

IN REPLY REFER TO:

United States Department of the Interior

FILE

FISH AND WILDLIFE SERVICE

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May 31, 2011

Natalie Furman
Florida Department of Transportation
District 3
Post Office Box 607
Chipley, Florida 32428-0607

Re: FWS No. 2011-I-0332
Florida Department of Transportation
US 90 Yellow River Bridge Replacement
FPID: 424508-1
Yellow River
Okaloosa County, Florida

Dear Ms. Furman:

Thank you for your letter to the Fish and Wildlife Service (Service) dated May 5, 2011, and received May 9, 2011, requesting concurrence with your determination that the above-referenced project is not likely to adversely affect (NLAA) resources protected under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). This response is provided in accordance with Section 7 of the Act.

The Florida Department of Transportation (FDOT) proposes to replace the existing US 90 bridge over the Yellow River for a distance of 0.947 mile. The new bridge typical section will include two 12-foot lanes, 10-foot shoulders, and Type F barrier Railing. It will be constructed to the north of the existing bridge, within FDOT right-of-way (ROW). Construction will be in a single phase with tie-ins to the four-lane section to the east and to the two-lane section to the west. The existing bridge will be used to maintain traffic during construction, and will be removed as part of this project.

The FDOT has proposed several conservation measures to avoid and minimize impacts to federally protected species. These measures include: incorporating Gulf Sturgeon and Eastern Indigo Snake Guidelines into project construction plans; reinitiating consultation if explosives are needed for bridge demolition; and conducting surveys for candidate mussels in 2011 and coordinating the results with the Service. The FDOT has determined that with these protective measures in place, the project may affect, but is not likely to adversely affect (NLAA) endangered species or adversely modify their critical habitat.

The Service concurs with your determination that the proposed work may affect, but is NLAA the red-cockaded woodpecker and Eastern indigo snake. However, we cannot concur that the work is NLAA the Gulf sturgeon or adversely modify its critical habitat.

Gulf Sturgeon

The proposed project is located within Critical Habitat Unit 4 - the Yellow River System. The Yellow River supports a sub-population of Gulf sturgeon and provides the following primary constituent elements (PCEs) essential for its conservation:

1. Abundant prey items for larval and juvenile life stages;
2. Riverine spawning sites;
3. Riverine aggregation areas used by adult, subadult, and/or juveniles;
4. A flow regime necessary for normal behavior, growth, and survival of all life stages;
5. 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;
6. Sediment quality, including texture and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages; and
7. Safe and unobstructed migratory pathways necessary for passage within and between riverine, estuarine, and marine habitats.

The proposed work is of a scope (major construction for the width of the river) and duration (likely greater than one year) with effects that are likely not insignificant and/or discountable. Due to the potential for the proposed project to adversely affect the Gulf sturgeon and adversely modify the PCEs for its critical habitat, we recommend initiating formal consultation for this project. The Service recommends the following measures to avoid and minimize impacts to the Gulf sturgeon:

1. *Construction Special Provisions - Sturgeon Protection Guideline* should be incorporated into construction plans.
2. In-water bridge construction activities should be timed to avoid peak migratory periods for the sturgeon. Pile construction in the Yellow River should be avoided from March through May and from September through November.
3. Innovative, environmentally sensitive construction techniques should be used such as top-down construction.
4. Placement of piles in the river should be minimized to the extent practicable.
5. Siltation barriers should be made of material in which a sturgeon cannot become entangled, be properly secured, and be regularly monitored to avoid protected species entrapment. Barriers should not block entry to or exit from designated critical habitat.

6. If a sturgeon is seen within 100 yards of the active daily construction operation or vessel movement, all appropriate precautions should be implemented to ensure its protection.
7. These precautions should include cessation of operation of any moving equipment closer than 50 feet of a sturgeon. Operation of any mechanical construction equipment should cease immediately if a sturgeon is seen within a 50-foot radius of the equipment. Activities should not resume until the protected species has departed the project area of its own volition.
8. Stormwater should be collected and conveyed off of the bridge to treatment ponds to eliminate run off during construction and operation.
9. Equipment should be staged and stored in areas without environmentally sensitive habitats, including the docking, removal, or storage of boats during periods of inactivity.
10. Native vegetation should be planted immediately following completion of construction and erosion control measures should be removed only after vegetation has become fully established.
11. All applicable Best Management Practices (BMPs) should be implemented to control erosion, sedimentation, and turbidity. An erosion control plan should be submitted to the Service for approval prior to the start of construction.

Freshwater Mussels

The FDOT has indicated that surveys for candidate freshwater mussels will take place between May and July of this year. We are providing the following information to assist you with project planning as we await the survey results. While the candidate mussels currently have no regulatory protection under the Act, we anticipate their listing to be finalized prior to the 2014 construction date for this project. A proposal to list these species is expected to be published this year, although it has been temporarily delayed due to other Service priorities. We are providing the following guidance for addressing potential freshwater mussel impacts that could be incorporated into your Biological Assessment (BA).

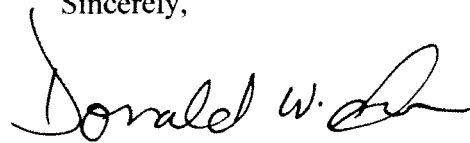
The BA should identify conservation measures to avoid and minimize impacts to these species during work activities. The conservation measures should include a rigorous erosion and sediment control plan, a mussel relocation plan for animals within the project footprint, identification of staging and storage areas, and methods to assure enforcement of these measures. I have enclosed a biological opinion for a Georgia Department of Transportation (GDOT) bridge replacement project to provide examples of conservation measures to reduce impacts to listed mussels. I have also enclosed an example mussel relocation protocol.

As part of the relocation plan, a suitable relocation site should be identified by FDOT's technical experts and be approved by the Service. The timing of relocation should be planned to minimize reproductive impacts. If construction is to begin outside of these species' reproductive season (generally May through July), animals should be moved in the fall. If work is to begin in the

reproductive season, animals should be moved immediately before work begins. The Service is working on additional guidance for relocating mussels and will provide it when available.

We appreciate the opportunity to provide comments. We look forward to working with you as we continue informal consultation on this project. Please contact Ms. Mary Mittiga (ext. 236) or Ms. Karen Herrington (ext. 250) if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald W. Imm". The signature is fluid and cursive, with a large initial "D" and a stylized "W".

Dr. Donald W. Imm
Project Leader

Enclosure:
GDOT Biological Opinion
Mussel Relocation Protocol

Ms. Natalie Furman

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cc:

FDOT, Chipley, FL (Blair Martin, Laura Haddock)
FHWA, Tallahassee, FL (Cathy Kendall)
FWCC, Tallahassee, FL (Scott Sanders, Ted Hoehn)
NMFS, St. Petersburg, FL (Dave Rydene)