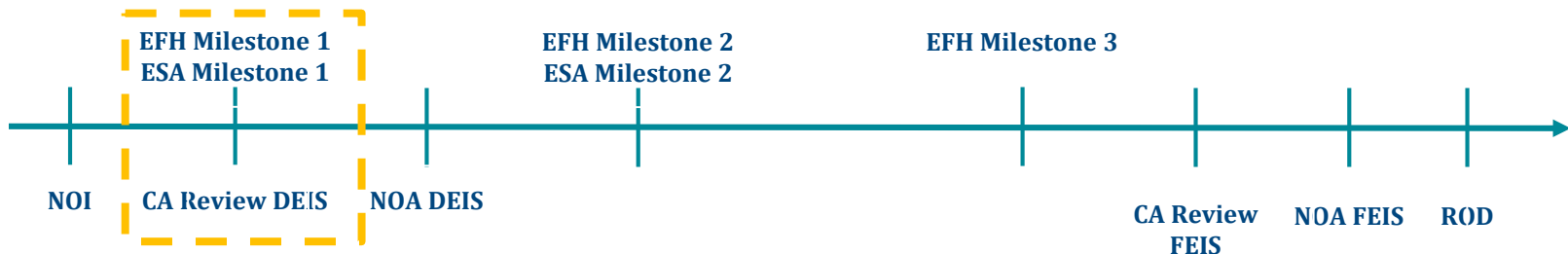
# EFH Milestone 1

## Timing considerations:

- Aligned with first day of cooperating agency review of DEIS
- Occurs concurrently with ESA Milestone 1

## Other considerations

- The more complete and accurate the early draft EFH assessment, the less review and back and forth required
- Description of the action must be consistent across documents
- Coordinate early- including pre-planning and pre-survey coordination



# EFH Milestone 2

## NOAA Receives the Complete EFH Assessment to Initiate EFH Consultation

- NOAA determines EFH Assessment is complete and initiates the consultation

## Information needed from BOEM:

- Complete EFH Assessment
- NOA of DEIS published

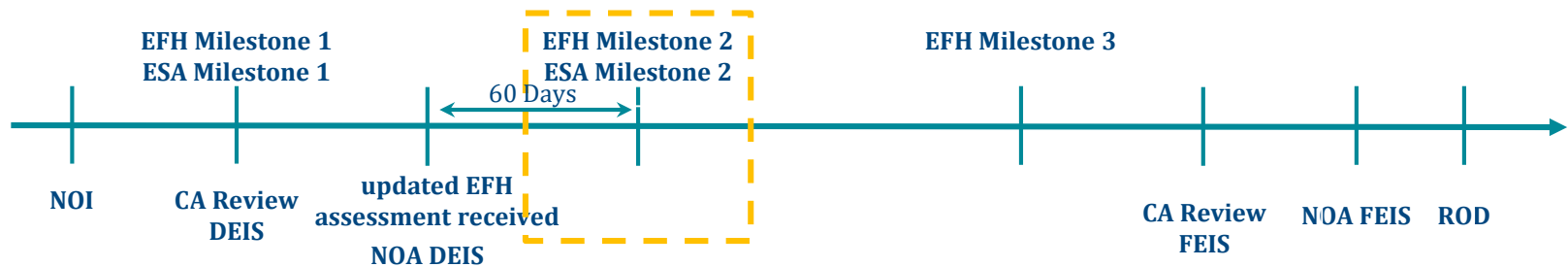
## Next Steps

- NMFS reviews EFH Assessment and supporting materials and prepares EFH Conservation Recommendations and FWCA recommendations

# EFH Milestone 2

## Timing considerations

- Receipt of EFH Assessment must be concurrent with NOA of DEIS
- Set 60 days from the NOA of the DEIS- to review updated EFH Assessment, determine that it is complete, or move milestone if deemed incomplete
- If all information is available sooner we can initiate consultation prior to the milestone date.



# EFH Milestone 3

## NOAA Issues a Response to the EFH Consultation Request

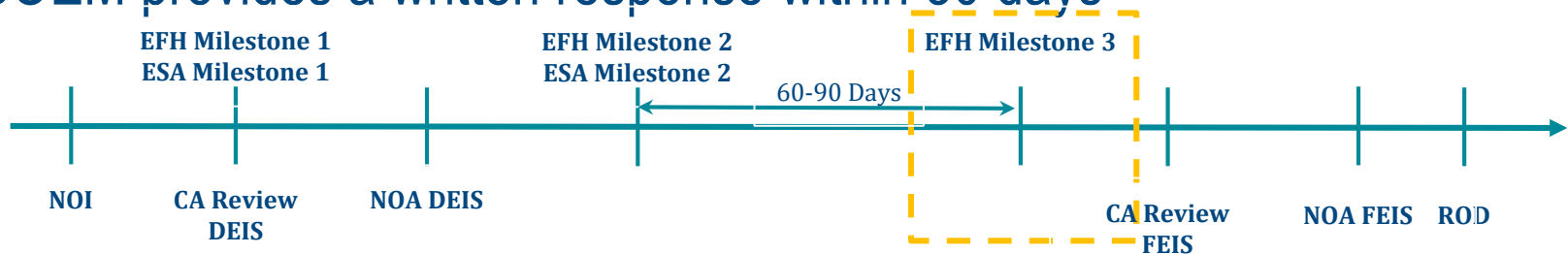
- NMFS provides BOEM with EFH Conservation Recommendations
- Recommendations under the FWCA provided concurrently

## Timing considerations:

- Set 60-90 days from consultation initiation (milestone 2)
- Aim to be completed 30 days before cooperating agency review of FEIS
- Should be completed prior to the FEIS

## Next Steps

- BOEM provides a written response within 30 days



# ESA Consultation Process



# Endangered Species Act Relevant Provisions



## Section 7(a)(2) – Interagency Cooperation

Each Federal agency shall, in consultation with the Secretary, 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 result in the destruction or adverse modification of critical habitat

## Section 9 – Take Prohibitions

It is illegal to “take” ESA listed species (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct)



# ESA Section 7 Consultation



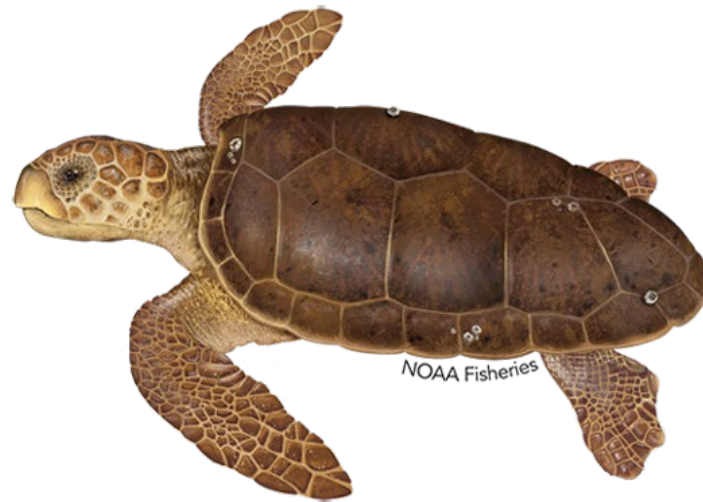
## Conducted at the request of the Lead Action Agency

- Lead action agency requests consultation and prepares a Biological Assessment (BA) that considers the effects of all proposed federal actions
- NMFS responds to BA with a Biological Opinion that may include an appropriate Incidental Take Statement

## The Biological Opinion is comprehensive:

- Covers entire life of project (construction/operation/decommissioning)
- All federal actions associated with a single project are considered
- May include Incidental Take Statement with Reasonable and Prudent Measures and Terms and Conditions

# ESA Milestones



# ESA Milestone 1

## Request for ESA Consultation Received

- BOEM contacts NMFS to request ESA consultation and submits a draft Biological Assessment

## Information needed

- Written request for ESA consultation from BOEM (as lead action agency on behalf of other federal agencies authorizing or permitting the project)
- Biological Assessment that considers effects of all Federal actions
- Preliminary DEIS and supporting documents

## Next Steps

- NMFS responds to BOEM within 60 days with written comments and requests additional information

# Biological Assessment

- Requirements outlined in 50 CFR 402.12
- Prepared by the lead action agency (BOEM) in cooperation with any other action agencies
- Describes the proposed action, inclusive of proposed measures to avoid, minimize, or mitigate effects of the action
- Considers effects of the action on ESA listed species and designated critical habitat in the action area
- With the DEIS and proposed MMPA ITA, forms the ESA initiation package
- NMFS has developed an “Information Needs” checklist, available online
- Work is ongoing between NMFS and BOEM to develop a template for Biological Assessments for Offshore Wind Projects in the Greater Atlantic Region

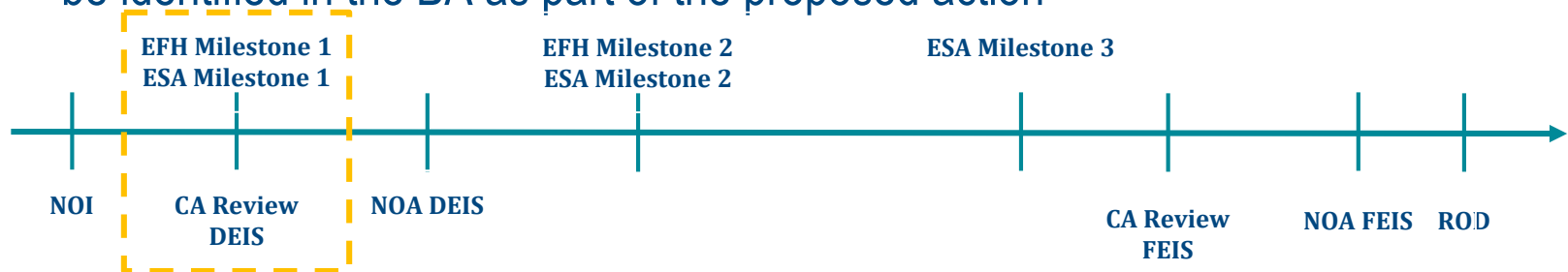
# ESA Milestone 1

## Timing considerations

- First day of cooperating agency review of DEIS
- Occurs concurrently with EFH Milestone 1

## Other considerations

- The more complete and accurate the early draft BA is, the less review and back and forth required
- Description of the action must be consistent across documents (BA, DEIS, MMPA application, USACE application, etc.)
- Thorough and appropriate measures to avoid, minimize, and mitigate effects should be identified in the BA as part of the proposed action



# ESA Milestone 2

## Consultation Package Deemed Complete – Formal

- NMFS determines all information to initiate consultation has been received
- Letter sent to BOEM as lead agency documenting date of initiation

## Information needed (50 CFR 402.16)

- Complete Biological Assessment that considers effects of all proposed federal actions
- NOA of the DEIS published
- Draft proposed Incidental Take Authorization pursuant to the MMPA authorization.

## Next Steps

- NMFS prepares a Biological Opinion



# ESA Milestone 2

## Timing considerations

- Receipt of final BA scheduled to be concurrent with NOA of DEIS
- Set 60 days from the NOA of the DEIS - to review updated Biological Assessment, determine that it is complete, or move milestone if deemed incomplete
- Set no earlier than 30 days prior to planned date of publication of the proposed Incidental Take Authorization in the Federal Register (MMPA Milestone 3) - to ensure we have complete and accurate information on the proposed MMPA action (e.g., take numbers, mitigation measures)
- If all of the information is available sooner than the ESA Milestone 2 date, we can initiate consultation on that earlier date.



# ESA Milestone 3

## Conclusion of ESA Consultation

- NMFS issues Biological Opinion considering effects of all federal actions associated with the project; may include an Incidental Take Statement

## Timing considerations

- Biological Opinion issued 150 days from consultation initiation (Milestone 2)
- BOEM needs sufficient time (preferably 45 days) prior to the NOA of the FEIS to ensure the consultation is incorporated into the FEIS
- Complete consultation prior to any final federal actions (e.g., COP approval, issuance of MMPA permit, USACE permits, etc.)



# Biological Opinion

Prepared by NMFS Regional Office (Consulting Agency)

Consistent with the requirements of 50 CFR 402.14, it contains:

- summary of the information on which the opinion is based;
- detailed discussion of the environmental baseline of the listed species and critical habitat;
- detailed discussion of the effects of the actions on listed species or critical habitat; and,
- NMFS opinion on whether the actions are likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat

If a “no jeopardy” conclusion is reached, will include an Incidental Take Statement, exempting an identified amount or extent of take, and associated Reasonable and Prudent Measures and Terms and Conditions

Reinitiation of ESA consultation is required if certain triggers are met, including changes to the proposed action that cause effects to listed species that were not considered in the Opinion

# ESA and MMPA Interdependencies

- All ESA listed whales are also protected under the Marine Mammal Protection Act
- Information necessary for the MMPA permit application is also necessary for the development of BOEM's EIS and Biological Assessment (e.g., acoustic modeling)
- NMFS proposed issuance of an MMPA Incidental Take Authorization is one of the federal actions considered in the Biological Opinion
- Consultation should not be initiated until sufficient information is available on the proposed MMPA ITA, which goes beyond what is included in the developer's application and influences the analysis of effects of the other actions.

# Timeline Dependencies and How to Minimize Delays

# Timeline Dependencies



## MMPA, EIS, and Consultation schedules are interdependent

- Delay or changes in one component likely affects another
- Extensive overlap of information needs -project information (e.g., noise modeling) is essential for MMPA ITA application, BA, EFH Assessment and EIS
- Essential that action(s) and effects are assessed consistently across all documents
- The MMPA action is one of the federal actions analyzed in NMFS Biological Opinion

## MMPA schedule affects the overall project timeline

- To meet MMPA Milestone 1, developers must provide NMFS with a draft application at least 6 months in advance
- Delay in MMPA Milestone 1 pushes back the other milestones, including MMPA Milestone 3 (NMFS proposed issuance of an MMPA ITA) and ESA Milestone 2 (initiation of consultation)
- ESA and EFH milestones 1 and 2 are aligned

# How to Minimize the Risk of Timeline Delays

- Coordinate with NMFS, BOEM, and the Corps early to identify and avoid resource conflicts, including identification of measures to avoid, minimize, and mitigate effects
- Follow NMFS Recommendations for Mapping Fish Habitat and coordinate with NMFS prior to conducting benthic surveys
- Avoid going to NOI before sufficient project details are available
- Submit initial MMPA Application to NMFS OPR at least 6 months prior to scheduled MMPA Milestone 1 and coordinate with NMFS OPR even earlier
- Provide high quality and complete NEPA and consultation documents
- Avoid project changes after consultations have been initiated
- Ensure consistency between environmental documents

# Key Takeaways

- Coordinate with NMFS early in the process
- NMFS ability to maintain the ESA and EFH milestones is dependent on BOEM and the developers providing complete and accurate information on the identified timeline
- The EIS, MMPA, ESA and EFH timelines are all interdependent.
- Delays or changes in information or project details result in delays to the timeline.
- Timeline dependencies are clearly defined in the CPP and should be referenced when questions arise
- FAST-41 requirements result in the need to identify potential missed milestones well in advance of that date
- NMFS has extremely limited staff resources for ESA and EFH consultations - we are working hard to ensure that projects move forward on time and need your help to develop reasonable timelines and ensure accurate and complete documents are provided to us



# Resources

SCIENCE & DATA

## Offshore Wind Energy Development in New England/Mid-Atlantic Waters

Offshore wind development is rapidly expanding along the Atlantic coast of the United States, especially from Massachusetts to North Carolina. This is a new use of our marine waters, requiring substantial scientific and regulatory review by NOAA Fisheries.

New England/Mid-Atlantic



**More Information**

- > Bureau of Ocean Energy Management
- > Northeast Fishery Management and Offshore Wind
- > Responsible Offshore Development Alliance
- > ICES Offshore Wind Working Group
- > Northeast Wind Team Staff
- > Socioeconomic Impacts of Atlantic Offshore Wind Development
- > Offshore Wind Energy Overview

**Recent News**

**FEATURE STORY**  
**Chesapeake Bay Partners Have Restored 1,220 Acres of Oyster Reef**  
 New England/Mid-Atlantic



**FEATURE STORY**  
**NOAA Fisheries Invites Public Comment on Draft Climate Regional Action Plans**  
 Alaska, New England/Mid-Atlantic, Pacific Islands, Southeast, West Coast, National



**LEADERSHIP MESSAGE**  
**Compliance Assistance in Place to Support Fishermen Changing Gear to Protect Right Whales**  
 New England/Mid-Atlantic



**More News >**

**NOAA's Role**

The [Bureau of Ocean Energy Management \(BOEM\)](#) is the lead federal agency for offshore energy exploration and development. NOAA Fisheries is the lead federal agency charged with stewardship of marine life. Building, operating, and decommissioning offshore wind power plants affects a number of our key mission areas, including: fisheries, protected animals (such as sea turtles and whales), seabirds, and marine habitats. We provide information to help the Bureau of Ocean Energy Management make informed decisions about offshore wind energy development and operations. Specifically, we:

- Provide data and analyses related to fishing activities, ocean conditions, and affected marine resources.
- Provide input and review throughout the regulatory process, working as a cooperating agency to assist BOEM in their development of an environmental impact statement under the National Environmental Policy Act.
- Conduct research and monitoring to better understand the potential effects of offshore wind energy development on marine habitats, fisheries, protected resources, and their ecosystems.
- Providing BOEM, other federal agencies, states, tribes, and stakeholders with information on fisheries operations and the potential socioeconomic impacts of offshore wind projects on fishing communities.
- Foster management decisions that promote coexistence among competing uses while minimizing adverse impacts to our trust resources.

SCIENCE & DATA

## Technical Guidance for Offshore Wind Energy Projects in the Greater Atlantic Region

Resources for action agencies to help with their analysis of the effects of proposed offshore wind projects in the Greater Atlantic Region. These resources may be updated periodically.

New England/Mid-Atlantic

**More Information**

- > Offshore Wind Energy Overview
- > Offshore Wind Energy Development in New England/Mid-Atlantic Waters

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### Assessing Effects on Endangered Species Act Listed Species and Critical Habitat

The documents and links below are resources to assist in the evaluation of impacts from offshore wind development projects on Endangered Species Act (ESA)-listed species and designated critical habitat. The Information Needs document provides an outline of the information necessary to support a robust analysis of the effects of a proposed offshore wind project on ESA-listed species and designated critical habitat. The ESA Section 7 Mapper provides a tool to explore and generate a list of ESA-listed species and critical habitat in a project action area. Links for additional resources for the Greater Atlantic and Southeast Regions are below, including general guidance on ESA section 7 consultations, issued biological opinions, and Marine Mammal Protection Act (MMPA) Incidental Take Authorizations for energy activities.

- > Information Needs for Assessing Effects of Offshore Wind Activities on ESA-listed Species
- > General Guidance on ESA Section 7 Consultations (Greater Atlantic Region, Southeast Region)
- > Greater Atlantic Region Biological Opinions
- > Southeast Region Biological Opinions
- > MMPA Incidental Take Authorizations

### Essential Fish Habitat Assessment and Consultation

The documents and links below are resources to assist with the development of an Essential Fish Habitat (EFH) assessment for offshore wind development projects. The Information Needs document provides an outline of the information and analysis needed to support a robust assessment of the potential effects of a proposed offshore wind project on EFH in the region. Recommendations for Mapping Fish Habitat provides methodologies for the collection and analysis of baseline habitat data and information to support the EFH assessment. The EFH Mapper provides a tool to explore and generate a list of designated EFH and Habitat Areas of Particular Concern within the project areas. Links for additional EFH Consultation information and resources for the Greater Atlantic and Southeast Regions are below.

## Offshore Wind Energy Development in New England/Mid-Atlantic Waters

## Technical Guidance for Offshore Wind Energy Projects in the Greater Atlantic Region

# Thank you!

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