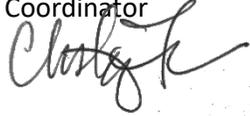




MEMORANDUM FOR: FILE

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

DATE: January 8, 2020

SUBJECT: LA TIG Funding for Fisheries-Independent Monitoring Program:
Activities Covered by Existing ESA Compliance

Based on my review of draft and final project materials (Fall 2019) describing the FIMP program, and in coordination with representatives from NOAA's Protected Resource Division in the Southeast Regional Office, the NOAA Restoration Center (RC) determined that the following projects proposed for NRDA funding by the LA TIG have existing coverage from previous compliance efforts under the Endangered Species Act, under the jurisdiction of National Marine Fisheries Service (NMFS):

- (1) Three months of additional fisheries-independent monitoring - extension of current activities through June 2020 (Resolution LA-2020-001, approved January 2020)
- (2) Three years of fisheries-independent monitoring described in the LA TIG MAM Activities Implementation Plan for June 2020 – June 2023 (Resolution TBD, expected April 2020)

The Louisiana coastwide FIMP provides valuable data for the nearshore habitats and resources targeted for NRDA restoration, including coastal wetlands, oysters, nekton, and prey resources (e.g., shrimps, crab, fishes) for threatened and/or endangered species such as the gulf sturgeon, sea turtles, and marine mammals. The LA TIG can use the data provided by the coastwide FIMP to assess changes in the fish, shellfish and their associated habitats (physical habitat with accompanying environmental data) in the basins over time, allowing for assessment of the influence of the comprehensive, integrated portfolio of restoration projects at a coastwide or regional-scale within the Gulf of Mexico (GOM) and relative to other drivers and long-term trends in the basins.

The two activities and timeframe proposed above are identical to those proposed in 2018 when NMFS completed an ESA consultation (attached). Therefore, these proposed activities above fit within the existing ESA analysis completed in 2018 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

Southeast Regional Office

263 13th Avenue South

St. Petersburg, Florida 33701-5505

<http://sero.nmfs.noaa.gov>

F/SER31: RH
SER-2018-19438

JUL 20 2018

Rachel W. Sweeney
Program Manager, Deepwater Horizon Restoration Program
NOAA Restoration Center
263 13th Avenue South
St. Petersburg, Florida 33701

Ref.: NOAA Restoration Center (DWH NRDA) – Louisiana Trustee Implementation Group
Coastwide Fisheries-Independent Monitoring Program (FIMP) Enhancement –
EXPEDITED TRACK

Dear Sir or Madam:

This letter responds to your July 17, 2018, 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. 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 Robert Hoffman, Consultation Biologist, at (727) 824-5312 or by email at robert.hoffman@noaa.gov.

Sincerely,

Roy E. Crabtree, Ph.D.
Regional Administrator

File: 1514-22.c





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

July 16, 2018

David Bernhart
Assistant Regional Administrator for Protected Resources
NOAA Fisheries Service, Southeast Regional Office
263 13th Avenue South
Saint Petersburg, Florida 33701

Re: Request for section 7 Endangered Species Act Informal Consultation for Project Proposed for Funding under the Deepwater Horizon Oil Spill Natural Resource Damage Assessment in the Louisiana Trustee Implementation Group

Dear David,

The National Oceanic and Atmospheric Administration (NOAA) Restoration Center requests informal consultation under section 7 of the Endangered Species Act (ESA) for the project listed below that may affect ESA-listed species.

The NOAA Restoration Center, is the Lead Federal Agency, and is requesting consultation on behalf of the Louisiana Trustee Implementation Group (LA TIG). Enclosed please find the project scope and details for the enhanced coastwide fish and shellfish monitoring program conducted by the Louisiana Department of Wildlife and Fisheries (LDWF) and to be funded by the LA TIG.

This proposed action is a continuation of a component of the Louisiana coastwide fisheries-independent monitoring program (FIMP) conducted by the LDWF and is also consistent with the robust fish and shellfish sampling design developed for the System Wide Assessment and Monitoring Program (SWAMP) to identify significant changes in nekton community composition and oyster biomass within the coastal basins and at a coastwide (i.e., regional) scale that may result from large-scale and/or cumulative coastal restoration and protection projects, environmental disturbances, changing climate, and other major drivers that impact the system (Hijuelos and Hemmerling 2015, 2016). will support several pilot projects that will collect necessary data for better quantification of fish and shellfish (collectively referred to as "fish" through proposal) relative abundances and densities, species composition and community/food web interactions, and habitat use within the coastal basins. The pilot projects will complement the current LDWF FIMP framework for better enumeration and a quantitative comparison among the monitoring gears that sample the fish life stages within the coastal wetlands, shallow shorelines, and more fresh water areas of the estuaries. The coastwide FIMP provides valuable data for the nearshore habitats and resources targeted for NRDA restoration, including coastal wetlands, oysters, nekton, and prey resources (e.g., shrimps, crab, fishes) for threatened and/or endangered species such as the gulf sturgeon, sea turtles, and marine mammals. The LA TIG can use the data provided by the coastwide FIMP to assess changes in the fish, shellfish and their associated habitats (physical habitat with accompanying environmental data) in the basins over time, allowing for assessment of the influence of

the comprehensive, integrated portfolio of restoration projects at a coastwide or regional-scale within the Gulf of Mexico and relative to other drivers and long-term trends in the basins.

A portion of the proposed action will require the use of trawl gear; trawl gear is known to take ESA listed species. However, LDWF has a National Marine Fisheries Service (NMFS) five year authorization, dated 11/9/2017 and issued under 50 CFR 223.207 (e)(2) to conduct fisheries research with trawls equipped without turtle excluder devices (TEDs). Potential adverse effects to listed species of these limited authorizations was analyzed by NMFS in the April 18, 2014, biological opinion concerning shrimp trawling in the Southeastern United States as regulated under the ESA Sea Turtle Conservation Regulations and as managed under the Magnuson-Stevens Fishery Conservation and Management Act. The biological opinion considered, among other things, the effects of routine issuance of the Southeast Region's authorization letters that allow research or testing that would otherwise be subject to the TED requirements. The Incidental Take Statement of the aforementioned biological opinion authorizes any incidental take associated with said authorized research.

A portion of the proposed action will require the use of center bag seine nets along the shoreline and shallow marsh edge within the Louisiana coastal basins. The use of this gear is not likely to adversely affect listed species because these relatively short, low catch efficiency nets (50 feet) are set within 100 feet of the shoreline or marsh edge and pulled slowly by field biologists walking shoreward. Since they are pulled by hand it is quite likely that any sea turtle in the vicinity of the net could be identified and avoided. It is extremely unlikely that a listed species would be captured in seine net sampling during the implementation of the proposed action, given the sampling locations, gear size, deployment speed, and efficiency. In addition, the nets will not be deployed if a listed or protected species is seen in the sampling area unless and until the animal(s) is(are) seen to leave the area, or it is deemed that there has been adequate time for such departure to have occurred. Based on the history of no captures in this gear and the reasons just described, we believe the chances of adverse effects to listed species are discountable.

A portion of the proposed action will require the use of electrofishing along the shoreline and shallow marsh edge within the coastal basins. It is extremely unlikely that a listed species would be captured in electrofishing samples during the implementation of the proposed action, given the sampling locations near shore and marshes), shallow depths, and the small effective range of the equipment. The use of this gear is not likely to adversely affect listed species because of the relatively short gear activation times (90 second tracks), small effective sampling range, and close proximity to shallow shoreline and marsh edge. In addition, the equipment will not be activated if a listed or protected species is seen in the sampling area unless and until the animal(s) is(are) seen to leave the area, or it is deemed that there has been adequate time for such departure to have occurred. Shallow water and the use of a 50m sampling buffer between the equipment and observed protected species in the deployment protocol further increases the likelihood of interactions. Based on the history of no captures and the reasons just described, we believe the chances of adverse effects to listed species are discountable.

A portion of the proposed action will require the use of a drop sampler along the shoreline and shallow marsh edge within the coastal basins. The use of this gear is not likely to adversely affect listed species because of the small size of the sampling area (1 m²), and close proximity to shoreline and marsh edge. The likelihood of a listed species being captured in drop samples during the implementation of the proposed action, given the gear design and deployment method is discountable. In addition, the equipment will not be deployed if a listed species is seen in the sampling area unless and until the



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

animal(s) is(are) seen to leave the area, or it is deemed that there has been adequate time for such departure to have occurred.

A portion of the proposed action will require the use of a square meter quadrat to estimate the density of alive and dead oysters at various life history stages. The 1 m² PVC quadrat frame is deployed by divers and will have no effect on listed or protected species.

A portion of the proposed action will require the use of an oyster dredge to sample oysters, fouling organisms, and other sessile organisms, including the oyster drill and hooked mussel. The use of this gear is not likely to adversely affect listed species because of the small overall size of the gear, small opening, slow tow speeds, and short tow duration. In addition, the equipment will not be deployed if a listed species is seen in the sampling area unless and until the animal(s) is(are) seen to leave the area, or it is deemed that there has been adequate time for such departure to have occurred. Based on the history of no captures and the reasons just described, we believe the chances of adverse effects to listed species are discountable.

A portion of the proposed action will require the use of gill and trammel nets, and has the potential to affect non-targeted species, including ESA-listed species if captured incidentally. It is extremely unlikely a listed species would be captured in gill or trammel net sampling during the implementation of the proposed action, given the sampling locations, gear type, short soak times, gill net monitors and constant tending. If a sea turtle, Gulf sturgeon, or dolphin is spotted in the sampling area, per written project sampling protocol, the gill net will not be set until the animal(s) is seen to leave the area or it is deemed there has been adequate time for such departure to have occurred. If the net is soaking and a listed species is seen, the net will immediately be removed and not be re-deployed until the animal(s) leave the area. The use of this collection gear is not likely to adversely affect listed species in the sampling area. Based on the reasons just described, we believe the chances of adverse effects to listed species are discountable.

Designated Gulf sturgeon critical habitat in the sampling area of the proposed action is described as follows:

Unit 8: Lake Pontchartrain, Lake St. Catherine, The Rigolets, Little Lake, Lake Borgne, and Mississippi Sound in Jefferson, Orleans, St. Tammany, and St. Bernard Parish, Louisiana, Hancock, Jackson, and Harrison Counties in Mississippi, and in Mobile County, Alabama.

Unit 8 encompasses Lake Pontchartrain east of the Lake Pontchartrain Causeway, all of Little Lake, The Rigolets, Lake St. Catherine, Lake Borgne, including Heron Bay, and the Mississippi Sound. Critical habitat follows the shorelines around the perimeters of each included lake. The Mississippi Sound includes adjacent open bays including Pascagoula Bay, Point aux Chenes Bay, Grand Bay, Sandy Bay, and barrier island passes, including Ship Island Pass, Dog Keys Pass, Horn Island Pass, and Petit Bois Pass. The northern boundary of the Mississippi Sound is the shorelines of the mainland between Heron Bay Point, Mississippi and Point aux Pins, Alabama. Critical habitat excludes St. Louis Bay, north of the railroad bridge across its mouth; Biloxi Bay, north of the U.S. Highway 90 bridge; and Back Bay of Biloxi. The southern boundary follows along the broken shoreline of Lake Borgne created by low swampy islands from Malheureux Point to Isle au Pitre. From the northeast point of Isle au Pitre, the boundary continues

in a straight north-northeast line to the point 1 nautical mile (nm) (1.9 kilometers (km)) seaward of the western most extremity of Cat Island (30°13'N, 89°10'W). The southern boundary continues 1 nm (1.9 km) offshore of the barrier islands and offshore of the 72 COLREGS lines at barrier island passes (defined at 33 CFR 80.815 (c), (d) and (e)) to the eastern boundary. Between Cat Island and Ship Island there is no 72 COLREGS line. We therefore, have defined that section of the southern boundary as 1 nm (1.9 km) offshore of a straight line drawn from the southern tip of Cat Island to the western tip of Ship Island. The eastern boundary is the line of longitude 88°18.8'W from its intersection with the shore (Point aux Pins) to its intersection with the southern boundary. The lateral extent of Unit 8 is the mean (average) high water (MHW) line on each shoreline of the included water bodies or the entrance to rivers, bayous, and creeks. (ii) Major shipping channels in this unit, as identified on standard navigation charts and marked by buoys, are excluded under section 4(b)(2) of the Act.

Gulf sturgeon critical habitat consists of the following primary constituent elements (PCEs):

The PCEs essential for the conservation of Gulf sturgeon are those habitat components that support feeding, resting, and sheltering, reproduction, migration, and physical features necessary for maintaining the natural processes that support these habitat components. The primary constituent elements include:

- abundant prey items within riverine habitats for larval and juvenile life stages, and within estuarine and marine habitats and substrates for juvenile, subadult, and adult life stages;
- riverine spawning sites with substrates suitable for egg deposition and development, such as limestone outcrops and cut limestone banks, bedrock, large gravel or cobble beds, marl, soapstone or hard clay;
- riverine aggregation areas, also referred to as resting, holding, and staging areas, used by adult, subadult, and/or juveniles, generally, but not always, located in holes below normal riverbed depths, believed necessary for minimizing energy expenditures during fresh water residency and possibly for osmoregulatory functions;
- a flow regime (*i.e.*, the magnitude, frequency, duration, seasonality, and rate-of-change of fresh water discharge over time) necessary for normal behavior, growth, and survival of all life stages in the riverine environment, including migration, breeding site selection, courtship, egg fertilization, resting, and staging; and
- a flow regime necessary for maintaining spawning sites in suitable condition for egg attachment, eggs sheltering, resting, and larvae staging;
- water quality, including temperature, salinity, pH, hardness, turbidity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages;
- sediment quality, including texture and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages;
- and safe and unobstructed migratory pathways necessary for passage within and between riverine, estuarine, and marine habitats (*e.g.* a river unobstructed by any permanent structure, or a dammed river that still allows for passage).



The sampling in the proposed action will not adversely affect the PCEs for designated Gulf Sturgeon critical habitat. The only PCE that maybe affected by the proposed action is the abundant prey PCE. Only the fish and shellfish sampling (with trawls and oyster dredges) may affect this PCE; however, due to the small scale of the sampling we believe any effects to this PCE will be insignificant. The proposed sampling will have no effect on the remaining PCEs that are related to spawning and aggregation areas, flow regimes, water and sediment quality, or availability of functional migratory pathways.

Designated GoM loggerhead sea turtle critical habitat is described as follows:

LOGG-S-2—Gulf of Mexico Sargassum. This unit contains *Sargassum* habitat only. The northern and western boundaries of the unit follow the 10 m depth contour starting at the mouth of South Pass of the Mississippi River proceeding west and south to the outer boundary of the U.S. EEZ. The southern boundary of the unit is the U.S. EEZ from the 10 m depth contour off of Texas to the Gulf of Mexico-Atlantic border (83° W. long.). The eastern boundary follows the 10 m depth contour from the mouth of South Pass of the Mississippi River at 28.97° N. lat., 89.15° W. long., in a straight line to the northernmost boundary of the Loop Current (28° N. lat., 89° W. long.) and along the eastern edge of the Loop Current roughly following the velocity of 0.101-0.20 m/second as depicted by Love *et al.* (2013) using the Gulf of Mexico summer mean sea surface currents from 1993-2011, to the Gulf of Mexico-Atlantic border (24.58° N. lat., 83° W. long.).

The PCEs that support this habitat are the following:

- (i) Convergence zones, surface-water downwelling areas, the margins of major boundary currents (Gulf Stream), and other locations where there are concentrated components of the *Sargassum* community in water temperatures suitable for the optimal growth of *Sargassum* and inhabitation of loggerheads;
- (ii) *Sargassum* in concentrations that support adequate prey abundance and cover;
- (iii) Available prey and other material associated with *Sargassum* habitat including, but not limited to, plants and cyanobacteria and animals native to the *Sargassum* community such as hydroids and copepods; and
- (iv) Sufficient water depth and proximity to available currents to ensure offshore transport (out of the surf zone), and foraging and cover requirements by *Sargassum* for post-hatchling loggerheads, i.e., >10 m depth.

The only sampling gear proposed for use in loggerhead critical habitat is the otter trawl. Trawling will not affect PCEs i, iii, and iv. Trawling may effect PCE ii; however, trawl sampling will not take place if *Sargassum* is observed in the selected sampling area. Therefore, any effects of the proposed action on loggerhead designated critical habitat will be insignificant.

The sampling proposed is not likely to affect ESA-listed species or their critical habitats as outline below (Table 1).

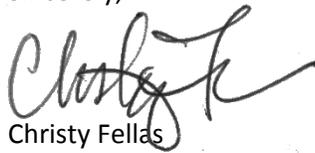
Table 1: Species and critical habitats in the action area

Species	ESA Listing Status	Effect Determination
---------	--------------------	----------------------

Green sea turtle ¹	T	NLAA
Kemp's ridley sea turtle	E	NLAA
Leatherback sea turtle	E	NLAA
Loggerhead sea turtle ²	T	NLAA
Hawksbill sea turtle	E	NLAA
Gulf sturgeon	T	NLAA
Critical Habitat	Status	Effect Determination
Gulf sturgeon CH	Designated	NLAA
Loggerhead sea turtle CH	Designated	NLAA

For further questions about the projects, please contact Christy Fellas in the NOAA Restoration Center, Southeast Region at 727-551-5714 or christina.fellas@noaa.gov. Thank you for your assistance.

Sincerely,



Christy Fellas
Environmental Compliance Coordinator
Deepwater Horizon Restoration Program

¹ North Atlantic and South Atlantic DPS

² Northwest Atlantic Ocean DPS