



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701-5511
(727) 824-5317; FAX (727) 824-5300
<http://sero.nmfs.noaa.gov/>

March 9, 2018

F/SER4:DD

Forest A. Willis, Co-Chair
Regional Response Team 4
U.S. Coast Guard Seventh District
Brickell Plaza Federal Building
909 SE 1st Avenue
Miami, Florida 33131-3050

Dear Mr. Willis:

NOAA's National Marine Fisheries Service (NMFS), Southeast Region, Habitat Conservation Division (HCD) has reviewed the Biological Assessment (BA) for the Preauthorized Use of Dispersant and In-Situ Burn Operations for the Region 4 Regional Response Team (RRT 4). As specified in the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), essential fish habitat (EFH) consultation is required for federal actions which may adversely affect EFH. The U.S. Coast Guard (USCG) and Environmental Protection Agency (EPA), as the RRT 4 co-chairs, have determined any impacts from dispersant and in-situ burn response operations on EFH are expected to be minor. This determination is based on RRT 4's protocols outlined in their Dispersant Use Preauthorization and In-situ Burn Plans (DUPP/ISBP) and conservation measures identified in the BA for the use of dispersants and in-situ burning which incorporate measures to minimize overall harm to EFH. While we do not disagree with RRT 4's conclusion that adverse impacts to EFH may occur but are anticipated to be minor, we caution that the impacts of an action should not be arbitrarily discounted by comparing an area impacted against the overall areal extent of all EFH. Cumulatively, EFH designations are expansive but localized adverse impacts to EFH can be significant. Actions identified in the DUPP, ISBP, and BA are intended to avoid and/or minimize impacts to Endangered Species Act (ESA) and EFH resources, however as written, some of the protocols specify "ESA-listed corals" or "designated critical habitat". As an example, in Table IV-1 the conservation measures for Daytime/Nighttime Operations of Vessels (page IV-7) "Night work increases the likelihood of accidental encounters with wildlife as well as movement into areas with ESA-listed coral colonies." Whereas only a few corals are listed under the ESA all corals are considered EFH under the MSFCMA. We recommend RRT 4 update their protocols to avoid confusion and clarify actions are protective of EFH as well as ESA resources.

Also enclosed for the RRT 4's information are best management practices (BMPs) developed by us to assist the USCG, EPA, and NOAA Scientific Support Coordinators for minimizing impacts to trust resources and serve as EFH conservation recommendations for certain, frequently utilized, emergency response activities. These are intended to prevent the need to conduct



emergency consultation with HCD during every incident occurring in the NMFS Southeast Region's area of responsibility. They also provide the USCG and EPA advice on when it may be necessary to conduct after-the-fact consultation; generally when response activities result in unexpected or unanticipated adverse effects to habitats identified and described as EFH. These BMPs will also be maintained on the Southeast Region's HCD website. We appreciate the opportunity to provide these comments. Questions should be directed to Mr. David Dale at (727) 824-5317 or by e-mail at David.Dale@noaa.gov.

Sincerely,



/ for

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

Enclosure