UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
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MAR 22 2012

F/SER31:JR

Mr. Stephen M. Robertson
Wildlife and Sport Fish Restoration Program
Fish and Wildlife Service
Department of the Interior
P.O. Box 1306
Albuquerque, New Mexico 87103

Re: FWS/R2/WSFR
TX T-61-1

Dear Mr. Robertson:

This responds to your letter dated November 29, 2011. You requested National Marine Fisheries Service (NMFS) concurrence with your project-effect determinations under Section 7 of the Endangered Species Act (ESA). The U.S. Fish and Wildlife Service (USFWS) proposes to fund and issue a State Wildlife Grant to Texas Park and Wildlife Department's (TPWD) Division of Coastal Fisheries, Artificial Reef Program. With USFWS funding, TPWD will deploy large-scale pre-designed reef materials to create the new Corpus Christi Nearshore Reef. You determined the project may affect, but is not likely to adversely affect, five species of sea turtles. We requested more information on December 6, 2011, which you supplied on December 13, 2011, via conference call and on December 22, 2011, via e-mail. Our findings on the project's potential effects are based on the project description in this response. Changes to the proposed action may negate our findings and may require reinitiating consultation.

The Corpus Christi Nearshore Reef project is located in the Gulf of Mexico, about 8 nautical miles off the coastal city of Corpus Christi, Nueces County, Texas, at approximately 27.6464°N, 97.0074°W. Coordinates marking the reef boundary are shown in Table 1. The site covers about 160 acres of barren, sandy substrate in 73 ft of water. Materials will be placed by lowering them using a barge-mounted crane with a quick release mechanism or by pushing/dropping buoyed reef materials over the side of the barge with a fork-lift and controlling their descent speed. Materials will consist of at least 400, 4-sided, semi-enclosed concrete reinforced pyramid structures with bases 10-12 ft long and heights of 8-10 ft. The applicant will comply with NMFS' *Sea Turtle and Smalltooth Sawfish Construction Conditions* dated March 23, 2006 (enclosed). Deployment of reef materials is expected to take 5 days.

Table 1. Coordinates marking the boundary of the artificial reef site.

	Depth	Latitude	Longitude
Midpoint	73	27.6464	-97.0074
NW Corner	73	27.6501	-97.0154
NE Corner	73	27.6500	-97.0033
SE Corner	73	27.6427	-97.0034
SW Corner	73	27.6428	-97.0116

Five species of sea turtles (loggerhead, green, hawksbill, Kemp's ridley, and leatherback) can be found in or near the action area and may be affected by the project. NMFS believes that the proposed action may affect, but is not likely to adversely affect, these species. The project is not located within designated critical habitat.

NMFS has identified the following potential effects to listed species from the deployment of these artificial reef materials and concluded that sea turtles are not likely to be adversely affected. Effects include being struck by artificial reef materials during deployment from barges.[1] Due to the species' mobility, the risk of injury will be discountable. The controlled rate of descent of the reef materials and compliance with the *Sea Turtle and Smalltooth Sawfish Construction Conditions* will further reduce the risk. The slow transit speed of the towed barge (5 knots or less) to and from the site renders the risk of a vessel strike interaction discountable. Sea turtles may be temporarily unable to use the site for forage or refuge habitat due to potential avoidance of deployment activities but this effect will be insignificant, given the short duration of deployments. Also, the site consists of barren sand and is unlikely to attract sea turtles because it lacks physical features which could be used for foraging or shelter. Post-construction, the artificial reef may attract sea turtles, which may potentially increase interactions with local fishermen (i.e., by hooking and/or entanglement). Increased fishing effort may result from the proposed reef creation. This is not expected to exceed overall effort levels existing prior to reef creation (i.e., one would not expect a new fisherman to purchase a boat merely to be able to fish the "new" artificial reef), merely to shift where that effort currently occurs and, therefore, would not provide new opportunities for commercial and recreational activities. Any potential use of this site will likely reduce commercial and recreational pressure at other nearby reef sites (including natural reefs),[2] resulting in no net increase in commercial and recreational activities in the area. A permit condition is compliance with Army Corps of Engineers' and Environmental Protection Agency's artificial reef guidance,[3] developed and refined over time to avoid adverse impacts to marine wildlife, including prevention of sea turtles entering and potentially becoming trapped in reef structures. TPWD's Texas Artificial Reef Act of 1990 provides further guidance and protective measures to avoid adverse impacts to marine wildlife.

Sport fishermen boating to and from the artificial reef will be an indirect effect of the proposed action. These and other high-speed recreational boats can strike sea turtles, leading to injury or death. We believe the risk of vessel strike impacts to sea turtles from construction and future use of the reef site is discountable. The addition of a new artificial reef to the area may cause an

[1] Other effects may include the entanglement of turtles in derelict fishing gear; however, these effects have been previously analyzed in NMFS' Gulf of Mexico Reef Fish Fishery Biological Opinion dated September 30, 2011.
[2] A TPWD artificial reef site is about 2 nmi north of this site.
[3] http://www.saj.usace.army.mil/Divisions/Regulatory/sourcebook/15-Permitting_StandardPermit-ArtificialReefs.html

increase in vessel traffic to the area, but this will generally coincide with fair weather patterns and calm sea states that will largely allow boaters to detect and avoid any sea turtles in their path, as they would normally avoid hitting any floating objects. Frequently, sea chop and wind will compel boaters to slow down, further reducing the strike risk.[4]

This concludes your consultation responsibilities under the ESA for species under NMFS' purview. Consultation must 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 relevant information for your review. If you have any questions on this consultation, please contact Jason Rueter by e-mail at Jason.Rueter@noaa.gov or at (727) 824-5350. Thank you for your continued cooperation in the conservation of listed species.

Sincerely,

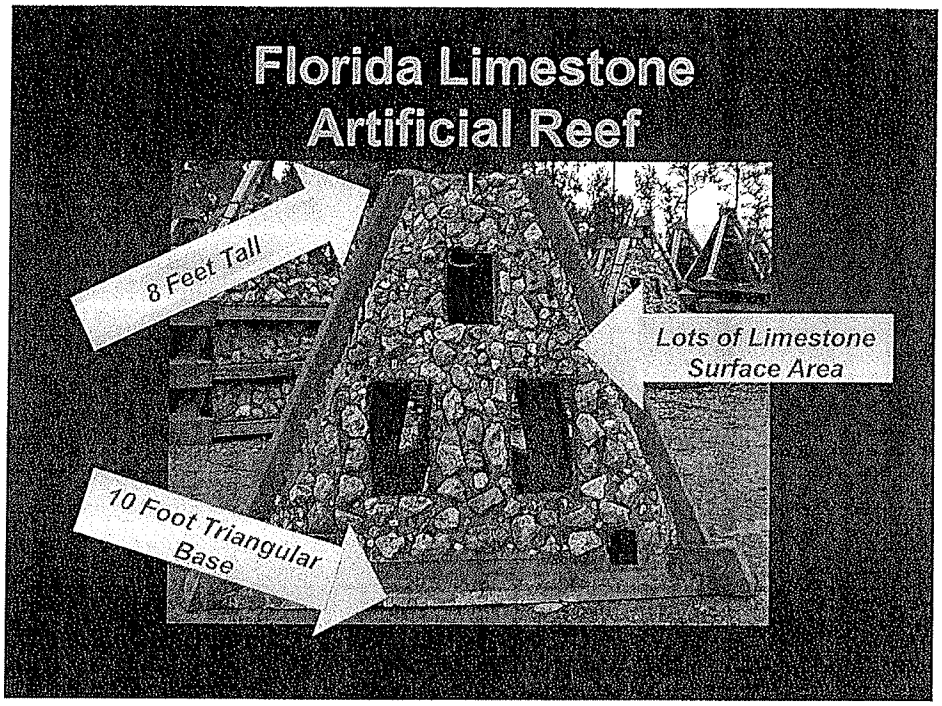
Miles M Croom

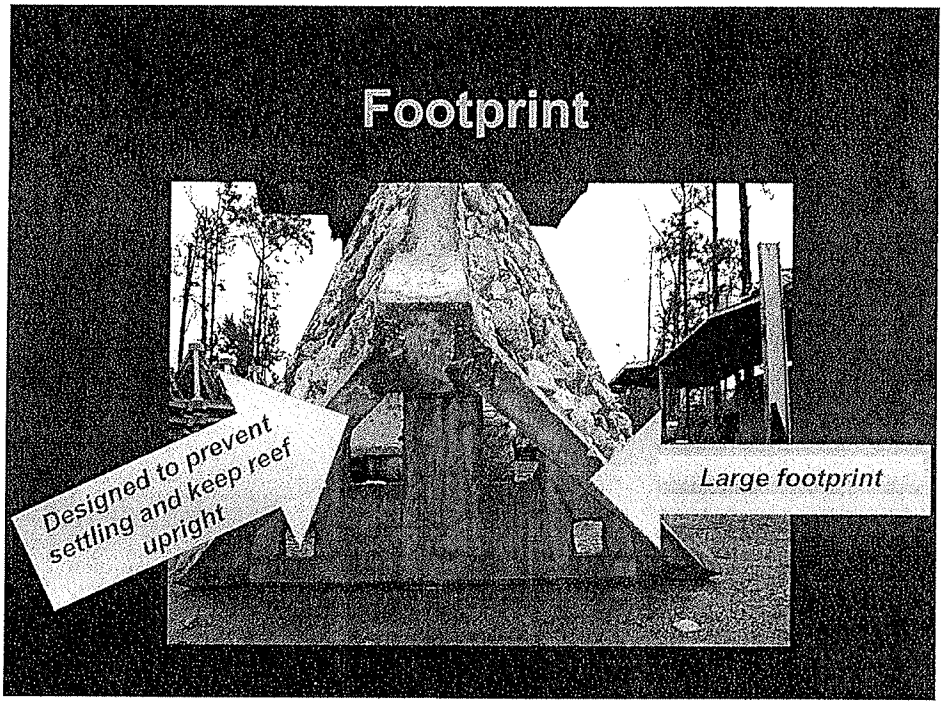
for Roy E. Crabtree, Ph.D.
Regional Administrator

Enclosures (2)

File: 1514-22.I
Ref: I/SER/2011/05859

[4] Barnette, M. NMFS Memorandum dated January 12, 2009: Threats and Effects Analysis for Protected Resources on Vessel Traffic Associated with Dock and Marina Construction. NMFS Southeast Regional Office, Protected Resources Division.


Florida Limestone
Artificial Reef
8 Feet Tall
Lots of Limestone
Surface Area
10 Foot Triangular
Base


Footprint
Designed to prevent
settling and keep reef
upright
Large footprint

PCTS Access and Additional Considerations for ESA Section 7 Consultations (Revised 7-15-2009)

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. Please contact NMFS' Permits, Conservation, and Education Division at (301) 713-2322 for more information regarding MMPA permitting procedures.

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SEA TURTLE AND SMALLTOOTH SAWFISH CONSTRUCTION CONDITIONS

The permittee shall comply with the following protected species construction conditions:

a. The permittee shall instruct all personnel associated with the project of the potential presence of these species and the need to avoid collisions with sea turtles and smalltooth sawfish. All construction personnel are responsible for observing water-related activities for the presence of these species.

b. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing sea turtles or smalltooth sawfish, which are protected under the Endangered Species Act of 1973.

c. Siltation barriers shall be made of material in which a sea turtle or smalltooth sawfish cannot become entangled, be properly secured, and be regularly monitored to avoid protected species entrapment. Barriers may not block sea turtle or smalltooth sawfish entry to or exit from designated critical habitat without prior agreement from the National Marine Fisheries Service's Protected Resources Division, St. Petersburg, Florida.

d. All vessels associated with the construction project shall operate at "no wake/idle" speeds at all times while in the construction area and while in water depths where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will preferentially follow deep-water routes (e.g., marked channels) whenever possible.

e. If a sea turtle or smalltooth sawfish is seen within 100 yards of the active daily construction/dredging operation or vessel movement, all appropriate precautions shall be implemented to ensure its protection. These precautions shall include cessation of operation of any moving equipment closer than 50 feet of a sea turtle or smalltooth sawfish. Operation of any mechanical construction equipment shall cease immediately if a sea turtle or smalltooth sawfish is seen within a 50-ft radius of the equipment. Activities may not resume until the protected species has departed the project area of its own volition.

f. Any collision with and/or injury to a sea turtle or smalltooth sawfish shall be reported immediately to the National Marine Fisheries Service's Protected Resources Division (727-824-5312) and the local authorized sea turtle stranding/rescue organization.

g. Any special construction conditions, required of your specific project, outside these general conditions, if applicable, will be addressed in the primary consultation.

Revised: March 23, 2006