



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Southeast Regional Office  
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**JUN - 6 2012**

F/SER31:RGH

Mr. Pete Serio  
Operations Division  
New Orleans District Corps of Engineers  
P.O. Box 60267  
New Orleans, Louisiana 70160-0267

Mr. Richard Hartman  
National Marine Fisheries Service  
c/o Louisiana State University  
Military Science Building, Room 266  
Baton Rouge, LA 70803

Re: Chenier Ronquille Barrier Island Restoration Project, MVN-2011-3148-ETT

Dear Mr. Serio and Mr. Hartman:

This responds to the Army Corps of Engineers (COE) New Orleans District's January 12, 2011, letter. The COE requested National Marine Fisheries Service (NMFS) concurrence with its project-effect determinations under Section 7 of the Endangered Species Act (ESA). The project is proposed and sponsored by NMFS' Habitat Conservation Division (NMFS HCD) in Baton Rouge, Louisiana, and the State of Louisiana's Coastal Protection and Restoration Authority (CRPA). The project will be authorized and funded under the federal Coastal Wetlands Planning, Protection, and Restoration Act. You determined the project may affect but is not likely to adversely affect swimming sea turtles and Gulf sturgeon. Our response is directed to both federal agencies since both agencies play a role in the funding or permitting of this project; both have Section 7 responsibilities under the ESA. Our findings on the project's potential effects are based on the project description in this response. Changes to the proposed action may negate our findings and may require reinitiating consultation.

The project site is located at 29.31879°N, 89.79077°W (North American Datum 1983) within Barataria Bay, Plaquemines Parish, Louisiana. The project purpose is to restore the integrity of the Chenier Ronquille barrier island by creating 309 acres of marsh and 189 acres of dune and beach. Approximately 11.1 million cubic yards (mcy) of material may be dredged (a minimum of 2.9 mcy will be dredged) from four borrow sites (S-1, S-2, D-1, and Quatre Bayou), consisting of 832 acres of unvegetated borrow site in the Gulf of Mexico southwest of Chenier Ronquille. The borrow sites will be dredged from the current depth of approximately -8 to -30 feet North American Vertical Datum 1988 (NAVD88) to a maximum of -37 feet. Dredged sediments will



be pumped to the marsh via a dredge pipeline. An access channel will be dredged to allow for equipment movement and pipeline placement. Sediment excavated from the access channel will be used to construct the adjacent containment dike. The containment dikes may be gapped as needed to provide hydrologic exchange and the project will continue to be monitored throughout the course of the 20-year project life. The resulting marsh will be filled to an elevation of +2.5 feet (NAVD88) and planted with approximately 20,000 units of appropriate marsh vegetation. Construction will require the use of airboats, barge-mounted bucket dredges, bulldozers, and hydraulic cutterhead dredges. The applicant will comply with NMFS' *Sea Turtle and Smalltooth Sawfish Construction Conditions* dated March 23, 2006, and NMFS' *Measures for Reducing the Entrapment Risk to Protected Species* dated May 22, 2012. Construction is anticipated to take 1 year to complete.

Four ESA-listed species of sea turtles (the endangered leatherback and Kemp's ridley; the threatened/endangered<sup>1</sup> green; and the threatened loggerhead<sup>2</sup>) can be found in or near the action area and may be affected by the project. The site is west of the Mississippi River, thus, NMFS expects no Gulf sturgeon to be present. There is no designated critical habitat in or near the project area.

NMFS has analyzed the routes of potential effects from the proposed project and determined that listed sea turtles are not likely to be adversely affected. Dredging activities have the potential to entrain and kill sea turtles. However, the use of a non-hopper-type dredge (such as cutterhead dredges and clamshell/bucket dredges) is unlikely to entrain healthy sea turtles due to the noisy, slow moving nature of these types of dredges, which would be easy for sea turtles to detect and avoid. Therefore, the likelihood of a sea turtle to be entrained would be discountable. Stranding data from Texas' shallow Laguna Madre suggests that cold-stunned turtles may be taken by cutterhead dredges while they are lethargic or dying from sudden exposure to cold; however, this possibility is rare and discountable. Although the likelihood of a sea turtle take through entrainment is discountable, NMFS recommends to further reduce the risk of sea turtle interactions with cutterhead dredges in this project, that cutterhead dredging be limited to warmer months when possible, and that cutterhead dredging be delayed and appropriate precautions taken (e.g., posting an observer) after cold snaps in shallow waters if water temperatures have fallen rapidly and if sea turtles are seen. Sea turtles could be harmed or killed by being struck by the transit and anchoring of equipment and barges at the project site, however, the likelihood of this outcome is also discountable due to these species' mobility. The implementation of NMFS' *Sea Turtle and Smalltooth Sawfish Construction Conditions* will further reduce the risk of injury to sea turtles. Sea turtles may be affected by having to avoid the area due to disturbances from in-water dredging and restoration activities where they may be foraging or sheltering. However, avoidance would be localized to a discrete area over the course of the project and will not affect foraging or sheltering opportunities for sea turtles in adjacent areas, which are suitable for these activities. Therefore, the effects of avoidance on sea turtles will be insignificant. The loss of potential foraging/sheltering habitat from the creation of the marsh is insignificant as well, because there is adequate alternative foraging/sheltering habitat in

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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>Northwest Atlantic Distinct Population Segment.

the nearby surrounding bayou. Last, sea turtles have the potential to become entrapped within the containment dikes. However, the likelihood of sea turtles becoming entrapped is discountable due to the deterring effects of consistent inflow of dredge material and heavy activity in and around the containment dike. Additionally, the implementation of NMFS' *Measures for Reducing the Entrapment Risk to Protected Species* will prevent or address such entrapment to sea turtles.

This concludes your consultation responsibilities under the ESA for species under NMFS' 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 have enclosed additional relevant information for your review. If you have any questions, 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.  
Southeast Regional Administrator

Enclosures (3)

File: 1514-22.F.7

Ref: I/SER/2012/00132

## **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





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## Measures for Reducing Entrapment Risk to Protected Species

Bottlenose dolphins, sea turtles, and Gulf sturgeon (protected species) are known to inhabit coastal waters of the northern Gulf of Mexico. Bottlenose dolphins are protected under the Marine Mammal Protection Act (MMPA) and sea turtles and Gulf sturgeon are protected under the Endangered Species Act (ESA). Because of the potential for these protected species to become entrapped within coastal waters of construction sites along the northern Gulf coast, projects that enclose shallow open water areas for wetland creation or nourishment will use the following measures to minimize the potential for entrapment:

- 1. Pre-construction planning.** During project design, the Federal Action Agency or project proponents must incorporate at least one escape route into the proposed retention structure(s) to allow any protected species to exit the area(s) to be enclosed. Escape routes must lead directly to open water outside the construction site and must have a minimum width of 100 feet. Escape routes should also have a depth as deep as the deepest natural entrance into the enclosure site and must remain open until a thorough survey of the area, conducted immediately prior to complete enclosure, determines no Protected Species are present within the confines of the structure (see item 5 below for details).
- 2. Pre-construction compliance meeting.** Prior to construction, the Federal Action Agency, project proponents, the contracting officer representative, and construction personnel should conduct a site visit and meeting to develop a project-specific approach to implementing these preventative measures.
- 3. Responsible parties.** The Federal Action Agency will instruct all personnel associated with the project of the potential presence of protected species in the area and the need to prevent entrapment of these animals. All construction personnel will be advised that there are civil and criminal penalties for harming, harassing, or killing protected species. Construction personnel will be held responsible for any protected species harassed or killed as a result of construction activities. All costs associated with monitoring and final clearance surveys are the responsibility of project proponents and must be incorporated in the construction plan.
- 4. Monitoring during retention structure construction.** It is the responsibility of construction personnel to monitor the area for protected species during dike or levee construction. If protected species are regularly sighted over a 2 or 3 day period within the enclosure area during retention structure assembly, construction personnel must notify the Federal Action Agency. It is the responsibility of the Federal Action Agency



to then coordinate with the National Marine Fisheries Service (NMFS) Marine Mammal Health and Stranding Response team (1-877-WHALE HELP [1-877-942-5343]) or the appropriate State Coordinator for the Sea Turtle Stranding and Salvage Network (see [http://www.sefsc.noaa.gov/species/turtles/stranding\\_coordinators.htm](http://www.sefsc.noaa.gov/species/turtles/stranding_coordinators.htm)) to determine what further actions may be required. Construction personnel may not attempt to scare, herd, disturb, or harass the protected species to encourage them to leave the area.

- 5. Pre-closure final clearance.** Prior to completing any retention structure by closing the escape route, the Federal Action Agency will insure that the area to be enclosed is observed for protected species. Surveys must be conducted by experienced marine observers during daylight hours beginning the day prior to closure and continuing during closure. This is best accomplished by small vessel or aerial surveys with 2-3 experienced marine observers per vehicle (vessel/helicopter) scanning for protected species. Large areas (e.g. >300 acres) will likely require the use of more than one vessel or aerial survey to insure full coverage of the area. These surveys will occur in a Beaufort sea state (BSS) of 3 feet or less, as protected species are difficult to sight in choppy water. Escape routes may not be closed until the final clearance determines the absence of protected species within the enclosure sight.
  
- 6. Post closure sightings.** If protected species become entrapped in an enclosed area, the Federal Action Agency and NMFS must be immediately notified. If observers note entrapped animals are visually disturbed, stressed, or their health is compromised then the Action Agency may require any pumping activity to cease and the breaching of retention structures so that the animals can either leave on their own or be moved under the direction of NMFS.
  - a. In coordination with the local stranding networks and other experts, NMFS will conduct an initial assessment to determine the number of animals, their size, age (in the case of dolphins), body condition, behavior, habitat, environmental parameters, prey availability and overall risk.
  - b. If the animal(s) is/are not in imminent danger they will need to be monitored by the Stranding Network for any significant changes in the above variables.
  - c. Construction personnel may not attempt to scare, herd, disturb, or harass the protected species to encourage them to leave the area. Coordination by the Federal Action Agency with the NMFS SER Stranding Coordinator may result in authorization for these actions.
  - d. NMFS may intervene (catch and release and/or rehabilitate) if the protected species are in a situation that is life threatening and evidence suggests the animal is unlikely to survive in its immediate surroundings.
  - e. Surveys will be conducted throughout the area at least twice or more in calm surface conditions (BSS 3 feet or less), with experienced marine observers, to determine whether protected species are no longer present in the area.

Revised: May 22, 2012

While NMFS recommends these best management practices to prevent the future takes of marine mammals by entrapment, use of these measures cannot guarantee a take will not occur. Following these measures does not constitute compliance with the MMPA's Incidental Take requirements and take is not authorized.