

# NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

## RECORD OF DECISION

*For the Amendment to the Final Restoration Plan and Environmental Assessment  
M/T Skaubay and M/V Berge Banker Oil Spill Natural Resource Damage Assessment  
Galveston, Texas*

### **Background:**

Under the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2706, Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et seq.*, and other applicable federal and state laws, natural resource trustee agencies, which in this case include the National Park System (NPS) and the U.S. Fish and Wildlife Service (USFWS) on behalf of the Department of the Interior, Texas Commission on Environmental Quality (TCEQ), Texas Parks and Wildlife Department (TPWD), and the Texas General Land Office (TGLO) (collectively the Trustees), in 2003, prepared a Final Restoration Plan/Environmental Assessment (2003 RP/EA) and a 2019 Amendment to the 2003 RP/EA, Restoration Plan/Environmental Assessment (Amendment) to address natural resource injuries associated with the M/T Skaubay and M/V Berge Banker Oil Spill Natural Resource Damage Assessment (NRDA).

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 waters of the Gulf of Mexico. The oil migrated more than 150 miles before it was subsequently deposited as tar balls and mats on the beaches of Matagorda Peninsula, Mustang Island, and Padre Island. This prompted a natural resource damage assessment (NRDA) by the Trustees.

The 2003 RP/EA proposed a number of restoration projects and selected seven for implementation:

- the Mustang Island Acquisition/Preservation project,
- the Dune Restoration/Preservation (Gulf Side) project,
- the Restroom/Shower Facility project,
- the Beach Pavilion at Fish Pass project,
- the Master Plan for Mustang Island project,
- the Shade Shelters and Picnic Tables project, and
- the Auditorium and First Aid Station Expansion project.

However, due to a change in restoration priorities primarily resulting from the preparation of a Master Plan for Mustang Island, several of these projects were not implemented or only partially implemented. The Trustees also did not allocate all of the restoration funds to specific projects. In addition, the Dune Restoration/Preservation (Gulf Side) project selected in the 2003 RP/EA will be completed under budget, providing cost savings to be used to implement additional restoration projects. As a result, the Trustees have selected a suite of additional restoration alternatives (Table 1). The details of each of the selected projects and the environmental assessment are discussed more fully in the Amendment and would be implemented by the Trustees pursuant to the terms of a settlement of natural resource damage claims for the Site, embodied in a federal Consent Decree.

**Table 1: Restoration Alternatives**

<i>Restoration Category</i>	<b>Replacement Projects</b>
<i>Lost and Diminished Recreational Use of State Parks</i>	Alternative 1: Dune Walkover at the Primary Dune Restoration Site
	Alternative 2: Boardwalk and Pavilion at Fish Pass
	Alternative 3: Kayak Launch, Restroom, and Parking Improvements at Fish Pass
	Alternative 4: Security Improvements at Corpus Christi Pass and Fish Pass South
	Alternative 5: Security Improvements at Fish Pass North
	Alternative 6: Interpretive Sign at South Jetty of Fish Pass
	Alternative 7: Road Repair at Corpus Christi Pass
	Alternative 8: Bollard and Cable Fencing for Pedestrian Safety at Day Use Area
	Alternative 9: Equipment Rental at Mustang Island State Park
<i>Dune and Vegetation Restoration</i>	Alternative 14: Bollard & Cable Fencing for Dune Protection at Corpus Christi Pass
	Alternative 15: Bollard and Cable Fencing for Dune Protection on Hwy 361
	Alternative 16: Bollard and Cable Fencing for Dune Protection at Fish Pass North
	Alternative 17: Bollard and Cable Fencing for Dune Protection at Fish Pass South
	Alternative 18: Bollard and Cable Fencing for Dune Protection at Fish Pass End
	Alternative 19: Bollard and Cable Fencing for Dune Protection at Oil and Gas Road
	Alternative 20: Removal and Restoration of Corpus Christi Pass Road and Well Pad

**Purpose**

NPS, as the lead federal agency for the M/T Skaubay and M/V Berge Banker Oil Spill NRDA, has prepared an evaluation of the environmental impacts associated with the selected restoration alternatives in the Amendment. This evaluation was completed in accordance with NPS Director's Order 12: Conservation Planning, Environmental Impact Analysis, and Decision-making (DO12) and, the Council on Environmental Quality (CEQ) regulations at 40 C.F.R. §1508.27 that state the significance of an action should be analyzed both in terms of "context" and "intensity." The USFWS as an affected bureau and cooperating federal agency is evaluating the significance of this action based on the criteria in 516 DM 8, 505 FW 1 and 550 FW1 as well as, CEQ's context and intensity criteria. The USFWS based their review of the restoration alternatives in Table 1 using the criteria listed below, and considered the alternatives individually, as well as in combination with the others.

**Evaluation**

1. *Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.*

**Response:** While the projects proposed in each of the restoration alternatives may have short term effects on the local environment, the Trustees do not expect the proposed alternatives to result in substantial adverse impacts to unique areas or resources, such as historic or cultural resources, parks, wetlands, essential fish habitat, or ecologically critical areas. The restoration alternatives proposed in the Amendment are designed to have positive impacts to recreational opportunities, wetlands, essential habitat, and ecologically critical areas.

2. *Can the proposed action reasonably be expected to have a substantial adverse impact on public health and safety?*

**Response:** No. The restoration alternatives are not expected to have any impacts, adverse or otherwise, on public health and safety, since the restoration staff would comply with required state and federal job site safety standards. The Trustees also have no reason to believe that the completed projects would render the restoration sites less safe.

3. *Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas?*

**Response:** No. The Trustees do not expect the restoration alternatives to result in substantial adverse impacts to unique areas or resources, such as historic or cultural resources, parks, wetlands, essential fish habitat, or ecologically critical areas. These restoration alternative project sites have undergone cultural resource reviews associated with previous restoration implemented on-site. No cultural resources were identified within the restoration alternative project areas. The restoration alternative selected in the Amendment are designed to have positive impacts to recreational opportunities, wetlands, essential habitat, and ecologically critical areas.

4. *Are the effects on the quality of the human environment likely to be highly controversial?*

**Response:** No. During the public review period of the Amendment, the Trustees received no public comments. There is no public disagreement with the selected restoration actions. Previous restoration actions have occurred at the project sites with public support. The Trustees expect there would be no uncertainty regarding likely environmental effects from the restoration alternatives.

5. *Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?*

**Response:** No. The restoration techniques that would be implemented are widely used in this region and do not involve unique or unknown risks.

6. *Is the proposed action likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?*

**Response:** No. The restoration alternatives will use techniques that are commonly applied and in use in the northern Gulf of Mexico and therefore would not establish a precedent for future actions.

7. *Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?*

**Response:** No. The potential impacts of the restoration alternatives were evaluated relative to other habitat restoration in this region. The restoration efforts identified in the Amendment would have positive habitat impacts at the local and regional scale. Therefore the proposed action would not result in any cumulatively significant impacts.

8. *Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?*

**Response:** No. The restoration alternatives selected in the Amendment are not expected to impact any cultural, scientific, or historic resources. The project sites identified in the restoration alternatives have undergone cultural resource reviews associated with previous restoration projects implemented on-site and no cultural resources were identified within the project areas.

9. *Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?*

**Response:** No. The restoration alternative project sites do not provide permanent habitat for threatened and endangered species, their critical habitat or marine mammals. Construction activities would not occur within 1,000 feet of a colonial water bird rookery. Any short-term and temporary localized impact to non-target species would be minimized or eliminated by the use of BMPs.

10. *Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?*

Response: No. Implementation of the restoration alternatives would not violate federal, state or local laws designed to protect the environment. Section 404 of the Clean Water Act (CWA) authorizes a permit program for the beneficial uses of dredged or fill material. Restoration of estuarine and freshwater wetlands would require Section 404 permits. Under Section 401 of the CWA, restoration alternatives that involve discharge or fill activities in navigable waters must obtain certification of compliance with state water quality standards. All necessary 404 permits and 401 certifications would be obtained by the project implementation partners. The Trustees also believe the actions proposed in the Amendment would have No Effect on Threatened or Endangered Species or their designated critical habitats.

*11. Have material adverse effects on resources requiring compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act.*

Response: No. The restoration alternatives selected in the Amendment would be in compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act and are not expected to have adverse impacts to recreational opportunities, wetlands, essential habitat, and ecologically critical areas.

**Categorical Exclusion:**

NEPA focuses on major Federal actions significantly affecting the quality of the human environment (the natural and physical environment and the relationship of people to the environment). A categorical exclusion (CatEx) describes a category or type of actions that do not cumulatively or individually have the potential for significant environmental impacts ([40 CFR §1508.4](#)). If an action fits within a CatEx it is not exempt from NEPA; however, it is exempted from the requirement to conduct further analysis of environmental impacts [i.e., prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS)].

In completing the NEPA evaluation of the Amendment, NPS has proposed the application of CatEx for the restoration alternatives selected in Table 1. The USFWS as a cooperating agency, evaluated the application of CatEx based on the following series of questions to determine if a CatEx is appropriate and consistent with the [Final Guidance for Federal Departments and Agencies on Establishing Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act](#), 43 CFR §46.210; and 516 DM 8:

*1. Will the action or connected actions being proposed result in only minor or negligible direct or indirect impacts?*

Response: Yes. While the restoration alternatives may have short term effects on the local environment, the implementation of the restoration alternatives would not result in substantial adverse impacts to unique areas or resources, such as historic or cultural resources, parks, wetlands, essential fish habitat, or ecologically critical areas.

*2. Would multiple similarly situated actions, if carried out to their logical extent and combined with the proposed action, result in more than minor or negligible adverse impacts?*

Response: No. The potential impacts of the restoration alternatives were evaluated relative to other habitat restoration in this region. The implementation of the restoration alternatives would have locally positive habitat impacts at the local and regional scale. Therefore the proposed action would not result in any cumulatively significant impacts.

*3. Comparison to the list of Departmental ([43 CFR §46.210](#)) and Service ([516 DM 8](#)) categorical exclusions to see if the proposed action is on the list.*

Response: NPS as the lead federal agency for the M/T Skaubay and M/V Berge Banker Oil Spill NRDA has prepared an evaluation of the environmental impacts associated with the selected restoration alternatives in the Amendment. In their evaluation, NPS determined that the restoration alternatives in Table 1, met one or more of the criteria to be categorically

excluded from further environmental analysis. Their evaluation and determination are more fully discussed in Appendix C of the Amendment; however, they proposed no further environmental evaluation based on the following five CatEx:

- C.05 – Installation of signs, displays, kiosks, etc.
- C.09 - Repair, resurfacing, striping, installation of traffic control devices, repair/replacement of guardrails, etc., on existing roads.
- C.18 – Construction of minor structures, including small improved parking lots, in previously disturbed or developed areas.
- D.03 – Minor changes in programs and regulation pertaining to visitor activities.
- E.04 – Removal of non-historic materials and structures in order to restore natural conditions.

The Service evaluated the NPS determination and compared these actions to the list of Departmental (43 CFR §46.210) and Service (516 DM 8) categorical exclusions available to the Service. The CatEX identified by NPS are substantially similar to those available to the Service:

- B.02- The operation, maintenance, and management of existing facilities and routine recurring management activities and improvements, including renovations and replacements which result in no or only minor changes in the use, and have no or negligible environmental effects on-site or in the vicinity of the site.
- B.03 - The construction of new, or the addition of, small structures or improvements, including structures and improvements for the restoration of wetland, riparian, instream, or native habitats, which result in no or only minor changes in the use of the affected local area.
- B.07 - Minor changes in the amounts or types of public use on Service or State-managed lands, in accordance with existing regulations, management plans, and procedures.

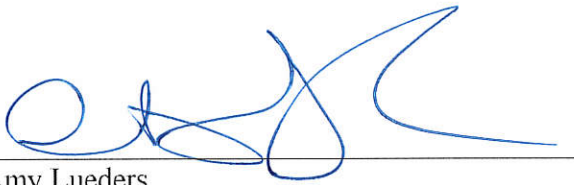
Had the Service been the lead federal agency, these actions would have similarly met the requirements for CatEx. Based on the Service's evaluation, the restoration alternatives selected for implementation are believed to be consistent with the categorical exclusion described in 43 CFR §46.210, 516 DM 8 and the Final Guidance for Federal Departments and Agencies on Establishing Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act.

4. *Would the proposed action trigger one of the extraordinary circumstances described in [43 CFR §46.215](#) that describes exceptions to categorical exclusions?*

Response: No. The Trustees do not expect the projects in the selected restoration alternatives to result in substantial adverse impacts to unique areas or resources, such as historic or cultural resources, parks, wetlands, essential fish habitat, or ecologically critical areas. As proposed the projects presented in the Amendment would not result in extraordinary circumstances described in 43 CFR §46.215.

## Determination

As an affected bureau and cooperation federal agency in accordance with CFR §46.320 and based upon a review and evaluation of the information contained in the 2003 RP/EA and the Amendment, as well as other documents and actions of record affiliated with this proposal, the USFWS concurs with the determination that the proposal to implement the selected restoration alternatives in the RP/EA does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of section 102 (2) (c) of the National Environmental Policy Act of 1969 (as amended). As such, USFWS concurs that an environmental impact statement is not required. An environmental assessment has been prepared in support of this finding and is available online [https://www.cerc.usgs.gov/orda\\_docs/CaseDetails?ID=994](https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=994).



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Date

8/14/19