APPENDIX H
Response to Public Comments

BAY AQUATIC BENEFICIAL USE SITES
GALVESTON BAY, TEXAS

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REPLY TO
ATTENTION OF
Navigation Branch

July 2, 2025

Response to Public Notice Comments
Bay Aquatic Beneficial Use Sites (BABUS)
USACE Project HSC-M-6

The USACE Galveston District Navigation Branch is providing the following responses to comments received as a result of a public notice published for the Project, Department of the Army, U.S. Army Corps of Engineers (USACE) Public Notice No. HSC-M-6. Following the National Environmental Policy Act procedures, comments have been reviewed for substantiality and responded to accordingly within requested information, project changes, or other, within this document, or within the Final Environmental Assessment, as noted.

The public notice for the project was published on April 25, 2025 for a 30-day comment period, closed May 26, 2025.

Responses to Comments

The responses to the public notice comments presented below are divided by commenting agency, commenter, and the applicant's response to the specific comment. Comments to the public notice were received from the following:

- NOAA National Marine Fisheries Service (NMFS)
- United States Fish and Wildlife Service (USWFS)
- Texas Parks and Wildlife (TPWD)
- Ingleside on the Bay Coastal Watch Association
- Public Citizens (3)

The comments are shown in italics and the responses in regular typeface.

NMFS Comments

1. *The proposed actions will have direct impacts on existing EFH through the conversion of estuarine open water, estuarine mud substrate, and estuarine shell substrate/oyster reef habitats from the creation of the BABUS PAs. More specifically, approximately 23.9 acres of scattered oysters over mud bottom and 64.3 acres of live oyster reef habitats will be impacted as a result of the proposed PAs. Mitigation for the oyster impacts is expected to be at a 1:1 ratio of acres impacted to acres relocated and created. The applicant is considering oyster relocation efforts onsite and/or utilizing the candidate sites for oyster reef mitigation identified previously from Appendix P-1 of the 2019 FIFR-EIS for potential relocation areas elsewhere within the Galveston Bay. The NMFS agrees the selected proposed action would impact EFH resources and we also concur the relocation and/or mitigation strategies coupled with the subsequent BU placement*

would offset those impacts. These mitigating actions would produce important intertidal habitat for aquatic species and provide important bird island nesting habitat along the Galveston migratory corridor, thus having a net benefit to the Galveston Bay estuary ecosystem.

Response: The USACE notes NMFS concurrence with the oyster mitigation approach proposed. Upon further project design and engineering, a more precise oyster relocation and mitigation plan may be produced for the project. USACE will continue to correspond with NMFS through the engineering phases of the project.

TPWD Comments

1. *TPWD has expressed serious concerns about the permanent damage to oyster habitats. The BABUS project is expected to impact approximately 64.3 acres of viable oyster habitat permanently.*

   Mitigation Request and Recommendations:

   - *Because oyster relocation typically has low success, TPWD recommends:*
     - *A 1:1 mitigation ratio for viable oyster habitats in harvestable areas.*
     - *For restricted harvest zones, TPWD supports the use of hard substrate installations to encourage natural oyster recruitment and reef development.*
   - *TPWD requests a Compensatory Mitigation Plan to address these impacts and be submitted for review.*

   The Mitigation Plan should include the following details:

   - *Type and source of the hard substrate material.*
   - *Depth, area, and layout of the constructed reef.*
   - *Construction methods and equipment to be employed.*
   - *A monitoring plan detailing:*
     - *Live oyster density.*
     - *Spat (larval oyster) recruitment.*
     - *Shell volume.*
   - *Defined success criteria for the restoration.*
   - *A clear timeline to ensure long-term ecological success and sustainability.*

Response: The USACE has referred to the Texas Department of State Health Services Classification of Shellfish Harvesting Areas of Galveston Bay current harvestable areas maps. The data indicates that a 1.2 acre consolidated reef and a 0.19 acre consolidated reef intersect the boundary of TX-5 harvest area, an approved shellfish harvest area. TX-4, a conditionally approved shellfish harvest area, intersects approximately 51.9 acres of consolidated reef and 1.3 acres of scattered reef area. The remaining 22.6 acres of scattered reef and 11.01 acres of consolidated oyster reef are located in Restricted Area. Both TX-4 and TX-5 areas are noted as closed for public harvest[1].

As noted by the TXDSHS, the status of shellfish growing waters in Texas estuaries is subject to change by the Texas Department of State Health Services at any time. These changes may be due to high rainfall and runoff, flooding, hurricanes and other extreme weather conditions, major spills, red tides, or the failure or inefficient operation of wastewater treatment facilities.

Due to the potential for fluctuating shellfish harvest areas restrictions and ongoing engineering and design of the project, total area of required oyster mitigation has not been determined at this time. The NMFS Habitat Conservation Division has concurred with the oyster mitigation approach described within the EFH consultation request and in the EA to include habitat relocation. USACE will continue communication with TPWD as the project approaches final design, engineering and construction to ensure all viable oyster habitat within harvestable areas are mitigated at the assured 1:1 ratio. Furthermore, a more robust Mitigation Plan may be completed at that time, if determined necessary to include the required details in addition to final engineering and design documents.

The Final EA incorporates the TXDSHS shellfish harvest area data in the discussion regarding oyster reefs to further gratify the commenter's request.

2. *As part of the proposed project, the goal is to achieve long-term ecological benefits by constructing new subtidal and intertidal marsh habitats. To enhance the success of these habitats, the TPWD recommends the planting of native wetland vegetation—either through seeds or seedlings—suited to the specific conditions of subtidal and intertidal zones.*

TPWD requests the submission of a detailed Wetland Restoration Plan for agency review. This plan should include the following key elements:

- *Hydrological modifications proposed to restore or replicate natural tidal and surface water flows.*
- *A comprehensive planting plan, detailing the selection of native species and the methods for planting.*
- *Benchmarks to measure success, focusing on:*
    - *Plant survival rates.*
    - *Species richness (biodiversity).*
    - *Hydrologic performance.*
- *A timeline outlining the evaluation of progress, consistent with the project's restoration objectives.*

[1] Texas Department of State Health Services. (2023). *Galveston Bay shellfish classification maps* [PDF]. https://www.dshs.texas.gov/sites/default/files/seafood/MapsPDF/ShellfishClassificationMaps/Gal2023combined.pdf

- *A monitoring plan designed to track key performance metrics and allow for adaptive management adjustments as needed.*

Overall, the plan should be designed to ensure the long-term viability and sustainability of the restored wetland ecosystems.

Response: USACE will assess wetland vegetation establishment within the Marsh Fill Areas of the BABUS Project following construction to determine if planting or seeding vegetation is necessary to achieve the culminating intertidal wetland marsh habitat. A wetland establishment plan, or similar document, will be included in final design and construction plans. As a Beneficial Use project, the USACE and cooperating agencies will ensure the BABUS will be constructed as a beneficial ecological site within Galveston Bay following completion of fill and USACE will ensure the long-term viability and sustainability of the site.

Houston Pilots

1. *A concern exists regarding the potential for strong surge and wake effects generated by passing deep-draft vessels in proximity to narrow recreational boater cuts within or adjacent to the proposed BABUS area. These effects could pose a safety hazard to small craft operators particularly in confined or poorly sheltered areas.*

   To mitigate this risk, it is recommended that the final design of BABUS incorporate careful consideration of bottom contours and shoreline geometry near any recreational boater cuts. Specifically, it is recommended the underwater slopes and adjacent depths be engineered to minimize the amplification and refraction of vessel-generated waves and surges. Strategic use of gradual bathymetric transitions, protective shoals, or breakwaters may significantly reduce the hazard to recreational users.

Response: USACE acknowledges that there is potential for increased wake and surge effects in the narrow channel area of boater cuts, specifically Five Mile Cut which is proposed to remain open and potentially bisect two constructed cells of the BABUS. As the full extent, shape, and configuration of BABUS has not been determined, this potential issue will be investigated further and remediated during final project engineering and design.

Houston Yacht Club

1. *HYC is concerned about the impacts to the environment as well as additional silting of shorelines and our harbor.*

Response: Through the Environmental Assessment process conducted by the USACE, it has been determined that the project would not cause significant alterations of siltation patterns to land and shorelines located across the Houston Ship Channel from the BABUS project. Localized and insignificant changes in sedimentation and siltation of shorelines of federally owned islands and DMPAs directly adjacent to the BABUS are possible.

2. *Increasing the land and shallow water that divides Galveston and Trinity Bays creates new hazards to navigation and changes water circulation patterns in the bay system. This may potentially add storm surge flow.*

Response: USACE does not propose to close Five Mile Cut with the construction of BABUS. This recreational navigation access will remain open and also provide water circulation in the bay system. Through the scoping and EA process, it was determined that there would be no significant negative impact of the project on storm surge flow or water circulation.

3. *Closing Five Mile Cut affects boaters, including commercial fishermen, all over the bay. HYC members often use Five Mile Cut to travel across Trinity Bay to Oak Island. It appears from the plan that the 5-mile cut is going to be compromised, and the North Boater's Cut is going to be completely blocked. The 5-mile cut needs to be maintained for access to Trinity Bay from upper Galveston Bay. We ask that the boater cuts (Five Mile Cut and North Boaters Cut) be maintained, and the dredge area be moved north of Five Mile Cut.*

   Response: USACE has strategically located the cells of the BABUS Project to avoid impacts to Five Mile Cut, which is proposed to remain open and potentially bisect two constructed cells of the BABUS. As the full extent, shape, and configuration of BABUS has not been finalized, this potential issue will be investigated further and remediated during final project engineering and design.

4. *We request that the Corps complete a full Environmental Impact Statement (EIS) rather than the minimal Environmental Assessment (EA). This would require a look at the full cumulative impacts with other projects in both Galveston Bay and Trinity Bay rather than just the impact of this project. We understand that the Corps is currently building another dredge spoil island in the middle of Trinity Bay. The silt and current impacts of both projects on each other, the environment, and other Bay users is unknown.*

   Response: USACE conducted a cumulative impacts assessment as part of the EA (Refer to Section 5 of the EA) that included assessment of the Three Bird Island located in Trinity Bay among several other projects identified. The cumulative impact assessment was conducted according to 40 CFR § 1508.1. Overall, the cumulative effects of this proposed action, combined with the predicted effects of the planned Three Bird Island Marsh PA, would have temporary minor negative impacts to water quality due to increased turbidity during construction and placement of material potentially occurring at the same time. Future combined actions, once established, are expected to provide beneficial effects to water and sediment quality due to the functioning of marsh and oyster reef habitats within this region of the bay.