TEMPLATE FOR INTERAGENCY CBRA CONSULTATIONS

The Coastal Barrier Resources Act (CBRA) (16 U.S.C. 3501 *et seq*.) encourages the conservation of hurricane prone and biologically rich coastal barriers. No new expenditures or financial assistance may be made available under authority of any Federal law for any purpose within the System Units of the John H. Chafee Coastal Barrier Resources System (CBRS) including: construction or purchase of roads, structures, facilities, or related infrastructure, and most projects to prevent the erosion of or otherwise stabilize any inlet, shoreline, or inshore area. However, the appropriate Federal officer, after consultation with the U.S. Fish and Wildlife Service (Service), may make Federal expenditures and financial assistance available within System Units for activities that meet one of the CBRA's exceptions (16 U.S.C. 3505). The CBRA imposes no restrictions on actions and projects within the CBRS that are carried out with State, local, or private funding. Any response from the Service to a CBRA consultation request is in the form of an opinion only. The Service has not been granted veto power. **The responsibility for complying with the CBRA and the final decision regarding the expenditure of funds for a particular action or project rests with the Federal funding agency.**

There are two types of units within the CBRS, System Units and Otherwise Protected Areas (OPAs). OPAs are denoted with a "P" at the end of the unit number (e.g., "FL-64P"). Most new Federal expenditures and financial assistance, including Federal flood insurance, are prohibited within System Units. The only Federal spending prohibition within OPAs is on Federal flood insurance; other Federal expenditures are permitted. **Consultation with the Service is not needed if the proposed action or project is located within an OPA.** However, agencies providing disaster assistance that is contingent upon a requirement to purchase flood insurance after the fact are advised to disclose the OPA designation and information on the restrictions on Federal flood insurance to the recipient prior to the commitments of funds.

The Service has developed the attached template to help facilitate the CBRA consultation process. This form, and any additional documentation, may be submitted to the appropriate Ecological Services Field Office to fulfill the CBRA's consultation requirement.

Additional Resources:

CBRS Mapper: *https://www.fws.gov/cbra/maps/mapper.html*

CBRS shapefile and Web Map Service: *https://www.fws.gov/cbra/maps/Boundaries.html*

CBRA consultations: *https://www.fws.gov/cbra* under "Project Consultations"

CBRS in/out property determinations: *https://www.fws.gov/cbra/Determinations.html*

Ecological Services Field Office contact information: *https://www.fws.gov/offices*

July 14, 2020

Joseph Ransom
Field Supervisor
U.S. Fish & Wildlife Service
Louisiana Ecological Services
Mississippi-Basin Region
200 Dulles Drive
Lafayette, LA 70506

The Louisiana Trustee Implementation Group (LA TIG) has evaluated four projects as potential restoration projects under the final Louisiana Trustee Implementation Group Final Restoration Plan and Environmental Assessment #5: Living Coastal and Marine Resources – Marine Mammals and Oysters. Public comment for this plan closed on April 20, 2020. Each of these four projects include potential activities located within a System Unit and Otherwise Protected Area, and require CBRS analysis.

If the LA TIG selects the projects, or any combination of projects, after consideration of public comment, the LA TIG partners would implement the projects.

The *Deepwater Horizon* Gulf Restoration Office (DHGRO) (U.S. Fish and Wildlife Service (Service) requests an intra-service consultation with the Service under the Coastal Barrier Resources Act (CBRA) (16 U.S.C. 3501 *et seq*.) for the proposed restoration projects within the plan.

Project Location
Insert project location. The CBRS Mapper can be used to identify the CBRS unit number(s) at: *http://www.fws.gov/cbra/Maps/Mapper.html.*

The actions or projects are located in coastal Louisiana and each of the four projects include activities that may partially occur within a Unit of the Coastal Barrier Resources System (CBRS). Please refer to the table in the attached document for a list of proposed projects, and Unit number (if applicable), and consistency determinations.

Description of the Proposed Action or Project
The proposed projects are designed to restore natural resources injured by the *Deepwater Horizon* oil spill. Please see the attached letter for project descriptions, maps, and consistency analysis.

Applicable Exception(s) under 16 U.S.C. 3505(a)
16 U.S.C. 3505(a)(6)(A): **Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats**, including acquisition of fish and wildlife habitats, and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.

General Exceptions

☐ 16 U.S.C. 3505(a)(1): Any use or facility necessary for the **exploration, extraction, or transportation of energy resources** which can be carried out only on, in, or adjacent to a coastal water area because the use or facility requires access to the coastal water body.

☐ 16 U.S.C. 3505(a)(2): The **maintenance or construction of improvements of existing Federal navigation channels** (including the Intracoastal Waterway) and related structures (such as jetties), including the disposal of dredge materials related to such maintenance or construction. A Federal

navigation channel or a related structure is an existing channel or structure, respectively, if it was authorized before the date on which the relevant System unit or portion of the System Unit was included within the CBRS.

☐ 16 U.S.C. 3505(a)(3): The maintenance, replacement, reconstruction, or repair, but not the expansion, of **publicly owned or publicly operated roads, structures, or facilities that are essential links** in a larger network or system.

☐ 16 U.S.C. 3505(a)(4): **Military activities** essential to national security.

☐ 16 U.S.C. 3505(a)(5): The construction, operation, maintenance, and rehabilitation of **Coast Guard facilities** and access thereto.

Specific Exceptions
These exceptions must also be consistent with all three purposes of the CBRA (see "Justification" section below).

☒ 16 U.S.C. 3505(a)(6)(A): **Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats**, including acquisition of fish and wildlife habitats, and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.

☐ 16 U.S.C. 3505(a)(6)(B): Establishment, operation, and maintenance of **air and water navigation aids** and devices, and for access thereto.

☐ 16 U.S.C. 3505(a)(6)(C): Projects under the **Land and Water Conservation Fund Act** of 1965 (16 U.S.C. 4601-4 through 11) and the **Coastal Zone Management Act** of 1972 (16 U.S.C. 1451 et seq.).

☐ 16 U.S.C. 3505(a)(6)(D): **Scientific research**, including aeronautical, atmospheric, space, geologic, marine, fish and wildlife, and other research, development, andapplications.

☐ 16 U.S.C. 3505(a)(6)(E): Assistance for **emergency actions essential to the saving of lives and the protection of property and the public health and safety**, if such actions are performed pursuant to sections 5170a, 5170b, and 5192 of title 42 **and are limited to actions that are necessary to alleviate the emergency.**

☐ 16 U.S.C. 3505(a)(6)(F): Maintenance, replacement, reconstruction, or repair, but not the expansion (except with respect to United States route 1 in the Florida Keys), of **publicly owned or publicly operated roads, structures, and facilities.**

☐ 16 U.S.C. 3505(a)(6)(G): **Nonstructural projects for shoreline stabilization** that are designed to mimic, enhance, or restore a natural stabilization system.

Justification for Exception(s)
Briefly explain how the proposed action or project meets the exception(s) under the CBRA identified above. ***If the exception(s) cited above is under 16 U.S.C 3505(a)(6), the justification should also include an explanation of how the proposed action or project is consistent with the three purposes of the CBRA****, which are to minimize: (1) the loss of human life; (2) wasteful expenditure of Federal revenues; and (3) damage to fish, wildlife, and other natural resources associated with the coastal barriers by restricting Federal expenditures and financial assistance which have the effect of encouraging development.*

The Marine Mammal Stranding Response project is a project to enhance resources, equipment, and capabilities for a Stranding Coordinator for Louisiana and that will manage and protect fish and wildlife habitats. The Brood Reef Oyster Restoration project is an oyster reef construction project that will enhance and protect fish and wildlife habitats. The Hatchery-based Oyster Restoration project will provide larvae and seed resources for oyster seed grounds and water-based oyster culture, and will manage, enhance, and protect fish and wildlife habitats. The Cultch Plant project is an oyster reef construction project that will enhance and protect fish and wildlife habitats. Please see the CBRA Summary document for additional project information for these four projects and the detailed CBRA analysis.

Contact Information
Please provide response via email to the following:

Erin Chandler**,** Environmental Compliance Coordinator
Deepwater Horizon Gulf Restoration Office
Tel: 470-361-3153
erin_chandler@fws.gov

Ben Frater, Assistant Gulf Restoration Manager
Deepwater Horizon Gulf Restoration Office
(251) 517-8019
Benjamin_Frater@fws.gov

Ben Frater
Assistant Gulf Restoration Manager
Deepwater Horizon Gulf Restoration Office

U.S. Fish and Wildlife Service Response
Below is the Service's response to DHGRO FWS's request for a consultation under the CBRA for *1) Marine Mammal Stranding Network efforts; 2) Brood Reef Oyster Restoration Project; 3) Hatchery-based Oyster Restoration; and the 4) Cultch Plant Project.* This response represents the Service's opinion. **The final decision regarding the expenditure of funds for this action or project rests with the Federal funding agency.** DHGRO FWS's has fulfilled its obligation to consult with the Service under the CBRA for this particular action or project within the CBRS. Please note that any new commitment of Federal funds associated with this action or project, or change in the project design and/or scope, is subject to the CBRA's consultation requirement.

The Service has reviewed the information provided by DHGRO FWS's, and believes the referenced actions/projects are:

☐ Not located within a System Unit of the CBRS and the CBRA does not apply (except with respect to the restrictions on Federal flood insurance)

☒ **Located within a System Unit of the CBRS and meets the exception(s) to the CBRA selected above**

☐ Located within a System Unit of the CBRS and meets different exception(s) than the one(s) selected above (see additional information/comments below)

☐ Located within a System Unit of the CBRS and does not meet an exception to the CBRA (see additional information/comments below)

☐ Due to many competing priorities, the Service is unable to provide an opinion on the applicability of the CBRA's exceptions to this action/project at this time. The AGENCY NAME may elect to proceed with the action/project if it has determined that the action/project is allowable under the CBRA. Please note that any new commitment of Federal funds associated with this action/project or a related future project is subject to the CBRA's consultation requirement.

Additional Information/Comments
Include any additional information/comments.

This response does not constitute consultation for any project pursuant to section 7 of the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) or comments afforded by the Fish and Wildlife Coordination Act (48 Stat. 401; 16 U.S.C. 661 *et seq.*); nor does it preclude comment on any forthcoming environmental documents pursuant to the National Environmental Policy Act (83 Stat. 852; 42 U.S.C. 4321 *et seq.*).

SERVICE FIELD OFFICE SIGNATORY AND TITLE DATE

U.S. Fish and Wildlife Service
1875 Century Blvd NE,
Atlanta, GA 30345

Stationed at field office in Panama City, FL
1601 Balboa Avenue, Florida 32405
Phone: 850-769-0552 x 45228

Patricia Kelly, Regions 2 & 4 CBRA Coordinator Date

8-21-2020