



# 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

January 11, 2022

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

From: Chief, Planning and Compliance Branch, Deepwater Horizon Gulf Restoration Office

Subject: Notification of Compliance with Marine Mammal Protection Act

## Overview

The Region Wide Trustee Implementation Group (RW TIG) evaluated eight projects to restore natural resources injured as a result of the *Deepwater Horizon (DWH)* oil spill that 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) determination for these eight projects is: May Affect, Not Likely to Adversely Affect for manatee. The Mississippi Ecological Services Field Office concurred with this determination on September 9, 2021. The Alabama Ecological Services Field Office concurred with this determination on September 30, 2021. The Texas Ecological Services Field Office concurred with this determination on October 18, 2021. The Florida Ecological Services Office concurred with this determination on November 18, 2021. The Louisiana Ecological Services Field Office concurred with this determination on January 11, 2022. 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) of 1972, as amended (16 U.S.C. 1461 et seq.).

## 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 that develop plans for, choose, and implement specific restoration actions under the Final PDARP/PEIS. The RW TIG includes trustees from each gulf state and all the respective federal trustees.

The RW TIG has evaluated these projects as potential restoration projects under the *Region Wide Trustee Implementation Group Final Restoration Plan and Environmental Assessment #1: Birds, Marine Mammals, Oysters, and Sea Turtles*, which was open for public comment from April 27, 2021 to May 6, 2021. The RW TIG partners will implement the projects.

#### Marine Mammal Protection Act Project Compliance Information

Eight projects 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 and conservation measures for each project.

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 projects 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 or other conservation measures specific to the project (Table 1). The Trustees will also implement NOAA's "Protected Species Construction Conditions" dated 2021 as described in Table 1.

#### Conclusion

DOI believes the procedures contained within the ESA consultation constitute 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 for manatee as a result of the implementation of these projects.

Additionally, 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 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 (9)

- Maps of project locations (Figures 1 – 8)
- Summary of Project Information and ESA Determinations (Table 1)

Figure 1. Map showing the B: Conservation and Enhancement of Nesting and Foraging Birds, Component 1: Chandeleur Islands, LA project area.

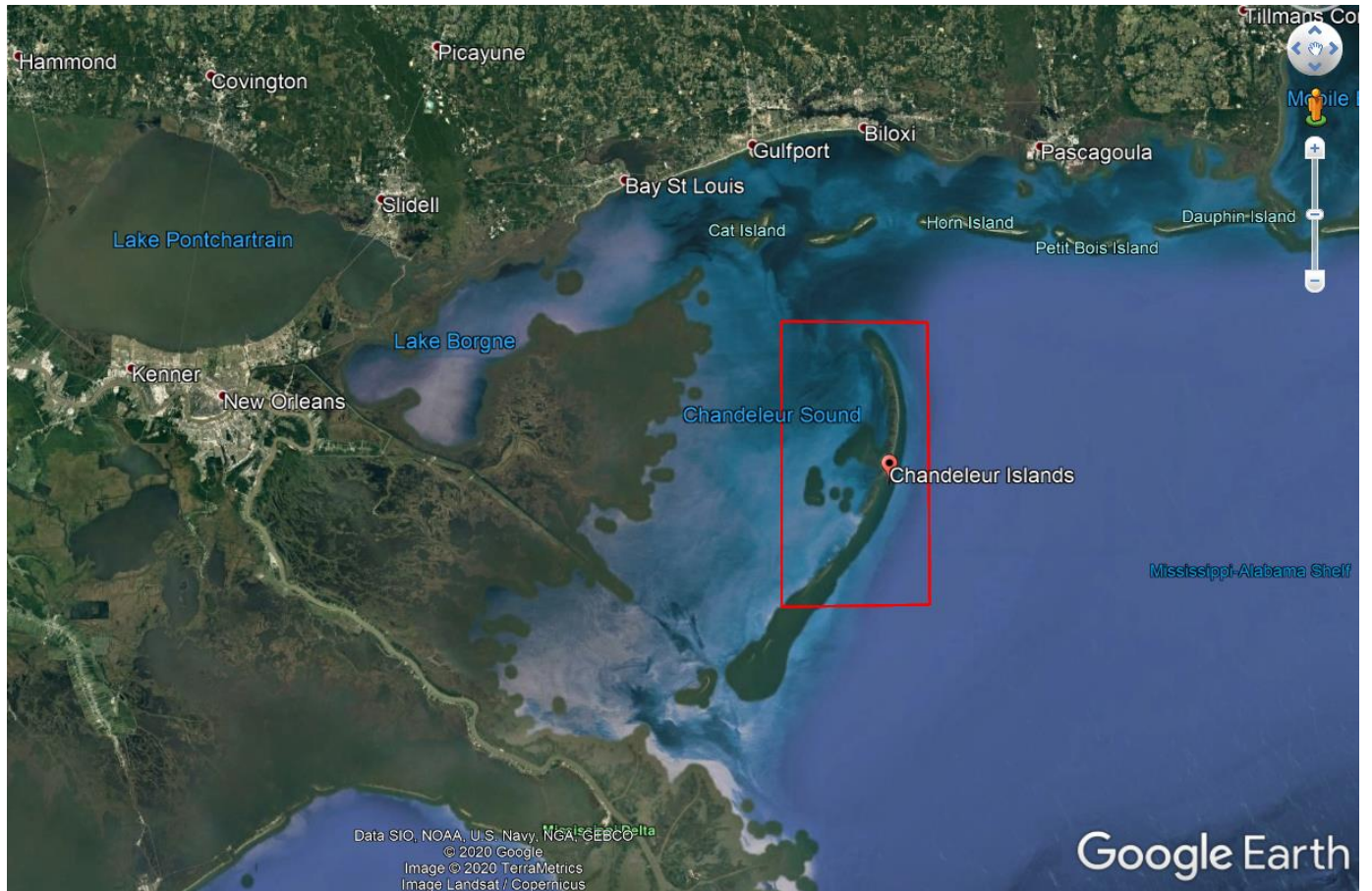


Figure 2. Map showing the B: Conservation and Enhancement of Nesting and Foraging Birds, Component 3: San Antonio Bay Island, TX project area.



Figure 3. Map showing the B: Conservation and Enhancement of Nesting and Foraging Birds, Component 4: Matagorda Bay Bird Island (Chester Island), TX project area.



Figure 4. Map showing the O: Improving Resilience for Oysters by Linking Brood Reefs and Sink Reefs, Component 1, Texas project area.

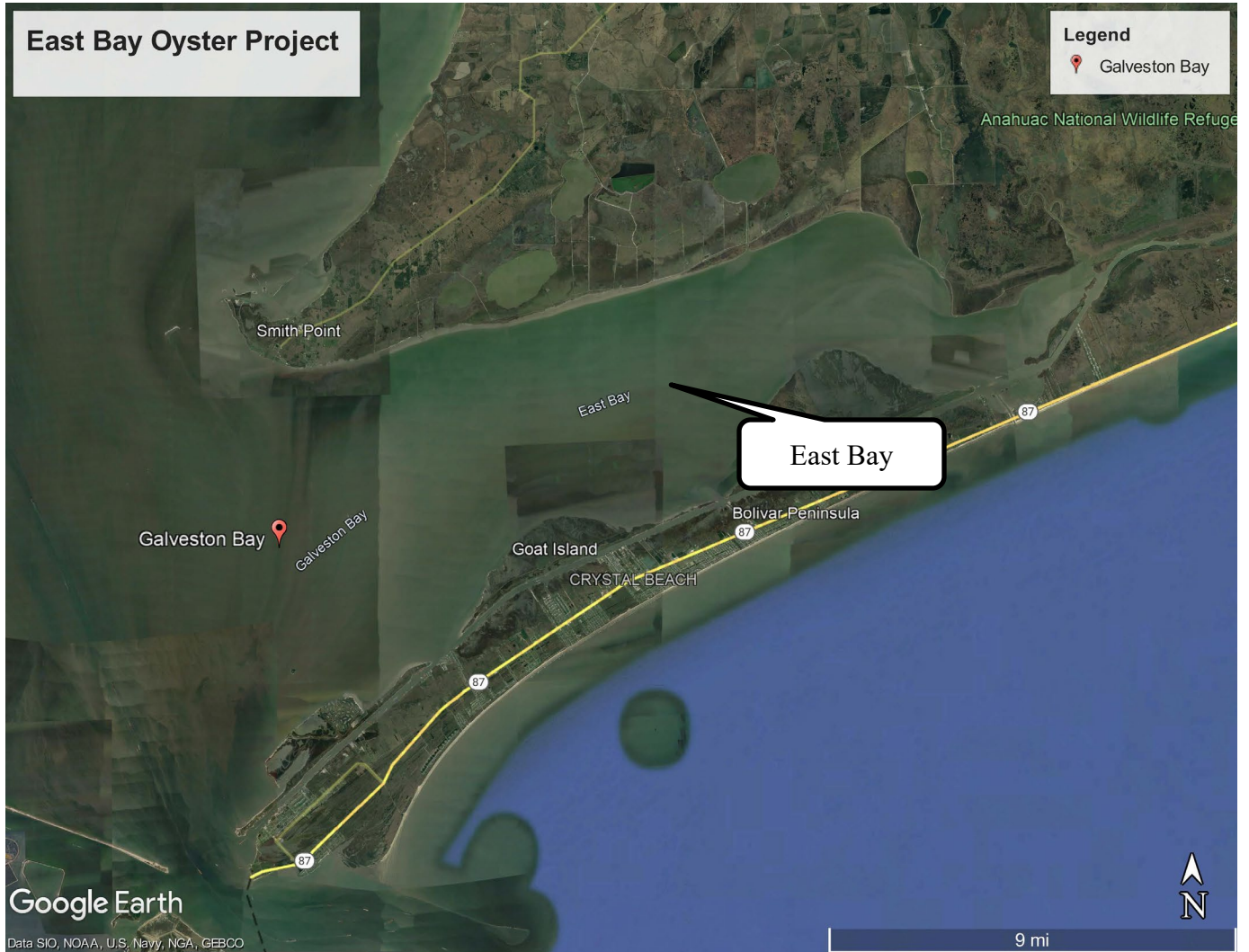


Figure 5. Map showing the O: Improving Resilience for Oysters by Linking Brood Reefs and Sink Reefs, Component 2, Louisiana project area.

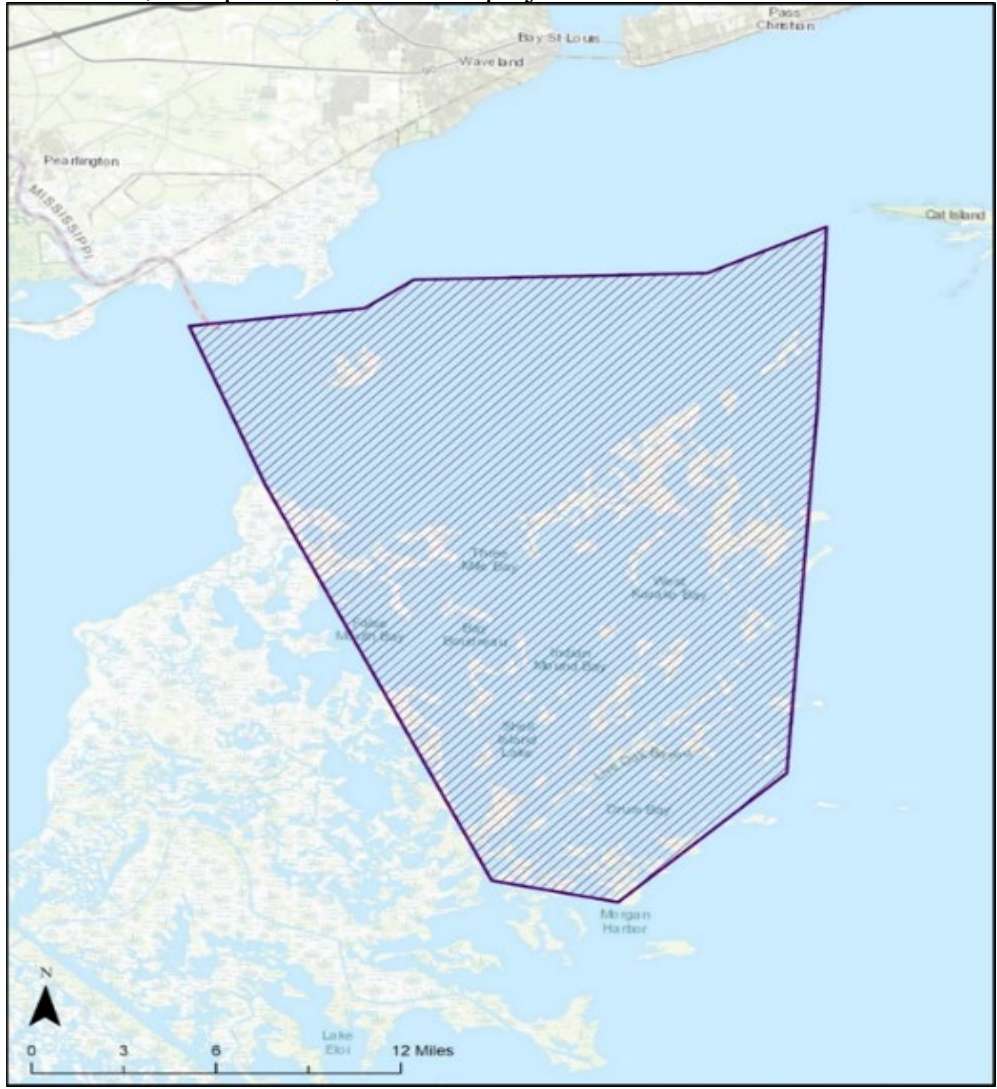




Figure 6: Map showing the O: Improving Resilience for Oysters by Linking Brood Reefs and Sink Reefs, Component 3, Mississippi project area.

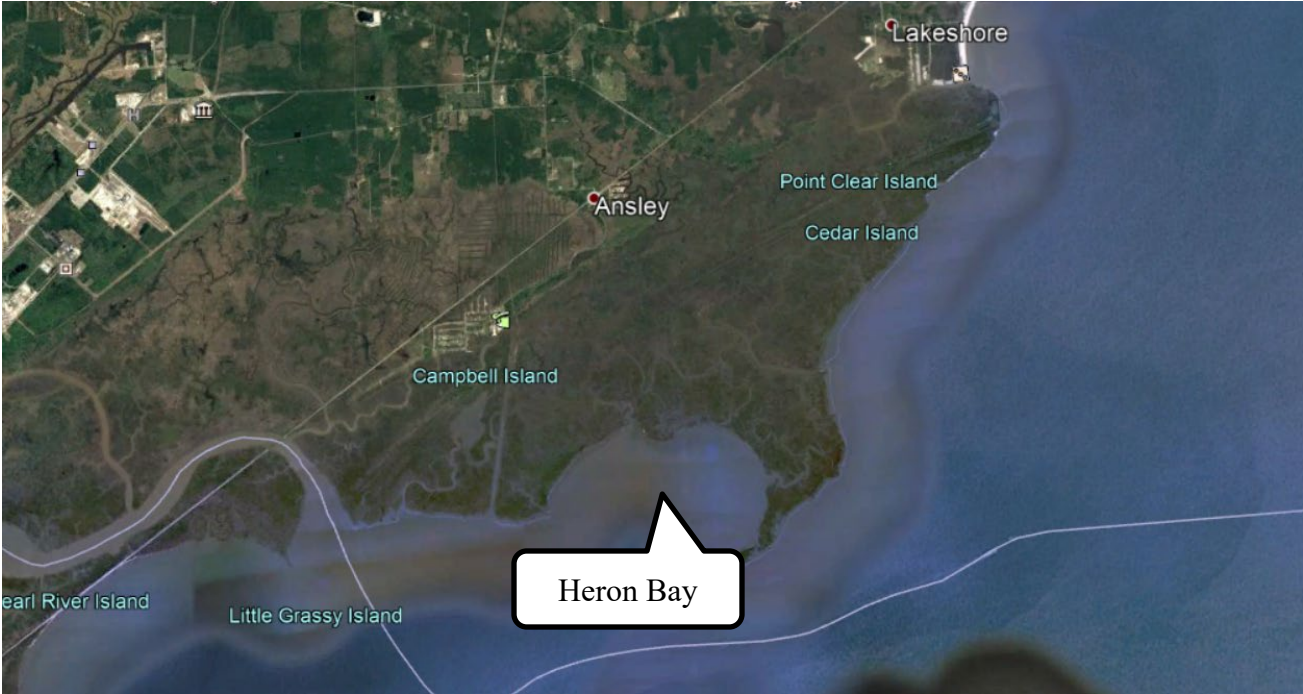


Figure 7. Map showing the O: Improving Resilience for Oysters by Linking Brood Reefs and Sink Reefs, Component 4, Alabama project area.

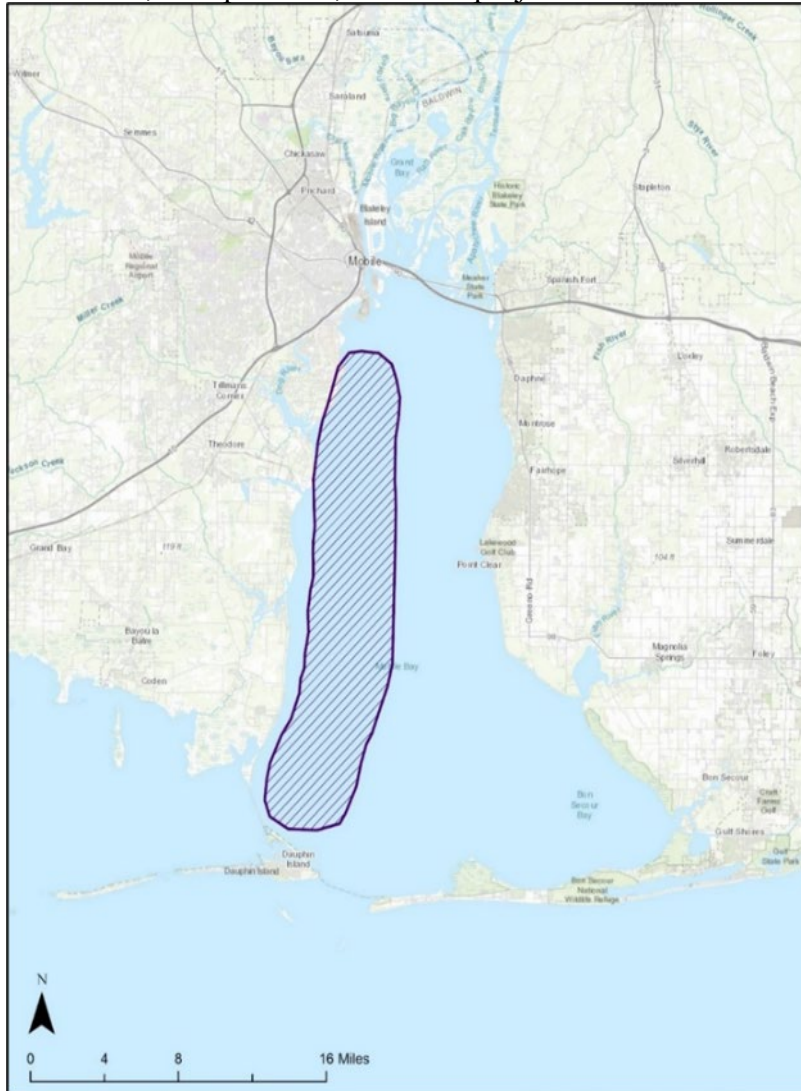


Figure 8: Map showing the O: Improving Resilience for Oysters by Linking Brood Reefs and Sink Reefs, Component 5, Florida project area.

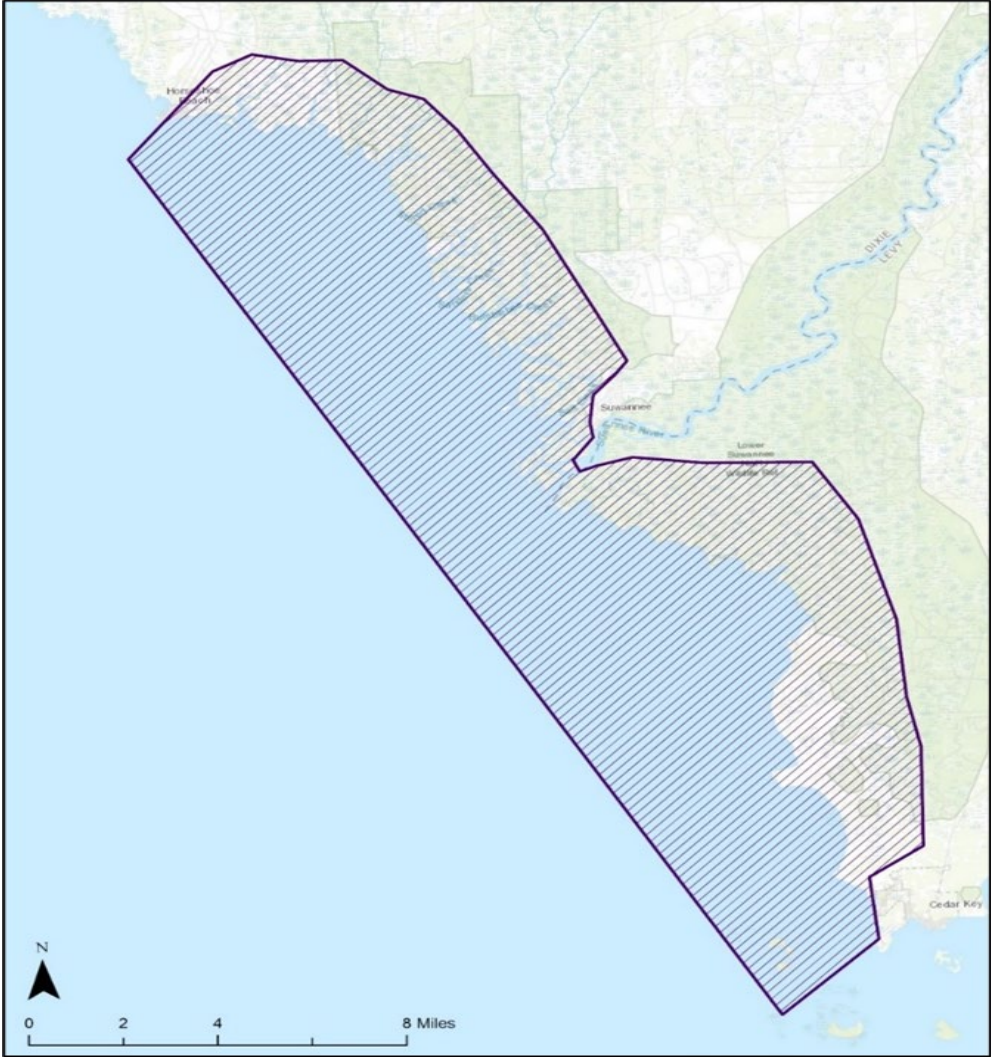


Table 1. Summary of in-water work and conservation measures to protect the West Indian manatee for eight projects included in RW TIG RP/EA #1. Projects will not proceed with implementation until compliance with all relevant laws is achieved.

*NLAA = May Affect, Not Likely to Adversely Affect; S = Standard Manatee Conditions for In-Water Work, dated 2011; PS = Protected Species Construction Conditions, dated 2021; 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>B: Conservation and Enhancement of Nesting and Foraging Birds, Component 1: Chandeleur Islands, LA</p>	<p>No construction would occur as part of this proposed project. This is an engineering and design project. Activities in the project area may include: Bathymetric and topographic surveys of access channels, dredging areas, and fill areas; Magnetometer surveys; Geotechnical data collection, including borings and/or cone penetrometer tests, possibly in both dredging and fill areas; Other geophysical surveys; Possible probing to confirm pipeline locations/depth of cover; Possible cultural resources surveys; Oyster surveys, assessments, and appraisals; and Nesting surveys (birds and sea turtles).</p>	<p>NLAA</p>	<p>S, PS, M, V</p>	<p>1/11/22</p>
<p>B: Conservation and Enhancement of Nesting and Foraging Birds, Component 3: San Antonio Bay Island, TX</p>	<p>This project proposes to complete engineering design and build a rookery island in San Antonio Bay, Texas near the town of Seadrift. The proposed island would measure approximately 920-feet long by 450-feet wide, and would have a total footprint of approximately 8.0 acres, including 4.0 acres of habitat above the shoreline and 1.0 acre of submerged reef habitat.</p>	<p>NLAA</p>	<p>S, PS, M, V</p>	<p>10/18/21</p>

	<p>The proposed island would include shoreline protection to protect it from wave erosion. The island would be constructed using a containment berm and rock revetment. The outside of the berms would be armored with revetment type shoreline protection constructed with a 2:1 slope and the crest of the final containment berms would be reduced so that the top of the rock is at +6.0 feet. A 5-foot wide toe would be constructed at the base of the revetment constructed to an elevation of approximately +2.5 feet above the bay bottom. An approximately 120-foot wide shallow water beach opening would be included at the northwestern side of the island. A reef would be constructed on the northwestern side of the island at the beach opening using graded riprap. Fill material for placement inside the berm will be provided from an upland source.</p>			
<p>B: Conservation and Enhancement of Nesting and Foraging Birds, Component 4: Matagorda Bay Bird Island (Chester Island), TX</p>	<p>This project proposes to slow the erosion of Chester Island by constructing sediment control and shoreline protection measures such as groins and breakwaters along the channel side of the island to protect the island from wave action and to contain future U.S. Army Corps of Engineers dredge material placement events. The potential installation of sediment control structures would occur along the high</p>	<p>NLAA</p>	<p>S, PS, M, V</p>	<p>10/18/21</p>

	energy shorelines of the island. No vegetative plantings are contemplated as part of this project.			
O: Improving Resilience for Oysters by Linking Brood Reefs and Sink Reefs, Component 1: Texas	This project will create a network of high-vertical relief brood reefs which will be linked to commercially harvestable reefs through larval transport, allowing for increased oyster population sustainability and oyster reef resilience. Brood reefs will be built with large, high-relief material that will still permit harvesting based on limited harvest technique(s). Restored reef sites will be constructed with the use of marine barges to transport cultch material and construction equipment such as excavators to place the material into reef configurations. Reefs will be constructed at a height to keep oysters out of hypoxic bottom waters and where possible, reefs will be constructed on suitable hard substrate that currently does not support oysters. The project is anticipated to last 6 years, including planning, implementation, and monitoring.	NLAA	S, PS, M, V	10/18/21
O: Improving Resilience for Oysters by Linking Brood Reefs and Sink Reefs, Component 2: Louisiana	This project will create a network of high-vertical relief brood reefs which will be linked to commercially harvestable reefs through larval transport, allowing for increased oyster population sustainability and oyster reef resilience. Brood reefs will be	NLAA	S, PS, M, V	1/11/22

	<p>built with large, high-relief material interspersed with smaller cultch material. Restored reef sites will be constructed with the use of marine barges to transport cultch material and construction equipment such as excavators to place the material into reef configurations. Reefs will be constructed to a height of between 6” – 1.5’ to keep oysters out of hypoxic bottom waters and where possible, reefs will be constructed on suitable hard substrate that currently do not support oysters. The project is anticipated to last 7 years, including planning, implementation, and monitoring.</p>			
<p>O: Improving Resilience for Oysters by Linking Brood Reefs and Sink Reefs, Component 3: Mississippi</p>	<p>The proposed project includes the creation of a high-vertical relief 30 – 50 acre brood reef located in close proximity to the existing subtidal reef that was created under the Natural Resources Damage Assessment Phase III Early Restoration: Hancock County Marsh Living Shoreline Project in Heron Bay. This project will provide opportunity for larval transport between the two reefs in Heron Bay as well as the commercially harvested oyster reefs located in the western Mississippi Sound and in Louisiana waters. If the 30 – 50 acre reef does not receive a natural spatset (larvae set on a hard substrate), hatchery spat or adult oysters may be</p>	<p>NLAA</p>	<p>S, PS, M, V</p>	<p>9/9/21</p>

	<p>transplanted to the reef as part of this project. The project is anticipated to last 7 years, including planning, implementation, and monitoring.</p>			
<p>O: Improving Resilience for Oysters by Linking Brood Reefs and Sink Reefs, Component 4: Alabama</p>	<p>This project will create a network of high-vertical relief brood reefs which will be linked to commercially harvestable reefs through larval transport, allowing for increased oyster population sustainability and oyster reef resilience. Brood reefs will be built with large, high-relief material that will still permit harvesting based on limited harvest technique(s). The reefs will be sited in such a way that larvae produced on the brood reefs will drift toward the commercially harvestable reefs. The project will construct up to 30 acres of new oyster reefs. Cultch materials may include natural oyster shell or an alternative substrate such as crushed limestone. It is anticipated that contractor(s) selected to construct the new reefs will transport cultch by push boat and barge to the site and deploy the material off the deck, placing it into reef configurations using skid steers, excavator shovels, or high-pressure water hoses. Reefs will be constructed at a height to keep oysters out of hypoxic bottom waters and where possible, reefs will be constructed on suitable hard substrate that currently do not</p>	<p>NLAA</p>	<p>S, PS, M, V</p>	<p>9/30/21</p>



	support oysters. Water depth in the action area generally ranges from approximately 7 – 12 feet.			
<p>O: Improving Resilience for Oysters by Linking Brood Reefs and Sink Reefs, Component 5: Florida</p>	<p>The project involves the construction of approximately 30 to 40 acres of oyster reef by planting oyster cultch material (defined below) by barge or small shallow draft vessel. Reef size acreage will be based on the final height of built reefs. Building taller reefs will decrease the acreage and building shorter reefs will increase the acreage. The average height will be 1 foot above the surrounding bottom. Cultch materials that are suitable for oyster reef restoration include 1) fossilized oyster shell, 2) recycled oyster shell, or 3) crushed limestone. In Florida, the material size will be like other restoration activities in the area where materials range in size, 3 inch minimum dimension up to 18-36 inch maximum dimension. The height of the restored reefs (brood and sink) will not exceed the average of 1 foot above the substrate. Cultch material shall be clean and reasonably free from soil, quarry fines, and containing no refuse. Brood reefs will be built with large, high-relief material; sink reefs will be constructed of cultch that will either permit or discourage harvesting based on the state’s management goals. Reefs will be constructed at a height to keep oysters out of</p>	<p>NLAA</p>	<p>S, PS, M, V</p>	<p>11/18/21</p>

	hypoxic bottom waters. Where possible, reefs will be constructed on suitable hard substrate that does not currently support oysters. This project will take 7 years to complete.			
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