



**United States Department of the Interior
FISH AND WILDLIFE SERVICE**

Gulf Restoration Program Office
4444 Corona Drive, Suite 215
Corpus Christi, Texas 78411
361-994-9005



In Reply Refer To:
FWS/R2/GRO

6/28/2022

Michael Glenn Barron
Environmental Compliance Coordinator
USFWS - Gulf Restoration Office
341 N. Greeno Road
Fairhope, AL 36532

Dear Michael Barron:

The U.S. Fish and Wildlife Service (USFWS) has reviewed your request dated March 31, 2022 to provide consultation under the Coastal Barrier Resources Act (CBRA) (16 U.S.C. 3501 *et seq.*) related to thirteen (13) Restoration Projects proposed in the Texas Trustee Implementation Group's Restoration Plan #2 as part of the Deepwater Horizon Natural Resource Damage Assessment.

Project Location

The locations and project descriptions were reviewed based on maps provided in your request. All thirteen projects are located along the Texas coast however, only three are located within (or partially within) a Coastal Barrier Resources System (CBRS) Unit/OPA (Table 1.).

Table 1. Proposed Projects and Locations Relative to CBRS Units and OPA Units.

Proposed Project	CBRA Consistency Determination
Bahia Grand Channel F Wetland Restoration	Programmatic activities include the following Texas counties: Cameron. Potential actions could occur within the following CBRS units and OPAs: CBRS Units/OPAs: None
Bird Island Cove Habitat Restoration Phase II	Programmatic activities include the following Texas counties: Galveston. Potential actions could occur within the following CBRS units and OPAs: CBRS Units/OPAs: None
Follets Island Coastal Management Area (CMA) Habitat Acquisition Phase II	Programmatic activities include the following Texas counties: Brazoria. Potential actions could occur within the following CBRS units and OPAs: CBRS Units: T04 OPA Units: T04P

Galveston Island Habitat Acquisition	<p>Programmatic activities include the following Texas counties: Galveston.</p> <p>Potential actions could occur within the following CBRS units and OPAs: CBRS/OPA Units: None</p>
Jones Bay Oystercatcher Habitat Restoration	<p>Programmatic activities include the following Texas counties: Galveston.</p> <p>Potential actions could occur within the following CBRS units and OPAs: CBRS/OPA Units: None</p>
Laguna Vista Rookery Island Habitat Protection	<p>Programmatic activities include the following Texas counties: Cameron.</p> <p>Potential actions could occur within the following CBRS units and OPAs: CBRS/OPA Units: None</p>
Lancha Sea Turtle Mitigation Plan	<p>Programmatic activities include the following Texas counties: Cameron, Kenedy, Kleberg, Nueces, Willacy.</p> <p>Potential actions could occur within the following CBRS units and OPAs: CBRS Units: T10, T11, T12 OPA Units: T10P, T12P, TX-15P, TX16-P</p>
Landscape Scale Oyster Restoration in Galveston Bay, TX	<p>Programmatic activities include the following Texas counties: Chambers, Galveston.</p> <p>Potential actions could occur within the following CBRS units and OPAs: CBRS/OPA Units: None</p>
Petronila Creek Constructed Wetlands Planning	<p>Programmatic activities include the following Texas counties: Nueces.</p> <p>Potential actions could occur within the following CBRS units and OPAs: CBRS/OPA Units: None</p>
Petronila Creek Watershed Nutrient Reduction Initiative	<p>Programmatic activities include the following Texas counties: Nueces.</p> <p>Potential actions could occur within the following CBRS units and OPAs: CBRS/OPA Units: None</p>
San Antonio Bay Bird Island	<p>Programmatic activities include the following Texas counties: Calhoun.</p> <p>Potential actions could occur within the following CBRS units and OPAs: CBRS/OPA Units: None</p>
Texas Breeding Shorebird and Seabird Stewardship	<p>Programmatic activities include the following Texas counties: Brazoria, Cameron, Galveston, Matagorda, Nueces.</p> <p>Potential actions could occur within the following CBRS and OPAs: CBRS Units: T01, T02A, T03A, TX-04, T04, T05, T06, T07, T11, T12, TX-17 OPA Units: T01P, TX-02P, T03AP, T04P, TX-04P, T05P, TX-05P, T07P, T11P, T12P, TX-15P, TX-16P, TX-17P, TX-22P</p>
Upper Texas Coast Sea Turtle Rehabilitation Facility	<p>Programmatic activities include the following Texas counties: Galveston.</p> <p>Potential actions could occur within the following CBRS units and OPAs: CBRS/OPA Units: None</p>

Description of the Proposed Action or Project

1. Bahia Grand Channel F Wetland Restoration

The proposed project is located within the Laguna Atascosa National Wildlife Refuge between Bahia Grande and Laguna Vista, Texas. This project proposes to enhance 800 acres of wetlands and shallow open waters by restoring freshwater flow from north of Highway 100 to Laguna Larga in the upper Bahia Grande System. Hydrological restoration would be accomplished through the installation of a 4 foot x 3 foot box culvert under Highway 100 with stone rip rap placed at the outfall location to minimize erosion. A channel will be constructed to route water flow into Laguna Larga which will include grading in uplands and freshwater emergent wetland habitat surrounding the channel and the installation of a water control structure weirs to control flow into Laguna Larga. In addition, 870 linear feet of existing ditches will be filled. Reestablishing freshwater flow into Laguna Larga would complement the tidal flow restoration between the Brownsville Ship Channel and Bahia Grande.

The proposed action is not within any System Units. Therefore, this project is not subject to a Consistency Analysis under CBRA.

2. Bird Island Cove Habitat Restoration Phase II

The proposed project is located in West Galveston Bay, at the mouth of Ostermayer Bayou, around and in front of Shell Island Point, Bird Island Cove, and McAllis Point. This project is estimated to protect approximately 170 acres of sensitive estuarine marshes from continued erosion through the construction of a breakwater. This proposed project would finalize the engineering design phase, conduct a coastal boundary survey and update previous surveys to construct approximately 8,820 linear feet (LF) of riprap concrete or limestone breakwaters adjacent to the shoreline of Bird Island Cove, Ostermayer Bayou, and Shell Island Point.

The proposed action is not within any CBRS System Units but is within OPA Unit T07P. Therefore, this project is not subject to a Consistency Analysis under CBRA.

3. Follets Island Coastal Management Area (CMA) Habitat Acquisition Phase II

The proposed 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.

The proposed project consists of the completion of due diligence including appraisal, environmental assessment, survey, and title search before securing the property with a purchase contract; and transferring the property to Texas Parks and Wildlife Department (TPWD) for inclusion in the Follets Island CMA. No construction is anticipated at this time.

Consistency Analysis

The proposed action is within System Unit and T04 and OPA Unit T04P. Therefore, this project is subject to a Consistency Analysis under CBRA. Within the System units, the proposed action involves no construction and consists primarily of management, protection, and enhancement of fish and wildlife resources and habitats. Consequently, this activity is consistent with CBRA per exemption 16 U.S.C. 3505(a)(6)(A) for "Projects for the study, management, protection, and

enhancement of fish and wildlife resources and habitats, including acquisition of fish and wildlife habitats, and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.” The purposes of CBRA are “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damages to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf Coasts...” 16 U.S.C. §3501(b). Based on the description, this project will have no effect on the loss of human life and is designed to enhance natural resources injured by the Deepwater Horizon oil spill by purchasing land and expanding the Follets Island CMA. Because this project will protect habitat and increase coastal resiliency it is not considered a wasteful expenditure of Federal revenue. Accordingly, this project is consistent with the purposes of the CBRA and falls within the CBRA exemption discussed above.

4. Galveston Island Habitat Acquisition

The proposed project is located on Galveston Island adjacent to Starvation Cove and Mentzel Bayou in Galveston County, Texas. This project proposes to acquire and conserve 142 acres of barrier island habitat on Galveston Island, Texas, in perpetuity through a conservation easement. The 142 acre property is currently planned for residential and commercial development. Acquisition of the property would preserve its coastal resiliency benefits by preventing the development and associated degradation of this portion of the barrier island’s natural resources. The property would be preserved in perpetuity through a conservation easement held by an approved easement holder.

This proposed project activities would include the completion of due diligence, including appraisal, land surveys, title searches, and a Phase I Environmental Site Assessment audit; realty closing and transfer of ownership to Artist Boat, a local nonprofit organization that has successfully conserved over 600 acres on west Galveston Island. In addition, a conservation easement would be held by a certified land trust organization.

Consistency Analysis

The proposed action is not within any System Units. Therefore, this project is not subject to a Consistency Analysis under CBRA.

5. Jones Bay Oystercatcher Habitat Restoration

The proposed project would restore up to five remnant nesting islands and six intertidal reef sites in Jones Bay in Galveston County, Texas. Nesting island restoration would be achieved by placing approved cultch material on existing islands to increase their elevation. The combined area footprint is approximately one acre in size. The elevation of existing small islands would be enhanced to elevations that exceed mean high water (MHW) using graded limestone to raise the elevation to approximately +4.5 feet NAVD88. Cultch material would also be graded and sized to use larger grain material in high energy locations and to ensure the material remains stable over time. A rock breakwater may be installed at one island site to protect the nesting island from vessels wakes associated with the Gulf Intracoastal Waterway.

Intertidal reef restoration would place cultch-acceptable material near each restored nesting island to provide foraging habitat for nesting oystercatchers and their young as well as other bird species. An area of approximately 1.5 acres total for all intertidal reef sites would be constructed

on unconsolidated sediments adjacent to existing reefs using limestone cultch. For the intertidal reef component of the project, geotextile fabric may be placed on the substrate to better support cultch material and reduce settlement. The reef would be constructed to an elevation of approximately +0.20 feet NAVD88 for accessibility to foraging oystercatchers.

Consistency Analysis

The proposed action is not within any System Units. Therefore, this project is not subject to a Consistency Analysis under CBRA.

6. Laguna Vista Rookery Island Habitat Protection

The proposed project would complete engineering and construct approximately 2,250 linear feet (LF) of living shoreline to minimize erosion and restore the perimeter around the 11-acre spoil island. The proposed project would enhance portions of the island by adding sediment and protect the island from erosion by constructing a breakwater along the most vulnerable portion of the island's shoreline. Channel dredging is required to access the proposed project site via barge. A barge-mounted excavator would mechanically dredge a flotation channel of a width of 50 feet, a depth that provides no more than four feet of water depth, and length of approximately 1,800 LF. Excavated sediments will be used to enhance the island or returned to the access channel after the access channel is no longer required. Appropriate best management practices, including silt curtains, would be used to minimize turbidity during dredging.

Consistency Analysis

The proposed action is not within any System Units. Therefore, this project is not subject to a Consistency Analysis under CBRA.

7. Lancha Sea Turtle Mitigation Plan

This proposed project would include the purchase of a long-range boat vessel and conducting enhanced enforcement and/or patrols by the TPWD targeted at apprehending illegal vessels and remove illegal fishing gear from the water (e.g., gill nets, longline gear). In addition, the project may result in the procurement of dock space for the vessel which includes the installation of a floating dock. The floating dock would be anchored in place either in water on the sea floor or on land, via small poles hammered into the ground with sledgehammers. No large pilings would be added, as the existing ones may also be used to anchor the floating dock. The primary objective is to reduce sea turtle injuries and mortality caused by use of illegal commercial fishing gear in U.S. waters. In an email dated 6/28/2022, the Service was notified of a change to the proposed project from Lancha Sea Turtle Mitigation Plan to Reducing Sea Turtle Mortality through Removal of Illegal Fishing Gear however, the project description remains the same.

Consistency Analysis

The proposed action is within System Units T10, T11, T12 and OPA Units T10P, T12P, TX-15P, TX16-P. Therefore, this project is subject to a Consistency Analysis under CBRA. Within the System units, the proposed action involves no construction and consists primarily of management, protection, and enhancement of fish and wildlife resources and habitats. Consequently, this activity is consistent with CBRA per exemption 16 U.S.C. 3505(a)(6)(A) for "Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats, including acquisition of fish and wildlife habitats, and related lands, stabilization

projects for fish and wildlife habitats, and recreational projects.” The purposes of CBRA are “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damages to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf Coasts...” 16 U.S.C. §3501(b). Based on the description, this project will have no effect on the loss of human life. Through the removal of derelict fishing gear this project will minimize potential navigational hazards and help enhance resources injured by the Deepwater Horizon oil spill by minimizing entanglement of marine life. Because this project will remove hazards to both human and marine life, it is not considered a wasteful expenditure of Federal revenue. Accordingly, this project is consistent with the purposes of the CBRA and falls within the CBRA exemption discussed above.

8. Landscape Scale Oyster Restoration in Galveston Bay, TX

The project would involve construction of a network of intertidal and subtidal reef complexes totaling approximately 50 acres within unidentified locations within Trinity Bay and Upper Galveston Bay. The specific sites for oyster reef restoration would be determined as part of the site suitability analysis. The network of reef complexes would include high vertical relief reefs and lower elevation reefs in both intertidal and subtidal zones. These reefs would be positioned so that the predominant currents would transport larvae between reef complexes.

The number and dimensions of the reef mounds/ridges have not yet been determined but would be dependent on the selected sites’ geophysical characteristics and hydrological characteristics. Reef design would include intermittent breaks between reef segments to avoid impeding movement between marine habitat and shoreline/freshwater spawning and rearing habitats and prevent entrapment.

Construction activities would include the transportation of the cultch material via barges to the site locations. Mounds would then be placed using an excavator from a deck barge to place the cultch material on the selected locations. Following placement, any debris placed beyond the boundary of the reef would be removed by hand or excavator. In the event that construction activities would occur adjacent to bird nesting locations, construction activities would be scheduled to avoid bird nesting season.

Consistency Analysis

The proposed action is not within any System Units. Therefore, this project is not subject to a Consistency Analysis under CBRA.

9. Petronila Creek Constructed Wetlands Planning

The proposed project would include a feasibility study and, if determined to be feasible, development of 30% engineering and design (E&D) components and completion of the planning stages necessary to convert a 240-acre agricultural tract to constructed wetlands through which Petronila Creek would be diverted. The site is ideally suited to intercept and treat nutrient-rich agricultural runoff, thereby reducing water quality impacts to Baffin Bay. Water would be drawn from Petronila Creek and passed through the wetlands for water quality improvements before being returned to the creek. The goal of the alternative would be to treat up to 15,000 acre-feet of water per year. The proposed project would include design of a series of wetlands and wet ponds as a comprehensive ecosystem design. Results of this proposed project would be used to determine feasibility of potential future construction actions.

Consistency Analysis

The proposed action is not within any System Units. Therefore, this project is not subject to a Consistency Analysis under CBRA.

10. Petronila Creek Watershed Nutrient Reduction Initiative

The proposed project would focus on cropland within the highest priority of the Petronila Creek watershed hydrologic unit codes (HUCs) (Tier 1 watershed): City of Concordia-Petronila Creek, Gertrude Lubby Lake-Petronila Creek, and Chapman Ranch Lake-Petronila Creek. The project proposes to implement conservation practices on agricultural lands within 12-digit HUC watersheds to improve water quality conditions at the watershed level. Outreach and financial and technical assistance would be provided to voluntary participants to develop and implement conservation practices on agricultural land that is vulnerable to nutrient and sediment runoff. This project would consist of landowner outreach and education, conservation planning, engineering and design, environmental compliance, and conservation practice implementation.

Consistency Analysis

The proposed action is not within any System Units. Therefore, this project is not subject to a Consistency Analysis under CBRA.

11. San Antonio Bay Bird Island

The island was designed to capture a full range of desired bird nesting and foraging habitats, and mimic habitats previously observed on Seadrift Rookery Island. The proposed island would measure approximately 920-feet long by 450-feet wide with a total footprint of approximately 8.0 acres, including 4.0 acres of habitat above the shoreline and 1.0 acre of submerged reef habitat.

The island would be constructed using a containment berm and rock revetment. An approximately 120-foot wide shallow water beach opening would be included at the northwestern side of the island. A reef would be constructed on the northwestern side of the island at the beach opening. The reef would be constructed with graded riprap to an elevation of approximately -1.0 foot NAVD. The reef would reduce wave energy into the beach, provide oyster reef habitat, and provide foraging habitat for several bird species.

Consistency Analysis

The proposed action is not within any System Units. Therefore, this project is not subject to a Consistency Analysis under CBRA.

12. Texas Breeding Shorebird and Seabird Stewardship

The proposed project would implement a stewardship program that would protect breeding bird habitat and reduce human disturbance to nesting shorebirds and other bird species. The program would build upon successful previous work that began in 2012. Stewardship activities would reduce the effects of disturbance and predation on nest success and chick survival through the use of intervention techniques (e.g., symbolic fencing, nest patrols, etc.), which would facilitate improved nest production (i.e., more fledglings). These methods support additional recruitment into the population that would not take place otherwise. Each year, it is anticipated that once a

project team has been established, activities in preparation for the upcoming breeding season would begin in January. Depending on the species targeted and their nesting locations field activities may begin as early as February and continue through the end of breeding each year. The program would continue for at least five consecutive breeding seasons. The proposed project would include: 1) project team development, 2) site selection and management, and 3) implementation of stewardship activities, as follows:

Activity 1: Project team development. A project team would be developed for the alternative and would include organizations that specialize and focus on bird conservation nationally, state-wide, and regionally and have established relationships with site managers along the coast. The project team would meet annually prior to nesting season to review the previous season's data and adaptively manage and strategize activities for each site for the current season to best reach alternative goals and objectives.

Activity 2: Site selection and set project schedule, goals, and methods. Sites and methods would be selected based on a variety of factors including focusing the effort on the most important sites where intervention would yield the greatest benefits to nesting birds. Site managers for the project would include city, county, state, and non-governmental organizations who are responsible for coastal sites that are used for natural resource conservation and public recreation. The project team members would work closely with each site manager to develop approaches to accommodate the needs of breeding birds, public recreation, and site management operations. At the onset of each year's breeding season, site managers would be made aware of the schedule and target goals identified in project team yearly meetings, and field staff would begin to identify nesting territories targeted for protection.

Activity 3: Implementation. Program implementation would include a combination of methods that include targeted outreach and education to site owners and managers, the general public on beaches, symbolic fencing and signage to protect high-use bird nesting areas, steward patrols, and collection of breeding bird and nesting success data at each designated site. Additional intervention methods may include predator proof fencing, live trapping, or other techniques specific to the predator threat. Young and adult birds may be banded by a qualified bander holding U.S. Geological Survey banding permits, USFWS migratory bird permits, and TPWD scientific permits to document migration and nesting site fidelity. Additional activities could include holding events to engage visitors about nesting birds and increase awareness, which may be stand-alone events or associated with larger events hosted by the site manager.

Consistency Analysis

The proposed action is within System Units T01, T02A, T03A, TX-04, T04, T05, T06, T07, T11, T12, TX-17 and OPA Units T01P, TX-02P, T03AP, T04P, TX-04P, T05P, TX-05P, T07P, T11P, T12P, TX-15P, TX-16P, TX-17P, TX-22P. Therefore, this project is subject to a Consistency Analysis under CBRA. Within the System units, the proposed action involves no construction and consists primarily of management, protection, and enhancement of fish and wildlife resources and habitats. Consequently, this activity is consistent with CBRA per exemption 16 U.S.C. 3505(a)(6)(A) for "Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats, including acquisition of fish and wildlife habitats, and related lands, stabilization projects for fish and wildlife habitats, and

recreational projects.” The purposes of CBRA are “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damages to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf Coasts...” 16 U.S.C. §3501(b). Based on the description, this project will have no effect on the loss of human life and is designed to enhance natural resources injured by the Deepwater Horizon oil spill through increased awareness and protection of nesting colonies and is not considered a wasteful expenditure of Federal revenue. Accordingly, this project is consistent with the purposes of the CBRA and falls within the CBRA exemption discussed above.

13. Upper Texas Coast Sea Turtle Rehabilitation Facility

The proposed project would be located on Pelican Island in the City of Galveston, Galveston County, Texas, on the Texas A&M University at Galveston (TAMUG) campus, west of Seawolf Parkway. This project would involve the construction of a new sea turtle rehabilitation facility and parking lot on a previously disturbed area of land that was used as a dredge placement facility located directly northwest of the TAMUG Campus Wetland Center. Areas outside the immediate construction footprint may be used to stage equipment and materials (e.g., fill); however, this would be temporary. The addition of impervious surfaces within the construction footprint would result in the permanent modification of approximately two acres of the site, although pervious materials could also be incorporated if feasible. Access to the facility would be provided by existing access roads; no additional access roads would be constructed. Any areas disturbed by construction activities that are not within the construction footprint would be revegetated with native species following construction. A stormwater pollution prevention plan would be prepared according to Texas Commission on Environmental Quality standards.

Consistency Analysis

The proposed action is not within any System Units. Therefore, this project is not subject to a Consistency Analysis under CBRA.

Applicable Exception(s) under 16 U.S.C. 3505(a)

General Exceptions

- 16 U.S.C. 3505(a)(1): Any use or facility necessary for the **exploration, extraction, or transportation of energy resources** which can be carried out only on, in, or adjacent to a coastal water area because the use or facility requires access to the coastal water body.
- 16 U.S.C. 3505(a)(2): The **maintenance or construction of improvements of existing Federal navigation channels** (including the Intracoastal Waterway) and related structures (such as jetties), including the disposal of dredge materials related to such maintenance or construction. A Federal navigation channel or a related structure is an existing channel or structure, respectively, if it was authorized before the date on which the relevant System unit or portion of the System Unit was included within the CBRS.
- 16 U.S.C. 3505(a)(3): The maintenance, replacement, reconstruction, or repair, but not the expansion, of **publicly owned or publicly operated roads, structures, or facilities that are essential links** in a larger network or system.

- 16 U.S.C. 3505(a)(4): **Military activities** essential to national security.
- 16 U.S.C. 3505(a)(5): The construction, operation, maintenance, and rehabilitation of **Coast Guard facilities** and access thereto.

Specific Exceptions

These exceptions must also be consistent with all three purposes of the CBRA (see "Justification" section below).

- 16 U.S.C. 3505(a)(6)(A): **Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats**, including acquisition of fish and wildlife habitats, and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.
- 16 U.S.C. 3505(a)(6)(B): Establishment, operation, and maintenance of **air and water navigation aids** and devices, and for access thereto.
- 16 U.S.C. 3505(a)(6)(C): Projects under the **Land and Water Conservation Fund Act** of 1965 (16 U.S.C. 4601-4 through 11) and the **Coastal Zone Management Act** of 1972 (16 U.S.C. 1451 et seq.).
- 16 U.S.C. 3505(a)(6)(D): **Scientific research**, including aeronautical, atmospheric, space, geologic, marine, fish and wildlife, and other research, development, and applications.
- 16 U.S.C. 3505(a)(6)(E): Assistance for **emergency actions essential to the saving of lives and the protection of property and the public health and safety**, if such actions are performed pursuant to sections 5170a, 5170b, and 5192 of title 42 **and are limited to actions that are necessary to alleviate the emergency**.
- 16 U.S.C. 3505(a)(6)(F): Maintenance, replacement, reconstruction, or repair, but not the expansion (except with respect to United States route 1 in the Florida Keys), of **publicly owned or publicly operated roads, structures, and facilities**.
- 16 U.S.C. 3505(a)(6)(G): **Nonstructural projects for shoreline stabilization** that are designed to mimic, enhance, or restore a natural stabilization system.

Justification for Exception(s)

The following projects are within a Coastal Barrier Resources System Unit therefore are subject to a Consistency Analysis under CBRA.

- Follets Island Coastal Management Area (CMA) Habitat Acquisition Phase II - System Unit T04 and OPA Unit T04P.
- Texas Breeding Shorebird and Seabird Stewardship - System Units T01, T02A, T03A, TX-04, T04, T05, T06, T07, T11, T12, TX-17 and OPA Units T01P, TX-02P, T03AP, T04P, TX-04P, T05P, TX-05P, T07P, T11P, T12P, TX-15P, TX-16P, TX-17P, TX-22P.

- Lancha Sea Turtle Mitigation Plan - System Units T10, T11, T12 and OPA Units T10P, T12P, TX-15P, TX16-P.

Within the System units, the proposed actions involve no construction and consists primarily of management, protection, and enhancement of fish and wildlife resources and habitats. Consequently, this activity is consistent with CBRA per exemption 16 U.S.C. 3505(a)(6)(A) for “Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats, including acquisition of fish and wildlife habitats, and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.” The purposes of CBRA are “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damages to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf Coasts...” 16 U.S.C. §3501(b). Based on the description provided, projects will have no effect on the loss of human life and are designed to enhance natural resources injured by the Deepwater Horizon oil spill. In addition, because these projects will enhance habitat, minimize injury through removal of hazards and increase awareness and protection of coastal birds, these projects are not considered a wasteful expenditure of Federal revenue. Accordingly, this project is consistent with the purposes of the CBRA and falls within the CBRA exemption discussed above.

U.S. Fish and Wildlife Service Response

Below is the Service's response to USFWS request for a consultation under the CBRA for Implementation of Thirteen (13) Restoration Projects proposed in the Texas Trustee Implementation Group's Restoration Plan #2. This response represents the Service's opinion. **The final decision regarding the expenditure of funds for this action or project rests with the Federal funding agency.** USFWS has fulfilled its obligation to consult with the Service under the CBRA for this particular action or project within the CBRS. Please note that any new commitment of Federal funds associated with this action or project, or change in the project design and/or scope, is subject to the CBRA's consultation requirement.

The Service has reviewed the information provided by USFWS's Deepwater Horizon Gulf Restoration Office, and believes the referenced action/project is:

- Not located within a System Unit of the CBRS and the CBRA does not apply (except with respect to the restrictions on Federal flood insurance)
- Located within a System Unit of the CBRS and meets the exception(s) to the CBRA selected above
- Located within a System Unit of the CBRS and meets different exception(s) than the one(s) selected above (see additional information/comments below)
- Located within a System Unit of the CBRS and does not meet an exception to the CBRA (see additional information/comments below)

- Due to many competing priorities, the Service is unable to provide an opinion on the applicability of the CBRA's exceptions to this action/project at this time. The USFWS may elect to proceed with the action/project if it has determined that the action/project is allowable under the CBRA. Please note that any new commitment of Federal funds associated with this action/project or a related future project is subject to the CBRA's consultation requirement.

Additional Information/Comments

This response does not constitute consultation for any project pursuant to section 7 of the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) or comments afforded by the Fish and Wildlife Coordination Act (48 Stat. 401; 16 U.S.C. 661 *et seq.*); nor does it preclude comment on any forthcoming environmental documents pursuant to the National Environmental Policy Act (83 Stat. 852; 42 U.S.C. 4321 *et seq.*). Should there be questions regarding this review, please feel free to contact Adrian Leiva at 281-898-5686.

Sincerely,

Beau Hardegree
Field Supervisor
Gulf Restoration Program Office

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