



**UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration**

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December 12, 2013

Ray Newby, P.G.  
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P.O. Box 12873  
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Dear Mr. Newby:

The Natural Resource Trustees for the Deepwater Horizon Oil Spill are proposing implementation of several early restoration projects within Texas' coastal zone. These projects are proposed as Phase III early restoration actions for the Deepwater Horizon oil spill in a just released document titled "Draft Programmatic and Phase III Early Restoration Plan and Draft Early Restoration Programmatic Environmental Impact Statement." The U. S. Department of the Interior (DOI), the National Oceanic and Atmospheric Administration (NOAA), the United States Department of Agriculture (USDA), and the United States Environmental Protection Agency (EPA) (the undersigned Federal Trustees), have reviewed the projects for consistency with the Texas Coastal Management Program (TCMP) and have found that, as best as can be determined at this level of planning, these proposed restoration actions are, and will be undertaken in a manner that is, consistent with the applicable, enforceable policies of the State's program. This letter submits that determination for State review.

### **Background**

On or about April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon* experienced an explosion, leading to a fire and its subsequent sinking in the Gulf of Mexico. These events resulted in the discharge of several millions of barrels of oil into the Gulf over a period of approximately 3 months. In addition, various response actions were undertaken, including, but not limited to the application of approximately hundreds of thousands or more gallons of dispersants to the waters of the spill area in an attempt to minimize impacts from spilled oil. These events are hereafter collectively referred to as the Oil Spill.

The magnitude of the Oil Spill and the U.S. Coast Guard-directed efforts to contain and clean up the oil across the Gulf were massive and unprecedented. The Oil Spill and associated response efforts impacted coastal and oceanic ecosystems ranging from the deep ocean floor, through the oceanic water column, to the highly productive coastal habitats of the northern Gulf of Mexico, including estuaries, shorelines and coastal marsh as well as ecologically, recreationally, and commercially important species and their habitats in the Gulf of Mexico and along the coastal areas of Alabama, Florida, Louisiana, Mississippi, and Texas. These fish and wildlife species and their supporting habitats provide a number of important ecological and recreational services.

The Federal Trustees and the designated natural resource trustee agencies for each of the five states on the Gulf coast (collectively, the Trustees), including the Texas Parks and Wildlife Department (TPWD), the Texas General Land Office (TGLO), and the Texas Commission on Environmental Quality, are each



authorized by the Oil Pollution Act of 1990 (OPA) and other applicable federal or state laws to assess and assert a natural resource damages claim for this Oil Spill, in order to fully restore and compensate the public for the harm the Oil Spill caused to natural resources, including lost use of these resources by the public. Consistent with their authority and their claim, the Trustees are investigating the resource injuries and losses that occurred and have initiated restoration planning to identify the actions that will be needed or appropriate to restore injured resources and to make the public whole for the injuries and losses that occurred. That process, known as a Natural Resource Damage Assessment (NRDA), was initiated in the earliest days of the Oil Spill and is on-going at this time.

On April 20, 2011, DOI, NOAA, and the State Trustees entered into an agreement with BP, a responsible party for the Oil Spill, under which BP agreed to provide \$1 billion for early restoration projects in the Gulf to address injuries to natural resources caused by the Oil Spill. That agreement, entitled “Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill” (Framework Agreement)<sup>1</sup>, established a process under which the Trustees and BP are working together “to commence implementation of early restoration projects that will provide meaningful benefits to accelerate restoration in the Gulf as quickly as practicable” prior to completion of the NRDA process or full resolution of the Trustees’ natural resource damages claims. Ten early restoration projects have already been selected for this purpose across the Gulf (See Phase I Final Early Restoration Plan, April 18, 2012; Phase II Early Restoration Plan, December 21, 2012). Implementation of these projects is underway.<sup>2</sup>

The Trustees are now proposing a third set of early restoration projects (Phase III) for implementation across the Gulf. The proposed Phase III projects include several that would be implemented within the coastal zone of the State of Texas (hereafter, collectively referred to as “the Texas Phase III Projects”). The Trustees are presently seeking public review and comment on these projects in the Draft Programmatic and Phase III Early Restoration Plan and Draft Early Restoration Programmatic Environmental Impact Statement (hereafter, Draft Plan) released on December 6, 2013.

The Draft Plan also includes a proposed programmatic plan for the Trustees’ early restoration decisions under the Oil Pollution Act and the Framework Agreement going forward, including for the Phase III projects. The Trustees have evaluated program alternatives for early restoration based on project types with a nexus to the injuries established by injury assessment efforts to date and are proposing to continue to pursue early restoration using a range of project types that contribute to the initial restoration and protection of certain habitats and living coastal and marine resources, and enhance and restore recreational opportunities. The proposed programmatic plan is included as part of and supported by the Draft Programmatic Environmental Impact Statement for Early Restoration (DPEIS for Early Restoration) included in the Draft Plan. The Draft Plan was informed by and developed following a public scoping process undertaken by the Trustees in accordance with NEPA. The Draft Plan, including the proposed programmatic framework and the DPEIS for Early Restoration, is available for public review and comment until February 4, 2014 and the Trustees welcome any comments from your office that may enhance their ability to select early restoration projects that are in keeping with the TCMP. An announcement of the comment period on the Draft Plan, with directions for submitting written comments

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<sup>1</sup> The Framework Agreement is available at: <http://www.gulfspillrestoration.noaa.gov/wp-content/uploads/2011/05/framework-for-early-restoration-04212011.pdf>

<sup>2</sup> Additional information about these projects is available at: <http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/>

on that document, may be found at: <http://www.doi.gov/deepwaterhorizon> or  
<http://www.gulfspillrestoration.noaa.gov>.

As required by the Framework Agreement, the Draft Plan includes the restoration benefits estimated to be provided by the specific projects proposed for implementation in Phase III of early restoration. These estimated benefits are referred to as “NRD Offsets” and represent the benefits that, at the end of the NRDA process, the Trustees would credit against the assessment of total injury for the Oil Spill in relation to BP’s natural resource damages liability. If approved by the Trustees following consideration of public comments, the Trustees would expect the Phase III early restoration projects to be implemented with funds from the \$1 billion BP set aside for use for early restoration pursuant to the Framework Agreement.

The projects previously chosen and the projects the Trustees are now proposing do not represent the full extent of restoration needed to satisfy the Trustees’ natural resource damages claims against the responsible parties for the Oil Spill. They are intended only to help accelerate meaningful restoration in the Gulf prior to completion of the full NRDA.

#### **Proposed Phase III Early Restoration Projects in Texas:**

The Trustees have proposed the following early restoration actions for implementation along the Texas coast. All of these projects would be implemented by the TPWD, with assistance of qualified contractors.

Artificial Reef Projects – The following artificial reef projects are proposed for implementation (one conditionally) for the purposes of increasing and enhancing recreational fishing and diving opportunities in waters off the Texas coast:

- *Enhancement of the George Vancouver (Liberty Ship) Artificial Reef (Freeport Reef Project)* - This project proposes to expand the area of artificial reef within an existing permitted artificial reef site in Texas state waters about six nautical miles from Freeport, TX (center point coordinate of 28.793009° N 95.347796° W (NAD 83)), at Outer Continental Shelf Block Brazos (BA-336). The existing reef is known as the George Vancouver (Liberty Ship) Artificial Reef and covers ~ 40 acres of the permitted site. That reef encompasses the Vancouver Liberty Ship, an obsolete 441-foot WWII ship placed in 1976, and additional reef materials, including 1-ton+ quarry rock and concrete culverts, and 100 concrete pyramid structures. The Freeport Reef Project would increase the area of reef within the permitted site from 40 to 160 acres by placing 800 to 950 similar, predesigned concrete pyramids (8 ft high) on barren substrate (sand and silt particle sizes) in waters of about 55 ft in depth. The proposed project activities are covered by U. S. Army Corps of Engineer (USACOE)’s permit (Texas Freeport Reef Project 1 USACOE SWG-2010-00264) and TGLO surface lease (Texas Freeport Reef Project TGLO SL20070057) issued in 2012 and 2011, respectively.
- *Matagorda Reef Project* - This project proposes to create an artificial reef within a 160 acre permitted reef site in Texas state waters about eight nautical miles offshore from Matagorda County, TX (center point coordinate of 28.516972° N 95.781525° W (NAD 83)), at Outer Continental Shelf Block Brazos (BA-439). The project would include deployment of ~ 1,600 predesigned concrete pyramids (8 ft high) on barren substrate (sand and silt particle sizes) at the

permitted site in waters of about 60 ft in depth. The proposed project activities are covered by USACOE permit (Texas Matagorda Reef Project USACOE Permit SWG 2009-01139) and TGLO surface lease (Texas Matagorda Reef Project TGLO SL20070057) issued in 2010 and 2011, respectively. No reef materials have been deployed within the site to date.

- *Creation of Ship Artificial Reef in the Gulf Of Mexico Off Texas (Ship Reef Project)* - This project proposes to create an artificial reef by acquiring, cleaning and sinking a large vessel (200 ft in length or greater) in deep waters of the Gulf of Mexico about 58 nautical miles offshore from Galveston, TX (at a center point coordinate of 28.44401°N, 94.28504°W (NAD 83), at Outer Continental Shelf Block High Island (HI-A-424). The project site would cover 80 acres of what is believed to be barren, sandy substrate in about 135 ft of water on the continental shelf. The project includes acquiring a ship, cleaning it of hazardous substances in accordance with EPA criteria, making any necessary hull modifications, passing all required inspections (i.e., EPA, TPWD, and U.S. Coast Guard (USCG), transporting the ship to and sinking it in the project area. Implosive charges (explosives; method forcing metal inward) will be used to sink the ship to overcome buoyancy and allow it to settle quickly to the ocean floor. This technique for sinking large ships is a preferred method over controlled flooding in mid- to high-seas. Prior experience with the Texas Clipper has shown controlled flooding in mid- to high-seas is problematic. Additional coordination with local private and non-profit dive and fishing groups as well as federal, state and local agencies will occur as project-specific plans are developed and implemented to ensure public support for the project. If the Ship Reef Project proves technically infeasible for any reason, the project described next (Corpus Reef Project) below would be undertaken instead.
- *Enhancement of the Corpus Christi Artificial Reef in Texas State Waters of the Gulf of Mexico (Corpus Reef Project)* – This project would be implemented if the Ship Reef Project cannot be. The project would expand the area of artificial reef within a 160-acre permitted reef site about 11 nautical miles east of Packery Channel and Mustang Island State Park, near Corpus Christi, TX, at Outer Continental Shelf Block Mustang Island (MU-775)). The Corpus Reef Project would increase the area of artificial reef at the site by placing 1,000-1,200 predesigned concrete pyramids (8 ft high) and other suitable large (over 1-ton in size) materials on barren, sandy substrate on the continental shelf in waters of about 73 ft in depth. Placement of these materials will be in portions of the site that have not yet received artificial reef materials<sup>3</sup> and will finish populating the permitted reef site. The proposed Project activities are covered by USACOE permit (Texas Corpus Reef Project USCOE Permit SWG-2010-01407) and TGLO surface lease (Texas Corpus Reef Project TGLO SL950008) issued in 2011 for the entire 160-acre site.

Galveston Island State Park Beach Development Project (GISP Project) - The GISP Project will increase or enhance recreational opportunities on the Texas coast by restoring and improving recreational infrastructure and facilities at Galveston Island State Park. The park has historically provided camping facilities and associated recreational amenities for use by day and overnight visitors, however, much of the park infrastructure was destroyed or severely impacted in 2008 by Hurricane Ike. The GISP Project is

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<sup>3</sup> The first artificial reef materials were deployed at the site in September 2013 by TPWD, under a separate deployment contract and entirely independent of any early restoration plans for this Oil Spill.

based on the Master Plan developed with public input after the storm to guide restoration efforts at the park. The GISP Project includes building of multi-use campsites, tent campsites, dune access boardwalks, an equestrian trail head, and restroom and shower facilities on the beach side of the park. Campsite areas will include parking and associated amenities (such as comfort stations, rinse showers, nearby picnic shelters and grills) and are located outside areas of future dune migration. The multi-use campsites will be RV-accessible and equipped with water and electric hook-ups and a dump station. Native trees and shrubs will be planted to create natural screens between campsites. The proposed boardwalks will provide access to the beach from campsite areas across dunes. The equestrian trail head would include limited trailer parking as well as access to horse corral pens and the beach. All facilities and boardwalks will meet Texas Accessibility Standards and Americans with Disabilities Act guidelines as well as the standards in the Dune Protection and Improvement Manual for the Texas Gulf Coast (TGLO 2005<sup>4</sup>).

Sea Rim State Park Project: Wildlife Blinds, Comfort Station & Fish-Cleaning Shelter (Sea Rim Park Project) – This project will increase or enhance recreational opportunities on the Texas coast by restoring and improving recreational facilities at Sea Rim State Park. Located on the upper Texas coast and in the Central Flyway for migratory birds, this park is an excellent location for a variety of recreational activities involving use and enjoyment of natural resources, including bird watching, fishing, boating, camping, and beach going. Much of the park's infrastructure was damaged by Hurricanes Rita (2005) and Ike (2008). The components of the proposed Sea Rim Park Project are drawn from the Master Plan developed with public input after these storms to guide restoration efforts at the Park. The project involves construction of two wildlife viewing platforms (at Fence Lake and Willow Pond), one comfort station (vault toilet), and one fish cleaning shelter in the park. The Fence Lake platform will provide wildlife viewing opportunities, with visitor access by kayaks and other shallow draft boats. It will consist of a 10-foot by 14-foot fixed platform and an adjacent 6-foot by 4-foot floating platform located in a small cove on the lake with cleats to tie off boats and a ladder to assist visitors exiting boats. The Willow Pond will consist of a 16-foot by 8-foot observation platform connected to a new 5-foot wide boardwalk. The boardwalk will connect to an adjacent road and parking area, as well as to an existing boardwalk that is currently not accessible (due to prior storm damage). The comfort station will have two restrooms, be located near the park's boat ramp, be similar to others in the park and serve day-use visitors using the park's trails or boat ramp. The fish cleaning shelter will be located near the beach adjacent to an existing equestrian parking lot. All structures will meet Texas Accessibility Standards and Americans with Disabilities Act Accessibility Guidelines.

The project design and engineering plans are 60% complete presently, so design specifics for the project's components are still subject to change.

#### **Summary of Coastal Zone Management Consistency Review for Listed Projects:**

Ship Reef Project – The project is proposed for implementation in the Gulf about 58 nautical miles off the Texas coast, well outside the limits of Texas state waters and the boundaries of the Texas coastal zone as defined by the TCMP. Even though this project will benefit visitors and residents of Texas coastal areas, those benefits are passive. None of the activities involved in implementation of this project have the potential to directly or indirectly affect any resources or areas within the Texas coastal zone subject to

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<sup>4</sup> [http://www.glo.texas.gov/what-we-do/caring-for-the-coast/\\_publications/DuneManual.pdf](http://www.glo.texas.gov/what-we-do/caring-for-the-coast/_publications/DuneManual.pdf).

TCMP policies. Under these circumstances, the Federal Trustees have not evaluated the consistency of this project with TCMP policies as such an evaluation is not required by the Coastal Zone Management Act (CZMA).

Freeport Reef and Matagorda Reef Projects - The TGLO has previously reviewed each of these proposed Projects and found both to be consistent with TCMP policies. These findings are documented in two letters issued by the TGLO as part of the federal permitting phase for these projects. The letter determining the Freeport Reef Project (USACOE SWG-2010-00264) to be consistent with the principal policies of the TCMP was dated May 1, 2012. The letter determining the Matagorda Reef Project (USACOE SWG-2009-011398) was consistent with the principal policies of the TCMP was dated September 10, 2010. Copies of these letters are enclosed for your convenience. Neither of these projects has materially changed since TGLO concurred that they were consistent with the TCMP. The Federal Trustees are relying on TGLO's prior concurrence of TCMP consistency for all policies applicable to these two projects except for the policies for Prevention, Response and Remediation of Oil Spills, 31 T.A.C. 501.20 and for Major Actions, 31 T.A.C 501.15. At the time of TGLO's prior reviews, neither of these projects had any factual linkage to any oil spill and may not have been included in processes involving an EIS, so these policies may not have been considered then. Consistency of all projects with these two policies, including the Freeport and Matagorda Reef actions, is addressed here:

(1) **Prevention, Response, and Remediation of Oil Spills** – 31 T.A.C. 501.20 – This section requires that the public be involved in the restoration planning process for an oil spill and that such plans be designed to promote the expeditious restoration of injured resources. The proposed Texas Phase III Projects are considered fully consistent with this policy.

The Oil Pollution Act requires that Trustees seek public review and input on all restoration actions that they plan to use to address or compensate for injuries and losses to the public's natural resources due to oil spills in U. S. waters. The Draft Plan proposes the Texas Phase III Projects and other restoration actions in an effort to provide for early, expedited restoration that can address some of the public's losses caused by the Deepwater Horizon Oil Spill. The public has a present opportunity to provide input on the early restoration planning process for the Oil Spill, and the proposed Texas Phase III Projects in particular, as part of the public review and comment period on the Draft Plan. Public comment on the Draft Plan will be considered before Phase III project choices are finalized. Development of the Draft Plan has been based on extensive prior public input as part of the early restoration planning process for the Oil Spill but has also benefited from significant prior regional planning efforts undertaken to support other restoration initiatives and activities in the Gulf of Mexico.

Public engagement in early restoration planning for the Oil Spill has been extensive. To facilitate public involvement, the Trustees have provided the public with injury assessment information, regular updates about ongoing NRDA activities, information about restoration planning, and access to administrative record materials. The identification of early restoration projects for this spill has and continues to benefit from various opportunities for public input into early restoration planning to date, including from direct public submission of restoration projects or ideas, public review and comment on the Phase I and Phase II plans, and the public scoping process undertaken by the Trustees in accordance with NEPA to support development of this Draft Plan. Since initiating the early restoration planning process, the Trustees have held many public meetings in the five Gulf states and in Washington, D.C., reviewed thousands of public comments received through websites, written comments, emails, voicemails, and verbally at meetings.

As the restoration planning process moves forward, the Trustees will continue to engage the public in the process, including by publishing proposed restoration plans for comment.

Each of the Texas Phase III Projects also reflects and has been informed by thoughtful, prior regional planning processes undertaken by the State of Texas in coordination with public user groups and stakeholders. The proposed Artificial Reef Projects are supported by and consistent with publicly-informed, historic planning efforts in Texas, including those used to develop TPWD's Artificial Reef Program (TARP), the Texas Artificial Reef Fishery Management Plan<sup>5</sup> and the Gulf States Marine Fisheries Commission's Guidelines for Artificial Reef Materials, 2nd edition, January 2004<sup>6</sup>. There was substantial public involvement in the course of developing TARP, the Texas management plan for reefs, and these guidelines for building reefs. Similarly, the two State park projects are informed by Master Plans developed with public input to guide restoration of the recreational infrastructure and facilities at each park that were damaged by earlier hurricanes.

Each of the proposed projects will help address impacts to the recreational use and enjoyment of natural resources along the Texas coast caused by the Oil Spill. The Artificial Reef Projects would help address these public losses through the creation and enhancement of accessible artificial reef areas along the Texas coasts (both within and outside state waters) that can be used and enjoyed by recreational anglers and divers. The Galveston Island and Sea Rim State Park Projects address these losses by increasing and enhancing recreational opportunities in two State parks on the coast through restoration and improvement of the infrastructure and facilities that support recreational use and enjoyment of these parks. Further, the projects are proposed in the next phase of early restoration under the Framework Agreement with BP in part because they are actions that can be undertaken to restore or enhance opportunities for the public to use and enjoy coastal resources as soon as practicable and prior to completing the full NRDA process.

**(2) Policy for Major Actions** – 31 T.A.C. 501.15 - Under the TCMP, a “major action” is “an individual or agency or subdivision action relating to an activity for which a federal environmental impact statement (EIS) under the National Environmental Policy Act is required”, 31 T.A.C. 501.15(a). Under the major actions policy, agencies and subdivisions with jurisdiction over the activity must meet and coordinate their actions and, to the greatest extent possible, consider the cumulative and secondary adverse effects, as described in the federal environment impact assessment process, of each major action relating to the activity, 31 T.A.C. 501.15(b). An agency subject to the major actions policy may not take an action that is inconsistent with the TCMP goals and policies and must avoid and otherwise minimize the cumulative adverse effects to coastal natural resource areas of each major action, 31 T.A.C. 501.15(c).

The federal Trustees do not believe the major actions policy outlined in this subsection of the TCMP applies to the proposed Texas Phase III Projects outlined in the Draft Plan. Consistent with federal NEPA guidelines, the Trustees did elect to develop an EIS for purposes of this Draft Plan, however, that decision was not grounded in a determination that the Texas Phase III Projects would – individually or collectively – represent a “major action” for which a federal environmental impact statement (EIS) under the National Environmental Policy Act would be required. Rather, the Trustees elected to use the EIS

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<sup>5</sup> Fishery Management Plan Series Number 3, PWD-PL-3400-332-12/90 (1990);  
[http://www.tpwd.state.tx.us/publications/pwdpubs/media/pwd\\_pl\\_v3400\\_0332.pdf](http://www.tpwd.state.tx.us/publications/pwdpubs/media/pwd_pl_v3400_0332.pdf).

<sup>6</sup> <http://www.myfwc.com/media/131591/ArtificialReefMaterialsGuidelines.pdf>.

process for a broader purpose: to review restoration project types and inform the programmatic alternative(s) to be used in further planning for early restoration as well as to support their Phase III and future early restoration project choices. In keeping with that approach, the Draft Plan includes evaluations of programmatic alternative(s) and potential cumulative effects of the programmatic plan for early restoration as well as including analyses of the potential environmental consequences of each proposed Phase III Project. While the Texas Phase III Projects are included in the Draft Plan, they would likely not – individually or collectively – represent a “major action” for which a federal environmental impact statement (EIS) under the National Environmental Policy Act would be required.

For the remaining three potential Texas Phase III early restoration projects, the Federal Trustees view the principal enforceable policies of the TCMP that are potentially applicable to be those at 31 T.A.C. Sections:

- 501.23 - relating to the policies for development in critical areas;
- 501.24 - relating to the policies for construction of waterfront facilities and other structures on state owned submerged lands;
- 501.26 - relating to construction in the beach/dune system;
- 501.27 - concerning policies for development in coastal hazard areas;
- 501.28 - concerning the policies for development within Coastal Barrier Resource System Units and otherwise protected areas on coastal barriers; and
- 501.31- pertaining to policies for transportation projects).

The basis for the Federal Trustees’ determination of consistency of the Corpus Reef, GISP and Sea Rim State Park Projects with these policies is reflected in the following summaries:

**(3) Development in Critical Areas** – 31 T.A.C. 501.23 – Critical areas include coastal wetlands, seagrasses, tidal sand and mud flats, oyster reefs and hard substrate reefs. Projects in critical areas are to avoid and minimize, to the greatest extent practicable, adverse effects on these areas. Also, to be consistent with CMP policies, projects should not significantly interfere with navigation, should not significantly interfere with natural coastal processes that supply sediments to shore areas, and should avoid shading of critical areas and other adverse effects.

The Corpus Reef Project will not impact any of the critical areas identified in Section 501.23. It will be constructed ten miles east of Packery Channel and Mustang Island State Park, off the Corpus Christi, Texas area. The project site consists of semi-firm sand sediments and is far enough offshore and in depths that have no potential to disrupt the natural coastal processes that supply sediments to the beaches and shore. The project design, location, and depth and adherence to USCG and USACOE requirements during construction ensures it will not significantly interfere with navigation.

In designing both the GISP and Sea Rim State Park Projects, the TPWD has sought to avoid impacts to critical areas to the greatest extent feasible, by designing structures around sensitive habitats, confining them to existing footprints of previous structures and using elevated boardwalks and dune walkovers. The Projects will, however, result in some, limited impacts to coastal wetlands. Where impacts to coastal wetlands could not be avoided through project design, they have been minimized and all such impacts to wetlands will be mitigated on-site and in-kind and in accordance with the USACOE permits. Based on

current plans, TPWD anticipates mitigation in the GISP Project will result in a net gain of nine or more acres of wetlands (including created, enhanced, and restored wetlands). Neither project includes features that will interfere with navigation in area waters; the Sea Rim State Park Project, however, includes one feature (floating platform) that will support access by water-borne visitors to viewing platforms.

**(4) Construction of Waterfront Facilities and Other Structures on State-owned Submerged Lands** – 31 T.A.C 501.24 – The policies in this section are applicable to development actions on submerged lands within the TCMP boundary. Among other things, these policies seek to avoid adverse effects on critical areas from boat traffic, to avoid unnecessary interference with public navigation and natural processes, to construct structures (e.g., roadways) in existing rights-of-way or previously disturbed areas, and to construct structures with materials that will not cause adverse effects in coastal waters or critical areas.

The Corpus Reef Project involves placement of structures (predesigned, 8 ft high concrete pyramids and other suitable artificial reef materials) on state-owned submerged lands. The TPWD obtained a lease for use of these submerged lands and the project would be implemented in accordance with all requirements of that lease, including those included to avoid impacts to critical habitats and coastal waters. The reef building materials are among those pre-approved within and the reef's construction will follow the *Guidelines for Marine Artificial Reef Material, 2<sup>nd</sup> Edition, Gulf States Fisheries Commission, Number 121, January 2004*, and the *Texas Artificial Reef Fishery Management Plan, Texas Parks and Wildlife Department, Fishery Management Plan Series Number 3, December 1990*. Additionally, the lease requires that the project adhere to clearance and distance from shipping lanes, safety fairways, and anchorages requirements established by the USACOE and the USCG, ensuring that the project will not interfere with public navigation. The project has no potential to disrupt the natural coastal processes that supply sediments to the beaches and shore based on its distance from shore, depth and design.

This policy is not implicated by any of the activities proposed as part of the GISP Project and is only implicated for the Sea Rim Park Project within the portion of the footprint for construction of platforms (viewing and floating) and boardwalks that would be over wetlands or water. As noted above, the design of both projects has limited these structures to the footprints of existing or previous structures and any impacts will be mitigated on-site and in-kind in accordance with the USACOE permits.

**(5) Construction in the Beach/Dune System** – 31 T.A.C 501.26 – The policies in this section intended to protect and ensure the continued viability of critical dune areas and areas on and adjacent to Gulf beaches and to preserve and enhance the ability of the public to use and access public beaches. Actions that would materially weaken dunes or damage dune vegetation are prohibited. Construction in such areas is to be sited, designed, constructed, maintained, and operated to avoid adverse effects on sediment budgets and critical dune areas to the greatest extent practicable and otherwise minimized through management of the magnitude of the activity and its manner of implementation, and through repair, rehabilitation or restoration and compensation of adverse effects that cannot be avoided or minimized.

Both the GISP and Sea Rim State Park projects include proposed construction activities within or near dune and beach areas. In the design of both projects, the TPWD has sought to avoid impacts to beach and dune systems by siting structures and other recreational amenities away from such areas to the extent possible and by appropriately elevating walkways, boardwalks and walkovers in or near these systems.

As a result, none of the proposed activities for either project will negatively impact any beach/dune system, impede natural dune migration in these systems or substantially interfere with the public's right of access and use of the public beach. Both projects will enhance public access and provide additional amenities for public use.

This policy is not implicated by any of the activities proposed as part of the Corpus Reef Project.

**(6) Development in Coastal Hazard Areas** – 31 T.A.C 501.27 – The policies in this section requires the Trustees evaluate cooperation with the Federal Emergency Management Agency to ensure compliance with the National Flood Insurance Program and to comply with state and local law and building standards.

Neither the GISP or Sea Rim State Park projects involve construction of any shoreline protection or erosion response structures<sup>7</sup>. The TPWD (implementing agency) is exempt from the requirements to develop an Erosion Response Plan; therefore, Texas Natural Resources Code, Chapter 33, Subchapter H does not apply to either project. TPWD will be work in cooperation with the Federal Emergency Management Agency to ensure compliance with the National Flood Insurance Program (NFIP) in accordance with Texas Water Code, Chapter 16, Subchapter I, §16.314 and §16.315. The projects' plans included elevated structures that may be required, per Texas Local Government Code, Chapter 240, Subchapter Z, §240.901(c).

This policy is not implicated by any of the activities proposed as part of the Corpus Reef Project.

**(7) Development Within the Coastal Barrier Resource System** – 31 T.A.C 501.28 – These policies apply to the development of new infrastructure or the major repair of existing infrastructure within or supporting development within the Coastal Barrier Resource System Units and Otherwise Protected Areas under the U.S. Coastal Barrier Resources Act (COBRA) 16 U.S.C. 3503 (a).

Both the GISP and the Sea Rim Park Projects will occur within the John Chafee Coastal Barrier Resources System, in Units T-05 and T01 of that system, respectively. The restoration actions proposed in both projects, however, would all be implemented in parks dedicated to public usage and with developed facilities, both existing and in the past. Neither of these projects would implement new activities in undeveloped areas within that coastal barrier system. Likewise, neither of these projects will adversely impact the geologic function of either barrier unit or its associated ecological resources, nor encourage additional development within these units.

As noted previously, in designing both Projects, TPWD has acted to ensure that proposed structures and recreational amenities are sited in existing footprints or previously disturbed areas to avoid or minimize adverse impacts to resources within the Unit to the greatest extent practicable. Construction activities will be undertaken at times and in places that avoid impacts to wildlife spawning, nesting and migration and avoid or minimize potential impacts to dunes, beaches, natural resources, and habitats. Mitigation activities would take place as part of the GISP Project for anticipated, minimal wetland and upland impacts.

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<sup>7</sup> The GISP Bay shoreline is considered a Critical Erosion Area by TGLO, but no Project activities would occur in this area.

Because both projects involve construction of recreational amenities within public lands, COBRA would not prevent the expenditure of project funds within the Unit, even if viewed as “federal funds” for purposes of that Act.

This policy is not implicated by any of the activities proposed as part of the Corpus Reef Project.

**(8) Transportation Projects** – 31 T.A.C. 501.31 – This section is applicable for actions that have a transportation component. It requires actions to ensure that construction and maintenance of transportation infrastructure does not impact critical areas or water quality. Transportation projects are to be located in existing rights-of-way or previously disturbed areas if necessary to avoid or minimize adverse effects. Additionally, construction of transportation projects is to occur at sites and times selected to have the least adverse effects practicable on recreational uses and on spawning or nesting seasons or seasonal migrations of terrestrial or aquatic species.

Both the GISP and Sea Rim State Park Projects may be considered as having “transportation” components to the extent that they include construction of or improvements to walkways, parking, and other features that directly support public access to areas and resources in the parks. Pollution prevention procedures would be incorporated into the construction and maintenance of all relevant improvements as needed to minimize pollutant loading to coastal waters from erosion, sedimentation, and stormwater runoff. In addition, as noted previously, the actions proposed are planned to occur, to the extent feasible, in already disturbed areas to avoid or minimize adverse effects to the environment.

The Corpus Reef Project infrastructure does not itself have a “transportation” component, but the Project has been designed and will be implemented in accordance with USCG and USACOE requirements during construction to ensure it will not significantly interfere with navigation in State waters.

**Conclusion:**

Based on review of the requirements of the TCMP, and after evaluating the applicable factors associated with activities proposed in Texas’ coastal zone, a determination has been made that the proposed Texas Phase III Projects, to the maximum extent practicable, are and will be undertaken in a manner that is consistent with the applicable, enforceable policies of the TCMP.

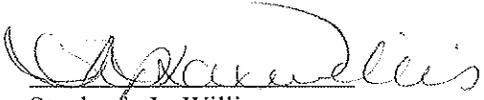
For the Federal Trustees, this represents the earliest opportunity for consideration of the consistency of the proposed Phase III early restoration projects with the TCMP. Early consideration of CZMA consistency of these projects will provide support for finalizing the selection of projects and help the participating federal, state and local agencies in expeditiously implementing restoration in keeping with the goals of early restoration for the Oil Spill.

Because the projects are being proposed as part of the early restoration process, i.e, are intended to accelerate the restoration of resources and services impacted by the Oil Spill, the Federal Trustees are

Deepwater Spill Draft Phase III Early Restoration Plan -  
Letter concerning Texas Coastal Management Program

requesting and would deeply appreciate a response to this determination of consistency as soon as is practicable. We thank you in advance for your efforts to accommodate this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "S. Willis".

Stephanie L. Willis  
Senior Attorney  
National Oceanic & Atmospheric Administration

Deepwater Spill Draft Phase III Early Restoration Plan -  
Letter concerning Texas Coastal Management Program

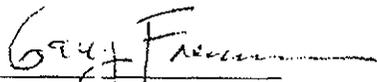


Harriet M. Deal

Attorney-Adviser

United States Department of the Interior

Deepwater Spill Draft Phase III Early Restoration Plan -  
Letter concerning Texas Coastal Management Program



Gary M. Freerman  
Senior Counsel, Office of the General Counsel  
United States Department of Agriculture

Deepwater Spill Draft Phase III Early Restoration Plan -  
Letter concerning Texas Coastal Management Program

A handwritten signature in cursive script, appearing to read "James Bove".

James Bove  
Senior Attorney  
United States Environmental Protection Agency

Deepwater Spill Draft Phase III Early Restoration Plan -  
Letter concerning Texas Coastal Management Program

Encl: Letter dated May 1, 2012 from TGLO (Zultner) to TPWD re Freeport Reef Project (USACOE  
SWG-2010-00264; CMP#12-0746-F1).

Letter dated September 10, 2010 from Texas Coastal Coordination Council (Zultner) to TPWD re  
Matagorda Reef Project (USACOE SWG-2009-011398; CMP#10-0108-F#).

TEXAS



GENERAL LAND OFFICE

JERRY PATTERSON, COMMISSIONER

May 1, 2012

Texas Parks and Wildlife Dept.  
Artificial Reef Program  
4200 Smith School Rd.  
Austin, TX 78744-3218

**Re: Corps of Engineers Permit Application No. SWG-2010-00264**  
**Artificial reef expansion of existing site**  
**Gulf of Mexico, Brazos 336 OCS Block**  
**CMP#: 12-0746-F1**

Dear Applicant:

Pursuant to Section 506.30 of 31 TAC of the Coastal Coordination Act, the project referenced above has been reviewed for consistency with the Texas Coastal Management Program (CMP).

The project was reviewed for impacts to coastal natural resource areas within the CMP boundary. No unavoidable adverse impacts were found. Therefore, this project is consistent with the CMP goals and policies.

Please note that this letter does not authorize the use of Coastal Public Land. No work may be conducted or structures placed on State-owned land until you have obtained all necessary authorizations, including any required by the General Land Office and the U.S. Army Corps of Engineers.

Sincerely,

A handwritten signature in cursive script that reads "Kate Zultner".

Kate Zultner  
Consistency Review Coordinator  
Texas General Land Office

email cc: Natalie Rund , USACE  
GLO PSC Upper Coast

Stephen F. Austin Building • 1700 North Congress Avenue • Austin, Texas 78701-1495

Post Office Box 12873 • Austin, Texas 78711-2873

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# Coastal Coordination Council

P.O. Box 12873 ♦ Austin, Texas 78711-2873 ♦ (800) 998-4GLO ♦ FAX (512) 475-0680

## Chairman

**Jerry Patterson**  
Texas Land Commissioner



## Members

**Karen Hixon**  
Parks & Wildlife Commission  
of Texas

**Jose Dodier**  
Texas State Soil & Water  
Conservation Board

**Edward G. Vaughan**  
Texas Water Development Board

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Texas Transportation Commission

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Railroad Commission of Texas

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Texas Commission on  
Environmental Quality

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Sea Grant College Program

**Robert "Bob" Jones**  
Coastal Resident Representative

**Jerry Mohn**  
Coastal Business Representative

**George Deshotels**  
Coastal Government  
Representative

**Bob McCan**  
Agriculture Representative



**Kate Zultner**  
Council Secretary

**Jesse Solis, Jr.**  
Permit Service Center  
Corpus Christi  
1-866-894-3578

Permit Service Center  
Galveston  
1-866-894-7664

September 10, 2010

Texas Parks and Wildlife Dept.  
Artificial Reef Program  
POC: J. Dale Shively  
4200 Smith School Rd.  
**Austin, TX 7844-3291**

**Re: Corps of Engineers Permit Application No. SWG-2009-01139**  
**Texas Parks & Wildlife Dept.**  
**CMP#: 10-0108-F3**

Dear Mr. Shively:

**Pursuant to Title 31 Natural Resources and Conservation, Part 16 Coastal Coordination Council rules, Section 506.30, the project referenced above has been reviewed for consistency with the Texas Coastal Management Program (CMP).**

It has been determined that there are no significant unresolved consistency issues with respect to the project. Therefore, this project is consistent with the CMP goals and policies.

Please note that this letter does not authorize the use Coastal Public Land. No work may be conducted or structures placed on State-owned land until you have obtained all necessary authorizations, including any required by the General Land Office and the U.S. Army Corps of Engineers.

Sincerely,

A handwritten signature in cursive script that reads "Kate Zultner".

Kate Zultner  
Consistency Review Coordinator  
Texas General Land Office

cc: Mark Pattillo, USACE  
Manuel Freytes, GLO Field Service  
GLO PSC Lower Coast