

APPENDIX D
USFWS CONCURRENCE LETTER



United States Department of the Interior

FISH AND WILDLIFE SERVICE

646 Cajundome Blvd.

Suite 400

Lafayette, Louisiana 70506



March 14, 2016

Marshall Olson
Perennial Environmental Services, LLC
13100 Northwest Freeway, Suite 160
Houston, Texas 77040

Dear Mr. Olson:

Please reference your February 19, 2016, letter and attached Threatened and Endangered Species and Sensitive Resources Report (received by our office on February 22, 2016) regarding a proposal by Bayou Bridge Pipeline, LLC (BBP) to construct a 162.79-mile-long crude oil transportation pipeline with associated pump stations and ancillary facilities. The proposed pipeline would traverse portions of Calcasieu, Jefferson Davis, Acadia, Vermilion, Lafayette, Iberia, St. Martin, Iberville, Ascension, Assumption, and St. James Parishes, Louisiana. The Fish and Wildlife Service (Service) has reviewed the information you provided, and offers the following comments in accordance with provisions of the Endangered Species Act of 1973 (ESA; 87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

Portions of the proposed project would occur within critical habitat for the threatened Louisiana black bear (*Ursus americanus luteolus*). Project implementation would impact 133.19 acres of land within the Louisiana black bear critical habitat boundary. That acreage constitutes approximately 0.03 percent of the total amount of critical habitat in Unit 2 as defined in the final rule designating critical habitat for the Louisiana black bear (Federal Register Vol. 74, No. 45). According to the above-referenced correspondence from your office, conservation measures to minimize impacts to the Louisiana black bear and its critical habitat will be implemented during project construction. Such measures would include reducing the footprint of the proposed project by co-locating approximately 82 percent of the proposed route within existing utility rights-of-way (ROWs) within bottomland hardwood forested areas in parishes where the subspecies is found, and co-locating the entire proposed pipeline route through Louisiana black bear critical habitat. The above-referenced document also states that only one large tree (i.e., 36 inches or more in diameter at breast height) occurs within the proposed construction footprint, and that tree would be avoided by reducing the standard ROW width in its vicinity. Accordingly, the Service concurs with your determination that the proposed project is not likely to adversely affect the Louisiana black bear or destroy or adversely affect its critical habitat at the unit level. In concurring with your determination, we have not relied on the regulatory definition of “destruction or adverse modification” of critical habitat at 50 C.F.R. 402.02; instead, we have relied on the statutory provisions of the Endangered Species Act.

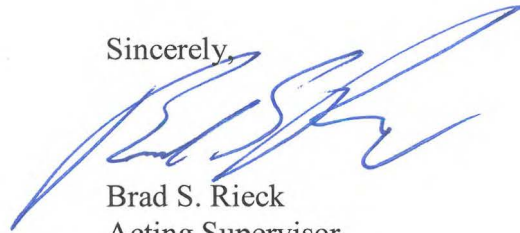
Based on the project description and the detailed, species-specific justifications provided in your report, the Service also concurs with your “no effect” and “not likely to adversely affect”

determinations for the other listed species that may occur within the project vicinity (i.e., interior least tern, piping plover, red knot, red-cockaded woodpecker, Atlantic sturgeon, pallid sturgeon, West Indian manatee, green sea turtle, hawksbill sea turtle, Kemp's Ridley sea turtle, leatherback sea turtle, loggerhead sea turtle, and Alabama heelsplitter).

No further ESA consultation with the Service will be necessary for the proposed action unless there are significant changes in the scope or location of the proposed project, or it has not been initiated within one year of the date of this letter. If the proposed project has not been initiated within one year, follow-up consultation (via telephone call or e-mail) should be accomplished with the Service prior to making expenditures because our threatened and endangered species database is updated annually. If the scope or location of the proposed project is changed significantly, consultation should occur as soon as such changes are made.

If you need further assistance or have any questions regarding our comments, please contact David Soileau, Jr., (337/291-3109) of this office.

Sincerely,



Brad S. Rieck
Acting Supervisor
Louisiana Ecological Services Office

cc: LDWF, Large Carnivore Program, Lafayette, LA



Soileau, David <david_soileau@fws.gov>

Bayou Bridge Pipeline Project - Follow-up Consultation for T&E Species Concurrence

1 message

Marshall Olson <molson@perennialenv.com>

Wed, Feb 1, 2017 at 5:21 PM

To: "david_oster@fws.gov" <david_oster@fws.gov>

Cc: "Soileau, David" <david_soileau@fws.gov>, "Howard, Monica" <Monica.Howard@energytransfer.com>

David,

Per the original concurrence letter issued by the USFWS – Louisiana Ecological Services Field Office for the Bayou Bridge Pipeline Project on March 14, 2016, follow-up consultation is required if the proposed project has not been initiated within 1 year of the original concurrence letter. As detailed in the attached document, there have been no significant changes to the scope or location of the proposed project that would alter the original *no effect* and *not likely to adversely affect* determinations for the federally listed threatened and endangered species that could potentially occur within the project area. Therefore, we respectfully request the reissuance of a letter indicating concurrence with these determinations.

I have copied David Soileau on this email since he was the original reviewer for the project and indicated that you would be reviewing this request letter. Please let me know if you have any questions or need any additional information.

Thanks,

Marshall Olson

Environmental Project Manager

Perennial Environmental Services, LLC

13100 Northwest Freeway, Suite 150

Houston, Texas 77040

713-462-7121

This project has been reviewed for effects to Federal trust resources under our jurisdiction and currently protected by the Endangered Species Act of 1973 (Act). The project, as proposed,
(☒) Will have no effect on those resources
() Is not likely to adversely affect those resources.
This finding fulfills the requirements under Section 7(a)(2) of the Act.

Monica Suber

2-27-17

Acting Supervisor
Louisiana Field Office
U.S. Fish and Wildlife Service

Date

See attached standard language on colonial birds, the Louisiana black bear fact sheet, and bald eagle information



BBP_USFWS_TE_Concurrence_Reissuance_Letter_02.01.2017.pdf

2236K

Colonial Nesting Wading Birds

The proposed project would be located in an area where colonial nesting waterbirds may be present. Colonies may be present that are not currently listed in the database maintained by the Louisiana Department of Wildlife and Fisheries. 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 site for the presence of undocumented nesting colonies during the nesting season.

For colonies containing nesting wading birds (i.e., herons, egrets, night-herons, ibis, and roseate spoonbills), anhingas, and/or cormorants, all activity occurring within 1,000 feet of a rookery should be restricted to the non-nesting period, depending on the species present. Below is the list of colonial nesting birds that may be found and the corresponding window during which the project may occur. Please note no part of the project should occur outside those windows.

<u>Species</u>	<u>Project Activity Window</u>
Anhinga	July 1 to March 1
Cormorant	July 1 to March 1
Great Blue Heron	August 1 to February 15
Great Egret	August 1 to February 15
Snowy Egret	August 1 to March 1

In addition, we recommend that on-site contract personnel be trained to identify colonial nesting birds and their nests, and avoid affecting them during the breeding season (i.e., the time period outside the activity window).

Time of Year (TOY) Restrictions for Non-Colonial Birds

Little Blue Heron	August 1 to March 1
Tricolored Heron	August 1 to March 1
Reddish Egret	August 1 to March 1
Cattle Egret	September 1 to April 1
Green-backed Heron	September 1 to March 15
Black-crowned Night-Heron	September 1 to March 1
Yellow-crowned Night-Heron	September 1 to March 15
Ibis	September 1 to April 1
Roseate Spoonbill	August 1 to April 1

Bald Eagle

The proposed project area may provide nesting habitat for the bald eagle (*Haliaeetus leucocephalus*), which was officially removed from the List of Endangered and Threatened Species as of August 8, 2007. However, the bald eagle remains protected under the MBTA and BGEPA. Comprehensive bald eagle survey data have not been collected by the Louisiana Department of Wildlife and Fisheries (LDWF) since 2008, and new active, inactive, or alternate nests may have been constructed within the proposed project area since that time.

Bald eagles typically nest in large trees located near coastlines, rivers, or lakes that support adequate foraging from October through mid-May. In southeastern Louisiana parishes, eagles typically nest in mature trees (e.g., baldcypress, sycamore, willow, etc.) near fresh to intermediate marshes or open water. Bald eagles may also nest in mature pine trees near large lakes in central and northern Louisiana. Major threats to this species include habitat alteration, human disturbance, and environmental contaminants. Furthermore, bald eagles are vulnerable to disturbance during courtship, nest building, egg laying, incubation, and brooding. Disturbance during these periods may lead to nest abandonment, cracked and chilled eggs, and exposure of small young to the elements. Human activity near a nest late in the nesting cycle may also cause flightless birds to jump from the nest tree, thus reducing their chance of survival.

The Service developed the National Bald Eagle Management (NBEM) Guidelines to provide landowners, land managers, and others with information and recommendations 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/southeast/es/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. During any project construction, on-site personnel should be informed of the possible presence of nesting bald eagles in the vicinity of the project boundary, and should identify, avoid, and immediately report any such nests to this office. If a bald eagle nest occurs or is discovered within 660 feet of the proposed project area, then an evaluation must be performed to determine whether the project is likely to disturb nesting bald eagles. That evaluation may be conducted on-line 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.

On September 11, 2009, the Service published two federal regulations establishing the authority to issue permits for non-purposeful bald eagle take (typically disturbance) and eagle nest take when recommendations of the NBEM Guidelines cannot be achieved. Permits may be issued for nest take only under the following circumstances where: 1) necessary to alleviate a safety emergency to people or eagles, 2) necessary to ensure public health and safety, 3) the nest prevents the use of a human-engineered structure, or 4) the activity or mitigation for the activity will provide a net benefit to eagles. Except in emergencies, only inactive nests may be permitted to be taken. The Division of Migratory Birds for the Southeast Region of the Service (phone: 404/679-7051, e-mail: SEmigratorybirds@fws.gov) has the lead role in conducting consultations and issuance of permits. Should you need further assistance interpreting the guidelines, avoidance measures, or performing an on-line project evaluation, please contact Ulgonda Kirkpatrick (phone: 321/972-9089, e-mail: ulgonda_kirkpatrick@fws.gov).



The Louisiana Black Bear

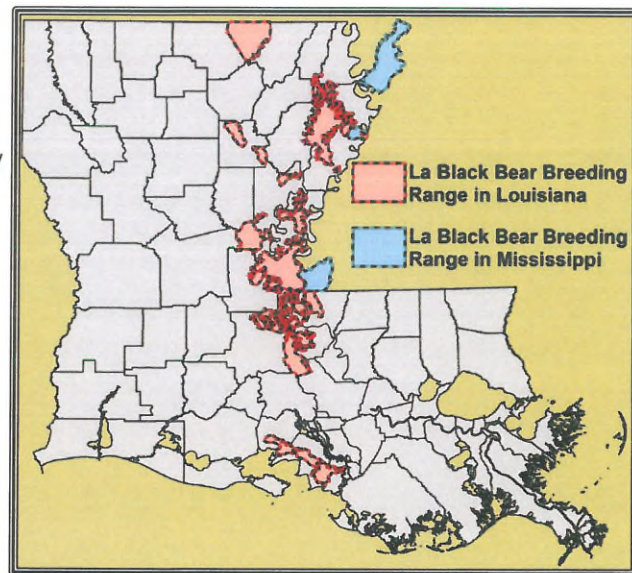
Recovered and Delisted



Post-Delisting Conservation Considerations

The Louisiana black bear (*Ursus americanus luteolus*) was listed as a threatened subspecies in 1992. Due to recovery, it was officially removed from the List of Endangered and Threatened Species on March 11, 2016 (effective April 11, 2016); critical habitat designation for this subspecies has also been withdrawn. Because the Louisiana black bear is no longer protected under the Endangered Species Act (ESA), *consultation with the U.S. Fish and Wildlife Service (Service) is not required for this subspecies.* The Louisiana black bear remains protected under Louisiana state law, and the Louisiana Department of Wildlife and Fisheries (LDWF) will continue to actively manage this subspecies. The Service and LDWF have developed a plan to extensively monitor the status of the Louisiana black bear for 7 years following its delisting (until year 2022). That monitoring will be undertaken to detect any potential population decreases or threat increases that may warrant the implementation of measures to ensure that the Louisiana black bear remains secure from risk of extinction.

The Louisiana black bear is primarily associated with forested wetlands, but will utilize a variety of other habitat types, including scrub-shrub, marsh, spoil banks, and upland forests. They normally den from December through April and preferred den sites include large, hollow trees (36 inches or more in diameter at breast height) with sufficiently sized openings that allow access to interior cavities. Although ESA consultation is no longer required regarding project impacts on this subspecies, in the interest of conserving the Louisiana black bear, projects proposed in areas of the state that are inhabited by bears should be designed to avoid adversely affecting this subspecies or its habitat. (A current Louisiana black bear breeding area map is located at:



https://www.fws.gov/Lafayette/pdf/LA_Black_Bear_Breeding_Habitat_Map.pdf.)

Conservation measures for the Louisiana black bear include:

- reducing the footprint of proposed actions to the maximum extent feasible
- avoiding impacts to potential den trees that are 36 inches or more in diameter at breast height
- implementing programs to prevent the habituation of bears to human-associated food sources (e.g., use of "bear-proof" waste disposal containers or daily removal of food and garbage)
- avoiding vegetative clearing during the black bear denning season (i.e., December 1 through April 30).

For additional information regarding the Louisiana black bear and project-specific conservation measures that may be required by the LDWF, please contact Maria Davidson (Large Carnivore Program Manager) at (337) 262-2080 or mdavidson@wlf.la.gov.



Oster, David <david_oster@fws.gov>

Bayou Bridge Pipeline Project - Follow-up consultation regarding pallid sturgeon

Marshall Olson <molson@perennialenv.com>

Fri, May 5, 2017 at 7:02 AM

To: "Oster, David" <david_oster@fws.gov>

Cc: "Walther, David" <david_walther@fws.gov>, "Howard, Monica" <Monica.Howard@energytransfer.com>, "Little, James W Jr CIV USARMY CEMVN (US)" <James.Little@usace.army.mil>, "Ladner, Howard W CIV CEMVN CEMVD (US)" <Howard.W.Ladner@usace.army.mil>

Dave,

Bayou Bridge Pipeline, LLC has reviewed the information you provided regarding water intake requirements for the pallid sturgeon, and has determined that all of the measures outlined in your email dated May 1, 2017 will be implemented when withdrawing water from the Atchafalaya River and the Gulf Intracoastal Waterway (GIWW) for the Bayou Bridge Pipeline Project. Given the implementation of these measures, could you please respond to this email concurring that the withdraw of water from the Atchafalaya River and the GIWW is not likely to adversely affect the pallid sturgeon?

Please let me know if you have any questions or need any additional information.

Thanks,

Marshall Olson

Environmental Project Manager

Perennial Environmental Services, LLC

13100 Northwest Freeway, Suite 150

Houston, Texas 77040

713-462-7121

This project has been reviewed for effects to Federal trust resources under our jurisdiction and currently protected by the Endangered Species Act of 1973 (Act). The project, as proposed,
() Will have no effect on those resources
(x) Is not likely to adversely affect those resources. *Pallid Sturgeon*
This finding fulfills the requirements under Section 7(a)(2) of the Act.

Joseph A. R.
Acting Supervisor
Louisiana Field Office
U.S. Fish and Wildlife Service

10 May 17
Date

From: Oster, David [mailto:david_oster@fws.gov]**Sent:** Monday, May 01, 2017 2:22 PM**To:** Marshall Olson <molson@perennialenv.com>**Cc:** Walther, David <david_walther@fws.gov>**Subject:** Re: Bayou Bridge Pipeline Project - Follow-up consultation regarding pallid sturgeon

Hi Marshall,

Upon further review of the proposed project, we have condensed the requirements so that they more accurately reflect the scale of project activities. Please review the following information regarding water intake requirements for the pallid sturgeon.

Please respond to this email either confirming or denying that these elements will be incorporated into the proposed project, which will serve as an updated concurrence request.

The following is a list of various intake specifications for both lake and stream environments. Different options are available that could be implemented to protect trust fish and wildlife resources depending on the size and type of stream/river.

Endangered Pallid Sturgeon Recovery Plan Requirements

New point-source water intakes serving industry, irrigation, and public water supply that may affect pallid sturgeon recruitment must be screened with a ¼-inch (6.35 mm) mesh and have an intake velocity of less than 1/2 ft/sec (15.24 cm/sec), or be placed at water depths greater than 15 feet (4.575 m) to protect against entrainment or impingement of pallid sturgeon larvae or fingerlings. Existing intakes found to be adversely affecting pallid sturgeon populations should be redesigned as needed to reduce adverse effects on this species (U.S. Fish and Wildlife Service 1993).

Streams and Rivers

Avoid locating intakes in known locations of eddies.

Placing the intake on the cut or higher velocity bank has been shown to reduce the amount of organisms impinged or entrained (Environmental Protection Agency 1976).

Intakes that are within streams should be placed away from the shoreline and no closer than 2 feet from the bottom (U.S. Fish and Wildlife Service 1978, Environmental Protection Agency 1976).

Sincerely,

Dave

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David A. Oster
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
646 Cajundome Blvd, Suite 400
Lafayette, LA 70506
Office: 337-291-3121