United States Department of the Interior

FISH AND WILDLIFE SERVICE
1875 Century Boulevard
Atlanta, Georgia 30345

In Reply Refer To:
FWS/R4/DH NRDAR

Memorandum September 27, 2013

To: Field Supervisor, Clear Lake Ecological Services Office

From: Deputy Deepwater Horizon, Department of the Interior Natural Resource Damage Assessment and Restoration (NRDAR) Case Manager Debra L McCl.

Subject: No Effect Determination for the Proposed Enhancement of the George Vancouver (Liberty Ship) Artificial Reef (BA-336) in Texas State Waters of the Gulf of Mexico (Freeport Reef Project)

As you are no doubt aware, on or about April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon* experienced an explosion, leading to a fire and its subsequent sinking in the Gulf of Mexico (the Gulf). These events resulted in the discharge of millions of barrels of oil into the Gulf over a period of 87 days. In addition, various response actions were undertaken in an attempt to minimize impacts from spilled oil. These events are hereafter collectively referred to as the Oil Spill.

The Department of the Interior (DOI), acting through the U.S. Fish and Wildlife Service (the Service) and other Bureaus, is a designated natural resource trustee agency authorized by the Oil Pollution Act of 1990 (OPA) and other applicable federal laws to assess and assert a natural resource damages claim for this Oil Spill. DOI is only one of several Trustees, including agencies of the state of Texas, so authorized. Consistent with their federal and state authorities, the Trustees are investigating the resource injuries and losses that occurred as a result of the Oil Spill and have initiated restoration planning to identify the actions that will be needed or appropriate to restore injured resources and to make the public whole for the injuries and losses that occurred. This process is known as a Natural Resource Damage Assessment (NRDA).

On April 20, 2011, DOI, the National Oceanic and Atmospheric Administration and the Trustees for the five Gulf states affected by the Oil Spill entered into an agreement with BP, a responsible party for the Oil Spill, under which BP agreed to provide $1 billion for early restoration projects in the Gulf to begin to address injuries to natural resources caused by the Oil Spill. The subject project is being evaluated by the Trustees as a potential early restoration project. The early restoration project will be proposed in a draft early restoration plan that will be released for public comment and review. If the Trustees select the project after publication of the plan and consideration of public comment and a stipulated agreement is reached with BP, the early restoration project will be implemented by the state of Texas (the State). DOI, acting through the Service, will be a co-Trustee for the project, if it is selected and implemented.

The above facts lead us to the conclusion that consultation under Section 7 of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), is required for the proposed early restoration project and we wish to engage in such consultation. Accordingly, we have reviewed the proposed Enhancement of the George Vancouver (Liberty Ship) Artificial Reef (BA-336) in Texas State Waters of the Gulf of Mexico (Freeport Reef Project) for potential impacts to listed species and critical habitats in accordance with section 7 of the ESA and for impacts to bald eagles and migratory birds in accordance with the Bald and Golden Eagle Protection Act (BGEPA) of 1940 (16 U.S.C. 668-668c) and the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703–712), respectively. Consultation will also be initiated with National Marine Fisheries Service (NMFS) for species where ESA regulatory authority is shared (i.e., sea turtles) and in regards to Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1461 *et seq.*).

The proposed early restoration project is approximately 6 nautical miles offshore of Brazoria County, Texas and will occur at an approximate depth of 55 feet underwater. The proposed project will expand an existing artificial reef from 40 acres to 160 acres. All work will be conducted in-water on barren substrates of sand and silt. Predesigned pyramid reef structures (approximately 800) will be used in conjunction with other durable, stable and clean materials (i.e., concrete culverts, steel hulled vessels, quarry rock, and components of oil and gas structures) to expand the reef. No explosives will be used in reefing operations.

We reviewed the species list for Brazoria County, Texas, which considered the following species and critical habitat as potentially present within the County: Green sea turtle (*Chelonia mydas*)[1], Hawksbill sea turtle (*Eretmochelys imbricata*), Kemp's Ridley sea turtle (*Lepidochelys kempii*), Leatherback sea turtle (*Dermochelys coriacea)*, Loggerhead sea turtle (*Caretta caretta*), Piping plover (*Charadrius melodus*), Whooping crane (*Grus Americana*), and Critical Habitat for Piping Plover. We also considered, West Indian manatee (*Trichechus manatus*), Red knot (*Calidris canutus rufa*) a candidate species, bald eagles (*Haliaeetus leucocephalus*), and migratory birds as they could potentially use terrestrial habitats in Brazoria County as well.

For sea turtles and bird species, all work is in-water, six nautical miles offshore. Work this far offshore is not expected to result in any impacts (i.e., noise disturbance, shoreline habitat impacts) that would interfere with normal nesting (sea turtles, bald eagles, migratory birds), or foraging/roosting (piping plovers, whooping cranes) behaviors. Again, NMFS will analyze any potential affects to sea turtles in the estuarine or marine environments.

Manatees were not included in the Species List for Brazoria County, Texas. However, we considered manatee because of 127 sporadic sighting, carcass, and capture records documented between 1912 and 2004 along the entire coast of Texas (Fertl et al. 2005). Manatees are extremely unlikely to be present in the project area due to its depth, lack of water clarity, and lack of sea grass habitats. If present, vessel operation and placement of materials in water could startle or strike a manatee and disrupt resting or migration. Strikes generally result in injury or mortality. A trained on-site monitor will be present during reef construction. If marine mammals are present in the area during implementation, work will be halted until the mammal has moved

[1] Sea turtles in marine environments are consulted on by NMFS; therefore, we will only consider sea turtles in the terrestrial environment.

on its own volition from harm's way and it is deemed safe, by the monitor, to continue. The low likelihood of manatee presence (due to murky waters without sea grass, off the coast of Texas, and at depths greater than 20 feet) and the use of a marine mammal monitor will avoid startling or striking a manatee.

Primary constituent elements (PCEs) of piping plover critical habitat include: sand or mud flats (or both) with no or sparse emergent vegetation; adjacent unvegetated or sparsely vegetated sand, mud, or algal flats above high tide; beach/dune ecosystem including surf-cast algae, sparsely vegetated back beach and salterns, spits, and washover areas[2]. No PCEs are present in-water at the project site. The artificial reef will be created at depth and is not expected to change terrestrial shoreline conditions (through changes in current patterns/sediment accretion and erosion) in a manner that would modify or reduce function of existing PCE's for piping plover.

In 2012, the U.S. Army Corps of Engineers (ACOE) issued a permit for the proposed project (SWG 2010-00264). We are not aware if the Service previously reviewed or commented on the application. If your office issued a letter to the ACOE regarding the proposed project, we would like to request a copy for our administrative record.

Based upon the information presented above, we have determined that the proposed project will not affect listed and candidate species, or critical habitats under the jurisdiction of the Service or result in take of bald eagles or migratory birds. We request concurrence with our determination.

If you have questions or concerns regarding this request for consultation, please contact Holly Herod, Fish and Wildlife Biologist, at 404-679-7089 or holly_herod@fws.gov.

[2] Washover areas are broad, unvegetated zones, with little or no topographic relief, that are formed and maintained by the action of hurricanes, storm surge, or other extreme wave action.

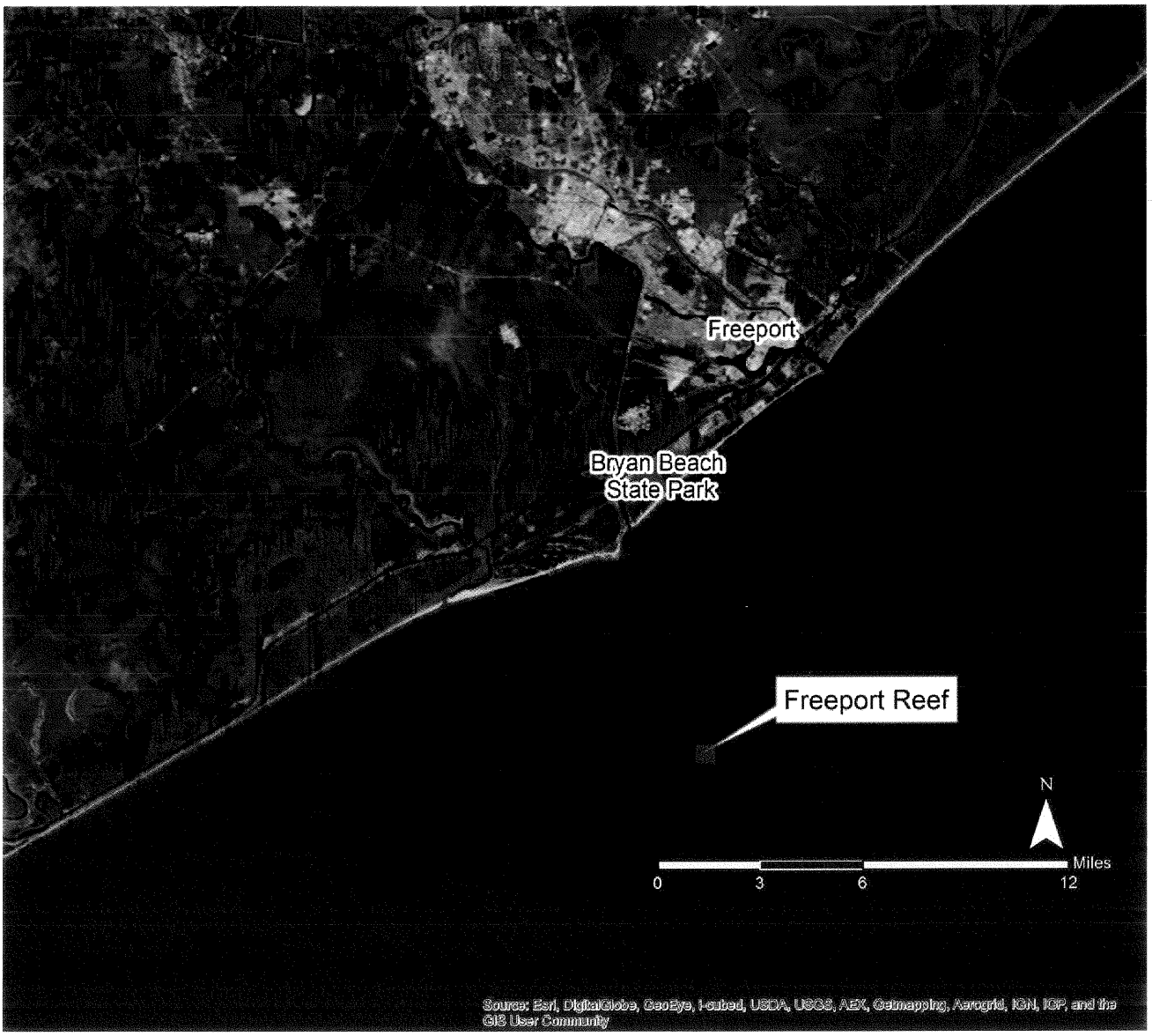

Figure 1. Map of the general project vicinity.

Literature Cited

Fertl, D., A.J. Schiro, G.T. Regan, C.A. Beck, N. Adimey, L. Price-may, A. Amos, G.A.J. Worthy, and R. Crossland. 2005. Manatee occurrence in the northern Gulf of Mexico, West of Florida. Gulf and Caribbean Research 17:69-94.