



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

June 9, 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 Mississippi Trustee Implementation Group (MS TIG) evaluated four projects to restore natural resources injured as a result of the *Deepwater Horizon (DWH)* oil spill. Two of the four projects occur in areas where manatees could be present. Both 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 two of the projects may affect, but would not likely adversely affect the West Indian manatee. The Mississippi Ecological Services Field Office concurred with these determinations on March 27, 2020. A brief summary of these two projects and the ESA consultation, as related to the West Indian 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 MS TIG includes one Mississippi state trustee agency and four federal trustee agencies: Mississippi Department of Environmental Quality (MDEQ); 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 MS TIG evaluated the potential restoration projects under the Mississippi Trustee Implementation Group Draft Restoration Plan II and Environmental Assessment: Wetlands, Coastal, and Nearshore Habitats and Oysters, which closed to public comment on May 22, 2020. The MS TIG partners will implement the projects.

Marine Mammal Protection Act (MMPA) Project Compliance Information

Two projects within the 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 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 and other conservation measures specific to the project (Table 1).

Conclusion

DOI anticipates two of the projects may affect, but would not likely adversely affect the West Indian manatee. A brief summary of these two 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) 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 Erin Chandler, Fish and Wildlife Biologist, at 470-361-3153, or erin_chandler@fws.gov.

Attachments (3)

- Maps of project locations (Figures 1 and 2)
- Summary of Project Information and ESA Determinations (Table 1)

Figure 1. Mississippi Oyster Gardening Program proposed project area in coastal Mississippi.

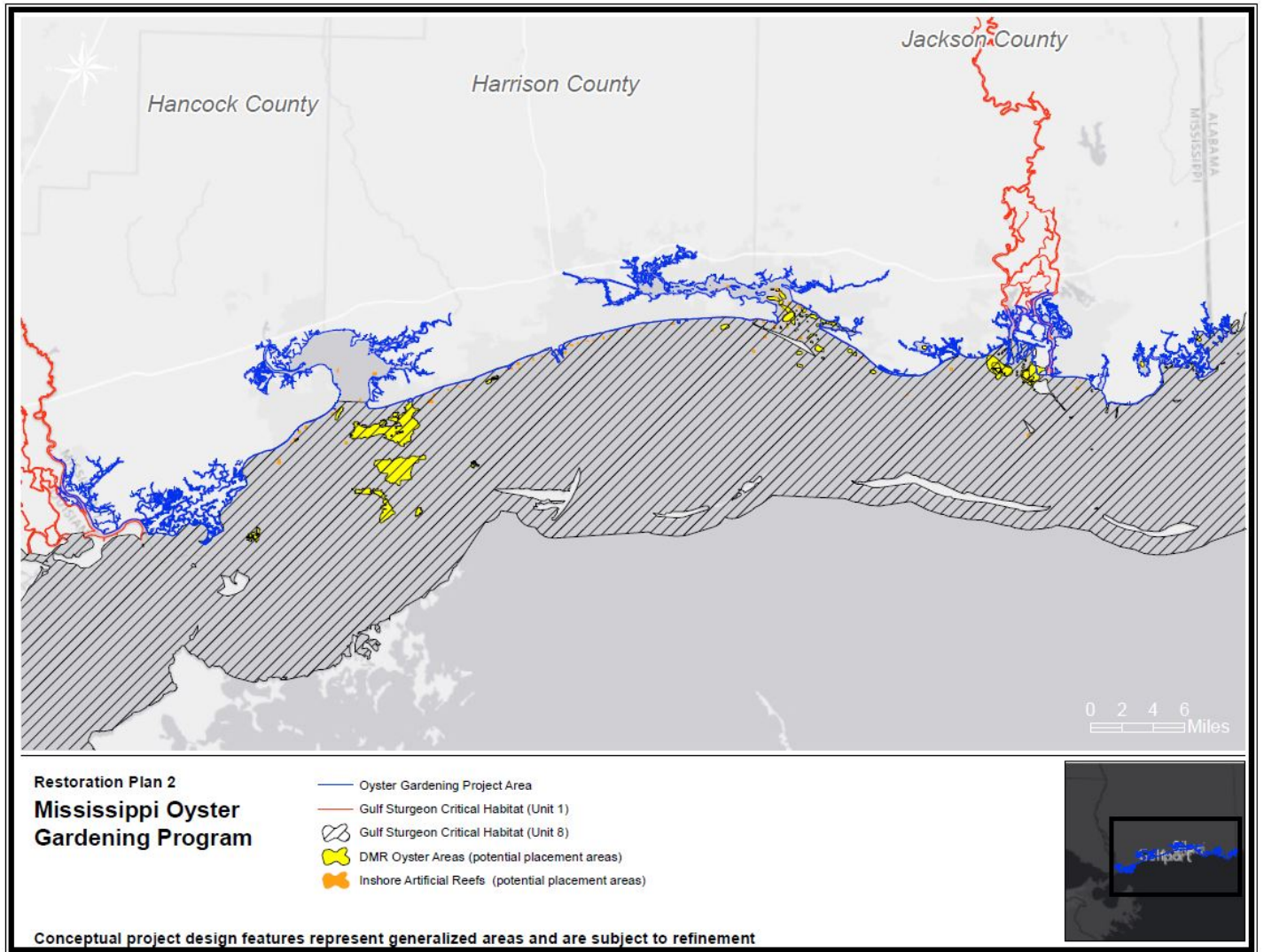


Figure 2. Oyster Spawning Reefs proposed project area in coastal Mississippi.

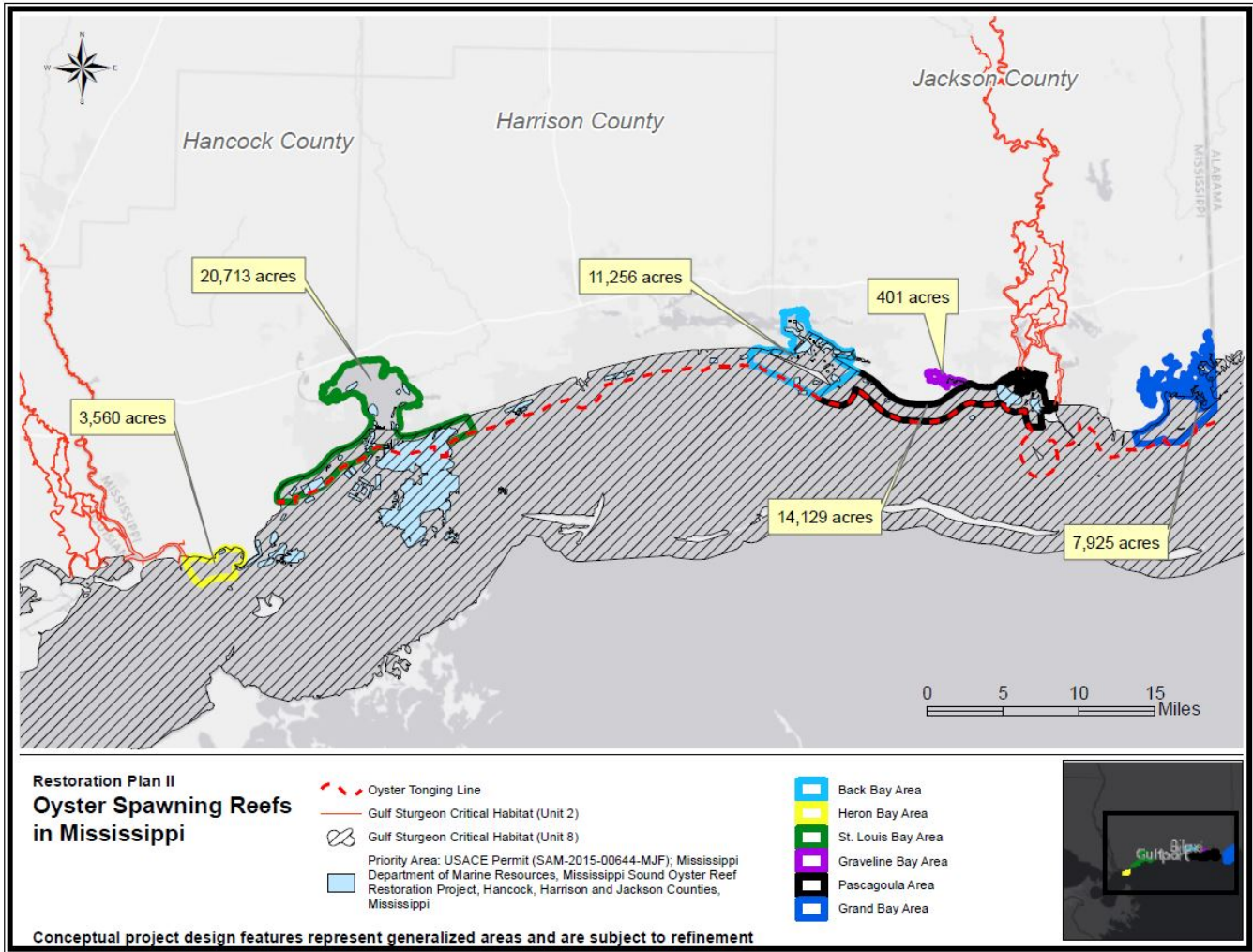


Table 1. Summary of in-water work and conservation measures to protect the West Indian manatee for two projects included MS RP/EA #2. Projects will not proceed with implementation until compliance with all relevant laws is achieved.

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; 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>Mississippi Oyster Gardening Program</p>	<p>In-water work is limited to hanging oyster cages from existing pilings, docks, and piers. Project includes volunteers hanging fabricated cages or oyster gardens off existing structures to encourage growth of oysters. Each oyster garden would be suspended between pilings using a single thick, rigid rope to suspend the cage approximately 12 inches off the bottom. Each cage is set for a growing season of approximately 9-10 months. At the conclusion of the season, oysters would be collected by program staff and stocked in existing reef areas.</p>	<p>NLAA</p>	<p>No conservation measures were recommended for in-water work given that the oyster gardens will be hanging from existing structures, and the gardens would not impede the transit of manatees within the project area.</p>	<p>March 27, 2020</p>
<p>Oyster Spawning Reefs in Mississippi</p>	<p>Placement of oyster cultch material in shallow bays. Mechanical equipment would be utilized to load the materials onto shallow draft barges or shallow draft self-powered marine vessels. The material would be deployed from barge or vessel using a high-pressure water jet or using a clam-shell bucket mounted on a crane or a long-armed track hoe located on a separate equipment barge.</p>	<p>NLAA</p>	<p>S, SS, M, V</p>	<p>March 27, 2020</p>