United States Department of the Interior

FISH AND WILDLIFE SERVICE
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September 12, 2003

Document ID Number: 2227
AR: LA Regional Rest. Plan. Prog.
Title: FWS ...September 12, 2003 [letter to] NOAA/NOS [concurring with ESA assessment for the LRRPP/DPEIS]

Dr. William Conner.
Chief, Damage Assessment
National Ocean Service
National Oceanic and Atmospheric Administration
Silver Spring, MD 20810

Dear Dr. Conner:

Please reference your September 10, 2003, letter and analysis of potential effects (analysis), and the attached Draft Programmatic Environmental Impact Statement (DPEIS) on the Louisiana Regional Restoration Plan. The proposed action described in that DPEIS would establish a statewide Regional Restoration Planning Program (RRP) to assist natural resource trustees in carrying out their natural resource damage assessment and restoration (NRDAR) responsibilities for oil spills in Louisiana. Specifically, the RRP program identifies the statewide RRP structure, the decision-making process, and the criteria that will be used to select restoration project(s) that would restore the natural resources injured by a given incident. The following Federally listed species are known to occur in Louisiana: Louisiana black bear (*Ursus americanus luteolus*), West Indian manatee (*Trichechus manatus*), bald eagle (*Haliaeetus leucocephalus*), brown pelican (*Pelecanus occidentalis*), piping plover (*Charadrius melodus*) and its designated critical habitat, interior least tern (*Sterna antillarum*), red-cockaded woodpecker (*Picoides borealis*), gopher tortoise (*Gopherus polyphemus*), loggerhead sea turtle (*Caretta caretta*), ringed map turtle (*Graptemys oculifera*), Gulf sturgeon (*Acipenser oxyrhynchus desotoi*) and its designated critical habitat, pallid sturgeon (*Scaphirhynchus albus*), inflated heelsplitter mussel (*Potamilus inflatus*), Louisiana pearlshell mussel (*Margaritifera hembeli*), pink mucket pearly mussel (*Lampsilis abrupta*), American chaff-seed (*Schwalbea americana)*, earth fruit (*Geocarpon minimum*), and the Louisiana quillwort (*Isoetes louisianensis*). Your letter requested the U.S. Fish and Wildlife Service's (Service) concurrence with your determination that the adoption of the preferred alternative is not likely to adversely affect those threatened or endangered species and/or their critical habitat. The Service has reviewed the information provided with your letter, and offers the following comments in accordance with provisions of the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

The proposed action would establish a statewide RRP program to facilitate accomplishment of NRDAR responsibilities under the Federal Oil Pollution Act of 1990 (OPA) and the Louisiana Oil Spill Prevention and Response Act of 1991. These laws establish liability for a discharge or substantial threat of discharge of oil, and authorize certain Federal and State agencies to act as natural resources trustees on behalf of the public. Regulations under OPA describe a process for the trustees to conduct NRDARs for the purposes of: (1) returning natural resources and services to a

condition they would have been in, if the spill had not occurred; and, (2) obtaining compensation for interim losses of natural resources and services. The DPEIS identifies types of restoration techniques commonly implemented to restore injuries to natural resources resulting from oil spills in coastal and inland regions. Restoration techniques identified in the DPEIS include: vegetative planting, vegetative protection, hydrologic restoration, marsh management, dredge and fill, shoreline protection, faunal stocking, sediment diversion, freshwater diversion, outfall management, nutrient and sediment trapping, silviculture, land/substrate recontouring and rehabilitation, and resource enhancement. The proposed statewide RRP program would provide a framework for the specific regional restoration plans that will be developed for each of the State's nine regions.

As presented in your analysis, many of the above-listed techniques could potentially affect listed species both beneficially and adversely; however, the project selection criterion established under the NRDAR regulations for the OPA requires trustees to evaluate restoration alternatives that ". . . prevent future injury . . . and avoid collateral injury as a result of implementing the alternative." That criterion requires the trustees to assess the impacts of proposed restoration alternatives on other natural resources, including Federally listed species, and establishes a clear preference for projects that would not have adverse impacts on, and/or that would potentially benefit, Federally listed species and/or their critical habitat. Restoration activities that could potentially adversely affect a listed species can frequently be modified (e.g., timing, extent, duration, etc.) to avoid those potential adverse effects. Table 1.1 of the DPEIS lists NRDAR activities for incidents in Louisiana from 1990 to the present; none of those projects were implemented in a way that adversely affected Federally listed species or their critical habitats. Additionally, your agency has added language to the DPEIS that further clarifies and strengthens the project selection criteria by: (1) requiring restoration projects having the potential to adversely affected listed species or their critical habitat to be designed to avoid those adverse effects; and, (2) precluding their selection if those adverse effects cannot be avoided. Based on the above information, the Service concurs with your determination that implementation of the proposed RRP program is not likely to adversely affect Federally listed species or their critical habitats.

The Service greatly appreciates the cooperation of your agency during this consultation. We look forward to assisting you during future consultations for the individual regional plans and specific restoration projects. If you have any questions or require further coordination on this matter, please contact Deborah Fuller of this office at 318/291-3124.

Sincerely,

Russell C. Watson
Acting Supervisor
Louisiana Field Office

cc: FWS, Atlanta, GA (ES/HC)
LDWF, Natural Heritage Program, Baton Rouge, LA