

MEMORANDUM FOR THE RECORD

FROM: LOUISIANA RESTORATION AREA TRUSTEE IMPLEMENTATION GROUP
of the *Deepwater Horizon* Trustee Council

SUBJECT: Near-Term Marine Mammal Data Collection to Provide Information for Future Louisiana TIG
Restoration Planning

DATE: July 20, 2018

ISSUE: Environmental and restoration planning compliance considerations supporting the Louisiana TIG
decision to fund marine mammal near-term data collection, July 2018.

DISCUSSION

The Louisiana Trustee Implementation Group (LA TIG) has proposed funding for the Barataria Basin Marine Mammal Monitoring Near-Term Data Collection Statement of Work (SOW). These marine mammal near-term data collection efforts are designed to (1) support the understanding of baseline population conditions that will be used to evaluate the effects of implementing DWH NRDA and other restoration projects and (2) support understanding and restoration of bottlenose dolphins (*Tursiops truncatus*) through the synthesis of existing data regarding the physiological effects of low salinity and fresh water exposure. Products developed may inform analyses in the Mid Barataria Sediment Diversion (MBSD) Environmental Impact Statement (EIS) and future planning efforts. Data collected through two projects will provide (1) updated population demography and (2) the spectrum of physiological responses to environmental change (i.e., low salinity).

PROPOSED ACTIVITIES

Two tasks are proposed:

Field work for Task 1 would take place in Barataria Basin during late winter/spring timeframe (March-April, 2019) with data analysis and a final report due by March 2020. No field work is required for Task 2. Data synthesis would begin immediately upon funding with the expert panel's final report due no later than July 15, 2019.

1. **Task 1: Vessel-based photo-identification surveys for abundance, distribution, density, and survival in the Barataria Basin** – Collection of current demographic parameters through basin-wide surveys. This project will provide an updated abundance, distribution, and density of dolphins in Barataria Bay. The findings would provide information on how the population might be impacted by other stressors (e.g., oil spill). The findings would have applicability across coastal Louisiana where other proposed restoration projects may impact marine mammals. In addition to providing information on the current status and biology of the population, this project would also contribute to any longer-term marine mammal monitoring.

This task involves field surveys and photo-identification capture-mark-recapture (CMR) of Barataria Basin dolphins. Systematic and standardized vessel-based photo-identification studies which identify specific individuals and allow those individuals to be tracked over time, is a well-established approach for estimation of

survival rates in marine mammal populations. This work would be conducted by NMFS scientists and partners trained in marine mammal population survey techniques.

- Task 2: Physiological and biological responses and potential impacts to low salinity exposures** - including the biological and physiological responses to, and potential impacts of, low salinity and freshwater exposure on common bottlenose dolphins, using existing published data, synthesis of unpublished data, and expert elicitation. This project will identify previous work (published and unpublished) and samples that are available for review and analyses related to low salinity and freshwater exposure and associated physiological responses from both wild and managed dolphin populations. These historical data, samples and information can help inform an assessment of the current state of knowledge on low salinity and freshwater impacts and physiological responses.

This task involves bench top and office-based activities to compile and evaluate data, develop and implement models, conduct expert elicitation, and complete a report of findings from this effort. No field work or new sample collection is involved in this task.

FINDING

We have reviewed the activities proposed in the SOW for potential environmental consequences and existing environmental review, and consistency with OPA criteria and the PDARP's programmatic goal: *Provide for Monitoring, Adaptive Management, and Administrative Oversight to Support Restoration Implementation*, and consistency with the PDARP's goals for the marine mammal restoration type. Accordingly, the following determinations have been made.

Photo-identification capture-mark-recapture as proposed under Task 1 is an allowed biomonitoring and research activity when conducted under a current Marine Mammal Protection Act, Section 104 permit for scientific research on marine mammals /Endangered Species Act (MMPA/ESA) permit authorized by the NMFS. This specific study will be completed under the existing NOAA MMPA/ESA research/enhancement permit 18786-03, as evaluated under NEPA via the "Programmatic Environmental Impact Statement for the Marine Mammal Health and Stranding Response Program" (February, 2009) (PEIS). The Final Programmatic Environmental Impact Statement (PEIS) for the MMHSRP (NMFS 2009) evaluated the MMHSRP's entire program, including various enhancement and research activities permitted by NMFS and conducted by government employees, stranding agreement holders, and researchers including bottlenose dolphin photo-ID and other studies. The analyses and conclusions in that PEIS are still valid as applied to the MMHSRP activities covered under Permit No. 18786-03. Relevant sections of the PEIS were incorporated by reference in an Environmental Assessment (EA) pertaining to the majority of permitted activities previously analyzed (NMFS 2015b). The EA focused its analysis on three activities not analyzed in that PEIS: 1) hot branding, 2) unmanned aircraft system (UAS) use, and 3) vaccinations. Based on the analysis in the EA, NMFS determined that permit issuance will not have significant impacts on the quality of the human environment, and prepared a Finding of No Significant Impact documenting that decision signed June 29, 2015.

Activities under this permit have therefore been fully considered under NEPA per NOAA Administrative Order 216-6A and its Companion Manual. Summary of that analysis is included in the permit, recorded at MMPA/ESA Permit 18786, as amended. In particular, NOAA has reviewed and evaluated the criteria for determining whether a current proposed action is adequately addressed and covered within the scope of an existing NEPA analysis and document. (Companion Manual, 5.A

.a)-d)). Based on our review and evaluation, we have determined that the proposed activities for Task 1 are adequately addressed in the aforementioned PEIS. As such, no additional NEPA evaluation is necessary for this proposed activity.

Further, NMFS issued a Biological Opinion for the original permit No 18786 in which it was determined that permit issuance was not likely to jeopardize the continued existence of NMFS ESA-listed species or to result in the destruction or adverse modification of designated critical habitat (NMFS 2015a). A major amendment to Permit No. 18786 was issued on July 13, 2016, in which consultation was reinitiated. The updated Biological Opinion authorized take of several ESA-listed turtle and fish species incidental to dolphin capture activities in an incidental take statement, and concluded that the action was not likely to jeopardize the continued existence of currently ESA-listed species nor adversely modify designated critical habitat (NMFS 2016). An updated Biological Opinion was issued for Permit No. 18786-01 on July 3, 2017, to evaluate the effects to foreign species from live import, and to include a conference option on the GOMx Bryde's whale (NMFS 2017). This opinion also concluded that the MMHSRP's actions would not likely to jeopardize the continued existence of currently ESA-listed species nor adversely modify designated critical habitat.

Activities proposed under Task 2 are desktop-based actions involving the collection and synthesis of information from published data and previously collected samples, organization of a workshop of experts, and synthesis of findings resulting from that workshop. Such activities have no impact on the environment, and consistent with NEPA, are administrative in nature. Such activities are consistent with those evaluated under NOAA Categorical Exclusion E1, "Activities conducted in laboratories and facilities where research practices and safeguards prevent environmental impacts" (NOAA Companion Manual, 2016). Relevant activities include research, development, testing, and evaluation studies, including but not limited to analysis of previously collected samples or data development and use of mathematical models and computer simulations; synthesis of previously collected data or information; and database development or maintenance. We have reviewed extraordinary circumstances and determined none exist that would preclude use of that CE. No additional environmental review of this activity is necessary.

Consistent with evaluation supporting the MMPA/ESA Permit and activities under NOAA CE E.1, the LA TIG, including Federal members, have determined that the action will not adversely affect EFH, and therefore an EFH consultation is not required.

This proposal was evaluated to ensure OPA compliance. Both tasks are consistent with the PDARP programmatic goal "Provide for Monitoring, Adaptive Management, and Administrative Oversight to Support Restoration Implementation." They are consistent with the MAM Framework described in the PDARP, and will support informed decision-making for LA TIG restoration projects. The two proposed projects will allow for "informing and evaluating restoration outcomes across multiple projects," as described in the PDARP S. 5.5.15.3 ("Monitoring and Adaptive Management for the Restoration Plan"). In addition, the proposal was evaluated for and found to be consistent with the PDARP/PEIS goals for the marine mammal restoration type.

It is proposed to use MAM type funding for Task 1. This type of funding, as described in the Trustee Council SOP 10.5.1 ("MAM Funds"), is intended for activities including the following that are relevant to Task 1:

- Resolving critical information gaps/uncertainties for restoration planning; inform restoration decision-making.

- Supplementing Restoration Type monitoring activities, where needed.
- Evaluating regional restoration outcomes (beyond individual project footprints) within the TIG's Restoration Area.
- Performing monitoring to inform the design and implementation of future restoration projects, including better characterizing ecological function.

As described in the Scope of Work, proposed Deepwater Horizon restoration projects in Louisiana have the potential to alter salinities across entire hydrologic basis. The approach to and siting of dolphin restoration is dependent on an understanding of the physiological effects of fresh water exposure. Additionally, it is important to establish the abundance, distribution, and density of animals in to evaluate the effect of the DWH restoration projects on bottlenose dolphin stocks. The proposed Scope of Work will address these critical information gaps; will allow evaluation of progress towards meeting ecosystem goals; and will inform restoration decision making in Barataria Bay and throughout Louisiana.

It is proposed to use Restoration type funding for Task 2. The MAM SOP 10.5.2 ("Restoration Type Funding") states that activities that may be supported under Restoration Type funds include data collection in support of planning restoration projects, and collection of prioritized data to address Restoration Type MAM priorities. The proposed task will synthesize prioritized data for marine mammals, and may inform restoration planning, including consideration for the Mid-Barataria sediment diversion restoration planning and associated EIS. It will also make information available to inform future restoration planning.

The OPA compliance evaluation also confirmed that the proposals are technically sound; the CMR project is based on previously established protocols and the Robust Design model that has been applied in previous surveys of Barataria Bay, and the formal expert elicitation and review of published literature are well-established processes. The projects are cost effective; the budget has been developed by multiple subject-matter experts who are familiar with established protocols, and the methods leverage existing experience of agency employees. The projects are proposed specifically because they are expected to support the planning and evaluation of restoration projects.

FINDING

Environmental consequences that may occur as a result of these tasks as proposed in the Statement of Work have been considered. The NMFS Restoration Center reviewed the proposed tasks and determined that the tasks proposed are consistent with activities previously evaluated and currently permitted monitoring efforts. By implementation of Resolution LA-2018-017, the LA Trustees agree that all activities conducted during these tasks will meet all applicable regulatory compliance requirements and terms and conditions of all federal and state permits required. Consistent with terms in the Resolution, any incident of non-authorized activities being conducted will be reported to the LA TIG immediately upon discovery.

LITERATURE CITED

NMFS 2009. Marine Mammal Health and Stranding Response Program Final Programmatic Environmental Impact Statement. Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Silver Spring, Maryland.

NMFS 2015a. Biological Opinion for issuance of permit No. 18786 to the NOAA NMFS Marine Mammal Health and Stranding Response Program. Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Silver Spring, Maryland.

NMFS 2015b. Environmental assessment on issuing a scientific and enhancement permit to the Marine Mammal Health and Stranding Response Program to include hot branding, unmanned aircraft systems, and vaccinations. Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Silver Spring, Maryland.

NMFS 2016. Biological and Conference Opinion on 1) Issuance of permit No. 18786-01 to the Marine Mammal Health and Stranding Response Program pursuant to sections 109(h), 112(c), 104(c) and Title IV of the Marine Mammal Protection Act and section 10(a)(1)(A) of the Endangered Species Act, and 2) Implementation of the Marine Mammal Health and Stranding Response Program. Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Silver Spring, MD.

NMFS 2017. Biological and Conference Opinion on the Issuance of Permit No. 18786-01 to the Marine Mammal Health and Stranding Response Program and Implementation of the Marine Mammal Health and Stranding Response Program (2017 Reinitiation). Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Silver Spring, MD.

NOAA, 2016. NOAA Administrative Order 216-6A and its Companion Manual.