



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
646 Cajundome Blvd.  
Suite 400  
Lafayette, Louisiana 70506  
January 30, 2007



Colonel Michael McCormick  
Hurricane Protection Office (HPO)  
U.S. Army Corps of Engineers  
Post Office Box 60267  
New Orleans, Louisiana 70160-0267

Dear Colonel McCormick:

Please reference the December 31, 2008, letter from Mr. Gib Owen, Acting Chief of the Environmental Planning and Compliance Branch, requesting our concurrence with determinations regarding impacts to threatened or endangered species and their critical habitat made by U.S. Army Corps of Engineers' (Corps) for work proposed in Individual Environmental Reports (IER) 5-11 in Orleans, Jefferson, and St. Bernard Parishes. Those projects would involve improvements to levees, floodwalls, floodgates, and construction of new barriers, closure structures, navigable gates and/or permanent pump stations in the New Orleans East Bank, New Orleans East and Chalmette Loop sub basins. These improvements are necessary to provide 100-year level flood protection for the New Orleans Metropolitan area. The U.S. Fish and Wildlife Service (Service) has reviewed the information provided, and offers the following comments in accordance with the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), Bald and Golden Eagle Protection Act (BGEPA) (54 Stat. 250, as amended, 16 U.S.C. 668a-d), Migratory Bird Treaty Act (MBTA) (40 Stat. 755, as amended; 16 U.S.C. 703 et seq.), and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.).

The projects included in IERs 5-11 span a large geographic area and have unique components, but the number of potentially impacted threatened or endangered species is small; therefore, the IERs will be grouped according to potentially affected species.

Federally listed as an endangered species, West Indian manatees (*Trichechus manatus*) occasionally enter Lakes Pontchartrain and Maurepas, and associated coastal waters and streams during the summer months (i.e., June through September). Manatee occurrences appear to be increasing, and they have been regularly reported in the Amite, Blind, Tchefonctue, and Tickfaw Rivers, and in canals within the adjacent coastal marshes of Louisiana. They have also been occasionally observed elsewhere along the Louisiana Gulf coast. The manatee has declined in numbers due to collisions with boats and barges, entrapment in flood control structures, poaching, habitat loss, and pollution. Cold weather and outbreaks of red tide may also adversely affect these animals.

Some or all of the proposed project features, including alternatives, of IERs 5, 6, 7, 8, and 11 (especially the dredging of access channels for IERs 6 and 7), could potentially impact the



manatee. The Corps has incorporated the following protective measures into its construction contracts; therefore, the Service concurs with your determination that construction of the proposed project features is not likely to adversely affect the manatee.

All contract personnel associated with the project should be informed of the potential presence of manatees and the need to avoid collisions with manatees, which are protected under the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973. All construction personnel are responsible for observing water-related activities for the presence of manatee(s). Temporary signs should be posted prior to and during all construction/dredging activities to remind personnel to be observant for manatees during active construction/dredging operations or within vessel movement zones (i.e., work area), and at least one sign should be placed where it is visible to the vessel operator. Siltation barriers, if used, should be made of material in which manatees could not become entangled, and should be properly secured and monitored. If a manatee is sighted within 100 yards of the active work zone, special operating conditions should be implemented, including: no operation of moving equipment within 50 feet of a manatee; all vessels should operate at no wake/idle speeds within 100 yards of the work area; and siltation barriers, if used, should be re-secured and monitored. Once the manatee has left the 100-yard buffer zone around the work area on its own accord, special operating conditions are no longer necessary, but careful observations would be resumed. Any manatee sighting should be immediately reported to the Service's Lafayette, Louisiana Field Office (337/291-3100) and the Louisiana Department of Wildlife and Fisheries, Natural Heritage Program (225/765-2821).

The Gulf sturgeon (*Acipenser oxyrinchus desotoi*), federally listed as a threatened species, is an anadromous fish that occurs in many rivers, streams, and estuarine waters along the northern Gulf coast between the Mississippi River and the Suwanee River, Florida. In Louisiana, Gulf sturgeon have been reported at Rigolets Pass, rivers and lakes of the Lake Pontchartrain basin, and adjacent estuarine areas. Spawning occurs in coastal rivers between late winter and early spring (i.e., March to May). Adults and sub-adults may be found in those rivers and streams until November, and in estuarine or marine waters during the remainder of the year. Sturgeon less than two years old appear to remain in riverine habitats and estuarine areas throughout the year, rather than migrate to marine waters. Habitat alterations such as those caused by water control structures that limit and prevent spawning, poor water quality, and over-fishing have negatively affected this species.

On March 19, 2003, the Service and the National Marine Fisheries Service (NMFS) published a final rule in the Federal Register (Volume 68, No. 53) designating critical habitat for the Gulf sturgeon in Louisiana, Mississippi, Alabama, and Florida. Portions of the Pearl and Bogue Chitto Rivers, Lake Pontchartrain east of the Lake Pontchartrain Causeway, all of Little Lake, The Rigolets, Lake St. Catherine, and Lake Borgne within Louisiana were included in that designation. The primary constituent elements essential for the conservation of Gulf sturgeon are those habitat components that support feeding, resting, sheltering, reproduction, migration, and physical features necessary for maintaining the natural processes that support those habitat components.

In that critical habitat designation, responsibility for consultation with specific Federal agencies was also identified for the Service and for the NMFS. For estuarine and marine waters in



Louisiana, the NMFS is responsible for consultations regarding impacts to the sturgeon and its critical habitat with all Federal Agency agencies, except the Department of Transportation, the Environmental Protection Agency, the U.S. Coast Guard, and the Federal Emergency Management Agency, which consult with the Service. Therefore, please contact Dr. Stephania Bolden (727/824-5312) in St. Petersburg, Florida, for information concerning that species and its critical habitat. Should the proposed project directly or indirectly affect the Gulf sturgeon or its critical habitat in Louisiana, further consultation with that office will be necessary.

The project-area forested wetlands may provide nesting habitat for the bald eagle (*Haliaeetus leucocephalus*), which has officially been removed from the List of Endangered and Threatened Species as of August 8, 2007, however the bald eagle continues to be protected under the MBTA and the BGEPA. Bald eagles nest in Louisiana from October through mid-May. Eagles typically nest in mature trees (e.g., bald cypress, sycamore, willow, etc.) near fresh to intermediate marshes or open water in the southeastern parishes. Major threats to this species include habitat alteration, human disturbance, and environmental contaminants.

The Service developed the National Bald Eagle Management (NBEM) Guidelines to provide landowners, land managers, and others with information and recommendations regarding how to minimize potential project impacts to bald eagles, particularly where such impacts may constitute "disturbance," which is prohibited by the BGEPA. A copy of the NBEM Guidelines is available at:

<http://www.fws.gov/migratorybirds/issues/BaldEagle/NationalBaldEagleManagementGuidelines.pdf>. Those guidelines recommend: (1) maintaining a specified distance between the activity and the nest (buffer area); (2) maintaining natural areas (preferably forested) between the activity and nest trees (landscape buffers); and (3) avoiding certain activities during the breeding season. On-site personnel should be informed of the possible presence of nesting bald eagles within the project boundary, and should identify, avoid, and immediately report any such nests to this office. The construction of the proposed project features for IER 10, Reach LPV 148, may potentially impact the bald eagle. If the Corps determines that construction activities will be located at or closer than 660 feet from a nest tree, the Service recommends that the Corps conduct an on-line evaluation at: <http://www.fws.gov/southeast/es/baldeagle>. Following completion of the evaluation, that website will provide a determination of whether additional consultation is necessary. A copy of that determination should be provided to this office. The Division of Migratory Birds for the Southeast Region of the Service (phone: 404/679-7051, e-mail: [SEmigratorybirds@fws.gov](mailto:SEmigratorybirds@fws.gov)) has the lead role in conducting such consultations. Should you need further assistance interpreting the guidelines or performing an on-line project evaluation, please contact our office.

Federally listed as an endangered species, brown pelicans (*Pelecanus occidentalis*) are not currently known to nest in the project vicinity. Brown pelicans feed along the Louisiana coast in shallow estuarine waters, using sand spits and offshore sand bars as rest and roost areas. Major threats to this species include chemical pollutants, colony site erosion, disease, and human disturbance. The Service concurs that construction of the proposed project features is not likely to adversely affect the brown pelican.

IERs 6, 7, 8, 9, and 10 are located where colonial nesting waterbirds may be present. LDWF currently maintains a database of these colonies locations. That database is updated primarily by monitoring the colony sites that were previously surveyed during the 1980s. Until a new, comprehensive coast-wide survey is conducted to determine the location of newly-established nesting colonies, we recommend that a qualified biologist inspect the proposed work sites for the presence of undocumented nesting colonies during the nesting season (e.g. February through September depending on the species). If colonies exist, work should not be conducted within 1,000 feet of the colony during the nesting season

Portions of IER 6 and 7 are located within or may require access through the Service's Bayou Sauvage National Wildlife Refuge. The National Wildlife Refuge System Improvement Act of 1997 authorized that no new or expanded use of a refuge may be allowed unless it is first determined to be compatible. A compatibility determination is a written determination signed and dated by the Refuge Manager and Regional Refuge Chief, signifying that a proposed or existing use of a national wildlife refuge is a compatible use or is not a compatible use. A compatible use is defined as a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the national wildlife refuge. A compatibility determination is only required when the Service has jurisdiction over the use. For example, proposed uses that deal exclusively with air space, navigable waters or overly refuges where another Federal agency has primary jurisdiction over the area, would not be subject to compatibility.

Federal agencies proposing a project that includes features on a national wildlife refuge are encouraged to contact the Refuge Manager early in the planning process. The Refuge Manager will work with the project proponent to determine if the proposed project constitutes a "refuge use" subject to a compatibility determination. If the proposed project requires a compatibility determination, a concise description of the project (refuge use) including who, what, where, when, how, and why will be needed to prepare the compatibility determination. In order to determine the anticipated impacts of use, the project proponent may be required to provide sufficient data and information sources to document any short-term, long-term, direct, indirect or cumulative impacts on refuge resources. Compatibility determinations will include a public review and comment before issuing a final determination.

All construction or maintenance activities (e.g., surveys, land clearing, etc.) on a National Wildlife Refuge (NWR) will require the Corps to obtain a Special Use Permit from the Refuge Manager; furthermore, all activities on that NWR must be coordinated with the Refuge Manager. Therefore, we recommend that the Corps request issuance of a Special Use Permit well in advance of conducting any work on the refuge. Please contact Kenneth Litzenberger, Project Leader for the Service's Southeast National Wildlife Refuges and Jack Bohannon Refuge Manager for the Bayou Sauvage National Wildlife Refuge at (985) 822-2000, for further information on compatibility of flood control features, and for assistance in obtaining a Special Use Permit. Close coordination by both the Corps and its contractor must be maintained with the Refuge Manager to ensure that construction and maintenance activities are carried out in accordance with provisions of any Special Use Permit issued by the NWR.

Based on our review, the Service concurs with your determinations that the construction of the proposed project features in IERs 5-11 is not likely to adversely affect the brown pelican, and because of manatee protective measures included in the Corps' construction contracts, the Service also concurs that the construction of the proposed project features in IERs 5-11 is not likely to adversely affect the manatee. The Service recommends that the Corps contact NMFS regarding impacts to the Gulf sturgeon and its critical habitat and implement the above mentioned survey and protection measure to protect colonial nesting birds. The Service is also willing to assist the Corps evaluate the potential impacts to the bald eagle under the NBEM Guidelines.

We appreciate the opportunity to review the proposed 100 Year Hurricane Protection Projects for IERs 5-11. If you need further assistance or have questions regarding this letter, please contact David Walther (337/291-3122) of this office.

Sincerely,



for James F. Boggs  
Field Supervisor  
Louisiana Field Office

cc: NOAA, St. Petersburg, FL  
Laura Lee Wilkinson, CEMVN, New Orleans, LA  
LDWF, Natural Heritage, Baton Rouge, LA

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