



United States Department of the Interior

FISH AND WILDLIFE SERVICE

1875 Century Boulevard
Atlanta, Georgia 30345

In Reply Refer To:
FWS/RW/DH NRDAR

Memorandum

To: Manatee Recovery Coordinator, North Florida Ecological Services Field Office

From: Deputy *Deepwater Horizon* Department of the Interior Natural Resource Damage Assessment and Restoration (NRDAR), Case Manager 

Subject: Compliance with Marine Mammal Protection Act

Overview

The Alabama Trustee Implementation Group (AL TIG) has selected six projects to restore natural resources injured as a result of the *Deepwater Horizon (DWH)* oil spill. Three of the projects will involve in-water work in areas where West Indian manatee could be present and as such, consultations under Section 7 of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 et seq.), were initiated (Table 1). The Department of the Interior (DOI) determined that these three projects may affect, but would not likely adversely affect the West Indian manatee. The USFWS Alabama Ecological Services Field Office concurred with this determination on April 17, 2017 for two of the three projects. Formal ESA section 7 consultation (for Alabama beach mouse) on the third project is in progress. A brief summary of the projects and ESA consultation, as related to the West Indian manatee, is provided in Table 1 below.

Background

After the Oil Spill, federal and state natural resource trustee agencies (Trustees) came together to assess the effects of the spill and plan for the restoration of injured natural resources. As part of the legal settlement reached with BP in 2016, the Trustees prepared a Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS), to provide the framework for *DWH* oil spill restoration across the Gulf.

The Final PDARP/PEIS established Trustee Implementation Groups (TIGs) that develop plans for, choose, and implement specific restoration actions under the Final PDARP/PEIS. The Alabama Trustee Implementation Group (AL TIG) is made up of the following agencies: Alabama Department of Conservation and Natural Resources (ADCNR); U.S. Department of the Interior, as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management; National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce; U.S. Department of Agriculture; and the U.S. Environmental Protection Agency.

In April 2017, the AL TIG approved its first restoration plan and environmental impact statement "*Deepwater Horizon Oil Spill* Alabama Trustee Implementation Group Draft Restoration Plan I and Environmental Impact Statement: Provide and Enhance Recreational Opportunities" (RP/EIS), and the Record of Decision was signed in May 2017. The restoration activities described in the plan will address natural resource injuries from the *Deepwater Horizon* oil spill. This restoration plan focuses on lost shoreline recreational use opportunities and is consistent with the Trustees' programmatic restoration

plan. The final AL TIG RP/EIS reflects revisions to the draft plan resulting from public comments and continuing Trustee project development.

Marine Mammal Protection Act (MMPA) Project Compliance Information

Three projects in the AL TIG RP/EIS include in-water work in areas where West Indian manatee could be present and as such, consultation under Section 7 of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), was initiated (Table 1). Table 1 includes a general description of in-water work and conservation measures for each project.

Because take of manatees, incidental or otherwise, is not presently authorized under the Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1461 *et seq.*), each consultation where manatees could be affected includes conservation measures to ensure potential effects to manatees are avoided or minimized to an insignificant and discountable level. These consultations considered the likelihood of manatee presence and the potential adverse effects of the projects to the manatee. While manatees are not likely to be present at most of the site locations, they could be transiting the project areas. Therefore, conservation measures for manatee were incorporated into the consultation because in-water work would occur where manatees could be present. The Trustees will implement the Service's "Standard Manatee Conditions for In-Water Work" dated 2011 and NOAA's "Sea Turtle and Small-tooth Sawfish Construction Conditions dated 2006.

Conclusion

DOI anticipates the three projects may affect, but are not likely to adversely affect the West Indian manatee. The USFWS Alabama Ecological Services Field Office, located in Daphne, AL, concurred with this determination on April 17, 2017 for two of the three projects: Fort Morgan Pier Rehabilitation and Dauphin Island Eco-Tourism and Environmental Education Area. Formal ESA section 7 consultation (for Alabama beach mouse) on the third project (Laguna Cove Little Lagoon Natural Resource Protection) is in progress. A copy of each ESA section 7 consultation is available upon request.

DOI believes the procedures contained within these consultations constitute appropriate and responsible steps to promote compliance with MMPA prohibitions on take by requiring the activities to achieve a standard of May Affect, Not Likely to Adversely Affect for manatees. As such, we do not anticipate any take, incidental or otherwise, under the ESA or MMPA for West Indian manatee as a result of the implementation of these projects.

In addition, the National Marine Fisheries Service (NMFS) is also coordinating with the Trustees under MMPA in order to protect other species of marine mammals that could be present in project areas. NMFS may require additional avoidance measures to protect dolphins or other marine mammals at the project sites. These measures could include, but are not limited to: an on-site marine mammal monitor; use of bubble curtains, and other similar measures. While we have not attempted to catalogue avoidance and minimization measures from NMFS, we believe any additional measures they require will further avoid impacts to manatees should they be present at these project areas.

If modifications are made to any of these projects in a manner that may affect the manatee or its habitat; if additional information involving potential effects to the manatee or other listed species not previously considered becomes available; or if in the unlikely event that the take of a manatee occurs during the project, consultation will be reinitiated.

If you have any questions or concerns regarding this response, please immediately contact Erin Chandler, Fish and Wildlife Biologist, at 361-244-3540, or erin_chandler@fws.gov.

Attachments (4)

- **Maps of project locations (Figures 1, 2, and 3)**
- **Summary of Project Information and Determinations (Table 1)**

Figure 1. Fort Morgan Pier Rehabilitation Project



Figure 2. Laguna Cove Little Lagoon Natural Resource Protection Project

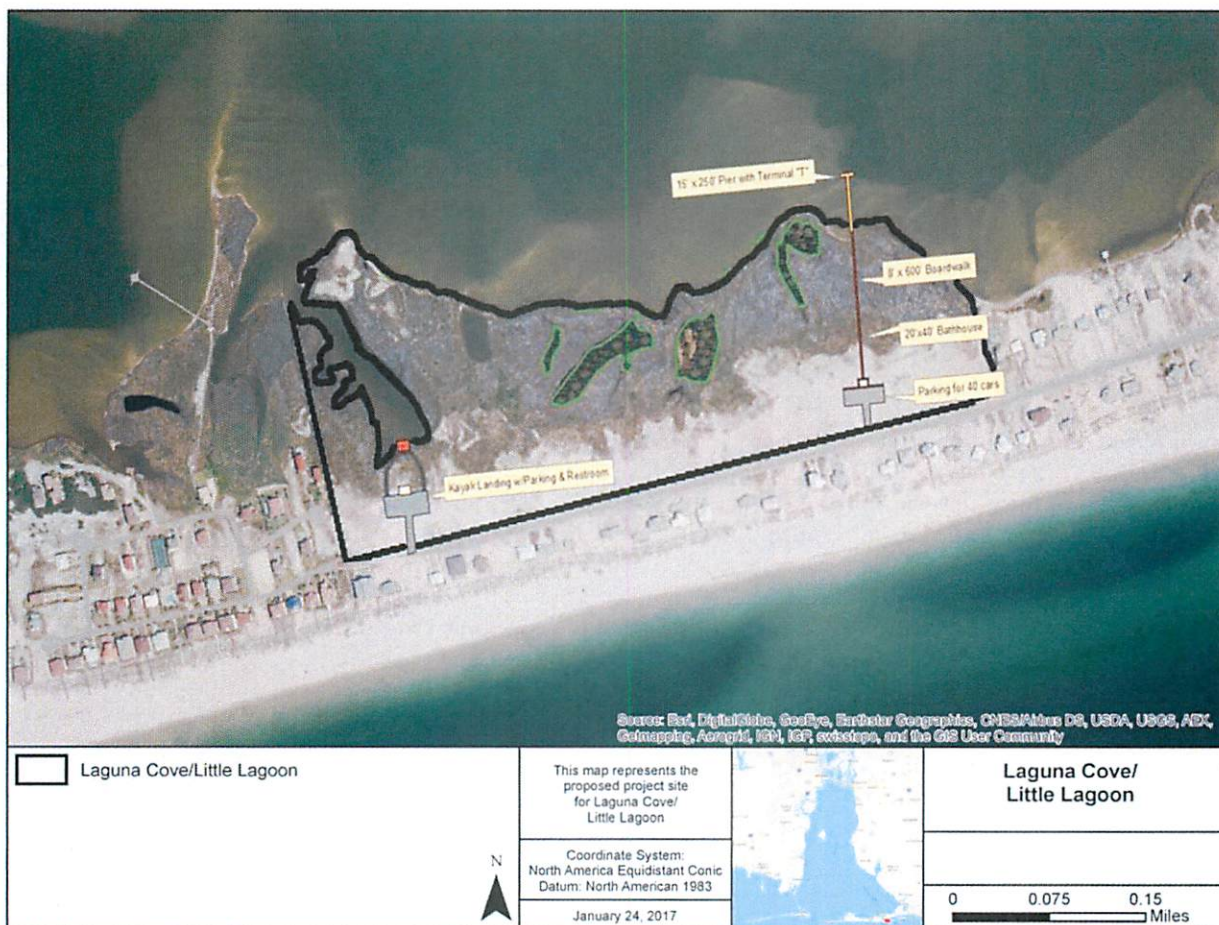


Table 1. Summary of in-water work and conservation measures to protect the West Indian manatee for the projects included in the AL TIG RP/EIS. The projects will not proceed with implementation until compliance with all relevant laws is achieved.

NE= No Effect, NLAA = May Affect, Not Likely to Adversely Affect; S = Standard Manatee Conditions for In-Water Work, dated 2011; SS = Sea Turtle and Small-tooth Sawfish Construction Conditions, dated 2006. N/A = Not applicable.

Project Title	In-Water Work	ESA Determination for Manatee	Conservation Measures for Manatee
Fort Morgan Pier Rehabilitation	Removing existing wooden pier decking and replacing with concrete decking, installing vinyl sheet pile, and dredge fill material placement between the sheet pile and existing pier structure. In-water work is expected to take a total of 60-90 days.	NLAA	S, SS
Laguna Cove Little Lagoon Natural Resource Protection	Construction of one elevated fishing pier and elevated boardwalk, and a kayak launch. Pier and boardwalk require installation of new pilings.	NLAA	S
Dauphin Island Eco-Tourism and Environmental Education Area	Constructing elevated boardwalks, a main fishing pier, and four finger piers (off the main pier).	NLAA	S, SS