United States Department of the Interior

FISH AND WILDLIFE SERVICE
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Lafayette, Louisiana 70506

April 1, 2005

Mr. John Rapp
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
LSU, Louisiana Business & Technology Center
Baton Rouge, Louisiana 70803

Dear Mr. Rapp:

Please reference your March 2, 2005, letter and the attached draft Final Programmatic Environmental Impact Statement (FPEIS) on the Louisiana Regional Restoration Plan. The proposed action described in that draft FPEIS 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 would be used to select projects 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*), fat pocketbook pearly mussel (*Potamilus capax*), American chaff-seed (*Schwalbea americana*), earth fruit (*Geocarpon minimum*), and the Louisiana quillwort (*Isoetes louisianensis*). The U.S. Fish and Wildlife Service (Service) previously concurred with the National Oceanic and Atmospheric Administration – National Ocean Service's determination that implementation of the proposed RRP program is not likely to adversely affect federally listed species or their critical habitats. That concurrence, however, did not include the fat pocketbook pearly mussel, which was included in the 2004 species list. Your letter requests the Service's updated concurrence with your determination that implementation of the proposed RRP program is not likely to adversely affect threatened or endangered species and/or their critical habitat, particularly the fat pocketbook pearly mussel. 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 draft FPEIS 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 draft FPEIS 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 would be developed for each of the State's nine regions.

As presented in your analysis, many of the above-listed techniques could potentially have adverse or beneficial effects to listed species; however, the project selection criterion established under the NRDAR regulations for 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., by changing their timing, extent, duration, etc.) to avoid those potential adverse effects. Table 1.1 of the draft FPEIS 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 draft FPEIS that further clarifies and strengthens the project selection criteria by: (1) requiring restoration projects having the potential to adversely affect 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 the fat pocketbook pearly mussel, or other 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 Brigette Firmin of this office at 337/291-3108.

Sincerely,

Russell C. Watson
Acting Supervisor
Louisiana Field Office

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