

**Sabine Pass to Galveston Bay, Texas
Coastal Storm Risk Reduction and Ecosystem
Restoration**

**Draft Integrated Feasibility Report and
Environmental Impact Study**

DRAFT APPENDIX H

**CLEAN WATER ACT SECTION 404(b)(1)
EVALUATION**

September 2015

APPENDIX B
EVALUATION OF SECTION 404(b)(1) GUIDELINES
(SHORT FORM)

PROPOSED PROJECT: Sabine Pass to Galveston Bay, Texas, Coastal Storm Risk Management and Ecosystem Restoration Draft Integrated Feasibility Report and Environmental Impact Statement; Orange-Jefferson Levee Tentatively Selected Plan (TSP), Port Arthur Hurricane Flood Protection TSP, and Freeport Hurricane Flood Protection TSP

	Yes	No*
1. Review of Compliance (230.10(a)-(d))		
A review of the proposed project indicates that:		
a. The placement represents the least environmentally damaging practicable alternative and, if in a special aquatic site, the activity associated with the placement must have direct access or proximity to, or be located in the aquatic ecosystem, to fulfill its basic purpose (if no, see section 2 and information gathered for EA alternative).	X	
b. The activity does not appear to:		
1) Violate applicable state water quality standards or effluent standards prohibited under Section 307 of the Clean Water Act;	X	
2) Jeopardize the existence of Federally-listed endangered or threatened species or their habitat; and	X	
3) Violate requirements of any Federally-designated marine sanctuary (if no, see section 2b and check responses from resource and water quality certifying agencies).	X	
c. The activity will not cause or contribute to significant degradation of waters of the U.S. including adverse effects on human health, life stages of organisms dependent on the aquatic ecosystem, ecosystem diversity, productivity and stability, and recreational, aesthetic, an economic values (if no, see values, Section 2)	X	
d. Appropriate and practicable steps have been taken to minimize potential adverse impacts of the discharge on the aquatic ecosystem (if no, see Section 5)	X	

	Not Applicable	Not Significant	Significant*
2. Technical Evaluation Factors (Subparts C-F) (where a 'Significant' category is checked, add explanation below.)			
a. Physical and Chemical Characteristics of the Aquatic Ecosystem (Subpart C)			
1) Substrate impacts		X	
2) Suspended particulates/turbidity impacts		X	
3) Water column impacts		X	
4) Alteration of current patterns and water circulation		X	
5) Alteration of normal water fluctuation/hydroperiod		X	
6) Alteration of salinity gradients		X	
b. Biological Characteristics of the Aquatic Ecosystem (Subpart D)			
1) Effect on threatened/endangered species and their habitat		X	

2) Effect on the aquatic food web		X	
3) Effect on other wildlife (mammals, birds, reptiles and amphibians)		X	
	Not Applicable	Not Significant	Significant*
2. Technical Evaluation Factors (Subparts C-F) (where a 'Significant' category is checked, add explanation below.)			
c. Special Aquatic Sites (Subpart E)			
1) Sanctuaries and refuges Approximately 47.5 acres of Texas Parks and Wildlife property could be directly impacted by construction of the Orange-Jefferson CSR Plan alignment as shown in the Draft Integrated Feasibility Report-EIS (IFR-EIS). Of this total, approximately 7.6 acres are bottomland hardwood, 4.1 acres are swamp, and 27 acres are marsh. Refinements in the alignment for the Final IFR-EIS may result in changes to the total TPWD lands affected. Revisions will minimize impacts to the greatest extent possible. All wetland impacts would be fully compensated by in-kind mitigation.			X
2) Wetlands Approximately 405.6 acres of marsh and forested wetlands (inclusive of the TPWD property discussed above) would be directly impacted by construction of the Orange-Jefferson CSR Plan. Refinements in the alignment for the Final IFR-EIS may result in changes to the total wetlands affected. Revisions will minimize impacts to the greatest extent possible. These significant impacts would be fully compensated by in-kind mitigation.			X
3) Mud flats	X		
4) Vegetated shallows	X		
5) Coral reefs	X		
6) Riffle and pool complexes	X		
d. Human Use Characteristics (Subpart F)			
1) Effects on municipal and private water supplies	X		
2) Recreational and Commercial fisheries impacts	X		
3) Effects on water-related recreation	X		
4) Aesthetic impacts		X	
5) Effects on parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar preserves	X		

	Yes
3. Evaluation of Dredged or Fill Material (Subpart G)	
a. The following information has been considered in evaluating the biological availability of possible contaminants in dredged or fill material (check only those appropriate)	

1) Physical characteristics	X
2) Hydrography in relation to known or anticipated sources of contaminants	X
3) Results from previous testing of the material or similar material in the vicinity of the project	X
4) Known, significant sources of persistent pesticides from land runoff or percolation	
5) Spill records for petroleum products or designated (Section 311 of Clean Water Act) hazardous substances	X
6) Other public records of significant introduction of contaminants from industries, municipalities or other sources	X
7) Known existence of substantial material deposits of substances which could be released in harmful quantities to the aquatic environment by man-induced discharge activities	

List appropriate references:

- 1) USACE. 2008. Final Environmental Assessment – Restoration of the Mouth of the San Bernard River to the Gulf of Mexico, Brazoria County, Texas. Galveston District, Galveston, Texas.
- 2) USACE. 2011. Final Environmental Impact Statement for Sabine-Neches Waterway Channel Improvement Project, Southeast Texas and Southwest Louisiana. Galveston District, Galveston, Texas.
- 3) USACE. 2012. Final Environmental Impact Statement for Freeport Harbor Channel Improvement Project, Brazoria County, Texas. Galveston District, Galveston, Texas.
- 4) USACE. 2015. Appendix N, Hazardous, Toxic and Radioactive Waste Assessment for Sabine Pass to Galveston Bay Integrated Feasibility Report and EIS.

	Yes	No
b. An evaluation of the appropriate information in 3a above indicates that there is reason to believe the proposed dredged or fill material is not a carrier of contaminants, or that levels of contaminants are substantively similar at extraction and placement sites and not likely to degrade the placement sites, or the material meets the testing exclusion criteria.	X	

	Yes
4. Placement Site Delineation (230.11(f))	
a. The following factors as appropriate, have been considered in evaluating the placement site:	N/A
1) Depth of water at placement site	
2) Current velocity, direction, and variability at placement site	
3) Degree of turbulence	
4) Water column stratification	
5) Discharge vessel speed and direction	
6) Rate of discharge	

7) Fill material characteristics (constituents, amount, and type of material, settling velocities)	
8) Number of discharges per unit of time	
9) Other factors affecting rates and patterns of mixing (specify)	

List appropriate references:

	Yes	No
b. An evaluation of the appropriate factors in 4a above indicates that the placement site and/or size of mixing zone are acceptable.	N/A	

	Yes	No
5. Actions to Minimize Adverse Effects (Subpart H)		
All appropriate and practicable steps have been taken, through application of recommendations of 230.70-230.77 to ensure minimal adverse effects of the proposed discharge.	X	

List actions taken:

- 1) Silt curtains will be utilized to prevent inadvertent discharge of fill material into adjacent wetlands or waterbodies. Forestry BMPs will be utilized to prevent disturbance of forest floors.

	Yes	No*
6. Factual Determination (230.11)		
A review of appropriate information as identified in items 2-5 above indicates that there is minimal potential for short- or long-term environmental effects of the proposed discharge as related to:		
a. Physical substrate at the placement site (review Sections 2a. 3, 4, and 5 above)	X	
b. Water circulation, fluctuation and salinity (review Sections 2a. 3, 4, and 5)	X	
c. Suspended particulates/turbidity (review Sections 2a. 3, 4, and 5)	X	
d. Contaminant availability (review Sections 2a. 3, and 4)	X	
e. Aquatic ecosystem structure and function (review Sections 2b and c, 3, and 5)	X	
f. Placement site (review Sections 2, 4, and 5)	X	
g. Cumulative impacts on the aquatic ecosystem	X	
h. Secondary impacts on the aquatic ecosystem	X	

7. Evaluation Responsibility
a. This evaluation was prepared by: Janelle Stokes Position: Regional Technical Specialist, Unit A, PEC-TN

8. Findings	Yes
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a. The proposed placement site for discharge of or fill material complies with the Section 404(b)(1) Guidelines.	X
b. The proposed placement site for discharge of dredged or fill material complies with the Section 404(b)(1) Guidelines with the inclusion of the following conditions:	

List of conditions:

c. The proposed placement site for discharge of dredged or fill material does not comply with the Section 404(b)(1) Guidelines for the following reason(s):	
1) There is a less damaging practicable alternative	
2) The proposed discharge will result in significant degradation of the aquatic ecosystem	
3) The proposed discharge does not include all practicable and appropriate measures to minimize potential harm to the aquatic ecosystem	
<hr/> Date	<hr/> DOUG SIMS Chief, PEC-TN

NOTES:

* A negative, significant, or unknown response indicates that the permit application may not be in compliance with the Section 404(b)(1) Guidelines.

Negative responses to three or more of the compliance criteria at the preliminary stage indicate that the proposed projects may not be evaluated using this “short form” procedure. Care should be used in assessing pertinent portions of the technical information of items 2a-e before completing the final review of compliance.

Negative response to one of the compliance criteria at the final stage indicates that the proposed project does not comply with the Guidelines. If the economics of navigation and anchorage of Section 404(b)(2) are to be evaluated in the decision-making process, the “short form” evaluation process is inappropriate.

**Sabine Pass to Galveston Bay, Texas
Coastal Storm Risk Reduction and Ecosystem
Restoration**

**Draft Integrated Feasibility Report and
Environmental Impact Study**

DRAFT APPENDIX I

CLEAN AIR ACT EMISSIONS MODELING

September 2015

APPENDIX I

**AIR QUALITY ASSESSMENT AND IMPACTS
DURING CONSTRUCTION**

for the

Draft

**Integrated Feasibility Report/Environmental Impact Statement
for
Sabine Pass to Galveston Bay, Texas
Coastal Storm Damage Risk Management Study**

Prepared by:



**Gulf South Research Corporation
8081 Innovation Park Drive
Baton Rouge, Louisiana 70820**

August 2015

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1 BACKGROUND

The Tentatively Selected Plan (TSP) for the Sabine Pass to Galveston Bay (S2G) Draft Integrated Feasibility Report (DIFR-EIS) consists of three separable elements in two regions of the upper Texas Gulf Coast. The Orange-Jefferson Coastal Storm Risk Management (CSRMR) Plan and the Port Arthur CSRMR plan are located in the Sabine Region (Orange and Jefferson counties) (Figures 1 and 2); the Freeport CSRMR Plan is located in the Houston-Galveston-Brazoria (HGB) Region (Brazoria County) (Figure 3). The Orange-Jefferson CSRMR Plan involves the construction of a new levee/floodwall system, while the Port Arthur and Freeport CSRMR plans would reconstruct portions of existing Hurricane Flood Protection systems. The Orange-Jefferson CSRMR Plan is made up of three parts – Orange Reach 3 in Orange County, and the Jefferson Main Reach and Beaumont Reach A in Jefferson County. The Orange-Jefferson and Port Arthur CSRMR plans fall within a common air quality region, or airshed, while the Freeport CSRMR Plan falls in a separate airshed. The potential projects, along with their estimated start dates, durations, and airshed are provided in Table 1-1.

Table 1-1. S2G CSRMR Alternatives

Alternatives	Start Year	Duration (years)	County	Airshed
Orange	2020	8	Orange	Sabine
Jefferson	2028	2	Jefferson	Sabine
Beaumont	2023	1	Jefferson	Sabine
Port Arthur	2024	4	Jefferson	Sabine
Freeport	2020	3	Brazoria	HGB

The air emission impacts assessed in this report are based on preliminary estimates and schedules for evaluated alternatives in accordance with USACE SMART Planning guidelines. The impact assessments utilized conservatively-high duration and quantity estimates to ensure that all potential impacts are identified and disclosed for review. Furthermore, the alternatives include all potential damage reaches, while the actual TSP recommends only the reaches listed above.

The purpose of this assessment is to evaluate impacts on ambient air quality from the Proposed Action. Air quality impacts from the Proposed Action would be significant if emissions would:

- 1) increase ambient air pollution concentrations above the National Ambient Air Quality Standards (NAAQS),
- 2) contribute to an existing violation of the NAAQS,
- 3) interfere with or delay timely attainment of the NAAQS,

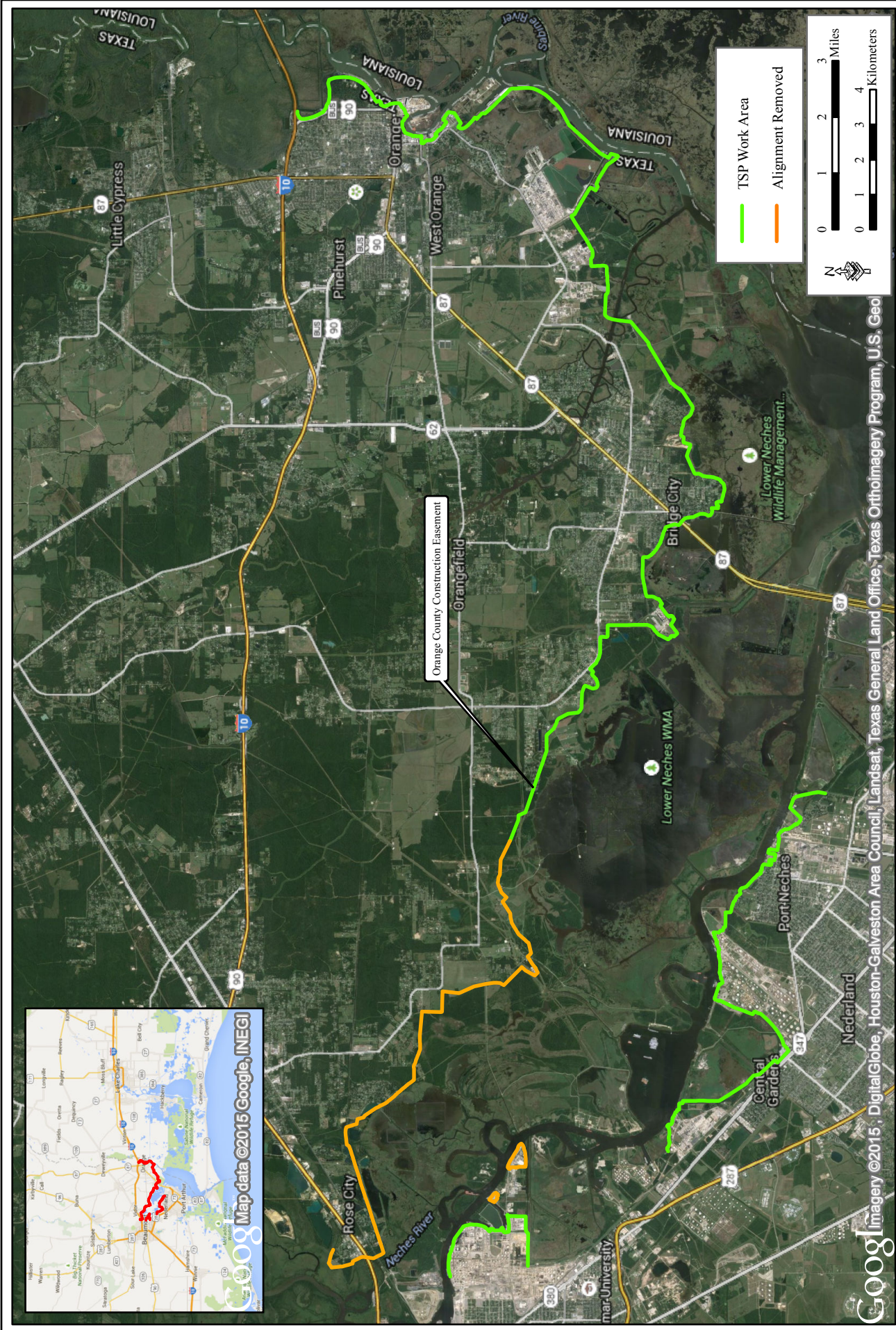


Figure 1. Orange-Jefferson Tentatively Selected Plan Alignment and Work Areas

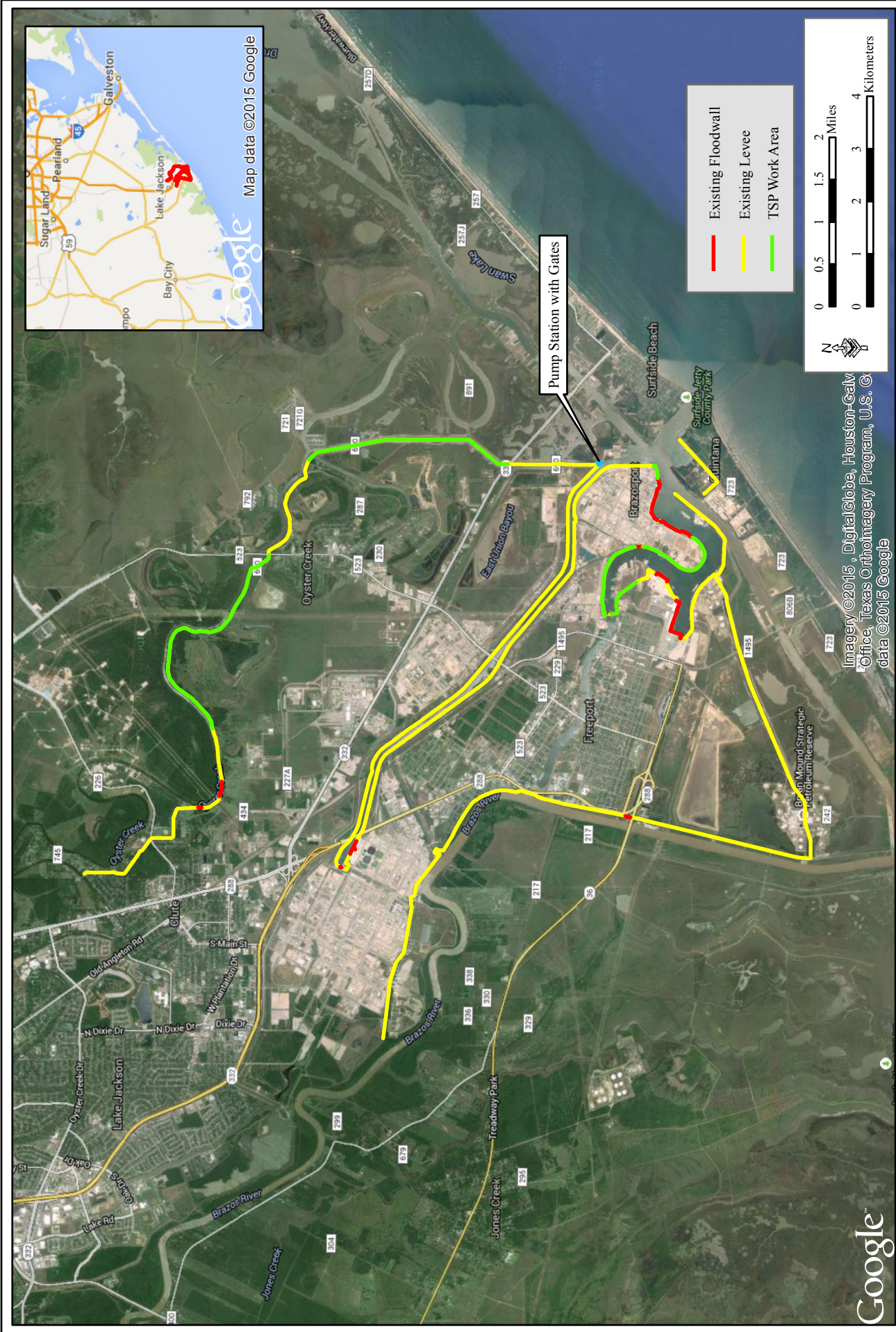


Figure 3. Freepoint Tentatively Selected Plan Alignment and Work Areas

- 4) impair visibility within Federally mandated Prevention of Significant Deterioration (PSD) Class I areas,
- 5) result in the potential for any new stationary source to be considered a major source of emissions as defined in 40 Code of Federal Regulations (CFR) Part 52.21 (total emissions of any pollutant subject to regulation under the Clean Air Act (CAA) that are greater than 250 tons per year for attainment areas),
- 6) for mobile source emissions, the increase in emissions to exceed 250 tons per year for any pollutant, or
- 7) for greenhouse gases (GHG) emissions, exceed 25,000 metric tons (27,557 U.S. tons) of direct carbon dioxide (CO₂)-equivalent emissions on an annual basis.

Brazoria County is currently designated as Severe Non-attainment for the 8-Hr Ozone (1997) standard and Marginal Non-attainment for the 8-Hr Ozone (2008) standard as part of the Houston-Galveston-Brazoria (HGB) airshed region as defined in the Texas State Implementation Plan (SIP), adopted in 1972 and revisions thereafter. In compliance with the Texas SIP, fuels testing and vehicle inspections for ozone emission components are required in the HGB airshed. The HGB region is in attainment for other criteria pollutants. According to the U.S. Environmental Protection Agency (USEPA) Region 6 (<http://www.epa.gov/region6/6pd/air/pd-l/non.htm>), the Beaumont-Port Arthur (Sabine) region has been re-designated as attainment with the 1997 8-hour Ozone NAAQS. Further, the Sabine region is designated as attainment for all other criteria pollutants.

2 AIR QUALITY IMPACTS FROM THE PROPOSED ACTION

Sources of air quality changes from the Proposed Action are expected to result from the following:

- Direct emissions from construction and demolition equipment (nonroad equipment), such as cranes, excavators, bulldozers, concrete pumps, saws, and generators; and
- Indirect emissions from commuting workers and delivery vehicles (on-road vehicles) such as cars, pickup trucks, flatbed trucks, dump trucks, and concrete trucks.

Air quality impacts are expected to be temporary and confined to the duration of the construction events. The S2G DIFR-EIS has determined that no additional induced development would result from implementation of the Proposed Action.

A list of equipment (including anticipated hours of usage) was provided by USACE Galveston for each of the alternatives. The USEPA software package Motor Vehicle Emissions Simulator 2014 (MOVES2014) was utilized to generate emission factors based on the types of construction equipment and vehicles anticipated. MOVES2014 is the USEPA's most current software, and supersedes previous versions of MOVES, as well as legacy USEPA software such NONROAD and MOBILE 6. The equipment list provided by USACE Galveston was divided into motor vehicles (on-road) and non-road vehicles and MOVES2014 equipment categories were assigned based on the type, fuel, and size of each piece of equipment. Since the non-road and on-road equipment lists, along with their proposed operations, are quite lengthy, they have not been included in this report; however, they are available upon request.

Key assumptions that were utilized in running the emissions simulations are presented below.

Assumptions for Calculating Emissions using MOVES2014:

1. USEPA's software model MOVES2014 was used to estimate non-road and on-road equipment emissions.
2. For trucks used on the construction site, it was assumed 15 miles per hour of use onsite.
3. For commuting workers, it was assumed 1.5 workers per piece of equipment, plus 200 additional commuter vehicles per day for the duration of the project. Commuter vehicles were assumed to be an even mix of gasoline-fired passenger vehicles and passenger trucks. Commuter vehicles were assumed to each have a roundtrip of 20 miles/day.
4. The model used 2020, August, weekday, 12:00 as the daily surrogate for worst-case emissions.

5. The model used Urban Unrestricted roads for running emissions.
6. National average was used for vehicle model year.
7. Construction was assumed to occur in currently-developed urban areas; therefore, emissions from fugitive dust and asphalt paving were assumed to be negligible and not quantified.
8. The equipment list provided by USACE Galveston was matched to equipment lists and horsepower ranges provided within MOVES2014. Where fuel type or power rating were not provided, best engineering judgement was used to select an appropriate category and rating.
9. Total usage (hours, miles) and emissions were spread out evenly over the entire duration of each project.

MOVES2014 was used to generate criteria pollutant emission rates based on the type of equipment. Non-road equipment emission rates were output in grams of pollutant per horsepower-hour of usage (g/hp-hr); on-road emission rates were output in pounds of pollutant per mile driven (lb/mile). The emission rates were combined and subtotaled for the various operating conditions within each equipment type (e.g., engine start, running exhaust, refueling loss) in order to develop equipment-specific emission factors for each criteria pollutant. The non-road and on-road emission factors are provided in Attachments D and E, respectively.

The emission factors were then combined with the activity (hp-hr or miles) to calculate the emissions estimates for each piece of equipment within each alternative area for each year. The detailed emissions estimates (lb/year) for non-road and on-road equipment are quite lengthy; the estimates are summarized in the tables below; detailed estimates are available upon request. Total emissions (tons/year) for each alternative in the Sabine airshed are provided in Table 2-1, and the total emissions for the alternative in the HGB airshed are provided in Table 2-2.

Table 2-1. Air Quality Impacts in the Sabine Airshed from the Proposed Action

Year	Alternatives	Airshed	Pollutant (tons/year)						
			CO	NOx	PM-10	PM-2.5	SO ₂	VOC	Lead
2020	Orange	Sabine	21.0	25.7	2.1	2.0	0.1	5.8	0.0
2021	Orange	Sabine	21.0	25.7	2.1	2.0	0.1	5.8	0.0
2022	Orange	Sabine	21.0	25.7	2.1	2.0	0.1	5.8	0.0
2023	Beaumont	Sabine	30.6	37.4	2.9	2.8	0.1	9.0	0.0
2023	Orange	Sabine	21.0	25.7	2.1	2.0	0.1	5.8	0.0
2024	Port Arthur	Sabine	17.9	44.4	2.8	2.7	0.1	6.6	0.0
2024	Orange	Sabine	21.0	25.7	2.1	2.0	0.1	5.8	0.0
2025	Port Arthur	Sabine	17.9	44.4	2.8	2.7	0.1	6.6	0.0
2025	Orange	Sabine	21.0	25.7	2.1	2.0	0.1	5.8	0.0
2026	Port Arthur	Sabine	17.9	44.4	2.8	2.7	0.1	6.6	0.0

Table 2-1, continued

Year	Alternatives	Airshed	Pollutant (tons/year)						
			CO	NOx	PM-10	PM-2.5	SO ₂	VOC	Lead
2026	Orange	Sabine	21.0	25.7	2.1	2.0	0.1	5.8	0.0
2027	Port Arthur	Sabine	17.9	44.4	2.8	2.7	0.1	6.6	0.0
2027	Orange	Sabine	21.0	25.7	2.1	2.0	0.1	5.8	0.0
2028	Jefferson	Sabine	16.9	26.3	1.8	1.8	0.1	4.9	0.0
2029	Jefferson	Sabine	16.9	26.3	1.8	1.8	0.1	4.9	0.0

CO=carbon monoxide, NOx=nitrous oxides, PM-10=particulate matter less than 10 microns, PM-2.5=particulate matter less than 2.5 microns, SO₂=Sulphur dioxide, VOC=volatile organic carbons

Table 2-2. Air Quality Impacts in the HGB Airshed from the Proposed Action

Year	Alternative	Airshed	Pollutant (tons/year)						
			CO	NOx	PM-10	PM-2.5	SO ₂	VOC	Lead
2020	Freeport	HGB	12.2	3.0	0.5	0.4	0.0	2.3	0.0
2021	Freeport	HGB	12.1	3.0	0.5	0.4	0.0	2.3	0.0
2022	Freeport	HGB	12.1	3.0	0.5	0.4	0.0	2.3	0.0

CO=carbon monoxide, NOx=nitrous oxides, PM-10=particulate matter less than 10 microns, PM-2.5=particulate matter less than 2.5 microns, SO₂=Sulphur dioxide, VOC=volatile organic carbons

2.1 SIGNIFICANCE OF AIR QUALITY IMPACTS FROM THE PROPOSED ACTION

Per 40 CFR Part 93, Chapter 153, a conformity determination is required for each criteria pollutant or precursor where the total of direct and indirect emissions of the criteria pollutant or precursor in a nonattainment or maintenance area caused by a Federal action would equal or exceed any of the rates. The General Conformity thresholds are provided in Table 2-3.

Table 2-3. General Conformity Rule *de minimis* Thresholds for NAAQS Nonattainment Areas

<i>General Conformity de minimis Levels</i>		
Pollutant	Area Type	Tons/Year
Ozone (VOC or NOx)	Serious nonattainment	50
	Severe nonattainment	25
	Extreme nonattainment	10
	Other areas outside an ozone transport region	100
Ozone (NOx)	Marginal and moderate nonattainment inside an ozone transport region	100
	Maintenance	100
Ozone (VOC)	Marginal and moderate nonattainment inside an ozone transport region	50
	Maintenance within an ozone transport region	50
	Maintenance outside an ozone transport region	100

Table 2-3, continued

<i>General Conformity de minimis Levels</i>		
Pollutant	Area Type	Tons/Year
Carbon monoxide, SO ₂ and NO ₂	All nonattainment & maintenance	100
PM-10	Serious nonattainment	70
	Moderate nonattainment and maintenance	100
PM _{2.5} : Direct emissions, SO ₂ , NO _x (unless determined not to be a significant precursor), VOC or ammonia (if determined to be significant precursors)	All nonattainment & maintenance	100
Lead (Pb)	All nonattainment & maintenance	25
40 CFR 93 § 153 defines de minimis levels, that is, the minimum threshold for which a conformity determination must be performed, for various criteria pollutants in various areas.		

The Sabine airshed is classified as attainment for all NAAQS pollutants and, therefore, the General Conformity Rule does not apply. The single greatest increase of any criteria pollutant from all projects within the Sabine airshed is 70.1 tons/year of NO_x (2024 – 2027). Since the General Conformity Rule *de minimis* thresholds do not apply and the total emissions from all activities are demonstrated to be below the significance thresholds identified above, the Proposed Action would not have significant impacts on ambient air quality within the Sabine airshed.

The HGB airshed is classified as Marginal Non-attainment for the 2008 ozone NAAQS, and Severe Non-attainment for the 1997 ozone NAAQS. Therefore, the General Conformity Rule applies to the precursors of ozone (NO_x and VOC) resulting from the Proposed Action. The *de minimis* thresholds are 25 tons/year for NO_x and VOC. Emissions of NO_x and VOC are estimated to increase by 3.0 tons/year and 2.3 tons/year, respectively, for years 2020 and 2021; therefore, the *de minimis* thresholds are not exceeded and a conformity determination is not required. Emissions from the other criteria pollutants are demonstrated to be below the significance thresholds identified above. Because the Proposed Action levels fall below the *de minimis* thresholds for non-attainment pollutants and are below significance levels for attainment pollutants, the Proposed Action would not have significant impacts on ambient air quality within the HGB airshed.

2.2 GREENHOUSE GAS IMPACTS

Air emissions from the operation of internal combustion engines that produce exhaust result in Greenhouse Gases (GHG) emissions that could contribute to global climate change. The Council on Environmental Quality (CEQ) published “Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions”, December 18, 2014 (CEQ 2014). The Draft Guidance suggests that the impacts of projects directly emitting GHG in excess of 25,000 metric tons or more of carbon dioxide (CO₂)-equivalent (CO₂e) GHG emissions per year

be considered in a qualitative and quantitative manner in NEPA reporting; however, there are no implementing regulations to direct development of these analyses for federal projects. On December 19, 2014, EPA delegated authority for GHG Prevention of Significant Deterioration (PSD) permitting in Texas to the state air regulatory agency, TCEQ, as part of the approval of the state SIP (USEPA 2014a and b). As implemented by TCEQ, GHG permits are required only for stationary sources or facilities already required to obtain PSD permits for other criteria pollutants. Under the state program, non-stationary sources of emissions like construction equipment/construction projects are not required to obtain permits. Since no PSD permitting is required for any of the Proposed Action projects in Texas, detailed GHG analysis was not performed. All emissions would come from individual mobile internal combustion engines in on-road and non-road equipment, and it is likely that the total GHG emissions from mobile sources for the five projects would exceed 25,000 metric tons per year of CO₂e per year when considered cumulatively.

However, except for the NAAQS pollutants emitted by these mobile sources as indicated in Tables 2-1 and 2-2, the same GHG emissions would occur for every mobile vehicle and piece of equipment regardless of whether the Proposed Action is implemented. The vehicles and equipment would be used elsewhere by the project contractors on other construction projects, but not necessarily in the two airsheds affected by the Proposed Action. Since GHG are not listed as NAAQS pollutants subject to regulation under the Texas SIP, and no listed pollutants are generated above *de minimis* levels, and the Proposed Action would not result in any new stationary emission sources, detailed analysis of GHG emissions is not warranted for the Proposed Action.

3 REFERENCES

Council on Environmental Quality (CEQ) (2014). Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions. December 18, 2014.

U.S. Environmental Protection Agency (USEPA) (2014a). Next Steps for Addressing EPA-Issued Step 2 Prevention of Significant Deterioration Greenhouse Gas Permits and Associated Requirements. Memorandum, December 19, 2014.

USEPA (2014b). No Action Assurance Regarding EPA-Issued Prevention of Significant Deterioration Permits and Related Title V Requirements Following *Utility Air Regulatory Group v. Environmental Protection Agency*. Memorandum, December 19, 2014.

USEPA (2015a). National Ambient Air Quality Standards (NAAQS). Available online: www.epa.gov/air/criteria.html

USEPA (2015b). Welcome to the Green Book Nonattainment Areas for Criteria Pollutants. Available online: www.epa.gov/oar/oaqps/greenbk

**Sabine Pass to Galveston Bay, Texas
Coastal Storm Risk Reduction and Ecosystem
Restoration
Draft Integrated Feasibility Report and
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Draft Appendix J

**Biological Assessment
for Endangered Species Act Coordination**

September 2015



**US Army Corps
of Engineers** ®
Galveston District

Draft
BIOLOGICAL ASSESSMENT FOR
FEDERALLY-LISTED
THREATENED AND ENDANGERED SPECIES

SABINE PASS TO GALVESTON BAY, TEXAS
COASTAL STORM RISK MANAGEMENT AND ECOSYSTEM RESTORATION PROJECT
TENTATIVELY SELECTED PLAN (SABINE AND FREEPORT REGIONS)
ORANGE, JEFFERSON AND BRAZORIA COUNTIES, TEXAS

PREPARED BY U.S. ARMY CORPS OF ENGINEERS
GALVESTON DISTRICT
2000 FORT POINT ROAD
GALVESTON, TEXAS 77550

September 2015

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LIST OF ATTACHMENTS

Attachment A: USFWS and NMFS species lists

List of Acronyms

Biological Assessment (BA)
Coastal Storm Risk Management (CSRМ)
Distinct Population Segment (DPS)
Draft Integrated Feasibility Report and Environmental Impact Statement (DIFR-EIS)
Ecosystem Restoration (ER)
Essential Fish Habitat (EFH)
Endangered Species Act (ESA)
National Marine Fisheries Service (NMFS)
National Wildlife Refuge (NWR)
Padre Island National Seashore (PINS)
Relative sea-level rise (RSLR)
Submerged aquatic vegetation (SAV)
Tentatively Selected Plan (TSP)
Texas General Land Office (GLO)
United States (U.S.)
United States Army Corps of Engineers (USACE)
United States Fish and Wildlife Service (USFWS)
Wildlife Management Area (WMA)

1 INTRODUCTION

1.1 PURPOSE OF THE BIOLOGICAL ASSESSMENT

This Biological Assessment (BA) is being prepared for the purpose of fulfilling the U.S. Army Corps of Engineers (USACE) requirements as outlined under Section 7(c) of the Endangered Species Act (ESA) of 1973, as amended, and to assist the National Marine Fisheries Service (NMFS) and United States Fish and Wildlife Service (USFWS) personnel in fulfilling their obligations under the ESA. The proposed Federal action (also referred to as the tentatively selected plan or TSP) consists of coastal storm risk management projects in Orange, Jefferson and Brazoria Counties, Texas. The proposed action was identified during the Sabine Pass to Galveston Bay, Texas, Coastal Storm Risk Management (CSRSM) and Ecosystem Restoration (ER) Study, conducted by USACE and the non-Federal sponsor for the study, the Texas General Land Office. USACE and GLO are in the process of completing a Draft Integrated Feasibility Report and Environmental Impact Statement (DIFR-EIS) for the study. A Notice of Intent to prepare an EIS was published on November 24, 2014. The DIFR-EIS is currently scheduled to be released for public review in September, 2015. Further engineering refinement of the TSP will be conducted after comments are received on the DIFR-EIS. USACE Headquarters review will confirm the final recommended plan. If impacts of the final plan are greatly different from that presented in the DIFR-EIS, USACE will prepare a revised biological assessment and consult further with USFWS and the NMFS. Depending upon the scale and significance of the plan revisions, USACE may also prepare a revised DEIS. Currently, the Final IFR-EIS is scheduled for release in August 2016.

1.2 PROJECT SETTING

The Sabine Pass to Galveston Bay feasibility study is evaluating CSRSM and ER problems in a six-county (Orange, Jefferson, Chambers, Harris, Galveston and Brazoria) study area along the upper Texas coast (Figure 1). The study area is located in the northwest Gulf of Mexico, which has a higher probability risk for occurrence of severe hurricanes and storm surge than other areas of the Gulf. Over five million people reside in these six counties, including the 4th largest U.S. city (Houston), and three other large metropolitan areas (Beaumont/Port Arthur/Orange, Galveston/Texas City and Freeport/Lake Jackson/Surfside). The population of these six counties is projected to increase to over nine million within the next 50 years. In addition to the potential population at risk, three of the world's nine largest oil refineries, 40 percent of the nation's petrochemical industry, 25 percent of the nation's petroleum-refining capacity, and three of the 10 largest U.S. seaports are also located in the study area. Waterborne commerce statistics data show that \$232 billion in cargo transits the study area annually. The growing population,

communities and nationally significant industries are extremely vulnerable to risks from coastal storm events with approximately 2.26 million people in the study area living within a storm-surge inundation zone.

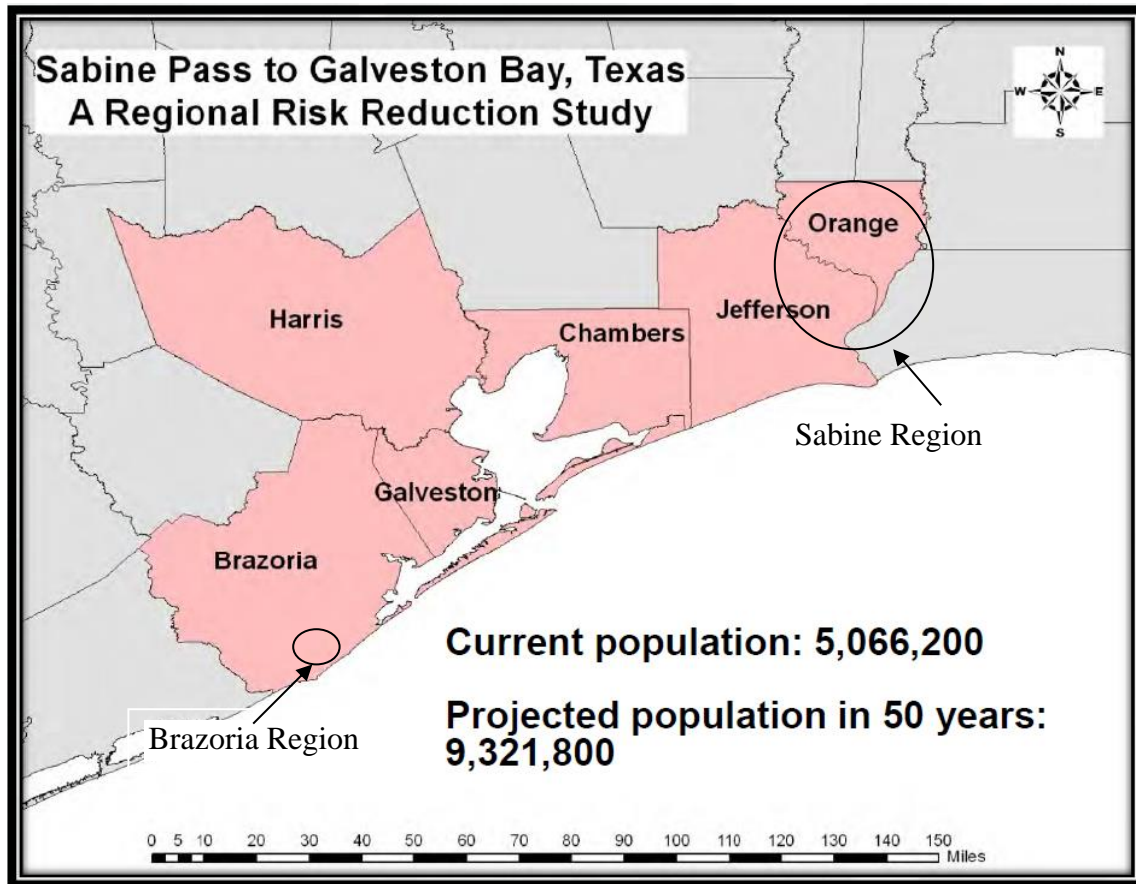


Figure 1: S2G Study and Project Areas Vicinity Map

The study area consists of three watershed-based regions: the Sabine, Galveston, and Brazoria Regions. The Sabine Region is focused on Orange and Northeast Jefferson Counties, including the three communities known as the Golden Triangle – Beaumont, Port Arthur, and Orange, Texas. The Galveston Region includes all of the Galveston Bay system, including the Gulf shoreline along Bolivar Peninsula and Galveston Island from High Island to San Luis Pass. The Brazoria Region includes the lower Brazos River Diversion and Old River Channels in the vicinity of Freeport, Texas.

In this assessment, the footprint of proposed CSRMs projects and the areas affected by these systems will be referred to as the “project areas.” This Biological Assessment evaluates two geographically separate project areas in detail – the Sabine Region and the Brazoria Region. The general extent of the two regions is circled on Figure 1. The DIFR-EIS has identified a

Tentatively Selected Plan (TSP) with three separate elements. The Orange-Jefferson CSR Plan and the Port Arthur and Vicinity CSR Plan are located in the Sabine Region, and the Freeport and Vicinity CSR Plan is located in the Brazoria Region.

The DIFR-EIS will present a programmatic overview of coastal storm risk problems and opportunities in the entire six-county study area, but will fully evaluate only the three plans in the Sabine and Brazoria regions. A programmatic overview of coastal storm risk problems and opportunities in the Galveston Region (Chambers, Harris and Galveston Counties) will be presented in the DIFR-EIS. This overview will provide recommendations for future studies in the Galveston Region; no in-depth alternative analyses will be conducted and no recommendations for project construction will be made for this region. The study report will also present a programmatic overview of ER opportunities for the entire six-county study area. None of the ER proposals will be fully developed or recommended for construction in this report. This Biological Assessment does not evaluate potential impacts on listed species for recommended future studies in the Galveston Region or the programmatic overview of ER opportunities in the six-county study area. Assessments will be developed in the future for specific recommended projects covered by subsequent feasibility reports.

1.3 DESCRIPTION OF THE ECOLOGICAL REGION

1.3.1 General Overview

The study area lies within the Gulf Prairie and Marsh ecological region, which extends along the Texas Gulf Coast from the Sabine River south to the Rio Grande (Gould et al. 1960). The prominent features of this coastal ecosystem include tidal, micro-tidal, and freshwater coastal marshes; bays and lagoons which support extensive seagrass beds, tidal flats and reef complexes; barrier islands; tallgrass prairie with small depressional wetlands, and forest riparian corridors, oak mottes and coastal woodlots, and dense brush habitats. Wetland habitats provide important wintering and migration stopover habitat for migratory birds including Central Flyway waterfowl, shorebirds, wading birds, and marsh and waterbirds. A string of refuges and wildlife management areas (WMAs) along the coast serve as critical staging areas for waterfowl migrating to and from Mexico (TPWD, 2013; USFWS, 2013).

Natural forces, which shape the system, include dominant south to southeast winds, tropical weather systems, and a substantial rainfall of over 60 inches per year. Flooding and freshwater inflows are key systemic processes, which buffer salinity and provide nutrients and sediments to extensive estuaries in the Sabine and Galveston regions. In contrast to these regions, the Brazos River discharges directly into the Gulf of Mexico, and deltaic and barrier island processes have formed extensive coastal wetlands along the coast in Brazoria County. While highly impacted

by human activities, this ecosystem remains very productive for a wide variety of fish and wildlife.

The Sabine and greater Galveston Bay estuaries and extensive coastal wetlands in the Brazos delta region are a vital habitat for 75 percent of the fish and shellfish species found in the Gulf of Mexico. The marshes and rice prairies over the entire study area are a major wintering area for waterfowl of the central flyway. On average, 1.3 to 4.5 million ducks, or 30 to 71 percent of the total flyway population, winter annually on the Texas Gulf coast (Stutzenbaker and Weller 1989). This area also winters 90 percent of the snow, Canada, and greater white-fronted geese in the Central Flyway. On average, 180,000 pairs of colonial-nesting waterbirds nest annually in Texas coastal habitats. Near coastal forests are critically important for the nation's songbird resources as the vast majority utilize this habitat during their trans- and circum-Gulf migrations (USFWS 2008).

1.3.2 Biological Communities in the Project Areas

Coastal prairies

Remnant tracts of tall grass and salty prairies are present in the study area, often interspersed within coastal marshes. Slightly higher in elevation, the grass and prairie tracts offer a different type of habitat (USFWS 2008). Woolly rosemallow, bushy bluestem, and gulf cordgrass thrive here and provide important nesting habitat for mottled ducks, dickcissels, and other species. Black rails, short-eared owls, and LeConte's sparrow find shelter and feed within these prairie habitats. Almost all of the region's historic native coastal tall grass prairie and its associated prairie wetlands have been lost through conversion to agricultural uses and urban development (USFWS, 2008).

Coastal marshes

Salt marsh is located along the Gulf shoreline and higher salinity areas of the estuarine systems. Subjected to regular tidal inundation, low saline marsh is dominated by smooth cordgrass/oystergrass (*Spartina alterniflora*) and often accompanied by seashore saltgrass (*Distichlis spicata*), blackrush (*Juncus roemerianus*), saline marsh aster (*Aster tenuifolius*), and marshhay cordgrass/wiregrass (*S. patens*). The dominant species in high salt marsh, which is subject to less-frequent tidal inundation, is glasswort (*Salicornia* spp.). Brackish marshes grade inland from salt marsh. The dominant species in low brackish marsh is saltmarsh bulrush (*Scirpus robustus*); seashore saltgrass and marshhay cordgrass are co-dominant species in high brackish marsh. Intermediate marshes are subjected to periodic pulses of salt water and maintain a year-round salinity in the range of 3 to 4 ppt. They grade inland from brackish marshes and dominate interior marshes of the Sabine and coastal Brazoria systems. The diversity and density

of plant species are relatively high with marshhay cordgrass the most dominant species in high marsh. Co-dominant species in low marsh are seashore paspalum (*Paspalum vaginatum*), Olney bulrush (*S. americanus*), California bulrush/giant bulrush (*S. californicus*), and common reedgrass/roseau cane (*Phragmites australis*); bulltongue (*Sagittari lancifolia*) and sand spikerush (*E. montevidensis*) are also frequent. Freshwater marshes dominate in upstream reaches of the Sabine and Brazos Rivers. They are heterogeneous, with local species composition governed by frequency and duration of flooding, topography, substrate, hydrology, and salinity. Co-dominant species in low marsh are maidencane (*P. hemitomen*), giant cutgrass (*Zizaniopsis milacea*), and bulltongue. Co-dominant species in high marsh are squarestem spikerush (*E. quadrangulata*) and marshhay cordgrass. Other characteristic species include American lotus (*Nelumbo lutea*), watershield (*Brasenia screeben*), duckweed (*Lemna* spp.), and fanwort (*Cabomba caroliniana*). Salinity rarely increases above 2 ppt., with a year-round average of approximately 0.5 to 1 ppt. Tidal fresh marshes support extremely high densities of wildlife, such as migratory waterfowl. Marsh serves as nursery areas for many important commercial and recreational fish and shellfish species including white and brown shrimp, blue crab, red drum, flounder, and speckled sea trout.

Coastal marsh habitats provide important functions of improving water quality in the estuarine ecosystem, providing flood control benefits, and buffering inland habitats from tropical storm-generated tidal surges. In addition, marshes are extremely biologically productive and diverse and provide detrital input, which is the basis for the estuarine food chain (USFWS 2008). The shallow Gulf of Mexico waters, tidal flats, and beaches provide important shallow water feeding, breeding, and nesting habitat utilized by a host of colonial and migrating waterfowl and shorebirds (USFWS 2008).

Forested Wetlands

Upstream of the coastal marshes in the Sabine-Neches estuary, the study area is dominated by dense bottomland hardwood forests and cypress-tupelo swamps. These wetland forests cover an intricate network of sloughs and sandy ridges formed within the rivers' relict meander belts. Bald cypress (*Taxodium distichum*) – tupelo-gum (*Nyssa aquatica*) swamps grow in the inundated areas between the ridges, and floodplain hardwood forest of oaks (*Quercus nigra*, *Q. phellos*, *Q. alba*, *Q. lyrata*), sweetgum (*Liquidambar styraciflua*), hickories (*Carya* spp.), American elm (*Ulmus americanus*), maple (*Acer rubrum*), green ash (*Fraxinus pennsylvanica*), American holly (*Ilex opaca*), and loblolly pine (*Pinus taeda*) grow atop the sandier ridges and on the Pleistocene terrace uplands which border the floodplains. In general, these are healthy, stable habitats. The hardwoods, and especially the cypress trees, have been logged repeatedly since the turn of the century and as recently, perhaps, as the 1950s (USACE 1998). Though much of the forest is secondary growth, the swamp and bottomland hardwood habitats have medium to high

value for food and cover to resident and migratory fish and wildlife. Inland from the coastal zone, forested wetlands in the Brazos River system are dominated by bottomland hardwood communities.

Aquatic Habitats

Large estuarine aquatic habitats are present in the Sabine Lake area. Sabine Lake is the drowned valley of the converged Sabine and Neches River systems. In contrast to the Sabine Region, the Brazos River discharges directly into the Gulf of Mexico. Both the Sabine and Brazoria regions contain essential fish habitat (EFH), which is considered necessary for spawning, breeding, feeding, or growth to maturity of species managed by Regional Fishery Management Councils, as described in a series of Fishery Management Plans, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. The study area contains EFH for larval, juvenile, and adult brown and white shrimp (*Penaeus aztecus* and *Penaeus setiferus*); juvenile king mackerel (*Scomberomorus cavalla*), vermilion snapper (*Rhomboplites aurorubens*), Warsaw grouper (*Epinephelus nigritus*), and Wenchman snapper (*Pristipomoides aquilonaris*); juvenile and adult red drum (*Sciaenops ocellatus*), Almaco jack (*Seriola rivoliana*), and gray triggerfish (*Balistes capriscus*); adult gag grouper (*Mycteroperca microlepis*) and gray snapper (*Lutjanus griseus*); larval, juvenile, and adult red snapper (*Lutjanus campechanus*), lane snapper (*Lutjanus synagris*), greater amberjack (*Seriola dumerili*), and cobia (*Rachycentron canadum*). The categories of EFH that occur within the study area include estuarine emergent marsh, estuarine submerged aquatic vegetation (SAV), estuarine hard bottom, and estuarine mud/soft bottoms.

1.3.3 Protected Lands

In or Adjacent to the Sabine Region

McFaddin NWR covers about 58,861 acres in Jefferson and Chambers Counties (USFWS 2012 and 2013). Along with the J.D. Murphree WMA, it protects the largest expanse of remaining freshwater marsh on the Texas Coast and thousands of acres of intermediate marsh. The Refuge's southern boundary consists of over 15 miles of Gulf of Mexico shoreline. Remnant dune/beach systems exist along the coastline, although much has been lost through erosion and shoreline retreat, leaving only a low-lying washover terrace (TPWD, 2013).

J.D. Murphree WMA comprises 24,498 acres of fresh, intermediate, and brackish marsh on the Chenier plain in Jefferson County (TPWD, 2013). Extending north and south of the GIWW west of the Sabine-Neches Waterway, the WMA is highly diverse in coastal wetland communities.

Texas Point NWR in Jefferson County encompasses 8,952 acres of fresh to saline marshes and some wooded uplands and prairie ridges (USFWS, 2012 and 2013). The Refuge's southern boundary consists of over 6 miles of Gulf of Mexico shoreline. The Chenier plain is

characterized by relict beach fronts that form ridges paralleling the Gulf shore. The term derives from the French name for live oak trees (*chenier*), which typically are found growing atop these ridges.

The Lower Neches River WMA is comprised of 7,998 acres located near Bridge City in Orange County (TPWD, 2015). The Nelda Stark and Old River units are located adjacent to the lower Neches River. The Nelda Stark Unit is primarily shallow open-water which resulted from the degradation of a former marsh system by saltwater intrusion and subsidence. The Old River Unit, near Bridge City at the mouth of the Neches River, is a mixture of intermediate marsh and open water. The Adams Bayou Unit is located on Adams Bayou, a tributary of the lower Sabine River. This unit was formerly a placement area; it is much higher than surrounding wetland habitats and remains hydrologically isolated.

The Tony Houseman WMA, managed as a cooperative effort between the TxDOT and TPWD, is located on the Sabine River at Interstate 10 (TPWD, 2015). A 600-foot boardwalk leads from the center into the swamp. Outdoor recreation includes public hunting opportunities, fishing, wildlife viewing, hiking, and canoeing. The WMA extends from the western bank of the Sabine River just north of the community of Echo, down to the confluence of Little Cypress Bayou and the Sabine River south of I-10 at Orange. More than 80 percent is cypress-tupelo swamp.

In or Adjacent to the Brazoria Region

The Brazoria NWR is a 44,414-acre wildlife conservation area along the coast in Brazoria County (USFWS, 2015). It borders the GIWW, behind Follets Island in Brazoria County. Refuge habitats are made up of salt water, fresh water, and brackish wetlands. In addition, there are prairies, woody thickets, salt and mud flats, and lakes and streams. The refuge also contains 5,000 acres of rare, native bluestem prairie, representing one of the last coastal prairies in Texas. Brazoria NWR has a key location on the Texas Gulf, which helps Freeport draw one of the highest Audubon Christmas bird counts in the nation - more than 200 species.

Justin Hurst WMA (Bryan Beach Unit) is located on the Gulf shoreline on the eastern shore of the Brazos River Diversion Channel. The unit is 440 acres dominated by a 90-acre embayment, which is flooded by Gulf waters during high tides and storms. Large vegetated coastal dunes surround the embayment and separate it from the Gulf.

The San Bernard NWR in Brazoria County serves as the end point of the Central Flyway for waterfowl in winter and an entry point for neotropical migratory songbirds tired from a 600-mile Gulf crossing from the Yucatan Peninsula (USFWS, 2015). The 57,698-acre refuge contains salt and freshwater marshes, sloughs, ponds, coastal prairies, and bottomland forest. Refuge

bottomland forests and willow trees attract high numbers of warblers migrating north. Several remote islands in a sheltered bay between the GIWW and the Gulf come alive every nesting season with herons, egrets, terns, and gulls.

1.4 ALTERNATIVES CONSIDERED

A lengthy array of alternatives was considered during plan formulation. The alternatives were developed from ideas provided by the public, resource agencies, USACE, and the non-Federal sponsor. Four public scoping meetings were held in February and March 2012 to gather ideas and information on coastal storm risks and ecosystem restoration opportunities in the study area. Comments were captured in a list of about 250 initial measures, which were organized geographically by the Sabine, Galveston Bay, and Brazoria regions of the study area.

An initial array, an evaluation array, and a final array of alternatives were screened to identify the TSP. Criteria applied to evaluate the alternatives included performance related to planning objectives, potential economic benefits, preliminary environmental benefits and/or impacts, and cost. Structural alternatives evaluated for the Sabine region include Gulf shoreline protection and restoration measures such as beach nourishment, dune restoration, Chenier ridge restoration, sediment management, shoreline armoring, and submerged near-shore breakwaters. Structural alternatives evaluated for the Brazoria area include various Gulf shoreline protection and restoration measures such as beach nourishment, dune restoration, sediment management, shoreline armoring, and submerged near-shore breakwaters. Non-structural alternatives, such as raising structures to reduce surge impacts and targeted buy-outs, were also evaluated for both the Sabine and Brazoria regions. No ER alternatives will be evaluated in detail for these regions.

The following plans are being evaluated in detail in the DIFR-EIS:

The TSP in the Sabine Region is comprised of two elements, which together would provide storm surge protection to Orange and Northeast Jefferson County: 1) the Orange-Jefferson CSRMM Plan, and 2) the Port Arthur and Vicinity CSRMM Plan. Upgrades to the existing Port Arthur and Vicinity HFP system would, in combination with the new Orange-Jefferson levee system, reduce the risk of storm surge impacts over all of the most densely populated parts of Jefferson and Orange Counties.

The TSP in the Brazoria Region, the Freeport and Vicinity TSP Plan, would consist of improvements to the existing the Freeport HFP System.

1.5 DESCRIPTION OF THE TENTATIVELY SELECTED PLAN

1.5.1 Orange-Jefferson CSRM Plan

The TSP would include a new levee/floodwall system constructed along the upland-floodplain margin of the Sabine and Neches Rivers in south Orange County and along the Neches River in northeast Jefferson County. The maximum length of the full system in Orange County would be about 42 miles; in Jefferson County, the maximum length would be about 16.5 miles. Further evaluations are likely to result in a reduction in the overall length. The new system would protect several communities in Orange County, including Bridge City, West Orange, and Orange, as well as an area known as “Chemical Row” where Dupont, Chevron-Phillips Chemical Company, Honeywell, and Lanxess facilities are located. In northeast Jefferson County, several large petro-chemical facilities such as ExxonMobil, Dupont, ChemTreat, Oil Tanking-Beaumont, Huntsman Performance Products, Texaco, and Calabrian would be protected, in addition to some Nederland and Port Neches residential and commercial areas.

For earthen levee segments of the new system (up to a maximum of about 43 miles system-wide), dozers and front-end loaders would clear, grub, and strip the ground within the identified construction right-of-way in preparation for levee construction. Dump trucks would haul and place commercially-obtained fill material to construct the levees. All fill material would be compacted and the levee crown would be covered with crushed limestone or gravel to provide a paved surface. Revetment (riprap, reinforced concrete slab and/or articulated concrete block mattresses) would be installed along the levee embankment where necessary to prevent erosion. Construction would be conducted using equipment such as bulldozers, excavators, front-end loaders, scrapers, graders, and cranes. Best management practices such as silt curtains would be utilized to prevent fill material from entering wetlands, streams, and larger waterways during construction. It is estimated that construction of the new system could take 5 to 7 years to complete. Figure 2 illustrates the largest potential footprint of the new levee system in Orange and Northeast Jefferson County; the earthen levee is in yellow and floodwalls in red.

Some segments will require use of a floodwall rather than an earthen levee, generally because of right-of-way width constraints. The maximum length of floodwalls to be included in the system would be about 16 miles. The foundation area would be cleared, grubbed, and stripped. The subsurface would then be excavated to depth for the concrete wall footing, which is to be cast in place. Excavated areas would be subsequently backfilled and thoroughly compacted. Cranes would be used to drive piles that will provide structural stability and to drive sheet pile. Formworks would be installed to form the footing and wall stem and reinforcing steel bar would be placed. Concrete mixer trucks would pump concrete to the footing and into the stem via a

Orange and Jefferson County Preliminary Alignments

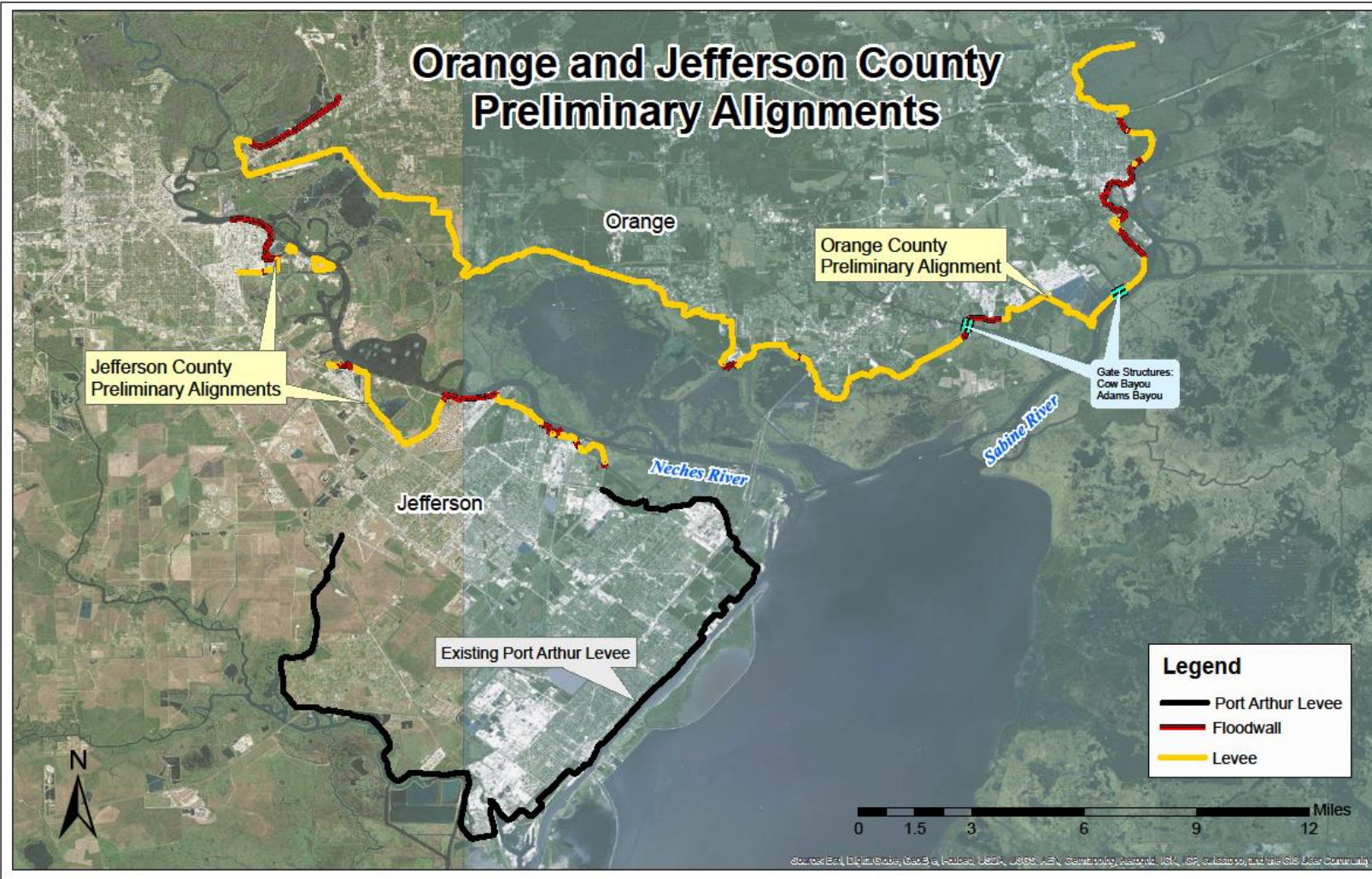


Figure 2: Orange-Jefferson Levee Alternative (Maximum Potential Length)

concrete boom. Additional earthwork would involve tying the floodwall into adjacent earthen levees and backfilling and compacting around the completed wall.

Two new navigable surge gates would be constructed on Cow and Adams Bayous. The gate locations are shown on Figure 2. Both gates would be similar to the structure shown in Figure 3. Since both streams currently accommodate barge traffic, there would be sector gates on the navigation channels with one or more flanking vertical lift gates to maintain flows on one or both sides of the navigation gates. An aerial view of this type of structure is shown in Figure 3. Cofferdams would be constructed around the gate sites so they could be constructed in the dry. A temporary navigation channel would be excavated to the side of the coffer dam to allow navigation and tidal flows to continue unobstructed during construction.



Figure 3: Conceptual Plan View of Adams and Cow Bayou Structures

Desk-top modeling was conducted to determine if operation of these gates in their normal, open condition would adversely affect water surface elevations, velocities, and salinities in the bayous (USACE 2015). The results indicate negligible impacts within Adams and Cow Bayous from potential constrictions to the channel cross-section with the proposed surge gates in their normal, open condition. This was determined by a sensitivity analysis conducted on the inlet size for each bayou, based on the assumption that construction of the gates would result in some reduction of the cross-section in their normal, open condition. In the analysis, bayou cross-sections were reduced by a wide range of estimated parameters, up to a maximum 75 percent constriction. It was determined that the limited tidal prism associated with the bayous results in minimal energy loss across the connection between the bayous and the Sabine River, and therefore, constriction of this access point results in little change in the tidal energy passing into the bayou. The insensitivity of the water surface elevation and salinity gives high confidence

that the general conclusion associated with this study is robust; constriction of the inlet, even significant constriction, results in minimal impacts on water surface elevation and salinity within the bayous. With high flows such as those occurring with tropical storms, velocities through the gated structures would be somewhat higher than the existing condition; these can be managed with appropriate armoring.

The extent to which these constrictions would impound storm water within the bayous was also examined by evaluating the effects of a significant rainfall event (Tropical Storm Allison) that had been captured in the median flow simulation. Once again, this analysis applies to the normal, open condition of the gate and evaluated the impacts of rainfall not associated with a significant storm surge event. Given the type of structures currently being evaluated (sector gates on the navigation channels with one or more flanking vertical lift gates to maintain flows on one or both sides of the navigation gates), it is estimated that existing flows may be reduced by a maximum of 50 percent. The DOWSMM analysis showed that, even for a 50 percent constriction, the volume of water resulting from such a storm could still pass through the constriction with little impact on upstream stage.

Impacts on the floodplain, both upstream and downstream of the levee system, would be minimized to the greatest extent possible. Culverts have been designed to maintain existing flows for a 100-year rainfall event, with an additional 10 percent to account for the predicted increase in rainfall due to climate change over the period of analysis. In addition, they will be designed with longer spans and lesser heights than would typically be used in an attempt to replicate the natural opening. In the existing condition, freshwater inflows from the upland areas to marshes and forested wetlands in the floodplain are being conveyed primarily through existing stream channels. The majority of the time, flows are directed toward channels and ditches that discharge into the floodplain through existing drainages. Water flows into the major rivers through those channels that have an incised bed, and in some cases flows spread out directly into wetland areas. Overland sheet flow is temporary, occurring during intense or long-duration rain events, as the majority of the area upstream of the levee is undeveloped and permeable. The degree to which shallow groundwater aquifers may contribute flows to the floodplain is unknown, but they are assumed to be a minor contributor. It is believed that marshes in the floodplain rely primarily on rainfall and tidal push for inundation.

Just before and during a surge event, the Adams and Cow Bayou surge gates and sluice gates in the levee system would be closed; pumps would be used to pump rainfall runoff from the interior to the exterior. The pumps are being conservatively sized to avoid floodplain impacts on the interior of the levee system, and to allow overbank flooding in the streams in the floodplain outside of the levee during high flow events. Hydrologic flows in the FWP condition would thus

be very similar to FWOP flows and in location, duration, and magnitude, both inside and outside of the levee system. It is assumed that the Adams and Cow Bayou gates would be closed for an estimated two weeks every 10-15 years to protect the area from surge impacts during tropical storms. The operating plan for the gates has not yet been developed, but even a worst case estimate of closure time would result in only minor and temporary impacts on fisheries access for gates with tidal flows.

New pump stations would be installed to ensure that the levee does not result in flooding upstream of the levee alignment, and the extensive system of large, new drainage structures would ensure that tidal ebb and flow in the area remains essentially the same as the FWP condition. Sluice gate culverts are planned for use everywhere there are tidal flows; flap gate culverts may be utilized in upstream areas above tidal influence. Gated culverts would be placed everywhere the red drainage lines intersect the yellow levee alignment, as shown on Figure 4. The sluice gates would remain open except when surge protection is needed; they would be closed temporarily for a short period before and after a storm occurs. Flap gate culverts would provide for one-way flow downstream from the levee system.

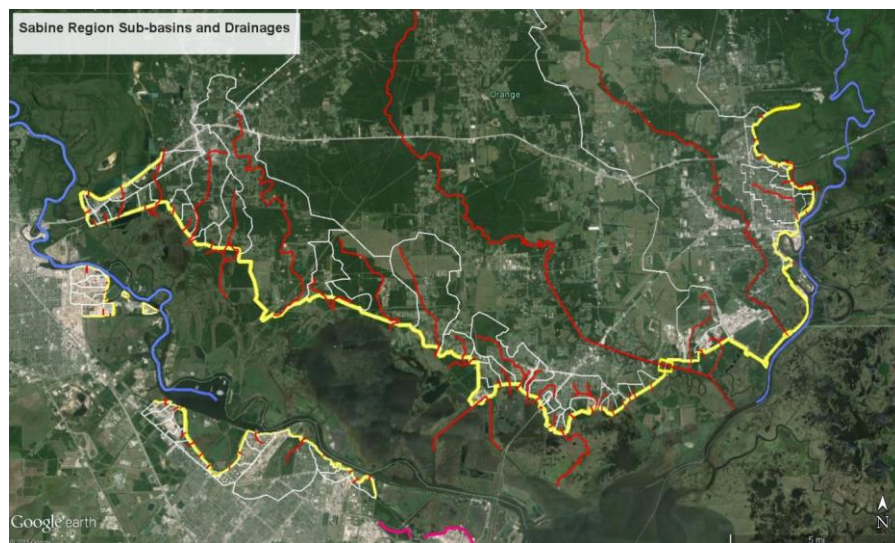


Figure 4: Sabine Region Sub-Basins and Drainages

1.5.2 CSRM Plan Improvements for Port Arthur and Freeport

Improvements to the existing HFP systems would consist of measures which increase the resiliency of the existing system features, and to accommodate future RSLR. Improvements would likely include replacement of outmoded I-Wall-type flood walls with newer, more resilient T-Wall-type floodwalls, repairs to existing earthen levees as needed, levee raisings where needed to reduce the risk of storm surge impacts under intermediate RSLR conditions, and

armoring of levee toes and transitions as needed to provide resiliency during over-topping. Based on engineering information developed to date, it is assumed that proposed improvements to the existing HFP systems can be made largely within the existing project alignments. Impacts on wetlands or fish and wildlife and their habitat from improvements to the existing Freeport and Port Arthur HFPs are not anticipated.

1.5.2.1 Port Arthur and Vicinity CSRM Plan

This existing HFP system, located west of Sabine Lake in Jefferson County, protects the Port Arthur area from coastal storm surge. The non-Federal partner for the existing project is the Jefferson County Drainage District No. 7. The system was designed and constructed in the mid-1960's to protect the area from a 100-year storm surge event. The levee system consists of 27.8 miles of earthen embankment, 6.6 miles of floodwall including 3.5 miles of coastal cantilever I-wall, and a wave barrier on Pleasure Island. In addition to residential and commercial areas in Port Arthur, the system protects the Motiva Enterprises refinery, the largest refinery in the United States. Lying adjacent to the HFP, this facility was initially constructed in 1903 during the Spindletop oil boom and now has a capacity of 600,000 barrels of crude oil per day. In addition to residential and commercial areas in Port Arthur, Nederland, and Groves, the area protected by the HFP also includes Valero Refining, Total/BASF, and the Port of Port Arthur.



Figure 5: Existing Port Arthur HFP System

Sections of floodwall fronting the deep-draft navigation Sabine-Neches Canal would be modified or reconstructed to accommodate intermediate RSLR and to meet current engineering standards. Other sections of earthen levee along the Sabine-Neches Canal may also be raised to match floodwall elevations. All construction activities would be conducted within the existing project right-of-way and therefore, no wetland impacts are anticipated. Construction equipment and methods would be similar to those described for the new levee system.

1.5.2.1 Freeport and Vicinity CSRM Plan

The Velasco Drainage District is the non-Federal sponsor for the existing system. Located in south-central Brazoria County, the system was designed and constructed in the early 1960's to protect the area from a 100-year storm surge event. The system consists of approximately 43 miles of levees and wave barriers, seven pump stations and multiple gates, culverts, and related facilities. Protection is provided for Dow Chemical, Dow Chemical Shipping, Gulf Chemical, and Port Freeport. Although the system primarily protects industrial areas, some residential areas in Freeport, Oyster Creek, Clute, and Lake Jackson are also protected.

Improvements to the existing system would consist of contracting a surge gate and I-wall reconstruction at the mouth of the Dow Barge Canal, raising approximately 2.5 miles of earthen levee in the East Storm/Oyster Levee to accommodate intermediate RSLR, raising approximately one-third mile of the Oyster Creek Levee, and raising approximately 3.2 miles of the Old River North Levee at the Dow Thumb. Most of the improvements can be made within the existing right-of-way. However, about 1 mile of the Oyster Creek Levee would require a minor amount of additional right-of-way; no wetland or aquatic impacts are anticipated in this area. Construction equipment and methods would be similar to those described for the new levee system.

The new navigable surge gate at the mouth of the Dow Barge Canal would be similar to the structure shown in Figure 3. This is a man-made canal with no natural habitat along the channel. A sector gate would be constructed on the navigation channel to allow barge-traffic access, with one or more flanking vertical lift gates to maintain flows. A coffer dam would probably be needed to construct the gate; existing tidal access would be maintained during construction and after construction. The gate would be constructed with bulldozers and draglines; no hopper dredges would be used to construct this gate.



Figure 6: Existing Freeport HFP System

2.0 FEDERALLY-LISTED THREATENED AND ENDANGERED SPECIES AND CRITICAL HABITAT

Descriptions of ESA species and habitats are combined for the two geographic areas (Sabine and Brazoria Regions) being studied in detail because most of the species are present in both areas. USACE contacted the USFWS and NMFS by email, requesting information on threatened and endangered species in the project areas. The agency lists are provided in Appendix A. Endangered or threatened species listed in Table 1 are those that the agencies list as possibly occurring in the general vicinity of the two regions. The status, range, habitat, and presence are discussed separately for each species following the table order. There is no designated Critical Habitat in either region.

2.1 PIPING PLOVER

USFWS listed the piping plover (*Charadrius melodus*) as threatened and endangered on 11 December 1985 (50 FR 50726, December, 11 1985). The piping plover is an endangered species in the northern Great Plains and Great Lakes where it breeds in the summer. Piping plovers wintering in Texas are part of the northern Great Plains and Great Lakes populations and, therefore, are listed as threatened (USFWS, 2009). The wintering range on the Atlantic and Gulf coasts stretches from North Carolina to Mexico (AOU, 1998; 50 FR 50726, December, 11 1985). Migration occurs both through the interior of North America east of the Rocky Mountains (especially in the Mississippi Valley), and along the Atlantic Coast (AOU, 1998). Approximately 35 percent of the known global population of piping plovers winters along the Texas Gulf Coast, where they spend 60 to 70 percent of the year. Piping plover concentrations in Texas are believed to occur in Brazoria and Jefferson counties, primarily restricted to areas along the Gulf shoreline. On their wintering grounds, piping plover use beaches, mudflats, sandflats, dunes, and offshore emergent placement areas (USFWS, 1995; AOU, 1998), as well as sandflats in existing USACE placement areas. Piping plovers are known to frequent the area immediately south of the Brazoria study area; they occur less frequently in the more inland Sabine study area.

Threats to piping plovers and their habitat in their migration and wintering ranges indicate a continuing loss and degradation of habitat due to sand placement projects, inlet stabilization, sand mining, groins, seawalls and revetments, exotic and invasive vegetation, and wrack removal (USFWS, 2009). There is also concern with projects that would impede the ability of barrier islands to respond to natural habitat building processes in the context of accelerating sea-level rise.

Table 1: Threatened and Endangered Species, Orange, Jefferson and Brazoria Counties

Common Name	Scientific Name	Listing Status	Jurisdiction
BIRDS			
piping plover	<i>Charadrius melodus</i>	Threatened	USFWS
red knot	<i>Calidris canutus rufa</i>	Threatened	USFWS
whooping crane	<i>Grus americana</i>	Endangered	USFWS
MAMMALS			
West Indian manatee	<i>Trichechus manatus</i>	Endangered	USFWS
fin whale	<i>Balaenoptera physalus</i>	Endangered	NMFS
humpback whale	<i>Megaptera novaeangliae</i>	Endangered	NMFS
sei whale	<i>Balaenoptera borealis</i>	Endangered	NMFS
sperm whale	<i>Physeter macrocephalus</i>	Endangered	NMFS
REPTILES			
green sea turtle	<i>Chelonia mydas</i>	Threatened	USFWS; NMFS
Kemp's ridley sea turtle	<i>Lepidochelys kempii</i>	Endangered	USFWS; NMFS
loggerhead sea turtle	<i>Caretta caretta</i>	Threatened	USFWS; NMFS
hawksbill sea turtle	<i>Eretmochelys imbricata</i>	Endangered	USFWS; NMFS
leatherback sea turtle	<i>Dermochelys coriacea</i>	Endangered	USFWS; NMFS
INVERTEBRATES			
lobed star coral	<i>Orbicella annularis</i>	Threatened	NMFS
mountainous star coral	<i>Orbicella faveolata</i>	Threatened	NMFS
boulder star coral	<i>Orbicella franksi</i>	Threatened	NMFS
elkhorn coral	<i>Acropora palmata</i>	Threatened	NMFS
CANDIDATE SPECIES			
Sprague's pipit	<i>Anthus spragueii</i>	Candidate	USFWS
smooth pimpleback clam	<i>Quadrula houstonensis</i>	Candidate	USFWS
Texas fawnsfoot clam	<i>Truncilla macrodon</i>	Candidate	USFWS

Sources: USFWS and NMFS websites:

http://www.fws.gov/southwest/es/ES_Lists_Main.cfm (accessed May 21, 2015)

<http://sero.nmfs.noaa.gov/pr/esa/specieslst.htm> (accessed May 21, 2015)

<http://www.nmfs.noaa.gov/pr/species/esa/candidate.htm> (accessed May 21, 2015)

There is no piping plover critical habitat in the Sabine and Brazoria project areas. However, critical habitat is located in the general area, the nearest being approximately 2 miles southwest of the project area in Brazoria County (74 FR 23476, May 19, 2009).

2.2 RED KNOT

Red knots of the *rufa* subspecies (*Calidris canutus rufa*) are medium-sized shorebirds that breed only in Arctic Canada and migrate approximately 18,500 miles annually between Arctic breeding grounds and primary wintering areas in Tierra Del Fuego, at the southern tip of South

America. They also winter in three other distinct coastal areas of the Western Hemisphere: the southeastern United States (mainly Florida and Georgia, with smaller numbers in South Carolina), the Gulf of Mexico coast of Texas, and Maranhão in northern Brazil (USFWS, 2011). The USFWS began proposing that this species be considered a Candidate for listing in 2008, and published a final designation of threatened status in 2014 (79 FR 73706, December 11, 2014).

In South American wintering areas, red knots are found principally in intertidal marine habitats, especially near coastal inlets, estuaries, and bays, or along intertidal earthen shelf formations. The Delaware Bay area (in Delaware and New Jersey) is the largest known spring migration stopover area, with far fewer migrants congregating elsewhere along the Atlantic coast. The concentration in the Delaware Bay area occurs from the middle of May to early June, corresponding to the spawning season of horseshoe crabs. The knots feed on horseshoe crab eggs, rebuilding energy reserves needed to complete migrations to the Arctic. Surveys at wintering areas and at Delaware Bay during spring migration indicate a substantial decline in the red knot in recent years. Research shows that since 1998, a high proportion of red knots leaving the Delaware Bay failed to achieve threshold departure masses needed to fly to breeding grounds and survive an initial few days of snow cover, and this corresponded to reduced annual survival rates (73 FR 75176, December 10, 2008).

The primary factor threatening the red knot is destruction and modification of its habitat, particularly the reduction in key food resources resulting from reductions in horseshoe crabs, which are harvested primarily for use as bait and secondarily to support a biomedical industry. Counts of red knots within the principal wintering areas in Chile and Argentina declined by nearly 75 percent from 1985 to 2007 and declined by an additional 15 percent in the past year (2007 to 2008).

Along the Texas coast, red knots forage on beaches, oyster reefs, and exposed bay bottoms and roost on high sand flats, reefs, and other sites protected from high tides (NatureServe, 2013). They are believed to use the beaches in Brazoria County, near but not in the project area. In wintering and migration habitats, red knots commonly forage on bivalves, gastropods, and crustaceans. It has been reported that Coquina clams (*Donax variabilis*) serve as a frequent and often important food resource for red knots along Gulf beaches. Reports of the size of flocks of along the Gulf of Mexico coast vary considerably, from highs of about 2,800 to 700 (USFWS 2011).

2.3 WHOOPING CRANE

The whooping crane (*Grus americana*) was Federally listed as endangered on March 11, 1967 (32 FR 4001). Critical habitat has been designated in Aransas, Calhoun, and Refugio counties in Texas, and includes the Aransas National Wildlife Refuge (NWR). The main factors for the decline of the whooping crane are loss of habitat to agriculture, human disturbance of nesting areas, uncontrolled hunting, and collisions with power lines (NatureServe, 2015). Biological factors, such as delayed sexual maturity and small clutch size, prevent rapid population recovery. Drought during the breeding season presents serious hazards to this species (Campbell, 1995). Whooping cranes are vulnerable to loss of habitat along their long migration route (NatureServe, 2015), along which they are still subject to cataclysmic weather events, accidental shooting, collision with power lines, and predators. They are susceptible to avian tuberculosis, avian cholera, and lead poisoning (Campbell, 1995). Exposure to disease is a special problem when large numbers of birds are concentrated in limited areas, as often happens during times of drought.

The principal winter habitat in Texas is brackish bays, marshes, and salt flats, although whooping cranes sometimes feed in upland sites characterized by oak mottes, grassland swales, and ponds on gently rolling sandy soils (NatureServe, 2015). Summer foods include large insect nymphs or larvae, frogs, rodents, small birds, minnows, and berries. During the winter in Texas, they eat a wide variety of plant and animal foods. Blue crabs, clams, and berries of Carolina wolfberry (*Lycium carolinianum*) comprise the diet. Foods taken at upland sites include acorns, snails, crayfish, and insects.

Whooping cranes were originally found throughout most of North America. In the nineteenth century, the main breeding area was from the Northwest Territories to the prairie provinces in Canada, and the northern prairie states to Illinois. A nonmigratory flock existed in Louisiana, but is now extirpated. Whooping cranes wintered from Florida to New Jersey along the Atlantic Coast, along the Texas Gulf Coast, and in the high plateaus of central Mexico. They now breed in isolated, marshy areas of Wood Buffalo National Park, Northwest Territories, and Canada. They winter primarily in the Aransas NWR and adjacent areas of the central Texas Gulf Coast (USFWS, 1995). During migration they use various stopover areas in western Canada and the American Midwest.

The natural wild population of whooping cranes spends its winters at the Aransas NWR, Matagorda Island, Isla San Jose, portions of the Lamar Peninsula, and Welder Point on the east side of San Antonio Bay (NatureServe, 2015). The main stopover points in Texas for migrating birds are in the central and eastern Panhandle (USFWS, 1995).

Brazoria County is on the extreme margin of the species' migration corridor. The species is unlikely to occur in the Brazoria project area because of the absence of suitable habitat. TPWD (2006) indicates documented records of whooping cranes from marshes west of the Brazos River; however, these likely represent vagrant birds, and no wintering populations are present in the project area.

2.4 WEST INDIAN MANATEE

Manatees (*Trichechus manatus*) are marine mammals found in marine, estuarine, and freshwater environments. The manatee ranges from the southeastern U.S. and coastal regions of the Gulf, through the West Indies and Caribbean, to northern South America. U.S. populations occur primarily in Florida, where they are effectively isolated from other populations by the cooler waters of the northern Gulf and the deeper waters of the Straits of Florida (NatureServe, 2013).

USFWS listed the West Indian manatee as endangered in 1967 (32 FR 4001, March 11, 1967). Later it received protection under the ESA of 1973. Critical habitat has been designated in Florida, but none in Texas.

The West Indian manatee inhabits shallow coastal waters, estuaries, bays, rivers, and lakes. Throughout most of its range, it appears to prefer rivers and estuaries to marine habitats. It is not averse to traveling through dredged canals or using quiet marinas. Manatees are apparently not able to tolerate prolonged exposure to water colder than 68 degrees Fahrenheit. In the northern portions of their range, during October through April, they congregate in warmer water bodies, such as spring-fed rivers and outfalls from power plants. They usually avoid areas with strong currents (NatureServe, 2013). Manatees are primarily dependent upon submergent, emergent, and floating vegetation, with the diet varying according to plant availability.

The largest known human-related cause of manatee mortality is collisions with hulls and/or propellers of boats and ships. The second-largest human related cause of mortality is entrapment in floodgates and navigation locks. Other known causes of human-related manatee mortality include poaching and vandalism, entrapment in shrimp nets and other fishing gear, entrapment in water pipes, and ingestion of marine debris (USFWS, 2001). Hunting and fishing pressures were responsible for much of its original decline because of the demand for meat, hides, and bones, which resulted in near extirpation of the species (USFWS, 1995). A prominent cause of natural mortality in some years is cold stress, and major die-offs associated with the outbreaks of red tide have occurred (USFWS, 2001). The low reproductive rate and habitat loss make it difficult for manatee populations to recover.

The West Indian manatee historically inhabited the Laguna Madre, the Gulf, and tidally influenced portions of rivers. It is currently, however, extremely rare in Texas waters and the most recent sightings are likely individuals migrating or wandering from Mexican waters. Historical records from Texas waters include Copano Bay, the Bolivar Peninsula, and the mouth of the Rio Grande River (Schmidly, 2004). In November, 2014, a live manatee was rescued from Trinity Bay (USFWS, 2015). The occurrence of the West Indian manatee in the study area is possible but not likely.

2.5 WHALES

NMFS identifies four endangered whale species of potential occurrence in the Gulf. These are the sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), humpback whale (*Megaptera novaeangliae*), and sperm whale (*Physeter macrocephalus*) (NMFS, 2015). These species are generally restricted to deeper offshore waters; therefore, it is unlikely that any of these five species would regularly occur in either the Brazoria or Sabine project areas.

2.6 SEA TURTLES

NFMS and USFWS identify five sea turtle species of potential occurrence in both the Brazoria and Sabine regions.

2.6.1 Green Sea Turtle

The green turtle (*Chelonia mydas*) is a circumglobal species in tropical and subtropical waters. In U.S. Atlantic waters, it occurs around the U.S. Virgin Islands, Puerto Rico, and continental U.S. from Massachusetts to Texas. Major nesting activity occurs on Ascension Island, Aves Island (Venezuela), Costa Rica, and in Surinam. Relatively small numbers nest in Florida, with even smaller numbers in Georgia, North Carolina, and Texas (NMFS and USFWS, 1991a; Hirth, 1997).

The green turtle was listed in 1978 as threatened, except for Florida and the Pacific Coast of Mexico (including the Gulf of California) where it was listed as endangered (43 FR 32800, July 28, 1978). In 1998, NMFS designated critical habitat to include the coastal waters around Culebra Island, Puerto Rico (63 FR 46693, September 2, 1998). On March 23, 2015, NMFS and USFWS proposed to revise the existing listing to identify 11 green sea turtle distinct population segments (DPS) worldwide (80 FR 15271 (March 23, 2015)). The proposed DPS rule would list the North Atlantic DPS as threatened.

The green turtle primarily utilizes shallow habitats such as lagoons, bays, inlets, shoals, estuaries, and other areas with an abundance of marine algae and seagrasses. Hatchlings often float in

masses of sea plants (e.g., rafts of sargassum) in convergence zones. Coral reefs and rocky outcrops near feeding pastures often are used as resting areas. The adults are almost exclusively herbivorous, while the juveniles consume more invertebrates. Foods consumed include seagrasses, macroalgae and other marine plants, mollusks, sponges, crustaceans, and jellyfish (Mortimer, 1982).

Terrestrial habitat is typically limited to nesting activities (Balazs, 1980). They prefer high-energy beaches with deep sand, which may be coarse to fine, with little organic content. Most green turtles nest in Florida and in Mexico. Green turtle nests are rare in Texas. In 1987, the first confirmed nesting of a green sea turtle on the Texas coast was recorded (Shaver and Amos, 1988). More recently, two green turtle nests were documented in 2006 and three in 2007; all but one in 2007 were from the Padre Island National Seashore (PINS). In 2012, six green sea turtle nests were reported from PINS and two from South Padre Island.

The principal cause of the historical, worldwide decline of the green turtle is long-term harvest of eggs and adults on nesting beaches, and juveniles and adults on feeding grounds. These harvests continue in some areas of the world and compromise efforts to recover this species. Incidental capture in fishing gear, such as gillnets and trawls, is a serious ongoing source of mortality that also adversely affects the species' recovery (NMFS, 2013). Incidental take of green turtles has been documented with hopper dredges.

Of the green turtle strandings reported from 2004 through 2007 (last year reported) along the Texas Coast, 374 were from Zone 21, which extends from the mouth of the Rio Grande to the vicinity of Yarborough Pass (STSSN, 2013). In 2007, 233 green turtles were reported stranded; of these, at least 147 were cold-stunned turtles resulting from a strong cold front that passed in January (Sea Turtle, Inc., 2008).

The USACE Sea Turtle Data Warehouse (USACE, 2013) maintained records of documented incidental takes of sea turtles as a result of hopper dredging activities throughout southeastern coastal waters. USACE is currently developing a new system, called Operations and Dredging Endangered Species System (ODESS), to centralize and archive data regarding T&E species and impacts from dredging activities. The system is being coordinated with NMFS SERO staff. Incidences involving impacts on two green sea turtle individuals within Freeport Harbor Channel were recorded in 2006. One incident regarding impact on an individual green sea turtle within the Freeport Harbor Entrance Channel was documented in 2007. These documented events provide clear indication that swimming green turtles may be found in the entrance channel and near the Freeport Harbor jetties. They are not likely to be found in the inland channels near the Freeport CSRM project area. The project area does not include the Gulf shoreline. The

southernmost extent of the Port Arthur CSRM Plan project area is 15 stream-miles inland from the Gulf shoreline; there is very little likelihood that green turtles would be found in that study area.

2.6.2 Kemp's Ridley Sea Turtle

The Kemp's ridley sea turtle (*Lepidochelys kempii*) is the smallest of the sea turtles, with adults reaching about 2 feet in length and weighing up to 100 pounds. Adults are primarily restricted to the Gulf, although juveniles may range throughout the Atlantic Ocean. Important foraging areas include Campeche Bay, Mexico, and Louisiana coastal waters. Almost the entire population of Kemp's ridleys nests on an 11-mile stretch of coastline near Rancho Nuevo, Tamaulipas, Mexico, approximately 190 miles south of the Rio Grande. A secondary nesting area occurs at Tuxpan, Veracruz, and sporadic nesting has been reported from Mustang Island, Texas, southward to Isla Aquada, Campeche. Several scattered isolated nesting attempts have occurred from North Carolina to Colombia.

The Kemp's ridley sea turtle was listed as endangered throughout its range in 1970 (35 FR 18319, December 2, 1970). It is considered to be the most seriously endangered of all sea turtles (USFWS and NMFS, 1992). No critical habitat has yet been designated.

Kemp's ridleys inhabit shallow coastal and estuarine waters, usually over sand or mud bottoms. Adults are primarily shallow-water benthic feeders that specialize on crabs while juveniles feed on sargassum and associated infauna, and other epipelagic species of the Gulf (USFWS and NMFS, 1992). In some regions, blue crab (*Callinectes sapidus*) is the most common food item of adults and juveniles. Other food items include shrimp, snails, bivalves, sea urchins, jellyfish, sea stars, fish, and occasional marine plants (Pritchard and Marquez, 1973; Shaver, 1991; Campbell, 1995).

Populations of this species have declined since 1947, when an estimated 42,000 females nested in one day, to a total nesting population of approximately 1,000 in the mid-1980s. The decline of this species was primarily the result of human activities including collection of eggs, fishing for juveniles and adults, killing adults for meat and other products, and direct take for indigenous use. In addition to these sources of mortality, Kemp's ridleys have been subject to high levels of incidental capture in fishing gear, primarily in shrimp trawls, but also in gill nets, longlines, and traps (USFWS and NMFS, 1992; NMFS, 2013b). The National Research Council's (NRC) Committee on Sea Turtle Conservation estimated in 1990 that 86 percent of the human-caused deaths of juvenile and adult loggerheads and Kemp's ridleys resulted from shrimp trawling (Campbell, 1995).

Further threats to this species include collisions with boats, explosives used to remove oil rigs, and entrapment in coastal power plant intake pipes (Campbell, 1995). Dredging operations affect Kemp's ridley turtles through incidental take and by degrading the habitat. Incidental take of ridleys has been documented with hopper dredges. In addition to direct take, channelization of the inshore and nearshore areas can degrade foraging and migratory habitat through dredged material placement, degraded water quality/clarity, and altered current flow (USFWS and NMFS, 1992). Sea turtles are also especially subject to human impacts during the time the females come ashore for nesting.

Nesting beaches were afforded official protection in 1966 and this, together with the requirement to use TEDs in shrimp trawls and other measures to reduce turtle bycatch, are some of the primary factors in recovery of this species (NMFS, 2013). Kemp's ridley appears to be in the earliest stages of recovery. In 2006, a record number of nests were recorded since monitoring began in 1978; 12,143 nests were documented in Mexico, with 7,866 of those at Rancho Nuevo (NMFS, 2013).

Kemp's ridleys may have nested sporadically in Texas in the last 50 years; however, the number of nests over recent years has shown an ever-increasing trend (NPS, 2012 and 2013). Some of these nests were from headstarted ridleys. The majority of the Kemp's ridley nests recorded in Texas were at the PINS. Such nestings, together with the proximity of the Rancho Nuevo rookery, probably account for the occurrence of hatchlings and subadults in Texas.

Kemp's ridley has been recorded from the general vicinity of the Brazoria region. The USACE Sea Turtle Data Warehouse (USACE, 2010) documents the taking of two Kemp's ridley turtles within the Freeport Harbor Entrance Channel in 2007. Documented records of Kemp's ridleys exist from Jefferson County, Texas (Dixon, 2000); however, they would not be expected to occur as far inland as the Port Arthur and Orange-Jefferson CSR project areas.

2.6.3 Loggerhead Sea Turtle

Loggerhead sea turtles (*Caretta caretta*) were named for their relatively large heads, which support powerful jaws and enable them to feed on hard-shelled prey, such as whelks and conch. The loggerhead is widely distributed in tropical and subtropical seas, being found in the Atlantic Ocean from Nova Scotia to Argentina, the Gulf, Indian, and Pacific oceans (although it is rare in the eastern and central Pacific), and the Mediterranean Sea (Rebel, 1974; Ross, 1982; Iverson, 1986), and is the most abundant sea turtle species in U.S. coastal waters (NMFS, 2013). In the continental U.S., loggerheads nest along the Atlantic coast from Florida to as far north as New

Jersey and sporadically along the Gulf Coast. In recent years, a few have nested on barrier islands along the Texas coast.

The Northwest Atlantic Ocean population of the loggerhead turtle was listed as threatened in 2011 (76 FR 58868, September 22, 2011). In 2011, the NMFS and USFWS determined that the loggerhead sea turtle is composed of nine distinct population segments (DPSs) that constitute “species” that may be listed as threatened or endangered under the ESA. Formerly, all populations of the loggerhead were determined threatened throughout its range (43 FR 32808, July 28, 1978). In the 2011 final rule, four DPSs were listed as threatened and five as endangered under the ESA. The four threatened DPSs are located in the Northwest Atlantic Ocean, the South Atlantic Ocean, the Southeast Indo-Pacific Ocean, and the Southwest Indian Ocean. The five endangered DTSs are located in the Mediterranean Sea, the North Indian Ocean, the North Pacific Ocean, the Northeast Atlantic Ocean, and the South Pacific Ocean. NMFS and USFWS also announced they intend to propose the designation of critical habitat for the two loggerhead sea turtle DPSs occurring within the U.S. (the Northwest Atlantic and North Pacific Oceans) in a future rulemaking. Proposed critical habitat is located in coastal counties in North Carolina, South Carolina, Georgia, Florida, Alabama, and Mississippi (78 FR 17999, March 25, 2013).

The loggerhead occurs in the open seas as far as 500 miles from shore, but mainly over the continental shelf, and in bays, estuaries, lagoons, creeks, and mouths of rivers. It favors warm temperate and subtropical regions not far from shorelines. The adults occupy various habitats, from turbid bays to clear waters of reefs. Subadults occur mainly in nearshore and estuarine waters. Hatchlings move directly to sea after hatching, and often float in masses of sargassum (NMFS and USFWS, 1991). Commensurate with their use of varied habitats, loggerheads consume a wide variety of both benthic and pelagic food items, which they crush before swallowing. Conches, shellfish, horseshoe crabs, prawns and other crustacea, squid, sponges, jellyfish, basket stars, fish (carrion or slow-moving species), and even hatchling loggerheads have all been recorded as loggerhead prey (Rebel, 1974; Hughes, 1974; Mortimer, 1982).

Nesting occurs usually on open sandy beaches above the high-tide mark and seaward of well-developed dunes. They nest primarily on high-energy beaches on barrier islands adjacent to continental land masses in warm-temperate and subtropical regions. Steeply sloped beaches with gradually sloped offshore approaches are favored.

Recent analyses of nesting data from southeast Florida show the population is declining. Similarly, long-term nesting data show loggerhead nesting declines in North Carolina, South Carolina, and Georgia (NMFS, 2013). The decline of the loggerhead, like that of most sea

turtles, is the result of overexploitation by man, and inadvertent mortality associated with fishing and trawling activities. The most significant threats to its population are incidental capture in fishing gear, directed harvest, coastal development, increased human use of nesting beaches, and pollution (NMFS, 2013). Incidental take of loggerheads has been documented with hopper dredges.

The loggerhead is the most abundant turtle in Texas marine waters, preferring shallow inner continental shelf waters and occurring only very infrequently in the bays. It often occurs near offshore oil rig platforms, reefs, and jetties. Loggerheads are probably present year-round but are most noticeable in the spring when a favored food item, the Portuguese man-of-war (*Physalia physalis*), is abundant. Loggerheads constitute a major portion of stranded turtles on the Texas coast each year (STSSN, 2013). A large proportion of these deaths are the result of accidental capture by shrimp trawlers, where caught turtles drown and their bodies are dumped overboard.

Before 1977, no positive documentation of loggerhead nests in Texas existed. Since that time, several nests have been recorded along the Texas coast. During the last decade, nesting has remained relatively stable on the Texas coast, with 0-6 nests per year. Although nests have been found state-wide, the largest numbers have been located at the PINS (NPS, 2013).

This species has been recorded in the Brazoria study area. Between 1995 and 2000, eight loggerheads were caught in Freeport Harbor Channel, and during the Freeport Harbor Project (July 13 to September 24, 2002), a relocation trawler captured one loggerhead (NMFS, 2003). More recently, an additional loggerhead was incidentally taken in the Freeport Harbor Entrance Channel in 2006 as a result of dredging activities (USACE, 2013). No nests have been recorded in the study area. Documented records of loggerheads exist from Jefferson County, Texas (Dixon, 2000); however, potential for its occurrence in the Sabine study area is low.

2.6.4 Hawksbill Sea Turtle

The hawksbill sea turtle (*Eretmochelys imbricata*) is circumtropical, occurring in tropical and subtropical seas of the Atlantic, Pacific, and Indian oceans (Witzell, 1983). This species is probably the most tropical of all marine turtles, although it does occur in many temperate regions. The hawksbill sea turtle is widely distributed in the Caribbean Sea and western Atlantic Ocean, with representatives of at least some life history stages regularly occurring in southern Florida and the northern Gulf (especially Texas), south to Brazil (NMFS, 2013d). In the continental U.S., the hawksbill largely nests in Florida, where it is sporadic at best (NFWL, 1980). However, a major nesting beach exists on Mona Island, Puerto Rico.

The hawksbill sea turtle was Federally listed as endangered in 1970 on (35 FR 84952, June 2, 1970b). In 1998, NMFS and USFWS designated critical habitat near Mona Island and Isla Monito, Puerto Rico, seaward to 5.6 kilometers (km) (63 FR 46693, September 2, 1998).

Hawksbills generally inhabit coastal reefs, bays, rocky areas, passes, estuaries, and lagoons, where they occur at depths of less than 70 feet. Like some other sea turtle species, hatchlings are sometimes found floating in masses of marine plants (e.g., sargassum rafts) in the open ocean (NFWL, 1980). Hawksbills reenter coastal waters when they reach a carapace length of approximately 20 to 25 centimeters. Coral reefs are widely recognized as the resident foraging habitat of juveniles, subadults, and adults. This habitat association is undoubtedly related to their diet of sponges, which need solid substrate for attachment. Hawksbills also occur around rocky outcrops and high-energy shoals, which are also optimum sites for sponge growth.

While this species is omnivorous, it prefers invertebrates, especially encrusting organisms, such as sponges, tunicates, bryozoans, mollusks, corals, barnacles, and sea urchins. Pelagic species consumed include jellyfish and fish, and plant material such as algae, sea grasses, and mangroves (Rebel, 1974; Pritchard, 1977; Mortimer, 1982). The young are reported to be somewhat more herbivorous than adults (Ernst and Barbour, 1972). Terrestrial habitat is typically limited to nesting activities. The hawksbill, which is typically a solitary nester, nests on undisturbed, deep-sand beaches, from high-energy ocean beaches to tiny pocket beaches several meters wide bounded by crevices of cliff walls. Typically, the sand beaches are low energy, with woody vegetation, such as sea grape (*Coccoloba uvifera*), near the waterline (NRC, 1990).

The primary global threat to hawksbills is habitat loss of coral reef communities. There remains a continuing demand for the hawksbill's shell, as well as other products, including leather, oil, perfume, and cosmetics. Additionally, hawksbills are harvested for their eggs and meat, while whole stuffed turtles are sold as curios in the tourist trade. In addition to directed harvest, increased human presence is a threat to hawksbills. In particular, increased recreational and commercial use of nesting beaches, general harassment of turtles, and loss of nesting habitat from human activities negatively impact hawksbills. Incidental capture in fishing gear, primarily gillnets, and vessel strikes also adversely affect this species' recovery (NMFS, 2013).

Texas is the only state outside of Florida where hawksbills are sighted with any regularity. Most of these sightings involve posthatchlings and juveniles, and are primarily associated with stone jetties. These small turtles are believed to originate from nesting beaches in Mexico (NMFS, 2013). On June 13, 1998, the first hawksbill nest recorded on the Texas coast was found at PINS. This nest remains the only documented hawksbill nest on the Texas coast (NPS, 2013). Stranding data from 2004 through 2007 show that 59 hawksbills were found along Texas waters

or shorelines (STSSN, 2013). No documented records of hawksbills exist from Brazoria, Jefferson, or Orange counties (Dixon, 2000) and they are not expected to be present in the project area.

2.6.5 Leatherback Sea Turtle

Leatherback sea turtles (*Dermochelys coriacea*) are named for their appearance. They do not have shells as other sea turtles do. Instead, their backs are covered by a slate black to bluish-black leathery skin with irregular white or pink patches. They are the largest turtles in the world, reaching over 6 feet in length and 650-1,200 pounds in weight (NPS, 2013).

The leatherback sea turtle was listed as endangered throughout its range in 1970 (35 FR 84952, June 2, 1970), with critical habitat designated in the U.S. Virgin Islands in 1978 and 1979 (43 FR 43688, September 26, 1978, and 44 FR 17710, March 23, 1979, respectively). In 2011, USFWS announced that revision of the critical habitat to include the coastline and offshore waters of the Northeast Ecological Corridor of Puerto Rico may be warranted and that assessment of the need for revisions to critical habitat would be conducted during a future planned status review (76 FR 47133, August 4, 2011).

The leatherback is probably the most wide-ranging of all sea turtle species. It occurs in the Atlantic, Pacific, and Indian oceans; as far north as British Columbia, Newfoundland, Great Britain, and Norway; as far south as Australia, the Cape of Good Hope, and Argentina; and in other water bodies such as the Mediterranean Sea (NFWL, 1980). The leatherback migrates further and ventures into colder water than any other marine reptile. Adults appear to engage in routine migrations between boreal, temperate, and tropical waters, presumably to optimize both foraging and nesting opportunities. During the summer, leatherbacks tend to occur along the east coast of the U.S. from the Gulf of Maine south to the middle of Florida.

Leatherbacks nest primarily in tropical regions; major nesting beaches include Malaysia, Mexico, French Guiana, Surinam, Costa Rica, and Trinidad (Ross, 1982). Leatherbacks nest only sporadically in some of the Atlantic and Gulf states of the continental U.S., with one nesting reported as far north as North Carolina (Schwartz, 1976). The U.S. Caribbean, primarily Puerto Rico and the U.S. Virgin Islands, and southeast Florida support minor nesting colonies, but represent the most significant nesting activity within the U.S. (NMFS, 2013).

The leatherback sea turtle is mainly pelagic, inhabiting the open ocean, and seldom approaches land except for nesting (Eckert, 1992). It is most often found in coastal waters only when nesting or when following concentrations of jellyfish, when it can be found in inshore waters,

bays, and estuaries. It dives almost continuously, often to great depths. Despite their large size, the diet of leatherbacks consists largely of jellyfish and sea squirts. They also consume sea urchins, squid, crustaceans, fish, blue-green algae, and floating seaweed (NFWL, 1980). The leatherback typically nests on beaches with a deepwater approach (Pritchard, 1971).

Its decline is attributable to overexploitation by man and incidental mortality associated with commercial shrimping and fishing activities. Nesting populations of leatherback sea turtles are especially difficult to estimate because the females frequently change nesting beaches; however, Spotila et al. (1996) estimated the 1995 worldwide population of nesting female leatherbacks at 26,000 to 42,000. Major threats include egg collecting and mortality associated with bycatch in longline, trawl, and gillnet fisheries throughout their range; although they are jeopardized to some extent by harvesting of adult females, destruction or degradation of nesting habitat, and ingestion of floating trash (Nature Serve, 2013). This species is probably more susceptible than other turtles to drowning in shrimp trawlers equipped with turtle extruder devices (TEDs) because adult leatherbacks are too large to pass through the TED exit opening. Because leatherbacks nest in the tropics during hurricane season, a potential exists for storm-generated waves and wind to erode nesting beaches, resulting in nest loss (NMFS and USFWS, 1992).

Apart from occasional feeding aggregations such as the large one of 100 animals reported by Leary (1957) off Port Aransas in December 1956, or possible concentrations in the Brownsville Eddy in winter, leatherbacks are rare along the Texas coast, tending to keep to deeper offshore waters where their primary food source, jellyfish, occurs. In the Gulf, the leatherback is often associated with two species of jellyfish: the cabbagehead (*Stomolophus sp.*) and the moon jellyfish (*Aurelia sp.*) (NMFS and USFWS, 1992). According to USFWS (1981), leatherbacks never have been common in Texas waters. Leatherback nests were recorded on Padre Island in the 1930's to 40's. One leatherback nest was located at PINS in 2008. Since then, no leatherback nests have been located anywhere in Texas (NPS, 2013).

No leatherbacks have been taken by dredging activities in Texas (USACE, 2013). This species is unlikely to occur in either the Brazoria or Sabine regions.

2.7 CORALS

On October 20, 2009, NMFS received a petition from the Center for Biological Diversity to list 83 species of coral as either threatened or endangered under the ESA. On September 10, 2014 (70 FR 53852), NMFS published a final rule listing 20 of the petitioned coral species as threatened under the Endangered Species Act. Of these 20, the following five Caribbean species are listed as threatened on the NMFS list for Texas – lobed star (*Orbicella annularis*),

mountainous star (*Orbicella faveolata*), boulder star (*Orbicella franksi*), and elkhorn coral (*Acropora palmata*) retained their listing status as threatened species. Relatively high human population densities and a long history of pervasive human impacts on coral reef systems exist across the Caribbean region (NMFS, 2012). Nearly two-thirds of Caribbean coral reefs are threatened by at least one form of human activity, with continuing threats of region-wide damage due to rising sea temperatures and disease. Additionally, none of the Caribbean's three keystone species indicative of reef health (the corals *Acropora palmata* and *A.cervicornis*, and the urchin *Diadema antillarum*) show significant recovery over decadal time scales. The region is also susceptible to strengthening storms and hurricanes, and suffers mass bleaching events, hampering ecosystem recovery. None of five species listed for Texas are known to occur in the Brazoria or Sabine regions, and their potential range does not extend into these areas.

2.8 CANDIDATE SPECIES

2.8.1 Sprague's Pipit

The Sprague's pipit (*Anthus spragueii*) is a small passerine endemic to the Northern Great Plains and is one of the few bird species endemic to the North American prairie (75 FR 56028, September 15, 2010). Sprague's pipits are strongly tied to native prairie throughout their life cycle but will utilize nonnative planted grassland. These birds are sensitive to fragmentation and require relatively large grassland patches to form breeding territories.

USFWS initiated a status review in response to a petition filed in 2009 (74 FR 63337, December 3, 2009), which resulted in the Sprague's pipit being considered a Candidate for listing. In 2010, USFWS found that listing was warranted but precluded by higher priority listing actions (75 FR 56028, September 15, 2010).

The Sprague's pipit breeding range extends throughout North Dakota, except for the easternmost counties, northern and central Montana east of the Rocky Mountains, northern portions of South Dakota, northwestern Minnesota, southeastern Alberta, the southern half of Saskatchewan, and into southwest Manitoba. Its wintering range includes south-central and southeast Arizona, Texas, southern Oklahoma, southern Arkansas, northwest Mississippi, southern Louisiana, and northern Mexico. Migration and wintering ecology are poorly known, but migrating and wintering Sprague's pipits are found in both densely and sparsely vegetated grassland and pastures; they are rarely found in fallow cropland. Sprague's pipits exhibit a strong preference for grassland habitat during the winter and an avoidance of areas with too much shrub encroachment. They eat a wide variety of insects during the breeding season and a very small percentage of seeds (74 FR 63337, December 3, 2009).

The primary threats to the Sprague's pipit are habitat fragmentation on the breeding grounds, energy development, roads, and inadequacy of existing regulatory mechanisms. Native prairie is one of the most imperiled habitats worldwide, with loss rates approximating 70 percent in the United States and Canada, and prairie loss is accelerating. There is less specific information available on the wintering grounds, but the data available indicate that large areas of the wintering grounds are being converted from grassland habitat. The 40-year trend in Christmas Bird Count data shows an annual decline of 2.54 percent of this species in Texas. Adequate regulations are not in place at the local, State, or Federal level to adequately minimize the threat of habitat degradation and fragmentation.

While most of the population winters in Mexico, the vast majority of the winter sightings in the U.S. have been in Texas, and the majority of those were on the central and south Texas coastal plain, south of the Brazoria region (USFWS 2014). They prefer native grassland prairie but will use other grasslands if the areas are sufficiently large. They avoid edges between grassland and landscape features that are structurally different than grassland such as wetlands, cropland, trees and shrubs, and burned or mowed areas. The shape of the patch is also important; grassland areas with a low edge-to-area ratio provide optimal habitat and thus, a linear patch may not be suitable.

No native prairie has been identified in either the Brazoria or Sabine project areas, but some pasture and other grassland is present. Many of these areas are regularly grazed, mowed, or cultivated. The landscape is highly fragmented with small patches of grassland, forest, scrub-shrub, and coastal marsh distributed across the landscape in both areas. No large grassland areas have been identified that would be attractive to this species, which appears to prefer large patch sizes and specific grassland structure.

2.8.2 Freshwater Mussels

2.8.2.1 Smooth Pimpleback Clam

USFWS added the smooth pimpleback clam (*Quadrula houstonensis*) to its candidate species list in 2011 (76 FR 62166, October 6, 2011) and subsequently has confirmed that status in annual reviews. The smooth pimpleback is a nearly round, thick-shelled freshwater mussel that generally reaches at least 2.6 inches in length. It has been found in mixed mud, sand, and fine gravel substrate in medium-to-large rivers and some reservoirs throughout its range. Adult freshwater mussels are filter-feeders, siphoning algae, bacteria, detritus, microscopic animals, and dissolved organic matter. Mussels tend to grow relatively rapidly for the first few years, and then slow appreciably at sexual maturity, when energy presumably is being diverted from growth to reproductive activities. They are extremely long lived, living from two to several decades.

The smooth pimpleback is native to the Brazos and Colorado River basins of central Texas. Within the Brazos River basin, the species historically occurred throughout the length of the mainstem of the Brazos River, as well as in the Clear Fork Brazos, Leon, Navasota, Little Brazos, San Gabriel, Lampasas, and Little Rivers and Yegua Creek (USFWS 2014). The reduction in numbers and range of the smooth pimpleback is primarily the result of the long-lasting effects of habitat alterations caused by impoundments, sedimentation, dewatering, sand and gravel mining, and chemical contaminants. Impoundments occur throughout the range of the species and have far-reaching effects on riverine habitat, both upstream and downstream of the dams. The Colorado and Brazos River systems have experienced a large amount of sedimentation from agriculture, instream mining, and urban development. Sand and gravel mining affects smooth pimpleback habitat by increasing sedimentation and channel instability downstream and by causing headcutting upstream. Chemical contaminants exceeding the standards developed to support aquatic life have been documented throughout the range of the species and may represent a significant threat to the smooth pimpleback. However, the large populations in the San Saba River, lower Brazos River, Navasota River, Leon River, and Yegua Creek indicate that some smooth pimpleback populations are not currently as vulnerable to habitat loss as others. Climate change could also affect the smooth pimpleback through the combined effects of global and regional climate change, along with the increased probability of long-term drought.

Recent surveys suggest a greater abundance and distribution of the smooth pimpleback in the central and lower Brazos River drainage than was indicated by collections from the past 40 years. The smooth pimpleback historically occurred in the Brazos River system from Haskell and Throckmorton Counties downstream to Austin and Waller Counties, as well as in numerous tributaries. Although not extirpated from the middle Brazos River, the smooth pimpleback occurs only in low numbers. Smooth pimpleback are more numerous in the lower mainstem Brazos River; however, far fewer have been reported from farther downstream in Austin and Fort Bend Counties. None are known to have occurred in Brazoria County.

2.8.2.2 Texas Fawnsfoot Clam

USFWS added the Texas fawnsfoot clam (*Truncilla macrodon*) to its candidate species list in 2011 (76 FR 62166, October 6, 2011) and subsequently has confirmed that status in annual reviews. The Texas fawnsfoot is a small, relatively thin-shelled freshwater mussel that can reach 2.4 inches in length but is usually much smaller. Since Texas fawnsfoot were not found alive for many years, very little information is available about its habitat preferences. In the past only Texas fawnsfoot shells and recently dead individuals were occasionally found along rivers following drought-related dewatering or bank deposition after high floods. These shells and recently dead individuals indicated that the Texas fawnsfoot occurs in flowing water, as it was

never found in ponds, lakes, or reservoirs, suggesting that it is intolerant of deep, low-velocity waters created by artificial impoundments. The recently discovered live population in the Brazos River indicates that the species occurs in rivers with soft, sandy sediment with moderate water flow (USFWS 2014).

The Texas fawnsfoot is endemic to the Brazos and Colorado Rivers of central Texas. Until recently, relatively few Texas fawnsfoot have been documented since the species was first described in 1859, and few live individuals have been found in recent decades. It was not until 2008 when the first live population of Texas fawnsfoot was discovered in the Brazos River near its confluence with the Navasota River. In the Brazos River system, the Texas fawnsfoot persists in the mainstem Brazos River, Clear Fork Brazos River, Navasota River, and possibly in Deer Creek. It has also been found further downstream in Austin, Waller and Fort Bend Counties, the latter being the furthest downstream collection in the mainstem of the Brazos River on record in recent years. There is no record at this time of it being found in Brazoria County.

3 EFFECTS ON LISTED SPECIES

3.1 PIPING PLOVER

On their wintering grounds, piping plovers use beaches, mudflats, sandflats, dunes, and may also use sandflats in existing USACE PAs near the coast. There is one placement area located inside of the existing Freeport HFP levee system where temporary sandflats could be attractive to piping plover. However, the Freeport CSRM project construction right-of-way does not affect this PA. None of the other landscape features attractive to plovers are present in or adjacent to the construction right-of-way. The general area is heavily industrialized with substantial disturbances from ship and roadway traffic, and plant and port activities. The Port Arthur and Orange-Jefferson CSRM project areas are located well inland from the coast and do not contain piping plover habitat, making it highly unlikely that piping plovers would occur in the area.

Construction activities associated with the TSP in both the Sabine and Brazoria regions would not occur in the placement areas; they would be confined to the levee system right-of-way. It is unlikely that piping plovers would frequent the TSP project areas because of the lack of acceptable habitat and extensive urban and industrial disturbances. Therefore, USACE has determined that the TSP would have no effect on piping plovers.

3.2 RED KNOT

The red knot winters along the Texas coast, foraging on beaches, oyster reefs, and exposed bay bottoms and roosting on high sand flats, and reefs, utilizing the same areas as piping plovers. The potential for occurrence in the TSP project areas is the same as that of the piping plover. It is unlikely that red knots would frequent the TSP project areas because of the lack of acceptable habitat and extensive urban and industrial disturbances. Therefore, USACE has determined that the TSP would have no effect on red knots.

3.3 WHOOPING CRANE

Although their primary migration route is to the west, occasionally whooping cranes may pass through the Brazoria region on the way to and from their principal winter habitat in and around the Aransas National Wildlife Refuge in the Texas coastal bend region. They may rest along the way in brackish bays, marshes, and salt flats, feeding primarily on blue crabs, clams, snails and insects. The Freeport CSRM project area is located in upland areas and the levee system surrounds extensive urban and industrial development. The type of coastal marsh system these large birds prefer is not present in the area that would be affected by construction of the TSP.

The migratory route does not extend to the Sabine region. Therefore, USACE has determined that the TSP would have no effect on whooping cranes.

3.4 WEST INDIAN MANATEE

Sightings of West Indian manatees are very rare along the Texas coast. The construction right-of-way in the Sabine and Brazoria regions would cross only three bodies of water where manatees could potentially occur, and these are the locations where surge gates are proposed. The Orange-Jefferson CSRM Plan includes the construction of tidal surge gates on Cow and Adams Bayous, and the Freeport CSRM plan includes construction of a surge gate on the Dow Barge Canal. All other construction right-of-way water crossings are shallow upland ponds or streams to which manatees would not have access. The Dow barge canal does not contain preferred habitat such as seagrass and manatees would have to traverse a heavily utilized, deepwater channel to gain access to the area. To reach the locations of the Cow and Adams Bayou structures, manatees would have to travel more than 30 miles from the Gulf through a pass with high water velocities, and waters without seagrass and preferred habitat. Given these considerations, USACE has determined that the manatee is not likely to occur in the project areas, and that the TSP would have no effect on the West Indian manatee.

3.5 WHALES

Whales occur in offshore waters and none of these species are likely to wander into shallow coastal estuaries. Therefore, USACE has determined that the Sabine and Brazoria TSPs would have no effect on these species.

3.6 SEA TURTLES

The leatherback is the not likely to occur in the project areas due to its preference for deep marine waters. No documented records of hawksbills exist from Brazoria, Jefferson or Orange counties. Green, Kemp's ridley, and loggerhead sea turtles occur in and around the Entrance Channel of the Freeport Harbor Navigation Channel and the Entrance Channel of the Sabine-Neches Waterway, but they are unlikely to occur in the inland channels of either system. They are not likely to occur near the construction rights-of-way for the Freeport, Port Arthur and Orange-Jefferson CSRM plans. Furthermore, project construction will not utilize hopper dredges, which are known to adversely impact sea turtles. Inasmuch as it would be unlikely that sea turtles would visit the area, USACE has determined that the TSP would have no effect on sea turtles.

3.7 CORALS

Corals occur in offshore waters; none of these species occur in the Sabine and Brazoria regions. Therefore, USACE has determined that the TSP would have no effect on these species.

3.8 CANDIDATE SPECIES

3.8.1 Sprague's Pipit

No native prairie, preferred habitat for Sprague's pipits, has been identified in either the Brazoria or Sabine regions, but some pasture and other grassland is present. Many of these areas are regularly grazed, mowed or cultivated. The landscape is highly fragmented with small patches of grassland, forest, scrub-shrub and coastal marsh distributed across the landscape in both regions. No large grassland areas have been identified that might be utilized by this species, which appears to prefer large patch sizes and specific grassland structure. None are known to have utilized the study areas. Therefore, USACE has determined that the TSP would have no effect on wintering Sprague's pipits

3.8.2 Freshwater Mussels

Although they are present farther upstream in the main stem of the Brazos River, neither the smooth pimpleback nor Texas fawnfoot clam has been reported anywhere near the TSP construction area in Brazoria County. The range of these mussels does not extend to the Sabine region. Therefore, USACE has determined that the TSP would have no effect on these species.

4 SUMMARY OF EFFECT

This Biological Assessment has determined that the TSP of the Sabine-Pass to Galveston Bay, Texas DIFR-EIS (specifically the Orange-Jefferson, Port Arthur and Vicinity, and Freeport and Vicinity CSRM Plans) would have no effect on the following listed animal species – piping plover, red knot, whooping crane, the West Indian manatee, four whale species (fin, humpback, sei, and sperm), four sea turtle species (green, Kemp’s ridley, loggerhead and hawksbill), and four coral species (lobed star, mountainous star, boulder star and elkhorn). USACE has also determined that the TSP would have no effect on the following Candidate species: Sprague’s pipit, and two freshwater mussel species (smooth pimpleback and Texas fawnsfoot).

5 LITERATURE CITED

- American Ornithologists' Union (AOU). 1998. Check-list of North American birds. Seventh edition.
- Armstrong, N., M. Brody, and N. Funicelli. 1987. The ecology of open-bay bottoms of Texas: a community profile. U.S. Department of the Interior Fish and Wildlife Service. Biological Report 85(7.12).
- Balazs, G. 1980. Synopsis of biological data on the green turtle in the Hawaiian Islands. NOAA Technical Memorandum. NMFS-SWFC-7.
- Bartlett, R.D., and P.P Bartlett. 1999. A field guide to Texas reptiles and amphibians. Gulf Publishing Company. Houston.
- Blakenship, R. 2005. Texas Parks and Wildlife Department, Coastal Fisheries Division. Personal communication to Erik Huebner, PBS&J, 12 May.
- Campbell, L. 1995. Endangered and threatened animals of Texas, their life history and management. Texas Parks and Wildlife Department, Resource Protection Division, Endangered Resources Branch, Austin.
- Dixon, J.R. 2000. Amphibians and reptiles of Texas. Second edition. Texas A&M University Press, College Station.
- Eckert, S.A. 1992. Bound for deepwater. *Natural History*, March 1992, pp. 28–35.
- Ernst, C.H., and R.W. Barbour. 1972. *Turtles of the United States*. University of Kentucky Press, Lexington.
- Gould, F.W., G.O. Hoffman, and C.A. Rechenthin. 1960. *Vegetational Areas of Texas*. Texas A&M University, Texas Agricultural Experiment Station Leaflet No. 492.
- Hirth, H.F. 1997. Synopsis of the biological data on the green turtle *Chelonia mydas* (Linnaeus 1758). Biological Report 97 (1). U.S. Fish and Wildlife Service, Washington, D.C.
- Iverson, J.B. 1986. A checklist with distribution maps of the turtles of the world. Paust Printing, Richmond, Indiana.

- Leary, T. 1957. A schooling of leatherback turtles, *Dermochelys coriacea coriacea*, on the Texas coast. *Copeia* 3:232.
- Mortimer, J.A. 1982. Feeding ecology of sea turtles. In: *Biology and conservation of sea Turtles* (K. Bjorndal, ed.), 103–109. Smithsonian Institution Press, Washington, D.C.
- National Fish and Wildlife Laboratory (NFWL). 1980. Selected vertebrate endangered species of the seacoast of the United States. U.S. Fish and Wildlife Service, Biological Services Program, Washington, D.C. FWS/OBS-80/01.
- NMFS (National Marine Fisheries Service) .1979. Designated Critical Habitat; Determination of Critical Habitat for the Leatherback Sea Turtle (44 FR 17710, March 23, 1979).
- _____.1998. Designated Critical Habitat; Green and Hawksbill Sea Turtles (63 FR 46693, September 2, 1998).
- _____. 2012. Management Report for 82 Corals Status Review under the Endangered Species Act: Existing Regulatory Mechanisms and Conservation Efforts. Pacific Islands Regional Office.
- _____. 2013. Office of Protected Species – Green Turtle (*Chelonia mydas*). <http://www.nmfs.noaa.gov/pr/species/turtles/green.htm> (accessed June 6, 2013).
- _____. 2013. Office of Protected Species – Kemp’s Ridley Turtle (*Lepidochelys kempii*). <http://www.nmfs.noaa.gov/pr/species/turtles/kempstridley.htm> (accessed June 6, 2013).
- _____. 2013. Office of Protected Species – Loggerhead Turtle (*Caretta caretta*). <http://www.nmfs.noaa.gov/pr/species/turtles/loggerhead.htm> (accessed June 6, 2013).
- _____. 2013. Office of Protected Species – Hawksbill Turtle (*Eretmochelys imbricata*). <http://www.nmfs.noaa.gov/pr/species/turtles/hawksbill.htm> (accessed June 6, 2013).
- _____. 2013. Office of Protected Species – Leatherback Turtle (*Dermochelys coriacea*). <http://www.nmfs.noaa.gov/pr/species/turtles/leatherback.htm> (accessed June 6, 2013).
- _____. 2013f. Office of Protected Species – Threats to Marine Turtles. <http://www.nmfs.noaa.gov/pr/species/turtles/threats.htm> (accessed June 6, 2013).

_____.2014. Endangered and Threatened Wildlife and Plants: Final Listing Determinations on Proposal to List 66 Reef Building Coral Species and to Reclassify Elkhorn and Staghorn Corals (70 FR 53852).

_____.2015. Texas' Threatened and Endangered Species. NOAA Fisheries, Southeast Region, Protected Resources Division.
http://sero.nmfs.noaa.gov/protected_resources/section_7/threatened_endangered/Documents/texas.pdf (accessed May 21, 2015).

National Marine Fisheries Service and U.S. Fish and Wildlife Service (NMFS and USFWS).
1991. Recovery plan for U.S. population of Atlantic green turtle. National Marine Fisheries Service, Washington, D.C.

_____.1991. Recovery plan for U.S. population of loggerhead turtle. National Marine Fisheries Service, Washington, D.C.

_____.1992. Recovery plan for leatherback turtles in the U.S. Caribbean, Atlantic, and Gulf of Mexico. National Marine Fisheries Service, Washington, D.C.

_____.1998. Designated Critical Habitat; Green and Hawksbill Sea Turtles (63 FR 46693, September 2, 1998).

_____. 2003. Endangered Species Act, Section 7 Consultation, Biological Opinion for Dredging of Gulf of Mexico Navigation Channels and Sand Mining (Borrow) Areas Using Hopper Dredges by COE Galveston. Issued November 19, 2003.

_____. 2011. Endangered and Threatened Species; Determination of Nine Distinct Population Segments of Loggerhead Sea Turtles as Endangered or Threatened, (76 FR 58858, September 22, 2011).

National Park Service (NPS). 2012. Sea Turtle Nesting Season 2012, Padre Island National Seashore, Texas. <http://www.nps.gov/pais/naturescience/nesting2012.htm> (accessed on June 6, 2013).

_____. 2013. The Kemp's Ridley Sea Turtle.
<http://www.nps.gov/pais/naturescience/kridley.htm> (accessed June 6, 2013).

-
- _____. 2013. The Loggerhead Sea Turtle. <http://www.nps.gov/pais/naturescience/loggerhead.htm>. (accessed June 6, 2013).
- _____. 2013. The Hawksbill Sea Turtle. <http://www.nps.gov/pais/naturescience/hawksbill.htm> (accessed June 6, 2013).
- _____. 2013. The Leatherback Sea Turtle. <http://www.nps.gov/pais/naturescience/leatherback.htm> (accessed June 6, 2013).
- National Research Council (NRC). 1990. Decline of the sea turtles: causes and prevention. National Academy Press, Washington, D.C.
- NatureServe. 2013. *Trichechus manatus* (West Indian Manatee) in NatureServe Explorer: An online encyclopedia of life. Accessed on the internet on June 4, 2013. <http://www.natureserve.org/explorer/servlet/NatureServe?searchName=Trichechus+manatus+>
- _____. 2013. *Calidris canutus rufa* (Red Knot – rufa subspecies) in NatureServe Explorer: An online encyclopedia of life. Accessed on the internet on June 4, 2013. <http://www.natureserve.org/explorer/servlet/NatureServe?searchName=Calidris+canutus+rufa>
- _____. 2013. *Dermochelys coriacea* (Leatherback) in NatureServe Explorer: An online encyclopedia of life. Accessed on the internet on June 4, 2013. <http://www.natureserve.org/explorer/servlet/NatureServe?searchName=Dermochelys+coriacea>
- _____. 2015. *Grus Americana* (Whooping Crane) in NatureServe Explorer: An online encyclopedia of life. <http://explorer.natureserve.org/servlet/NatureServe?searchName=Grus+americana> (accessed on May 27, 2015).
- Pritchard, P.C.H. 1971. The leatherback or leathery turtle *Dermochelys coriacea*. IUCN Monograph No. 1. International Union for Conservation of Nature and Natural Resources, Morges, Switzerland.
- Pritchard, P.C.H. and R. Marquez. 1973. Kemp's ridley turtle or Atlantic ridley, *Lepidochelys kempi*. IUCN Monograph 2, Morges, Switzerland.
-

- Rebel, T.P. 1974. Sea turtles and the turtle industry of the West Indies, Florida, and the Gulf of Mexico. Rev. Ed. University of Miami Press, Coral Gables, Florida.
- Ross, J.P. 1982. Historical decline of loggerhead, ridley, and leatherback sea turtles. In: Biology and conservation of sea turtles (K. Bjorndal, ed.), 189–195. Smithsonian Institution Press, Washington, D.C.
- Schmidley, D. J. 2004. The mammals of Texas, revised edition. University of Texas Press, Austin.
- Schwartz, F. 1976. Status of sea turtles, Cheloniidae and Dermochelidae, in North Carolina. Abstr. in Proceedings and abstracts from the 73rd meeting of the North Carolina Academy of Science, Inc., April 2–3, 1976, at the Univ. N. Carolina, Wilmington, N. Carolina. J. Elisha Mitchell Sci. Soc. 92(2):76–77.
- Sea Turtle, Inc. 2008. <http://www.seaturtleinc.com/> (accessed February 11, 2008).
- Sea Turtle Stranding and Salvage Network (STSSN). 2013. <http://www.sefsc.noaa.gov/STSSN/STSSNReportDriver.jsp> (accessed June 6, 2013).
- Shaver, D.J. 1991. Feeding ecology of wild and head-started Kemp’s ridley sea turtles in south Texas waters. *Journal of Herpetology* 25(3):327–334.
- Shaver, D.J. and A. Amos. 1988. Sea Turtle Nesting on Texas Beaches in 1987. *Marine Turtle Newsletter* 42:7-9
- Spotila, J.R., A.E. Dunham, A.J. Leslie, A.C. Steyermark, P.T. Plotkin, and F.V. Paladino. 1996. Worldwide population decline of *Dermochelys coriacea*: are leatherback turtles going extinct? *Chelonian Conservation and Biology* 2(2):209–222.
- Stutzenbaker, C.D., and M.W.Weller. 1989. “The Texas Coast” in *Habitat Management for Migrating and Wintering Waterfowl in North America*, L.M. Smith, R. Pederson and R. Kaminski (eds). Texas Tech University Press, Lubbock.
- Texas Parks and Wildlife Department (TPWD). 2013. Texas Gulf Ecological Management Sites (GEMS). <http://www.tpwd.state.tx.us/landwater/water/conservation/txgems/index.phtml> (accessed on June 30, 2013).

- _____. 2013. J.D. Murphree Wildlife Management Area.
http://www.tpwd.state.tx.us/huntwild/hunt/wma/find_a_wma/list/?id=40 (accessed on June 30, 2013).
- _____. 2015. Lower Neches Wildlife Management Area.
https://tpwd.texas.gov/huntwild/hunt/wma/find_a_wma/list/?id=58 (accessed on January 3, 2015)
- _____. 2015. Tony Houseman Wildlife Management Area.
https://tpwd.texas.gov/huntwild/hunt/wma/find_a_wma/list/?id=38 (accessed on January 3, 2015)
- U.S. Army Corps of Engineers (USACE)
- _____. 1998. Environmental assessment for a change in location of the Neches River and tributaries, saltwater barrier at Beaumont, Texas. U.S. Army Engineer District, Galveston, Texas.
- _____. 2013. Sea Turtle Data Warehouse.
<http://el.erdc.usace.army.mil/seaturtles/list.cfm?Code=Project&Step=2&Type=SWG>
(accessed June 6, 2013).
- _____. 2015. Analysis of Cow and Adams Bayous in Orange County, Texas using Desktop Off-Channel Wetland Salinity Mitigation Model (DOWSMM) by B. Gunkel and G. Brown. ERDC-CHL, Vicksburg.
- U.S. Fish and Wildlife Service (USFWS). 1967. Native Fish and Wildlife; Endangered Species (32 FR 4001, March 11, 1967).
- _____. 1970. Conservation of Endangered Species and Other Fish or Wildlife. (35 FR 84952, June 2, 1970).
- _____. 1978. Endangered and Threatened Wildlife and Plants; Listing and Protecting Loggerhead Sea Turtles as “Threatened Species” and Populations of Green and Olive Ridley Sea Turtles as Threatened Species or “Endangered Species.” (43 FR 32808, July 28, 1978).
- _____. 1978. Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Leatherback Sea Turtle (43 FR 43688, September 26, 1978).

- _____. 1981 . Endangered species assessments and surveys in Hidalgo and Willacy counties, Texas. Final report to USACE, Galveston by USFWS, Denver Wildlife Research Center.
- _____. 1985. Determination of Endangered and Threatened Status for Piping Plover; 50 FR 50726 (December 11, 1985).
- _____. 1995. Threatened and Endangered Species of Texas. USFWS, Austin.
- _____. 2001. Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for Wintering Piping Plovers, 66 FR 36038 (July 10, 2001).
- _____. 2001. Florida manatee (*Trichechus manatus latirostris*), third revision. USFWS, Atlanta.
- _____. 2008. Texas Chenier Plain Refuge Complex Final Environmental Impact Statement, Comprehensive Conservation Plan, and Land Protection Plan. Prepared by the Division of Planning, National Wildlife Refuge System, Southwest Region, Albuquerque.
- _____. 2008. Confirmed Sea Turtle Nests on South Padre Island and Boca Chica Beaches, Texas, 1999-2007. Unpublished Data.
- _____. 2008. Endangered and Threatened Wildlife and Plants; Review of Native Species That Are Candidates for Listing as Endangered or Threatened; Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions, Notice of Review, 73 FR 75176 (December 10, 2008).
- _____. 2009. Piping Plover (*Charadrius melodus*): Spotlight Species Action Plan for the threatened Atlantic Coast and Northern Great Plains populations. Prepared by Endangered Species Program, Northeast Region.
- _____. 2009. Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Wintering Population of the Piping Plover (*Charadrius melodus*), 74 FR 23476 (May 19, 2009).
- _____. 2009. Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List Sprague's Pipit as Threatened T or Endangered, 74 FR 63337, December 3, 2009.

- _____. 2010. Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List Sprague's Pipit as Endangered or Threatened Throughout Its Range, 75 FR 56028 (September 15, 2010).
- _____. 2011. U.S. Fish and Wildlife Service Species Assessment and Listing Priority Assignment Form "*Calidris canutus ssp. rufa*". Accessed on the internet (6/4/2013) http://ecos.fws.gov/docs/candidate/assessments/2012/r5/BODM_V01.pdf
- _____. 2011. Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List Texas Fatmucket, Golden Orb, Smooth Pimpleback, Texas Pimpleback and Texas Fawnsfoot as Threatened or Endangered; Proposed Rule (76 FR 62166, October 6, 2011).
- _____. 2011. Endangered and Threatened Wildlife and Plants; 90-Day Finding and 12-Month Determination on a Petition to Revise Critical Habitat for the Leatherback Sea Turtle (76 FR 47133, August 4, 2011).
- _____. 2012. Endangered and Threatened Wildlife and Plants; Review of Native Species That Are Candidates for Listing as Endangered or Threatened; Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions, Notice of Review, 77 FR 69994 (November 12, 2012).
- _____. 2012. Annual Report of Lands Under Control of the U.S. Fish and Wildlife Service. http://www.fws.gov/refuges/realty/archives/pdf/2012_Annual_Report_of_LandsDataTable11162012.pdf (accessed June 30, 2013).
- _____. 2013. National Wildlife Refuge System. <http://www.fws.gov/southwest/refuges/statemaps/texas.html> (accessed on June 30, 2013).
- _____. 2013. Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Northwest Atlantic Ocean Distinct Population Segments of the Loggerhead Sea Turtle (*Caretta caretta*); Proposed Rule (78 FR 17999, March 25, 2013).
- _____. 2014. Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Rufa Red Knot. Final Rule (79 FR 73706, December 11, 2014).

- _____. 2014. U.S. Fish and Wildlife Service Species Assessment and Listing Priority Assignment Form (*Anthus spragueii*, Sprague's Pipit). Prepared by Region 6 (Mountain-Prairie Region), dated 8/29/2014. Accessed on May 22, 2015 at http://ecos.fws.gov/docs/candidate/assessments/2014/r6/BOGD_V01.pdf
- _____. 2014. U.S. Fish and Wildlife Service Species Assessment and Listing Priority Assignment Form (*Quadrula houstonensis*, Smooth Pimpleback). Prepared by Region 6 (Southwest Region), dated 5/30/2014. Accessed on May 22, 2015 at http://ecos.fws.gov/docs/candidate/assessments/2014/r2/F04G_I01.pdf
- _____. 2014. U.S. Fish and Wildlife Service Species Assessment and Listing Priority Assignment Form (*Truncilla macrodon*, Texas Fawnsfoot). Prepared by Region 6 (Southwest Region), dated 5/30/2014. Accessed on May 22, 2015 at http://ecos.fws.gov/docs/candidate/assessments/2014/r2/F04E_I01.pdf
- _____. 2015. Brazoria National Wildlife Refuge. <http://www.fws.gov/refuge/brazoria/> (accessed on January 3, 2015).
- _____. 2015. San Bernard National Wildlife Refuge. http://www.fws.gov/refuge/san_bernard/ (accessed on January 4, 2015).
- _____. 2015. Personal communication with USFWS on manatee in Trinity Bay.
- U.S. Fish and Wildlife Service and National Marine Fisheries Service (USFWS and NMFS). 1992. Recovery plan for the Kemp's ridley sea turtle (*Lepidochelys kempii*). National Marine Fisheries Service, St. Petersburg, Florida.
- Witzell, W.N. 1983. Synopsis of biological data on the hawksbill turtle *Eretmochelys imbricata* (Linnaeus, 1766). FAO Fisheries Synopsis No. 137. FIR/S137, SAST – Hawksbill Turtle – 5.31 (07) 017.01. Food and Agriculture Organization (FAO) of the United Nations, Rome, Italy.

APPENDIX A
NMFS AND USFWS SPECIES LISTS



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Texas Coastal Ecological Services Field Office

17629 EL CAMINO REAL, SUITE 211

HOUSTON, TX 77058

PHONE: (281)286-8282 FAX: (281)488-5882

URL: www.fws.gov/southwest/es/TexasCoastal/;

www.fws.gov/southwest/es/ES_Lists_Main2.html

Consultation Code: 02ETTX0-2015-SLI-0103

May 21, 2015

Event Code: 02ETTX0-2015-E-00459

Project Name: Sabine Pass to Galveston Bay - Freeport

Subject: Updated list of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The U.S. Fish and Wildlife Service (Service) field offices in Clear Lake, Tx, and Corpus Christi, Tx, have combined administratively to form the Texas Coastal Ecological Services Field Office. A map of the Texas Coastal Ecological Services Field Office area of responsibility can be found at: <http://www.fws.gov/southwest/es/TexasCoastal/Map.html>. All project related correspondence should be sent to the field office responsible for the area in which your project occurs. For projects located in southeast Texas please write to: Field Supervisor; U.S. Fish and Wildlife Service; 17629 El Camino Real Ste. 211; Houston, Texas 77058. For projects located in southern Texas please write to: Field Supervisor; U.S. Fish and Wildlife Service; 6300 Ocean Drive, Unit 5837, Corpus Christi, Texas 78412.

The enclosed species list identifies federally threatened, endangered, and proposed to be listed species; designated critical habitat; and candidate species that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list is provided by the Service under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.).

New information from updated surveys, changes in the abundance and distribution of species, changes in habitat conditions, or other factors could change the list. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. The Service recommends that verification be completed by visiting the ECOS-IPaC website <http://ecos.fws.gov/ipac/> at regular intervals during project planning and implementation for updates to species list and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

Candidate species have no protection under the Act but are included for consideration because they could be listed prior to the completion of your project. The other species information should help you determine if suitable habitat for these listed species exists in any of the proposed project areas or if project activities may affect species on-site, off-site, and/or result in "take" of a federally listed species.

"Take" is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. In addition to the direct take of an individual animal, habitat destruction or modification can be considered take, regardless of whether it has been formally designated as critical habitat, if the activity results in the death or injury of wildlife by removing essential habitat components or significantly alters essential behavior patterns, including breeding, feeding, or sheltering.

Section 7

Section 7 of the Act requires that all Federal agencies consult with the Service to ensure that actions authorized, funded or carried out by such agencies do not jeopardize the continued existence of any listed threatened or endangered species or adversely modify or destroy critical habitat of such species. It is the responsibility of the Federal action agency to determine if the proposed project may affect threatened or endangered species. If a "may affect" determination is made, the Federal agency shall initiate the section 7 consultation process by writing to the office that has responsibility for the area in which your project occurs.

Is not likely to adversely affect – the project may affect listed species and/or critical habitat; however, the effects are expected to be discountable, insignificant, or completely beneficial. Certain avoidance and minimization measures may need to be implemented in order to reach this level of effects. The Federal agency or the designated non-Federal representative should seek written concurrence from the Service that adverse effects have been eliminated. Be sure to include all of the information and documentation used to reach your decision with your request for concurrence. The Service must have this documentation before issuing a concurrence.

Is likely to adversely affect – adverse effects to listed species may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not discountable, insignificant, or beneficial. If the overall effect of the proposed action is beneficial to the listed species but also is likely to cause some adverse effects to individuals of that species, then the proposed action "is likely to adversely affect" the listed species. An "is likely to adversely affect" determination requires the Federal action agency to initiate formal section 7 consultation with this office.

No effect – the proposed action will not affect federally listed species or critical habitat (i.e., suitable habitat for the species occurring in the project county is not present in or adjacent to the action area). No further coordination or contact with the Service is necessary. However, if the project changes or additional information on the distribution of listed or proposed species becomes available, the project should be reanalyzed for effects not previously considered.

Regardless of your determination, the Service recommends that you maintain a complete record of the evaluation, including steps leading to the determination of affect, the qualified personnel

conducting the evaluation, habitat conditions, site photographs, and any other related articles.

Please be advised that while a Federal agency may designate a non-Federal representative to conduct informal consultations with the Service, assess project effects, or prepare a biological assessment, the Federal agency must notify the Service in writing of such a designation. The Federal agency shall also independently review and evaluate the scope and contents of a biological assessment prepared by their designated non-Federal representative before that document is submitted to the Service.

The Service's Consultation Handbook is available online to assist you with further information on definitions, process, and fulfilling Act requirements for your projects at:

http://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf

Section 10

If there is no federal involvement and the proposed project is being funded or carried out by private interests and/or non-federal government agencies, and the project as proposed may affect listed species, a section 10(a)(1)(B) permit is recommended. The Habitat Conservation Planning Handbook is available at

<http://www.fws.gov/midwest/endangered/permits/hcp/hcphandbook.html>.

Service Response

Please note that the Service strives to respond to requests for project review within 30 days of receipt, however, this time period is not mandated by regulation. Responses may be delayed due to workload and lack of staff. Failure to meet the 30-day timeframe does not constitute a concurrence from the Service that the proposed project will not have impacts to threatened and endangered species.

Candidate Species

Several species of freshwater mussels occur in Texas and five are candidates for listing under the ESA. The Service is also reviewing the status of six other species for potential listing under the ESA. One of the main contributors to mussel die offs is sedimentation, which smothers and suffocates mussels. To reduce sedimentation within rivers, streams, and tributaries crossed by a project, the Service recommends that that you implement the best management practices found at: <http://www.fws.gov/southwest/es/TexasCoastal/FreshwaterMussels.html>.

Candidate Conservation Agreements (CCAs) or Candidate Conservation Agreements with Assurances (CCAAs) are voluntary agreements between the Service and public or private entities to implement conservation measures to address threats to candidate species. Implementing conservation efforts before species are listed increases the likelihood that simpler, flexible, and more cost-effective conservation options are available. A CCAA can provide participants with assurances that if they engage in conservation actions, they will not be required to implement additional conservation measures beyond those in the agreement. For additional information on CCAs/CCAAs please visit the Service's website at <http://www.fws.gov/endangered/what-we-do/cca.html>.

Migratory Birds

The Migratory Bird Treaty Act (MBTA) implements various treaties and conventions for the protection of migratory birds. Under the MBTA, taking, killing, or possessing migratory birds is unlawful. Many may nest in trees, brush areas or other suitable habitat. The Service recommends activities requiring vegetation removal or disturbance avoid the peak nesting period of March through August to avoid destruction of individuals or eggs. If project activities must be conducted during this time, we recommend surveying for active nests prior to commencing work. A list of migratory birds may be viewed at <http://www.fws.gov/migratorybirds/regulationspolicies/mbta/mbtandx.html>.

The bald eagle (*Haliaeetus leucocephalus*) was delisted under the Act on August 9, 2007. Both the bald eagle and the golden eagle (*Aquila chrysaetos*) are still protected under the MBTA and BGEPA. The BGEPA affords both eagles protection in addition to that provided by the MBTA, in particular, by making it unlawful to "disturb" eagles. Under the BGEPA, the Service may issue limited permits to incidentally "take" eagles (e.g., injury, interfering with normal breeding, feeding, or sheltering behavior nest abandonment). For more information on bald and golden eagle management guidelines, we recommend you review information provided at <http://www.fws.gov/midwest/eagle/pdf/NationalBaldEagleManagementGuidelines.pdf>

The construction of overhead power lines creates threats of avian collision and electrocution. The Service recommends the installation of underground rather than overhead power lines whenever possible. For new overhead lines or retrofitting of old lines, we recommend that project developers implement, to the maximum extent practicable, the Avian Power Line Interaction Committee guidelines found at <http://www.aplic.org/>.

Meteorological and communication towers are estimated to kill millions of birds per year. We recommend following the guidance set forth in the Service Interim Guidelines for Recommendations on Communications Tower Siting, Constructions, Operation and Decommissioning, found online at: <http://www.fws.gov/habitatconservation/communicationtowers.html>, to minimize the threat of avian mortality at these towers. Monitoring at these towers would provide insight into the effectiveness of the minimization measures. We request the results of any wildlife mortality monitoring at towers associated with this project.

We request that you provide us with the final location and specifications of your proposed towers, as well as the recommendations implemented. A Tower Site Evaluation Form is also available via the above website; we recommend you complete this form and keep it in your files. If meteorological towers are to be constructed, please forward this completed form to our office.

More information concerning sections 7 and 10 of the Act, migratory birds, candidate species, and landowner tools can be found on our website at: <http://www.fws.gov/southwest/es/TexasCoastal/ProjectReviews.html>.

Wetlands and Wildlife Habitat

Wetlands and riparian zones provide valuable fish and wildlife habitat as well as contribute to

ood control, water quality enhancement, and groundwater recharge. Wetland and riparian vegetation provides food and cover for wildlife, stabilizes banks and decreases soil erosion. These areas are inherently dynamic and very sensitive to changes caused by such activities as overgrazing, logging, major construction, or earth disturbance. Executive Order 11990 asserts that each agency shall provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial value of wetlands in carrying out the agency's responsibilities. Construction activities near riparian zones should be carefully designed to minimize impacts. If vegetation clearing is needed in these riparian areas, they should be re-vegetated with native wetland and riparian vegetation to prevent erosion or loss of habitat. We recommend minimizing the area of soil scarification and initiating incremental re-establishment of herbaceous vegetation at the proposed work sites. Denuded and/or disturbed areas should be re-vegetated with a mixture of native legumes and grasses. Species commonly used for soil stabilization are listed in the Texas Department of Agriculture's (TDA) Native Tree and Plant Directory, available from TDA at P.O. Box 12847, Austin, Texas 78711. The Service also urges taking precautions to ensure sediment loading does not occur to any receiving streams in the proposed project area. To prevent and/or minimize soil erosion and compaction associated with construction activities, avoid any unnecessary clearing of vegetation, and follow established rights-of-way whenever possible. All machinery and petroleum products should be stored outside the oodplain and/or wetland area during construction to prevent possible contamination of water and soils.

Wetlands and riparian areas are high priority fish and wildlife habitat, serving as important sources of food, cover, and shelter for numerous species of resident and migratory wildlife. Waterfowl and other migratory birds use wetlands and riparian corridors as stopover, feeding, and nesting areas. We strongly recommend that the selected project site not impact wetlands and riparian areas, and be located as far as practical from these areas. Migratory birds tend to concentrate in or near wetlands and riparian areas and use these areas as migratory ways or corridors. After every effort has been made to avoid impacting wetlands, you anticipate unavoidable wetland impacts will occur; you should contact the appropriate U.S. Army Corps of Engineers office to determine if a permit is necessary prior to commencement of construction activities.

If your project will involve filling, dredging, or trenching of a wetland or riparian area it may require a Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers (COE). For permitting requirements please contact the U.S. Corps of Engineers, District Engineer, P.O. Box 1229, Galveston, Texas 77553-1229, (409) 766-3002.

Beneficial Landscaping

In accordance with Executive Order 13112 on Invasive Species and the Executive Memorandum on Beneficial Landscaping (42 C.F.R. 26961), where possible, any landscaping associated with project plans should be limited to seeding and replanting with native species. A mixture of grasses and forbs appropriate to address potential erosion problems and long-term cover should be planted when seed is reasonably available. Although Bermuda grass is listed in seed mixtures, this species and other introduced species should be avoided as much as possible. The Service also recommends the use of native trees, shrubs, and herbaceous species that are adaptable, drought tolerant and conserve water.

State Listed Species

The State of Texas protects certain species. Please contact the Texas Parks and Wildlife Department (Endangered Resources Branch), 4200 Smith School Road, Austin, Texas 78744 (telephone 512/389-8021) for information concerning fish, wildlife, and plants of State concern or visit their website at:

http://www.tpwd.state.tx.us/huntwild/wild/wildlife_diversity/texas_rare_species/listed_species/.

If we can be of further assistance, or if you have any questions about these comments, please contact 281/286-8282 if your project is in southeast Texas, or 361/994-9005 if your project is in southern Texas. Please refer to the Service consultation number listed above in any future correspondence regarding this project.

Attachment



United States Department of Interior
Fish and Wildlife Service

Project name: Sabine Pass to Galveston Bay - Freeport

Official Species List

Provided by:

Texas Coastal Ecological Services Field Office

17629 EL CAMINO REAL, SUITE 211

HOUSTON, TX 77058

(281) 286-8282

<http://www.fws.gov/southwest/es/TexasCoastal/>

http://www.fws.gov/southwest/es/ES_Lists_Main2.html

Consultation Code: 02ETTX0-2015-SLI-0103

Event Code: 02ETTX0-2015-E-00459

Project Type: ** OTHER **

Project Name: Sabine Pass to Galveston Bay - Freeport

Project Description: The Sabine Pass to Galveston Bay feasibility study is evaluating coastal storm risk management (CSR) and ecosystem restoration (ER) problems in two separate areas on the upper Texas coast - Orange-NW Jefferson counties and the Freeport area in Brazoria County. This official species list request is for the Freeport area only.

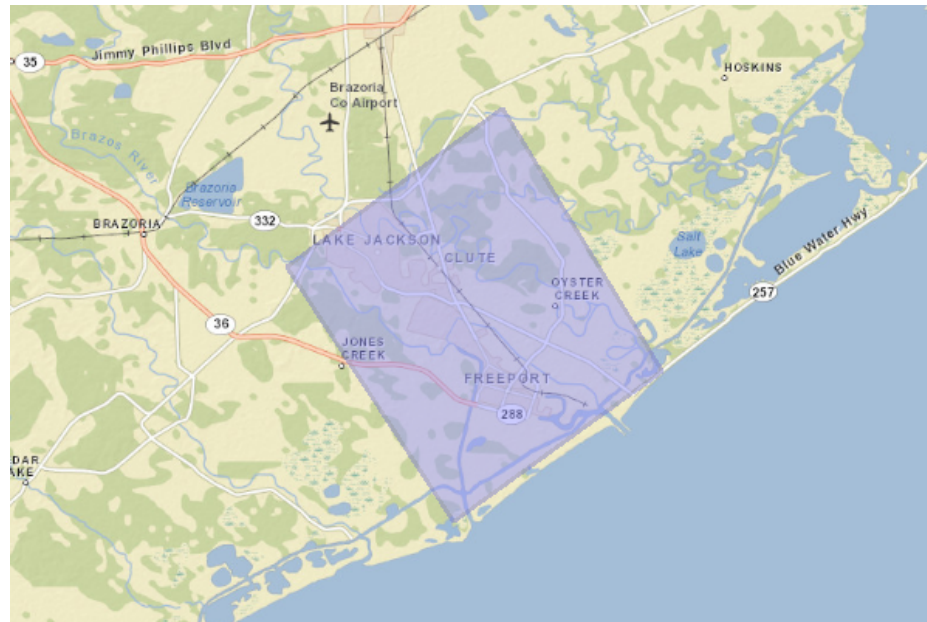
Please Note: The FWS office may have modified the Project Name and/or Project Description, so it may be different from what was submitted in your previous request. If the Consultation Code matches, the FWS considers this to be the same project. Contact the office in the 'Provided by' section of your previous Official Species list if you have any questions or concerns.



United States Department of Interior
Fish and Wildlife Service

Project name: Sabine Pass to Galveston Bay - Freeport

Project Location Map:



Project Coordinates: MULTIPOLYGON (((-95.4867573 29.0253992, -95.3624744 29.1166206, -95.2704639 28.9653712, -95.3906269 28.8788264, -95.4867573 29.0253992)))

Project Counties: Brazoria, TX



United States Department of Interior
Fish and Wildlife Service

Project name: Sabine Pass to Galveston Bay - Freeport

Endangered Species Act Species List

There are a total of 12 threatened, endangered, or candidate species on your species list. Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Critical habitats listed under the **Has Critical Habitat** column may or may not lie within your project area. See the **Critical habitats within your project area** section further below for critical habitat that lies within your project. Please contact the designated FWS office if you have questions.

Birds	Status	Has Critical Habitat	Condition(s)
Piping Plover (<i>Charadrius melodus</i>) Population: except Great Lakes watershed	Threatened	Final designated	
Red Knot (<i>Calidris canutus rufa</i>)	Threatened		
Sprague's Pipit (<i>Anthus spragueii</i>)	Candidate		
Whooping crane (<i>Grus americana</i>) Population: except where EXPN	Endangered	Final designated	
Clams			
Smooth Pimpleback (<i>Quadrula houstonensis</i>)	Candidate		
Texas Fawnsfoot (<i>Truncilla macrodon</i>)	Candidate		
Mammals			
West Indian Manatee (<i>Trichechus manatus</i>) Population: Entire	Endangered	Final designated	
Reptiles			
Green sea turtle (<i>Chelonia mydas</i>)	Threatened	Final designated	



United States Department of Interior
Fish and Wildlife Service

Project name: Sabine Pass to Galveston Bay - Freeport

Population: Except where endangered			
Hawksbill sea turtle (<i>Eretmochelys imbricata</i>) Population: Entire	Endangered	Final designated	
Kemp's Ridley sea turtle (<i>Lepidochelys kempii</i>) Population: Entire	Endangered		
Leatherback sea turtle (<i>Dermochelys coriacea</i>) Population: Entire	Endangered	Final designated	
Loggerhead sea turtle (<i>Caretta caretta</i>) Population: Northwest Atlantic Ocean DPS	Threatened	Final designated	



United States Department of Interior
Fish and Wildlife Service

Project name: Sabine Pass to Galveston Bay - Freeport

Critical habitats that lie within your project area

There are no critical habitats within your project area.



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Texas Coastal Ecological Services Field Office
17629 EL CAMINO REAL, SUITE 211
HOUSTON, TX 77058
PHONE: (281)286-8282 FAX: (281)488-5882
URL: www.fws.gov/southwest/es/TexasCoastal/;
www.fws.gov/southwest/es/ES_Lists_Main2.html

Consultation Code: 02ETTX0-2015-SLI-0415

May 21, 2015

Event Code: 02ETTX0-2015-E-00460

Project Name: Sabine Pass to Galveston Bay

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The U.S. Fish and Wildlife Service (Service) field offices in Clear Lake, Tx, and Corpus Christi, Tx, have combined administratively to form the Texas Coastal Ecological Services Field Office. A map of the Texas Coastal Ecological Services Field Office area of responsibility can be found at: <http://www.fws.gov/southwest/es/TexasCoastal/Map.html>. All project related correspondence should be sent to the field office responsible for the area in which your project occurs. For projects located in southeast Texas please write to: Field Supervisor; U.S. Fish and Wildlife Service; 17629 El Camino Real Ste. 211; Houston, Texas 77058. For projects located in southern Texas please write to: Field Supervisor; U.S. Fish and Wildlife Service; 6300 Ocean Drive, Unit 5837, Corpus Christi, Texas 78412.

The enclosed species list identifies federally threatened, endangered, and proposed to be listed species; designated critical habitat; and candidate species that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list is provided by the Service under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.).

New information from updated surveys, changes in the abundance and distribution of species, changes in habitat conditions, or other factors could change the list. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. The Service recommends that verification be completed by visiting the ECOS-IPaC website <http://ecos.fws.gov/ipac/> at regular intervals during project planning and implementation for updates to species list and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

Candidate species have no protection under the Act but are included for consideration because they could be listed prior to the completion of your project. The other species information should help you determine if suitable habitat for these listed species exists in any of the proposed project areas or if project activities may affect species on-site, off-site, and/or result in "take" of a federally listed species.

"Take" is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. In addition to the direct take of an individual animal, habitat destruction or modification can be considered take, regardless of whether it has been formally designated as critical habitat, if the activity results in the death or injury of wildlife by removing essential habitat components or significantly alters essential behavior patterns, including breeding, feeding, or sheltering.

Section 7

Section 7 of the Act requires that all Federal agencies consult with the Service to ensure that actions authorized, funded or carried out by such agencies do not jeopardize the continued existence of any listed threatened or endangered species or adversely modify or destroy critical habitat of such species. It is the responsibility of the Federal action agency to determine if the proposed project may affect threatened or endangered species. If a "may affect" determination is made, the Federal agency shall initiate the section 7 consultation process by writing to the office that has responsibility for the area in which your project occurs.

Is not likely to adversely affect – the project may affect listed species and/or critical habitat; however, the effects are expected to be discountable, insignificant, or completely beneficial. Certain avoidance and minimization measures may need to be implemented in order to reach this level of effects. The Federal agency or the designated non-Federal representative should seek written concurrence from the Service that adverse effects have been eliminated. Be sure to include all of the information and documentation used to reach your decision with your request for concurrence. The Service must have this documentation before issuing a concurrence.

Is likely to adversely affect – adverse effects to listed species may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not discountable, insignificant, or beneficial. If the overall effect of the proposed action is beneficial to the listed species but also is likely to cause some adverse effects to individuals of that species, then the proposed action "is likely to adversely affect" the listed species. An "is likely to adversely affect" determination requires the Federal action agency to initiate formal section 7 consultation with this office.

No effect – the proposed action will not affect federally listed species or critical habitat (i.e., suitable habitat for the species occurring in the project county is not present in or adjacent to the action area). No further coordination or contact with the Service is necessary. However, if the project changes or additional information on the distribution of listed or proposed species becomes available, the project should be reanalyzed for effects not previously considered.

Regardless of your determination, the Service recommends that you maintain a complete record of the evaluation, including steps leading to the determination of affect, the qualified personnel

conducting the evaluation, habitat conditions, site photographs, and any other related articles.

Please be advised that while a Federal agency may designate a non-Federal representative to conduct informal consultations with the Service, assess project effects, or prepare a biological assessment, the Federal agency must notify the Service in writing of such a designation. The Federal agency shall also independently review and evaluate the scope and contents of a biological assessment prepared by their designated non-Federal representative before that document is submitted to the Service.

The Service's Consultation Handbook is available online to assist you with further information on definitions, process, and fulfilling Act requirements for your projects at:

http://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf

Section 10

If there is no federal involvement and the proposed project is being funded or carried out by private interests and/or non-federal government agencies, and the project as proposed may affect listed species, a section 10(a)(1)(B) permit is recommended. The Habitat Conservation Planning Handbook is available at

<http://www.fws.gov/midwest/endangered/permits/hcp/hcphandbook.html>.

Service Response

Please note that the Service strives to respond to requests for project review within 30 days of receipt, however, this time period is not mandated by regulation. Responses may be delayed due to workload and lack of staff. Failure to meet the 30-day timeframe does not constitute a concurrence from the Service that the proposed project will not have impacts to threatened and endangered species.

Candidate Species

Several species of freshwater mussels occur in Texas and five are candidates for listing under the ESA. The Service is also reviewing the status of six other species for potential listing under the ESA. One of the main contributors to mussel die offs is sedimentation, which smothers and suffocates mussels. To reduce sedimentation within rivers, streams, and tributaries crossed by a project, the Service recommends that that you implement the best management practices found at: <http://www.fws.gov/southwest/es/TexasCoastal/FreshwaterMussels.html>.

Candidate Conservation Agreements (CCAs) or Candidate Conservation Agreements with Assurances (CCAAs) are voluntary agreements between the Service and public or private entities to implement conservation measures to address threats to candidate species. Implementing conservation efforts before species are listed increases the likelihood that simpler, flexible, and more cost-effective conservation options are available. A CCAA can provide participants with assurances that if they engage in conservation actions, they will not be required to implement additional conservation measures beyond those in the agreement. For additional information on CCAs/CCAAs please visit the Service's website at <http://www.fws.gov/endangered/what-we-do/cca.html>.

Migratory Birds

The Migratory Bird Treaty Act (MBTA) implements various treaties and conventions for the protection of migratory birds. Under the MBTA, taking, killing, or possessing migratory birds is unlawful. Many may nest in trees, brush areas or other suitable habitat. The Service recommends activities requiring vegetation removal or disturbance avoid the peak nesting period of March through August to avoid destruction of individuals or eggs. If project activities must be conducted during this time, we recommend surveying for active nests prior to commencing work. A list of migratory birds may be viewed at <http://www.fws.gov/migratorybirds/regulationspolicies/mbta/mbtandx.html>.

The bald eagle (*Haliaeetus leucocephalus*) was delisted under the Act on August 9, 2007. Both the bald eagle and the golden eagle (*Aquila chrysaetos*) are still protected under the MBTA and BGEPA. The BGEPA affords both eagles protection in addition to that provided by the MBTA, in particular, by making it unlawful to "disturb" eagles. Under the BGEPA, the Service may issue limited permits to incidentally "take" eagles (e.g., injury, interfering with normal breeding, feeding, or sheltering behavior nest abandonment). For more information on bald and golden eagle management guidelines, we recommend you review information provided at <http://www.fws.gov/midwest/eagle/pdf/NationalBaldEagleManagementGuidelines.pdf>

The construction of overhead power lines creates threats of avian collision and electrocution. The Service recommends the installation of underground rather than overhead power lines whenever possible. For new overhead lines or retrofitting of old lines, we recommend that project developers implement, to the maximum extent practicable, the Avian Power Line Interaction Committee guidelines found at <http://www.aplic.org/>.

Meteorological and communication towers are estimated to kill millions of birds per year. We recommend following the guidance set forth in the Service Interim Guidelines for Recommendations on Communications Tower Siting, Constructions, Operation and Decommissioning, found online at: <http://www.fws.gov/habitatconservation/communicationtowers.html>, to minimize the threat of avian mortality at these towers. Monitoring at these towers would provide insight into the effectiveness of the minimization measures. We request the results of any wildlife mortality monitoring at towers associated with this project.

We request that you provide us with the final location and specifications of your proposed towers, as well as the recommendations implemented. A Tower Site Evaluation Form is also available via the above website; we recommend you complete this form and keep it in your files. If meteorological towers are to be constructed, please forward this completed form to our office.

More information concerning sections 7 and 10 of the Act, migratory birds, candidate species, and landowner tools can be found on our website at: <http://www.fws.gov/southwest/es/TexasCoastal/ProjectReviews.html>.

Wetlands and Wildlife Habitat

Wetlands and riparian zones provide valuable fish and wildlife habitat as well as contribute to

ood control, water quality enhancement, and groundwater recharge. Wetland and riparian vegetation provides food and cover for wildlife, stabilizes banks and decreases soil erosion. These areas are inherently dynamic and very sensitive to changes caused by such activities as overgrazing, logging, major construction, or earth disturbance. Executive Order 11990 asserts that each agency shall provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial value of wetlands in carrying out the agency's responsibilities. Construction activities near riparian zones should be carefully designed to minimize impacts. If vegetation clearing is needed in these riparian areas, they should be re-vegetated with native wetland and riparian vegetation to prevent erosion or loss of habitat. We recommend minimizing the area of soil scarification and initiating incremental re-establishment of herbaceous vegetation at the proposed work sites. Denuded and/or disturbed areas should be re-vegetated with a mixture of native legumes and grasses. Species commonly used for soil stabilization are listed in the Texas Department of Agriculture's (TDA) Native Tree and Plant Directory, available from TDA at P.O. Box 12847, Austin, Texas 78711. The Service also urges taking precautions to ensure sediment loading does not occur to any receiving streams in the proposed project area. To prevent and/or minimize soil erosion and compaction associated with construction activities, avoid any unnecessary clearing of vegetation, and follow established rights-of-way whenever possible. All machinery and petroleum products should be stored outside the oodplain and/or wetland area during construction to prevent possible contamination of water and soils.

Wetlands and riparian areas are high priority fish and wildlife habitat, serving as important sources of food, cover, and shelter for numerous species of resident and migratory wildlife. Waterfowl and other migratory birds use wetlands and riparian corridors as stopover, feeding, and nesting areas. We strongly recommend that the selected project site not impact wetlands and riparian areas, and be located as far as practical from these areas. Migratory birds tend to concentrate in or near wetlands and riparian areas and use these areas as migratory ways or corridors. After every effort has been made to avoid impacting wetlands, you anticipate unavoidable wetland impacts will occur; you should contact the appropriate U.S. Army Corps of Engineers office to determine if a permit is necessary prior to commencement of construction activities.

If your project will involve filling, dredging, or trenching of a wetland or riparian area it may require a Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers (COE). For permitting requirements please contact the U.S. Corps of Engineers, District Engineer, P.O. Box 1229, Galveston, Texas 77553-1229, (409) 766-3002.

Beneficial Landscaping

In accordance with Executive Order 13112 on Invasive Species and the Executive Memorandum on Beneficial Landscaping (42 C.F.R. 26961), where possible, any landscaping associated with project plans should be limited to seeding and replanting with native species. A mixture of grasses and forbs appropriate to address potential erosion problems and long-term cover should be planted when seed is reasonably available. Although Bermuda grass is listed in seed mixtures, this species and other introduced species should be avoided as much as possible. The Service also recommends the use of native trees, shrubs, and herbaceous species that are adaptable, drought tolerant and conserve water.

State Listed Species

The State of Texas protects certain species. Please contact the Texas Parks and Wildlife Department (Endangered Resources Branch), 4200 Smith School Road, Austin, Texas 78744 (telephone 512/389-8021) for information concerning fish, wildlife, and plants of State concern or visit their website at:

http://www.tpwd.state.tx.us/huntwild/wild/wildlife_diversity/texas_rare_species/listed_species/.

If we can be of further assistance, or if you have any questions about these comments, please contact 281/286-8282 if your project is in southeast Texas, or 361/994-9005 if your project is in southern Texas. Please refer to the Service consultation number listed above in any future correspondence regarding this project.

Attachment



United States Department of Interior
Fish and Wildlife Service

Project name: Sabine Pass to Galveston Bay

Official Species List

Provided by:

Texas Coastal Ecological Services Field Office

17629 EL CAMINO REAL, SUITE 211

HOUSTON, TX 77058

(281) 286-8282

<http://www.fws.gov/southwest/es/TexasCoastal/>

http://www.fws.gov/southwest/es/ES_Lists_Main2.html

Consultation Code: 02ETTX0-2015-SLI-0415

Event Code: 02ETTX0-2015-E-00460

Project Type: ** OTHER **

Project Name: Sabine Pass to Galveston Bay

Project Description: Coastal storm risk management study for Beaumont/Orange Tx region.

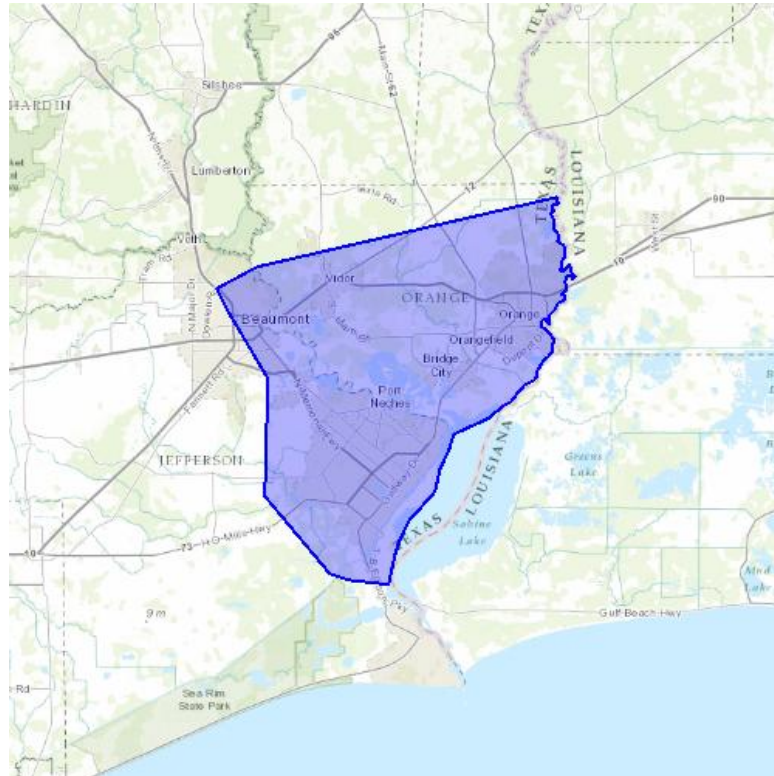
Please Note: The FWS office may have modified the Project Name and/or Project Description, so it may be different from what was submitted in your previous request. If the Consultation Code matches, the FWS considers this to be the same project. Contact the office in the 'Provided by' section of your previous Official Species list if you have any questions or concerns.



United States Department of Interior
Fish and Wildlife Service

Project name: Sabine Pass to Galveston Bay

Project Location Map:



Project Coordinates: The coordinates are too numerous to display here.

Project Counties: Jefferson, TX | Orange, TX



United States Department of Interior
Fish and Wildlife Service

Project name: Sabine Pass to Galveston Bay

Endangered Species Act Species List

There are a total of 9 threatened or endangered species on your species list. Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Note that 3 of these species should be considered only under certain conditions. Critical habitats listed under the **Has Critical Habitat** column may or may not lie within your project area. See the **Critical habitats within your project area** section further below for critical habitat that lies within your project. Please contact the designated FWS office if you have questions.

Birds	Status	Has Critical Habitat	Condition(s)
Least tern (<i>Sterna antillarum</i>) Population: interior pop.	Endangered		Wind related projects within migratory route.
Piping Plover (<i>Charadrius melodus</i>) Population: except Great Lakes watershed	Threatened	Final designated	Wind related projects within migratory route.
Red Knot (<i>Calidris canutus rufa</i>)	Threatened		Wind related projects within migratory route.
Mammals			
West Indian Manatee (<i>Trichechus manatus</i>) Population: Entire	Endangered	Final designated	
Reptiles			
Green sea turtle (<i>Chelonia mydas</i>) Population: Except where endangered	Threatened	Final designated	
Hawksbill sea turtle (<i>Eretmochelys imbricata</i>)	Endangered	Final designated	



United States Department of Interior
Fish and Wildlife Service

Project name: Sabine Pass to Galveston Bay

Population: Entire			
Kemp's Ridley sea turtle (<i>Lepidochelys kempii</i>) Population: Entire	Endangered		
Leatherback sea turtle (<i>Dermochelys coriacea</i>) Population: Entire	Endangered	Final designated	
Loggerhead sea turtle (<i>Caretta caretta</i>) Population: Northwest Atlantic Ocean DPS	Threatened	Proposed, Final designated	



United States Department of Interior
Fish and Wildlife Service

Project name: Sabine Pass to Galveston Bay

Critical habitats that lie within your project area

There are no critical habitats within your project area.



NOAA FISHERIES

Southeast Region

Protected Resources Division

Texas' Threatened and Endangered Species

For more information on listed species please visit:

<http://www.nmfs.noaa.gov/pr/species/esa/listed.htm>

http://sero.nmfs.noaa.gov/protected_resources/index.html

Marine Mammal Species

fin whale

Scientific Name

Balaenoptera physalus

Status

Endangered

humpback whale

Megaptera novaeangliae

Endangered

sei whale

Balaenoptera borealis

Endangered

sperm whale

Physeter macrocephalus

Endangered

Sea Turtle Species

green sea turtle

Chelonia mydas

Threatened¹

hawksbill sea turtle

Eretmochelys imbricata

Endangered

Kemp's ridley sea turtle

Lepidochelys kempii

Endangered

leatherback sea turtle

Dermochelys coriacea

Endangered

loggerhead sea turtle

Caretta caretta

Threatened²

Invertebrate Species

lobed star coral

Orbicella annularis

Threatened

mountainous star coral

Orbicella faveolata

Threatened

boulder star coral

Orbicella franksi

Threatened

elkhorn coral

Acropora palmata

Threatened³

Critical Habitat Designations

For final rules, maps, and GIS data please visit:

http://sero.nmfs.noaa.gov/maps_gis_data/protected_resources/critical_habitat/index.html

Loggerhead sea turtle: There are 38 designated marine areas that occur throughout the Southeast Region.

¹ Florida's breeding population is listed as endangered.

² Northwest Atlantic distinct population segment.

³ Colonies located at Flower Garden Banks National Marine Sanctuary.



NOAA FISHERIES

Southeast Region

Protected Resources Division

Species Proposed for Listing Under the Endangered Species Act

Federal action agencies are encouraged to include species proposed for listing under the Endangered Species Act (ESA) in their Section 7 consultation requests. Species that are proposed for listing are those which have been found to warrant federal protection under the ESA, but a final rule formally listing the species has not yet published. By including these species in your Section 7 consultation, reinitiating consultation after the ESA listing is finalized may not be necessary.

For more information on species proposed for listing under the ESA, please visit:

<http://www.nmfs.noaa.gov/pr/species/esa/candidate.htm#proposed>



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Candidate and Proposed Species Under the Endangered Species Act (ESA)

Candidate species are any species that are undergoing a status review that we have announced in a *Federal Register* notice, whether or not they are the subject of a petition. For detailed definitions and explanations, please refer to the 2006 [Candidate Species Definition](#) (71 FR 61022, 10/17/2006).

Proposed species are those candidate species that were found to warrant listing as either threatened or endangered and were officially proposed as such in a *Federal Register* notice after the completion of a status review and consideration of other protective conservation measures. We always seek public comment on a proposal to list species under the ESA. We generally have one year after a species is proposed for listing under the ESA to make a final determination whether to list a species as threatened or endangered.

Candidates for Listing (25 candidate "species")

Species	Year	Federal Register notice
Fishes		
2 bony fish species		
<ul style="list-style-type: none"> • grouper, comb (<i>Mycteroperca fusca</i>) • grouper, Gulf (<i>Mycteroperca jordani</i>) 	2014	79 FR 10104
clownfish, orange (<i>Amphiprion percula</i>)	2014	79 FR 52276
cusk (<i>Brosme brosme</i>)	2007	72 FR 10710
ray, Caribbean electric (<i>Narcine bancroftii</i>)	2014	79 FR 4877
seahorse, dwarf (<i>Hippocampus zosterae</i>)	2012	77 FR 26478
shad, Alabama (<i>Alosa alabamae</i>)	2013	78 FR 57611
shark, common thresher (<i>Alopias vulpinus</i>)	2015	80 FR 11379
shark, porbeagle (<i>Lamna nasus</i>)	2015	80 FR 16356
8 shark species		
<ul style="list-style-type: none"> • Daggernose (<i>Isogomphodon oxyrinchus</i>) • Striped smooth-hound (<i>Mustelus fasciatus</i>) • Narrownose smooth-hound (<i>Mustelus schmitti</i>) • Sawback angelshark (<i>Squatina aculeata</i>) • Argentine angelshark (<i>Squatina argentina</i>) • Angular angel shark (<i>Squatina guggenheim</i>) • Smoothback angelshark (<i>Squatina oculata</i>) • Common angel shark (<i>Squatina squatina</i>) 	2013	78 FR 69376
4 skate & ray species		
<ul style="list-style-type: none"> • guitarfish (<i>Rhinobatos rhinobatos</i>) • guitarfish, blackchin (<i>Rhinobatos cemiculus</i>) • guitarfish, Brazilian (<i>Rhinobatos horkelii</i>) • skate, greytail (<i>Bathyraja griseocauda</i>) 	2014	79 FR 10104

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Marine Mammals		
2 marine mammal species <ul style="list-style-type: none"> dolphin, common bottlenose (1 candidate DPS) (<i>Tursiops truncatus</i>) <ul style="list-style-type: none"> Fiordland dolphin, Hector's (<i>Cephalorhynchus hectori</i>) 	2014	79 FR 9880
seal, Pacific harbor (1 candidate DPS) (<i>Phoca vitulina richardii</i>) <ul style="list-style-type: none"> Iliamna Lake 	2013	78 FR 29098
whale, Bryde's (1 candidate DPS) (<i>Balaenoptera edeni</i>) <ul style="list-style-type: none"> Gulf of Mexico 	2015	80 FR 18343

Proposed for Listing (23 proposed "species")

Species	Year Proposed	Status
Fishes		
cardinalfish, Banggai (<i>Pteropogon kauderni</i>)	2014	proposed threatened
coelacanth, African (1 DPS) (<i>Latimeria chalumnae</i>) <ul style="list-style-type: none"> Tanzanian DPS 	2015	proposed threatened
grouper, Nassau (<i>Epinephelus striatus</i>)	2014	proposed threatened
shark, Harrison's dogfish (<i>Centrophorus harrissoni</i>)	2014	proposed threatened
Marine Invertebrates		
3 coral species <ul style="list-style-type: none"> (<i>Cantharellus noumeae</i>) (<i>Siderastrea glynni</i>) (<i>Tubastraea floreana</i>) 	2014	proposed endangered
Marine Mammals		
whale, humpback (4 DPSs) (<i>Megaptera novaeangliae</i>) <ul style="list-style-type: none"> Central America Western North Pacific 	2015	proposed threatened
<ul style="list-style-type: none"> Arabian Sea Cape Verde Islands/Northwest Africa 		proposed endangered
Marine Reptiles		
sea snake, dusky (<i>Aipysurus fuscus</i>)	2014	proposed endangered
sea turtle, green (11 DPSs) (<i>Chelonia mydas</i>) <ul style="list-style-type: none"> Central North Pacific East Indian-West Pacific East Pacific North Atlantic North Indian South Atlantic Southwest Indian 	2015	proposed threatened
<ul style="list-style-type: none"> Central South Pacific Central West Pacific Mediterranean 		proposed endangered

Endangered and Threatened Species Under NMFS' Jurisdiction:

- [All Endangered and Threatened Species under NMFS Jurisdiction](#)
 - » [Marine Mammals](#)
 - » [Sea Turtles](#)
 - » [Fish \(Marine & Anadromous\)](#)
 - » [Marine Invertebrates & Plants](#)

Additional Species:

- [Species Petitioned for Listing under the ESA](#) (awaiting 90-day findings)
- [Candidates for ESA Listing](#)
- [Species Proposed for ESA Listing](#)
- [Species with "Not Warranted" 12-month findings](#) (we reviewed the status, but determined that listing was not warranted)
- [Delisted Species and Species Under Review or Proposed for Delisting](#)

Updated: May 11, 2015

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**Sabine Pass to Galveston Bay, Texas
Coastal Storm Risk Reduction and Ecosystem
Restoration
Draft Integrated Feasibility Report and
Environmental Impact Study**

**Draft Appendix K
Coordination Act Report**

September 2015

PLACEHOLDER

The U.S. Fish and Wildlife Service (USFWS) is currently preparing the Draft Coordination Act Report (CAR); however, a draft report is not expected to be complete in time for inclusion in the Draft Integrated Feasibility Report and Environmental Impact Statement (DIFR-EIS). USFWS, National Marine Fisheries Service, Natural Resource Conservation Service, U.S. Environmental Protection Agency, and Texas Parks and Wildlife have actively participated in the environmental impact analysis and Wetlands Value Assessment modeling. Based upon this extensive coordination, USFWS provided draft conservation recommendations which USACE has incorporated into the resource impact assessments and implementation recommendations. A draft CAR will be available for use in preparing the Final IFR-EIS.

**Sabine Pass to Galveston Bay, Texas
Coastal Storm Risk Reduction and Ecosystem
Restoration**

**Draft Integrated Feasibility Report and
Environmental Impact Study**

DRAFT APPENDIX L

**NATIONAL HISTORIC PRESERVATION ACT
DRAFT COOPERATIVE AGREEMENT**

September 2015

DRAFT

**PROGRAMMATIC AGREEMENT
REGARDING COMPLIANCE WITH SECTION 106 OF THE NATIONAL
HISTORIC PRESERVATION ACT FOR
THE SABINE PASS TO GALVESTON BAY COASTAL STORM RISK
MANAGEMENT AND ECOSYSTEM RESTORATION PROJECT
IN
ORANGE, JEFFERSON, CHAMBERS, GALVESTON, HARRIS, AND
BRAZORIA COUNTIES, TEXAS
AMONG
THE U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT,
THE TEXAS STATE HISTORIC PRESERVATION OFFICER,
AND
A *NON-FEDERAL SPONSOR***

WHEREAS, the U.S. Army Corps of Engineers, Galveston District (USACE) has determined that new construction, improvements to existing facilities, and maintenance of existing facilities of the Sabine Pass to Galveston Bay Coastal Storm Risk Management and Ecosystem Restoration Study (hereinafter, “undertaking”) may have an effect on historic properties eligible for listing in the National Register of Historic Places (NRHP) (hereinafter, “historic properties”) pursuant to Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) (NHPA), as amended, and its implementing regulations (36 CFR 800); and

WHEREAS, the Sabine Pass to Galveston Bay Coastal Storm Risk Management and Ecosystem Restoration Study was authorized by resolution by the Committee of Transportation and Infrastructure of the United States House of Representatives, in accordance with Section 110 of the Rivers and Harbors Act of 1962 requesting the Secretary of the Army to review the feasibility of providing shore protection and related improvements between Sabine Pass and the entrance of Galveston Bay. Resolution dated February 16, 2000; and

WHEREAS, the *NON-FEDERAL SPONSOR (NFS)* is the non-Federal partner with the USACE for construction and maintenance of this undertaking, and is providing the necessary lands, easements, relocations and rights-of-way; and

WHEREAS, the Area of Potential Effect (APE) has not been investigated for historic properties, this Programmatic Agreement (PA) is being executed to describe the process the USACE and the *NFS* will utilize in the event that unanticipated discoveries are identified during construction and maintenance activities; and

WHEREAS, the USACE, the Texas State Historic Preservation Officer (SHPO), and the *NFS* have agreed that it is advisable to execute this PA for the purposes stated above in accordance with 36 CFR 800.6 and 36 CFR 800.14(b)(1)(ii); and

WHEREAS, the USACE has invited the Advisory Council on Historic Preservation (Council) to participate and the Council has declined to enter into the Section 106 process; and

WHEREAS, in accordance with 36 C.F.R. § 800.14(b), the USACE has notified the Alabama-Coushatta Tribe of Texas, the Kiowa Indian Tribe of Oklahoma, the Tonkawa Tribe, the Choctaw Nation of Oklahoma, and the Mescalero Apache Tribe (for Lipan) of the development and execution of this PA.

NOW, THEREFORE, the USACE, the SHPO, and the *NFS* agree that the proposed undertaking shall be implemented and administered in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties and to satisfy the USACE's Section 106 responsibilities for all individual aspects of the undertaking.

STIPULATIONS

I. Identification, Evaluation, Effect Determination, and Resolution

- A. **Scope of Undertaking.** This PA shall be applicable to all new construction, improvements, and maintenance activities related to the proposed Coastal Storm Risk Management and Ecosystem Restoration project. The APE shall be established by the USACE in consultation with the SHPO and shall include all areas to be directly affected by new construction, construction staging and access areas, new or extensions of existing levees or borrow areas, ecological mitigation features, and project maintenance activities.
- B. **Qualifications and Standards.** The USACE shall ensure that all work conducted in conjunction with this PA is performed in a manner consistent with the Secretary of Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716-44740; September 23, 1983), as amended, or the Secretary of the Interior's "Standards for the Treatment of Historic Properties" (36 CFR 68), as appropriate.
- C. **Definitions.** The definitions set forth in 36 CFR 800.16 are incorporated herein by reference and apply throughout this PA.
- D. **Identification of Historic Properties.** Prior to the initiation of construction, the USACE shall make a reasonable and good faith effort to identify historic properties located within the APE. These steps may include, but are not limited to, background research, consultation, oral history interviews, sample field

investigations, and field survey. The level of effort for these activities shall be determined in consultation with the SHPO and any Native American Indian Tribe or Tribes (Tribes) that attach religious and cultural significance to identified properties. All draft reports of survey or site testing investigations shall be submitted to the SHPO for review and comment. If the SHPO comments are not received by the USACE within thirty (30) days of receipt, the reports and their recommendations shall be considered adequate and the reports may be finalized. Comments received by the USACE from the SHPO or Tribes shall be addressed in the final reports, which shall be provided to all consulting parties. If no historic properties are identified in the APE, the USACE shall document this finding pursuant to 36 CFR 800.11(d), provide this documentation to the SHPO.

- E. Evaluation of National Register Eligibility. If historic properties are identified within the APE, the USACE shall determine their eligibility for the NRHP in accordance with the process described in 36 CFR 800.4(c) and criteria established in 36 CFR 60. All draft reports of NRHP site testing or other NRHP investigations shall be submitted to the SHPO and Tribes for review and comment. If SHPO comments are not received by the USACE within 30 days of receipt, the reports or investigations and their recommendations shall be considered adequate and the reports may be finalized. Comments received by the USACE from the SHPO or Tribes shall be addressed in the final report, which shall be provided to all consulting parties. The determinations of significance shall be conducted in consultation with the SHPO and Tribes. Should the USACE and the SHPO agree that a property is or is not eligible, then such consensus shall be deemed conclusive for the purpose of this PA. Should the USACE and the SHPO not agree regarding the eligibility of a property, the USACE shall obtain a determination of eligibility from the Keeper of the National Register pursuant to 36 CFR 63. For historic properties found not eligible for the NRHP, no further protection or consideration of the site will be afforded for compliance purposes.
- F. Assessment of Adverse Effects.
1. No Historic Properties Affected. The USACE shall make a reasonable and good faith effort to evaluate the effect of each undertaking on historic properties in the APE. The USACE may conclude that no historic properties are affected by an undertaking if no historic properties are present in the APE, or the undertaking will have no effect as defined in 36 CFR 800.16(i). This finding shall be documented in compliance with 36 CFR 800.11(d) and the documentation shall be provided to the SHPO and retained by the USACE for at least seven (7) years. The USACE shall provide information on the finding to the public upon request, consistent with the confidentiality requirements or 36 CFR 800.11(c).
 2. Finding of No Adverse Effect. The USACE, in consultation with the SHPO, and Tribes shall apply the criteria of adverse effect to historic properties within the APE in accordance with 36 CFR 800.5. The USACE may propose a finding of no adverse effect if the undertaking's effects do not meet the

criteria of 36 CFR 800.5(a)(1) or the undertaking is modified to avoid adverse effects in accordance with 36 CFR 68. The USACE shall provide to the SHPO documentation of this finding meeting the requirements of 36 CFR 800.11(e). The SHPO shall have 30 days in which to review the findings and provide a written response to the USACE. The USACE may proceed upon receipt of written concurrence from the SHPO. Failure of the SHPO to respond with 30 calendar days of receipt of the finding shall be considered agreement with the finding. The USACE shall maintain a record of the finding and provide information on the finding to the public upon request, consistent with the confidentiality requirements of 36 CFR 800.11(c).

3. Resolution of Adverse Effect. If the USACE determines that the undertaking will have an adverse effect on historic properties as measured by criteria in 36 CFR 800.5(a)(1), the USACE shall consult with the SHPO and Tribes to resolve adverse effects in accordance with 36 CFR 800.6.
 - a) For historic properties that the USACE and the SHPO agree will be adversely affected, the USACE shall:
 - (1) Consult with the SHPO to identify other individuals or organizations to be invited to become consulting parties. If additional consulting parties are identified, the USACE shall provide them copies of documentation specified in 36 CFR 800.11(e) subject to confidentiality provisions of 36 CFR 800.11(c).
 - (2) Afford the public an opportunity to express their views on resolving adverse effects in a manner appropriate to the magnitude of the project and its likely effects on historic properties.
 - (3) Consult with the SHPO, Tribes, and any additional consulting parties to seek ways to avoid, minimize or mitigate adverse effects.
 - (4) Prepare an historic property plan (Plan) which describes mitigation measures the USACE proposes to resolve the undertaking's adverse effects and provide this Plan for review and comment to all consulting parties. All parties have 30 days in which to provide a written response to the USACE.
 - b) If the USACE and the SHPO fail to agree on how adverse effects will be resolved, the USACE shall request that the Council join the consultation and provide the Council and all consulting parties with documentation pursuant to 36 CFR 800.11(g).
 - c) If the Council agrees to join the consultation, the USACE shall proceed in accordance with 36 CFR 800.9.
 - d) If, after consulting to resolve adverse effects, the Council, the USACE, or the SHPO determines that further consultation will not be productive, then

any party may terminate consultation in accordance with the notification requirements and processes prescribed in 36 CFR 800.7.

II. Post Review Changes and Discoveries

- A. Changes in the Undertaking. If construction on the undertaking has not commenced and the USACE determines that it will not conduct the undertaking as originally coordinated, the USACE shall reopen consultation pursuant to Stipulation I. D-F.
- B. Unanticipated Discoveries or Effects. Pursuant to 36 CFR 800.13(b)(3), if historic properties are discovered or unanticipated effects on historic properties are found after construction on an undertaking has commenced, the USACE shall develop a treatment plan to resolve adverse effects and notify the SHPO and Tribes within 48 hours of the discovery. The notification shall include the USACE assessment of the NRHP eligibility of affected properties and proposed actions to resolve the adverse effects. Comments received from the SHPO and Tribes within 48 hours of the notification shall be taken into account by the USACE in carrying out the proposed treatment plan. The USACE may assume SHPO concurrence in its eligibility assessment and treatment plan unless otherwise notified by the SHPO within 48 hours of notification. USACE shall provide the SHPO and Tribes a report of the USACE actions when they are completed.

III. Curation and Disposition of Recovered Materials, Records, and Reports

- A. Curation. The USACE shall ensure that all archeological materials and associated records owned by the State of Texas or the *NFS*, which result from identification, evaluation, and treatment efforts conducted under this PA, are accessioned into a curatorial facility in accordance with the standards of 36 CFR 79, the Antiquities Code of Texas (Texas Natural Resource Code, Chapter 191), the Texas Administrative Code 13 TAC §29.5, and the *Council of Texas Archeologists Guidelines and Standards for Curation*, except as specified in Stipulation IV for human remains. The curation of items owned by the State of Texas or the *NFS* shall be maintained in perpetuity by the *NFS*. Archeological items and materials from privately owned lands shall be returned to their owners upon completion of analyses required for Section 106 compliance under this PA.
- B. Reports. The USACE shall provide copies of final technical reports of investigations and mitigation to the consulting parties and the SHPO, as well as additional copies for public distribution. All consulting parties shall withhold site location information or other data that may be of a confidential or sensitive nature pursuant to 36 CFR 800.11(c).

IV. Treatment of Native American Human Remains

- A. Prior Consultation. If the USACE's investigations, conducted pursuant to Stipulation I of this PA, indicate a high likelihood that Native American Indian human remains may be encountered, the USACE shall develop a treatment plan

for these remains in consultation with the SHPO and Tribes. The USACE shall ensure that Tribes indicating an interest in the undertaking are afforded a reasonable opportunity to identify concerns, provide advice on identification and evaluation, and participation in the resolution of adverse effects in compliance with the terms of this PA.

- B. Inadvertent Discovery. Immediately upon the inadvertent discovery of human remains during historic properties investigations or construction activities conducted pursuant to this PA, the USACE shall ensure that all ground disturbing activities cease in the vicinity of the human remains and any associated grave goods and that the site is secured from further disturbance or vandalism. The USACE shall be responsible for immediately notifying local law enforcement officials, and within 48 hours of the discovery, shall initiate consultation with the SHPO and Tribes to develop a plan for resolving the adverse effects.
- C. Dispute Resolution. If, during consultation conducted under paragraphs A and B of Stipulation IV, all consulting parties cannot agree upon a consensus plan for resolving adverse effects, the matter shall be referred to the Council for resolution in accordance with the procedures outlined in 36 CFR 800.9.

V. PA Amendments, Disputes and Termination

- A. Amendments. Any party to the PA may propose to the other parties that it be amended, whereupon the parties will consult in accordance with 36 CFR 800.6(c)(7) to consider such an amendment.
- B. Disputes. Disputes regarding the completion of the terms of this agreement shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, any one of the signatories may request the participation of the Council in resolving the dispute in accordance with the procedures outlined in 36 CFR 800.9. The USACE shall forward to the Council and all consulting parties within fifteen (15) days of such a request all documentation relevant to the dispute, including the USACE's proposed resolution of the dispute. The Council will respond to the request within thirty (30) days of receiving all documentation. The USACE will take any recommendations or comments from the Council into account in resolving the dispute. In the event that the Council fails to respond to the request within thirty (30) days of receiving all documentation, the USACE may assume the Council's concurrence with its proposed resolution and proceed with resolving the dispute.
- C. Termination of PA. Any party to this PA may terminate it by providing sixty (60) days notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that will avoid termination. In the event of termination of this PA the USACE shall comply with the provisions of 36 CFR 800, Subpart B.

Term of this Agreement

- D. This PA remains in force for a period of ten (10) years from the date of its execution by all signatories, unless terminated pursuant to Stipulation V.C. Sixty (60) days prior to the conclusion of the ten (10) year period, the USACE shall notify all parties in writing of the end of the ten year period to determine if they have any objections to extending the term of this PA. If there are no objections received prior to expiration, the PA will continue to remain in force for a new ten (10) year period.

Execution of this PA and implementation of its terms evidences that the USACE has afforded the Council an opportunity to comment on the undertaking and its effects on historic properties, and that the USACE has taken into account those effects and fulfilled Section 106 responsibilities regarding the undertaking.

Colonel Richard P. Pannell, District Engineer

Date

Signature Page for State Historic Preservation Officer

**PROGRAMMATIC AGREEMENT
REGARDING COMPLIANCE WITH SECTION 106 OF THE NATIONAL
HISTORIC PRESERVATION ACT FOR
THE SABINE PASS TO GALVESTON BAY COASTAL STORM RISK
MANAGEMENT AND ECOSYSTEM RESOTRATION PROJECT
IN
ORANGE, JEFFERSON, CHAMBERS, GALVESTON, HARRIS, AND
BRAZORIA COUNTIES, TEXAS
AMONG
THE U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT,
THE TEXAS STATE HISTORIC PRESERVATION OFFICER,
AND
*A NON-FEDERAL SPONSOR***

Mark Wolfe, Texas State Historic Preservation Officer

Date

Signature Page for the *NON-FEDERAL SPONSOR*

**PROGRAMMATIC AGREEMENT
REGARDING COMPLIANCE WITH SECTION 106 OF THE NATIONAL
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AND
*A NON-FEDERAL SPONSOR***

Signatory for, NON-FEDERAL SPONSOR

Date

**Sabine Pass to Galveston Bay, Texas
Coastal Storm Risk Reduction and Ecosystem
Restoration
Draft Integrated Feasibility Report and
Environmental Impact Study**

Draft Appendix M

**Texas Coastal Management Program
Consistency Determination**

September 2015

INTRODUCTION

To reduce the risk of coastal storm surge impacts, the U.S. Army Corps of Engineers (USACE) proposes to construct a new levee/floodwall system in Orange and Jefferson counties, and to modify the existing Port Arthur and Freeport Hurricane Flood Protection Projects (HFPP).

The Orange-Jefferson Coastal Storm Risk Management (CSRM) Plan is comprised of three separate levee segments, one in Orange County and two in Jefferson County, totaling about 39 miles in length (Figure 1). The levees and floodwalls would be constructed to a minimum 11 to 12 feet elevation (NAVD88), adjusted as needed to accommodate for relative sea-level rise over a 50-year project life. The new system would require a maximum of 15 million cubic yards of fill to construct; the fill would be obtained from commercial borrow sources and tested to ensure that it is suitable for use. Tidal surge gates would be constructed on Adams and Cow Bayous in the Orange County segment; these gates would normally remain open, but would be closed for short periods when the area is threatened by storm surge. Culverts would be designed to accommodate future tidal flows and ensure that flows inside and outside of the levee system maintain future without-project conditions. Orange County has agreed to be the non-Federal sponsor for the Orange County portion of the Orange-Jefferson CSRM Plan, and Jefferson County has agreed to sponsor the Jefferson Main and Beaumont A segments. Plan details are provided in the Sabine Pass to Galveston Draft Integrated Feasibility Report-Environmental Impact Statement (DIFR-EIS) Appendix D.

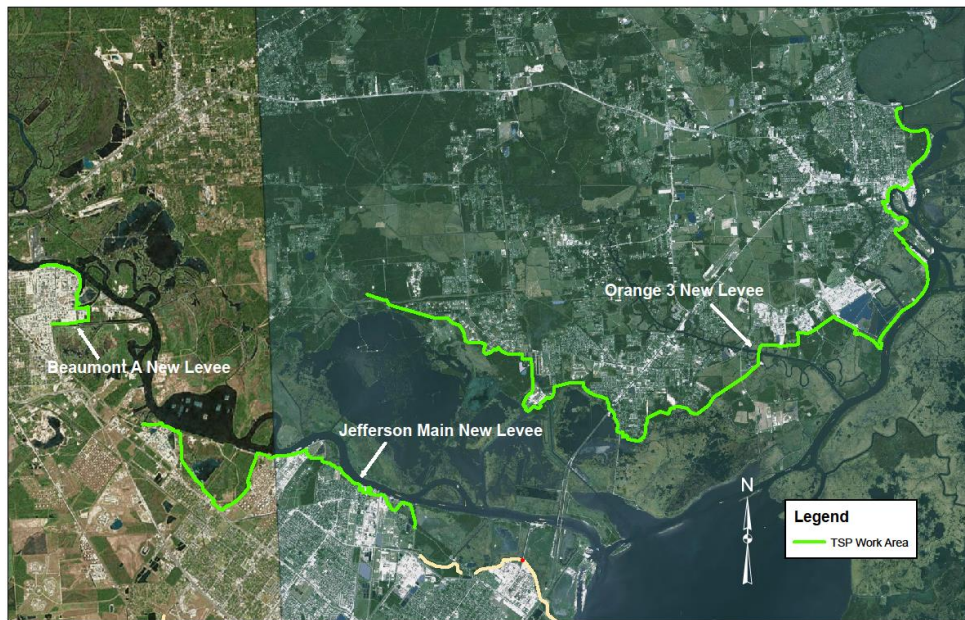


Figure 1: Orange-Jefferson CSRM Plan

The Port Arthur and Vicinity CSRM Plan would raise three I-Walls and one railroad track closure structure by one foot. Areas to be modified are shown in green on Figure 2. Jefferson County Drainage District No. 7 would continue as the non-Federal sponsor the Port Arthur and Vicinity CSRM Plan.



Figure 2: Port Arthur and Vicinity CSRM Plan

The Freeport and Vicinity CSRM Plan would raise the Oyster Creek, East Storm Levee and Old River Levee at DOW Thumb by one foot, raise the Tide Gate I-Wall by one foot, and add resiliency features to the Freeport Dock Floodwall. It would also construct a tidal surge gate structure at the mouth of the DOW Barge Canal. Fill required for levee raises would be obtained from commercial borrow sources and tested to ensure that it is suitable for use. The Velasco Drainage District would continue to serve as the non-Federal sponsor for the Freeport and Vicinity CSRM Plan. Areas to be modified are shown in green on Figure 3.



Figure 3: Freeport and Vicinity CSRM Plan

COMPLIANCE WITH GOALS AND POLICIES

The following goals and policies of the Texas Coastal Management Program (TCMP) were reviewed for compliance:

§501.15 Policy for Major Actions

1. For purposes of these policy categories, "major action" means an individual agency or subdivision action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program), §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program), or §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program), relating to an activity for which a federal environmental impact statement under the National Environmental Policy Act, 42 United States Code Annotated, §4321 et seq. is required.

Compliance: This project has been determined to be a “major action” requiring the preparation of an environmental impact statement (EIS). A Notice of Intent to prepare an EIS was published in November 2014. A DIFR-EIS will be issued for public review in September 2015.

2. Prior to taking a major action, the agencies and subdivisions having jurisdiction over the activity shall meet and coordinate their major actions relating to the activity. The agencies and subdivisions shall, to the greatest extent practicable, consider the cumulative and secondary adverse effects, as described in the federal environmental impact assessment process, of each major action relating to the activity.

Compliance: Extensive coordination has been conducted with the Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Natural Resource Conservation Service and Texas Parks and Wildlife to identify and quantify project impacts. Cumulative and secondary adverse impacts have been considered and are identified in the DIFR-EIS.

3. No agency or subdivision shall take a major action that is inconsistent with the goals and policies of this chapter. In addition, an agency or subdivision shall avoid and otherwise minimize the cumulative adverse effects to CNRAs of each of its major actions relating to the activity.

Compliance: These resource agencies listed above will also be involved in development of the mitigation plan. Areas targeted for evaluation exclude areas already identified for beneficial use or mitigation in conjunction with other projects. Specifically, authorized improvements to the SNWW navigation project include the restoration of large areas within both Bessie Heights and Old River Cove marshes with the beneficial use of dredged material. In addition, areas targeted for restoration by TPWD have also been excluded. Any mitigation sites selected for this project would augment, not replace, these other proposals.

§ 501.23 Policies for Development in Critical Areas

(a) Dredging and construction of structures in, or the discharge of dredged or fill material into, critical areas shall comply with the policies in this section. In implementing this section, cumulative and secondary adverse effects of these activities will be considered.

(1) The policies in this section shall be applied in a manner consistent with the goal of achieving no net loss of critical area functions and values.

Compliance: The mitigation plan will fully compensate for all wetland impacts such that the project will result in “no net loss” of wetlands.

(2) Persons proposing development in critical areas shall demonstrate that no practicable alternative with fewer adverse effects is available.

Compliance: Planning for the avoidance and minimization of impacts began with the initial selection of the Orange-Jefferson levee alignment. The levee was located as close to the upland-wetland margin as possible to minimize wetland impacts, while also minimizing social effects and maximizing economic impacts. Opportunities to further avoid and minimize environmental impacts will be evaluated during final feasibility planning. The project is will reduce the risk of storm surge in areas at risk to flooding, and thus must be situated in special hazard areas.

(3) In evaluating practicable alternatives, the following sequence shall be applied:

(A) Adverse effects on critical areas shall be avoided to the greatest extent practicable.

(B) Unavoidable adverse effects shall be minimized to the greatest extent practicable by limiting the degree or magnitude of the activity and its implementation.

(C) Appropriate and practicable compensatory mitigation shall be required to the greatest extent practicable for all adverse effects that cannot be avoided or minimized.

Compliance: Adverse effects on critical areas have been avoided to the greatest extent practicable. The project would primarily impact coastal wetlands; small areas of submerged lands and submerged aquatic vegetation (SAV) are incorporated into the wetland impact analysis as waters within the wetland systems. Total direct construction impacts would affect 300.5 acres of coastal wetlands; indirect impacts would affect 2,551 acres (2,137 acres of which are functional impacts to fisheries access). Direct and indirect impacts would result in a loss of 261.8 AAHUs. Approximately 47.5 acres of coastal preserve areas (Texas Parks and Wildlife Department's [TPWD] Tony Houseman and Lower Neches River Wildlife Management Areas [WMAs]) would also be impacted. None of the other Coastal Natural Resource Areas (CNRAs) would be affected by the proposed project.

(4) Compensatory mitigation includes restoring adversely affected critical areas or replacing adversely affected critical areas by creating new critical areas. Compensatory mitigation should be undertaken, when practicable, in areas adjacent or contiguous to the affected critical areas (on-site). If on-site compensatory mitigation is not practicable, compensatory mitigation should be undertaken in close physical proximity to the affected critical areas if practicable and in the same watershed if possible (off-site). Compensatory mitigation should also attempt to replace affected critical areas with critical areas with characteristics identical to or closely approximating those of the affected critical areas (in-kind). The preferred order of compensatory mitigation is:(A) on-site, in-kind;(B) off-site, in-kind;(C) on-site, out-of-kind; and(D) off-site, out-of-kind.

In-kind mitigation areas would be selected during final feasibility planning. Areas being evaluated for mitigation are off-site, but in close proximity to the affected areas and within the Neches and Sabine watersheds. Mitigation of direct impacts could not be on-site, because affected areas would be covered by the levee system. Indirect impacts are primarily fisheries access impacts; mitigation within these areas would not be optimal because the areas are behind the surge gates which create the impact.

(5) Mitigation banking is acceptable compensatory mitigation if use of the mitigation bank has been approved by the agency authorizing the development and mitigation credits are available for withdrawal. Preservation through acquisition for public ownership of unique critical areas or other ecologically important areas may be acceptable compensatory mitigation in exceptional circumstances. Examples of this include areas of high priority for preservation or restoration, areas whose functions and values are difficult to replicate, or areas not adequately protected by regulatory programs. Acquisition will normally be allowed only in conjunction with preferred forms of compensatory mitigation.

Compliance: Mitigation banks will be investigated to determine if sufficient and appropriate mitigation is available; none are known at this time. If mitigation banks are not available to compensate for all or a portion of project impacts, areas in the floodplains of the Neches and Sabine Rivers within and adjacent to the study area will be reviewed to identify potential in-kind mitigation sites.

(6) In determining compensatory mitigation requirements, the impaired functions and values of the affected critical area shall be replaced on a one-to-one ratio. Replacement of functions and values on a one-to-one ratio may require restoration or replacement of the physical area affected on a ratio higher than one-to-one. While no net loss of critical area functions and values is the goal, it is not required in individual cases where mitigation is not practicable or would result in only inconsequential environmental benefits. It is also important to recognize that there are circumstances where the adverse effects of the activity are so significant that, even if alternatives are not available, the activity may not be permitted regardless of the compensatory mitigation proposed.

Compliance: Compensatory mitigation requirements will be determined using the Wetlands Value Assessment Model. This model considers functions and values of swamp, bottomland hardwood, and marsh communities.

(7) Development in critical areas shall not be authorized if significant degradation of critical areas will occur. Significant degradation occurs if:

(A) the activity will jeopardize the continued existence of species listed as endangered or threatened, or will result in likelihood of the destruction or adverse modification of a habitat determined to be a critical habitat under the Endangered Species Act, 16 United States Code Annotated, §§1531 - 1544;

Compliance: The project would have no effect on threatened or endangered species.

(B) the activity will cause or contribute, after consideration of dilution and dispersion, to violation of any applicable surface water quality standards established under §501.21 of this title;

Compliance: The project would not violate applicable water quality standards.

(C) the activity violates any applicable toxic effluent standard or prohibition established under §501.21 of this title;

Compliance: Material used to construct the new or modify the existing levee systems would be tested to determine if it is suitable for use.

(D) the activity violates any requirement imposed to protect a marine sanctuary designated under the Marine Protection, Research, and Sanctuaries Act of 1972, 33 United States Code Annotated, Chapter 27; or

Compliance: The project would not affect any marine sanctuaries.

(E) taking into account the nature and degree of all identifiable adverse effects, including their persistence, permanence, areal extent, and the degree to which these effects will have been mitigated pursuant to subsections (c) and (d) of this section, the activity will, individually or collectively, cause or contribute to significant adverse effects on:

(i) human health and welfare, including effects on water supplies, plankton, benthos, fish, shellfish, wildlife, and consumption of fish and wildlife;

(ii) the life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, or spread of pollutants or their byproducts beyond the site, or their introduction into an ecosystem, through biological, physical, or chemical processes;

(iii) ecosystem diversity, productivity, and stability, including loss of fish and wildlife habitat or loss of the capacity of a coastal wetland to assimilate nutrients, purify water, or reduce wave energy; or

(iv) generally accepted recreational, aesthetic or economic values of the critical area which are of exceptional character and importance.

Compliance: The project would not cause significant adverse effects on human health and welfare or any of the natural resources or systems listed above. It would not reduce ecosystem diversity, productivity, or the capacity of the wetland systems to assimilate nutrients, purify water, or reduce wave energy.

(b) The TCEQ and the RRC shall comply with the policies in this section when issuing certifications and adopting rules under Texas Water Code, Chapter 26, and the Texas Natural Resources Code, Chapter 91, governing certification of compliance with surface water quality standards for federal actions and permits authorizing development affecting critical areas; provided that activities exempted from the requirement for a permit for the discharge of dredged or fill material, described in Code of Federal Regulations, Title 33, §323.4 and/or Code of Federal Regulations, Title 40, §232.3, including but not limited to normal farming, silviculture, and ranching activities, such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, shall not be considered activities for which a certification is required. The GLO and the SLB shall comply with the policies in this section when approving oil, gas, or other mineral lease plans of operation or granting surface leases, easements, and permits and adopting rules under the Texas Natural Resources Code, Chapters 32, 33 and 51 - 53, and Texas Water Code, Chapter 61, governing development affecting critical areas on state submerged lands and private submerged lands, and when issuing approvals and adopting rules under Texas Natural Resources Code, Chapter 221, for mitigation banks operated by subdivisions of the state.

Compliance: A 404(b)(1) analysis has been prepared and will be submitted to TCEQ for approval.

(c) Agencies required to comply with this section will coordinate with one another and with federal agencies when evaluating alternatives, determining appropriate and practicable mitigation, and assessing significant degradation. Those agencies' rules governing authorizations for development in critical areas shall require a demonstration that the requirements of subsection (a)(1) - (7) of this section have been satisfied.

Compliance: Extensive coordination has been conducted with the Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Natural Resource Conservation Service and Texas Parks and Wildlife to identify and quantify project impacts. These agencies will also be involved in development of the mitigation plan.

(d) For any dredging or construction of structures in, or discharge of dredged or fill material into, critical areas that is subject to the requirements of §501.15 of this title (relating to Policy for Major Actions), data and information on the cumulative and secondary adverse affects of the project need not be produced or evaluated to comply with this section if such data and information is produced and evaluated in compliance with §501.15(b) - (c) of this title.

Compliance: The project complies with §501.15(b) - (c).

§501.29 Policies for Development in State Parks, Wildlife Management Areas or Preserves

Development by a person other than the Parks and Wildlife Department that requires the use or taking of any public land in such areas shall comply with Texas Parks and Wildlife Code, Chapter 26 Protection of Public Parks and Recreational Lands.

Compliance: USACE has determined that there is no feasible and prudent alternative to the taking of approximately 47.5 acres of TPWD lands in the Tony Houseman and Lower Neches River WMAs for construction of a portion of the Orange-Jefferson CSRSM Plan. Project construction will employ best management practices to minimize harm to remaining WMA lands that would result from the taking.

§501.34 – Levee Improvement or Flood Control Projects

1. a) Drainage, reclamation, channelization, levee construction or modification, or flood- or floodwater-control infrastructure projects shall be designed, constructed, and maintained to avoid the impoundment and draining of coastal wetlands to the greatest extent practicable. If impoundment or draining of coastal wetlands cannot be avoided, adverse effects to the wetlands shall be mitigated in accordance with the sequencing requirements found in the critical areas policy(§ 501.23).

Compliance: No significant environmental impacts have been identified for the Port Arthur and Freeport and Vicinities CSRSM Plans. All environmental impacts identified for the TSP are associated with the Orange-Jefferson CSRSM Plan, and these are limited to wetland impacts. Planning for the avoidance and minimization of impacts began with the initial selection of the Orange-Jefferson levee alignment. The levee was located as close to the upland-wetland margin as possible to minimize wetland impacts, while also minimizing social effects and maximizing

economic impacts. Opportunities to further avoid and minimize environmental impacts will be evaluated during final feasibility planning.

Indirect impacts on drainage associated with installation of the levee system would be minimized by maintaining flows in tidal bayous and streams equivalent to the future without-project (FWOP) condition. Culverts would be sized and modified as needed to provide for increased tidal flows expected with RSLC. With tidal access maintained at FWOP flows, RSLC-related landscape and wetland changes to areas both inside and outside of the levee system would occur with the project in place as they would have occurred in the FWOP condition. A few small areas have been identified where marsh and forested wetland would be impounded between the upland terrace margin and the new levee system, and where hydrologic connectivity would be permanently disrupted by levee system construction. Impacts for all of these areas, as well as direct impacts associated levee system construction, have been quantified. In total, mitigation would be needed to compensate for a loss of 80.1 AAHUs from forested wetlands and 181.7 AAHUs from coastal wetlands. All impacts would be fully compensated with a mitigation plan to be developed during final feasibility planning. WVA modeling will be conducted to quantify benefits (AAHUs) of mitigation measures. Selection of potential mitigation sites and modeling of benefits will be conducted in coordination with resource agencies. Feasibility-level costs of selected mitigation measures will be developed, and the costs and benefits will be used to identify a best buy mitigation plan using Cost Effectiveness-Incremental Cost Analysis that will fully compensate for all impacts.

1. b) TCEQ rules and approvals for the levee construction, modification, drainage, reclamation, channelization, or flood- or floodwater-control projects, pursuant to the Texas Water Code, §16.236, shall comply with the policies in this section.

Compliance: Extensive hydrology and hydraulics evaluations conducted in development of the Orange-Jefferson, Port Arthur and Vicinity, and Freeport and Vicinity CSMR Plans are presented in the Engineering Appendix (Appendix D) of the Sabine Pass to Galveston Bay DIFR-EIS. These studies evaluated the effects of the levees on storm surge coincident with heavy inland rainfall events and determined that the design would not adversely impact the flood carrying capacity of adjacent rivers, will not increase flooding or divert waters such that lives and property would be endangered or subject to significantly increased flooding. Orange and Jefferson Counties have indicated a willingness to serve as local sponsors for the new Orange-Jefferson CSMR system; Jefferson County Drainage District No 7 would continue as the sponsor of the Port Arthur and Vicinity CSRM project, and Velasco Drainage District would continue to sponsor the Freeport and Vicinity CSRM project. Landowners that would be affected by construction of the new Orange-Jefferson CSRM system and modifications of the Port Arthur

and Freeport and Vicinities CSRM projects are identified in the DIFR-EIS Distribution List (Section 9.2).

IMPACTS ON COASTAL NATURAL RESOURCE AREAS

Potential impacts to Coastal Natural Resource Areas (CNRAs) listed in 31 Texas Administrative Code (TAC) §501.3, and of methods to minimize or avoid potential impacts, are discussed below.

Waters of the Open Gulf of Mexico

Waters of the open Gulf of Mexico (Gulf) are not located in any of the three CSRM project areas.

Waters Under Tidal Influence

All three CSRM project areas include streams and bayous that experience tidal influence. Levee, floodwall and surge gate construction activities would result in a negligible impact because the potential release of suspended solids is minimized by using appropriate best management practices (BMPs) such as silt curtains, and compliance with the required State §401 Certification.

Submerged Lands

Small areas of submerged lands within the Orange-Jefferson CSRM Plan construction right-of-way would be impacted by construction of the new levee system. Impacts on submerged lands have been minimized to the greatest extent possible. Total acres of marsh and forested wetland impacts are included in the impact areas evaluated with the Wetlands Value Assessment model, and thus impacts will be fully compensated by the mitigation plan. Construction of the Cow and Adams Bayou surge gates would result in the loss of approximately 11 acres of submerged lands. The structures themselves would provide artificial hard bottom habitat in the same area, increasing the diversity of bottom types in the area, resulting in negligible long-term impacts. No impacts on submerged lands are expected with construction of the Port Arthur and Vicinity CSRM Plan. The Freeport and Vicinity CSRM Plan would impact a small area of submerged bottom with construction of a surge gate in DOW Barge Canal. This is an artificial canal with little fish and wildlife value; the impacts would result in negligible long-term impacts.

Coastal Wetlands

Direct and indirect impacts associated with construction of the Orange-Jefferson CSRM Plan would result in the loss of about 275.9 acres of estuarine emergent marsh and 139.9 acres of forested wetlands over the period of analysis. Impacts were minimized to the greatest extent practicable. Remaining unavoidable impacts will be fully compensated by in-kind mitigation; all

impacts would be fully compensated with the restoration of estuarine emergent marsh and shallow water.

Total acres include water within the wetlands and small drainages; some SAV in the estuarine marsh areas would also be lost. These acres would be replaced by in-kind mitigation in the amount determined using the WVA model and the CE/ICA incremental analysis

Construction of the Cow and Adams Bayou surge gates would result in the loss of approximately 11 acres of estuarine soft bottom EFH. This is the area estimated for the footings of the gate structures. The structures themselves would provide artificial hard bottom habitat in the same area, increasing the diversity of EFH bottom types in the area. The net long-term loss to EFH bottom habitat from the Cow and Adams gate structures would therefore be negligible.

Submerged Aquatic Vegetation

Some submerged aquatic vegetation is present in waters in the wetlands that will be impacted by construction of the Orange-Jefferson CSRM Plan. These acres would be replaced by in-kind mitigation in the amount determined using the WVA model.

Tidal Sand and Mud Flats

No tidal sands and mud flats occur in the project areas.

Oyster Reefs

No oyster reefs occur in the project areas.

Hard Substrate Reefs

No hard substrate reefs occur in the project areas.

Coastal Barriers

No coastal barriers occur in the project areas.

Coastal Shore Areas

No coastal shore areas occur in the project areas.

Gulf Beaches

No Gulf beaches occur in the project areas.

Critical Dune Areas

No critical dune areas occur in the project areas.

Special Hazard Areas

Special hazard areas are areas designated by the Administrator of the Federal Insurance Administration under the National Flood Insurance Act as having special flood, mudslide, and/or flood-related erosion hazards. The new Orange-Jefferson CSRM Plan alignment is predominantly located in or adjacent to the 100-year floodplain in special hazard zones A8 and AE. Project objectives would decrease the hazard of the flood-prone areas, and a beneficial effect to the hazard area is expected. The Port Arthur and Freeport and Vicinities CSRM Plans are modifications of existing projects which have decreased flood hazards in those areas; no special hazard areas would be affected by modifications of these systems.

Critical Erosion Areas

No critical erosion areas occur in the project areas.

Coastal Historic Areas

No coastal historic areas (sites in the National Register of Historic Places on public land or State Archeological Landmarks that are identified by the Texas Historical Commission as being coastal in character) would be impacted by the project.

Coastal Preserves

The project would directly impact approximately 47.5 acres of TPWD lands in the Tony Houseman and Lower Neches River WMAs. The lands are required for construction of a portion of the Orange-Jefferson CSRM Plan. USACE has determined that there is no feasible and prudent alternative to the taking of these lands. These acres would be replaced by in-kind mitigation in the amount determined using the WVA model on TPWD lands in close proximity to the impact areas.