



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Southeast Regional Office  
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F/SER31:DK

Mr. Patrick T. Keane  
Region 4 and Caribbean Regional Response Teams  
Seventh Coast Guard District  
909 SE First Avenue, Suite 808  
Miami, FL 33131-3050

Dear Mr. Keane:

This is in reply to your April 26, 2006, letter, biological evaluation (BE), and copy of the *Limited Pre-authorization and Use Policy for Chemical Countermeasures* received by the National Marine Fisheries Service (NMFS). The U.S. Coast Guard (USCG), Caribbean Regional Response Team, submitted these documents pursuant to section 7 of the Endangered Species Act (ESA). The USCG proposes to pre-authorize the use of chemical countermeasures in Region IV and the Caribbean to be used in the event of an oil spill, and requests our review and concurrence with their determination that the action would be not likely to adversely affect any endangered, threatened, or candidate species under NMFS purview. Areas of Region IV and the Caribbean that fall under NMFS purview include waters off North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Puerto Rico, and the U.S. Virgin Islands.

The Regional Response Team for Federal Region IV and the Caribbean propose to pre-authorize the use of solidifiers to mitigate oil spills. These solidifiers form a physical bond with the oil and are expected to be beneficial to the environment and protected species as they increase oil spill recovery and containment. The solidifiers themselves have low-to-no toxicity and do not sink when they react with oil. The use of these products is considered an appropriate response for spills in marinas, harbors, on land, inside facilities, and in small water bodies as any loose product can readily be contained and recovered. Use in open water habitats such as oceans or coastal waters would occur only if the oil is physically contained by a boom or other such structure.

Because of the broad geographic range covered by the pre-authorization, including inshore waters, as well as coastal and oceanic waters (if spill is contained in a boom), all ESA-listed species under the purview of NMFS' Southeast Regional Office (SERO) are included in this consultation. The complete species list is included as an enclosure with this letter.

NMFS has analyzed the proposed actions and believes the projects' potential effects on listed species and their critical habitat under NMFS' purview will be discountable and insignificant. The pre-authorization plan includes specific Preauthorization Conditions (enclosed) which will help ensure that the use of the solidifiers is not likely to affect listed species. These conditions include a requirement to contain and recover all loose product and treated oil; therefore, the likelihood of solidifier, or solidifier/oil product remaining in the environment in more than very small quantities is very low. As a result, the probability of ingestion of floating product by any listed species is discountable. The amount of oil to be treated is limited to less than 500 gallons if solidifiers are used in loose form, and no restriction if contained. Likewise, a limit of 1000 pounds of solidifier can be applied in response to any single treatment event. Additionally, the



solidifier and the solidifier/oil product float, and therefore would not reach the benthic habitats utilized by some of the listed species. The possibility of ingestion of minute quantities of the solidifier is minimal, but in the event that it does happen, the effects are deemed to be insignificant as the product is considered to have no-to-low toxicity and the quantities of any stray product would be minimal. The Conditions also require monitoring and reporting of the entire process. The use of the solidifier could also potentially prevent harm to habitats used by protected species by aiding in the recovery of petroleum products that have been spilled.

The use of the solidifier can potentially occur in areas that have been designated as critical habitat for listed species under NMFS' purview (see enclosure). However, the use of the solidifier is not likely to impact critical habitat for the same reasons that it is deemed not likely to adversely affect listed species as detailed above. No critical habitat features for sea turtles will be impacted by the proposed action. The designated leatherback sea turtle critical habitat is based on use of those waters for courting, breeding, and access to the nesting beaches. The green and hawksbill sea turtle critical habitat is based on the areas being extensively used for foraging by the turtles, especially juveniles. Green turtles utilize sea grass beds, and hawksbills specialize on sponges found on reefs and hardbottom habitats. The proposed action will not alter the physical and biological features that were the basis for designation of right whale critical habitat (water depth, water temperature, and the distribution of cow/calf pairs in relation to the distance from the shoreline to the 40-meter isobath). Critical habitat for Johnson's seagrass is based on the following physical and biological attributes, none of which will be negatively impacted by the proposed action: adequate water quality, adequate salinity levels, adequate water transparency, and stable, unconsolidated sediments free of disturbance.

The Gulf sturgeon critical habitat designation is based upon the areas having one or more of the following principle constituent elements, none of which will be impacted by the proposed action:

- *Abundant prey items, such as amphipods, lancelets, polychaetes, gastropods, ghost shrimp, isopods, molluscs and/or crustaceans, within estuarine and marine habitats and substrates for subadult and adult life stages.*

- *Water quality, including temperature, salinity, pH, hardness, turbidity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages;*

- *Sediment quality, including texture and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages; and*

- *Safe and unobstructed migratory pathways necessary for passage within and between riverine, estuarine, and marine habitats (e.g., an unobstructed river or a dammed river that still allows for passage).*

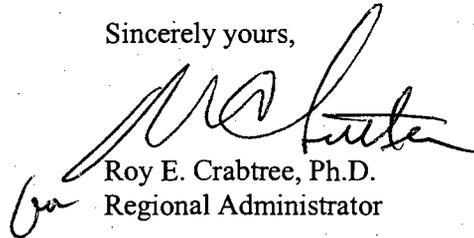
The use of solidifiers to clean up oil spills will not negatively impact critical habitat. The solidifier and the solidifier/oil product float, and therefore will not impact benthic habitats or sediment quality. The solidifier and solidifier/oil product will be contained and recovered, and therefore will not negatively impact water quality. The very small quantities of material that may not be recovered during an operation will have an insignificant impact on habitats as it is deemed to be low-to-non-toxic. Boat operations to clean the spills will be very localized and limited in time, and therefore won't cause additional impacts to critical habitats or their PCEs. The impacts of petroleum products left unrecovered would pose a greater threat to critical habitats than the minimal likelihood of impact posed by the use of solidifiers as detailed in the plan.

Based upon our review of the information provided, NMFS concurs with the USCG's determination that the action plan associated with the *Limited Pre-authorization and Use Policy for Chemical Countermeasures: Solidifiers* may affect, but is not likely to adversely affect, any listed species under NMFS' purview. The U.S. Fish and Wildlife Service is responsible for ESA section 7 issues for sea turtles in terrestrial environments (the beach) and therefore should be contacted for consultation regarding any potential impacts of solidifiers on the nesting beach.

This concludes the USCG's consultation responsibilities under section 7 of the ESA. A new consultation must be initiated if there is a take, if new information reveals effects of the action to listed species or critical habitat in a manner or to an extent that was not previously considered; if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not previously considered; or if a new species is listed or critical habitat designated that may be affected by the identified action.

We have enclosed additional information on other statutory requirements that may apply to this action, as well as NMFS' Public Consultation Tracking System that allows you to track the status of this ESA consultation. If you have any questions, please contact Dennis Klemm, fisheries biologist, at (727) 824-5312, or by e-mail at [dennis.klemm@noaa.gov](mailto:dennis.klemm@noaa.gov).

Sincerely yours,



Roy E. Crabtree, Ph.D.  
Regional Administrator

Enclosures

cc: F/SER4 - M. Croom

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