



# 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

March 15, 2024

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 Florida Trustee Implementation Group (FL TIG) evaluated the project: Pensacola and Perdido Bay Watersheds Microbial Source Tracking (Planning) to restore natural resources injured as a result of the Deepwater Horizon (DWH) oil spill. This project is part of the FL TIG Draft Restoration Plan 3 and Environmental Assessment: Water Quality. 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. The Department of the Interior (DOI) determined that this project may affect, but would not likely adversely affect the manatee. The Florida Ecological Services Office concurred with this determination on March 15, 2024. 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 FL TIG

includes two Florida state trustee agencies and four federal trustee agencies: the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission; the United States Department of Commerce, represented by the National Oceanic and Atmospheric Administration (NOAA); the United States Department of the Interior (DOI), 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 the National Marine Fisheries Service "Vessel Strike Avoidance Measures" 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 the 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 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](mailto:michael_barron@fws.gov).

Attachments (2)

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



Table 1. Summary of in-water work and conservation measures to protect the West Indian manatee for the Pensacola and Perdido Bay Watersheds Microbial Source Tracking (Planning) project.

*NLAA = May Affect, Not Likely to Adversely Affect; S = Standard Manatee Conditions for In-Water Work, dated 2011; V= NMFS Vessel Strike Avoidance Measures, dated 2021*

<b>Proposed Project</b>	<b>In-Water Work</b>	<b>ESA Determination for Manatee</b>	<b>Conservation Measures for Manatee</b>	<b>Field Office Concurrence</b>
<p>Pensacola and Perdido Bay Watersheds Microbial Source Tracking (Planning)</p>	<p>This project would conduct water quality data gathering and monitoring activities within nine sub-watersheds in Pensacola Bay and Perdido Bay in Santa Rosa and Escambia Counties, Florida (Figure 1). Project activities would be conducted for sub-watersheds that have been verified as impaired by the Florida Department of Environmental Protection or have recurring bacterial issues and that have restricted shellfish harvesting. These include Blackwater River, Blackwater Bay, and Garcon Point in the Perdido watershed and Elevenmile Creek, Carpenter Creek, Bayou Texar, Bayou Marcus, Bruce Beach, and Bayou Chico in the Pensacola watershed. Additionally, sources of nutrient hotspots would be assessed for Bayou Marcus, Elevenmile Creek, Carpenter Creek, and Bayou Chico in the Pensacola watershed. In-water work would include field reconnaissance and water quality sampling via foot, vehicle, or boat. Most field investigations would occur in highly developed sub-watershed areas to identify sources of anthropogenic water quality impairment.</p>	<p>NLAA</p>	<p>S, V</p>	<p>March 15, 2024</p>