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JUL 12 2004

F/SER3:KPB

Troy C. Hill, P.E., Acting Chief
NPDES Permit Branch
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Received
JUL 15 2004
6WQ-PP

Dear Mr. Hill:

This letter is in reply to the May 14, 2004, letter from the U.S. Environmental Protection Agency (EPA) pertaining to re-issuance of a National Pollutant and Discharge Elimination System General Permit (GP) No. GMG290000 for discharges associated with oil and gas exploration and production offshore of Louisiana and Texas. You have requested that we analyze the possible effects on the species listed under the Endangered Species Act (ESA) under the purview of the National Marine Fisheries Service (NOAA Fisheries), pursuant to the interagency consultation requirements of section 7 of the ESA.

History and Summary of the Proposed Action

EPA requested interagency consultation with NOAA Fisheries in 1991 on the GP for Outer Continental Shelf (OCS) waters in the western Gulf of Mexico (GOM). In a letter dated June 28, 1991, we concurred with EPA that the Region 6 GP would not affect listed species under our jurisdiction. In 2001, EPA proposed to add new types of drilling fluids (synthetic-based fluids) to the GP. NOAA Fisheries provided concurrence in a letter dated November 27, 2001, that the proposed changes were not likely to adversely affect listed species.

For the current action the EPA proposes to re-issue the GP for existing source and new source facilities in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR 435), applicable to discharges from sources on the OCS offshore of Louisiana and Texas. The geographic range under consideration for the GP has not changed; however, the following changes to the permit, as listed in the biological evaluation, are proposed:

- The time frame specified for collection of a produced water sample after a sheen is observed is changed to within two hours;
- The discharge prohibitions at National Marine Sanctuaries are clarified in an attempt to better reflect NOAA regulations;
- The variability factor for use in determining compliance with the permit's limitations for sediment toxicity and biodegradation is removed;
- The requirement to submit fourteen day advanced notification of intent to be covered by the permit is removed;

- The final discharge monitoring report will be required to be submitted along with a notice of termination;
- New test methods are allowed for monitoring cadmium and mercury in stock barite;
- Several minor miscellaneous discharges are added to better represent deep water technologies;
- A produced water study is proposed to determine the potential impacts of produced water discharges on the hypoxic zone in the northern GOM;
- Other changes to the permit's miscellaneous discharge requirements are proposed to clarify that water toxicity testing is not required for non-toxic dyes; and,
- Other minor changes in wording are also proposed to resolve confusion of the EPA's intent regarding the permit's requirements.

The proposed re-issuance of the GP would be valid for a period of three years so that the above-mentioned study on the effects of discharges of produced water on hypoxia can be completed and considered in the next re-issuance of the GP.

Threatened and endangered species under the jurisdiction of NOAA Fisheries that are known to occur in the action area of the GP in EPA Region 6 include the sperm whale (*Physeter macrocephalus*), leatherback sea turtle (*Dermochelys coriacea*), Kemp's ridley sea turtle (*Lepidochelys kempii*), green sea turtle (*Chelonia mydas*), hawksbill sea turtle (*Eretmochelys imbricata*), loggerhead sea turtle (*Caretta caretta*), and Gulf sturgeon (*Acipenser oxyrinchus desotoi*).

The following endangered cetacean species are not believed to be resident stocks in the GOM: blue (*Balaenoptera musculus*), sei (*B. borealis*), fin (*B. physalus*), humpback (*Megaptera novaeangliae*), and North Atlantic right whales (*Eubalaena glacialis*). Although these species have been occasionally observed in the GOM, individuals observed have likely been inexperienced juveniles straying from their normal ranges or occasional transients. Resident stocks are not believed to be present in the GOM; therefore, the potential for effects to these species from the proposed action is believed to be extremely low.

Historically, the smalltooth sawfish was common along the GOM coast, but the current range of this species has been reduced to habitats mainly along peninsular Florida, although some individuals distributed along the GOM coast are possible. Smalltooth sawfish are usually found in shallow waters very close to shore over muddy and sandy substrates, but some larger individuals may be found in greater depths. Due to the reduced range of the smalltooth sawfish, NOAA Fisheries believes the potential risk of any harm to smalltooth sawfish off Louisiana and Texas is so low as to be considered discountable. However, the EPA should consider smalltooth sawfish in future environmental assessments for actions occurring in the North Atlantic Ocean and the GOM.

NOAA Fisheries acknowledges that there have been few scientific studies on the effects of contaminants associated with oil and gas extraction on listed species, and existing data are not sufficient to be conclusive. NOAA Fisheries is not aware of any documented take of listed species due to the effects associated with the past issuance of the GP. Because the proposed GP permit seeks to improve monitoring, documentation, and characterization of the discharges to be permitted, NOAA Fisheries believes that it is not likely that the proposed action will cause harm to the species listed above.

Based on our evaluation of the information provided, NOAA Fisheries concurs with the EPA's finding that the re-issuance of the GP may affect, but is not likely to adversely affect any endangered or threatened species under the purview of NOAA Fisheries. No critical habitat is present; therefore, none will be affected. This concludes consultation responsibilities under section 7 of the ESA. A new consultation should be initiated if there is a take, new information reveals impacts of the identified activity that may affect listed species or their critical habitat, a new species is listed, the identified activity is subsequently modified or critical habitat designated that may be affected by the identified activity.

It is recommended that scientific studies continue to investigate the effects of permitted discharges on the OCS. Meanwhile, the EPA should continue to evaluate the cumulative impacts of permitted discharges in the OCS in relation to the other anthropogenic inputs such as atmospheric deposition, inputs from rivers, and other sources affecting the marine environment. Because of the lack of conclusive studies on the effects of discharges into the marine environment, a comprehensive cumulative impact analysis should be completed to better understand the possible impact of anthropogenic discharges on listed species, as well as on the ecosystems upon which they depend.

The EPA must determine if EFH consultation with NOAA Fisheries' Habitat Conservation Division is required pursuant to the Magnuson-Stevens Act's requirements for EFH consultation (16 U.S.C. 1855 (b)(2) and 50 CFR 600.905-.930, subpart K). Consultation is not complete until EFH and ESA concerns have been addressed. If you have any questions about EFH consultation for this project, please contact Heather Young of the Habitat Conservation Division at (409) 766-3699 or via e-mail at Heather.Young@noaa.gov.

We look forward to the continued cooperation between our two agencies in conserving our endangered and threatened resources. We are interested in the results of the study of the effects of produced water on the hypoxic zone and would appreciate a copy of the report when it is available. If you have any questions regarding this letter, please contact Kyle Baker of the Protected Resources Division at the number listed above or via e-mail at Kyle.Baker@noaa.gov.

Sincerely,

for Roy E. Crabtree, Ph.D.
Regional Administrator

cc: Denise Hamilton – EPA Region 6
F/SER42 – H. Young
F/PR3

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