United States Department of the Interior

FISH AND WILDLIFE SERVICE

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In Reply Refer To:
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August 11, 2022

Memorandum

To: Michael Barron, Wildlife Biologist Compliance Coordinator, Gulf Restoration Office, U.S. Fish and Wildlife Service, Fairhope, Alabama

From: Beau Hardegree, Project Leader, Gulf Restoration Office, U.S. Fish and Wildlife Service, Corpus Christi, Texas

BILLY HARDEGREE Digitally signed by BILLY HARDEGREE
Date: 2022.08.11 16:31:03 -05'00'

Subject: Informal Section 7 Consultation on the Bahia Grande Channel F Wetland Restoration project within Laguna Atascosa National Wildlife Refuge in Cameron County, Texas

This letter 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 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. In a previous letter signed on April 28, 2022, the Service provided concurrence determinations for (8) eight of the (9) projects submitted. The Service did not have all the necessary information to conduct a comprehensive evaluation of effects for the Bahia Grande Channel F Wetland Restoration project within Laguna Atascosa National Wildlife Refuge (refuge). The Service requested more detailed project plans for alignment, construction methods, access corridors, staging areas and disposal sites for excavated material. This information was received by the Service on June 13, 2022. At issue are the project's effects on federally listed species such as the piping plover (*Charadrius melodus*), red knot (*Calidris canutus*), eastern black rail (*Laterallus jamaicensis jamaicensis*), Northern aplomado falcon (*Falco femoralis*), Ocelot (*Leopardus pardalis*), and the Gulf Coast Jaguarundi (*Herpailurus yagouaroundi*).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).

Pursuant to 50 CFR 402.12(j), you submitted a letter that included a biological assessment for our review and requested concurrence with the findings presented therein. The Service has reviewed all information provided along with additional surveys collected by Service staff. These findings conclude that the proposed project may affect but is not likely to adversely affect listed species identified above. In addition, the proposed project is not within designated or proposed critical habitat for any federally listed species. The TX TIG has determined that the proposed project would have no effect on listed or proposed species that do not occur in the proposed project area, including the west Indian manatee (*Trichechus manatus*), all five species of sea turtles present in the Gulf of Mexico, south Texas ambrosia (*Ambrosia cheiranthifolia*) and the Texas ayenia (*Ayenia limitaris*).

In considering your request, we based our evaluation on the following: 1) the April 1, 2022, letter requesting initiation of informal consultation with the accompanying BE form; 2) Bahia Grande Hydrological Restoration Project Laguna Atascosa National Wildlife Refuge Waters of the U.S. Report (Freese and Nichols, Inc.); 3) Review of 186 hours of sound files collected by two autonomous recording units (ARUs) placed at sites adjacent to the Channel F route between May 6 and May 25; 4) A site visit to the proposed project area on July 6, 2022, to assess potential habitat; 5) the August 11, 2022, email from TX TIG updating the project description; and 5) other information available to the Service.

The proposed project is located south of State Highway 100 (SH 100) in the upper Bahia Grande System of the refuge and would restore hydrology to the area between SH 100 and Laguna Larga by allowing surface runoff from the highway to drain into the wetland potentially enhancing 101.4 acres of palustrine wetlands south of SH 100 and 800 acres of shallow open water of Laguna Larga. The natural drainage of this wetland was previously altered to move water out of the area. Current water inflow to the system is from rainfall and surface water runoff creating ephemeral freshwater ponds surrounded by coastal wetland prairie. The type of prairie found in this is known as *"Gulf Coast Salty Prairie,"* which is at or near sea level, and includes salt-tolerant plants such as leatherleaf (*Maytenus phyllanthoides*), seepweed (*Sueda linearis*), glasswort (Salicornia bigelovii), saltwort (*Batis maritima*), shoregrass (*Distichlis littoralis*), salt grass (*D. spicata*), sea ox-eye daisy (*Borrichia frutescens*), and sea lavender (*Limonium nashii*). On slightly higher elevations, the coastal prairie consists of Gulf cordgrass (*Spartina spartinae*), which may be interspersed with woody vegetation such as yucca (*Yucca treculeana*), honey mesquite (*Prosopis glandulosa*), and prickly pear cactus (*Opuntia engelmannii var. lindheimeri*) to form a savannah.

Proposed project activities include modifying the existing culvert under SH 100 and excavating a 1.6-mile-long and 70-feet wide earthen channel to allow for more complete water passage from the drainage areas north of the highway into the wetlands complex and ultimately into the Laguna Larga. Channel F will have 5:1 side slope and a bottom width of 30 feet. A fixed-crest weir would be constructed near the southern terminus of the channel to

maintain water levels in existing palustrine wetlands and allow freshwater flows into Laguna Larga. The weir structure will consist of an articulated concrete block mat that will be constructed to the north and south of an existing unimproved road. Additionally, there is an existing ditch located to the east of the proposed channel that currently drains north toward SH 100 and deprives the wetlands complex of freshwater flows. This project proposes to plug the ditch to prevent flows from draining away from the wetlands complex. The total excavated area of the channel is 10.75 acres, which includes 9.34 acres of wetland habitat and 1.41 acres of upland vegetation. Construction of the excavated channel would result in a net increase of 1.41 acres of freshwater emergent wetland. The excavated material will be placed in disturbed uplands at the site. Equipment staging and access will be from SH 100 or from areas designated with upland habitat. The overall project is expected to improve retention of water that used to drain away from the site and increase the potential depth of water and extend the hydroperiod of the wetlands that are present.

Prior to project implementation, the State Historic Preservation Office (SHPO) requested a cultural resources survey of the potential area of effect in order to comply with Section 106 of the National Historic and Preservation Act of 1966, as amended in 36 CFR 800.4. This deep trench survey will take place within the project footprint and will not require any additional impacts than what is proposed by project activities.

The TX TIG proposed the following conservation measures in the BE forms submitted to minimize or avoid adverse effects of proposed actions on listed species for the following species: Piping Plover and Red Knot

- All individuals working on the project will be provided information on how to identify the piping plover and red knot and means to minimize disturbance to the species and their habitat.

Eastern Black Rail

- Provide all individuals working on a project with information in support of general awareness of eastern black rail presence and means to avoid these species and their habitat.
- Efforts will be made to reduce noise and vibration within and adjacent to black rail habitat (i.e., within the action area), especially during the breeding season (March 1 – September 1). These efforts include planning and performing work outside of peak breeding call times (i.e., one hour before and after dawn and one hour before and after dusk) for black rail.
- Temporary clearing of black rail habitat must be done in a way that allows for the escape of the birds toward refugia areas which will remain after the completion of the project. Project managers should avoid clearing in a way that creates isolated pockets of suitable black rail habitat. In part this is done by linear clearing in the direction of refugia and avoiding clearing by decreasing concentric circles.
- Areas of dense herbaceous vegetation habitat should be left intact to provide temporary refugia for the black rail to ensure escape access routes.
- Marking the project boundary will be conducted in cases where there is a risk of

damage to areas outside the project area but within the action area. If used, marked fencing should remain up through all activities, once a project is completed, the fencing will be removed and disposed of properly off-site.

- Biological monitor or qualified personnel will be needed to assist construction crews with avoidance and minimization to black rail habitats once work begins. The biological monitor or qualified personnel will have authority to stop work immediately if black rail chick or eggs are observed within the project area. In addition, the Service should be contacted immediately.

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. A 1,000-foot buffer shall be maintained around the nest or perch depending on the sensitivity of the individual bird to keep human impacts to a minimum.

Ocelots

- All contract personnel associated with the project would be informed of the potential presence of ocelots and the means to avoid impacts to protected species and their habitats present at or near the specific project site.
- Contractors will be advised of speed restrictions to minimize potential negative effects on ocelots. Vehicular speeds within the refuge will be restricted to 15 mph or less.
- Work will only be conducted during daylight hours (i.e., between one hour after sunrise and one hour before sunset) to reduce the chances of vehicle activity during the primarily nocturnal activity period of ocelots.
- If an ocelot approaches the construction area within 75 feet, work will stop until they leave the construction site. Service should be contacted for additional guidance.

Piping Plover and Red Knot

Piping plover and red knot occur in coastal South Texas during their wintering and migrating periods. Neither species nests along the Gulf Coast, but rather uses the area as an important wintering and stopover habitat. During these periods, piping plover and red knot could occasionally occur on the southern end of the project where the channel connects with Laguna Larga, where suitable habitat occurs. The majority of the project area occurs away from Laguna Larga, and the rest of the project area contains no suitable habitat for these species. Because of the limited nature of available habitat near the project area, their presence in the majority of the project area is extremely unlikely, and the potential for adverse effects to these species is limited to noise disturbance from project activities to adjacent habitat. If present, these birds may be disturbed by work activities and may move to adjacent undisturbed areas causing temporary displacement of individuals as a result of project activities. There is a large amount of available habitat within the Laguna Larga area

outside of the project area. The potential for displacement due to project activities is very low, but if it were to occur, it would be temporary and because of the large amount of habitat available, would not adversely affect foraging or other activities. The Service has determined that the proposed project may affect, but is not likely to adversely affect these species.

Eastern Black Rail

Eastern black rails are cryptic species that occur in fresh, brackish, and saltwater marshes with clumping grass, rushes, or sedges. Eastern black rails require dense vegetative cover that allows movement underneath the canopy, and, because birds are found in a variety of salt, brackish, and freshwater marsh habitats that can be tidally or non-tidally influenced, plant structure is considered more important than plant species composition in predicting habitat suitability. Based on desktop habitat analysis of aerial imagery and a site visit conducted on July 6, 2022, potential suitable eastern black rail habitat is present in the proposed project area. The Service estimated that 1.16 acres of suitable habitat fall within the footprint of Channel F and the ditch that will be filled. Even though suitable vegetation communities are currently present in the proposed project area, shallow water required for suitable habitat is not likely to persist given the rainfall patterns of the region.

Eastern black rails have been documented in estuarine locations in units of the refuge north of SH 100 about 16 miles to the north of the proposed project area. While there are no comprehensive surveys of the region, all confirmed detections within the refuge are associated with persistent water on the landscape. Review of 186 hours of sound files from ARUs placed in two different sites near potential suitable black rail habitat within the proposed project area, did not identify any positive detections. The completed project should result in current wetlands having more persistent water which could benefit black rails. Overall, the project is anticipated to result in net ecological benefits to the estuarine ecosystem of the Bahia Grande unit. Prolonging the hydro-period of these wetlands will lead to more persistent water and expand the transitional black rail habitat surrounding each of the wetland depressions. Because no black rails were detected in the ARU data or during the site visit during the season when most vocalizations should occur, the Service has determined that project activities may affect but are not likely to adversely affect eastern black rail.

Northern Aplomado Falcon

Northern aplomado falcons have been re-introduced to Cameron County and regularly nest within the refuge, using either stick platforms built by other birds or artificial nesting platforms. The species nests only once a year during the dry season (January-June) with most nesting activities occurring in April and May. The two closest known nesting structures are 5,000 ft to the west of the Channel and about 4,000 ft to the north of SH 100. Adverse effects to nesting aplomado falcons will be avoided by close project coordination with Service staff and other avoidance measures. Noise disturbance due to project activities could cause temporary displacement of foraging or roosting aplomado falcons, but the potential for disturbance would be temporary, infrequent, and localized. A large amount of foraging and

roosting habitat occurs throughout the area, and temporary displacement would not measurably affect the aplomado falcons. Therefore, project activities may affect, but are not likely to adversely affect aplomado falcons.

Ocelot and Gulf Coast Jaguarundi

Core habitat area for the Ocelot and Gulf Coast Jaguarundi is within the refuge and is mostly found north SH 100. Both species require dense Tamaulipan thornscrub habitat, which does not occur within or adjacent to the proposed project area. In order to prevent the possibility of vehicle collisions with ocelot and jaguarundi when traveling to and from the proposed project area, contractors will be educated prior to carrying out activities and strictly adhere to speed limits (15 MPH) and driving restrictions while within the refuge. Due to the extremely low probability of encountering an ocelot or jaguarundi in the proposed project area due to lack of suitable habitat, project activities may affect, but are not likely to adversely affect the ocelot or the jaguarundi.

This concludes the Service's review of the proposed Bahia Grande Channel F Wetland Restoration project. 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 Wildlife Biologist, Adriana Leiva at (281) 898-5686.