



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

**SUPPLEMENTAL
ENVIRONMENTAL ASSESSMENT
PUBLIC COMMENTS
APPENDIX F**

**Sabine Pass to Galveston Bay
Port Arthur and Vicinity
Segments 2, 3, 4, 5 and 5A**

**U.S. Army Corps of Engineers
Southwestern Division
Galveston District**

MARCH 2025

NEPA Public Involvement

This draft SEA, the public comment was from December 9, 2024, to January 9, 2025, and received one comment letter. The comment letter received was from the Texas Parks and Wildlife Department (TPWD).

COMMENT:

1. TPWD regulates state-listed threatened and endangered list species. TPWD tracts species considered to be Species of Greatest Conservation Need (SGCN), that face extirpation or extinction but currently lack the legal protections given to threatened or endangered species. Minimization of impacts to these rare resources is important to reduce the likelihood of endangerment and preclude the need to list SGCN as threatened or endangered in the future.

Recommendations:

- The USACE, non-federal sponsor, and contractors become informed of the state-listed species and SGCN with potential to occur in the project areas. Please refer to the Rare, Threatened, and Endangered Species of Texas by County list on TPWD's website.
- State-listed species observed during construction should be allowed to safely leave the site or be translocated by a TPWD permitted individual to a nearby area with similar habitat that would not be disturbed during construction. TPWD recommends that any translocations of reptiles be the minimum distance possible, preferably within 100 to 200 yards from the initial encounter location or no greater than one mile. Again, state-listed species may only be handled by individuals permitted by TPWD for purposes of relocation, surveys, monitoring, and research.
- Precautions be taken to avoid impacts to SGCN in the project area during site assessments, construction, operation, and maintenance.

Resolution:

USACE will adopt the recommendation by TPWD to ensure information is provided to state-listed species that may occur within the area. Precautions will be taken to avoid potential impacts to SGCN within the area.

COMMENT:

2. TPWD states that Section 4.1.4 states, "the area would be surveyed for migratory birds or their nests before any shrubs or trees are cleared during the nesting season." This statement appears to exclude herbaceous-dominated areas such as coastal prairie and marsh. TPWD is concerned that these habitats would not be surveyed prior to construction activities occurring within the general bird nesting season. As stated in Section 3.3.2, coastal prairie is a critically imperiled habitat type and provides nesting habitat for many migratory bird species, some of which are afforded additional protections under the ESA or Section 68.015 PWC. Similarly, coastal marsh habitat supports nesting migratory birds with various levels of

conservation concern and regulatory protection.

Within the project area, potential impacts to migratory birds may occur during site preparation and other construction activities through the disturbance of existing vegetation (trees, shrubs, and non-woody plants) and bare ground (roads, gravel pads) that may harbor active bird nests.

Recommendation:

- Any vegetation clearing be scheduled outside of the general bird nesting season of March 15th to September 15th. If clearing must occur during nesting season, however, TPWD recommends surveying the proposed work area to ensure that no nests with eggs or young are present. Nest surveys should be conducted not more than five days prior to clearing activities to maximize detection of active nests. TPWD generally recommends a 100-foot radius buffer of vegetation remain around active nests until the eggs have hatched and the young have fledged. However, the size of the buffer zone depends on various factors and can be coordinated with the U.S. Fish and Wildlife Service.

Resolution:

USACE had coordinated with the USFWS to ensure all proper precautions will be taken during construction. USFWS has submitted recommendations to ensure proper oversight will be done during construction.

COMMENT:

3. TPWD states that the USACE proposes to purchase 255 credits, expressed as functional capacity units (FCUs), from the Sea Breeze Mitigation Bank (Bank) as compensation for permanent impacts to 104 acres of wetlands. References to "total" FCUs is incorrect application of hydrogeomorphic (HGM) methodology per Smith et al. (1995): ". . . functional capacity refer[s] to the ability of a wetland area to perform a single function and not the capacity of a wetland to perform across multiple functions (i.e., functional capacity is not an aggregate or summed measure of the capacity of a wetland area to perform multiple functions)." Therefore, summing across wetland functions to produce a "total" of FCUs is not appropriate from an HGM perspective and should not be reported as such.

Recommendation:

- The SEA be revised by deleting the open-circle and closed-square bullets on page 13 of Appendix A.

RESOLUTION:

The document has been revised as according to the recommendation.

4. TPWD states that the purchase of credits from the Bank is insufficient to fully compensate for the proposed amount of wetland impacts. The proposed number of credits does not comply with a required provision in the Bank's authorized mitigation banking instrument (MBI). Specifically, Section IV.2 of the MBI states that credits (i.e.,

FCUs) must be traded as a suite of functions – i.e., Temporary Storage of Surface Water (TSSW), Maintenance of Plant and Animal Communities (MPAC), and Removal and Sequestration of Elements and Compounds (RSEC). This would equate to 255 FCUs for the physical function (TSSW), 255 FCUs for the biological function (MPAC), and 255 FCUs for the chemical function (RSEC), but only a single amount of 255 FCUs is proposed for purchase. Additionally, the number of credits to be purchased exceeds the current amount of credits available from the Bank and may exceed the theoretical maximum number of credits that the Bank could produce.

Recommendations:

- The SEA be revised to specify the appropriate amount of FCUs to purchase for each wetland functional category (i.e., TSSW, MPAC, and RSEC).
- Text be added to the SEA that reads as follows: “USACE purchase of credits from the Sea Breeze Mitigation Bank shall occur within 60 days from the start of any land clearing or other construction activities.” This recommendation would ensure timely implementation of compensatory mitigation for permanent wetland impacts and would reduce temporal loss of wetland functions. Also, this recommendation is similar to our September 1, 2022 recommendation that was incorporated into the 2023 Final SEA for the Sabine Pass to Galveston Bay Port Arthur and Vicinity Contracts 3B and 3C.
- The SEA include a statement that the USACE will provide the resource agencies with a copy of the signed and dated credit transaction letter from the bank sponsor demonstrating that the purchase of wetland credits was completed. This recommendation is consistent with our September 1, 2022 recommendation that was incorporated into the 2023 Final SEA for the Sabine Pass to Galveston Bay Port Arthur and Vicinity Contracts 3B and 3C.
- The USACE engage with the Interagency Coordination Team to develop a contingent wetland mitigation plan for the possibility of the Bank lacking a sufficient number of credits to compensate for all wetland impacts.

RESOLUTION:

Information regarding the proper FCUs to purchase has been identified in Appendix A in Section 10 “Costs of Mitigation Plan Increments and Alternatives.” The description of the purchase of credits, agency notification and coordination is explained in Section 14 “Monitoring and Ecological Success Criteria.” Information within these two sections of Appendix A should satisfy TPWD recommendations.

COMMENT:

5. TPWD states that the USACE proposes to restore 60 acres of coastal prairie as compensation for permanent impacts to 42 acres of coastal prairie habitat. Although the restoration is proposed within the proposed real estate boundary for the western levee extension area, the specific location for the coastal prairie mitigation site did not appear to be included with the draft SEA.

Recommendation:

- The SEA be revised to include either 1) geographic coordinates (decimal degrees) and a map of the selected coastal prairie mitigation site's boundaries, or 2) a statement that a future SEA will be developed upon the identification of a specific location for the coastal prairie mitigation site.

Permanent impacts to coastal prairie habitat warrants permanent protection of the compensatory mitigation site.

RESOLUTION:

Identification of the location is still ongoing but will be included in the final SEA.

Recommendations:

- A perpetual conservation easement, held by a third party, be recorded with the Jefferson County Clerk within 180 days from the start of construction of Segment 5A, western levee. A third party is appropriate to ensure long-term site monitoring and protections that the USACE and/or non-federal sponsor may not operationally be able to provide.
- A non-profit conservation organization be selected to hold the conservation easement that is a current land trust member of the Texas Land Trust Council and/or a currently accredited land trust by the Land Trust Accreditation Commission.
- The conservation easement prohibit incompatible uses including grazing and other agricultural practices, surface and near-surface mineral extraction, and stormwater management infrastructure and operations.

The draft SEA is unclear whether the achievement of ecological success criteria within two years of construction refers to 1) project construction or mitigation site construction, and 2) the beginning of construction or the completion of construction.

RESOLUTION:

Updates to the Section 14.4 "Duration" to include post-construction monitoring.

Recommendation:

- Sections 14.2.1 and 14.3.1 of Appendix A be revised for improved clarity.

Section 14, Appendix A states, "Table 10 includes the cost and duration of monitoring work and identifies the entity that will be responsible for the monitoring activity." However, no monitoring

entity is identified in Table 10.

RESOLUTION:

Updates to the SEA has been completed as recommended.

Recommendation:

- Section 14 of Appendix A be revised to clearly specify whether the USACE and/or the non-federal sponsor is the entity responsible for monitoring in each of the following time periods: prior to construction, during construction, within five years after construction, and beyond five years after construction.

The second text block on page 16 of Section 14, Appendix A does not commit the USACE and/or the non-federal sponsor to documenting and communicating the status of monitoring activities and results. Without this information, it cannot be determined whether the mitigation site is on track to meet ecological success criteria and if adaptive management is needed.

RESOLUTION:

In Section 14 “Monitoring and Ecological Success Criteria”, it is stated the non-federal sponsor is responsible for the monitoring period. Information will be shared with the USACE.

Recommendation:

- All occurrences of the term “should” in the second text block on page 16 of Section 14, Appendix A be replaced with the term “shall”. Regarding the annual mitigation consultation meeting with resource agencies, TPWD’s recommended term “shall” is consistent with language in Section 906(d)(4)(B) of WRDA 1986, as amended through Public Law 117-286 (enacted December 27, 2022).

The duration of the monitoring period is unclear. Section 14.4, Appendix A references five years of post-construction monitoring, whereas Section 14.5, Appendix A references six years. Also, it is unclear whether the assumption of two additional years for monitoring (due to unanticipated natural disturbance) is part of, or in addition to, the proposed 6-year monitoring timeframe referenced in Section 14.5.

RESOLUTION:

Updates to the SEA has been completed as recommended.

Recommendations:

- Language in the SEA regarding the duration of monitoring be revised to read as follows: “Post-construction monitoring shall occur over a minimum of five years or continue until it has been demonstrated that the mitigation has met the ecological success criteria.” The latter portion of this recommendation is consistent with language in Section 906(d)(5) of WRDA 1986, as amended through Public Law 117-286 (enacted December 27, 2022).

- All language relating to oyster reef mitigation be deleted from Section 14.5, Appendix A because the draft SEA does not propose any impacts to oyster habitat.

RESOLUTION:

Updates to the SEA has been completed as recommended.