



# 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

September 3, 2020

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

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

Subject: Notification of Compliance with Marine Mammal Protection Act

## Overview

The Louisiana Trustee Implementation Group (LA TIG) evaluated four projects to restore natural resources injured as a result of the *Deepwater Horizon (DWH)* oil spill. One of these projects, “Increasing capacity and expanding partnerships to fill gaps in capabilities and coverage along the Louisiana coastline for marine mammal stranding response”, does not involve in-water work. The other three projects will involve in-water work in areas where West Indian manatee (*Trichechus manatus*) (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 projects may affect, but would not likely adversely affect, the manatee. The Lafayette Ecological Services Field Office concurred with these determinations in June 2020 (see Table 1 for specific concurrence date for each project). 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).

## 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 projects as potential restoration projects under the *Louisiana Trustee Implementation Group Final Restoration Plan and Environmental Assessment #5: Living Coastal and Marine Resources – Marine Mammals and Oysters*, which was open to public comment through April 20, 2020. The LA TIG partners will implement the projects.

#### Marine Mammal Protection Act (MMPA) Project Compliance Information

These three projects in the LA RP/EA include in-water work in areas where 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 these projects may affect, but would not likely adversely affect, the manatee. A brief summary of the projects and ESA consultation, as related to the 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 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 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 Michael Barron, Fish and Wildlife Biologist, at 251-421-7030, or michael\_barron@fws.gov.

Attachments (4)

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

Figure 1. Map showing the Brood Reef Oyster Restoration project area in coastal Louisiana.

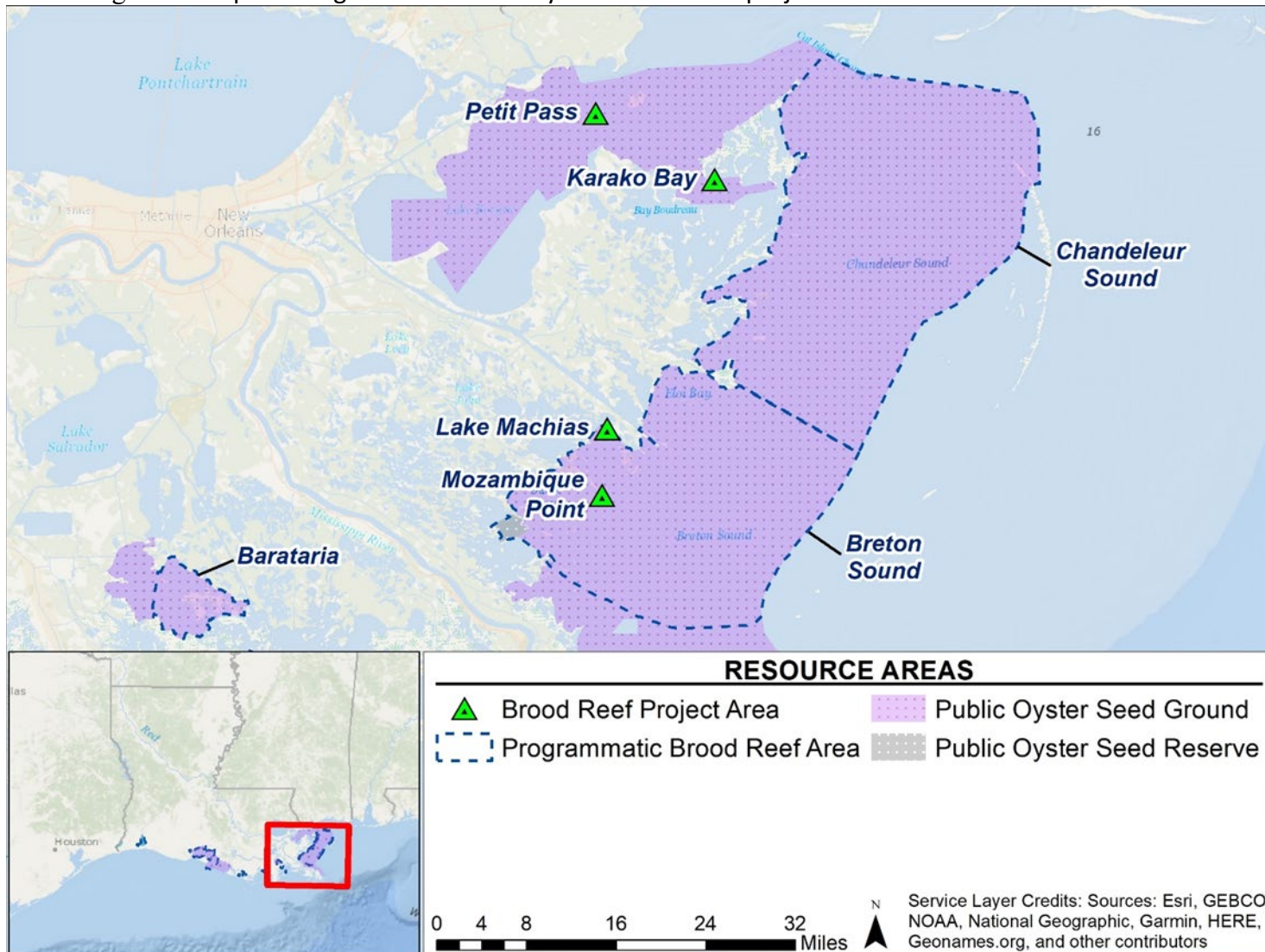


Figure 2. Map showing the Hatchery-based Oyster Restoration Project area in coastal Louisiana.

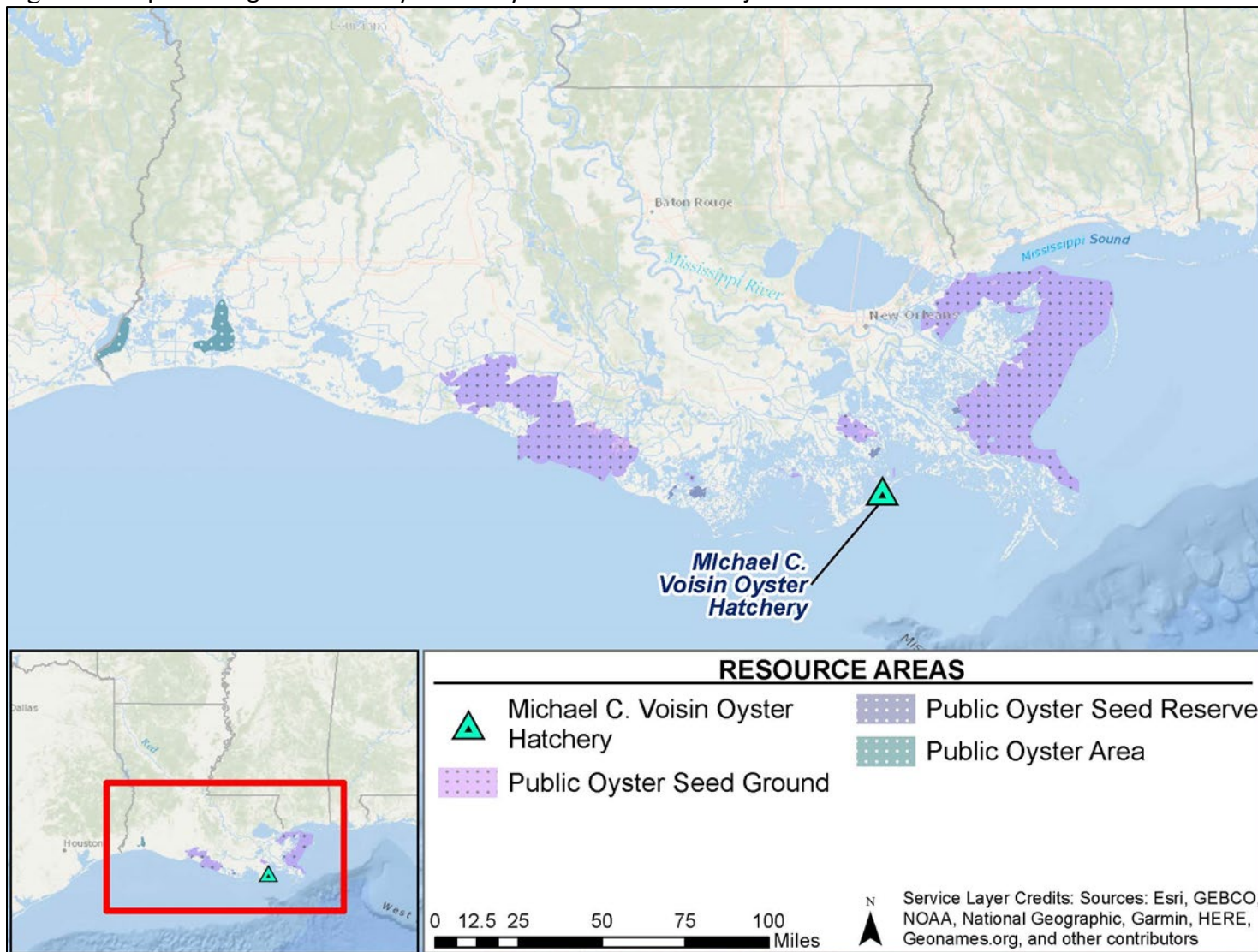




Figure 3. Map showing the Cultch Plant project area in coastal Louisiana.

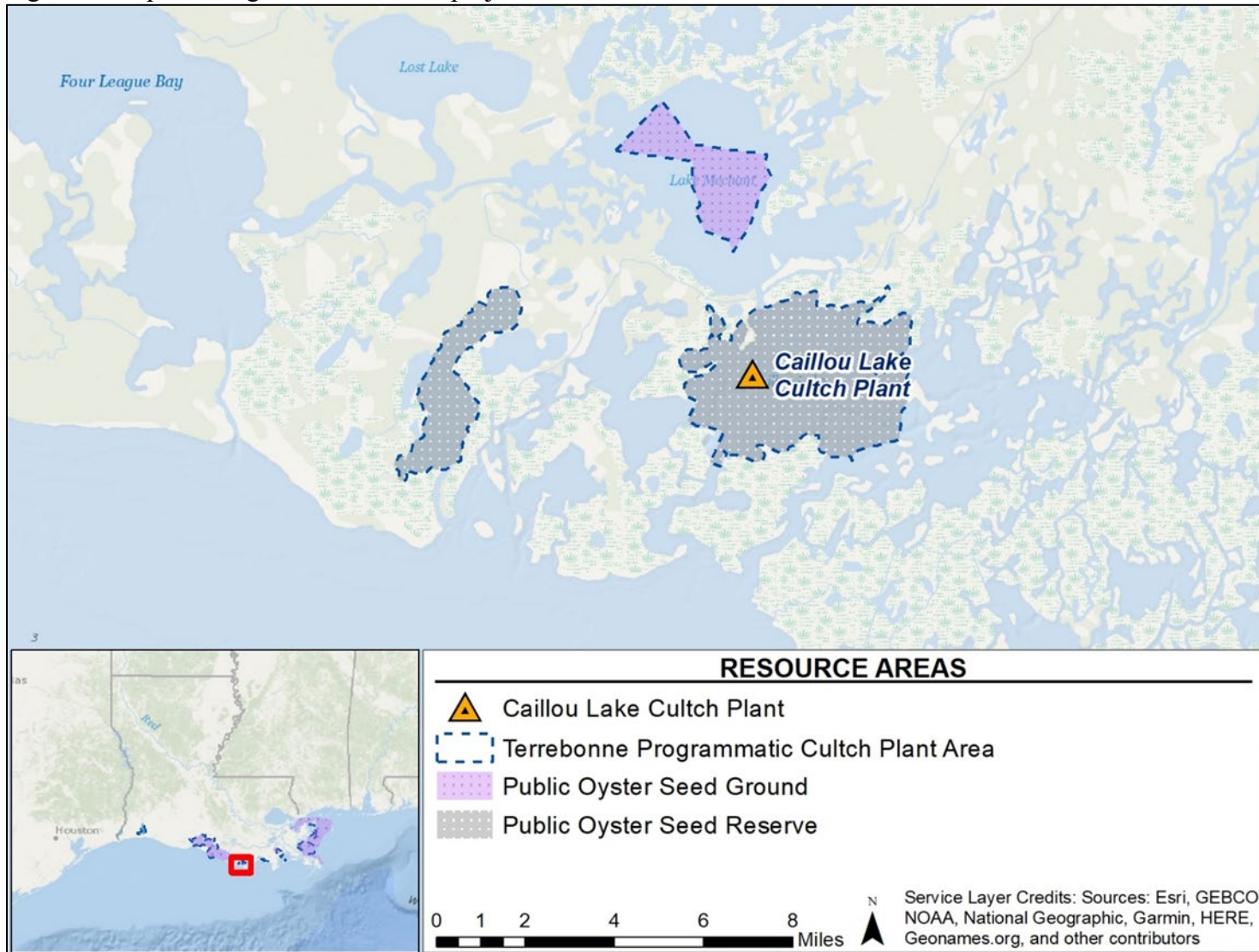


Table 1. Summary of in-water work and conservation measures to protect the West Indian manatee for three projects included in LA TIG RP/EA #5. Projects will not proceed with implementation until compliance with all relevant laws is achieved.  
*NLAA* = May Affect, Not Likely to Adversely Affect; *S* = Standard Manatee Conditions for In-Water Work, dated 2011;  
*SS* = Sea Turtle and Small-tooth Sawfish Construction Conditions, dated 2006; *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
Brood Reef Oyster Restoration Project	Proposed project in-water work includes the construction of brood reefs by placing clean brood reef materials on existing shell structures or relic reef locations. These activities will result in temporary localized turbidity, underwater noise, and human activity. Equipment will include barge and excavator.	NLAA	S, SS, M, V	June 10, 2020
Hatchery-based Oyster Restoration Project	Proposed project in-water work includes deployment of an LDWF vessel and personnel to spread bags of oyster spat by hand on Public Oyster Seed Grounds or Public Oyster Seed Reservations. These activities will result in temporary increased water turbidity, underwater noise, and human activity.	NLAA	S, SS, M, V	June 17, 2020
Cultch Plant Project	Construction activities will entail placing cultch material in suitable oyster habitat or relic reefs. Construction activities will involve cultch material (clean limestone) deployed from an oyster barge with a high-pressure water spray. Oyster monitoring would include limited dredge sampling in the spring and fall.	NLAA	S, SS, M, V	June 15, 2020

	<p>Equipment will include a tugboat and barge. These activities will result in temporary localized turbidity, increased underwater noise, and human activity.</p>			
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