



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
P.O. BOX 2288
MOBILE, AL 36628-0001

Coastal Environment Team
Planning and Environmental Division

Ms. Willa Brantley
Mississippi Department of Marine Resources
1141 Bayview Avenue, Suite 101
Biloxi, Mississippi 39530

Dear Ms. Brantley:

Pursuant to the requirements of the Coastal Zone Management Act (CZMA), the U.S. Army Corps of Engineers (USACE), Mobile District requests your concurrence with our determination of coastal zone consistency (CZC) for the Deer Island Ecosystem Restoration Project. USACE, Mobile District is proposing construction actions associated with the Deer Island Ecosystem Restoration Project, Biloxi, Mississippi as an authorized element of the Mississippi Coastal Improvements Program (MsCIP) Comprehensive Plan. Construction of the proposed project is necessary to provide stability to Deer Island, provide habitat for wildlife including numerous migratory birds and threatened and endangered species, and provide additional storm damage reduction benefits to the Mississippi mainland. A detailed description of the authorized project and proposed action is presented in the enclosed Joint Public Notice FP24-DI01-13 (Enclosure 1), which was made available for a 30-day public review on September 4, 2024.

DESCRIPTION OF THE PROPOSED ACTION:

The proposed action includes the restoration of approximately 400 acres of island habitat, including 128 acres of emergent tidal marsh, 78 acres of coastal maritime forest, and 86 acres of shoreline beach. The proposed action also involves the construction of the remaining sections of the previously authorized Katrina Key breakwater, which will offer added wave and erosion reduction to the restored island.

The extension of the southern beach and dune will consist of placement of approximately 1.5 million cubic yards (mcy) of sandy material over approximately 116 acres. This proposed expansion will tie-in to the existing beach and extend it approximately one mile to the southeast to restore the island's historic footprint. Restoration of up to 40 acres of maritime forest habitat along the northeast will be achieved by restoring elevation with approximately 175,000 cy of suitable soil followed by select native species planting and controlled burning. In addition, restoration of elevation and hydrology within the existing Grand Bayou including filling of existing mosquito ditches will occur as needed to optimize various habitat types. Marsh restoration within the lagoon will be completed by the placement of material dredged from the Biloxi Harbor Federal Navigation Channel over time until restoration benefits

are achieved. Material will be dredged from the Federal navigation channel and placed within the lagoon as part of previously authorized operations and maintenance dredging and placement activities. To prevent dredged material from leaving the lagoon and entering and potentially damaging surrounding marsh, a temporary berm may be constructed as needed extending the length of the lagoon where placement will occur. Another temporary berm will be constructed as needed at the mouth of the lagoon to prevent dredged material from entering the Mississippi Sound. The existing island will be expanded to restore it to the historic footprint through placement of approximately 1.8 mcy of sediment. The expansion area will serve as a combination of marsh and maritime forest habitat. The island restoration will cover approximately 260 acres of previously submerged water bottoms. The expanded area will be filled with suitable materials to bring the elevations to appropriate heights for maritime forest and marsh habitats. Maritime forest restoration will be completed by a combination of soil amendments and planting with select native species. Marsh habitat restoration will be completed by targeting elevations that allow for natural recruitment from the existing adjacent Grand Bayou marsh. The entire restored island will be monitored over a period of 5 years after construction to ensure success of the restoration effort. If the restored area does not meet success criteria, adaptive management actions may occur.

All material used for the restoration will come from a combination of sources to include: the footprint of the island restoration to construct a natural containment and create additional capacity for beneficial use of dredged material, the Biloxi Harbor Federal Navigation Channel, the Biloxi Harbor Federal Navigation project's authorized open water placement areas 6 and 7, and the previously approved borrow area for the 2008 breach and southern beach fill extension. Access channels may need to be dredged for equipment access (e.g., cranes, excavators, bulldozers and marsh buggies) to the island and along the Katrina Key extension due to water depths ranging from one to four feet through most of the restoration area. Access channels will measure approximately 150 ft wide and 10 ft deep and will be approximately three miles long for the Katrina Key access and approximately one mile long for Deer Island access. Material dredged from access channels will either be side-cast or used as part of the Deer Island restoration. All dredging associated with the Deer Island Ecosystem Restoration project will be completed using either a mechanical and/or a hydraulic cutterhead dredge. Material could be pumped directly on the island and/or mechanically placed from scows or offloader barges. Work associated with the initial construction of this project is expected to commence in 2025 and extend through late 2027. Placement in the beneficial use area, planting, and monitoring will initiate after the initial construction of the breakwater and island beach and dune features.

COORDINATION:

In accordance with requirements under the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act, this action has been coordinated for with the U.S. Fish and Wildlife Service (USFWS) and the NMFS, HCD and Protected Resources Division (PRD). USACE, Mobile District made the determination that the Deer Island Restoration project is not likely to adversely affect nesting sea turtles, Eastern black rail, Piping plover, Red knot and West Indian Manatee. The USFWS agreed with USACE's determination on April 7, 2023 (Enclosure 2). In a letter dated January 5, 2023 (Enclosure 3), the NMFS-PRD agreed with the

USACE determination that the Deer Island Ecosystem Restoration Project may affect but is not likely to adversely affect sea turtles, Giant manta ray and Gulf sturgeon. Additionally, the NMFS-PRD agreed with the determination that the project may affect but is not likely to destroy or adversely modify Gulf sturgeon critical habitat.

Coordination with the Mississippi State Historic Preservation Office (SHPO), per Section 106 of the National Historic Preservation Act was completed on March 23, 2023 (Enclosure 4). The Mississippi SHPO determined that no cultural resources are likely to be affected, and therefore have no objection with the proposed action.

USACE received one comment on the Public Notice from the NMFS-HCD. In an email response dated September 6, 2024, NMFS-HCD stated that there are no objections to the Deer Island Restoration project (Enclosure 5). No other comments were received.

USACE, Mobile District has determined that the proposed Deer Island Ecosystem Restoration Project is consistent with the requirements of the CZMA. Environmental impacts associated with the proposed action are anticipated to be minor and short-term. No wetlands, oyster reefs, or submerged aquatic vegetation would be adversely affected by the proposed action and no long-term water quality impacts are anticipated. Based on a review of the Mississippi Coastal Management Program, we find that the proposed action is consistent with the program to the maximum extent practicable. If you require additional information, please contact Ms. Angelia Lewis at (251) 694-4105 or by email angelia.v.lewis@usace.army.mil.

Sincerely,

Ryan B. Crane
Acting Chief, Planning and Environmental
Division

Enclosures

ENCLOSURE 1

PUBLIC NOTICE



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, MOBILE DISTRICT
P.O. BOX 2288
MOBILE, AL 36628-0001

CESAM-PD-EC
PUBLIC NOTICE NO. FP24-DI01-13

28 August 2024

JOINT PUBLIC NOTICE

**U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT AND
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY,
OFFICE OF POLLUTION CONTROL
AND
MISSISSIPPI DEPARTMENT OF MARINE RESOURCES**

FOR

**DEER ISLAND ECOSYSTEM RESTORATION MISSISSIPPI
COASTAL IMPROVEMENTS PROGRAM BILOXI, HARRISON
COUNTY, MISSISSIPPI**

A FEDERALLY AUTHORIZED PROJECT

Interested persons are hereby notified that the U.S. Army Corps of Engineers (USACE), Mobile District is proposing construction actions associated with the Deer Island Ecosystem Restoration Project, Biloxi, Mississippi, as an authorized element of the Mississippi Coastal Improvements Program (MsCIP) Comprehensive Plan.

This public notice is issued in accordance with rules and regulations published in the Federal Register April 26, 1988. These laws are applied whenever dredged or fill materials may enter waters of the United States. The recipient of this notice is requested specifically to review the proposed action as it may impact on water quality, relative to the requirements of Section 404(b)(1) of the Clean Water Act and Coastal Zone Management Act. Review of any other potential impacts is also requested.

WATERWAY AND LOCATION: Mississippi Sound, Harrison County, Mississippi.

DESCRIPTION OF THE AUTHORIZED PROJECT: As described in the MsCIP Comprehensive Plan and Integrated Programmatic Environmental Impact Statement (EIS), the authorized project includes the restoration of approximately 400 acres of habitat, including approximately 128 acres of emergent tidal marsh, 78 acres of coastal maritime forest, and 86 acres of shoreline beach.

DESCRIPTION OF THE PROPOSED ACTION: The proposed action includes the restoration of approximately 400 acres of island habitat, including 128 acres of emergent tidal marsh, 78 acres of coastal maritime forest, and 86 acres of shoreline beach. The proposed action also involves the construction of the remaining sections of the previously authorized Katrina Key breakwater, which will offer added wave and erosion reduction to the restored island.

The extension of the southern beach and dune will consist of placement of approximately 1.5 million cubic yards (mcy) of sandy material over approximately 116 acres. This proposed expansion will tie-in to the existing beach and extend it approximately one mile to the southeast to restore the island's historic footprint. Restoration of up to 40 acres of maritime forest habitat along the northeast will be achieved by restoring elevation with approximately 175,000 cy of suitable soil followed by select native species planting and controlled burning. In addition, restoration of elevation and hydrology within the existing Grand Bayou including filling of existing mosquito ditches will occur as needed to optimize various habitat types. Marsh restoration within the lagoon will be completed by the placement of material dredged from the Biloxi Harbor Federal Navigation Channel over time until restoration benefits are achieved. Material will be dredged from the Federal navigation channel and placed within the lagoon as part of previously authorized operations and maintenance dredging and placement activities. To prevent dredged material from leaving the lagoon and entering and potentially damaging surrounding marsh, a temporary berm may be constructed as needed extending the length of the lagoon where placement will occur. Another temporary berm will be constructed as needed at the mouth of the lagoon to prevent dredged material from entering the Mississippi Sound. The existing island will be expanded to restore it to the historic footprint through placement of approximately 1.8 mcy of sediment. The expansion area will serve as a combination of marsh and maritime forest habitat. The island restoration will cover approximately 260 acres of previously submerged water bottoms. The expanded area will be filled with suitable materials to bring the elevations to appropriate heights for maritime forest and marsh habitats. Maritime forest restoration will be completed by a combination of soil amendments and planting with select native species. Marsh habitat restoration will be completed by targeting elevations that allow for natural recruitment from the existing adjacent Grand Bayou marsh. The entire restored island will be monitored over a period of 5 years after construction to ensure success of the restoration effort. If the restored area does not meet success criteria, adaptive management actions may occur.

All material used for the restoration will come from a combination of sources to include: the footprint of the island restoration to construct a natural containment and create additional capacity for beneficial use of dredged material, the Biloxi Harbor Federal Navigation Channel, the Biloxi Harbor Federal Navigation project's authorized open water placement areas 6 and 7, and the previously approved borrow area for the 2008 breach and southern beach fill extension. Access channels may need to be dredged for equipment access (e.g., cranes, excavators, bulldozers and marsh buggies) to the island and along the Katrina Key extension due to water depths ranging from one to four feet through most of the restoration area. Access channels will measure approximately 150 ft wide and 10 ft deep and will be approximately three miles long for the Katrina Key access and approximately one mile long for Deer Island access. Material dredged from access channels will either be side-cast or used as part of the Deer Island restoration. All dredging associated with the Deer Island Ecosystem Restoration project will be completed using either a mechanical and/or a hydraulic cutterhead dredge. Material could be pumped directly on the island and/or mechanically placed from scows or offloader barges. Work associated with the initial construction of this project is expected to commence in 2025 and extend through late 2027. Placement in the beneficial use area, planting, and monitoring will initiate after the initial construction of the breakwater and island beach and dune features.

WATER QUALITY CERTIFICATION: Pursuant to the Clean Water Act, state water quality certification is required for the proposed actions described above. Water quality certification will be requested from the Mississippi Department of Environmental Quality, Office of Pollution Control (MDEQ). Upon completion of the required 30-day comment period, a decision relative to water quality certification will be made by MDEQ.

COASTAL ZONE CONSISTENCY: Pursuant to the Coastal Zone Management Act, the proposed action is consistent with the Mississippi Coastal Program to the maximum extent practicable. Concurrence with the determination will be requested from the Mississippi Department of Marine Resources (MDMR). Upon completion of the required 30-day comment period, a decision relative to coastal zone consistency will be made by MDMR.

USE BY OTHERS: The proposed action is not expected to create significant impacts on land and water use plans in the vicinity. Use of the waters in the vicinity of the project area includes fishing and recreational boating.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) CONSIDERATIONS: In accordance with the requirements of NEPA, a draft Environmental Assessment (EA), prepared by USACE, Mobile District has been tiered from the MsCIP Comprehensive Plan and Integrated EIS dated September 2009. The MsCIP EIS is available for review on the MsCIP webpage at <https://www.sam.usace.army.mil/Missions/Program-and-Project-Management/Civil-Projects/MsCIP/MsCIP-Downloads/>. The tiered draft EA for this proposed action is available for review at <https://www.sam.usace.army.mil/Missions/Planning-Environmental/Environmental-Assessments/>.

SECTION 404(B)(1) EVALUATION REPORT: Impacts associated with the proposed action have been identified in an evaluation report prepared in accordance with Public Law 920500, and Section 404 (b)(1) Guidelines promulgated by the U.S. Environmental Protection Agency under the Clean Water Act. The Draft Section 404 (b)(1) Evaluation Report is available for review on the District website at <https://www.sam.usace.army.mil/Missions/Planning-Environmental/Environmental-Assessments/>. The report concludes that only minor and short-term turbidity impact would result from the implementation of the proposed action.

ENDANGERED/THREATENED SPECIES: Pursuant to Section 7 of the Endangered Species Act, the proposed action has been coordinated with the U.S. Department of the Interior, U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service Protected Resources Division (NMFS-PRD). Federally protected species that may be found within the project area include the West Indian manatee (*Trishechus manatus*), Gulf sturgeon (*Acipenser oxyrinchus desotoi*), Piping plover (*Charadrius melodus*), Red knot (*Calidris canutus rufa*), Eastern black rail (*Laterallus jamaicensis*), Kemp's ridley sea turtle (*Lepidochelys kempii*), Loggerhead sea turtle (*Caretta caretta*), Green sea turtle (*Chelonia mydas*), Leatherback sea turtle (*Dermochelys coriacea*), and the Giant manta ray (*Manta birostris*). Additionally, the project area falls within Piping plover and Gulf sturgeon critical habitat.

The overall potential impacts from the proposed project to threatened and endangered species are expected to be minor and temporary. The species will likely avoid the area during construction and return shortly after construction has completed. Consultation with the USFWS was completed on April 7, 2023. The USFWS agreed with USACE's determination that the proposed action is not likely to adversely affect nesting sea turtles, Eastern black rail, Piping plover, and Red knot. Additionally, the USFWS agreed that the proposed project is not likely to adversely modify or destroy designated Piping plover critical habitat. Consultation with the NMFS-PRD was completed on January 5, 2023. The NMFS-PRD agreed with the USACE's determination that the proposed action is not likely to adversely affect sea turtles, Giant manta ray, and Gulf sturgeon. The NMFS-PRD also agreed that the project is not likely to adversely affect Gulf sturgeon critical habitat.

ESSENTIAL FISH HABITAT (EFH): EFH is defined in the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) as "those waters and substrate necessary for fish to spawn, breed, feed or grow to maturity." The Gulf of Mexico Fishery Management Council in accordance with the MSFCMA (PS 94-265) has developed management plans for the following fisheries in the Gulf of Mexico: coastal migratory pelagic, red drum, snappers, groupers, tilefishes, jacks, triggerfishes, hogfish, shrimp, spiny lobster, and corals. The NMFS-Habitat Conservation Division (HCD) has identified EFH habitats for the Gulf of Mexico in its Fishery Management Plan Amendments. These habitats include estuarine areas, such as estuarine emergent wetlands, seagrass beds, algal flats, mud, sand, shell, and rock substrates, and the estuarine water column. USACE, Mobile District has determined that no significant long-term impacts to EFH would be expected due to the relatively small area of ecosystem that would be affected, and given the rapid benthic recovery rates, no significant long-term impacts to EFH would be expected. This determination will be coordinated with the NMFS-HCD and a concurrence is anticipated.

CLEAN AIR ACT: Air quality in the vicinity of the proposed action would not be significantly affected by the proposed action. The equipment and machinery would generate some air pollution during construction activities, such as increased particulate levels from the burning of fossil fuels. However, these impacts would be minor and temporary in nature. The proposed action is in compliance with the Clean Air Act, as amended. The project area is in attainment with the National Ambient Air Quality Standards parameters. The proposed action would not affect the attainment status of the project area or the region.

EVALUATION: The decision whether to proceed with the proposed action will be based on an evaluation of the probable impact including cumulative impacts of the proposed action on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that may be reasonably expected to accrue from the proposed action must be balanced against its reasonably foreseeable detriments. All environmental resources/factors which may be relevant to the proposed action will be considered including the cumulative effects thereof. The proposed action will proceed unless it is found to be contrary to the overall public interest.

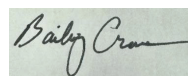
COORDINATION: Among the agencies receiving copies of this public notice are:

- Region 4, U.S. Environmental Protection Agency
- U.S. Department of the Interior, Fish and Wildlife Service, Jackson, Mississippi
- U.S. Department of Commerce, National Marine Fisheries Service, Habitat Conservation Division, Baton Rouge, Louisiana
- U.S. Department of Commerce, National Marine Fisheries Service, Protected Resource Division, St. Petersburg, Florida
- Commander, Eight Coast Guard District
- Mississippi Department of Marine Resources
- Mississippi Department of Environmental Quality
- Gulf of Mexico Fishery Management Council
- U.S. Department of Agriculture, Natural Resources Conservation Service
- Appropriate Federally Recognized Indian Tribes
- Mississippi State Historic Preservation Office

Other Federal, state, and local organizations are provided copies of this notice and are asked to participate in coordinating the proposed action. USACE, Mobile District request the information contained in this notice be communicated to any other parties who may have an interest in the proposed action.

CORRESPONDENCE: Any person who has an interest that may be affected by this proposed activity may request a public hearing. Any comments or requests for a public hearing must be submitted in writing to the District Engineer within 30 days of the date on this public notice. A request for a hearing must clearly set forth the interest, which may be affected, and the manner in which the interest may be affected.

Correspondence concerning this public notice should refer to Public Notice No. FP24-DI01-13 and should be directed to the Commander, U.S. Army Corps of Engineers, Mobile District, Attention: CESAM-PD-EC, Ms. Angelia Lewis, Biologist, Post Office Box 2288, Mobile, Alabama 36628, within 30 days of the date on this public notice. If you require additional information, please contact Ms. Angelia Lewis at (251) 694-4105 or by email at Angelia.V.Lewis@usace.army.mil



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RYAN B. CRANE
Acting Chief, Planning and Environmental
Division

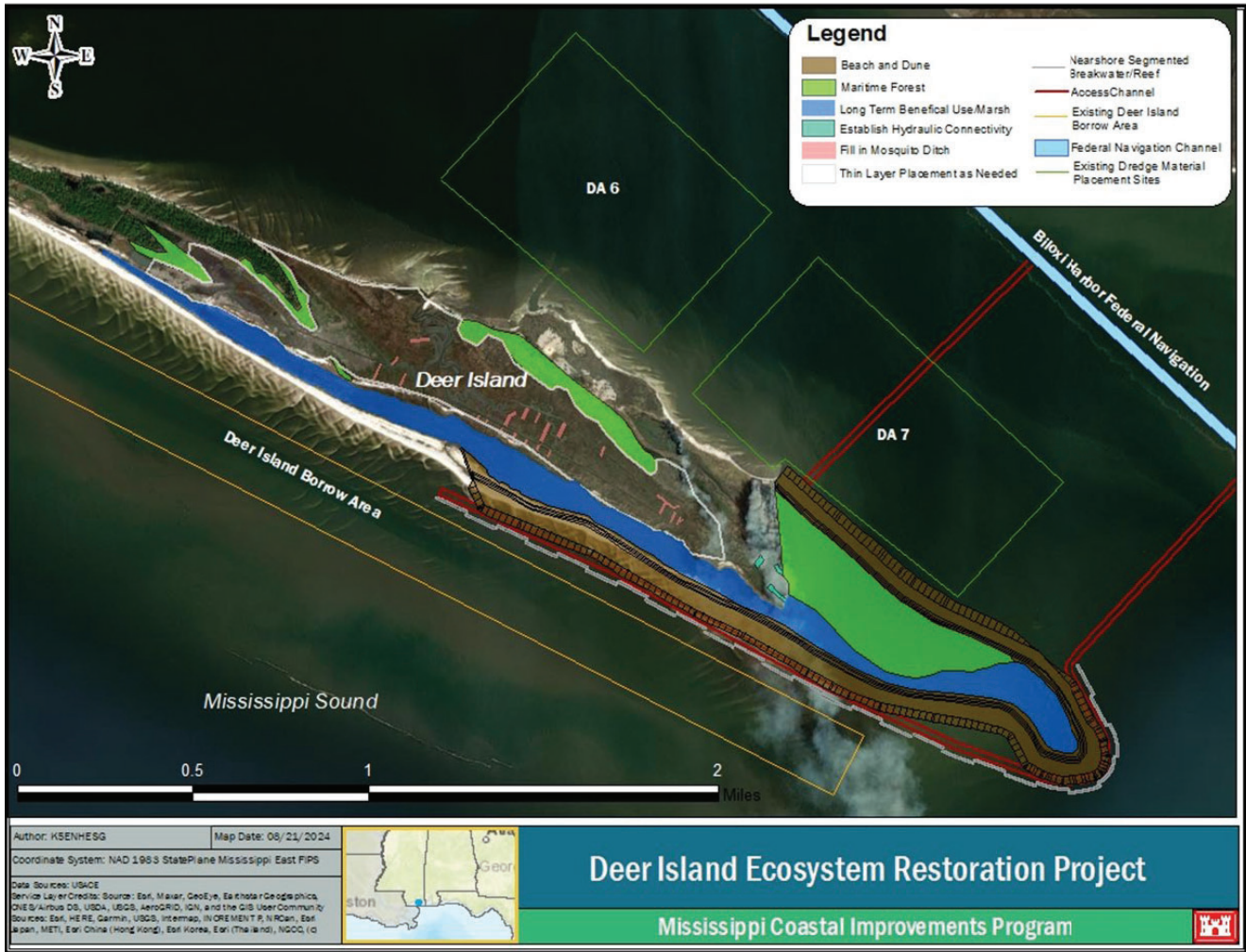


Figure 1: Deer Island Ecosystem Restoration Project Area

ENCLOSURE 2

USFWS COORDINATION

From: [Necaise, Paul](#)
To: [Lewis, Angelia V CIV USARMY CESAM \(USA\)](#)
Subject: [Non-DoD Source] Re: [EXTERNAL] Deer Island Sec 7 Consultation
Date: Friday, April 7, 2023 2:25:56 PM

Angelia,

The US Fish and Wildlife Service has reviewed the subject BA which outlined work proposed on Deer Island in Biloxi, MS. The proposed work includes the restoration of approximately 400 acres of island habitat, including 128 acres of emergent tidal marsh, 78 acres of coastal maritime forest, 86 acres of shoreline beach, and extending the previously authorized Katrina Key breakwater.

Based on the information contained in your above-referenced letter, and adequate monitoring is implemented for sea turtle nests and nesting shorebirds, the Service concurs that the proposed project may affect, but not likely adversely affect nesting sea turtles, eastern black rail, piping plover, and red knot. Further, we concur that the project is not likely to adversely modify or destroy designated piping plover critical habitat.

Therefore, provided adequate monitoring for sea turtle nests and nesting shorebirds during the respective nesting seasons are implemented as mentioned in your letter should equipment or personnel need to be located on the existing or constructed beach, the Service has no objection to the project as proposed. A detailed plan regarding wildlife and/or habitat monitoring that may be should be submitted to our office for review and approval. Should you need any assistance or have any questions, you may contact me at the telephone number listed below. The Service looks forward to working with the corps on this project.

Paul Necaise
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
Mississippi Ecological Services Field Office
6578 Dogwood View Parkway
Jackson, MS 39213
(228) 493-6631
Email: paul_necaise@fws.gov

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

From: Lewis, Angelia V CIV USARMY CESAM (USA) <Angelia.V.Lewis@usace.army.mil>
Sent: Friday, March 10, 2023 8:56 AM
To: Necaise, Paul <paul_necaise@fws.gov>
Cc: Mroczko, Donald E CIV USARMY CESAM (USA) <Donald.E.Mroczko@usace.army.mil>
Subject: [EXTERNAL] Deer Island Sec 7 Consultation

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Good Fri-YAY morning!

I just wanted to check in and see if you had a chance to look over the Deer Island consultation letter. If you have any questions or concerns about it just let me know

Thanks!

Angelia V. Lewis
Senior Biologist
Planning and Environmental / Coastal Environment Team
U.S. Army Corps of Engineers, Mobile District
251-694-4105
719-358-3009

From: [Necaise, Paul](#)
To: [Lewis, Angelia V CIV USARMY CESAM \(USA\)](#)
Subject: [Non-DoD Source] Re: [EXTERNAL] Deer Island Sec 7 Consultation
Date: Friday, August 11, 2023 11:09:31 AM

Hi Angelia!

Provided the Standard Manatee Construction Conditions is implemented as proposed below, the Service concurs with your determination for the West Indian manatee for this project.

Paul Necaise
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
Mississippi Ecological Services Field Office
6578 Dogwood View Parkway
Jackson, MS 39213
(228) 493-6631
Email: paul_necaise@fws.gov

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

From: Lewis, Angelia V CIV USARMY CESAM (USA) <Angelia.V.Lewis@usace.army.mil>
Sent: Thursday, August 10, 2023 4:34 PM
To: Necaise, Paul <paul_necaise@fws.gov>
Subject: RE: [EXTERNAL] Deer Island Sec 7 Consultation

Good afternoon Paul!

In writing the EA for the Deer Island restoration I realized that my coordination letter to you did not actually state a determination for manatee! So, I am writing you today to add that the Mobile District has determined that the Deer Island Ecosystem Restoration project is not likely to adversely affect West Indian manatee. In addition, the Mobile District agrees to implement Standard Manatee Construction Conditions while construction is taking place.

I apologize for missing this!

Angelia V. Lewis
Senior Biologist
Planning and Environmental / Coastal Environment Team
U.S. Army Corps of Engineers, Mobile District
251-694-4105
719-358-3009

ENCLOSURE 3

NMFS-PRD COORDINATION



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701-5505
<https://www.fisheries.noaa.gov/region/southeast>

F/SER31:KO
SERO-2022-01729

Donald E. Mroczko
Acting Chief, Environment and Resources Branch
Mobile District, US Army Corps of Engineers
Department of the Army
P.O. Box 2288
Mobile, AL 36628-0001

Ref.: Deer Island Ecosystem Restoration Project, Biloxi, MS – EXPEDITED TRACK

Dear Donald Mroczko:

This letter responds to your December 23, 2022 expedited request letter dated July 15, 2022 pursuant to Section 7 of the Endangered Species Act (ESA) for consultation with the National Marine Fisheries Service (NMFS) on the subject action.

We reviewed the action agency's consultation request document and related materials. Based on our knowledge, expertise, and the action agency's materials, we concur with the action agency's conclusions that the proposed action is not likely to adversely affect the NMFS ESA-listed species and/or designated critical habitat.

On July 5, 2022, the U.S. District Court for the Northern District of California issued an order vacating the 2019 regulations that were revised or added to 50 CFR part 402 in 2019 ("2019 Regulations," see 84 FR 44976, August 27, 2019) without making a finding on the merits. On September 21, 2022, the U.S. Court of Appeals for the Ninth Circuit granted a temporary stay of the district court's July 5 order. On November 14, 2022, the Northern District of California issued an order granting the government's request for voluntary remand without vacating the 2019 regulations. The District Court issued a slightly amended order two days later on November 16, 2022. As a result, the 2019 regulations remain in effect, and we are applying the 2019 regulations here. For purposes of this consultation and in an abundance of caution, we considered whether the substantive analysis and conclusions articulated in the letter of concurrence would be any different under the pre-2019 regulations. We have determined that our analysis and conclusions would not be any different.

This concludes your consultation responsibilities under the ESA for species and/or designated critical habitat under NMFS's purview. Reinitiation of consultation is required and shall be requested by the action agency or by NMFS where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (a) take occurs; (b) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered in this consultation; (c) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not previously considered in this consultation; or (d) if a new species is listed or critical habitat designated that may be affected by the action.



We look forward to further cooperation with you on other projects to ensure the conservation of our threatened and endangered marine species and designated critical habitat. If you have any questions on this consultation, please contact Kevin Owen, Consultation Biologist, by email at kevin.owen@noaa.gov.

Sincerely,

Kelly Shotts
Acting Assistant Regional Administrator
for Protected Resources

File: 1514-22.f.6

ENCLOSURE 4

SHPO COORDINATION

March 23, 2023

Ms. Wendy Weaver
Mobile District, Corps of Engineers
Post Office Box 2288
Mobile, Alabama 36628-0001

RE: Proposed Restoration of 400 Acres on Deer Island, Biloxi,
(USACE) MDAH Project Log #02-144-23, Harrison County

Dear Ms. Weaver:

We have reviewed your February 13, 2023, request for a cultural resources assessment for the above referenced project, received on February 23, 2023, in accordance with our responsibilities under Section 106 of the National Historic Preservation Act and 36 CFR Part 800. After reviewing the information provided, it is our determination that no cultural resources are likely to be affected. Therefore, we have no objection with the proposed undertaking.

Should there be additional work in connection with the project, or any changes in the scope of work, please let us know in order that we may provide you with appropriate comments in compliance with the above referenced regulations. If you have any questions, please do not hesitate to contact us at (601) 576-6940.

Sincerely,



Hal Bell
Review and Compliance Officer

FOR: Katie Blount
State Historic Preservation Officer

ENCLOSURE 5

COMMENT FROM NMFS-HCD

From: January.Murray@noaa.gov
To: [Lewis, Angelia V CIV USARMY CESAM \(USA\)](mailto:Lewis.Angelia.V.CIV.USARMY.CESAM.(USA)@usace.army.mil)
Cc: [_NMFS ser HCDconsultations](#)
Subject: [Non-DoD Source] Re: U.S. Army Corps of Engineers, Mobile District Public Notice
Date: Friday, September 6, 2024 7:37:56 AM

Hello Angelia,

The NMFS Habitat Conservation Division has reviewed the project listed below and does not object to the issuance of the following permit for the public notice number **FP24-DI01-13**.

Thank you for your coordination,
January Murray

On Wed, Sep 4, 2024 at 3:57 PM Lewis, Angelia V CIV USARMY CESAM (USA) <Angelia.V.Lewis@usace.army.mil> wrote:

The purpose of this message is to notify you of a Federal project Public Notice from the U.S. Army Corps of Engineers, Mobile District.

Joint Public Notice - Deer Island Ecosystem Restoration, Mississippi Coastal Improvements Program, Biloxi, Harrison County, Mississippi

To print or download an electronic copy of this Public Notice please

click this link:

http://www.sam.usace.army.mil/Portals/46/docs/planning_environmental/docs/PN/08282024_Deer%20Island_DRAFT_PN_COMPLETE_.pdf

You will also be able to find supporting environmental documentation related to the Public Notice

such as a draft EA and FONSI on our website. <http://www.sam.usace.army.mil/Missions/PlanningEnvironmental/PublicNotices.aspx>

The Mobile District is required by Federal regulations to issue Public Notices to solicit public comments on Federal Civil Works projects. The comment period is typically 15 or 30 days depending on the scope of the project and is referenced in the Public Notice. If you have any comments on this project, please mail or e-mail your comments to the Project Manager referenced in the Public Notice.

Do not respond to this e-mail.

The Mobile District maintains an overall mailing list of interested agencies, businesses, organizations, and individuals which we are required to update on a regular basis. If you would like to be removed from this distribution list or know someone who would like to be added to our list, please notify the Project Manager.

--

January Murray

Fishery Biologist

Habitat Conservation Division

NOAA Fisheries | U.S. Department of Commerce

5757 Corporate Blvd, Suite 375

Baton Rouge, LA 70808

Office: (601) 890-1504

www.fisheries.noaa.gov