



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Gulf Restoration Program Office
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Houston, Texas 77058
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In Reply Refer To:
FWS/R2/ES

October 6, 2015

Debora L. McClain
U.S. Fish and Wildlife Service
Attn: Ms. Ashley Mills
1875 Century Boulevard
Atlanta, Georgia 30345

Dear Ms. McClain,

Thank you for your letter dated August 26, 2015, requesting informal consultation for the proposed Texas Rookery Islands Project. The project involves four islands that will be restored or created to further enhance the rookery habitat along the Texas Gulf Coast. The U.S. Fish and Wildlife Service (Service) and National Marine Fisheries Service provided a request for concurrence that the proposed project “may affect, but is not likely to adversely affect” piping plover (*Charadrius melodus*), red knot (*Calidris canutus rufa*), West Indian manatee (*Trichechus manatus*), green sea turtle (*Chelonia midas*), hawksbill sea turtle (*Eretmochelys imbricata*), Kemp’s ridley sea turtle (*Lepidochelys kempii*), leatherback sea turtle (*Dermochelys coriacea*), loggerhead sea turtle (*Caretta caretta*), Northern aplomado falcon (*Falco femoralis septentrionalis*), and whooping crane (*Grus americana*) species federally listed as threatened or endangered pursuant to the Endangered Species Act (Act) of 1973. Secondly, your letter requests concurrence that the proposed project “may affect, but is not likely to adversely affect” Sprague’s pipit (*Anthus spragueii*) a candidate species. Lastly, your letter requests our concurrence that the proposed project will have “no effect” on the federally listed Attwater’s greater prairie chicken (*Tympanuchus cupido attwateri*) and smalltooth sawfish (*Pristis pectinata*).

Our comments are provided in accordance with the provisions of the Endangered Species Act (16 U.S.C. 1531 et seq.); the Migratory Bird Treaty Act (16 U.S.C. 703 et seq. Section 7 of the Act requires that all Federal agencies consult with the Service to ensure that the actions authorized, funded, or carried out by such agencies do not jeopardize the continued existence of any threatened or endangered species or adversely modify or destroy designated critical habitat of such species. The proposed Texas Rookery Islands Project is composed of four separate island creation/enhancement projects. Each of these islands will be addressed separately within this letter.

The Attwater’s greater prairie chicken inhabits coastal prairie land and does not utilize open water areas of Dickinson Bay, East Matagorda Bay, Rollover Bay, or Galveston Bay. Smalltooth

sawfish is considered to be extirpated in Texas (68 FR 15674). Based on this evaluation, a “No Effect” determination was made for Attwater’s greater prairie chicken and smalltooth sawfish as a result of the Texas Rookery Islands Project. The Service concurs that the Texas Rookery Islands Project will have no effect on these three species.

Dickinson Bay Island II

The site of the first proposed island is in Dickinson Bay southwest of the city of San Leon, Galveston County, Texas. Historically, there were three islands in the vicinity that provided habitat for colonial nesting waterbirds. These historical islands were overwashed decades ago due to erosion and subsidence. The Dickinson Bay Island II project proposes to create an island approximately 4 acres in size using earthen fill and incorporates 2,000 feet of armored shoreline to limit erosion. The proposal includes planting 3.5 acres of the island with appropriate coastal scrub-shrub vegetation in order to provide habitat for colonial nesting waterbirds.

Approximately 76,000 cubic yards of material will be used to create the island, requiring a borrow site approximately 562,500 square feet by no more than 5 feet deep.

There is no habitat for the piping plover or red knot on the open waters of Dickinson Bay. The Service is not aware of any reported sittings of piping plover use within or near the project area. In addition, due to ongoing construction activities at the project site, piping plovers are not expected to utilize areas under active construction. Therefore, the Service concurs with the no effect determination for the Dickinson Bay Island II project.

The West Indian manatee is uncommon in Texas waters and not likely to occur in the project site. All construction personnel will be notified of the potential presence of the West Indian manatee in the water and reminded of the criminal and civil penalties associated with harassing, injuring, or killing manatees. All workers will be educated that there could be West Indian manatees in the water and will be advised to look for manatees and, if observed, wait until manatees leave the area to put equipment in the water to ensure that no harm is caused to any manatee that may be nearby. Should a West Indian manatee come within 50 feet of the project area during construction activities, work will immediately cease until the manatee has moved away from the project area on its own. Based on the implementation of these measures, the Service concurs with the may affect not likely to adversely affect call for this location since the impacts would be insignificant or discountable.

The green sea turtle, hawksbill sea turtle, Kemp’s ridley sea turtle, leatherback sea turtle, and loggerhead sea turtle are not expected to undergo nesting activities in the area as there are no suitable beach habitats available. The Service has sole jurisdiction over sea turtles when on land and all consultations under Section 7 of the Act involving sea turtle nesting beaches shall be the responsibility of the Service (see http://www.nmfs.noaa.gov/pr/pdfs/species/turtle_mou.pdf). However, since there is no suitable nesting habitat present at the Dickinson Bay Island II location, the Service will not be concurring for these species.

Northern aplomado falcons and whooping cranes do not occur in Dickinson Bay, therefore, concurrence for these species at this location is not necessary.

The Sprague's pipit does not have habitat in the open waters of Dickinson Bay. In addition, the borrow areas are unlikely to contain suitable habitat for the Sprague's pipit due to ongoing land management practices. If an upland borrow site is used the contractor will be required to provide documentation that the borrow site meets all engineering, environmental, and cultural resource requirements. The Sprague's pipit is a candidate species and is evaluated in this consultation. In the analysis of the proposed action, it is likely that the effects of the Dickinson Bay Island II project on this species would be discountable or insignificant if it was listed. However, the prohibitions against taking such species found in Section 9 of the Act do not apply until the species is listed. Therefore, we are not providing a concurrence for this species under Section 7 at this time. If this species is proposed for and listed under the Act during or prior to project construction, we can evaluate the effects of the project on this species as well as the implementation of applicable conservation measures and provide either a concurrence or incidental take statement, if appropriate.

Based on the information provided, the Service concurs with the conclusion that proposed project "may affect, by is not likely to adversely affect" piping plover, red knot, or West Indian manatee. Therefore, no further endangered species consultation will be required for the Dickinson Bay Island II project unless: 1) the identified action is subsequently modified in a manner that causes an effect on listed species or designated Critical Habitat; 2) new information reveals the identified action may affect federally protected species or designated Critical Habitat in a manner or to an extent not previously considered; or 3) a new species is listed or Critical Habitat is designated under the Act that may be affected by the identified action.

Dressing Point Island

The site of the second proposed island is in East Matagorda Bay south of the community of Chinquapin, Matagorda County, Texas. The island is currently about seven acres in size. The Dressing Point Island project proposes to increase the size of the island to approximately 12 acres using earthen fill and incorporates 5,000 feet of breakwater to limit erosion. The proposal includes planting seven acres of the island with appropriate coastal scrub-shrub vegetation in order to provide habitat for colonial nesting waterbirds. Approximately 70,000 cubic yards of material will be used to create the island, requiring a borrow site approximately 562,500 square feet by no more than 5 feet deep. An additional 2,500 cubic yards of shell material will be placed and integrated with an existing shell knoll to expand its size to approximately 3.5 acres.

There is no habitat for the piping plover, red knot, or Sprague's pipit in the open waters of East Matagorda Bay, though they may utilize the existing island in a transient manner. Any borrow areas would not likely affect this species as it would have sufficient habitat to fly to within a normal flying distance. If an upland borrow site is used the contractor will be required to provide documentation that the borrow site meets all engineering, environmental, and cultural

resource requirements. The Sprague's pipit is a candidate species and is evaluated in this consultation. In the analysis of the proposed action, it is likely that the effects of the Dressing Point Island project on this species would be discountable or insignificant if it was listed. However, the prohibitions against taking such species found in Section 9 of the Act do not apply until the species is listed. Therefore, we are not providing a concurrence for this species under Section 7 at this time. If this species is proposed for and listed under the Act during or prior to project construction, we can evaluate the effects of the project on this species as well as the implementation of applicable conservation measures and provide either a concurrence or incidental take statement, if appropriate.

Northern aplomado falcons and whooping cranes are not likely to be effected by construction activities as the island does not contain appropriate habitat for the species.

The West Indian manatee is uncommon in Texas waters and not likely to occur in the project site. All construction personnel will be notified of the potential presence of the West Indian manatee in the water and reminded of the criminal and civil penalties associated with harassing, injuring, or killing manatees. All workers will be educated that there could be West Indian manatees in the water and will be advised to look for manatees and, if observed, wait until manatees leave the area to put equipment in the water to ensure that no harm is caused to any manatee that may be nearby. Should a West Indian manatee come within 50 feet of the project area during construction activities, work will immediately cease until the manatee has moved away from the project area on its own.

The green sea turtle, hawksbill sea turtle, Kemp's ridley sea turtle, leatherback sea turtle, and loggerhead sea turtle are not expected to undergo nesting activities in the area as there are no suitable beach habitats available. The Service has sole jurisdiction over sea turtles when on land and all consultations under Section 7 of the Act involving sea turtle nesting beaches shall be the responsibility of the Service (see http://www.nmfs.noaa.gov/pr/pdfs/species/turtle_mou.pdf). Since there is no suitable nesting habitat present at the Dressing Point Island Location, the Service will not be concurring for these species.

The Service believes that potential adverse effects to the piping plover, red knot, Sprague's pipit, Northern aplomado falcon, whooping crane, and West Indian manatee would be insignificant or discountable. Based on the information provided, the Service concurs with the conclusion that the proposed project "may affect, by is not likely to adversely affect" piping plover, red knot, or West Indian manatee. Therefore, no further endangered species consultation will be required for the Dressing Point Island project unless: 1) the identified action is subsequently modified in a manner that causes an effect on listed species or designated Critical Habitat; 2) new information reveals the identified action may affect federally protected species of designated Critical Habitat in a manner or to an extent not previously considered; or 3) a new species is listed or Critical Habitat is designated under the Act that may be affected by the identified action.

Rollover Bay Island

The site of the third proposed island is in Rollover Bay near Rollover Pass adjacent to the Gulf Intracoastal Water Way in Galveston County, TX. Historically there were eleven islands created from dredged material in the project area, but due to erosion only five remain. The Rollover Bay Island focuses on one of these remaining islands that was approximately five acres in size in 1982, but has eroded down to less than one acre. The project proposes to increase the size of the island to approximately 10 acres using earthen fill and incorporates 4,500 feet of armored levees to limit erosion. The proposal includes planting four acres of the island with appropriate coastal scrub-shrub vegetation in order to provide habitat for colonial nesting waterbirds. Approximately 80,000 cubic yards of material will be used to create the island, requiring a borrow site approximately 562,500 square feet by no more than 5 feet deep. An additional mitigation area will be created (if needed) for impacts to hard bottom substrate using shell hash.

There is no habitat for the piping plover, red knot, or Sprague's pipit in the open waters of Rollover Bay, though they may utilize the existing island in a transient manner. Any borrow areas would not likely affect this species as it would have sufficient habitat to fly to within a normal flying distance. If an upland borrow site is used the contractor will be required to provide documentation that the borrow site meets all engineering, environmental, and cultural resource requirements. The Sprague's pipit is a candidate species and is evaluated in this consultation. In the analysis of the proposed action, it is likely that the effects of the Rollover Bay Island project on this species would be discountable or insignificant if it was listed. However, the prohibitions against taking such species found in Section 9 of the Act do not apply until the species is listed. Therefore, we are not providing a concurrence for this species under Section 7 at this time. If this species is proposed for and listed under the Act during or prior to project construction, we can evaluate the effects of the project on this species as well as the implementation of applicable conservation measures and provide either a concurrence or incidental take statement, if appropriate.

The West Indian manatee is uncommon in Texas waters and not likely to occur in the project site. All construction personnel will be notified of the potential presence of the West Indian manatee in the water and reminded of the criminal and civil penalties associated with harassing, injuring, or killing manatees. All workers will be educated that there could be West Indian manatees in the water and will be advised to look for manatees and, if observed, wait until manatees leave the area to put equipment in the water to ensure that no harm is caused to any manatee that may be nearby. Should a West Indian manatee come within 50 feet of the project area during construction activities, work will immediately cease until the manatee has moved away from the project area on its own. . The green sea turtle, hawksbill sea turtle, Kemp's ridley sea turtle, leatherback sea turtle, and loggerhead sea turtle are not expected to undergo nesting activities in the area as there are no suitable beach habitats available. The Service has sole jurisdiction over sea turtles when on land and all consultations under Section 7 of the Act involving sea turtle nesting beaches shall be the responsibility of the Service (see

http://www.nmfs.noaa.gov/pr/pdfs/species/turtle_mou.pdf). Since there is no suitable nesting habitat present at the Rollover Bay Island Location, the Service will not be concurring for these species.

Northern aplomado falcon and whooping crane do not occur in Rollover Bay.

The Service believes that potential adverse effects to the piping plover, red knot, Sprague's pipit, and West Indian manatee would be insignificant or discountable. Based on the information provided, the Service concurs with the conclusion that proposed project "may affect, by is not likely to adversely affect" piping plover, red knot, or West Indian manatee. Therefore, no further endangered species consultation will be required for the Rollover Bay Island project unless: 1) the identified action is subsequently modified in a manner that causes an effect on listed species or designated Critical Habitat; 2) new information reveals the identified action may affect federally protected species of designated Critical Habitat in a manner or to an extent not previously considered; or 3) a new species is listed or Critical Habitat is designated under the Act that may be affected by the identified action.

Smith Point Island

The site of the fourth proposed island is in Galveston Bay southwest of Smith Point Peninsula in Galveston County, TX. The island is currently between three and four acres in size. The Smith Point Island project proposes to increase the size of the island to approximately six acres using earthen fill and enhances 2,000 feet of existing breakwater to limit erosion. An additional 250 feet of new breakwater is proposed for the northeast side of the island to further protect the restored island. The proposal includes planting three acres of the island with appropriate coastal scrub-shrub vegetation in order to provide habitat for colonial nesting waterbirds.

Approximately 70,000 cubic yards of material will be used to create the island, requiring a borrow site approximately 562,500 square feet by no more than 5 feet deep.

There is no habitat for the piping plover, red knot, or Sprague's pipit in the open waters of Galveston Bay, though they may utilize the existing island in a transient manner. Any borrow areas would not likely affect this species as it would have sufficient habitat to fly to within a normal flying distance. If an upland borrow site is used the contractor will be required to provide documentation that the borrow site meets all engineering, environmental, and cultural resource requirements. The Sprague's pipit is a candidate species and is evaluated in this consultation. In the analysis of the proposed action, it is likely that the effects of the Smith Point Island project on this species would be discountable or insignificant if it was listed. However, the prohibitions against taking such species found in Section 9 of the Act do not apply until the species is listed. Therefore, we are not providing a concurrence for this species under Section 7 at this time. If this species is proposed for and listed under the Act during or prior to project construction, we can evaluate the effects of the project on this species as well as the implementation of applicable conservation measures and provide either a concurrence or incidental take statement, if appropriate.

The West Indian manatee is uncommon in Texas waters and not likely to occur in the project site. All construction personnel will be notified of the potential presence of the West Indian manatee in the water and reminded of the criminal and civil penalties associated with harassing, injuring, or killing manatees. All workers will be educated that there could be West Indian manatees in the water and will be advised to look for manatees and, if observed, wait until manatees leave the area to put equipment in the water to ensure that no harm is caused to any manatee that may be nearby. Should a West Indian manatee come within 50 feet of the project area during construction activities, work will immediately cease until the manatee has moved away from the project area on its own.

The green sea turtle, hawksbill sea turtle, Kemp's ridley sea turtle, leatherback sea turtle, and loggerhead sea turtle are not expected to undergo nesting activities in the area as there are no suitable beach habitats available. The Service has sole jurisdiction over sea turtles when on land and all consultations under Section 7 of the Act involving sea turtle nesting beaches shall be the responsibility of the Service (see http://www.nmfs.noaa.gov/pr/pdfs/species/turtle_mou.pdf). Since there is no suitable nesting habitat present at the Rollover Bay Island Location, the Service will not be concurring for these species.

Northern aplomado falcon and whooping crane do not occur in Galveston Bay.

The Service believes that potential adverse effects to the piping plover, red knot, Sprague's pipit, and West Indian manatee would be insignificant or discountable. Based on the information provided, the Service concurs with the conclusion that proposed project "may affect, by is not likely to adversely affect" piping plover, red knot, or West Indian manatee. Therefore, no further endangered species consultation will be required for the Smith Point Island project unless: 1) the identified action is subsequently modified in a manner that causes an effect on listed species or designated Critical Habitat; 2) new information reveals the identified action may affect federally protected species of designated Critical Habitat in a manner or to an extent not previously considered; or 3) a new species is listed or Critical Habitat is designated under the Act that may be affected by the identified action.

If you have any questions or comments regarding this letter, please contact Harmon Brown of this office at (281) 286-8282 extension 245.

Sincerely,



John Huffman
Program Supervisor