

# NOAA Fisheries Greater Atlantic Region Permitting Considerations for Fisheries Surveys and Monitoring Activities to Support Offshore Wind Energy Development

## Introduction

This document provides information to offshore wind energy lessees/project proponents and other stakeholders about applicable permitting considerations for surveys, monitoring, or research activities targeting fish species managed by the NOAA Fisheries Service's Greater Atlantic Regional Fisheries Office (GARFO). All site characterization, site assessment, and monitoring activities related to offshore wind energy development must comply with applicable laws and regulations, including the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Endangered Species Act (ESA), the National Environmental Policy Act (NEPA), and the Marine Mammal Protection Act (MMPA). The "take" of a [species](#) (see [ESA Threatened & Endangered](#) and [Marine Mammals](#) tabs) protected under the [ESA](#) or [MMPA](#) without the appropriate permits/authorizations and/or exemptions is a violation of federal law. Such violations may result in civil or criminal penalties. Early coordination with NOAA Fisheries staff, including as fishery monitoring/surveying plans are being developed, is strongly encouraged to identify any permits, authorizations, or exemptions that may be necessary.

This document provides a summary of selected provisions of the MSA, ESA, and MMPA, and their implementing regulations that should be considered in the context of offshore wind-related fisheries site characterization, site assessment, and monitoring activities. NOAA Fisheries prepared it in response to numerous questions from lessees, their contractors, and other interested parties regarding permitting for offshore wind-related fisheries surveys, monitoring, or research activities. This document is intended to be a brief primer that presents in one place a description of existing permitting considerations across several select statutes and their implementing regulations. It does not create new obligations, nor does it present new interpretations of current law. This document is not intended to be binding on members of the public or the agency. It is not an exhaustive description of each statute and is not a substitute for independent legal review of the terms of the relevant statutes and regulations. Nevertheless, NOAA Fisheries hopes it helps clarify existing permitting considerations and improves efficiency of applicable regulatory processes.

## What Permits, Authorizations, and/or Exemptions Do I Need?

To help you identify which permits, authorizations, and/or exemptions may be necessary for your fisheries survey/monitoring activities, please answer the following questions in order and follow the steps outlined for each answer. *Note: The process to obtain a "fisheries permit" is separate and distinct from the process to obtain protected species take authorization(s). If the*

*scientific research or fishing activity may result in the take of protected species, additional coordination with NOAA Fisheries is strongly recommended (see ESA and MMPA sections below for more details).*

- 1. Will fisheries survey/monitoring activities involve a scientific research vessel conducting scientific research (e.g., a vessel chartered and controlled by a university/scientific institution and operating under a scientific research plan) as defined under the MSA and its implementing regulations at 50 CFR part 600?**

**YES:** Request a “Letter of Acknowledgement” from the Regional Administrator by submitting a request through [FishOnline](#) (instructions are [available here](#)). Please note that a Letter of Acknowledgement does not authorize anything, including the take of protected species.

**NO:** This means the survey/monitoring activities may constitute “fishing” under the MSA and must comply with applicable federal fishery management plans and regulations. If the survey/monitoring activities cannot be conducted in compliance with the governing fishery management permit requirements and rules (e.g., regarding mesh size, fish size, possession limits, closure areas), you may be able to receive an exemption(s) from some regulatory requirements through an Exempted Fishing Permit (EFP). Information on how to submit an EFP application is [available here](#).

## **Proceed to Question 2**

- 2. Will survey/monitoring activities *potentially* affect protected species (marine mammals, sea turtles, sturgeon, etc.) or their designated critical habitat, including the potential capture and release of live animals? It is strongly recommended that you contact NOAA Fisheries staff to assess the risk of survey/monitoring activities to protected species, please email the relevant contacts listed below.**

**YES:** Confirm with NOAA Fisheries GARFO Protected Resources Division staff whether the survey/monitoring activities have been analyzed in an ESA section 7 consultation (e.g., a biological opinion for an offshore wind project or a fisheries management plan) and/or are already covered by an MMPA authorization. If they have been, refer to the relevant ESA consultation and/or MMPA authorization for any minimization, monitoring, and reporting measures that may need to be implemented as part of the survey/monitoring activities.

Incidental take “coverage” can be obtained through section 7 or section 10 of the ESA for takes of endangered and/or threatened species. If the proposed survey work is being

authorized, funded, or carried out by a federal agency (e.g., it is a condition of a permit issued by a federal agency) or it would not occur but for such a federal action, an ESA section 7 consultation should be carried out that considers the survey activity. If section 7 consultation has not been completed, contact the relevant federal agencies (e.g., BOEM, USACE, DOE) to discuss plans for section 7 consultation. If there is no section 7 consultation that addresses the survey/monitoring activities, and take of ESA-listed species can not be avoided, you are strongly encouraged to apply for an ESA section 10 incidental take permit. If any interactions with marine mammals are anticipated, you may need to apply for an MMPA Incidental Take Authorization (ITA) (more information on the MMPA ITA process, including application instructions, is [available here](#)).

### **Proceed to Question 3**

**NO:** This is likely to be the case when you are using a gear type (e.g. baited remote underwater video (BRUV)) that is not known to interact with protected species or you are operating in an area or time of year when protected species do not occur. No further coordination with NOAA Fisheries regarding the ESA or MMPA is likely necessary under this scenario. *Note: NOAA Fisheries staff may be contacted to assist in assessing risk of survey/monitoring activities.*

- 3. Can the risk of protected species interactions be reduced to the extent that interactions are not anticipated (i.e., extremely unlikely to occur or will not occur) through gear modifications (e.g., on-demand/ropeless trap/pot gear), area/season restrictions, limited amount of gear, limited soak/trawl duration, or other actions (see best management practices document for further details on our [website](#)). We recommend discussing gear modifications/best management practices with NOAA Fisheries staff prior to conducting the survey ([nmfs.gar.esa.section7@noaa.gov](mailto:nmfs.gar.esa.section7@noaa.gov)).**

**YES:** We strongly recommend that you incorporate the measures to reduce risk of interactions with protected species into your survey/monitoring plan so that any take (including capture and release of live animals) is no longer likely to occur. If interactions are no longer anticipated, no further coordination with NOAA Fisheries regarding the ESA or MMPA is likely necessary. However, if any interactions with protected species occur during survey/monitoring activities, please cease further activities immediately and provide information about the interaction (where it occurred, when it occurred, gear type involved, species condition, name, email, and telephone number of the person to contact about the interaction, and any other relevant information (e.g. photos/videos) to [nmfs.gar.incidental-take@noaa.gov](mailto:nmfs.gar.incidental-take@noaa.gov) within 24 hours.

**NO:** Apply for the necessary ESA and/or MMPA permits to authorize incidental take, as appropriate. Note that this can be a lengthy process. For example, both the ESA and the MMPA take authorization processes may take over a year to complete. More information on the ESA section 10 permit process, including permit application is [available here](#). More information on the MMPA Incidental Take Authorization process, including application instructions, is [available here](#).

## Relevant Contact Information

Permitting under the MSA and permits or authorizations for research or surveys of highly migratory species, contact the Sustainable Fisheries Division at:

[nmfs.gar.researchpermit@noaa.gov](mailto:nmfs.gar.researchpermit@noaa.gov)

Permitting under the ESA or protected species questions, contact the GARFO Protected Resources Division at: [nmfs.gar.esa.section7@noaa.gov](mailto:nmfs.gar.esa.section7@noaa.gov)

Permitting information regarding incidental take authorizations pursuant to the MMPA can be found at the Office of Protected Resources Permits and Conservation Division at:

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>

## Permitting Considerations

### Magnuson-Stevens Fishery Conservation and Management Act

All offshore wind energy fisheries survey plans that engage in “fishing” as defined by the MSA<sup>1</sup> must comply with all applicable fishery management permits and regulations issued pursuant to that statute. Survey activities that qualify as scientific research activity as defined in the regulations at 50 CFR 600.10, aboard a scientific research vessel<sup>2</sup> (e.g., a vessel chartered and controlled by a university/scientific institution and operating under a scientific research plan) are

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<sup>1</sup> *Fishing, or to fish* under the MSA means any activity, other than scientific research conducted by a scientific research vessel, that involves: (1) The catching, taking, or harvesting of fish; (2) The attempted catching, taking, or harvesting of fish; (3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or (4) Any operations at sea in support of, or in preparation for, any activity described in this definition. See 16 U.S.C. 1802(12).

<sup>2</sup> A scientific research vessel means a vessel owned or chartered by, and controlled by, a foreign government agency, U.S. Government agency (including NOAA or institutions designated as federally funded research and development centers), U.S. state or territorial agency, university (or other educational institution accredited by a recognized national or international accreditation body), international treaty organization, or scientific institution. In order for a domestic commercial fishing vessel to meet this definition, it must be under the control of a qualifying agency or institution, and operate in accordance with a scientific research plan, for the duration of the scientific research activity. In order for a vessel that is owned or chartered and controlled by a foreign government to meet this definition, the vessel must have scientific research as its exclusive mission during the scientific activity in question, and the vessel operations must be conducted in accordance with a scientific research plan. See 50 C.F.R §600.10.

not considered to be fishing under the MSA. Scientific research vessel activity is not subject to MSA fishery management regulations. This means that scientific research vessels engaged in scientific research activity are not restricted by fishing regulations established under 50 CFR parts 648 and 697 for regional fisheries, including quotas, gear restrictions, or area closures. The full scope of vessel activity must be consistent with the definition for scientific research, and the scientific research vessel may not conduct fishing and research activities on the same trip.

NOAA Fisheries recognizes scientific research activities aboard a scientific research vessel by providing, upon request, a Letter of Acknowledgement. A Letter of Acknowledgement for a scientific research activity is not required, but we highly encourage that project proponents obtain one to ensure NOAA Fisheries identifies the scientific research vessel and views the survey/monitoring as a scientific research activity that is not subject to MSA-based fishing regulations. Obtaining a Letter of Acknowledgement helps minimize delays caused by potential U.S. Coast Guard and other law enforcement inquiries. A Letter of Acknowledgement typically takes 30 days to process from the time a complete application has been received. However, due to the complexities of survey/monitoring activities in support of wind energy development, applicants should be aware that it could take longer and should plan accordingly.

**Please note that a Letter of Acknowledgement is not an MSA fishing permit and is separate and distinct from any permit or consultation required under the MMPA, the ESA, or any other applicable law.** The issuance of a Letter of Acknowledgement does not provide any authorization/exemption for “incidental take” of species protected under the ESA or MMPA (inclusive of capture and live release). Proponents of any fisheries surveys/monitoring activities issued a Letter of Acknowledgement should coordinate with NOAA Fisheries to determine the risk of interaction of their proposed activities with protected species. See Questions 2 and 3 above for additional information about protected species considerations.

Survey activities that do not meet the definition of scientific research activity conducted by a scientific research vessel and involve fishing in federal waters require a fishery management plan permit and may need an exemption from specific fishing regulations such as minimum fish sizes and gear requirements to support experimental/survey activities during fishing trips. This depends upon the fishing activity to be conducted and the federal fishing permit(s) issued to participating vessel(s). Exemptions to existing federal fishing regulations for vessels issued a federal fishing permit may be obtained by applying for a Temporary Possession Permit or an EFP from the Regional Administrator. Note, EFPs are not available to scientific research vessels performing scientific research.

A Temporary Possession Permit authorizes a federally permitted fishing vessel that is accompanied by an eligible research technician to temporarily retain fish that are not compliant with applicable fishing regulations for the purpose of collecting catch data. All such fish are

returned to the sea as soon as practicable following data collection. To be eligible for a Temporary Possession Permit, a vessel must have on board a trained fishery research technician that is an acknowledged representative of a state agency, educational institution, or scientific institution. Applications should be submitted at least 30 days prior to the start of the sampling activity.

Other exemptions would require an EFP. An EFP typically takes approximately 60 days to process from the time a complete application has been received, given the need to solicit public comment and analyze effects of issuing an EFP in compliance with NEPA, ESA, and other applicable law. However, due to the complexities of survey/monitoring activities in support of wind energy development, applicants should be aware that it could take longer to complete or issue the applicable permits and associated consultations and should plan accordingly. Appendix A provides examples of recently issued EFPs in the Greater Atlantic Region.

EFPs include terms and conditions that must be followed, such as additional vessel trip reporting requirements, spatial and temporal restrictions, and gear requirements. If the fishing carried out under an EFP may affect [protected species](#) (marine mammals, sea turtles, or sturgeon, etc.) and/or their designated critical habitat, NOAA Fisheries will determine if those effects have already been addressed in an [ESA section 7 consultation](#) for the relevant federal Fishery Management Plan (FMP) or for an offshore wind project or program. If they have not, additional ESA consultation may be necessary which could include issuance of a new biological opinion by NOAA Fisheries. Note that this additional ESA coordination may take several months, including 135 days to prepare a new biological opinion. Generally, any take of ESA-listed species while operating with an EFP would likely count against the Incidental Take Statement issued as part of the biological opinion for the fishing action (e.g. the biological opinion for the relevant FMP, unless an EFP-specific biological opinion was issued). If the exempted take limit is exceeded, the ESA consultation for that FMP would need to be reinitiated which may lead to additional regulations, including operational restrictions (gear modifications, seasonal closures, etc.), on the fishery(s) managed under the respective FMP, as described in this section.

Guidance to assist researchers with understanding whether a Letter of Acknowledgement or an EFP is an appropriate document to obtain prior to beginning a project can be found at: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/sustainable-fisheries/scientific-research-and-exempting-fishing-permits>.

Forms and applications, including permits, by fishery can be found at: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/resources-fishing/greater-atlantic-region-forms-and-applications-summary>.

## Endangered Species Act

Depending on where and how surveys and monitoring of fisheries resources are carried out, there may be effects to species listed as threatened or endangered under the ESA (e.g., certain marine mammals, all sea turtles, and some fish, see <https://www.fisheries.noaa.gov/species-directory/threatened-endangered>), and/or effects to [designated critical habitat](#). Section 9 of the ESA prohibits the take of ESA-listed species. “Take” under the ESA is broadly defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct against a listed species 16 U.S.C 1532(19). It prohibits the trapping, capture or collection of ESA-listed animals even if they are released alive and uninjured. The prohibition also applies regardless of whether the taking is the purpose of an activity. “Incidental take” is a take that results from, but is not the purpose of, an otherwise lawful activity 50 C.F.R. §402.02. For example, the ESA prohibits the capture of an ESA-listed species during fishing for commercial species, or fishery resource surveys designed to assess a fish stock in an area, even if the ESA-listed animal is released alive and uninjured. Efforts should be made to avoid or minimize interactions with these species and avoid or limit impacts to critical habitat. In all cases, we encourage project proponents to design and carry out survey activities in a way that avoids the potential for interactions with ESA-listed species, and limits the severity of those interactions. As early as possible in the planning process, developers should consider whether survey/monitoring activities could result in interactions with ESA-listed species and/or affect critical habitat, and meet with NOAA Fisheries staff to discuss permitting and consultation needs.

NOAA Fisheries staff can provide technical assistance to developers and stakeholders and suggest measures to reduce risk of interactions with listed species, minimize the effects of any such interactions, and avoid or minimize effects of the activity on listed species’ habitat. Recommendations for best management practices and risk reduction measures for fishery surveys and monitoring are available at: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/science-data/offshore-wind-energy-development-new-england-mid-atlantic-waters>.

An exemption from the prohibitions on take of ESA-listed species can be provided through section 7 and section 10 of the ESA. Note that the ESA section 7 and section 10 processes only apply to ESA-listed species, and other permits, authorizations, and/or exemptions may be necessary to exempt any survey work from other requirements and prohibitions (see e.g., MSA and MMPA sections).

Section 7 of the ESA requires consultation on actions authorized, funded, or carried out, in whole or in part, by federal agencies (“federal action”) that may affect ESA-listed species. As a result of the consultation, an incidental take statement may be issued that exempts an identified amount of incidental take from the ESA’s prohibitions against take. Issuance of an EFP is a federal

action that requires section 7 consultation (see above). Note, that any take of listed species that has not received prior authorization/exemption may be a violation of relevant law(s) and lead to fines and/or other penalties for responsible parties, including but not limited to, vessel operators, vessel owners, contractors, developers, and/or federal action agencies.

The issuance of an MSA Letter of Acknowledgement is not a federal action that triggers ESA section 7 consultation. If incidental take of listed species may occur (including capture and release of live animals) and the survey/monitoring activities cannot be modified in a way to eliminate that risk, an ESA section 10 incidental take permit should be pursued (see below). The only exception would be if the survey/monitoring activity that will take place with an MSA Letter of Acknowledgement is part of, or a result of, another action that has undergone section 7 consultation. For example, if the survey/monitoring activity is a component of a Construction and Operations Plan (COP), and that COP has undergone section 7 consultation with NOAA Fisheries, the biological opinion would address the survey activities and any relevant requirements of the incidental take statement would need to be followed. If the activity falls within the scope of a section 7 consultation, an ESA section 10 permit is not required.

#### *Additional Information on Section 7 Consultation*

Under section 7(a)(2) of the ESA, federal agencies must consult with NOAA Fisheries on discretionary activities that they authorize, fund, or carry out that may affect species listed as threatened or endangered, or critical habitat designated for these species, under the ESA. ESA consultation should be completed before any federal funding, authorization, or permit is finalized and before the survey begins. The consultation itself generally takes between 30-135 days; see link below for more information about the consultation process and timing. ESA consultation can result in issuance of a biological opinion and incidental take statement (ITS). An ITS provides a legal exemption from the ESA's prohibitions against taking listed species. The ITS will include measures that must be complied with in order for the take exemption to apply. Further information can be found online at: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-consultations-greater-atlantic-region>.

Note: A programmatic ESA section 7 consultation on pre-construction/COP fisheries survey plans is in development between BOEM and NOAA Fisheries.

#### *Additional Information on Section 10 Permits*

An ESA section 10(a)(1)(B) Incidental Take Permit may be issued to authorize the "take" of an endangered or threatened species incidental to, and not the purpose of, an otherwise lawful activity. This permit is not required for activities authorized, funded, or carried out (in whole or in part) by a federal agency, whose take has been evaluated in a biological opinion and described in an Incidental Take Statement. For example, if a lessee/project proponent proposes to conduct a marine resource survey that is likely to "take" listed species, and the survey is carried out by a



scientific research vessel with an MSA Letter of Acknowledgement, and a federal action is not the “but for” cause of the survey activity, then applying for an incidental take permit under ESA section 10(a)(1)(B) is appropriate. An applicant for an ESA section 10 incidental take permit must complete a permit application, develop a Conservation Plan or Habitat Conservation Plan, and satisfy other regulatory requirements. Note that the processing time for a section 10 incidental take permit is typically at least one year as NOAA Fisheries must complete analyses under the National Environmental Policy Act (NEPA), ESA, and other applicable laws, as well as submit the proposed permit for public comment through the *Federal Register*. More information on the ESA section 10 incidental take permit process is available online at: <https://www.fisheries.noaa.gov/permit/permits-incidental-taking-endangered-and-threatened-species>.

More information on the ESA permitting process is available online at:

<https://www.fisheries.noaa.gov/insight/understanding-permits-and-authorizations-protected-species>.

### **Marine Mammal Protection Act**

The MMPA prohibits “take” of marine mammals, which is broadly defined as “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.” The MMPA includes several exceptions to the take prohibition including:

- Incidental take (e.g., unintentional take) during commercial fishing
- Incidental take that may occur during non-fishing activities (e.g., coastal construction, oil and gas exploration, or military readiness training)
- Permitted directed take and import for scientific research, enhancement, commercial or educational photography, and public display

MMPA take authorization for fisheries surveys/monitoring activities can occur through different routes depending on the activity.

Section 118 of the MMPA authorizes incidental take of marine mammals during commercial fishing operations, as defined under the MMPA and its implementing regulations. Commercial fisheries are classified on the List of Fisheries (LOF) as Category I, II, or III based on the level of marine mammal death and serious injury incidental to each fishery. If you operate in a Category I or II fishery, you must obtain a Marine Mammal Authorization Program (MMAP) certificate each year from NOAA Fisheries or its designated agent. You must, regardless of your Category, report every incidental marine mammal death or injury of marine mammals that results from commercial fishing operations. If a fishery is not listed on the LOF, it is automatically classified as a Category II fishery, which confers MMPA take coverage and requires the reporting of any marine mammal injuries or deaths within 48 hours. The LOF is updated

annually and more information on registration and reporting can be found at the link below. If incidental take of marine mammals occurs during a commercial fishing operation in a LOF-listed fishery, and the vessel at the same time is conducting fisheries surveys/monitoring while commercial fishing, then the take is authorized under section 118 of the MMPA. If incidental take of marine mammals is anticipated during fisheries survey/monitoring activities, and NOAA Fisheries issues an EFP for that fishing activity, incidental take of some, but not all, marine mammals may be covered by the existing MMPA section 118 incidental take authorization provided through the MMAP for commercial fisheries.

If the survey activity falls outside the scope of MMPA section 118 incidental take authorization, you may need to seek incidental take coverage under MMPA section 101(a)(5)(A) or (D), if applicable.

An Incidental Take Regulation (described in MMPA section 101(a)(5)(A)) and accompanying “Letter of Authorization” (described at 50 C.F.R. 216.106) could provide coverage for mortality or serious injury of marine mammals incidental to some activities for up to 5 years. This process involves rulemaking, typically takes 9 to 18 months (but sometimes longer), and the authorization can only be issued if the take is determined and NOAA Fisheries finds that the total taking during the 5-year period will have a “negligible impact” on a “small number” of the affected species or stocks. In addition, the authorization must include mitigation measures such that the taking effects the “least practicable adverse impact” on the affected species or stock and its habitat.

If incidental take of marine mammals is anticipated during fisheries survey/monitoring activities occurring with an MSA Letter of Acknowledgement, you may need to obtain appropriate MMPA authorizations. We encourage you to coordinate early with NOAA Fisheries given potential differences between an MSA “scientific research activity” and an MMPA “commercial fishing operation” conducted as part of a fishery for which incidental take of marine mammals may have already been authorized through the MMAP for commercial fisheries. Note, that any take of marine mammals that has not received prior authorization/exemption may be a violation of relevant law(s) and result in fines and/or other penalties for responsible parties, including but not limited to, vessel operators, vessel owners, contractors, and/or developers.

More information on the LOF is available online at:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries>.

More information on the MMAP program is available online at:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program>.

More information on the MMPA permitting process is available online at:  
<https://www.fisheries.noaa.gov/insight/understanding-permits-and-authorizations-protected-species>.

Further information regarding incidental take authorizations pursuant to the MMPA can be found at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

## **Appendix A. Examples of recently issued Letters of Acknowledgement and Exempted Fishing Permits in the Greater Atlantic Region**

### Letter of Acknowledgement Example 1:

NOAA Fisheries issued a Letter of Acknowledgement to the University of Massachusetts, Dartmouth, School for Marine Science & Technology (SMAST) regarding their planned drop camera survey in and around the Mayflower Wind lease area. SMAST will contract with six vessels to complete this research.

A Letter of Acknowledgement was issued because the activity met the MSA provisions for scientific research aboard a scientific research vessel, and was therefore determined to not be “fishing.” SMAST did not apply for an MMPA permit or ESA section 10 permit for this activity; given the scope of the survey (i.e., drop cameras only), no interactions with protected species were anticipated.

### Letter of Acknowledgement Example 2:

NOAA Fisheries issued a Letter of Acknowledgement to the University of Massachusetts, Dartmouth, SMAST regarding their planned ventless trap and larval surveys in the Vineyard Wind lease area (OSC-A 501N).

A Letter of Acknowledgement was issued because the activity met the MSA provisions for scientific research aboard a scientific research vessel, and was therefore determined to not be “fishing.” This activity was also considered as part of the proposed action in the ESA consultation for the Vineyard Wind 1 biological opinion; therefore, no additional ESA section 7 consultation was necessary.

### Letter of Acknowledgement Example 3:

NOAA Fisheries issued a Letter of Acknowledgement to Rutgers University regarding their plans to survey surf clams as part of a resource survey within and around wind energy lease areas in the Mid-Atlantic.

A Letter of Acknowledgement was issued because the activity met the MSA provisions for scientific research aboard a scientific research vessel, and was therefore determined to not be “fishing.” Rutgers University corresponded with the NOAA Fisheries Office of Protected Resources regarding the need for an ESA Section 10 incidental take permit. Because NOAA Fisheries agreed this activity is not likely to result in the take of ESA-listed species, no additional ESA permitting or consultation was necessary.

EFP Example 1:

NOAA Fisheries issued an EFP to the NOAA Fisheries' Northeast Fisheries Science Center to continue trials of on-demand fishing gear in the American lobster and Jonah crab fishery. An EFP was necessary because an exemption was sought from gear marking requirements as specified under the regulations 50 CFR 697.21(b)(2). The goal of this study is to support the development of strategies to reduce entanglement risk to protected species through trials of on-demand gear in a variety of oceanographic conditions and trials of gear marking systems' ability to consistently locate gear and to alert other fishermen to its presence. The EFP authorizes a limited number of vessels to participate in the trial between August 2022 and August 2023. Participating vessels may replace up to 10 of their existing trawls with modified, on-demand trawls. This project will include the opportunity for a limited number of participating vessels at a time to trial gear (up to 300 trawls total) without static vertical lines in Atlantic Large Whale Take Reduction Plan Restricted Areas. This project will also allow participating vessels to retrieve buoyless gear via grappling (up to 250 trawls total) to enable the Center to collect data on the viability of grappling at a commercial scale. Other than gear markings, all trawls will be consistent with the regulations of the management area where the vessel is fishing and will include no more than 50 traps per trawl. The project includes additional measures to minimize the risk of impacts to protected species and to reduce the risk of gear conflicts.

NOAA Fisheries determined that the activities to be carried out under this EFP, including anticipated effects to ESA listed species, are within the scope of activities and effects considered in the [May 27, 2021, biological opinion on the authorization of ten fisheries as authorized by NOAA Fisheries and the Implementation of Omnibus EFH Amendment 2](#). As such, the Incidental Take Statement issued with that biological opinion applies to the EFP as well. NOAA Fisheries also determined that the activities to be carried out under the EFP are consistent with the activities considered in the [MMAP authorization](#) for the relevant fishery. As such, the MMAP authorization for the relevant fishery applies to the EFP as well. Therefore, no additional ESA or MMPA permits, consultations, or authorizations were necessary.

EFP Example 2:

NOAA Fisheries issued an EFP to the Massachusetts Division of Marine Fisheries (MA DMF) that authorized four Federally permitted lobster vessels to deploy three standard and three ventless traps per six-pot trawl. The EFP provided an exemption that allowed deployment of gear in excess of the trap limit to support an ongoing lobster resource survey. Stations were sampled twice per month from June through October while the vessel was on a commercial fishing trip. Sampling trips occurred after a soak time of 3-5 days, with at least one MA DMF scientist on board for the sampling trips. MA DMF personnel were not on-board when traps were baited and deployed. All gear was Atlantic Large Whale Take Reduction Plan compliant. Survey traps were separate from each vessel's commercial lobster traps and tagged as, "MADMF Research Traps."

NOAA Fisheries determined that the activities to be carried out under this EFP, including anticipated effects to ESA-listed species, are within the scope of activities and effects considered in the [May 27, 2021, biological opinion on the authorization of ten fisheries as authorized by NOAA Fisheries and the Implementation of Omnibus EFH Amendment 2](#). As such, the Incidental Take Statement issued with that biological opinion applies to the EFP as well. NOAA Fisheries also determined that the activities to be carried out under the EFP are consistent with the activities considered in the [MMAP authorization](#) for the relevant fishery. As such, the MMAP authorization for the relevant fishery applies to the EFP as well. Therefore, no additional ESA or MMPA permits, consultations, or authorizations were necessary.

EFP Example 3:

NOAA Fisheries issued an EFP to the Northeast Sector Services Network in support of an exploratory fishing project with 6-inch mesh gillnets in the Gulf of Maine (GOM). The EFP exempts a single vessel from the minimum mesh size restriction for day gillnet vessels in the GOM from January 2022 to April 2022. The activity carried out with this EFP is intended to determine whether this exemption would provide greater opportunity to harvest GOM haddock. All trips taken under the EFP are required to carry fisheries observers.

NOAA Fisheries determined that the activities to be carried out under this EFP, including anticipated effects to ESA-listed species, are within the scope of activities and effects considered in the [May 27, 2021, biological opinion on the authorization of ten fisheries as authorized by NOAA Fisheries and the Implementation of Omnibus EFH Amendment 2](#). As such, the Incidental Take Statement issued with that biological opinion applies to the EFP as well. NOAA Fisheries also determined that the activities to be carried out under the EFP are consistent with the activities considered in the [MMAP authorization](#) for the relevant fishery. As such, the MMAP authorization for the relevant fishery applies to the EFP as well. Therefore, no additional ESA or MMPA permits, consultations, or authorizations were necessary.