



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
<http://sero.nmfs.noaa.gov>

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 SER-2014-13080

APR 14 2014

Ms. Leslie Craig
 Supervisor, NOAA Restoration Center-Southeast Region
 NOAA Fisheries, Office of Habitat Conservation
 263 13th Avenue South
 St. Petersburg, Florida 33701

Ref.: DWH-ERP, Scallop Enhancement, Escambia, Santa Rosa, Okaloosa, Bay, Gulf, and Franklin Counties, Florida

Dear Ms. Craig:

This letter responds to the National Oceanic and Atmospheric Administration (NOAA) Restoration Center's letter of January 30, 2014, requesting National Marine Fisheries Service (NMFS) concurrence under Section 7 of the Endangered Species Act (ESA) with the project-effects determinations for enhancing scallop populations. You determined that the proposed activities are not likely to adversely affect sea turtles, Gulf sturgeon, smalltooth sawfish, and designated Gulf sturgeon critical habitat in Units 9, 10, 12, and 13. NMFS's findings on the project's potential effects are based on the project description in this response; thus, any changes to the proposed action may negate the findings of this consultation and may require reinitiation of the consultation with NMFS.

The proposed projects are located within Escambia, Santa Rosa, Okaloosa, Bay, Gulf, and Franklin Counties (Figure 1). Approximate project locations are shown in Table 1 (all project location datum are North American Datum 1983). The applicant will follow NMFS's *Sea Turtle and Smalltooth Sawfish Construction Conditions*, dated March 23, 2006, and U.S. Fish and Wildlife Service's (USFWS) *Standard Manatee Conditions for In-Water Work*, dated 2011.

Table 1. Coordinates for project locations

Project Site	Latitude, Longitude	
Escambia County	30.32071°N	-87.35856°W
Santa Rosa County	30.38151°N	-86.94025°W
Okaloosa County	30.43566°N	-86.49395°W
Bay County	30.14685°N	-85.69132°W
Gulf County	29.79520°N	-85.35297°W
Franklin County	29.71066°N	-84.83418°W

The proposed project will involve enhancing bay scallop (*Argopecten irradians*) populations through the collection and redistribution of naturally-occurring, juvenile scallops, referred to as



spat. This will be supplemented with the stocking of spat, obtained from a commercial scallop hatchery, if not enough are collected from the wild.

Small workboats, not barges, will be used to access the spawning areas for collecting spat and then again for redistributing the spat at the targeted sites. The spat collection device is typically constructed of a collection bag with a float to keep it near the surface that is tied to a cinderblock with a 6- to 12-foot line (Figure 2). Twelve pairs of collection devices will be deployed in each of the bays and the soak time for each device is 2 months. Spat collected from the water column will be placed in holding containers (5-gallon pails), and then released by pouring a mixture of the spat and seawater overboard. This collection and redistribution activity will take place year-round to maximize peak scallop spawning and existing scallop monitoring efforts.

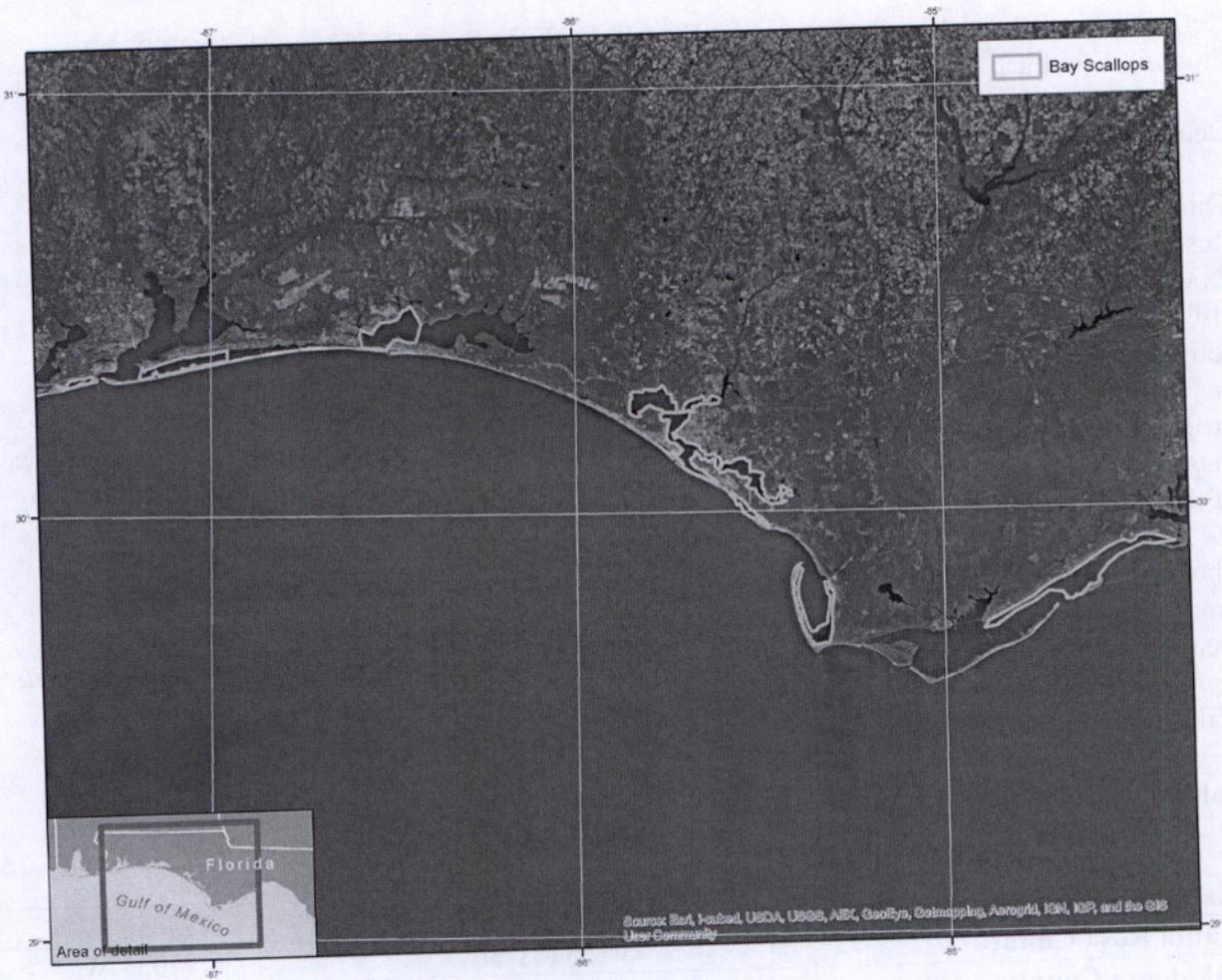


Figure 1. Google Earth© image showing proposed project footprints

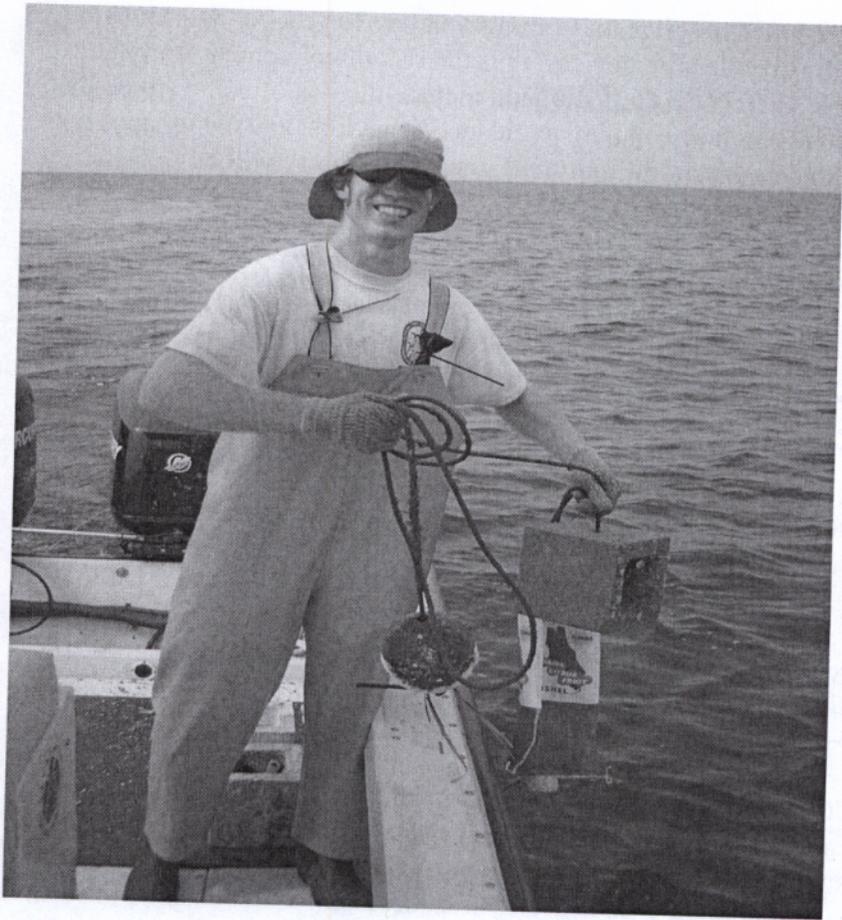


Figure 2. Example of scallop spat collection device

Three ESA-listed species of sea turtles (the endangered Kemp's ridley; the threatened loggerhead,¹ and the threatened/endangered green²) and the threatened Gulf sturgeon may be present in the action areas and may be affected by the projects. The proposed projects also fall within ESA-designated, Gulf sturgeon critical habitat Units 9, 10, 12, and 13. We believe leatherback and hawksbill sea turtles and smalltooth sawfish are extremely unlikely to be present. The turtles' very-specific foraging and life history requirements are not met in or near the action areas: leatherbacks are deepwater, pelagic species and hawksbills are associated with coral reefs. Smalltooth sawfish distribution has contracted to peninsular Florida and, within that area, they can only be found with regularity off the extreme southern portion of the state. Therefore, any effects to leatherback and hawksbill sea turtles and smalltooth sawfish from the proposed projects are discountable and will not be discussed further.

NMFS has identified potential effects to sea turtles and Gulf sturgeon and has concluded that the species are not likely to be adversely affected by the proposed action for the following reasons. There is a possibility of sea turtles becoming entangled in the vertical lines connecting the spat collectors to the surface buoys. The limited number of spat collectors being proposed for use, (12 pairs per site) and the temporary nature of spat collection will help to reduce the risk of entrapment.

¹ Northwest Atlantic Ocean distinct population segment (DPS)

² Green turtles are listed as threatened except for the Florida and Pacific coast of Mexico breeding populations, which are listed as endangered.

Additionally, the Florida Fish and Wildlife Conservation Commission has 20 years of data showing no record of entanglement issues with the collection devices, thus the risk of entrapment from the collection devices will be discountable. Effects to Gulf sturgeon include the risk of being struck by the small workboats. Due to the species' mobility, natural avoidance behaviors, and compliance with the *Sea Turtle and Smalltooth Sawfish Construction Conditions*, the risk of injury will be discountable.

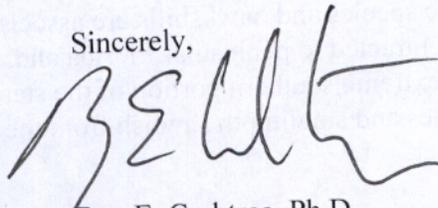
The essential features for the conservation of Gulf sturgeon present in Units 9, 10, 12, and 13 include: (1) abundant prey items; (2) water quality and sediment quality necessary for normal behavior, growth, and viability of all life stages; and (3) safe and unobstructed migratory pathways necessary for passage within and between riverine, estuarine, and marine habitats. The temporary nature of the proposed action consists of stopping at the collection areas to retrieve the spat bags and transporting the spat to the targeted sites where the spat are then poured overboard. This activity will not decrease the abundance of prey items, alter water quality, change the composition of the sediment, prevent Gulf sturgeon from transiting the area, nor from using the sites for refuge and foraging. Therefore, NMFS believes scallop enhancement will have no effect on Gulf sturgeon critical habitat.

Finally, we concur with your project-effect determinations that the project for which you requested ESA consultation is not likely to adversely affect leatherback, Kemp's ridley, hawksbill, loggerhead, or green sea turtles, smalltooth sawfish, or Gulf sturgeon.

This concludes the NOAA Restoration Center's consultation responsibilities under the ESA for species under NMFS's 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've enclosed additional relevant information for your review. 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 about this consultation, please contact Joyce Barkley-Hahn, Consultation Biologist, at (727) 551-5741, or by email at joyce.barkley-hahn@noaa.gov.

Sincerely,



Roy E. Crabtree, Ph.D.
Regional Administrator

- Enc.: 1. *Sea Turtle and Smalltooth Sawfish Construction Conditions* (Revised March 23, 2006)
2. *Standard Manatee Conditions for In-Water Work* (2011)

File: 1514-22.C



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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

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STANDARD MANATEE CONDITIONS FOR IN-WATER WORK
2011

The permittee shall comply with the following conditions intended to protect manatees from direct project effects:

- a. All personnel associated with the project shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with and injury to manatees. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.
- b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
- c. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers must not impede manatee movement.
- d. All on-site project personnel are responsible for observing water-related activities for the presence of manatee(s). All in-water operations, including vessels, must be shutdown if a manatee(s) comes within 50 feet of the operation. Activities will not resume until the manatee(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the manatee(s) has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.
- e. Any collision with or injury to a manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1-888-404-3922. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-731-3336) for north Florida or in Vero Beach (1-772-562-3909) for south Florida, and emailed to FWC at ImperiledSpecies@myFWC.com.
- f. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the permittee upon completion of the project. Temporary signs that have already been approved for this use by the FWC must be used. One sign which reads *Caution: Boaters* must be posted. A second sign measuring at least 8½" by 11" explaining the requirements for "Idle Speed/No Wake" and the shut down of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related activities. These signs can be viewed at http://www.myfwc.com/WILDLIFEHABITATS/manatee_sign_vendors.htm. Questions concerning these signs can be forwarded to the email address listed above.