




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>

5/12/2016

F/SER31:NA
SER-2015-16919

MEMORANDUM FOR: F/HC3 – Leslie Craig
FROM: F/SE – Roy E. Crabtree, Ph.D. 
SUBJECT: Deepwater Horizon-Early Restoration Plan
Phase IV, Endangered Species Act Section 7 Consultations
for Pelagic Longline Bycatch Reduction Project

This memorandum responds to your request for consultation with us, the National Marine Fisheries Service (NMFS), pursuant to Section 7 of the Endangered Species Act (ESA) for the following action.

Applicants	Project Type
NOAA Restoration Center (RC) and NMFS Office of Sustainable Fisheries (SF), Highly Migratory Species (HMS) Division	Pelagic Longline (PLL) Bycatch Reduction Project

Consultation History

We received your letter requesting consultation on August 14, 2015. We requested additional information on October 23, 2015, February 22, 2016, and February 24, 2016. We received a final response on February 22, 2016, and February 24, 2016, and initiated consultation that day.

Project Location

The proposed project is located in the Gulf of Mexico.



Figure 1 Gulf of Mexico

Project Description

The proposed project consists of 2 integrated components. The first is a compensation-based, voluntary, 6-month, annual cessation (or repose period) in PLL fishing each year for 5-10 years to reduce bycatch from PLL gear during the repose period. The second component is the providing of alternative gears which are known to have lower bycatch rates than traditional long-line gear, to allow fishers to continue the sustainable harvest of PLL target species (yellowfin tuna and swordfish) during the voluntary repose periods. This PLL Bycatch Reduction Project is one of a suite of projects proposed for implementation in Phase IV of the Deepwater Horizon Oil Spill Draft Early Restoration Plan. The NOAA RC, on behalf of the natural resource trustees (the Trustees) for the Deepwater Horizon oil spill, is serving as the lead federal agency for ESA Section 7 consultation for this project.

The proposed project consists of a compensation-based, voluntary, annual 6-month repose in PLL fishing that would run from January to June of each year. The duration of the proposed PLL Bycatch Reduction Project is dependent on the number of fishers volunteering to participate each year, but involvement is expected to continue for 5-10 years. As an alternative to PLL fishing gear, the proposed project would promote the use of buoy gear and green-stick gear, which are more discriminate than PLL gear in regards to the species impacted, and have been shown to result in low post-release mortality of bycatch and regulatory discards. Green-stick gear consists of a mainline with hooks on leaders or gangions trolled from a long fiberglass or bamboo pole. Baits are trolled at a high speed and deployed at or slightly below the surface of the water. Buoy gear is fishing gear that has one 1 or more floatation devices supporting a single mainline to which no more than two 2 hooks or gangions are attached. This gear may be free-floating and is not required to be attached to, or in contact with, a vessel; however, it must be released and retrieved by hand. These alternative gear types are currently authorized in HMS fisheries, and vessels participating in the proposed project would fish with buoy and green-stick gear in a manner consistent with existing authorizations. The primary goal of this project is to reduce PLL fishing effects on non-target species (including marine mammals and sea turtles) that otherwise would have occurred under *status quo*, or existing fishing practices, resulting in beneficial effects to numerous non-target species.

Effects Determination(s) for Species the Action Agency or NMFS Believes May Be Affected by the Proposed Action

Species	ESA Listing Status	Action Agency Effect Determination	NMFS Effect Determination
Sea Turtles			
Green	E/T ¹	Hand(/Buoy) Gear: May adversely affect but are not likely to jeopardize the continued existence Green-stick gear: Not likely to adversely affect any listed species	NLAA
Kemp's ridley	E	Hand(/Buoy) Gear: May adversely affect but are not likely to jeopardize the continued existence Green-stick gear: Not likely to adversely affect any listed species	NLAA
Leatherback	E	Hand(/Buoy) Gear: May adversely affect but are not likely to jeopardize the continued existence Green-stick gear: Not likely to adversely affect any listed species	NLAA
Loggerhead (Northwest Atlantic Ocean distinct population segment [DPS])	T	Hand(/Buoy) Gear: May adversely affect but are not likely to jeopardize the continued existence Green-stick gear: Not likely to adversely affect any listed species	NLAA
Hawksbill	E	Hand/Buoy Gear: May adversely affect but are not likely to jeopardize the continued existence Green-stick gear: Not likely to adversely affect any listed species	NLAA
Marine Mammals			
North Atlantic right whale	E	Hand(/Buoy) Gear: Continued operation of Atlantic PLL fishery may adversely affect but are not likely to jeopardize the continued existence Green-stick gear: No potential to interact with listed whales	NE
Fin whale	E	Hand(/Buoy) Gear: Continued operation of Atlantic PLL fishery may adversely affect but are not likely to jeopardize the continued existence Green-stick gear: No potential to interact with listed whales	NE
Humpback whale	E	Hand(/Buoy) Gear: Continued operation of Atlantic PLL fishery may adversely affect but are not likely to jeopardize the continued existence Green-stick gear: No potential to interact with listed whales	NE
Sei whale	E	Hand(/Buoy) Gear: Continued operation of Atlantic PLL fishery may adversely affect but are not likely to jeopardize the continued existence Green-stick gear: No potential to interact with listed whales	NE

¹ Green turtles are listed as threatened except for the Florida and Pacific coast of Mexico breeding populations, which are listed as endangered.

Species	ESA Listing Status	Action Agency Effect Determination	NMFS Effect Determination
Sperm whale	E	Hand(/Buoy) Gear: Continued operation of Atlantic PLL fishery may adversely affect but are not likely to jeopardize the continued existence Green-stick gear: No potential to interact with listed whales	NE
E = endangered; T = threatened; NLAA = may affect, not likely to adversely affect; NE = no effect; NP = not present			

The NMFS Office of SF, HMS Division activities, that NOAA RC will be funding through the proposed action, were previously authorized by the Atlantic HMS, Draft Consolidated Atlantic HMS, and Consolidated Atlantic HMS Fishery Management Plan (FMP). The effects of the activities authorized under the HMS FMP to ESA-listed sea turtles and marine mammals have been analyzed in several Biological Opinions and memoranda, the most relevant of which are:

1. The June 14, 2001 Programmatic Biological Opinion on the Reinitiation of Consultation on the Atlantic HMS FMP and its Associated Fisheries.
2. The June 1, 2004, Reinitiation of Consultation on the Atlantic PLL Fishery for HMS.
3. The August 10, 2005, Memorandum on the Proposed Rule for the Draft Consolidated Atlantic HMS FMP.
4. The August 1, 2008, Memorandum on the Proposed Rule to Authorize Green-stick and Harpoon Gear and Require a Sea Turtle Control Device in the U.S. Atlantic Tunas Fishery under the Consolidated Atlantic HMS FMP.

The NMFS June 14, 2001, Biological Opinion analyzed *all* HMS fisheries (i.e., commercial open fishing, commercial limited access recreational fishing, and recreational fishing). This Opinion concluded that the continued operation of the HMS fisheries in the Atlantic (which includes the use of hand gear similar to that promoted under the proposed project) may adversely affect, but is not likely to jeopardize, the continued existence of the right whale, humpback, fin, or sperm whales, or Kemp's ridley, green, loggerhead, hawksbill, or leatherback sea turtles.

The NMFS June 1, 2004, Biological Opinion analyzed Atlantic Tuna, Swordfish, and Shark HMS fisheries. This Opinion concluded that the continued operation of the HMS fisheries in the Atlantic (which includes the use of hand gear similar to that promoted under the proposed project) may adversely affect but is not likely to jeopardize the continued existence of the loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, and is likely to jeopardize the continued existence of leatherback sea turtles. Consequently, the opinion required NMFS to take management and conservation measures to address and reduce the adverse effects to leatherback populations expected to result from the proposed action. Specifically, NOAA Fisheries must (1) reduce post-release mortality of leatherbacks, (2) improve monitoring of the effects of the fishery, (3) confirm the effectiveness of the hook and bait combinations that are required as part of the proposed action, and (4) take management action to avoid long-term elevations in leatherback takes or mortality.

The NMFS August 10, 2005, memorandum highlighted the renaming of existing gear types (handline to buoy gear), for the commercial swordfish fishery. It also provided preferred

alternatives in HMS fisheries for authorizing fishing gear that could change fishing practices by allowing fishers to use green-stick and buoy gear legally. The memorandum indicated that while the use of green-stick and buoy gear may not reduce the level of interactions with protected species, it would likely reduce any mortality because fishers would know as soon as a fish (or sea turtle) is caught. Thus, NMFS Protected Resources Division (PRD) concluded that it does not expect ESA-listed species interaction to increase as a result of these types in fishing gear.

The NMFS August 1, 2008, memorandum concurred that authorizing green-stick gear for the harvest of Atlantic tunas (among other actions) was not likely to adversely affect listed species. This memorandum noted that no interactions with ESA-listed species have been documented with green-stick gear, and concluded that there is no potential for this type of gear to interact with listed whales, corals, or fish, and the potential for this gear type to interact with sea turtles is discountable.

After reviewing the information presented in your letter, NMFS PRD has determined that the effects to ESA-listed sea turtles and marine mammals from the proposed action will be completely beneficial. The PLL Bycatch Reduction project to be funded by the NOAA RC promotes both the cessation of PLL fishing and the use of greenstick gear and buoy gear in a fishery that currently allows the use of this gear as authorized by the HMS FMP. Reducing PLL fishing and increasing the use of the authorized greenstick gear and buoy gear will reduce the extent of the adverse effects to ESA-listed sea turtles and marine mammals that are anticipated from the continued harvest of PLL species as previously analyzed in the relevant biological opinions and memoranda. Thus, the proposed action is not likely to adversely affected ESA-listed sea turtles and marine mammals.

With respect to ESA-listed corals, NMFS PRD had previously determined (in the 2008 Memorandum described above) that both green-stick and buoy gear do not come into contact with the ocean floor or any benthic habitats; and thus, they are anticipated to have no effect on listed corals. With regard to scalloped hammerhead sharks, the distribution and range of the threatened Central and Southwest Atlantic DPS of scalloped hammerhead shark does not overlap the PLL Bycatch Reduction Project area in the Gulf of Mexico. Therefore, the proposed action will not affect the Central and Southwest Atlantic DPS of the scalloped hammerhead shark.

Critical Habitat

The proposed PLL project is not located within the boundary loggerhead critical habitat LOGG-N-20 to LOGG-N-36 (*Nearshore Reproductive Habitat*) (79 FR 39855, July 10, 2014), which are the portion of the nearshore waters adjacent to nesting beaches that are used by hatchlings to egress to the open-water environment as well as by nesting females to transit between beach and open water during the nesting season. Therefore, the proposed PLL Bycatch Reduction project activities will have no effect on *Nearshore Reproductive Habitat*.

The project is located within the boundary of loggerhead critical habitat LOGG-S-02-Gulf of Mexico (*Sargassum*) (79 FR 39855, July 10, 2014). The following essential features/primary constituent elements are present in LOGG-S-02:

1. Convergence zones, surface-water downwelling areas where there are concentrated components of the *Sargassum* community in water temperatures suitable for the optimal growth of *Sargassum* and inhabitation of loggerheads.

2. *Sargassum* in concentrations that support adequate prey abundance and cover.
3. Available prey and other material associated with *Sargassum* habitat including, but not limited to, plants and cyanobacteria, and animals native to the *Sargassum* community such as hydroids and copepods.
4. Sufficient water depth and proximity to available currents to ensure offshore transport (out of the surf zone), and foraging and cover requirements by *Sargassum* for post-hatchling loggerheads (i.e., >10 meters depth).

None of the PLL Bycatch Reduction project activities would affect the location of convergence zones, surface-water downwelling areas, or other locations where there are concentrated components of the *Sargassum* community in water temperatures suitable for optimal growth of *Sargassum* and inhabitation of loggerheads. The project activities would not affect the availability of prey for hatchling loggerhead sea turtles or other material associated with *Sargassum* habitat. They will not affect the water depth or proximity to currents necessary for offshore transport, foraging and cover. It is possible that vessels fishing as authorized under the HMS FMP will transit through the *Sargassum* habitat. To the extent these vessels may impact this habitat, the voluntary repose period in PLL fishing each year would reduce the impact, resulting in effects that are completely beneficial, and the increase in use greenstick gear and buoy gear on these vessels would have no effect on the habitat. Thus, we conclude that the proposed action is not likely to adversely affect the *Sargassum* loggerhead critical habitat.

Conclusion:

Because the potential project effects to listed species and critical habitat were found to be completely beneficial, we conclude that the proposed action is not likely to adversely affect listed species or critical habitat under NMFS's purview. This concludes your consultation responsibilities under the ESA for species and critical habitat under NMFS's purview. Consultation must be reinitiated if a take occurs or new information reveals effects of the action not previously considered, or if 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. NMFS's findings on the project's potential effects are based on the project description in this response. Any changes to the proposed action may negate the findings of this consultation and may require reinitiation of consultation with NMFS.

If you have any questions about this consultation, please contact Nicolás Alvarado, Consultation Biologist, at (727) 209-5955, or by email at Nicolas.Alvarado@noaa.gov.