



In Reply Refer To:
FWS/R2/GRPO/
2025-0103086

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Gulf Restoration Program Office
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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 Texas Trustee Implementation Group Final Restoration Plan/Environmental Assessment #3: Restoration of Wetlands, Coastal, and Nearshore Habitats. Your initiation request and project information were received on April 2, 2025.

The Service has reviewed the Biological Evaluation (BE) forms submitted by the Deepwater Horizon TX TIG for five (5) 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 #3: Wetland, Coastal and Nearshore Habitats in 2025. 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*), whooping crane (*Grus americana*), west Indian manatee (*Trichechus manatus*), green sea turtle (*Chelonia mydas*), hawksbill sea turtle (*Eretmochelys imbricata*), Kemp's Ridley sea turtle (*Lepidochelys kempii*), leatherback sea turtle (*Dermochelys coriacea*), loggerhead sea turtle (*Caretta caretta*), and proposed species such as the tricolored bat (*Perimyotis subflavus*), and the monarch butterfly (*Danaus plexippus*).

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 several biological evaluation forms on April 2, 2025 for our review and requested concurrence with the findings presented therein. The Service has reviewed the information provided.

This letter provides a concurrence determination for five (5) projects submitted with the request.

- Jocelyn Nungaray National Wildlife Refuge Roberts Mueller Tract Wetland Restoration
- McFaddin National Wildlife Refuge Willow Lake Terraces Wetland Restoration
- Lower Neches Wildlife Management Area Old River Unit Wetland Restoration
- San Bernard National Wildlife Refuge Sargent Oil Field Wetland Restoration

- Texas Point National Wildlife Refuge Wetland Restoration

Table 1. Federally listed endangered (E), threatened (T), and (P) proposed 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	Jocelyn Nungaray NWR Roberts Mueller Tract	McFaddin NWR Willow Lake Terraces	Lower Neches Wildlife Management Area Old River Unit	San Bernard NWR Sargent Oil Field	Texas Point National Wildlife Refuge
Eastern Black Rail (<i>Laterallus jamaicensis jamaicensis</i>)	T	NLAA	NLAA	NLAA	NLAA	NLAA
Piping Plover (<i>Charadrius melodus</i>)	T	NLAA	NLAA	NLAA	NLAA	NLAA
Piping Plover (CH)		--	--	--	--	--
Red Knot (<i>Calidris cantutus rufa</i>)	T	NLAA	NLAA	NLAA	NLAA	NLAA
Red Knot (CH)		--	--	--	--	--
Aplomado Falcon (<i>Falco femoralis septentrionalis</i>)	E	--	--	--	NE	--
Whooping Crane (<i>Grus americana</i>)	E	NLAA	NE	NLAA	NLAA	NLAA
Whooping Crane (CH)		--	--	--	--	--
West Indian Manatee (<i>Trichechus manatus</i>)	T	NE	NE	NE	NE	NE
Green Sea Turtle (<i>Chelonia mydas</i>)	E	NE	NE	--	NE	NE
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	NE
Loggerhead Sea Turtle (<i>Caretta</i>	T	--	--	--	--	NE

<i>caretta</i>)						
Leatherback Sea Turtle (<i>Dermochelys coriacea</i>)	E	--	--	--	--	NE
Monarch Butterfly (<i>Danaus plexippus</i>)	P	NLAA	NLAA	NLAA	NLAA	NE
Tricolor Bat (<i>Perimyotis subflavus</i>)	P	NE	NE	NE	NE	NE

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, all five species of sea turtles present in the Gulf of Mexico, as well as the proposed tricolored bat (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.

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:

General Conservation Measures and/or BMPS:

1. All construction crew members (e.g., contractors and workers) will attend training sessions prior to the initiation of, or their participation in, project work activities. Training will be conducted by qualified personnel and the scope of training will include the following: 1) recognition of sea turtles, rufa red knots, eastern black rail, and piping plovers, their habitats, and tracks; 2) recognition of other listed species; 3) impact avoidance measures; 4) reporting criteria; and 5) contact information for different rescue agencies in the area.
2. Project equipment and vehicles will be kept to a minimum and will use designated routes to the project area. Vehicle access shall be confined to the immediate needs of the project.
3. The contractor will coordinate and sequence the work to minimize the frequency and density of vehicular traffic within the project area to the greatest extent practicable. During beneficial use placement, the contractor will minimize the number of vehicles within the project area during vehicle ingress and egress and will avoid “stacking” vehicles within the work area waiting to unload materials or waiting to leave the area.
4. The area around any idle vehicles will be checked for wildlife prior to moving. If a suspected threatened or endangered species is observed, this will be immediately reported to the monitor(s) on site.
5. All equipment will be regularly checked for leaks. If any leaks are found, they will be addressed and cleaned up immediately.
6. Spill prevention and BMPs will be in place according to the contractor’s standard operating procedures available by request.

7. The use of construction lighting at night shall be minimized, directed toward the construction activity area, and shielded from view outside of the project area to the maximum extent practicable.
8. All potential marine debris and trash resulting from daily work activities will be properly secured until removed and disposed of from the vessels and work vehicles each day.
9. A designated monitor(s) will be identified who will act as the single point of contact responsible for communicating and reporting endangered species issues throughout construction of the project.

Eastern black rail:

- During the project design phase, coordinate with the USFWS and the state trust resource agency to site and design projects to avoid or minimize impacts black rails and their habitat.
- Provide all individuals working on a project with information about the eastern black rail behavior and its habitat preferences. Emphasize how their activities may affect the bird, methods that will avoid affecting the birds, and their need to avoid negative impacts to their habitat.
- Project activities will mitigate unnecessary noise and vibration within and adjacent to 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).
- The boundaries should be clearly marked between work zones and sensitive areas. Marked fencing or flagging should remain up through all activities. Once activities are completed within an area, fencing and/or flagging will be removed and disposed of properly off-site.
- If temporary access routes or staging areas must occur within potential BLRA habitat, the operator will minimize traffic by limiting the number of ingress and egress routes.
- In addition to minimizing access routes, areas of dense herbaceous vegetation habitat should be left intact to provide temporary refugia and to ensure escape routes for the BLRA. The project manager should work with the Service to identify refugia areas once site specific planning begins.
- A biological monitor or qualified personnel may be needed to assist construction crews with avoidance and minimization to BLRA habitats once work begins. The biological monitor or qualified personnel will have authority to stop work immediately if BLRAs are observed within the project area. In addition, the Implementing Trustee should be contacted immediately.
- Equipment used within potential BLRA habitat should be designed to avoid or minimize rutting. (i.e., long term surface damage as described in the Final Rule).
- All equipment should operate at a sufficiently slow pace (5mph or less) moving through potential habitat to allow birds to escape ahead of equipment. This secretive species will freeze or run to escape oncoming disturbance and are highly unlikely to fly. The applicant will revegetate disturbed areas with native plants indigenous to the project site and match the local site composition.

Piping plover and Rufa Red knot:

- Provide all individuals working on a project with information in support of general awareness of piping plover presence and means to avoid birds and their critical or otherwise important habitats.
- Access to the site should be confined to the immediate needs of the proposed project.
- Materials and vehicles required for the project should be staged in upland areas and transported as needed to the proposed work site.
- Use care to avoid birds when operating machinery or vehicles near birds.
- A qualified monitor(s) or other qualified personnel will inspect the work area prior to the beginning of the field activities for piping plovers. If a piping plover or red knot approach 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.

Whooping Crane:

- Provide all individuals working on a project with information in support of general awareness of whooping crane presence and means to avoid birds and their critical or otherwise important habitats.
- Between late 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 equipment cannot be laid down at dusk or overnight, then such equipment will be marked using surveyors flagging tape, red plastic balls or other suitable marking devices and lighted during inclement weather conditions when low light and/or fog is present.
- 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.
- Report sightings of whooping cranes to the Texas Coastal Ecological Services Field Office in Corpus Christi at (361) 533-6765.

Monarch Butterfly:

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

Migratory Bird Treaty Act

- Use care to avoid birds when operating machinery or vehicles near birds.
- During the project design phase, coordinate with USFWS and the state trust resource agency to site and design projects to avoid or minimize impacts to migratory bird nesting habitats or important feeding/loafing areas.

- Avoid working in migratory bird nesting habitats during breeding, nesting, and fledging (approximately mid-February through late August).
- If project activities must occur during this time frame and breeding, nesting, or fledging birds are present, contact the state trust resource agency to obtain the most recent guidance to protect nesting birds or rookeries, and their recommendations will be implemented.
- Conservation areas may already be marked to protect bird nesting areas. Stay out of existing marked areas.

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.

Proposed activities for all five (5) projects involved the placement of dredge material to build elevations suitable for marsh growth as determined from adjacent healthy wetlands. The predominant wetland habitats in the project areas are characterized as salt and brackish marsh and estuarine open water. Hydraulic pipelines will be placed within previously disturbed areas such as uplands and/or temporary access corridors located within open water ditches and shallow open water areas at the project sites to minimize impacts to vegetated habitats. The specific sources of dredged material will be determined during finalization of project engineering and design; however, maintenance dredging material must pass environmental and permitting requirements to be suitable for the project. Dredging activities are not funded through Deepwater Horizon Natural Resource Damage Assessment (DWH NRDA) settlement funds; therefore, the dredging activities are not included in this compliance discussion. Dredging activities that supply sediment to the restoration projects will only be used if they have completed their own permitting, authorization and environmental compliance processes.

Final engineering and designs are still being finalized for the individual projects. For most of the proposed projects, containment levees will be constructed from materials collected from inside the toe using marsh excavators however, when not possible, existing marsh will be used as the boundary of containment with support from other natural materials such as hay bales or imported fill if needed. The borrow trenches inside the containment levees will be backfilled using the same hydraulic pumped dredged material used to fill the containment areas. See BE forms for individual project details. Actions reviewed for this determination include the construction of earthen containment levees, placement of dredged material, and vegetation planting.

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. The species may be present in all of the Texas coastal counties year-round. The species is most vulnerable during breeding, chick rearing, and the flightless molt period. Where black rails are present, avoid disturbance activities March 1st through September 30th in suitable BLRA habitat (e.g., dense overhead cover, moist soils that are occasionally dry and interspersed or adjacent to

shallow water, depths up to 5 cm but typically <3 cm) as described in the Final Rule (pgs. 63767, 63798, and 63800). Most of the habitat within the action area of each site is open water, however there are some areas where black rails may be present. Temporary displacement of individuals may occur as a result of construction activities due to increased human presence, noise disturbance, and proposed dredge activity. Direct impacts to eastern black rail if present may include crushing of eggs, chicks and adults by equipment if birds are present where activities occur. These effects can be minimized by implementing the conservation measures submitted in the BE forms, the conservation measures recommended below and avoiding work activities in suitable habitat during between March 1 and September 30th. The Service concurs with the TX TIG that the proposed project may affect but is not likely to adversely affect these species.

Piping Plover and Red Knot

Piping plover and red knot occur in coastal South Texas during their wintering and migrating periods from approximately July 15 through May 15. Neither species nests along the Gulf Coast, but rather uses the area as an important wintering and stopover habitat. They are usually found on gulf beaches, tidal inlets, and large exposed mud flats where they prefer unvegetated habitat. Disturbance or loss of foraging habitat for piping plover or red knot is not anticipated while restoring the marsh because the action area is mostly underwater and there is very little unvegetated intertidal habitat available for these two species; therefore, these two species are not expected to be use the area. In addition, no critical habitat for this species is within the project area. In the unlikelyhood that they are 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. The proposed actions will occur inside refuges and wildlife management areas where there is a large amount of available habitat outside of the action 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 and therefore can be considered insignificant. The Service concurs with the TX TIG that the proposed project may affect but is not likely to adversely affect these species.

Whooping Crane

Whooping crane winters along the marshes of the central Texas coast and feeds on aquatic invertebrates such as insects, blue crabs, small vertebrate fish, amphibians, birds, mammals, and plants commonly found in freshwater to brackish marsh regimes and coastal prairies. Only four populations of whooping cranes exist in the wild, the largest of which is the Aransas-Wood Buffalo population, which breeds in isolated marshy areas of Wood Buffalo National Park in Canada's Northwest Territories. Each fall, the entire population of whooping cranes from this national park migrates some 2,600 miles primarily to the Aransas National Wildlife Refuge and adjacent areas in Aransas, Calhoun, and Refugio counties south of the project areas, where it overwinters. Typically, whooping crane wintering season is considered to be from November 1 to April 30 along the mid Texas coast. In recent years, whooping cranes have been expanding their range to Matagorda County. In addition, the Louisiana non-migratory experimental population has also been documented in more northern Texas coastal counties as the flock has expanded in size. The primary threat to whooping cranes remains habitat loss; however, adequate food supplies are critical to increasing the whooping crane population. Healthy wetlands on the

wintering grounds and along the migratory route continue to play an integral part in the whooping crane's survival and should be restored and protected. These projects propose to restore estuarine marsh which is considered important feeding habitat for the whooping crane. In addition, no critical habitat for this species is within any of the proposed project area. In the unlikelyhood that they are 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. These effects can be minimized by implementing the conservation measures submitted in the BE forms. The proposed actions will occur inside refuges and wildlife management areas where there is a large amount of available habitat outside of the action 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 and therefore can be considered insignificant. The Service concurs with the TX TIG that the proposed project may affect but is not likely to adversely affect these species.

Northern Aplomado Falcons

The northern aplomado falcon is a medium-sized falcon with a total length of about 15 to 18 inches with a wingspan of about 32 to 36 inches. Historically, this species was seen regularly along the coastal prairies of south Texas. Through reintroduction efforts, falcons were released on the Laguna Atascosa National Wildlife Refuge, the Aransas National Wildlife Refuge as well as several other mainland units of Mustang Island, Padre Island, and private ranches. Aplomado falcons have been observed in coastal counties including Brazoria at the Brazoria National Wildlife Refuge. Aplomado falcons nest either on natural stick platforms built by other birds or artificial nesting platforms and are well monitored by Service staff. The species nests only once a year during the dry season (January-June) with most nesting activities occurring in April and May. The species uses open prairies and are rarely seen in open water or in marsh areas similar to the habitats that are proposed for restoration. In the unlikelyhood that they are 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. These effects can be minimized by implementing the conservation measures proposed by the Service. The proposed actions will occur inside refuges and wildlife management areas where there is a large amount of available habitat outside of the action 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 and therefore can be considered insignificant. The Service concurs with the TX TIG that the proposed project may affect but is not likely to adversely affect these species.

Monarch Butterfly

The monarch butterfly is a generational migratory species of butterfly that depends on overwintering habitat, nectar, and the presence of milkweed plants to maintain its generational migratory journey. The Monarch butterfly can generally be found in any habitat, natural or anthropogenic, that contains milkweed (*Asclepias* spp.) since it is a required component of their reproduction cycle. Monarch butterflies lay their eggs on milkweed plants during their spring and summer breeding seasons and the eggs hatch over a 2-to-5-day period. The striped larvae (caterpillars) feed on milkweed plants and then form a chrysalis. In early spring the overwintering adults' mate and begin the multi-generational migration back to spring and

summer breeding grounds. The proposed projects are mostly underwater or tidally influenced and therefore, it is unlikely that milkweed is present and any effects to the monarch butterfly would be discountable. Staging areas for the proposed projects may be vegetated however they are mostly previously disturbed areas created for roads or from side casting sediments from adjacent channels. The Service concurs with the TX TIG that the proposed project may affect but is not likely to adversely affect these species.

Conservation Measures

In addition to the conservation measures provided by the TX TIG, the Service recommends the following to minimize and avoid adverse effects of proposed actions on listed species:

Eastern Black Rail

- Assess the work area to determine if suitable habitat is present. If suitable habitat is present, the Project Manager can implement detection surveys to assess the likelihood that individuals are present. If detection surveys are not used, the Project Manager should assume the bird is present in suitable habitat. Please coordinate with the Texas Coastal Ecological Service's Field Office on habitat assessments and detection surveys. For work activities in suitable habitat we recommend the following measures.
 - Work activities between March 1 and September 30 should be avoided.
 - Avoid placement of material, traffic, equipment movement, etc. in suitable habitat.
 - Suitable habitat areas for black rail must be marked and avoided.
 - Access routes, pipeline routes, or staging areas must not transit across identified black rail habitat, the contractor must minimize traffic in these areas therefore minimizing the construction footprint, (i.e., limited paths) and restrict traffic to the same pathways.
 - The project manager should work with the Service to identify access routes, pipeline routes and staging areas as well as designate refugia areas once site specific planning begins. Access routes should focus on using previously disturbed uplands for staging equipment and /or open water areas to access placement sites and where possible, navigating around black rail habitat.
 - We recommend the use of a designated biological monitor to guide activities so that black rail habitat is avoided and impacts minimized. The biological monitor will have authority to stop work immediately if BLRA chick or eggs are observed within the project area. In addition, the Texas Coastal Ecological Service's Office should be contacted immediately at (281)286-8282.
 - Keep lighting pointed at work zone for nighttime work and turn off at night while work is not being conducted, as possible. All permanent lighting should be

pointed away from potential BLRA habitat, be down shielded, and should follow the Dark Skies or Texas Bird City guidelines for lighting.

- If suitable habitat is damaged by work activities, it should be restored to conditions before work activities began.
- Projects involving revegetation of disturbed areas of suitable habitat should use native herbaceous plants mimicking the local site composition.
- Do not remove or disturb all suitable BLRA habitat in a day. Leave pockets of suitable BLRA habitat (refugia) and/or have a biological monitor ensure dense herbaceous covered pathways are maintained into unaffected areas. The refugia remaining within the project area may be disturbed after two days. Acceptable refugia size is approximately 10 feet by 20 feet.

Northern Aplomado Falcon

- During the project design phase, coordinate with the USFWS and the state trust resource agency to site and design projects to avoid or minimize impacts to nesting habitats or important feeding/loafing areas.
- 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.

This concludes the Service's review for the (5) five proposed projects published under the Texas Trustee Implementation Group Final Restoration Plan/Environmental Assessment #3: Restoration of Wetlands, Coastal, and Nearshore Habitats published in 2025. No further action pursuant to the Act is necessary unless final engineering and design documents or other 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.

Sincerely,

Beau Hardegree
Texas Restoration Program Office Supervisor