

ATTACHMENT 9

**U.S. FISH AND WILDLIFE SERVICE
CONCURRENCE ON LOUISIANA BLACK
BEAR DETERMINATION**



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Mississippi Field Office
6578 Dogwood View Parkway, Suite A
Jackson, Mississippi 39213

August 10, 2006

Lieutenant Colonel William Burruss
Acting District Engineer
U.S. Army Corps of Engineers, Vicksburg District
4155 Clay Street
Vicksburg, MS 39183-3435

Re: Yazoo Backwater Reformulation Project, Louisiana Black Bear (43910-2006-I-0397)

Dear Colonel Burruss:

This letter transmits the Fish and Wildlife Service's (Service) review of the effects of the Yazoo Backwater Reformulation Project (YBRP) on the threatened Louisiana black bear (*Ursus americanus luteolus*) as developed during the informal consultation process began in January 2006 in accordance with section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.). This consultation was triggered by recent evidence of resident bears in the project area (i.e., bears establishing annual home ranges), as well as a significant increase in bear sightings in the surrounding area. This new information was not available in previous biological assessments. Informal consultation provides an opportunity for the action agency and the Service to explore ways to modify the action to reduce or remove adverse effects to the species or critical habitat.

A forthcoming Fish and Wildlife Coordination Act report will provide pertinent information on the species, potential effects of this type of project, and mitigation recommendations to maximize benefit to this species, which may be useful as the U.S. Army Corps of Engineers (Corps) continues the planning process, in conjunction with its local sponsor, the Mississippi Levee Board (MLB).

This report is based on information provided in your December 5, 2005, revised Appendix 14 draft biological assessment (BA), the July 2005 draft environmental appendices, correspondence with Gary Young and Dave Johnson at the Corps and Peter Nimrod with Mississippi Levee Board (MLB) during May - August 2006, and other sources of information. A complete administrative record of this informal consultation is on file at

the MS Ecological Services Field Office, Jackson, MS.

Informal Consultation History

- September 2000, the Corps released Appendix 14: Endangered and Threatened Species Biological Assessment of the Draft Yazoo Backwater Area, Mississippi Reformulation Report. The Corps stated the project is not likely to adversely affect Louisiana black bear.
- Service responded by letter October 16, 2000, with a review of Appendix 14 and concurrence with the not likely to adversely affect designation for the bear, based on best available scientific evidence.
- June 2002, Mississippi Department of Wildlife Fisheries and Parks (MDWFP) hired a full time black bear biologist to address increasing bear sightings in Mississippi, especially in the Delta, and to inform and educate the public about black bears.
- June 2004, the first bear is caught and radio-collared by MDWFP in the lower Delta and tracked for one year. Five other bears, including a female with a cub, are subsequently collared and tracked over the next two years, indicating that there are resident bears (including at least one female, which indicates a potential breeding population, or “occupied” area) who have established home ranges in the Delta. Sightings continue to increase.
- On September 30, 2004, Earthjustice wrote a letter to the Corps and the Service requesting reinitiation of consultation with respect to the possible effects of the YBRP on the bear due to new information indicating that the bear is found in the project area.
- By letter October 26, 2004, the Service requested that the Corps consider reinitiation of consultation with the Service with respect to the possible affects of the YBRP on the Louisiana black bear, based on new information provided by MDWFP.
- On December 5, 2005, the Corps provided a revised draft Appendix 14 “Endangered and Threatened Species Biological Assessment.” The Corps requests formal consultation on pondberry but concludes the project is not likely to adversely affect the Louisiana black bear.
- On December 15, 2005, the Service acknowledged by letter the Corps position on Louisiana black bear and refers to the October 26, 2004, letter stating that new information on black bears was available and requests the Corps perform additional analysis so the Service may review a revised BA on this matter.
- On January 4, 2006, the Service provided the Corps with a review of the December 5, 2005, draft BA, noting missing and other available information that should be provided to represent the best available scientific and commercial data available.

- January 27, 2006, the Service, in a response letter regarding formal consultation on pondberry, also recommends formal consultation on the bear, but notes that with clarifications and information the Corps might provide, the Service may change its finding to conclude the project is not likely to adversely affect the bear (this begins informal consultation).
- January 30, 2006, Mississippi Levee Board (MLB), as the local sponsor of the proposed project, requests to participate in future consultation meetings with the Service and Corps.
- On February 8 and 17, 2006, the Service and Corps meet to start the review of consultation, information and analysis issues identified in the Service's January 18 review of the revised BA.
- March 10, 2006, Corps sends the Service a copy of correspondence to the MLB, acknowledging that the Board will participate in future consultation meetings.
- Beginning March 2006, the Service and Corps correspond over several months through emails, phone calls and data exchanges to determine differences in acreage calculations for potential wetlands lost and potential mitigation available in the YBWA.
- June 7, 2006, Corps begins using new 2005 landuse data and provides that raw base data to the Service.
- July 6, 2006, the Jackson Field Office and MLB briefed the Regional Director on the YBRP.
- July 17, 2006, the Service and Corps met to discuss the Service's final GIS calculations regarding potential wetlands lost and potential mitigation available, in regards to the project's effect on the Louisiana black bear.
- August 1, 2006, the Service received the Corps revised GIS calculations regarding potential wetlands lost and potential mitigation available and have additional questions regarding calculation differences.
- August 8, 2006, Service and Corps agree with the Corps GIS calculations regarding potential wetlands lost and potential mitigation available.

FWS Log No: 43910-2006-I-0397

Date Started: January 27, 2006

Applicant: n/a

Project Title: Yazoo Backwater Reformulation Project - "Yazoo Pumps"

County: Sharkey, Issaquena, Warren, Yazoo, Humphries, Washington

Application No.: n/a

Ecosystem: Lower Miss. River

Action Agency: COE (with MLB)

Summary

The 925,600-acre Yazoo Backwater Area (YBWA) is at the lower end of the Mississippi River delta in MS and is bounded by the MS Mainline Levee on the east, the Yazoo escarpment on the west, and the Yazoo River on the south. Historically a backwater area, the YBWA is now leveed and interior water is trapped when the MS River begins backing up through the Steele Bayou structure. The Corps' selected plan for the Yazoo Backwater Reformulation Project (YBRP) is a 14,000 cfs pumping plant that would begin operation at the 87-foot elevation, the one year flood event, whenever Mississippi River backwater necessitates the closing of the flood gates at Steele Bayou.

Implementation of the selected plan would result in the loss of Clean Water Act jurisdictional protection on approximately 8,900 acres of forested private wetlands (Appendix I). Of those acres classified as forested in the 2005 landuse data, 2,800 are in permanent to semi-permanent conservation easement programs (Wetlands Reserve Program – 1,880 acres; Conservation Reserve Program – 920 acres) and are therefore not likely to be affected. Anderson-Tully Company and Delta Wildlife and Forestry, Inc., both of which use their land primarily for recreation purposes, own an additional 2,450 acres of forested land potentially losing jurisdictional protection; however, they have submitted letters to the MLB, carbon-copied to the Corps and Service, indicating that they would not clear their forested areas. MLB also submitted letters from NRCS which state that conversion of forested habitat to agriculture has decreased and re-forestation of the Delta has increased since 1985, indicating a strong reforestation trend. The Wetland Conservation (i.e., Swampbuster) provisions of the Farm Security and Rural Investment Act, discourages removal of woody; non-compliance with those provisions could potentially result in the loss of farm program eligibility and benefits. Based on those facts, we can estimate that the remaining 3,640 private acres currently not in any type of conservation are very unlikely to be cleared in the foreseeable future.

The majority of bear sightings within the YBWA are located on the relatively large blocks of publicly owned forested habitat (Appendix I). The private forested habitat potentially affected by this project consists of many small, disjunct tracts. The loss of this amount of habitat, or conservatively, of the entire 7,020 acres not in permanent conservation easements, would not likely adversely affect the black bear due to the size, location and distribution of these parcels relative to the larger, forested tracts where the majority of bear sightings have occurred and current resident bears have established home ranges (Appendix I), and also due to the habitat-generalist nature of this wide-ranging species.

The Corps has proposed to reforest up to 55,600 acres for past and future potential wetland losses by offering perpetual conservation easements to willing landowners and reforesting those private cleared lands that qualify. The easement program will be offered over a 14-year period (or 10 years after the completion of the pumps). There are approximately 43,000 acres of private cleared land in the YBWA available for mitigation in the one-year floodplain (below 87 feet, NGVD). The remaining acreage needed to reach

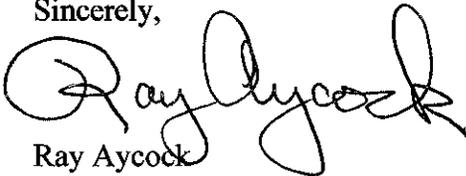
the target would be acquired in the two-year floodplain (between 87 and 91 feet, NGVD), of which there are approximately 52,600 acres available. The Corps has determined that mitigation for 13,745 acres for the current project and past projects is required before the pumps are operable. The Corps believes that the required mitigation would compensate for unavoidable environmental losses.

The potential for re-forestation for mitigation purposes in the YBWA could result in a significant gain in forested wetlands. With proper planning, those efforts could contribute to areas important for bear movements and habitat expansion, and thus could result in a possible benefit to this species. The FWCA report will provide further recommendations for ways to make this project as beneficial to the Louisiana black bear as possible.

In conclusion, the Service concurs with the Corps not likely to adversely affect determination for the Louisiana black bear. Effects by this project on this listed species are expected to be insignificant and/or discountable; and even possibly beneficial. No critical habitat has been designated for this species; therefore, none will be affected.

We would like to continue working with you and your staff on the Yazoo Backwater Reformulation Project. For further coordination please contact Shauna Ginger (601) 321-1130, in our office. In future correspondences regarding this project please refer to number 43910-2006-I-0397.

Sincerely,



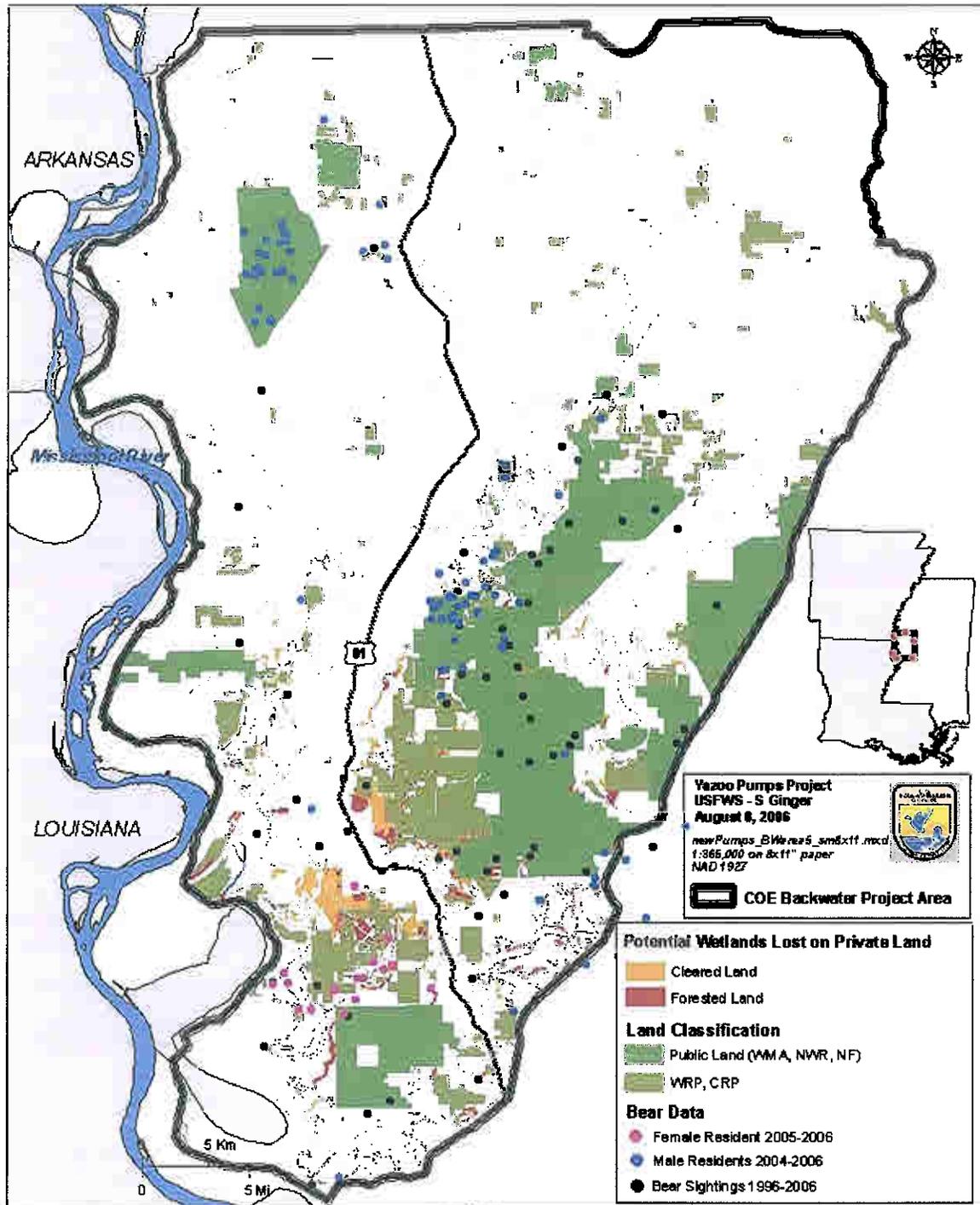
Ray Aycock
Field Supervisor

Enclosures: Appendix I – maps

cc: Mississippi Levee Board (Attn: Peter Nimrod)
USFWS Lafayette FO (Attn: Debbie Fuller)
MDWFP (Attn: Brad Young)

APPENDIX I

COE Yazoo Backwater Reformulation Project
Potential Wetlands Lost and Louisiana Black Bear Locations



**COE Yazoo Backwater Reformulation Project
 Potential Private Cleared Mitigation Lands Available,
 Louisiana Black Bear Locations and Habitat Conservation Zones**

