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The Open Ocean Technical Implementation Group has evaluated this project as a potential restoration project under the Open Ocean Trustee Implementation Group Draft Restoration Plan II/Environmental Assessment (Draft RP II/EA). Public comment for this plan closed on July 15, 2019. The federal trustees work together on restoration plans and will coordinate with appropriate state trustees when proposed projects overlap their jurisdictions. This will include water column and ocean bottom fish and invertebrates, sea turtles, birds, marine mammals, sturgeon, and deep-sea coral reefs.

The *Deepwater Horizon* Gulf Restoration Office (United States Fish and Wildlife Service) requests a consultation with the U.S. Fish and Wildlife Service (Service) under the Coastal Barrier Resources Act (CBRA) (16 U.S.C. 3501 *et seq.*) for these one proposed project within the plan.

#### Project Location

*Insert project location. The CBRS Mapper can be used to identify the CBRS unit number(s) at: <http://www.fws.gov/cbra/Maps/Mapper.html>.*

The action or project is located on the Atlantic coast of Florida. The project occurs partially within Unit(s) of the Coastal Barrier Resources System (CBRS) and Otherwise Protected Areas (OPAs). Please refer the attached document for a project description.

#### Description of the Proposed Action or Project

The proposed project is designed to restore natural resources injured by the *Deepwater Horizon* oil spill. Please see attached letter for project description, map, and consistency analysis.

#### Applicable Exception(s) under 16 U.S.C. 3505(a)

16 U.S.C. 3505(a)(6)(A): **Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats**, including acquisition of fish and wildlife habitats, and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.

#### *General Exceptions*

- 16 U.S.C. 3505(a)(1): Any use or facility necessary for the **exploration, extraction, or transportation of energy resources** which can be carried out only on, in, or adjacent to a coastal water area because the use or facility requires access to the coastal water body.

- 16 U.S.C. 3505(a)(2): The **maintenance or construction of improvements of existing Federal navigation channels** (including the Intracoastal Waterway) and related structures (such as jetties), including the disposal of dredge materials related to such maintenance or construction. A Federal navigation channel or a related structure is an existing channel or structure, respectively, if it was authorized before the date on which the relevant System unit or portion of the System Unit was included within the CBRS.
- 16 U.S.C. 3505(a)(3): The maintenance, replacement, reconstruction, or repair, but not the expansion, of **publicly owned or publicly operated roads, structures, or facilities that are essential links** in a larger network or system.
- 16 U.S.C. 3505(a)(4): **Military activities** essential to national security.
- 16 U.S.C. 3505(a)(5): The construction, operation, maintenance, and rehabilitation of **Coast Guard facilities** and access thereto.

***Specific Exceptions***

*These exceptions must also be consistent with all three purposes of the CBRA (see "Justification" section below).*

- 16 U.S.C. 3505(a)(6)(A): **Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats**, including acquisition of fish and wildlife habitats, and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.
- 16 U.S.C. 3505(a)(6)(B): Establishment, operation, and maintenance of **air and water navigation aids** and devices, and for access thereto.
- 16 U.S.C. 3505(a)(6)(C): Projects under the **Land and Water Conservation Fund Act** of 1965 (16 U.S.C. 4601-4 through 11) and the **Coastal Zone Management Act** of 1972 (16 U.S.C. 1451 et seq.).
- 16 U.S.C. 3505(a)(6)(D): **Scientific research**, including aeronautical, atmospheric, space, geologic, marine, fish and wildlife, and other research, development, and applications.
- 16 U.S.C. 3505(a)(6)(E): Assistance for **emergency actions essential to the saving of lives and the protection of property and the public health and safety**, if such actions are performed pursuant to sections 5170a, 5170b, and 5192 of title 42 **and are limited to actions that are necessary to alleviate the emergency.**
- 16 U.S.C. 3505(a)(6)(F): Maintenance, replacement, reconstruction, or repair, but not the expansion (except with respect to United States route 1 in the Florida Keys), of **publicly owned or publicly operated roads, structures, and facilities.**
- 16 U.S.C. 3505(a)(6)(G): **Nonstructural projects for shoreline stabilization** that are designed to mimic, enhance, or restore a natural stabilization system.

Justification for Exception(s)

*Briefly explain how the proposed action or project meets the exception(s) under the CBRA identified above. If the exception(s) cited above is under 16 U.S.C 3505(a)(6), the justification should also include an explanation of how the proposed action or project is consistent with the three purposes of the CBRA, which are to minimize: (1) the loss of human life; (2) wasteful expenditure of Federal revenues; and (3) damage to fish, wildlife, and other natural resources associated with the coastal barriers by restricting Federal expenditures and financial assistance which have the effect of encouraging development.*

Contact Information

Please provide response via email to the following:

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Deepwater Horizon Gulf Restoration Office  
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Ben Frater  
Assistant Gulf Restoration Manager  
Deepwater Horizon Gulf Restoration Office

U.S. Fish and Wildlife Service Response

Below is the Service's response to USFWS Deepwater Horizon Gulf Restoration Office's request for a consultation under the CBRA for the project entitled "Long-Term Nesting Beach Habitat Protection for Sea Turtles." This response represents the Service's Intra-Service compliance opinion. The Gulf Restoration Office has fulfilled its obligation to consult within the Service under the CBRA for this particular action or project within the CBRS. Please note that any new commitment of Federal funds associated with this action or project, or change in the project design and/or scope, is subject to the CBRA's consultation requirement.

The Service's Regional CBRA Coordinator has reviewed the information provided by USFWS Deepwater Horizon Gulf Restoration Office, and believes the referenced action/project is:

- Not located within a System Unit of the CBRS and the CBRA does not apply (except with respect to the restrictions on Federal flood insurance)

- Located within a System Unit of the CBRS and meets the exception(s) to the CBRA selected above
- Located within a System Unit of the CBRS and meets different exception(s) than the one(s) selected above (see additional information/comments below)
- Located within a System Unit of the CBRS and does not meet an exception to the CBRA (see additional information/comments below)
- Due to many competing priorities, the Service is unable to provide an opinion on the applicability of the CBRA's exceptions to this action/project at this time. The **AGENCY NAME** may elect to proceed with the action/project if it has determined that the action/project is allowable under the CBRA. Please note that any new commitment of Federal funds associated with this action/project or a related future project is subject to the CBRA's consultation requirement.

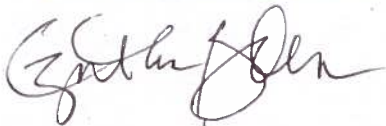
Additional Information/Comments

*Include any additional information/comments.*

This response does not constitute consultation for any project pursuant to section 7 of the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) or comments afforded by the Fish and Wildlife Coordination Act (48 Stat. 401; 16 U.S.C. 661 *et seq.*); nor does it preclude comment on any forthcoming environmental documents pursuant to the National Environmental Policy Act (83 Stat. 852; 42 U.S.C. 4321 *et seq.*).

**SERVICE FIELD OFFICE SIGNATORY AND TITLE**

**DATE**



11/15/2019

Regional Coastal Barrier Resources Act Coordinator