

MEMORANDUM FOR THE RECORD

FROM: LOUISIANA RESTORATION AREA TRUSTEE IMPLEMENTATION GROUP
of the *Deepwater Horizon* Trustee Council

SUBJECT: NRDA Resource Management and Assessment for Louisiana: The Coastwide Fish and Shellfish Monitoring Program

DATE: July 20, 2018

ISSUE: Environmental and restoration planning compliance considerations supporting the Louisiana TIG decision to fund Year 1 of a 5-year coastwide fish and shellfish monitoring program.

DISCUSSION

On July 3, 2018, the State of Louisiana submitted a proposed monitoring work plan, *NRDA Resource Management and Assessment for Louisiana: The Coastwide Fish and Shellfish Monitoring Program* for review and funding by the Louisiana Trustee Implementation Group (LA TIG). Funding under this proposal is requested for sustaining and expanding an enhanced portion of the coastwide fisheries-independent monitoring program (FIMP) conducted by the Louisiana Department of Wildlife and Fisheries (LDWF), with that enhanced portion originally initiated and funded out of the Gulf Environmental Benefit Fund. Funding is also requested in this proposal to 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 are proposed to complement the current 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 (GOM) and relative to other drivers and long-term trends in the basins.

The work plan provides the specifics of the timing, sampling and design for this effort. Field work will be completed by trained LDWF and Water Institute of the Gulf field biologists. Implementation involves the following gear types:

1. Bottom trawls (6’ balloon otter, 16’ flat otter, and 20’ balloon otter trawls) for sampling penaid shrimp, blue crab, groundfish, and several other species caught in high abundance with the five coastal study areas (CSA) of Louisiana and nearshore shelf waters.
2. Marsh edge and finfish: seines, electrofishing, drop samplers, gill nets and trammel nets for sampling the relative abundance and size distribution of small juvenile shrimps, crabs, and

fish along the shoreline and shallow marsh edge habitats within the CSAs. Best management practices will be in place during the use of gill and trammel nets for the benefit of protected species. For example, prior to deploying gill nets, the field biologists will carefully observe the area for the presence of any protected species (e.g., sea turtles). If they observe any protected species, sampling will not occur until the animals leave the area on their own volition (i.e., without prompting from the field team). Once the net is set and fishing, if any protected species are observed in the area, fishing will cease and the net retrieved immediately. Sampling will not resume until the animals leave on their own volition.

3. Oysters: Square meter and dredge sampling: The square meter and oyster dredge samples are used to characterize oyster spat settlement, size distribution, and mortality for management and assessment of Louisiana's oyster fishery. Data management and Deliverables: Data management by LDWF includes all field data input, QA/QC, and quarterly dissemination of electronic data to CPRA through an established SharePoint site. All data are logged on field data sheets by coastal biologists. The field data sheets are scanned as electronic pdf files and the hardcopies are archived at the field offices. As field data sheets are collected, they are entered into computer data files and initially reviewed by the LDWF data management section for quality assurance.

FINDING

We have reviewed the activities proposed in the work plan for potential environmental consequences and consistency with existing environmental review, and for consistency with OPA criteria and the PDARP's programmatic goal: *Provide for Monitoring, Adaptive Management, and Administrative Oversight to Support Restoration Implementation*. Accordingly, the following determinations are made.

Endangered Species Act

Activities Covered under Existing Consultations

Under federal regulations protecting endangered and threatened species of sea turtles, any shrimp trawling in the Southeastern United States must have an approved turtle excluder device (TED) in any net rigged for fishing, including the trawling proposed for conduct in this work plan. TED regulations, however, provide limited exemptions for conducting fishery research with a written authorization from the Southeast Regional Administrator, NMFS.

On October 2, 2017 LDWF sought exemption from such requirement for research-trawling activities associated with state fisheries-independent sampling program. A 5-year authorization for that exemption was issued on November 9, 2017 under 50 CFR 23.207 (e)(2), remains in place through December 31, 2022, and is applicable for the trawling proposed in this work plan. Potential adverse effects of these limited authorizations were analyzed by NMFS in the April 18, 2014, biological opinion concerning shrimp trawling in the Southeastern United States as regulated under the Endangered Species Act 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 routing issuance of the Southeast Regions'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 this authorized research. As such no additional Section 7 consultation is necessary. Sampling and trawl times proposed in this work plan will be consistent with the requirements outlined in that federal

TED exemption and any requirements included in the Incidental Take Statement (ITS) for the aforementioned biological opinion.

Activities with Pending ESA Consultation

The remainder of the sampling activities proposed are not covered by existing ESA consultations, including non-trawling sampling methods such as bag seine, electrofishing, drop sampler, density estimate sampling, oyster dredge and gill and trammel nets. These additional techniques were evaluated and informal ESA consultation was requested by NOAA, on behalf of the LA TIG, on July 17, 2018, and the LA TIG would not conduct the in-field sampling activities until this consultation is concluded.

National Environmental Policy Act

Use of non-trawl gear and sampling methodologies summarized above and outlined in the work plan are typical of long-standing research and data collection approaches in the field. The gear types identified have been fully considered under NEPA per NOAA Administrative Order 216-6A and its Companion Manual. In particular, NOAA has reviewed and evaluated the criteria for whether a current proposed action is adequately addressed and covered within the scope of an existing NEPA analysis and document (Companion Manual, 5.A.a-d). Such sampling methodologies have been previously evaluated for fisheries assessment activities (*Environmental Assessment for the Issuance of a Scientific Research Permit to the National Marine Fisheries Service Southeast Fisheries Science Center for Resource Assessment Surveys and Conservation Engineering Research*, NMFS, 2017). Further, activities in this work plan would otherwise be covered by NOAA Categorical Exclusion (CE) E.5, addressing activities involving invasive techniques or methods that are conducted for scientific purposes, when such activities are conducted in accordance with all applicable provisions of the Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, and Magnuson-Stevens Fishery Conservation and Management Act. Such activities will be limited to impacting living resources on a small scale relative to the size of the populations, and limited to methodologies and locations to ensure that there are no long-term adverse impacts to benthic habitats, essential fish habitat, critical habitat, or protected species. We have reviewed the potential for extraordinary circumstances and determined none exist that would preclude the use of that CE. As such, no additional NEPA evaluation is necessary for this proposed activity.

Essential Fish Habitat

Consistent with evaluation supporting the MMPA/ESA Permit and activities under NOAA CE E.1, the LA TIG, including Federal members, have determined that the action will not adversely affect EFH, and therefore an EFH consultation is not required).

Marine Mammal Protection Act (Section 101(a)(5))

The proposed activities are not expected to result in the incidental take, by harassment or injury, of marine mammals thus no incidental take authorization under MMPA is required for these specified activities in these geographies.

Oil Pollution Act and Goals of the DWH PDARP/PEIS

This proposal was evaluated to ensure OPA compliance. The activity addressed in the work plan is consistent with the PDARP programmatic goal "Provide for Monitoring, Adaptive Management, and Administrative Oversight to Support Restoration Implementation." It is consistent with the MAM Framework described in the PDARP, and will support informed decision-making for LA TIG restoration projects. The activities proposed in the work plan will allow for "informing and evaluating restoration outcomes across multiple projects," as described in the PDARP S. 5.5.15.3 ("Monitoring and Adaptive Management for the Restoration Plan").

This action is proposed to be supported through MAM type funding as allocated for the Louisiana Restoration Area. This type of funding, as described in the Trustee Council SOP 10.5.1 (“MAM Funds”), is intended for activities including the following that are relevant to the work plan:

- Resolving critical information gaps/uncertainties for restoration planning; inform restoration decision-making.
- Supplementing Restoration Type monitoring activities, where needed.
- Evaluating regional restoration outcomes (beyond individual project footprints) within the TIG’s Restoration Area.
- Performing monitoring to inform the design and implementation of future restoration projects, including better characterizing ecological function.

The LA TIG can use the data provided by the coastwide fish and shellfish monitoring plan 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. This OPA compliance evaluation also confirms that the work plan is technically sound; the activities are a continuation of a portion of the existing coastwide FIMP conducted by the LDWF. The actions are cost effective; the budget has been developed by State and Federal experts who are familiar with established protocols, and the methods leverage existing experience of agency employees. The projects are proposed specifically because they are expected to support the planning and evaluation of restoration projects.

FINDING

The Louisiana TIG trustees reviewed the proposed actions and determined no additional review or evaluation are required regarding environmental consequences or OPA consistency of the proposed actions, except for the activities specified above requiring informal consultation under Section 7 of the Endangered Species Act. The actions proposed are consistent with activities previously evaluated and currently permitted monitoring efforts. A request to initiate ESA consultation on specified portions of the project was submitted to NMFS Protected Resources Division on July 17, 2018. By implementation of Resolution LA-2018-017, the LA Trustees agree that all activities conducted during these tasks will meet all applicable regulatory compliance requirements and terms and conditions of all federal and state permits required. Consistent with terms in the Resolution, any incident of non-authorized activities being conducted will be reported to the LA TIG immediately upon discovery.