



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

August 12, 2021

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

From: Chief, Planning and Compliance Branch, Deepwater Horizon Gulf Restoration Office

Subject: Notification of Compliance with Marine Mammal Protection Act

Overview

The Open Ocean Trustee Implementation Group (OO TIG) evaluated the project “Juvenile Gulf Sturgeon – Gulf-wide Population Dynamics and Habitat Use” to restore natural resources injured as a result of the *Deepwater Horizon (DWH)* oil spill. 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 United States Department of the Interior (DOI) determined that these projects may affect, but would not likely adversely affect the manatee. The Florida Ecological Services Office concurred with this determination on August 11, 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 OO TIG

includes four federal trustee agencies: the United States Department of Commerce, represented by the National Oceanic and Atmospheric Administration (NOAA); 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.

The OO TIG has evaluated this project as potential restoration project under the Open Ocean Monitoring and Adaptive Management Activities Implementation Plan: Juvenile Gulf Sturgeon – Gulf-wide Population Dynamics and Habitat Use which was signed on June 26, 2020. The OO 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. The project will be implemented in estuarine waters where juvenile sturgeon may be found including the following locations: Florida – Dixie, Escambia, Franklin, Santa Rosa and Walton counties; Louisiana – St. Tammany parish; and Mississippi – Jackson county; across the following river systems: Pearl, Pascagoula, Escambia, Yellow, Choctawhatchee, Apalachicola, and Suwannee. 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 “Sea Turtle and Small-tooth Sawfish Construction Conditions” dated 2006 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 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 these project areas.

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)

- Summary of Project Information and ESA Determinations (Table 1)

Table 1. Summary of in-water work and conservation measures to protect the West Indian manatee for the project. 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; *SS* = Sea Turtle and Small-tooth Sawfish Construction Conditions, dated 2006; *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>Juvenile Gulf Sturgeon – Gulf-wide Population Dynamics and Habitat Use</p>	<p>This Monitoring and Adaptive Management (MAM) activity will examine juvenile Gulf sturgeon (<i>Acipenser oxyrinchus desotoi</i>) habitat use and preference in estuaries in the northern Gulf of Mexico to: (1) better understand baseline status and conditions, (2) identify and prioritize habitats most in need of restoration, and (3) provide a framework for monitoring the results of restoration in an adaptive management context. Data will be collected on habitat use as well as trends in juvenile recruitment, growth, survival, genetics, and kinship across the following river systems: Pearl, Pascagoula, Escambia, Yellow, Choctawhatchee, Apalachicola, and Suwannee. All captured fish will have a PIT tag inserted and fin rays and DNA samples collected. Field sampling methods include traditional tagging approaches, surgically implanting acoustic transmitters, and collecting fin rays.</p>	<p>NLAA</p>	<p>S, SS, M, V</p>	<p>August 11, 2021</p>