

Notice of Project Change for the Tank Barge DBL 152 Oil Spill Damage Assessment and Restoration Plan and Environmental Assessment: Shoreline Protection and Salt Marsh Restoration Project on the Texas Chenier Plain National Wildlife Refuge Complex

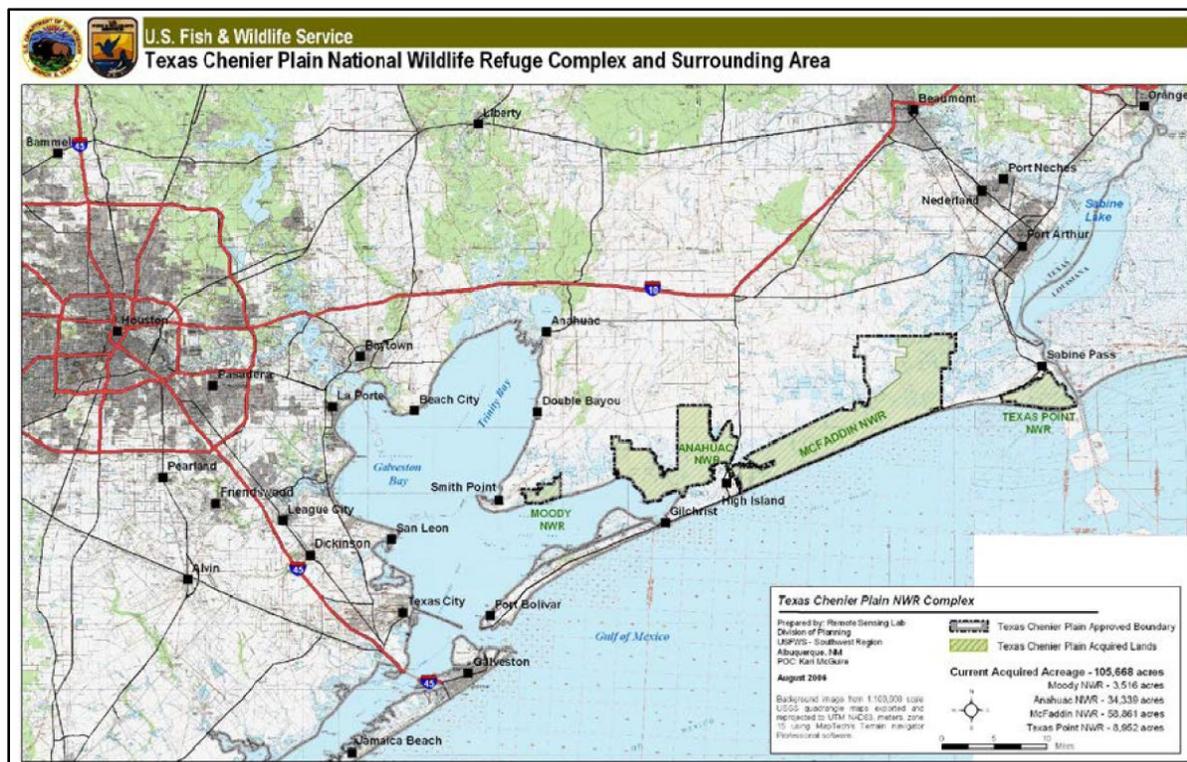


Figure 1. Texas Chenier Plain National Wildlife Refuge Complex

The Shoreline Protection and Salt Marsh Restoration Project on the Texas Chenier Plain National Wildlife Refuge Complex was analyzed in the [2016 Tank Barge DBL 152 Oil Spill Final Damage Assessment and Restoration Plan and Environmental Assessment](#) (Final DARP/EA) and selected for implementation. In that Final DARP/EA, the project included the design and construction of at least 4.23 miles of shoreline protection. The protective structure would consist of 8.97 acres of rip-rap habitat, and 11.55 acres of salt marsh habitat would be created behind the breakwater. The project would also protect 8.5 acres of existing salt marsh over its lifetime. The protection of 4.23 miles of shoreline and associated habitat

creation was estimated to be sufficient to compensate the public for injuries arising from the DBL 152 Incident. The National Oceanic and Atmospheric Administration (NOAA) is the sole Trustee for this case and responsible for implementing this restoration project. Due to a reduction made by the U.S. Coast Guard National Pollution Fund Center (NPFC) to the amount of funds requested by NOAA, a notification of a material project change must be considered.

Notification of a material project change

NOAA submitted a claim to the NPFC Oil Spill Liability Trust Fund (OSLTF) for compensatory restoration totaling \$13,471,035.46 to cover the costs to implement the 4.23 miles of shoreline protection and saltmarsh restoration, as identified in the Plan, to restore for services injured by the DBL 152 Incident. Claim submission to the NPFC was necessary given that the Responsible Party (RP) sought a liability determination for the DBL 152 Incident from the Coast Guard, which determined that the RP exceeded its limit of liability under the Oil Pollution Act (OPA). (See, 33 U.S.C. 2704). The OSLTF is available to pay claims for uncompensated damages. 33 U.S.C. §2712(a)(4). Covered damages include Natural Resource Damage, 33 U.S.C. §2702(b)(2)(A), which are for injury to, destruction of, loss of, or loss of use of natural resources, including the reasonable costs to assess those damages. 33 U.S.C. §2706(d)(1)(C). The U.S. Coast Guard NPFC manages the OSLTF for purposes of paying claims for uncompensated damages. E.O. 12777, Section 7 (Oct. 18, 1991).

On February 8, 2021, NOAA received the NPFC's final OSLTF claim determination for the DBL 152 Incident. The NPFC rejected the claim of \$13,471,035.46, which was based on sound science and appropriate methodologies and offered only \$4,532,941.59 for compensatory restoration implementation costs, approximately 1/3 of the funding amount requested by NOAA. Specifically, the NPFC overrode NOAA's scientific quantification of injury, scaling of compensatory restoration, and monitoring plan. The NPFC substantially adjusted inputs into NOAA's Habitat Equivalency Analysis (HEA) as follows:

- Length of Time of 100% service loss: changed from 8 months to 2 months
- Scaling offshore benthic to marsh habitat productivity: changed from 4.51:1 to 10:1
- Scaling offshore benthic to protected marsh habitat productivity: changed from 4.51:1 to 10:1
- Scaling offshore benthic to constructed rip rap productivity: changed from 0.45:1 to 1:1

The NPFC's substantial adjustments reduced the total number of discounted service acre years (DSAYs) of injured benthic offshore habitat from the DBL 152 Incident from 1436 DSAYs to 1106 DSAYs. Furthermore, the NPFC also substantially changed NOAA's restoration scaling determinations, collectively resulting in a 34.8% decrease in the compensatory restoration requirement calculated by NOAA, or a reduction of shoreline restoration from 4.23 miles to only 1.47 miles. The NPFC also denied some monitoring and administrative costs and, while recognizing that some costs may not be scalable, still applied the 34.8% reduction to NOAA's overall budget for the proposed compensatory restoration project to calculate an offer of \$4,532,941.59. NOAA does not agree with the NPFC's adjustments.

On April 7, 2021, NOAA accepted the NPFC's offer with objection. With no other legal or administrative remedies available to make the public whole for the DBL 152 Incident, NOAA accepted the NPFC's offer; however, NOAA has continued concerns regarding NPFC's applied standard of review of the OSLTF claim, which went beyond the reasonableness review, ignored the rebuttable presumption which should have been accorded to NOAA, and replaced the expert judgment of a Trustee legally mandated with the

responsibility of discerning injury and scaling restoration with its own discernment regarding period of injury, restoration scaling, and monitoring.

Despite some restoration costs not being scalable, NOAA has reasonable assurance that it can implement 34.8% of the initial selected restoration project, which is 1.47 miles of shoreline protection. This is 2.76 miles (or 65.2%) less shoreline and associated habitat creation than NOAA originally selected as the preferred restoration project for the DBL-152 Incident. The total rip-rap habitat is reduced from 8.97 acres to approximately 3.11 acres and the total salt marsh habitat created is reduced from 11.55 acres to approximately 4.01 acres. The existing salt marsh habitat protected over the project lifetime is reduced from 8.5 acres to approximately 2.9 acres. Therefore, NOAA anticipates that the compensatory restoration funded by the OSLTF will fall short of the amount necessary to make the public whole according to NOAA's scientific analysis.

Evaluation and finding of consistency with Final RP/EA

NOAA, as the sole trustee for this case, is required to evaluate material changes to any selected restoration project and must also determine whether additional restoration planning and environmental review—including opportunity for public comment—is necessary. In order to determine whether additional restoration planning and environmental review are necessary, NOAA considers: (1) whether any change to the project is consistent with the environmental review conducted in the Final DARP/EA or if there are substantial changes that are relevant to environmental concerns, and (2) whether or not there are significant new circumstances or information relevant to environmental concerns not addressed in the impact analysis of the Final DARP/EA; and (3) whether any changes to the project would affect its selection under OPA.

Elimination of a portion of the Shoreline Protection and Salt Marsh Restoration Project does not affect the overall project objectives for the portion of the project that will be completed and there are no substantial changes in the environmental impact of implementing the restoration evaluated in the Final DARP/EA as a result of the project change from 4.23 to 1.47 miles of shoreline restoration. Further, there are no significant new circumstances or information relevant to environmental concerns not addressed in the Final DARP/EA that affects the selected alternative under OPA. The reduction of the total miles of shoreline restoration does not affect the selection of the project under OPA at the Moody National Wildlife Refuge within the Texas Chenier Plain National Wildlife Refuge (Figure 2). The modified project area will provide some shoreline protection and secondary productivity benefits that were contemplated for the 4.23 mile project at a smaller scale of 1.47 miles. In sum, the Project, while smaller in scale than the one originally selected, is consistent with the environmental review conducted for the Final DARP/EA and no further analyses under OPA or the National Environmental Policy Act (NEPA) are necessary for the eliminated portion of the Shoreline Protection and Salt Marsh Restoration Project at this time.



Figure 2. The Moody National Wildlife Refuge (outlined in blue) within the Texas Chenier Plain National Wildlife Refuge Complex (outlined in red). The Project will be implemented along this shoreline.

Next steps

NOAA is currently planning for engineering design and permitting. Final costs for implementation of the project will be more certain as these tasks move forward. The NPFC will be updated accordingly. Following completion of construction of the project, two monitoring events will occur to ensure the survival of any planted vegetation and the stabilization of other shoreline materials.