

**APPENDIX E**

October 28, 2013, FWCA Report Recommendations  
Provided for PIER #36

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**October 28, 2013**

**FISH AND WILDLIFE COORDINATION ACT REPORT**

**SERVICE POSITION AND RECOMMENDATIONS**

The Service supports the Corps' current constructible features and recognizes that additional Tiered IERs will further address individual mitigation features that are still in early design phases. We support the Corps' plan to mitigate impacts to fish and wildlife resources associated with LPV HSDRRS provided that the following fish and wildlife conservation recommendations are incorporated into future project planning and implementation and outstanding issues are adequately resolved via ongoing planning efforts:

1. Avoid adverse impacts to bald eagle and osprey nesting locations and wading bird colonies through careful design project features and timing of construction. Forest clearing associated with project features should be conducted during the fall or winter to minimize impacts to nesting migratory birds, when practicable.
2. We recommend that the Corps initiate ESA consultation with this office to ensure that the proposed project would not adversely affect any federally listed threatened or endangered species or their habitat. Subsequently, ESA consultation should be reinitiated should the proposed project features change significantly or are not implemented within one year of the last ESA consultation with this office to ensure that the proposed project does not adversely affect any federally listed threatened or endangered species or their habitat.
3. With regards to the Bonne Carré Dry- BLH, Wet-BLH, and Swamp Restoration projects, the Corps made a "no effect" determination in the Programmatic IER for project impacts on West Indian manatee, Gulf sturgeon, pallid sturgeon, and sea turtles. Because these species may occur in either one of the alternative borrow areas, we cannot support a "no effect" determination at this time. A "no effect" determination is the appropriate conclusion when the proposed action will not affect listed species or critical habitat. A "may affect," but "not likely to adversely affect" determination is an appropriate conclusion when effects on listed species are expected to be discountable, or insignificant, or completely beneficial. In order to ensure compliance with the ESA, we recommend that the Corps re-examine the projects to determine whether they may affect those species listed above and provide a basis for that determination.
4. Impacts to wetland habitat (including SAV habitat) and non-wet BLH associated with the construction of the mitigation features should be avoided and minimized to the greatest extent possible. The Corps shall fully compensate for any unavoidable losses of wetland habitat or non-wet BLH caused by project features

preferably through resizing of the mitigation features and in close coordination with the natural resource agencies.

5. Impacts to EFH should be avoided and minimized to the greatest extent possible. For proposed project areas that impact designated EFH habitat, coordination with the NMFS should be conducted.
6. Sediment borrow sites for the marsh creation areas should be designed to avoid and minimize impacts to water quality. The general guidelines for borrow design found in Appendix C should be incorporated into project design, and close coordination with the natural resource agencies should continue since borrow design can be case specific and influenced by a number of factors.
7. Further detailed planning of project features (e.g., Design Documentation Report, Engineering Documentation Report, Plans and Specifications, Water Control Plans, or other similar documents) should be coordinated with the Service, NMFS, LDWF, EPA and LDNR). The Service shall be provided an opportunity to review and submit recommendations on the all work addressed in those reports.
8. If applicable, a General Plan should be developed by the Corps, the Service, and the managing natural resource agency in accordance with Section 3(b) of the FWCA for mitigation lands.
9. We recommend that the Corps consider the availability of credits at a bank and within a hydrologic unit when evaluating the mitigation bank alternative to avoid exhausting credits available for individual landowners/permittee within a particular hydrologic unit.
10. If mitigation lands are purchased for inclusion within a NWR those lands must meet certain requirements; a summary of some of those requirements is provided in Appendix A. Other land-managing natural resource agencies may have similar requirements that must be met prior to accepting mitigation lands; therefore, if they are proposed as a manager of a mitigation site they should be contacted early in the planning phase regarding such requirements.
11. The Corps should continue to coordinate with refuge personnel during planning and compatibility determination processes. A Special-Use Permit should be obtained prior to any entrance onto the refuge. Coordination should continue until construction of the flood protection project and restoration projects are complete and prior to any subsequent maintenance. Points of contacts for that refuge are Kenneth Litzenberger, Project Leader for the Service's Southeast National Wildlife Refuges and Neil Lalonde (985) 822-2000, Refuge Manager for the Bayou Sauvage NWR. The Corps should not sign the Decision of Record until a Compatibility Determination is complete.

12. The local sponsor should also be made aware of the above requirements should it be their responsibility to transfer mitigation lands to the Service or other land-managing natural resource agency.
13. If the local project-sponsor is unable to fulfill the financial mitigation requirements for operation and/or maintenance of mitigation lands, then the Corps should provide the necessary funding to ensure mitigation obligations are met on behalf of the public interest.
14. Any proposed change in mitigation features or plans should be coordinated in advance with the Service, NMFS, LDWF, EPA and LDNR.
15. The Service encourages the Corps to finalize mitigation plans and proceed to mitigation construction so that it will be concurrent with project construction and revising the impact and mitigation period-of-analysis to reflect additional temporal losses will not be required.
16. For on-refuge impacts the Service prefers and recommends implementation of the proposed TSP, including the Bayou Sauvage brackish marsh alternative, because this alternative ranks higher in long-term sustainability and property management feasibility over other brackish marsh alternatives. Further, the Service does not support the selection of the Golden Triangle mitigation alternative for on-refuge impacts; however, we would not object to that alternative should it be selected for non-refuge impacts.
17. It is the position of the Service at this time that any lands acquired through the condemnation process (excluding those condemned for unclear title) will not be accepted by donation, transfer, sale, or other means to become part of a national wildlife refuge. Based on this position the Service would not consider any such action as meeting the necessary mitigation requirements for impacts to refuge lands. Should condemnation be foreseeable to acquire lands for on-refuge mitigation, we recommend alternatives be further investigated and developed. We will continue to work with the Corps to seek alternatives within refuge lands or from willing sellers to fulfill the necessary mitigation requirements.
18. The Service supports the mitigation of on-refuge flood-side BLH impacts on either side of the levee (flood or protected) and recommends that the Corps, in consultation with the Service, develop acceptable mitigation for such impacts should the proposed TSP mitigation feature (i.e., Fritchie alternative) not be feasible.
19. The habitat assessment for the Fritchie BLH alternative is based on a surrogate BLH habitat located in the vicinity of the project area. Once access is granted to the proposed restoration area, a reassessment should be conducted. Should further development of feature designs result in a lower mitigation potential, a supplemental FWCA report may be necessary.

20. The Service recommends that the Corps work with the natural resource agencies to incorporate proposed modifications (Appendix G) and finalize the “GUIDELINES – WET BLH HABITAT ENHANCEMENT, SWAMP HABITAT RESTORATION, AND SWAMP HABITAT ENHANCEMENT” and the untitled document for marsh mitigation (Appendix F).
21. The Service recommends that the Corps maintain full responsibility for any BLH mitigation project for a minimum of 4-years post planting. The Corps should maintain full responsibility for all marsh mitigation projects until monitoring guidelines to be developed are completed and demonstrate the projects are fully compliant with success and performance requirements.
22. At this time none of the mitigation planning documents describe in detail actions needed by the Corps and/or the local sponsor if mitigation is not succeeding as planned. The Service recommends that this important component of the mitigation plan be developed.