



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
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<https://www.fisheries.noaa.gov/region/southeast>

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SERO-2024-02953

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Ref.: Ocean Era Marine Aquaculture Project, Sarasota, Sarasota County, FL– EXPEDITED
TRACK

Dear Kip Tyler, John Fellows, and Mark Rath,

On January 21, 2025, we responded to your December 23, 2024 request for reinitiation of a previous consultation with the National Marine Fisheries Service (NMFS) on the subject action due to modifications to the project which may have affects not previously considered under 50 CFR 402.16(a)(2) with a letter of concurrence. This letter issues an amendment to add concurrence under the Fish and Wildlife Conservation Act (FWCA), per your original request, and adds additional clarification on the two points discussed in our original response. On September 30, 2019, we issued a letter of concurrence (NMFS tracking # SERO-2019-02205) for this project, and on August 26, 2022, we issued an amended letter of concurrence (NMFS tracking# SERO-2021-02842) due to the addition of a late arriving action agency and to analyze effects not previously considered.

We reviewed the action agency's consultation request document and related materials. Based on our knowledge, expertise, and the action agency's materials, we concur with the action agency's conclusions that the proposed action is not likely to adversely affect the NMFS ESA-listed



species and/or designated critical habitat. However, we would like to offer the following clarifications regarding potential entanglement effects. First, the consultation request includes the following statement: “The length of time the facility will be deployed, and the small-scale nature of the system, are additional factors that make entanglement impacts to ESA-listed species highly unlikely to occur or extremely minor in severity.” We do not concur with the phrase “extremely minor in severity,” as this statement is inconsistent with the conclusion that impacts are “highly unlikely to occur.” As noted in your consultation document, the changes to the mooring and cage design will not increase the risk of entanglement, and we concur with your determination that entanglement impacts are “highly unlikely to occur.” Second, the consultation request states that a 2023 global review of aquaculture entanglements notes “that there are instances of marine mammal physical interactions that result in fatal entanglements at offshore finfish farms.” However, this information is not relevant to the current reinitiation request or our concurrence because we previously determined that there will be no effect to ESA-listed whales as a result of the proposed action. As explained in our 2019 concurrence letter, we do not believe any ESA-listed marine mammal species will occur in the action area for this project or be close enough for there to be any potential routes of effects to these species.

NMFS’s Southeast Regional Office, Habitat Conservation Division reviewed the information in the Draft Biological Evaluation pursuant to the FWCA, and based on that review, we anticipate any adverse effects that might occur on marine and anadromous fishery resources would be minimal. Therefore, we do not object to issuance of the permit per the FWCA.

Updates to the regulations governing interagency consultation (50 CFR part 402) were effective on May 6, 2024 (89 Fed. Reg. 24268). We are applying the updated regulations to this consultation. The 2024 regulatory changes, like those from 2019, were intended to improve and clarify the consultation process, and, with one exception from 2024 (offsetting reasonable and prudent measures), were not intended to result in changes to the Services’ existing practice in implementing section 7(a)(2) of the Act. 84 Fed. Reg. at 45015; 89 Fed. Reg. at 24268. We have considered the prior rules and affirm that the substantive analysis and conclusions articulated in this letter of concurrence would not have been any different under the 2019 regulations or pre-2019 regulations.

This concludes your consultation responsibilities under the ESA for species and/or designated critical habitat under NMFS’s purview. Reinitiation of consultation is required and shall be requested by the action agency where discretionary Federal action agency involvement or control over the action has been retained or is authorized by law and: (a) take occurs; (b) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered in this consultation; (c) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not previously considered in this consultation; or (d) if a new species is listed or critical habitat designated that may be affected by the action.

We look forward to further cooperation with you on other projects to ensure the conservation of our threatened and endangered marine species and designated critical habitat. If you have any questions on this consultation, please contact Lindsey Feldman, Consultation Biologist, at (941) 479-1370 or by email at Lindsey.Feldman@noaa.gov.

Sincerely,

David Bernhart
Assistant Regional Administrator
for Protected Resources

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