



In Reply Refer To:
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United States Department of the Interior

FISH AND WILDLIFE SERVICE

Gulf Restoration Program Office
17629 El Camino Real #211
Houston, Texas 77058-3051
281/286-8282 Fax 281/488-5822



This communication is in response to the Texas Trustee Implementation Group's (TX TIG) request for informal Section 7 consultation with the U.S. Fish and Wildlife Service (Service) on the Restoration Plan #2: Wetland, Coastal and Nearshore Habitats, Living Coastal and Marine Resources, and Water Quality. Your initiation request and project information were received on April 1, 2022.

The Service has reviewed the Biological Evaluation (BE) forms submitted by the Deepwater Horizon TX TIG for nine (9) projects to be implemented throughout the Texas coast funded as part of the legal settlement reached with British Petroleum in 2016. The Trustees prepared a Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS) of the same year. The projects being implemented by the TX TIG were developed and published under the Restoration Plan #2: Wetland, Coastal and Nearshore Habitats, Living Coastal and Marine Resources, and Water Quality in 2022.

This response is provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act), and in accordance with the implementing regulations pertaining to interagency cooperation (50 CFR 402). All necessary information has not yet been provided for the Bahia Grande Channel F Wetland Restoration project; therefore, this project will be reviewed separately once all information has been received by our office. Bahia Grande Channel F Wetland Restoration is not considered in the determination below.

This letter provides a concurrence determination for (8) eight of the (9) projects submitted with the request.

- Bird Island Cove Habitat Restoration Phase II
- Follets Island Coastal Management Area (CMA) Habitat Acquisition Phase II
- Galveston Island Habitat Acquisition
- Jones Bay Oystercatcher Habitat Restoration
- Lancha Sea Turtle Mitigation Plan
- Landscape Scale Oyster Restoration in Galveston Bay, TX
- Laguna Vista Rookery Island Habitat Restoration
- Texas Breeding Shorebird and Seabird Stewardship

Table 1. Federally listed endangered (E), threatened (T), and (C) candidate species for the proposed projects including critical habitat (CH) and the TX TIG determinations of project effects on those

species of no effect (NE) and may affect, but not likely to adversely affect (NLAA) adapted from table 2 *Summary of ESA determinations for the proposed projects. (NE = No Effect, NLAA = May Affect, Not Likely to Adversely Affect, -- = Not Applicable)* of the BE forms submitted for review.

ESA Species Under USFWS Jurisdiction	Status	Bird Island Cove Habitat Restoration Phase II	Follets Island Coastal Management Area (CMA) Habitat Acquisition Phase II	Galveston Island Habitat Acquisition	Jones Bay Oystercatcher Habitat Restoration
Eastern Black Rail (<i>Laterallus jamaicensis jamaicensis</i>)	T	NE	NLAA	NLAA	NE
Piping Plover (<i>Charadrius melodus</i>)	T	NE	NLAA	NLAA	NLAA
Piping Plover (CH)		--	--	--	--
Red Knot (<i>Calidris cantutus rufa</i>)	T	NE	NLAA	NLAA	NLAA
Red Knot (CH)		--	--	--	--
Ocelot (<i>Leopardus (=Felis) pardalis</i>)	E	--	--	--	--
Aplomado Falcon (<i>Falco femoralis septentrionalis</i>)	E	--	--	--	--
Monarch Butterfly (<i>Danaus plexippus</i>)	C	NE	NLAA	NLAA	NE
West Indian Manatee (<i>Trichechus manatus</i>)	T	NLAA	NE	NE	NLAA
Whooping Crane (<i>Grus americana</i>)	E	NLAA	NLAA	NLAA	--
Green Sea Turtle (<i>Chelonia mydas</i>)	E	NE	NLAA	NE	NE
Hawksbill Sea Turtle (<i>Eretmochelys imbricata</i>)	E	NE	NLAA	NE	NE
Kemp's Ridley Sea Turtle (<i>Lepidochelys kempii</i>)	E	NE	NLAA	NE	NE
Loggerhead Sea Turtle (<i>Caretta caretta</i>)	T	NE	NLAA	NE	NE
Leatherback Sea Turtle (<i>Dermochelys coriacea</i>)	E	NE	NE	NE	NE
Attwater's Greater Prairie-Chicken (<i>Tympanuchus cupido attwateri</i>)	E	NE	NE	NE	--

Continuation of Table 1.

ESA Species Under USFWS Jurisdiction	Status	Lancha Sea Turtle Mitigation Plan	Landscape Scale Oyster Restoration in Galveston Bay, TX	Laguna Vista Rookery Island Habitat Restoration	Texas Breeding Shorebird and Seabird Stewardship
Eastern Black Rail (<i>Laterallus jamaicensis jamaicensis</i>)	T	--	NE	NE	NE
Piping Plover (<i>Charadrius melodus</i>)	T	--	NE	NLAA	NLAA
Piping Plover CH		--	--	NLAA	NLAA
Red Knot (<i>Calidris cantutus rufa</i>)	T	--	NE	NLAA	NLAA
Red Knot CH		--	--	NLAA	NLAA
Ocelot (<i>Leopardus (=Felis) pardalis</i>)	E	--	--	NE	NE
Aplomado Falcon (<i>Falco femoralis septentrionalis</i>)	E	--	--	NE	NLAA
Monarch Butterfly (<i>Danaus plexippus</i>)	C	NE	NE	NLAA	NLAA
West Indian Manatee (<i>Trichechus manatus</i>)	T	NLAA	NLAA	NLAA	NE
Whooping Crane (<i>Grus americana</i>)	E	--	--	--	NLAA
Green Sea Turtle (<i>Chelonia mydas</i>)	E	NE	NE	NE	NLAA
Hawksbill Sea Turtle (<i>Eretmochelys imbricata</i>)	E	NE	NE	NE	NE
Kemp's Ridley Sea Turtle (<i>Lepidochelys kempii</i>)	E	NE	NE	NE	NLAA
Loggerhead Sea Turtle (<i>Caretta caretta</i>)	T	NE	NE	NE	NLAA
Leatherback Sea Turtle (<i>Dermochelys coriacea</i>)	E	NE	NE	NE	NE
Attwater's Greater Prairie-Chicken (<i>Tympanuchus cupido attwateri</i>)	E	--	--	--	NE

The TX TIG has determined that the proposed projects would have no effect on listed or proposed species for projects that would not occur in a species' occupied habitat (Table 1). Although the Endangered Species Act does not require Federal agencies to consult with the U.S. Fish and Wildlife Service (Service) if the action agency determines their action will have “no effect” on threatened or endangered species or designated critical habitat, we appreciate your consideration of the project’s potential for effects to these species and notification of your “no effect” determinations.

Pursuant to 50 CFR 402.12(j), you submitted a biological evaluation form for our review and requested concurrence with the findings presented therein. These findings are summarized below:

Bird Island Cove Habitat Restoration Phase II project is located in West Galveston Bay, at the mouth of Ostermayer Bayou. The proposed project would construct approximately 8,820 LF of riprap breakwaters in eight segments to protect and enhance approximately 170 acres of existing estuarine marsh habitats. The breakwater would include gaps to allow for the ingress and egress of federally managed fisheries and other aquatic organisms. Actions reviewed for this determination include the dredging of a floatation channel, the creation of marsh mounds and the construction of the breakwater. Disturbance or loss of foraging manatee habitat is not anticipated as there is no seagrass in the action area. Beneficial effects may be expected from the restoration of these reef as construction would improve water quality and reduce siltation which will enhance manatee foraging habitat. None the less, potential adverse effects to West Indian manatee would be during construction activities, which may result in increased turbidity and increased noise. The likelihood of a manatee to be in the potential area of effect is low and if present would likely avoid or move away from construction activities. In addition, by implementing the conservation measures proposed in the BE forms to reduce potential effect to manatees, effects are reduced to insignificant and discountable. Potential Whooping crane suitable habitat can be found near the project site, but the likelihood that whooping cranes would use the site is extremely low but could occur from October to April when wintering cranes are present on the Texas coasts, primarily in Aransas, Refugio and Calhoun counties. Although no work will be taking place in potential whooping crane habitat, if a whooping crane does use the area of potential effect, they could be disturbed by these activities however, these effects may be minimized with the implementation of the conservation measures proposed in the BE forms. Overall, the proposed project is expected to improve and protect whooping crane habitat providing a benefit to the recovery of the species. After reviewing all available information, including project specific conservation measures contained in the BE forms and listed below, the potential for adverse effects to federally listed species present in the potential area of effect are insignificant and discountable. Therefore, we concur with your determination that the proposed project may affect, but is not likely to adversely affect West Indian manatee and the whooping crane.

Follets Island Coastal Management Area (CMA) Habitat Acquisition Phase II project would obtain and conserve up to approximately 350 acres of wetland, coastal, and nearshore habitats on Follets Island, Texas in perpetuity through fee-simple acquisition for inclusion to the existing Follets Island CMA managed by Texas Parks and Wildlife Department (TPWD). A land survey is the only action reviewed for effect because the bollards mentioned on the BE are not part of the Restoration Plan #2; therefore, they were not included in this determination. If the TX TIG decides to install bollards as part of this project,

they will have to seek a separate consultation for that action. Impacts from surveying properties can be minimized through conservation measures. In addition, potential effects of surveying the potential area of effect are outweighed by the long-term benefits listed species will have from the conservation of this property, this project removes any potential development in the future. After reviewing all available information, including project specific conservation measures contained in the BE forms and listed below, the potential for adverse effects to federally listed species present at the action site are insignificant and discountable. Therefore, we concur with your determination that the proposed project may affect, but is not likely to adversely affect eastern black rail, piping plover, red knot, whooping crane, green sea turtle, hawksbill sea turtle, Kemp's Ridley sea turtle and loggerhead sea turtle during land survey activities. Monarch butterflies breed and migrate throughout Texas. During the breeding season, monarchs lay their eggs on obligate milkweed host plants (primarily *Asclepias* spp.), and larvae emerge after two to five days, feeding on milkweed and sequestering toxic chemicals as a defense against predators. This project will conserve native habitat critical to the recovery of the monarch butterfly and therefore this project will not jeopardize the monarch butterfly population.

Galveston Island Habitat Acquisition project proposes to acquire and conserve 142 acres of barrier island habitat on Galveston Island, Texas, in perpetuity through a conservation easement and transfer ownership to a nonprofit organization Artist Boat. Actions reviewed for this determination include land surveys needed to develop the Phase I Environmental Site Assessment audit. Impacts from surveying the property can be minimized through conservation measures. In addition, potential effects of surveying the potential area of effect are outweighed by the long-term benefits listed species will have from the conservation of this property, this project removes any potential development in the future. After reviewing all available information, including project specific conservation measures contained in the BE forms and listed below, the potential for adverse effects to federally listed species present at the action site are insignificant and discountable. Therefore, we concur with your determination that the proposed project may affect, but is not likely to adversely affect eastern black rail, piping plover, red knot, and whooping crane. Monarch butterflies breed and migrate throughout Texas. During the breeding season, monarchs lay their eggs on obligate milkweed host plants (primarily *Asclepias* spp.), and larvae emerge after two to five days, feeding on milkweed and sequestering toxic chemicals as a defense against predators. This project will conserve native habitat critical to the recovery of the monarch butterfly and therefore this project will not jeopardize the monarch butterfly population.

Jones Bay Oystercatcher Habitat Restoration project proposed to restore up to 5 nesting islands and 6 intertidal reef sites located in Jones Bay, Galveston County, Texas. Approved cultch material would be placed on the remnant nesting island to increase the elevations to exceed mean high water. A breakwater may be installed to minimize erosion from vessels wakes associated with the Gulf Intracoastal Waterway. Foraging habitat primarily for nesting oystercatchers and their young will be created around each restored nesting island by placing approved cultch material over geotextile fabric to create an intertidal reef. Because the islands that will be enhanced are very eroded, it is unlikely that piping plover or red knot are present when there is better habitat surrounding the area. Disturbance or loss of foraging manatee habitat is not anticipated as there is no seagrass in the action area. Beneficial effects may be expected from the restoration of these reef as construction would improve water quality and reduce siltation which will enhance manatee foraging habitat. None the less, potential adverse effects to West Indian manatee would be during construction activities, which may result in increased turbidity and increased noise. The likelihood of a manatee to be in the potential area of effect is low and if present would likely avoid or move away from construction activities. In addition, by implementing the conservation measures

proposed in the BE forms to reduce potential effect to manatees, effects are reduced to insignificant and discountable. After reviewing all available information, including project specific conservation measures contained in the BE forms and listed below, the potential for adverse effects to federally listed species present at the action site are insignificant and discountable. Therefore, we concur with your determination that the proposed project may affect, but is not likely to adversely affect piping plover, red knot, and West Indian manatee.

Lancha Sea Turtle Mitigation Plan

This proposed project would include the purchase of a long-range vessel as well as the installation of a floating dock for the vessel, anticipated to be located in Brownsville within a developed area at the Port of Brownsville. This project will support increased enforcement patrols and removal of illegal fishing gear from U.S. waters by the TPWD. These actions would benefit not only sea turtles but other species such as manatees from potential entanglement. It would be extremely unlikely that the boat operator would encounter a free-swimming manatee offshore and the benefits to the population from the removal of illegal gillnets outweigh the potential effects. After reviewing all available information, including project specific conservation measures contained in the BE forms and listed below, the potential for adverse effects to federally listed species present at the action site are insignificant and discountable. Therefore, we concur with your determination that the proposed project may affect, but is not likely to adversely affect West Indian Manatee.

Landscape Scale Oyster Restoration in Galveston Bay

This proposed project would construct a system of intertidal and subtidal reefs totaling approximately 50 acres within the Upper Galveston and Trinity Bays. A site suitability survey will be implemented to determine specific sites for each oyster reef restoration. Reefs will be designed with enough space between breaks to allow marine species to move between habitats and to prevent entrapment. Disturbance or loss of foraging manatee habitat is not anticipated as there will be no seagrass in the potential area of effect. Beneficial effects may be expected from the restoration of these reef as construction would improve water quality and reduce siltation which will enhance manatee foraging habitat. None the less, potential adverse effects to West Indian manatee would be during construction activities, which may result in increased turbidity and increased noise. The likelihood of a manatee to be in the potential area of effect is low and if present would likely avoid or move away from construction activities. In addition, by implementing the conservation measures proposed in the BE forms to reduce potential effect to manatees, effects are reduced to insignificant and discountable. After reviewing all available information including project specific conservation measures contained in the BE forms and listed below, the potential for adverse effects to federally listed species present at the action site are insignificant and discountable. Therefore, we concur with your determination that the proposed project may affect, but is not likely to adversely affect West Indian manatee.

Laguna Vista Rookery Island Habitat Restoration project proposes to provide shoreline protection measures to address active erosion and restore colonial and migratory bird habitat that has been lost due to continuous erosion from winds and wave action. Activities include the installation of a breakwater and revetment features, the addition of sediment to raise overall elevation, followed by regrading of the shoreline to allow proper drainage as well as diversity in habitat elevation, and revegetation to increase nesting diversity. Disturbance or loss of foraging

habitat for piping plover or red knot is not anticipated while restoring the island because the island is small with very little intertidal habitat available for these two species. Nearby tidal flats provide more suitable foraging and roosting habitat for piping plover and red knot. The likelihood of a manatee to be in the potential area of effect is low and if present would likely avoid or move away from construction activities. In addition, by implementing the conservation measures proposed in the BE forms to reduce potential effect to manatees, effects are reduced to insignificant and discountable. In addition, once completed, this project will benefit colonial waterbirds as well as other shorebirds. After reviewing all available information, including project specific conservation measures contained in the BE forms and listed below, the potential for adverse effects to federally listed species present at the action site are insignificant and discountable. Therefore, we concur with your determination that the proposed project may affect, but is not likely to adversely affect piping plover, red knot nor the West Indian manatee. Monarch butterflies breed and migrate throughout Texas. During the breeding season, monarchs lay their eggs on obligate milkweed host plants (primarily *Asclepias* spp.), and larvae emerge after two to five days, feeding on milkweed and sequestering toxic chemicals as a defense against predators. This project will enhance and conserve native habitat critical to the recovery of the monarch butterfly and therefore this project will not jeopardize the monarch butterfly population.

Texas Breeding Shorebird and Seabird Stewardship

The activities associated with this project include using intervention techniques to minimize disturbance of primarily beach dwelling shorebirds. The techniques include posting of signs, virtual fences (twine strung between poles or posts), engagement with members of the beach-going public, capturing and banding nesting shore and sea birds, monitoring nest sites over the breeding season, tracking non-breeding shorebird presence and behavior, tracking disturbance events, working with site managers to develop management plans for shorebirds including listed species, and possibly removing predators or using exclusion techniques to reduce predation. Benefits from this project will outweigh temporary disturbance from accessing the site through increased nesting viability. Contractors will be trained in the proper way to conduct activities with minimal disturbance to the species they are protecting including the potential to encounter sea turtle nests while accessing the site as well as the avoidance of milkweed plants that are important for monarch butterflies. After reviewing all available information, including project specific conservation measures contained in the BE forms and listed below, the potential for adverse effects to federally listed species present at the action site are insignificant and discountable. Therefore, we concur with your determination that the proposed project may affect, but is not likely to adversely affect piping plover, red knot, northern aplomado falcon, whooping crane, green sea turtle, Kemp's Ridley Sea turtle and loggerhead sea turtle.

Conservation Measures

The TX TIG proposed the following conservation measures in the biological evaluation forms submitted to minimize or avoid adverse effects of proposed actions on listed species or critical habitat for the following species:

Eastern Black Rail

- All individuals surveying the properties will be provided information on how to identify

the species and means minimize disturbance if birds are present.

- Avoid entering vegetated areas with vehicles UTVs, or by foot in black rail habitat during the breeding season March 1st through October 1st.
- When vehicles are used during the non-breeding season in areas with black rails present, vehicles should be operated at minimal speed to allow birds to move out of the path of the oncoming vehicle.
- In the non-breeding season, if vegetated areas must be accessed, personnel should walk into the areas and minimize disturbance to densely vegetated herbaceous stands.

Piping Plover & Red Knot

- All individuals working on the project will be provided information on how to identify the species and means to minimize disturbance to the species and their habitat.
- Prior to implementing the project, qualified monitor(s) or other qualified personnel will survey the work area to ensure no birds are present.
- Use care to avoid birds when operating machinery or vehicles near birds.
- If a bird approaches the construction area within 75 feet, work will stop until the bird(s) leave(s) the construction site. USFWS should be contacted for additional guidance.

Northern Aplomado Falcon

- Provide all individuals working on a project with information in support of general awareness of presence of aplomado falcons and the means to minimize disturbance to the species and their habitat.
- During March through June, project sites should be evaluated for suitable habitat and all large stick nests should be examined from a distance for signs of adults incubating eggs or brooding chicks. Contractors should remain a safe distance away from the nest or perch 100 to 300 yards depending on the sensitivity of the individual bird and keep human impacts to a minimum.

Whooping Crane

- Provide all individuals working on a project with information in support of general awareness of whooping crane presence and means to minimize disturbance to the species if present.
- Between October and April all construction equipment reaching heights of 15' or greater will be lowered as much as possible during nighttime hours and periods of low visibility to reduce collision risk.
- If whooping cranes are observed within 1000 feet of project activities all work will stop until the cranes have left or move greater than 1,000 feet from the work site. Whooping crane sightings will be immediately reported to the Implementing Trustee to determine if additional conservation measure will be required.

West Indian Manatee

- All contract personnel associated with the project would be informed of the potential

presence of manatees and the need to avoid collisions with manatees, which are protected under the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973.

- All construction personnel are responsible for observing water-related activities for the presence of manatee(s).
- Temporary signs would be posted prior to and during all construction activities to remind personnel to be observant for manatees during active construction/dredging operations or within vessel movement zones (i.e., work area), and at least one sign should be placed where it is visible to the vessel operator.
- Siltation barriers, if used, would be made of material in which manatees could not become entangled, and should be properly secured and monitored.
- If a manatee is sighted within 100 yards of the active work zone, special operating conditions would be implemented, including: no operation of moving equipment within 50 feet of a manatee; all vessels shall operate at no wake/idle speeds within 100 yards of the work area; and siltation barriers, if used, should be re-secured and monitored. Once the manatee has left the 100-yard buffer zone around the work area on its own accord, special operating conditions are no longer necessary, but careful observations would be resumed.
- Any manatee sighting would be immediately reported to the implementing trustee.
- In-water lines would be made of materials such as stiff cable or plastic-coated lines and any ropes would be thick, heavy, and taut lines that do not loop or entangle, and would be installed in a manner to minimize the risk of entanglement of protected species.

Green Sea Turtle, Kemp's Ridley Sea Turtle & Loggerhead Sea Turtle

- If work must occur on nesting beaches during sea turtle nesting season (May through August)
 - All contract personnel associated with the project would be informed of the potential presence of nesting sea turtles and shall be trained to identify sea turtle tracks on the beach.
 - Work with vehicles or machinery shall begin after 9:00 a.m. local time to allow the sea turtle monitoring program to detect and mark new nests and assess the need to relocate sea turtle nests that could be affected by the project construction.
 - Avoid marked nests by at least 10 feet.
 - A speed limit of 15 mph will be maintained throughout the action area. Avoid driving over the wrack line or areas of dense seaweed, as these habitats may contain sea turtle hatchlings that are difficult to see.

Monarch butterfly

- Provide all individuals with information in support of general awareness of presence of milkweed and the means to avoid trampling on plants.

This concludes the Service's review for the (8) eight proposed projects published under the Restoration Plan #2: Wetland, Coastal and Nearshore Habitats, Living Coastal and Marine Resources, and Water Quality in 2022. No further action pursuant to the Act is necessary unless

new information reveals effects of the proposed project that may affect listed species or critical habitat in a manner or to an extent not previously considered; the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this determination; or a new species is listed, or critical habitat designated that may be affected by the identified action. Should the TX TIG have any questions regarding this consultation, please feel free to contact Field Supervisor, Beau Hardegree at (361) 533-6054.

Sincerely,

Beau Hardegree
Field Supervisor
Gulf Restoration Program Office

cc: Adriana Leiva, U.S. Fish and Wildlife Service, Corpus Christi, Texas