



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

May 1, 2023

To: Manatee Recovery Coordinator, Florida Ecological Services Field Office

From: Compliance Supervisor, Deepwater Horizon Gulf Restoration Office

Subject: Notification of Compliance with Marine Mammal Protection Act

Overview

The Open Ocean (OO) Trustee Implementation Group (OO TIG) evaluated the projects: OO Restoration Plan (RP) 2 Mesophotic and Deepsea Benthic Communities (MDBC) Mapping, Ground Truthing, and Predictive Habitat Modeling; OO RP2 MDBC Habitat Assessment and Evaluation; OO RP2 MDBC Coral Propagation Technique Development; and OO RP2 MDBC Active Management and Protection to restore natural resources injured as a result of the Deepwater Horizon (DWH) oil spill. These projects will involve in-water work in areas where West Indian manatee (*Trichechus manatus*) (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). The United States Department of the Interior (DOI) determined that these projects may affect, but would not likely adversely affect the manatee. The Florida Ecological Services Office (ESO) concurred with this determination on March 14, 2023; the Louisiana ESO concurred with this determination on April 25, 2023; the Mississippi ESO concurred with this determination on April 17, 2023; and the Texas ESO concurred with this determination on April 21, 2023. A brief summary of the projects and ESA consultation, as related to the manatee, is provided below in Table 1. This memo serves as notification of compliance with the Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1461 et seq.).

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 that develop plans for, choose, and implement specific restoration actions under the Final PDARP/PEIS. The OO TIG includes four federal trustee agencies: the United States Department of Commerce, represented by the National Oceanic and Atmospheric Administration (NOAA); DOI, represented by the United States Fish and Wildlife Service and National Park Service; the United States Department of Agriculture; and the United States Environmental Protection Agency.

Marine Mammal Protection Act Project Compliance Information

These projects include in-water work in areas where manatee could be present and as such, consultation under Section 7 of the ESA was initiated. Table 1 includes a general description and conservation measures for the projects.

Because take of manatees, incidental or otherwise, is not presently authorized under the MMPA, 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. 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 projects (Table 1). The Trustees will also implement NOAA's "Sea Turtle and Small-tooth Sawfish Construction Conditions" dated 2021 as described in Table 1.

Conclusion

DOI anticipates these projects may affect, but would not likely adversely affect the manatee. A brief summary of the projects and ESA consultations, as related to the manatee, is provided in Table 1 below.

DOI believes the procedures contained within the ESA consultation 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 the manatee. As such, we do not anticipate any take, incidental or otherwise, under the ESA or MMPA for manatee as a result of the implementation of these projects.

In addition, the National Marine Fisheries Service (NMFS) also coordinated 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 the 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 projects, consultation will be reinitiated.

If you have any questions or concerns regarding this response, please contact Michael Barron, Fish and Wildlife Biologist, at 251-421-7030, or michael_barron@fws.gov.

Attachments (2)

- Map of Project locations (Figure 1)
- Summary of Project Information and ESA Determinations (Table 1)

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

NLAA = May Affect, Not Likely to Adversely Affect; S = Standard Manatee Conditions for In-Water Work, dated 2011; PS = Protected Species Construction Conditions, dated 2021; M = NMFS Measures for Reducing Entrapment Risk to Protected Species; V= NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (including searching area for marine mammals)

Proposed Project	In-Water Work	ESA Determination for Manatee	Conservation Measures for Manatee	Field Office Concurrence
<p>Mesophotic and Deepsea Benthic Communities Projects</p>	<p>The work described will be implemented by NOAA offices and NOAA funded partners that may include staff and equipment from Southeast Fisheries Science Center, Office of Coastal Survey, National Centers for Coastal Ocean Science, Office of National Marine Sanctuaries, Office of Habitat Conservation, and other agencies/partners as needed. The work may take place on NOAA vessels, NOAA contracted vessels or vessels operated by NOAA funded partners.</p> <p>The goal of the Mapping, Ground-truthing, and Predictive Habitat Modeling project is to document the abundance and distribution of MDBC and to gain a better understanding of extent, species composition, and habitat characteristics. Mapping operations will also collect data to refine predictive models to improve the effectiveness and cost efficiency of restoration and mapping efforts.</p> <p>Habitat assessment operations will include dives to characterize the fish and water column community including the deep scattering layer, and to perform sub-bottom profiling to characterize sediment and substrate stratigraphy. Visual/image transects will be conducted at previously imaged and new sites and biological, geological, and water column samples (i.e., tissues, organisms, colonies,</p>	<p>NLAA</p>	<p>S, PS, M, V</p>	<p>Florida: March 14, 2023; Louisiana: April 25, 2023; Mississippi: April 17, 2023; Texas: April 21, 2023</p>

	<p>sediment, substrate, water, eDNA) will be taken.</p> <p>Field operations for the MDBC Coral Propagation Technique Development Project support objectives to develop coral husbandry techniques for priority species and conduct specialized analyses of biological and environmental samples to evaluate potential restoration sites</p> <p>Coral propagation technique development-related field operations will include the targeted collection of coral specimens (whole colonies, fragments for genetics analysis, commensal organisms, associated sediments or substrates, and water containing gametes or larvae) and small-scale deployments of experimental settlement substrates to test coral recruitment potential and performance. Targeted coral collections are planned during cruise missions for laboratory culture and in support of studies of genetic connectivity, life history characteristics, health condition, and trophodynamic linkages among ecosystem components.</p> <p>Management activities included in the MDBC Active Management and Protection project for directly addressing threats to MDBC will also be undertaken in 2023-2027; including mooring buoy installations to reduce damage to MDBC's from anchoring, removal of invasive species such as lionfish, documentation and removal of marine debris and derelict fishing gear, assessing and remediating risks associated with leaking and abandoned oil and gas infrastructure, and enhancing enforcement capacity for protection and management of MDBC's.</p> <p>Vessels will generally transit to and from the following ports: Pascagoula, MS; Gulfport, MS; Houma/Cocodrie, LA; Fourchon, LA; Panama City, FL; Tampa, FL; and Houston/Galveston, TX.</p>			
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