DEN 152

Received
FEB 19 2003
6WQ-PP

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
9721 Executive Center Drive North
St. Petersburg, FL 33702
(727) 570-5312; FAX 570-5517
http://caldera.sero.nmfs.gov

JAN 28 2003 F/SER3:KM:egh

Mr. Jack V. Ferguson, P.E.
Chief, NPDES Permits Branch
U.S. Environmental Protection Agency, Region 6, (6WQ-P)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Re: National Pollution Discharge Elimination System (NPDES)/Louisiana Pollutant Discharge Elimination System Permit No. LA0049492/AI4634 for LOOP LLC

Dear Mr. Ferguson:

This is in reference to your letter dated October 24, 2002, regarding the NPDES/Louisiana Pollutant Discharge Elimination System Permit No. LA0049492/AI4634 to LOOP LLC. The letter indicates that you propose to re-issue the permit which would continue the authorization of discharges from a deepwater port, pipelines, and storage facilities for the transportation of crude oil to Federal waters of the Gulf of Mexico and waters of the state of Louisiana (Appendix 1). We have reviewed the material you submitted (i.e., the effects determination, draft permit, fact sheet, and outfall maps) with respect to possible effects on the species listed under the Endangered Species Act (ESA) under the purview of the National Marine Fisheries Service (NOAA Fisheries). The NOAA Fisheries consultation number for this project is I/SER/2002/01302; please refer to this number in future correspondence on this project.

The proposed permit re-issuance seeks to continue the existing fourteen discharges without authorizing any new discharges. Through the permit, the Environmental Protection Agency (EPA) and the state of Louisiana have established effluent limitations that ensure the protection of aquatic life and maintenance of the receiving water as aquatic habitat, and the permit conditions include several limitations to reduce the impacts to listed species. The EPA has determined that the re-issuance of this permit is not likely to have an adverse effect on any endangered or candidate species or critical habitat. EPA has also determined that the re-issuance of the permit does not authorize or control future actions that are reasonably certain to occur within the action area and are contingent upon the issuance of the permit.

The permit application indicates that the receiving waters include Gulf of Mexico, Bayou Lafourche, Breton Canal, LLE Canal, and Bayou Moreau. Several listed species under NOAA Fisheries' purview potentially occur in the receiving waters. These species include gulf sturgeon (*Acipenser oxyrinchus desotoi*), northern right whale (*Eubalaena glacialis*), blue whale

(*Balaenoptera musculus*), finback whale (*Balaenoptera physalus*), sei whale (*Balaenoptera borealis*), humpback whale (*Megaptera novaeangliae*), sperm whale (*Physeter macrocephalus*), Kemp's ridley sea turtle (*Lepidochelys kempii*), loggerhead sea turtle (*Caretta caretta*), leatherback sea turtle (*Dermochelys coriacea*), hawksbill sea turtle (*Eretmochelys imbricata*), and green sea turtle (*Chelonia mydas*). Several candidate species also occur in the receiving waters. These species include dusky shark (*Carcharhinus obscurus*), sand tiger shark (*Odontaspis taurus*), night shark (*Carcharinus signatus*), speckled hind (*Epinephelus drummondhayi*), saltmarsh topminnow (*Fundulus jenkensi*), Goliath grouper (*Epinephelus itajara*), Warsaw grouper (*Epinephelus nigritus*), Nassau grouper (*Epinephelus striatus*), mangrove rivulus (*Rivulus marmoratus*), Alabama shad (*Alosa alabamae*), and Key silverside (*Menidia conchorum*).

The outfalls' effluents have the potential to affect the habitat of listed species under NOAA Fisheries' purview, and the EPA and NOAA Fisheries have pledged to address any potential effects through a national agreement, "Memorandum of Agreement Between the Environmental Protection Agency, Fish and Wildlife Service, and National Marine Fisheries Service Regarding Enhanced Coordination Under the Clean Water Act and Endangered Species Act," EPA-823-F-01-002, January 2001.

The EPA and NOAA Fisheries have gained considerable experience in evaluating the potential effects on endangered and threatened species of pollutants for which EPA has published recommended aquatic life criteria under section 304(a) of the Clean Water Act. EPA and NOAA Fisheries have also conducted consultations on state water quality standards approval actions which have covered water quality criteria contained in the standards. Both parties recognize that conducting consultations on a state-by-state basis is not the most efficient approach to evaluating the effects of water pollution on endangered and threatened species throughout the country. Therefore, EPA and NOAA Fisheries have agreed to ensure a consistent approach to evaluating the effects of pollutants on species and identifying measures that may be needed to better protect them. In addition, national consultations will ensure better consideration of effects on species whose ranges cross State boundaries.

Complementing the aforementioned national agreement, NOAA Fisheries and the Louisiana Department of Environmental Quality have pledged to work together to implement the Louisiana Pollutant Discharge Elimination System program while conserving federally-listed threatened and endangered species in the state.

The effluent limitations and monitoring procedures associated with the proposed permit action result from existing water quality standards which both the EPA and NOAA Fisheries have pledged to evaluate with respect to their impacts to protected species. NOAA Fisheries concurs with EPA's finding that the project is not likely to adversely affect listed species under NOAA Fisheries' purview. NOAA Fisheries will continue to work cooperatively with the EPA and the

ED_001774D_00000531-00002

state of Louisiana to conserve federally-listed threatened and endangered species in their jurisdictions.

This concludes consultation responsibilities under section 7 of the ESA for the proposed action for federally-listed species, and their critical habitat, under NOAA Fisheries' purview. Consultation should be reinitiated if there is a take, new information reveals impacts of the proposed actions that may affect listed species or their critical habitat, a new species is listed, the identified action is subsequently modified, or critical habitat determined that may be affected by the proposed activity.

Pursuant to the essential fish habitat consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(b)(2) and 50 CFR 600.905-.930, Subpart K), the NOAA Fisheries Habitat Conservation Division (HCD) is being copied with this letter. The HCD biologist for this region is Richard Hartman. If you have any questions about consultation regarding essential fish habitat for this project, please contact Mr. Hartman at (225) 389-0508.

We look forward to continued cooperation with the EPA in conserving our endangered and threatened resources. If you have any questions, please contact Ms. Katie Moore, fishery biologist, at (727) 570-5312 or by e-mail at Katie.Moore@noaa.gov.

Sincerely,

Roy E. Crabtree, Ph.D.
Regional Administrator

cc: F/PR3
F/SER44 - Richard Hartman

O:\section7\epa\I.SER.2002.01302 LA NPDES.wpd
File: 1514.22 k.4

ED_001774D_00000531-00003

Appendix 1. Discharge Description

Outfall Number	Effluent	Discharge Location
001	Stormwater from the oily water system	Gulf of Mexico
002, 006, 007, 008, 023	Treated sanitary wastewater	Gulf of Mexico, Bayou Lafourche, Breton Canal, and Bayou Moreau
004	Brine discharge	Gulf of Mexico
005	Marine cargo hose testing water, stormwater runoff from the testing facility, stormwater and wash water from the oil spill equipment cleaning pad and stormwater from the containment area surrounding the oily tank at the small boat harbor	Bayou Lafourche,
015	Non-contact cooling water	Gulf of Mexico
012, 018, 020, 021, & 022	Stormwater runoff	Breton Canal, Bayou Moreau, LLE Canal, and Bayou Moreau