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Measures for Reducing Entrapment Risk to Protected Species

Bottlenose dolphins, sea turtles, and Gulf sturgeon (protected species) are known to inhabit coastal waters of the northern Gulf of Mexico. Bottlenose dolphins are protected under the Marine Mammal Protection Act (MMPA) and sea turtles and Gulf sturgeon are protected under the Endangered Species Act (ESA). Because of the potential for these protected species to become entrapped within coastal waters of construction sites along the northern Gulf coast, projects that enclose shallow open water areas for wetland creation or nourishment will use the following measures to minimize the potential for entrapment:

- 1. Pre-construction planning.** During project design, the Federal Action Agency or project proponents must incorporate at least one escape route into the proposed retention structure(s) to allow any protected species to exit the area(s) to be enclosed. Escape routes must lead directly to open water outside the construction site and must have a minimum width of 100 feet. Escape routes should also have a depth as deep as the deepest natural entrance into the enclosure site and must remain open until a thorough survey of the area, conducted immediately prior to complete enclosure, determines no Protected Species are present within the confines of the structure (see item 5 below for details).
- 2. Pre-construction compliance meeting.** Prior to construction, the Federal Action Agency, project proponents, the contracting officer representative, and construction personnel should conduct a site visit and meeting to develop a project-specific approach to implementing these preventative measures.
- 3. Responsible parties.** The Federal Action Agency will instruct all personnel associated with the project of the potential presence of protected species in the area and the need to prevent entrapment of these animals. All construction personnel will be advised that there are civil and criminal penalties for harming, harassing, or killing protected species. Construction personnel will be held responsible for any protected species harassed or killed as a result of construction activities. All costs associated with monitoring and final clearance surveys are the responsibility of project proponents and must be incorporated in the construction plan.
- 4. Monitoring during retention structure construction.** It is the responsibility of construction personnel to monitor the area for protected species during dike or levee construction. If protected species are regularly sighted over a 2 or 3 day period within the enclosure area during retention structure assembly, construction personnel must notify the Federal Action Agency. It is the responsibility of the Federal Action Agency



to then coordinate with the National Marine Fisheries Service (NMFS) Marine Mammal Health and Stranding Response team (1-877-WHALE HELP [1-877-942-5343]) or the appropriate State Coordinator for the Sea Turtle Stranding and Salvage Network (see http://www.sefsc.noaa.gov/species/turtles/stranding_coordinators.htm) to determine what further actions may be required. Construction personnel may not attempt to scare, herd, disturb, or harass the protected species to encourage them to leave the area.

- 5. Pre-closure final clearance.** Prior to completing any retention structure by closing the escape route, the Federal Action Agency will insure that the area to be enclosed is observed for protected species. Surveys must be conducted by experienced marine observers during daylight hours beginning the day prior to closure and continuing during closure. This is best accomplished by small vessel or aerial surveys with 2-3 experienced marine observers per vehicle (vessel/helicopter) scanning for protected species. Large areas (e.g. >300 acres) will likely require the use of more than one vessel or aerial survey to insure full coverage of the area. These surveys will occur in a Beaufort sea state (BSS) of 3 feet or less, as protected species are difficult to sight in choppy water. Escape routes may not be closed until the final clearance determines the absence of protected species within the enclosure sight.

- 6. Post closure sightings.** If protected species become entrapped in an enclosed area, the Federal Action Agency and NMFS must be immediately notified. If observers note entrapped animals are visually disturbed, stressed, or their health is compromised then the Action Agency may require any pumping activity to cease and the breaching of retention structures so that the animals can either leave on their own or be moved under the direction of NMFS.
 - a. In coordination with the local stranding networks and other experts, NMFS will conduct an initial assessment to determine the number of animals, their size, age (in the case of dolphins), body condition, behavior, habitat, environmental parameters, prey availability and overall risk.
 - b. If the animal(s) is/are not in imminent danger they will need to be monitored by the Stranding Network for any significant changes in the above variables.
 - c. Construction personnel may not attempt to scare, herd, disturb, or harass the protected species to encourage them to leave the area. Coordination by the Federal Action Agency with the NMFS SER Stranding Coordinator may result in authorization for these actions.
 - d. NMFS may intervene (catch and release and/or rehabilitate) if the protected species are in a situation that is life threatening and evidence suggests the animal is unlikely to survive in its immediate surroundings.
 - e. Surveys will be conducted throughout the area at least twice or more in calm surface conditions (BSS 3 feet or less), with experienced marine observers, to determine whether protected species are no longer present in the area.

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While NMFS recommends these best management practices to prevent the future takes of marine mammals by entrapment, use of these measures cannot guarantee a take will not occur. Following these measures does not constitute compliance with the MMPA's Incidental Take requirements and take is not authorized.