



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>

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 SER-2014-13079

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, Escambia, Santa Rosa, Bay, and Franklin Counties, Florida

Dear Ms. Craig:

This letter responds to the National Oceanic and Atmospheric Administration (NOAA) Restoration Center's letter of January 30, 2014, requesting National Marine Fisheries Service (NMFS) concurrence under Section 7 of the Endangered Species Act (ESA) with the project-effect determinations for cultch placement on existing oyster reefs. You determined that the proposed activities are not likely to adversely affect sea turtles, Gulf sturgeon, smalltooth sawfish, and ESA-designated Gulf sturgeon critical habitat in Units 9 and 13. NMFS requested additional information via email on February 28, 2014. We received the response on March 11, 2014, and we initiated consultation that day. NMFS's findings on the projects' potential effects are based on the projects' descriptions in this response; thus, any changes to the proposed actions may negate the findings of this consultation and may require reinitiation of the consultation with NMFS.

The proposed projects are located within Pensacola Bay (Escambia and Santa Rosa Counties), St. Andrew Bay (Bay County), and Apalachicola Bay (Franklin County), on the panhandle of Florida (Figure 1). Project locations are shown in Table 1 (all project location datum are North American Datum 1983). The applicant will follow NMFS's *Sea Turtle and Smalltooth Sawfish Construction Conditions*, dated March 23, 2006, and U.S. Fish and Wildlife Service's (USFWS) *Standard Manatee Conditions for In-Water Work*, dated 2011.

Table 1. Latitude and Longitude coordinates for project locations

Project Sites	Latitude	Longitude
Pensacola Bay	30.50090°N	87.11239°W
	30.48941°N	87.02202°W
	30.46541°N	87.10426°W
	30.42457°N	87.02670°W
	30.43803°N	86.97539°W
St. Andrew Bay	30.27298°N	85.82846°W
	30.27699°N	85.79135°W
	30.25840°N	85.78117°W
	30.25966°N	85.67740°W
	30.26242°N	85.66393°W



	30.06203°N	85.51323°W
	30.05318°N	85.50520°W
	30.03069°N	85.48771°W
	30.02530°N	85.46905°W
Apalachicola Bay	29.71350°N	85.07613°W
	29.69193°N	85.08503°W
	29.65041°N	85.07776°W
	29.67555°N	85.05612°W
	29.68596°N	85.02965°W
	29.68855°N	84.93385°W
	29.69961°N	84.91018°W
	29.70651°N	84.89828°W
	29.67284°N	84.89019°W
	29.69271°N	84.87258°W
	29.73197°N	84.83546°W
	29.70092°N	84.81762°W

The restoration work will include placement of suitable cultch material on existing or previously constructed oyster bars for the settling of native oyster larvae and oyster colonization. In Escambia and Santa Rosa Counties, 12,000 cubic yards (cy), of cultch material will be placed on debilitated oyster reefs, over a 60-acre area. In Bay County, 12,000 cy will be placed on debilitated oyster reefs, over a 60-acre area while 18,000 cy of cultch material will be placed over a 90-acre area in Franklin County.

Cultch material will consist of a combination of aged oyster shells and/or limestone, approved for use by the Department of Agriculture and Consumer Services (DACs). Processed, aged oyster shell is preferred for cultch material where the shell is available and can be efficiently transported to reef sites. Shell will be placed on deck barges, using front-end loaders and dump trucks, and transported to oyster reef sites. At the site, oyster cultch locations and specific deposition sites will be delineated and marked by staff prior to depositing cultch materials.

The cultch placement involves off-loading material from barges using either spray cannons or depositing using a crane and bucket. The new cultch material will be placed on top of existing oyster reefs created and managed by the DACs. These reefs are either depleted of shell material or have reached the end of their productive life. Placing cultch in bays where natural reproduction occurs is the most effective technique used throughout the Gulf of Mexico for several purposes: (1) create three-dimensional reef structure, (2) stimulate spat setting, (3) sustain oyster fisheries, (4) enhance community functions, (5) increase natural productivity, and (6) accelerate the recovery process.

Harvest closures in Pensacola and Apalachicola Bays occur June through August, making these months the focus of activity for cultch placement. Placement in St. Andrew Bay will be attempted between May and October to limit potential impacts to Gulf sturgeon. Restored reefs can remain productive for more than 10 years with little additional maintenance. In Apalachicola Bay, restoration will require 2 days per reef: loading the barge one day and placement the following day. For all other sites, restoration will require approximately 12 days per reef: loading 2 barges in 2-3 days, travel time, and placement in 2-9 days. Overall oyster reef restoration activities are expected to be completed within 1 year after work begins.

The DACS will be responsible for assessing the status of the reefs. All restored reefs will be sampled twice yearly in Years 1-5 and once a year in Years 6-10. Sampling intervals may be modified to assess significant events, which may affect oyster population dynamics. A total of 16 sampling trips are planned for each restored reef that would involve following the Standard Oyster Resource Management Protocol (Florida Administrative Code 2012).

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 projects also fall within ESA-designated Gulf sturgeon critical habitat Units 9 and 13. Smalltooth sawfish are not likely to be encountered at any of the project sites. Their current distribution has contracted to peninsular Florida and, within that area, they can only be found with regularity off the extreme southern portion of the state. Therefore, any effects to smalltooth sawfish from the proposed projects are discountable and will not be discussed further.

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 barges, the risk of injury will be discountable. Compliance with the *Sea Turtle and Smalltooth Sawfish Construction Conditions* will further reduce the risk, as it requires work to stop if a listed species is observed within 50 feet of operating machinery.

Sea turtles and Gulf sturgeon may be affected by being temporarily unable to use the sites due to potential avoidance of construction activities. The sites do not provide essential refuge or foraging habitat for these species and there is alternate, similar habitat nearby. Given the short duration of cultch deployments and alternate similar habitat available nearby, the effect will be insignificant. The project sites are primarily historical oyster reefs composed of hard reef substrate of shells and/or limestone. In addition, project activities within Pensacola and Apalachicola bays (and to the extent practicable in St. Andrew Bay), will occur between May and October when Gulf sturgeon are found primarily in freshwater rivers. St. Andrew Bay is outside of Gulf sturgeon critical habitat and is not a gateway to known current Gulf sturgeon spawning rivers, therefore construction timing is not as crucial.

The essential features for the conservation of Gulf sturgeon present in Units 9 and 13 include (1) abundant prey items; (2) water quality and sediment quality necessary for normal behavior, growth, and viability of all life stages; and (3) safe and unobstructed migratory pathways necessary for passage within and between riverine, estuarine, and marine habitats. Of these features, NMFS believes prey abundance, water quality, and sediment quality may be affected. The existing substrate in the project area is hard bottom and the addition of cultch material will not alter prey availability or sediment quality. Gulf sturgeon forage over soft, sandy bottoms, as this type of habitat supports their benthic prey items and is conducive to their suction-feeding foraging. The placement of cultch material that is clean and free of toxins will not alter water or

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.

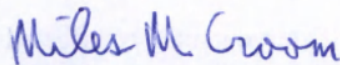
sediment quality. Therefore, the effects of culch placement on prey availability, water quality, and sediment quality in Gulf sturgeon critical habitat Units 9 and 13 are discountable.

Based on the above analysis, 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, smalltooth sawfish, 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)
2. *Standard Manatee Conditions for In-Water Work* (Dated 2011)

File: 1514-22.C

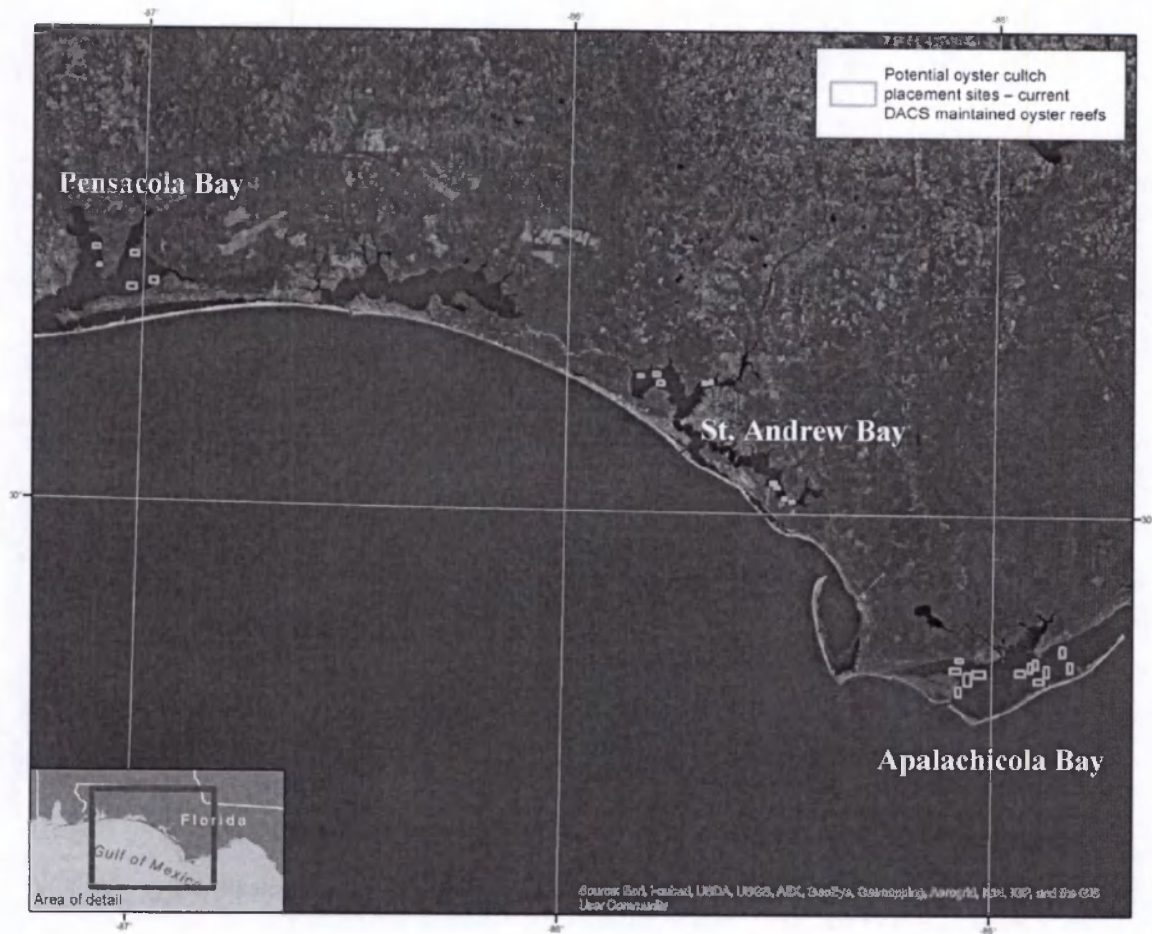


Figure 1. Google Earth© image showing proposed project footprints



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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

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STANDARD MANATEE CONDITIONS FOR IN-WATER WORK

2011

The permittee shall comply with the following conditions intended to protect manatees from direct project effects:

- a. All personnel associated with the project shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with and injury to manatees. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.
- b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
- c. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers must not impede manatee movement.
- d. All on-site project personnel are responsible for observing water-related activities for the presence of manatee(s). All in-water operations, including vessels, must be shutdown if a manatee(s) comes within 50 feet of the operation. Activities will not resume until the manatee(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the manatee(s) has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.
- e. Any collision with or injury to a manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1-888-404-3922. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-731-3336) for north Florida or in Vero Beach (1-772-562-3909) for south Florida, and emailed to FWC at ImperiledSpecies@myFWC.com.
- f. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the permittee upon completion of the project. Temporary signs that have already been approved for this use by the FWC must be used. One sign which reads *Caution: Boaters* must be posted. A second sign measuring at least 8 1/2" by 11" explaining the requirements for "Idle Speed/No Wake" and the shut down of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related activities. These signs can be viewed at http://www.myfwc.com/WILDLIFEHABITATS/manatee_sign_vendors.htm. Questions concerning these signs can be forwarded to the email address listed above.