



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

MEMORANDUM FOR: FILE

FROM: Christy Fellas, DWH Environmental Compliance Coordinator
NOAA Restoration Center

DATE: June 5, 2023

SUBJECT: MS TIG RP4 WCNH3 Hancock County Marsh Living Shoreline Phase 6
Breakwater Project: Activities Covered by Existing ESA Compliance

A handwritten signature in black ink, appearing to read "Christy Fellas", is placed to the right of the subject line.

Based on my review of the project materials (May 2023) describing the living shoreline project in Hancock County, Mississippi, the NOAA Restoration Center (RC) determined that project proposed for NRDA funding by the MS TIG has existing coverage from previous compliance efforts under the Endangered Species Act, under the jurisdiction of National Marine Fisheries Service (NMFS). Consultation with the U.S. Army Corps of Engineers during permitting (SAM-2022-00174-MJF) was completed by NMFS on March 28, 2023.

The proposed activities fit within the existing ESA analysis completed in 2023 and do not require further ESA consultation at this time. If the project is modified in a way that may not be covered by existing analyses, it will be reevaluated as appropriate.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
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F/SER31:MA/AM
SERO-2022-02205

Maryellen J. Farmer
Senior Project Manager
Regulatory Division
U.S. Army Corp of Engineers
Biloxi Field Office
1141 Bayview Avenue, Suite 203
Biloxi, MS 39530

Ref.: SAM-2022-00174-MJF, Mississippi Department of Environmental Quality, Breakwater Construction, Bayou Bolan, Hancock County, Mississippi – EXPEDITED TRACK

Dear Maryellen Farmer,

This letter responds to your March 21, 2023 revised request pursuant to Section 7 of the Endangered Species Act (ESA) for consultation with the National Marine Fisheries Service (NMFS) on the subject action.

We reviewed the action agency's consultation request document and related materials. Based on our knowledge, expertise, and the action agency's materials, we concur with the action agency's conclusions that the proposed action is not likely to adversely affect the NMFS ESA-listed species and/or designated critical habitat.

On July 5, 2022, the U.S. District Court for the Northern District of California issued an order vacating the 2019 regulations that were revised or added to 50 CFR part 402 in 2019 ("2019 Regulations," see 84 FR 44976, August 27, 2019) without making a finding on the merits. On September 21, 2022, the U.S. Court of Appeals for the Ninth Circuit granted a temporary stay of the district court's July 5 order. As a result, the 2019 regulations are once again in effect, and we are applying the 2019 regulations here. For purposes of this consultation, we considered whether the substantive analysis and conclusions articulated in the letter of concurrence would be any different under the pre-2019 regulations. We have determined that our analysis and conclusions would not be any different.

This concludes your consultation responsibilities under the ESA for species and/or designated critical habitat under NMFS's purview. Reinitiation of consultation is required and shall be requested by the action agency or by NMFS where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (a) take occurs; (b) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered in this consultation; (c) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not previously considered in this consultation; or (d) if a new species is listed or critical habitat designated that may be affected by the action.



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 Melissa Alvarez by email at Melissa.Alvarez@noaa.gov.

Sincerely,

David Bernhart
Assistant Regional Administrator
for Protected Resources

File: 1514-22.f.6