UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701-5505
https://www.fisheries.noaa.gov/region/southeast

09/05/2023

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SERO-2023-00559

Eric Williams
Chief, Environmental Planning Branch
New Orleans District Corps of Engineers
Department of the Army
7400 Leake Avenue
New Orleans, Louisiana 70118

Ref.: U.S. Army Corps of Engineers, St. Tammany Parish Feasibility Study, New Orleans, St. Tammany Parish, Louisiana – EXPEDITED TRACK

Dear Eric Williams,

This letter responds to your September 1, 2023, request pursuant to Section 7 of the Endangered Species Act (ESA) for consultation with the National Marine Fisheries Service (NMFS) on the subject action.

We reviewed the action agency's consultation request document and related materials. Based on our knowledge, expertise, and the action agency's materials, we concur with the action agency's conclusions that the proposed action is not likely to adversely affect the NMFS ESA-listed species and/or designated critical habitat.

We would like to offer the following clarifications to complement your incoming request for consultation. Please include this information as applicable in future consultation requests. Although the consultation request identified the correct ESA-listed species, it should also include a reference to the most recent listing notice in the Federal Register and any applicable species recovery plan. This consultation included the following species: green sea turtle (North Atlantic and South Atlantic distinct population segments) listed as threatened (81 FR 20057, April 6, 2016; Recovery Plan – October 1991); Kemp's ridley sea turtle listed as endangered 35 FR 18319, December 2, 1970; Recovery Plan – September 2011; loggerhead sea turtle (Northwest Atlantic distinct population segment) listed as threatened 76 FR 58868, September 22, 2011; Recovery Plan – December 2008; giant manta ray listed as threatened 83 FR 2916, January 22, 2018; Recovery Outline 2019; and gulf sturgeon listed as threatened 56 FR 49653, September 30, 1991; Recovery Plan – September 1995.

On July 5, 2022, the U.S. District Court for the Northern District of California issued an order vacating the 2019 regulations that were revised or added to 50 CFR part 402 in 2019 ("2019 Regulations," see 84 FR 44976, August 27, 2019) without making a finding on the merits. On September 21, 2022, the U.S. Court of Appeals for the Ninth Circuit granted a temporary stay of the district court's July 5 order. On November 14, 2022, the Northern District of California issued an order granting the government's request for voluntary remand without vacating the 2019 regulations. The District Court issued a slightly amended order two days later on November 16, 2022. As a result, the 2019 regulations remain in effect, and we are applying the 2019 regulations here. For purposes of this consultation and in an abundance of caution, we considered whether the substantive analysis and conclusions articulated in the letter of

concurrence would be any different under the pre-2019 regulations. We have determined that our analysis and conclusions would not be any different.

This concludes your consultation responsibilities under the ESA for species and/or designated critical habitat under NMFS's purview. Reinitiation of consultation is required and shall be requested by the action agency or by NMFS where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (a) take occurs; (b) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered in this consultation; (c) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not previously considered in this consultation; or (d) if a new species is listed or critical habitat designated that may be affected by the action.

We look forward to further cooperation with you on other projects to ensure the conservation of our threatened and endangered marine species and designated critical habitat. If you have any questions on this consultation, please contact Sarah Garvin, Consultation Biologist, at (727) 342-0249 or by email at Sarah.Garvin@noaa.gov.

Sincerely,

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for David Bernhart
Assistant Regional Administrator
for Protected Resources

File: 1514-22.f.7