UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

January 16, 2025

Ms. Leslie Koza
Texas General Land
Office Federal
Consistency Coordinator
PO Box 12873
Austin, TX 78711-2873

Dear Ms. Koza:

The Deepwater Horizon (DWH) Oil Spill Texas Trustee Implementation Group (TIG) is comprised of federal and state Trustees: the U.S. Department of the Interior (DOI), the National Oceanic and Atmospheric Administration (NOAA), the U.S. Department of Agriculture (USDA), the U.S. Environmental Protection Agency (EPA), Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality. The Texas TIG is proposing seven (7) preferred restoration projects for implementation in a restoration plan titled *Deepwater Horizon Oil Spill Texas Trustee Implementation Group Draft Restoration Plan/Environmental Assessment #3: Restoration of Wetlands, Coastal, and Nearshore Habitats* (Draft RP/EA #3). This letter provides information regarding the federal Trustees' review of these projects pursuant to the Coastal Zone Management Act (16 USC 1451 et seq.) and applicable federal regulations (15 CFR Part 930 – Federal Consistency with Approved Coastal Management Programs). NOAA is submitting this letter as the lead federal agency on behalf of the federal Trustees on the Texas TIG.

Background

On or about April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon* experienced an explosion, leading to a fire and its subsequent sinking in the Gulf of Mexico. These events resulted in the discharge of more than three million barrels of oil into the Gulf over a period of approximately three months. In addition, various response actions were undertaken, including, but not limited to the application of dispersants to the waters of the spill area in an attempt to minimize impacts from spilled oil. These events are hereafter collectively referred to as the DWH Oil Spill. The magnitude of the DWH Oil Spill and the efforts to contain and clean up the oil across the Gulf were massive and unprecedented. The DWH Oil Spill and associated

response efforts impacted coastal and oceanic ecosystems ranging from the deep ocean floor, through the oceanic water column, to the highly productive coastal habitats of the northern Gulf of Mexico. This includes estuaries, shorelines, and coastal marshes as well as ecologically, recreationally, and commercially important species and their habitats in the Gulf of Mexico and along the coastal areas of Alabama, Florida, Louisiana, Mississippi, and Texas. These fish and wildlife species and their supporting habitats provide a number of important ecological and recreational services.

After the DWH Oil Spill, the designated state and federal natural resource trustees, (collectively the Trustees) conducted a natural resource damage assessment (NRDA) for injuries resulting from the DWH Oil Spill in order to restore and compensate the public for the harm the spill caused to natural resources, including lost use of these resources by the public. In February 2016, the Trustees issued a Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (PDARP/PEIS) under the Oil Pollution Act (OPA) and the National Environmental Policy Act (NEPA) to analyze alternative approaches to implementing restoration and to guide restoration decisions. On April 4, 2016, the Trustees reached and finalized a settlement of their natural resources damage claims with BP Exploration and Production, Inc., a responsible party for the DWH Oil Spill, through a Consent Decree approved by the U.S. District Court for the Eastern District of Louisiana.

All activities undertaken by TIGs are required to be consistent with the DWH programmatic restoration plan. That programmatic plan identifies Coastal Zone Management Act (CZMA) federal consistency among relevant authorities to be examined by the TIGs to ensure continuing compliance with applicable authorities for actions proposed in TIG restoration plans (section 6.9 and 6.9.3 of PDARP/PEIS). Whether and to what extent an authority applies to the Trustees' restoration actions depends on the specific characteristics of a particular project, among other things.

Proposed Texas TIG Draft RP/EA #3 Projects

In the Draft RP/EA #3, the Texas TIG evaluated the environmental consequences of a total of eight restoration project alternatives. Of those, seven are identified as preferred alternatives. The seven preferred restoration projects included in the Draft RP/EA #3 are listed in Table 1. Detailed information about the potential environmental effects of each project is contained in Chapter 4 of the Draft RP/EA #3 available at https://www.gulfspillrestoration.noaa.gov/restoration-areas/texas.

Attachment A provides an overview description of each of the projects proposed for implementation. Texas consistency determination is applicable to all seven of the preferred alternatives. *Attachment B* provides the federal Trustees' evaluation of the

enforceable policies of the Texas Administrative Code (TAC) that are potentially applicable to these proposed restoration projects and the basis of our determination of consistency with these policies. The Final PDARP/PEIS provides for TIGs to propose phasing restoration projects across multiple restoration plans. The Texas TIG is proposing spend $40M dollars to implement these seven preferred alternatives.

Table 1. The preferred alternatives proposed in the Texas TIG Draft RP/EA #3

Restoration Type	Project Title	Federal Consistency Analysis Required
Wetlands, Coastal, and Nearshore Habitats (WCNH)	Anahuac National Wildlife Refuge Roberts Mueller Tract Wetland Restoration	Yes
WCNH	Goose Island Wetland Restoration	Yes
WCNH	Lower Neches Wildlife Management Area Old River Unit Wetland Restoration	Yes
WCNH	McFaddin National Wildlife Refuge Willow Lake Terraces Wetland Restoration	Yes
WCNH	San Bernard National Wildlife Refuge Sargent Oil Field Wetland Restoration	Yes
WCNH	Schicke Point Wetland Restoration	Yes
WCNH	Texas Point National Wildlife Refuge Wetland Restoration	Yes

Conclusion

Based on our review of 15 CFR Part 930 and the requirements of the State's coastal zone management program and after evaluating the activities for each proposed restoration project, the federal Trustees of the Texas TIG find that seven preferred restoration projects included in the Draft RP/EA #3 have reasonably foreseeable effects on coastal uses or resources of the State and are consistent, to the maximum extent practicable, with the applicable, enforceable policies of the State's approved coastal management program. If selected and implemented, the proposed projects would comply and be implemented in a manner consistent with the TAC. This letter

submits these determinations for review by the State coincident with public review of the Draft RP/EA #3. We thank you in advance for your assistance.

If you have any questions, please contact Jamie Schubert (jamie.schubert@noaa.gov) and Christy Fellas (christina.fellas@noaa.gov).

Sincerely,

SWEENEY.RACHEL.W.1365818998

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Rachel W. Sweeney
Program Manager, Deepwater Horizon Restoration Program
National Oceanic and Atmospheric Administration

Attachments: as stated

cc: Cody Hayes, U.S. Department of the Interior
Ron Howard, U.S. Department of Agriculture
Doug Jacobson, U.S. Environmental Protection Agency
Michael Cave, Texas Commission on Environmental Quality
Allison Fischer, Texas General Land Office
Angela Shrift, Texas Parks and Wildlife Department

ATTACHEMENT A
DESCRIPTIONS OF PROPOSED RESTORATION PROJECTS
from the
TEXAS TIG DRAFT RP/EA#3

Wetlands, Coastal, and Nearshore Habitats Restoration Type

All proposed projects will beneficially use dredged materials to restore intertidal marsh habitat at each site. The Texas TIG will only fund the incremental costs associated with restoring wetlands with sediments dredged from federally managed channels and private channels. The Trustees are basing the consistency analysis only on the placement activities and not the dredging activities which would be required to have their own consistency determinations.

Anahuac NWR Roberts Mueller Tract Wetland Restoration

The primary objective of this project is to return current submerged shallow open water habitat in the Anahuac NWR to reference marsh elevations to support habitat restoration and revegetation with native vegetation such as smooth cordgrass (*Sporobolus alterniflorus*) and saltmeadow cordgrass (*Sporobolus pumilus*). This project would place up to 650,000 cubic yards (cy) of suitable hydraulically dredged material within levees constructed from on-site sediment. Dredged material would be placed in the levees to build elevations suitable for marsh growth as determined from adjacent healthy wetlands. The final target elevation will consider sediment compaction and expected sea level rise. Project actions would restore up to 550 acres of marsh habitat, including the conversion of approximately 380 acres of existing open water to intertidal marsh habitat.

Goose Island Wetland Restoration

The primary objective of this project is to return current shallow open water habitat within the project site to reference marsh elevations to support habitat restoration and revegetation with native vegetation such as smooth cordgrass and saltmeadow cordgrass. This project would place up to 195,000 cy of suitable hydraulically dredged material within containment levees. As part of the project, existing levees would be rehabilitated and additional levees constructed. Sediment would be placed in the site to build elevations suitable for marsh growth as determined from adjacent healthy wetlands. The final target elevation will consider sediment compaction and expected sea level rise. Project actions would restore up to 40 acres of marsh habitat, including the conversion of approximately 34 acres of existing open water to intertidal and high marsh habitat.

Lower Neches WMA Old River Unit Wetland Restoration

The primary objective of this project is to restore and conserve wetlands at the project site by beneficially using dredged material to create a viable, vegetated, wetland habitat for fish and wildlife. In addition, rebuilding the wetlands contributes to coastal resiliency by creating buffers that protect adjacent natural areas from storm surge damage. The primary objective of this project is to restore shallow open water habitat in Lower Neches WMA Old River Unit to reference marsh elevations to support habitat restoration and revegetation with native vegetation such as smooth cordgrass and saltmeadow cordgrass. This project would place up to 400,000 cy of suitable hydraulically dredged material within levees constructed from on-site sediment. Dredged material would be placed in the site to build elevations suitable for marsh growth as determined from adjacent healthy wetlands. The final target elevation would consider sediment compaction and expected sea level rise. Project actions would restore up to 224 acres of intertidal marsh, including the conversion of 96 acres of existing open water to intertidal marsh.

McFaddin NWR Willow Lake Terraces Wetland Restoration

The primary objective of this project is to restore and conserve wetlands and coastal habitats in Willow Lake by beneficially using dredged material to create a viable, vegetated, wetland habitat for fish and wildlife. In addition, rebuilding the wetlands contributes to coastal resiliency by creating buffers that protect adjacent natural areas from storm surge damage. The primary objective of this project is to restore shallow open water habitat in Willow Lake to reference marsh elevations to support habitat restoration and revegetation with native vegetation such as smooth cordgrass and saltmeadow cordgrass. This project would place up to 475,000 cy of suitable hydraulically dredged material within levees constructed from on-site material. Sediment would be placed in the site to build elevations suitable for marsh growth as determined from adjacent healthy wetlands. The final target elevation will consider sediment compaction and expected sea level rise. Project actions would restore up to 218 acres of marsh habitat, including the conversion of up to 140 acres of existing open water to low marsh.

San Bernard NWR Sargent Oil Field Wetland Restoration

The primary objective of this project is to restore and conserve wetlands and coastal habitats in the San Bernard NWR Sargent Oil Field area by beneficially using dredged material to create a viable, vegetated, wetland habitat for fish and wildlife. In addition, rebuilding the wetlands contributes to coastal resiliency by creating buffers that protect adjacent natural areas from storm surge damage. The primary objective of this project is to restore shallow open water habitat in the San Bernard NWR Sargent Oil Field site to reference marsh elevations to support habitat restoration and revegetation with native vegetation such as smooth cordgrass and saltmeadow cordgrass. This project would place up to 120,000 cy of suitable hydraulically dredged material within levees constructed

from on-site sediment. Dredged material would be placed in the site to build elevations suitable for marsh growth as determined from adjacent healthy wetlands. The final target elevation will consider sediment compaction and expected sea level rise. Project actions would restore up to 200 acres of marsh habitat, including the conversion of up to 119 acres of existing open water to low marsh.

Schicke Point Wetland Restoration

The primary objective of this project is to restore and conserve wetlands and coastal habitats in Schicke Point by beneficially using dredged material to create a viable, vegetated, wetland habitat for fish and wildlife. In addition, rebuilding the wetlands contributes to coastal resiliency by creating buffers that protect adjacent natural areas from storm surge damage. The primary objective of this project is to restore shallow open water habitat in Schicke Point to reference marsh elevations to support habitat restoration and revegetation with native vegetation such as smooth cordgrass and saltmeadow cordgrass. This project would place up to 182,000 cy of suitable hydraulically dredged material within levees constructed from on-site sediment. Dredged material would be placed in the site to build elevations suitable for marsh growth as determined from adjacent healthy wetlands. The final target elevation will consider sediment compaction and expected sea level rise. Project actions would restore up to 72 acres of marsh habitat.

Texas Point NWR Wetland Restoration

The primary objective of this project is to restore shallow submerged open water habitat in the Texas Point NWR to reference marsh elevations to support habitat restoration and revegetation with native vegetation such as smooth cordgrass and saltmeadow cordgrass. This project would place up to 1.6 million cy of suitable hydraulically dredged material within levees constructed from on-site sediment. Dredged material would be placed in the site to build elevations suitable for marsh growth as determined from adjacent healthy wetlands. The final target elevation will consider sediment compaction and expected sea level rise. Project actions would restore up to 623 acres of marsh habitat, including the conversion of up to 239 acres of existing open water to intertidal marsh.

ATTACHMENT B
CONSISTENCY DETERMINATIONS FOR FEDERAL AGENCY ACTIVITIES/PROPOSED PROJECTS WITH REASONABLY FORSEEABLE COASTAL EFFECTS

The coastal regulations for the State of Texas are contained in Title 31 of the Texas Administrative Code (TAC), Part 16, Sections 501-506. Included in TAC Title 31, Part 16, Section 501, Subchapter B, are the enforceable policies that provide for the permitting, monitoring, and enforcement functions of the Texas Coastal Management Program (TCMP) and are a requirement of the Coastal Zone Management Act of 1972 (CZMA), as amended. The requirements and process for determining that federal and federally-related activities are conducted in accordance with the TCMP are provided in TAC Title 31, Part 16, Section 506.

The review process for federal projects, activities, and assistance in the State of Texas is provided by TAC Title 31, Part 16, Section 506. TAC Title 31, Part 16, Section 506.12 (Federal Agency Actions, Federal Agency Activities and Development Projects, and Outer Continental Shelf Plans Subject to the Coastal Management Program) provides the list of federal actions, activities, licenses, permits, and assistance that are subject to TCMP review. As provided by TAC Title 31, Part 16, Section 506.12(a) the following federal actions within the CMP boundary are subject to the TCMP:

> (F)(ii) natural resource restoration plans developed pursuant to the Oil Pollution Act of 1990 (33 United States Code Annotated §§2701-2761) and the Comprehensive Environmental Response, Compensation and Liability Act (42 United States Code Annotated §§9601-9675).

The following additional enforceable policies of the TCMP were considered, but based on review by the federal Trustees, do not appear to be applicable to the projects being proposed in the Texas TIG Draft RP/EA 3:

> §501.16. Policies for Construction of Electric Generating and Transmission Facilities
> §501.17. Policies for Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities
> §501.18. Policies for Discharges of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities
> §501.19 Policies for Construction and Operation of Solid Waste Treatment, Storage, and Disposal Facilities
> §501.21 Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters

§501.22 Policies for Nonpoint Source (NPS) Water Pollution
§501.23 Policies for Development in Critical Areas
§501.24 Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands
§501.25 Policies for Dredging and Dredged Material Disposal and Placement
§501.26 Policies for Construction in the Beach/Dune System
§501.27 Policies for Development in Coastal Hazard Areas
§501.28 Policies for Development within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers
§501.29 Policies for Development in State Parks, Wildlife Management Areas or Preserves
§501.30 Policies for Alteration of Coastal Historic Areas
§501.31 Policies for Transportation Projects
§501.32 Policies for Emission of Air Pollutants
§501.33 Policies for Appropriations of Water
§501.34. Policies for Levee and Flood Control Projects

The federal Trustees have reviewed the provisions of TAC Title 31, Part 16, Sections 501-506 and have determined that TAC 501.12 (relating to the goals of the TCMP) and TAC 501.20 (Policies for Prevention, Response and Remediation of Oil Spills) are potentially applicable to the proposed projects included in the Texas TIG Draft RP/EA #3 with reasonably foreseeable coastal effects.

§501.12 Goals
This section outlines the goals of the TCMP to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs) by ensuring sound management of all coastal resources; minimizing loss of human life and property due to the impairment and loss of protective features of CNRAs; ensuring and enhancing planned public access to and enjoyment of the coastal zone compatible with private property rights and other uses; balancing the benefits from economic development and multiple human uses, including protecting these resources, minimizing losses of life and property, and public access and use; coordinating agency and subdivision decision-making; increasing the efficiency and effectiveness of decision-making; providing for public participation in the ongoing development and implementation of the Texas CMP; and educating the public about issues related to coastal management. The projects proposed in the Draft RP/EA #3 are consistent with the goals of this section by protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of CNRAs. The Texas TIG prepared the Draft RP/EA #3 to evaluate restoration project alternatives to restore Texas natural resources and ecological services injured or lost as a result of the DWH Oil Spill. The proposed projects would restore wetlands, coastal and nearshore habitats. In addition, they would

restore CNRAs that help protect human life and property and enhance public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses. The projects are consistent with the other applicable provisions of this section, including balancing multiple human uses of the coastal zone, cooperative decision-making, and providing educational opportunities and public engagement (discussed further below).

§501.20 Policies for Prevention, Response and Remediation of Oil Spills
This section requires that the public be involved in the restoration planning process for an oil spill and that such plans be designed to promote the expeditious restoration of injured resources. The OPA requires that Trustees seek public review and input on all restoration actions that they plan to use to address or compensate for injuries and losses to the public's natural resources due to oil spills in U.S. waters. Public engagement in restoration planning for the DWH Oil Spill has been extensive, starting October 1, 2010, when the DWH Trustees published the Notice of Intent to Conduct Restoration Planning (75 FR 60800).

Since then, the DWH Trustees have sought restoration project ideas from the public through a variety of means. In addition, the DWH Trustees conducted an extensive public outreach process as part of Final PDARP/PEIS development efforts; that process and associated public comments are described more fully in Chapter 8 of the Final PDARP/PEIS. The DWH Trustees also solicited public review and comment on over sixty draft DWH restoration plan/environmental reviews and held in-person or virtual public meetings for each restoration plan including two published by the Texas TIG. These projects proposed in the Texas TIG's RP/EA#3 were identified and designed in the Dredged Material Planning for Wetland Restoration project that was selected in the Texas TIG's 2017 Restoration Plan/Environmental Assessment #1. This project included and project identification process that included input from coastal stakeholders, nongovernmental organizations, experts, and members of the public. With assistance from its project team, led by Ducks Unlimited, the Texas TIG engaged in an iterative process to create a list of potentially suitable sites and refine a shortlist for consideration and preliminary planning and development. Through this process the process, the project team winnowed 163 potential sites to the seven preferred projects evaluated in the RP/EA#3. The public now has opportunity to provide input on this restoration plan as part of the public review and comment process. A public, in-person meeting will also be held during the comment period for the Draft RP/EA #3. The Texas TIG will consider the public comments received before selecting projects for implementation in a Final RP/EA #3. Development of the Draft RP/EA #3 has been based on extensive public input as part of the Texas TIG restoration planning process. The proposed projects as provided by the RP/EA #3 are considered fully consistent with this policy.

The Draft RP/EA #3 proposes restoration that can address some of the public's losses caused by the DWH Oil Spill for wetland, coastal, and nearshore habitat. All the proposed projects have been developed to meet the goals of the PDARP/PEIS including Restore and Conserve Habitat. Collectively, the proposed projects will aid in the recovery of Texas natural resources injured by the DWH Oil Spill and are consistent with the enforceable policies of the TCMP which are intended to improve the management of the State's CNRAs and to ensure the long-term ecological and economic productivity of the Texas coast.