



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Deepwater Horizon Gulf Restoration Office
341 Greeno Road North, Suite A
Fairhope, Alabama 36532




In Reply Refer To:
FWS/RW/DH NRDAR

Memorandum

June 27, 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 Alabama Trustee Implementation Group (AL TIG) is currently evaluating twenty-two projects to restore natural resources injured as a result of the *Deepwater Horizon (DWH)* oil spill. Twenty-one of the twenty-two projects occur in areas where manatees could be present and thirteen of the twenty-two projects will involve in-water work in areas where West Indian manatee could be present. 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 eight of the projects will have no effect on the West Indian manatee due to the lack of suitable habitat in the project area. We determined the additional thirteen projects may affect, but would not likely adversely affect the West Indian manatee. The Daphne Ecological Services Field Office concurred with these determinations on June 27, 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 Alabama Trustee Implementation Group (AL TIG) is made up of the following agencies:

Alabama Department of Conservation and Natural Resources (ADCNR); Geological Survey of Alabama; U.S. Department of the Interior (DOI), as represented by the National Park Service, Bureau of Land Management and U.S. Fish and Wildlife Service (USFWS); National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce; U.S. Department of Agriculture (USDA); and U.S. Environmental Protection Agency (EPA).

The AL TIG is currently evaluating the subject projects as potential restoration projects under the AL TIG Draft Restoration Plan II / Environmental Assessment – Restoration of Wetlands, Coastal, and Near Shore Habitats; Habitat Projects on Federally Managed Lands; Nutrient Reduction (Nonpoint Source); Sea Turtles; Marine Mammals; Birds; and Oysters (RP/ES). The Draft RP/ES was made available for public comment on April 5, 2018. The draft RP II/EA describes the restoration project alternatives considered by the Alabama TIG to meet the Trustee's goals to restore and conserve habitat, to replenish and protect living coastal and marine resources, to restore water quality, and to provide for monitoring and adaptive management. If the AL TIG selects the subject projects, the AL TIG partners 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

Twenty-one of the twenty-two projects occur in areas where manatees could be present and thirteen of the twenty-two projects will involve in-water work in areas where West Indian manatee could be present. 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 thirteen of the twenty-one projects may affect, but would not likely adversely affect the West Indian manatee, and eight of the twenty-one 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 - 22)
- Summary of Project Information and ESA Determinations (Table 1)

Figure 1. Magnolia River Land Acquisition (Holmes Tract) project area in coastal Alabama.

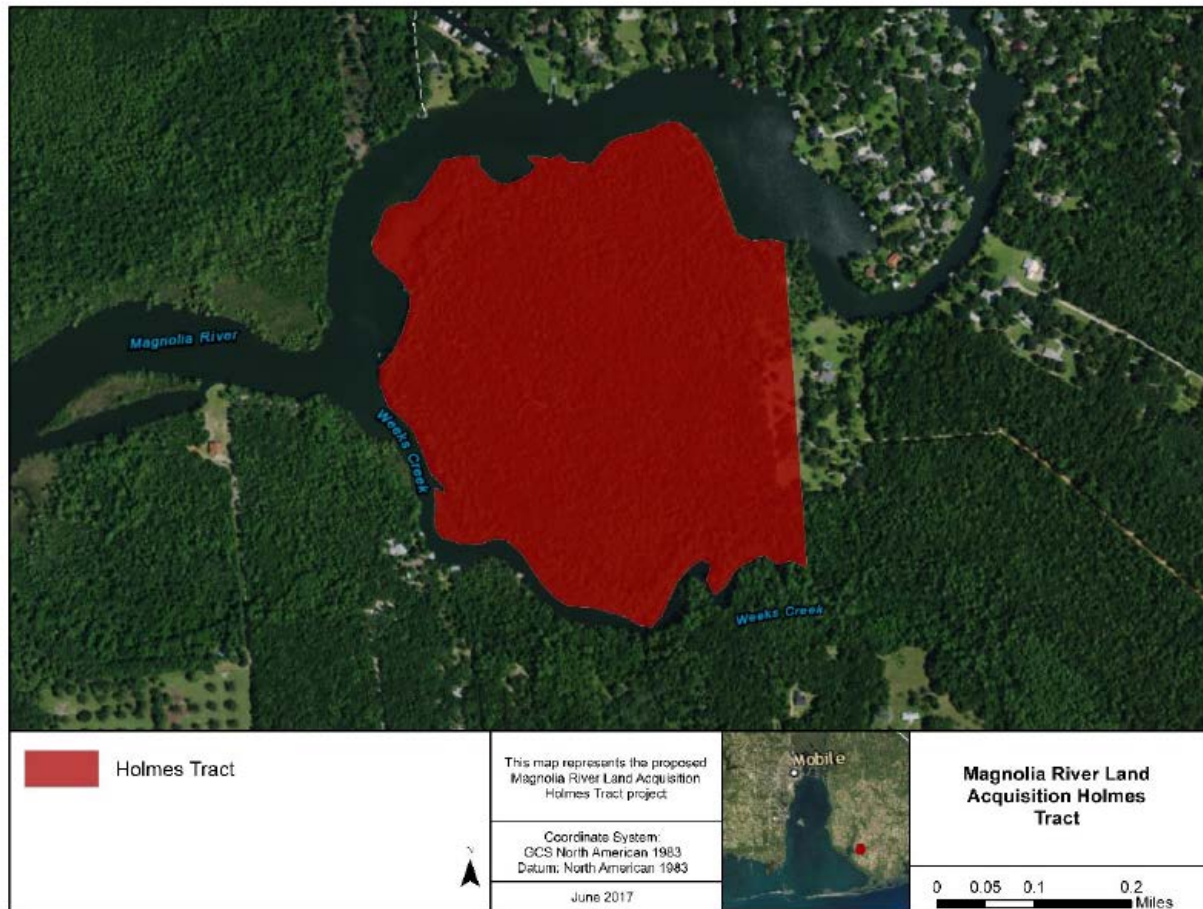


Figure 2. Weeks Bay Land Acquisition East Gateway Tract project area in coastal Alabama.

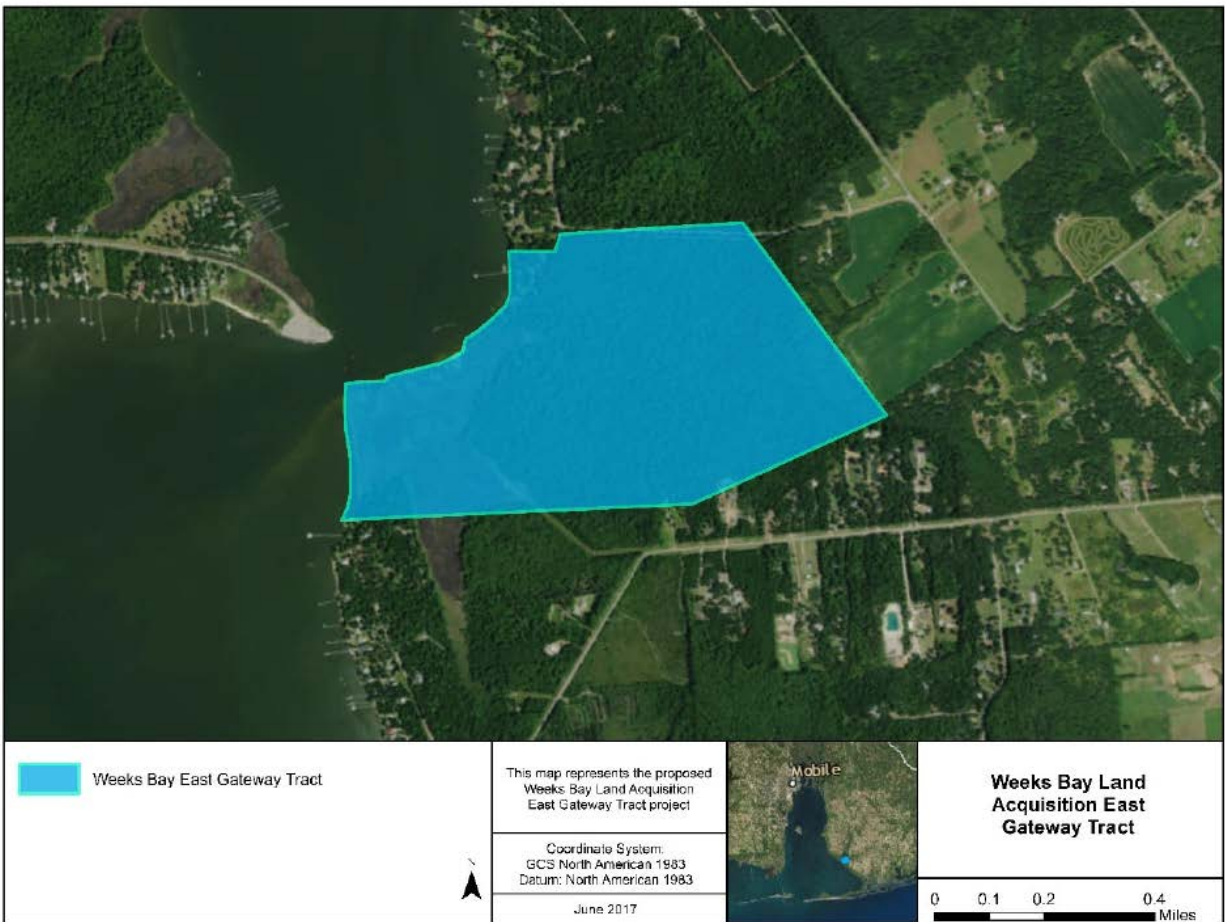


Figure 3. Weeks Bay Land Acquisition Harrod Tract project area in coastal Alabama.

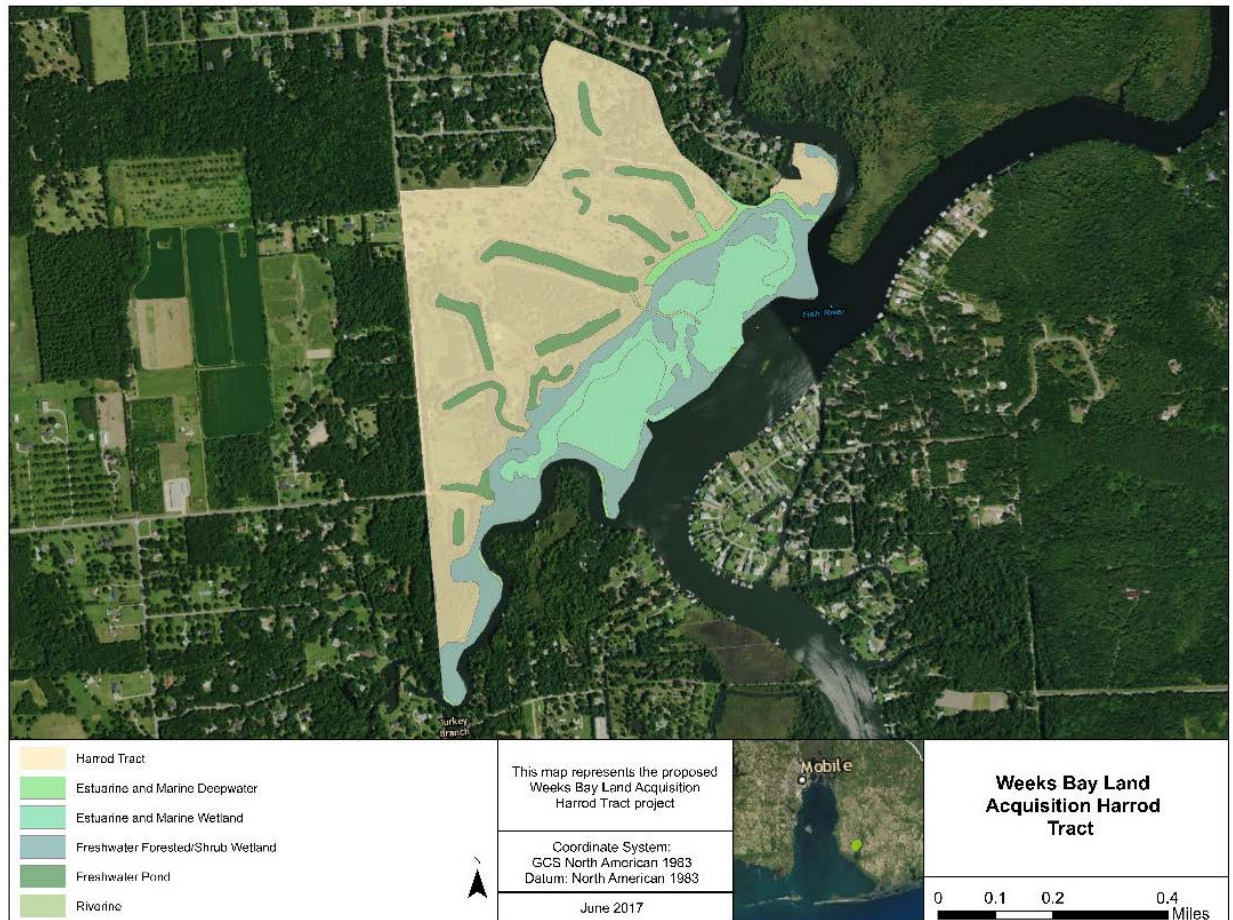


Figure 4. Restoring the Night Sky project area in coastal Alabama.

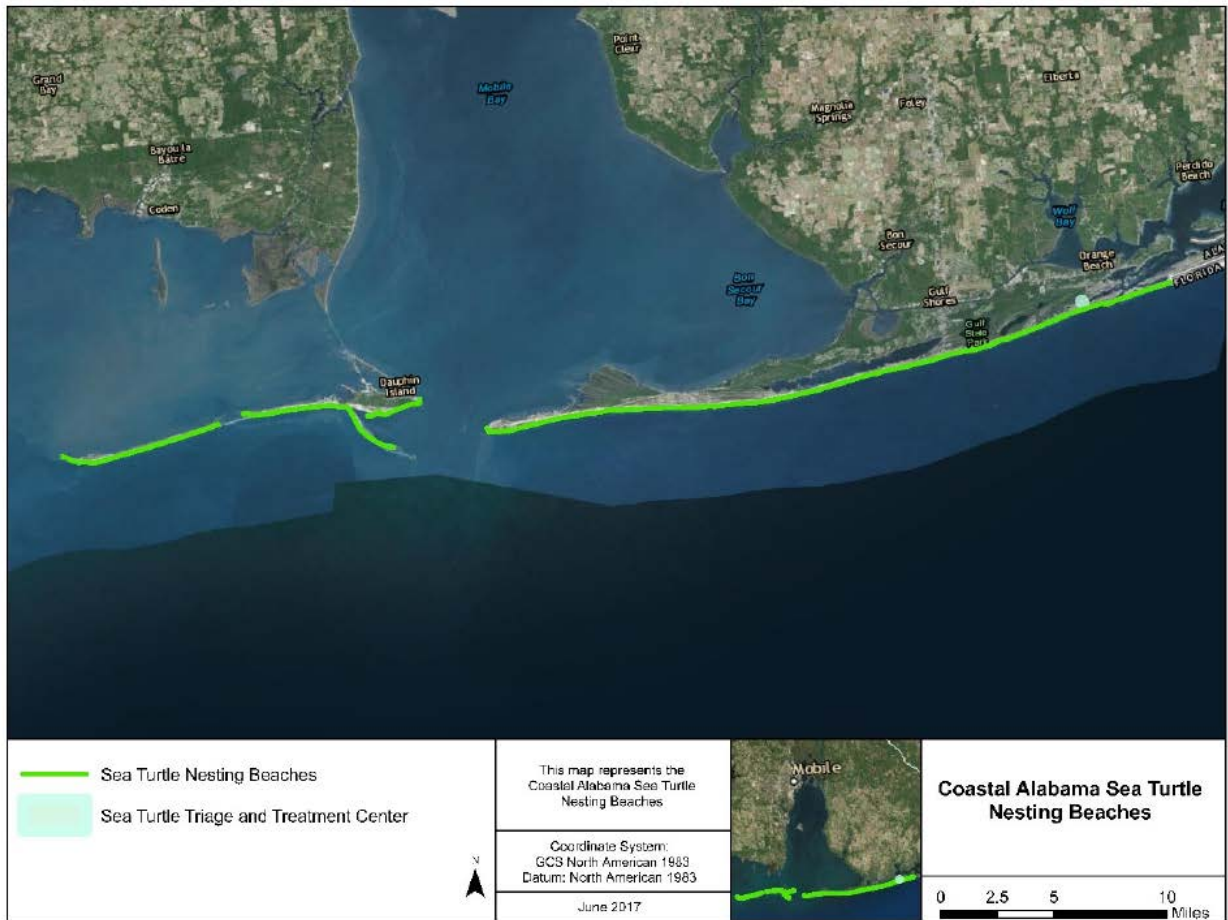


Figure 5. Fowl River Nutrient Reduction project area in coastal Alabama.

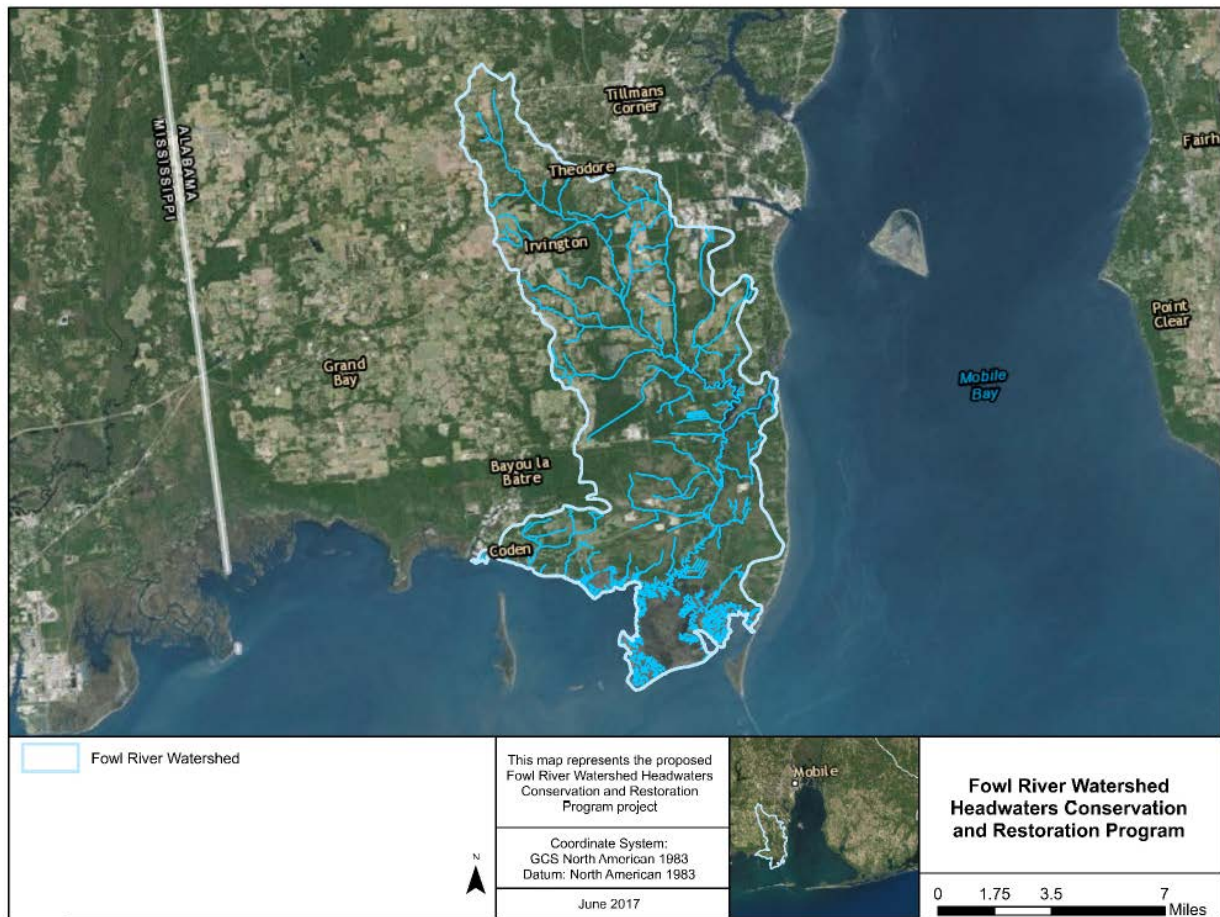


Figure 6. Weeks Bay Nutrient Reduction project area in coastal Alabama.

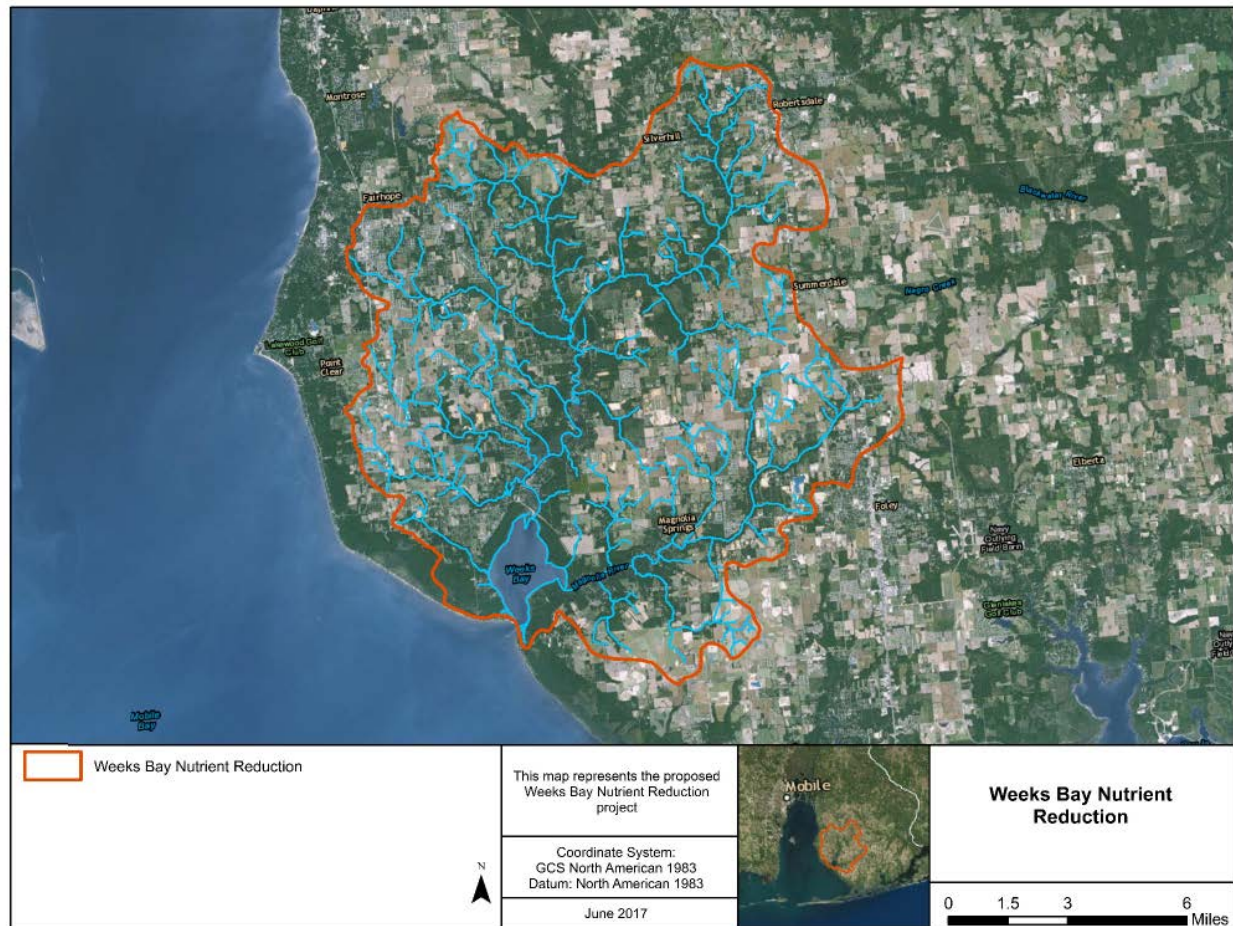


Figure 7. Coastal Alabama Sea Turtle Conservation Program (share the beach) project area in coastal Alabama.

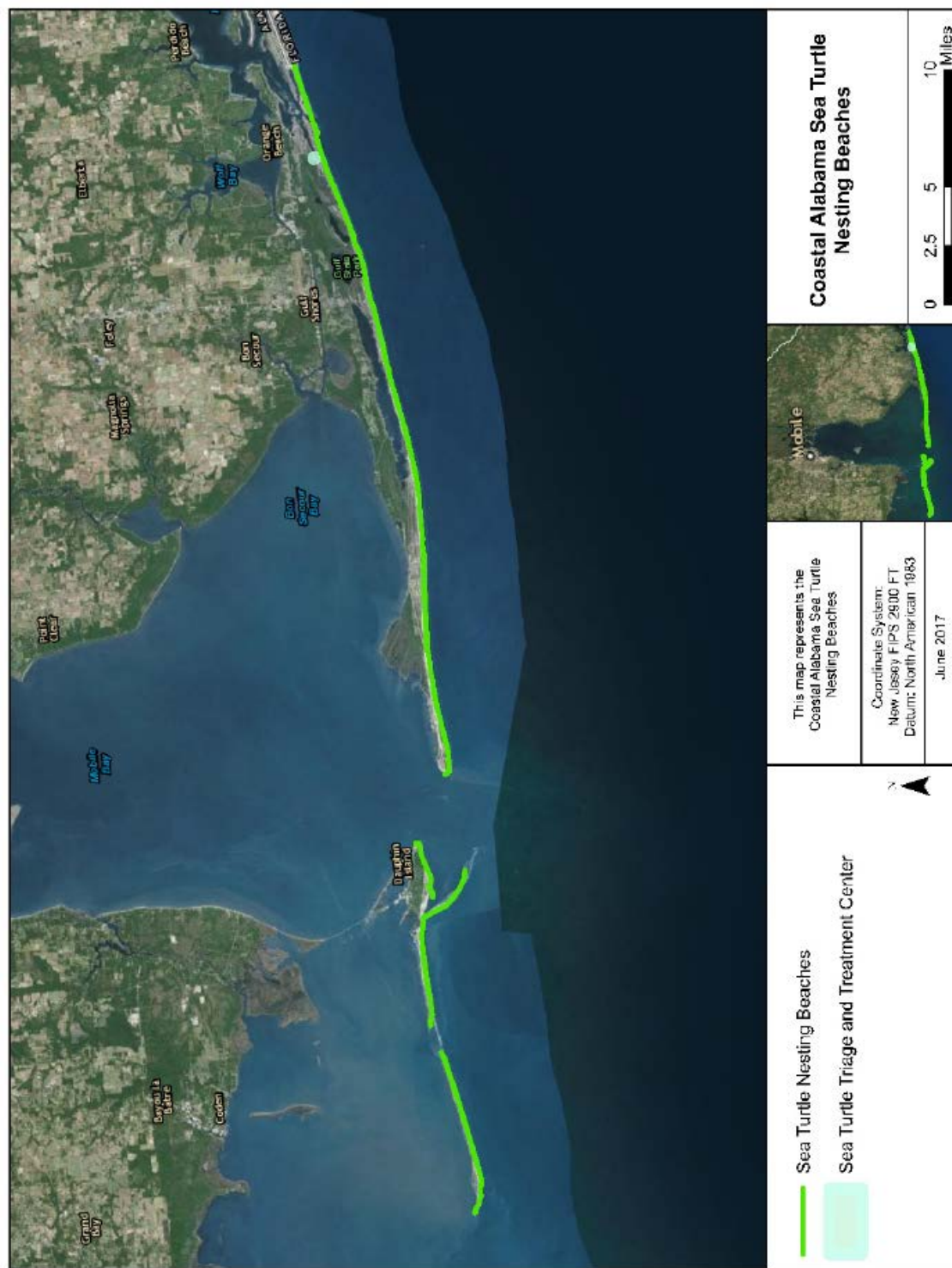


Figure 8. Coastal Alabama Sea Turtle Triage and Treatment Center project area in coastal Alabama.



Figure 10. Lower Perdido Islands Restoration Phase I – Engineering and Design project area in coastal Alabama.



Figure 11. Coffee Island Restoration – Phase I Engineering and Design project area in coastal Alabama.



Figure 12. Little Lagoon Living Shorelines project area in Gulf Shores, Alabama.



Figure 13. Coastal Alabama Sea Turtle Habitat Usage and Population Dynamics project area in coastal Alabama.

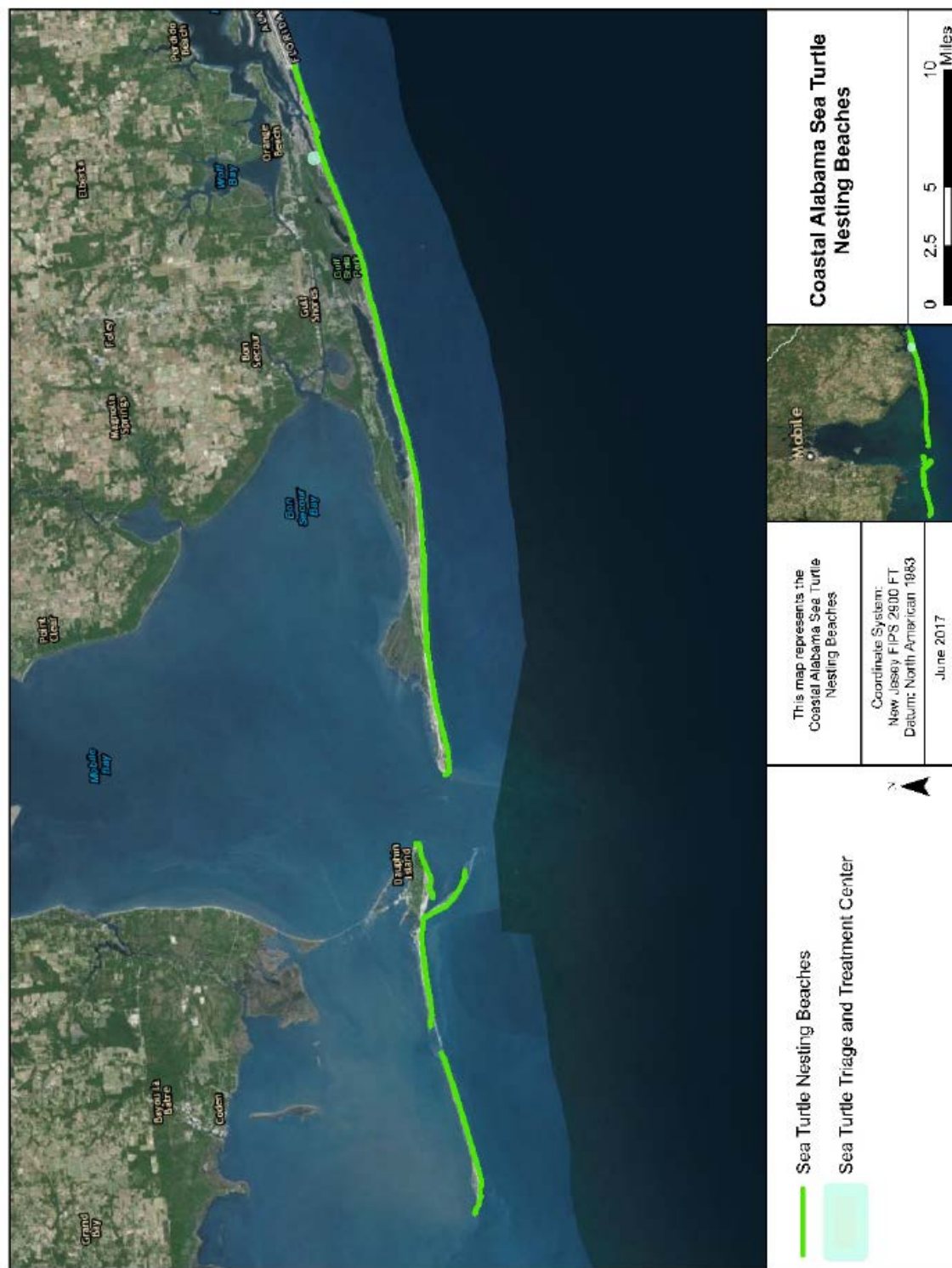


Figure 14. Coastal Alabama Sea Turtle Protection: Enhancement and Education project area in coastal Alabama.

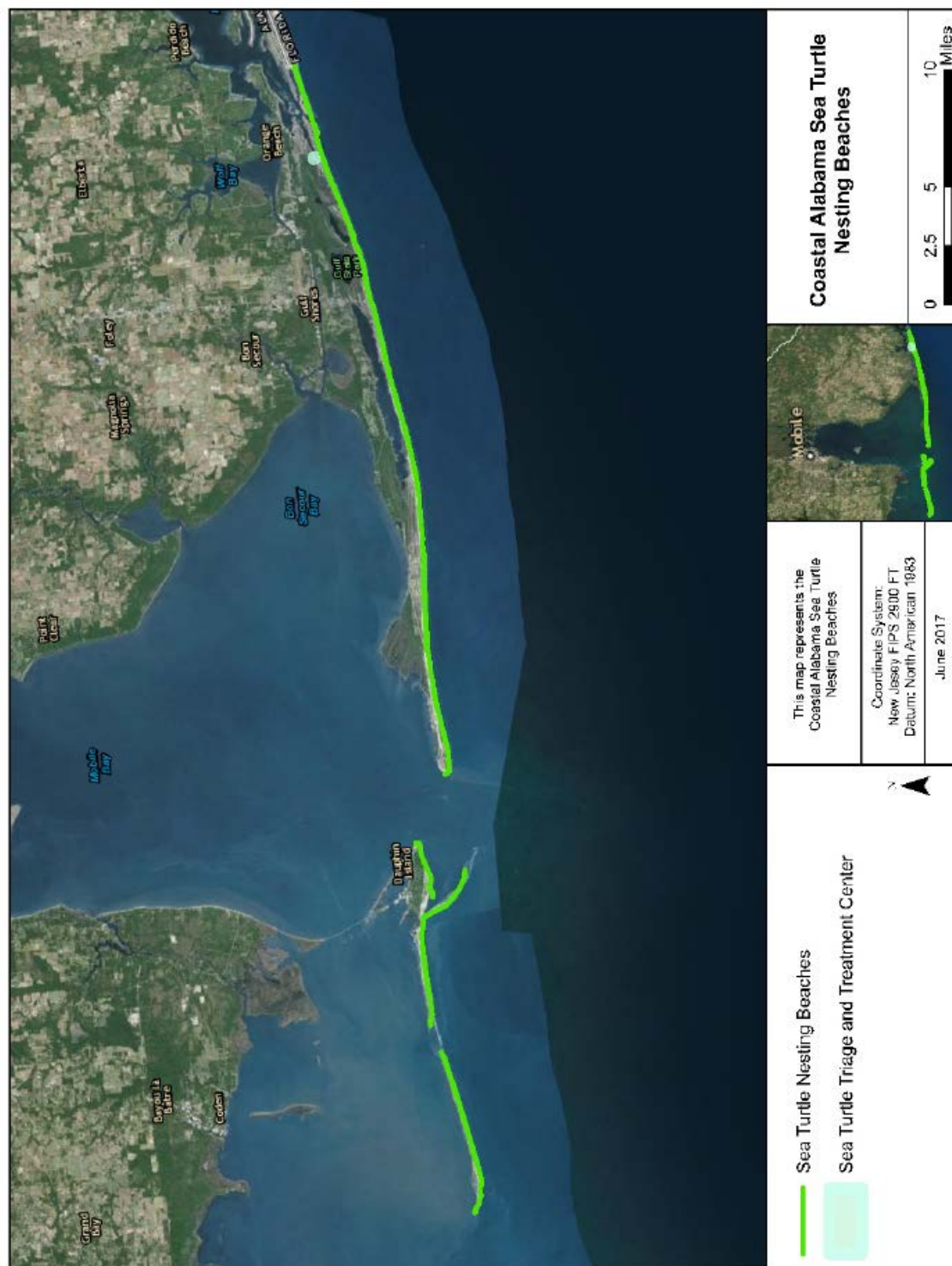


Figure 15. Enhancing Capacity for the Alabama Marine Mammal Stranding Network project area in coastal Alabama.

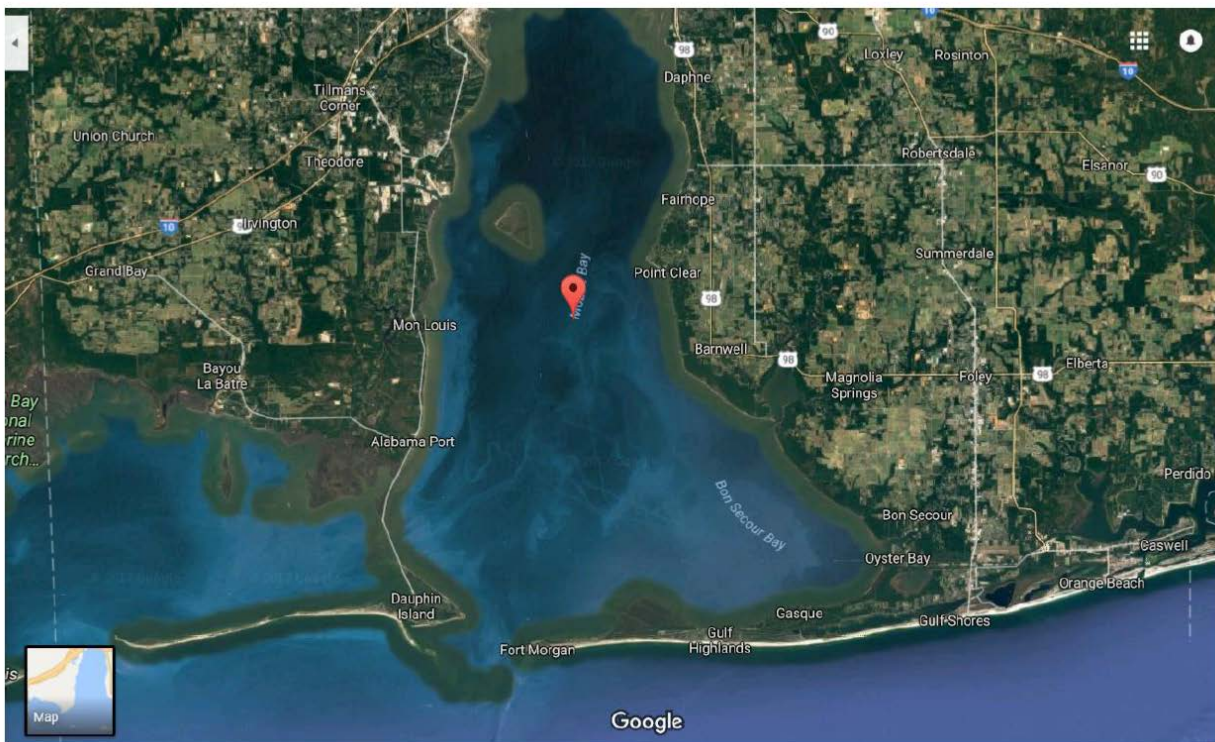


Figure 16. Assessment of Alabama Estuarine Bottlenose Dolphin Populations and Health project area in coastal Alabama.

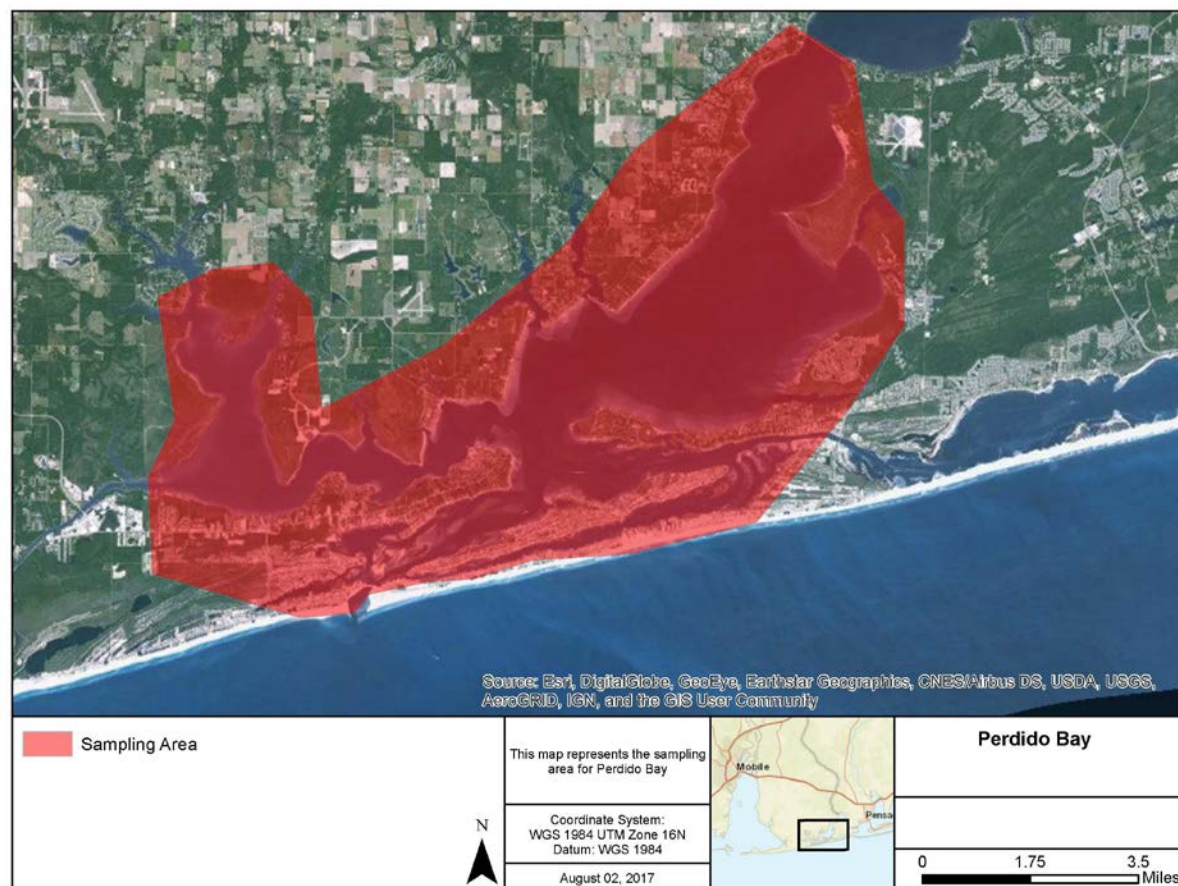


Figure 17. Alabama Estuarine Bottlenose Dolphin Protection: Enhancement and Education project area in coastal Alabama.

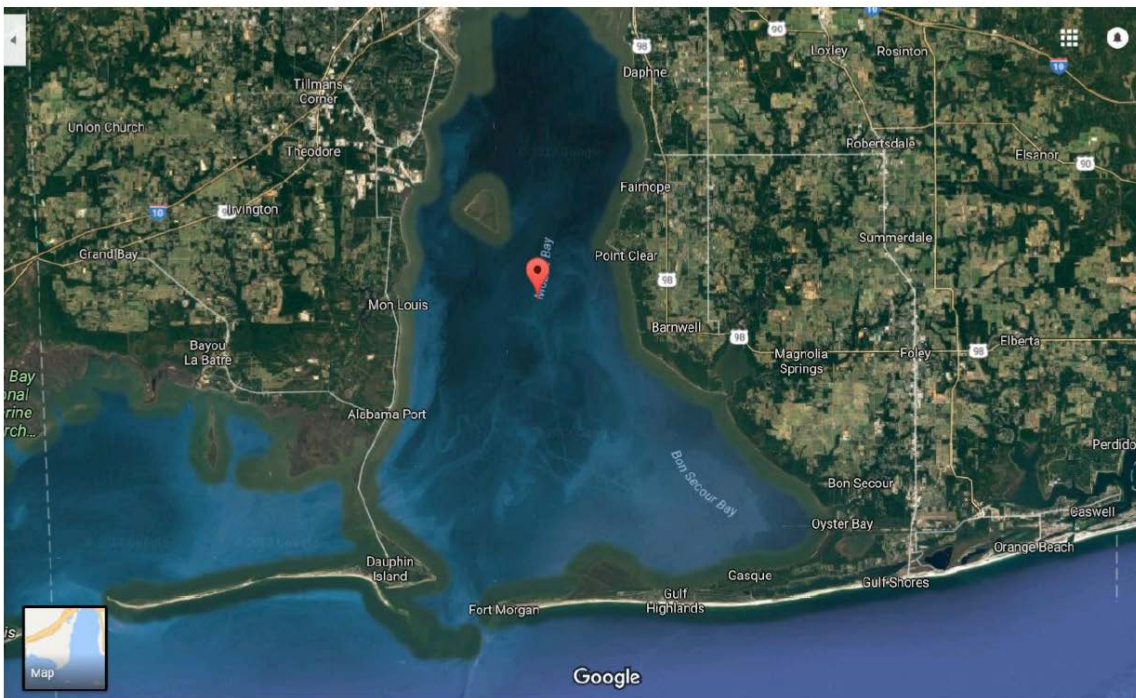


Figure 18. Colonial Nesting Wading Bird Telemetry Study project area in Mobile Bay, Alabama.

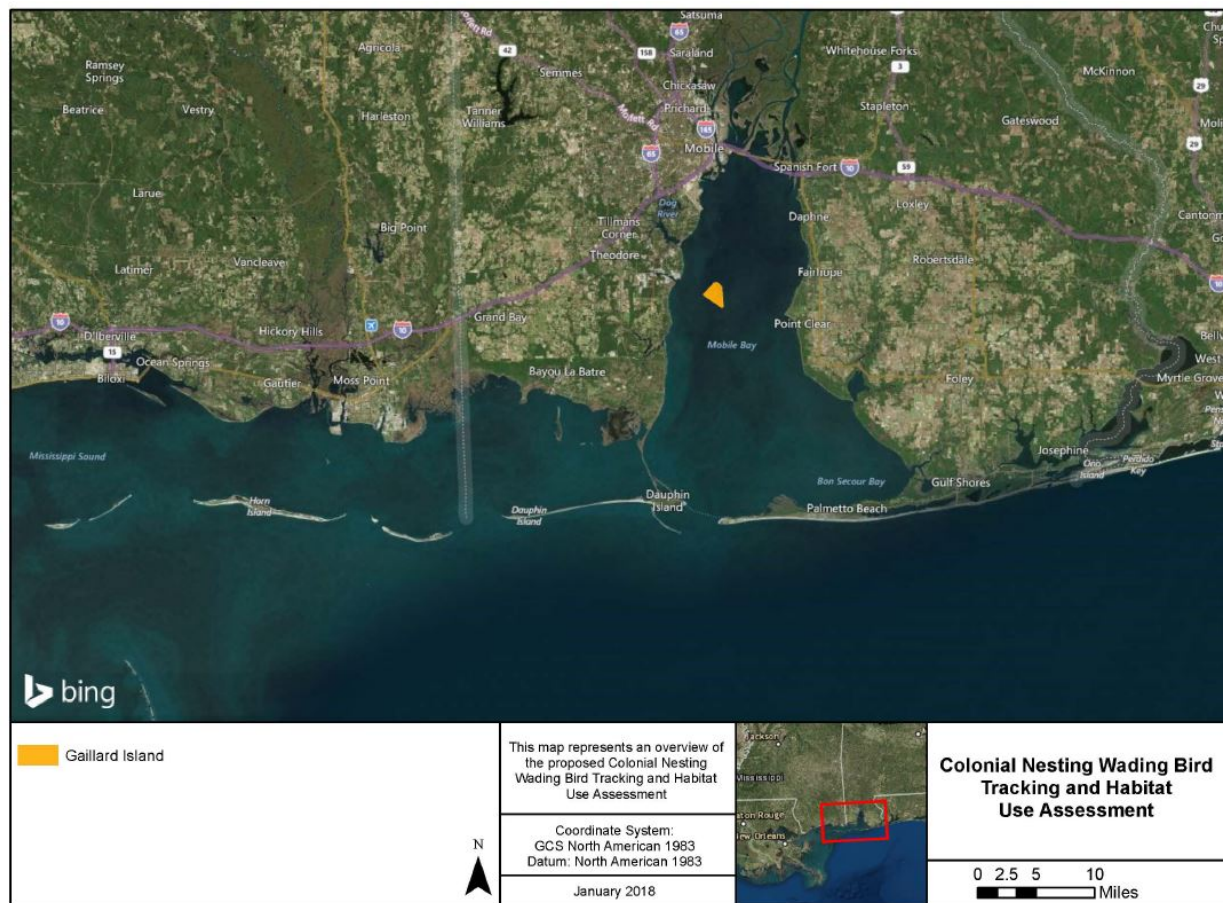


Figure 19. Oyster Cultch Relief and Reef Configuration project area in Mobile Bay, Alabama.

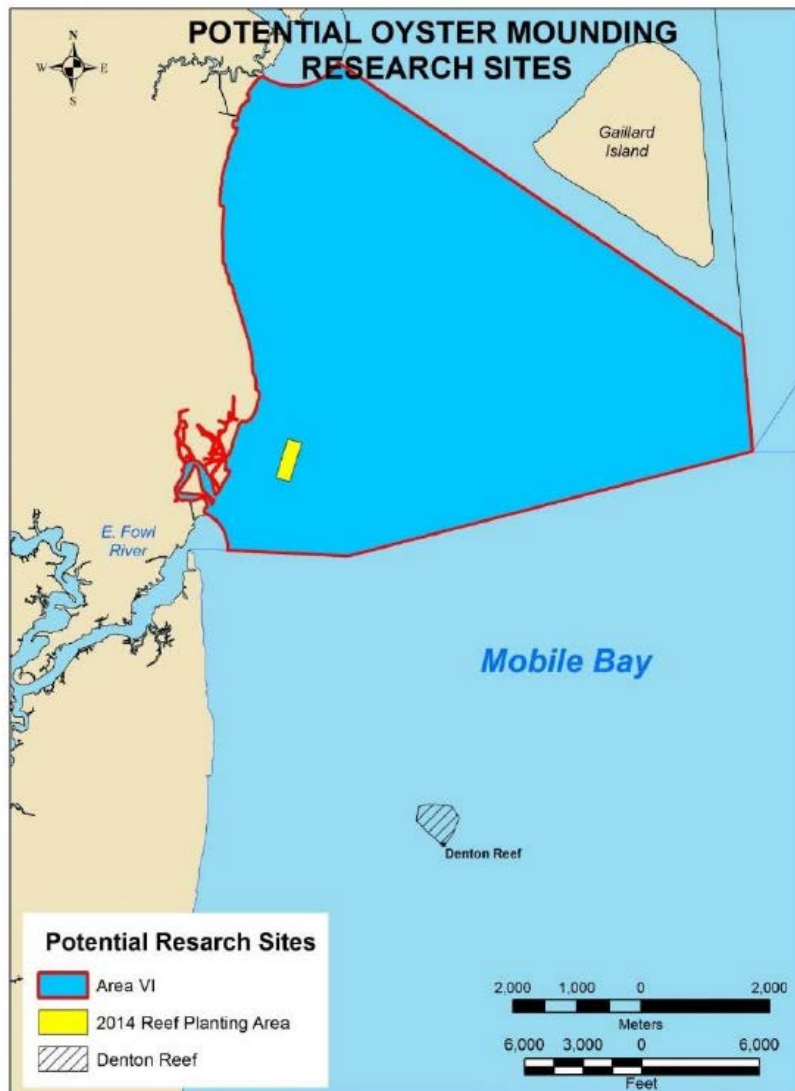


Figure 20. Side-scan Mapping of Mobile Bay Relic Oyster Reefs project area in coastal Alabama.

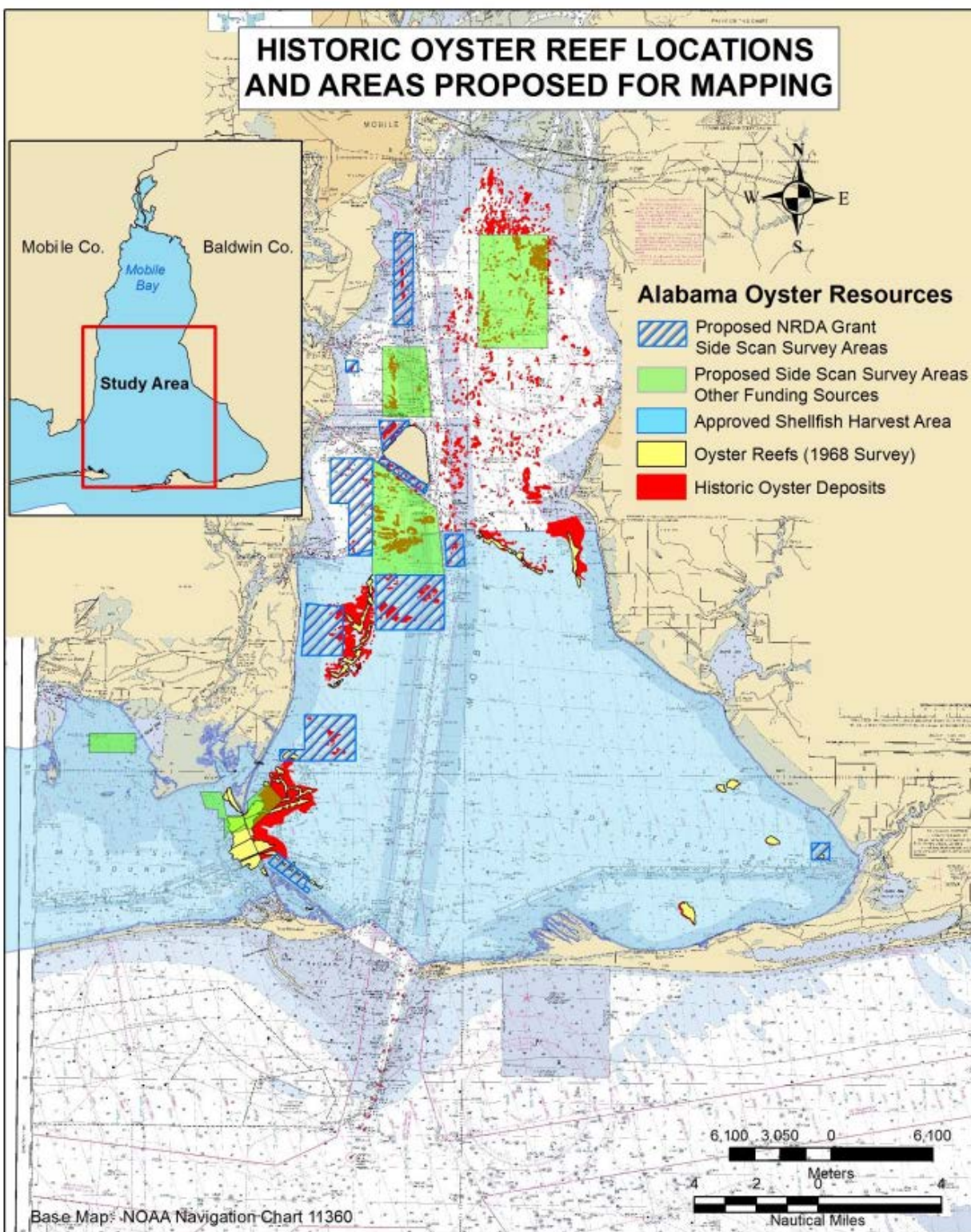


Figure 21. Oyster Hatchery at Claude Peteet Mariculture Center project area in coastal Alabama.

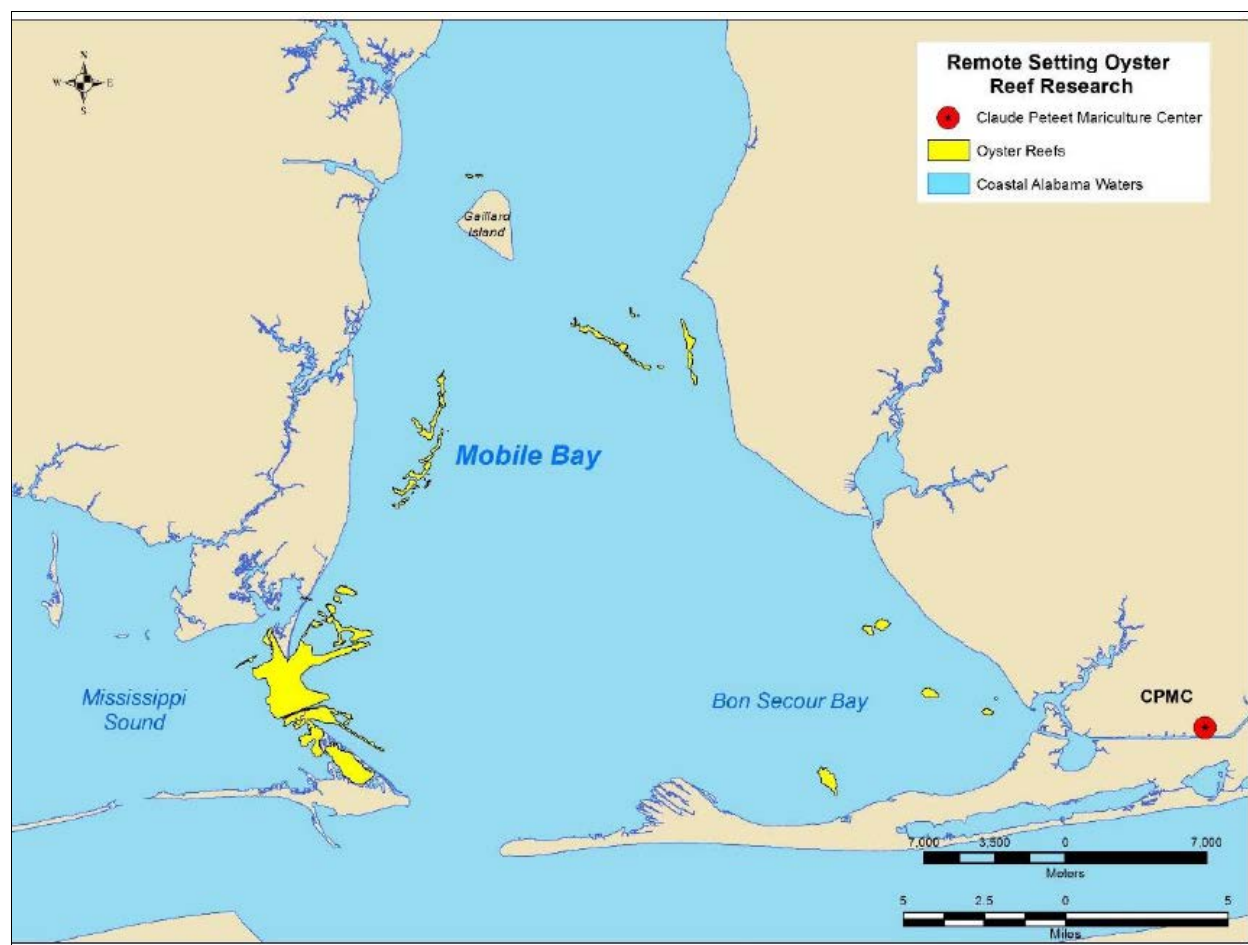


Figure 22. Oyster Grow Out Restoration Reef Placement project area in coastal Alabama.



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
Magnolia River Land Acquisition (Holmes Tract)	Land acquisition, no in-water work	NE	N/A	June 26 2018
Weeks Bay Land Acquisition East Gateway Tract	Land acquisition, no in-water work	NE	N/A	June 26 2018
Weeks Bay Land Acquisition Harrod Tract	Land acquisition, no in-water work	NE	N/A	June 26 2018
Restoring the Night Sky	E&D, none	NE	N/A	June 26 2018
Fowl River Nutrient Reduction	All upland, no in-water work	NE	N/A	June 26 2018
Weeks Bay Nutrient Reduction	All upland, no in-water work	NE	N/A	June 26 2018
Coastal Alabama Sea Turtle Conservation Program (share the beach)	On beaches, no in-water work	NE	N/A	June 26 2018
Coastal Alabama Sea Turtle Triage and Treatment Center	All upland, no in-water work	NE	N/A	June 26 2018
Lower Perdido Islands Restoration Phase I – Engineering and Design	Temporary disturbance due to short-term increase of research vessels being used to collect data to support engineering and design of Lower Perdido Islands restoration planning	NLAA	NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (includes searching area for manatees)	June 26 2018
Coffee Island Restoration – Phase I Engineering and Design	Temporary disturbance due to short-term increase of research vessels being used	NLAA	NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (includes searching area for manatees)	June 26 2018

	to collect data to support engineering and design of Coffee Island restoration planning			
Little Lagoon Living Shorelines	Installation of shoreline coir logs (by hand) and vegetation planting in shallow water/shoreline.	NLAA	S, Measures for Reducing Entrapment Risk to Protected Species.	June 26 2018
Coastal Alabama Sea Turtle Habitat Usage and Population Dynamics	Sea turtle capture and tracking at several inshore sites along the Alabama coast (including nearshore waters). Hand capture and dip nets would be primary form of capture, but trawls or nets may also be used.	NLAA	S, USFWS Standard Conditions for Netting in Manatee Habitat, NMFS Marine Mammal Mitigation Measures for Sea Turtle Research Using Entanglement Netting Surveys, NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (including searching area for marine mammals)	June 26 2018
Coastal Alabama Sea Turtle Protection: Enhancement and Education	Minor increased presence of vessels in nearshore waters related to sea turtle outreach/education efforts and nesting protection enforcement activities.	NLAA	S, NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (including searching area for marine mammals)	June 26 2018
Enhancing Capacity for the Alabama Marine Mammal Stranding Network	Minor increased presence of vessels in nearshore waters related to marine mammal stranding response activities	NLAA	S, SS, Measures for Reducing Entrapment Risk to Protected Species, NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (including searching area for marine mammals)	June 26 2018
Assessment of Alabama Estuarine Bottlenose Dolphin Populations and Health	Minor increased presence of vessels in nearshore waters for dolphin health research activities (dolphin tissue sampling via noninvasive darting and prey sampling using trawl net)	NLAA	NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (includes searching area for manatees)	June 26 2018
Alabama Estuarine Bottlenose Dolphin Protection: Enhancement and Education	Minor increased presence of law enforcement vessels in nearshore waters to support education/enforcement activities related to marine mammals.	NLAA	NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (includes searching area for manatees)	June 26 2018
Colonial Nesting Wading Bird	Minor increased presence of	NLAA	S, Measures for Reducing Entrapment Risk to Protected	June 26 2018

Telemetry Study	vessels in nearshore waters related to colonial waterbird terrestrial capture and tagging.		Species, NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (includes searching area for manatees)	
Oyster Cultch Relief and Reef Configuration	Short term increased presence of vessels and barge during construction, vessel presence during post-construction monitoring, temporary turbidity from cultch placement in nearshore water	NLAA	S, SS, Measures for Reducing Entrapment Risk to Protected Species, NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (includes searching area for manatees)	June 26 2018
Side-scan Mapping of Mobile Bay Relic Oyster Reefs	Minor increased presence of vessels in nearshore waters related to side-scan surveys and ground-truthing (hand dredge sampling and/or cane pole sounding)	NLAA	S, NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (includes searching area for manatees)	June 26 2018
Oyster Hatchery at Claude Petet Mariculture Center	Minor increased presence of vessels in project area related to transport and outplanting of oysters spat	NLAA	S, NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (includes searching area for manatees)	June 26 2018
Oyster Grow Out Restoration Reef Placement	Installation of pilings in sandy/mud bottom for mid-water oyster growout structures. Temporary increase in noise and turbidity during installation of pilings (pushing pilings into sediment) in sandy/mud bottom to suspend oyster grow out baskets in water. Minor increased presence of vessels during piling installation and post-construction monitoring.	NLAA	S, SS, Measures for Reducing Entrapment Risk to Protected Species, NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (includes searching area for manatees)	June 26 2018