



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

December 12, 2022

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

The Louisiana Trustee Implementation Group (LA TIG) evaluated one project to restore natural resources injured as a result of the *Deepwater Horizon (DWH)* oil spill. The project, Terrebonne Houma Navigation Canal (HNC) Island Restoration Project (TE-0165) is evaluated in the *Final Restoration Plan and Environmental Assessment #7.1: Birds*, which closed for public comment on September 23, 2022. The project 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 Department of the Interior (DOI) determined that the project may affect, but would not likely adversely affect the manatee. The Lafayette Ecological Services Field Office concurred with this determination on December 6, 2022. A brief summary of the project 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).

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 LA TIG includes five Louisiana state trustee agencies and four federal trustee agencies: the Louisiana Coastal Protection and Restoration Authority; the Louisiana Department of Natural Resources; the Louisiana Department of Environmental Quality; the Louisiana Oil Spill Coordinator's

Office; the Louisiana Department of Wildlife and Fisheries; 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.

The project includes in-water work in areas where manatee could be present and as such, ESA consultation was initiated. Table 1 includes a general description of the project, conservation measures, and the consultation determination. 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 project 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, NOAA's "Protected Species Construction Conditions" dated 2021 and other conservation measures specific to the project (Table 1).

DOI believes the procedures contained within the consultation constitutes appropriate and responsible steps to promote compliance with MMPA prohibitions on take by requiring the activities to achieve a standard of 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 as a result of the implementation of the project.

In addition, the National Marine Fisheries Service (NMFS) also coordinated with the Trustees under MMPA in order to protect other marine mammals that could be present in the project area. NMFS may require additional avoidance measures to protect these species. 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 in the project areas.

If modifications are made to the project 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 (3)

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

Figure 1. Map showing the project Terrebonne Houma Navigation Canal (HNC) Island Restoration Project (TE-0165) area in coastal Louisiana.

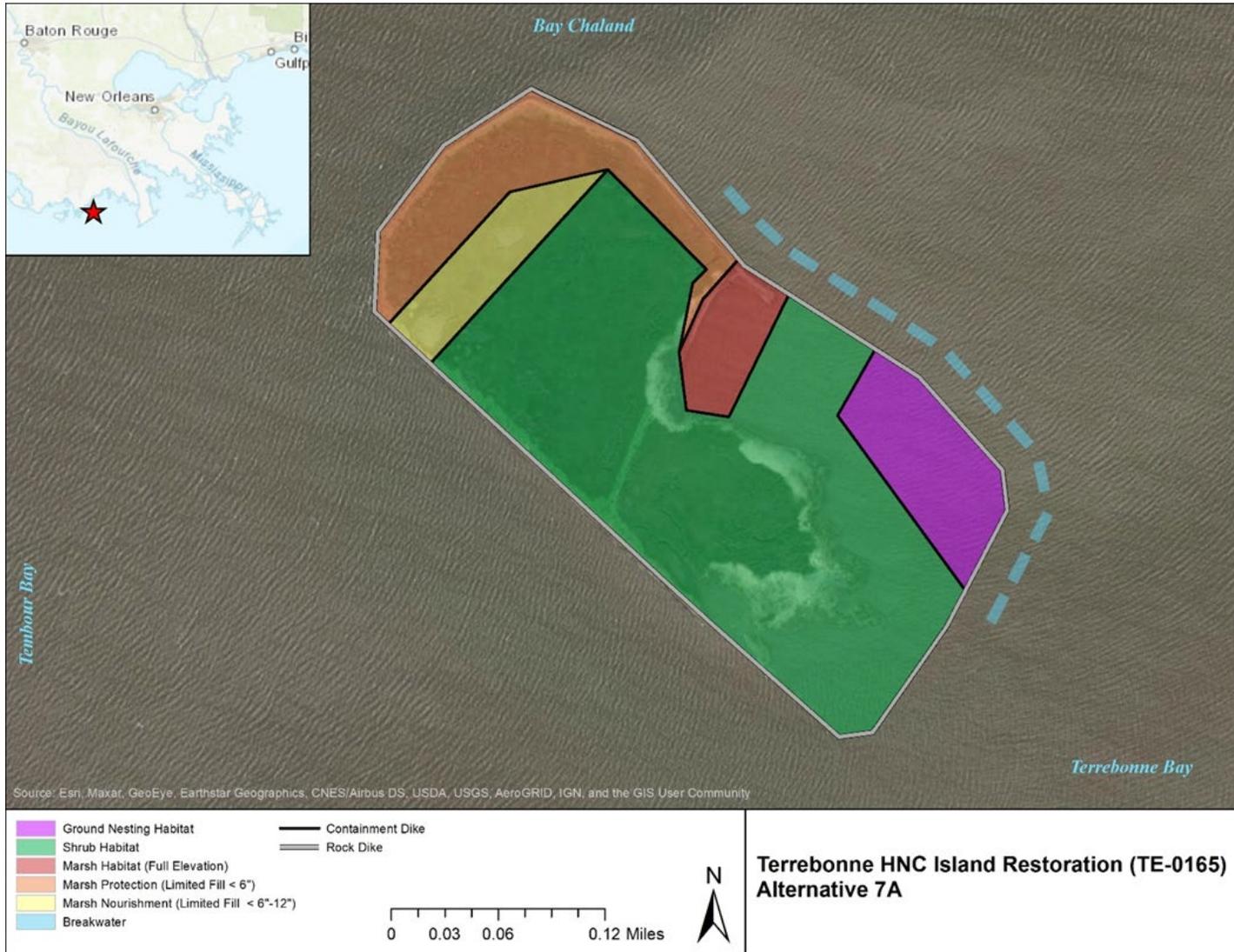


Figure 2. Map showing the borrow area/access route for the project Terrebonne Houma Navigation Canal (HNC) Island Restoration Project (TE-0165) in coastal Louisiana.

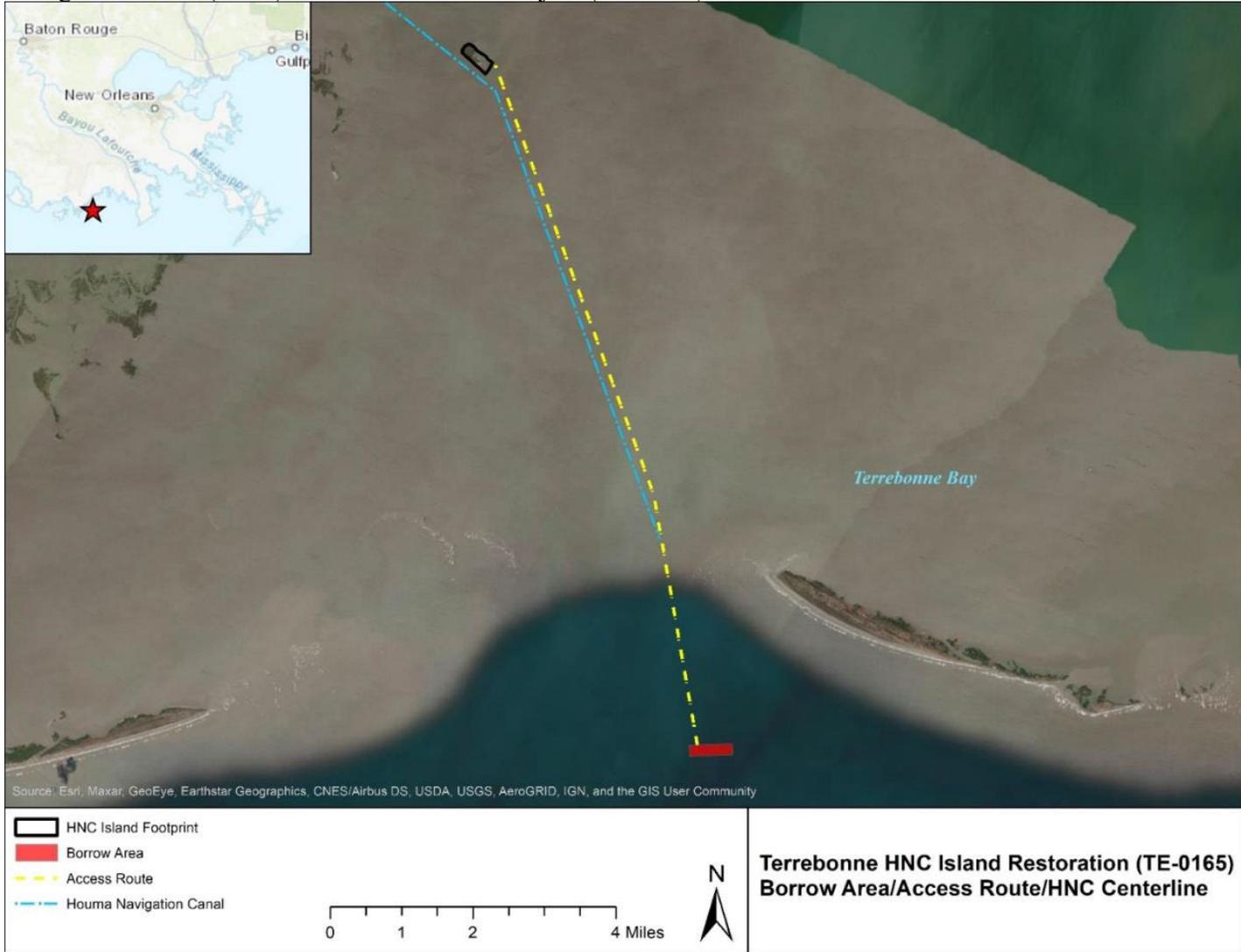


Table 1. Summary of in-water work and conservation measures to protect the West Indian manatee for one project included in LA TIG RP/EA #7.1. Project will not proceed with implementation until compliance with all relevant laws is achieved. *NLAA = May Affect, Not Likely to Adversely Affect; S = Standard Manatee Conditions for In-Water Work, dated 2011; PS = Protected Species Construction Conditions, dated 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>Terrebonne Houma Navigation Canal (HNC) Island Restoration Project (TE-0165)</p>	<p>The project is expected to result in approximately 3.9 acres of ground nesting habitat and approximately 27 acres of shrub nesting habitat. The project makes use of the island’s existing features by creating three different marsh elevations: marsh protection (about 5.9 acres), marsh nourishment (about 2.6 acres), and marsh creation (full marsh habitat) (about 2 acres) to total approximately 10.5 acres of marsh.</p> <p>Approximately 5,575 linear feet of rock dike would be refurbished and constructed around the perimeter of the island. The entirety of this rock dike would be constructed using 440-pound rock riprap. The dike is proposed to be built at two different elevations based on the following methodologies:</p> <ul style="list-style-type: none"> • Along the southeastern and western sides of the island in the submerged areas, as well as on the existing dike, the rock dike would be constructed to an elevation of +5.5 feet and would total approximately 3,700 linear feet. The inside slope would contain a geotextile separator fabric to prevent sediment from moving through the dike. • Adjacent to the marsh protection habitat, roughly 1,875 linear feet of rock dike would be refurbished to an elevation of approximately +2.5 feet. 	<p>NLAA</p>	<p>S, PS, M, V</p>	<p>December 6, 2022</p>

This proposed rock dike would add an average of 2 feet to the existing rock dike in this area, which would allow for greater tidal exchange and increased nourishment to the marsh protection area that contains existing mangroves and would also promote further tidal exchange near the proposed marsh habitat. It would not include geotextile separator fabric.

Breakwaters are being designed to provide additional protection to the island's planned tidal exchange areas. In these areas, the external rock dike would be reduced in height.

Cat Island Pass is the planned borrow area for the project; it is located between Timbalier Island and Isles Dernieres and is approximately 10 miles south of the HNC Island project area. Approximately 450,000 cubic yards of material would be required to be dredged from the borrow area to complete the habitat restoration.

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