

ENVIRONMENTAL ASSESSMENT
AND
STATEMENT OF FINDINGS

1. Name and Address of Applicant.

Texas Parks and Wildlife Department
4200 Smith School Road
Austin, TX 78744-3291

2. Corps Authority. The U.S. Army Corps of Engineers, Galveston District (CESWG) evaluated the proposed activity under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

3. Project and Site Description. The applicant proposes to create an artificial reef in the Gulf of Mexico, in State Tract 775. Concrete culverts and other forms of concrete of approximately 1 ton in size, obsolete oil and gas production structure legs, obsolete or surplus vessels and other approved artificial reef materials will be placed within the confines of a designated 2,640-foot by 2,640-foot area. A minimum clearance of 50 feet, at mean low water, will be maintained above each structure. All activity associated with placement of artificial reef materials will be done in a manner as not to interfere with current and future lease holders. All floatable materials will be removed prior to placement. All tanks, compartments and enclosures will be cleaned to EPA standards prior to placement. The project site is located in the Gulf of Mexico at the Outer Continental Shelf Block Mustang Island (State Tract) 775, approximately 10.6 miles east of Packery Channel in the Corpus Christi area, Nueces County, Texas in 73 feet of water. The USGS Quad reference map is the U.S.G.S. 1:100,000 scale map titled: CORPUS CHRISTI, Texas.

4. Background Information. The Texas Parks and Wildlife Department's (TPWD) Artificial Reef Program was established to provide greater opportunities to enhance the artificial reef potential off Texas in development of offshore artificial reefs along the Texas coast. Reefs are placed on sites permitted to TPWD by the U.S. Army Corps of Engineers (USACE). TPWD currently holds USACE reef building permits for 54 sites, and is authorized by these permits to conduct reef development activities by placing inspected and approved artificial reef materials within designated artificial reef sites offshore Texas. TPWD will likely establish additional sites to facilitate reefing under the state's Artificial Reef Program in the future.

The TPWD Artificial Reef Program's goal is to provide artificial substrate that supports marine habitat which will develop into a complex reef community. Materials to be used in the construction of artificial reef units are chosen with safety to the marine environment, durability, and stability in mind.

5. Scope of Analysis. The determination of what is the appropriate Scope of Analysis governing the Corps' permit review and decision is guided by the Corps' National Environmental Policy Act (NEPA) regulations for the regulatory program: 33 CFR Part 325, Appendix B. The Scope of Analysis should be limited to the specific activity requiring a DA permit and any additional portions of the entire project over which there is sufficient Federal control and responsibility to warrant NEPA review. Appendix B states that factors to consider in determining whether sufficient "control and responsibility" exist include: 1) whether or not the regulated activity comprises "merely a link" in a corridor type project; 2) whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity; 3) the extent to which the entire project will be within Corps jurisdiction; and 4) the extent of cumulative Federal control and responsibility. Generally, the Corps' area of responsibility includes all waters of the U.S. as well as any additional areas of non-jurisdictional waters or uplands where the district determines there is adequate Federal control and responsibility to justify including those areas within the Corps' NEPA scope of analysis. This normally includes upland areas in the immediate vicinity of the waters of the U.S. where the regulated activity occurs (Standard Operating Procedures for the U.S. Army Corps of Engineers Regulatory Program – July 2009).

With regard to the first factor that must be considered in the determination of sufficient Federal control and responsibility, the regulated activities associated with this construction project do not comprise a link in a corridor type of project.

With regard to the second factor, the project's proposed location is approximately 8 nautical miles from the Texas coast at its nearest point. There are no upland portions of the project to affect the location and configuration of the regulated activities.

With regard to the third factor, the proposed artificial reef project will directly impact 160 acres of navigable waters within the Gulf of Mexico (100 % of the total acreage of the project site) and are jurisdictional under the authorities of Section 404 of the Clean Water Act, and Section 10 of the Rivers and Harbors Act of 1899. The entire project is within the Corps' jurisdiction; thus this project meets the third factor.

With regard to the fourth factor that must be considered in the determination of sufficient Federal control and responsibility, during our consideration of the extent of cumulative Federal control and responsibility for the TPWD Corpus Christi Nearshore Artificial Reef Site MU-775 project, we appropriately relied on and fully considered, information and reports from Federal and state agencies pursuant to their responsibilities under the Fish and Wildlife Coordination Act (U.S. Fish and Wildlife Service – FWS, National Marine Fisheries Service (NMFS) and Texas Parks and Wildlife Department – TPWD) and Essential Fish Habitat (EFH) regulations NMFS. No threatened or endangered species consultation with the FWS or NMFS was required for this

permit action. EFH Consultation was successfully completed with the NMFS. The FWS provided comments which are discussed in detail in Section 7 of this document. Our staff archeologist reviewed the project site and determined that the State tracts proposed for work under this permit application are not included in the Texas Antiquity Committee's list of tracts containing State Archaeological Landmarks, and therefore, the proposed activities are not likely to affect pre-20th-century shipwrecks. No further coordination was required pursuant to our responsibilities under 33 CFR Part 325, Appendix C. No other approvals were denied by Federal and state land use planning authorities.

In conclusion, based on our examination of NEPA (33 CFR Part 325, Appendix B) and applicable program guidance (e.g. CEQ's Considering Cumulative Effects Under the National Environmental Policy Act and the Standard Operating Procedures for the U.S. Army Corps of Engineers Regulatory Program – July 2009), we have determined that, with regard to sufficient Federal control and responsibility, the TPWD Corpus Christi Nearshore Artificial Reef Site MU-775 project does not meet factors one, two and four. However, it does meet factor three, in that the entire project is within the Corps' jurisdiction. Therefore, sufficient Federal control and responsibility does exist to warrant expanding our review to the entire 160-acre project area. Our Scope of Analysis will include the project site in its entirety.

6. Environmental Assessment.

a. Purpose and Need for the Work. The purpose of this project is to create an artificial reef in the Gulf of Mexico for use as an offshore destination for recreational divers and sport fishermen.

b. Alternatives. There are no unresolved conflicts concerning alternatives.

c. Environmental Setting. The Gulf of Mexico is a semi-enclosed, partially land-locked, marginal sea bounded by the southeastern periphery of the North American continent and the island of Cuba. It is a diverse ecosystem that is home to several major and important habitats defined by particular sets of physical environmental factors, which provide many important direct and indirect benefits to society. These habitats, many of which are found in coastal and shallow marine waters, are highly productive and provide food and shelter for a wide range of species, many considered threatened or endangered by extinction. The growth and survival of many of these animals in their early life stages depends on the presence of ocean, coastal, estuarine, and riverine habitats that are linked to the Gulf. The 25,000 km of the U.S. Gulf Coast is dominated by tidal marshes, mangroves, and submerged seagrass beds, most of which are found in Gulf's 207 estuaries that represent the largest concentration of such systems in the contiguous U.S. These estuarine areas provide habitats for 48% of the commercially important species of the Gulf and 45% of its important recreational species, as well as several threatened and endangered marine species.

d. Environmental Impacts. The possible consequences of this proposed work were studied for environmental concerns, social well-being, and the public interest, in accordance with regulations published in 33 C.F.R. 320-330. All factors, which may be relevant to the proposal, must be considered. The following factors were determined to be particularly relevant to this application and were evaluated appropriately.

(1) Historic and Cultural Resources. The National Register of Historic Places has been consulted and no properties are listed in the permit area. In addition, the State tracts proposed for work under this permit application are not included in the Texas Antiquity Committee's list of tracts containing State Archaeological Landmarks. Therefore, the proposed activities are not likely to affect pre-20th-century shipwrecks.

(2) Water Quality. Temporary turbidity is probable during placement of structures, resulting in minimal damage to fish and wildlife habitat and other biota. No lasting water pollution will occur.

(3) Endangered Species. No known endangered species or its critical habitat are likely to be adversely affected by the proposed work.

(4) Fish and Wildlife Values. The TPWD Artificial Reef Program's goal is to provide artificial substrate that supports marine habitat which will develop into a complex reef community. The artificial reefs provide hard surfaces required for attachment by invertebrates such as barnacles, corals, sponges, clams, bryozoans and hydroids. These organisms are the beginnings of an interactive food web that supports a host of reef fish species. By providing food and shelter, artificial reefs can enhance overfished populations of resident reef fish like snapper and grouper. Transient species like mackerel, shark and billfish can also benefit by feeding on the resident fish.

(5) Essential Fish Habitat (EFH). No known impacts will occur to essential fish habitat as listed under the Magnuson-Stevens Fishery Conservation and Management Act.

(6) Wetlands/Special Aquatic Sites. The proposed work will not impact any wetland areas in the Gulf of Mexico.

(7) Recreation. The recreational value of the area will be enhanced as a result of the proposed project, providing a site for recreational divers as well as potentially attracting game fish for sport fishermen.

(8) Navigation. Navigation occurring in the area will not be adversely affected by this project. The proposed project is greater than 2.3 nautical miles distance away from any safety

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fairway and will have at least 50 feet clearance over the reef.

(9) Federal Projects. The project will not adversely impact any Federal Project.

(10) Safety. The artificial reef will be placed and marked according to U.S. Coast Guard Guidelines.

(11) Economics. This project will positively impact the economics of the State of Texas. Sport fishermen and recreational divers will utilize nearby facilities along the Texas Coast, thereby increasing revenues in the sport outfitting, recreation and tourism industries.

(12) Air Pollution. Exhaust from diesel engines used during the reef placement operation will be released into the air. This exhaust should not significantly raise the amount of particulate matter or CO₂ level of the air in this area due to the large expanse of ocean and presence of prevailing winds.

(13) Other Federal, State, or Local Requirements. All required Federal, State, and/or local authorization or certifications necessary to complete processing of this application have been obtained except for water quality certification.

The applicant has stated that the proposed activity complies with Texas' approved Coastal Management Program (CMP) and will be conducted in a manner consistent with such program. There has been no response from the Texas Coastal Coordination Council (CCC) so it is assumed that the TCEQ will be solely responsible for determining the project's consistency with the goals and policies of the CMP. This determination will accompany TCEQ's Section 401 certification.

This project is considered a Tier II project. The Texas Commission on Environmental Quality (TCEQ) has not yet acted on the applicant's request for water quality certification under Section 401 of the Clean Water Act. The CESWG will provide the TCEQ with a copy of this permit decision document when finalized. The final permit decision document will contain the environmental assessment and mitigation and §404(b)(1) analysis. The TCEQ will then make its determination whether the project will comply with state surface water quality standards in accordance with Section 401 of the Clean Water Act. The CESWG will provide a permit decision to the applicant when the following procedures have been completed. The TCEQ will either provide its certification decision (issuance or denial) to, or request an extension from the CESWG within 10 working days from receipt of the CESWG decision document. If the TCEQ does not provide a certification decision or request an extension within the 10 day period, the CESWG will presume waiver of certification in accordance with 33 CFR 325.2(b) and proceed with the issuance or denial of the permit. If TCEQ requests an extension of time, the CESWG will determine the merit of the time extension request and the length of the extension based on 33 CFR 325.2(b) and notify TCEQ of its intended decision. If the CESWG decides to deny or

modify a request for extension, TCEQ will have 10 working days from the date it is notified of the intended action of the CESWG on the request for extension in which to either certify or deny certification.

(14) Other Factors Considered. The following factors were considered during the evaluation process but were determined to not be particularly relevant to this application: shoreline erosion and accretion, aesthetics, land use, general environmental concerns, conservation, floodplain values, safety, energy needs, flood hazards, water supply and conservation, food and fiber production, and mineral needs.

e. Cumulative Impacts. An assessment of cumulative impacts takes into consideration the consequences that past, present, and reasonably foreseeable future projects had, have, or will have on an ecosystem. Every permit application must be considered on its own merits. Its impacts on the environment must be assessed in light of historical permitting activity, along with anticipated future activities in the area. Although a particular project may constitute a minor impact in itself, the cumulative impacts that result from a large number of such projects could cause a significant impairment of water resources and interfere with the productivity and water quality of existing aquatic ecosystems.

The area in which impacts resulting from the proposed project will be felt is the western Gulf of Mexico. The impacts that are expected in that area from the proposed project are temporary turbidity due to the placement of structures on the ocean floor, the presence of diesel exhaust from work boats during construction, and exhaust and potential jettisoning of trash from pleasure and fishing boats when visiting the artificial reef after construction. Other actions - past, proposed, and reasonably foreseeable - that have had or are expected to have impacts in the same area are the placement of offshore oil platforms, well heads, and necessary appurtenances, and the potential placement of offshore wind power turbines. The impacts or expected impacts from these other actions are the possibilities of oil or other contaminant spills within the Gulf of Mexico. The overall impact that can be expected if the individual impacts are allowed to accumulate is an abundance of structures which may hamper navigation within the area, and a greater, though unlikely possibility of a contaminant spill of significant proportions which may impact the overall biodiversity of the western Gulf of Mexico. Overall, the project will not result in minimal environmental impacts and minimal impacts on fish and wildlife values.

When considering the overall impacts that will result from this project, in context with the overall impacts from similar past, present, and reasonably foreseeable future projects, their cumulative impacts are not considered to be significantly adverse. It is likely we will receive similar projects in the future, which will go through a comparable review process.

f. Findings of No Significant Impact. There have been no significant environmental effects identified resulting from the proposed work. The impact of this proposed activity on aspects

affecting the quality of the human environment has been evaluated and it is determined that this action does not require an Environmental Impact Statement.

7. Statement of Findings.

a. Coordination. The formal evaluation process began with publication of a 30-day public notice on December 3, 2010. The comment period for the public notice closed on January 4, 2011. Copies of the public notice were forwarded to concerned Federal, State, and local agencies, organized groups, individuals and navigation districts. These entities included but are not limited to the following:

U.S. Fish and Wildlife Service (FWS)
National Marine Fisheries Service (NMFS)
Environmental Protection Agency (EPA)
U.S. Coast Guard (USCG)
Texas Commission on Environmental Quality (TCEQ)
Texas Parks and Wildlife Department (TPWD)
Texas Historical Commission (THC)
Texas Coastal Coordination Council (CCC)
General Land Office (GLO)
National Ocean Survey, Atlantic Marine Center (NOS)
American Waterways Operators (AWO)

b. Response to the Public Notice.

(1) Federal Agencies. The FWS submitted a letter, dated December 28, 2010, stating that no significant adverse effects on fish and wildlife, their habitats, and human uses thereof, are expected to result from the proposed work activity, and therefore, from the standpoint of fish and wildlife and their habitat, FWS has no objection to the issuance of the permit.

The NMFS submitted a letter, dated December 15, 2010, stating that they anticipate that any adverse effects that might occur on marine and anadromous fishery resources would be minimal, therefore, NMFS does not object to the issuance of the permit. No EFH comments were received.

No response was received from the EPA.

The U.S. Coast Guard submitted a letter, dated January 3, 2011 stating that the project does not indicate an unacceptable level of risk with regard to waterway safety. They further suggested that primary and backup communications are kept on vessels engaged in the operation and that work be conducted either before or after hurricane season. Finally, they stated that the applicant be

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required to contact the Waterways Management Division 60 days prior to performing the proposed action if there will be a need for a Broadcast Notice to Mariners or Safety Zone.

The proposed action was coordinated with CESWG offices by Internal Review notice dated November 22, 2010. The Programs and Project Management Division, Southern Area Office Engineer, Real Estate Division, Operations Division and Engineering Division Offices responded to the notice stating that they had no objection to the proposed work. No response was received from any other office.

(2) Federally Recognized Native American Tribes and Affiliated Groups. The Alabama-Coushatta Tribe of Texas submitted a letter December 29, 2010, stating that the proposed project will not affect any objects, sites, or locations important to their traditional culture or religion.

(3) State and Local Agencies. No response was received from the TPWD.

The Texas State Historic Preservation Officer submitted a letter, dated December 27, 2010, stating that no survey is required and that the project may proceed.

No response was received from the CCC.

The TCEQ submitted a letter, dated January 3, 2011, stating that they have no objection to the proposed permit, and a water quality decision cannot be made until all relevant comments submitted in response to the public notice are received and evaluated, and the Statement of Findings is completed by the US Army Corps of Engineers. The TCEQ further stated that if new concerns are identified from comments, the TCEQ will submit a comment letter to identify those concerns.

(4) Individual and Organized Groups. No response was received from any individual or organized group.

c. Consideration of Comments. No negative comment letters were received during the public notice comment period and the applicant was informed by phone and email dated 18 February 2011.

d. Findings. This particular project will result in the creation of an artificial reef that will augment natural fisheries habitat for juvenile reef fish and provide sport and recreational fishing benefits for the public. There are no existing reefs located within the project site.

The proposed actions subject to Corps' permit requirements have been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined the activities proposed under this permit will not exceed de minimis emissions

of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this permit action.

The following special conditions will be added to the authorization:

1. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. The permittee shall supply written notification to the U.S. Coast Guard (USCG), Waterways Management Division 60 days prior to the installation of structures placed near Federal Fairways or Anchorage areas. This notification will include the date the work is expected to begin, a construction timeline, and contact information of the site supervisor. Additionally, the permittee will again telephonically notify the USCG 48 hours before construction begins to verify the start date and issue a notice to mariners. A copy of all notifications required by this special condition will be also sent to the Corpus Christi Regulatory Field Office.

e. Conclusion. We have reviewed and evaluated, in light of the overall public interest, the documents and factors concerning this permit application, as well as the stated views of other interested Federal and non-Federal agencies and the concerned public, relative to the proposed work in navigable waters of the United States. This evaluation is in accordance with the guidelines contained in 40 C.F.R. 230 pursuant to Section 404(b) of the Clean Water Act.

Based on our review, we find that the proposed project is not contrary to the public interest and that a Department of the Army permit should be issued.

FOR THE COMMANDER:

4-28-11

(Date)



Lloyd Mullins
Supervisor
Corpus Christi Regulatory Field Office

