



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

August 1, 2022

To: Manatee Recovery Coordinator, Florida Ecological Services Field Office

From: Assistant 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 two projects to restore natural resources injured as a result of the *Deepwater Horizon (DWH)* oil spill. These projects are evaluated as potential restoration projects under the *Draft Restoration Plan and Environmental Assessment #8: Wetlands, Coastal, and Nearshore*, which closed for public comment on April 18, 2022. 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 Louisiana Ecological Services Office concurred with this determination on July 7, 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 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; the United States Department of the Interior, 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.

Marine Mammal Protection Act Project Compliance Information

These two 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 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 (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 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 (2)

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

Figure 1. Map showing the Bayou Dularge Ridge and Marsh Restoration project area.

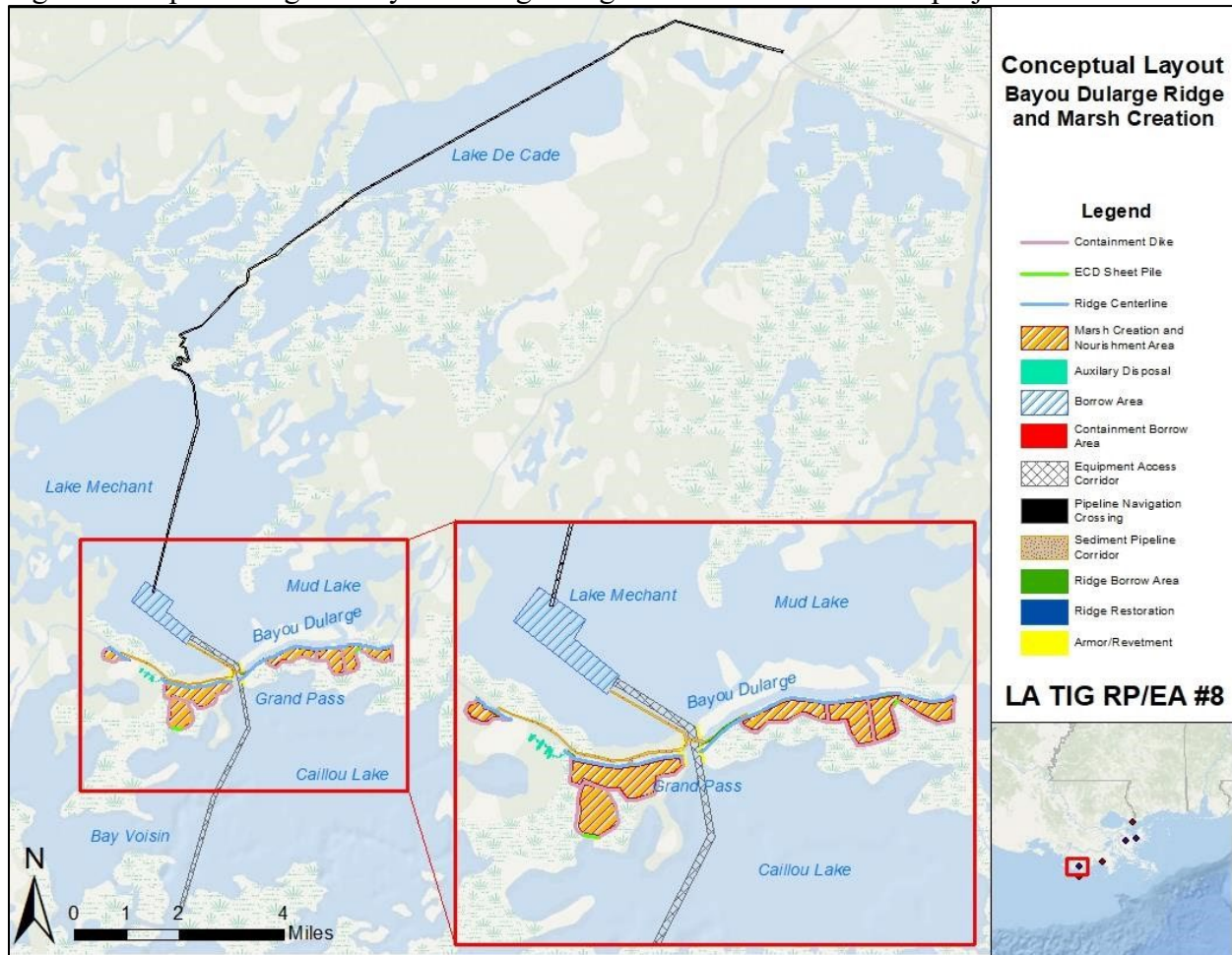


Figure 2. Map showing the Bayou La Loutre Ridge Restoration and Marsh Creation project area.

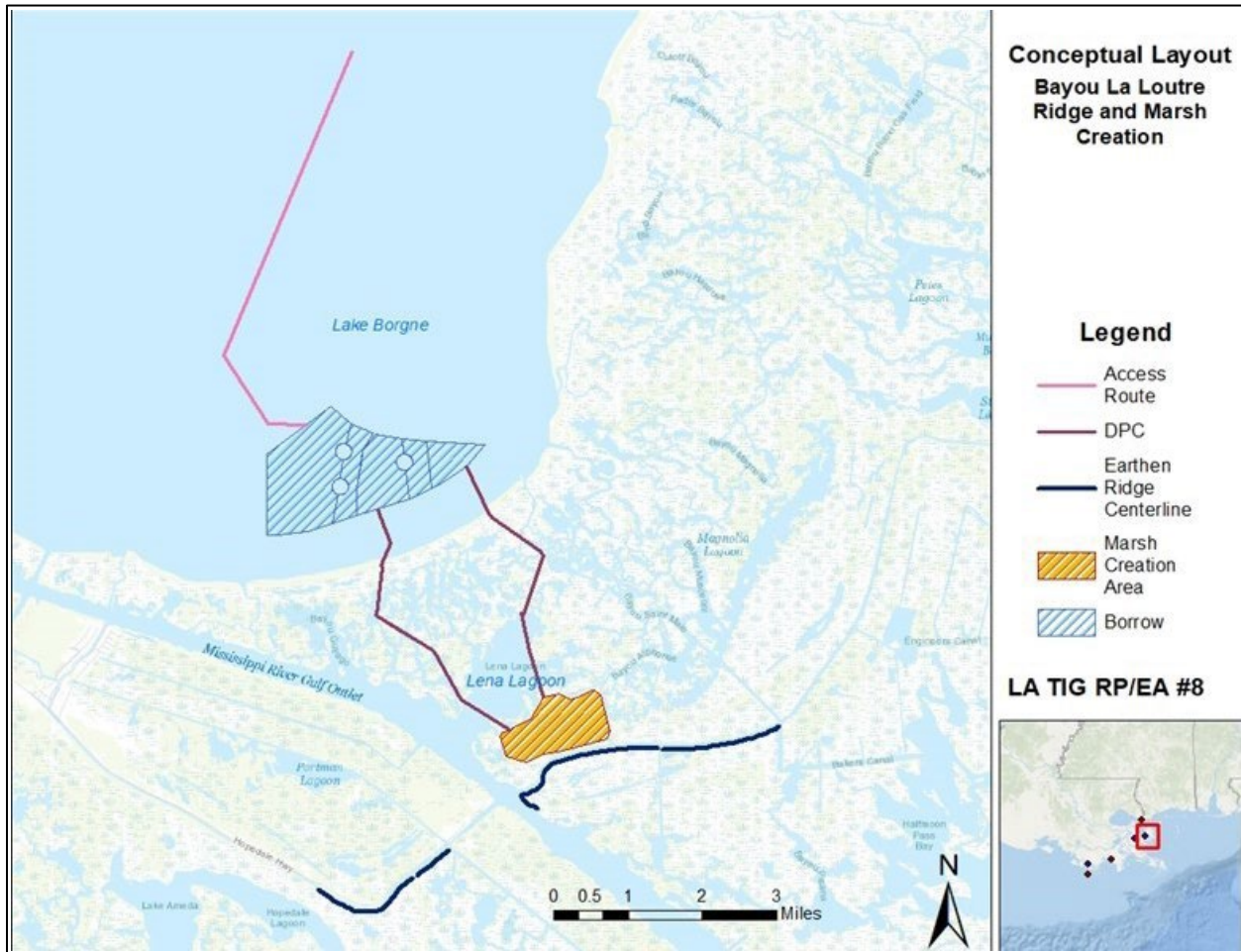


Table 1. Summary of in-water work and conservation measures to protect the West Indian manatee for two projects included in LA TIG RP/EA #8. Projects will not proceed with implementation until compliance with all relevant laws is achieved

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>Bayou Dularge Ridge and Marsh Restoration</p>	<p>Lake Mechant sediments would be hydraulically dredged and pumped via pipeline to create/nourish approximately 400 - 500 acres of marsh. The proposed design is to place the dredged material to a fill height conducive with marsh creation, approximately +1.3-ft. to +1.5-ft. in elevation, with a 20-year project lifespan. After dewatering and compaction of dredged sediments to the designed elevation, intertidal emergent wetlands would establish. The project includes perimeter containment dikes built with in-situ material to contain the hydraulically dredged sediment. Containment would not be constructed in areas where spoil banks currently exist or along the ridge alignment. This project would also create a ridge feature over a 27.6 acre footprint in three segments (19,860 – 17,200 linear feet). Of the 27.6 acre footprint, 21.3 acres are below mean high water (MHW). The remaining 6.3 acres are above MHW. The table below shows the ridge restoration calculations. The existing 21.3 acres of ridge below MHW will be converted to an approximate above tidal elevation of +5.0- +6.0 ft. The tidal range 0.94 MHW and -0.03 mean low water (MLW). The current proposal is to restore the ridge using material excavated from south of the existing ridge and from Bayou Dularge. Herbaceous plantings (e.g., Seashore paspalum) may occur</p>	<p>NLAA</p>	<p>S, PS, M, V</p>	<p>July 7, 2022</p>

	<p>immediately after construction. Appropriate bottomland hardwood species (seedlings and saplings) would be planted approximately two years after material deposition is complete.</p>			
<p>Bayou La Loutre Ridge Restoration and Marsh Creation</p>	<p>The proposed project would create approximately 5.46 miles (28,855 ft.) of ridge along Bayou La Loutre and 19.4 acres of Live Oak /Hackberry Maritime forest habitat. The ridge habitat would be built by bucket dredging Bayou La Loutre down to elevation -10-ft. NAVD88 with a side slope of 3:1 (H:V). Material would be placed on the existing remnant of the ridge at a ground elevation ranging from 0.8 to 1.8-ft., while a marsh buggy grades the ridge to the design cross section. The structure would have a +5-ft. NAVD88 elevation, 15-ft. crest width and 5:1 (H:V) side slopes. Additionally, the newly created ridge would include herbaceous and woody plantings with smooth cord plantings along the toe. The Lena Lagoon site would create and nourish approximately 421 acres of marsh using sediment hydraulically dredged from Lake Borgne down to bottom elevation - 10 to -20-ft. NAVD88. Lena Lagoon would have a semi-confined south and east flank and a fully confined north flank. Containment would be degraded as necessary to re-establish hydrologic connectivity with adjacent wetlands. The project would result in approximately 163 acres of created marsh, 258 acres of nourished marsh, and approximately 31.7 acres of forested ridge.</p>	<p>NLAA</p>	<p>S, PS, M, V</p>	<p>July 7, 2022</p>