



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

September 25, 2017

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 *Debora L. McClellan*

Subject: Compliance with Marine Mammal Protection Act

Overview

The Texas Trustee Implementation Group (TX TIG) is currently evaluating thirteen preferred project alternatives (hereafter referred to as "projects") to restore natural resources injured as a result of the *Deepwater Horizon* (DWH) oil spill. Four of these 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). Consultations and permits are current for two of the projects. The Department of the Interior (DOI) determined that the two other projects may affect, but would not likely adversely affect the West Indian manatee. USFWS Texas Coastal Ecological Services Field Office concurred with this determination on August 10, 2017, for the two projects, noting that the project areas are outside of the typical habitat for West Indian manatee. 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 DWH 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 Texas Trustee Implementation Group (TX TIG) is made up of the following agencies: Texas Commission on Environmental Quality (TCEQ); Texas Parks and Wildlife Department (TPWD); Texas General Land Office (TGLO); U.S. Department of the Interior, as represented by the National Park Service, U.S. Fish and Wildlife Service (USFWS), 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 U.S. Environmental Protection Agency.

The TX TIG is currently evaluating the subject projects as potential restoration projects under the draft Texas Trustee Implementation Group Restoration Plan/Environmental Assessment: Restoration of Wetlands, Coastal and Nearshore Habitats; and Oysters (TX RP/EA), which was released for public review and comment on May 18, 2017. If the TX TIG selects the subject projects, the TCEQ, TPWD, TGLO, or USFWS would implement the projects. A brief description of the subject projects is provided in Table 1 below.

Marine Mammal Protection Act (MMPA) Project Compliance Information

Four projects in the TX RP/EA 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. In general, where in-water work will occur and manatees could be present, the Trustees will implement the Service's "Standard Manatee Conditions for In-Water Work" dated 2011 or other conservation measures specific to the project (Table 1). The Trustees will also implement NOAA's "Sea Turtle and Small-tooth Sawfish Construction Conditions" dated 2006 for the four projects, as described in Table 1.

Conclusion

DOI anticipates three of the four projects may affect, but would not likely adversely affect the West Indian manatee, and one of the four projects would have no effect on the West Indian manatee. Consultations and permits are current for two of the projects: Bahia Grande Hydrologic Main Channel, and McFaddin Beach and Dune Restoration. The Department of the Interior (DOI) determined that the two other projects may affect, but would not likely adversely affect the West Indian manatee: Bessie Heights Wetland Restoration, and Pierce Marsh Wetland Restoration. USFWS Texas Coastal Ecological Services Field Office concurred with this determination on August 9, 2017, for the two projects, noting that the project areas are outside of the typical habitat for West Indian manatee. A brief summary of the projects and ESA consultation, as related to the West Indian manatee, is provided in Table 1 below.

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 No Effect or 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. 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 404-309-5713, or erin_chandler@fws.gov.

Attachments (5)

- Maps of project locations (Figures 1 - 4)
- Summary of Project Information and ESA Determinations (Table 1)

Figure 1. McFaddin Beach and Dune Restoration Project



Figure 2. Bahia Grande Hydrologic Main Channel Project



Figure 3. Pierce Marsh Wetland Restoration through Beneficial Use of Dredged Material Project



Figure 4. Bessie Heights Wetland Restoration Project



Table 1. Summary of in-water work and conservation measures to protect the West Indian manatee for four projects included in the TX TIG RP/EA. 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.

Project Title	In-Water Work	ESA Determination for Manatee	Conservation Measures for Manatee	Field Office Concurrence
McFaddin Beach and Dune Restoration	Dredging sand sediments from an offshore borrow area by using a cutter-head dredge and transferring it to the shore via a submerged pipeline	NLAA	S, SS	August 10, 2016
Bahia Grande Hydrologic Main Channel	Mechanical and hydraulic dredging to widen and deepen the existing pilot channel (including a temporary access route), placement of dredge material in an existing placement area, and installing permanent riprap scour protection along approximately 400 feet in both directions from the SH 48 bridge, covering approximately 4.3 acres	NE	SS; If marine mammals are sighted within 50 feet of the construction area, work would stop until the animals move away from the area under their own volition.	January 26, 2016
Pierce Marsh Wetland Restoration through Beneficial Use of Dredged Material	Transporting dredge material via hydraulic dredge pipeline, marine track hoe (on floating pontoon) excavation of existing levees, berms, and access corridors, and placement of dredge material in levees	NLAA	SS; All construction personnel will be notified of potential presence of manatee in water and reminded of criminal and civil penalties associated with harassing, injuring, or killing manatees. All workers will be educated about manatees in water and will be advised to look for manatees and, if observed, wait until manatees leave the area to put the equipment in the water. Care will be taken when using equipment in water to ensure no harm is caused to any manatee. Should a manatee come within 50 ft of the project area during construction activities, work would immediately cease until manatee has moved away from the project area on its own. Construction noise will be kept to minimum feasible.	August 9, 2017

<p>Bessie Heights Wetland Restoration</p> <p>Transporting dredge material via pipeline and placement of dredge material in open water (including use of barges, small watercraft, cutterhead-hydraulic or clamshell dredges, and a dockside staging area)</p>	<p>NLAA</p> <p>SS; All construction personnel will be notified of potential presence of manatee in water and reminded of criminal and civil penalties associated with harassing, injuring, or killing manatees. All workers will be educated about manatees in water and will be advised to look for manatees and, if observed, wait until manatees leave the area to put the equipment in the water. Care will be taken when using equipment in water to ensure no harm is caused to any manatee. Should a manatee come within 50 ft of the project area during construction activities, work would immediately cease until manatee has moved away from the project area on its own. Construction noise will be kept to minimum feasible.</p>	<p>August 9, 2017</p>
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