



UNITED STATES DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NATIONAL MARINE FISHERIES SERVICE

Southeast Regional Office

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<http://sero.nmfs.noaa.gov>

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SER-2018-19310

Emily Biondi  
Director, Office of Project Development  
and Environmental Review  
Federal Highway Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue, Southeast  
Washington, D.C. 20590

SEP 21 2018

Dear Ms. Biondi:

This letter 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 Federal Highway Administration (FHWA) transportation activities in North Carolina, South Carolina, and Georgia. We received your letter requesting consultation on May 11, 2018. You also provided your *Programmatic Biological Evaluation (NLAA) on the Effects of Transportation Activities and Projects Regularly Undertaken in North Carolina, South Carolina, and Georgia*, which we herein incorporate by reference. Given the projects represent a suite of frequently occurring or routine activities implemented in the aforementioned states, you requested an informal programmatic consultation to cover these activities over 5-year periods.

Programmatic consultations can be used to evaluate the expected effects of groups of related agency actions expected to be implemented in the future, where specifics of individual projects such as project location are not definitively known. A programmatic consultation must include the following elements to ensure its consistency with ESA Section 7 and its implementing regulations:

1. Project design criteria (PDCs) to prevent or limit future adverse effects on listed species and critical habitat;
2. A description of the manner in which projects to be implemented under the programmatic consultation may adversely affect listed species and critical habitat and evaluation of expected level of adverse effects from covered projects;
3. A process for evaluating and tracking expected and actual aggregate (net) additive effects of all projects expected to be implemented under the programmatic consultation;
4. Procedures for streamlined project-specific consultation;
5. Procedures for monitoring projects and validating effects predictions; and
6. A comprehensive review of the program, generally conducted annually.

At the project-specific consultation stage, a proposed project is reviewed to determine if it can be implemented according to the PDCs, to evaluate the specific amount of any adverse effects including take expected from the specific project, and to evaluate or tally the aggregate effects or



take that will have resulted by implementing projects under the programmatic consultation to date, including the proposed project.

This programmatic consultation analyses the effects of various projects, including new alignments/roadways and roadway construction; new bridge, bridge replacement, and bridge widening, as well as new and replacement piers; bridge repair, maintenance, and retrofit, as well as pier repair and maintenance; culvert installation, replacement, repair, maintenance, and cleaning; installation, maintenance, and removal of shoreline stabilization; and pavement preservation. Activities related to these projects include the installation, maintenance, and removal of temporary erosion, turbidity, and sedimentation control devices; staging areas; site preparation; geotechnical drilling and hazardous waste sampling; installation, maintenance, and removal of scientific survey devices; temporary platforms, access fills, and cofferdams; pile installation and removal; blasting; dredging and underwater excavation; and use of various equipment. Details on these projects and activities (Section 4.1), along with general and specific PDCs for each project and associated activities, are discussed in more detail in your programmatic biological evaluation (PBE), which we incorporate herein by reference. The following tables from your PBE summarize the anticipated number of projects and activities over the next 5 years and annually:

**Number of Projects Estimated to be Undertaken Using this Programmatic Consultation per 5-Year Period**

<b>Category of Project</b>	<b>Number of Projects During the Next 5 Years</b>	<b>Average Number of Projects Per Year</b>
New alignment/roadway; road widening	45	9
New/replacement bridge and pier; bridge widening	50	10
Bridge and pier repair, maintenance, and retrofit	60	12
Culvert installation, replacement, repair, and maintenance	50	10
Shoreline stabilization	105	21
Pavement preservation	45	9

**Number of Activities Estimated to be Undertaken Using this Programmatic Consultation per 5-Year Period**

<b>Category of Project</b>	<b>Number of Projects During the Next 5 Years</b>	<b>Average Number of Projects Per Year</b>
Erosion, turbidity, and sediment control	355	71
Staging areas	355	71
Site preparation	310	62
Geotechnical drilling	60	12
Scientific survey devices	50	10
Temporary platforms, fills, and cofferdams	150	30
Pile installation and removal	125	25
Blasting	40	8
Dredging	45	9
Equipment	355	71

Because this is a programmatic consultation, the exact location, number of activities, and effects of each individual activity is unknown. As a result, your effects analysis included a list of assumptions in Section 4.3, which is also incorporated herein by reference. You also detailed the process for a project-specific review, as well as a programmatic review (Sections 4.4 and 4.5). Due to the nature and scope of this programmatic consultation, they are repeated verbatim here for clarity:

*Project-Specific Review*

As discussed in Section 3, FHWA will follow certain steps before moving forward on a project using this programmatic informal consultation to satisfy the Section 7 consultation requirement. FHWA must conduct a project-specific review to ensure that all of the PDCs are incorporated into the action. If the PDCs are incorporated into the action, then a request for coverage under the programmatic informal consultation is submitted to NMFS as described below:

Submission to NMFS: FHWA or the appropriate state transportation agency must email the following information to NMFS at [nmfs.ser.esa.consultations@noaa.gov](mailto:nmfs.ser.esa.consultations@noaa.gov).

1. A completed Excel spreadsheet corresponding to the applicable activities in the format shown in Appendix B. The table in Appendix B provides the required format and column headings. Descriptions and formatting requirements for each of the columns are also located in Appendix B. This spreadsheet may be modified as necessary if modifications are approved in advance by NMFS.
2. Any other supporting documentation necessary to support the effects determination made by FHWA or its delegated authority. This should include project plans, site survey (e.g., benthic, seagrass, hard bottom), photos, environmental assessment, and any other relevant documentation.

NMFS may acknowledge receipt of the transportation agency's email submission through an auto-reply email. During the first year of implementation, the transportation agency will wait 15 calendar days before moving forward with the activity. The timeframe begins the calendar day following the receipt of the auto reply email. For example, if the FHWA transmits the required information on Monday and receives the auto reply email the same day the calculation of 15 calendar days starts with Tuesday as the first day.

During (the) 15-day period, NMFS has the opportunity to spot-check projects for compliance with this programmatic informal consultation. If the transportation agency receives acknowledgement of NMFS's receipt of the application package, and receives no subsequent notification within the review periods stating that the project does not comply with the Programmatic Informal Consultation, then coverage under the programmatic informal consultation is extended to the action and the transportation agency may proceed on the 15th calendar day. Additionally, coverage under the programmatic informal consultation can occur before the end of the 15-day period if the transportation agency receives confirmation of compliance from NMFS.

### *Programmatic Review*

NMFS and FHWA will conduct programmatic reviews annually, or at another agreed-upon period, to evaluate (1) the effectiveness of the programmatic informal consultation; (2) whether the PDCs continue to be appropriate and are being implemented effectively; and (3) whether the project-specific consultation procedures are being complied with and are effective. The purpose of this

evaluation is to assess the effectiveness of the consultation and verify conclusions regarding the potential effects to ESA-listed species and critical habitat, review data on the aggregate effects of the combined projects from the previous year(s), and evaluate the need for changes to PDCs or procedures. If the results of the programmatic review show that the anticipated effects to listed species or critical habitat defined in this document are being exceeded, reinitiation of consultation may be required. Reviews will be conducted in the following way:

FHWA Reports: The FHWA or the state transportation agency will provide NMFS with a completed spreadsheet of all activities authorized using this programmatic consultation as the Section 7 consultation during each year, ending on June 30; the report is due 90 days later. Before submitting the spreadsheet to NMFS, FHWA or the state transportation agency will quality-control check the spreadsheet for accuracy (e.g., properly formatted, completely filled out, no duplicates, latitude/longitude data is accurate and entered according to the formatting requirements provided) and review the data to confirm that this programmatic informal consultation is being implemented properly (activities are following the PDCs). The FHWA shall provide a short summary of their findings with their email submission of the spreadsheet to [nmfs.ser.esa.consultations@noaa.gov](mailto:nmfs.ser.esa.consultations@noaa.gov).

Annually: The annual review will cover all projects that occur within a year and will occur at the end of that year. A year will end on June 30 and a new year will begin July 1. During this review, FHWA will evaluate a random sample of projects authorized using this consultation as the Section 7 consultation analysis by selecting a subset of activities and will review them in detail. Additionally, FHWA may select projects from each of the 6 categories of projects (e.g., 3 bridge replacements, 3 shoreline stabilization) to evaluate. FHWA will document the results of the annual review in a formal letter to NMFS. NMFS will review this annual report and provide comments or set up a conference call to discuss the result. The FHWA annual report will include:

1. The annual spreadsheet of projects permitted during the previous year in the format shown in Appendix B. This spreadsheet may be modified as necessary if modifications are approved by NMFS.
2. Discussion of the results of the in-depth project reviews as discussed above.

3. Analysis and discussion regarding the number of activities and projects anticipated under each category to determine if the number of projects exceeds those provided in Tables 3 through 6, and to determine if the extent of critical habitat loss exceeds the amounts discussed in Section 6 of this document.
4. Results and summary of the pre- and post-construction compliance inspections completed during the previous year.
5. Any lessons learned or procedural changes necessary to improve the program.

Monthly/Quarterly Call: During the first year of implementation, FHWA or the state transportation agency and NMFS will conduct a monthly or quarterly call, or as needed, to discuss projects under this programmatic informal consultation used as the Section 7 analysis. This call will provide the opportunity to discuss issues as they arise and answer questions about the implementation of the program as a whole. Re-initiation of the programmatic informal consultation may be required if new information reveals effects not considered in this consultation, or a new species is listed or critical habitat is designated that may be affected by the actions covered. If the FHWA or a state DOT alters an action such that it is not consistent with the programmatic informal consultation, that action would no longer be qualified to use the programmatic informal consultation and would need to seek separate Section 7 consultation.

Your PBE also included anticipated effects on ESA-listed species and critical habitat resulting from the projects and activities encompassed by this programmatic consultation. Your effects determinations are summarized below:

**Effects Determination(s) for Species and Critical Habitat the Action Agency Believes May Be Affected by the Proposed Action**

Species	ESA Listing Status	Action Agency Effect Determination
<b>Sea Turtles</b>		
Green (North Atlantic [NA] distinct population segment [DPS])	T	NE/NLAA
Kemp's ridley	E	NE/NLAA
Leatherback	E	NE/NLAA
Loggerhead (Northwest Atlantic [NWA] DPS)	T	NE/NLAA
Hawksbill	E	NE/NLAA

Species	ESA Listing Status	Action Agency Effect Determination
<b>Fish</b>		
Shortnose sturgeon	E	NLAA
Atlantic sturgeon	E	NLAA
<b>Critical Habitat</b>		
Atlantic sturgeon	-	NE/NLAA
E = endangered; T = threatened; NLAA = may affect, not likely to adversely affect; NE = no effect; NP = not present		

In summary, we believe your PBE includes the following elements to ensure this programmatic consultation's consistency with ESA Section 7 and its implementing regulations.

*Analysis of Potential Routes of Effects to Species*

Your PBE provides a discussion on the potential routes of effects to ESA-listed sea turtle and sturgeon species (Section 5.1), including an insignificant, discountable, or implausible rationale for your no effect or may affect, but is not likely to adversely affect conclusion for each activity. These include physical effects, effects on foraging and sheltering, migration and behavior, and potential noise impacts. Likewise, you also provide necessary information on potential effects to Atlantic sturgeon critical habitat from each of the activities and projects encompassed in this consultation. This includes potential effects on each of the critical habitat's physical or biological features (PBFs), and a rationale for why a particular activity may result in your determination of no effect or may affect, but is not likely to adversely affect conclusion. Because of the level of detail in the effects analysis of your PBE, we believe it is sufficient and appropriate to incorporate it herein solely by reference.

*Conclusion*

For the same rationales outlined in your effects analysis in Section 5.1 of your PBE, we concur with your determinations that the activities and projects encompassed within this programmatic informal consultation would have discountable, insignificant, or implausible effects on ESA-listed species and critical habitat under our purview. Please be advised of the project-specific and annual programmatic review requirements for activities authorized under this consultation, as found on pages 3-6 of this letter.

This concludes your consultation responsibilities under the ESA for species under our 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. Our findings on the project's potential effects are based on the project

description in the September 2018 version of your PBE. Any changes to the proposed action may negate the findings of this consultation and may require reinitiation of consultation.

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 Michael Barnette, Fishery Biologist, at (727) 551-5794, or by email at [michael.barnette@noaa.gov](mailto:michael.barnette@noaa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'R. E. Crabtree', with a stylized flourish at the end.

Roy E. Crabtree, Ph.D.  
Regional Administrator

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