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Re: Draft Integrated General Reevaluation Report-Environmental Assessment for the Tentatively Selected Plan of the Freeport Harbor Channel Improvement Project Brazoria County, Texas

Texas Parks and Wildlife Department (TPWD) has reviewed Draft Integrated General Reevaluation Report-Environmental Assessment (DIGRR-EA) for the Tentatively Selected Plan (TSP) of the Freeport Harbor Channel Improvement Project (FHCIP) prepared by the U.S. Army Corps of Engineers-Galveston District (USACE). This DIGRR-EA evaluates modifications to the recommended plan from the FHCIP Final Feasibility Report and Environmental Impact Statement dated September 2012 (2012 Feasibility Report). The 2012 plan was authorized for construction in Section 7002 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014 Project). The stated purpose of the reevaluation is to determine the modifications to the WRRDA 2014 Project that are necessary to facilitate safe and efficient navigation of Panamax vessels around the Dow Thumb to and from the Velasco Container Terminal. The study area is located on the middle Texas coast, bounded generally by the Brazos River on the west, Oyster Creek on the north and east, and the Gulf of Mexico on the south. The project area for this DIGRR-EA is a subset of the authorized project study area and is located in Freeport, Brazoria County, Texas.

TPWD previously commented on the Draft Environmental Impact Statement (DEIS) for the Proposed Freeport Harbor Channel Improvement Project in a letter dated February 28, 2011 and submitted comments on FHCIP proposed placement areas in a letter dated October 6, 2005. Copies of these comment letters are attached.

The project modifications proposed in the TSP include widening of the channel at the Dow Thumb to 400 feet, construction of a Bend Easing southeast of the Dow Thumb, and dredging a turning notch in the existing Brazos Port Harbor. All dredging would be to a depth of 46 feet MLLW with allowable advance maintenance dredging and over-dredge totaling an additional three feet. The channel widening would require dredging approximately 7.5 acres of submerged bottom; construction of the Bend Easing would require excavation of 16.4 acres of upland and dredging of 7.5 acres of submerged bottom; and construction of the turning notch would require dredging 8.3 acres of submerged bottom. Combined, the construction would generate approximately 1.7 million cubic yards (MCY) of material. According to the DIGRR-EA, under a least-cost placement plan, new work material generated by the TSP would be placed in PA 1 and maintenance material (approximately 2.7 MCY over a 50-year period) would be deposited offshore in Ocean Dredged Material Disposal Area 1A.

Additional changes in the scope of the authorized WRRDA 2014 Project include the removal of Future PA 9 from the 2012 Feasibility Report Dredge Material Maintenance

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Plan (DMMP). The USACE has determined that Proposed PA 8 has sufficient capacity to accommodate all the new work material that previously was designated to go to PA 8 and PA 9. All future maintenance material would be placed offshore in PA 1A.

Dredge Material Placement

TPWD is not able to fully evaluate the DMMP due to discrepancies in the proposed placement of the new work dredge material that would be produced under the TSP. Table 8-4 on Page 8-22 of the DIGRR-EA indicates that under the previously authorized plan, 1,853,144 CY of material from dredging the channel from the Lower Turning Basin (TB) to the Brazosport TB would be placed in PA 8, while 2,765,559 CY of material dredged from the channel from the Brazosport TB to the Stauffer Channel would be placed in PA 9. The revised DMMP (with PA 9 removed) indicates a total of 6,352,703 CY would now be placed in PA 8. This increase includes the 1,734,000 CY of material that would be produced under the TSP, as evidenced by the description for Table 8-4 which states "TSP new work quantities have been included in the revised new work placement plan". However, page 5-12 of the DIGRR-EA states "all new work material (from the TSP) would be placed in the existing upland confined PA 1." 1

Section 1.7, Beneficial Use Opportunities, of Appendix K, Dredge Material Management Plan, of the DIGRR-EA states the potential for beneficial use (BU) of the new work material that would be produced by implementation of the TSP has been considered; however, in comparing the pumping distance from the proposed Bend Easing area to the nearest potential marsh restoration area with the distance to PA 1, the PA 1was found to be closer (3.1 miles versus 2.3 miles). Section 1.7 states "The PAs or BU areas selected in the DMMP are those, which provide the needed capacity at the lowest cost per cubic yard. Based solely on pumping distance, the least-cost disposal option would be PA 1 since the closest potential BU site is about 30 percent farther than the proposed upland site (PA 1)." Although use of PA 8 is not considered in Appendix K, Appendix C, Real Estate Plan, states "There may be a possibility that PA 8 will need to be used for this project. If so, the NFS (non-federal sponsor) will need to convey a perpetual dredge material easement to the Government. The NFS owns the land in fee for PA 8. If it is determined PA 8 will be utilized, a dredge material pipeline easement will be needed for the transfer of material from the channel to PA 8." TPWD notes the distance from the proposed Bend Easing area to PA 8 is approximately 4 miles. 2

TPWD stands by previous recommendations that the USACE and local sponsor consider the beneficial use of dredge material to restore and enhance fish and wildlife habitat. While TPWD acknowledges the USACE has chosen placement based least cost analysis, it is noted that Policies for Dredging and Dredged Material Disposal and Placement under Goals and Policies of the Texas Coastal Management Program (CMP) state that "dredged material from dredging projects in commercially navigable waterways is a potentially reusable resource and must be used beneficially in accordance with this policy" (31 TAC §501.25(d)). Additionally, the CMP Goals and Policies state that "the material shall be used beneficially unless it is demonstrated that the costs of using the material beneficially are not reasonably proportionate to the costs of the project and benefits that will result" (31 TAC §501.25(d)(2)). Appendix A, Economic Appendix of the DIGRR-EA states, in summary, that the Cost Benefit Ratio of the GRR portion of the project is predicted as 1.47, while the average annual economic benefit of the FHCIP as a whole yields a CBR

of 1.53. In addition to direct economic benefits of the project, benefits that must be considered when evaluating BU opportunities include enhancement of fish and wildlife habitat, reduction of shoreline erosion, enhancement of recreational use, benefit to benthic communities, and benefit to the sediment budget. Restoration of subsided marshes in the vicinity of the FHCIP would increase environmental and economic resiliency of this area. TPWD believes the economic values of these BU services should be considered in an economic analysis of project costs. TPWD is willing to assist in the restoration of fish and wildlife habitat by offering assistance in locating areas that are appropriate and in need of beneficial use of dredge material. 3

Compensatory Mitigation

In conjunction with removal of PA 9 from the DMMP, the USACE states mitigation for the project "would be reduced significantly, as more than half of wetland impacts for the entire authorized project were associated with this proposed PA." The reduction in the proposed mitigation is not defined. Additionally, it is not clear from the DIGRR-EA whether or not the proposed mitigation for impacts to wetlands in PA 8 would continue to be conducted in Tract 9, north of the previously proposed PA 9, as shown in Appendix H-1, Mitigation and HEP Cost Report, of the 2012 Feasibility Report and Environmental Impact Statement. The amount and location of mitigation associated with proposed impacts to PA 8 should be addressed by USACE. 4

TPWD stands by previous comments regarding the compensatory mitigation plan included in the 2012 Final Environmental Impact Statement. While TPWD is not opposed to the proposed modifications to the Freeport Harbor Channel system, the agency believes that all impacts to habitats associated with the proposed action should be adequately compensated for. TPWD notes the entirety of the proposed PA 8 lies within the 100-year floodplain and the majority of the tract is included in the U.S. Fish and Wildlife Service National Wetland Inventory as palustrine emergent wetland. In the comment letter of January 28, 2011, TPWD noted the proposed creation of freshwater wetlands as compensatory mitigation for impacts to palustrine wetlands in proposed PAs 8 and 9 represented a 0.077 to 1 compensation ratio. TPWD continues to find the USACE mitigation plan for impacts to the PA 8 site inadequate. 5

TPWD appreciates the opportunity to provide comments and recommendations for this DIGRR-EA. Questions can be directed to Ms. Colleen Roco (281-534-0139) in the Dickinson Marine Lab.

Sincerely,

Rebecca Hensley

Rebecca Hensley
Regional Director, Ecosystem Resources Program
Coastal Fisheries Division

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January 28, 2011

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TCEQ 401 Coordinator
Mail Code 150
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Re: Draft Environmental Impact Statement (DEIS) for the Proposed Freeport Harbor Channel Improvement Project

Texas Parks and Wildlife Department (TPWD) has reviewed the DEIS for the proposed Freeport Harbor Channel Improvement Project (FHCIP). TPWD has participated in two site visits to the proposed project area and in a letter dated October 6, 2005 provided comments regarding the functions and values of the habitat, made recommendations regarding the beneficial use (BU) of the dredge material, and the use of two potential disposal areas for the placement of dredge material. Additionally, in a letter dated February 22, 2008 TPWD provided comments regarding the document entitled Freeport Harbor Channel Improvement Project- Environmental Mitigation for Habitat Impacts on Proposed Placement Areas 8 & 9 dated November 15, 2007.

In various locations of the DEIS it states, "Coordination with U.S. Fish and Wildlife Service (USFWS) and the Texas Parks and Wildlife Department (TPWD) regarding these [vegetation and wetlands] impacts has resulted in proposed mitigation that includes creation and maintenance of forested habitat and creation of wetland areas adjacent to impact areas." While this statement is correct, the coordination did not result in a mitigation plan that adequately compensates for the proposed project's impacts to habitat.

Appendix H-1, Mitigation and HEP/Cost Analysis Report located in Volume II of the DEIS, does acknowledged that "agencies [USFWS and TPWD] made a number of recommendations we [the U.S. Army Corps of Engineers] could not concur with for project mitigation." Particularly, "TPWD requested preservations in perpetuity of a 5-acre ephemeral wetland swale located between PA 8 and SH 36 as a mitigation feature. However, the Port does not wish to make this property available for project mitigation. The resource agencies also requested mitigation for the 358 acres of pasture impacted by PA's 8 and 9. The agencies classify these pastures as wet-coastal prairie. We [the U.S. Army Corps of Engineers] do not concur with this classification. Although the land may have at one time been coastal prairie, it is now degraded grassland primarily consisting of non-native pasture grasses limited of wildlife habitat value that does not merit mitigation."

As stated from our letter dated February 22, 2008, "TPWD disagrees with the Corps classification of the habitat present at the proposed disposal areas and their assessment of it as not significant. The Service also considers this habitat as wet 1

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coastal prairie and provided a species list of vegetation and wildlife observed to support this classification in their PAL [Planning Aid Letter] dated April 5, 2007. In the same letter the Service describes coastal prairie as a valuable and declining wildlife resource." The information (species list of vegetation and wildlife observed) provided in the PAL contradicts the Corps classification of the habitat present at the proposed disposal areas.

The DEIS states, "Mitigation refers to the avoidance, minimization, and rectification, reduction, or compensation of impacts resulting from implementation of an action. For the proposed FHCIP, the majority of the potential project-related impacts were avoided. Thus, mitigation would be required only for impacts to forested and wetland habitat at the proposed new upland PA's." It is unclear how or why the U.S. Army Corps of Engineers (Corps) determined that "the majority of the potential project-related impacts were avoided." Even though the Corps does not concur with the USFWS and TPWD regarding the habitat value of the wet coastal prairie that is proposed to be impacted by PA 8 and 9, the proposed project will still impact 358 acres of habitat and does merit mitigation (the avoidance, minimization, and rectification, reduction, or compensation of impacts resulting from implementation of an action). 2

As proposed, the project would impact 358 acres of coastal prairie, 39 acres of freshwater wetlands, and 21 acres of riparian forest. The Corps mitigation plan would improve 12 acres of exiting forest, a 0.57 to 1.0 compensation ratio, create 3.0 acres of freshwater wetlands, a 0.077 to 1 compensation ratio, and no mitigation is proposed to compensate for impacts to coastal prairie. The Corps proposed mitigation plan is inadequate and does not compensate for the majority of the proposed impacts at the project site. 3

Texas Parks and Wildlife Department is not opposed to the widening and deepening of the Freeport Harbor Channel system, but recommends that all impacts to habitat associated with the proposed action be appropriately compensated for. Specifically, TPWD continues to recommend that, if suitable dredge material exists, the Corps and local sponsor consider the beneficial use of the dredge material to restore and enhance fish and wildlife habitat. If the material is not suitable, TPWD does not object to the upland disposal on PA-8 or PA-9, but recommends that the entire 21-acre wooded areas on PA-9 and 117-acre wooded area directly to adjacent PA-9 be avoided. TPWD continues to recommend the wetland swale on PA-8 with an upland buffer component also be avoided and included as mitigation for the impacts to freshwater wetlands. An appropriate upland buffer for this wetland would be the upland between the wetland and SH 36 and the uplands between the wetland and the barbed wire fence dividing the area. Additionally, TPWD recommends all impacts to the coastal prairie be assessed and be compensated for appropriately. Due to the 4 5 6

inadequacy of the mitigation plan presented in this DEIS, TPWD does not concur with the findings of the DEIS.

Questions can be directed to Cherie O'Brien in the Dickinson Field Office at 281-534-0132.

Sincerely,

Rebecca Hensley

Rebecca Hensley
Regional Director, Ecosystem Resources Program
Science and Policy Branch
TPWD Coastal Fisheries Division

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October 6, 2005

Mr. George Dabney
Environmental Lead
U.S. Army Corps of Engineers-ERB
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Galveston, Texas 77553-1229

Re: Freeport Harbor- Proposed Upland Placement Areas

Dear Mr. Dabney,

Provided below are Texas Parks and Wildlife Department's comments and recommendations regarding the use of two potential disposal areas for the placement of maintenance dredge material from the Freeport Harbor.

Parcel 9 is a 442-acre parcel adjacent to a designated placement area ("spoil easement Reserved by U.S.A.") and to the Brazos River. The majority of Parcel 9 is over grazed cow pasture vegetated with Seacoast sumpweed, Carolina wolfberry, frog fruit, carpet grass, Bermuda grass, and smutgrass. The designated placement area encompasses a 2.29-acre wooded area at the northern most portion directly adjacent to the Brazos River. Parcel 9 also encompasses a wooded area at its northern most portion adjacent to the Brazos River. The 2.29-acre area is vegetated with a diverse range of species including; hackberry, cedar elm, toothache tree, pecan, red mulberry, honey locust, gum bumelia, Jerusalem tree, Chinaberry, yaupon holly, palmetto, green briar, peppervine, trumpet creeper, poison ivy, dewberry, native chili peppers, iron weed, turk's cap, frog fruit, basketgrass, and unknown grasses sedged and rushes. The wooded are at the northern potion of Parcel 9 is also vegetated with some of these same species but not as mature.

Wooded areas along the coast provide important habitat to migrating songbirds particularly during spring migration when exhausted from their flight across the Gulf of Mexico songbirds flock to wooded areas along the Gulf of Mexico to rest and refuel. Wooded areas such as the two described above provide important habitat for and are used as a "fall out area" by Neotropical migrating birds. Dr. Sidney Gauthreaux's radar studies of Neotropical migrant songbirds have identified the area between Matagorda Bay and east of Sabine Lake into Louisiana as one of the most important migration corridors in North America.

Parcel 8 is 254.5-acre parcel located northeast of State Highway 36. This parcel is also utilized as a grazing pasture but does not show signs of being overgrazed as parcel 9. There are two stock ponds vegetated with common arrowhead, Walteri millet, rattle bush, Seacoast sumpweed, and Chinese tallow. An

additional wetland exists in the southern portion of the parcel between SH 36 and a barbed wire fence. The wetland is vegetated with knotroot bristlegrass, Gulf cordgrass, Carolina wolfberry, seashore paspalum, sea-ox daisy eye, frog fruit, and marsh elder. This wetland swale which has 100 percent vegetative cover conveys runoff to Tobey Ditch. Tobey Ditch is a tidally influenced ditch which parallels the Brazos River and drains into the Gulf Intracoastal Water Way. The margins of Tobey Ditch are vegetated with Gulf cordgrass, marshhay cordgrass, smooth cordgrass, saltglass, saltwort, sea-ox daisy eye, and coastal saltgrass.

Wetland swales such as these provide important feeding and cover habitat for amphibians, reptiles, and small mammals and feeding habitat for the for predator bird species such as Marsh Hawks (Northern harrier) and Black-shouldered Kites. Shallow vegetated swale wetlands also provide feeding habitat for numerous wading birds such as yellow-crowned and black-crowned night herons, American bitterns, great blue herons, and great egrets. The wetlands and adjacent upland provided feeding, breeding, and cover habitat for resident and migrating waterfowl and prairie songbirds. They also protect and improve water quality by retaining freshwater runoff and associated pollutants from adjacent areas. This particular wetland improves the quality of runoff from the adjacent cow pastures before discharging into Tobey Ditch and eventually the GIWW.

For years dredge material, particularly maintenance dredge material, was considered to be a useless by-product of dredging projects and stockpiled in dredged spoil areas. But today dredge material is considered to be a resource that, if suitable, can be used beneficially to restore and enhance fish and wildlife habitat. Texas Parks and Wildlife Department advocates and supports the beneficial use of dredge material. If stored in an upland disposal unit, this particular project will require approximately 300-350 acres.

Texas Parks and Wildlife Departments first recommends, if suitable material exists, the Corps and local sponsor consider the beneficial use of the dredge material to restore and enhance fish and wildlife habitat. 1

If the material is not suitable TPWD does not object to the upland disposal on parcel 8 or 9 but recommends that the entire wooded areas on Parcel 9 and 2.29-acre wooded area directly adjacent described above be avoided. Additionally we recommend the wetlands swale on Parcel 8 with an upland buffer component also be avoided. An appropriate upland buffer for this wetland would be the upland between the wetland and SH 36 and the uplands between the wetland and the barbed wire fence dividing the pasture. 2 3

As always, Texas Parks and Wildlife Department is willing to assist in the protection and restoration of fish and wildlife habitat. If additional assistance,

including technical guidance regarding fish and wildlife habitat, its restoration, or beneficial use of dredge material please don't hesitate to contact us.

We appreciate the opportunity to provide comments and to be involved in the planning and selection of potential disposal for the Freeport Harbor.

Questions can be directed to Cherie O'Brien in Dickinso n at 281-534-0132.

Sincerely,

Jarrett (Woody) Woodrow
Coastal Conservation Program Director

JOW:COB