



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Silver Spring, MD 20910

MEMORANDUM FOR: File

FROM: Christy Fellas, DWH Environmental Compliance Coordinator  
NOAA Restoration Center 

DATE: August 15, 2017

SUBJECT: DWH Early Restoration Phase IV: no re-initiation of ESA  
consultation with National Marine Fisheries Service required  
(SER-2015-16919)

Under the Endangered Species Act (ESA) Section 7(a)(2), each Federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species, or destroy/adversely modify designated critical habitat. If a Federal agency determines that a Federal action will have no effect on listed species or designated critical habitat, then the Federal agency is not required to consult with National Marine Fisheries Service (NMFS) for purposes of ESA.

NOAA Restoration Center (RC) received a letter of concurrence on May 12, 2016 from South East Regional Office (SERO) Protected Resources Division (PRD) confirming that the Oceanic Fish Restoration Project is not likely to adversely affect ESA listed sea turtles and marine mammals or their critical habitats under NMFS' jurisdiction<sup>1</sup>. This conclusion was based on the knowledge that the alternative gear types are currently authorized in Atlantic Highly Migratory Species (HMS) fisheries, and vessels participating in the project would fish with the alternative gear in a manner consistent with existing authorizations. In addition, the effects of the activities authorized under the HMS Fishery Management Plan (FMP) to ESA-listed sea turtles and marine mammals have been authorized in several Biological Opinions and memoranda.

The two additional fishing methods being considered for use in year two of the project are deep drop swordfish rigs (rod and reel) and buoy gear for tuna. The buoy gear fishery typically occurs at night; however, when targeting tuna, it is likely to be fished during the day. Use of these fishing methods will not create additional impacts to ESA-listed species as the action has not changed and the proposed gears are already analyzed in previous Biological Opinions as described further below. Based on the NOAA RC's review of project materials (Summer 2017)

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<sup>1</sup> Terrestrial life stages of sea turtles are managed USFWS and a previous "no effect" determination was made for the original project (USFWS letter can be accessed at: <https://www.fws.gov/doiddata/dwh-ar-documents/1124/DWH-AR0288422.pdf>)





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and in previous coordination with representatives from NOAA's SERO PRD, the NOAA RC determined that the two project modifications proposed for inclusion in year 2 of the Oceanic Fish Restoration Project do not necessitate re-initiation of ESA consultation.

### Previous Biological Opinions

The two proposed alternative fishing methods were previously authorized by the Atlantic HMS, Draft Consolidated Atlantic HMS, and Consolidated Atlantic HMS 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 Greenstick 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 right, 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 (i.e. rod and reel for deep-dropping) 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





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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 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.