



**NOAA**  
**FISHERIES**

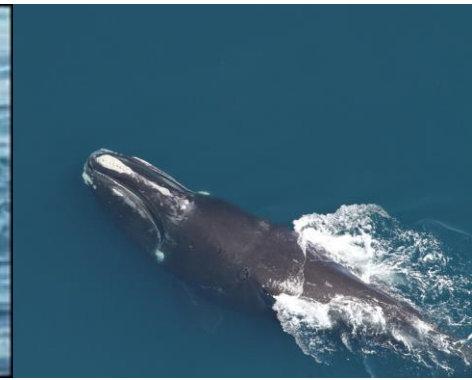
# NMFS Roles and Responsibilities for Offshore Wind

Gulf of Mexico Task Force Meeting  
June 15, 2021

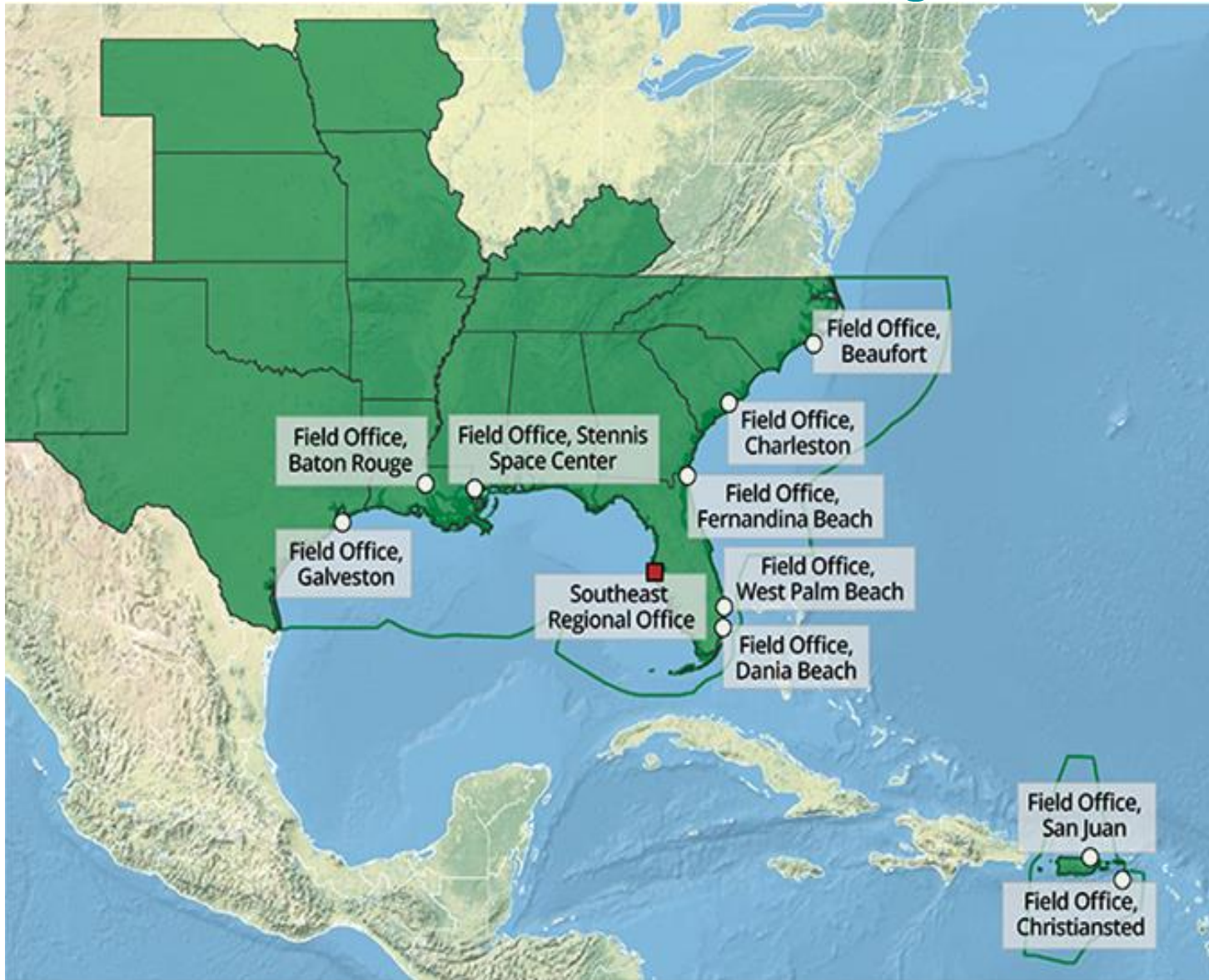
# Our Mission

**NOAA** - Science, Service, Stewardship

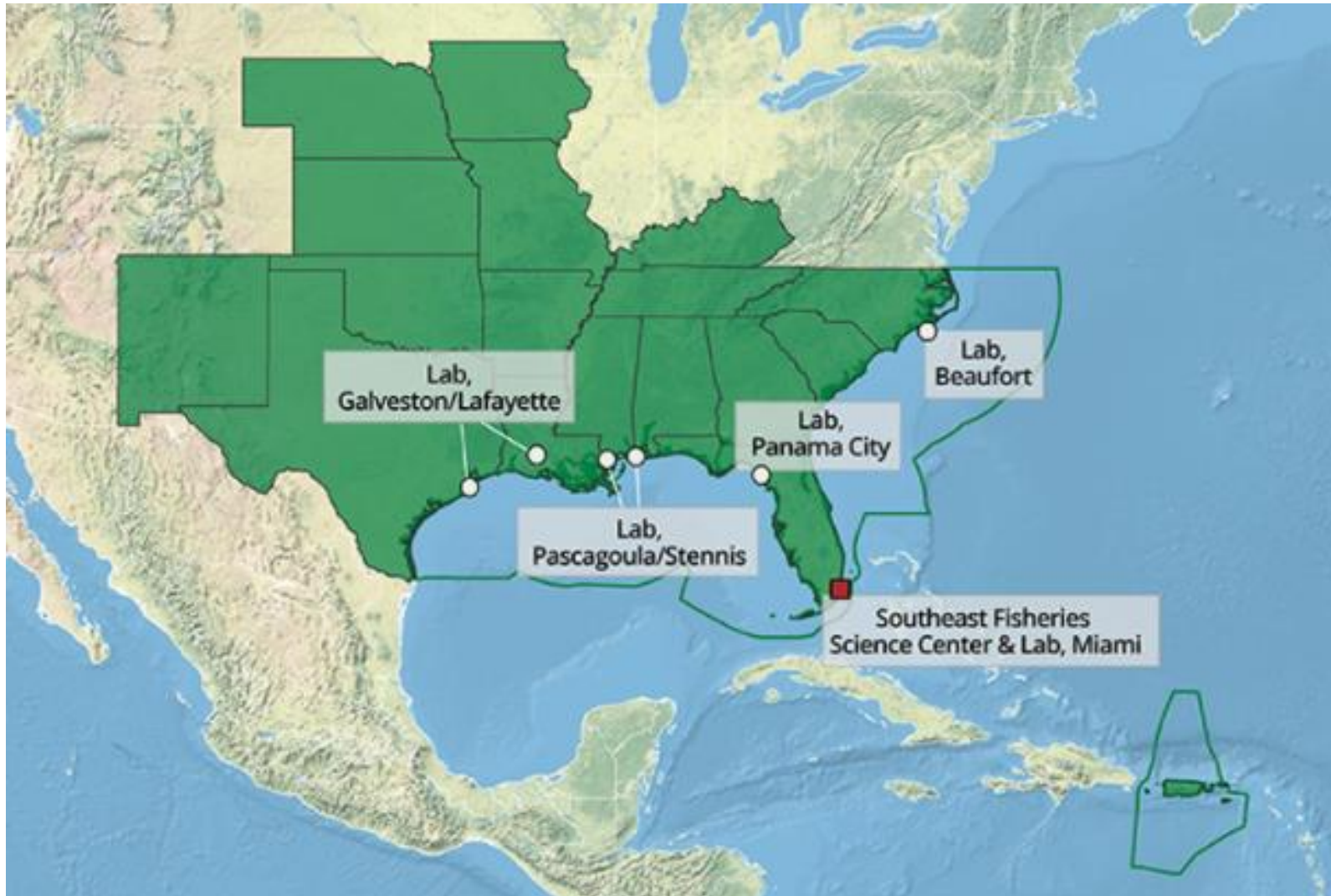
**NMFS** - Responsible for the stewardship of the nation's ocean resources and their habitat. We provide vital services for the nation: productive and sustainable fisheries, safe sources of seafood, the recovery and conservation of protected resources, and healthy ecosystems - all backed by sound science and an ecosystem-based approach to management.



# NOAA Fisheries Southeast Region



# NOAA Southeast Fisheries Science Center



# Roles and Responsibilities Related to Offshore Wind



NMFS role limited to statutory mandates provided by Congress

## Advice, comments, and conservation recommendations

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

## Biological Opinion

- Endangered Species Act (ESA)

## Incidental Take Authorization

- Marine Mammal Protection Act (MMPA)

## Interagency Coordination and Streamlining Requirements

- Title 41 of Fixing America's Surface Transport Act (FAST-41)

# NEPA and Offshore Wind



## Cooperating agency under NEPA

- Evaluate the Purpose and Need of the action to ensure it considers NOAA trust resources
- Evaluate whether the range of alternatives are developed to consider the impacts to NOAA trust resources
- Advise BOEM on the level of analysis to ensure that impacts to the fishing industry and marine trust resources are fully considered

## Adopting agency under MMPA

- If deemed sufficient to do so, per CEQ regulations, we will rely on and adopt BOEM's Final EIS to satisfy our independent legal obligations to prepare an adequate and sufficient analysis under NEPA in support of issuing an ITA.

# 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

[EFH Species in NOAA's Southeast Region](#)

[EFH Mapper Tool](#)



# 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 federally managed fish for:
  - spawning
  - breeding
  - feeding, or
  - growth to maturity
- EFH is designated in Fishery Management Plans adopted by regional Fishery Management Councils (and NMFS for highly migratory species)





# EFH Consultation



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

- NMFS 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 and no assessment is required
- NMFS evaluates effects and make recommendations
- Action agency response to recommendations not mandated



# Endangered Species Act Relevant Provisions



## Section 7(a)(1) - Conservation of T&E Species

Federal agencies shall utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of listed endangered and threatened species.

## 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 ('agency action') is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat

## Section 9 – Take Prohibitions

It is unlawful for any person to take, possess, sell, deliver, carry, transport, or ship endangered species of fish or wildlife



# ESA Section 7 Consultation



**Informal consultations:** occur when a project may affect, but is not likely to adversely affect a threatened or endangered species or critical habitat

**Formal consultations:** are required when a proposed project may affect and is likely to adversely affect a threatened or endangered species or critical habitat

**Consultation initiation** - initiated by federal action agency with written request and complete initiation package (including a Biological Assessment if appropriate)

- Description of action and action area
- ESA-listed species/critical habitat affected
- Conclusions about effects (supported by best scientific data available)
- May include measures to minimize/monitor impacts of activity

NMFS responds to BA with a Biological Opinion (within 135 days of receipt of a complete consultation package)

## ESA Listed Species

# ESA Section 7 Consultation



**The Biological Opinion is comprehensive (note: Biological Opinions only for formal consultations):**

- Cover entire life of project (construction/operation/decommissioning)
- All federal actions associated with a single project are considered
- May include Incidental Take Statement with mandatory Reasonable and Prudent Measures and Terms and Conditions
- Summarizes the effects of a Federal “action” on ESA-listed species and/or designated critical habitat
- Represents the opinion of NMFS considering technical, legal, and policy issues related to the action
- Provides NMFS conclusion on whether or not the action is likely to jeopardize the continued existence of an ESA-listed species or destroy or adversely modify critical habitat.

# Marine Mammal Protection Act



- The Marine Mammal Protection Act (MMPA) establishes a general moratorium and prohibition on take of all marine mammals.
- However, the MMPA set up system of exemptions and permitting authorities that does allow for take in certain situations, including incidental take authorizations (ITAs).
- ITAs do not authorize the activity; they authorize the take of marine mammals incidental to the activity.
- NMFS must make certain findings to issue an ITA; ITAs must include mitigation, monitoring, and reporting requirements.
- ITA applications are reviewed and issued by the Office of Protected Resources (OPR) in Silver Spring, MD.
- SERO provides technical assistance to applicant and OPR.

## [Marine Mammal Protection Act: Resources](#)

# MMPA Incidental Take Authorization



- Issued for activities that result in take of *any* marine mammal species (not just ESA-listed) incidental to otherwise lawful activity
- Two types of authorizations:

## **Incidental Harassment Authorization (IHA)**

- valid for up to 1 year, limited to Level A and Level B harassment
- requires one 30-day public comment period
- for offshore wind, approx 12 month process to integrate with ESA and NEPA schedules

## **Letter of Authorization (LOA)**

- valid for up to 5 years
- requires rulemaking on the part of NMFS and two 30-day public comment periods
- 12 -18 month process

# MMPA Incidental Take Authorization

- Issuance of an ITA is a major Federal action triggering NEPA and ESA compliance.
- NMFS Office of Protected Resources (OPR) would be a co-action agency on the Biological Opinion
  - Consultation requests from BOEM and NMFS must align in terms of project description, analyses, and schedule.
  - NMFS and BOEM are held to same Terms and Conditions.
- NMFS may adopt BOEM's EIS if deemed sufficient. NMFS may also be a co-signatory on ROD.
- FAST-41 Scheduling will require significant coordination with OPR and SERO PRD to ensure MMPA, ESA, and NEPA alignment.





# FAST-41 Coordination



- Title 41 of Fixing America's Surface Act (FAST-41) established mandates to promote interagency coordination
- Established Federal Permitting Improvement Steering Council (FPISC)
- Project sponsors submit initiation notice to be covered under FAST-41
- Lead federal agency must coordinate the development of an interagency coordinated project plan (CPP) that outlines roles, responsibilities, and timelines for authorizations/consultations, quarterly updates
- Permitting timelines posted to a public-facing website, the Permitting Dashboard ([permits.performance.gov](https://permits.performance.gov))
- Our implementation of FAST-41 requires coordination across divisions to ensure alignment of ESA, EFH, and MMPA related actions
- Established timing requirements for certain actions (posting of CPP, updates to completion dates, extension of milestones)

# Thank you!