United States Department of the Interior

FISH AND WILDLIFE SERVICE
1875 Century Boulevard
Atlanta, Georgia 30345

In Reply Refer To:
FWS/R4/DH NRDAR

MAR 26 2014

Memorandum

To: Field Supervisor, Panama City Ecological Services Office

From: Deputy Deepwater Horizon, Department of the Interior Natural Resource Damage Assessment and Restoration (NRDAR), Case Manager Debora L McCl-

Subject: Informal Consultation and Conference Request for the Proposed Gulf County Recreation Project – Windmark Beach Fishing Pier, Florida

As you are no doubt aware, on or about April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon* experienced an explosion, leading to a fire and its subsequent sinking in the Gulf of Mexico (the Gulf). These events resulted in the discharge of millions of barrels of oil into the Gulf over a period of 87 days. In addition, various response actions were undertaken in an attempt to minimize impacts from spilled oil. These events are hereafter collectively referred to as the Oil Spill.

The Department of the Interior (DOI), acting through the U.S. Fish and Wildlife Service (the Service) and other Bureaus, is a designated natural resource trustee agency authorized by the Oil Pollution Act of 1990 (OPA) and other applicable federal laws to assess and assert a natural resource damages claim for this Oil Spill. DOI is only one of several Trustees, including agencies of the State of Florida, so authorized. Consistent with their federal and state authorities, the Trustees are investigating the resource injuries and losses that occurred as a result of the Oil Spill and have initiated restoration planning to identify the actions that will be needed or appropriate to restore injured resources and to make the public whole for the injuries and losses that occurred. This process is known as a Natural Resource Damage Assessment (NRDA).

On April 20, 2011, DOI, National Oceanic and Atmospheric Administration, and the Trustees for the five Gulf states affected by the Oil Spill entered into an agreement with BP, a responsible party for the Oil Spill, under which BP agreed to provide $1 billion for early restoration projects in the Gulf to address injuries to natural resources caused by the Oil Spill. The subject project is being evaluated by the Trustees as a potential early restoration project. The early restoration project has been proposed in a draft early restoration plan that was released for public comment and review on December 6, 2013. If the Trustees select the project after consideration of public comment and a stipulated agreement is reached with BP, the early restoration project will be implemented by the State of Florida. DOI, acting through the Service, will be a co-Trustee for the project, if it is selected and implemented.

The above facts lead us to the conclusion that consultation and conference under Section 7 of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), is required for the proposed project and we wish to engage in such consultation. Accordingly, we have reviewed

the proposed Gulf County Recreation Project – Windmark Beach Fishing Pier, Florida for potential impacts to listed, candidate, and proposed species and designated and proposed critical habitats in accordance with Section 7 of the ESA. We determined the proposed project may affect, but is not likely to adversely affect, St. Andrews beach mouse, five species of sea turtles (green, hawksbill, Kemp's ridley, leatherback, and loggerhead), piping plover, red knot (if listed), and West Indian manatee and have provided our analysis in the attached Biological Evaluation. We also determined the proposed project would not result in adverse modification or destruction of critical habitat for St. Andrews beach mouse, or loggerhead sea turtle (if designated). We have also reviewed the proposed project for impacts to bald eagles and migratory birds in accordance with the Bald and Golden Eagle Protection Act (BGEPA) of 1940 (16 U.S.C. 668-668c) and the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703–712), respectively. Consultation will also be initiated with National Marine Fisheries Service for species where ESA regulatory authority is shared in regards to Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1461 *et seq.*).

We request your review of and concurrence with the attached intra-Service Section 7 Biological Evaluation form describing the proposed project, potential effects, conservation measures and justifications for our determinations. If you have questions or concerns regarding this request for consultation, please contact Holly Herod, Fish and Wildlife Biologist, at 404-679-7089 or holly_herod@fws.gov.

Attachment

SOUTHEAST REGION
INTRA-SERVICE SECTION 7
BIOLOGICAL EVALUATION FORM

Originating Person: Holly Herod; prepared by David Mills (representing the State of Florida Natural Resource Trustees – The Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission)
Telephone Number: Holly Herod: 404-679-7089; Dave Mills 303 381 8248
E-Mail: holly_herod@fws.gov; dmills@stratusconsulting.com
Date: March 26, 2014

PROJECT NAME (Grant Title/Number): Gulf County Recreation Project – Windmark Beach Fishing Pier Improvements

I. **Service Program:**
- _X__ **NRDAR**
- ___ **Ecological Services**
- ___ **Federal Aid**
  - ___ **Clean Vessel Act**
  - ___ **Coastal Wetlands**
  - ___ **Endangered Species Section 6**
  - ___ **Partners for Fish and Wildlife**
  - ___ **Sport Fish Restoration**
  - ___ **Wildlife Restoration**
- ___ **Fisheries**
- ___ **Migratory Birds**
- ___ **Refuges/Wildlife**

II. **State/Agency:** Florida Department of Environmental Protection (DEP) and Florida Fish and Wildlife Conservation Commission (FWC)

III. **Station Name:** DOI Deepwater Horizon Case Management Team, USFWS Southeast Regional Office, Atlanta, Georgia 30345

IV. **Location (attach map):** See Figure 1 at the end of this document for a map indicating the potential areas of activity for the project.

A. **Ecoregion Number and Name:** Southeast Region

B. **County and State:** Gulf County, Florida

C. **Section, township, and range (or latitude and longitude):** See Figure 1

D. **Distance (miles) and direction to nearest town:** see map (Figure 1)

V. **Description of Proposed Action (attach additional pages as needed):**

V. Description of Proposed Action (attach additional pages as needed):

The proposed project includes constructing a fishing pier and associated shoreline access structures (i.e., a dune crossover) at Windmark Beach in Gulf County, Florida. Figure 1 provides the approximate project location and defines the area of potential effect for the project.

Standard construction procedures would be used to construct the pier and dune crossover structures required to provide access to anglers from the existing parking area to the proposed fishing pier. The proposed pier would be constructed from both upland and water using a barge and crane to install support pilings, stringers, and the pier deck. These pilings would be water jetted most of the way in to the sediment and impact driven for roughly the last 5 feet. In addition, the pier would be constructed in a manner to conform to the Americans with Disabilities Act. Handrails would be constructed to prevent accidental falls from the structure and to discourage mooring of vessels. Receptacles for waste and recyclable materials (such as monofilament) would be provided to encourage proper waste disposal and a recycling program as part of the proposed project. The dune crossover would be constructed using following current best practice guidelines (e.g., USFWS, 2013) in accordance with the engineering requirements of the final project design to provide a clear means for visitors to access the pier without having to walk directly through the dunes between the parking area and beach at the project site. As a result of this controlled access the project would help minimize contact and potential adverse impacts to identified critical habitat for the St. Andrews Beach Mouse (see Tables 2 and 3 for additional details).

Some excavation of sediment and sand would be required to construct the pier and walkway. Final structure design, including all locations of the proposed excavation, would be completed upon project funding and provided with the appropriate permit applications. Grading design, manufacturer information, type of decking material, deck plank spacing, deck elevation above MHW, water depths, pier orientation, piling number, type, installation procedure, and final size (terminus and access way overwater square footage) would be determined in the final project design and comply with relevant guidance from the FWC, USFWS, and NOAA.

Fixed signs with instructions on what to do in the event of hooking a listed species (i.e., sea turtle) would be placed at the entrance of the proposed pier and strategically at fixed intervals along its length. The proposed project also includes the addition of a new kiosk to be located at the pier, dune crossover, or in the area leading to the crossover in the existing parking area. This kiosk would provide information on best management practices (BMPs) to users on catch and release as well as other fishing practices to limit potential adverse impacts to marine wildlife and habitat.

BMPs, including those to prevent degradation of ambient water quality parameters, would be used throughout construction activities. These may include monitoring the integrity of turbidity control screens and/or other devices to control erosion, sedimentation, and turbidity during piling installation and efforts to limit placement of pilings on the beach. The project contractor and permittee would comply with the Standard Manatee (USFWS, 2011) and Standard Sea Turtle and Smalltooth Sawfish Construction Conditions (NOAA, 2006) throughout construction to

prevent accidental injury to these and other protected species that may enter the immediate project area. These standards require monitoring the construction area to prevent injury to manatees, sea turtles, and smalltooth sawfish should these species enter or be observed within the immediate project limits.

VI. Description of the Project Area (attach additional pages as needed):

The potential project area is identified in Figures 1 and 2. The the proposed project area consists of a mix of a pre-existing paved parking area along with coastal dunes, beach habitat, including critical habitat for St. Andrew's beach mouse, and areas of open water. The area is generally undeveloped.

VII. Species and Habitat:

A. Complete the following table:

Table 1, provided at the end of this document, provides a summary of the different species that were identified and initially considered for the project's potential impacts. The information in this table was adopted from the U.S. Fish and Wildlife, Panama City office website: http://www.fws.gov/panamacity/specieslist.html which provides a county-based list of federal threatened, endangered, and other species of concern likely to occur in the Florida Panhandle.

VIII. Determination of Effects:

A. Explanation of effects of the action on species and critical habitats in item VII.A (attach additional pages as needed):

Table 2 presents a summary of the potential species/critical habitat that could be impacted from the proposed project. The species/critical habitat in Table 2 were identified after considering where there was potential overlap from information on identified natural communities in Table 1 with the potential locations where the project could be implemented and areas adjacent to the immediate project locations.

Table 2. Potential Impacts to Species/Critical Habitats

SPECIES/CRITICAL HABITAT	SPECIES/CRITICAL HABITAT IMPACTS
Green turtle, Hawksbill turtle, Kemp's ridley turtle; Leatherback turtle, Loggerhead turtle Loggerhead proposed	Should the work be conducted during the turtles' nesting and hatching season from approximately May through October, adult and hatchling turtles, eggs, and nests could be at risk. Impacts to turtles include the disruption of nesting behaviors, destruction of nests and harm or mortality of eggs and hatchlings. Conservation measures below are expected to reduce these potential impacts to an insignificant and discountable level. Additionally, installation of pilings and turtles caught in fishing gear could result in harm or mortality during in-water construction activities or use of the facilities, respectively. Consultation will be initiated with NMFS to address this risk as this agency has jurisdiction to review impacts to sea turtles in the estuarine and marine environments.

SPECIES/CRITICAL	SPECIES/CRITICAL HABITAT IMPACTS
critical habitat	The project area overlaps the currently proposed critical habitat area LOGG-N-32 encompassing nearshore reproductive habitat in Florida for Northwest Atlantic Distinct Population Segment of the loggerhead sea turtle (i.e., beaches and shorelines) (78 FR 18000)Department of the Interior, 2013). PCEs for proposed loggerhead critical habitat include: 1. Suitable nesting beach habitat that: (a) has relatively unimpeded nearshore access from the ocean to the beach for nesting females and from the beach to the ocean for both post-nesting females and hatchlings and (b) is located above mean high water to avoid being inundated frequently by high tides. 2. Sand that: (a) allows for suitable nest construction, (b) is suitable for facilitating gas diffusion conducive to embryo development, and (c) is able to develop and maintain temperatures and moisture content conducive to embryo development. 3. Suitable nesting beach habitat with sufficient darkness to ensure that nesting turtles are not deterred from emerging onto the beach and hatchlings and post-nesting females orient to the sea. Temporary use of heavy equipment to construct the walkover and place pilings for the fishing pier could change sand and beach access characteristics important to nesting activity, nest construction, and embryo development in the immediate area of work. Lighting could alter the darkness of the beach and deter nesting. Conservation measures below will ensure PCEs are not altered and that no adverse modification or destruction of proposed critical habitat occurs. Permanent placement of pilings could impede access to and from the beach; though the area of impact is anticipated to be small compared to the size of the beach and proposed critical habitat unit. While turtles may not have unimpeded access to the beach under the pier, access would not be affected elsewhere on the beach due to the proposed project and the PCEs within the unit would continue to support recovery of the species. Therefore, we do not consider this impact to be an adverse modification or destruction of proposed critical habitat.
West Indian manatee	The county in the project area are not part of the 36 Florida counties that are identified as being counties where manatees regularly occur in coastal and inland waters (U.S. Department of the Interior, 2011). While unlikely, manatees could be present in the project waters. The main risk to manatees during implementation of this project would come from in-water construction which could result in harm or mortality from noise or physical contact. Conservation measures below are designed to minimize potential effects to an insignificant and discountable level.
Piping plover	The main risk to Piping plovers is from human disturbance while the birds are resting and foraging in habitats adjacent to work areas and adjacent to the pier during visitor use. The proposed project could result in short term increases in noise which could startle individuals, though we would expect normal activity to resume within minutes or cause the plovers to move to a nearby area. Because other foraging/resting habitats are nearby (less than two miles) we would expect this temporary displacement to be within normal movement patterns and consider this effect insignificant and discountable.
Red knot	The main risk to Red knots is from human disturbance while the birds are resting and foraging in habitats adjacent to work areas and adjacent to the pier during

SPECIES/CRITICAL	SPECIES/CRITICAL HABITAT IMPACTS
	visitor use. The proposed project could result in short term increases in noise which could startle individuals, though we would expect normal activity to resume within minutes or cause the Red knots to move to a nearby area. Because other foraging/resting habitats are nearby (less than two miles) we would expect this temporary displacement to be within normal movement patterns and consider this effect insignificant and discountable.
Gulf sturgeon	NMFS is providing consultation for Gulf sturgeon and its Critical Habitat in the estuarine environment. As a result, Gulf Sturgeon will not be considered in the consultation with the USFWS.
St. Andrew beach mouse	The main risk to the St. Andrew Beach Mouse is the collapse of burrows during construction which can result in abandonment of the burrow by the adults leading to potential harm or mortality and mortality of any young within the burrow, and increased risk of predation on adults. Additionally, impacts to beach mice could occur from increased visitor use attracting predators and changes in lighting regimes affecting behavior. Because of the conservation measures listed below (including those for critical habitat), we believe effects to beach mice will be reduced to an insignificant and discountable level.
Critical habitat for St. Andrew beach mouse	The project area overlaps with St. Andrew Beach Mouse Critical Habitat Unit #2, the Palm Point Unit. The total acreage of this unit is 162 acres. Primary Constituent Elements for the St. Andrews beach mouse habitat are: 1. A contiguous mosaic of primary, secondary scrub vegetation, and dune structure, with a balanced level of competition and predation and few or no competitive or predaceous nonnative species present, that collectively provide foraging opportunities, cover, and burrow sites; 2. Primary and secondary dunes, generally dominated by sea oats that, despite occasional temporary impacts and reconfiguration from tropical storms and hurricanes, provide abundant food resources, burrow sites, and protection from predators; 3. Scrub dunes, generally dominated by scrub oaks, that provide food resources and burrow sites, and provide elevated refugia during and after intense flooding due to rainfall and/or hurricane induced storm surge; 4. Functional, unobstructed habitat connections that facilitate genetic exchange, dispersal, natural exploratory movements, and recolonization of locally extirpated areas; and 5. A natural light regime within the coastal dune ecosystem, compatible with the nocturnal activity of beach mice, necessary for normal behavior, growth and viability of all life stages. The proposed projects are not expected to negatively impact PCEs but rather may benefit PCEs because the project area currently lacks a dune crossover. . Instead, visitors currently access the beach habitat using uncontrolled informal trails from existing parking areas through the dunes to the beach. These trails could be fragmenting contiguous habitat, food resources, and burrow sites for the St. Andrew beach mouse. Constructing the crossover to link/access the pier and the beach should allow for unobstructed movements by mice; help prevent dune erosion as a result of the "fanning" of the current informal pathways, and thereby help reduce future adverse impacts of human activity to burrow sites and food resources. A natural light regime will be maintained as any lighting necessary on

SPECIES/CRITICAL	SPECIES/CRITICAL HABITAT IMPACTS
	the walkover will be wildlife friendly. Based upon the implementation of the conservation measures below, no adverse modification or destruction of critical habitat areas for the St. Andrew beach mouse is anticipated.

B. Table 3. Explanation of actions (Conservation Measures) to be implemented to reduce adverse effects:

SPECIES	CONSERVATION MEASURES TO MINIMIZE IMPACTS
Green turtle, Hawksbill turtle, Kemp's ridley turtle, Leatherback turtle, Loggerhead turtle	Should work be undertaken between May 1 and October 31 the following conservation measures will be followed: 1. All construction personnel will be notified of the potential presence of sea turtles and reminded of the criminal and civil penalties associated with harassing, harming, or killing sea turtles (all life stages). 2. The local sea turtle nesting surveyor will conduct daily sea turtle nesting surveys and will assess the need for the relocation of sea turtle nests that could be affected by the project construction prior to project implementation each day Between May 1 and August 31[1], actions with mechanized equipment or vehicles shall not begin prior to 9:00 am to ensure sea turtle monitoring surveys are completed for the day. Surveys are conducted during the nesting season only. 3. If a sea turtle (either adult or hatchling) is observed, maintain at least 200 feet between the turtle and personnel. 4. All actions shall observe a 10-foot buffer from marked sea turtle nests. 5. If altered, beach topography shall be restored in all areas to the natural beach profile by 20:00 hours each day. Restoring beach topography includes raking of tire ruts, filling pits or holes. 6. Avoid driving over the wrack line or areas of dense seaweed, as these habitats may contain sea turtle hatchings or baby birds that are difficult to see. 7. Sea turtle nests are regularly monitored and marked, thereby allowing visitors the opportunity to avoid impacting any nests. 8. In addition, any lighting will be required to be consistent with the guidance provided in the current edition of the FWC's Lighting Technical Manual.
Proposed loggerhead sea turtle critical habitat	To maintain PCEs for proposed loggerhead critical habitat, the following measures shall be implemented *(regardless of seasonality)*: 1. All construction personnel will be notified of the presence of proposed critical habitat and reminded of means to protect it. 2. The nearest, existing staging, access and egress areas, travel corridors, pathways, and roadways shall be used (including those provided by the State, local governments, land managers, trustee, or private property owner, with proper permissions). 3. No new staging areas, access or egress, or travel corridors shall be created. 4. If driving equipment or vehicles on the beach, enter at designated access, proceed directly to the hard-packed sand near or below the high tide line and stay below the tide line when driving long distances.

[1] Turtle *nesting* season is May 1 to August 31, while turtle *hatching* continues until October 31.

SPECIES	CONSERVATION MEASURES TO MINIMIZE IMPACTS
	5. Avoid driving on the upper beach whenever possible, and never drive over any dunes or beach vegetation. 6. Use the smallest footprint possible to complete the proposed project. 7. If altered, beach topography shall be restored in all areas to the natural beach profile by 20:00 hours each day. Restoring beach topography includes raking of tire ruts, filling pits or holes. 8. Any installed lighting on the pier or dune crossover will be turtle friendly (exception for required navigation lighting if there is not a means to make it wildlife friendly). To minimize risks to all sea turtle species in the aquatic environment, all construction conditions identified in the *Sea Turtle and Smalltooth Construction Conditions* (NOAA, 2006) would be implemented and adhered to.
West Indian manatee	All construction conditions identified in the *Standard Manatee Conditions for In-water Work* (FWC, 2011) would be implemented and adhered to during project construction. In addition to the avoidance measures in the standard conditions, water jetting piles will further minimize construction noise in the area.
Piping plover and Red knot	Piping plovers and Red knots are likely to be present between August and May. Surveys for these species will be conducted on a regular basis. Where either species congregates, an exclusion zone will be placed around the birds and no work will occur within 150 feet of the exclusion zone until the birds move on their own volition.
Gulf sturgeon	See note in above table about the review of potential Gulf sturgeon impacts being coordinated through NMFS instead of through the USFWS.
St. Andrew beach mouse	Conservation measures that will be implemented to avoid or minimize impacts to the St. Andrew Beach Mouse include: 1. All construction personnel will be notified of the potential presence of St. Andrew Beach Mice and reminded of the criminal and civil penalties associated with harassing, injuring, or killing St. Andrew Beach Mice. 2. To minimize impacts to St. Andrew Beach Mice in burrows, a qualified, permitted, biologist will survey the project site before work commences and flag potential burrows and tracks so that they can be avoided. 3. Construction noise will be kept to the minimum feasible. 4. Construction will occur during the day to minimize disturbance to nocturnal patterns. 5. Equipment, vehicles, and project debris will not be stored in a manner or location where it could be colonized by mice. 6. Prior to bringing any equipment (including personal gear, machinery, vehicles or vessels) to the work site, each item will be inspected for mud or soil, seeds, and vegetation. If present, the equipment, vehicles, or personal gear shall be cleaned until they are free from mud, soil, seeds, and vegetation before used in sensitive habitats. This inspection will occur each time equipment, vehicles, and personal gear are being prepared to go to a site or prior to transferring between sites to avoid spreading exotic, nuisance species. 7. Sites will be periodically inspected to identify and control new colonies/individuals of an invasive species not previously observed prior to construction.

SPECIES	CONSERVATION MEASURES TO MINIMIZE IMPACTS
	8. Remove trash or anything that would attract nuisance wildlife to work areas daily. 9. Project related trash or debris shall not be allowed to blow into open water, onto beaches or into the dunes. 10. Appropriate waste/trash receptacles will be installed and maintained at boardwalks so that predators are not attracted to the area. 11. Any lighting installed will be wildlife friendly to prevent changes to the lighting regime.
St. Andrew beach mouse critical habitat	Conservation measures that will be implemented to avoid impacts to the St. Andrew beach mouse critical habitat include: 1. The project will occur in very localized locations for very short periods of time, allowing the mosaic of primary, secondary scrub vegetation and dune structure to remain unchanged or increase after implementation. 2. If native dune plants are destroyed during the project, appropriate native plants will be planted in the same location to minimize effects to the vegetative composition of the area. The Panama City Field Office will be contacted regarding dune plantings to balance habitat for listed and migratory birds and beach mouse. 3. If necessary (due to food source removal during construction and growing periods for replacement plants), supplemental beach mouse food sources will be provided. 4. Project work will only occur during daylight hours, as such it will not alter the natural light regime of the area. Any lighting installed will be wildlife friendly to prevent changes to the lighting regime.
All	In addition to the species-specific measures identified above in Table 3, the new dune walkover will be constructed in a manner consistent with the recent guidance for such work issued by the USFWS Panama City field office (USFWS, 2013). Further, to the extent possible (i.e., navigational lighting may have specific requirements), any lighting installed as part of the project will be wildlife friendly. Educational signage at the kiosk will remind visitors of sensitive species and habitats and how visitors can enjoy the area while protecting wildlife. Signage will discuss minimizing impacts from fishing gear entanglement to turtles, manatees, and birds.

IX. Table 4. Effect Determination and Response Requested:

Species	Species Impacts					Response Requested*
	NE	NLAA	MAA	JP	JC	
Green turtle		X				Concurrence (terrestrial); Consultation with NMFS (in-water)

Species	Species Impacts					Response Requested*
	NE	NLAA	MAA	JP	JC	
Hawksbill turtle		X				Concurrence (terrestrial); Consultation with NMFS (in-water)
Kemp's ridley turtle		X				Concurrence (terrestrial); Consultation with NMFS (in-water)
Leatherback turtle		X				Concurrence (terrestrial); Consultation with NMFS (in-water)
Loggerhead turtle		X				Concurrence (terrestrial); Consultation with NMFS (in-water)
Loggerhead turtle proposed critical habitat	No Adverse Modification or destruction					Conference
West Indian manatee		X				Concurrence
Piping plover		X				Concurrence
Red knot		X				Conference
St. Andrew beach mouse		X				Concurrence
St. Andrew beach mouse critical habitat	No Adverse Modification or destruction					Conference
Gulf sturgeon[a]	---	---	---	---	---	n/a – see table note a

[a] NMFS is providing consultation for Gulf sturgeon and its CH in the estuarine environment so this species will not be considered in the consultation with the USFWS.

X. Bald Eagles

Are bald eagles present in the action area? _X __No ____Yes

If "Yes," can you implement the conservation measures below? ____Yes ____ No

1. If bald eagle breeding or nesting behaviors are observed or a nest is discovered or known, all activities (walking, camping, cleanup, use of a UTV, ATV, or boat) should avoid the nest by a minimum of 660 feet. If the nest is protected by a vegetated buffer where there is *no* line of sight to the nest, then the minimum avoidance distance is 330 feet. This avoidance distance shall be maintained from the onset of breeding/courtship behaviors until any eggs have hatched and eaglets have fledged (approximately 6 months).

2. If a similar activity (like driving on a roadway) is closer than 660 feet to a nest, then you may maintain a distance buffer as close to the nest as the existing tolerated activity.
3. If a vegetated buffer is present and there is no line of sight to the nest and a similar activity is closer than 330 feet to a nest, then you may maintain a distance buffer as close to the nest as the existing tolerated activity.
4. In some instances activities conducted within 660 feet of a nest may result in disturbance, particularly for the eagles occupying the Mississippi barrier islands. If an activity appears to cause initial disturbance, the activity shall stop and all individuals and equipment will be moved away until the eagles are no longer displaying disturbance behaviors.

If not, contact the Service's Migratory Bird Permit Office to determine how to avoid impacts or if a permit may be needed.

XI. Migratory Birds

A. Identify the species anticipated in the project area and behaviors (breeding, roosting, foraging) anticipated during project implementation.

SPECIES	BEHAVIOR	SPECIES/HABITAT IMPACTS
Shorebirds	Foraging, feeding, resting, nesting	Shorebirds nest, forage, feed, and rest in the types of habitats consistent with some of the shoreline areas near the proposed project. As such, they may be impacted locally and temporarily by the project. Visitor use could also impact nesting birds.
Seabirds (terns, gulls, skimmers, double-crested cormorant, American white pelican, brown pelican)	Resting, roosting, nesting	Seabirds forage in water and rest/roost/nest in terrestrial habitats including dunes like those on the project site.

B. If species or habitat impacts could occur, identify avoidance and minimization measures to prevent incidental take. Incidental take of Migratory Birds cannot be authorized.

SPECIES/SPECIES GROUP	CONSERVATION MEASURES TO MINIMIZE IMPACTS
Shorebirds	Habitat in and around the project area is optimal for shorebird foraging and resting; while we expect shorebirds to move if disturbed, displacement could result in greater densities of shorebirds in other areas. If other areas are less optimal for foraging or resting, inter and intra-specific competition could occur. Therefore, care will be taken to minimize noise and physical disruptions near areas where foraging or resting birds are encountered.

SPECIES/SPECIES GROUP	CONSERVATION MEASURES TO MINIMIZE IMPACTS
	Nesting shorebird colonies are known in the Windmark area. During the design phase of the project, coordination with the Panama City Ecological Services Field Office (PCFO) and FWC will occur so that the pier and the boardwalk can be sited and designed to avoid being placed in the nesting colony habitats. Nesting shorebirds could be affected by visitor use. If FWC or PCFO determines that visitor use may impact nesting shorebirds, additional BMPs (e.g., as signage or roping a protective area that excludes visitors) will be provided. If project construction will occur during shorebird nesting season (February 15 to August 31), the FWC will be contacted to obtain the most recent guidance to protect nesting shorebirds or rookeries and their recommendations will be implemented.
Seabirds (terns, gulls, skimmers, double-crested cormorant, American white pelican, brown pelican)	Habitat in and around the project area is optimal sea bird foraging and resting; while we expect seabirds to move if disturbed, displacement could result in greater densities of birds in other areas. If other areas are less optimal for foraging or resting, inter and intra-specific competition could occur. Therefore, care will be taken to minimize noise and physical disruptions near areas where foraging or resting birds are encountered. All disturbances will be localized and temporary. The general behavior of these birds is to mediate their own exposure to human activity when given the opportunity, which they will have. Roosting should not be impacted because the project will occur during daylight hours only. If project construction will occur during seabird nesting season (February 15 to August 31), the FWC will be contacted to obtain the most recent guidance to protect nesting s seabirds or rookeries and their recommendations will be implemented. Nesting seabirds could be affected by visitor use. If FWC or PCFO determines that visitor use may impact nesting seabirds, additional BMPs (e.g., as signage or roping a protective area that excludes visitors) will be provided.

XII. Signatures from the station preparing the Intra-Service Biological Evaluation:

/s/ Holly N. Blalock-Herod — March 26, 2014
Signature (originating station - preparer) **date**

Title

Deborah L Nelson — 3/26/14
Signature (originating station) **date**

Deputy Case Manager

This analysis resulted in a determination that no "take" of a federally listed species would occur. If any of the following occur, then there must be reinitiation on this action:

(1) any unforeseen circumstances arise or incidental take occurs

(2) new information reveals effects of the Service's action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion;

(3) the Service's action is later modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or

(4) a new species is listed or critical habitat designated that may be affected by the action.

In instances where any incidental take occurs, the operations causing such take must cease until reinitiation.

If reinitiation is required, contact the Panama City Ecological Services Field Office **about the action.**

US Fish and Wildlife Service
1601 Balboa Avenue
Panama City, FL 32405
Tel: 850-769-0552

XIII. Reviewing Ecological Services Office Evaluation:

A. Concurrence _____ Nonconcurrence _____

B. Formal consultation required _____

C. Conference required _____

D. Informal conference required _____E. Remarks (attach additional pages as needed):

_____ _____
Signature **date**

_____ _____
Field Supervisor **office**

References

NOAA. 2006. Sea Turtle and Smalltooth Sawfish Construction Conditions. http://sero.nmfs.noaa.gov/pr/endangered%20species/Sea%20Turtle%20and%20Smalltooth%20Sawfish%20Construction%20Conditions%203-23-06.pdf Accessed July 16, 2013.

U.S. Department of the Interior. 2011. Biological Opinion: Permitted actions for watercraft access facilities. FWS Log No. 41910-2-11-FC-0195. March, 21.

U.S. Department of the Interior. 2013. 50 CFR Part 17: Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Northwest Atlantic Ocean District Population Segment of the Loggerhead Sea Turtle (*Caretta caretta*). Proposed Rule. Federal Register p. 18000-18082. March 25.

U.S. Fish and Wildlife Service (USFWS) 2011. Standard Manatee Conditions for In-Water Work. http://www.fws.gov/northflorida/Manatee/Manate_Key_Programmatic/20130425_gd_Appendix%20B_2011_Standard%20Manatee%20Construction%20Conditions.pdf

USFWS. 2013. Conservation Measures for Dune Walkover Construction. Unpublished Guidance prepared by Panama City Ecological Services Field Office.

Figure 1. General location and area of potential effect for envisioned Windmark Beach Fishing Pier Improvements Project.

Table 1.Rare species known from Gulf County, Florida.

Resource category	Common name	FWS status	State status	Natural communities	Species impacts (NE, NLAA, MAA)	Justification
Amphibians	Gopher frog	SSC	ce	Terrestrial: sandhill, scrub, scrubby flatwoods, xeric hammock (reproduces in ephemeral wetlands within these communities).	NE	Listed natural community is inconsistent with the project habitat
Amphibians	Reticulated flatwoods salamander	E (CH)		Palustrine: wet Flatwoods, dome swamp, basin swamp, Terrestrial: mesic flatwoods (reproduces in ephemeral wetlands within this community).	NE	Listed natural community is inconsistent with the project habitat
Birds	Arctic peregrine falcon	ce	E	Terrestrial: various, ruderal; winters along coasts	NE	Listed natural community is inconsistent with the project habitat
Birds	Bald eagle	BGEPA		Estuarine: marsh edges, tidal swamp, open water Lacustrine: swamp lakes, edges Palustrine: swamp, floodplain Riverine: shoreline, open water Terrestrial: pine and hardwood forests, clearings.	NE	Listed natural community is inconsistent with the project habitat
Birds	Least tern		T	Terrestrial: beach dune, ruderal. Nests common on rooftops.	NE	Listed natural community is inconsistent with the project habitat
Birds	Piping plover	T (CH)	T	Estuarine: exposed unconsolidated substrate Marine: exposed unconsolidated substrate Terrestrial: dunes, sandy beaches, and inlet areas. Mostly wintering and migrants.	NLAA	See Table 2, 3, 4
Birds	Red knot	P		Estuarine: exposed unconsolidated substrate Marine: exposed unconsolidated substrate Terrestrial: dunes, sandy beaches, and inlet areas. Mostly wintering and migrants.	NLAA	See Table 2, 3, 4
Birds	Red-cockaded woodpecker	E		Terrestrial: mature pine forests.	NE	Listed natural community is inconsistent with the project habitat
Birds	Southeastern kestrel	Ce	T	Terrestrial: open pine forests, clearings, ruderal, various.	NE	Listed natural community is inconsistent with the project habitat

Resource category	Common name	FWS status	State status	Natural communities	Species impacts (NE, NLAA, MAA)	Justification
Birds	Southeastern snowy plover	Ce	T	Estuarine: exposed unconsolidated substrate Marine: exposed unconsolidated substrate Terrestrial: dunes, sandy beaches, and inlet areas.	NE	Listed natural community is inconsistent with the project habitat
Birds	Wood stork	E	E	Estuarine: marshes Lacustrine: floodplain lakes, marshes (feeding), various Palustrine: marshes, swamps, various.	NE	Listed natural community is inconsistent with the project habitat
Fish	Gulf sturgeon	T (CH)	SSC	Estuarine and Marine: sandy sediments for foraging and resting; Riverine: alluvial and blackwater streams.	------	See Table 2, 3, and 4
Mammals	Florida black bear	ce	T	Palustrine: titi swamps, floodplains Terrestrial: pine and hardwood forests.	NE	Listed natural community is inconsistent with the project habitat
Mammals	St. Andrew beach mouse	E (CH)	E	Terrestrial: beach dune, coastal scrub	NLAA	See Table 2, 3, 4
Mammals	West Indian manatee	E	E	Estuarine: submerged vegetation, open water Marine: open water, submerged vegetation Riverine: alluvial stream, blackwater stream, spring-run stream.	NLAA	See Table 2, 3, 4
Mussels	Chipola slabshell	T (CH)		Riverine: main channel of the Chipola River and its larger tributaries in substrate combinations of silt, clay, sand and occasionally gravel. Panhandle drainages: Chipola River.	NE	Listed natural community is inconsistent with the project habitat
Mussels	Fat threeridge	E (CH)		Riverine: main channels of small to large rivers in slow to moderate currents; fine to medium silty sand, also mixtures of sand, clay, and gravel. Panhandle drainages: Chipola and Apalachicola Rivers.	NE	Listed natural community is inconsistent with the project habitat
Mussels	Gulf moccasinshell	E (CH)		Riverine: medium-sized creeks to large rivers with sand and gravel substrates in slow to moderate currents. Panhandle drainages: Econfina Creek and Chipola River.	NE	Listed natural community is inconsistent with the project habitat
Mussels	Oval pigtoe	E (CH)		Riverine: medium-sized creeks to small rivers; various substrates; slow to moderate currents.	NE	Listed natural community is inconsistent with the project habitat

Resource category	Common name	FWS status	State status	Natural communities	Species impacts (NE, NLAA, MAA)	Justification
Mussels	Purple bank climber	T (CH)		Riverine: small to large rivers in sand, sand mixed with mud, or gravel substrates with slow to moderate currents. Panhandle drainages: Chipola, Apalachicola, and Ochlockonee Rivers.	NE	Listed natural community is inconsistent with the project habitat
Mussels	Shinyrayed pocketbook	E (CH)		Riverine: medium-sized creeks to mainstem rivers in a range of substrates including sand, clay, and gravel with slow to moderate current. Panhandle drainages: Econfina (Creek),Chipola, and Ochlockonee (upstream of Lake Talquin) Rivers.	NE	Listed natural community is inconsistent with the project habitat
Plants	Apalachicola dolls daisy	ce		Palustrine: Floodplain Forest.	NE	Listed natural community is inconsistent with the project habitat
Plants	Bear tupelo or Dwarf blackgum	ce		Terrestrial: fire-prone savannas, open herb bogs, and wet edges of pineland swamps.	NE	Listed natural community is inconsistent with the project habitat
Plants	Bent golden aster	ce	E	Terrestrial: pine forest, ruderal.	NE	Listed natural community is inconsistent with the project habitat
Plants	Buckthorn	ce	E	Palustrine: hydric hammock, floodplain swamp.	NE	Listed natural community is inconsistent with the project habitat
Plants	Chapman's butterwort	ce	T	Palustrine: wet flatwoods, seepage slopes, bog, dome swamp, ditches; in water.	NE	Listed natural community is inconsistent with the project habitat
Plants	Chapman's crownbeard	ce	T	Palustrine: seepage slope Terrestrial: mesic flatwoods with wiregrass (Aristida stricta).	NE	Listed natural community is inconsistent with the project habitat
Plants	Chapman's rhododendron	E	E	Palustrine: seepage slope (titi bog) Terrestrial: mesic flatwoods; ecotone between flatwoods or more xeric longleaf communities and titi bogs.	NE	Listed natural community is inconsistent with the project habitat
Plants	Dark-headed hatpin	ce		Palustrine: Wet Boggy Seepage slopes, mucky soils.	NE	Listed natural community is inconsistent with the project habitat

Resource category	Common name	FWS status	State status	Natural communities	Species impacts (NE, NLAA, MAA)	Justification
Plants	Decumbant pitcher plant		T	Palustrine: Bogs.	NE	Listed natural community is inconsistent with the project habitat
Plants	Florida skullcap	T	E	Palustrine: seepage slope, wet flatwoods, grassy openings Terrestrial: mesic flatwoods.	NE	Listed natural community is inconsistent with the project habitat
Plants	Giant water-dropwort		E	Palustrine: dome swamp, wet flatwoods, ditches; in water.	NE	Listed natural community is inconsistent with the project habitat
Plants	Godfrey's (violet) butterwort	T	E	Palustrine: wet flatwoods, wet prairie, bog; in shallow water Riverine: seepage slope; in shallow water. Also, roadside ditches and similar habitat.	NE	Listed natural community is inconsistent with the project habitat
Plants	Gulf coast lupine	ce	T	Terrestrial: beach dune, scrub, disturbed areas, roadsides, blowouts in dunes.	NE	Listed natural community is inconsistent with the project habitat
Plants	Harper's beauty	E	E	Palustrine: wet prairie, seepage slope, roadsides, edges of titi swamps.	NE	Listed natural community is inconsistent with the project habitat
Plants	Harper's grooved yellow flax	ce		Palustrine: wet Flatwoods Terrestrial: mesic flatwoods; in site-prepped areas.	NE	Listed natural community is inconsistent with the project habitat
Plants	Harper's yellow-eyed grass	ce	T	Palustrine: seepage slope, wet prairie, bogs.	NE	Listed natural community is inconsistent with the project habitat
Plants	Hooded pitcher plant		T	Palustrine: wet flatwoods, wet prairie, seepage slope.	NE	Listed natural community is inconsistent with the project habitat
Plants	Karst pond xyris		E	Lacustrine: sandhill upland lake margins.	NE	Listed natural community is inconsistent with the project habitat
Plants	Meadow beauty	ce	E	Palustrine: dome swamp margin, seepage slope, depression marsh; on slopes; with hypericum.	NE	Listed natural community is inconsistent with the project habitat

Resource category	Common name	FWS status	State status	Natural communities	Species impacts (NE, NLAA, MAA)	Justification
Plants	Panhandle spiderlily	ce	E	Palustrine: dome swamp edges, wet prairie, wet flatwoods, baygall edges, swamp edges Terrestrial: wet prairies and flatwoods.	NE	Listed natural community is inconsistent with the project habitat
Plants	Parrot pitcher plant		T	Palustrine: wet flatwoods, wet prairie, seepage slope.	NE	Listed natural community is inconsistent with the project habitat
Plants	Pine-woods aster	ce	E	Palustrine: seepage slope Terrestrial: sandhill, scrubby and mesic flatwoods.	NE	Listed natural community is inconsistent with the project habitat
Plants	Quillwort yellow-eyed grass	ce		Lacustrine: lake margins Palustrine: wet flatwoods, wet prairie.	NE	Listed natural community is inconsistent with the project habitat
Plants	Snowy orchid		T	Palustrine: bogs.	NE	Listed natural community is inconsistent with the project habitat
Plants	Southern milkweed	ce	T	Palustrine: wet prairie, seepage slope edges Riverine: seepage stream banks Terrestrial: mesic flatwoods, drainage ditches.	NE	Listed natural community is inconsistent with the project habitat
Plants	Southern red lily		T	Palustrine: wet prairie, wet flatwoods, seepage slope Terrestrial: mesic flatwoods, seepage slope; usually with grasses.	NE	Listed natural community is inconsistent with the project habitat
Plants	Spoon-leaved sundew		T	Lacustrine: sinkhole lake edges Palustrine: seepage slope, wet flatwoods, depression marsh Riverine: seepage stream banks, drainage ditches.	NE	Listed natural community is inconsistent with the project habitat
Plants	Telephus spurge	T	E	Terrestrial: mesic flatwoods; disturbed wiregrass (Aristida stricta) areas, coastal scrub. All known sites are within 4 miles of Gulf of Mexico.	NE	Listed natural community is inconsistent with the project habitat
Plants	Thick-leaved water willow	ce	E	Palustrine: dome swamp, seepage slope Terrestrial: mesic flatwoods.	NE	Listed natural community is inconsistent with the project habitat
Plants	Tropical waxweed	ce		Palustrine: wet prairie, seepage slope Terrestrial: mesic flatwoods.	NE	Listed natural community is inconsistent with the project habitat

Resource category	Common name	FWS status	State status	Natural communities	Species impacts (NE, NLAA, MAA)	Justification
Plants	West's flax	ce	E	Palustrine: dome swamp, depression marsh, wet flatwoods, wet prairie, pond margins.	NE	Listed natural community is inconsistent with the project habitat
Plants	White birds-in-a-nest	T	E	Palustrine: seepage slope Terrestrial: grassy mesic pine flatwoods, savannahs, roadsides, and similar habitat.	NE	Listed natural community is inconsistent with the project habitat
Plants	White Indian Plantain	ce		Palustrine: wet flatwoods.	NE	Listed natural community is inconsistent with the project habitat
Plants	White-top pitcher plant	ce	E	Palustrine: wet prairie, seepage slope, baygall edges, ditches.	NE	Listed natural community is inconsistent with the project habitat
Plants	Wiregrass gentian	ce	E	Palustrine: seepage slope, wet prairie, roadside ditches Terrestrial: mesic flatwoods, planted slash pine.	NE	Listed natural community is inconsistent with the project habitat
Plants	Yellow butterwort		T	Palustrine: flatwoods, bogs.	NE	Listed natural community is inconsistent with the project habitat
Plants	Yellow fringed orchid		T	Palustrine: bogs, wet flatwoods Terrestrial: Bluff.	NE	Listed natural community is inconsistent with the project habitat
Plants	Yellow fringeless orchid	ce	E	Palustrine: wet prairie, seepage slope Terrestrial: mesic flatwoods.	NE	Listed natural community is inconsistent with the project habitat
Reptiles	Alligator snapping turtle	ce	SSC	Estuarine: tidal marsh Lacustrine: river floodplain lake, swamp lake Riverine: alluvial stream, blackwater stream.	NE	Listed natural community is inconsistent with the project habitat
Reptiles	Barbour's map turtle	ce	SSC	Palustrine: floodplain stream, floodplain swamp Riverine: alluvial stream.	NE	Listed natural community is inconsistent with the project habitat
Reptiles	Eastern indigo snake	T	T	Estuarine: tidal swamp Palustrine: hydric hammock, wet Flatwoods Terrestrial: mesic flatwoods, upland pine forest, sand hills, scrub, scrubby flatwoods, rockland hammock, ruderal.	NE	Listed natural community is inconsistent with the project habitat

Resource category	Common name	FWS status	State status	Natural communities	Species impacts (NE, NLAA, MAA)	Justification
Reptiles	Florida pine snake	ce	SSC	Lacustrine: ruderal, sandhill upland lake Terrestrial: flatwoods, xeric hammock, ruderal.	NE	Listed natural community is inconsistent with the project habitat
Reptiles	Gopher tortoise	C	SSC	Terrestrial: sandhills, scrub, scrubby flatwoods, xeric hammocks, coastal strand, ruderal.	NE	Listed natural community is inconsistent with the project habitat
Reptiles	Green turtle	E	E	Marine: open water; Terrestrial: sandy beaches; nesting.	NLAA	See Table 2, 3, 4
Reptiles	Hawksbill turtle	E	E	Marine: open water; Marine: open water nesting.	NLAA	See Table 2, 3, 4
Reptiles	Kemp's ridley turtle	E	E	Marine: open water; Terrestrial: sandy beaches; nesting.	NLAA	See Table 2, 3, 4
Reptiles	Leatherback turtle	E	E	Marine: open water; Terrestrial: sandy beaches; nesting.	NLAA	See Table 2, 3, 4
Reptiles	Loggerhead turtle	T	T	Marine: open water; Terrestrial: sandy beaches; nesting.	NLAA	See Table 2, 3, 4

In Reply Refer To:
FWS/R4/DH NRDAR

Memorandum

To: Field Supervisor, Panama City Ecological Services Office

From: Deputy Deepwater Horizon, Department of the Interior Natural Resource Damage Assessment and Restoration (NRDAR), Case Manager

Subject: Informal Consultation and Conference Request for the Proposed Gulf County Recreation Project – Windmark Beach Fishing Pier, Florida

As you are no doubt aware, on or about April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon* experienced an explosion, leading to a fire and its subsequent sinking in the Gulf of Mexico (the Gulf). These events resulted in the discharge of millions of barrels of oil into the Gulf over a period of 87 days. In addition, various response actions were undertaken in an attempt to minimize impacts from spilled oil. These events are hereafter collectively referred to as the Oil Spill.

The Department of the Interior (DOI), acting through the U.S. Fish and Wildlife Service (the Service) and other Bureaus, is a designated natural resource trustee agency authorized by the Oil Pollution Act of 1990 (OPA) and other applicable federal laws to assess and assert a natural resource damages claim for this Oil Spill. DOI is only one of several Trustees, including agencies of the State of Florida, so authorized. Consistent with their federal and state authorities, the Trustees are investigating the resource injuries and losses that occurred as a result of the Oil Spill and have initiated restoration planning to identify the actions that will be needed or appropriate to restore injured resources and to make the public whole for the injuries and losses that occurred. This process is known as a Natural Resource Damage Assessment (NRDA).

On April 20, 2011, DOI, National Oceanic and Atmospheric Administration, and the Trustees for the five Gulf states affected by the Oil Spill entered into an agreement with BP, a responsible party for the Oil Spill, under which BP agreed to provide $1 billion for early restoration projects in the Gulf to address injuries to natural resources caused by the Oil Spill. The subject project is being evaluated by the Trustees as a potential early restoration project. The early restoration project has been proposed in a draft early restoration plan that was released for public comment and review on December 6, 2013. If the Trustees select the project after consideration of public comment and a stipulated agreement is reached with BP, the early restoration project will be implemented by the State of Florida. DOI, acting through the Service, will be a co-Trustee for the project, if it is selected and implemented.

The above facts lead us to the conclusion that consultation and conference under Section 7 of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), is required for the proposed project and we wish to engage in such consultation. Accordingly, we have reviewed

the proposed Gulf County Recreation Project – Windmark Beach Fishing Pier, Florida for potential impacts to listed, candidate, and proposed species and designated and proposed critical habitats in accordance with Section 7 of the ESA. We determined the proposed project may affect, but is not likely to adversely affect, St. Andrews beach mouse, five species of sea turtles (green, hawksbill, Kemp's ridley, leatherback, and loggerhead), piping plover, red knot (if listed), and West Indian manatee and have provided our analysis in the attached Biological Evaluation. We also determined the proposed project would not result in adverse modification or destruction of critical habitat for St. Andrews beach mouse, or loggerhead sea turtle (if designated). We have also reviewed the proposed project for impacts to bald eagles and migratory birds in accordance with the Bald and Golden Eagle Protection Act (BGEPA) of 1940 (16 U.S.C. 668-668c) and the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703–712), respectively. Consultation will also be initiated with National Marine Fisheries Service for species where ESA regulatory authority is shared in regards to Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1461 *et seq.*).

We request your review of and concurrence with the attached intra-Service Section 7 Biological Evaluation form describing the proposed project, potential effects, conservation measures and justifications for our determinations. If you have questions or concerns regarding this request for consultation, please contact Holly Herod, Fish and Wildlife Biologist, at 404-679-7089 or holly_herod@fws.gov.

Attachment