

**Finding Of No Significant Impact
for the
Restoration Plan/Environmental Assessment
for the
Skaubay/Berge Banker Oil Spill**

November 25, 2003

INTRODUCTION

On February 5, 1995, two tankers, the M/V Berge Banker and the M/T Skaubay, collided in the Galveston Lightering Area in the Gulf of Mexico while preparing to transfer crude oil. The collision caused the Berge Banker to discharge approximately 845 barrels of Bunker C oil into the water. A combination of wind, ocean, and tidal currents began to move the oil across the Gulf of Mexico, and an offshore cleanup operation was implemented; however, because of adverse weather, only five barrels were recovered. Much of the oil sank below the surface of the water and migrated more than 150 miles before it was subsequently deposited as tar balls and mats on publicly owned beaches in Matagorda Island National Wildlife Refuge, Matagorda Island State Park, Mustang Island State Park (MISP), and Padre Island National Seashore (PAIS).

Two types of restoration have occurred or will occur at the injured areas: primary and compensatory. Primary restoration is action taken to return injured natural resources and/or services to baseline conditions. Compensatory restoration is action taken to compensate for the interim losses of natural resources and/or services pending recovery. A total of \$1,568,077 was awarded to the Trustees under the Consent Decree for the design, implementation, permitting, monitoring, and oversight of restoration projects. Of this amount, \$187,126 was awarded for primary restoration; the remaining \$1,380,951 was awarded for compensatory restoration. Primary restoration has already been completed by the Responsible Parties according to the terms of the November, 1999 Consent Decree that was entered into by the United States, the State of Texas, and the Responsible Parties. The Final Restoration Plan/Environmental Assessment (hereafter "RP/EA") which this FONSI document pertains to documents the evaluation of, and selection process for, the compensatory restoration projects only.

According to the January, 2000 Memorandum of Agreement between the various state and federal natural resource trustee council member agencies (the U.S. Department of the Interior (DOI), represented by the National Park Service (NPS) and the U.S. Fish and Wildlife Service (FWS), and the State of Texas, represented by the Texas Parks and Wildlife Department, the Texas General Land Office, and the Texas Commission on Environmental Quality), the settlement money allocated to compensatory restoration will address four resource categories – birds, dunes (including dune vegetation), recreational services at Texas State Parks, and recreational services at PAIS.

ALTERNATIVES

The original list of candidate restoration projects came from the Trustees, other government agencies, and the public. As per the Oil Pollution Act regulations (15 CFR 990.54), evaluation criteria were developed and used by the trustee council to prioritize and then select the final list of

projects to be implemented. Seventeen projects were identified and prioritized, and seven of these were selected for implementation (see Table 1 below). The combination of the seven selected projects effectively comprises the Preferred Alternative. (NOTE: This FONSI document pertains to only six of these projects; see explanation under the second bullet item on p. 3.) The combination of the remaining ten projects (whose "project status" designations are unshaded in the table below), effectively comprises the other Action Alternative.

As required by the National Environmental Policy Act (NEPA) and DOI Natural Resource Damage Assessment regulations, a No-Action Alternative was also evaluated in the RP/EA. In this alternative, no compensatory restoration projects would be implemented.

In addition to the projects in the Preferred and Action Alternatives, twenty-seven other projects also were considered; however, they soon were dropped by the Trustees because either they were deemed inadequate when the evaluation criteria were applied, or they were redundant with other proposed projects. These projects effectively comprise the one alternative that was "considered but rejected."

The rationale for selecting the seven projects in the Preferred Alternative follows the table below.

Table 1. Selected and Unselected Restoration Projects for the Skaubay/Berge Banker Oil Spill

Project No.	Resource Category and Project Name	Project Status ¹
<i>Bird Restoration</i>		
1	Coyote Island Acquisition/Preservation	H
2	Mustang Island Acquisition/Preservation—Francine Cohn Nature Preserve	H
3	Packery Channel Sanctuary Acquisition	N
<i>Dune/Vegetation Injury</i>		
4	Dune Restoration and Preservation—Gulf Side ²	H
5	Dune Restoration and Preservation—Bay Side	M
6	Dune Reconstruction—Gulf Side	M
<i>Lost and Diminished Recreational Use Services (Texas Parks)</i>		
7	Equipment Purchase	N
8	New Restroom/Shower Facility	H
9	Beach Pavilion at Fish Pass	H
10	Interpretive Pavilion and Marsh Boardwalk	M
11	Park Ranger III Position—Equipment Operator	N
12	Park Exhibit Technician II Position—Interpreter (Stand Alone)	N
12A	Park Exhibit Technician II Position—Interpreter (Combined with other Interpretive Projects)	N
13	Two Birding Pavilions Beside Park Office	M
14	Shade Shelters and Picnic Tables	H
15	Master Plan for Mustang Island Infrastructure	H
<i>Lost and Diminished Recreational Use Services (PAIS)</i>		
16	Interpretive Education Opportunities	H
17	Auditorium and First Aid Station Expansion	H

 = project selected for implementation

¹ H = highly recommended project, M = moderately recommended project, N = non-recommended project

² = see second bullet item below for explanation of why this FONSI document does not pertain to this project

Following are the rationales for selecting the projects that comprise the Preferred Alternative, organized by the four resource categories:

- **Bird Restoration:** Because more acreage could be purchased or preserved via conservation easement, a more contiguous sanctuary created, and protection of unique ecological resources ensured, the Mustang Island Acquisition/Preservation—Francine Cohn Nature Preserve was selected for implementation over the other acquisition projects.
- **Dune/Vegetation Injury:** The selected project is the Dune Restoration and Preservation—Gulf Side project. This project was selected over the other dune projects because it is located directly in the impacted area and the technical feasibility was the greatest of the Gulf-side projects. Note, however, that the final location(s) of this project are unknown at this time (there are roughly 50 miles of dune habitat along the coastline where this project could occur). Once the specific restoration and/or preservation project locations are selected, appropriate state and federal resource agency personnel will further identify and evaluate potential impacts that the specific project might have at the selected site(s). This includes conducting further NEPA analyses and documentation as needed. As such, *this FONSI document does not pertain to this particular project, but, rather, pertains only to the six other projects in the Preferred Alternative.*
- **Lost and Diminished Recreational Use Services – Texas:** Selected Mustang Island State Park projects include the Restroom/Shower Facility, Beach Pavilion at Fish Pass, the Shade Shelters and Picnic Tables, and the Master Plan for Mustang Island Infrastructure projects. These projects were selected over the other projects for reasons that include being more technically feasible, being more consistent with Trustee’s restoration goals, being more closely related to the actual injured services, the duration of the benefits would be longer, and cost-benefit ratios were more favorable.
- **Lost and Diminished Recreational Use Services – PAIS:** The selected PAIS project is the Auditorium Expansion and First Aid Station. It was selected over the other project at PAIS because it offers greater opportunity for multiple uses, including interpretive education, and would have fewer adverse environmental effects.

The Preferred Alternative is also the Environmentally Preferred Alternative. The Environmentally Preferred Alternative is the alternative that will promote the national environmental policy as expressed in §101 of NEPA. This includes alternatives that:

- (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations
- (2) assure for all generations safe, healthful, productive, and esthetically and culturally pleasing surroundings
- (3) attain the widest range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences
- (4) preserve important historic, cultural and natural aspects of our national heritage and maintain, wherever possible, an environment that supports diversity and variety of individual choice

- (5) achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities, and
- (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources

The Trustees developed 15 criteria which they used to prioritize and select projects for the Preferred Alternative. About five of these criteria are similar in ways to the first three criteria listed immediately above. As such, projects that ranked higher for these five criteria are projects that are more “environmentally preferred” than other projects. Not all seven projects in the Preferred Alternative ranked significantly higher than projects in the other Action Alternative; however, enough did so that, on balance, the Preferred Alternative, when compared to the other Action Alternative, is the Environmentally Preferred Alternative.

WHY THE PREFERRED ALTERNATIVE WILL NOT HAVE A SIGNIFICANT EFFECT ON THE HUMAN ENVIRONMENT

As defined in 40 CFR §1508.27, significance is determined by examining the following criteria (in italics):

Impacts that may be both beneficial and adverse

Although some adverse effects may occur as a result of implementing the Preferred Alternative, the beneficial effects are expected to greatly outweigh these. This is because, of course, the projects are restoration projects that are intended to have positive effects that will compensate for the injured or lost services that the state and federal park resources provided. Visitor experiences are expected to improve, dune resources will be restored, and bird habitat will be protected.

The adverse effects that could occur as the Preferred Alternative is implemented are all minor and temporary and would occur during the construction activities associated with the four Lost and Diminished Recreational Use Services projects (in the state parks) and the Auditorium and First Aid Station Expansion project (at PAIS). (Again, this discussion does not pertain to the “Dune Restoration and Preservation—Gulf Side” project.) Adverse effects could occur for visitor experiences and beach area birds, wildlife, and vegetation. However, in most cases these effects can be minimized or even avoided altogether by careful project site selection and by managing construction activities and scheduling properly. Minor and long-term adverse effects might also occur if the improvements attract more visitors to these areas.

Two of the projects – the Acquisition/Preservation of the Francine Cohn Nature Preserve and the development of the Master Plan for the Mustang Island Infrastructure – should have no adverse effects whatsoever, but instead should have many beneficial effects.

Degree of effect on public health or safety

Public Health and Safety was one of the four threshold criteria that the trustee council developed in order to prioritize the candidate projects. The criterion reads as follows:

“The proposed alternative will comply with public and agency health and safety requirements and guidelines so as to protect and maintain the health and safety of the public.”

Each of the projects in the Preferred Alternative that was eventually selected got the highest possible score (i.e., “1 – Meets the criterion very well”) for this criterion. As such, there are no public health or safety concerns with these projects.

Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas

As stated in the RP/EA:

“No cultural or historic resources would be significantly impacted by the selected projects.

“Neither wetlands, other unique and critical ecological resources, nor any parkland would be significantly impacted by the selected projects. On the contrary, some projects will actually protect wetlands and other unique and critical ecological resources where currently they are not.

“Neither wild and scenic rivers nor prime farmlands exist in the areas where the projects would occur.”

Degree to which effects on the quality of the human environment are likely to be highly controversial

None of the selected projects are expected to be highly controversial since 1) the effects of the selected projects are nearly all beneficial, and 2) no comments were made by the public on the RP/EA during the public review process. There may be some controversy surrounding the closing of a dune area to vehicular traffic as part of one project; however, again, no public comments were received on this project, and vehicular traffic in this area has always been unauthorized anyway.

Degree to which the possible effects on the quality of the human environment are highly uncertain or involve unique or unknown risks

All the projects are straightforward and the trustees have a high degree of certainty about what the possible adverse effects might be for each.

Degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration

Since the action being taken is restorative in nature and the beneficial effects far outweigh any possible adverse effects, there is no danger that a precedent for similar future actions with significant adverse effects is being set. Although the project involving the Master Plan for Mustang Island infrastructure would facilitate the selection and implementation of another set of projects whose effects are unknown at this time, this project in and of itself makes no decisions about future projects that might result from it.

Whether the action is related to other actions with individually insignificant but cumulatively significant impacts

Some degree of cumulative negative effects to wildlife and to recreational use of facilities could result if construction projects on federal and state lands occurred simultaneously. Also, if all projects were implemented simultaneously, there would be short-term disturbance of birds and wildlife and some interruption of, and adverse effect on, recreational use. However, with the long-term benefits of the projects greatly outweighing any temporary impacts of the projects and with the projects being phased and managed properly, cumulatively significant impacts are not expected. Also, no similar projects outside of this plan are expected to be implemented while projects under this plan are being implemented.

Degree to which the action may adversely affect districts, sites, highways, structures, or objects listed on National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

Numerous archeological sites representing all three periods (Native American, Spanish, and American) are located throughout Padre Island including the Novilla Line Camp which is listed on the National Register of Historic Places. However, no cultural or historic resources would be impacted by the selected projects.

One mitigative action preventing this is a case-by-case consultation in accordance with §106 of the National Historic Preservation Act that will review potential impacts to archaeological resources. These consultations will be conducted by TPWD according to the terms of an interagency Memorandum of Understanding with the Texas Historical Commission that allows qualified agency staff to undertake the review of departmental projects.

Scientific resources would not be adversely affected; on the contrary, projects that will restore and set aside lands would enhance scientific resources by providing more opportunities for research and study of populations that are less disturbed and habitat that is more whole. Similarly, the expanded auditorium at PAIS will enhance opportunities for communicating scientific information to the public.

No highways or structures will be adversely affected by implementing the Preferred Alternative.

Degree to which the action may adversely affect an endangered or threatened species or its critical habitat

As noted in the RP/EA, several federal- and state-listed species frequent the areas impacted by the oil spill, including areas where the Trustees are considering restoration projects. Prior to implementation of any project, the Trustees would conduct a "Section 7 consultation" as required by the Endangered Species Act. Should it be determined that any of the projects would adversely affect a threatened or endangered species, the Trustees would either redesign the project or substitute another project. As such, no adverse effects on endangered or threatened species or their habitat are expected. On the contrary, beneficial effects are expected for listed species such as the brown pelican (*P. occidentalis*), the least tern (*Sterna antillarum athalassos*), and the piping plover (*C. melodius*).

Whether the action threatens a violation of Federal, state, or local environmental protection law

This action will be in compliance with all the applicable state and federal statutes and regulations, executive orders, and NPS Director's Orders that are listed in the RP/EA. As such, this action violates no federal, state, or local environmental protection law.

Impairment

In addition to reviewing the list of significance criteria above, the National Park Service has determined that implementing the selected restoration projects of the proposal will not constitute an impairment to Padre Island National Seashore's resources and values. This conclusion is based on a thorough analysis of the environmental impacts described in the Skaubay/Berge Banker Final Restoration Plan and Environmental Assessment, the public review process, relevant scientific studies, and the professional judgment of the decision-maker guided by the direction in NPS *Management Policies* (December 27, 2000). Although the action may have some adverse effects, these effects are expected to be far outweighed by the beneficial effects of the projects. Overall, the action results in benefits to park resources and values, and opportunities for their enjoyment; it does not result in their impairment.

PUBLIC INVOLVEMENT

Before work on the RP/EA was begun, a scoping process was initiated as required by NPS (DO-12) and NEPA. Notice to the Public was issued in the Corpus Christi *Caller Times* on September 5, 2002. The Trustees prepared a Public Scoping document that described injuries associated with the oil spill and summarized the potential restoration projects that were identified. The document was presented at a public meeting held on September 10, 2002, in Corpus Christi, TX. The Public Scoping document was used as a tool to solicit input from both the public and other interested parties who could provide additional expertise and perspective to the planning process. All comments made by interested parties during this meeting were considered during the development of the Final RP/EA, including the incorporation of candidate restoration projects that were submitted by the public during the Public Scoping process.

Public review of the Draft RP/EA ran from June 16 to July 14, 2003 (30 days). No comments were received from the public during this review period.

CONCLUSION

The Preferred Alternative does not constitute an action that normally requires preparation of an environmental impact statement (EIS). The Preferred Alternative will not have a significant effect on the human environment. Negative (i.e., adverse) environmental impacts that could occur would be short-term in duration and minor in intensity. Projects requiring restoration or construction work will be reviewed by the appropriate state and federal agencies after the potential project sites have been identified (but prior to commencement of work) in order to identify and minimize – or even avoid – potential adverse impacts. There are no significant impacts on public health, public safety, threatened or endangered species, sites or districts listed in or eligible for listing in the National Register of Historic Places, or other unique characteristics of the region. No highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects, or elements of precedence were identified. Implementation of the action will not violate any federal, state, or local environmental protection law.

Based on the foregoing, it has been determined that an EIS is not required for this project and thus will not be prepared.

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This FONSI is concurred with and recommended for approval by:

Allan M. Strand Kenneth Lee for Allan Strand Date 12-02-03
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Tammy Whittington 11-26-03
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This FONSI is duly approved by:

Stephen P. Martin 12/04/03
Date
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