



# MARINE MAMMAL COMMISSION

22 October 2018

Kevin D. Reynolds, Ph.D.  
Assistant Regional Director, Gulf Restoration  
U.S. Fish and Wildlife Service  
Florida Trustee Implementation Group  
P.O. Box 49567  
Atlanta, Georgia 30345

Dear Dr. Reynolds:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Florida Trustee Implementation Group's (FL TIG) draft Restoration Plan 1 and Environmental Assessment (draft RP1/EA). The draft RP1/EA proposes four types of restoration projects, identified as: habitat projects on federally managed lands; nutrient reduction; water quality; and provide and enhance recreational opportunities. The proposed projects represent a variety of approaches to restore resources injured as a result of the Deepwater Horizon oil spill.

The Commission's primary concerns pertain to restoration projects identified in the draft RP1/EA that involve in-water activities that may result in a "take"<sup>1</sup> of marine mammals. Marine mammals that occur in Florida coastal waters include West Indian manatees (which are listed as threatened under the Endangered Species Act (ESA) and also protected under the Marine Mammal Protection Act (MMPA)) and bay, sound, and estuary stocks of common bottlenose dolphins (which are protected under the MMPA). A number of the projects proposed in the draft RP1/EA include in-water activities that could result in disturbance of, or harm to, manatees and/or bottlenose dolphins from restoration activities (e.g., increased vessel traffic, sound generated from construction activities primarily from pile driving/removal), entrapment in shallow water, or entanglement in or ingestion of construction-related debris.

The Commission understands that the FL TIG is coordinating closely with the U.S. Fish and Wildlife Service (FWS; for manatees) and the National Marine Fisheries Service (NMFS; for bottlenose dolphins and other cetaceans) to review each project's activities to determine whether there is a potential for disturbance or harm to marine mammals and to advise on appropriate mitigation measures to reduce the potential for takes. Many of the project summaries specify conservation measures that would be undertaken to avoid adverse impacts on marine mammals. For example, for manatees, measures identified include ceasing operations if a manatee approaches within 50 feet of the equipment, in accordance with the Standard Manatee Conditions for In-Water Work (FWS 2011). For bottlenose dolphins, measures identified include implementing vessel strike avoidance and reporting measures (NMFS 2008), reducing entrapment risk (NMFS 2012), and

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<sup>1</sup> Take is defined under the ESA as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct" (16 U.S.C. § 1532). Take is defined under the MMPA as "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal" (16 U.S.C. § 1362).

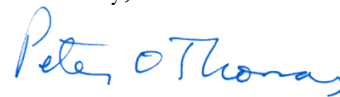
posting signage to promote awareness regarding dolphin-friendly fishing tips, viewing guidelines, and feeding prohibitions.

Although such measures may reduce the potential for disturbing marine mammals, they do not guarantee that project activities will not result in takes. If there is potential for taking of manatees, the FL TIG should consult with FWS to determine whether the projects may affect manatees, and, if appropriate, initiate consultation in accordance with section 7 of the ESA<sup>2</sup> to determine whether additional measures or project modifications are necessary. If there is potential for taking of bottlenose dolphins or other cetaceans, the FL TIG should work with NMFS to determine whether takes can be avoided through implementation of mitigation measures. If takes cannot be avoided, the FL TIG or other appropriate entities should be advised to apply for an incidental take authorization, in accordance with sections 101(a)(5)(A) or (D) of the MMPA. Information regarding marine mammal incidental take authorizations and the application process can be found on the NMFS<sup>3</sup> website and in its implementing regulations at 50 C.F.R. § 216.101 *et seq.*

To ensure that consistent guidance is available for all entities engaged in activities that may affect marine mammals, the Commission encourages the FL TIG and other Deepwater Horizon TIGs to expedite the development of comprehensive monitoring and adaptive management (MAM) procedures that can be incorporated as integral parts of all in-water restoration project plans to ensure effective monitoring of restoration impacts to marine mammals. Such procedures should include sufficiently detailed directives concerning standard mitigation measures designed to avoid or minimize the potential for marine mammals to be taken; guidance on the types of information that should be collected before, during, and after in-water project activities to determine whether and how those activities may affect marine mammals; and an explanation of how information gained from individual projects regarding marine mammal interactions (such as the effectiveness of mitigation measures) would be applied to other, similar restoration projects being planned or conducted across the Gulf of Mexico.

The Commission appreciates the opportunity to review the RP1/EA and hopes that the FL TIG finds these comments helpful. Please contact me if you have any questions concerning any issues raised in this letter.

Sincerely,

A handwritten signature in blue ink that reads "Peter O. Thomas". The signature is written in a cursive, flowing style.

Peter O. Thomas, Ph.D.,  
Executive Director

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<sup>2</sup> [https://www.fws.gov/midwest/endangered/section7/ba\\_guide.html](https://www.fws.gov/midwest/endangered/section7/ba_guide.html)

<sup>3</sup> <https://www.fisheries.noaa.gov/node/23111>

## References

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- NMFS. 2012. Measures for Reducing Entrapment Risk to Protected Species. Available at:  
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