



# 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

October 21, 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 five projects to restore natural resources injured as a result of the *Deepwater Horizon (DWH)* oil spill. These five 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 on September 25, 2020, October 16, 2020, and October 20, 2020. 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 #7: Birds and Wetlands, Coastal, and Nearshore Habitats*, which was open to public comment beginning August 20, 2020. The LA TIG partners will implement the projects.

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

These five 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 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 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 (NFMS) 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 contact Michael Barron, Fish and Wildlife Biologist, at 251-421-7030, or michael\_barron@fws.gov.

Attachments (6)

- Maps of project locations (Figures 1 – 5)
- Summary of Project Information and ESA Determinations (Table 1)

Figure 1. Map showing the Bird's Foot Delta Hydrologic Restoration project area in coastal Louisiana.

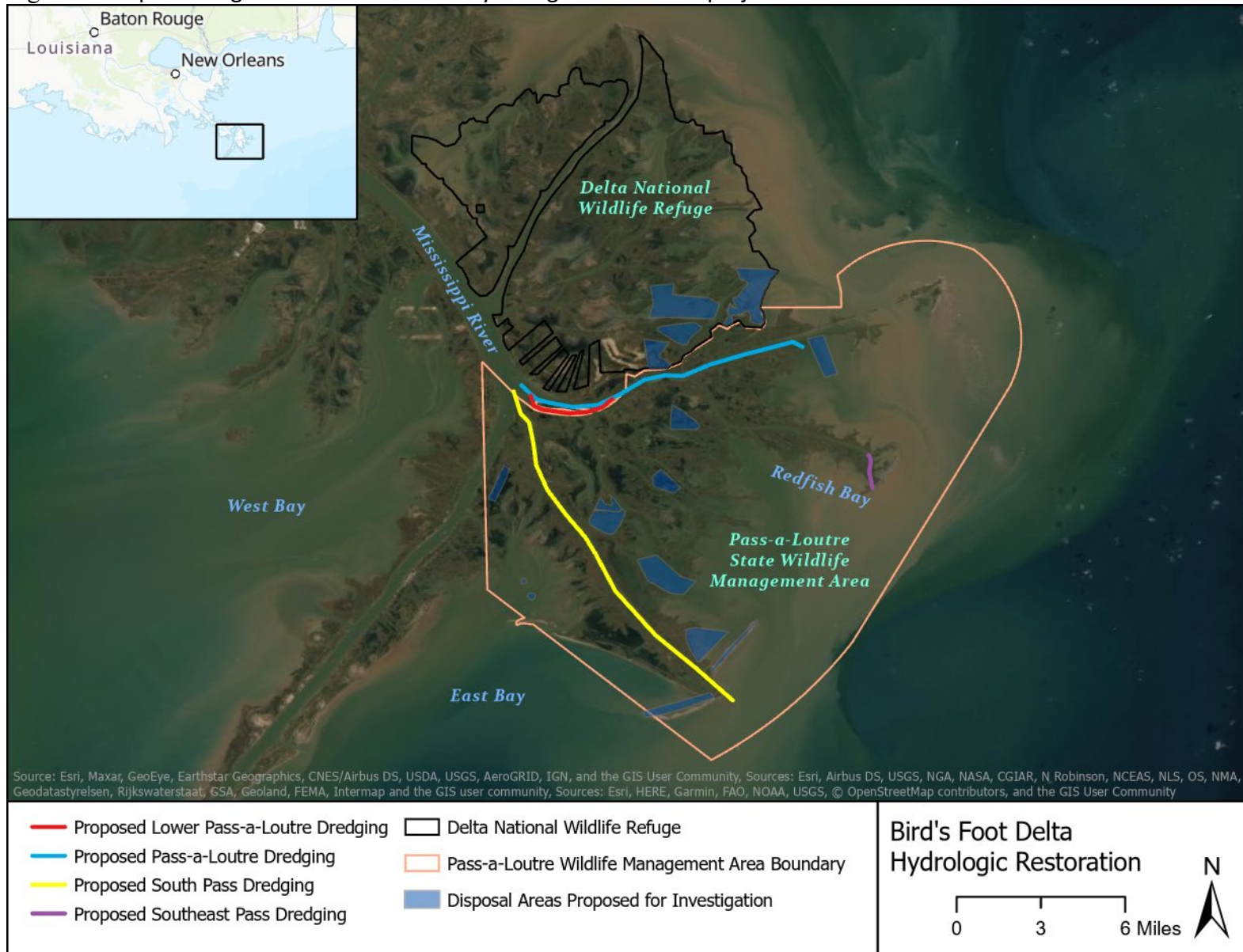


Figure 2. Map showing the Terrebonne Bay HNC Island project area in coastal Louisiana.

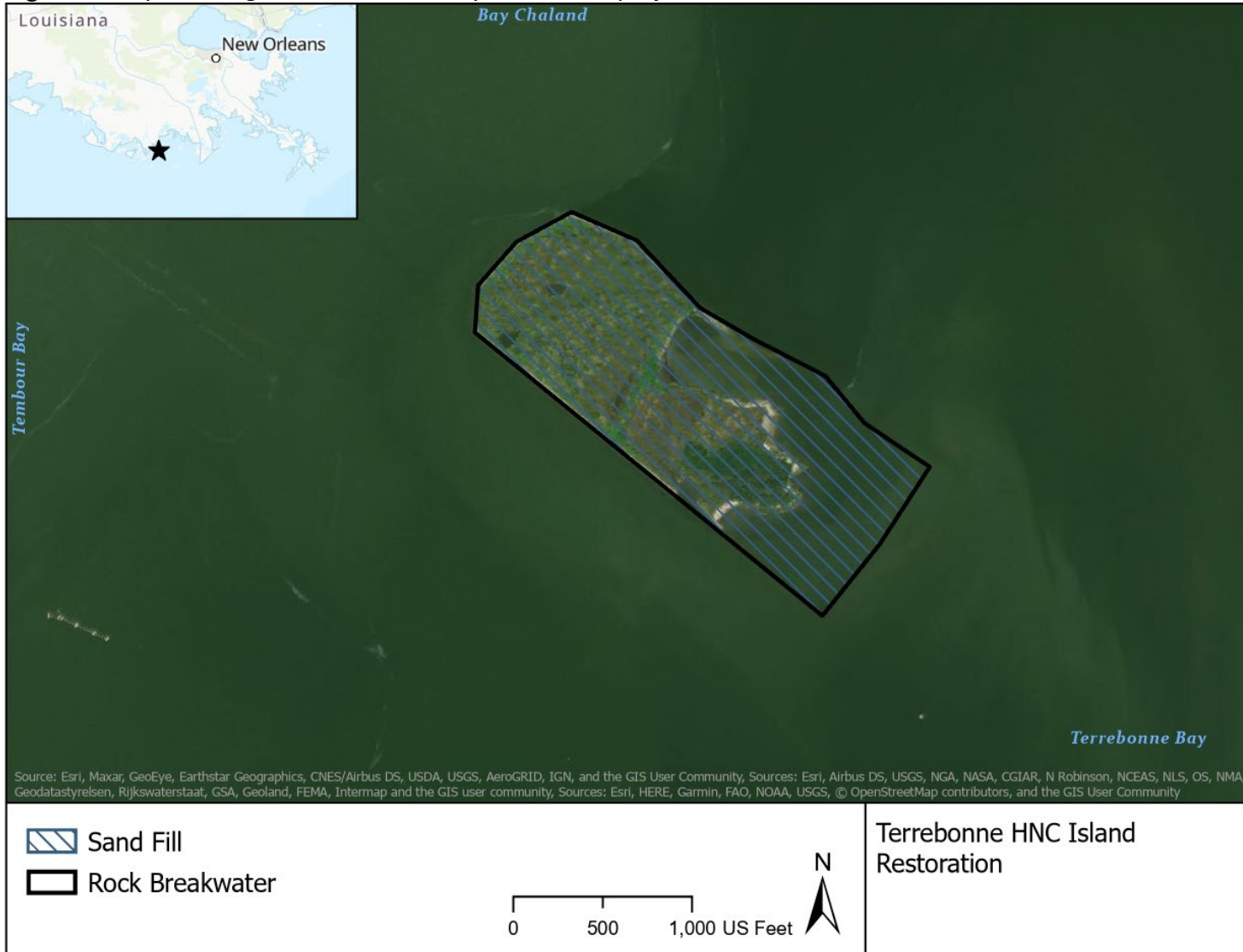


Figure 3. Map showing the Isle Au Pitre Restoration project area in coastal Louisiana.

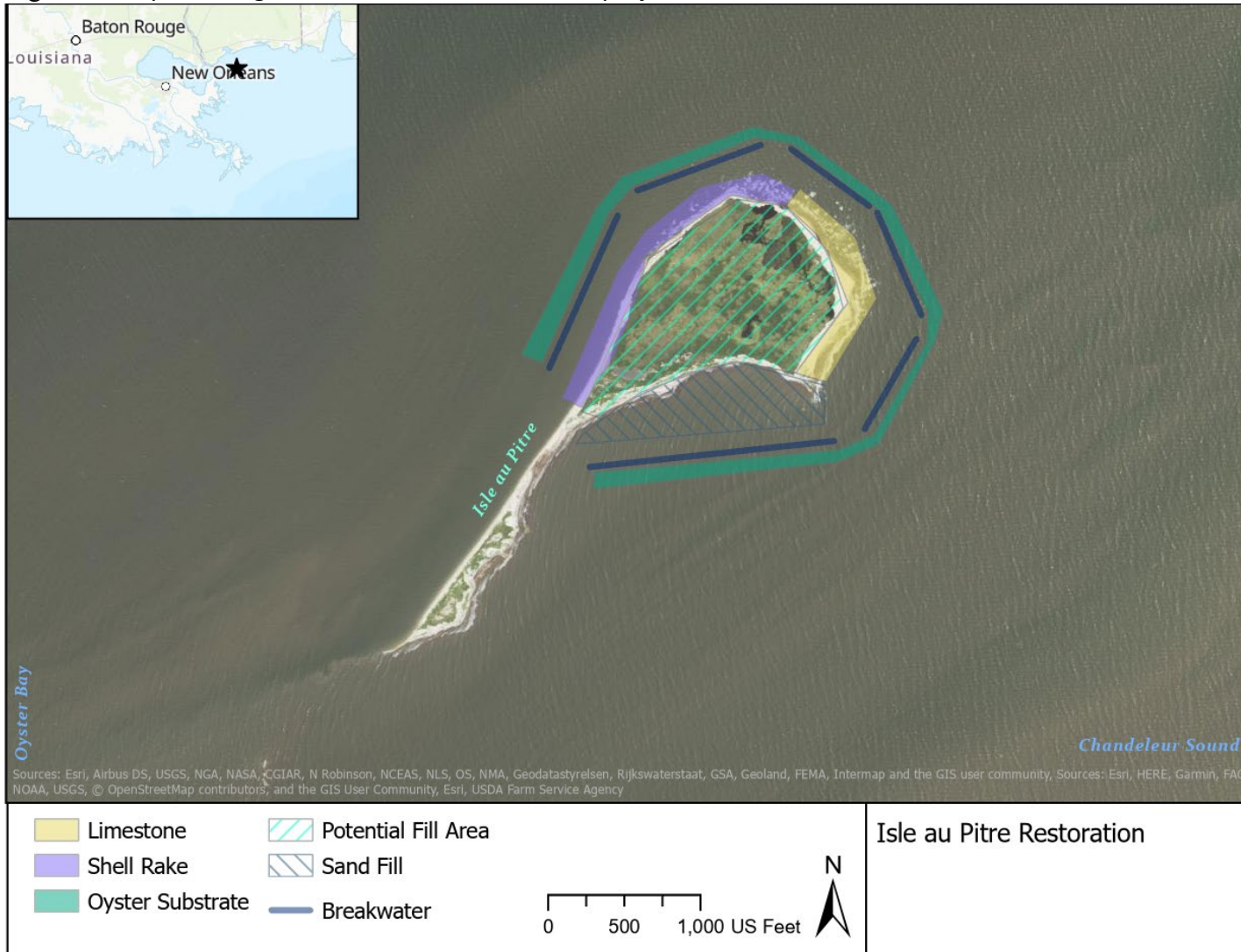


Figure 4. Map showing the Terrebonne Basin Ridge and Marsh Creation project area in coastal Louisiana.

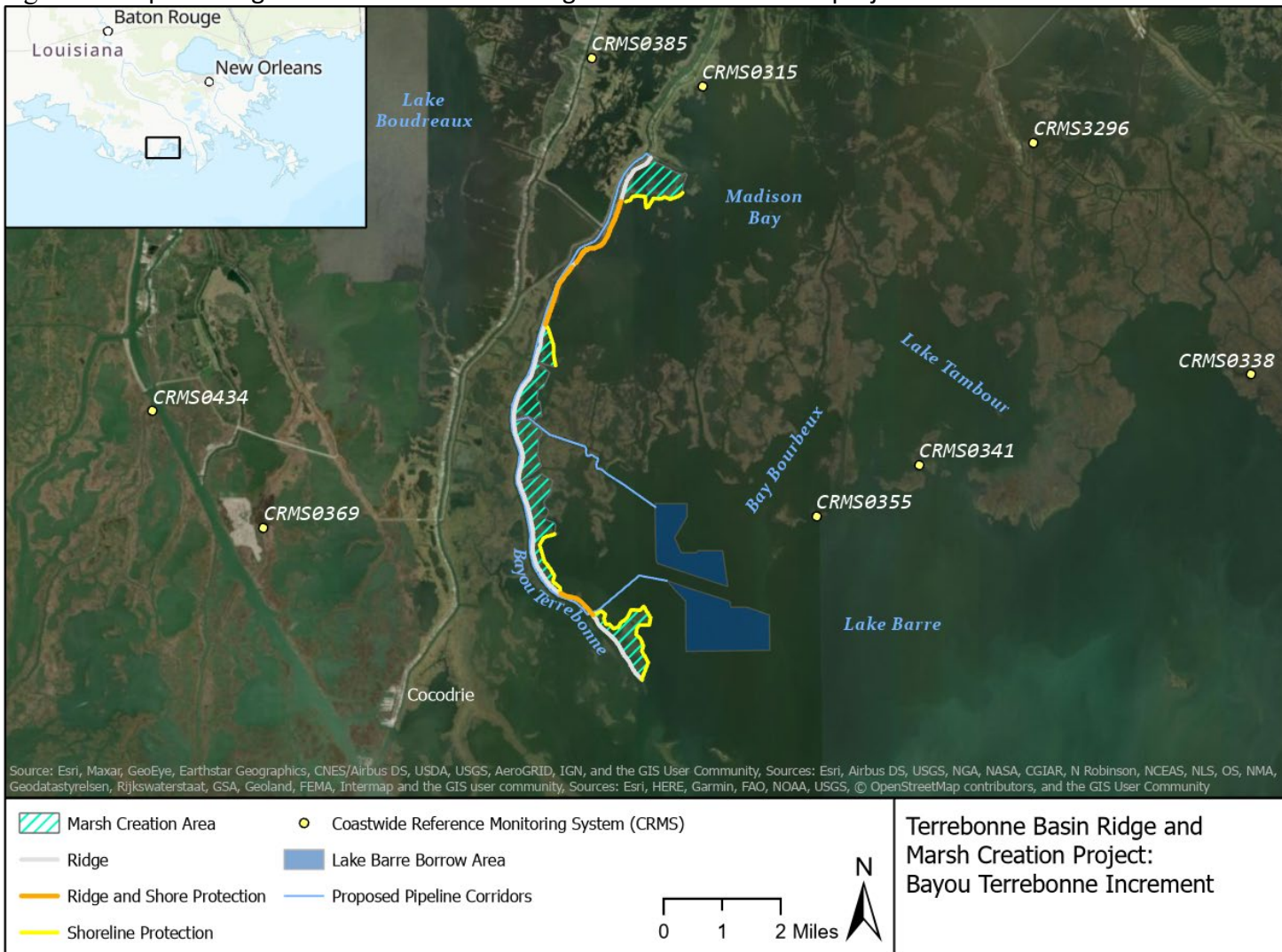


Figure 5. Map showing the Grande Cheniere Ridge Marsh Creation (BA0240) project area in coastal Louisiana.

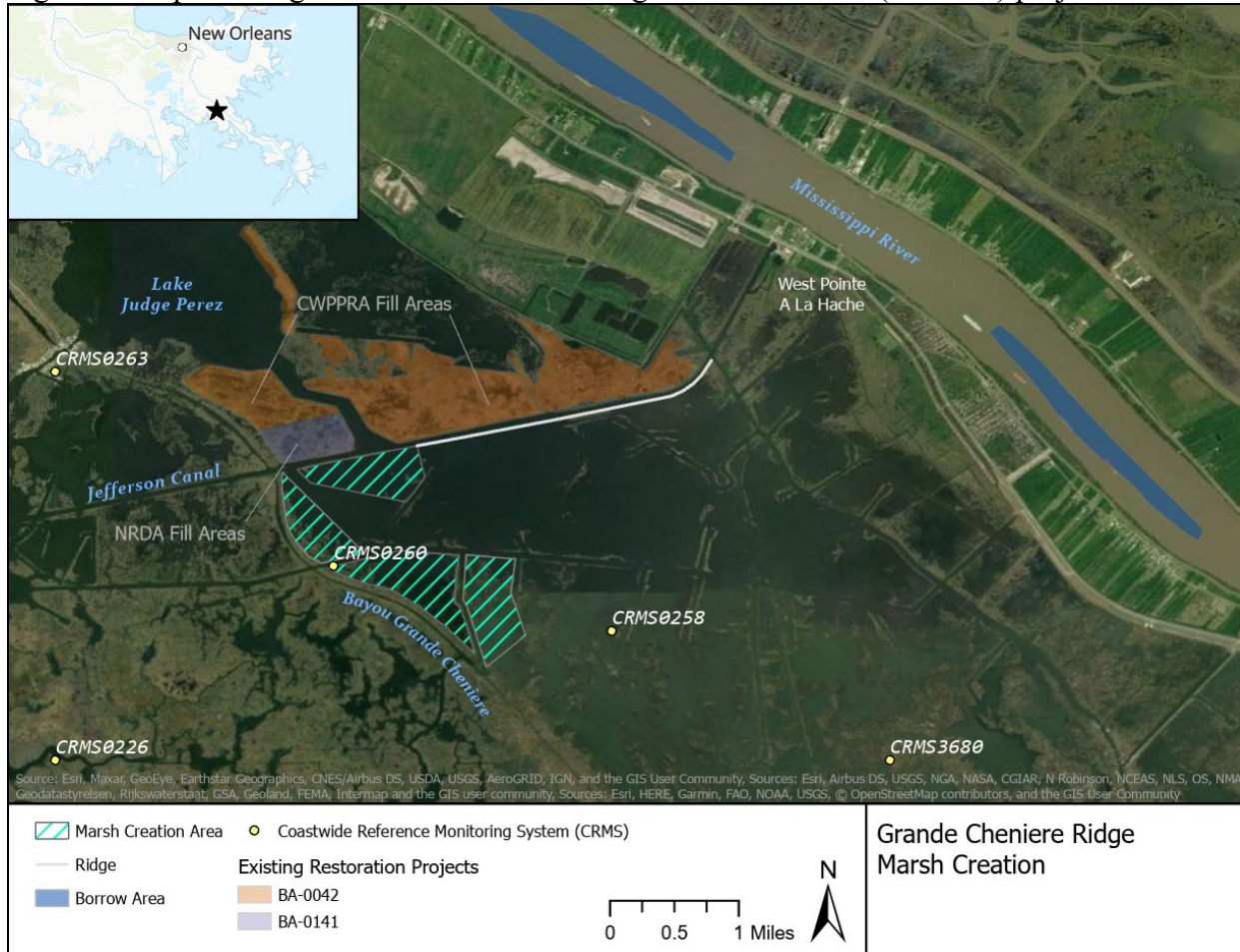




Table 1. Summary of in-water work and conservation measures to protect the West Indian manatee for three projects included in LA TIG RP/EA #5. Projects will not proceed with implementation until compliance with all relevant laws is achieved.

*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
Bird's Foot Delta Hydrologic Restoration Project	This project includes numerous engineering and design projects that include in-water surveys to gather data. This may include the following: bathymetric and topographic surveys, magnetometer surveys, geotechnical data collection, borings and/or cone penetrometer tests, other geophysical surveys, probing to confirm pipeline locations/depth of cover, sediment load and flow distribution sampling, and cultural resources surveys.	NLAA	S, SS, M, V	October 16, 2020
Terrebonne Bay HNC Island	This project includes numerous engineering and design projects that include in-water surveys to gather data. This may include the following: bathymetric and topographic surveys, magnetometer surveys, geotechnical data collection, borings and/or cone penetrometer tests, other geophysical surveys, probing to confirm pipeline locations/depth of cover, cultural resources surveys, oyster surveys, assessments, and appraisals, and nesting surveys.	NLAA	S, SS, M, V	October 20, 2020

<p>Isle Au Pitre Restoration</p>	<p>This project includes numerous engineering and design projects that include in-water surveys to gather data. This may include the following: bathymetric and topographic surveys, magnetometer surveys, geotechnical data collection, borings and/or cone penetrometer tests, other geophysical surveys, probing to confirm pipeline locations/depth of cover, cultural resources surveys, oyster surveys, assessments, and appraisals, and nesting surveys.</p>	<p>NLAA</p>	<p>S, SS, M, V</p>	<p>September 25, 2020 and October 16, 2020</p>
<p>Terrebonne Basin Ridge and Marsh Creation</p>	<p>Construction activities will be implemented to create/nourish up to 1,430 acres of brackish and saline marsh and create up to 80 acres of earthen ridge. This may be accomplished through cutterhead and bucket dredges, accompanied by marsh buggies to shape containment dikes, ridges, and relocate fill. Mechanical excavation of material from the would likely be accomplished with marsh buggy excavators and/or barge-mounted draglines. Containment dikes will be constructed with material mechanically excavated from outside of the marsh creation areas in existing open water with some reaches of containment requiring material excavated from within the marsh creation areas where existing marsh is located adjacent to the marsh creation area perimeter. Equipment for earthen containment dikes would likely be marsh buggy excavators. Impacts include construction disturbances such as minor air quality and noise</p>	<p>NLAA</p>	<p>S, SS, M, V</p>	<p>September 25, 2020</p>

	impacts, and minor water quality effects such as surface soil erosion.			
Grande Cheniere Ridge Marsh Creation (BA0240)	Construction activities will be implemented to create up to 624 acres of marsh and create up to 12,480 linear feet of earthen ridge. Marsh platform features will be constructed utilizing a hydraulic cutter suction dredge with booster pumps and a steel dredge pipeline system. Low pressure dozers, Y-valves, and amphibious marsh excavators will be used during construction and placement of the sandy marsh fill material. Earthen Containment Dikes (ECD) and ridge construction will likely be constructed using amphibious marsh excavators and barge-mounted clamshell excavators.	NLAA	S, SS, M, V	September 25, 2020