



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Deepwater Horizon Gulf Restoration Office
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Fairhope, Alabama 36532

In Reply Refer To:
FWS/RW/DH NRDAR

Memorandum

July 17, 2018

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

From: Assistant Gulf Restoration Manager, Deepwater Horizon Gulf Restoration Office

Subject: Compliance with Marine Mammal Protection Act

Overview

The Louisiana Trustee Implementation Group (LA TIG) is currently evaluating three projects to restore natural resources injured as a result of the *Deepwater Horizon (DWH)* oil spill. One 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). The Department of the Interior (DOI) determined that one of the projects will have no effect on the West Indian manatee due to the lack of suitable habitat in the project area or the inability of manatees to access the project area. We determined that two projects may affect, but would not likely adversely affect the West Indian manatee. The Lafayette Ecological Services Field Office concurred with these determinations on June 1, 2018 and June 19, 2018. 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 Louisiana Trustee Implementation Group (TIG) includes five Louisiana state trustee agencies and four federal trustee agencies: the Louisiana Coastal Protection and Restoration Authority

(CPRA); the Louisiana Department of Natural Resources (LDNR); the Louisiana Department of Environmental Quality (LDEQ); the Louisiana Oil Spill Coordinator's Office (LOSCO); the Louisiana Department of Wildlife and Fisheries (LDWF); the United States Department of Commerce, represented by the National Oceanic and Atmospheric Administration (NOAA); the United States Department of the Interior (USDOI), represented by the United States Fish and Wildlife Service (USFWS) and National Park Service (NPS); the United States Department of Agriculture (USDA); and the United States Environmental Protection Agency (EPA).

The LA TIG has evaluated these three projects as potential restoration projects under the draft Louisiana Trustee Implementation Group Draft Restoration Plan/Environmental Assessment #2: Provide and Enhance Recreational Opportunities, which was released for public review and comment on January 26, 2018. In response to public comments received, the LA TIG proposed modifications to the Elmer's Island Access project. The modified project was evaluated by the LA TIG under the *Draft Supplemental Restoration Plan and Environmental Assessment for the Elmer's Island Access Project Modification*, which was released for public review and comment on May 21, 2018. If the LA TIG selects these projects, the Louisiana Department of Wildlife and Fisheries would implement the projects. A brief description of each project is provided in Table 1 below.

Marine Mammal Protection Act (MMPA) Project Compliance Information

One project in the LA RP/EA includes 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 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. This consultation 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 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 two projects, as described in Table 1.

Conclusion

DOI anticipates two of the three projects may affect, but would not likely adversely affect the West Indian manatee, and one of the three projects would have no effect on the 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 (4)

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

Figure 1. Island Road, Pointe-aux-Chenes Wildlife Management Area project in Terrebonne Parish, LA.



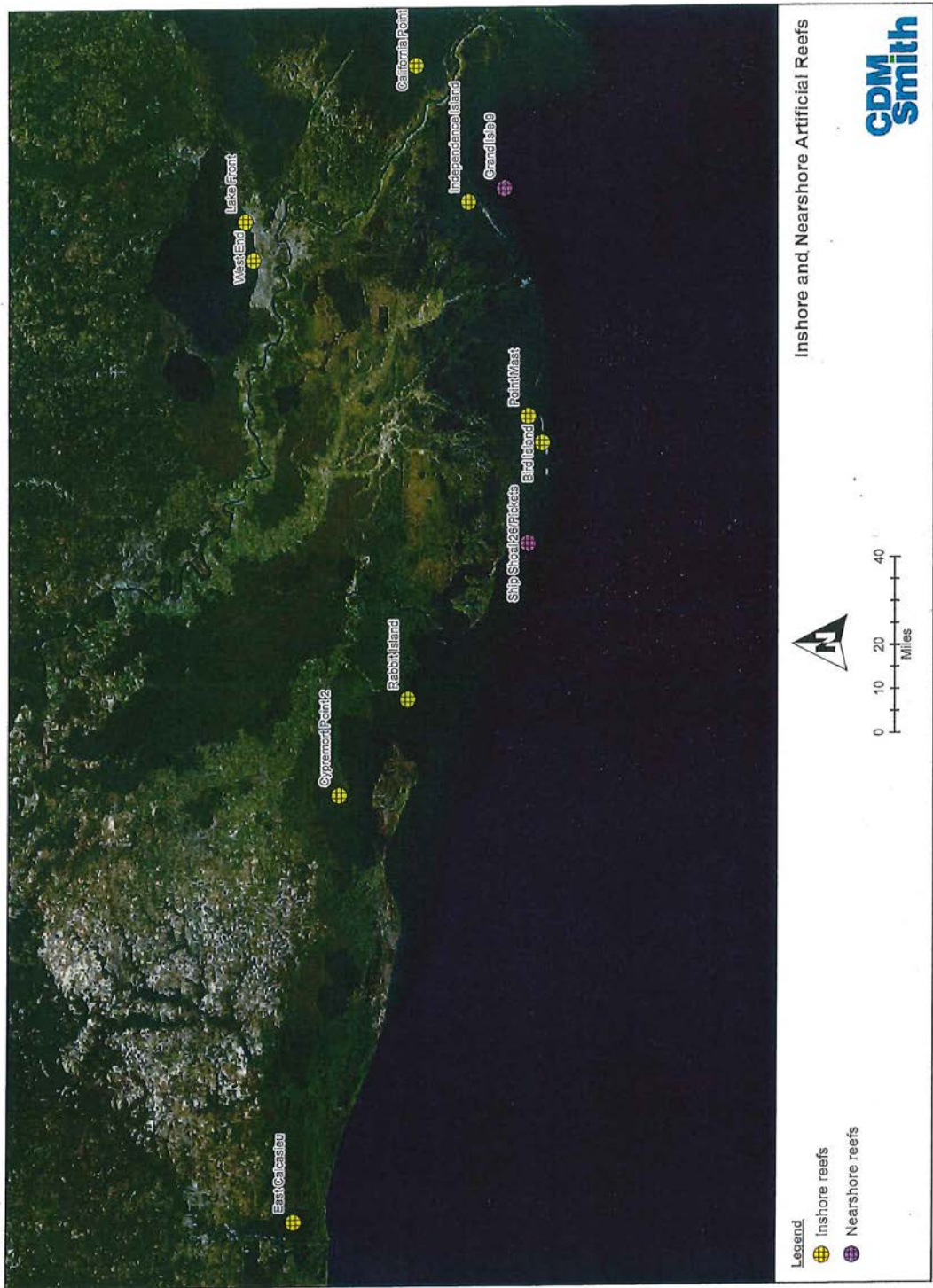


Figure 2. Proposed locations for Artificial Reef Project in coastal Louisiana.

Figure 3. Elmer’s Island Access project in Jefferson Parish, LA.

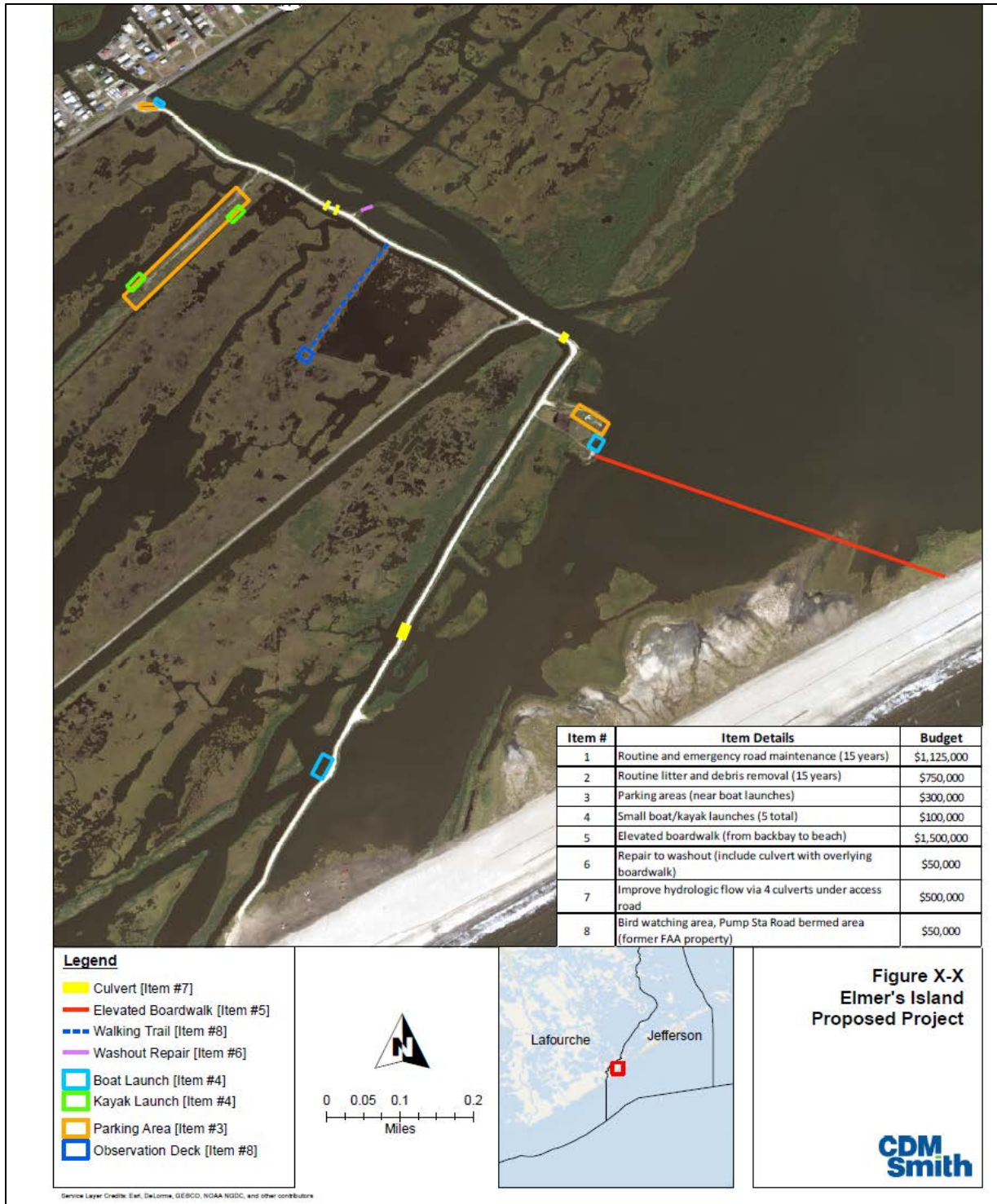


Table 1. Summary of in-water work and conservation measures to protect the West Indian manatee for three projects included in the LA TIG RP/EA. Projects will not proceed with implementation until compliance with all relevant laws is achieved. NE = No Effect; NLAA = May Affect, Not Likely to Adversely 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
Island Road, Pointe-aux-Chenes Wildlife Management Area	The Island Road, Pointe-aux-Chenes Wildlife Management Area project would enhance existing features and construct new features along Island Road. In-water work would include installation of sheet pile walls to reinforce parking areas adjacent to roadway, placement of dirt and limestone fill for pull-overs, and construction of paired fishing piers at each vehicle pull-over (56' in length and 8' wide). This project area is located behind a water control structure, and therefore no manatees or other marine mammals can access the area.	NE	N/A	June 1 2018
Artificial Reefs	The Artificial Reef project would enhance eleven (11) existing artificial reefs, providing habitat by adding material to the permitted areas of these previously constructed artificial reef sites. Proposed action includes transferring materials to existing reef sites by barge, and depositing materials on existing reef sites	NLAA	S,SS	June 1, 2018
Elmer's Island Access	Proposed in-water work would include the construction of boat launches, and repair of a road washout area that connected a spur off of the main access road to a popular fishing location along Gormley Canal. Additional in-water work may be associated with a bird observation platform, but the footprint of such a structure would likely be	NLAA	S, SS	June 19, 2018

	<p>placed in upland areas to the extent practicable. In-water work associated with boat launches is expected to be relatively minor and consists primarily of installing sand and crushed stone. Similarly, in-water work associated with road washout repair is also expected to be minor, with construction likely using a limestone aggregate to develop a footpath above a new culvert to convey flowing water.</p>			
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