

APPENDIX S: COMPLIANCE DOCUMENTATION

Marine Mammal Protection Act Waiver



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910
THE DIRECTOR

MAR 15 2018

Marine Mammal Protection Act Waiver

Mid-Barataria Sediment Diversion, Mid-Breton Sound Sediment Diversion, and Calcasieu Ship Channel Salinity Control Measures Projects

With Congress' recognition of the consistency of the Mid-Barataria Sediment Diversion, Mid-Breton Sound Sediment Diversion, and Calcasieu Ship Channel Salinity Control Measures projects with the findings and policy declarations in section 2(6) of the Marine Mammal Protection Act (MMPA, 16 U.S.C. section 1361 et seq.) and as directed by section 20201 of the Bipartisan Budget Act of 2018 (Pub. L. 115-123), the National Marine Fisheries Service hereby issues this waiver pursuant to title II, section 20201 of the Bipartisan Budget Act of 2018 and section 101(a)(3)(A) of the MMPA for the three named projects, as selected by the 2017 Louisiana Comprehensive Master Plan for a Sustainable Coast. The requirements of sections 101(a) and 102(a) of the MMPA do not apply to any take of marine mammals caused by and for the duration of the construction, operation, or maintenance of the three named projects.

Samuel D. Rauch III
Deputy Assistant Administrator for Regulatory Programs
NOAA Fisheries




**Marine Mammal Protection Act
Decision Memorandum**



MAR 15 2018

MEMORANDUM FOR: Chris Oliver
Assistant Administrator

FROM: Donna S. Wieting 
Director, Office of Protected Resources

SUBJECT: Issuance of a Waiver of Requirements Under Sections 101(a) and 102(a) of the Marine Mammal Protection Act for the Mid-Barataria Bay Sediment Diversion, the Mid-Breton Sound Sediment Diversion, and Calcasieu Ship Channel Salinity Control Measures Projects –
DECISION MEMORANDUM

On February 9, 2018, Congress passed the Bipartisan Budget Act of 2018 (Budget Act), Public Law 115-123, 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 or Act) moratorium and prohibitions for three specific Louisiana wetland restoration projects. Specifically, title II, section 20201(a) of the Budget Act provides:

In recognition of the consistency of the Mid-Barataria Sediment Diversion, Mid-Breton Sound Sediment Diversion, and Calcasieu Ship Channel Salinity Control Measures projects, as selected by the 2017 Louisiana Comprehensive Master Plan for a Sustainable Coast, with the findings and policy declarations in section 2(6) of the Marine Mammal Protection Act (16 U.S.C. 1361 et seq., as amended) regarding maintaining the health and stability of the marine ecosystem, within 120 days of the enactment of this section, the Secretary of Commerce shall issue a waiver pursuant to section 101(a)(3)(A) and this section to section 101(a) and section 102(a) of the Act, for such projects that will remain in effect for the duration of the construction, operations and maintenance of the projects. No rulemaking, permit, determination, or other condition or limitation shall be required when issuing a waiver pursuant to this section.

Where Congress did not itself waive compliance with the MMPA moratorium, prohibitions, and associated requirements as applied to the three named projects, but instead directed NMFS to issue a waiver consistent with both MMPA section 101(a)(3)(A) and the terms of section 20201, this memorandum explains NMFS's interpretation and implementation of Congress's direction under section 20201 of the Budget Act.

MMPA section 101(a)(3)(A) (16 U.S.C. section 1371(a)(3)(A)) allows NMFS to waive the moratorium on taking marine mammals based on the best scientific evidence available after considering certain factors and making specific findings. These include considering distribution,



abundance, breeding habits, and migratory movements of affected marine mammal species or stocks and finding that any taking would be in accord with sound principles of resource protection and conservation as provided in the purposes and policies of the MMPA. Overall, the agency must determine whether it is compatible with the MMPA to grant such as waiver.

In addition to the considerations identified in section 101(a)(3)(A), the MMPA waiver provision requires NMFS to “make determinations in accordance with” section 103.¹ Thus, requests to waive the moratorium under section 101(a)(3)(A) are implemented through the rulemaking process outlined in MMPA section 103, which requires consideration of additional factors and development of certain statements and findings. Any proposed regulations must consider all factors that may affect the extent to which affected marine mammals may be taken, including the effect of the regulations on existing and future levels of marine mammals species and stocks; existing international treaty and agreement obligations; the marine ecosystem and related environmental considerations; conservation, development, and utilization of fishery resources; and economic and technological feasibility of implementation. The agency must also provide statements on the estimated levels of affected species or stocks, the expected impact of the proposed regulations on optimum sustainable population levels (OSP), the evidence supporting the proposed regulations, and any studies or recommendations by or for the agency or the Marine Mammal Commission (MMC). Overall, under section 103(a) the agency must find, based on the best scientific evidence available, that the allowed taking will not be to the disadvantage of the affected species and stocks and will be consistent with the purposes and policies in section 2 of the MMPA.

Through section 20201, Congress removed NMFS’s discretion and the requirements to consider the statutory factors, provide the required statements, make the required findings, and determine whether issuance of a waiver meets the statutory standards under sections 101(a)(3)(A) and 103. Through the Budget Act, Congress directed that NMFS “shall issue a waiver.” This eliminated the agency’s discretion to consider the best available scientific evidence, factors relevant to determining impacts on affected species or stocks, and whether issuance of a waiver and associated takings would be compatible with the MMPA, not to the disadvantage of the affected species and stocks, and consistent with the purposes and policies of the Act. Congress also found that the three named projects² are “consisten[t] . . . with the findings and policy declarations in section 2(6) of the [MMPA] . . . regarding maintaining the health and stability of the marine ecosystem.” Thus, Congress substituted its finding and decision that a waiver must be issued for the considerations, findings, and determinations that otherwise would have been made by the agency.

¹ Not relevant here, section 101(a)(3)(A) also calls for making determinations and issuing regulations under section 102 (importation of certain animals), section 104 (issuance of permits), and section 111 (regulation of commercial fisheries gear).

² The waiver applies only to the Mid-Barataria Sediment Diversion, Mid-Breton Sound Sediment Diversion, and Calcasieu Ship Channel Salinity Control Measures projects. Absent additional Congressional action, standard MMPA provisions would apply to other projects under the 2017 Louisiana Comprehensive Master Plan for a Sustainable Coast.

Additional language in section 20201(a) confirms Congress's removal of agency discretion to consider the statutory factors and standards, and make the MMPA determinations. The Budget Act states not only that NMFS "shall issue" the waiver but further provides that "no . . . determination . . . shall be required when issuing a waiver pursuant to this section." Thus, Congress expressly precluded the agency from making any of the determinations called for under sections 101(a)(3)(A) and 103. With no discretion on whether to issue the waiver and no ability to make the determinations under sections 101(a)(3)(A) or 103, any consideration of the remaining statutory elements, such as evaluation of the section 101(a)(3)(A) and 103(b) factors or issuance of the section 103(d) statements would be superfluous.

In addition, through section 20201 Congress substituted the procedure in the Budget Act for the procedures NMFS otherwise would follow in issuing a waiver under section 101(a)(3)(A). For waivers not associated with commercial fishing, MMPA section 101(a)(3)(A) requires the agency to "adopt suitable regulations, issue permits, and make determinations in accordance with sections 102, 103, [and] 104." It is this provision that would typically require NMFS to waive the moratorium through the formal rulemaking procedures of section 103. Along with requiring that the waiver be developed through formal rulemaking on the record and after opportunity for an agency hearing, the standard MMPA process would require publication of the statements on population levels and OSP discussed above. However, section 20201(a) specifies, "No rulemaking [or] permit . . . shall be required when issuing a waiver pursuant to this section." Thus, the rulemaking requirements called for under sections 101(a)(3)(A) and 103 do not apply to NMFS's issuance of the waiver. In addition, because Congress directed in broad terms that no rulemaking or permitting procedures apply to issuance of the waiver and did not limit itself to MMPA procedural requirements, procedures potentially applicable under other laws such as the Administrative Procedure Act (APA) do not apply. Congress's direction to issue the waiver without any form of rulemaking or issuance of permits along with no determinations or other conditions or limitations takes precedence over the section 103 formal rulemaking called for under section 101(a)(3)(A).

The fact that Congress intended the waiver to be issued without following the procedures under MMPA section 103 or the APA is confirmed by the fact that section 20201 directs the waiver to be issued within 120 days of enactment of the Budget Act. The rulemaking procedures called for under section 103 and described in agency regulations at 50 CFR part 228 require publication of notice of a hearing in the Federal Register along with the agency's proposed determination to waive the moratorium. The presiding officer is then appointed, interested parties submit written direct testimony, and the presiding officer determines the issues of fact to be addressed at the hearing and holds of a prehearing conference. This is followed by publication in the *Federal Register* of a final agenda of issues to be addressed at the hearing along with the list of witnesses who may appear at the hearing, conduct of the hearing, transmission of the presiding officer's recommended decision to the agency, publication of notice of the recommended decision in the *Federal Register* with opportunity for public comment, and the agency's final decision on the proposed regulations and waiver. It is not possible, and Congress must have known when considering enactment of section 20201 that it is not possible, to complete this process within 120 days.

Nonetheless, NMFS consulted with the MMC prior to issuing the waiver. The MMPA requires the agency to issue waivers under section 101(a)(3)(A) “in consultation with” the MMC. The Budget Act states that NMFS shall issue the waiver pursuant to both section 101(a)(3)(A) and section 20201, and nothing in the Budget Act precludes the consultation requirement under section 101(a)(3)(A). That said, with no discretion on whether to issue the waiver and the substantive standards and procedural requirements limited as described above, consultation was limited to whether NMFS is properly implementing the waiver provision under section 20201.

Because NMFS has no discretion whether to issue the waiver under section 20201, consultation under section 7 of the Endangered Species Act (ESA) is not required. Joint NMFS/FWS regulations at 50 CFR 402.03 state that section 7 of the ESA and the regulatory consultation requirements apply to agency actions “in which there is discretionary Federal involvement or control.” Because NMFS has no discretion or control over whether or not to issue the waiver, issuance of the waiver is not subject to section 7 consultation.

In addition, issuance of the waiver is not subject to analysis under the National Environmental Policy Act (NEPA). Section 102(c) of NEPA requires all agencies of the United States “to the fullest extent possible” to “include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment” an environmental impact statement [EIS] analyzing the consequences of, and alternatives to, the proposed action. “Section 102 recognizes, however, that where a clear and unavoidable conflict in statutory authority exists, NEPA must give way.” *Flint Ridge Dev. Co. v. Scenic Rivers Ass'n of Oklahoma*, 426 U.S. 776, 788, 96 S. Ct. 2430, 2438, 49 L. Ed. 2d 205 (1976). Because NMFS does not have discretion to affect the outcome of its actions, the information that NEPA would provide can have no effect on the agency’s actions, and therefore NEPA is inapplicable. *Citizens Against Rails-To-Trails v. Surface Transportation Board*, 267 F.3d 1144, 1151 (D.C. Cir. 2001); see also NOAA’s Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities: Companion Manual to NOAA Administrative Order 216-6A (NEPA applies to actions where the proposed action and effects are subject to NOAA control and responsibility). Here, NMFS has no discretion whether to issue the waiver, no discretion to decide what is included in the waiver, no alternatives to issuing the waiver, and issuing the waiver is not subject to the agency’s control.

Finally, for some of the reasons discussed earlier, and the same reasons that consultation is not required under section 7 of the ESA and environmental impact analysis is not required under NEPA, no analysis of economic effects is required under the Regulatory Flexibility Act or E.O. 12866. Issuance of the waiver under section 20201 is not a regulatory action or a rulemaking, and the agency has no discretion not to issue the waiver.

Section 20201 provides that it shall operate as “a waiver . . . to section 101(a) and section 102(a) of the [MMPA].” Thus, the legal effect of the section 20201 waiver is to waive the MMPA section 101(a) moratorium for any take of any marine mammal species caused by the construction, operation, or maintenance of the three named projects. The waiver also exempts any take caused by the three named projects from the prohibitions under MMPA section 102(a). The waiver applies without additional agency action for the duration of construction, operation,

and maintenance of the three projects. As directed by Congress, the waiver does not include any “condition or limitation.”

Nonetheless, separate from issuance of the waiver, Congress directed the State of Louisiana to minimize impacts on marine mammal species and stocks and to monitor and evaluate any impacts of the projects. Specifically, section 20201(b) of the Act provides:

Upon issuance of a waiver pursuant to this section, the State of Louisiana 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 populations stocks.*

NMFS looks forward to consulting with the State on ways to minimize impacts on the affected species and stocks and on measures to monitor and evaluate the impacts of the three projects on the affected species and stocks.

**Marine Mammal Protection Act Waiver -
Federal Register**

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.³ 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.⁴ Rebuttal briefs must be limited to issues raised in the case briefs.⁵ 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.⁶ 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
- III. Scope of the Order
- IV. Subsidies Valuation
- V. Benchmarks and Interest Rates
- VI. Application of the CVD Law to Imports from China
- VII. Use of Facts Otherwise Available and Adverse Inferences
- VIII. Analysis of Programs
- IX. Disclosure and Public Comment
- X. Conclusion

[FR Doc. 2018-05709 Filed 3-20-18; 8:45 am]

BILLING CODE 3510-DS-P

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

³ See 19 CFR 351.224(b).

⁴ See 19 CFR 351.309(c)(1)(ii) and (d)(1).

⁵ See 19 CFR 351.309(d)(2).

⁶ 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.

[FR Doc. 2018-05652 Filed 3-20-18; 8:45 am]

BILLING CODE 3510-22-P

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, (301) 427-8711.
- Louisiana—Joann Hicks, 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);