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

F/SER31:NA
MAR 12 2014 SER-2014-13017

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

Ref.: SER-2014-13017 Beach Enhancement Project at Gulf Island National Seashore, Pensacola Beach, Escambia County, Florida

Dear Ms. Craig:

This letter responds to the National Oceanic and Atmospheric Administration (NOAA) Restoration Center's (RC) January 21, 2014, letter requesting National Marine Fisheries Service (NMFS) concurrence under Section 7 of the Endangered Species Act (ESA) with the project-effects determinations for a project comprising the Deepwater Horizon Oil Spill Draft Phase 3 Early Restoration Plan (DERP). The NOAA RC, a lead federal agency, is requesting consultation on behalf of the natural resource trustees for the Deepwater Horizon oil spill. You requested concurrence from NMFS with your determinations that the projects may affect, but are not likely to adversely affect, Gulf sturgeon and 5 species of sea turtles (loggerhead, Kemp's ridley, green, leatherback, and hawksbill), and designated Gulf sturgeon critical habitat Unit 11, Florida Nearshore Gulf of Mexico. NMFS's determinations regarding the effects of the proposed action are based on the description of the action in this informal consultation. Any changes to the proposed action may negate the findings of the present consultation and may require reinitiation of consultation with NMFS.

Phase 3 DERP
Under the Oil Pollution Act, the federal government and affected state governments act as trustees on behalf of the public. The trustees are charged with recovering damages from the responsible parties to restore the public's natural resources that sustained injuries. The Phase 3 DERP contains the plan for a series of restoration actions that the trustees will undertake to compensate the public for the natural resource injuries caused by the Deepwater Horizon oil spill. NOAA shares trusteeship with the other natural resource trustees over all of the resources that will benefit from these restoration actions. While the Phase 3 DERP includes a suite of projects, this project is independent from the others.

The project is located in the Gulf Island National Seashore (GUIS), Pensacola Beach, Escambia County, Florida, between 30.322476°N, 87.209179°W (parking lot 21) and 30.318604°N, 87.240753°W (parking lot 22), North American Datum 1983 (Figure 1). The project footprint is a long, thin area approximately 20 feet (ft) by 2 miles long (211,200 ft^2 or ~4.8 acres) in the inter- and sub-tidal zone within the GUIS. The project is located within Gulf Sturgeon Critical

Habitat Unit 11 (68 FR 13370, March 19, 2003) and is approximately 4 miles east of Proposed Loggerhead Critical Habitat Unit LOGG-N-33 (Gulf State Park to FL/AL state line, Baldwin County, Alabama; FL/AL state line to Pensacola Pass, Escambia County, Florida) (78 FR 43005, July 18, 2013) (Figure 2).

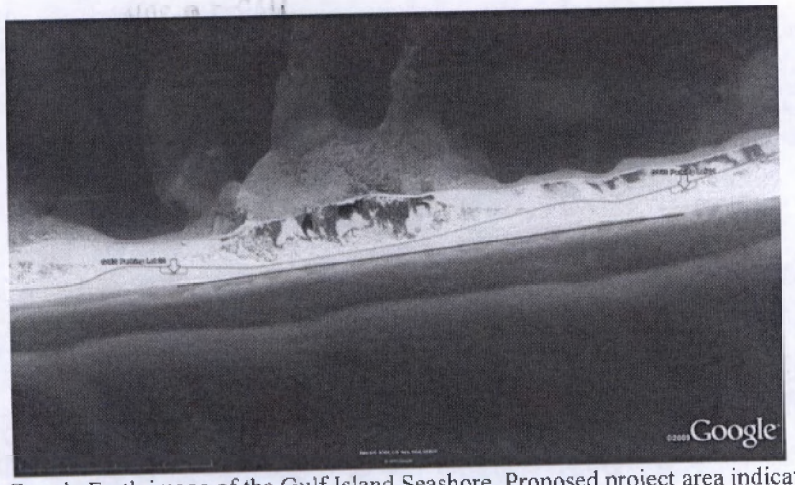


Figure 1. Google Earth image of the Gulf Island Seashore. Proposed project area indicated by the red line between yellow arrows.

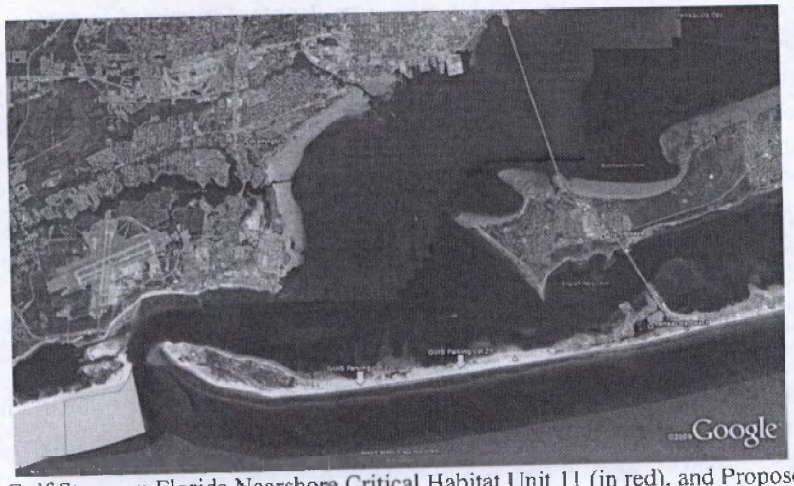


Figure 2. Gulf Sturgeon Florida Nearshore Critical Habitat Unit 11 (in red), and Proposed Loggerhead Critical Habitat Unit N-33 (in pink).

The applicant proposes to remove fragments of asphalt and road-base material, destroyed and inundated by numerous storm events since 1995, which have been scattered widely over areas of the Florida District of GUIS. A large backhoe with a long arm and bucket or grapple will operate in the uplands near the mean low tide line with no work done from boats or barges. The backhoe will retrieve materials from that inter- and sub-tidal zone, reaching a distance up to approximately 15-20 ft and a depth of approximately -3 ft mean lower low water (MLLW). The removed debris will be deposited on the beach just above the surf line where it will be taken off-site and disposed of via trucks. No seagrasses are present at the project site, based on the 2013

GUIS-Seagrass Geospatial Dataset (https://irma.nps.gov/App/Reference/Profile/2194913). Construction crews will follow NMFS's *Sea Turtle and Smalltooth Sawfish Construction Conditions*, dated March 23, 2006. The entire removal project is expected to last up to 4 years, with field work done between August 15 and March 15. The inter- and sub-tidal zone portion of the project is expected to occur during the second, third, or fourth year.

Five ESA-listed species of sea turtles (the endangered leatherback, Kemp's ridley, and hawksbill; the threatened/endangered[1] green; and the threatened loggerhead), and the threatened Gulf sturgeon can be found in or near the action area and may be affected by the project. The proposed project is located within designated Gulf sturgeon critical habitat Unit 11 (Florida Nearshore) and approximately 4 miles from Proposed Loggerhead Critical Habitat Unit LOGG-N-33) (Figure 2). The features essential for the conservation of Gulf sturgeon present in Unit 11 include: abundant prey items; water quality and sediment quality necessary for normal behavior, growth, and viability of all life stages; and safe and unobstructed migratory pathways necessary for passage within and between riverine, estuarine, and marine habitats. The essential features of Proposed Loggerhead Critical Habitat Unit LOGG-N-33 (nearshore reproductive habitat) include: nearshore waters with direct proximity to nesting beaches that support critical aggregations of nesting; waters sufficiently free of obstructions or artificial lighting to allow transit through the surf zone and outward toward open water; and waters with minimal man-made structures that could promote predators, disrupt wave patterns necessary for orientation, and/or create excessive longshore currents.

Impacts to the essential features of Gulf sturgeon critical habitat and proposed loggerhead critical habitat are expected to be negligible due to the small size of the project footprint (i.e., one or two backhoes in the intertidal zone), the mitigation measures in place for sea turtles (i.e., visual observation of sea turtles on-land or approaching land, marking the area and a workaround, as appropriate), the time of year the project will be implemented (i.e., avoiding the turtle nesting season which typically occurs May through August, with hatching occurring from late July through October), and the ability of Gulf sturgeon to avoid disturbed areas. No in-water construction equipment will be used during this project except for the one (or two) backhoe(s) that will move sand while removing large debris during low tides. The equipment will stay out of the water where possible to reduce engine noise there and large pieces of concrete and asphalt will be broken up on the beach rather than in the water to further reduce underwater noise.

The potential effects to sea turtles and Gulf sturgeon include temporary exclusion from the project area for foraging or use as refuge habitat due to potential avoidance of construction activities and related noise, but these effects will be insignificant because there are equally suitable forage and refuge habitat further along either side of the project area. Also, construction will only occur during daylight hours in a very small portion of the overall project area at any given time, leaving access to large portions of the project area for foraging and refuge by ESA-listed species. Sea turtles and Gulf sturgeon could be adversely affected by sand displacement and increased turbidity while foraging. The increases in turbidity and the alterations in benthic topography will be temporary, highly localized, and short-lived in an area that is already very turbid due to wave action. Therefore, we believe these effects will be insignificant. Moreover,

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

as the debris are removed from the sandy bottom and deposited on the beach, above the surf line, the applicant will return sand to the original location from where it came, thus minimizing the topographical alterations.

Although the anticipated project is expected to last up to 4 years, with field work between August 15 and March 15, the project should not adversely affect listed species due to the small project footprint and the species' ability to avoid disturbed areas. Gulf sturgeon are opportunistic feeders that forage over large distances and thus will be able to locate prey throughout Unit 11 in areas unaffected by this action and in available sandy areas adjacent to that impacted by this project; therefore, effects to foraging will be insignificant. The nearest sea turtle nesting beach is approximately 4 miles away on the Gulf side of the barrier island (78 FR 43005, July 18, 2013). The risk that construction impacts from this project would impact any sea turtles approaching the beach to nest is discountable because the applicant has agreed to restrict construction to daylight hours and limit work to outside of the sea turtle nesting season (i.e., May through August, with hatching occurring from late July through October). Therefore, all foraging or nesting habitat-related effects to sea turtles and Gulf sturgeon will be insignificant or discountable.

NMFS believes the project is not likely to adversely affect Gulf sturgeon critical habitat in Unit 11. NMFS believes all 4 of the essential features of critical habitat (i.e., water quality, sediment quality, prey abundance, and safe and unobstructed migratory pathways) may be affected, but that these effects will be insignificant. Water quality impacts from project activities will be insignificant because increases in turbidity will be temporary and within natural background levels. Sediment quality will be improved by the displacement of debris from the inter- and sub-tidal zone and will actually have a small long-term benefit on habitat and any listed species by removing impediments to the normal use of the sandy benthos currently present. Gulf sturgeon prey abundance (and consequently, foraging success) will be insignificantly affected within the 4.8-acre area. Normal foraging depths are usually deeper than 5 feet and the project area ranges from 0-3 ft deep MLLW. Migratory pathways will be insignificantly affected because the method of sand placement in the shallow waters along the beach will not interfere with Gulf sturgeon migration.

Finally, we concur with your project effect determinations that the proposed action is not likely to adversely affect leatherback, Kemp's ridley, hawksbill, loggerhead, or green sea turtles, or Gulf sturgeon; or designated or proposed critical habitats for these species. 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 adverse 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.

Note that this consultation does not cover onshore impacts, such as those impacts to nesting sea turtles on the beach, sea turtle nests, or hatchlings on the beach. The U.S. Fish and Wildlife Service (USFWS) has jurisdiction over sea turtles while they are on land; therefore, a

consultation with USFWS is required to ensure ESA Section 7 compliance for potential onshore impacts to sea turtles.

We have 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 on this consultation, please contact Nicolas Alvarado, Consultation Biologist, at (727) 209-5955, or by email at Nicolas.Alvarado@noaa.gov.

Sincerely,

Roy E. Crabtree, Ph.D.
Regional Administrator

Enc.: 1. *Sea Turtle and Smalltooth Sawfish Construction Conditions* (Revised March 23, 2006)
2. *PCTS Access and Additional Considerations for ESA Section 7 Consultations* (Revised June 11, 2013)

File: 1514-22.C

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.

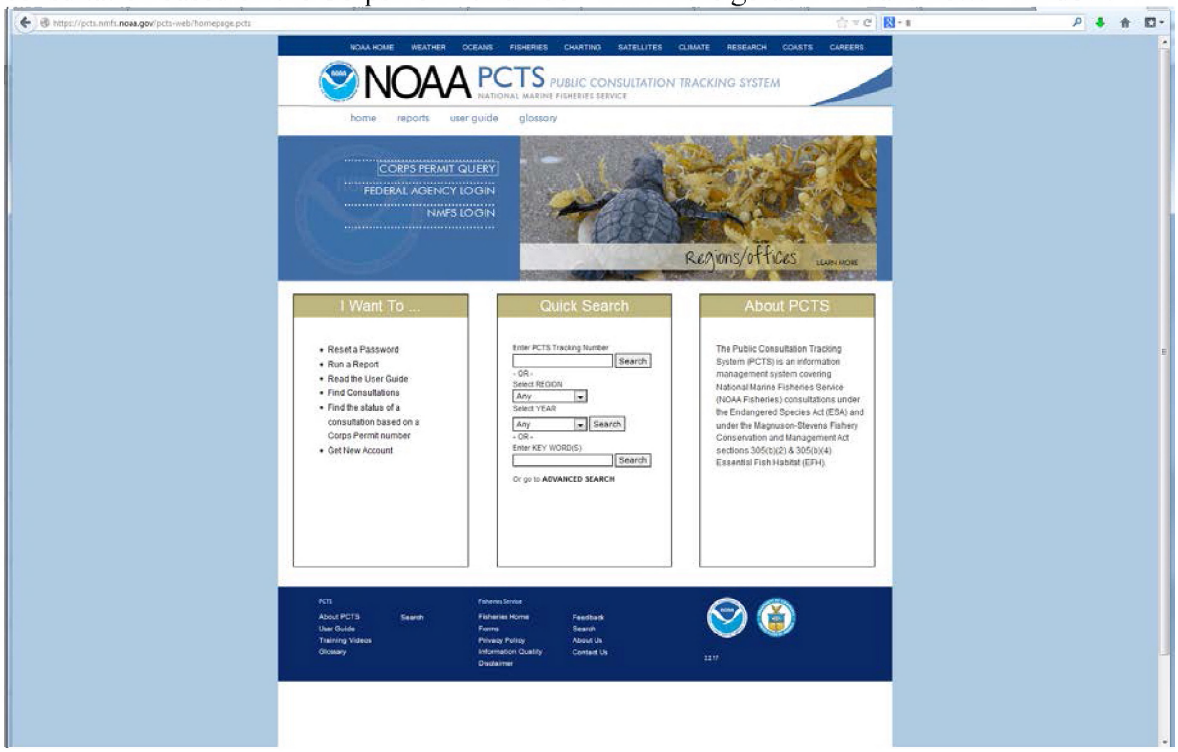
g. Any special construction conditions, required of your specific project, outside these general conditions, if applicable, will be addressed in the primary consultation.

Revised: March 23, 2006

PCTS Access and Additional Considerations for ESA Section 7 Consultations
(Revised 6-11-2013)

Public Consultation Tracking System (PCTS) Guidance: PCTS is a Web-based query system at **https://pcts.nmfs.noaa.gov/** that allows all federal agencies (e.g., U.S. Army Corps of Engineers - USACE), project managers, permit applicants, consultants, and the general public to find the current status of NMFS's Endangered Species Act (ESA) and Essential Fish Habitat (EFH) consultations which are being conducted (or have been completed) pursuant to ESA Section 7 and the Magnuson-Stevens Fishery Conservation and Management Act's (MSA) Sections 305(b)2 and 305(b)(4). Basic information including access to documents is available to all.

The PCTS Home Page is shown below. For USACE-permitted projects, the easiest and quickest way to look up a project's status, or review completed ESA/EFH consultations, is to click on either the "Corps Permit Query" link (top left); or, below it, click the "Find the status of a consultation based on the Corps Permit number" link in the golden "I Want To…" window.



Then, from the "Corps District Office" list pick the appropriate USACE district. In the "Corps Permit #" box, type in the 9-digit USACE permit number identifier, with no hyphens or letters. Simply enter the year and the permit number, joined together, using preceding zeros if necessary after the year to obtain the necessary 9-digit (no more, no less) number. For example, the USACE Jacksonville District's issued permit number SAJ-2013-0235 (LP-CMW) must be typed in as 201300235 for PCTS to run a proper search and provide complete and accurate results. For querying permit applications submitted for ESA/EFH consultation by other USACE districts, the procedure is the same. For example, an inquiry on Mobile District's permit MVN201301412 is entered as 201301412 after selecting the Mobile District from the "Corps District Office" list. PCTS questions should be directed to Eric Hawk at Eric.Hawk@noaa.gov or (727) 551-5773.

EFH Recommendations: In addition to its protected species/critical habitat consultation requirements with NMFS' Protected Resources Division pursuant to Section 7 of the ESA, prior to proceeding with the proposed action the action agency must also consult with NMFS' Habitat Conservation Division (HCD) pursuant to the MSA requirements for EFH consultation (16 U.S.C. 1855 (b)(2) and 50 CFR 600.905-.930, subpart K). The action agency should also ensure that the applicant understands the ESA and EFH processes; that ESA and EFH consultations are separate, distinct, and guided by different statutes, goals, and time lines for responding to the action agency; and that the action agency will (and the applicant may) receive separate consultation correspondence on NMFS letterhead from HCD regarding their concerns and/or finalizing EFH consultation.

Marine Mammal Protection Act (MMPA) Recommendations: The ESA Section 7 process does not authorize incidental takes of listed or non-listed marine mammals. If such takes may occur an incidental take authorization under MMPA Section 101 (a)(5) is necessary. Please contact NMFS' Permits, Conservation, and Education Division at (301) 713-2322 for more information regarding MMPA permitting procedures.