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 July 22, 2021

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 Florida Trustee Implementation Group (FL TIG) evaluated eight projects to restore natural resources injured as a result of the *Deepwater Horizon* (*DWH*) oil spill. These projects 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 these projects may affect, but would not likely adversely affect the manatee. The Florida Ecological Services Office concurred with this determination on July 16, 2021. 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 FL TIG includes two Florida state trustee agencies and four federal trustee agencies: the Florida

Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission; the United States Department of Commerce, represented by the National Oceanic and Atmospheric Administration (NOAA); the United States Department of the Interior (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 FL TIG has evaluated these projects as potential restoration projects under the *Florida Trustee Implementation Group Final Restoration Plan and Environmental Assessment #2: Habitat Projects on Federally Managed Lands; Sea Turtles; Marine Mammals; Birds; and Provide and Enhance Recreational Opportunities,* which was open for public comment from February 19, 2021 to March 29, 2021. The FL TIG partners will implement the projects.

Marine Mammal Protection Act Project Compliance Information

These 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 "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 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 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 (9)

- Maps of project locations (Figures 1 – 8)
- Summary of Project Information and ESA Determinations (Table 9)

Figure 1. Map showing the Gomez Key Oyster Reef Expansion and Breakwaters for American Oystercatchers project area.

Figure 2. Map showing the Reducing Vessel-Strikes of Sea Turtles project area.

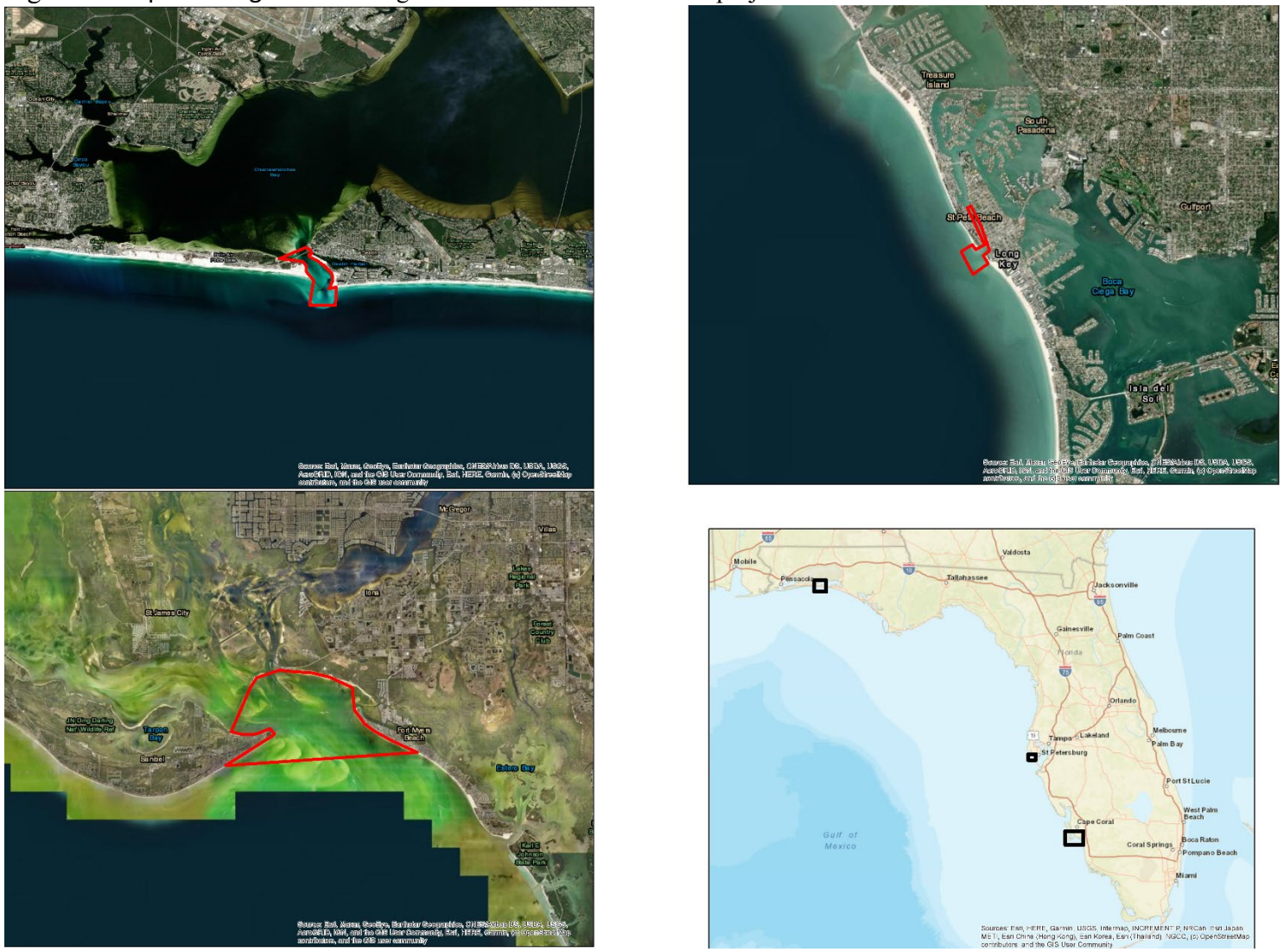

Figure 3. Map showing the Perdido Key Sediment Placement project area.

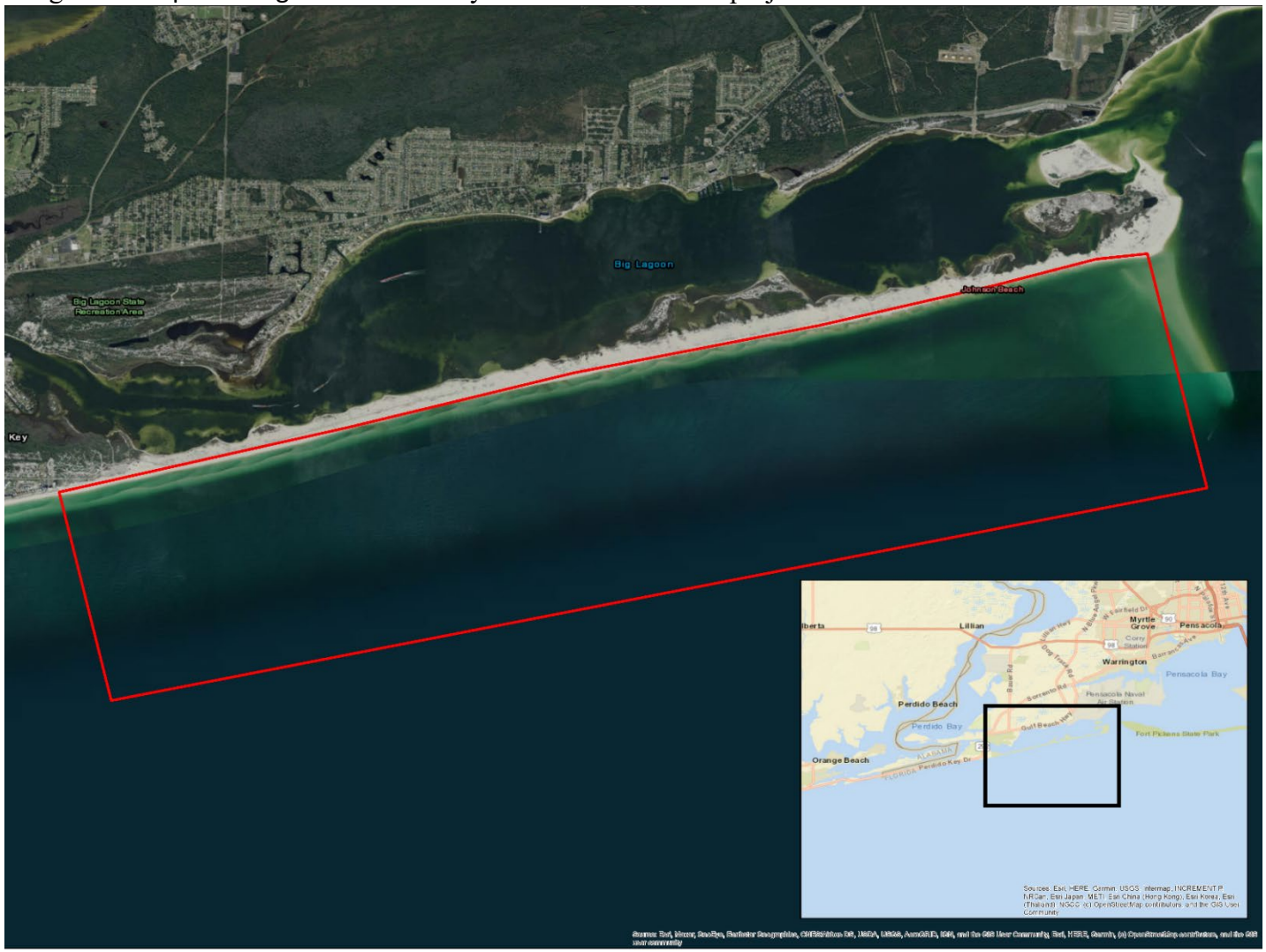

Figure 4. Map showing the Pensacola Maritime Park Public Fishing Marina project area.

Figure 5. Map showing Baars Park and Sanders Beach Kayak Fishing Trail Access Upgrades project area.

Figure 6. Map showing the Gulf Breeze Park Boating and Fishing Access Upgrades project area.

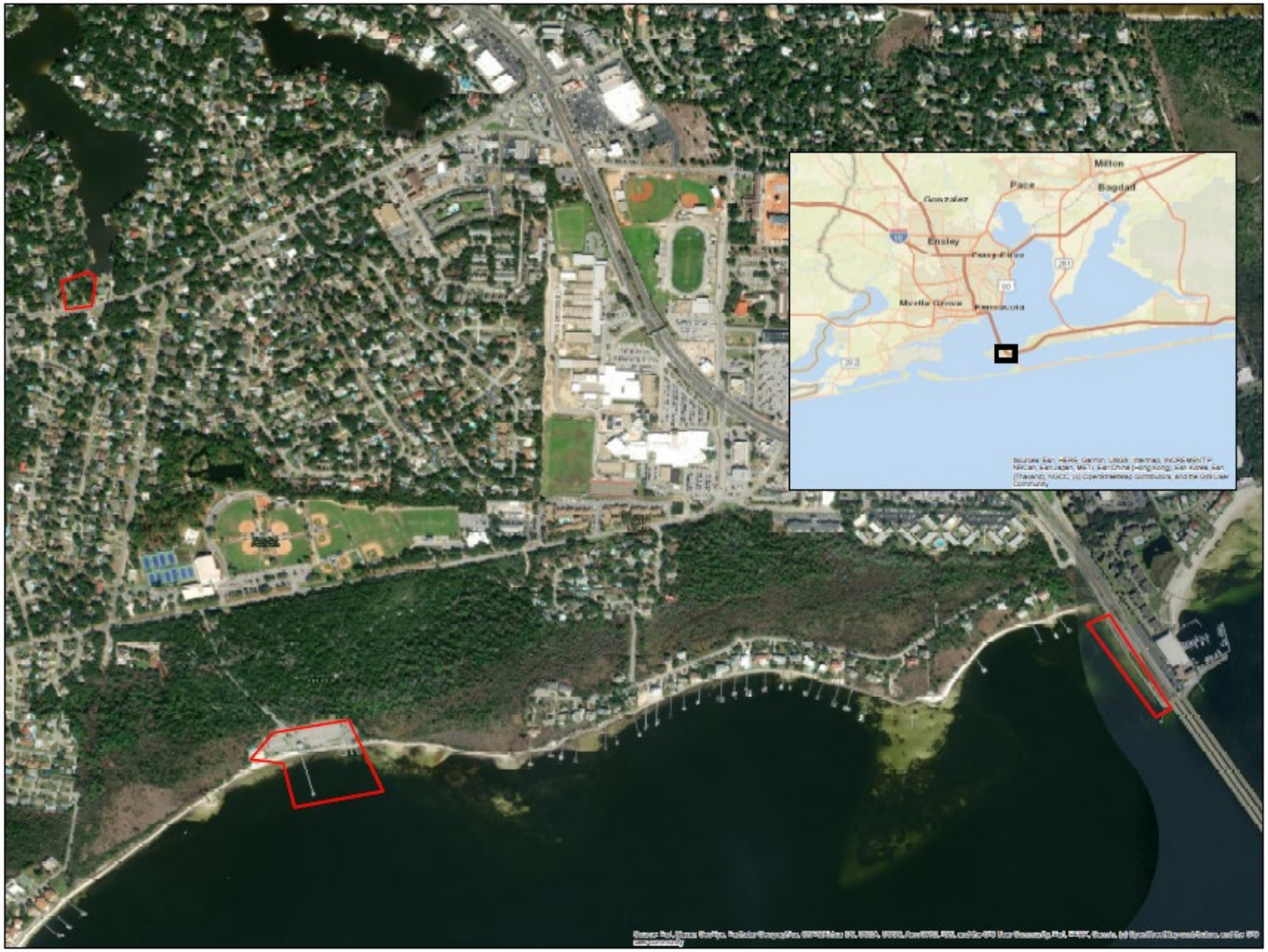

Figure 7. Map showing the Lincoln Park Boat Ramp and Dock Improvements project area.

Figure 8. Map showing the Florida Artificial Reef Creation and Restoration - Phase 2 project area.

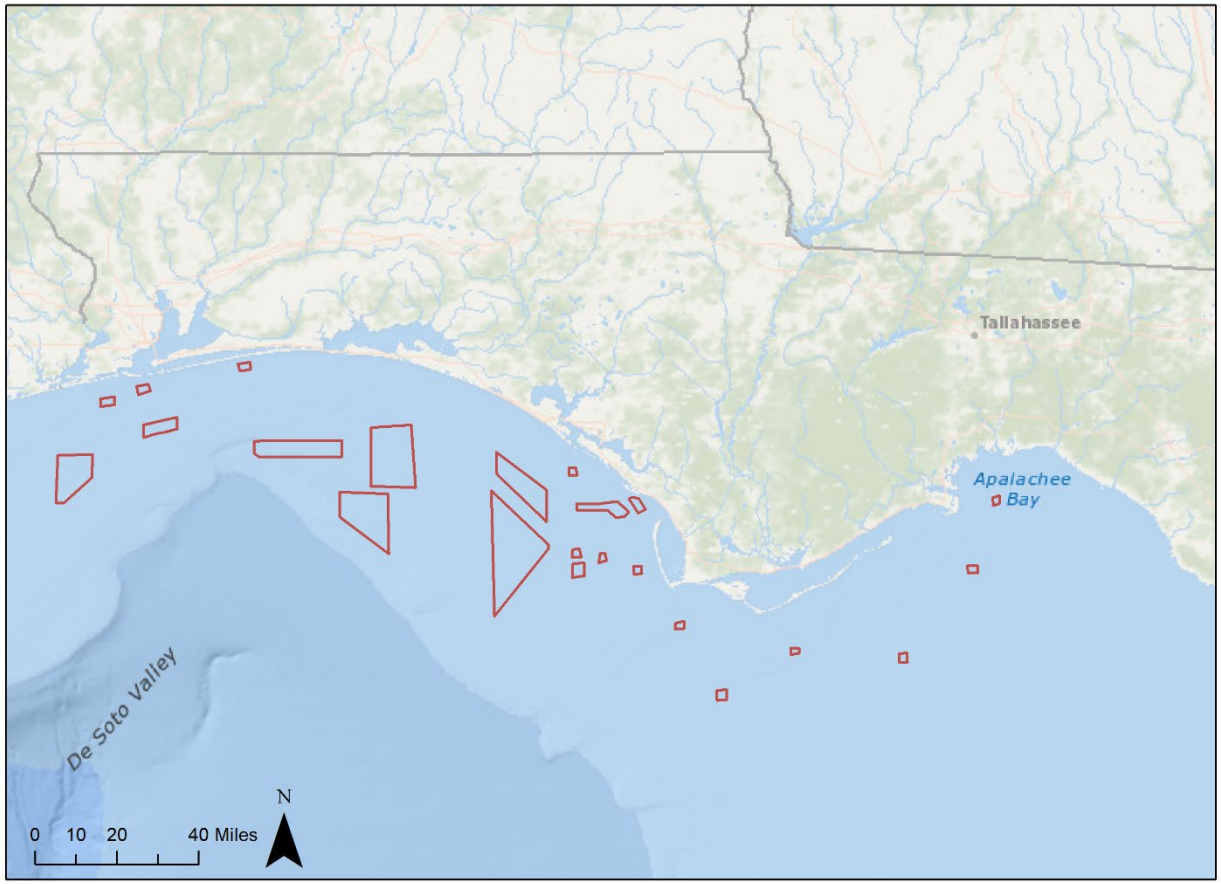

Table 1. Summary of in-water work and conservation measures to protect the West Indian manatee for three projects included in FL TIG RP/EA #5. Projects will not proceed with implementation until compliance with all relevant laws is achieved.
NLAA *= May Affect, Not Likely to Adversely Affect;* ***S*** *= 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
Gomez Key Oyster Reef Expansion and Breakwaters for American Oystercatchers	The goal of the project is to restore and enhance American oystercatcher nesting and foraging habitat at Gomez Key and to prevent further erosion and habitat loss. Specifically, project activities include: • Providing durable structure and surface area of approximately two to five acres, including the breakwater, for oyster reef expansion and recolonization in the intertidal zone and expand potential nesting habitat above the mean high-water line; and • Installing native rock (e.g., limestone and shell) breakwaters of approximately 820-1,805 linear feet along the wave-ward side of the island to dissipate wave energy and increase sediment deposition on the island. Project activities include planning, engineering, design, permitting, placement of cultch material, installation of breakwaters, and monitoring.	NLAA	S, SS, M, V	July 16, 2021

	Oyster reef expansion and breakwater installation would involve using barge and excavators to deposit limestone rip rap and Carolina Skiffs to deposit cultch material in the intertidal zone. The breakwater(s) would likely be a detached single or multiple configuration and be oriented to buffer the island from dominant wind/wave energy. Breakwaters would include gaps to allow for species movement and reduce the risk of entrapment. Where feasible, additional rock would be placed between the breakwater and the island to allow for intertidal oyster reef expansion. Approximately 844.7 to 1,689.4 cubic yards of limestone rip rap with cultch are expected to be deposited in the intertidal zone as part of this project.			
Reducing Vessel-Strikes of Sea Turtles	The project would work to reduce the mortality of sea turtles. This project would: • Compile data on sea turtles by collating existing and/or obtaining new information, as needed, on the habitat use, behavior, and temporal distribution of sea turtles at selected passes in the Gulf of Mexico where injury by motorized watercraft is high; • Quantify vessel use and activity at the same passes; • Compile data on vessel strikes by collating existing and/or obtaining new information, as needed, to determine the overlap between sea	NLAA	S, SS, M, V	July 16, 2021

	turtles and vessels at the selected passes and identify areas with low, medium and high risk of a vessel-strike; • Obtain information on factors that may influence the risk of a vessel-strike for sea turtles; • Conduct surveys of boaters to assess the acceptability and perception of boaters to identified strategies to reduce vessel-strikes; • Quantify the willingness and potential motivation of boaters to change their boating practices to reduce vessel-strikes of sea turtles; • Conduct a public awareness campaign at each pass to educate the public about the presence of sea turtles around each pass and the threat of a vessel-strike for those sea turtles and to suggest strategies for boaters that would reduce vessel-strikes of sea turtles and encourage responsible boating practices.			
Perdido Key Sediment Placement	This project would partially restore the natural sediment budget for the Perdido Key unit of Gulf Islands National Seashore through the placement of dredged material. The goal of the project is to: 1) improve habitat at Perdido Key that is home to a wide variety of wildlife, nesting sea turtles, a variety of shorebirds, and a wide variety of plants, and 2) increase the ability of Perdido Key to withstand the natural erosive effects of storms. Project activities would include planning and design (engineering, design, and permitting), placement of dredged material, and monitoring.	NLAA	S, SS, M, V	July 16, 2021

	Specifically, project activities would: • Re-introduce sand into the barrier island system through: A) "swash zone" placement (the area extending from the +three-foot-above mean high water to mean low water); or B) direct "on-beach" placement (the area extending from the + eight-foot-above mean high water [MHW] to mean low water [MLW]). The exact placement location would depend on the condition of the shoreline at the time of the next dredging cycle at Pensacola Pass.			
Pensacola Maritime Park Public Fishing Marina	This project would provide and enhance recreational fishing opportunities by constructing a public fishing marina in Pensacola Bay. Specific planned amenities include: • Construction of a designed and permitted 48-vessel slip public fishing marina; • Installation educational signage/kiosks, monofilament recycling bins, and sea-turtle-friendly lights at the new marina. Project activities include construction and monitoring. Implementation of this project could include use of heavy construction equipment, such as bulldozers, trucks, backhoes, tractor trailers, cranes, small excavators, forklifts, asphalt machine, roller, small power tools, generators, small trucks, and hand tools.	NLAA	S, SS, M, V	July 16, 2021

Baars Park and Sanders Beach Kayak Fishing Trail Access Upgrades	This project would provide and enhance recreational paddling opportunities by creating recreational amenities and water access points at two locations in Pensacola. Specific planned amenities include: • Creating recreational infrastructure at Baars Park: - Construct a small pier and dock with specialized kayak and accessible entry. Any lighting associated with the pier and dock would be implemented in accordance with applicable sea turtle lighting regulations; - Construct a small unpaved parking lot with approximately eight parking spaces; - Construct a picnic area/shelter; - Install monofilament recycling bins; - Install informational/educational kiosks; • Enhancing existing infrastructure at Sanders Beach Boat Launch: - Convert the existing powercraft launch to an accessible kayak launch (method to be determined); - Install floating accessible kayak launches to the two existing docks; - Reconfigure, and possibly expand, the existing parking lot; - Install monofilament recycling bins; - Install informational/educational kiosks. Project activities include engineering, design, permitting, construction, and monitoring.	NLAA	S, SS, M, V	July 16, 2021

	This project is in conceptual planning and most amenities have yet to be designed. The exact locations would be determined during design but would be sited based on existing site conditions to minimize impacts to habitat. Implementation of this project could include use of heavy construction equipment, such as bulldozers, trucks, backhoes, tractor trailers, cranes, small excavators, forklifts, asphalt machine, roller, small power tools, generators, small trucks, and hand tools. Both land- and water-based construction would occur. Vehicles and staging equipment would utilize previously existing roads, parking areas, and disturbed areas.			
Gulf Breeze Park Boating and Fishing Access Upgrades	The goal of the project is to increase recreational fishing opportunities by renovating three existing parks (Shoreline Park South, Woodlands Park, and Vista Park). The project includes construction of new amenities and enhancement of existing amenities to increase access and improve overall fishing experiences. Specifically, this project would: • Enhance Shoreline Park South (a popular destination for boat launching) by: - Demolishing the existing pier (which was damaged by recent storms) and construing an expanded fishing pier in the same location to increase foot traffic, and accommodate the mooring of fishing vessels; - Renovating the boat launches (specifically, making slope repairs above the waterline);	NLAA	S, SS, M, V	July 16, 2021

	- Constructing a new small vessel/fishing boat launch with floating dock, a fish cleaning station, and a refresh station for fisherman with ice, vending, and frozen bait machines; - Improving/enhancing parking, utilities, and security; - Installing additional monofilament recycling bins, if there is determined to be a need. • Enhance Woodlands Park by: - Demolishing the existing dock and pier; - Constructing a new floating pier/gangway (eight feet wide by 60 feet long) with attached floating dock (16 feet by 26 feet) and kayak launch; - Constructing a new American with Disabilities Act compliant restroom facility; - Installing monofilament recycling bins; - Expanding parking and a concrete walk to connect the improvements to the existing facilities. • Enhance Vista Park by: - Constructing a new small vessel/fishing boat launch; - Installing a floating dock (16 feet by 26 feet) attached to the shoreline; - Installing monofilament recycling bins; - Constructing a new concrete walk connecting to existing park. Project activities include engineering, design, construction, and monitoring.			
Lincoln Park Boat Ramp and Dock Improvements	This project would enhance recreational experiences at Lincoln Park by improving existing recreational infrastructure. The goal of	NLAA	S, SS, M, V	July 16, 2021

	the project is to enhance public fishing opportunities by improving water access sites. Specific upgrades include: • Demolish two existing single-lane boat ramps (~1,191 square feet) and construct a new re-designed two-lane boat ramp in the same location (~1500 square feet); • Incorporate sheetpile into the new boat ramp for increased resiliency and design life to reduce potential for scour at the ramp toe and siltation along the nearshore portion of the ramp; • Install approximately three concrete piles to support the waterward end of the slab (if determined to be required during design); • Demolish the existing central pier (~710 square feet) and construct two new flanking access docks (~1,072 square feet); • Repair and expand the existing unpaved parking lot (existing parking lot is a gravel lot and the project would expand it with an additional approximately 11 spaces that would be graveled as well); and • Install monofilament recycling bins. Equipment involved in includes front-end loaders, back hoes, skid steers, augers, pavement cutters, large jackhammers, dump trucks, concrete trucks, vehicle and material delivery trucks and trailers, light-duty work trucks, generators, port-a-johns, a construction trailer, and a variety of power tools. Staging areas would be located on existing pavement or			

	other heavily impacted areas to the greatest extent possible.			
Florida Artificial Reef Creation and Restoration - Phase 2	Building upon the inter-agency partnerships developed during the Early Restoration Florida Artificial Reef Creation and Restoration project (Phase 1), the project would implement the second phase of artificial reef development across Northwest Florida, creating new marine recreational fishing and diving opportunities. Specifically, the project would include: • Partnering and establishing grant agreements with local coastal governments for project implementation (planning, selection, design, permitting, construction, and as-built documentation) off Escambia, Santa Rosa, Okaloosa, Walton, and Bay counties. FWC will directly oversee these activities off Gulf, Franklin, and Wakulla counties. • Constructing artificial reefs with one or more of the following materials: 1) rock boulders, 2) prefabricated concrete, or 3) designed modules. Project activities include engineering, design, feasibility studies, permitting, construction, and monitoring. All in-water conservation measures for manatees would be followed.	NLAA	S, SS, M, V	July 16, 2021