

## Example Coastal Zone Consistency Letter - Lavaca Bay, Texas

Sept. 1999

Mr. Richard Seiler  
State Lead Administrative Trustee  
Texas Natural Resource Conservation Commission, MC142  
P.O. Box 13087  
Austin, Texas 78711-3087

Dear Mr. Seiler:

The U.S. Department of the Interior (DOI) and the National Oceanic and Atmospheric Administration (NOAA) have reviewed the restoration actions outlined in the “Draft Damage Assessment and Restoration Plan/Environmental Assessment for the Point Comfort/Lavaca Bay NPL Site Recreational Fishing Service Losses” (Draft DARP/EA) for consistency with the Texas Coastal Management Program (TCMP) and have found, that, as best as can be determined at this level of planning, the restoration actions described therein are consistent to the maximum extent practicable with the applicable, enforceable policies of the TCMP and will otherwise be undertaken in a manner consistent with that approved coastal zone management program. This letter submits that determination to the State Trustee agencies<sup>1</sup> for review. NOAA and DOI understand that review of this determination is delegated to these State Trustee agencies by 31 T.A.C. 506.20(c).

### **Background**

The Alcoa Point Comfort/Lavaca Bay NPL Site is located in Point Comfort, Calhoun County, Texas and encompasses releases of hazardous substances from Alcoa’s Point Comfort Operations facility. Past operations at the facility have resulted in the release of hazardous substances into the surrounding environment, including into Lavaca Bay via discharges of mercury-containing wastewater from 1966 to 1970 and releases of mercury through a groundwater pathway. In April 1988, the Texas Department of Health (TDH) issued a “closure order” prohibiting the taking of finfish and crabs for consumption from a specific area of Lavaca Bay near the facility due to elevated mercury concentrations found in these species. The Alcoa Point Comfort/Lavaca Bay Site was added to the National Priorities List (NPL), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), on March 25, 1994, in part due to the fishing closure imposed by TDH. Alcoa, the State of Texas and the U.S. Environmental Protection Agency signed an Administrative Order on Consent under CERCLA in March 1994 in order to conduct a remedial investigation and

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<sup>1</sup> The Texas Natural Resource Conservation Commission, the Texas Parks and Wildlife Department, and the Texas General Land Office.

feasibility study (RI/FS) for the Site.

Paralleling the RI/FS process for the Site, NOAA and DOI joined with the state trustees to assess the natural resource injuries and service losses attributable to hazardous substances releases from the Site. The Draft DARP/EA addresses the lost access to or use of fishery resources due to the closure and is a product of this joint, cooperative assessment process. The Draft DARP/EA, therefore, identifies restoration projects which all five agencies consider appropriate to restore, replace, or acquire recreational fishing services equivalent to those lost as a result of the fishing closure in Lavaca Bay.

The Draft DARP/EA proposes the following projects to restore those lost recreational services:

- The construction of a lighted fishing pier (300 linear feet long, 8 feet wide) off the promenade at Six-Mile Park;
- The construction of a lighted fishing pier (300 linear feet long, 8 feet wide) off the peninsula west of the existing boat ramp at Point Comfort Park and the construction of a paved access road and a parking area with roughly twenty spaces; and
- The construction of a two-lane boat ramp capable of accommodating large boats, 25 feet or longer, on the promenade adjacent to the existing marina at the Port Lavaca Bayfront, the construction of three walkways associated with the boat ramp – one down each side and one between the lanes, and the construction of a parking area with approximately twenty spaces for boat trailers.

Each restoration project will be designed to last approximately thirty years and, during this period, will be managed by local governments. A copy of the subject Draft DARP/EA is enclosed with this letter, and is also on file with each of the state trustee agencies involved in its development.

### **Summary of CZA Analysis**

The principle policies of the TCMP that are potentially relevant to restoration actions described in the Draft DARP/EA are those at 31 T.A.C. 501.14 (e) – relating to the prevention, response, and remediation of oil spills, (h) – relating to development in areas designated as critical, (i) – relating to construction of waterfront facilities and other structures on submerged lands, (j) – relating to dredging and the use of dredged material disposal and placement, (m) – relating to the development within the coastal barrier resource system, (n) – relating to development within State parks, (o) – relating to the alteration of coastal historic areas, (p) – relating to transportation projects, and at 501.15 – relating to policy for major actions. The basis for our determination of consistency with these enforceable policies is reflected in the following summaries:

**(1) Prevention, Response, and Remediation of Oil Spills** – Subsection 501.14(e) – This section requires that a restoration plan provide for participation by the public and be designed to promote the restoration of injured resources with all deliberate speed. While the identified restoration actions are not proposed in response to an oil spill, but rather to restore resource losses due to a hazardous waste site, we elected to note our adherence to this policy, which may be applicable to all damage assessment and restoration plans.

The Draft DARP/EA is consistent with this sections policy that the public be involved with restoration planning. The public has already participated in two ways. The first was through input at public meetings held in Port Lavaca, TX, in February and November 1998. These meetings were used to inform and solicit input from the public on the types of restoration projects that would be likely to improve or enhance recreational fishing opportunities in Lacaca Bay. The list of restoration projects evaluated in the Draft DARP/EA increased as a result of this input. The public also participated through a saltwater fishing angler survey. The results of this survey supported the establishment of recreational fishing models, which were used to assess recreational service losses and the benefits of restoration actions, based on fishing site characteristics that anglers value. The public also has the opportunity to review and comment on the restoration actions proposed before those choices are finalized. The Draft DARP/EA is expected to be released for public review in September, 1999.

The restoration actions proposed in the Draft DARP/EA address the interim lost access to or use of fishery resources due to the closure by increasing or enhancing recreational fishing opportunities in the Bay. These actions are consistent with the restoration policy outlined in this subsection as they will provide recreational fishing services of a type and quality comparable to those lost.

**(2) Development in Critical Areas** – Subsection 501.14(h) – 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 TCMP policies, pier projects should not significantly interfere with navigation, should not significantly interfere with natural coastal process that supply sediments to shore areas, and should avoid shading of critical areas and other adverse effects. No critical areas are present at the Six-Mile and Bayfront sites. At the Point Comfort site, there are two small stands of *Spartina alterniflora* and several small pancake reefs scattered several hundred feet offshore. To be consistent with TCMP policies, the pier at the Point Comfort site will be aligned and sited to avoid the limited sensitive areas and, thus, any impact to them.

**(3) Construction of Waterfront Facilities and Other Structures** – Subsection 501.14(i) – 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 restoration actions identified in the Draft DARP/EA fall within the scope of the requirements for development actions on submerged lands. The Bayfront site for the proposed boat ramp does not contain any critical areas. Thus, the project does not pose any adverse effects to critical areas from potential boat traffic. Boat ramps presently exist at the Six-Mile and Point Comfort sites; the new piers at those locations are being specifically designed to avoid interference with boat traffic. The new boat ramp at the Bayfront will be adjacent to an existing marina and should enhance boat navigation. The paved access road and parking to be implemented at the Point Comfort site and the parking to be implemented at the Bayfront will occur in already disturbed areas and will not impact coastal wetlands. The materials for the projects will not adversely affect coastal waters.

**(4) Dredging and Dredged Material Disposal and Placement** – Subsection 501.14(j) – If dredging or the use of dredged material becomes necessary, permits necessary to implement such actions will be obtained from the U.S. Army Corps of Engineers, the appropriate State agencies, and/or local municipalities.

**(5) Development Within the Coastal Barrier Resource System** – Subsection 501.14(m) – According to 16 U.S.C. Section 3503 (a) a coastal barrier resource unit “...consists of those undeveloped coastal barriers...” The restoration actions proposed in the Draft DARP/EA would all be implemented in parks with existing developed facilities. None of the proposed restoration actions would be implemented in undeveloped coastal barriers. Therefore, NOAA and DOI believe that this TCMP subsection is inapplicable.

**(6) Development in State Parks** – Subsection 501.14(n) – Restoration actions proposed in the Draft DARP/EA will occur at Six Mile Park, Point Comfort Park, and the Port Lavaca Bayfront. None of these locations are within or adjacent to any State parks or other areas presented in this subsection (wildlife management areas or preserves). Therefore, NOAA and DOI believe this TCMP subsection is inapplicable.

**(7) Alteration of Coastal Historic Areas** – Subsection 501.14(o) – NOAA and DOI have investigated and know of no areas designated as Coastal Historic Areas by the State in the vicinity of the proposed restoration projects. Accordingly, NOAA and DOI believe the proposed restoration actions will not affect any areas designated by the State as Coastal Historic Areas.

**(8) Transportation Projects** – Subsection 501.14(p) – This section is applicable for actions that have a transportation component. 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. As noted under (2) above, the restoration projects proposed would occur in already disturbed areas and will not displace or otherwise adversely affect any coastal wetlands. The boat ramp and pier projects are not expected to affect natural resources; recreational use impacts will be minimized as the projects would be implemented during winter months, which recreational use of existing facilities is lowest.

**(9) Policy for Major Actions** – 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.” 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. 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. 501.15(c). Consistent with federal NEPA requirements, an environmental assessment of restoration alternatives was incorporated in the Draft DARP/EA. That assessment indicates that no significant impacts to the human environment, including to coastal natural resources, will occur as the result of implementation of restoration actions proposed in the Draft DARP/EA. DOI and NOAA will proceed to finalize their assessment (a finding of no significant impact) after considering any public comments received on this Draft DARP/EA. Based on the current assessment, however, NOAA and DOI do not believe the major actions policy outlined in this subsection of the TCMP will apply to the restoration actions outlined in this Draft DARP/EA.

## **Conclusion**

In addition to the specific instances mentioned in the above summaries all applicable federal, state, and local permits will be obtained and abided by in implementing proposed restoration projects. These permits will further ensure appropriate construction practices and consistency with the TCMP and other applicable sections of the T.A.C.

An expeditious review of this determination by the state trustee agencies is requested. If you have any questions or need an additional information please feel free to contact Tony Penn at 301-713-3038, ext. 197 or fax 301-713-4387.

Sincerely,

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Tony Penn  
NOAA Damage Assessment Center

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Tom Schultz  
USFWS Division of  
Environmental Contaminants

cc: Ms. Janet Fatheree, Council Secretary – Coastal Coordination Council  
Diane Hyatt, Texas General Land Office  
David Sager, Texas Parks and Wildlife Department