

APPENDIX G-1:

FINDING OF NO SIGNIFICANT IMPACT For the Texas Rookery Islands Project

Overview and Background

The Department of the Interior (DOI), National Oceanic and Atmospheric Administration (NOAA), Environmental Protection Agency (EPA), and United States Department of Agriculture (USDA), (collectively “Federal Trustees”) have conducted an environmental assessment (EA) for the Texas Rookery Islands Project. The project consists of restoration and protection actions on four rookery islands (Dickinson Bay II, Rollover Bay, Smith Point, and Dressing Point) to restore and protect colonial waterbird nesting habitat in the Gulf of Mexico and would be implemented by the Texas Trustees (Texas Parks and Wildlife Department, the Texas General Land Office, and the Texas Commission on Environmental Quality) and the Department of the Interior (DOI). The project is an early restoration project to be funded as part of the *Deepwater Horizon* Natural Resource Damage Assessment and Restoration process in accordance with the “Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill.” This project is one of several projects to be implemented by the Trustees as identified in the Final Phase IV Early Restoration Plan and Environmental Assessments (Final Phase IV ERP/EA) to accelerate restoration, and represents an initial step toward the restoration of natural resources injured by the *Deepwater Horizon* oil spill (Spill).

Under the Oil Pollution Act of 1990, damages recovered from parties responsible for natural resource injuries are used to restore, replace, rehabilitate and/or acquire the equivalent of the injured natural resources and services they provide (33 U.S.C. § 2706). When federal trustees are involved, these restoration activities are subject to the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.* Therefore, the Trustees prepared the Final Phase IV ERP/EA to evaluate the potential environmental impacts associated with multiple restoration activities to benefit colonial waterbird nesting habitat. This EA tiers from the Final Phase III Early Restoration Plan and Programmatic Environmental Impact Statement (Final Phase III ERP/PEIS) prepared by the Trustees in 2014 and is prepared in accordance with NEPA, Council on Environmental Quality (CEQ) NEPA regulations, and all applicable agency NEPA regulations and guidance.

Summary of Proposed Action and Alternatives

The CEQ NEPA regulations require the decision-maker to consider the environmental effects of the proposed action and a reasonable range of alternatives, including the No Action Alternative (40 C.F.R. § 1502.14). The EA addresses the proposed action and a No Action alternative. The purpose of, and need

for the proposed action is to begin to restore, replace, rehabilitate and/or acquire the equivalent of avian resources injured by the Spill.

The proposed action would be selected because it will result in more efficient recovery of colonial nesting waterbird losses compared to the No Action Alternative. The Texas Rookery Islands project would restore and protect three rookery islands in Galveston Bay and one rookery island in East Matagorda Bay using coastal engineering techniques. Restoration actions at each proposed rookery island would increase the amount of available nesting habitat by expanding the size of the island and enhancing the quality of habitat for nesting birds. Habitat longevity would be increased by raising the island elevation and constructing protective features, such as breakwaters or armoring levees.

Under the No Action Alternative, the Trustees would not restore and protect the rookery islands in Texas, resulting in the existing rookery islands continuing to diminish and nesting habitat for colonial waterbirds continuing to degrade. The No Action alternative would result in fewer pairs of nesting colonial waterbirds on Texas rookery islands.

The Texas Rookery Island project is analyzed and described in one Environmental Assessment (EA) composed of two sections based on geographic location and observed similarities among the four islands. The two sections of the proposed project EA are separated by bay, Galveston or East Matagorda, and include these rookery islands:

- 1) Galveston Bay, which addresses Dickinson Bay II, Rollover Bay, and Smith Point Islands; and
- 2) East Matagorda Bay, which addresses Dressing Point Island.

The Final EA and this Finding of No Significant Impact were prepared after considering input from the public during the public comment period for the Draft Phase IV ERP/ EA.

Analysis Summary

The Federal Trustees evaluated potential environmental effects of the proposed action and analyzed the significance of this action based on NEPA, Council on Environmental Quality (CEQ) NEPA regulations, and all applicable agency NEPA regulations and guidance. CEQ regulations (40 C.F.R. §1508.27) state that the significance of an action should be analyzed both in terms of “context” and “intensity.” Criteria discussed below are relevant to making a Finding of No Significant Impact. Each criterion was considered individually, as well as in combination with the others. The Final Phase IV ERP/EA’s analysis of the environmental consequences of the proposed project islands within each bay (Galveston and Matagorda) determines that minor (or less), short-term and long-term, adverse impacts to some resource categories and no moderate or major adverse impacts are anticipated to result from the restoration and protection of the rookery islands described above. See Final Phase IV ERP/EA Chapter 5, sections 5.2.5 (Galveston Bay Rookery Islands Affected Environment and Environmental Consequences); 5.2.7 (East Matagorda Bay Rookery Island Affected Environment and Environmental Consequences);

5.2.8 (Summary and Next Steps); and 5.2.9 (Overall Summary of the Texas Rookery Islands Project).

When environmental consequences were reviewed across the entire Texas Rookery Islands project, the analysis suggests that resources would either not be affected by project activities or have minor adverse and beneficial impacts as discussed below and in the Phase IV ERP/EA Chapter 5:

- Impacts to the physical environment (geology and substrates, hydrology and water quality, air quality/ greenhouse gas emissions, and noise) were assessed in the Final Phase IV ERP/EA Chapter 5, sections 5.2.5.1; 5.2.7.1; and 5.2.9.1, and would be temporary and minor. Long-term benefits would occur to the bottom substrates due to stabilization of sediments and protection from erosion. Long-term benefits would also occur from the breakwater/armored levee protection of the islands. Minor, adverse and local impacts to geology and substrates within the footprint of the project would be affected through the placement of clean fill and hard, structural material. Minor, adverse and local impacts to geology and substrates would occur at the borrow site as well. No impacts to floodplains or hydrology would occur. Temporary, local, and minor impacts to water quality would result from increased turbidity during dredging activities and placement of fill material. Minor short-term adverse impacts to noise, air quality, and GHG emissions will occur from the use of construction equipment. Impacts would be localized and last only during the construction period.
- Impacts to the biological environment were assessed in the Final Phase IV ERP/EA Chapter 5, sections 5.2.5.2; 5.2.7.2; and 5.2.9.2, and would be minor. The proposed action will provide long-term benefits by restoring and protecting nesting habitat, reducing erosion and turbidity in nearshore waters for oyster populations, and providing additional hard structure (including crevices and interstitial voids) habitat for marine species. The additional hard structure and interstitial spaces would also enhance foraging areas for fish as well as provide cover for juvenile fish and substrate for establishment of oyster habitat. Seagrasses would be surveyed prior to construction and avoided so there would be no impacts. Potential short-term minor adverse effects to benthic organisms, invertebrates, and fish may occur during construction activities due to placement of fill, construction of breakwaters/levees, and noise. Active oyster reefs would be surveyed prior to construction and avoided so there would be no impacts. Potential short-term minor adverse effects to essential fish habitat (EFH) could occur due to localized turbidity during dredging and placement of fill. Restoration of the islands and construction of breakwaters/levees would result in the permanent loss of over 20 acres of submerged bay habitat. No impacts to marine mammals are expected because they would leave the area to avoid the construction activities and/or would generally avoid the area because optimal habitat does not exist. If present, best management practices (BMPs) would be implemented to avoid impacts. Construction activities would cause temporary, minor adverse impacts to wildlife due to the presence of people and use of heavy equipment on the islands. Construction activities would be relatively short-term and occur outside of the nesting season period, and would therefore not affect any bird nesting activities. Potentially temporary and minor adverse impacts

to sea turtles could occur during construction. However, these species are all mobile and expected to avoid the project area during construction. No impacts would be expected to the northern aplomado falcon, whooping crane, piping plover, red knot, or eagles. If present, BMPs would be implemented to avoid impacts.

- Impacts to human uses and socioeconomics (cultural resources, aesthetics and visual resources, tourism and recreational use, and public health and safety) were assessed in the Final Phase IV ERP/EA Chapter 5, sections 5.2.5.3; 5.2.7.3; and 5.2.9.3, and would be short-term and minor. Socioeconomics and environmental justice would not be impacted. Land and marine management and transportation as well as infrastructure were determined to have no adverse impact. The project would result in minor, short-term visual impacts during construction. However, there would be a long-term beneficial impact to visual and aesthetic resources once the island restoration is completed. There would be short-term, minor adverse impacts to recreational activities in the area during construction. Following construction, there would be long-term benefits through the enhancement of waterbird populations locally, regionally, and Gulf-wide, which supports nature based tourism. There would be no adverse impact to public health and safety.
- The project is not expected to have any significant adverse effects on floodplains pursuant to Executive Order 11988.
- The project will restore and protect bird nesting islands at four locations within waters of the U.S. This project will affect wetlands and deepwater (>6.6 ft in depth) habitats. The habitats affected to varying degrees at each site would include estuarine subtidal and intertidal unconsolidated bottom reef, emergent and scrub-shrub wetlands. The project will avoid, minimize and/or compensate for any unavoidable impacts to associated wetlands and/or special aquatic sites. In addition, this project will be adding similar habitats at each restoration site, thereby increasing wetlands services provided currently. This project complies with EO 11990 by meeting the requirements presented in the Order including consideration of the factors relevant to the proposal's effect on the survival and quality of wetlands as specified in Section 5 (a-c).
- Because the Texas Rookery Islands Project has reasonably foreseeable effects on coastal uses or resources that are the subject of federally approved Coastal Zone Management Plans in Texas, the Federal Trustees submitted a consistency determination for the project for review to the Texas General Land Office (TGLO). TGLO concurred with that determination on behalf its state, however, TGLO noted that no work may be conducted or structures placed on State-owned land until all necessary authorizations, including those required by TGLO and the USACE have been obtained. Additional consistency review may also be required pursuant to federal regulations

(see 15 C.F.R. Part 930) prior to project implementation, including incident to these authorization processes.

- The proposed project would have no significant adverse direct or indirect impacts, and no significant adverse cumulative impacts are anticipated from implementation of this project, due in part to its long-term beneficial impacts on birds and bird habitat. (Refer to the Final Phase IV ERP/EA Chapter 5, section 5.2.10).
- The project would have no significant impact to any ocean, coastal or essential fish habitats as defined under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA).
- The project's potential impacts are not controversial and the project is supported by the general public. It would benefit a variety of colonial nesting waterbirds and is not anticipated to significantly impact unique areas such as historic or cultural resources or ecologically critical areas. It would have no effects on the human environment that would be highly uncertain or involve unique or unknown risks.
- The proposed action is not expected to result in the introduction or spread of any invasive species.
- The proposed action would use well-established rookery island restoration and protection techniques, with BMPs that have been used effectively in other projects. There is no expectation it would threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment, and is not expected to establish a precedent for future actions with potential significant effects. However, the extent of success of the project will be monitored closely, and the approach and design may be applied, adopted, or modified.

Copies of the draft EA for this project were available to the public as provided in a Federal Register notice published on May 20, 2015. See *Deepwater Horizon* Oil Spill; Draft Phase IV Early Restoration Plan and Environmental Assessments 80 FR 29019-29021 (May 20, 2015). Public comments on the Draft Phase IV ERP/EA were taken during a 47 day public comment period extending from May 20, 2015 to July 6, 2015 (80 FR 35393, June 19, 2015). Public comments received during this period have been considered and addressed by the Trustees in the Final Phase IV ERP/EA (Chapter 15, Response to Comments). The Final Phase IV ERP/EA is hereby incorporated by reference.

Agency Coordination and Consultation Summary

Endangered Species Act (ESA): The Trustees initiated consultations pursuant to Section 7 of the Endangered Species Act with the NMFS' Protected Resources Division (initiated July 7, 2015) and the USFWS Texas Coastal Ecological Services Field Office (initiated August 26, 2015). The Trustees are awaiting a response on the ESA from NMFS and USFWS.

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA): NMFS Southeast Regional Office Habitat Conservation Division reviewed and concurred with the EFH assessment for the project, which determined that temporary and permanent impacts will occur to estuarine water column and underlying submerged estuarine soft bottom habitat categorized as EFH identified in the Gulf of Mexico Fishery Management Council's 2005 Generic EFH Amendment, or the NMFS Highly Migratory Species Fishery Management Plan. Project implementation would directly impact estuarine soft bottom EFH to create upland colonial waterbird nesting islands. Both dredging and fill placement locations would be sited to avoid sensitive estuarine habitats such as oyster reefs and seagrasses. Best management practices to minimize both short-term construction impacts and long-term impacts to sensitive habitats will be followed.

BGEPA, MBTA and MMPA: The Trustees have also initiated review of the proposed project with USFWS for impacts to bald eagles and migratory birds in accordance with the Bald and Golden Eagle Protection Act (BGEPA) of 1940 and the Migratory Bird Treaty Act (MBTA) of 1918. The Trustees also coordinated with NMFS's Protected Resources Division to determine that this project does not require authorization under the MMPA.

NHPA: Potential impacts to cultural and historical resources protected under Section 106 of the National Historic Preservation Act were described in the Final Phase IV ERP/EA Chapter 5, sections 5.2.5.3.1; 5.7.5.3.1; and 5.9.3. A complete review of this project under Section 106 of the National Historic Preservation Act was initiated and will be completed prior to project implementation. NHPA Section 106 and Tribal consultations would further identify potential cultural resources in the project areas and any mitigation measures necessary to protect those resources.

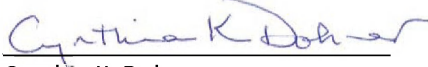
If any further need arises to coordinate and consult with other regulatory authorities, including for example Clean Water Act Section 404 or the Rivers and Harbors Act, the additional coordination or consultation requirements will be addressed prior to project implementation. The status of federal regulatory permits/approvals will be maintained online (<http://www.gulfspillrestoration.noaa.gov/environmental-compliance/>) and updated as regulatory compliance information changes. The Federal Trustees' Finding of No Significant Impact for this project is issued subject to the completion of all outstanding compliance reviews under other federal laws. If the proposed action changes or information is brought to light as a result of completing such reviews that is potentially relevant to the environmental evaluation supporting this Finding of No Significant Impact, that evaluation will be updated or supplemented as required by NEPA and a new determination made by the Federal Trustees under NEPA as to whether the proposed action is likely to significantly affect the quality of the human environment.

Determination

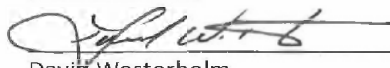
In view of the information presented in this document and the environmental analysis contained in the supporting Final Phase IV ERP/EA for the Texas Rookery Islands project, the Federal Trustees have determined that the Texas Rookery Islands project will not significantly impact the quality of the human environment. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

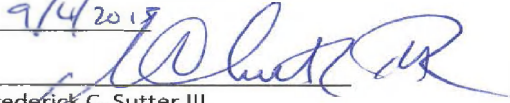
**FINDING OF NO SIGNIFICANT IMPACT
For the Texas Rookery Islands Project**

Date: 9/10/15

Signature: 
Cynthia K. Dohner
Authorized Official, U.S. Department of the Interior

**FINDING OF NO SIGNIFICANT IMPACT
For the Texas Rookery Islands Project**

Date: 9/8/2015
Signature: 
David Westerholm
Director, Office of Response and Restoration
National Ocean Service, NOAA

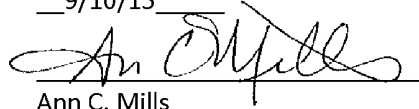
Date: 9/4/2015
Signature: 
Frederick C. Sutter III
Director, Office of Habitat Conservation
National Marine Fisheries Service, NOAA

FINDING OF NO SIGNIFICANT IMPACT
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Date:

9/10/15

Signature:



Ann C. Mills

Deputy Under Secretary, USDA

**FINDING OF NO SIGNIFICANT IMPACT
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Date: 9/10/15

Signature: *Kenneth J. Kopocis*
Kenneth J. Kopocis
Principal Representative, EPA