FINAL AMENDMENT TO THE 2014 FINAL PROGRAMMATIC RESTORATION PLAN AND ENVIRONMENTAL ASSESSMENT FOR THE BUZZARDS BAY BOUCHARD BARGE-120 (B-120) OIL SPILL

SHORELINE, AQUATIC, AND NATURAL RESOURCE USE INJURIES

MASSACHUSETTS AND RHODE ISLAND

October 2020

National Oceanic and Atmospheric Administration
United States Fish and Wildlife Service
Massachusetts Executive Office of Energy and Environmental Affairs
Rhode Island Department of Environmental Management

Table of Contents

List of Tables and Figures

1. Introduction

This document is a Final Amendment to the 2014 Final Programmatic Restoration Plan and Environmental Assessment for the Buzzards Bay Bouchard Barge-120 (B-120) Oil Spill Shoreline, Aquatic and Natural Resource Use Injuries, Massachusetts and Rhode Island (Final PRP/EA), or Final Amendment, and has been prepared by the Bouchard Barge B-120 Trustees (Trustees) in compliance with the Oil Pollution Act of 1990 (OPA) and the National Environmental Policy Act of 1969 (NEPA). The Trustees include the National Oceanic and Atmospheric Administration (NOAA), U.S. Fish and Wildlife Service (USFWS), Commonwealth of Massachusetts and State of Rhode Island. This Final Amendment selects a preferred restoration alternative for shoreline and aquatic restoration and describes the Trustees' evaluation of its restoration benefits and environmental impacts. The same alternative was previously identified, evaluated and selected among the restoration alternatives considered for certain bird species injured by the oil spill.[1]

1.1. Incident and Natural Resources Injured

On April 27, 2003, the Bouchard Barge-120 (B-120), owned and operated by the Bouchard Transportation Company, Inc., struck a rocky shoal soon after entering the western approach to Buzzards Bay. The grounding ruptured a 12-foot hole in the hull of the barge, releasing approximately 98,000 gallons of No. 6 fuel oil into the Bay. The oil was spread and driven ashore by winds and currents and primarily affected the north, northwest, and northeast portions of the Bay including shoreline in the towns of Westport, Dartmouth, New Bedford, Fairhaven, Mattapoisett, Marion, Wareham, Gosnold, Bourne, and Falmouth, Massachusetts (Figure 2, Final PRP/EA). Oil continued to be transported throughout Buzzards Bay and nearby coastal waters. More than 98 miles of shoreline were affected, including shoreline and coastal waters in both Massachusetts and Rhode Island. Oiling was unevenly distributed and was particularly concentrated at exposed shoreline headlands and peninsulas in discrete, localized areas (e.g., Barneys Joy Point and Mishaum Point in South Dartmouth; West Island, Sconticut Neck, and Long Island in Fairhaven). Shoreline oiling was also reported at the Elizabeth Islands along the southern portion of Buzzards Bay and portions of the Rhode Island shoreline (e.g., Little Compton and Block Island).

The Buzzards Bay shoreline is comprised of a diversity of shoreline types including sand and cobble beaches, rocky shores, tidal wetlands, and sand- and mud-flats under both public and private ownership. Approximately one-quarter of the affected shoreline was determined to be moderately to heavily-oiled, while the remaining three-quarters of affected shoreline incurred very light or light oiling. Various shoreline and aquatic natural resources and uses of these injured coastal resources were adversely affected by the spill and spill clean-up activities.

[1] *See* Cuttyhunk Island habitat protection restoration alternative (OB-1MA) as discussed in Final Restoration Plan for Common Loon (*Gavia immer*) and Other Birds Impacted by the Bouchard Barge B-120 (B-120) Oil Spill Buzzards Bay Massachusetts and Rhode Island, June 3, 2020.

Natural resources injured by the spill include nearly 100 miles of coastal shoreline including tidal marshes and intertidal flats; aquatic resources including water column and benthic sub-tidal habitats and benthic communities; and shellfish, fish, birds, and other aquatic biota. The spill also resulted in lost general public access to beaches and other coastal areas; lost recreational boating including sailing and power boating; and lost recreational shellfishing due to closures imposed by the Commonwealth of Massachusetts due to potential exposure and human health risk. More detailed information on the spill incident and the natural resource injuries is provided in Section 1.2 of the Final PRP/EA.

1.2. Natural Resource Trustees

OPA provides for the designation of federal, state, and tribal trustees for natural resources affected by oil spills. NOAA, pursuant to authority delegated by the Secretary of Commerce, is a designated federal trustee for certain natural resources including living marine resources and their habitats (e.g., marine, estuarine and diadromous fishes, other aquatic biota, and certain marine mammals). The Secretary of the Department of the Interior (DOI) is the designated federal trustee for certain natural resources including, but not limited to, migratory birds, certain marine mammals, anadromous fish, federally endangered and threatened species, and their respective habitats, and federal lands managed by DOI. The Secretary of the Interior designated the Northeast Regional Director, Region 5 of the USFWS to act on behalf of the Secretary, as the Authorized Official for the spill.

The aforementioned statute also provides that liability for natural resource damages to states is for those resources belonging to, managed by, controlled by, or appertaining to the state or political subdivision thereof. The governor of each state designates the state agency or agencies that will act as the natural resource trustee for each particular affected state. For the Bouchard B-120 spill, the Governor of Massachusetts designated the Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs (MA-EEA) as the trustee for the Commonwealth. The MA-EEA is supported by the Massachusetts Department of Environmental Protection (MassDEP) which administers the state's Natural Resources Damages (NRD) Program. The Governor of Rhode Island designated the Rhode Island Department of Environmental Management (RIDEM) as the state's natural resource trustee.

1.3. Initial Settlement and Original Programmatic Restoration Plan and Environmental Assessment (PRP/EA)

The Bouchard B-120 Trustees worked collaboratively with the Responsible Parties to assess the natural resource injuries and negotiate a settlement for natural resource damage claims. A settlement to compensate for a portion of the damages was memorialized in a May 17, 2011 Consent Decree. In addition to resolving certain damage assessment costs, the settlement provided compensation for alleged injuries to Aquatic Resources, Shoreline Resources, Recreational Resources and Piping Plover,

but not for Wildlife Resources, including other birds, which were addressed in a subsequent settlement. The U.S. Department of Justice filed the Consent Decree with the U.S. District Court for the District of Massachusetts (United States of America v. Bouchard Transportation Company, Inc., Tug Evening Tide Corporation, and B. No. 120 Corporation, May 17, 2011, US District Court, District of Massachusetts). The Consent Decree specified that the Responsible Parties pay the Trustees more than $6 million to settle the specific claims (Refer to: https://darrp.noaa.gov/oil-spills/bouchard-barge-120).

The following is a summary of the natural resources damages (in addition to assessment costs) paid by the Responsible Parties to the Bouchard B-120 Trustees and the intended uses for restoration, as identified in the 2011 Consent Decree:

- $1,522,000 for injuries to address shoreline and aquatic resources in MA and RI;
- $3,305,393 to address lost recreational uses in Massachusetts and Rhode Island;
- $534,000 for injuries to shoreline resources on Ram Island, a state-owned and managed wildlife sanctuary in Mattapoisett, MA; and
- $715,000 for injuries to piping plover, a bird species federally-listed as threatened under the Endangered Species Act.

In 2018, injuries to common loons, terns, shorebirds (other than piping plover), and other birds were resolved in a separate settlement with the Responsible Parties (United States of America v. Bouchard Transportation Company, Inc., Tug Evening Tide Corporation, and B. No. 120 Corporation, Case No. 17-cv-12046, January 24, 2018, U.S. District Court, District of Massachusetts).

The Bouchard B-120 Trustees began the restoration planning process in 2011 by holding two public information meetings, soliciting restoration project ideas, and preparing a Draft RP/EA that identified and evaluated shoreline and aquatic projects, in addition to other categories of natural resource restoration alternatives (coastal access and recreational boating projects, and projects that addressed lost recreational shellfishing and shellfish restoration). In 2014, the Bouchard B-120 Trustees published the Final PRP/EA, available here: https://pub-data.diver.orr.noaa.gov/admin-record/6406/B-120-Final-PRP-EA-and-FONSI-09-30-14.pdf. The Trustees released draft Supplemental Environmental Assessments (SEAs) to further evaluate potential environmental impacts of multiple alternatives that addressed lost recreational shellfishing and three project alternatives that addressed aquatic and shoreline injuries in 2016 and 2017 respectively, once final designs were completed or once site-specific project locations and work scope were identified following release of the Final

PRP/EA. The Draft SEAs were published to facilitate further public input in the decision making process for these site-specific restoration projects. After considering public comments, if any, the Final SEAs were released to the public, and affirmed the Trustees' final selection of projects for implementation.

1.4. Purpose and Need for Amendment

On June 2, 2020, the Trustees released a Draft Amendment to the Final PRP/EA in compliance with OPA and NEPA to consider and evaluate modifications to the original range of restoration alternatives, specifically to consider whether a project (Cuttyhunk Island Land Acquisition and Habitat Protection) would provide benefits for shoreline and aquatic restoration and be a preferred restoration alternative for those resources. The project was already evaluated and selected for bird restoration associated with this case, but lacks sufficient funding to be implemented.

In the Common Loons and Other Birds Final Restoration Plan (USFWS et al. 2020), protecting land on Cuttyhunk Island was recognized as a practical, effective means of benefitting in perpetuity the bird species affected by the spill. As such, the project would satisfy the plan's goal of compensating for injuries to migratory bird species. In reaching this determination, the Trustees relied on the advice of wildlife experts seeking to help develop criteria that would identify successful bird restoration projects. Shoreline and Aquatic resource restoration was not a goal of the common loon and other birds plan. In fact, the draft (and final) restoration plan stated that "[r]estoration of shoreline and aquatic resources….was addressed in prior restoration plans." Since the Trustees' singular focus was on bird restoration in the Common Loons and Other Birds Restoration Plan, the Trustees did not evaluate potential benefits from habitat restoration or protection that would accrue to other resources, including shoreline and aquatic resources.

This Final Amendment to the Final PRP/EA provides the Trustees' determination that the Cuttyhunk Island project is a reasonable restoration alternative for shoreline and aquatic resources (determined by using the applicable OPA eligibility and evaluation criteria specified in Section 4 of the Final PRP/EA). This document also outlines the Trustees' process of (i) examining why the project was (for purposes of the Draft Amendment) a proposed preferred alternative, and (ii) examining potential environmental impacts resulting from this alternative that may differ from the impact analyses described in the Final PRP/EA.

Since publication of the Final PRP/EA, nearly all of the selected restoration projects have been completed, or are in the process of being completed. However, one of the shoreline and aquatic restoration projects was unable to be implemented, and thus, the Trustees have chosen to redirect the remaining, unused funds to achieve additional shoreline and aquatic resource restoration by contributing to the implementation of a different project (i.e., the Cuttyhunk Island protection project). This Final Amendment to the Final PRP/EA informs the public regarding the

modification to the Final PRP/EA to help restore shoreline and aquatic resource injuries resulting from the Spill.

Regarding shoreline and aquatic restoration, the Trustees originally selected four preferred Tier 1[2] projects to restore, enhance or rehabilitate the same or similar natural resources or natural resource services that were injured in the shoreline and aquatic environments in Massachusetts (Table 1). Approximately $1,300,000[3] was available for shoreline and aquatic restoration projects in Massachusetts, and $40,000 was available for shoreline and aquatic restoration in Rhode Island. With the implementation of the Factory Brook Fish Passage Improvement Project in South Kingstown, restoration in Rhode Island was completed in 2017.

The shoreline and aquatic restoration projects in Massachusetts were selected to: 1) restore fish populations through dam removal and river restoration; 2) rehabilitate tidal marshes by removing obstructions to restore normal tidal exchange and removing soil fill; 3) rehabilitate eelgrass beds; and 4) enhance salt marshes by controlling non-native, invasive plants. The Trustees also identified three Tier 2 preferred restoration projects in Massachusetts that could be funded if settlement funds remained after the Tier 1 projects were completed (Table 1).

[2] In the Final PRP/EA, the Trustees grouped preferred restoration projects into two funding tiers. Projects that best met the Evaluation Criteria were placed into Tier 1 preferred for funding. Tier 2 represents a lower level of funding priority; these projects could be funded if Bouchard B-120 settlement funds for a restoration type (e.g., Shoreline and Aquatic resource restoration) are available after Tier 1 project implementation is complete.

[3] The funding available for restoration is less than the settlement amount, since approximately 12% was reserved by the Trustees for administrative costs associated with restoration planning, oversight, and monitoring.

Table 1. Tier 1 and Tier 2 projects to restore, enhance or rehabilitate the same or similar natural resources or natural resource services that were injured in the shoreline and aquatic environments in Massachusetts.

Bouchard B-120 Preferred Restoration Projects (Massachusetts), $1,340,000 available							
Project ID	Project Name	Restoration Category	Restoration Type	Location	Project Status	Requested Funding Level	Trustee Funding Provided
Tier 1 Preferred Tier							
Shoreline and Aquatic Resource Restoration							
SA-2	Horseshoe Pond Dam-Weweantic River Restoration	Shoreline & Aquatic	Estuary restoration, diadromous fish passage	Wareham, MA	In progress	$500,000	$983,392
SA-4	Round Hill Salt Marsh Restoration	Shoreline & Aquatic	Marsh restoration by removing fill soils	Dartmouth, MA	No longer feasible	$813,105	$48,828
SA-10	Conservation Mooring Systems	Aquatic	Eelgrass bed restoration and protection	Falmouth, MA	In progress	$100,000	$100,000
SA-11	Allens Pond *Phragmites* Control	Shoreline	Mowing and herbicide application to control non-native salt marsh plants	Dartmouth, MA	Completed	$22,000	$22,000
Tier 1 Total:						$1,435,105	$1,154,220
Tier 2 Preferred							
SA-1	Gray Gables Salt Marsh Restoration	Shoreline & Aquatic	Marsh restoration by culvert replacement	Bourne, MA	No further project work completed	$460,000	none to date
SA-16	Red Brook Headwaters Restoration Project	Aquatic	Diadromous fish passage	Plymouth, MA	State to fund	$1,623,360	none to date
SA-21	Agawam River Restoration-Headwater Bogs	Aquatic	Diadromous fish passage	Plymouth, MA	No further project work completed	$170,000	none to date
*Tier 2 Total:						$2,253,360*	

*These funds would be spent only if funds are available after Tier 1 projects are concluded.

All of the Tier 1 projects have been completed or are underway, except for the Round Hill Salt Marsh Restoration Project (Project SA-4) which is no longer being implemented. The goal of the Round Hill project was to restore 12+ acres of intertidal saltmarsh, and the ecological functions and services lost from the site due to historic marsh filling, loss of tidal exchange, and other ecological disturbances and negative impacts. During the project design and permitting phase, the Town of Dartmouth, as proponent and property owner, withdrew its support for the project, in part due to concerns about changes in public access to nearby Round Hill beach. Without the Town's support of the project that was to occur on Town-owned land, the Trustees and project partners were unable to implement the project.

Because the Trustees were unable to carry out the Round Hill Salt Marsh Restoration Project, there remains a need for restoration of shoreline and aquatic resources in Massachusetts. Currently, approximately $300,000 - $400,000 remains available for shoreline and aquatic resource restoration. This total consists of funds leftover from the no-longer-being-implemented Round Hill Salt Marsh project as well as expected savings from the Horseshoe Mill Dam Removal (resulting from lower-than-anticipated construction costs and match funding provided by project partners, reducing the need for aquatic and shoreline funds). The specific amount of funds that will be available to help implement a shoreline and aquatic resource restoration project in MA (e.g., the Cuttyhunk project) will not be determined until the Horseshoe Mill Dam Removal project is completed, expected by late September 2020.

The Trustees have prepared this Final Amendment to the Final PRP/EA in compliance with OPA and NEPA to evaluate modifications to the range of restoration alternatives considered. Specifically it describes and selects a new preferred alternative for shoreline and aquatic restoration. The Amendment also evaluates the restoration benefits and environmental impacts resulting from this preferred alternative for differences from the analysis described in the Final PRP/EA.

1.5. Public Involvement

The Trustees held two public informational meetings during the original Restoration Planning Process in 2011 to inform the public about the restoration planning and to solicit restoration project ideas. The Bouchard B-120 Trustees held a third public informational meeting after publishing the Draft PRP/EA in 2014. The Draft PRP/EA was released to the public through public notice in local newspapers, and for review and comment for a period of 45 calendar days. The Bouchard B-120 Trustees considered all written and oral comments received during the public comment period and public meetings, and published the Final PRP/EA in September 2014.

In June 2020, the Draft Amendment was released and circulated for public comment via email to known interested parties, and to the general public through announcements and weblinks in local newspapers, and NOAA's web site (https://darrp.noaa.gov/oil-spills/bouchard-barge-120). The Trustees received two

comments on the Draft Amendment during the 14-day public comment period (Appendix A). Both comments expressed support for the proposed alternative.

This restoration project review process is consistent with all applicable state and federal laws and regulations, including NEPA and its implementing regulations, and the guidance for restoration planning found within the federal OPA regulations (15 CFR Part 990).

1.6. Administrative Record

The Bouchard B-120 Trustees have established and are developing an Administrative Record in compliance with federal regulatory requirements for natural resource damage assessments of oil spills (15 CFR §900.45). The Administrative Record includes information and documents considered by the Trustees during the injury assessment and determination, restoration planning, and restoration scaling. Interested persons can access or view the Administrative Record at:

NOAA Restoration Center
28 Tarzwell Drive
Narragansett, RI 02882
Attention: Bouchard B-120 Administrative Records Management

Arrangements must be made in advance to review or to obtain copies of these records by contacting the office listed, above. Access to and copying of these records are subject to all applicable policies including, but not limited to, policies relating to copying fees and the reproduction or use of any material that is copyrighted. The Trustees are also in the process of making the Administrative Record available at https://www.diver.orr.noaa.gov/web/guest/diver-admin-record?diverWorkspaceSiteId=6406.

2. Alternatives Considered

This section describes the reasonable range of restoration alternatives considered by the Trustees in the process of selecting the preferred alternative, per OPA (15 CFR §990.53(a)(2)) and NEPA (40 CFR §1505.1(e)) regulations. This section also summarizes the screening and evaluation criteria used in the development and evaluation of the restoration alternatives (in both the Final PRP/EA and for this Amendment) in accordance with the OPA NRDA regulations (e.g., 15 CFR § 990.54). In addition, this section provides the justification for selection of the new preferred alternative.

2.1. Original Screening and Evaluation/Selection Criteria

Restoration Criteria

Among the purposes of restoration, as outlined in the Final PRP/EA, is to make the public whole for injuries to shoreline and aquatic resources and compensating for the associated interim natural resource losses. The federal OPA regulations require

restoration projects and activities be developed and used by NRDA trustees to restore, rehabilitate, replace, or acquire the equivalent of the resources and services that were injured or lost, although these regulations provide trustees with the flexibility to identify and implement projects that best address resource injuries and their lost uses. Natural resource trustees, after developing a reasonable range of restoration alternatives and based on an evaluation of factors, select a preferred restoration alternative(s), along with providing an opportunity for public review and comment on a draft restoration plan. The draft restoration plan includes the range of restoration alternatives considered and a discussion of how the alternatives were developed and evaluated.

The OPA regulations require federal and state trustees to evaluate proposed restoration alternatives based on a minimum of the following factors:

- The cost to carry out the alternative;
- The extent to which each alternative is expected to meet the trustees' goals and objectives in returning the injured natural resources and services to baseline and/or compensating for interim losses;
- The likelihood of success of each alternative;
- The extent to which each alternative will prevent future injury as a result of the incident, and avoid collateral injury as a result of implementing the alternative;
- The extent to which each alternative benefits more than one natural resource and/or ecological service; and
- The effect of each alternative on public health and safety.

To determine restoration project eligibility for addressing the Buzzards Bay natural resource injuries, the Bouchard B-120 Trustees incorporated these factors into their Eligibility and Evaluation Criteria for potential projects. The Eligibility Criteria were used by the Trustees to determine whether potential projects met minimum standards for further consideration (refer to Section 4.2 of the Final PRP/EA). Potential projects that met the Eligibility Criteria were then evaluated by the Bouchard B-120 Trustees by applying the Evaluation Criteria (refer to Section 4.3 of the Final PRP/EA) as the means for assessing and evaluating project strengths and weaknesses, and determining whether a potential project should be considered as a preferred versus non-preferred project to address the natural resource injuries.

Eligibility Criteria

Potential restoration projects must meet a set of Eligibility Criteria to be further considered and evaluated by the Trustees. Projects that did not meet the Eligibility Criteria were not given further consideration by the Bouchard B-120 Trustees. Of note, a project's demonstrated compatibility with the Eligibility Criteria does not necessarily guarantee that the project will be selected as a preferred project and funded, but only establishes that the Trustees will consider the project for possible B-

120 funding. Conversely, rejection of a proposed project based on the Eligibility Criteria means that the Trustees determined that funds cannot be allocated for the project, even though the proposed project may yield a restoration benefit to injured natural resources. A potential restoration project or activity will only be considered by the Bouchard B-120 Trustees as eligible for further consideration and evaluation if the project:

- Demonstrates a significant nexus to the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured natural resources or, if natural resource restoration is not possible or feasible, the project results in restoration of natural resource services that were injured by the Bouchard B-120 spill.
- In terms of cost, does not overburden the ability of trustees to expend funds in a manner that accomplishes trustee restoration goals for the injury restoration, and/or allows the trustees to select project(s) that serve as broad a geographic area affected by the spill as possible, and benefits the restoration of the injured resource and/or resource use categories.
- Provides measurable results. A project must deliver tangible and specific resource restoration results that are identifiable and measurable, and will be capable of being assessed and evaluated using quantitative methods, so that changes to the targeted resource and/or resource use can be documented and evaluated.
- Ensures protection of human health and safety, and/or is not prohibited by federal, state, or local laws, regulations, or policies addressing public health and safety.
- Is not subject to an independent, prior obligation to perform the action or activity pursuant to statute, regulation, ordinance, consent decree, judgment, court order, permit condition, memorandum of agreement, or contract. The project must not otherwise be required by federal, state, or local law, including but not limited to enforcement actions or regulatory compensatory mitigation requirements.
- Is consistent with, or will not be negatively impacted by any future remediation activities, nor would the project adversely affect any ongoing or anticipated remedial actions in the resource injury area.

Restoration Evaluation Criteria

The Bouchard B-120 Trustees developed specific Evaluation Criteria for Shoreline and Aquatic Restoration Projects to assess project strengths and weaknesses (refer to Section 4.3.1 of the Final PRP/EA for more information). These included the following criteria:

High Importance: nexus to injury (spatial proximity), nexus to injury (same or similar resource type), ecological services provided or enhanced, acres or miles of habitat restored/resources rehabilitated;

Moderate Importance: site ownership, project implementation readiness, sustainability of resource benefits, technical feasibility, cost effectiveness; and

Low Importance: operation and maintenance needs, impact avoidance or minimization, level of funding and resources needed for project implementation, community involvement.

Representatives from the Bouchard B-120 Trustee agencies evaluated each eligible restoration project using the Evaluation Criteria. The Bouchard B-120 Trustee Council finalized their recommendations through a series of consensus-based discussions. The following other factors were also taken into consideration:

- The overall level of funds available for the settlement and funding level of each specific resource and resource use restoration category;
- A balance and distribution of funds pertaining to: the geographical distribution over the affected spill area; project activity type; restoration priority category; project and work activity approach; and the number and diversity of project proponents and partners;
- The cumulative cost of the highest-ranked projects relative to the corresponding restoration type funds available;
- Potential impacts resulting from project activities, particularly relating to the NEPA and state (MA and RI) environmental and social impact review processes;
- The likelihood of timely permits, approvals, and authorizations to be secured for the project;
- The likelihood and timeliness of obtaining requisite access easements, rights-of-way, and/or any other necessary legal documentation to implement the project;
- Past performance of a project proponent to efficiently use funds, complete project planning and design, secure regulatory approvals, and successfully complete projects, particularly natural resource or resource use restoration projects; and
- Written public comments received by trustees regarding the proposed projects.

2.2. New Alternative(s) Identified and Evaluation

2.2.1. Alternative #1 – preferred

Cuttyhunk Island Land Habitat Protection Project (SA-2020A)

Project Idea Submittal: Cuttyhunk Island Land Acquisition and Habitat Protection by Buzzards Bay Coalition (BBC) and Partners

Project Location: Gosnold, MA

Requested Funding: approximately $300,000-$400,000 (all remaining shoreline and aquatic funds)

Restoration Objective

The goal of the Cuttyhunk Island Land Habitat Protection project is to acquire (through fee title and conservation easement) and permanently protect approximately 300 acres of coastal and aquatic habitat and more than 5 miles of shoreline on Cuttyhunk Island, one of the Elizabeth Islands in Gosnold, MA (an area that was directly impacted by the Spill) (Figure 1). Habitat protection offers a practical, effective means of preventing future losses of shoreline and aquatic resources. In addition, habitat protection will prevent potential impacts to nesting birds, shellfish and fish species that would be directly affected by habitat loss and degradation associated with anticipated future development of Cuttyhunk Island.

Summary of Preferred Alternative

The Trustees have determined that the Cuttyhunk Island Land Habitat Protection project meets the original eligibility criteria outlined in Section 4.2 of the Final PRP/EA and Section 2.1 of this Final Amendment. The project was not considered in the 2014 Final PRP/EA since it was not then a viable alternative; the option to purchase the land had not yet been identified nor negotiated with the landowners, and no fundraising efforts had been completed. This restoration alternative protects habitat that benefits multiple natural resources and services affected by the Spill. These natural resources and services include shoreline and aquatic habitats and biota using these habitats including shellfish and other benthic macro-invertebrates, estuarine and marine fishes, migratory birds (terns, waterfowl, waterbirds) and other wildlife, as well as recreational uses such as fishing, shellfishing and wildlife viewing. Habitat protection offers a practical, effective means of preventing future losses of shoreline and aquatic resources. In addition, habitat protection will prevent impacts to nesting birds, shellfish and fish species that would be directly impacted by habitat loss and degradation associated with anticipated future development, as noted in the Common Loons and Other Birds Final Restoration Plan (USFWS et al. 2020). Existing recreational activities on Cuttyhunk Island (e.g., fishing, shellfishing, boating, and bird watching) will benefit from the protection afforded by this project, and some activities such as hiking will be expanded, while still adequately protecting existing shoreline and aquatic habitats with signage and other project management measures.

Cuttyhunk Island is a 581-acre island located off the coast of Massachusetts in Buzzards Bay (Figure 2). More than fifty percent of the shoreline on the island was oiled during the Spill. The island is comprised of a variety of coastal habitats in largely pristine condition, including ponds, freshwater wetlands, salt marshes, marine cliffs, barrier beaches, coastal shrublands, forests and grasslands. The shallow water coastline is characterized by substantial eelgrass beds, tidal flats, and rocky reefs. Because of its offshore location and limited development, water and sediment quality are high and numerous species of birds, shellfish and finfish are found. More than 250 bird species have been sighted at and reported from Cuttyhunk (eBird 2019), including nearly all of the species impacted by the Spill. Numerous recreational fish species including striped bass, summer flounder, bluefish, tautog, and black sea bass are

commonly found in the waters in the vicinity of Cuttyhunk Island. Hard clam, bay scallop and other bivalves are also abundant in the Cuttyhunk coastal waters that are important to recreational shellfisheries. As part of the B-120 Buzzards Bay lost shellfishing restoration, The Nature Conservancy was the recipient of funds to complete a Buzzards Bay-wide shellfish restoration prioritization. The prioritization (TNC, 2015) identified Cuttyhunk Harbor waters as a high priority for bay scallop restoration. Ultimately, the bay scallop project was not implemented, although quahog broodstock relays were conducted through the Massachusetts Department of Marine Fisheries (MA DMF), with the Town of Gosnold transplanting quahogs in Cuttyhunk Harbor for shellfish population enhancement. Lastly, the Island has also been identified in the Massachusetts State Wildlife Action Plan as a high priority area for conservation known as a "Key Site," which is a location designated with the highest and best concentrations of rare species and other elements of biodiversity .

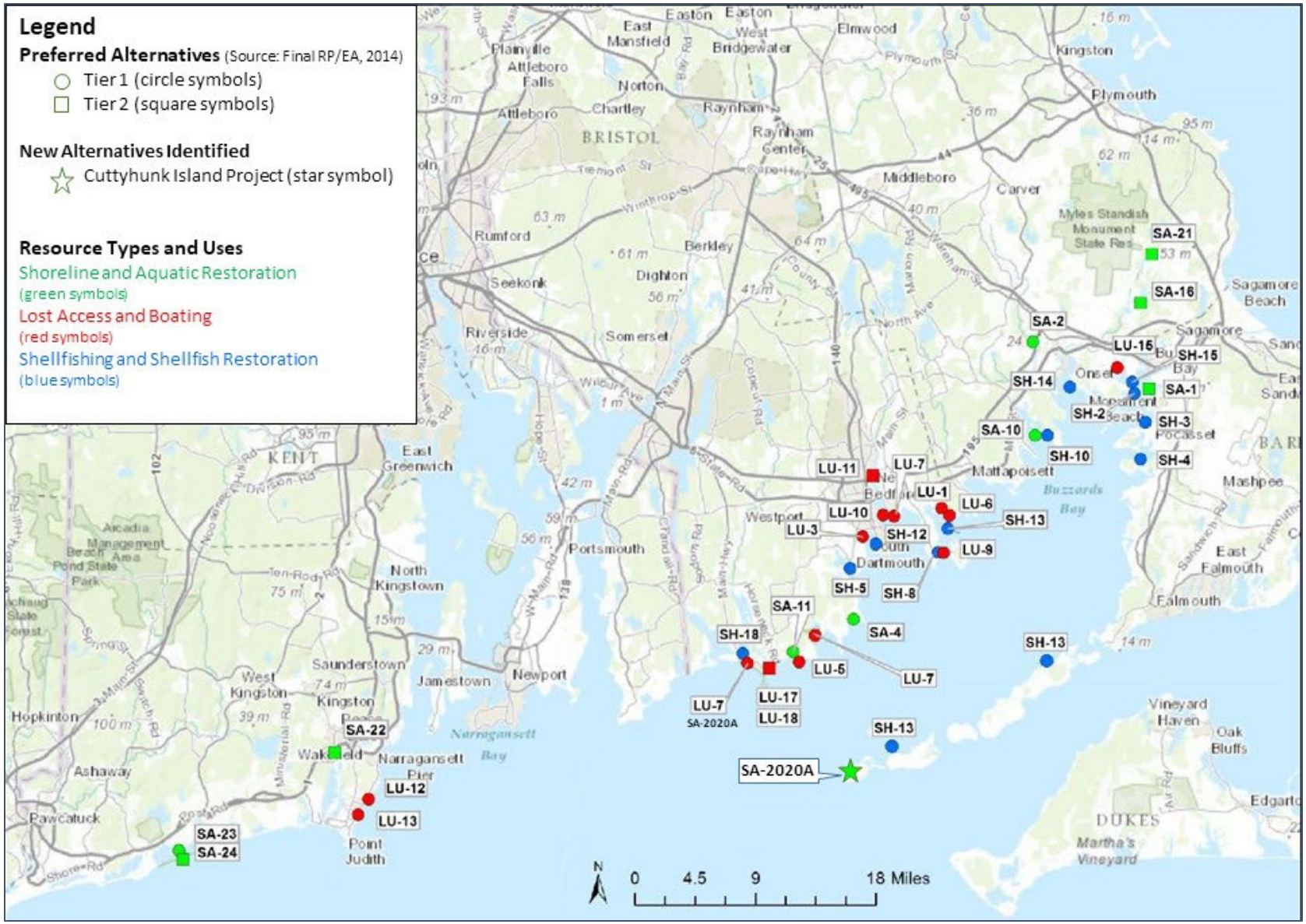


Figure 1. Locational map of Cuttyhunk Island Project (SA-2020A).

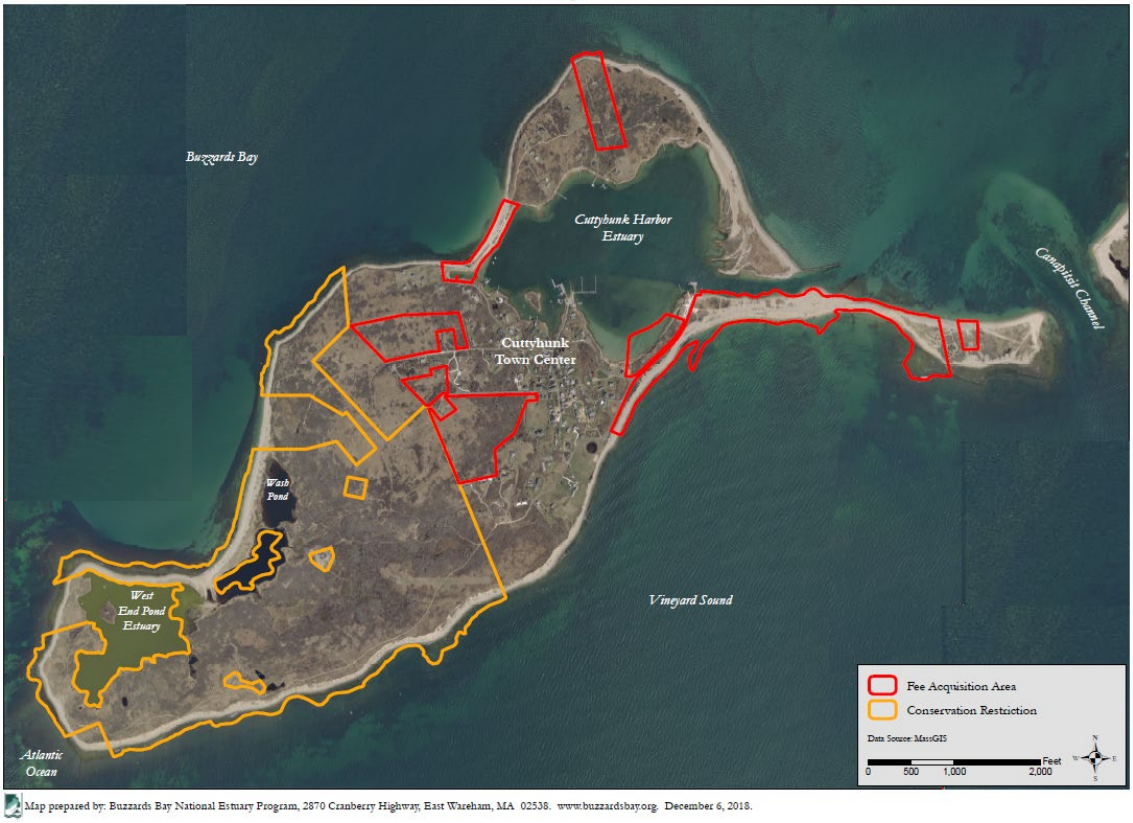


Figure 2. Cuttyhunk Island project site with fee acquisition areas (in red) and conservation easement areas (in orange), Gosnold, Massachusetts.

Currently, the Island is largely undeveloped and privately owned. Residential development has begun to expand and spread from the village center. The majority of the land has been controlled by three separate property owner groups, and the lands have been vulnerable to development. The BBC has been leading an effort for several years to protect a portion of the Island in collaboration with the Town of Gosnold and the Massachusetts Department of Conservation and Recreation (collectively, the project partners). The BBC has negotiated a purchase and sales agreement with two landowner groups and has prepared a conservation restriction with a third landowner. These groups agreed to the land owner transfer in June 2020. With combined funding support from private, State, and Federal stakeholders, the project partners' efforts will permanently protect approximately 300 acres of high priority habitat (MassWildlife 2015), including over 5 miles (8 km) of undeveloped shoreline bounding Buzzards Bay, Rhode Island Sound and Vineyard Sound.

Due to the Island's importance to numerous bird species, including many avian species that were impacted by the Spill, the Bouchard B-120 Trustees proposed to allocate $500,000 of bird restoration funds to the protection of Cuttyhunk Island, as identified in the Draft RP for Common Loon and Other Birds (USFWS et al. 2019). Due to the substantial restoration benefits of the project and the tremendous, broad-reaching support from citizens, local conservation groups, and public representatives

during the Draft RP/EA comment period, the Trustees selected the project as a preferred alternative in the Final RP for Common Loons and Other Birds (USFWS et al. 2020) and authorized an increased total of $774,000 in funding for the project.

The total project cost (including fee acquisition, due diligence, closing costs, and stewardship) for the Cuttyhunk Island protection is $7,050,000. A summary of current funding sources and potential additional awards is provided below (Table 2). Based on the total funds raised to date, the BBC currently needs an additional $620,958 to complete the project.

Table 2. Summary of current funding sources and potential additional awards for the Cuttyhunk Island project.

Funding Source	Funds Provided
Private Gifts	$2,034,623
Town of Gosnold	$400,000
Mass Municipal Vulnerability Preparedness Grant	$1,400,000
Mass Local Lands & Natural Diversity (LAND) Grant	$400,000
Mass Drinking Water Supply Protection Grant	$300,000
U.S. Fish and Wildlife Service Coastal Wetlands Grant	$1,000,000
Buzzards Bay National Estuary Program Mini-Grant	$20,419
Bouchard Other Birds Restoration Project Funds	$774,000
NAWCA Small Grant	$100,000
Total Funds Raised	$6,429,042
Remaining Funds Needed	$620,958

Monitoring and Measurable Results

In combination of the land acquisition and conservation easement, the property will be protected in perpetuity, managed for conservation (e.g., educational signage to protect habitats), and monitored annually by the project proponent to ensure the conservation goals are being met (e.g., no development encroachment, unauthorized trespassing or activities; and protection and conservation of aquatic and shoreline resources). As a component of the B-120 funding, the Trustees will require monitoring and the submittal of annual monitoring reports (for 5 years) by the project proponent to ensure that conservation goals are being met, and determine whether adaptive management measures may be needed to fulfill the Trustees' conservation goals for the project.

Evaluation of Alternative

The Cuttyhunk Island project is consistent with, and rates favorable against, the Evaluation Criteria and other factors considered and described above in Section 2.1. This project demonstrates a clear and significant nexus to the habitats and natural resources injured by the Spill. Cuttyhunk Island is located in Buzzards Bay and the entire northern shore of the Island was oiled during the Spill. Twenty-five dead birds (or 5 percent of the total number of collected birds) were recovered from the Island. Following the Spill, shellfishing was temporarily closed adjacent to the island. Protecting land on Cuttyhunk Island directly benefits habitat and species affected by the Spill. Ecological services provided by coastal ponds, estuaries and eelgrass beds (e.g. habitat/shelter, food resources, and water quality) will be protected and minimized from degradation, particularly impacts resulting from island development. Approximately 300 acres and 5 miles of shoreline will be protected. The Cuttyhunk Island project comprises one of the largest remaining coastal habitats that is available for protection in Massachusetts. Due to its location and relatively pristine condition, the Cuttyhunk Island project provides a highly unique natural resource conservation opportunity including protection and conservation of aquatic and shoreline resources.

The Cuttyhunk Island project lands have been privately owned for decades, but with the purchase and sale agreements for fee title acquisition and conservation restrictions, these lands will be protected into perpetuity. Permanent protection of the property on Cuttyhunk Island was secured in late June 2020. A number of private contributions, foundations and state and federal grants have provided nearly all of the required funding; however, $620,958 remains to be secured. The contribution of the shoreline and aquatic funds ($300,000 - $400,000) will reduce the total funds needed to complete the Cuttyhunk Island project to about $221,000 to $321,000. The BBC anticipates that they will be able to raise additional private donations to cover the remaining costs. If the funds secured are not sufficient to implement the Cuttyhunk Island project as described in this Amendment, all shoreline and aquatic funds will be promptly returned to the Trustees for use to pursue other aquatic and shoreline restoration projects.

The Cuttyhunk Island project fulfills the original restoration goals of the Final PRP/EA by helping to address shoreline and aquatic resource injuries resulting from the Spill, and compensating for the associated interim natural resource losses. The Trustees conclude that the Cuttyhunk Island project is feasible, cost-effective (leveraging significant funding from other sources), expected to be ecologically successful and sustainable, and will provide benefits to shoreline and aquatic resources, recreational resources, and fish, shellfish and bird species impacted by the Spill in perpetuity. The Trustees have determined that land protection efforts will have no significant adverse impacts to the areas of implementation, nor will the project impact public health and safety. There has been tremendous community support for the Cuttyhunk Island project.

2.3. No Action Alternative (Natural Recovery)

Pursuant to the OPA regulations, the Trustees considered a No Action alternative premised on "natural recovery." Under the natural recovery alternative, the Trustees would take no direct action to restore injured natural resources or compensate for lost services using B-120 case settlement funds at this time. The Trustees would allow natural recovery processes to occur. With the No Action alternative, no restoration, rehabilitation, replacement or acquisition projects or actions would occur discrete from current conditions. This alternative would result in minimal to no costs since no action using Bouchard B-120 settlement funds would be taken. If selected, there would be no implementation of restoration, replacement, or acquisition of lost resources and their services/uses, and there would be no intent to implement projects directed at making the public whole for past natural resource and resource use injuries resulting from the B-120 oil spill. Various habitats in the Buzzards Bay region such as tidal marshes, eelgrass beds and shellfish populations have been adversely affected by multiple direct and secondary impacts. While other federal and state (Massachusetts Division of Ecological Restoration [MADER]) restoration programs exist in the Buzzards Bay region, no programs are targeted specifically at addressing the injuries that resulted from the B-120 spill. If the Trustees select the No Action Alternative, restoration funds would not be targeted for Buzzards Bay restoration projects, and only natural resource recovery would proceed. This would allow for some affected resource conditions to continue with uncertain duration or outcomes, and would prolong the environmental injury from the spill. For purposes of the Draft Amendment to the Final PRP/EA, the No Action Alternative cannot be the preferred alternative since compensatory restoration is required by federal statute (i.e., OPA) and regulations. The No Action alternative is retained in this Draft Amendment for comparative purposes relating to the natural resource restoration activities resulting from the project alternatives considered.

2.4. Tier 2 Alternatives

The Trustees have considered and concluded that none of the Tier 2 shoreline and aquatic restoration projects selected in the Final PRP/EA are currently suitable for implementation. These alternatives, along with the Cuttyhunk project, comprise the reasonable range of restoration alternatives evaluated by the Trustees to receive the remaining funds available for shoreline and aquatic restoration. Also, there are no remaining Tier 1 Aquatic and Shoreline resource projects with funding shortfalls. A brief description and current status of the Tier 2 projects identified in the Final PRP/EA follows. Additional project details can be found in the Final PRP/EA.

Gray Gables Marsh Culvert Replacement and Tidal Hydrology Restoration, Bourne, MA

Restoration Objective

The objective of this tidal marsh restoration is to restore normal tidal hydrology to a 15±-acre degrading tidal marsh system, to address ongoing negative impacts

attributed to undersized and partially functioning culverts and exacerbated by sea level rise. With restoration, marsh health and restored connectivity with the bordering Buzzards Bay would be expected to improve fish and wildlife habitats and other ecological services derived by a restored marsh.

Project Status/Budget

The Gray Gables salt marsh restoration project consists of two tidally-restricted, degrading marsh systems interconnected by an undersized culvert. Preliminary feasibility studies were conducted prior to release of the Final PRP/EA in 2014. Several potential issues were noted, including potential site limitations and regulatory concerns that could affect the project feasibility and design. No additional engineering or design has been completed, and significant additional feasibility analysis and permitting would be required for potential implementation. A preliminary estimated cost for project implementation ($460,000) was identified in 2008. The total project cost is expected to be substantially higher, as additional funds would be needed to complete further hydrologic and hydraulic modeling and alternatives analyses, and then to complete engineering designs and regulatory permitting. Updated implementation costs would also likely be substantially higher than the preliminary estimate if regulatory authorizations could be secured for the project, including a state variance for impacts to dune resources for a tidal culvert installation, as regulated through the Massachusetts Wetlands Protection Act. NOAA and others completed a site visit in 2018, and concluded that implementation of this project would be unlikely due to the technical and regulatory challenges for implementing the marsh modification, culvert replacements, and likely other design measures to address the requisite hydrology and soil conditions to restore the salt marsh. Thus, this project is no longer considered to be a technically-feasible or cost-effective alternative for implementation with the remaining funds available to the Trustees.

Red Brook Headwaters Fish Passage Restoration Project, Plymouth, MA

Restoration Objective

The goal of the Red Brook restoration project at the state-owned Century Bog property is to restore unimpeded passage and habitat access and use by river herring, American eel and sea-run brook in Red Brook. Red Brook is a small, spring-fed, coastal stream and discharges from White Island Pond in Plymouth, MA and into the northeastern Buzzards Bay watershed. The project proponent seeks to improve fish passage, enhance aquatic habitat within Red Brook, restore diverse and sustainable riparian habitat, and restore up to 60 acres of freshwater wetlands.

Project Status/Budget

The total cost of implementing this project was conceptually estimated by the MADER at $1,900,000, and approximately $276,640 has been secured by project partners to date. While MADER expected to secure regulatory authorizations for the

project in 2014, due to other competing priorities, limited work has been completed to advance the project. MADER still intends to implement the project; however, the agency recently notified the Trustees that they have identified other funding sources that will be utilized to implement the project at a later date. Thus, B-120 funds are no longer needed for this project.

Agawam River Fish Passage and Riparian Wetland Restoration, Plymouth, MA

Restoration Objective

The goal of the Agawam River Fish Passage and Riparian Wetland restoration project is to improve instream habitat quality, riparian wetland habitat and diadromous fish passage access to and use of spawning and rearing habitats in the upper Agawam River.

The 29-acre wetland and stream restoration project site is located 0.5 miles downstream from 232-acre Halfway Pond, which is the headwaters of the Agawam River, a relatively small coastal river. The proposed project would separate and restore the river from cranberry bog operations by reconstructing a natural stream channel in conjunction with restoring a woody riparian wetland plant community. The goal of the project is to eliminate diadromous fish passage barriers and reduce excessive nutrient inputs to the river, and ultimately, Buzzards Bay.

Project Status/Budget

The Town of Plymouth was working collaboratively with the property owner, A.D. Makepeace (a cranberry-producing industry), to complete the design of the project. In 2014, at the time of publication of the Final PRP/EA, the Town of Plymouth sought a total of $170,000 for the project, including final project design ($70,000), permitting and construction oversight ($30,000), cost for a box culvert ($56,250), and native plantings associated with project implementation ($13,750). The Town was working with the property owner who had offered to contribute in-kind services for the construction of the project, estimated at approximately $50,000. The project has not been advanced further by the Town or others since the preparation of the Final PRP/EA; as a result, feasibility, design and permitting are incomplete, specific project costs are unknown, and project implementation and timing of the work are uncertain.

Considering the relatively small amount of funds remaining available for aquatic and shoreline restoration ($300,000 - $400,000), and the complexities, uncertainties and current status of each of the Tier 2 projects, the Trustees propose to amend the Final PRP/EA to include the Cuttyhunk Island Land Habitat Protection Project among the set of restoration alternatives for shoreline and aquatic restoration which is a feasible, ready-to-implement, and cost-effective alternative that will protect a broad variety of shoreline and aquatic resources similar to those that were injured during the Spill.

2.5. Alternatives Considered but Eliminated

The Trustees and staff within our agencies are generally familiar with restoration projects in the Buzzards Bay area. We have been implementing restoration activities since publication of the Final PRP/EA with partners and the public and we are currently unaware of any projects that are ready-to-be-implemented (i.e. final designs and permitting completed) and that would restore aquatic and shoreline habitats as cost-effectively and expeditiously as the Cuttyhunk Island land protection project. The Trustees have not identified any other restoration alternatives that could be implemented with the remaining funding, and would meet the original screening criteria and the Trustees' restoration goals and objectives for shoreline and aquatic resources.

In terms of other potential land protection projects, the Trustees are currently unaware of any projects that would protect as many species and acres of coastal habitat as the Cuttyhunk Island project. In response to the recent release of the Draft RP for Common Loon and Other Birds (USFWS et al. 2019), the Trustees received comments from several land protection organizations in Rhode Island and Massachusetts (Sakonnet Preservation Association, Rhode Island Natural History Survey, Save the Bay, and the Massachusetts and Rhode Island Nature Conservancy) expressing their belief that there were not currently any other lands available for acquisition in Rhode Island or Massachusetts that would permanently protect such a large parcel of contiguous undeveloped lands and valuable wildlife habitat.

2.6. Conclusion

After completing an evaluation of the alternatives, consistent with the evaluation criteria and process developed for the Final PRP/EA, the Bouchard B-120 Trustees support utilizing the remaining shoreline and aquatic funds (approximately $300,000 - $400,000) for the Cuttyhunk Island Land Habitat Protection Project. The funding of this project will protect approximately 300 acres of coastal habitat and more than 5 miles of shoreline on Cuttyhunk Island in Gosnold, Massachusetts. The project will restore shoreline and aquatic resources impacted as a result of the Spill. Therefore, the Trustees select the Cuttyhunk Island Land Habitat Protection Project to address aquatic and shoreline resource injury restoration. .

3. Compliance with the National Environmental Policy Act

The National Environmental Protection Act (NEPA) (42 U.S.C. §4321 et seq.) and Council on Environmental Quality (CEQ) regulations implementing NEPA (40 C.F.R. Parts 1500-1508) apply to NRDA restoration actions by federal trustees, except where a categorical exclusion (CE) or other exceptions to NEPA apply (15 C.F.R. §990.23)[4].

[4] This Amendment to the Final PRP/EA is being prepared using the 1978 CEQ NEPA Regulations. NEPA reviews initiated prior to the effective date of the revised CEQ regulations may be conducted using the 1978 version of the regulations. The effective date of the 2020 CEQ NEPA Regulations is September 14, 2020. The NEPA review for this

NEPA and its implementing regulations outline the responsibilities of federal agencies when preparing environmental documentation. In general, federal agencies contemplating implementation of a major federal action must produce an Environmental Impact Statement (EIS) if the action is expected to have significant impacts on the quality of the human environment. When it is uncertain whether the proposed action is likely to have significant impacts, federal agencies prepare an Environmental Assessment (EA) to evaluate the potential need for an Environmental Impact Statement (EIS). If the EA demonstrates that the proposed action will not significantly impact the quality of the human environment, the agencies issue a Finding of No Significant Impact (FONSI), which satisfies the requirements of NEPA, and no EIS would be required.

Alternatively, federal agencies may identify categories of actions which do not individually or cumulatively have a significant effect on the human environment (40 C.F.R. §1508.4) (e.g., actions with limited degree, geographic extent, and duration). Actions falling into those categories may result in the exercise of a Categorical Exclusion (CE) and are exempt from the requirement to prepare an EA or EIS.

3.1. DOI NEPA Compliance

DOI has established regulations for the implementation of NEPA, including actions that are categorically excluded (43 CFR §46.210). The USFWS has established additional categorical exclusions, as described in DOI Department Manual 6, Section 516, Chapter 8.5 (516 DM 8.5). The USFWS categorical exclusions include the following "Resource Management" actions:

- (B.11.) Natural resource damage assessment restoration plans, prepared under sections 107, 111, and 122(j) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA); section 311(f)(4) of the Clean Water Act; and the Oil Pollution Act; when only minor or negligible change in the use of the affected areas is planned.

After careful consideration of the preferred alternatives identified, DOI has determined that the project will result in negligible environmental disturbances or only minor or negligible changes in the use of the affected areas and therefore, DOI has applied Categorical Exclusions B11 to satisfy NEPA compliance for this Final Amendment.

3.2. NOAA NEPA Compliance

NOAA does not have CEs specific to land acquisition and habitat protection activities, and typically does not exercise CEs for implementation of NRDA restoration actions. As such, NOAA will satisfy its NEPA compliance requirements for the proposed action using an alternative approach.

Amendment began in February 2020; therefor, the federal agencies have decided to proceed under the 1978 regulations.

To address NEPA compliance for the proposed Cuttyhunk Island Land Protection project, NOAA used the existing NEPA analyses from a similar restoration alternative selected in the Final PRP/EA (Section 5.7.1.1 Nasketucket Bay Land Acquisition). Section 5.A ("Guidance for Analyzing Adequacy of Existing NOAA NEPA Documents for a New Proposed Action") of the Companion Manual to NOAA Administrative Order 216-6A – Policy and Procedures for Compliance with NEPA and Related Authorities (Companion Manual), provides guidance for using existing environmental analyses to analyze the effects associated with a new proposed action.

Using the guidelines in Section 5.A of the Companion Manual, NOAA has concluded the following: 1) the proposed action (Cuttyhunk Island land acquisition and habitat protection) is similar to other land acquisition alternatives (Nasketucket Bay Land Acquisition) analyzed in the initial NEPA document (i.e., Bouchard B-120 Final PRP/EA); 2) the proposed action is located in immediate proximity to the Bouchard B-120 oil spill site, is within the same geographic area as the spill, and has similar resource conditions (i.e., shoreline and coastal habitats supporting marine and estuarine fish, shellfish, shorebirds and waterfowl, and state/federally protected species) to those analyzed in the initial NEPA document; 3) the range of alternatives analyzed in the existing NEPA document is appropriate with respect to the new proposed action, given the environmental concerns, interests, and resource values relevant to the proposed action; 4) the existing analyses remains valid, and there are no new circumstances or new information relevant to environmental issues bearing on the proposed action or its expected impacts (40 C.F.R. §1502.9 (c)); and 5) the direct, indirect, and cumulative effects that will result from implementation of the proposed action are similar to those analyzed for comparable projects in the original NEPA document.

Accordingly, NOAA has determined that the existing NEPA document and the analyses in the Final PRP/EA are sufficient to cover the proposed action described in this Amendment, and no additional NEPA compliance is needed. A summary of the expected environmental consequences is provided in Section 3.4.2 below.

3.2.1. Affected Environment

General

As discussed in the Final PRP/EA, the geographic scope for the Bouchard B-120 restoration includes Buzzards Bay and nearby coastal waters and their watersheds of southeastern Massachusetts and Rhode Island. Section 2.1 of the Final PRP/EA includes a detailed description of the existing physical, biological, and cultural and human environment of Buzzards Bay and surrounding waters, and the areas impacted by the Bouchard B-120 oil spill. That information is incorporated here by reference and briefly summarized below (40 C.F.R. §1502.21). There are no new resources that were not described and evaluated in the Final PRP/EA.

Physical Environment: Buzzards Bay is a moderately large estuary that is approximately 28 miles (45 km) long, averages about 8 miles (13 km) in width, and covers approximately 228 square miles (mi^2) (595 km^2). There are approximately 280 miles (450 km) of Bay shoreline. The shoreline is comprised of a variety of physical settings and habitat types including sand, cobble and boulder beaches, rocky shores, salt marsh and tidal wetlands, and tidal flats. Approximately 5,107 acres (2,067 hectares) of salt marsh are present along Buzzards Bay, comprising 8.6% of wetlands in the watershed (BBNEP 2013). Most of the known eelgrass beds and shellfish stocks are located in nearshore waters and embayments less than 16 feet (5 m) deep. Approximately 3% of the Bay is comprised of intertidal flats. The Bay itself is relatively shallow with a mean depth of approximately 35 ft. (11 m) and a relatively uniform basin (Howes and Goehringer 1996). The four counties in Massachusetts encompassing Buzzards Bay (Bristol, Plymouth, Barnstable, and Dukes Counties) are in attainment for all Clean Air Act criteria pollutants (MADEP 2013).

Biological Environment: Buzzards Bay maintains a wide variety of habitats, representative of most ecosystems found along the North Atlantic coast of the United States. Barrier beaches, tidal wetlands, tidal flats, rocky and boulder intertidal zones, and hard and soft benthic habitats are dispersed along the perimeter of the Bay, as well as circulation-restricted coves and embayments providing protected habitats for a variety of plant and animal species. These include resident and migratory finfish species, recreationally and commercially important shellfish species, shorebirds, and various marsh-dependent plant and animal species.

Endangered Species: Species listed under the federal Endangered Species Act (ESA) of 1973 (16 U.S.C. §§1531, et seq.), are known to be present within Buzzards Bay and contiguous coastal areas. Federally-listed species found in the Buzzards Bay waters and nearby coastal areas area include northern long-eared bat, piping plover, roseate tern, rufa red knot, Atlantic sturgeon, shortnose sturgeon, dwarf wedge mussel, and the northern red-bellied cooter. Other species including alewife, blueback herring, and rainbow smelt, which spawn in streams and rivers discharging to Buzzards Bay and spend part of their lives in Buzzards Bay and other Northwest Atlantic marine waters, are federally-designated by NOAA as Species of Concern. American eel, also present in Buzzards Bay and its tributaries, are designated by the USFWS as a Species of Concern.

Cultural and Human Environment: The Buzzards Bay watershed encompasses all or portions of 21 municipalities, including two communities in Rhode Island. Eleven coastal communities encompass and share the Bay in Massachusetts (City of New Bedford and Towns of Westport, Dartmouth, Acushnet, Fairhaven, Mattapoisett, Marion, Wareham, Bourne, Falmouth, and Gosnold (Elizabeth Islands including Cuttyhunk Island)). Two other municipalities in Rhode Island

(Little Compton and New Shoreham (i.e., Block Island)) are located at or west of the entrance to Buzzards Bay.

Much of the watershed is rural and forested, and only a lesser amount of the watershed classified as developed (14%); conversely, within one-half mile of the coast, more than 34 percent of the land is characterized as residential, commercial, and industrial land use (Buzzards Bay National Estuary Program 2012).

Shoreline ownership in the watershed is both public and private, and a variety of shoreline uses occur on both land ownership types. Approximately 25 percent of the Buzzards Bay watershed is protected open space. Much of the use is concentrated in defined public access points such as state parks and town beaches.

Buzzards Bay is home to more than 12,000 docked or moored boats, and during peak summer holiday or boat events, more than 15,000 vessels may be in the bay. Most of the registered vessels are recreational boats, while the remaining ~1,850 boats are commercial or government operated vessels (mostly fishing boats, ferries and municipal craft). More than 33 public and private marinas, 58 public boat ramps, 6,340 moorings, and more than 1,000 docks service the boats used in Buzzards Bay.

Shellfishing is a significant recreational and commercial activity in Buzzards Bay. Quahog (i.e., hard clam) is the principal species harvested in Buzzards Bay terms of poundage, while bay scallop, soft-shell clam, and eastern oyster remain highly valuable in terms of dollar value. Water quality degradation due to pathogen contamination remains a serious human health risk and an economic loss.

Environmental Justice Communities: Environmental justice (EJ) is federally defined as the equal protection and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies and the equitable distribution of environmental benefits. The federal Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, was signed into law by President Clinton on February 11, 1994, calling on each federal agency to achieve environmental justice as part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

The Commonwealth of Massachusetts Environmental Justice definition is based on the principle that all people have a right to be protected from environmental pollution and to live in and enjoy a clean and healthful environment. The MA-EEA has determined that EJ populations are those found to be most at risk of being unaware of or unable to participate in environmental decision-making, or to gain access to state environmental resources. The MA-EEA EJ policy is a key factor in decision-making by its agencies. The policy can be located at: https://www.mass.gov/service-details/environmental-justice-policy.

In the context of this case, a number of EJ areas are located within the Buzzards Bay communities. The EJ designated areas within the Buzzards Bay oiling impact area are depicted in mapped materials in Appendix A of the Final PRP/EA. The web link for the locations of the Commonwealth of Massachusetts EJ communities can be found at: https://www.mass.gov/info-details/environmental-justice-communities-in-massachusetts.

Cuttyhunk Island, Gosnold, Massachusetts

The project area encompasses 300 acres of coastal and aquatic habitat and over 5 miles of shoreline within the 581-acre Cuttyhunk Island. A description of the project area is provided in Section 2.2.1 of this Final Amendment. Cuttyhunk Island was exposed to oil during the Bouchard B-120 oil spill and therefore, represents a strong nexus in terms of spatial proximity to the affected area. Protecting land on Cuttyhunk Island will benefit the multiple resources and services affected by the spill that were identified as part of the NRDA process—these include shoreline and aquatic habitat, aquatic invertebrates, shellfish, fish, migratory birds (terns, waterfowl, waterbirds) and other wildlife, and recreational uses.

3.2.2. Environmental Consequences

3.2.2.1. Cuttyhunk Island Land Protection (Preferred Alternative)

The potential impacts to the physical, biological, and cultural and human environment from this type of restoration activity (i.e., land acquisition for habitat protection) were fully evaluated in the Final PRP/EA (Section 6.3.11 and Table 2), and are incorporated here by reference and summarized below.

Water Resources and Water Quality: The primary action associated with this project is land acquisition, which will have no direct impacts to water resources or water quality. It will however, prevent potential future direct and indirect impacts to water resources and water quality from development (e.g. increased run off, habitat loss, or use of herbicides/pesticides). Increased public access and recreational use of the property may result. Increased recreational use of the property could

result in increased foot traffic in wetlands and coastal shoreline areas. Increased usage could potentially increase trampling, thereby impacting ground vegetation. Vegetation loss could de-stabilize soils and decrease available habitat for wildlife. Increased human activities may also result in minor disturbance and avoidance impacts to wetland-dependent birds and other sensitive wildlife.

Through land acquisition and permanent conservation easement, the project will protect and benefit important natural resources associated with the Bay, its shoreline and coastal habitats benefitting fish, shellfish, birds, and state/federally protected species.

Rare, Threatened and Endangered Species and Critical Habitats: piping plover, a federally-threatened and state-listed endangered species, roseate tern (federally- and state-endangered) and common tern, least tern, northern harrier, and northern parula, which are state-listed endangered species, have been documented in the vicinity of the project area. This preferred project will benefit state and federally listed bird species by permanently protecting contiguous coastal habitats bordering Buzzards Bay waters.

Noise: A result of the project may be increased recreational activity on the property. Noise associated with increased human use may temporarily disturb and cause relocation of sensitive wildlife to other habitats with limited human intrusion.

Recreation: This project will provide substantial recreational benefits by increasing public access to the coast. An existing trail network will be enhanced and made available to the public.

Cultural and Historic Resources: This land habitat protection project is not expected to have any adverse effect on cultural or historic resources. The project will permanently protect approximately 300 acres of aquatic and coastal habitats, with public use restrictions set in place by MA DCR to protect resources associated with the island.

Environmental Justice: Environmental justice communities will not be negatively impacted through this project. This project will create benefits to area residents, including improving natural ecological conditions and increasing local recreational opportunities.

Cumulative Impacts: The actions in the preferred alternative, when considered in combination with past, present and reasonably foreseeable future actions, are not expected to have a cumulatively significant impact

on the environment. These actions will result in minor to moderate short and long-term cumulative benefits.

3.2.2.2. No Action (Non-preferred Alternative)

NEPA requires consideration of a No Action alternative as a basis for comparison of potential environmental consequences of the action alternatives(s) (40 C.F.R. §1502.14(d)). The No Action analysis presents the conditions that would result if the Trustees did not elect to undertake the preferred restoration alternative (land acquisition).

As discussed above, the No Action (natural recovery) alternative would not result in impacts to the physical, biological, and cultural/human use environment since no restoration action would be undertaken. However, the benefits from land acquisition and habitat protection in the vicinity of the oil spill would not be fully achieved and the public would receive less compensation for lost natural resources and services caused by the spill.

The No Action alternative is evaluated in the Final PRP/EA (Section 6.1) and in this Final Amendment in conformance with NEPA. The following is a summary of the environmental impacts and social consequences associated with the Trustees' No Action alternative:

Water Resources: With the No Action alternative, there would be no improvements to coastal habitats that could benefit the wetland and coastal upland plant communities or animal populations using coastal and aquatic habitats in the Buzzards Bay environment.

Water Quality: With the No Action alternative, no direct improvements to the quality of coastal waters such as increased water column clarity, decreased excessive nutrient levels, or increased dissolved oxygen levels, would result from protection of tidal wetlands, eelgrass beds, shellfish beds or other coastal habitats. This alternative would result in no beneficial impacts to water quality beyond what are currently experienced.

Rare, Threatened and Endangered Species and Their Critical Habitats: With the No Action alternative, there would be no improvements to coastal habitats that could benefit federally-listed plant or animal species. Some species may use the affected area for only one life stage or activity, such as stopover or staging area during migration, while others spend their entire life cycle in the area. Short to long-term and minor to moderate benefits to these species resulting from the preferred projects would not be realized under the No Action alternative.

Air Quality: No air quality impacts beyond what are currently experienced would result with the No Action alternative.

Noise: No noise impacts beyond what are currently experienced would result with the No Action alternative.

Environmental Justice: Designated Environmental Justice communities in the affected area would not benefit from implementation of Bouchard B-120 restoration projects providing ecological services.

Historic and Cultural Resources: No impacts to historic or other cultural resources beyond what are currently experienced would result from the No Action alternative.

Traffic: No changes in traffic would result from the No Action alternative.

Recreation: The No Action alternative would result in no improvements to recreation. The effects to recreation associated with implementing the preferred project, including minor to moderate short-term adverse impacts as well as minor to moderate long-term benefits to recreation would not be realized.

3.2.2.3. Tier 2 Alternatives

The potential direct, indirect, and cumulative impacts of the currently unimplemented Tier 2 alternatives on the physical, biological, and cultural and human environment were fully analyzed in Section 6.0 of the Final PRP/EA, and the document materials are incorporated herein by reference. Refer specifically to Sections 6.3.5 – 6.3.8 in the Final PRP/EA for the discussion of environmental impacts resulting from the Gray Gables Marsh, Red Brook Headwaters Fish Passage, and Agawam River Fish passage projects.

3.2.3. Conclusion

NOAA determined that the scope of the proposed restoration action and its potential impacts are similar to those described and evaluated for comparable projects (land acquisition) selected in the Final PRP/EA. Based on the review documented above, NOAA concluded that the proposed action and associated direct, indirect, and cumulative environmental impacts are fully addressed in the Final PRP/EA NEPA analysis. Moreover, there are no geographic or site-specific conditions, sensitivities, new information, or additional environmental impacts expected to occur within the project area beyond those covered in the Final PRP/EA that might warrant additional NEPA analysis or preparation of a new NEPA document (e.g., EA).

NOAA determined that, based on the programmatic analysis provided in the Final PRP/EA, and any site- or project-specific considerations, the findings indicate that the alternatives evaluated in this Final Amendment will not result in any significant impacts on the human environment in accordance with the guidelines for determining the significance of proposed federal actions (40 C.F.R. §1508.27). The Trustees received two comments during the public comment period, both in support of the preferred alternative (Appendix A). The Trustees determined that no substantive changes were needed to the Draft Amendment. Upon confirmation of the findings, NOAA has issued a Finding of No Significant Impact (FONSI) with this Final Amendment to the Final PRP/EA (Appendix C).

The proposed action of providing aquatic and shoreline injury restoration funds for the Cuttyhunk Island project can now advance in compliance with all applicable federal, state and local permits and approvals. All environmental compliance requirements will be addressed and satisfied prior to project implementation.

4. Other Environmental Compliance

Other federal and state statutes, regulations and policies that may apply are fully described in the Final PRP/EA (NOAA 2014).

5. Preparers

James Turek and John Fiorentino, U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Restoration Center

Molly Sperduto and Latice Fuentes, U.S. Department of the Interior, U.S. Fish and Wildlife Service

Gerard Martin, Massachusetts Executive Office of Energy and Environmental Affairs, Massachusetts Department of Environmental Protection

Mary Kay, Rhode Island Department of Environmental Management

6. References

Buzzards Bay National Estuary Program (BBNEP). 2012. http://www.buzzardsbay.org/bayshed.htm.

BBNEP. 2013. Buzzards Bay Comprehensive Conservation and Management Plan 2013 Update. Prepared by the Buzzards Bay National Estuary Program, Executive Office of Energy and Environmental Affairs, and Massachusetts Office of Coastal Zone Management. November 26. Available: http://www.buzzardsbay.org/newccmp-info.htm.

eBird. 2019. eBird: An online database of bird distribution and abundance [web application]. eBird, Ithaca, New York. Available: http://www.ebird.org. (Accessed: January 2019)

Howes, B.L. and D.D. Goehringer. 1996. Ecology of Buzzards Bay: An Estuarine Profile. National Biological Service Biological Report 31:141 pp.

Massachusetts Division of Environmental Protection (MADEP. 2013. Massachusetts 2012 Air Quality Report. Massachusetts Department of Environmental Protection. July 2013. Available: http://www.mass.gov/eea/docs/dep/air/priorities/12aqrpt.pdf.

Massachusetts Division of Fisheries and Wildlife (MassWildlife). 2015. Massachusetts State Wildlife Action Plan 2015. Westborough, Massachusetts.

Massachusetts Executive Office of Energy and Environmental Affairs (MA-EEA). 2010. Environmental Justice Populations. Available: http://www.mass.gov/anf/docs/itd/services/massgis/ej-2010-communitystatistics.pdf.

National Oceanic and Atmospheric Administration (NOAA), United States Fish and Wildlife Service, Massachusetts Executive Office of Energy and Environmental Affairs and Rhode Island Department of Environmental Management. 2014. Final Programmatic Restoration Plan and Environmental Assessment for the Buzzards Bay Bouchard Barge-120 (B-120) Oil Spill Shoreline, Aquatic, and Natural Resource Use Injuries Massachusetts and Rhode Island. September 2014.

Rhode Island Statewide Planning Program. 2015. Census Data Bulleting – Population Focus: Environmental Justice and Title VI Populations in Rhode Island. August 2015. Available: http://www.planning.ri.gov/documents/census/bulletin/August2015_Census_Bulletin1.pdf.

The Nature Conservancy. 2015. Buzzards Bay B-120 Shellfish Restoration Site Prioritization: Recommendations. September 2015. 40 pp.

United States Fish and Wildlife Service (USFWS), Massachusetts Executive Office of Energy and Environmental Affairs, Rhode Island Department of Environmental Management, and National Oceanic and Atmospheric Administration. 2019. Draft Restoration Plan for common loon (*Gavia immer*) and other birds impacted by the Bouchard Barge B 120 (B-120) oil spill, Buzzards Bay, Massachusetts and Rhode Island. August 2019.

United States Fish and Wildlife Service (USFWS), Massachusetts Executive Office of Energy and Environmental Affairs, Rhode Island Department of Environmental Management, and National Oceanic and Atmospheric Administration. 2020. Final Restoration Plan for common loon (*Gavia immer*) and other birds impacted by the Bouchard Barge B 120 (B-120) oil spill, Buzzards Bay, Massachusetts and Rhode Island. June 2020.

7. Appendices

7.1. Appendix A: Public Comments

June 9, 2020

NOAA Restoration Center
Attention: James Turek
28 Tarzwell Drive
Narragansett, Rhode Island 02882

Re: Draft Amendment to B-120 Buzzards Bay Final PRP/EA Comment

Dear Mr. Turek:

The Buzzards Bay Coalition (BBC) writes to express our support of the *Draft Amendment to the 2014 Final Programmatic Restoration Plan and Environmental Assessment for the Buzzards Bay Bouchard Barge 120 (B-120) Oil Spill* which will allocate $300,000 to $400,000 to the Cuttyhunk Land Acquisition and Habitat Protection Project that is being advanced by BBC and its partners.

We continue to believe that the Cuttyhunk Project is the most valuable coastal habitat protection project available in the Buzzards Bay region and best serves the objectives of the B-120 Trustee Council. The subject funds, together with funds recently allocated by the *Final Restoration Plan for Common Loon and other Birds Impacted by the Bouchard Barge 120 Oil Spill – June 3, 2020*, will enable BBC and its partners to complete this very important project which will provide protection of natural resources similar to those impacted by the 2003 oil spill.

The Coalition is a nonprofit membership organization dedicated to the restoration, protection and sustainable use and enjoyment of Buzzards Bay and its watershed. Founded in 1987 and supported by more than 10,000 individuals, families and businesses, we work to improve the health of the Bay for all through education, conservation, research and advocacy. As the Massachusetts DEP-Designated Volunteer Coordinator for Oil Spills in Buzzards Bay, our organization was heavily involved in the response and cleanup of the B-120 Spill. Since the spill, we have and continue to work closely with the agencies of the Trustee Council to successfully implement land protection and restoration projects in our watershed.

As you know, the Buzzards Bay Coalition has agreements in place to acquire and protect over 300 acres of valuable, high quality and diverse coastal habitats on the island - including an extraordinary 5 miles of undeveloped shoreline. This is a once-in-a-lifetime opportunity to forever protect one of the Northeast's most extraordinary coastal landscapes characterized by largely pristine salt ponds, saltmarsh, marine cliffs, rocky intertidal shoreline, barrier beaches and coastal

shrubland and forest habitat, surrounded by shallow coastal water with eelgrass beds, tidal flats and rocky reefs. BBC has to date raised nearly the entirety of what is needed to complete this $7 million project and the subject funding from the B-120 Oil Spill Trustee Council will close the remaining gap and facilitate the completion of the project this summer.

Thank you for the opportunity to comment. We appreciate that the Trustee Council has recognized the importance of the Cuttyhunk project in terms of the scale (300+ acres and 5 miles of shoreline), ecological significance, financial leverage, community support and the unique opportunity in time that it represents. We also appreciate the hard work of the Trustee Council in determining a means of providing this much needed support to the project in the context of various options around the Bay.

We look forward to seeing this Amendment finalized and to working with you complete this important project.

Thank you.

Sincerely,

Mark Rasmussen
President

cc: Molly Sperduto, U.S. Fish and Wildlife Service
Martin Suuberg, Commissioner, MA Department of Environmental Protection
Millie Garcia-Serrano, MA Department of Environmental Protection

U.S. Senator Elizabeth Warren
U.S. Senator Edward Markey
U.S. Congressman William R. Keating

State Senator Julian Cyr
State Senator Michael Rodrigues
State Senator Mark C. Montigny
State Representative Dylan Fernandes

Gosnold Board of Selectmen

Steve Quinn **<stevequinn1704@gmail.com>**

Tue, Jun 9, 6:11 PM (13 hours ago)

to me

Dear Mr Turek,

I am writing in support of the proposed protections for the Buzzards Bay region seashore and connected ecosystems. The unique and precious natural areas need the fullest protection we can provide, and hopefully we can all avoid another disaster like that oil spill.

Thanks for tote opportunity to comment.

Sincerely,

Steve Quinn

7.2. Appendix B: Trustee Agency Approvals

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Approval of the Final Amendment to the
2014 Programmatic Restoration Plan and Environmental Assessment for the
Buzzards Bay Bouchard Barge-120 (B-120) Oil Spill
Shoreline, Aquatic and Natural Resource Use Injuries
Massachusetts and Rhode Island

In accordance with interagency Trustee protocol regarding documentation for Natural Resource Damage Assessment and Restoration projects, the National Oceanic and Atmospheric Administration is providing its approval of the Final Amendment to the 2014 Programmatic Restoration Plan and Environmental Assessment for the Buzzards Bay Bouchard Barge-120 (B-120) Oil Spill Shoreline, Aquatic and Natural Resource Use Injuries, Massachusetts and Rhode Island (Final Amendment). The Final Amendment takes into account comments received by the Trustees during the Draft Amendment public comment period.

The Authorized Official for the Bouchard B-120 Oil Spill is the designated Trustee representative.

By the signature below, the Final Amendment is hereby approved.

Approved by:

James G. Turek — September 25, 2020

James G. Turek
Natural Resource Trustee Representative for NOAA

Date:

U.S. Department of the Interior
U.S. Fish and Wildlife Service
Approval of the Final Amendment to the
2014 Programmatic Restoration Plan and Environmental Assessment for the
Buzzards Bay Bouchard Barge-120 (B-120) Oil Spill
Shoreline, Aquatic and Natural Resource Use Injuries
Massachusetts and Rhode Island

In accordance with U.S. Department of the Interior (Department) policy regarding documentation for Natural Resource Damage Assessment and Restoration projects (521 DM 3), the Authorized Official for the Department must demonstrate approval of draft and final restoration plans and their associated National Environmental Policy Act documentation, with concurrence from the Department's Office of the Solicitor.

The Authorized Official for the Bouchard B-120 Oil Spill is the Regional Director for the U.S. Fish and Wildlife Service's North Atlantic-Appalachian Region.

By the signatures below, the Final Amendment to the 2014 Programmatic Restoration Plan and Environmental Assessment for the Buzzards Bay Bouchard Barge-120 (B-120) Oil Spill Shoreline, Aquatic and Natural Resource Use Injuries, Massachusetts and Rhode Island (Final Amendment) is hereby approved.

Approved by:

WENDI WEBER Digitally signed by WENDI WEBER
Date: 2020.10.20 12:36:02 -04'00'

_____ _____

Wendi Weber
Regional Director
North Atlantic Appalachian Region
U.S. Fish and Wildlife Service

Date:

Concurred:

MARK BARASH Digitally signed by MARK BARASH
Date: 2020.09.15 15:51:49 -04'00'

_____ _____

Mark Barash
Senior Attorney
Northeast Region
Office of the Solicitor

Date:

Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
Approval of the Final Amendment to the
2014 Programmatic Restoration Plan and Environmental Assessment for the
Buzzards Bay Bouchard Barge-120 (B-120) Oil Spill
Shoreline, Aquatic and Natural Resource Use Injuries
Massachusetts and Rhode Island

In accordance with Trustee protocol regarding documentation for Natural Resource Damage Assessment and Restoration projects, the Massachusetts Executive Office of Energy and Environmental Affairs is providing its approval of the Final Amendment to the 2014 Programmatic Restoration Plan and Environmental Assessment for the Buzzards Bay Bouchard Barge-120 (B-120) Oil Spill Shoreline, Aquatic and Natural Resource Use Injuries, Massachusetts and Rhode Island (Final Amendment).

Approved by:

K. Theoharides — 10/2/20

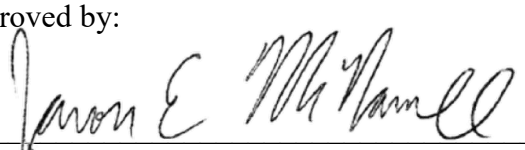
Secretary Kathleen A. Theoharides
Natural Resource Trustee for the Commonwealth of Massachusetts

Date:

State of Rhode Island
Rhode Island Department of Environmental Management
Approval of the Final Amendment to the
2014 Programmatic Restoration Plan and Environmental Assessment for the
Buzzards Bay Bouchard Barge-120 (B-120) Oil Spill
Shoreline, Aquatic and Natural Resource Use Injuries
Massachusetts and Rhode Island

In accordance with Trustee protocol regarding documentation for Natural Resource Damage Assessment and Restoration projects, the Rhode Island Department of Environmental Management is providing its approval of the Final Amendment to the 2014 Programmatic Restoration Plan and Environmental Assessment for the Buzzards Bay Bouchard Barge-120 (B-120) Oil Spill Shoreline, Aquatic and Natural Resource Use Injuries, Massachusetts and Rhode Island (Final Amendment).

Approved by:



Jason McNamee, Ph.D.
Deputy Director, Bureau of Natural Resources
Rhode Island Department of Environmental Management

9-15-20
Date:

7.3. Appendix C: Finding of No Significant Impact (FONSI)

FINDING OF NO SIGNIFICANT IMPACT
Final Amendment to the
2014 Final Programmatic Restoration Plan and Environmental Assessment for the Buzzards Bay Bouchard Barge-120 (B-120) Oil Spill, Massachusetts and Rhode Island

Background:

On April 27, 2003, the Bouchard Barge-120 (B-120), owned and operated by the Bouchard Transportation Company, Inc., struck a rocky shoal soon after entering the western approach to Buzzards Bay. The grounding ruptured a 12-foot hole in the hull of the barge, releasing approximately 98,000 gallons of No. 6 fuel oil into the Bay. Oil was spread and driven ashore by winds and currents and primarily affected the north, northwest, and northeast portions of the Bay including shoreline in the towns of Westport, Dartmouth, New Bedford, Fairhaven, Mattapoisett, Marion, Wareham, Gosnold, Bourne, and Falmouth, Massachusetts. Oil continued to be transported throughout Buzzards Bay and nearby coastal waters. More than 98 miles of shoreline were affected, including shoreline and coastal waters in both Massachusetts and Rhode Island. Oiling was unevenly distributed and was particularly concentrated at exposed shoreline headlands and peninsulas in discrete, localized areas, but was also reported at the Elizabeth Islands along the southern portion of Buzzards Bay and the Rhode Island shoreline.

Natural resources injured by the oil spill included nearly 100 miles of coastal shoreline including tidal marshes and intertidal flats; aquatic resources including water column and benthic sub-tidal habitats and benthic communities; and shellfish, fish, birds, and other aquatic biota. The spill also caused lost public access to beaches and other coastal areas; lost recreational boating; and lost recreational shellfishing due to regulated closures imposed by the Commonwealth of Massachusetts due to potential exposure and human health risk.

The Oil Pollution Act (OPA) provides for the designation of federal, state, and tribal trustees for natural resources affected by oil spills. NOAA, pursuant to authority delegated by the Secretary of Commerce, is a designated federal trustee for certain natural resources including living marine resources and their habitats (e.g., marine, estuarine and diadromous fishes, other aquatic biota, and certain marine mammals). The Secretary of the Department of the Interior (DOI) is the designated federal trustee for certain natural resources including, but not limited to, migratory birds, certain marine mammals, anadromous fish, federally endangered and threatened species, and their respective habitats, and federal lands managed by DOI. The Secretary of the Interior designated the Northeast Regional Director, Region 5 of the USFWS to act on behalf of the Secretary, as the Authorized Official for the B-120 spill.

The OPA also provides that liability for natural resource damages to states is for those resources belonging to, managed by, controlled by, or appertaining to the state or political subdivision thereof. The governor of each state designates the state agency or agencies that will act as the natural resource trustee for each particular affected state. For the B-120 spill, the Governor of Massachusetts designated the Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs (MA-EEA) as the Trustee for the Commonwealth. The MA-EEA is supported by the Massachusetts Department of Environmental Protection (MassDEP) which

administers the state's Natural Resources Damages (NRD) Program. The Governor of Rhode Island designated the Rhode Island Department of Environmental Management (RIDEM) as the state's natural resource Trustee.

The Bouchard B-120 Trustees worked collaboratively with the Responsible Parties to complete the natural resource injury assessment and negotiate a settlement for natural resource damage claims. A settlement to compensate for a portion of the damages, including aquatic and shoreline resource injuries, was memorialized in a May 17, 2011 Consent Decree. The Trustees began the restoration planning process in September 2011 by holding public information meetings, soliciting restoration project ideas, and preparing a Draft Restoration Plan and Environmental Assessment (RP/EA) that identified and evaluated shoreline and aquatic projects, in addition to other categories of natural resource restoration alternatives (coastal access and recreational boating projects, and projects that addressed lost recreational shellfishing and shellfish restoration). In 2014, the Bouchard B-120 Trustees published the Final Programmatic RP/EA (PRP/EA).

To date, the Trustees have implemented nearly all of the restoration projects addressed in the Final PRP/EA. However, one of the shoreline and aquatic restoration projects (Round Hill salt marsh restoration) was unable to be implemented, and thus, the Trustees propose to redirect the remaining, unused aquatic and shoreline resource funds to achieve additional restoration for these natural resource types.

Restoration Project:

Cuttyhunk Island is a 581-acre island located off the coast of Massachusetts in Buzzards Bay, and more than fifty percent of the shoreline on the island was oiled during the spill. The island is comprised of a variety of coastal habitats in largely pristine condition, including ponds, freshwater wetlands, salt marshes, marine cliffs, barrier beaches, coastal shrub lands, forests and grasslands. The shallow water coastline is characterized by substantial eelgrass beds, tidal flats, and rocky reefs. Because of its offshore location and limited development, water and sediment quality are high and numerous species of birds, shellfish and finfish are found. Numerous recreational fish species including striped bass, summer flounder, bluefish, tautog, and black sea bass are commonly found in the waters in the vicinity of Cuttyhunk Island. Hard clam, bay scallop and other bivalves are also abundant in the Cuttyhunk coastal waters, and are highly important to recreational shellfisheries. The island has also been identified in the Massachusetts State Wildlife Action Plan as a high priority area for conservation known as a "Key Site," which is a location designated with the highest and best concentrations of rare species and other elements of biodiversity. The island is largely undeveloped and privately owned, but residential development has begun to expand and spread from the village center. The majority of the land has been controlled by three separate property owner groups, and the lands have been vulnerable to development.

The B-120 Trustees have identified the Cuttyhunk Island Land Habitat Protection project as a preferred alternative in the Amendment to the Final PRP/EA (Amendment). The Cuttyhunk Island project is to acquire (through fee title and conservation easement) and permanently protect nearly 300 acres of coastal and aquatic habitats and more than 5 miles of island shoreline that is currently owned by several private property groups. Cuttyhunk Island is one of the Elizabeth

Islands in Gosnold, MA, an area that was directly impacted by the spill. Habitat protection offers a practical, effective means of preventing future losses of shoreline and aquatic resources. Habitat protection will also prevent potential impacts to nesting birds, shellfish and fish species that would be directly affected by habitat loss and degradation associated with anticipated future development of Cuttyhunk Island. Activities such as hiking will be expanded, and actions will be taken to adequately protect existing shoreline and aquatic habitats with signage and other project management measures.

Public Involvement:

Throughout the National Environmental Policy Act (NEPA) and OPA process, the B-120 Trustees have made information available to the public. The Trustees sought the public's input on a Draft Amendment to the Final PRP/EA. The public review period for the draft occurred between June 3 and June 17, 2020, including formal notice to the public in local newspapers and on the NOAA Damage, Assessment, Remediation and Restoration Program (DARRP) website. Two public comments received by the Trustees were both supportive of the proposed land protection project and are included in an appendix in the Final Amendment.

Alternatives Considered Under OPA:

The B-120 Trustees considered the following alternatives in developing the Amendment to the Final PRP/EA:

- Cuttyhunk Island Land Habitat Protection (preferred) alternative;
- Gray Gables Marsh Culvert Replacement and Tidal Hydrology Restoration alternative;
- Red Brook Headwaters Fish Passage Restoration Project alternative;
- Agawam River Fish Passage and Riparian Wetland Restoration alternative; and
- "No Action", natural recovery alternative.

Due to the extent of the injury and the affected aquatic and shoreline resources in Buzzards Bay, along with technical feasibility and the costs of other restoration alternatives, the Trustees determined that the Cuttyhunk Island protection project will best address and benefit aquatic and shoreline habitats and fish and wildlife species similar to those that were adversely affected by the oil spill. The Trustees proposed Cuttyhunk Island protection project will benefit habitats and species that were injured by the oil spill. In compliance with both OPA regulations and NEPA, the selection of the preferred alternative was finalized following and based on public review and comment in June 2020.

Environmental Consequences:

NEPA requires an analysis of the effects of government actions on the quality of the human environment. The Federal Trustees have determined it is appropriate to combine the RP and NEPA impacts analyses into one document that evaluates alternatives for restoration under both OPA and NEPA.

NOAA's *Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities – Companion Manual for NOAA Administrative Order 216-6A* (Companion Manual, January 13, 2017) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality (CEQ) regulations at 40 C.F.R. §1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." The significance of this action is analyzed based on the Companion Manual criteria and the CEQ's context and intensity criteria. The criteria listed below are relevant to the determination of a Finding of No Significant Impact (FONSI), and have been considered individually, as well as in combination with the others, and include the following:

(1) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or Essential Fish Habitat (EFH), as defined under the Magnuson-Stevens Act, and identified in one or more Federal Management Plans (FMPs)?

Response: No. The Trustees do not expect the proposed action to cause damage to ocean or coastal habitats or EFH as defined under the Magnuson-Stevens Act. The preferred alternative is to protect coastal habitats including EFH from potential future development. No construction activities or other disturbances would be associated with this habitat protection project. As described in the Final Amendment to the Final PRP/EA, the Trustees anticipate that the preferred alternative will result in long-term, beneficial impacts to coastal habitats and species by sustaining coastal ponds, salt marsh, eelgrass beds, shallow intertidal and subtidal waters, and other natural resource habitats on Cuttyhunk Island.

(2) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator prey relationships, etc.)?

Response: No. The proposed action is not expected to have any substantial negative impacts on biodiversity, productivity or ecological services at the local level. The beneficial impacts of the habitat protection project may be substantial at a local but not regional scale, although the project is expected to benefit species such as marine and estuarine fishes, shellfish, lobster and crab species, and a variety of coastal wildlife species. Implementation of the project would result in moderate long-term beneficial impacts to plants and wildlife, protecting undisturbed coastal habitats to supporting sensitive ecological communities and resulting in sustaining habitat complexity, diversity, productivity, and resiliency.

(3) Can the proposed action reasonably be expected to have a substantial adverse impact on public health and safety?

Response: No. The proposed action is not expected to have any negative impacts on public health or safety. The implementation of the proposed project would not present any unique physical hazards to the public. The habitat protection project is expected to provide public access for safe and enjoyable passive recreational use to lands and waters associated with this 300-acre project site.

(4) 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 proposed action is not expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species. Overall, the selected project is expected to benefit these species by preventing potential future land development and/or uses which could adversely affect island coastal habitats for RTE species.

(5) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: No. The Trustees do not expect there to be any significant adverse social or economic impacts interrelated with the natural or physical environmental effects of the proposed action. It is expected that the selected project will provide positive social interactions with the natural environment through increased public access and passive recreational opportunities such as fishing, shellfishing, wildlife viewing, nature photography, and education through ecological research.

(6) Are the effects on the quality of the human environment likely to be highly controversial?

Response: No. The effects on the quality of the human environment from the proposed action are not controversial. The selected project is expected to protect existing coastal habitats and have long-term, beneficial impacts to the human environment through increased public access to hiking, fishing, shellfishing, and observing natural resources and viewscapes.

(7) 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, EFH, or ecologically critical areas?

Response: No. The project area and associated environment includes intertidal saltmarsh and mudflat habitats, subtidal waters, benthic habitats, eelgrass beds, and coastal embayment. While these habitat areas are associated with the largely undeveloped island which includes unique characteristics, the proposed action is expected to be beneficial to sustaining the ecological characteristics and conditions of the island. No unique or rare habitat, particularly EFH, would be destroyed due to the proposed project. EFH for multiple species is expected to benefit from the project through protection from potential future land development and/or uses. The project will not adversely affect any National Historic Places or culturally or historically significant resources.

(8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: No. The proposed action is land and habitat protection, and in fact, public access will be afforded by the project for beneficial use of the human environment. Public access will be managed to avoid adverse ecological impacts, but these management measures (e.g.,

walking trails with directional signage) will not cause any unique or unknown risk to the human environment or public uses.

(9) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: No. The Trustees evaluated the proposed action in conjunction with other known past, proposed or foreseeable closely related land protection and conservation projects, and determined that there are no anticipated significant cumulative impacts. Other land protection projects have occurred in and near Buzzards Bay in the recent past, including the Nasketucket Bay Land Protection project selected by the Trustees in the 2014 Final PRP/EA, but there is no potential for significant adverse cumulative impacts to occur from these land protection projects. Rather, these projects provide greater beneficial impacts in providing important access by the public, including Environmental Justice communities in the Buzzards Bay area.

(10) 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 proposed action will not adversely affect designated historic districts, features or objects. No significant scientific, cultural or historic resources will be affected by the land protection.

(11) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: No. No significant disturbances, including introduction of non-native plants or animals, would be associated with the proposed action. While public access would be afforded by the project, the island has been used for decades by several private groups. The preferred project will prevent potential land development, and any public access will be carefully managed to minimize potential foot travel and disturbances to sensitive wildlife species. Additionally, the preferred project may include control and management of non-native plants that may already be present on the island, as a measure to minimize potential adverse impacts to fish and wildlife.

(12) 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 proposed action is not expected to set a precedent for future actions that would significantly affect the human environment or represent a decision in principle about a future consideration. The proposed land protection would, in fact, allow public access to this remote island, thus providing beneficial outcomes for public use.

(13) 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. The proposed action would not result in any violation of federal, state or local laws designed to protect the environment. Rather, the project is to protect island land and coastal habitats which are a requirement of these environmental laws and regulations in protecting natural resources and the environment.

(14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effecton the target species or non-target species?

Response: No. The Trustees evaluated the proposed action and have determined that there will be no significant cumulative impacts to the environment including specific target or non-target species. Rather, the protection of the coastal habitats on the island is expected to provide beneficial impacts on a variety of fish and wildlife that use this unique island ecosystem.

DETERMINATION

Based upon an environmental review and evaluation of the "Final Amendment to the 2014 Final Programmatic Restoration Plan and Environmental Assessment for The Buzzards Bay Bouchard Barge-120 (B-120) Oil Spill, Shoreline, Aquatic, and Natural Resource Use Injuries Massachusetts and Rhode Island," as summarized above, it is determined that implementation of the Final Amendment 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). Accordingly, an environmental impact statement is not required for this action.

Christopher Doley

Digitally signed by
DOLEY.CHRISTOPHER.D.1365844042
Date: 2020.09.25 08:15:39 -04'00'

Christopher Doley
Chief, Restoration Center
National Marine Fisheries Service
As designated by the Director of the Office of Habitat Conservation

Date

PENN.TONY.MARTIN.1365863640

Digitally signed by
PENN.TONY.MARTIN.1365863640
Date: 2020.09.21 08:32:11 -04'00'

Tony Penn
Chief, Assessment and Restoration Division
National Ocean Service
As designated by the Director of the Office of Response and Restoration

Date