NATIONWIDES, BANKS AND MORE...A CORNUCOPIA OF REGULATORY UPDATES FROM THE GALVESTON DISTRICT REGULATORY PROGRAM

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TOPICS

- Nationwide Permits 2017
- Mitigation Bank Service Areas
- Functional Assessments
- Regulatory Guidance Letter 01-16
- Lightening Round

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2017 NWP PROGRAM

June 1, 2016 U.S. Army Corps of Engineers announced it was seeking comments on its proposal to renew and revise 50 NWPs and issue 2 new NWPs.

June 7, 2016 All Districts with areas of responsibility in Texas published a Public Notice soliciting comments on proposed 2017 NWP Regional Conditions.

- There were 5 Regional Conditions for all of Texas.
- There were an additional 12 proposed just for Galveston.
- All Districts proposed District-specific Regional Conditions.

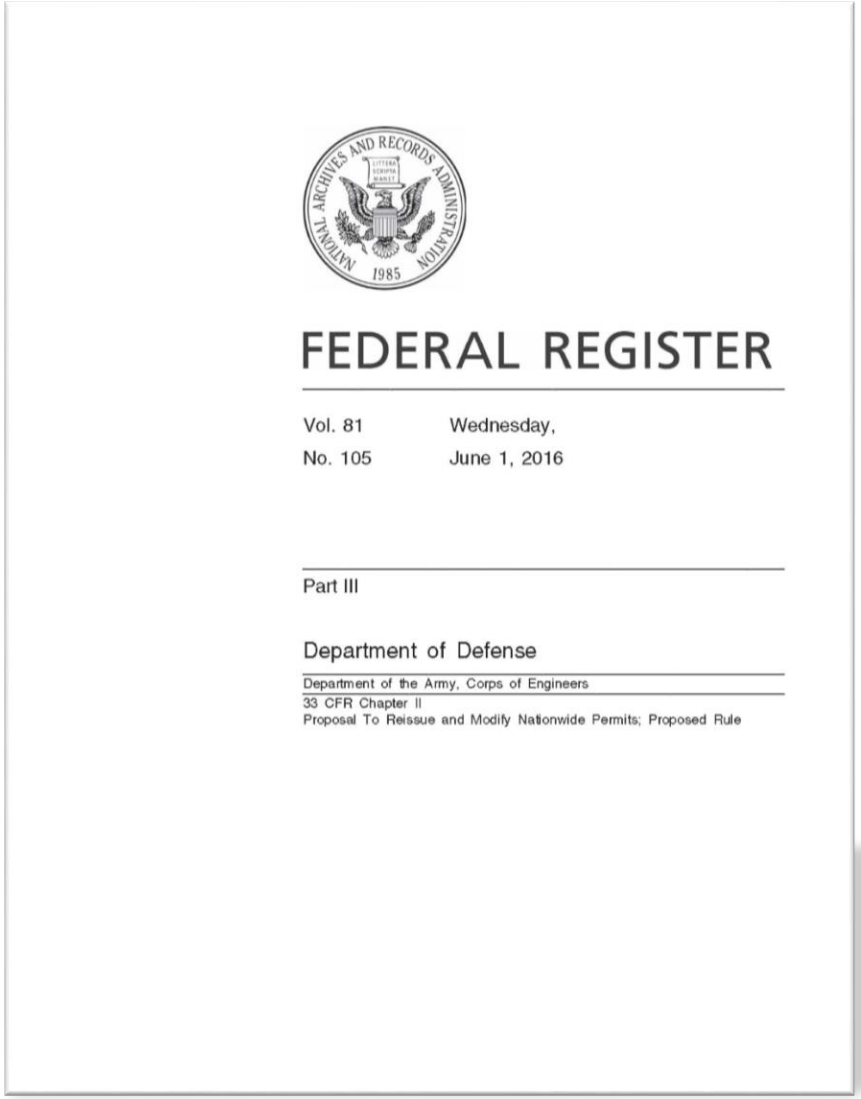
October 28th draft Final NWPs submitted to OMB's to start interagency review process under Executive Order 12866.

December 2016 - Final NWPs scheduled to be published.

December -Texas Districts will need to re-publish Regional General Conditions due to changes resulting from June public notice.

January – March -States conduct 401 certification and coastal consistency reviews.

March 18, 2007 Final rule takes effect.



FEDERAL REGISTER

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Part III

Department of Defense

Department of the Army, Corps of Engineers
33 CFR Chapter II
Proposal To Reissue and Modify Nationwide Permits; Proposed Rule

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GALVESTON DISTRICT'S COMPENSATORY MITIGATION SERVICE AREA MODELS

"…develop a GIS-based database and reporting tool capable of providing the necessary information to determine the appropriate watershed approach service area determination for compensatory mitigation…"

-Scope of Work

Texas Watershed GIS Project
Contract W91278-10-D-0102-0011
EN Project Number C-15-26

Create a Watershed Approach that…

- will run exclusively within the USACE Galveston District
- is science based
- uses the latest open GIS datasets
- has a logical, sustainable algorithm
- uses the latest enhancements in GIS software

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Coastal / Estuarine Model

Bound inland by the Coastal Management Zone Boundary

Flows into the adjacent bay

- 13 bays

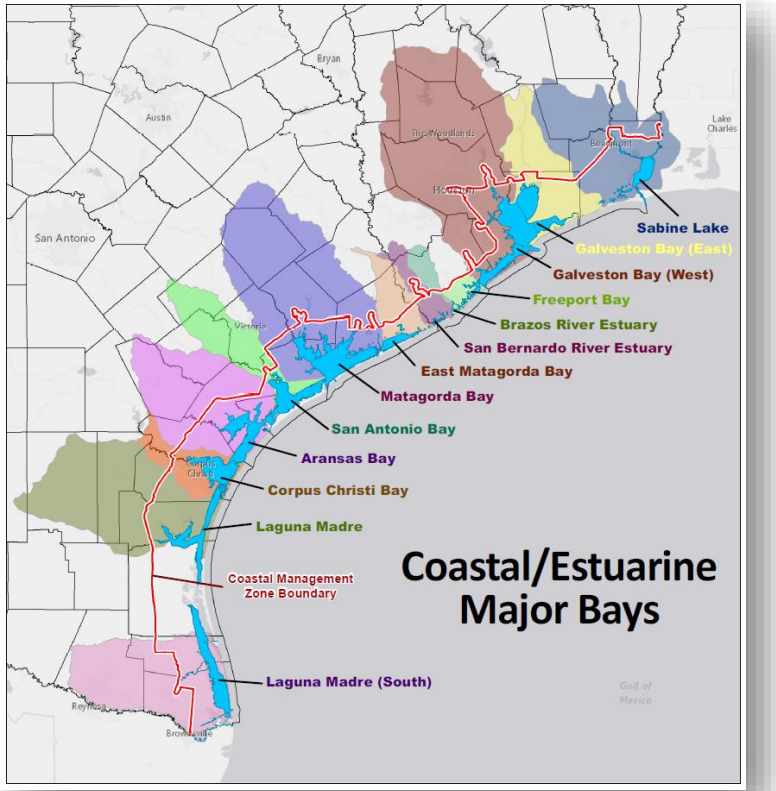
Barrier Islands and peninsulas are not included

Primary Service Area

- Same watershed and Level IV ecoregion as site location

Secondary Service Area

- Same watershed as site location to Coastal Management Zone Boundary



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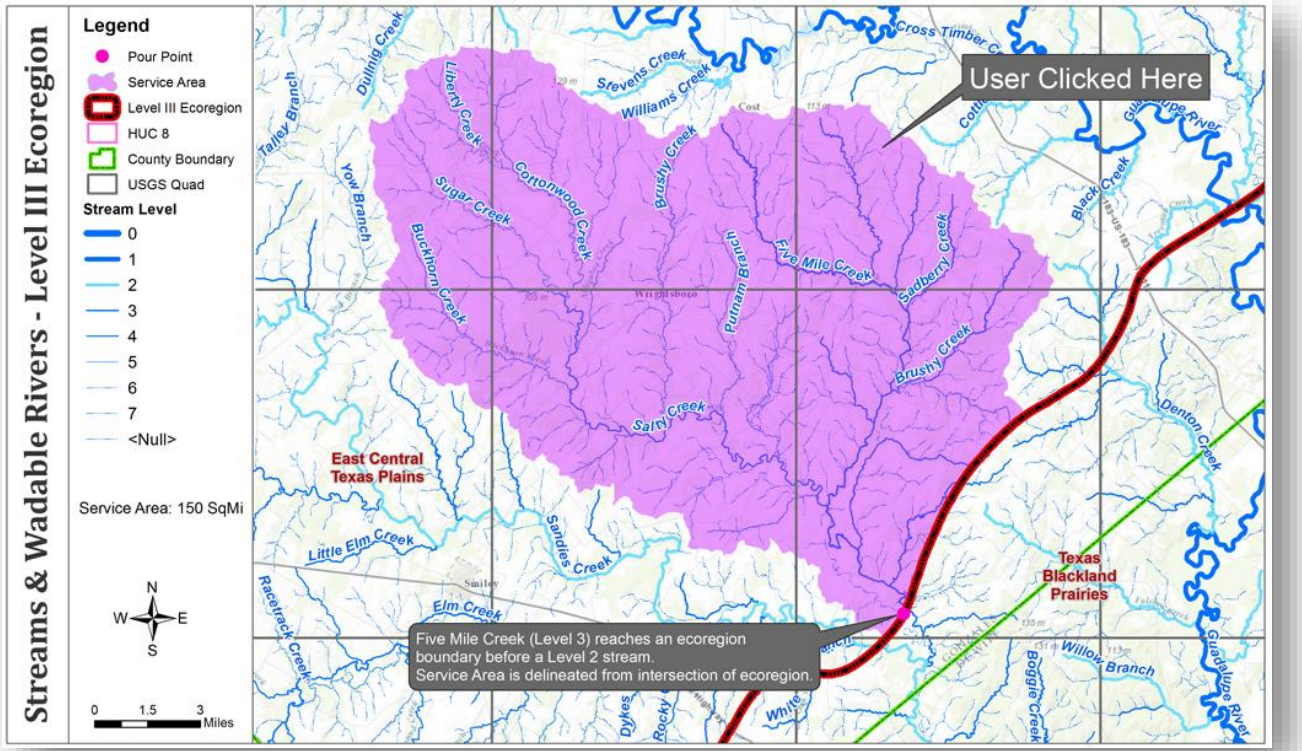
STREAMS AND WADABLE RIVERS MODEL

- Primary service area delineated downstream from site to
  - first occurrence of Level 2 stream or
  - Lacustrine body with surface area >= 100 acres
- Coastal Areas not included
- Level III Ecoregions are used to contain Service Areas
- Primary Service Area
  - Same Level III ecoregion as site's watershed
- Secondary Service Area
  - Different Level III ecoregions of site's location but same watershed
  - Watershed delineated from next available pour point (traced downstream)



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FRESHWATER WETLAND MODEL

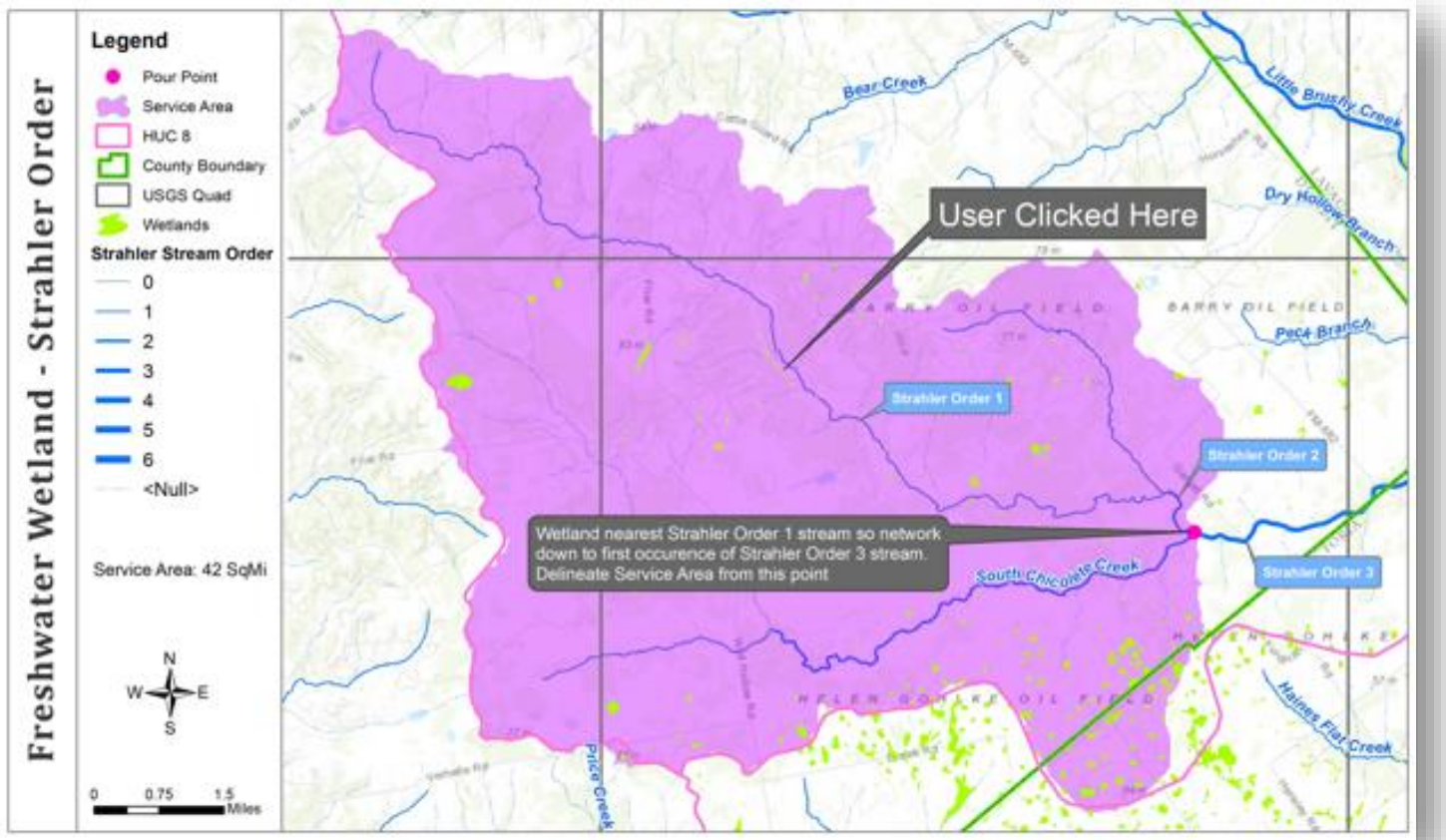
Primary service area delineated downstream from site to
- first occurrence of Level 2 stream or
- first occurrence of stream two orders higher than stream closest to site

Coastal Areas not included

Level III Ecoregions are used

Primary Service Area
- Same Level III ecoregion as site's watershed

Secondary Service Area
- Different Level III ecoregions of site's location but same watershed
- Watershed delineated from next available pour point (traced downstream)



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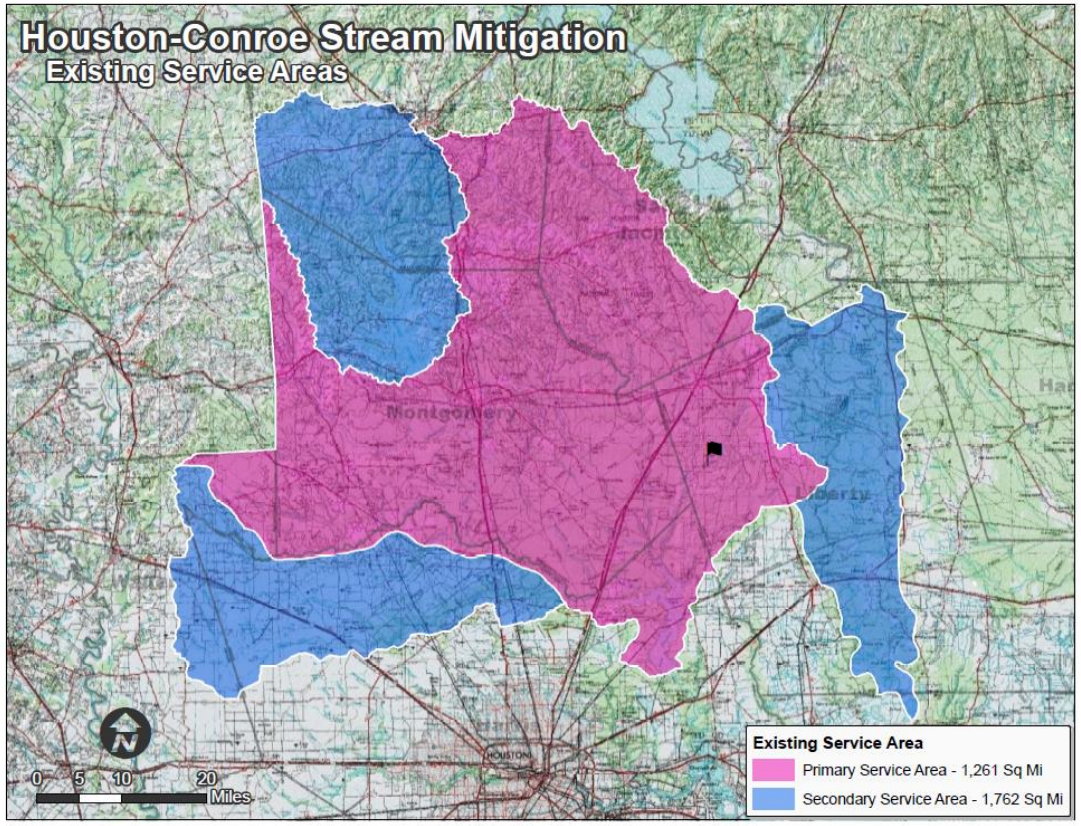
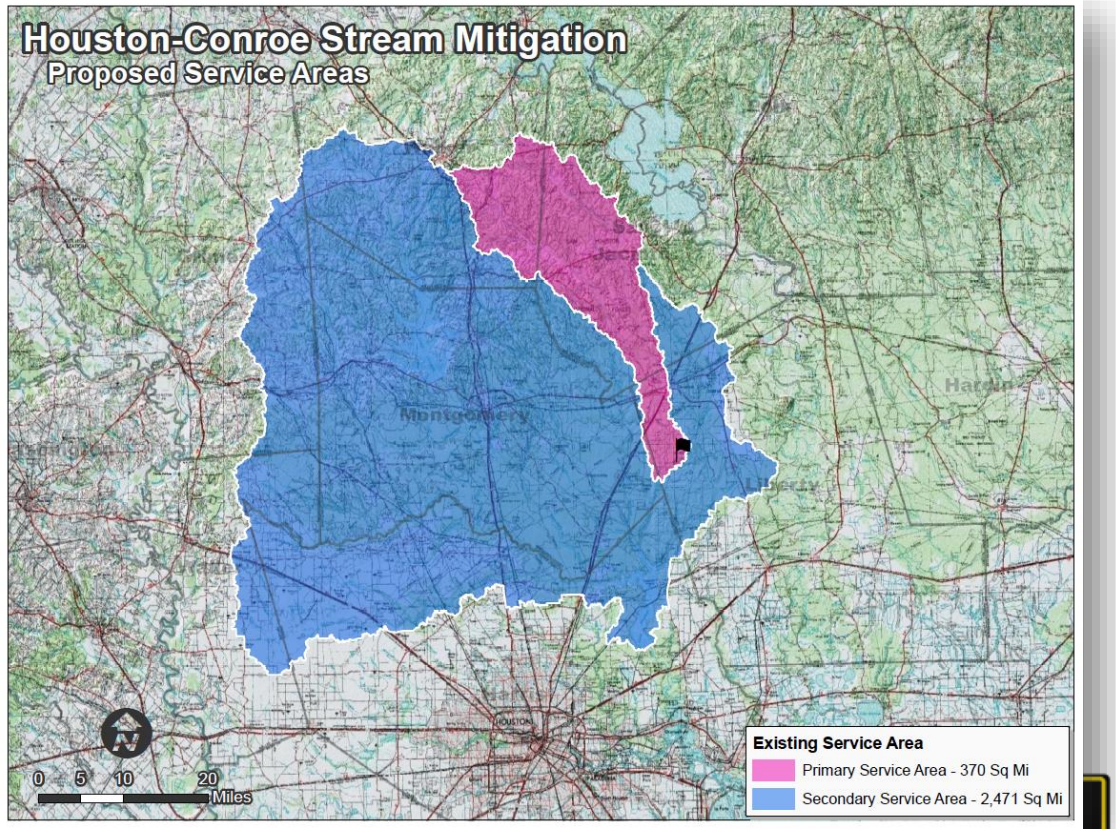
STREAM AND WADABLE RIVERS MODEL - HOUSTON CONROE STREAM MITIGATION BANK

Authorized Service Area
Primary 1, 261 sq mi
Secondary 1, 762 sq mi



Beta Model
Primary 370 sq mi
Secondary 2, 470 sq mi



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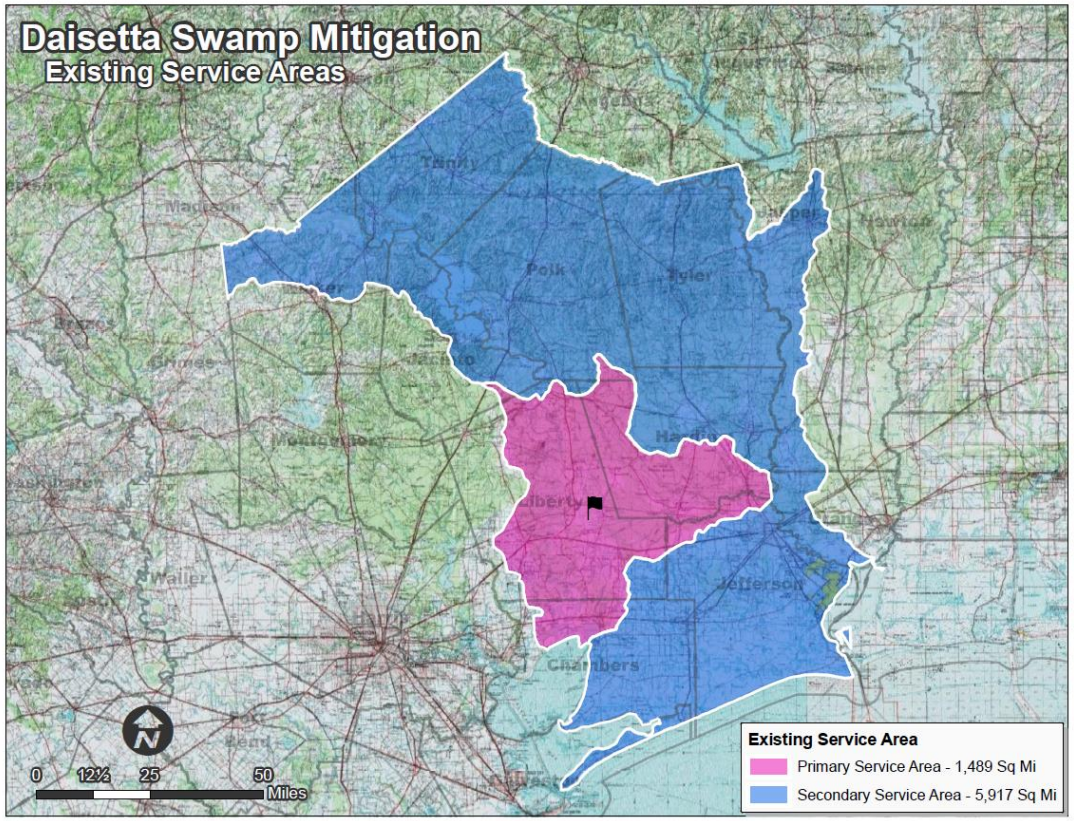
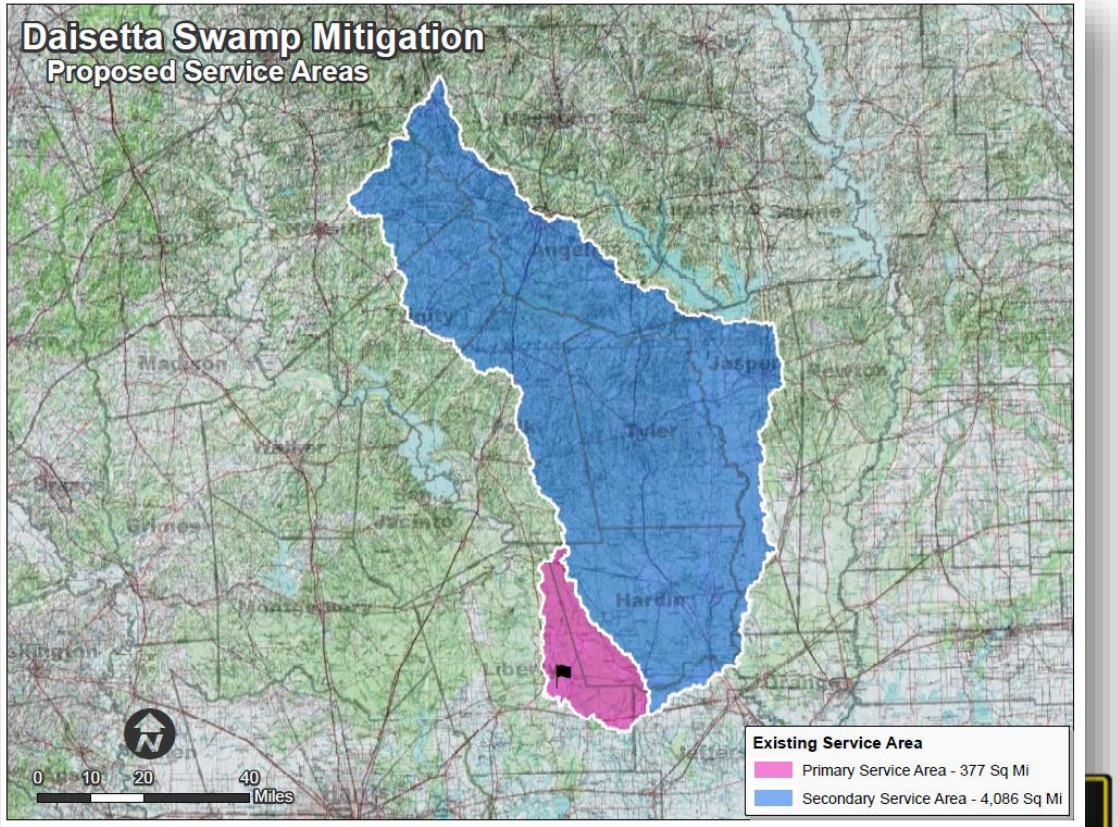
FRESHWATER WETLAND MODEL – DAISETTA SWAMP

Authorized Service Area
Primary 1,489 sq mi
Secondary 5,917



Beta Model
Primary 377 sq mi
Secondary 4,086



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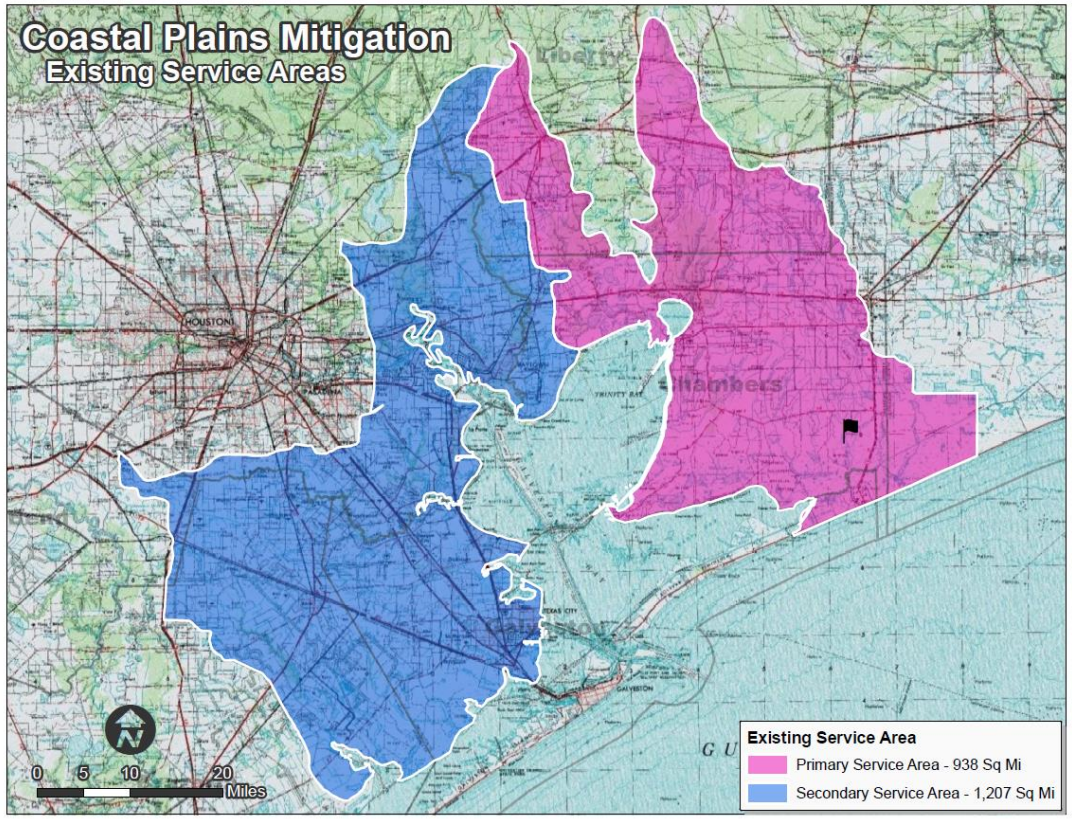
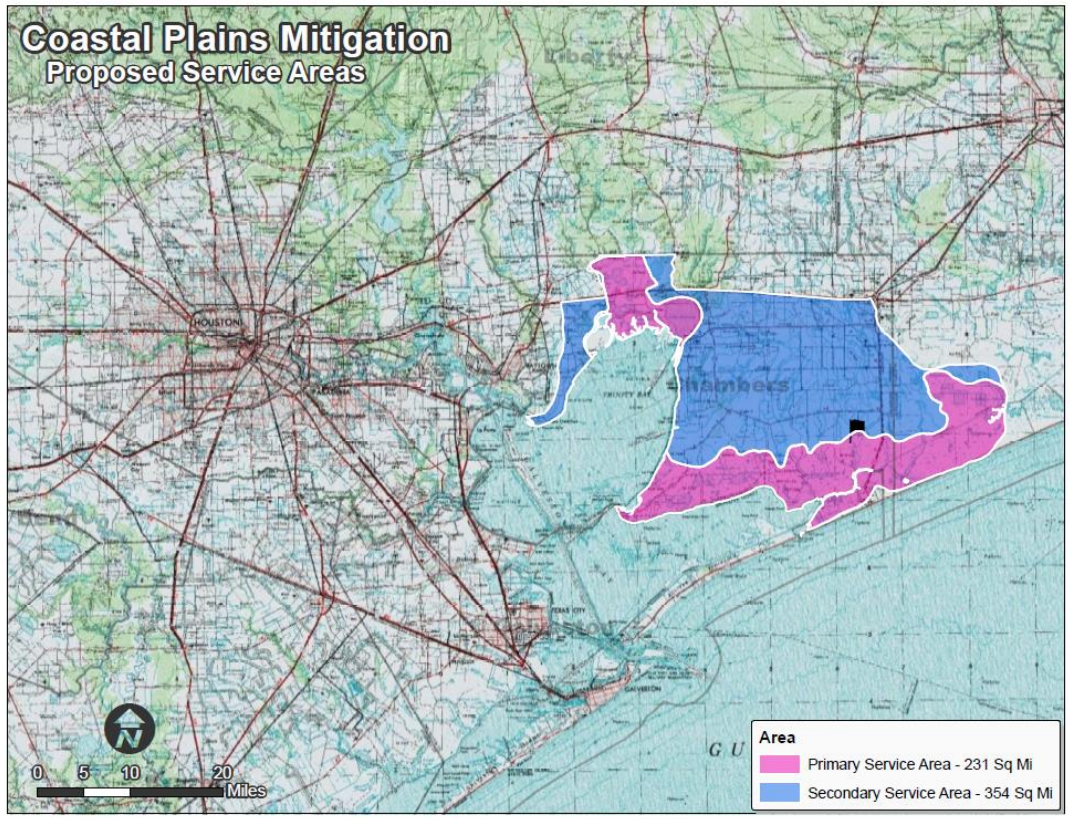
COASTAL ESTUARINE MODEL – COASTAL PLAINS MITIGATION BANK

Approved Service Area
Primary 938 sq. mi
Secondary 1,207 sq. mi



Beta Model
Primary 231 sq mi
Secondary 354 sq mi



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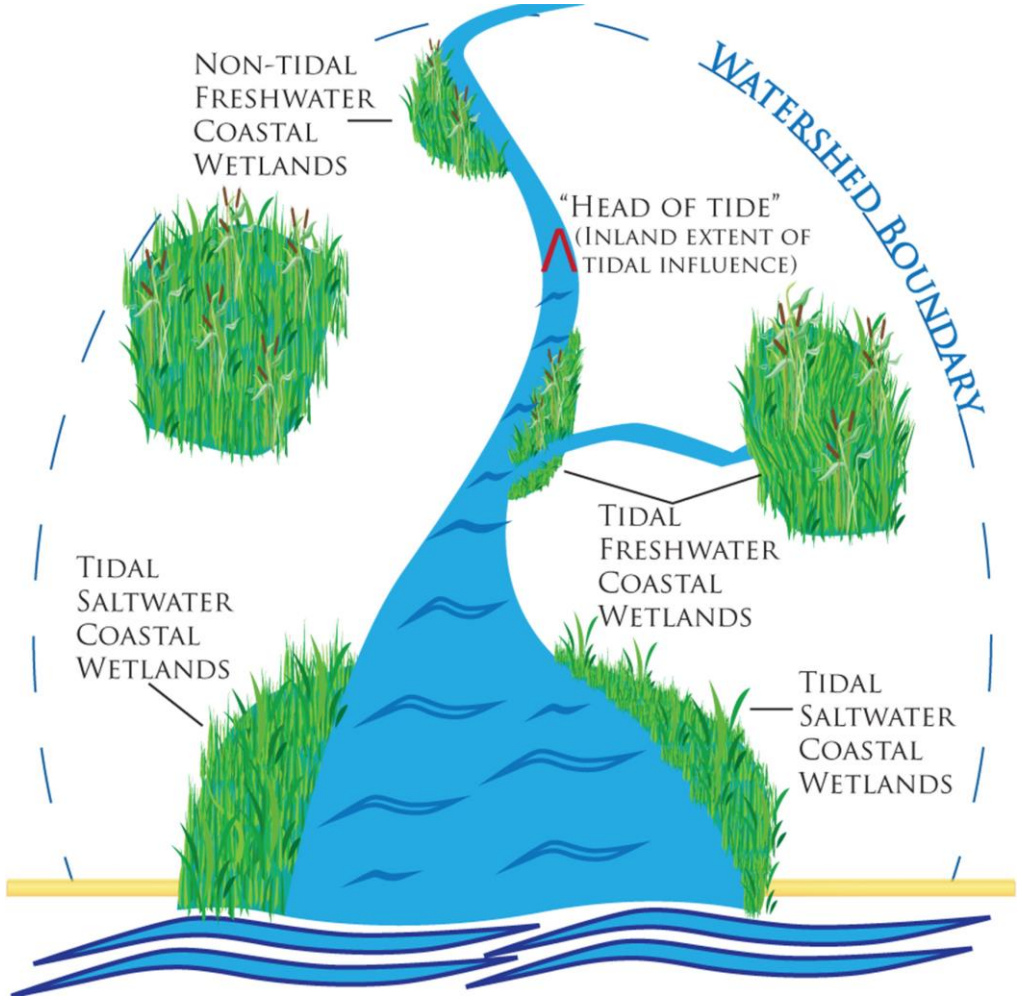
FUNCTIONAL ASSESSMENTS

No updated models

Funding re-programmed

In-house effort complicated by workloads

Cannot accept applicant/sponsor developed functional assessments



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REGULATORY GUIDANCE LETTER 16-01

This is the first Corps RGL issued in eight years.

2016 United States Supreme Court decision *U.S. Army Corps of Engineers v. Hawkes Co.* held that a Federal District Court could review a Corps Clean Water Act jurisdictional determination. The basis for this was its holding that an AJD is a final action jurisdictionally reviewable under the Administrative Procedures Act.

RGL 16-01 explains the difference between AJDs and PJDs.

Provides guidance to Corps field personnel and the regulated public on the circumstances for issuance of either of the two types of JD.

It also notes that circumstances may exist when it may not be appropriate to issue a JD.

The RGL 16-01 also states the District Engineer should set reasonable priorities based upon the district's workload and available regulatory resources. For example, it may be reasonable to give higher priority to a JD request when it accompanies a permit request.

RGL 16-01 does not change or modify the definitions of AJDs and PJDs included in Corps regulations and does no address which aquatic resources are subject to jurisdictional.

RGL 16-01 supersedes RGL 07-12 & RGL 08-02 which also addressed "Jurisdictional Determinations."

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LIGHTNING ROUND

Do you have any other topics you would like updates on?

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