



**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://serc.nmfs.noaa.gov>

APR 02 2014

F/SER31:NA  
SER-2014-13018

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

Ref.: SER-2014-13018 DWH-ERP, North Breton Island Restoration, North Breton Island, Plaquemines Parish, Louisiana

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 dredging/beach restoration 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 project may affect, but are not likely to adversely affect 5 species of sea turtles (green, hawksbill, Kemp's ridley, leatherback, and loggerhead) within Louisiana state waters in the Gulf of Mexico. NMFS requested additional information via email on February 5, 2014, and March 6, 2014. We received the responses on February 14, 2014, and March 7, 2014. We initiated consultation on March 7. 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 within Louisiana State waters, on and offshore of North Breton Island, Plaquemines Parish, Louisiana, at approximately 29.461311°N, 89.146914°W, North American



Datum 1983 (Figure 1). The in-water project footprint is 38 square miles (mi<sup>2</sup>) or 98.4 square kilometers (km<sup>2</sup>); 41.4 mi<sup>2</sup> (or 106.4 km<sup>2</sup>) including proposed North Breton Island restoration (Figure 2; Table 1). The project is not located within Gulf sturgeon critical habitat (68 FR 13370, March 19, 2003), nor proposed loggerhead sea turtle critical habitat (78 FR 43005, July 18, 2013).

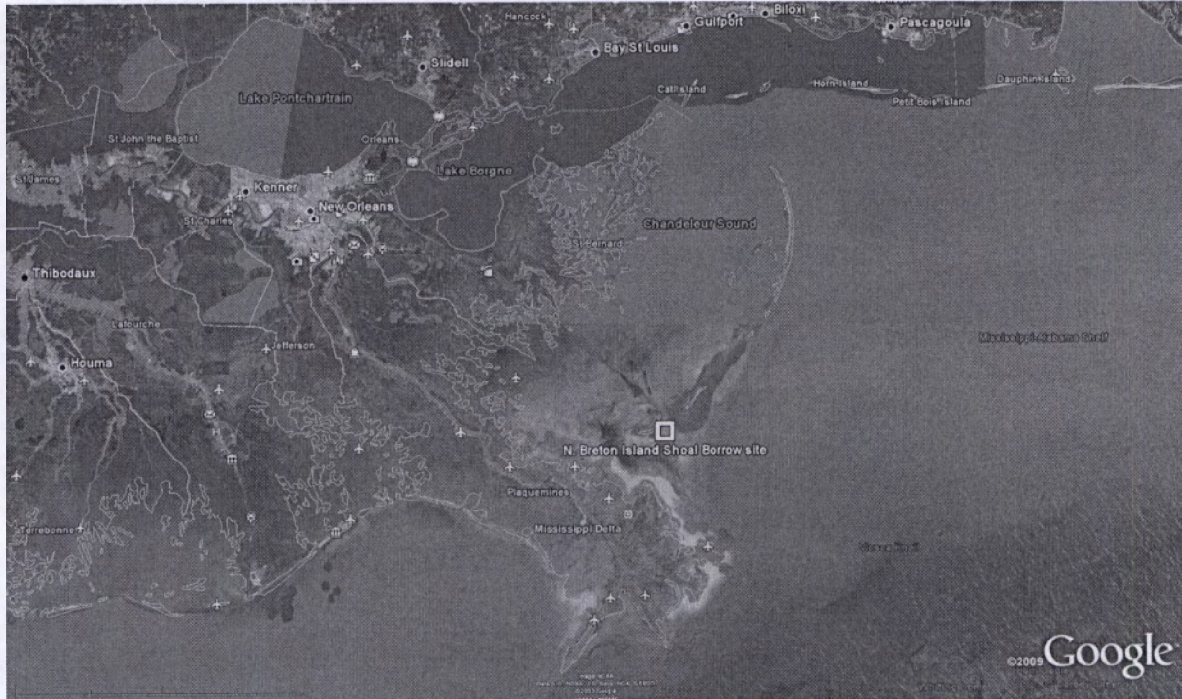


Figure 1. Image of the North Breton Island project area (yellow square) and Gulf sturgeon critical habitat Unit 8 (in red) (©2013 Google, NOAA, Data SIO, NOAA, US Navy, NGA, GEBCO, Image Landsat)

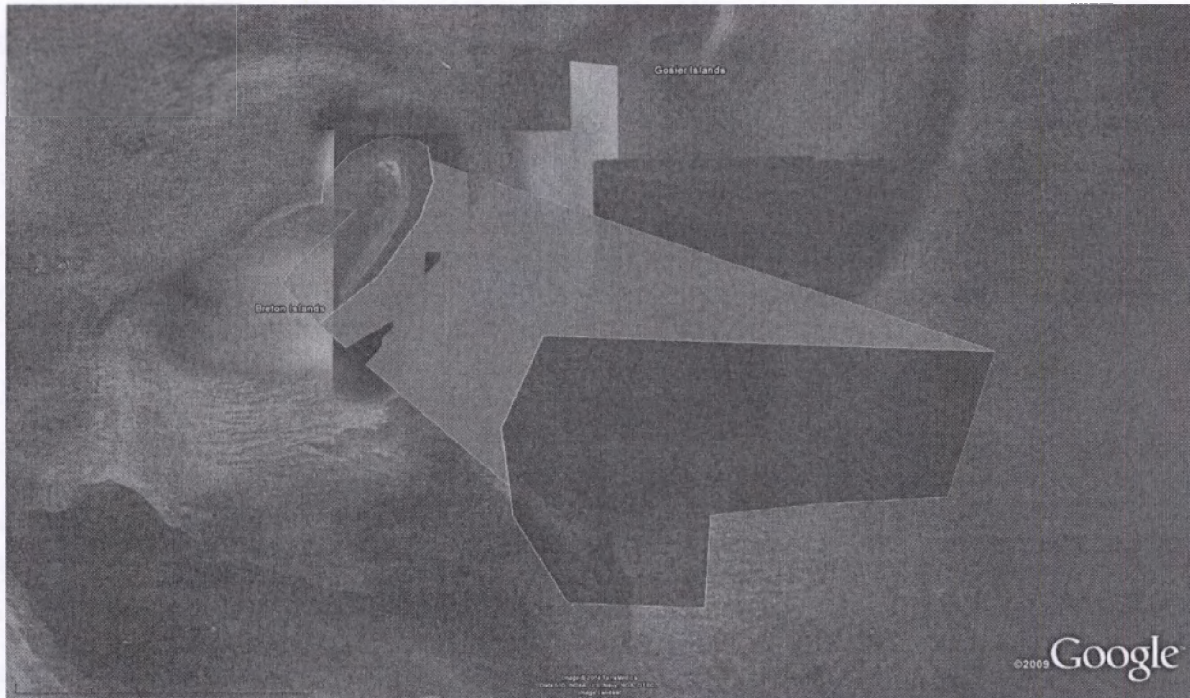


Figure 2. Enlarged image of the North Breton Island and the proposed project area (with the proposed restoration area in green, potential corridor for dredged-material pipeline in orange, and the offshore shoals borrow site in red) (©2014 Google, TerraMetrics, NOAA, Data SIO, NOAA, US Navy, NGA, GEBCO, Image USDA Farm Service Agency).

**Table 1. Table of bounding coordinates for a) proposed restoration, b) dredging corridor, c) offshore shoals**

Breton Island Proposed Restoration Area is approx. 3.4 mi <sup>2</sup> (~8.8 km <sup>2</sup> )		Breton Island Corridor Area is approx. 16.5 mi <sup>2</sup> (~42.7 km <sup>2</sup> )		Offshore Shoals Area is approx. 21.5 mi <sup>2</sup> (~55.8 km <sup>2</sup> )	
Latitude (°N)	Longitude (°W)	Latitude (°N)	Longitude (°W)	Latitude (°N)	Longitude (°W)
29.487158	89.191673	29.496726	89.163768	29.457875	89.134875
29.491805	89.191165	29.454383	89.019706	29.454388	89.019700
29.498609	89.183923	29.457879	89.134896	29.421817	89.031979
29.501141	89.178138	29.437380	89.145716	29.420373	89.064667
29.502008	89.172797	29.424457	89.143734	29.417808	89.091988
29.500959	89.167088	29.460432	89.192517	29.397150	89.093600
29.499718	89.164250	29.471277	89.176870	29.398256	89.128713
29.491937	89.162917	29.483875	89.166366	29.417665	89.142694
29.483876	89.166366	29.491937	89.162917	29.437376	89.145719
29.471277	89.176870				
29.460432	89.192517				
29.469420	89.202010				
29.473541	89.198512				
29.479968	89.189916				
29.485583	89.182974				

The applicant proposes to dredge 3.7 million cubic yards ( $\text{yd}^3$ ) or approximately  $2.8 \times 10^6$  cubic meters ( $\text{m}^3$ ) of sand, silt, and clay materials from 1 or more sites within offshore shoals borrow sites (Figure 2) from a water depth range of 6-20 feet (ft) or 1.8-6.1 meters (m) deep mean lower low water (MLLW). A hydraulic cutterhead dredge will pump the dredged materials, via a 30-inch-diameter pipeline, from the borrow areas to the Breton Island restoration site approximately 3 mi away (Figure 2). The applicant will use a pipeline barge to bring pipe to a staging area and another barge with a crane to connect the pipe into strings of 6-7 pipes floated on pontoons to the existing joined pipeline from the island. These pipes will be connected to the booster pump barge and dredge barge at the borrow site. After connection, the pipe will be lowered by crane to the bottom, except for a floating length of pipe from the dredge barge to the booster pump barge to give the dredge room to maneuver. During removal, the pipe will be raised by crane from the bottom and placed on pontoons, where it will be disconnected into separate pipe sections and placed on the pipe barge for transport.

Temporary retention dikes will be constructed on the island using the dredged materials. The applicant will construct the dikes via barge-mounted bucket dredge and trackhoes. Sand will be reworked with shore-based equipment (e.g., dozers) after being pumped to the island via hydraulic dredge pipeline. The retention dikes will require 85,000-110,000  $\text{yd}^3$  ( $\sim 0.65\text{-}0.84 \times 10^6 \text{ m}^3$ ) of material. Retention dikes approximately 5-7 ft high by 35-40 ft at the base will be constructed to contain the dredged material for the marsh platform. Dredged material retention dikes would be placed bayward of the island and perpendicular to the island on the north and southern sides for a total of approximately 17,000 linear feet. The bayward dike may have to be protected from wave action with geotextile or other material during construction. The permeable geotextile will be secured to the dike via weights or stakes to prevent it from being dislodged from the dike. The geotextile will extend 5 ft beyond than the protective dike and will be secured to the dike and adjacent sediment substrate. Since the geotextile will be installed directly to the dike which will be above the MLLW line, it will not have the potential to impact ESA-listed species. The dredged material placed in shallow waters within the retention dikes will be the foundation for marsh restoration and the retention dikes will be gapped or degraded to marsh level after construction.

The mobilization and demobilization phase of the dredge and pipeline will take 1.5-2 months each, for a total of 3-4 months. The retention dike construction will take 3-4 months. The dikes will be constructed at the same time the dredge and dredge pipe are being mobilized. Dredging  $3.7 \times 10^6 \text{ yd}^3$  (or  $2.8 \times 10^6 \text{ m}^3$ ) of material will take up to 5 months, assuming 1 borrow area. If separate borrow areas are needed for beach, dune, and marsh material sand sources, then these construction times would be longer due to the need to mobilize to a second borrow area. The applicant will be working 24-hour shifts. The entire project is expected to last up to 12 months, barring unfavorable weather, equipment breakdowns, and other logistical challenges encountered.

This project involves potential impacts to terrestrial, as well as marine, ESA-listed species. The terrestrial portion of the project will be supervised by U.S. Fish and Wildlife Service (USFWS). The USFWS will ensure that the applicant/construction crews comply with the best management practices in NMFS's *Sea Turtle and Smalltooth Sawfish Construction Conditions*, dated March 23, 2006, and *Measures for Reducing Entrapment Risk to Protected Species*, dated May 22,

2012, to ensure that no protected species are entrapped within the marsh creation retention area or the dredging site and corresponding pipeline corridor.

ESA-listed sea turtles (the endangered leatherback, Kemp's ridley, and hawksbill; the threatened/endangered<sup>1</sup> green; and the threatened loggerhead), marine mammals (the endangered blue, fin, humpback, sei, and sperm whales), and the threatened Gulf sturgeon can be found in or near the action area and may be affected by the project. The site is not located in critical habitat for any listed species and does not have submerged aquatic vegetation (SAV).

Breton Island is the southernmost island in the Chandeleur Islands barrier system and is situated along the western edge of the subsiding St. Bernard delta complex within the Mississippi Deltaic Plain. The barrier system includes (from north to south) Chandeleur Island, Curlew Island, Gosier Island, and Breton Island. This island system is separated by tidal inlets and numerous washovers which are the result of marine processes and subsidence that have reworked and eroded the most westward deltaic deposits into the existing sand bodies. The most dominant process currently affecting the barrier islands is overwash during storms and high tides, thereby making the barrier system discontinuous at present. Breton Island has also been separated from the island chain by the Mississippi River Gulf Outlet navigation channel. The Chandeleur Islands barrier system is separated from the fringing delta plain marshes located to the east by approximately 20 mi of open water in Chandeleur and Breton Sounds. The borrow site composition is homogeneous, gentle sloping flat, soft mud with sand deposits (i.e., Pleistocene and Holocene deltaic) nearshore marine and coastal sedimentary deposits (loamy fine sand) with a depth range of 6-20 ft (1.8-6.1 m) below the water surface MLLW.

Five ESA-protected species of whales (blue, fin, humpback, sei, and sperm) and Gulf sturgeon are known to occur in the Gulf of Mexico. However, NMFS believes due to the relatively shallow depth of the project area, whales are not likely to be present. Based upon known wintering migration patterns<sup>2</sup> and the location of the project area, Gulf sturgeon are extremely unlikely to be present. Consequently, these species will not be considered further.

NMFS identified the following potential effects to listed sea turtles and concluded that they are not likely to be adversely affected by the proposed action. Sea turtles may be affected by being temporarily unable to use the sites for forage or refuge habitat due to potential avoidance of construction activities and related noise. Moreover, the borrow sites consist of homogeneous, soft mud with sand deposits and is unlikely to attract sea turtles because they lack physical features which could be used for foraging or shelter. There are no seagrasses, SAV, or hard bottom within the project sites; therefore, loss of foraging habitat and associated potential effects to sea turtles are insignificant. In addition, they will be physically excluded from areas contained by turbidity curtains, but these effects will be insignificant for the same reason. Effects on sea turtles include the risk of injury from impacts with operating or moving construction machinery and materials, which will be discountable due to the species' mobility. No adverse effects to sea

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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.

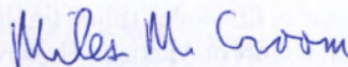
<sup>2</sup> Ross, S.T., W.T. Slack, R.J. Heise, M.A. Dugo, H. Rogillio, B.R. Bowen, P. Mickle, and R.W. Heard. 2009. Estuarine and coastal habitat use of Gulf sturgeon (*Acipenser oxyrinchus desotoi*) in the North-Central Gulf of Mexico. *Estuaries and Coasts* 32: 360-374.

turtles or Gulf sturgeon are expected from proposed cutterhead dredge use, as cutterhead dredges advance very slowly and are noisy, enabling these species to safely move away.<sup>3</sup> The implementation of NMFS's *Sea Turtle and Smalltooth Sawfish Construction Conditions*, dated March 23, 2006, and *Measures for Reducing Entrapment Risk to Protected Species*, dated May 22, 2012, ensure additional protection.

Finally, we concur with your project-effect determinations that the project is not likely to adversely affect leatherback, Kemp's ridley, hawksbill, loggerhead, or green sea turtles, or Gulf sturgeon or its designated critical habitat. 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 is designated that may be affected by the identified action.

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](mailto:Nicolas.Alvarado@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. *Measures for Reducing Entrapment Risk to Protected Species* (Revised: May 22, 2012)  
3. *PCTS Access and Additional Considerations for ESA Section 7 Consultations* (Revised June 11, 2013)

File: 1514-22.C

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<sup>3</sup> NMFS. 2007. Revision 2 to the National Marine Fisheries Service (NMFS) November 19, 2003, Gulf of Mexico Regional Biological Opinion (GRBO) to the U.S. Army Corps of Engineers (COE) on Hopper Dredging of Navigation Channels and Borrow Areas in the U.S. Gulf of Mexico. National Marine Fisheries Service, Southeast Regional Office, Protected Resources Division, St. Petersburg, Florida. January 9, 2007. 15 pp.

## **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.

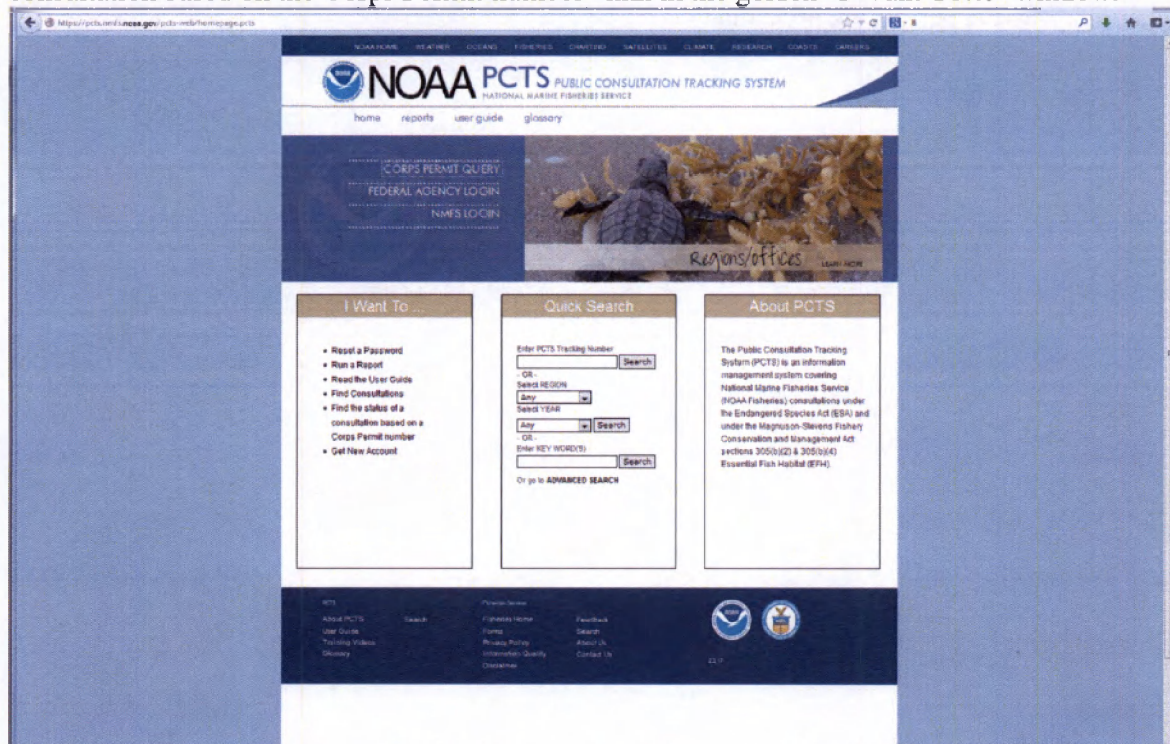
Revised: May 22, 2012

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.

## 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](mailto: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.