



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Southeast Regional Office  
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APR 11 2011

Mr. Kevin D. O'Kane  
Chief, North Permits Branch  
Panama City Field Office  
Jacksonville District Corps of Engineers  
1002 West 23<sup>rd</sup> Street, Suite 350  
Panama City, FL 32405-3648

Re: SAJ-2010-2882 (IP-DNA)

Dear Mr. O'Kane:

This responds to your letter dated October 15, 2010, requesting National Marine Fisheries Service (NMFS) concurrence with your project effect determinations pursuant to Section 7 of the Endangered Species Act (ESA) for the Army Corps of Engineers (COE) Jacksonville District's construction permit application by the City of Mexico Beach. You determined the project may affect but is not likely to adversely affect Gulf sturgeon and Gulf sturgeon critical habitat. NMFS' determinations regarding the effects of the proposed action are based on the description of the action in this informal consultation. NMFS requested additional information from the COE via e-mail on December 13, 2010, and the COE responded via e-mail on March 3, 2011. You are reminded that any changes to the proposed action may negate the findings of the present consultation and may require reinitiation of consultation with NMFS.

The proposed project is located within the man-made Mexico Beach Canal adjacent to Canal Parkway, at latitude 29.952734°N, longitude 85.429794°W, Bay County, Florida. The COE stated that the project was within Gulf sturgeon critical habitat; however, upon further review of the boundary by NMFS it was concluded that the project is just outside of the Gulf sturgeon boundary limits. The project site contains an existing marina with 2,380 square feet of water coverage. Currently there are approximately 40 boat slips within the project. On average, the boat slips within the project area are 35 feet long. The applicant proposes to construct a 1,700-linear-foot, steel, sheet-pile retaining wall approximately 2 feet in front of the existing wooden retaining wall. The proposed volume of fill between the wall and the shore will be 440.7 cubic yards. The project also includes replacing 18 existing finger piers along the northern side, 3 finger piers along the western side, and creating 8 new finger piers (16 slips) located along the western edge of the canal, for a total of 56 boat slips. The finger piers will be 16 feet long by 3 feet wide, with a terminal piling being installed approximately 17 feet from the terminal pier. No seagrasses or mangroves were documented at the project site. Construction will take place from the uplands for the majority of the project; a small barge will be used for pier placement and dock construction. Pilings will be installed primarily by low-pressure jet; however, a drop hammer may be used to finish installing the pilings when necessary. The applicant will use turbidity controls and comply with NMFS' Sea Turtle and Smalltooth Sawfish Construction



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Conditions, dated March 23, 2006. The proposed project will be staggered in phases over 10 months, due to funding.

Five ESA-listed species of sea turtles (the endangered leatherback, Kemp's ridley, and hawksbill; the threatened/endangered<sup>1</sup> green; and the threatened loggerhead), smalltooth sawfish, and Gulf sturgeon may occur at the project site.

NMFS has analyzed the routes of potential effects from the proposed project and determined that listed sea turtles, smalltooth sawfish, and Gulf sturgeon are not likely to be adversely affected. Effects to sea turtles and smalltooth sawfish include the risk of injury from construction, and pile driving noise, which will be discountable due to the species' mobility, the low level of noise produced, and the implementation of NMFS' Sea Turtle and Smalltooth Sawfish Construction Conditions. Sea turtles, smalltooth sawfish, and Gulf sturgeon may be affected by being temporarily unable to use the site for forage or refuge habitat due to potential avoidance of construction activities and related noise, and physical exclusion from areas contained by turbidity curtains, but these effects will be insignificant. Disturbance from construction activities (e.g., installation of dock pilings) and related noise will be intermittent and only occur during the day for part of the construction period. Additionally, turbidity curtains will only enclose the small project site area, will be removed upon project completion, and will not appreciably interfere with use of the area by sea turtles, smalltooth sawfish, and Gulf sturgeon.

Vessel traffic originating from the expansion of an existing commercial dock is an indirect effect of the proposed action. Vessel traffic, particularly high-speed recreational boats, can strike sea turtles leading to injury or death; therefore, sea turtles may be affected by the project through the operation of boats using the docking facility. However, in NMFS' judgment, the risk of vessel strike impacts to sea turtles resulting from the construction and future use of the commercial docking facility is discountable for the following reasons: (1) The creation of additional boat slips (16) will not necessarily increase vessel traffic in the area, as the action may instead relocate existing vessels; (2) based on an extremely conservative analysis of available information,<sup>2</sup> a new docking facility would have to introduce more than 300-500 new vessels into an area used by sea turtles to present a risk of a single strike of a sea turtle in the dock's first year of operation; and (3) vessels will be required to travel slowly through the area because the project site is located in a "Slow Speed/No-Wake Zone."

This concludes your ESA consultation responsibilities with NMFS for the proposed project. Be advised that the 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 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 have enclosed additional information on other statutory requirements that may apply to this action, as well as information on NMFS' Public Consultation Tracking System (PCTS) that

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<sup>1</sup>Green turtles are listed as threatened, except for breeding populations in Florida and the Pacific coast of Mexico, which are listed as endangered.

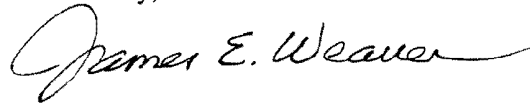
<sup>2</sup> Barnette, M. NMFS Memorandum dated January 12, 2009, Threats and Effects Analysis for Protected Resources on Vessel Traffic Associated with Dock and Marina Construction.

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allows you to track the status of ESA consultations. 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 habitats.

If you have any questions on this consultation or PCTS, please contact Ryan Hendren, ESA Consultant, at (727) 551-5610, or by e-mail at [Ryan.Hendren@noaa.gov](mailto:Ryan.Hendren@noaa.gov).

Sincerely,



for

Roy E. Crabtree, Ph.D.  
Regional Administrator

Enclosures (3)

File: 1514-22. F.4

Ref: I/SER/2010/05367

**PCTS Access and Additional Considerations for ESA Section 7 Consultations  
(Revised 7-15-2009)**

**Public Consultation Tracking System (PCTS) Guidance:** PCTS is an online query system at <https://pcts.nmfs.noaa.gov/> that allows federal agencies and U.S. Army Corps of Engineers' (COE) permit applicants and their consultants to ascertain the status of NMFS' Endangered Species Act (ESA) and Essential Fish Habitat (EFH) consultations, conducted pursuant to ESA section 7, and Magnuson-Stevens Fishery Conservation and Management Act's (MSA) sections 305(b)2 and 305(b)4, respectively. Federal agencies are required to enter an agency-specific username and password to query the Federal Agency Site. The COE "Permit Site" (no password needed) allows COE permit applicants and consultants to check on the current status of Clean Water Act section 404 permit actions for which NMFS has conducted, or is in the process of conducting, an ESA or EFH consultation with the COE.

For COE-permitted projects, click on "Enter Corps Permit Site." From the "Choose Agency Subdivision (Required)" list, pick the appropriate COE district. At "Enter Agency Permit Number" type in the COE district identifier, hyphen, year, hyphen, number. The COE is in the processing of converting its permit application database to PCTS-compatible "ORM." An example permit number is: SAJ-2005-000001234-IPS-1. For the Jacksonville District, which has already converted to ORM, permit application numbers should be entered as SAJ (hyphen), followed by 4-digit year (hyphen), followed by permit application numeric identifier with no preceding zeros. For example: SAJ-2005-123; SAJ-2005-1234; SAJ-2005-12345.

For inquiries regarding applications processed by COE districts that have not yet made the conversion to ORM (e.g., Mobile District), enter the 9-digit numeric identifier, or convert the existing COE-assigned application number to 9 numeric digits by deleting all letters, hyphens, and commas; converting the year to 4-digit format (e.g., -04 to 2004); and adding additional zeros in front of the numeric identifier to make a total of 9 numeric digits. For example: AL05-982-F converts to 200500982; MS05-04401-A converts to 200504401. PCTS questions should be directed to Eric Hawk at [Eric.Hawk@noaa.gov](mailto:Eric.Hawk@noaa.gov). Requests for username and password should be directed to [PCTS.Usersupport@noaa.gov](mailto:PCTS.Usersupport@noaa.gov).

**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.



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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





## **Vessel Strike Avoidance Measures and Reporting for Mariners NOAA Fisheries Service, Southeast Region**

### **Background**

The National Marine Fisheries Service (NMFS) has determined that collisions with vessels can injure or kill protected species (e.g., endangered and threatened species, and marine mammals). The following standard measures should be implemented to reduce the risk associated with vessel strikes or disturbance of these protected species to discountable levels. NMFS should be contacted to identify any additional conservation and recovery issues of concern, and to assist in the development of measures that may be necessary.

### **Protected Species Identification Training**

Vessel crews should use an Atlantic and Gulf of Mexico reference guide that helps identify protected species that might be encountered in U.S. waters of the Atlantic Ocean, including the Caribbean Sea, and Gulf of Mexico. Additional training should be provided regarding information and resources available regarding federal laws and regulations for protected species, ship strike information, critical habitat, migratory routes and seasonal abundance, and recent sightings of protected species.

### **Vessel Strike Avoidance**

In order to avoid causing injury or death to marine mammals and sea turtles the following measures should be taken when consistent with safe navigation:

1. Vessel operators and crews shall maintain a vigilant watch for marine mammals and sea turtles to avoid striking sighted protected species.
2. When whales are sighted, maintain a distance of 100 yards or greater between the whale and the vessel.
3. When sea turtles or small cetaceans are sighted, attempt to maintain a distance of 50 yards or greater between the animal and the vessel whenever possible.
4. When small cetaceans are sighted while a vessel is underway (e.g., bow-riding), attempt to remain parallel to the animal's course. Avoid excessive speed or abrupt changes in direction until the cetacean has left the area.
5. Reduce vessel speed to 10 knots or less when mother/calf pairs, groups, or large assemblages of cetaceans are observed near an underway vessel, when safety permits. A single cetacean at the surface may indicate the presence of submerged animals in the vicinity; therefore, prudent precautionary measures should always be exercised. The vessel shall attempt to route around the animals, maintaining a minimum distance of 100 yards whenever possible.

NMFS Southeast Region Vessel Strike Avoidance Measures and Reporting for Mariners; revised February 2008.

6. Whales may surface in unpredictable locations or approach slowly moving vessels. When an animal is sighted in the vessel's path or in close proximity to a moving vessel and when safety permits, reduce speed and shift the engine to neutral. Do not engage the engines until the animals are clear of the area.

#### **Additional Requirements for the North Atlantic Right Whale**

1. If a sighted whale is believed to be a North Atlantic right whale, federal regulation requires a minimum distance of 500 yards be maintained from the animal (50 CFR 224.103 (c)).
2. Vessels entering North Atlantic right whale critical habitat are required to report into the Mandatory Ship Reporting System.
3. Mariners shall check with various communication media for general information regarding avoiding ship strikes and specific information regarding North Atlantic right whale sighting locations. These include NOAA weather radio, U.S. Coast Guard NAVTEX broadcasts, and Notices to Mariners. Commercial mariners calling on United States ports should view the most recent version of the NOAA/USCG produced training CD entitled "A Prudent Mariner's Guide to Right Whale Protection" (contact the NMFS Southeast Region, Protected Resources Division for more information regarding the CD).
4. Injured, dead, or entangled right whales should be immediately reported to the U.S. Coast Guard via VHF Channel 16.

#### **Injured or Dead Protected Species Reporting**

Vessel crews shall report sightings of any injured or dead protected species immediately, regardless of whether the injury or death is caused by your vessel.

Report marine mammals to the Southeast U.S. Stranding Hotline: 877-433-8299

Report sea turtles to the NMFS Southeast Regional Office: 727-824-5312

If the injury or death of a marine mammal was caused by a collision with your vessel, responsible parties shall remain available to assist the respective salvage and stranding network as needed. NMFS' Southeast Regional Office shall be immediately notified of the strike by email ([takereport.nmfsser@noaa.gov](mailto:takereport.nmfsser@noaa.gov)) using the attached vessel strike reporting form.

#### **For additional information, please contact the Protected Resources Division at:**

NOAA Fisheries Service

Southeast Regional Office

263 13<sup>th</sup> Avenue South

St. Petersburg, FL 33701

Tel: (727) 824-5312

Visit us on the web at <http://sero.nmfs.noaa.gov>

NMFS Southeast Region Vessel Strike Avoidance Measures and Reporting for Mariners; revised February 2008.