



UNITED STATES DEPARTMENT OF COMMERCE
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NATIONAL MARINE FISHERIES SERVICE
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MAR 13 2009

F/SER31:KS

Ms. Elizabeth Wiggins
New Orleans District Corps of Engineers
P.O. Box 60267
New Orleans, Louisiana 70160-0267

Re: IER 6 and 7

Dear Ms. Wiggins:

This responds to your letter dated September 17, 2008, requesting section 7 consultation pursuant to the Endangered Species Act (ESA) for the Army Corps of Engineers' (COE) Individual Environmental Reports (IER) 6 and 7. The reports evaluate the COE's proposal to upgrade the existing hurricane protection system to protect communities and infrastructure in Orleans Parish, Louisiana, from 100-year level storms. The proposed projects include the placement of rock on the existing foreshore protection to raise its elevation on several sections of the levee system on Lake Pontchartrain near New Orleans, Louisiana. You requested concurrence from the National Marine Fisheries Service (NMFS) with your determination the projects are not likely to adversely affect the threatened Gulf sturgeon and its designated critical habitat. NMFS' determinations regarding the effects of the proposed action are based on the description of the action in this and any related consultation documents. You are reminded that any changes to the proposed action may negate the findings of the present and completed consultations and may require reinitiation of consultation with NMFS.

Alternative Arrangements for NEPA and Incremental ESA Analysis

Though NMFS has previously completed consultation on three COE-proposed hurricane protection projects, we have only recently recognized that those projects as well as the projects evaluated in IERs 6 and 7 are components of the COE's comprehensive plan to upgrade existing structures in the Greater New Orleans Hurricane and Storm Damage Risk Reduction System, which was authorized and funded under Public Law 109-234, Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery (2006). The 17 projects included in the proposed comprehensive plan will upgrade the existing hurricane protection system, damaged and weakened by Hurricanes Katrina and Rita in 2005, to reduce the threats to communities and infrastructure from 100-year level storms. On March 13, 2007, the COE implemented Alternative Arrangements under the provisions of the Council on Environmental Quality Regulations for Implementing the National Environmental Policy Act (NEPA; 40 CFR 1506.11) to expedite complete environmental analysis for the proposed comprehensive plan. The Alternative Arrangements allow decisions on individual components



of the overall proposed action so that the process can be completed more quickly than under the traditional NEPA process. The COE deemed the Alternative Arrangements necessary to reduce the risk of flooding and to restore public confidence in the hurricane protection system so that economic recovery of the area could proceed. When sufficient information is available from each of the IERs analyzing the proposed individual projects making up the comprehensive plan, the COE will produce a draft Comprehensive Environmental Document (CED). The CED will incorporate the IERs by reference and address the work completed, as well as the remaining work to be completed, on a system-wide scale and include a final mitigation plan. The COE has committed to NMFS that if individual and/or cumulative effects to listed species or designated critical habitat not previously addressed in IERs that have undergone consultation are subsequently identified in the CED, the COE will reinitiate consultation with NMFS.

The Endangered Species Act has been interpreted by courts, including the Supreme Court of the United States, as requiring comprehensive consultation on the entire scope of a proposed project or plan. Incremental consultation on separate stages or phases of a project is allowable only where the project is implemented under statutes that authorize staged decision-making, including staged environmental reviews and the potential for modification or cancellation of subsequent stages.

The regulations implementing the ESA include provisions at 50 CFR 402.14(k) for consulting on projects in incremental steps that are based on the caselaw discussed above. Section 402.14(k) provides that:

Incremental steps. When the action is authorized by a statute that allows the agency to take incremental steps toward the completion of the action, the Service shall, if requested by the Federal agency, issue a biological opinion on the incremental step being considered, including its views on the entire action. Upon the issuance of such a biological opinion, the Federal agency may proceed with or authorize the incremental steps of the action if:

- (1) The biological opinion does not conclude that the incremental step would violate section 7(a)(2);
- (2) The Federal agency continues consultation with respect to the entire action and obtains biological opinions, as required, for each incremental step;
- (3) The Federal agency fulfills its continuing obligation to obtain sufficient data upon which to base the final biological opinion on the entire action;
- (4) The incremental step does not violate section 7(d) of the Act concerning irreversible or irretrievable commitment of resources; and
- (5) There is a reasonable likelihood that the entire action will not violate section 7(a)(2) of the Act.

In accordance with these provisions, the consultation on each incremental step must be in the context of the entire action (i.e., the effects of all previous steps should be considered in the evaluation of the effects of the current step). NMFS has previously completed consultations on IERs 2, 3, and 11. Therefore, this consultation will consider the effects of those projects in the evaluation of the effects of the currently proposed actions, IERs 6 and 7, on listed species and critical habitat under NMFS purview.

Previously Authorized IER Projects

Section 7 consultation was completed on IER 2 on June 6, 2008. The project consists of replacing existing floodwalls with new T-walls, constructing a breakwater, and dredging a channel for equipment access in the western portion of Lake Pontchartrain in Jefferson and St. Charles Parishes, Louisiana. NMFS determined project activities are not likely to adversely affect Gulf sturgeon or listed sea turtles (Kemp's ridley, green, or loggerhead) potentially found in the project area. The project is not located in designated Gulf sturgeon critical habitat and has not yet been constructed.

Consultation for IER 3 was completed on May 28, 2008; consultation on modifications to the project was completed on November 6, 2008. The project, as modified, consists of the construction of a cement breakwater, the addition of rock riprap to existing foreshore protection along the shoreline, and dredging for equipment access in Lake Pontchartrain in Jefferson Parish, Louisiana. NMFS determined project activities are not likely to adversely affect Gulf sturgeon or listed sea turtles (Kemp's ridley, green, or loggerhead) potentially found in the project area. In addition, NMFS determined that IER 3 was not likely to adversely affect designated Gulf sturgeon critical habitat in Unit 8. Water quality impacts related to dredging and stockpiling of dredged material are expected to be insignificant because they will be temporary and minimized by the use of silt curtains. Potential effects to sediment quality resulting from dredging and stockpiling of dredged material will also be insignificant. While dredging may temporarily uncover a layer of finer-grained sediment, the original material will be placed back in the channel and sediment quality will be returned to pre-project conditions. Prey abundance will be temporarily affected by the dredging of 9 acres of waterbottom and the placement of dredged material on 20 acres of waterbottom. However, the project area encompasses only a small portion of the 403,200 acres of available habitat in Lake Pontchartrain supporting Gulf sturgeon prey items. Stockpiled material will be placed back into the dredged channels upon project completion and returned to pre-project contours. Benthic invertebrates utilized by Gulf sturgeon are expected to recolonize the dredged area rapidly, as they have been found to recolonize within one year when sediment composition and depth remain consistent. The permanent loss of 9 acres of habitat (due to the construction of the breakwater, riprap, and foreshore protection) on prey abundance is also expected to be insignificant. Gulf sturgeon prey are expected to be found in sandy substrate, while the substrate found at the site of the breakwater is mainly hard bottom. Further, Gulf sturgeon are expected to be found in deeper waters (2 to 4 meters) than those at the site of the proposed foreshore protection (less than 1 meter). The project has not yet been constructed.

Consultation on IER 11 was completed on August 12, 2008. The project consists of construction of storm surge protection structures (flood control gates and concrete floodwalls) and dredging for equipment access between the Inner Harbor Navigation Canal and Lake Borgne in Orleans and St. Bernard Parishes, Louisiana. NMFS determined project activities are not likely to adversely affect Gulf sturgeon or listed sea turtles (Kemp's ridley, green, or loggerhead) potentially found in the project area. Although not located in designated Gulf sturgeon critical habitat, the project is hydrologically connected to designated critical habitat in Unit 8. Based on modeling reports and analyses provided by the COE, the project will not significantly affect hydroperiod, salinity, ability for benthic communities to be established and maintained, water

velocity, dissolved oxygen, siltation, or accessibility; therefore, NMFS determined the project was not likely to adversely affect designated Gulf sturgeon critical habitat. This project is currently under construction.

Currently Proposed Projects

The proposed projects, IERs 6 and 7, are located between 30.0381°N, 90.0126°W (WGS84) and 30.1488°N, 89.8800°W (WGS84) in Orleans Parish, Louisiana, and includes improvements to structures from the New Orleans Lakefront Levee to the Citrus Lakefront Levee, the New Orleans Airport Floodwall to Paris Road, New Orleans East Lakefront Levee to New Orleans East Back Levee, and Paris Road to Eastbank of Michoud Canal. The elevation of 11 miles of existing foreshore protection will be raised to 14 feet NAVD88 by placing additional rock on the structure. To access the foreshore protection for rock placement, a bucket dredge will be used to excavate nine 10-foot-deep channels perpendicular to the shoreline of Lake Pontchartrain, ranging from 750- to 1,600-feet long and up to 400 feet wide. Four 2,000- by 500-foot-wide lateral access channels parallel to the shoreline will also be dredged. Dredging will only occur May through September in order to avoid impacts to Gulf sturgeon that may use Lake Pontchartrain as winter foraging habitat. Dredged material will be stockpiled adjacent to the channels (with a 14- to 40-foot buffer in between) and surrounded with a siltation curtain to keep it in place. All dredged material will be returned to the access channels once the project is completed. Approximately 44 acres of waterbottom will be dredged and 134 acres of waterbottom will be temporarily covered by the stockpiled dredged material, resulting in temporary impacts to 178 acres of benthic habitat through burying and physical disruption of potential prey. Permanent impacts will result from the placement of rock on the existing foreshore protection, which will extend into the water and permanently cover an additional 14 acres of waterbottom. Water depths in the area where the rock will be placed are less than 1 meter deep.

Effects to Species and Designated Critical Habitat from Previous and Currently Proposed IER Projects

As discussed in a previous section of the document, in accordance with the provisions of the ESA at 50 CFR 402.14(k), section 7 consultation on each incremental step of a phased/staged action must be in the context of the entire action (i.e., the effects of all previous steps should be considered in the evaluation of the effects of the current step). NMFS has previously completed consultations on IERs 2, 3, and 11. Therefore, this consultation will consider the effects of those projects in the evaluation of the effects of the currently proposed actions, IERs 6 and 7, on listed species and critical habitat under NMFS purview.

In addition to Gulf sturgeon, three listed species of sea turtles may occur at the project sites: the endangered Kemp's ridley, the threatened/endangered¹ green, and the threatened loggerhead. The currently proposed projects, IERs 6 and 7, as well as IER 3 are located within designated Gulf sturgeon critical habitat Unit 8. Although not located in critical habitat, IER 11 is

¹Green turtles are listed as threatened, except for breeding populations in Florida and the Pacific Coast of Mexico, which are listed as endangered.

hydrologically connected to Unit 8. The primary constituent elements (PCEs) essential for the conservation of Gulf sturgeon present in Unit 8 include: abundant prey items; water quality and sediment quality 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. Of these PCEs, NMFS believes water quality, sediment quality, and prey abundance may be affected.

NMFS has analyzed the routes of potential effects from the proposed projects in IERs 2, 3, 6, 7, and 11 and concluded that listed sea turtles and Gulf sturgeon are not likely to be adversely affected from the suite of activities proposed. The risk of injury to listed species from dredging activities associated with IERs 6 and 7 will be discountable based on the type of dredge being used and the adherence to the May-September dredging window. Gulf sturgeon are not likely to be present during dredging activities because they primarily utilize Lake Pontchartrain for winter foraging and dredging will only occur in the summer. There are no reported takes of sea turtles or Gulf sturgeon by a bucket dredge. Further, the likelihood of sea turtles and Gulf sturgeon being struck by the transit and anchoring of equipment and vessels at the project site is discountable due to these species' mobility. The likelihood of effects to Gulf sturgeon and sea turtles from dredging and the transit and anchoring of equipment and vessels were also determined to be discountable in the consultations on IERs 2, 3, and 11 due to these species' mobility, the type of dredges being used, and/or the lack of species' presence in dredging sites located in marsh or in heavily controlled artificial waterways of low habitat value.

NMFS considers the temporary loss of 178 acres of benthic habitat due to dredging and stockpiling of dredged material, and the permanent loss of 14 acres of habitat due to placement of rock on the existing foreshore protection, proposed in IERs 6 and 7 as having insignificant effects on sea turtles and Gulf sturgeon. The project area encompasses only a small portion of the 403,200-acre lake and there is similar habitat in the vicinity such that impacts to foraging success, reproduction, resting, or other activities that might occur in the area are expected to be minor and insignificant. Further, the bottom substrate does not support submerged aquatic vegetation and is likely a poor source of other forage resources for sea turtle species. Due to the shallow water depth and high-energy wave environment where the rock will be placed, the project area provides poor foraging habitat for Gulf sturgeon, as well. Water depths in the 14-acre rock placement site are less than 1 meter. Gulf sturgeon are usually found at deeper depths (2 to 4 meters), where lower wave energy at the substrate, compared to the shallower swash zone, interferes less with feeding.

We evaluated the potential impacts on listed species from the additive loss of a total of 322 acres of habitat (266 temporarily, 56 permanently) from implementing IERs 2, 3, 6, 7 and 11. If all impacts occurred in areas utilized by species under NMFS' purview, then only 0.08 percent of the available habitat in Lake Pontchartrain would be temporarily or permanently lost as foraging habitat. There is sufficient available habitat in the vicinity such that impacts to foraging success, reproduction, resting, or other behaviors are expected to be minor and insignificant. However, all of the permanent impacts and a portion of the temporary impacts will occur in areas that are not utilized by listed species under NMFS' purview because: (1) they consist of marsh, peat substrate, or hardbottom that do not support prey species or other foraging resources for sturgeon

and sea turtles; (2) the sites have high wave energy that interferes with feeding; and, (3) they are much shallower (less than 1 meter) than depths preferred by sturgeon and sea turtles. Project activities in IER 11 will not impact habitat in Lake Pontchartrain, but may cause sea turtles and Gulf sturgeon to temporarily avoid the project site due to construction noise. Also, the operation of flood control structures could potentially hinder access by sea turtles and sturgeon to Lake Pontchartrain, but the structures will remain open at all times with the exception of major storms or hurricanes and many other access points to the lake will remain available to these species.

NMFS and the United States Fish and Wildlife Service jointly designated Gulf sturgeon critical habitat on April 18, 2003 (50 CFR 226.214). NMFS believes the suite of project activities in IERs 3, 6, 7, and 11² may affect but are not likely to adversely affect Gulf sturgeon critical habitat in Unit 8. Water quality PCE impacts related to dredging and stockpiling of dredged material in IERs 3, 6, and 7 are expected to be insignificant because they will be temporary and minimized by the use of silt curtains. Potential effects to the sediment quality PCE resulting from dredging and stockpiling of dredged material will also be insignificant. While dredging in IERs 3, 6, and 7 may temporarily uncover a layer of finer-grained sediment, the original material will be placed back in the channel and sediment quality will be returned to pre-project conditions. Further, the placement of inert, non-toxic rock in these projects will not affect water quality or sediment quality. Prey abundance will be temporarily affected by the currently proposed projects (IERs 6 and 7) from the dredging of 44 acres of waterbottom and the placement of dredged material on 134 acres of waterbottom. The total temporary loss of Gulf sturgeon critical habitat from activities in IERs 3, 6, and 7 of 207 acres will be insignificant. This represents only a small portion (0.05 percent) of the available habitat in Lake Pontchartrain supporting Gulf sturgeon prey items. Further, stockpiled material will be placed back into the dredged channels upon project completion and returned to pre-project contours. Benthic invertebrates utilized by Gulf sturgeon are expected to recolonize the dredged area rapidly, as they have been found to recolonize within one year when sediment composition and depth remain consistent. The permanent loss of 14 acres of habitat will result from the placement of rock on the existing foreshore protection associated with IERs 6 and 7. The total permanent loss of prey associated with habitat that will be impacted by IERs 3, 6, and 7 of 23 acres will also be insignificant. Water depths at the project sites are less than 1 meter and these areas experience high wave energy. Gulf sturgeon are suction feeders; due to their feeding morphology, they are usually found at deeper depths (2 to 4 meters), where lower wave energy at the substrate, compared to the shallower swash zone, interferes less with feeding. Although not located in designated Gulf sturgeon critical habitat, project activities in IER 11 are hydrologically connected to designated critical habitat in Unit 8. Based on modeling reports and analyses provided by the COE, the project will not significantly affect hydroperiod, salinity, the ability for benthic communities to be established and maintained, water velocity, dissolved oxygen, siltation, or accessibility; therefore, NMFS determined the project was not likely to adversely affect designated Gulf sturgeon critical habitat.

Future IER Projects

Based on information provided by the COE, two consultations on three remaining IERs must be completed with NMFS. Varying levels of information are available regarding the remaining IER

²Project activities in IER 2 are not located in designated critical habitat.

projects. A brief summary of each remaining IER, with the key available details, are presented here in order to make a determination that the continued incremental consultation on each IER complies with 50 CFR 402.14(k).

IER 5 consists of the construction of two breakwaters to protect two pump stations in Orleans and Jefferson Parishes, Louisiana; consultation on this IER has been initiated. The project is located in Gulf sturgeon critical habitat Unit 8. Substrate at the project site is 50 percent sand and water depths at the breakwater locations are between 8 and 11 feet of water. Because the project is located in designated Gulf sturgeon critical habitat, and the substrate and water depth characteristics at the sites suggest they support Gulf sturgeon foraging activities, this project may adversely affect designated Gulf sturgeon critical habitat, and formal consultation is required. However, based on the small size of the area affected by the breakwaters (3.3 acres), we believe it would not be reasonably expected that this project would result in the destruction or adverse modification of designated critical habitat. Adverse effects to listed sea turtles from IER 5 are not expected. These conclusions, however, must be evaluated through completing the formal consultation on IER 5.

The COE will submit a single request for consultation on a supplement to IER 3 and IER 11 Tier 2. The IER 3 supplemental activities include the construction of bypass/detour lanes coming off the Lake Pontchartrain Causeway into New Orleans to reroute traffic around the other constructed components of IER 3. The project will occur in Gulf sturgeon critical habitat Unit 8. Temporary impacts from dredging for equipment access and the stockpiling of dredged material are expected to be similar to, or less than, the temporary impacts to 29 acres of habitat currently proposed in IER 3. Permanent impacts will result from the driving of piles into waterbottoms for the detour lanes. It is unknown how much designated critical habitat will be affected by these activities; however, other similar projects in Gulf sturgeon critical habitat have been found to affect a relatively small footprint and sturgeon can continue to forage underneath the pile-supported structure once construction is completed. IER 11 Tier 2 is not located in Gulf sturgeon critical habitat. However, components of the project involve placing flood control structures and shallowing waterbottoms with fill material in areas traversed by sturgeon and sea turtles. The COE will place coffer dams around the area during the majority of the construction period to exclude listed species from the site and to prevent sediments and other materials from flowing into Lake Pontchartrain. Further, the majority of construction will occur between May and September when Gulf sturgeon are not expected to be in the area. However, some components of the project may occur when the coffer dams are not in place and outside the May to September timeframe. Therefore, NMFS will have to evaluate expected impacts from IER 11 Tier 2 to listed species when all the necessary information becomes available. However, based on the short duration of the construction impacts, the low likelihood of interactions between construction activities and listed species, and the lack of operational impacts to listed species, any impacts associated with the project would not reasonably be expected to result in jeopardy. This conclusion must be verified through the completion of consultation on the project.

Analysis of Compliance with 50 CFR 402.14(k)

As discussed above, NMFS has determined that the incremental step of implementing IERs 6 and

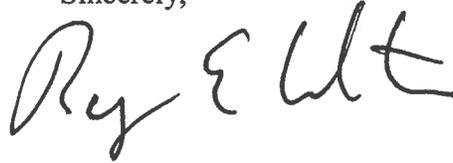
7 will not violate section 7(a)(2) of the ESA, as required in 50 CFR 402.12(k)(1). As required by 50 CFR 402.14(k) paragraphs (2) and (3), the COE will consult with NMFS on all future IERs that may affect species or critical habitat under NMFS' purview, and through ongoing information collection, will reinitiate consultation if new or unanticipated effects of previous action become apparent. Further, COE will complete a comprehensive environmental review of the effects of the entire hurricane protection plan as soon as sufficient information is available about each of the IERs.

Though specific project details for the remaining IERs are still in development, based on information currently available analyzed above, there is a reasonable likelihood that the COE's comprehensive plan to upgrade the Greater New Orleans Hurricane and Storm Damage Risk Reduction System will not violate section 7(a)(2) of the ESA by jeopardizing the continued existence of a listed species or destroying or adversely modifying designated critical habitat. Paragraph (4) of 50 CFR 402.14(k) requires that each incremental step of a comprehensive action does not violate section 7(d) of the ESA concerning irreversible or irretrievable commitment of resources. Therefore, the actions consulted on and authorized in IERs 2, 3, 6, 7, and 11 cannot foreclose the implementation of reasonable and prudent alternatives (RPAs), that may be necessary to address effects from the remaining consultations on IERs 3 supplemental, 5, and 11 Tier 2, or the additive effects of successively implemented projects. None of the impacts from the IERs, either individually or comprehensively, are expected to rise to the level of jeopardy to a listed species or destruction or adverse modification of designated critical. However, if information provided by the COE in the future suggests that jeopardy or adverse modification are likely, then potential RPAs (e.g., fully adhering to dredging/construction windows, modifications to structure design and placement) are still available to the action agency. Therefore, based on available information to date, we conclude that consultations on the IER projects under the Alternative Arrangements comply with all the provisions contained in 50 CFR 402.14(k) for consultations on incremental actions.

This concludes your consultation responsibilities under the ESA for species under NMFS' purview until such time as additional information on IER projects under the comprehensive plan to upgrade the Greater New Orleans Hurricane and Storm Damage Risk Reduction System becomes available. Consultation must also be reinitiated if a take occurs or new information reveals effects of the action not previously considered, or the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat in a manner or to an extent not previously considered, or if a new species is listed or critical habitat designated that may be affected by the identified action. We have enclosed additional information on other statutory requirements that may apply to this action, and on NMFS' Public Consultation Tracking System (PCTS) to allow you to track the status of ESA consultations.

Thank you for your continued cooperation in the conservation of threatened and endangered species under NMFS' purview. If you have any questions on this consultation or PCTS, please contact Kelly Shotts at (727) 824-5312, or by e-mail at kelly.shotts@noaa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Roy E. Crabtree". The signature is fluid and cursive, with the first name "Roy" being the most prominent.

Roy E. Crabtree, Ph.D.
Regional Administrator

Enclosure

cc: F/SER43, Hartman/Williams

File: 1514-22 F.1. LA

Ref: I/SER/2008/06354

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**PCTS Access and Additional Considerations for ESA Section 7 Consultations
(Revised 5-13-2008)**

Public Consultation Tracking System (PCTS) Guidance: PCTS is an online query system at <https://pcts.nmfs.noaa.gov/> that allows federal agencies and U.S. Army Corps of Engineers' (COE) permit applicants and their consultants to ascertain the status of NMFS' Endangered Species Act (ESA) and Essential Fish Habitat (EFH) consultations, conducted pursuant to ESA section 7, and Magnuson-Stevens Fishery Conservation and Management Act's (MSA) sections 305(b)2 and 305(b)(4), respectively. Federal agencies are required to enter an agency-specific username and password to query the Federal Agency Site. The COE "Permit Site" (no password needed) allows COE permit applicants and consultants to check on the current status of Clean Water Act section 404 permit actions for which NMFS has conducted, or is in the process of conducting, an ESA or EFH consultation with the COE.

For COE-permitted projects, click on "Enter Corps Permit Site." From the "Choose Agency Subdivision (Required)" list, pick the appropriate COE district. At "Enter Agency Permit Number" type in the COE district identifier, hyphen, year, hyphen, number. The COE is in the processing of converting its permit application database to PCTS-compatible "ORM." An example permit number is: SAJ-2005-000001234-IPS-1. For the Jacksonville District, which has already converted to ORM, permit application numbers should be entered as SAJ (hyphen), followed by 4-digit year (hyphen), followed by permit application numeric identifier with no preceding zeros. For example: SAJ-2005-123; SAJ-2005-1234; SAJ-2005-12345.

For inquiries regarding applications processed by COE districts that have not yet made the conversion to ORM (e.g., Mobile District), enter the 9-digit numeric identifier, or convert the existing COE-assigned application number to 9 numeric digits by deleting all letters, hyphens, and commas; converting the year to 4-digit format (e.g., -04 to 2004); and adding additional zeros in front of the numeric identifier to make a total of 9 numeric digits. For example: AL05-982-F converts to 200500982; MS05-04401-A converts to 200504401. PCTS questions should be directed to Eric Hawk at Eric.Hawk@noaa.gov. Requests for username and password should be directed to PCTS.Usersupport@noaa.gov.

EFH Recommendations: In addition to its protected species/critical habitat consultation requirements with NMFS' Protected Resources Division pursuant to section 7 of the ESA, prior to proceeding with the proposed action the action agency must also consult with NMFS' Habitat Conservation Division (HCD) pursuant to the MSA requirements for EFH consultation (16 U.S.C. 1855 (b)(2) and 50 CFR 600.905-.930, subpart K). The action agency should also ensure that the applicant understands the ESA and EFH processes; that ESA and EFH consultations are separate, distinct, and guided by different statutes, goals, and time lines for responding to the action agency; and that the action agency will (and the applicant may) receive separate consultation correspondence on NMFS letterhead from HCD regarding their concerns and/or finalizing EFH consultation.

Marine Mammal Protection Act (MMPA) Recommendations: The ESA section 7 process does not authorize incidental takes of listed or non-listed marine mammals. If such takes may occur an incidental take authorization under MMPA section 101 (a)(5) is necessary. Contact Ken Hollingshead of our NMFS Headquarters' Protected Resources staff at (301) 713-2323 for more information on MMPA permitting procedures.