



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 the following project to restore natural resources injured as a result of the *Deepwater Horizon (DWH)* oil spill: Nekton References and Targets: Assessing the Abundance and Density of Fish and Invertebrates Associated with Louisiana's Marsh Habitat. This project 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 this project may affect, but would not likely adversely affect the manatee. The Louisiana Ecological Services Office concurred with this determination on July 25, 2022. A brief summary of the project 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

This project includes 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 the 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 project 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 that this project may affect, but would not likely adversely affect the manatee. A brief summary of the project 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 this project.

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 the project area. NMFS may require additional avoidance measures to protect dolphins or other marine mammals at the project site. 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 in the project area. If modifications are made to the project 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 (1)

- Map of project location (Figure 1)
- Summary of Project Information and ESA Determination (Table 1)

Figure 1. Map showing the Nekton References and Targets: Assessing the Abundance and Density of Fish and Invertebrates Associated with Louisiana's Marsh Habitat project area.

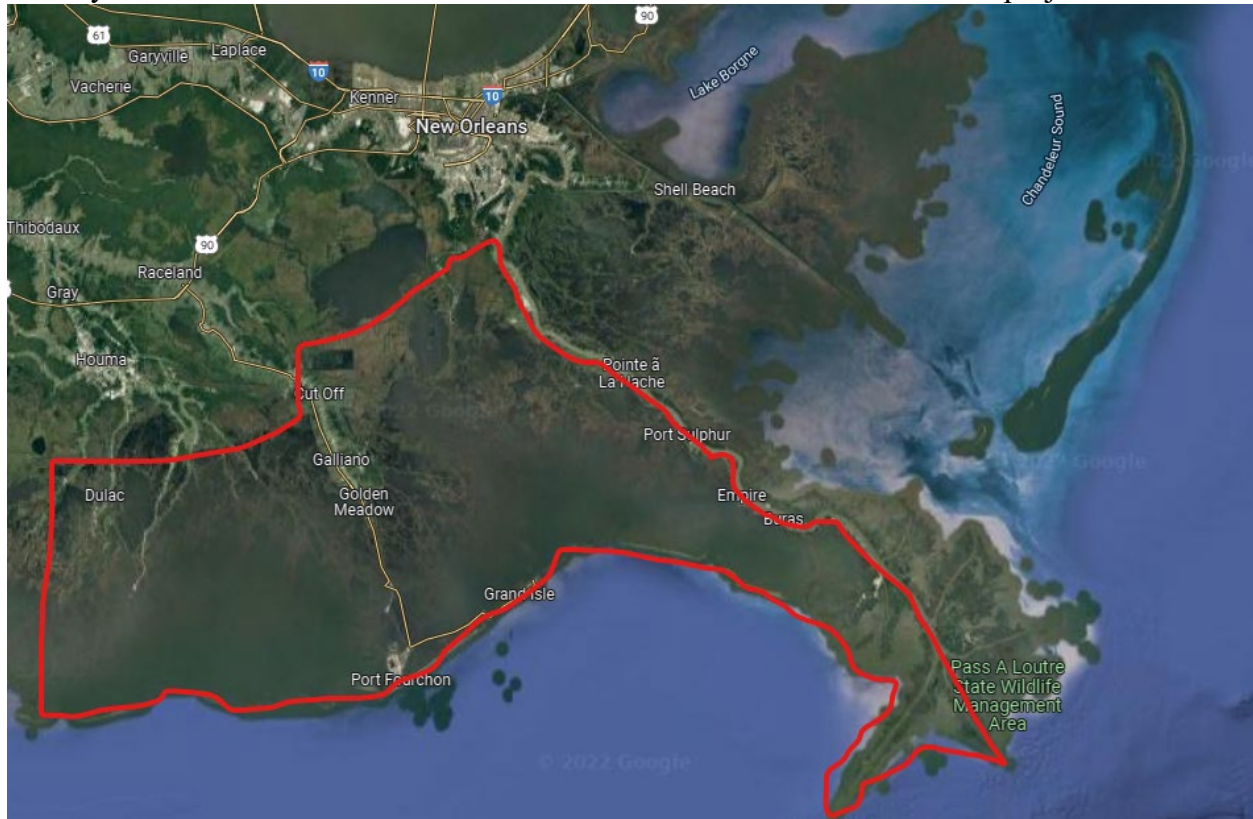


Table 1. Summary of in-water work and conservation measures to protect the West Indian manatee. *NLAA* = May Affect, Not Likely to Adversely Affect; *S* = Standard Manatee Conditions for In-Water Work, dated 2011; *PS* = Protected Species Construction Conditions, dated 2021; *M* = NMFS Measures for Reducing 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>Nekton References and Targets: Assessing the abundance and Density of Fish and Invertebrates Associated with Louisiana’s Marsh Habitat</p>	<p>This project consists of 3 primary tasks: 1) Desktop exercises that analyze existing nekton abundance data from Louisiana Department of Wildlife and Fisheries (LDWF) to select and identify a) reference sites and b) previously restored marshes locations where ongoing LDWF sampling sites align with existing hydrological stations (i.e., Coastwide Reference Monitoring System sites). Development of a fixed area sampling gear monitoring design that will be implemented in Task 2; these sampling locations would align with the reference sites and previously restored marsh locations that are identified during analysis of LDWF abundance data; 2) Implement the fixed-area sampling gear monitoring design (i.e., field sampling); and, 3) Analyze fixed-area sampling gear monitoring dataset respective of hydrological and other habitat variables identified in Task 1 as influential of marsh faunal communities. The field sampling (Task 2) component of this project will implement up to 3 years of fixed-area sampling (i.e., drop sampler and/or throw-trap) in estuarine marshes and open waters immediately adjacent to estuarine marshes, including</p>	<p>NLAA</p>	<p>S, PS, M, V</p>	<p>July 25, 2022</p>

	<p>reference and previously restored marsh locations, to improve understanding of fish and invertebrate epifaunal communities' associations with reference and restored marsh habitats/sub-habitats. This project does not include construction activities, so no over- or in-water features will be constructed and no dust, erosion or sediment controls will be occur. These sampling activities will be conducted from small vessels (Class 1 or smaller, <26 ft) in order to safely access shallow marsh areas without damaging benthic resources while in transit between specific sampling sites.</p>			
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