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 April 29, 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 Texas Trustee Implementation Group (TX TIG) evaluated five 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 Texas Ecological Services Office concurred with this determination on April 28, 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 (TIG) that develop plans for, choose, and implement specific restoration actions under the Final PDARP/PEIS. The Texas TIG (TX TIG) includes the Texas Parks and Wildlife Department, the Texas General Land Office, the Texas Commission on Environmental Quality, the United States Department of the

Interior, the National Oceanic and Atmospheric Administration, the United States Department of Agriculture, and the United States Environmental Protection Agency.

The TX TIG has evaluated these projects as potential restoration projects under the *Texas Trustee Implementation Group Draft Final Restoration Plan and Environmental Assessment #2: Restoration Plan and Environmental Assessment #2: Wetland, Coastal and Nearshore Habitats, Living Coastal and Marine Resources, and Water Quality,* which closed for public comment on March 25, 2022. The TX TIG partners will implement the projects.

Marine Mammal Protection Act Project Compliance Information

These five 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 (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 (5)

- Maps of project locations (Figures 1 – 5)
- Summary of Project Information and ESA Determinations (Table 1)

Figure 1. Map showing the Bird Island Cove Habitat Restoration Phase II project area.

Figure 2. Map showing the Jones Bay Oystercatcher Habitat Restoration project area.

Figure 3. Map showing the Lancha Sea Turtle Mitigation Plan project area.

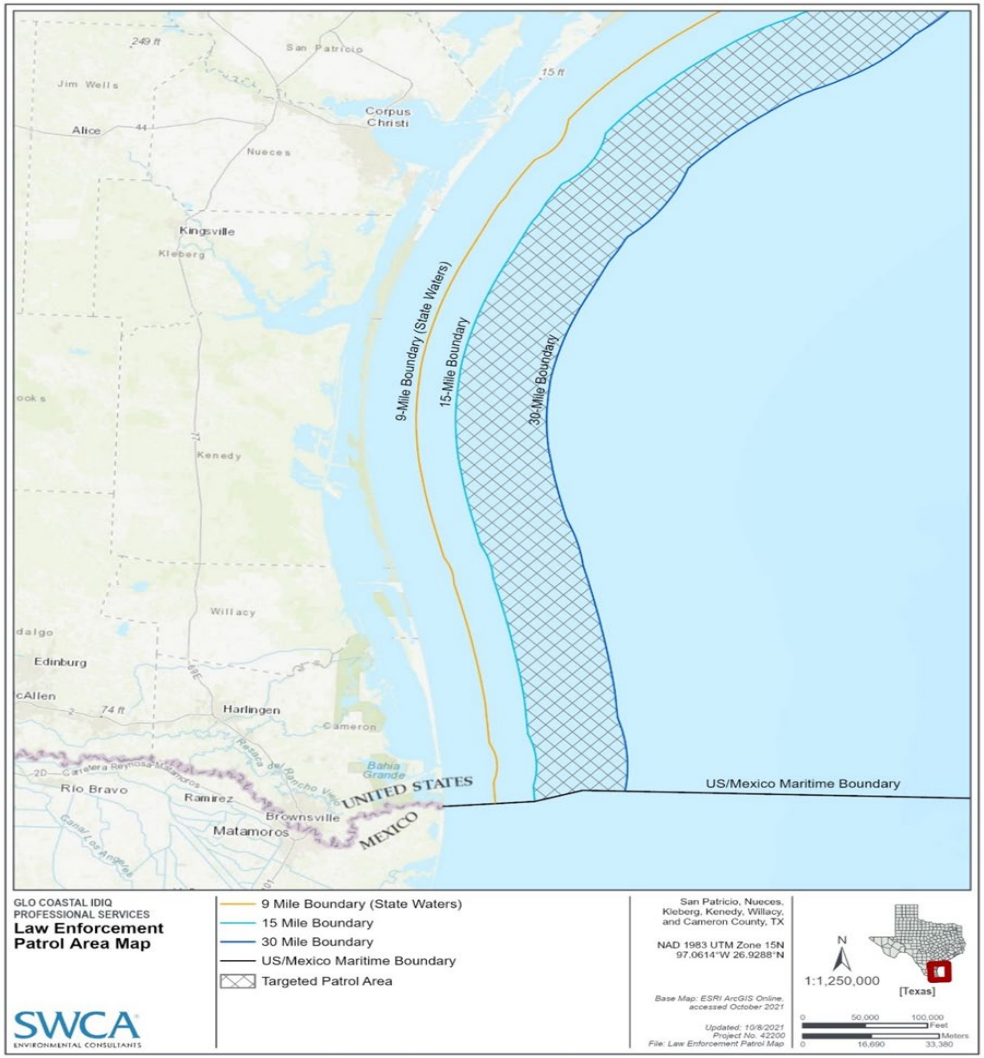

Figure 4. Map showing the Landscape Scale Oyster Restoration in Galveston Bay, TX project area.

Figure 5. Map showing the Laguna Vista Rookery Island Habitat Protection project area.

Table 1. Summary of in-water work and conservation measures to protect the West Indian manatee for five projects included in TX TIG RP/EA #2. 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
Bird Island Cove Habitat Restoration Phase II	The proposed project would construct approximately 8,820 linear feet (LF) of riprap concrete or limestone breakwaters adjacent to the shoreline of Bird Island Cove, Ostermayer Bayou, and Shell Island Point; and conduct monitoring over the course of 5 years. The proposed project would be constructed on state-owned submerged lands and would construct approximately 8,820 LF of riprap breakwaters in eight segments to protect and enhance existing estuarine marsh habitats. Each segment would range from approximately 800 to 3,900 linear feet in length. The breakwaters would be constructed to an elevation of approximately 3.5 feet NAVD 88 with a backhoe located on a barge. The breakwaters would be constructed of either limestone or clean concrete. To facilitate site access, approximately 13,500 LF of flotation channels may be constructed with a hydraulic dredge. If flotation channels are constructed, then the dredged material (up to 88,000 cubic yards [CY]) would be used to	NLAA	S, PS, M, V	April 28, 2022

	restore approximately 12 additional acres of estuarine marsh complex (intertidal emergent marsh interspersed with shallow open water and vegetated and non-vegetated sand flat). The dredged material would be pumped to an elevation between 2.1 to 2.5 NAVD 88 to create up to 15 marsh mounds within the 12-acre area. The number of marsh mounds constructed will depend on the amount of beneficial use of dredged material dredged (if applicable). The minimum crest diameter for each marsh mound would be 20 feet and would be constructed at +2.3 feet NAVD. The diameter of each marsh mound would be approximately 150 feet (+/- 10 feet) for portions above +0.4 NADV (elevation). The slope would be 30 feet (minimum) to 50 feet (maximum)/1. Portions of the dredge material would be placed above intertidal elevation and would be suitable elevation for restoring salt flat marsh/sand flat habitat in addition to intertidal *Spartina alterniflora* marsh.			
Jones Bay Oystercatcher Habitat Restoration	The proposed project would restore up to 5 remnant nesting islands and 6 intertidal reef sites in Jones Bay in Galveston County, Texas. Nesting island restoration would be achieved by placing approved cultch material on existing islands to increase their elevation. The combined area footprint is approximately one acre in size. Restoration would raise the current islands to an elevation less susceptible to extreme overwash, wave energy, and erosional force, and restore productive nesting habitat.	NLAA	S, PS, M, V	April 28, 2022

	The elevation of existing small islands would be enhanced to elevations that exceed mean high water (MHW) using graded limestone to raise the elevation to approximately to +4.5 feet NAVD88. A rock breakwater may be installed at one island site to protect the nesting island from vessels wakes associated with the Gulf Intracoastal Waterway. Intertidal reef restoration would place cultch-acceptable material near each restored nesting island to provide foraging habitat for nesting oystercatchers and their young as well as other bird species. An area of approximately 1.5 acres total for all intertidal reef sites would be constructed. For the intertidal reef component of the project, geotextile fabric may be placed on the substrate to better support cultch material and reduce settlement. The reef would be constructed to an elevation of approximately +0.20 feet NAVD88.			
Lancha Sea Turtle Mitigation Plan	The proposed project would include the purchase of a long-range boat vessel and conducting enhanced enforcement and/or patrols by the Texas Parks and Wildlife Department targeted at apprehending illegal vessels and remove illegal fishing gear from the water (e.g., gill nets, longline gear). In addition, the project may result in the procurement of dock space for vessel(s) used for this project and the installation of a floating dock for those vessel(s). The floating dock(s) could be anchored in place either in water on the sea floor or on land, via small poles hammered into	NLAA	S, PS, M, V	April 28, 2022

	the ground with sledgehammers. No large pilings would be added, as the existing ones may also be used to anchor the floating dock. Implementation of these activities may result in releasing live marine resources, counting dead marine resources, and/or transporting carcasses for necropsy or disposal. In the case of sea turtle discovery, specimens (alive or dead) would be turned over to the Texas Sea Turtle Salvage and Stranding Network (STSSN) for evaluation and necropsy or a sea turtle rehabilitation facility. Stranding reports would be completed for sea turtles that are encountered during patrols.			
Landscape Scale Oyster Restoration in Galveston Bay, TX	The proposed project would involve construction of a network of intertidal and subtidal reef complexes totaling approximately 50acres within unidentified locations within Trinity Bay and Upper Galveston Bay. The specific sites for oyster reef restoration would be determined as part of the site suitability analysis. This would be accomplished through the creation of a network of subtidal and nearshore reefs linked by larval transport. The network of reef complexes would include subtidal, high vertical relief reefs, and lower elevation reefs in both intertidal and subtidal zones. Reefs would be positioned so that the predominant currents would transport larvae between reef complexes. Any unfishable high vertical relief subtidal reefs would be located in areas so degraded that they would not be expected to ever recover	NLAA	S, PS, M, V	April 28, 2022

	naturally. The number and dimensions of the reef mounds/ridges have not yet been determined but would be dependent on the selected sites' geophysical characteristics and hydrological characteristics. The reefs constructed in the subtidal zone would use cultch material that is larger than 4-inch median-sized. The cultch material in the intertidal zones would use smaller diameter cultch, and reefs would be constructed with enough vertical relief to increase resiliency and longevity by protecting them from sedimentation and erosion from storm surges. Construction activities would include the transportation of the cultch material via barges to the site locations. Mounds would then be placed using an excavator from a deck barge to place the cultch material on the selected locations. Construction is not anticipated to involve dredging activities for site access. Following placement, any debris placed beyond the boundary of the reef would be removed by hand or excavator. Construction activities would be confined to daylight hours and would be scheduled to avoid bird nesting season. Post-restoration monitoring will be conducted to evaluate the success of the project that would include bathymetric side scan sonar surveys and biannual sampling of oyster reef densities at each site. Monitoring would be conducted for 5 years post-restoration.			
Laguna Vista Rookery Island Habitat Protection	The proposed project would construct approximately 2,250 linear feet (LF) of living	NLAA	S, PS, M, V	April 28, 2022

	shoreline and restore the shoreline along the perimeter of the 11-acre Spoil Island. The proposed project would enhance portions of the island by adding sediment and protect the island from erosion by constructing a breakwater along the most vulnerable portion of the island's shoreline. This proposed project would consist of the following construction activities: 1) construct breakwater and revetment features, 2) regrade and plant the eroded shoreline, 3) elevate portions of the island, 4) removal of derelict pipes located on the island, and 5) monitoring. Channel dredging is required to access the proposed project site via barge. A barge-mounted excavator would mechanically dredge a flotation channel of a width of 50 feet, a depth that provides no more than 4 feet of water depth, and length of approximately 1,800 LF. The channel would begin at the abandoned navigation channel adjacent to the east side of the island and continue to the island site through the open waters. Dredged sediments would be temporarily placed beside the access channel in areas of bare bay bottom. Where seagrasses are present excavated sediments will be placed temporarily on barges. Excavated sediments will be used to enhance the island or returned to the access channel. Suitable dredged material will be used as upland site fill of low-lying, unvegetated areas within approximately 1.5 acres of the spoil island's interior, above the mean high water (MHW) elevation. Construction of the breakwater would consist of			

	placing riprap material within shallow open water offshore parallel to the shoreline on portions of the islands to provide protection from wave erosion. Construction of the revetment would consist of placing riprap material along approximately 550 LF of the southern shoreline. Eroded shoreline areas would be regraded to pre-erosion conditions using in-situ sediments. Restoration target elevations would be above the MHW elevation. Native vegetation will be planted to stabilize the regraded shoreline. Approximately 250 CY of shoreline sediments would be regraded to an elevation below the MHW elevation. Two derelict pipe culverts located along the shoreline in the southwestern portion of the island would be removed. Pipe removal would occur outside the bird nesting season and would be accomplished with a shallow draft barge and excavator.			