



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

January 3, 2022

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

From: Compliance Branch Supervisor, 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: Mid-Barataria Sediment Diversion. 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. The Department of the Interior (DOI) determined that this project may affect, but is not likely adversely affect the manatee. The Louisiana Ecological Services Office concurred with this determination on December 13, 2021. 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 (CPRA); the Louisiana Department of Natural Resources (LDNR); the Louisiana Department of Environmental Quality (LDEQ); the Louisiana Oil Spill Coordinator's Office (LOSCO); the Louisiana Department of Wildlife and Fisheries (LDWF); the United States Department of Commerce, represented by the National Oceanic and Atmospheric Administration (NOAA); the United States Department of the Interior (USDOI), represented by the United States Fish and Wildlife Service (USFWS) and National Park Service (NPS); the United States Department of Agriculture (USDA); and the United States Environmental Protection Agency (EPA).

The LA TIG has evaluated this project as a potential restoration project under the *Louisiana Trustee Implementation Group Final Restoration Plan and Environmental Assessment #3.2: Mid-Barataria Sediment Diversion*, which was open to public comment from March 5, 2021 to June 3, 2021. The LA TIG partners will implement the project.

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 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 that this project may affect, but is 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 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 the project area.

If modifications are made to this 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 (2)

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

Figure 1. Map showing the Mid-Barataria Sediment Diversion project area.

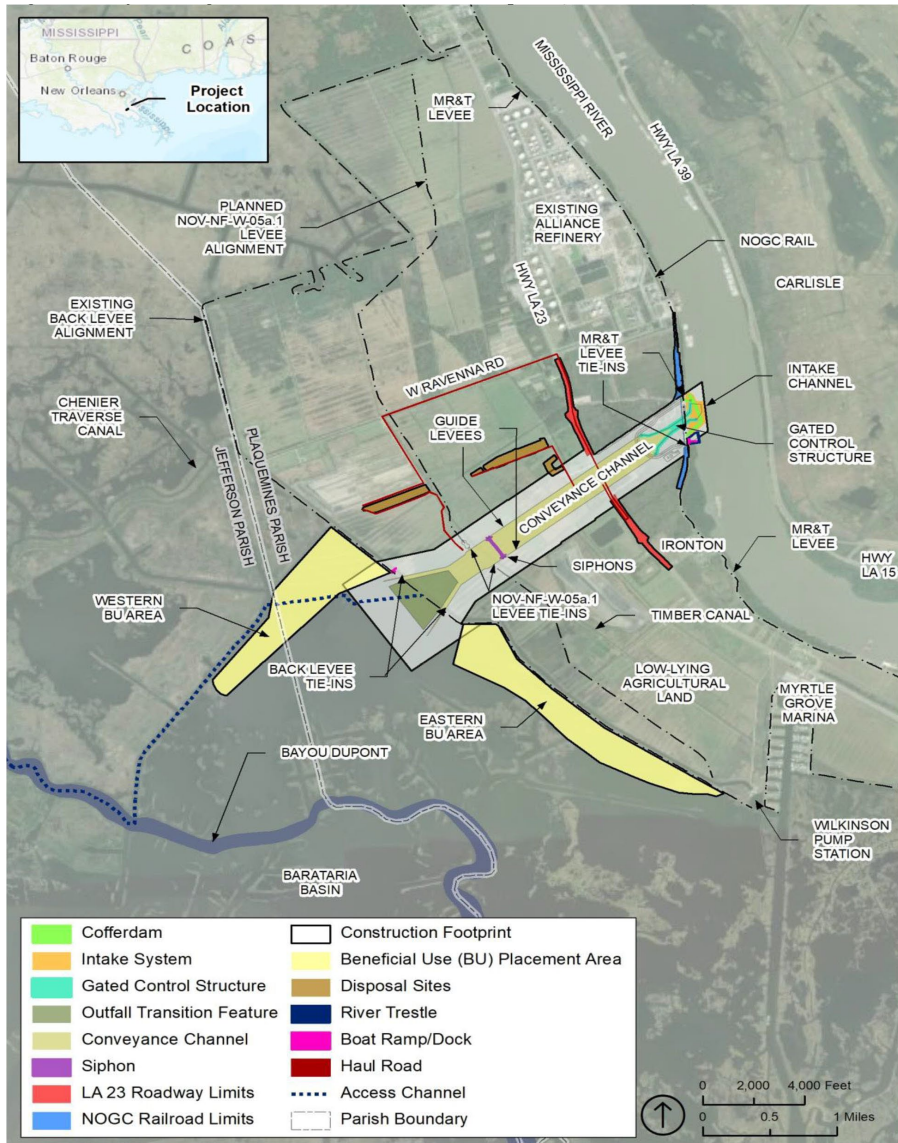


Table 1. Summary of in-water work and conservation measures to protect the West Indian manatee for the project Mid-Barataria Sediment Diversion. The project will not proceed with implementation until compliance with all relevant laws is achieved.

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
Mid-Barataria Sediment Diversion	<p>The proposed project consists of a multi-component river diversion system intended to convey sediment, fresh water, and nutrients from the Mississippi River at river mile (RM) 60.7 near the town of Ironton, in Plaquemines Parish, Louisiana to the mid-Barataria Basin. After passing through a proposed intake structure complex on the Mississippi River and proposed intake channel, the sediment-laden water would be transported through a conveyance channel to an outfall area in the mid-Barataria Basin located in Plaquemines and Jefferson Parishes.</p> <p>The design elements of the proposed project are separated into 3 categories:</p> <ul style="list-style-type: none"> □ Diversion Complex – The diversion complex will comprise features that form the basic structural elements for water inlet and conveyance from the Mississippi River to the 	NLAA	S, PS, M, V	December 13, 2021

	<p>basin outfall area. These features include the intake system, the gated control structure, the conveyance channel, and the guide levees.</p> <ul style="list-style-type: none">□ Basin Outfall Area – The basin side of the outfall area within the action area where the initial delta formation is anticipated from the sediment-laden water. The features to be constructed here are intended to increase the efficiency of water and sediment accumulation.□ Auxiliary Features – The project elements that accommodate existing or future services and infrastructure, including road, rail, and utilities and drainage systems. These features also include the placement of dredged materials in beneficial use placement areas and other mitigation measures designed to offset impacts of the construction process. <p>The proposed project will require 3 to 5 years of construction, depending on the extent of needed ground modifications and soil stabilization measures that may be necessary.</p> <p>During construction of the diversion complex, a pile supported trestle with a total surface area of approximately 36,000 square feet (ft²) would be installed just downstream of the intake along the Mississippi River for material transfer. The proposed construction limits for the diversion complex would be approximately 1,015.4 acres.</p> <p>The intake system of the diversion consists of an intake structure (with two flared training walls and an intake channel), a gated</p>			
--	---	--	--	--

	<p>control structure, and a transition channel that will connect to the larger conveyance channel.</p> <p>The training walls will extend into the Mississippi River approximately 950 feet shoreward (west) of the Mississippi River navigation channel limits and be located on the bed slope of the river adjacent to the sand bar which occurs at approximate depth elevations of -50 feet and -70 feet.</p>			
--	---	--	--	--