

**File Code:** 1950  
**Date:** May 6, 2022

Diane Mazuca  
Senior Advisor/Policy & Development  
TCEQ/RESTORE Program

Dear Ms. Mazuca:

Activities proposed for funding by the Gulf Coast Ecosystem Restoration Council are subject to federal procedures and resource review under the National Environmental Policy Act (NEPA). In March 2021, I determined that federal funding for purchase of land or conservation easements proposed by the Texas Commission on Environmental Quality (TCEQ) would not result in significant effects to the environment and was consistent with a category of activities that the USDA Forest Service excludes from more detailed NEPA analysis (“Acquisition of land or interest in land;” 36 CFR 220.6(d)(6)).

In early 2022, you requested expansion of the authorization to include Goliad County, Texas, which is adjacent to the originally approved area and contains similar coastal habitats. I have determined that adding Goliad County is aligned with the purpose of the proposal and that there are no resource concerns that were not already reviewed in the original documentation. In this letter I briefly review information supporting this addition and authorize the continued use of the Forest Service categorical exclusion for acquisition of land or interest in land within the expanded area.

The description of public involvement from the 2021 authorization with the additional information for Goliad County provided on April 14, 2022, demonstrates that the entire project has met NEPA requirements for project scoping. The additional information is enclosed and is incorporated into the record for the project along with this letter.

Since the 2021 review of potential extraordinary circumstances, two mussel species known from stretches of the San Antonio and Guadalupe Rivers – the Guadalupe orb (*Cyclonaias necki*) and the false spike (*Fusconaia mitchelli*) – have been proposed for listing under the Endangered Species Act (86 FR 47916-48011). Like other listed species considered in the original project documentation, there would be no effect on these two mussels resulting from the proposed activities or the inclusion of Goliad County in the authorization.

The analysis in the 2021 authorization remains valid for all other potential extraordinary circumstances, and the addition of Goliad County to the proposed action is within the scope of previously disclosed effects. However, as described in the previous documentation, this authorization applies only to the acquisition of land or interests in land; future activities on those lands may be subject to additional environmental review.



The USDA Forest Service is pleased to support the ongoing work of the TCEQ's Land Acquisition Program for Coastal Conservation. If you have any questions, please contact Ben Battle at [benjamin.battle@usda.gov](mailto:benjamin.battle@usda.gov) or 601-723-1155.

Sincerely,

A handwritten signature in blue ink that reads "Kenderick Arney". The signature is written in a cursive style with a large initial "K".

KENDERICK ARNEY  
Regional Forester

Enclosure: Documentation of public involvement

cc: Benjamin Battle

## **PUBLIC ENGAGEMENT ACTIVITIES: COASTAL PRAIRIE PROJECT, INCLUDING GOLIAD COUNTY, TEXAS**

Collaboration: Two Texas workgroups were established to provide input on coastal priorities: State & Federal Representatives and Non-Governmental Organizations. On-line and in-person meetings were held to discuss plans to develop Texas coastal priorities and to ensure the public's involvement. A survey was developed that asked for individual's coastal priorities. These surveys were available to the public and were also completed by members of the two work groups. Public meetings were conducted in three coastal cities for the public to present their issues and concerns. Information received from workgroup meetings, discussions with elected officials, public meetings and the surveys were used to develop a list of priorities to be included in the RESTORE Council's Planning Framework document.

Public Engagement, Outreach, and Education: The decision to submit four Bkt 2/FPL 3b Texas programs, including the Texas Land Acquisition for Coastal Conservation, was based on many months of discussions with work groups and participation by the public. It began with discussions with the Texas representatives for NRDA & NFWF to identify programs/projects for FPL 3b. This identified list was shared with the two workgroups (State & Federal and NGOs) established for Bucket 2 planning purposes, for their review and comment. County judges in the coastal area also were given the opportunity to identify potential programs/projects for their areas. Using the information compiled as part of this process, in the fall of 2019 a list of 23 projects, including the Coastal Prairie project that includes Goliad County, was posted for public comment on the Texas RESTORE website. In addition, two public hearings were held in coastal cities. In reviewing the comments received, the timing to move forward with proposals, and in discussions with the Texas Governor's staff, it was determined that the program rather than project specific proposals would be submitted. The development of the program proposals was done to ensure that projects posted for public comment could be considered in at least one of the program submissions. Much of the work has already been done to identify projects that could be funded within this program.

The process to select FPL 3b grant projects/subrecipients will include the requirement that projects will have to already be vetted by the public process presented above or through other public processes such as the GLO's Coastal Resiliency Master Plan, NRDA or NFWF related activities. The criteria to select the specific projects will include, but are not limited to, the following: addresses issues presented in the program activity description; amount of funds available for the program; readiness; leveraging opportunities; scalability; risk/benefit ratio; and distribution of funds across the Texas coastline. Notification of the projects selected to receive grant funds will be posted on the Texas RESTORE website at the appropriate time. This overall process, including parts already completed and others to be completed during program planning and implementation, will ensure that the ultimate selection of projects for this program are not only consistent with the RESTORE Planning Framework document, but also reflect the ideas that were discussed by the work groups, the elected officials, the public and the Office of the Governor.



Heather Young &lt;heather.young@restorethegulf.gov&gt;

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**Re: [EXTERNAL] FPL 3b TX Land acquisition program**

1 message

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**Frater, Benjamin** <benjamin\_frater@fws.gov>

Fri, May 13, 2022 at 9:17 AM

To: Heather Young &lt;heather.young@restorethegulf.gov&gt;

Cc: John Ettinger &lt;john.ettinger@restorethegulf.gov&gt;, "Hardegree, Beau" &lt;beau\_hardegree@fws.gov&gt;

Hi Heather,

Thanks for checking in. I reached out to Beau (cc'd here), who is our Coastal Office Project Leader in TX, to verify the ESA implications. He reported that he's been involved with the TX crew planning that project and supports the ESA determination. No additional ESA coordination is necessary. We're happy to have these lands added to the project for possible acquisition, and are excited to see the overall project moving along. Thanks again for verifying the ESA determination.

Have a great weekend,

Ben

Ben Frater

Compliance Supervisor

Deepwater Horizon Gulf Restoration Office

U.S. Fish and Wildlife Service

[341 Greeno Road](#) North, Suite A, Fairhope, AL 36532

cell: (404) 314-8815

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**From:** Heather Young <[heather.young@restorethegulf.gov](mailto:heather.young@restorethegulf.gov)>**Sent:** Thursday, May 12, 2022 4:43 PM**To:** Frater, Benjamin <[benjamin\\_frater@fws.gov](mailto:benjamin_frater@fws.gov)>**Cc:** John Ettinger <[john.ettinger@restorethegulf.gov](mailto:john.ettinger@restorethegulf.gov)>**Subject:** [EXTERNAL] FPL 3b TX Land acquisition program

**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

Hello Ben,

I hope this finds you well.

Texas is seeking to modify their [FPL3b land acquisition program](#) to add the possibility to acquire coastal prairie habitat in Goliad County, TX. Activity in Goliad County was not originally included within the geographic area of the program's project description or expressly covered by our supporting [2021 environmental compliance documentation](#) for this program. The addition of Goliad County will necessitate an amendment to FPL 3b. To jog your memory the Council is utilizing a USDA NEPA CE for this program. Texas has coordinated with the USDA regarding this proposed modification to add Goliad County, and USDA has determined "adding Goliad County is aligned with the purpose of the (original) proposal and that there are no resource concerns that were not already reviewed in the original documentation". I have

attached USDA's letter dated May 6, 2022 which does also note that two mussel species have been proposed for listing under ESA since the time of our 2021 coordination. USDA believes there would be no effect resulting from the proposed acquisition activities (note: no ground disturbance or physical management actions are proposed to be funded through the RESTORE 3b program).

Council staff agree with the USDA's analysis, but we wanted to reach out to FWS as a courtesy to see if you feel any additional ESA coordination is necessary on your end. Thank you in advance and just let us know if you have any questions.

Heather

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[Heather D. Young](#)

Ecosystem Restoration Specialist  
Gulf Coast Ecosystem Restoration Council  
tel. 504-252-7716  
[www.restorethegulf.gov](http://www.restorethegulf.gov)



**Gulf Coast Ecosystem Restoration Council  
Categorical Exclusion Determination Form**

*This form is to be completed before the Gulf Coast Ecosystem Restoration Council (Council) uses one or more Categorical Exclusions (CEs) to comply with the National Environmental Policy Act (NEPA) for a specific action or group of actions, as appropriate. More information on the Council's NEPA compliance and use of CEs can be found in the Council's [NEPA Procedures](#).*

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**Action Title:**

Texas Land Acquisition Program for Coastal Conservation

**Action Location:** *(State, County/Parish)*

Texas, within any of the 18 RESTORE eligible coastal Texas counties

**Action Description:**

The Council has approved \$24.3M in planning and implementation activities as FPL Category 1 Council-Selected Restoration Component funding for the Texas Land Acquisition Program for Coastal Conservation sponsored by Texas, through the Texas Commission on Environmental Quality (TCEQ). The program will acquire large, high-quality coastal zone properties in Texas. Locations will be selected on the basis of greatest value to the coastal environment now and in the future considering the pressures of environmental change and development. Targeted habitats will include urban green corridors, riparian, prairie and other upland, wooded wetlands, or bay and chenier wetlands. This program will conserve valuable land as habitat and provide natural buffers to flooding and erosion, decreasing the need for habitat destroying hard engineering projects while providing valuable ecosystem services. Program duration is expected to be 4 years.

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**Categorical Exclusion(s) Applied:**

USDA Categorical Exclusion 36 CFR 220.6(d)(6); "Acquisition of land or interest in land".

### Council Use of Member Categorical Exclusion(s)

*If the Categorical Exclusion(s) was established by a Federal agency Council member, complete the following. If not, leave this section blank and proceed to the segmentation section.*

Member with Categorical Exclusion(s)

Has the member with CE(s) advised the Council in writing that use of the CE(s) would be appropriate for the specific action under consideration by the Council, including consideration of segmentation and extraordinary circumstances (as described below)?

Yes  No

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### Segmentation

Has the proposed action been segmented to meet the definition of a Categorical Exclusion? (In making this determination, the Council should consider whether the action has independent utility.)

Yes  No

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### Extraordinary Circumstances

In considering whether to use a Categorical Exclusion for a given action, agencies must review whether there may be extraordinary circumstances in which a normally excluded action may have a significant environmental effect and, therefore, warrant further review pursuant to NEPA. Guidance on the review of potential extraordinary circumstances can be found in Section 4(e) of the Council's NEPA Procedures. The potential extraordinary circumstances listed below are set forth in the Council's NEPA Procedures.

The Council, in cooperation with the sponsor of the activity, has considered the following potential extraordinary circumstances, where applicable, and has made the following determinations. (By checking the "No" box, the Council is indicating that the activity under review would not result in the corresponding potential extraordinary circumstance.)

Yes  No 1. Is there a reasonable likelihood of substantial scientific controversy regarding the potential environmental impacts of the proposed action?

Yes  No 2. Are there Tribal concerns with actions that impact Tribal lands or resources that are sufficient to constitute an extraordinary circumstance?

Yes  No 3. Is there a reasonable likelihood of adversely affecting environmentally sensitive resources? Environmentally sensitive resources include but are not limited to:

- a. Species that are federally listed or proposed for listing as threatened or endangered, or their proposed or designated critical habitats; and
- b. Properties listed or eligible for listing on the National Register of Historic Places.

- Yes  No 4. Is there a reasonable likelihood of impacts that are highly uncertain or involve unknown risks or is there a substantial scientific controversy over the effects?
- Yes  No 5. Is there a reasonable likelihood of air pollution at levels of concern or otherwise requiring a formal conformity determination under the Clean Air Act?
- Yes  No 6. Is there a reasonable likelihood of a disproportionately high and adverse effect on low income or minority populations (see Executive Order 12898)?
- Yes  No 7. Is there a reasonable likelihood of contributing to the introduction or spread of noxious weeds or non-native invasive species or actions that may promote the introduction, or spread of such species (see Federal Noxious Weed Control Act and Executive Order 13112)?
- Yes  No 8. Is there a reasonable likelihood of a release of petroleum, oils, or lubricants (except from a properly functioning engine or vehicle) or reportable releases of hazardous or toxic substances as specified in 40 CFR part 302 (Designation, Reportable Quantities, and Notification); or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan in accordance with the Oil Pollution Prevention regulation?

**Supplemental Information**

Where appropriate, the following table should be used to provide additional information regarding the review of potential extraordinary circumstances and compliance with other applicable laws. The purpose of this table is to ensure that there is adequate information for specific findings regarding potential extraordinary circumstances.

Supplemental information and documentation is not needed for each individual finding regarding the potential extraordinary circumstances listed above. Specifically, the nature of an activity under review may be such that a reasonable person could conclude that there is a very low potential for a particular type of extraordinary circumstance to exist. For example, it would be reasonable to conclude that the simple act of acquiring land for conservation purposes (where

there are no other associated actions) does not present a reasonable likelihood of a release of petroleum, oils, lubricants, or hazardous or toxic substances.

For some types of activities, no supplemental information may be needed to support a finding that there are no extraordinary circumstances. For example, where the activity under review is solely planning (with no associated implementation activity), it may be reasonable to conclude that none of the extraordinary circumstances listed above would apply. In such cases, the table below would be left blank.

In other cases, it may be appropriate to include supplemental information to ensure that there is an adequate basis for a finding regarding a particular extraordinary circumstance. For example, it might be appropriate in some cases to document coordination and/or consultation with the appropriate agency regarding compliance with a potentially applicable law (such as the Endangered Species Act). In those cases, the table below should be used to provide the supplemental information.

Agency or Authority Consulted	Agency or Authority Representative: Name, Office & Phone	Date of Consultation	Notes: Topic discussed, relevant details, and conclusions. (This can include reference to other information on file and/or attached for the given action.)
USFWS	John Huffman	09/17/2020	Endangered Species Act

Additional supplemental information may be attached, as appropriate. Indicate below whether additional supplemental information is attached.

**Additional Information Attached:**  Yes  No

If “Yes”, indicate the subject:

USDA CE documentation for TXLAPCC and USFWS ESA Coordination
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**Determination by Responsible Official**

Based on my review of the proposed action, I have determined that the proposed action fits within the specified Categorical Exclusion(s), the other regulatory requirements set forth above are met, and the proposed action is hereby Categorically Excluded from further NEPA review.

**Responsible Official** (*Name*)

Mary S. Walker, Executive Director

**Responsible Official** (*Signature*)

MARY WALKER<sub>17:32:50 -04'00'</sub> Digitally signed by MARY WALKER Date: 2021.04.28

**Date**

April 28, 2021

**Documentation supporting the use of USDA Categorical Exclusion for Texas Land Acquisition  
Program for Coastal Conservation**

February 2021

**Responsible Council Member:** State of Texas – Texas Commission on Environmental Quality (TCEQ)

**Partnering Council Member:** United States Department of Agriculture

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**Regulatory Framework**

Federal agencies are required to develop procedures for implementing the National Environmental Policy Act (NEPA) to supplement those established by the CEQ at 40 CFR 1500- 1508. The Gulf Coast Ecosystem Restoration Council (Council) finalized NEPA procedures on May 5, 2015 (80 FR 86, p, 25680-25691). These procedures are applicable to all Council Actions, including approving and funding projects that were proposed by and otherwise will be implemented by non-federal parties (40 CFR 1508.18). The Council determined that certain categories of activities that have not undergone NEPA review may be categorically excluded from detailed documentation in an EA or EIS (Sec. 4(c,d)), subject to a review of extraordinary circumstances that could indicate potentially significant effects on the environment (Sec. 4(e)). The documentation below for the "Texas Land Acquisition Program for Coastal Conservation" follows requirements described in Sec. 4(f) for

categorical Exclusions (CEs), by incorporating supporting information from the United States Department of Agriculture (USDA) Forest Service (USFS).

### **Description of Proposed Activities**

The proposed action is the conservation of coastal land through land or conservation easement purchases in Texas (Figure 1). The program will acquire large, high-quality coastal zone properties in Texas. Locations will be selected on the basis of greatest value to the coastal environment now and in the future considering the pressures of environmental change and development. Targeted habitats will include urban green corridors, riparian, prairie and other upland, wooded wetlands, or bay and chenier wetlands. This program will conserve valuable land as habitat and provide natural buffers to flooding and erosion, decreasing the need for habitat destroying hard engineering projects while providing valuable ecosystem services. Once an area has been targeted for acquisition the following general steps will be required: (1) Complete due diligence including appraisal, environmental assessment, survey and title search to ensure that the purchase costs are consistent with market values, that the property is not contaminated, property boundaries are known, and that the tracts' titles are free and clear of objectionable encumbrances; (2) Secure the land or easement with a purchase contract; and (3) Convey the property for long-term management. This program will not alter the landscape or the environment of the land purchased, instead it will protect the land from future negative alterations due to development. In addition, acquisition of the valuable coastal properties may provide areas for possible future restoration or other beneficial activities that can increase the conservation footprint of the project.

The Texas Land Acquisition Program for Coastal Conservation applies Planning Framework approaches and techniques to support Comprehensive Plan goals and objectives. In support of the primary objective to Restore, enhance, and protect habitats, stressors such as coastal development will be addressed using the Land acquisition technique. Success using land acquisition to Restore, enhance, and protect habitats may be tracked using acres protected under easement and acres acquired in fee as metrics. Please see Appendix C for the full program Fact Sheet.

### **Existing Condition**

Potential program locations along the Texas coast provide valuable habitats and resources of coastal lands, and they support a diverse and abundant array of plants and animals. The land being considered for acquisition consist of areas that are at high risk of negative impacts of development, subsidence, changes in wetland vegetation, and degraded water quality. Targeted habitats will include urban green corridors, riparian forests, wetlands, uplands, coastal prairies, and barrier islands. This program aims to acquire the most beneficial land, both in acreage and in resources provided. Acquisition of these types of land will prevent development in high-risk areas, protect critical habitat and ecosystem functions, and continue to provide coastal resiliency to surrounding communities.

**Desired Condition**

This program will conserve valuable land as habitat and provide natural buffers to flooding and erosion, decreasing the need for habitat destroying hard engineering projects while providing valuable ecosystem services. In general, the environmental benefits provided by this program span from protecting habitats and conserving biodiversity to improving water quality and storm buffering. The direct benefits to coastal communities by preserving land include reducing erosion and flooding, as well as providing additional economic benefits and recreation. The acquisitions will require long term monitoring to ensure the natural habitats of the acquired properties are being conserved and protected. Monitoring the area over the program duration will help determine if the areas are providing the expected benefits. Once the targeted tracts of land are purchased, ownership will be transferred to a government or non-government organization to help monitor the conservation of the environments. Over time, steps may be taken to promote further environmental conservation by removing invasive species or planting more native vegetation, however, those actions are not within the scope of this program.

**Public Involvement**

CEQ NEPA regulations state that "There shall be an early and open process for determining the scope of the issues to be addressed and for identifying the significant issues related to a proposed action" (40 CFR 1501.7). Scoping should include interested or affected parties, potentially including "Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons."

The RESTORE ACT was signed into law October 5, 2010 as Executive Order 13554 and published in the Federal Register. In accordance with the law, The RESTORE ACT Council manages a public involvement process in order to generate input from local stakeholders, communities, public officials, and other members of the public throughout the gulf region. Widespread efforts have been made to ensure that these members of the public have had ample opportunity to share their views. The Council has hosted many public meetings and established an internet presence to accept public comments.

The decision to submit this program was based on many months of discussions with work groups and participation by the public. It began with discussions with the Texas representatives for NRDA & NFWF to identify programs/projects for FPL 3b. This identified list was shared with the two workgroups (State & Federal and NGOs) established for Bucket 2 planning purposes, for their review and comment. County judges in the coastal area also were given the opportunity to identify potential programs/projects for their areas. Using the information compiled as part of this process, a list of 23 projects were posted for public comment on the Texas RESTORE website. In addition, two public hearings were held in coastal cities. In reviewing the comments received, the timing to move forward with proposals, and in discussions with the Texas Governor's staff, it was determined that program rather than project specific proposals would be submitted. The development of the program proposals was done to ensure that projects posted for public comment could be

considered in at least one of the program submissions. Much of the work has already been done to identify projects that could be funded within this program submission. The process to select FPL 3b land acquisition projects will include the requirement that projects will have to already been vetted by this process or through other public processes such as the GLO's Coastal Resiliency Master Plan, or NRDA & NFWF related activities.

As part of public involvement, there was a public comment period from November 16, 2020 to January 5, 2021. Texas' responses to the public comments received for the Land Acquisition program in the RESTORE Council's posting of the FPL 3b document are as follows:

Comment: Several comments were received that confirm a broad level of strong support for the Texas Land Acquisition Program for Coastal Conservation. Commenters look forward to continued success in acquiring large tracts that are critical to preventing coastal habitat loss, maintaining habitat for birds and other wildlife, providing open space, and buffering communities from the impacts of tropical storms.

Response: The Council greatly appreciates these comments and looks forward to continuing to build upon and greatly expand its initial successes in land acquisition as a key restoration approach essential to the ecological health and future of coastal Texas.

Comment: One commenter does not feel that an appropriate set of scientific criteria for identifying and prioritizing land to be acquired under this program has been developed and therefore, it should not be funded as proposed. Recognizing that RESTORE is a coastal restoration program and that barrier islands and barrier shorelines are at very high risk of unregulated development, the commenter believes these habitats should be the highest priority for acquisition, but they are not currently mentioned in the proposal. Similarly, this commenter also feels that tidal flats should be purchased as a priority for acquisition and preservation since they are a unique and valuable coastal habitat facing severe threats from development and degradation with limited demonstrated success when it comes to restoration. The commenter does not support prioritizing acquisition of estuarine herbaceous wetlands since they are protected by wetlands regulatory programs and since their restoration is well understood. Finally, the commenter believes preservation of non-estuarine wetlands higher in the watershed should not be the highest priority because their link to coastal health is only through water quality, and instead feels that wetlands at risk of logging or mining should get a higher priority because they face threats that are not regulated.

Response: The Council appreciates suggestions regarding further refinement of the priorities for land acquisition. The acquisition selection process will consider those posted for public comment in late 2019, as well as utilize the Strategic Conservation Assessment (SCA) tool developed by the RESTORE Council to identify locations that provide the greatest value to the coastal environment. Additional natural and human environmental data and analyses will be evaluated to select the most vulnerable areas at risk from ongoing

degradation and future natural or human impacts. While not explicitly listed in the program proposal, no habitat types are being excluded from potential acquisition, including forested wetlands and barrier islands. Additionally, we recognize the value and importance of tidal flats in the estuarine environment, and they will not be excluded when selecting areas for acquisition. The Council also notes that the proposed FPL3b project titled “Wind-Tidal Flat Restoration Pilot,” aims to better understand how to implement successful restoration techniques on Texas coastal tidal flats and will provide research on best practices for restoration of this type of habitat.

### **Compliance with Other Laws and Regulations**

In accordance with the Migratory Bird Treaty Act of 1918, this program proposes to conserve critical habitat and will be beneficial to migratory birds.

Section 1-101 of Executive Order 12898 requires Federal agencies to consider any disproportionately high or adverse effects on minority or low-income populations. This proposed program will have no effect on low income or minority populations.

To comply with the Clean Air and Clean Water Acts, a review of the NEPA Assist Tool showed that there are EPA facilities in the proposed acquisition locations including hazardous waste, air pollution, water dischargers, toxic releases, superfunds, brownfields, and Toxic Substances Control Act sites (Figure 2). Specific locations for acquisition have not been determined, but as this program does not include any ground disturbing activities there is not a reasonable likelihood of air or water pollution as a result. Once specific acquisition locations are selected, due diligence will be completed as part of that determination, and any contamination present would disqualify that location from acquisition. Texas will work with all appropriate entities to ensure that all state and federal regulations are fulfilled.

Due to the large size of the potential locations for acquisition, it can be assumed that there are areas outside of city limits which fall into the Farmland Protection Policy Act. As this program is not proposing to complete any ground altering activities, there is not a reasonable likelihood that farmland would be negatively affected.

There is not a reasonable likelihood that this program will require a Spill Prevention, Control, or Countermeasures Plan in accordance with the Oil Pollution Prevention Regulation.

There is not a reasonable likelihood that the proposed program will promote the introduction or spread of noxious weeds or non-native invasive species in accordance with the Federal Noxious Weed Control Act and Executive Order 13112.

### **Applicable Categorical Exclusion**

The authority for purchase of the land is the USDA Organic Act of August 3, 1956 (70 Stat. 1032; 7 U.S.C. 428a, Sec. 11; P.L. 84-979); the Revived Economy of the Gulf Coast Act of 2011 (or the

"RESTORE the Gulf Coast Act"), 33 U.S.C. 1321; and an accompanying appropriations act when funding is received.

The acquisition as described meets the conditions for categorical exclusion as set forth in 36 CFR 220.6(d)(6).

(6) Acquisition of land or interest in land. Examples include but are not limited to:

Accepting the donation of lands or interests in land to the NFS, and

Purchasing fee, conservation easement, reserved interest deed, or other interests in lands.

### **Review of Extraordinary Circumstances**

*(1) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;*

A review by the U.S. Fish and Wildlife Service Information for Planning and Consultation (IPaC), was conducted for federally listed threatened, endangered, or candidate species that may occur in counties included in the potential acquisition action area. The list includes Gulf Coast Jaguarundi (Aransas, Calhoun, Cameron, Refugio, Kenedy, Kleberg, Nueces, San Patricio, Willacy), Ocelot (Aransas, Cameron, Refugio, Kenedy, Kleberg, Nueces, San Patricio, Willacy), West Indian Manatee (Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jefferson, Matagorda, Refugio, Jackson, Kenedy, Kleberg, Nueces, Orange, San Patricio, Willacy), Attwater's Greater Prairie Chicken (Aransas, Galveston, Refugio, Victoria), Least Tern (Aransas, Calhoun, Cameron, Harris, Refugio, Jackson, Kenedy, Kleberg, Nueces, Orange, San Patricio, Victoria, Willacy), Northern Aplomado Falcon (Aransas, Calhoun, Cameron, Matagorda, Refugio, Kenedy, Nueces, Willacy), Piping Plover (Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jefferson, Matagorda, Refugio, Jackson, Kenedy, Kleberg, Nueces, Orange, San Patricio, Victoria, Willacy), Red Knot (Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jefferson, Matagorda, Refugio, Jackson, Kenedy, Kleberg, Nueces, Orange, San Patricio, Victoria, Willacy), Whooping Crane (Aransas, Brazoria, Calhoun, Matagorda, Refugio, Jackson, Kenedy, Kleberg, Nueces, San Patricio, Victoria), Green Sea Turtle (Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Matagorda, Refugio, Kenedy, Kleberg, Nueces, San Patricio, Willacy), Hawksbill Sea Turtle (Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Matagorda, Refugio, Kenedy, Kleberg, Nueces, San Patricio, Willacy), Kemp's Ridley Sea Turtle (Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Matagorda, Refugio, Kenedy, Kleberg, Nueces, San Patricio, Willacy), Leatherback Sea Turtle (Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Matagorda, Refugio, Kenedy, Kleberg, Nueces, San Patricio, Willacy), Loggerhead Sea Turtle (Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Matagorda, Refugio, Kenedy, Kleberg, Nueces, San Patricio, Willacy), Texas Fawnsfoot (Brazoria and Matagorda), Texas Pimpleback (Calhoun, Matagorda, Refugio, Victoria), South Texas Ambrosia (Cameron, Kleberg, Nueces), Texas Ayenia (Cameron and Willacy), Texas Prairie Dawn (Harris), Black Lace Cactus (Refugio and Kleberg), and Slender Rush Pea (Kleberg and Nueces). Critical habitat for the Piping

Plover exists in Aransas, Brazoria, Calhoun, Cameron, Galveston, Matagorda, Kenedy, Kleberg, Nueces, San Patricio, and Willacy counties. Critical habitat for the Whooping Crane exists in Aransas, Calhoun, and Refugio counties.

Acquisition for conservation includes the transfer of title ownership or the purchase of conservation easements designed specifically to protect the natural ecological values of the habitats. No ground disturbing activities are proposed to be funded. The acquisition of private lands under the Texas Land Acquisition Program for Coastal Conservation (TLAPCC) will result in the permanent protection of potential habitat for these species, and with proper management, will result in new or improved suitable habitat for other species. Therefore, the Council has concluded that the TLAPCC will have "no effect" on listed species, their habitat, or proposed or designated critical habitat. If Texas proposes to fund any further activities beyond acquisition at a future date, additional environmental review may be conducted as needed.

*(2) Flood plains, wetlands, or municipal watersheds;*

The USFWS National Wetlands Inventory indicates that the 18 coastal counties selected for potential projects include freshwater and estuarine wetlands (Figure 3). Due to the large size of the potential locations to be acquired, it is assumed there will be wetlands and/or floodplains present within the areas. The purpose of the proposed program is preservation and should have beneficial impacts on these habitats.

*(3) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas;*

There are no congressionally designated areas, such as wilderness and wilderness study areas (Figure 4) or national recreation areas (Figure 5) located in the counties selected for potential land acquisitions.

*(4) Inventoried roadless areas or potential wilderness areas;*

The proposed program location(s) do not encompass inventoried roadless areas or potential wilderness areas (Figure 6).

*(5) Research natural areas;*

The proposed program location(s) do not encompass any research natural areas.

*(6) American Indians and Alaska Native religious or cultural sites, and*

The proposed program will not impact American Indians and Alaska Native religious or cultural sites, as it does not involve ground disturbing or ground clearing activities and will not include land which has known aboveground or belowground properties of tribal significance.

*(7) Archaeological sites, or historic properties or areas.*

The Texas Historical Commission has determined that this proposed project meets the Section 106 requirements of the National Historic Preservation Act of 1966 and has no potential to adversely affect historic properties since it does not involve any ground altering activities.

**Determination**

Based upon the information provided above, it is concluded the proposed Texas Land Acquisition Program is fully consistent and applicable to the category described in 36 CFR 220.6(d)(6); "Acquisition of land or interest in land". It is determined there are no extraordinary circumstances associated with this land acquisition program.



March 3, 2021

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KEN ARNEY  
Regional Forester  
USDA Forest Service  
Southern Region

**Appendix A – References**

Draft Initial Funded Priorities List:

[https://www.restorethegulf.gov/sites/default/files/Final%20DraftFPL3b\\_20201116\\_508.pdf](https://www.restorethegulf.gov/sites/default/files/Final%20DraftFPL3b_20201116_508.pdf)

Gulf Restoration Ecosystem Restoration Council NEPA implementing procedures:

<https://www.restorethegulf.gov/sites/default/files/documents/pdf/Gulf%20Coast%20Ecosystem%20Restoration%20Council%20NEPA%20Procedures.pdf>

National Environmental Policy Act Assist Tool. Accessed 1/19/2021.

<https://nepassisttool.epa.gov/nepassist/nepamap.aspx>

National Park Service, Texas Parks. Accessed 1/19/2021. <https://www.nps.gov/state/tx/index.htm>

U.S. Fish & Wildlife Service, National Wetlands Inventory. Accessed 2/2/2021.

<https://www.fws.gov/wetlands/data/Mapper.html>

United States Department of Agriculture, Forest Service, Established Research Natural Areas. Accessed 1/19/2021. <https://www.srs.fs.usda.gov/rna/estrnas/#tx>

United States Department of Agriculture, Forest Service, National Forests in Texas Inventoried Roadless Areas. Accessed 1/19/2021.

[https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fsmrs\\_072472.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsmrs_072472.pdf)

United States Department of Agriculture, Forest Service, Wilderness & Wild and Scenic Rivers & Wilderness Study Areas. Accessed 1/19/2021.

[https://data.fs.usda.gov/geodata/other\\_fs/wilderness/stateMap.php?stateID=TX](https://data.fs.usda.gov/geodata/other_fs/wilderness/stateMap.php?stateID=TX)

**Appendix B - Figures**

Figure 1: Program Location



Figure 2. EPA Facilities (hazardous waste, air pollution, water dischargers, toxic releases, superfunds, brownfields, toxic substances control act)

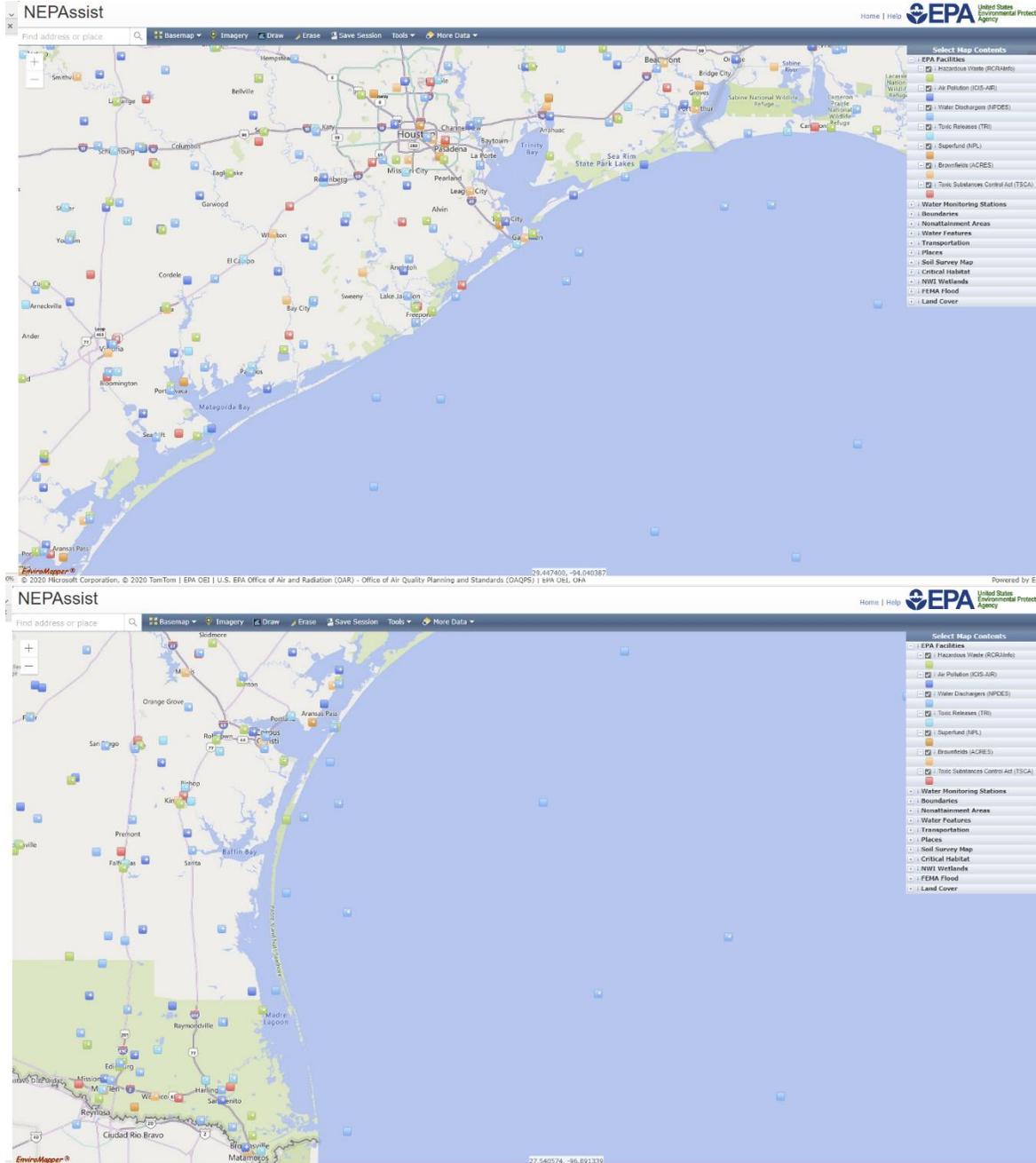


Figure 3. USFWS National Wetlands Inventory

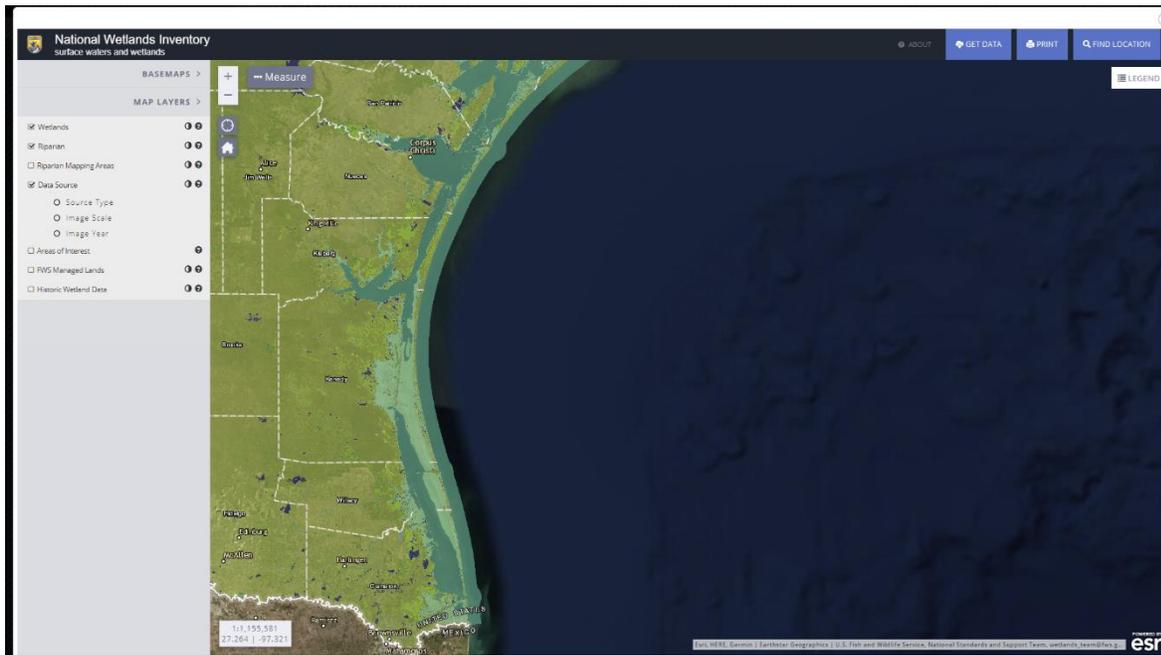
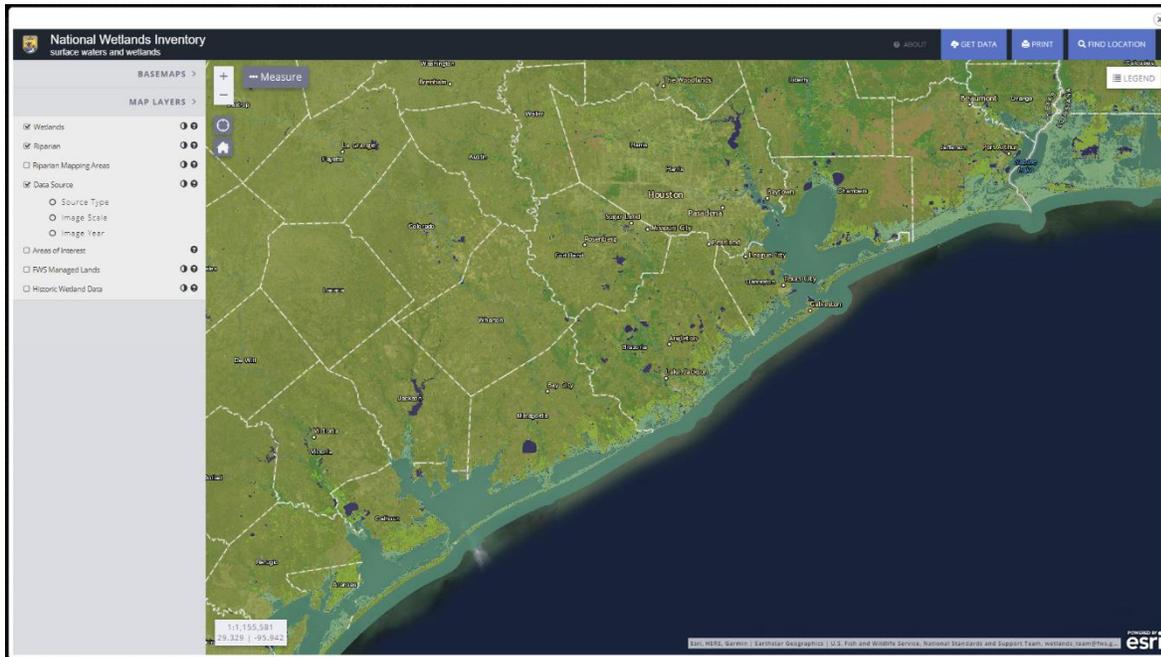


Figure 4. Official Boundary Documentation – Wilderness & Wild Scenic Rivers & Wilderness Study Areas

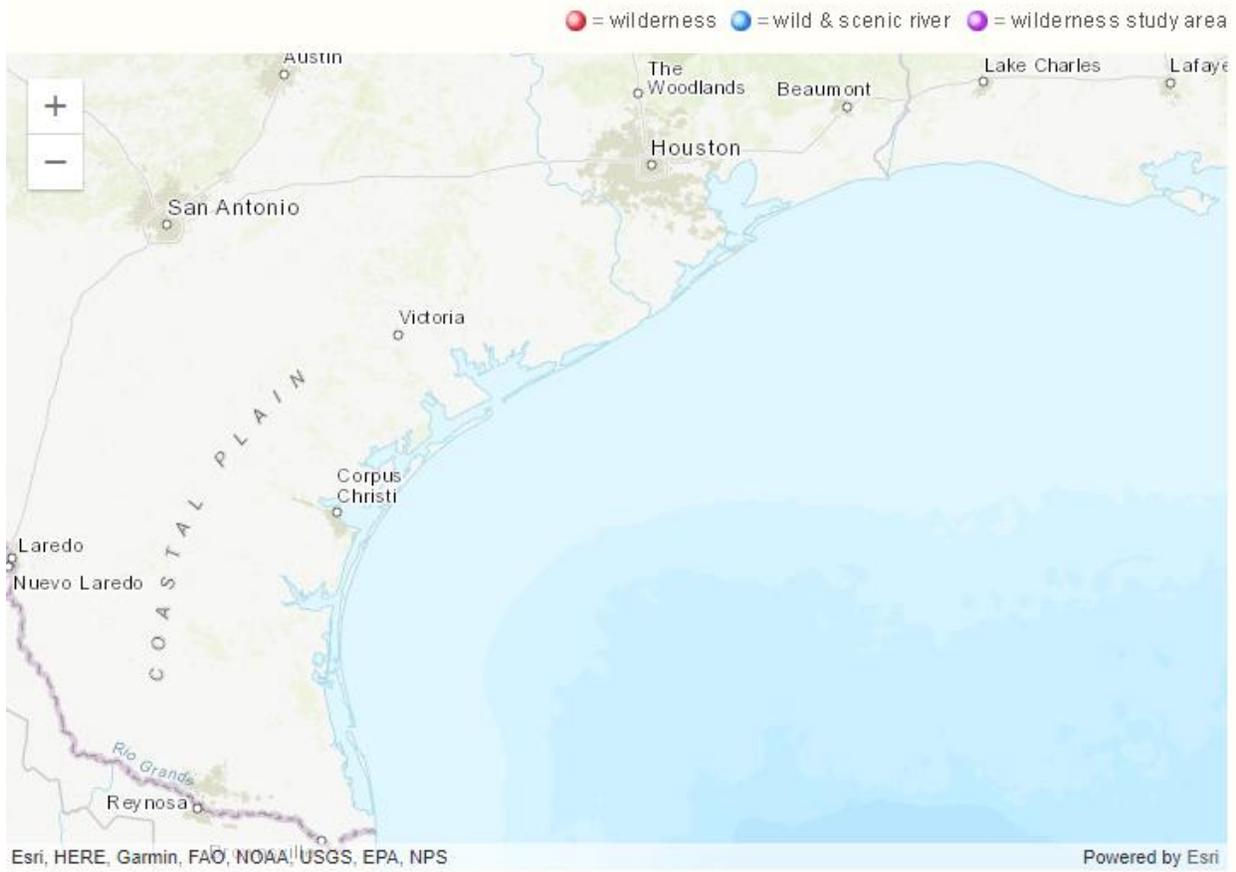


Figure 5. National Recreation Areas, Monuments, Parks, etc.

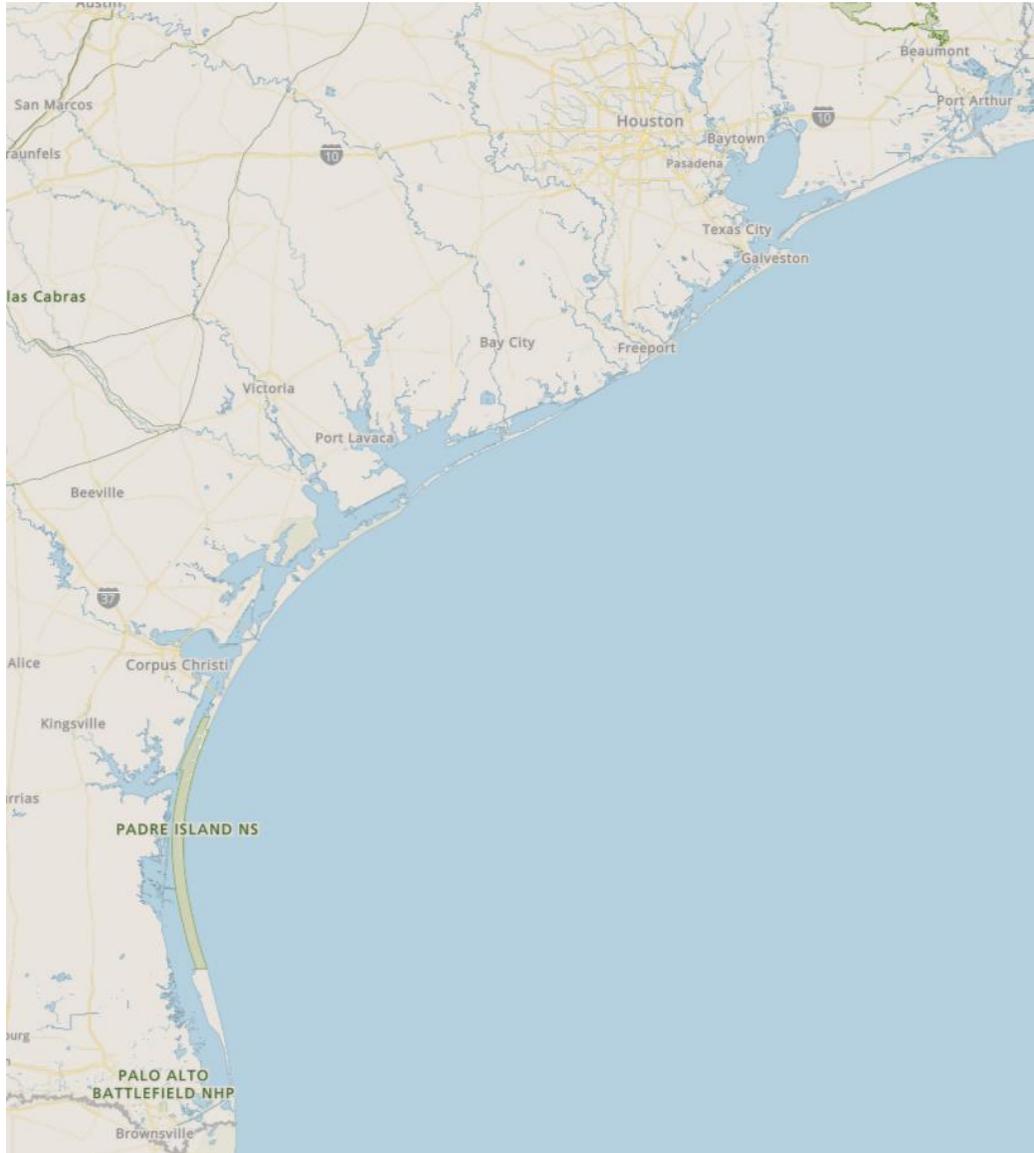
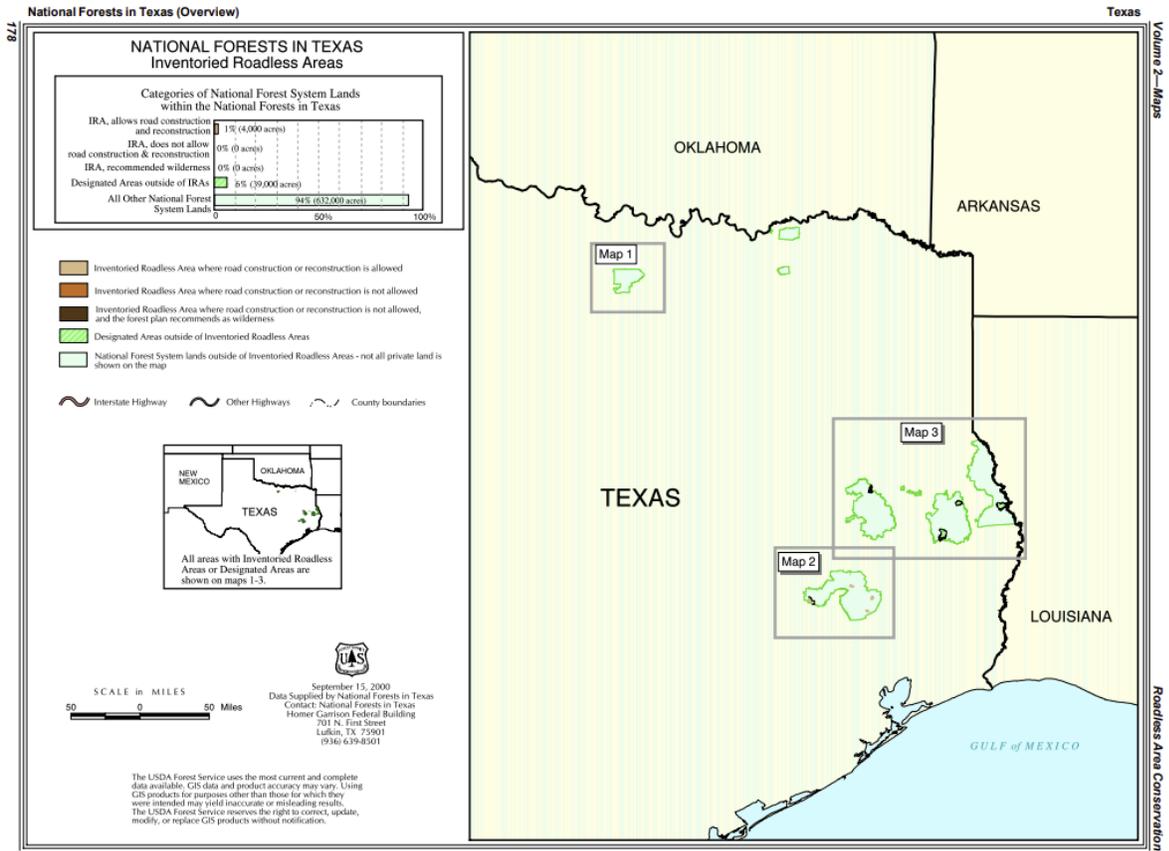


Figure 6. Inventoried Roadless Areas



Appendix C

# FUNDED PRIORITIES LIST 3B

**Texas Land Acquisition Program for Coastal Conservation**



Funded Priorities List (FPL) 3b is part of a two-phase approach used by the Gulf Coast Ecosystem Restoration Council (Council) to respond to ecosystem needs and take advantage of important partnership opportunities to advance large-scale ecosystem restoration.

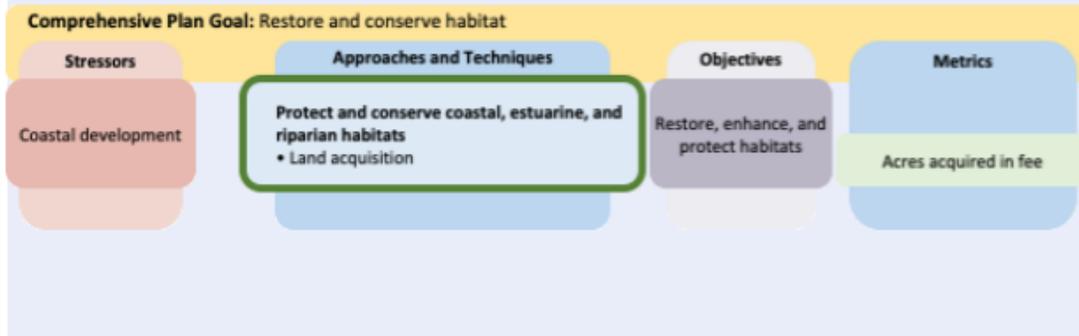
The Council is considering approval of \$1,579,500 in planning funds as FPL Category 1 for the *Texas Land Acquisition Program for Coastal Conservation*. In addition, the Council is considering an implementation component for potential future funding as an FPL Category 2 activity, and proposes to reserve \$22,720,500 for this component, pending further review and a Council vote. The *Texas Land Acquisition Program for Coastal Conservation* would utilize the Planning Framework techniques and approaches outlined in the figure below to address environmental stressors in Texas. Texas, through the Texas Commission on Environmental Quality is the sponsor of this proposed program.

The program will acquire large, high-quality coastal zone properties in Texas. Locations will be selected on the basis of greatest value to the coastal environment now and in the future considering the pressures of environmental change and development. Targeted habitats will include urban green corridors, riparian, prairie and other upland, wooded wetlands, or bay and chenier wetlands.

Potential partners for the program may include The Nature Conservancy, Texas Parks and Wildlife Department, Galveston Bay Foundation, Coastal Bend Bays & Estuaries Program, as well as other possible state and local governments. The program will utilize specified criteria for selecting projects that were identified earlier through public meetings and as part of a stakeholder process. This program will conserve valuable land as habitat and provide natural buffers to flooding and erosion, decreasing the need for habitat destroying hard engineering projects while providing valuable ecosystem services.

## Program at a Glance

The *Texas Land Acquisition Program for Coastal Conservation* applies Planning Framework approaches and techniques to support Comprehensive Plan goals and objectives. In support of the primary objective to *Restore, enhance, and protect habitats*, stressors such as coastal development will be addressed using the *Land acquisition* technique. Success using land acquisition to *Restore, enhance, and protect habitats* may be tracked using acres protected under easement and acres acquired in fee as metrics.



10/13/2020



**GULF COAST ECOSYSTEM RESTORATION COUNCIL**  
New Orleans, Louisiana

September 17, 2020

Mr. John Huffman  
Texas Gulf Restoration Program Office Supervisor  
USFWS - Arkansas-Rio Grande-Texas-Gulf Region  
17629 El Camino Real #211  
Houston, Texas 77058

Dear Mr. Huffman,

The Gulf Coast Ecosystem Restoration Council (the Council) is requesting informal coordination with the U.S. Fish and Wildlife Service (USFWS) regarding Section 7 of the Endangered Species Act (ESA) for the proposed Texas Land Acquisition Program for Coastal Conservation (TX LAP). Texas, through the Texas Commission on Environmental Quality, is requesting \$24,300,000 in RESTORE Act Council-Selected Restoration Component funding for planning, project management and land acquisition to permanently preserve large, high-quality coastal zone properties across an 18-county geographic area of Texas (See Figure 1). Acquisition may include both fee title purchases and/or purchase of conservation easements.



Figure 1. Action Area for the Texas Land Acquisition Program for Coastal Conservation.

Specific acquisition locations will be selected on the basis of greatest value to the coastal environment now and in the future considering the pressures of environmental change and coastal development. Targeted habitats will include urban green corridors, riparian habitats, prairie and other upland wooded wetlands, or bay and chenier wetlands. Potential partners for the program may include The Nature Conservancy, Texas Parks and Wildlife Department, Galveston Bay Foundation, Coastal Bend Bays & Estuaries Program, as well as other possible state and local governments. The program duration is expected to be four years. A more detailed proposal has been attached to provide additional information (see Enclosure).

Council staff have reviewed the USFWS Information for Planning and Conservation application. The following table lists counties included in the potential acquisition action area with which federally-listed threatened, endangered, or candidate species are noted to be present. It is also noted if designated critical habitat (DCH) occurs within that county for the listed species.

<b>Species</b>	<b>Counties</b>
Gulf coast jaguarundi	Aransas, Calhoun, Cameron, Refugio, Kenedy, Kleberg, Nueces San Patricio, and Willacy
ocelot	Aransas, Cameron, Refugio, Kenedy, Kleberg, Nueces, San Patricio, and Willacy
West Indian Manatee	Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jefferson, Matagorda, Refugio, Jackson Kenedy, Kleberg, Nueces, Orange, San Patricio, and Willacy
Attwater's greater prairie chicken	Aransas, Galveston, Refugio, and Victoria
least tern	Aransas, Calhoun, Cameron, Harris, Refugio, Jackson, Kenedy, Kleberg, Nueces, Orange, San Patricio, Victoria, and Willacy
northern aplomado falcon	Aransas, Calhoun, Cameron, Matagorda, Refugio Kenedy, Kleberg, Nueces, and Willacy
piping plover	Aransas*, Brazoria*, Calhoun*, Cameron*, Chambers, Galveston*, Harris, Jefferson, Matagorda*, Refugio, Jackson, Kenedy*, Kleberg*, Nueces*, Orange, San Patricio*, Victoria, and Willacy*
red knot	Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jefferson, Matagorda, Refugio, Jackson, Kenedy, Kleberg, Nueces, Orange, San Patricio, Victoria, and Willacy

whooping crane	Aransas*, Brazoria, Calhoun*, Matagorda, Refugio*, Jackson, Kenedy, Kleberg, Nueces, San Patricio, and Victoria
green sea turtle	Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Matagorda, Refugio, Kenedy, Kleberg, Nueces, San Patricio, and Willacy
hawksbill sea turtle	Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Matagorda, Refugio, Kenedy, Kleberg, Nueces, San Patricio, and Willacy
Kemp's ridley sea turtle	Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Matagorda, Refugio, Kenedy, Kleberg, Nueces, San Patricio, and Willacy
leatherback sea turtle	Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Matagorda, Refugio Kenedy, Kleberg, Nueces, San Patricio, and Willacy
loggerhead sea turtle	Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Matagorda, Refugio, Kenedy, Kleberg, Nueces, San Patricio, and Willacy
Texas fawnsfoot	Brazoria and Matagorda
Texas pimpleback	Calhoun, Matagorda, Refugio, and Victoria
South Texas ambrosia	Cameron, Kleberg, and Nueces
Texas ayenia	Cameron and Willacy
Texas prairie dawn	Harris
black lace cactus	Refugio and Kleberg
slender rush pea	Kleberg and Nueces

Table 1. This table lists species that may be found within the action area. An asterisk (\*) indicates that critical habitat has been designated for the listed species in the respective county.

The Council has reviewed the proposed project for its impacts to federally listed species and their DCH. Acquisition for conservation includes the transfer of title ownership or the purchase of conservation easements designed specifically to protect the natural ecological values of the habitats. No ground disturbing activities are proposed to be funded. The acquisition of private lands under the TX LAP will result in the permanent protection of potential habitat for these species, and with proper management, will result in new or improved suitable habitat for other species. Therefore, the Council has concluded that the TX LAP will have "no effect" on listed species, their habitat, or proposed or designated critical habitat. If Texas proposes to fund any further activities beyond acquisition at a future date, additional environmental review may be conducted as needed.

The Council appreciates your coordination Section 7 consultation. If USFWS disagrees with the Council's no effect determination or to address any additional information needs

or suggested modifications of the action, please contact me at phone number 504-252-7716 or by an email addressed to [heather.young@restorethegulf.gov](mailto:heather.young@restorethegulf.gov).

Thank you for your assistance.

Sincerely,

Heather Young  Digitally signed by Heather Young  
Date: 2020.09.17 10:13:20 -05'00'

Heather Young  
Ecosystem Restoration Specialist



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Gulf Restoration Program Office  
17629 El Camino Real, Suite 211  
Houston, Texas 77058-3051



In Reply Refer To:  
FWS/R2/02ETCP  
00-2020

September 17, 2020

Heather Young  
Gulf Ecosystem Restoration Council  
500 Poydras Street, Ste. 1117  
New Orleans, LA 70130

Dear Ms. Young:

The Fish and Wildlife Service (Service) has received and reviewed the documentation provided by the Gulf Coast Ecosystem Restoration Council (the Council) for the proposed project titled “Texas Land Acquisition Program for Coastal Conservation” for compliance with federal statutes pertaining to our trust resource concerns. The following comments specifically reference the Council’s compliance with the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

If selected, the Council will award Restore Act funds to this program which will be utilized by the Texas Commission on Environmental Quality for planning, project management and land acquisition, through either purchase of fee title or conservation easements, to permanently preserve large, high-quality coastal zone properties. Individual projects may be carried out through partners which could include state and local governments or non-governmental organizations. Land acquisitions through this program could occur in any of the 18 coastal Texas counties including Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jefferson, Matagorda, Refugio, Jackson, Kenedy, Kleberg, Nueces, Orange, San Patricio, Victoria, and Willacy.

In your letter dated September 17, 2020, the Council made a determination of “no effect” for all listed or candidate species and designated critical habitat occurring in those 18 Texas counties which include the following species: Gulf coast jaguarundi, ocelot, West Indian manatee, Attwater’s greater prairie chicken, least tern, Northern aplomado falcon, piping plover, red knot, whooping crane, green sea turtle, hawksbill sea turtle, Kemp’s ridley sea turtle, leatherback sea turtle, loggerhead sea turtle, Texas fawnsfoot, Texas pimpleback, South Texas ambrosia, Texas ayenia, Texas prairie dawn flower, black lace cactus and slender rush pea. As described in your letter, the Council’s determination was based on the program goals for permanent conservation of coastal habitat and does not include ground disturbing activities.

The Service does not issue concurrences for determinations of “no effect” by federal agencies. The Council has satisfied the requirements under Section 7 of the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) and no further action is necessary. If

modifications are made to the program or additional information on the distribution of listed or proposed species or critical habitat becomes available, the program should be reanalyzed for effects not previously considered and consultation may need to be re-initiated.

Should the Council have any questions regarding this consultation, please feel free to contact me at 281-212-1510.

Sincerely,

**JOHN HUFFMAN** Digitally signed by JOHN HUFFMAN  
Date: 2020.09.17 17:22:13 -05'00'

John Huffman  
Project Leader  
Gulf Restoration Program Office