United States Department of the Interior

FISH AND WILDLIFE SERVICE
Deepwater Horizon Gulf Restoration Office
341 Greeno Road North, Suite A
Fairhope, Alabama 36532

In Reply Refer To:
FWS/R4/DH NRDAR

Memorandum September 10, 2018

To: Field Supervisor, Minnesota-Wisconsin Field Office, Bloomington, MN

From: Assistant Gulf Restoration Manager, *Deepwater Horizon* Gulf Restoration Office

Subject: Notification of Informal Consultation for Restoration of Common Loons in Minnesota

Overview

The proposed common loon restoration project is currently being evaluated as a potential restoration project to restore natural resources in Minnesota that were injured as a result of the *Deepwater Horizon* (*DWH*) oil spill. We have reviewed this project in accordance with Section 7 of the ESA. We have made a No Effect determination for this project and are providing this memo as a notification. A brief description of the project is provided below and additional project detail can be found in the biological evaluation (BE) form included with this letter.

Project Description

This project is intended to reduce mortality and increase reproductive success of common loons at breeding, nesting, and migration staging locations in Minnesota (MN), USA. Proposed actions include:

1) Acquisition of lakeshore loon nesting habitat. In order to facilitate direct protection and ensure future availability of nest sites and supporting habitat we propose to acquire loon nesting habitat (i.e., shoreline) through land purchase at known nesting areas. Lakeshore restoration and management plans will be developed if the lands acquired do not fall under an existing management plan protective of loon habitat and nesting. Advisory signage will be installed in areas used by nesting loons to advise the public of access restrictions.
2) Habitat Enhancement through installation of artificial nest platforms and creation of a "Loon-friendly Lake Association" registry. Studies indicate (Kenow et al., 2013) the installation and management of ANPs help mitigate the effects of nesting habitat loss resulting from shoreline development, nesting failure due to fluctuating water levels, and shoreline-based nest predation. Artificial nesting platforms will be placed along targeted lakeshores in lakes managed and/or owned by Minnesota DNR (MDNR), and where a “lake association” has agreed to manage platforms according MDNR guidelines. We propose to engage established lake associations in order to create a “Loon-friendly Lake Association” registry program dedicated to loon conservation and monitoring.

3) Reduction in exposure to lead-based fishing tackle through funding intervention projects that promote the use of alternatives to lead fishing jigs and sinkers in MN. Ingestion of lead fishing tackle has been found to be the cause of death in 10 to 20% of MN loons turned in by private citizens annually, and has been identified as the leading cause of mortality in adult common loons (Sidor et al. 2003, Strom et al. 2009). We propose to increase adult loon survival rates by funding intervention projects that promote the use of alternatives to lead fishing jigs and sinkers in MN.

This project is expected to be implemented over the course of 3-5 years. Activities proposed within the first year of project implementation include establishing an on-sight FWS project coordinator to guide project implementation and coordinate project partners. Over the following years, the project will develop a priority list of habitat parcels, conduct site visits to assess any habitat conservation needs, develop a list of lakes potentially suitable for territorial loon occupancy but lacking in secure nesting habitat, and conduct site visits to identify lakes that would benefit from the addition of artificial nest platforms to increase breeding habitat. It will also collect and/or synthesize baseline MN loon population demographics data to inform monitoring and adaptive management strategies. Priority sites available for acquisition will be pursued for purchase as they become available. Monitoring will consist of quantifying increases in loon occupancy and reproductive performance on all lakes at which conservation activities occurred, as well as monitoring reduction in mortality from lead fishing tackle. Mobilization would begin immediately upon receipt of funds. Implementation is expected to begin within one year after receipt of funds, depending on contracting and hiring logistics, equipment acquisition, and timing of the nesting season.

Background

After the *DWH* oil spill, federal and state natural resource trustee agencies (Trustees) came together to assess the effects of the spill and plan for the restoration of injured natural resources. As part of the legal settlement reached with BP in 2016, the Trustees prepared a Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS), to provide the framework for *DWH* oil spill restoration across the Gulf.

The Final PDARP/PEIS established Trustee Implementation Groups (TIGs) that develop plans for, choose, and implement specific restoration actions under the Final PDARP/PEIS. The Open Ocean Trustee Implementation Group (TIG) includes four federal trustee agencies: the United States Department of Commerce, represented by the National Oceanic and Atmospheric Administration (NOAA); the United States Department of the Interior (USDOI), represented by the United States Fish and Wildlife Service (USFWS) and National Park Service (NPS); the United States Department of Agriculture (USDA); and the United States Environmental Protection Agency (EPA).

The Open Ocean TIG has evaluated this project as a potential restoration project under the Open Ocean Trustee Implementation Group Draft Restoration Plan I/Environmental Assessment (Draft RP I/EA). The federal trustees work together on restoration plans and will coordinate with appropriate state trustees when proposed projects overlap their jurisdictions. This will include water column and ocean bottom fish and invertebrates, sea turtles, birds, marine mammals,

sturgeon, and deep-sea coral reefs.

We reviewed the common loon restoration project activities for compliance with Section 7 of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.S 1531 et seq.). We have made a No Effect determination for any listed species within the potential project action area. All of the restoration measures and management activities will be designed to avoid adverse impacts and have long-term beneficial impacts to habitats and the native species that utilize the areas. We have summarized our analysis in the attached BE form.

Within the BE form, we also reviewed the proposed project for impacts to bald eagles and migratory birds in accordance with the Bald and Golden Eagle Protection Act (BGEPA) of 1940 (16 U.S.C. 668-668c) and the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703–712), respectively and we determined take would be avoided.

If you have questions or concerns regarding this request, please contact Erin Chandler, Fish and Wildlife Biologist, at 470-361-3153 or erin_chandler@fws.gov.

Attachments (1)

- BE form including project maps

Biological Evaluation Form

Deepwater Horizon Oil Spill Restoration

U.S. Fish and Wildlife Service & National Marine Fisheries Service

This form will be filled out by the Implementing Trustee and used by the regulatory agencies. The form will provide information to initiate informal Section 7 consultations under the Endangered Species Act (ESA) and may be used to document a No Effect determination or to initiate pre-consultation technical assistance.

It is recommended that this form also be completed to inform and evaluate additional needs for compliance with the following authorities: Migratory Bird Treaty Act (MBTA), Marine Mammal Protect Act (MMPA), Coastal Barrier Resources Act (CBRA), Bald and Golden Eagle Protection Act (BGEPA) and Section 106 of the National Historic Preservation Act (NHPA).

Further information may be required beyond what is captured on this form. Note: if you need additional space for writing, please attach pages as needed.

A. Project Identification

Federal Action Agency: U.S. Fish and Wildlife Service

Additional Federal Action Agency: Select Most Appropriate

Agency Contact(s)

USFWS: Ashley Mills at 812-756-2712 and Ashley_Mills@fws.gov
NMFS: Christy Fellas at 727-551-5714 and Christina.Fellas@noaa.gov

I. *Implementing Trustee(s)*: US Fish and Wildlife Service

II. *Contact Person*: Kate Healy

III. *Phone*: (251) 817-8010

Email: katherine_healy@fws.gov

IV. *Project Name and ID# (Official name of project and ID number assigned by Trustees in DIVER)*: Restoration of Common Loon in Minnesota

V. *NMFS Office (Choose appropriate office based on project location)*: Not Applicable

USFWS Office (Choose or write in appropriate office based on project location): Green Bay/Twin Cities Ecological Services Field Office

VI. *Project Type #1*: Restore and Conserve Bird Nesting and Foraging Habitat

Project Type #2, if helpful: Prevent Incidental Bird Mortality

VII. *TIG*: Open Ocean TIG

Restoration Plan: Restoration Plan 1

B. Project Location

I. Physical Address of action area (If applicable): Minnesota

II. *State & County/Parish of action area*: Unknown at this time

III. *Latitude & Longitude for action area (Decimal degrees and datum [e.g., 27.71622°N, 80.25174°W NAD83] [online conversion: https://www.fcc.gov/encyclopedia/degrees-minutes-seconds-tofrom-decimal-degrees])*: Unknown at this time

IV. Township, range and section of the action area: Unknown at this time

C. Existing Compliance Documentation

NEPA Documents

Are there any existing draft or final NEPA analyses (not PDARP/PEIS) that cover all or part of this project? ☑ Yes ☐ No

Examples:
-USACE programmatic NEPA analysis
-USACE Clean Water Act individual permit for the project
-NEPA analysis provided by a federal agency that gave approval, funding or authorization

Permits

Have any federal permits been obtained for this project, if so which ones and what is the permit number(s)? ☐ Yes ☑ No

Have any federal permits been applied for but not yet obtained, if so which ones and what is the permit number(s)? ☐ Yes ☑ No

If yes to any question above, please provide details in the text box (i.e. link to the NEPA document, or name of the document, year, lead federal agency, POC, copy of the permit or permit application, etc.). This is needed to check for consistency of the project scope across different sources and to facilitate the NEPA analysis. If you do not have a link, email the documents to the TIG representative for the Trustee designated as lead federal agency for the restoration plan.

Restoration plan: Open Ocean Trustee Implementation Group Draft Restoration Plan I/Environmental Assessment (Draft RP I/EA).

Any documentation or information provided will be very helpful in moving your project forward.

Name of Person Completing this Form:	Kate Healy
Name of Project Lead:	
Date Form Completed:	04/17/2018
Date Form Updated:	5/9/18

D. Description of Action Area

Attach a separate map delineating where the action will occur and where critical habitat, if any, is located. Map or describe all areas that may be directly or indirectly affected by the action. Provide a description of the existing environment (e.g., topography, vegetation type, soil type, substrate type, water quality, water depth, tidal/riverine/estuarine, hydrology and drainage patterns, current flow and direction), and land uses (e.g., public, residential, commercial, industrial, agricultural). If CH is not designated in the area, then map or describe any suitable habitat in the area.

The action area will occur within the state boundaries of Minnesota (MN). Exact locations of parcel acquisition and lakes designated for artificial nest platform placement are unknown at this time. When specific locations and management activities are identified, Implementing Trustees will revisit to determine if any protected species and/or designated critical habitat occur in those areas. If occurrence is known or likely, Implementing Trustees will identify potential impacts as well as measures to avoid or minimize impacts such that when implemented, impacts are insignificant or discountable. If a determination of "no effect" cannot be made, Implementing Trustees will initiate consultation.

a. *Waterbody*

If applicable. Name the body of water, including wetlands (freshwater or estuarine), on which the project is located. If the location is in a river or estuary, please approximate the navigable distance from the project location to the marine environment.

Location of water-bodies (lakes) where activities will occur is unknown at this time. Activities anticipated to occur within the state boundaries of Minnesota. When specific locations and management activities are identified, Implementing Trustees will revisit to determine if any protected species and/or designated critical habitat occur in those areas.

b. *Existing Structures*

If applicable. Describe the current and historical structures found in the action area (e.g., buildings, parking lots, docks, seawalls, groynes, jetties, marina). If known, please provide the years of construction.

Unknown at this time

c. *Seagrasses & Other Marine Vegetation*

If applicable. Describe seagrasses found in action area. If a benthic survey was done, provide the date it was completed and a copy of the report. Estimate the species area of coverage and density. Attach a separate map showing the location of the seagrasses in the action area.

N/A

d. *Mangroves*

If applicable. Describe the mangroves found in action area. Indicate the species found (red, black, white), the species area of coverage in square footage and linear footage along project shoreline. Attach a separate map showing the location of the mangroves in the action area.

N/A

e. *Corals*

If applicable. Describe the corals found in action area. If a benthic survey was done, provide the date it was completed and a copy of the report. Estimate the species area of coverage and density. Attach a separate map showing the location of the corals in the action area.

N/A

f. *Uplands*

If applicable. Describe the current terrestrial habitat in which the project is located (e.g. pasture, forest, meadows, beach and dune habitats, etc.).

Unknown at this time.

g. *Marine Mammals*

If applicable. Indicate and describe the species found in the action area. Use NMFS' Stock Assessment Reports (SARs) for more information, see http://www.nmfs.noaa.gov/pr/sars/region.htm

N/A

E. Project Description

I. *Construction Schedule (What is the anticipated schedule for major phases of work? Include duration of in-water work.)*

N/A

II. *Describe the Proposed Action: What are you trying to accomplish and how with this project? Describe in detail the construction equipment and methods** needed; long term vs. short term impacts; duration of short term impacts; dust, erosion, and sedimentation controls; restoration areas; if the project is growth-inducing or facilitates growth; whether the project is part of a larger project or plan; and what permits will need to be obtained. 3. Attach a separate map showing project footprint, avoidance areas, construction accesses, staging/laydown areas.* ***If construction involves overwater structures, pilings and sheetpiles, boat slips, boat ramps, shoreline armoring, dredging, blasting, artificial reefs or fishery activities, list the method here, but complete the next section(s) in detail.***

This project is intended to reduce mortality and increase reproductive success of common loons at breeding, nesting, and migration staging locations in Minnesota (MN), USA. Proposed actions include:

1.Acquisition of lakeshore loon nesting habitat.
In order to facilitate direct protection and ensure future availability of nest sites and supporting habitat we propose to acquire loon nesting habitat (i.e., shoreline) through land purchase at known nesting areas. Lakeshore restoration and management plans will be developed if the lands acquired do not fall under an existing management plan protective of loon habitat and nesting. Advisory signage will be installed in areas used by nesting loons to advise the public of access restrictions.

2.Habitat Enhancement through installation of artificial nest platforms and creation of a "Loon-friendly Lake Association" registry.
Studies indicate (Kenow et al., 2013) the installation and management of ANPs help mitigate the effects of nesting habitat loss resulting from shoreline development, nesting failure due to fluctuating water levels, and shoreline-based nest predation. Artificial nesting platforms will be placed along targeted lakeshores in lakes managed and/or owned by Minnesota DNR (MDNR), and where a “lake association” has agreed to manage platforms according MDNR guidelines. We propose to engage established lake associations in order to create a “Loon-friendly Lake Association” registry program dedicated to loon conservation and monitoring.

3.Reduction in exposure to lead-based fishing tackle through funding intervention projects that promote the use of alternatives to lead fishing jigs and sinkers in MN.
Ingestion of lead fishing tackle has been found to be the cause of death in 10 to 20% of MN loons turned in by private citizens annually, and has been identified as the leading cause of mortality in adult common loons (Sidor et al. 2003, Strom et al. 2009). We propose to increase adult loon survival rates by funding intervention projects that promote the use of alternatives to lead fishing jigs and sinkers in MN.

This project is proposed for 3 years. Activities proposed within the first year of project implementation include establishing an on-sight FWS project coordinator to guide project implementation and coordinate project partners. Develop a priority list of habitat parcels, conduct site visits to assess any habitat conservation needs, develop a list of lakes potentially suitable for territorial loon occupancy but lacking in secure nesting habitat, conduct site visits to identify lakes that would benefit from the addition of artificial nest platforms to increase breeding habitat. Collect and/or synthesize baseline MN loon population demographics data to inform monitoring and adaptive management strategies. Priority sites available for acquisition will be pursued for purchase. Monitoring will consist of quantifying increases in loon occupancy and reproductive performance on all lakes at which conservation activities occurred, as well as monitoring reduction in mortality from lead fishing tackle.

Mobilization would begin immediately upon receipt of funds. Implementation is expected to begin within one year after receipt of funds, depending on contracting and hiring logistics, equipment acquisition, and timing of the nesting season.

III. *Specific In-Water and/or Terrestrial Construction Methods (Provide a detailed account of construction methods. It is important to include step-by-step descriptions of how demolition or removal of structures is conducted and if any debris will be moved and how. Describe how construction will be implemented, what type and size of materials will be used and if machines will be used, manual labor, or both. Indicate if work will be done from upland, barge, or both.)*

a. *If applicable, Overwater Structures (Place your answers to the following questions in the box below.)*

i. *Is the proposed use of this structure for a docking facility or an observation platform?*

ii. *If no, is this a fishing pier? Public or Private? How many people are expected to fish per day? How do you plan to address hook and line captures?*

iii. *Use of "Dock Construction Guidelines"? http://sero.nmfs.noaa.gov/protected_resources/section_7/guidance_docs/documents/dockkey2002.pdf*

iv. *Type of decking: Grated – 43% open space; Wooden planks or composite planks – proposed spacing?*

v. *Height above Mean High Water (MHW) elevation?*

vi. *Directional orientation of main axis of dock?*

vii. *Overwater area (sqft)?*

Artificial loon nesting platforms will be manufactured off site. Platforms will be transported to designated lakes and floated to predetermined locations. Anchors will be attached to each nesting platform and will rest on the lake bottom. Nesting platforms will be removed each fall to avoid freezing and returned in early spring for nesting season.

b. *Pilings & Sheetpiles (What type of material is the piling or sheetpiles? What size and how many will be used? Method used to install: impact hammer, vibratory hammer, jetting, etc.?)*

N/A

c. *Marinas and Boat Slips (Describe the number and size of slips and if the number of new slips changes from what is currently available at the project. Indicate how many are wet slips and how many are dry slips. Estimate the shadow effect of the boats - the area (sqft) beneath the boats that will be shaded.)*

N/A

d. *Boat Ramp (Describe the number and size of boat ramps, the number of vessels that can be moored at the site (e.g., staging area) and if this is a public or private ramp. Indicate the boat trailer parking lot capacity, and if this number changes from what is currently available at the project.)*

N/A

e. *Shoreline Armoring (This includes all manner of shoreline armoring (e.g., riprap, seawalls, jetties, groins, breakwaters, etc.). Provide specific information on material and construction methodology used to install the shoreline armoring materials. Include linear footage and square footage. Attach a separate map showing the location of the shoreline armoring in the action area.*

N/A

f. *Dredging or digging (Provide details about dredge type (hopper, cutterhead, clamshell, etc.), maximum depth of dredging, area (ft^2) to be dredged, volume of material (yd^3) to be produced, grain size of material, sediment testing for contamination, spoil disposition plans, and hydrodynamic description (average current speed/direction)). If digging in the terrestrial environment, please describe fully with details about possible water jetting, vibration methods to install pilings for dune walk-over structure, or other methods. If using devices/methods/turtle relocation dredging to relocate sea turtles then describe the methods here.*

N/A

g. *Blasting (Projects that use blasting might not qualify as "minor projects," and a Biological Assessment (BA) may need to be prepared for the project. Arrange a technical consultation meeting with NMFS Protected Resources Division to determine if a BA is necessary. Please include explosive weights and blasting plan.)*

N/A

h. *Artificial Reefs (Provide a detailed account of the artificial reef site selection and reef establishment decisions (i.e., management and siting considerations, stakeholder considerations, environmental considerations), deployment schedule, materials used, deployment methods, as well as final depth profile and overhead clearance for vessel traffic. For additional information and detailed guidance on artificial reefs, please refer to the artificial reef program websites for the particular state the project will occur in.*

N/A

i. *Fishery Activities (Describe any use of gear that could entangle or capture protected species. This includes activities that may enhance fishing opportunities (e.g. fishing piers) or be fishery/gear research related (e.g. involve trawl gear, gillnets, hook and line gear, crab pots etc)).*

N/A

F. NOAA Species & Critical Habitat and Effects Determination Requested

1. *List all species, critical habitat, proposed species and proposed critical habitat that may be found in the action area.*

2. *Attach a separate map identifying species/critical habitat locations within the action area.*

For information on species and critical habitat under under NMFS jurisdiction, visit: http://sero.nmfs.noaa.gov/protected_resources/section_7/threatened_endangered/Documents/gulf_of_mexico.pdf.

Identify if Gulf sturgeon are in marine or in freshwater in your Species and/or Critical Habitat list to determine which federal agency will perform the analysis (e.g. Gulf sturgeon CH - marine). Identify if sea turtles are in water or on land in your Species and/or Critical Habitat list to determine which federal agency will perform the analysis (e.g. Loggerhead sea turtle CH - terrestrial).

SPECIES and/or **CRITICAL HABITAT**	**CH UNIT** (if applicable)	**LOCATION** (sea turtles and Gulf sturgeon only)	**DETERMINATION** (see definitions below)
Select One		Select One	Select Most Appropriate
Select One		Select One	Select Most Appropriate
Select One		Select One	Select Most Appropriate
Select One		Select One	Select Most Appropriate
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Select One		Select One	Select Most Appropriate
Select One		Select One	Select Most Appropriate
Select One		Select One	Select Most Appropriate

Determination Definitions

NE = no effect. This determination is appropriate when the proposed action will not directly, indirectly, or cumulatively impact, either positively or negatively, any listed, proposed, candidate species or designated/proposed critical habitat.

NLAA = not likely to adversely affect. This determination is appropriate when the proposed action is not likely to adversely impact any listed, proposed, candidate species or designated/proposed critical habitat or there may be beneficial effects to these resources.

Response requested is concurrence with the not likely to affect determination. This conclusion is appropriate when effects to the species or critical habitat will be wholly beneficial, discountable, or insignificant. Beneficial effects are contemporaneous positive effects without any adverse effects to the species or habitat. Insignificant effects relate to the size of the impact, while discountable effects are those that are extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur. If the Services concur in writing with the Action Agency's determination of "is not likely to adversely affect" listed species or critical habitat, the section 7 consultation process is completed.

LAA = likely to adversely affect. This determination is appropriate when the proposed action is likely to adversely impact any listed, proposed, candidate species or designated/proposed critical habitat.

Response requested for listed species is formal consultation for action with a likely to adversely affect determination, with a biological opinion as the concluding document. This conclusion is reached if any adverse effect to listed species or critical habitat may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not discountable or insignificant. In the event the overall effect of the proposed action is beneficial to the listed species or critical habitat, but may also cause some adverse effect on individuals of the listed species or segments of the critical habitat, then the determination is "likely to adversely affect." Any LAA determination requires formal section 7 consultation and will require additional information.

Critical Habitat No Destruction = When the proposed action will not diminish the value of critical habitat.

Critical Habitat Destruction or Adverse Modification = Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

G. USFWS Species & Critical Habitat and Effects Determination Requested

1. *List all species, critical habitat, proposed species and proposed critical habitat that may be found in the action area.*
2. *Attach a separate map identifying species/critical habitat locations within the action area.*

For information on species and critical habitat under USFWS jurisdiction, visit http://www.fws.gov/endangered/species/.

Identify if Gulf sturgeon are in marine or in freshwater in your Species and/or Critical Habitat list to determine which federal agency will perform the analysis (e.g. Gulf sturgeon CH - marine). Identify if sea turtles are in water or on land in your Species and/or Critical Habitat list to determine which federal agency will perform the analysis (e.g. Loggerhead sea turtle CH - terrestrial).

SPECIES and/or **CRITICAL HABITAT**	**CH UNIT** (if applicable)	**LOCATION** (sea turtles and Gulf sturgeon only)	**DETERMINATION** (see definitions below)
Select One		Select One	Select Most Appropriate
Select One		Select One	Select Most Appropriate
Select One		Select One	Select Most Appropriate
Select One		Select One	Select Most Appropriate
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Select One		Select One	Select Most Appropriate
Select One		Select One	Select Most Appropriate
Select One		Select One	Select Most Appropriate
Select One		Select One	Select Most Appropriate
See attached list for MN TEPC species		Select One	No Effect
		Select One	Select Most Appropriate

Determination Definitions

NE = no effect. This determination is appropriate when the proposed action will not directly, indirectly, or cumulatively impact, either positively or negatively, any listed, proposed, candidate species or designated/proposed critical habitat.

NLAA = not likely to adversely affect. This determination is appropriate when the proposed action is not likely to adversely impact any listed, proposed, candidate species or designated/proposed critical habitat or there may be beneficial effects to these resources.

Response requested is concurrence with the not likely to affect determination. This conclusion is appropriate when effects to the species or critical habitat will be wholly beneficial, discountable, or insignificant. Beneficial effects are contemporaneous positive effects without any adverse effects to the species or habitat. Insignificant effects relate to the size of the impact, while discountable effects are those that are extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur. If the Services concur in writing with the Action Agency's determination of "is not likely to adversely affect" listed species or critical habitat, the section 7 consultation process is completed.

LAA = likely to adversely affect. This determination is appropriate when the proposed action is likely to adversely impact any listed, proposed, candidate species or designated/proposed critical habitat.

Response requested for listed species is formal consultation for action with a likely to adversely affect determination, with a biological opinion as the concluding document. This conclusion is reached if any adverse effect to listed species or critical habitat may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not discountable or insignificant. In the event the overall effect of the proposed action is beneficial to the listed species or critical habitat, but may also cause some adverse effect on individuals of the listed species or segments of the critical habitat, then the determination is "likely to adversely affect." Any LAA determination requires formal section 7 consultation and will require additional information.

Critical Habitat No Destruction = When the proposed action will not diminish the value of critical habitat.

Critical Habitat Destruction or Adverse Modification = Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

H. Effects of the proposed project to the species and habitats

I. *Explain the potential beneficial and adverse effects to each species listed above (Describe what, when, and how the species will be impacted and the likely response to the impact. Be sure to include direct, indirect, and cumulative impacts and where possible, quantify effects. If species are present (or potentially present) and will not be adversely affected describe your rationale. If species are unlikely to be present in the general area or action area, explain why. This justification provides documentation for your administrative record, avoids the need for additional correspondence regarding the species, and helps expedite review.)*

The activities proposed under this project are expected to have no adverse impacts on the environment. All of the restoration measures and management activities will be designed to have long term beneficial impacts to habitats and the native species that utilize the areas. Land acquisition will prevent development of the land and loss of habitat. We anticipate land acquisition will not affect any listed species or designated critical habitat. The placement of ANP anchors on lake bottoms and planting native vegetation on lakeshores would be the activities with the most potential to cause disturbance, but can be mitigated through proper coordination.

When specific locations and management activities are identified, Implementing Trustees will revisit to determine if any protected species and/or designated critical habitat occur in those areas. If occurrence is known or likely, Implementing Trustees will identify potential impacts as well as measures to avoid or minimize impacts such that when implemented, impacts are insignificant or discountable. If a determination of "no effect" cannot be made, Implementing Trustees will initiate consultation.

II. *Explain the potential beneficial and adverse effects to critical habitat listed above (Describe what, when, and how the critical habitat will be impacted and the likely response to the impact. Be sure to include direct, indirect, and cumulative impacts and where possible, quantify effects (e.g. acres of habitat, miles of habitat). Describe your rationale if designated or proposed critical habitats are present and will not be adversely affected.*

Unknown at this time

I. Actions to Reduce Adverse Effects

I. *Explain the actions to reduce adverse effects to each species listed above (For each species for which impacts were identified, describe any conservation measures (e.g. BMPs) that will be implemented to avoid or minimize the impacts. Conservation measures are designed to avoid or minimize effects to listed species and critical habitats or further the recovery of the species under review. Conservation measures are considered part of the proposed action and their implementation is required. Any changes to, modifications of, or failure to implement these conservation measures may result in a need to reinitiate this consultation.)*

N/A

II. *Explain the actions to reduce adverse effects to critical habitat listed above (For critical habitat for which impacts were identified, describe any conservation measures (e.g. BMPs) that will be implemented to avoid or minimize the impacts. Conservation measures are designed to avoid or minimize effects to listed species and critical habitats or further the recovery of the species under review. Conservation measures are considered part of the proposed action and their implementation is required. Any changes to, modifications of, or failure to implement these conservation measures may result in a need to reinitiate this consultation.)*

N/A

J. Marine Mammals

I. The Marine Mammal Protection Act prohibits the taking (including disruption of behavior, entrapment, injury, or death) of all marine mammals (e.g.,whales, dolphins, manatees). However, the MMPA allows limited exceptions to the take prohibition if authorized, such as the incidental (i.e., unintentional but not unexpected) take of marine mammals. The following questions are designed to allow the Agencies to quickly determine if your action has the potential to take marine mammals. If the information provided indicates that incidental take is possible, further discussion with the Agencies is required.

Is your activity occurring in or on marine or estuarine waters? ☑ NO ☐ YES

Is your activity likely to impact the quality (e.g., salinity, temperature) of marine or estuarine waters? ☑ NO ☐ YES

II. If Yes, describe activities further using checkboxes. Does your activity involve any of the following:

NO	YES	
☐	☐	*a) Use of active acoustic equipment (e.g., echosounder) producing sound below 200 kHz*
☐	☐	*b) In-water construction or demolition*
☐	☐	*c) Temporary or fixed use of active or passive sampling gear (e.g., nets, lines, traps; turtle relocation trawls)*
☐	☐	*d) In-water Explosive detonation*
☐	☐	e) *Building or enhancing areas for water-related recreational use or fishing opportunities (e.g. fishing piers, bridges, boat ramps, marinas)*
☐	☐	*f) Aquaculture*
☐	☐	*g) Dredging or in-water construction activities to change hydrologic conditions or connectivity, create breakwaters and living shorelines, etc.*
☐	☐	*h) Restoration of barrier islands, levee construction or similar projects*
☐	☐	*i) Fresh-water river diversions*

III. If you checked "Yes" to any of the activities immediately above or the activity could impact the quality of marine or estuarine waters, please describe the nature of the activities in more detail or indicate which section of the form already includes these descriptions. See the NOAA Acoustic Guidance for more information: http://www.nmfs.noaa.gov/pr/acoustics/faq.htm

IV. Are any measures planned to mitigate potential impacts to marine mammals? If yes, provide text in box below. NO ☐ YES ☐

K. Bald Eagles

Are bald eagles present in the action area? ☐ NO ☑ YES

If YES, the following conservation measures should be implemented:

1. If bald eagle breeding or nesting behaviors are observed or a nest is discovered or known, all activities (e.g., walking, camping, clean-up, use of a UTV, ATV, or boat) should avoid the nest by a minimum of 660 feet. If the nest is protected by a vegetated buffer where there is *no* line of sight to the nest, then the minimum avoidance distance is 330 feet. This avoidance distance shall be maintained from the onset of breeding/ courtship behaviors until any eggs have hatched and eaglets have fledged (approximately 6 months).
2. If a similar activity (e.g., driving on a roadway) is closer than 660 feet to a nest, then you may maintain a distance buffer as close to the nest as the existing tolerated activity.
3. If a vegetated buffer is present and there is no line of sight to the nest and a similar activity is closer than 330 feet to a nest, then you may maintain a distance buffer as close to the nest as the existing tolerated activity.
4. In some instances, activities conducted at a distance greater than 660 feet of a nest may result in disturbance. If an activity appears to cause initial disturbance, the activity shall stop and all individuals and equipment will be moved away until the eagles are no longer displaying disturbance behaviors.

Will you implement the above measures? ☐ NO ☑ YES

If these measures cannot be implemented, then you must contact the Service's Migratory Bird Permit Office.
Texas – (505) 248-7882 or by email: **permitsR2MB@fws.gov**
Louisiana, Mississippi, Alabama, Florida – (404) 679-7070 or by email: **permitsR4MB@fws.gov**

L. Migratory Birds

Identify the species anticipated in the action area and behaviors (breeding, roosting, foraging) anticipated during project implementation. You may list similar species on a single line and categorize by type (e.g., Wading birds - great blue heron, snowy egret, reddish egret). If species are present and impacts to individuals or habitat could occur, identify avoidance and minimization measures to prevent incidental take.
Incidental take of Migratory Birds cannot be authorized. Use additional tables on the next page if needed.

I.

Species/Species Group	Behavior	Species/Habitat Impacts and Conservation Measures to Minimize Impacts
		We do not anticipate negative impacts to migratory birds as a result of these project activities.

M. Migratory Birds

Continuation page if needed.

II.	SPECIES/SPECIES GROUP	BEHAVIOR	SPECIES/HABITAT IMPACTS and CONSERVATION MEASURES TO MINIMIZE IMPACTS

N. Best Practices

Chapter 6 of the PDARP included an important appendix (6.A) of best practices, see information starting on page 6-173.
http://www.gulfspillrestoration.noaa.gov/sites/default/files/wp-content/uploads/Chapter-6_Environmental-Consequences_508.pdf
Use the box below to indicate which pratices you'll be using in your project.

O. Submitting the BE Form

NMFS ESA § 7 Consultation

We request that all ESA §7 consultation requests/packages be submitted electronically to: **Christina.Fellas@noaa.gov**

Questions about consultation status may be directed to the email address above or by phone: Christy Fellas: 727-551-5714

USFWS ESA § 7 Consultation

We request that all consultation requests/packages to USFWS be submitted electronically to: **Ashley_Mills@fws.gov**.

You will be notified when we receive your Biological Evaluation. Upon receipt, we will conduct a preliminary review and provide any comments and feedback, including any requests for modifications or additional information. If modifications or additional information is necessary, we will work with you until the Biological Evaluation form is considered complete. Once complete, we will send your Biological Evaluation to the appropriate Field Office to conduct consultation.

Questions about consultation status may be directed to the email address above or by phone: Ashley Mills: 812-756-2712

Endangered Species Act Programmatic Biological Opinion

Deepwater Horizon Oil Spill Restoration

National Marine Fisheries Service

Complete this section **only** if your project qualifies for streamlined ESA consultation under the ESA Framework Programmatic Biological Opinion completed by NMFS on February 10, 2016. To be eligible for streamlined ESA consultation with NMFS, you must implement all Project Design Criteria (PDCs) applicable to your project. By checking all boxes below that apply to this project you are confirming that PDCs are incorporated into the project design and construction. The entire Biological Evaluation Form must be completed and include any information necessary to verify that all applicable PDCs are incorporated into the project. If the project incorporates more than one type of restoration, check boxes in all appropriate categories.

Are you using this form to request approval for use of NMFS PDCs for this project? ○ Yes ◉ No

You must receive NMFS approval before proceeding with your project. Note that this PDC checklist does not apply to ESA consultation with USFWS.

Full text of the PDCs can be reviewed at: http://sero.nmfs.noaa.gov/protected_resources/section_7/freq_biop/documents/DWH_bo/appendix_a.pdf

Oyster Reef Creation and Enhancement ○ Yes ◉ No

- ☐ Project is designed to avoid techniques and locations listed in the oyster reef creation and enhancement PDCs 1.a-1.e.
- ☐ Follows NMFS' Sea Turtle and Smalltooth Sawfish Construction Conditions (PDC 2.a)
- ☐ Follows NMFS' Vessel Strike Avoidance Measures and Reporting for Mariners (PDC 2.b)
- ☐ In-water construction does not impede sea turtle access to or from nesting sites during nesting season (PDC 2.c)
- ☐ In Gulf sturgeon critical habitat, oyster reef creation and enhancement occurs only on existing shell substrata or relic reef locations (PDC 2.d)
- ☐ Cultch material is free of debris and contaminants (PDC 2.e)
- ☐ Fresh shell has been properly aged or quarantined before being deployed (PDC 2.f)
- ☐ Cultch material is placed in a manner to minimize disturbance of sediment (PDC 2.g)
- ☐ Methods are employed to avoid turbidity impacts to ESA-listed species (PDC 2.h)
- ☐ Plan/drawings for intermittent breaks between oyster reef segment has been provided (2.i)
- ☐ Spill prevention and response plan has been developed (2.j)
- ☐ Design and materials used avoid entanglement and entrapment risks for ESA-listed species (2.k)
- ☐ Monitoring plan is included and final reports will be submitted to NMFS (PDC 3 and 4)

Marine Debris Removal ○ Yes ◉ No

- ☐ This project is designed to avoid techniques and locations listed in the marine debris removal PDCs 1.a-1.c
- ☐ All on-water operations shall take place during daylight hours (PDC 2.a)
- ☐ Follows NMFS' Sea Turtle and Smalltooth Sawfish Conditions (PDC 2.b)
- ☐ Follows NMFS' Vessel Strike Avoidance Measures and Reporting for Mariners (PDC 2.c)
- ☐ Project personnel have been notified of procedures if approached by a marine mammal or sea turtle (PDC 2.d)
- ☐ Trash and debris will be disposed of at an upland location (PDCs 2.e)
- ☐ Monitoring plan is included and final reports will be submitted to NMFS (PDC 3 and 4)

Construction of Living Shorelines

○ Yes ◉ No

- ☐ This project is designed to avoid techniques and locations listed in the living shoreline PDCs 1.a-1.h
- ☐ Follows NMFS' Sea Turtle and Smalltooth Sawfish Conditions (PDC 2.a)
- ☐ All in-water work activities will conducted during daylight hours (PDC 2.b)
- ☐ Piles for navigation of public safety purposes are less than 24" diameter and non-metal if impact hammer used (PDC 2.c)
- ☐ Spill prevention and response plan has been developed (2.d)
- ☐ Fill material is not sourced using hopper dredge or from sea turtle, Gulf sturgeon or smalltooth sawfish critical habitat and in-water borrow sites do not impact turtle nesting beaches (PDC 2.e)
- ☐ Design and materials do not create entrapment or entanglement risks to ESA-listed species and do not block migration (PDC 2.f)
- ☐ In-water construction does not impede sea turtle access to or from nesting sites during nesting season (PDC 2.g)
- ☐ Methods are employed to avoid turbidity impacts to ESA-listed species (PDC 2.h)
- ☐ Follows NMFS' Vessel Strike Avoidance Measures and Reporting for Mariners (PDC 2.i)
- ☐ Monitoring plan is included and final reports will be submitted to NMFS (PDC 3 and 4)

Marsh Creation and Enhancement

○ Yes ◉ No

- ☐ Project is designed to avoid techniques and locations listed in the marsh creation PDCs 1.a-1.f
- ☐ Follows NMFS' Sea Turtle and Smalltooth Sawfish Conditions (PDC 2.a)
- ☐ Follows NMFS' Vessel Strike Avoidance Measures and Reporting for Mariners (PDC 2.b)
- ☐ All in-water work activities will be conducted during daylight hours (PDC 2.c)
- ☐ Spill prevention and response plan has been developed (PDC 2.d)
- ☐ Fill material is not sourced using hopper dredge or from sea turtle, Gulf sturgeon or smalltooth sawfish critical habitat and in-water borrow sites do not impact turtle nesting beaches (PDC 2.e)
- ☐ Design and materials do not create entrapment or entanglement risks to ESA-listed species and do not block migration (PDC 2.f)
- ☐ In-water construction does not impede sea turtle access to or from nesting sites during nesting season (PDC 2.g)
- ☐ Methods are employed to avoid turbidity impacts to ESA-listed species (PDCs 2.h)
- ☐ Monitoring plan is included and final reports will be submitted to NMFS (PDC 3 and 4)

Construction of Non-Fishing Piers

◯ Yes ◉ No

- ☐ This project is designed to avoid locations listed in the non-fishing piers PDCs 1.a
- ☐ Spill prevention and response plan has been developed (PDC 2.a)
- ☐ Design and materials do not create entrapment or entanglement risks to ESA-listed species and do not block migration (PDC 2.b)
- ☐ Follows NMFS' Sea Turtle and Smalltooth Sawfish Construction Conditions (PDC 2.c)
- ☐ Follows NMFS' Vessel Strike Avoidance Measures and Reporting for Mariners (PDC 2.d)
- ☐ Follow Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat (PDC 2.e)
- ☐ In-water construction does not impede sea turtle access to or from nesting sites during nesting season (PDC 2.f)
- ☐ Follows methods and timing for pile driving (2.g)
- ☐ Follows construction sequencing and avoids propwashing (PDC 2.h)
- ☐ Water depth will not be altered (PDC 2.i)
- ☐ Lighting specifications are incorporated for piers on or adjacent to sea turtle nesting beaches (PDC 2.j)
- ☐ Follows educational and fishing signage requirements (PDC 2.k)
- ☐ Methods are employed to avoid turbidity impacts to ESA-listed species (PDC 2.l)
- ☐ Monitoring plan is included and final reports will be submitted to NMFS (PDC 3 and 4)

Check the box to confirm that all applicable requirements are met and a streamlined consultation with NMFS is requested: ☐

Name of person(s) completing this form:

Date form completed:

*You must receive NMFS approval before proceeding with your project *