



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>

F/SER31:KBD

JUL 06 2018

Chief, Miami Permits Section
 Jacksonville District Corps of Engineers
 Department of the Army
 9900 Southwest 107th Avenue, Suite 203
 Miami, Florida 33176

Re: SER-2018-19218, Haulover Park Marina fuel dock expansion, SAJ-2007-04121

Dear Sir or Madam:

This letter responds to your request to reinitiate consultation with us, the National Marine Fisheries Service (NMFS), pursuant to Section 7 of the Endangered Species Act (ESA). You indicated the project plans have changed. These changes result in additional impacts to designated critical habitat for Johnson's seagrass.

Consultation History

We received your letter requesting reinitiation of consultation on March 20, 2018, due to the modification of project plans. We previously issued a Biological Opinion (Opinion) (SER-2017-18469) for this project on June 23, 2017. The Opinion evaluated proposed impacts to approximately 2,581 square feet (ft²) of Johnson's seagrass critical habitat and to the following listed species: green sea turtles (North and South Atlantic distinct population segments [DPSs]), hawksbill sea turtles, Kemp's ridley sea turtles, leatherback sea turtles, loggerhead sea turtles (Northwest Atlantic Ocean DPS), smalltooth sawfish (U.S. DPS). NMFS concluded that the proposed action may affect but is not likely to adversely affect green, hawksbill, Kemp's ridley, or loggerhead sea turtles, or smalltooth sawfish. The action area is within the boundary of Johnson's seagrass Critical Habitat Unit J, but Johnson's seagrass does not occur within the action area. In the Opinion, NMFS concluded that the proposed action is not likely to result in the destruction or adverse modification of designated critical habitat for Johnson's seagrass. This letter will analyze the impacts of the project revision (described below) on Johnson's seagrass critical habitat and will serve to amend the Opinion.

Project Location

Address	Latitude/Longitude	Water body
Haulover Park Marina, 13700 Collins Avenue, Miami, Miami-Dade County, Florida	25.90575°N , 80.12499°W (North American Datum 1983)	Biscayne Bay



Project plans remain unchanged with the exception of the following: The applicant proposes to add an additional 246 ft² floating dock¹ to the proposed expansion plans for the marina. The floating dock will be connected by dock lines to a fixed platform. No additional piles are proposed. It will be constructed of non-grated material and positioned along the seawall at the fueling facility and waterward of the riprap revetment along the shore to the south of the fueling facility.

We reviewed the Status of Critical Habitat, Environmental Baseline, and Cumulative sections of the Opinion and determined that there were no updates required to these sections.

Update to the Effects Analysis

In the 2017 Opinion, we determined that this project will result in the loss of approximately 2,581 ft² (~0.059 ac) of Johnson's seagrass critical habitat by placement of piles and shading by non-grated, overwater structures. The proposed action addressed by the Opinion is being modified in a manner that will cause an additional adverse effect to the water transparency essential feature (by shading) in 246 ft² (~0.006 acres) of Johnson's seagrass critical habitat for a total project impact of 2,827 ft² (~0.065 acres).

Update of Critical Habitat Destruction/Adverse Modification Analysis

NMFS's regulations define destruction or adverse modification to mean "a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features" (50 CFR § 402.02). Alterations that may destroy or adversely modify critical habitat may include impacts to the area itself, such as those that would impede access to or use of the essential features. We intend the phrase "significant delay" in development of essential features to encompass a delay that interrupts the likely natural trajectory of the development of physical and biological features in the designated critical habitat to support the species' recovery. NMFS will generally conclude that a federal action is likely to "destroy or adversely modify" designated critical habitat if the action results in an alteration that diminishes the quantity or quality of the essential physical or biological features of designated critical habitat or that precludes or significantly delays the capacity of that habitat to develop those features over time, and if the effect of the alteration is to appreciably diminish the value of critical habitat for the conservation of the species. This analysis takes into account the geographic and temporal scope of the proposed action, recognizing that "functionality" of critical habitat necessarily means that it must now and must continue in the future to support the conservation of the species and progress toward recovery. Destruction or adverse modification does not depend strictly on the size or proportion of the area adversely affected, but rather on the role the action area serves with regard to the function of the overall designation, and how that role is affected by the action.

¹ The March 20, 2018 consultation request letter indicates that the new floating dock is 265 ft², but the plans and associated project check list indicate that the new floating dock is actually 246 ft².

Recovery for Johnson's seagrass as set forth in the final recovery plan², will be achieved when the following recovery objectives are met: (1) the species' present geographic range remains stable for at least 10 years, or increases; (2) self-sustaining populations are present throughout the range at distances less than or equal to the maximum dispersal distance to allow for stable vegetative recruitment and genetic diversity; and (3) populations and supporting habitat in its geographic range have long-term protection (through regulatory action or purchase acquisition). We evaluated the projects' expected impacts on critical habitat to determine whether it will be able to continue to provide its intended functions in achieving these recovery objectives and supporting the conservation of the species.

The first recovery criterion for Johnson's seagrass is for its present range to remain stable for 10 years or to increase during that time. NMFS's 5-year review³ of the status of the species concluded that the first recovery objective had been achieved as of 2007. In fact, the range had increased slightly northward, and we have no information indicating range stability has decreased since then. This entire project will result in a loss of 2,827 ft² (~0.065 acres) of Johnson's seagrass critical habitat. Since the action area is not at a boundary of the species' range; the area that will be impacted is very small; and the loss of the potential areas for colonization will not affect the stability of the species' range now or in the future, we believe the project will not reduce the ability of the critical habitat to contribute to range stability for Johnson's seagrass.

The second recovery criterion for Johnson's seagrass requires that self-sustaining populations be present throughout the range at distances less than or equal to the maximum dispersal distance for the species. Due to its asexual reproductive mode, self-sustaining populations are present throughout the range of species. There are approximately 22,574 ac of Johnson's seagrass critical habitat. The loss of approximately 2,827 ft² (~0.065 ac) of designated critical habitat for Johnson's seagrass in Unit J would equate to a loss of 0.00029% of Johnson's seagrass critical habitat (0.065 ac × 100 / 22,574 ac). This loss will not affect the conservation value of available critical habitat to an extent that it would impact Johnson's seagrass self-sustaining populations by adversely affecting the availability of suitable habitat in which the species can spread/flow in the future. Drifting fragments of Johnson's seagrass can remain viable in the water column for 4-8 days⁴, and can travel several miles under the influence of wind, tides, and waves. Because of this, we believe that the removal of approximately 2,827 ft² of critical habitat by this project will not appreciably diminish the conservation value of critical habitat in supporting self-sustaining populations.

The final recovery criterion is for populations and supporting habitat in the geographic range of Johnson's seagrass to have long-term protection (through regulatory action or purchase acquisition). Though the affected portions of the project sites will not be available for the

² NMFS. 2002. Recovery plan for Johnson's seagrass (*Halophila johnsonii* Eiseman). Prepared by the Johnson's Seagrass Recovery Team for the National Marine Fisheries Service, Silver Spring, Maryland

³ NMFS. 2007. Endangered Species Act 5-Year Review: Johnson's Seagrass (*Halophila johnsonii*, Eiseman). National Marine Fisheries Service, Silver Spring, Maryland

⁴ Hall, L. M., M. D. Hanisak, and R. W. Virnstein. 2006. Fragments of the seagrasses *Halodule wrightii* and *Halophila johnsonii* as potential recruits in Indian River Lagoon, Florida. Marine Ecology Progress Series 310:109-117

longterm, thousands of acres of designated critical habitat are still available for long-term protection, which include areas surrounding the action areas. The proposed project will not affect the stability of the geographic range of the species; it will not appreciably diminish the conservation value of the critical habitat in supporting self-sustaining populations; and it will not prevent the long-term protection of the species and its supporting habitat in the remainder of its geographic range. Therefore, we conclude that the adverse effects of the proposed action on the additional 246 ft² of Johnson's seagrass critical habitat will not impede achieving the recovery objectives listed above and will, therefore, not appreciably diminish the value of the critical habitat for the conservation of the species and does not change our conclusions in the 2017 Opinion.

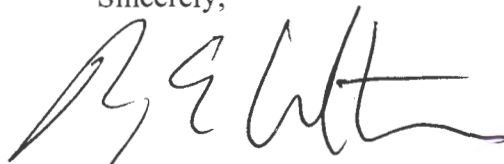
Conclusion

We have analyzed the best available scientific and commercial data, the current status of the species, environmental baseline, effects of the proposed actions, and cumulative effects to determine whether the proposed action is likely to destroy or adversely modify Johnson's seagrass critical habitat. Because the revised proposed action will not appreciably diminish the value of the critical habitat for the conservation of Johnson's seagrass, it is our Opinion that the proposed action is likely to adversely affect, but not likely to destroy or adversely modify Johnson's seagrass critical habitat.

We have no new conservation recommendations. 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.

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 on this consultation, please contact Kay Davy, Consultation Biologist, at (727) 415-9271, or by email at kay.davy@noaa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Roy E. Crabtree', written in a cursive style.

Roy E. Crabtree, Ph.D.
Regional Administrator

File: 1514-22.F.4