



# Public Notice

**U.S. Army Corps  
Of Engineers**

**Galveston District**

Permit Application No: \_\_\_\_\_

SWG-2013-00841

Date Issued: \_\_\_\_\_

23 April 2024

Comments \_\_\_\_\_

Due: \_\_\_\_\_

23 May 2024

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## U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT

**PURPOSE OF PUBLIC NOTICE:** To inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. The U.S. Army Corps of Engineers (Corps) is not the entity proposing or performing the proposed work, nor has the Corps taken a position, in favor or against the proposed work.

**AUTHORITY:** This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

**APPLICANT:**

Jefferson County  
1149 Pearl Street, 5th Floor, Jefferson County Courthouse  
Beaumont, Texas 77701  
POC: Judge Jeff Branick  
Phone: 409-835-8584  
Email: [Jeff.Branick@jeffcotx.us](mailto:Jeff.Branick@jeffcotx.us)

**AGENT:**

DESCO Environmental Consultants  
26902 Nichols Sawmills Road  
Magnolia, Texas 77355  
POC: Tanya Matcek  
Phone: 281-252-9799  
Email: [tmatcek@descoenv.com](mailto:tmatcek@descoenv.com)

**LOCATION:** The project site is located in Keith Lake Fish Pass between Keith Lake and the Sabine Neches Waterway, in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Port Arthur South, Texas.

**LATITUDE & LONGITUDE (NAD 83):**

**Latitude:** 29.772645° North; **Longitude:** 093.945731° West

**PROJECT DESCRIPTION:** The proposed project involves a request for modifications to previously authorized Department of the Army (DA) Permit SWG-2013-00841 to facilitate repairs and enhancements to the Keith Lake Fish Pass Baffle. The total footprint of the proposed project is approximately 9.412 acres, the majority of which is below Mean High Water (MHW) level (0.69 feet). Based on collected data there are approximately 1.538 acres of open water and 6.870 acres of wetlands within the project area. The purpose of the proposed modifications is to restore optimal functionality while preserving the original dimensions of the Keith Lake Fish Pass Baffle (310-foot-long by 156-foot-wide by 13-foot-tall). Of the resources identified, approximately 4.779 acres of Palustrine Emergent (PEM) wetlands, 0.0339 acres of Palustrine Scrub Shrub (PSS) wetlands, and 1.458 acres of open water would be permanently filled during construction resulting in a permanent loss. The remaining acreages (1.764 acres PEM wetlands, 0.292 acres PSS wetlands, and 0.079 acres of open water) would be subject to temporary impacts during construction. Areas subject to temporary impacts would be restored to existing grade and sprigged with smooth cordgrass plugs on a 1.5-foot by 1.5-foot grid spacing once construction is completed. Associated activities include the total excavation of approximately 27,056 cubic yards (CY) of material to facilitate placement of bedding stone and rock riprap to desired contours/dimensions during construction of rock riprap aprons on either side of the baffle and along the southern shore of the channel. Approximately 808.24 CY of the excavated material would consist of native material from open water, approximately 25,841.96 CY of excavated material would consist of wetlands, and approximately 405.62 CY of excavated material would consist of uplands. A total of 947.41 CY of the excavated native material would be placed in open water areas as fill to create an embankment with an elevation of -2.5 and a 4:1 slope along the southern shore of the channel. The remainder of the excavated material would be hauled off-site for disposal. Additionally, the permittee proposes to place a total of 10,708.33 CY of bedding stone (2,711.11 CY in open water (1,870.76 CY below mean high water MHW), 7,895 CY in wetlands, and 102.22 CY in uplands) in a 12-inch layer in the footprint of the apron and overlay the bedding stone with a total of 28,953.33 CY of rock riprap (6,776.11 CY in open water below MHW), 21,920.56 CY in wetlands, and 256.86 CY in uplands) in a 30- to 60-inch layer (depending on location). Rock riprap will be graded on a 4:1 slope to existing ground and the rock apron will have a top elevation of +1.0.

**PROJECT HISTORY:** DA Permit SWG-2013-00841 was issued 17 September 2014, and authorized the permittee to discharge 11,645 cubic yards of riprap and 80 cubic yards of clean backfill dirt into 1.11 acres of waters of the United States during construction of a structure that was 310-foot-long, 156-foot-wide at the base, and 13-foot-tall. The purpose of the structure was to reduce the cross-section of the Keith Lake Fish Pass (KLFP). This structure was designed to reduce the velocity of the water through the pass and decrease the salinity within Keith Lake. To construct the structure, approximately 9,000 cubic yards of clay were excavated from the pass and placed in the same upland dredged material placement area utilized when the pass was originally constructed. To access the pass with construction and excavation equipment, two temporary board roads and equipment working areas were constructed on either side of the pass, temporarily impacting a total of 2.20 acres of wetlands. The road on the north side was 25-foot-wide and 1,000-foot-long. It was built on top of the placement area levee to avoid wetlands, and it terminated in a 0.80-acre equipment work area. The access road on the south side was

25-foot-wide and 1,500-foot-long, also terminating in a 0.80-acre equipment work area. A 1,050-linear-foot portion of this road crossed 0.60 acres of wetlands. Both of the equipment work areas were in wetlands adjacent to the pass. The access roads were removed upon completion of construction, which was estimated to take six months. The authorization expired on 31 December 2019.

**AVOIDANCE AND MINIMIZATION:** The applicant has stated that any clearing activities in suitable Eastern Rail habitat would be conducted outside of the breeding season for the species to minimize potential for impact. Board matting will be used in temporary work areas, as necessary, to minimize impacts. Upon completion of operations, temporary workspaces will be restored to preconstruction contours and sprigged with smooth cordgrass plugs on a 1.5-foot by 1.5-foot grid.

**MITIGATION:** The applicant believes that the proposed project is self-mitigating and does not require additional mitigation measures due to the significant benefits it offers to the ecological health and resilience of the Keith Lake System. The repair and improvement of the Keith Lake Fish Pass Baffle are expected to reduce salinity levels, thereby preventing or slowing wetland conversion and loss within the system. Additionally, the project would preserve and enhance hundreds of acres of wetlands within the Keith Lake System over time post-construction. Analysis conducted by Michael Rezsutek, PhD, Texas Parks and Wildlife Department (TPWD) Upper Coast Wetland Ecosystem Project Leader, supports this assertion by estimating that approximately 80 acres of wetlands would be preserved per year once the baffle is functioning properly. As such, the applicant contends that the overall gain from repairing the baffle would outweigh any potential wetland impacts within the project footprint, making additional or supplemental mitigation unnecessary.

**ALTERNATIVES ANALYSIS:** The U.S. Fish and Wildlife Service (USFWS) considered the following alternatives prior to selecting the proposed action.

On-site Alternative A: Alternative A is the proposed action, as described above and shown in the attached drawings.

On-Site Alternative B: Ducks Unlimited (DU) considered dewatering the channel to facilitate project construction. Dewatering the channel would likely result in some fish mortality in a highly used recreational area. This alternative was not chosen because fish kills in this area would likely prompt public concern/complaints.

No Action Alternative: Under the no action alternative, the baffle would not be repaired; therefore, the Keith Lake System would continue to experience higher salinities and accelerated erosion. Wetlands within the system would continue to degrade, fragment and/or convert to open water over time at a rapid pace. This can significantly change the hydrological regime and alter the ecological diversity of the area. The no-action alternative was not selected because of the afore-mentioned negative effects on the Keith Lake System that would occur as a result of natural processes under this alternative.

**CURRENT SITE CONDITIONS:** The fish baffle is currently in a severely degraded state, with erosion having significantly impacted its effectiveness. Over time, water flow has eroded sediment between the structure and the banks on both the north and south sides, rendering the baffle ineffective at controlling water flow and reducing salinities in Keith and Johnson Lakes. Continuous water flow around the structure underscores the extent of its deterioration. The cut on the south side, measuring approximately 50-foot-wide and 12- to 15-foot-deep, exemplifies the substantial erosion, while a similar but slightly smaller cut exists on the north side, further highlighting the degraded condition of the baffle.

The approximate 9.412-acre project area is mostly comprised of brackish/estuarine marsh and open water, with approximately 1.004 acres categorized as uplands, 1.538 acres as open water, and 6.870 acres as wetlands. The topography of the project area and surrounding area can be characterized as flat marsh and open water with slightly higher uplands along the access routes to the project area on the north and east. Marsh in the assessment area is comprised of two mapped soil types (BaA— Bancker mucky peat, 0 to 1 percent slopes, frequently flooded, tidal, and IjmB— Ijam clay, 0 to 2 percent slopes, frequently flooded, tidal). Uplands within the project area consist of slightly higher elevations on the north and east sides of the project that will be used for equipment access. Wetlands identified within the project area consist of herbaceous (emergent) tidal wetlands that are situated just above sea elevation. Dominant vegetation species occurring within these wetlands include: saltwater cord grass (*Spartina alterniflora*), saltgrass (*Distichlis spicata*), seaside club-rush (*Schoenoplectus robustus*), groundsel tree (*Baccharis halimifolia*), and Jesuit's-Bark (*Iva frutescens*).

**NOTES:** This public notice is being issued based on information furnished by the applicant. This project information has not been verified by the Corps. The applicant's plans are enclosed in 9 sheets.

A preliminary review of this application indicates that an Environmental Impact Statement (EIS) is not required. Since permit assessment is a continuing process, this preliminary determination of EIS requirement will be changed if data or information brought forth in the coordination process is of a significant nature.

Our evaluation will also follow the guidelines published by the U.S. Environmental Protection Agency pursuant to Section 404 (b)(1) of the CWA.

**OTHER AGENCY AUTHORIZATIONS:**

Consistency with the State of Texas Coastal Management Plan is required. The applicant has stated that the proposed activity complies with Texas' approved Coastal Management Program goals and policies and will be conducted in a manner consistent with said program.

The proposed project will trigger review under Section 401 of the Clean Water Act (CWA). The Texas Commission on Environmental Quality (TCEQ) will review this application under Section 401 of the CWA and in accordance with Title 30, Texas Administrative Code Section 279.1-13 to determine if the work would comply with State water quality standards. The applicant has not yet reached out to the TCEQ to initiate the Section 401 CWA process. If you have comments or questions on this proposed project's State water quality certification, please contact [401certs@tceq.texas.gov](mailto:401certs@tceq.texas.gov). You may also find information on the Section 401 process here: <https://www.epa.gov/cwa-401/basic-information-cwa-section-401-certification>.

**NATIONAL REGISTER OF HISTORIC PLACES:** The staff archaeologist has reviewed the latest published version of the National Register of Historic Places, lists of properties determined eligible, and other sources of information. The following is current knowledge of the presence or absence of historic properties and the effects of the undertaking upon these properties:

The permit area has been so extensively impacted by construction and maintenance of the fish pass that there is no potential for historic properties to exist within the permit area. Therefore, the proposed project has no potential to effect historic properties.

**THREATENED AND ENDANGERED SPECIES:** Preliminary indications are that no known threatened and/or endangered species or their critical habitat will be affected by the proposed work.

**ESSENTIAL FISH HABITAT:** This notice initiates the Essential Fish Habitat consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Our initial determination is that the proposed action would not have a substantial adverse impact on Essential Fish Habitat or federally managed fisheries in the Gulf of Mexico. Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the National Marine Fisheries Service.

**PUBLIC INTEREST REVIEW FACTORS:** This application will be reviewed in accordance with 33 CFR 320-332, the Regulatory Programs of the Corps, and other pertinent laws, regulations and executive orders. The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the proposal, will be considered: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and, in general, the needs and welfare of the people.

**SOLICITATION OF COMMENTS:** The Corps is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Impact Assessment and/or an EIS pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

This public notice is being distributed to all known interested persons in order to assist in developing facts upon which a decision by the Corps may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

**PUBLIC HEARING:** The purpose of a public hearing is to solicit additional information to assist in the evaluation of the proposed project. Prior to the close of the comment period, any person may make a written request for a public hearing, setting forth the particular reasons for the request. The District Engineer will determine if the reasons identified for holding a public hearing are sufficient to warrant that a public hearing be held. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location.

**CLOSE OF COMMENT PERIOD:** All comments pertaining to this public notice must reach this office on or before **23 May 2024**. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. **If no comments are received by that date, it will be considered that there are no objections.** Comments and requests for additional information should reference our file number, **SWG-2013-00841**, and should be submitted to:

North Unit Evaluation  
Regulatory Division, CESWG-RDE  
U.S. Army Corps of Engineers  
Galveston District  
2000 Fort Point Road  
Galveston, Texas 77550  
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DISTRICT ENGINEER  
GALVESTON DISTRICT  
CORPS OF ENGINEERS