

### Disclosure and Public Comment

Commerce will disclose to parties to this proceeding the calculations performed in connection with these preliminary results within five days of publication of this notice.<sup>3</sup> Interested parties may submit case briefs within 30 days of publication of these preliminary results and rebuttal briefs no later than five days after the deadline for filing case briefs.<sup>4</sup> Rebuttal briefs must be limited to issues raised in the case briefs.<sup>5</sup> Parties who submit case or rebuttal briefs are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and, (3) a table of authorities.<sup>6</sup> Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless the deadline is extended pursuant to 19 CFR 351.214(h)(i)(2), Commerce will issue the final results of this expedited review, including the results of its analysis of issues raised in any written briefs, within 90 days after the date of publication of these preliminary results.

### Cash Deposit Instructions

Pursuant to section 19 CFR 351.214(k)(3)(iii), the final results of this expedited review will not be the basis for the assessment of countervailing duties. Upon issuing the final results, Commerce intends to instruct Customs and Border Protection to collect cash deposits of estimated countervailing duties for the companies subject to this expedited review, at the rates shown above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final

results of this expedited review. These cash deposit requirements, when imposed, shall remain in effect until further notice. Pursuant to 19 CFR 351.214(k)(3)(iv), however, if TG Tools has a final estimated net subsidy rate that is zero or *de minimis*, it will be excluded from the order.

This determination is issued and published pursuant to sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.214(h) and (k).

Dated: March 15, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

### Appendix

#### List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
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- X. Conclusion

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### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

**RIN 0648-XG090**

#### Waiver of Requirements Under Sections 101(a) and 102(a) of the Marine Mammal Protection Act (MMPA) for the Mid-Barataria Sediment Diversion, the Mid-Breton Sound Sediment Diversion, and Calcasieu Ship Channel Salinity Control Measures Projects

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of a waiver.

**SUMMARY:** On February 9, 2018, Congress passed the Bipartisan Budget Act of 2018 (Budget Act), which included a requirement that the Secretary of Commerce, as delegated to the Assistant Administrator of the National Marine Fisheries Service (NMFS), issue a waiver of the Marine Mammal Protection Act (MMPA) moratorium and prohibitions for the

Mid-Barataria Sediment Diversion, Mid-Breton Sound Sediment Diversion, and the Calcasieu Ship Channel Salinity Control Measures projects, as selected in the Louisiana Comprehensive Master Plan for a Sustainable Coast. NMFS has issued the waiver.

**DATES:** The waiver was issued on March 15, 2018.

**FOR FURTHER INFORMATION CONTACT:** Jolie Harrison, Office of Protected Resources, NMFS, (301) 427-8401. The waiver and supporting documents may be obtained online at <https://www.fisheries.noaa.gov/action/marine-mammal-protection-act-waiver-select-louisiana-coastal-master-plan-projects>. In case of problems accessing these documents, please call the contact listed above.

### SUPPLEMENTARY INFORMATION:

#### Background

Section 101(a) of the MMPA (16 U.S.C. 1361 *et seq.*) establishes a moratorium on the taking and importation of marine mammals, along with exceptions to the moratorium. Section 102(a) of the MMPA prohibits, among other things, the taking of marine mammals and includes further exceptions to the prohibitions in certain circumstances. The MMPA defines the term "take" to mean to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Section 101(a)(3)(A) allows the Secretary of Commerce, as delegated to NMFS, to waive the requirements of section 101 and allow the taking of marine mammals under sections 101(a) and 102(a), provided consultation with the Marine Mammal Commission occurs and certain determinations are made.

On February 9, 2018, the Budget Act (Pub. L. 115-123) was enacted by Congress. Section 20201 in title II of the Budget Act directs the Secretary of Commerce to, within 120 days of enactment, issue a waiver pursuant to section 20201 and section 101(a)(3) of the MMPA for three projects included in the 2017 Louisiana Comprehensive Master Plan for a Sustainable Coast. Specifically, in Congress' recognition of their consistency with the findings and policy declarations in section 2(6) of the MMPA, the Budget Act directs the Secretary to issue a waiver for the Mid-Barataria Sediment Diversion, the Mid-Breton Sound Sediment Diversion, and the Calcasieu Ship Channel Salinity Control Measures projects from the requirements of sections 101(a) and 102(a) of the MMPA for the duration of the construction, operation, and maintenance of the projects. The Budget Act further indicates that no

<sup>3</sup> See 19 CFR 351.224(b).

<sup>4</sup> See 19 CFR 351.309(c)(1)(ii) and (d)(1).

<sup>5</sup> See 19 CFR 351.309(d)(2).

<sup>6</sup> See 19 CFR 351.309(c)(2) and (d)(2).

rulemaking, permit, determination, or other condition or limitation shall be required when issuing the waiver. Although section 101(a)(3)(A) of the MMPA requires the agency to make certain findings and determinations and follow certain procedures when issuing a waiver, Congress removed NMFS's discretion under section 101(a)(3)(A) to make those findings and determinations and to follow those procedures to determine whether waiver of the take moratorium is warranted.

Section 20201 of the Budget Act further indicates that, upon the issuance of the waiver, the State of Louisiana (State) shall, in consultation with the Secretary of Commerce: (1) To the extent practicable and consistent with the purposes of the projects, minimize impacts on marine mammal species and population stocks, and (2) Monitor and evaluate the impacts of the projects on such species and population stocks.

#### Description of the Action

On March 15, 2018, NMFS issued the waiver from the requirements of the MMPA section 101(a) moratorium and section 102 prohibitions for take caused by the Mid-Barataria Sediment Diversion, Mid-Breton Sound Sediment Diversion and Calcasieu Ship Channel Salinity Control Measures projects, as identified in the 2017 Louisiana Comprehensive Master Plan for a Sustainable Coast, as required by the Budget Act. The waiver applies to take caused by construction, operation, and maintenance and remains in effect for the duration of these activities for the three projects. Take that is not caused by the construction, operation, and maintenance of the projects is not covered by the waiver.

Prior to issuing the waiver, NMFS consulted with the Marine Mammal Commission (Commission) on issuance of the waiver, as required under section 101(a)(3)(A) of the MMPA. On March 12, 2018, the Commission provided the following comments and recommendations (the Commission's letter can be found at <https://www.fisheries.noaa.gov/action/marine-mammal-protection-act-waiver-select-louisiana-coastal-master-plan-projects>).

#### Comments and Responses

*Comment 1:* The Commission notes Section 20201 of the Budget Act includes a finding that the three identified projects are consistent with the findings and policy declarations in section 2(6) of the MMPA. They note, however, that it is unclear if the projects are consistent with other stated purposes and policies of the MMPA, including maintaining marine mammal

species and stocks at optimum sustainable population levels and ensuring that species and stocks do not diminish to the point where they cease to be significant functioning elements in the ecosystems of which they are a part.

*NMFS Response:* NMFS has no comment regarding Congress' interpretation of the consistency of these projects with different sections of the MMPA.

*Comment 2:* The Commission recommends that the waiver indicate waiver recipients.

*NMFS Response:* Congress did not identify specific recipients who should be covered by the waiver. Rather, Congress directed that the waiver should cover all persons (as defined under the MMPA) who will engage in the activities of constructing, operating, and maintaining the three named diversion projects. Therefore, unlike issuance of a typical permit, authorization, or waiver under the MMPA, this waiver applies to any individual or entity that causes the take of marine mammals during construction, operation, or maintenance of the three projects. In fact, it would not be possible for NMFS to identify all individuals and entities who will engage in these activities, especially for projects in the early planning stages or for long-term maintenance.

*Comment 3:* The Commission recommends that NMFS seek agreement with the State or otherwise clarify that the requirements of section 20201(b) are ongoing responsibilities with consultations between the State and NMFS continuing as needed throughout all construction, operations, and maintenance activities.

*NMFS Response:* NMFS agrees consultation regarding impact minimization, monitoring, and evaluation should be ongoing as each project develops through design and engineering, construction, operation, and maintenance phases. It is ultimately the State's responsibility to engage in consultation with NMFS and, upon doing so, NMFS will work with the State to develop clear consultation expectations in accordance with the intent of the Budget Act. NMFS anticipates the State will utilize existing environmental review processes (e.g., National Environmental Policy Act (NEPA)), where available, to both begin consultation and develop an approach for ongoing consultation through the various phases for each project.

*Comment 4:* The Commission recommends that consultations between NMFS and the State begin immediately to review ongoing monitoring programs and update and expand them, as

necessary, to ensure that essential baseline information is available before construction begins. Further, the Commission encourages NMFS to seek the advice of appropriate outside experts in helping to design effective monitoring programs.

*NMFS Response:* For the Mid-Barataria Sediment Diversion, NMFS is a cooperating agency on the project's Environmental Impact Statement (EIS) under NEPA and a member of the Louisiana Trustees. Through these roles, NMFS has been and will continue to evaluate impacts of the project on marine mammals and continue to work with the State on marine mammal monitoring. For example, NMFS, in cooperation with the State's Coastal Protection and Restoration Authority (CPRA), has developed a marine mammal science plan which includes the collection of baseline data on Barataria Bay dolphins through tagging, health assessments, and modeling. This plan was developed with internal and external marine mammal experts, as recommended by the Commission, who led efforts to collect data on Barataria Bay dolphins after the Deepwater Horizon oil spill (e.g., Smith et al., 2017, Well et al., 2017). Phase I of the science plan is partially complete and NMFS is in discussion with the CPRA on funding for Phase II. For all projects, NMFS intends to continue working with external marine mammal experts to inform development and implementation of a comprehensive marine mammal monitoring plan as part of the State's consultation requirement.

#### Minimizing and Monitoring Impacts on Marine Mammals

As described above, the Budget Act requires the State, in consultation with the Secretary, to minimize, monitor, and evaluate impacts on marine mammals from the projects included in the waiver. We note here, as recommended by the Commission (see above), that by necessity the consultation will need to be ongoing to appropriately address the evolving project planning and design for the construction, operation, and maintenance phases of these three projects.

Currently, for the Mid-Barataria Sediment Diversion, the State and the U.S. Army Corps of Engineers are coordinating closely with NMFS to ensure compliance under multiple statutes other than the MMPA (e.g., NEPA and the Clean Water Act), and further coordinating in consideration of the Mid-Barataria Sediment Diversion pursuant to the Deepwater Horizon restoration planning efforts. These statutes and processes include various

requirements to assess, minimize, and/or monitor impacts to different resources, including marine mammals. While the State has coordinated most closely with NMFS on the Mid-Barataria Sediment Diversion to date, it is likely the other two projects covered under the waiver will be similarly coordinated with NMFS to some degree due to the NEPA processes and permitting requirements under other Federal statutes. We believe that in many cases other statutes and processes will provide the State efficient frameworks within which to conduct the required consultation with NMFS, and we will support the State in integrating Budget Act compliance into these processes, discussions, and timelines, as needed. Regardless, NMFS is prepared to support the State in identifying and developing practicable measures to minimize and monitor impacts of the covered projects on marine mammals.

**Authority:** 16 U.S.C. 1361 *et seq.*

Dated: March 15, 2018.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XE201

#### Notice of Availability of the Deepwater Horizon Oil Spill Louisiana Trustee Implementation Group Final Strategic Restoration Plan and Environmental Assessment #3

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act (NEPA), and a Consent Decree with BP Exploration & Production Inc. (BP), the *Deepwater Horizon* Federal and State natural resource trustee agencies for the Louisiana Trustee Implementation Group (LA TIG) have prepared the Final Strategic Restoration Plan and Environmental Assessment #3: Restoration of Wetlands, Coastal, and Nearshore Habitats in the Barataria Basin, Louisiana (SRP/EA). The Final SRP/EA identifies and, in conjunction with the associated Finding of No

Significant Impact (FONSI), selects a restoration strategy that will help prioritize future decisions regarding project selection and funding. Rather than selecting specific projects for construction, the Trustees evaluated a suite of restoration techniques and approaches, for example large-scale diversions or marsh creation, to determine how to best support restoring ecosystem-level injuries in the Gulf of Mexico through restoration in the Barataria Basin. This strategic approach to restoration will allow the Trustees to prioritize projects for further evaluation by the LA TIG. The purpose of this notice is to inform the public of the availability of the Final SRP/EA and FONSI.

**ADDRESSES:** *Obtaining Documents:* You may download the Final SRP/EA and FONSI at: <http://www.gulfspillrestoration.noaa.gov> and <http://www.la-dwh.com>. Alternatively, you may request a CD of the Final SRP/EA and FONSI (see **FOR FURTHER INFORMATION CONTACT**). In addition, you may view the document at any of the public facilities listed at <http://www.gulfspillrestoration.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:**

- National Oceanic and Atmospheric Administration—Mel Landry, [gulfspill.restoration@noaa.gov](mailto:gulfspill.restoration@noaa.gov), (301) 427-8711.
- Louisiana—Joann Hicks, [LATIGPublicComments@la.gov](mailto:LATIGPublicComments@la.gov), (225) 342-7308.

**SUPPLEMENTARY INFORMATION:**

**Introduction**

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon*, which was being used to drill a well for BP in the Macondo prospect (Mississippi Canyon 252-MC252), exploded, caught fire, and subsequently sank in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The *Deepwater Horizon* oil spill is the largest maritime oil spill in United States history, discharging millions of barrels of oil over a period of 87 days. In addition, well over one million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas also was released to the environment as a result of the spill.

The *Deepwater Horizon* Federal and State natural resource trustees (DWH Trustees) conducted the NRDA for the *Deepwater Horizon* oil spill under the Oil Pollution Act of 1990 (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA,

Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the time of restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred) is complete.

The DWH Trustees are:

- U.S. Department of the Interior, as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
  - National Oceanic and Atmospheric Administration, on behalf of the U.S. Department of Commerce;
  - U.S. Department of Agriculture;
  - U.S. Environmental Protection Agency;
  - State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
  - State of Mississippi Department of Environmental Quality;
  - State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
  - State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
  - For the State of Texas, Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.
- On April 4, 2016, the DWH Trustees reached and finalized a settlement of their natural resource damages claims with BP in a Consent Decree approved by the U.S. District Court for the Eastern District of Louisiana. Pursuant to that Consent Decree, restoration projects in the Louisiana Restoration Area are now chosen and managed by the LA TIG. The LA TIG is comprised of the following DWH Trustees:
- State of Louisiana Coastal Protection and Restoration Authority (CPRA);
  - Louisiana Oil Spill Coordinator's Office (LOSCO);
  - Louisiana Department of Environmental Quality (LDEQ);
  - Louisiana Department of Wildlife and Fisheries (LDWF);
  - Louisiana Department of Natural Resources (LDNR);