



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

May 1, 2023

To: Manatee Recovery Coordinator, Florida Ecological Services Field Office

From: Compliance 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 project: Characterizing Sea Turtle Nesting and the Nesting Environment in Louisiana to restore natural resources injured as a result of the Deepwater Horizon (DWH) oil spill. This project involves 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 April 25, 2023. 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

The 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 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 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 at these 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 Characterizing Sea Turtle Nesting and the Nesting Environment in Louisiana project area.

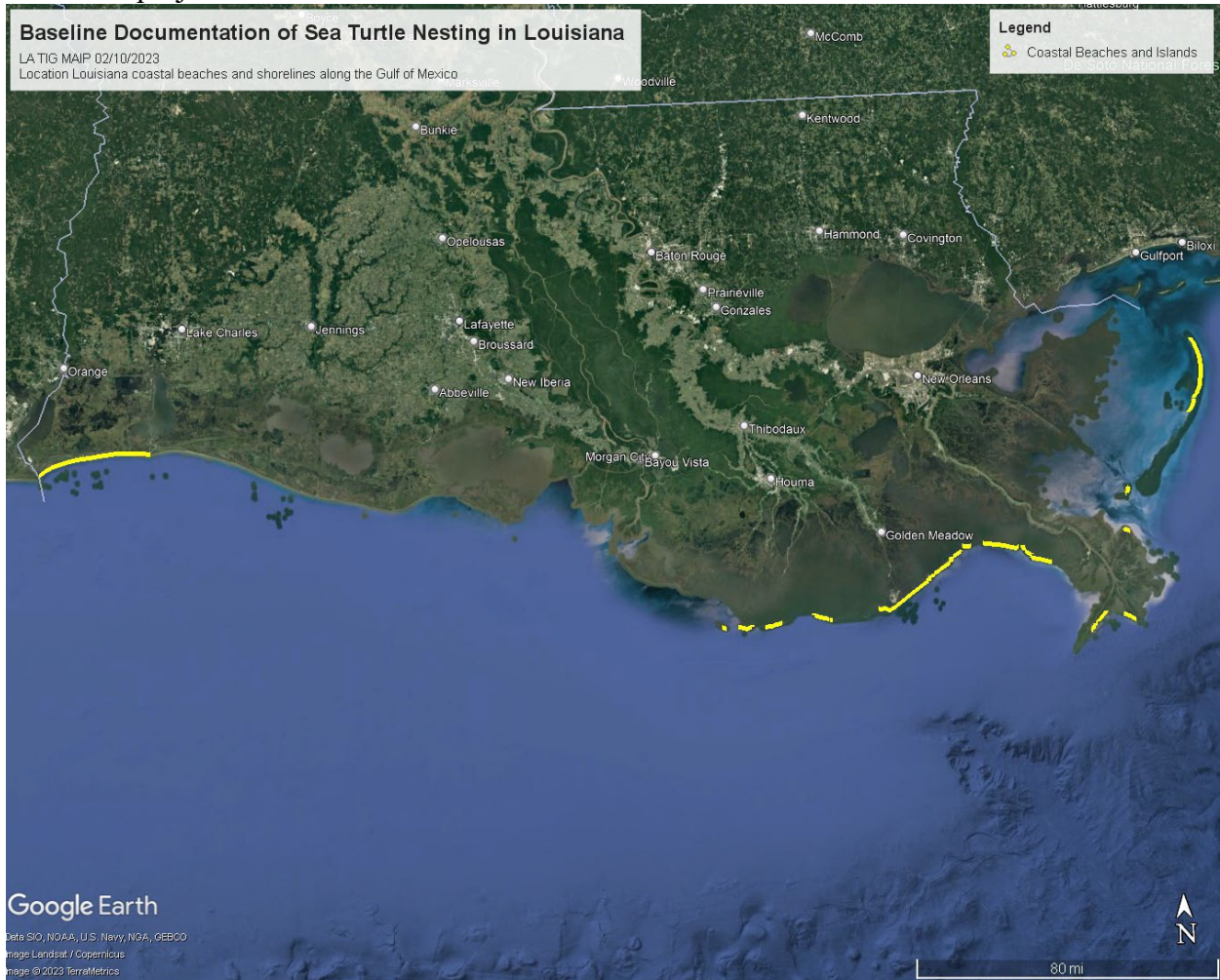


Table 1. Summary of in-water work and conservation measures to protect the West Indian manatee for the Characterizing Sea Turtle Nesting and the Nesting Environment in Louisiana project. The project will not proceed with implementation until compliance with all relevant laws is achieved

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
Characterizing Sea Turtle Nesting and the Nesting Environment in Louisiana	Vessels will be used to access the barrier islands. The following activities will be conducted: conduct census of sea turtle nesting on all mainland and barrier island beaches in Louisiana as feasible. Anticipated survey methods include aerial surveys by fixed wing or float plane; ground truth crawls and conduct nest assessments 3+days post hatching on foot where feasible. Anticipated timing/frequency of nest surveys - March 1 – August 31; 1x/week/2 years; nest assessments - September 1 – October 31; nests 3+ days post hatching /2 years as feasible; Collect beach characteristics on all beaches where feasible 1 time in conjunction with ground truthing of nests in year 1 during sea turtle nesting season (March 1 – August 31). Sampling will include dynamic cone penetrometers to depths of 3 feet, installation of sensors (about the size of 2 inch long by 1 inch wide) into the sand to assess moisture content, and temperature.	NLAA	S, PS, M, V	April 25, 2023