



UNITED STATES DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NATIONAL MARINE FISHERIES SERVICE

Southeast Regional Office

263 13th Avenue South

St. Petersburg, Florida 33701-5505

<http://sero.nmfs.noaa.gov>

MAY 6 2014

F/SER31:JBH

SER-2014-12924

Ms. Leslie Craig
Supervisor, NOAA Restoration Center-Southeast Region
NOAA Fisheries, Office of Habitat Conservation
263 13th Avenue South
St. Petersburg, Florida 33701

Ref.: DWH-ERP, Oyster Reef Restoration, Mobile County, Alabama

Dear Ms. Craig:

This letter responds to the National Oceanic and Atmospheric Administration (NOAA) Restoration Center's letter of January 13, 2014, requesting National Marine Fisheries Service (NMFS) concurrence under Section 7 of the Endangered Species Act (ESA) with the project-effects determinations for cultch placement on oyster reefs. You determined that the proposed activities are not likely to adversely affect sea turtles and Gulf sturgeon. NMFS requested additional information via email on January 23, 2014, and again on January 28, 2014. We received the response on January 29, 2014, and we initiated consultation that day. NMFS's findings on the project's potential effects are based on the project description in this response; thus, any changes to the proposed action may negate the findings of this consultation and may require reinitiation of the consultation with NMFS.

The proposed project is located within the proposed action area's bounding coordinates: 30.373769°N, 88.253573°W; 30.256553°N, 88.099322°W; and 30.478749°N, 88.091042°W; (North American Datum 1983), within Mobile Bay and the Mississippi Sound (Figure 1). The action area includes all areas within Mobile Bay and Mississippi Sound from the point of barge deployment extending to the areas immediately surrounding the location selected for placement of oyster cultch material. As the specific location has yet to be determined, the action area includes all areas outlined in the proposed project area. As anticipated, impacts associated with the proposed project are expected to be extremely minor, localized, and short term in nature. The flow patterns and currents were not considered in defining the area of analysis. Critical habitat for sea turtles and Gulf Sturgeon does not occur within the action area for the proposed project.

The proposed action's purpose is to enhance oyster biomass through the placement of 30,000-40,000 cubic yards (cy) of suitable cultch over approximately 319 acres of subtidal habitat. The planned oyster reef sites are proposed to be near other reefs currently managed by Alabama Department of Conservation and Natural Resources (ADCNR) and within the historic footprint of existing oyster reefs. Cultch placements promote the settlement and growth of oyster spat and have been successful in producing new oysters in Alabama. For this project, cultch material will be located between the -3 feet (ft) to -7 ft mean lower low water contour. The proposed project will involve the transportation and planting of cultch, which may be aged oyster shell, quarried fossilized oyster shell, or rock aggregate such as #57 limestone, crushed granite, crushed concrete aggregate, or quarried limestone. We anticipate that 2-8 barges filled with cultch would be transported, via a tug or push boat, per day. Generally, similar projects require 2-3 barges, in addition to a water-cannon barge, deployed over the planting site. In more shallow locations, less cultch may be loaded and use of shallow-draft, push boats or smaller vessels would be used. Small



planting vessels may include tonging skiffs (10-20 ft), dredge skiffs (15-35 ft), and/or small shrimping vessels (15-35 ft).

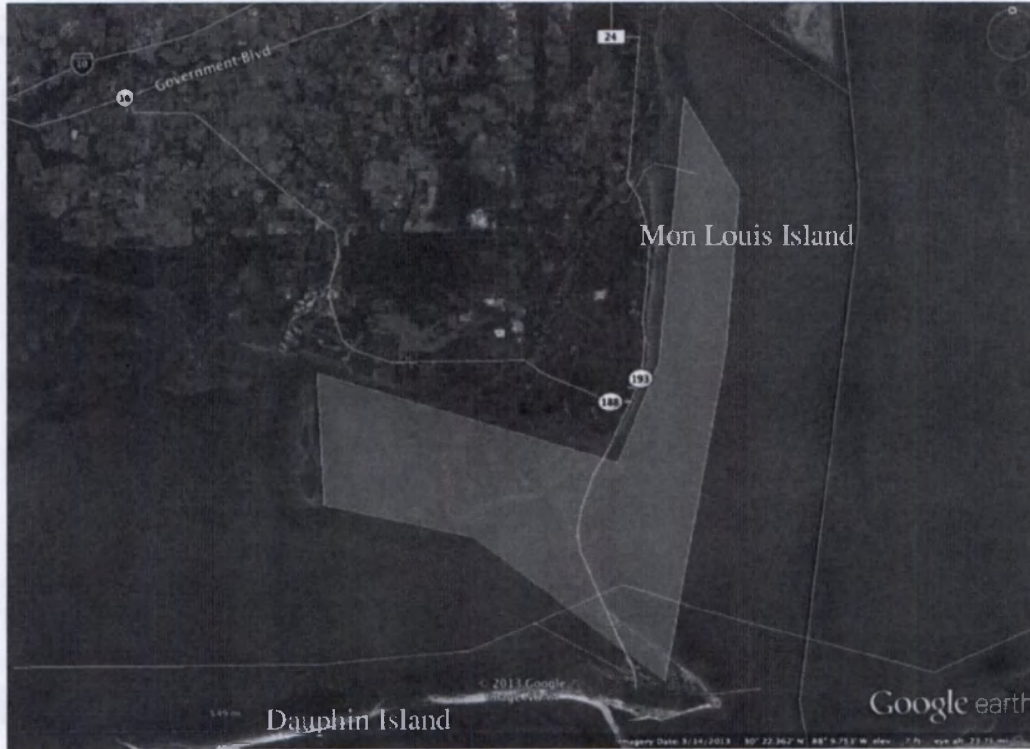


Figure 1. Google Earth© image showing proposed project footprint

Cultch planting will either occur all at one time or twice over a 1-year period (once in the fall and once in the spring). Ideally, this would occur during peak larval production between April and May and between September and October. Spawning continues throughout the summer months and even to a limited degree in the winter. The spring spawning peak is triggered when water temperature increases to 20°C. Similarly, the fall spawning peak begins when there is a sharp decline in water temperature.

Each planting would last approximately 5 days. The work would be done via shallow-draft barge and/or small boat, with cultch dispersed via blow-off (i.e., using a water cannon) at a density of 50-150 cy per acre. On smaller vessels, cultch would be pushed overboard using hand tools or high-pressure water spray from on-board, wash-down pumps. The ADCNR would mark the planting site with buoys. The time required to implement the proposed project depends on the amount of cultch required, and method of deployment (blow-off or small boat planting). Each barge blow-off may deploy approximately 5,000 cy in about 3 days, but small vessels may take 4 or 5 days to deploy the same amount of cultch.

Five ESA-listed species of sea turtles (the endangered leatherback, Kemp's ridley, and hawksbill; the threatened loggerhead¹ and the threatened/endangered green²) and the threatened Gulf sturgeon can be found in or near the action area and may be affected by the project. The proposed project does not fall within ESA-designated critical habitat areas or areas proposed for critical habitat designation.

¹ Northwest Atlantic Ocean distinct population segment (DPS).

² Green turtles are listed as threatened except for the Florida and Pacific coast of Mexico breeding populations, which are listed as endangered.

NMFS has identified the following potential effects to sea turtles and Gulf sturgeon and has concluded that the species are not likely to be adversely affected by the proposed action for the following reasons. Effects include the risks of being struck by transiting vessels and by cultch deployment from the barges. Due to the species' mobility, natural avoidance behaviors, and the slow transit speed of the towed barges (5 knots or less), the risk of injury will be discountable. Compliance with the *Sea Turtle and Smalltooth Sawfish Construction Conditions*, dated March 23, 2006 (enclosed), will further reduce the risk as it requires work to stop if a listed species is observed within 50 ft of operating machinery.

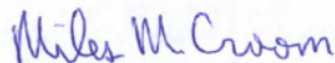
All of the above listed species may be affected by being temporarily unable to use the sites due to potential avoidance of construction activities. The project sites are primarily historical oyster reefs composed of hard reef substrate of shells, limestone, and/or concrete. Submerged aquatic vegetation has not been found to occur there.³ The sites do not provide essential refuge or foraging habitat for these species and there is ample, alternate, similar habitat to these species nearby. Given the short duration of cultch deployments and alternate similar habitat available nearby, the effect will be insignificant. In addition, activities would occur between May and October when Gulf sturgeon are found primarily in freshwater rivers.

Finally, we concur with your project effect determinations that the project for which you requested ESA consultation is not likely to adversely affect leatherback, Kemp's ridley, hawksbill, loggerhead, or green sea turtles, or Gulf sturgeon.

This concludes the NOAA Restoration Center's consultation responsibilities under the ESA for species under NMFS's purview. Consultation must be reinitiated if a take occurs or new information reveals effects of the action not previously considered, or the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat in a manner or to an extent not previously considered, or if a new species is listed or critical habitat designated that may be affected by the identified action.

We've enclosed additional relevant information for your review. We look forward to further cooperation with you on other projects to ensure the conservation of our threatened and endangered marine species and designated critical habitat. If you have any questions about this consultation, please contact Joyce Barkley-Hahn, Consultation Biologist, at (727) 551-5741, or by email at joyce.barkley-hahn@noaa.gov.

Sincerely,



for Roy E. Crabtree, Ph.D.
Regional Administrator

Enc.: 1. *Sea Turtle and Smalltooth Sawfish Construction Conditions* (Revised March 23, 2006)

File: 1514-22.C

³ Vittor, B. 2009. Mapping of Submerged Aquatic Vegetation in Mobile Bay and Adjacent Waters of Coastal Alabama in 2008 and 2009. Prepared for the Mobile Bay National Estuary Program, Mobile, AL.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, FL 33701

SEA TURTLE AND SMALLTOOTH SAWFISH CONSTRUCTION CONDITIONS

The permittee shall comply with the following protected species construction conditions:

- a. The permittee shall instruct all personnel associated with the project of the potential presence of these species and the need to avoid collisions with sea turtles and smalltooth sawfish. All construction personnel are responsible for observing water-related activities for the presence of these species.
- b. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing sea turtles or smalltooth sawfish, which are protected under the Endangered Species Act of 1973.
- c. Siltation barriers shall be made of material in which a sea turtle or smalltooth sawfish cannot become entangled, be properly secured, and be regularly monitored to avoid protected species entrapment. Barriers may not block sea turtle or smalltooth sawfish entry to or exit from designated critical habitat without prior agreement from the National Marine Fisheries Service's Protected Resources Division, St. Petersburg, Florida.
- d. All vessels associated with the construction project shall operate at "no wake/idle" speeds at all times while in the construction area and while in water depths where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will preferentially follow deep-water routes (e.g., marked channels) whenever possible.
- e. If a sea turtle or smalltooth sawfish is seen within 100 yards of the active daily construction/dredging operation or vessel movement, all appropriate precautions shall be implemented to ensure its protection. These precautions shall include cessation of operation of any moving equipment closer than 50 feet of a sea turtle or smalltooth sawfish. Operation of any mechanical construction equipment shall cease immediately if a sea turtle or smalltooth sawfish is seen within a 50-ft radius of the equipment. Activities may not resume until the protected species has departed the project area of its own volition.
- f. Any collision with and/or injury to a sea turtle or smalltooth sawfish shall be reported immediately to the National Marine Fisheries Service's Protected Resources Division (727-824-5312) and the local authorized sea turtle stranding/rescue organization.
- g. Any special construction conditions, required of your specific project, outside these general conditions, if applicable, will be addressed in the primary consultation.

Revised: March 23, 2006

O:\forms\Sea Turtle and Smalltooth Sawfish Construction Conditions.doc

