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Regulatory Division, Policy Analysis Branch
U.S. Army Corps of Engineers
2000 Fort Point Road
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Via Email: SWG201900067@usace.army.mil

Re: Comments Regarding the Draft Environmental Impact Statement for the Port of Corpus Christi Authority's Channel Deepening Project, Nueces and Aransas Counties, Texas (Department of the Army Permit No. SWG-2019-00067)

Greetings:

These comments are submitted on behalf of Ingleside on the Bay Coastal Watch Association ("IOBCWA") and Port Aransas Conservancy ("PAC"). IOBCWA is a 501(c)(3) non-profit organization whose purpose is to promote the health, safety, and quality of life for residents of the City of Ingleside on the Bay through research, education, communication, and action. PAC is a 501(c)(4) corporation whose purpose is to foster a balance of conservation and economically sustainable uses for Port Aransas and its surrounding neighborhood and waterways. Members of IOBCWA and PAC live and recreate in San Patricio, Nueces, and Aransas Counties. Members of IOBCWA and PAC will be impacted by the proposed Project.

I. The public comment deadline should be extended an additional 45 days.

IOBCWA and PAC appreciate the opportunity to offer their views and, especially, appreciate the Corps' 15-day extension of the comment window, during which time the Corps provided the public with the additional documents the Port previously sought to withhold that were relied upon and referenced in the DEIS.

IOBCWA and PAC re-urge their request to extend the comment deadline an additional 45 days to allow time to review the voluminous materials and to allow for

additional public meetings to be held in San Patricio, Nueces, and Aransas Counties. The DEIS itself, including appendices, is more than 2,500 pages, and the additional documents total no less than 3,300 pages, many of which have only been available for 15 days.

II. The 1978 CEQ Regulations control the Corps' NEPA analysis.

According to the DEIS, the Port submitted its application for deepening the Corpus Christi Ship Channel ("CCSC") on January 3, 2019. The Corps provided comments on May 23, 2019, and the Port revised its application on June 4, 2019. The Corps published a Notice of Intent to prepare a Draft Environmental Impact Statement (EIS) in the Federal Register on April 7, 2020. The scoping process included several public scoping meetings that took place in June 2020, with the comment deadline on July 3, 2020.

On July 16, 2020, the Council on Environmental Quality ("CEQ") published a final rule in the Federal Register, overhauling its regulations implementing NEPA.[1] These "2020 CEQ Revisions" were effective as of September 14, 2020. On April 20, 2022, the Council noticed a new revision to its NEPA implementing regulations.[2] This revision became effective May 20, 2022, and is the currently-effective umbrella NEPA law for all federal agencies. This revision largely returned the regulations to their pre-September 2020 condition, but the latest revision retains some of the organizational changes of the September 2020 revisions; e.g., some text has been moved among the sections. Prior to the July 2020 overhaul, the last time the CEQ regulations were comprehensively revised was in 1978. There had been small amendments between 1978 and 2020. These comments refer to the regulations that existed prior to the 2020 CEQ Revisions as the "1978 CEQ Regulations."

Because they were in effect when the Corps' NEPA review of the application began, including, importantly, the scoping process, those 1978 CEQ Regulations apply here. Further, though the 2020 CEQ Revisions instructed agencies, as necessary, to develop or revise proposed agency NEPA procedures within one year from the September 2020 effective date, that instruction was short-lived, when the current administration indicated

[1] Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304 (July 16, 2020).

[2] National Environmental Policy Act Implementing Regulations Revisions, 87 Fed. Reg. 23,453 (Apr. 20, 2022).

its intent to revise them again.[3] The Corps did not propose, let alone adopt, any revised NEPA procedures in response to the now-superseded 2020 CEQ Revisions.

III. The Project Purpose is erroneously based on improper and unsupported assumptions.

The DEIS improperly relies on 33 C.F.R. § 320.4(q) to form the basis for its conclusion that the purpose and need, as stated by the overall project purpose, is considered met. As the DEIS acknowledges, this provision in the Corps' regulations asserts that **"**when *private enterprise* makes application for a permit, it will generally be assumed that appropriate economic evaluations have been completed, the proposal is economically viable, and is needed in the market place."[4] However, the Port is not a private enterprise; the Port is a navigation district, and all navigation districts are political subdivisions of the State of Texas. Therefore, these assumptions were misplaced.

The "project purpose" is explained by or justified by an assumption that there will be 4,500,000 barrels/day of crude oil exported each day at the Port. This projection may be realistic, but it also may not be. Though it is repeated dozens of times in the DEIS and its appendices, it is never supported by any analysis. The purported need to move that many barrels/day drives, among other costs, SPM costs, and, in turn, affects the considerations of at least Alternatives 2 and 3.

IV. The Port's Preferred Alternative (Alternative 1) is also based on unsupported assumptions.

The same criticism, i.e., DEIS's failure to justify basic assumptions, is true for the estimated cubic yards of dredge spoils. Alternative 1 is repeatedly estimated to produce 46.3 million cubic yards of dredge material. However, the sources of that material are nowhere identified,[5] and there is no even rough calculation presented of the contribution of each source to the 46.3 million cubic yards. The volume of dredge spoils and, likely, the sources of dredge spoils attributable to Alternative 1 drive almost all the environmental impacts of that alternative.

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[3] Deadline for Agencies To Propose Updates to National Environmental Policy Act Procedures, 86 Fed. Reg. 34,154 (June 29, 2021).

[4] 33 C.F.R. § 320.4(q) (emphasis added).

[5] The Port's application, Eng. Form 4345 (in DEIS Appendix A), indicates 17.1 million cubic yards will be clay and 29.2 million cubic yards will be sand. Even that summary breakdown lacks any further support.

The public—and, one would think, Corps' decisionmakers—cannot meaningfully analyze the alternatives or on the impacts of the alternatives without information about why there is thought to be the oft-repeated 4.5 million barrel/day "need" for the project and why 46.3 million cubic yards of spoil is thought to be a reasonable estimate. If a draft statement is so inadequate as to preclude meaningful analysis, the regulatory directive is that agency shall prepare and publish a supplemental draft of the appropriate portions of the DEIS.[6] That is what should happen, here.

V. The DEIS fails to properly define the Port's Preferred Alternative (Alternative 1).

The DEIS at Table 2.2 and Figure 2.1 and related text describes Alternative 1, the preferred alternative. This description excludes the Axis Midstream/Midway to Harbor Island Storage Terminal/Pipeline project (#38) and the Port of Corpus Christi/Harbor Island Terminal (#41). (Parenthetical numbers are keyed to DEIS Table 5-1.) The two are projects the Corps anticipates will be constructed within the next 5 years. The DEIS acknowledges berths at each terminal would be capable of fully loading very large cargo carriers, the carriers for which Alternative 1, as presently described, is being undertaken to serve. Axis and Port terminals are acknowledged to be in the permit evaluation process, so they are "proposed" and not merely "contemplated," as those terms have been used by the courts to analyze when a single NEPA document is required.[7]

These three projects, i.e., the channel and extension dredging and the two Harbor Island terminals, and the pipelines and upstream storage tanks that serve the terminals (at least, those pipelines and storage tanks within the geographic scope defined by this DEIS) are "connected actions." The terminals and their supporting infrastructure are actions that "will not proceed unless other actions [i.e., the channel and extension dredging] are taken previously or simultaneously or are interdependent parts of a larger action and depend on the larger action for their justification."[8] As noted, *infra*, the channel and extension dredging action is connected to the action of developing the two terminals, in that the putative benefits of the dredging project depend on the fact of the terminal projects. 40

[6] 40 C.F.R. § 1502.9(b).

[7] *Fritiofson v. Alexander*, 772 F.2d 1225, 1242 (5th Cir. 1985).

[8] 40 C.F.R. § 1508.25(a)(1).

C.F.R. § 1501.9(e) provides that connected actions should be discussed in the same impact document, in this case, the same EIS.

The DEIS indicates (p. xiii) these terminal projects are among those for which impacts were only "described in general and qualitative terms" in the cumulative impacts analysis of the DEIS. That is generous, actually, insofar as the Port's Harbor Island terminal is concerned; this project is hardly described, at all. And, it is a large project, one for which air emissions on Harbor Island, alone and not including a co-located power generation plant, are permitted to allow 91.7 tons/year of CO_2 equivalents. In any event, the Corps' position (DEIS, p. 2-5) is that "preliminary review of these applications indicated that an EIS is not required and, therefore, no NEPA documentation is available." Thus, very little information about the impacts of the two Harbor Island terminals is cumulated with those of the other the other 40 past, present, and reasonably foreseeable projects in the study area.

The Corps' EIS does not invoke even best professional judgment to explore the impacts of these two terminals under the assumptions of Alternative 1. For Alternative 1, the Corps leans heavily on the two Harbor Island terminals, touting the forecast reduction of lightering: "Under Alternative 1, the same VLCCs loaded under the No-Action Alternative would still be loaded, except lightering events would be reduced as the deepened channel would allow full loading at the Harbor Island terminals. Therefore, the [air quality] impact assessment focused on the change in lightering activity."[9]

So, when extolling the benefits of Alternative 1, the Harbor Island terminals are assumed up and running for VLCCs. However, the additional dredge disposal burden, for example, imposed by creating the four (4) VLCC slips, dredging new areas of the north side of the ship channel at Harbor Island to allow access by VLCCs to the slips, and dredging all the Redfish Bay areas that must be dredged to get the oil by pipeline from the mainland to the terminals go unexplored. In the terms of the regulatory language cited, earlier, the two Harbor Island terminals at VLCC capacity are connected actions to the channel and extension dredging action for purposes of extolling the air quality benefits of Alternative 1, but the terminal projects are treated as not connected actions to the Alternative 1 action for any other purposes.

[9] DEIS, p. 4-35.

This is indefensibly unbalanced. It is incumbent on the Corps, as directed or at least encouraged by 40 C.F.R. § 1501.9(e), to consider the two terminal projects and the channel and extension dredging projects in one EIS.

VI. The DEIS fails to include an adequate 404(b) evaluation.

The DEIS fails to include a thorough Clean Water Act 404(b) evaluation. Although Appendix N purports to include such an evaluation, this evaluation is woefully deficient. It fails, for instance, to demonstrate, or even discuss, that the proposed action is the least environmentally damaging practicable alternative ("LEDPA").

In reviewing an application under section 404 the Clean Water Act, the Corps may only approve the "least environmentally damaging practicable alternative" that fulfills the project's "overall project purposes."[10] If the basic project purpose does not require access to wetlands or other special aquatic sites, the Clean Water Act's implementing regulations "set[] forth rebuttable presumptions that 1) alternatives … that do not involve special aquatic sites are available, and 2) alternatives that do not involve special aquatic sites have less adverse impact on the aquatic environment."[11] The applicant bears the burden of "'clearly demonstrat[ing]'" that these presumptions have been rebutted.[12]

The Corps' own regulations provide that the Corps must consider "the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work."[13] Under the 404(b)(1) guidelines, an alternative is "practicable" if it is "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes."[14] As explained in a guidance manual prepared by the Corps' Fort Worth District, "It is imperative the applicant describes why any alternative is eliminated from further analysis so that the Corps can independently review and verify the information and each step in the applicant's alternative analysis."

[10] *Butte Envtl. Council v. U.S. Army Corps of Engineers*, 620 F.3d 936, 946–47 (9th Cir. 2010) (interpreting 40 C.F.R. § 230.10(a)).

[11] Joint EPA and Corps guidance interpreting 40 C.F.R. § 230.10(a)(3).

[12] *Hillsdale Environmental Loss Prevention v. U.S. Army Corps of Engineers*, 702 F.3d 1156, 1166-68 (10th Cir. 2012) (quoting 40 C.F.R. § 230.10(a)(3)).

[13] 33 C.F.R. § 320.4(a)(2)(ii).

[14] 40 C.F.R. § 230.10(a)(2).

The presumption that a less damaging alternative is available can be rebutted only with particularized facts. That is, there must be specific information about the extent of the impacts expected from the proposed alternatives.[15]

The Corps may also consider specific information relating to cost concerns when evaluating an alternative's "practicability."[16] As with availability, the applicant must provide specific information, and the Corps must independently evaluate it.[17]

Here, the proposed project "does not require access or proximity to, or siting within, a special aquatic site in order to fulfill its basic purpose."[18] Thus, there is a rebuttable presumption that alternatives that do not involve special aquatic sites are available and alternatives that do not involve special aquatic sites have less adverse impact on the aquatic environment.

The DEIS acknowledges that special aquatic sites will be directly impacted by the disposal or placement of the dredged material.[19] Yet, the DEIS fails to fully assess the potential impacts of the dredged material disposal on special aquatic sites. There is no specific information regarding the suitability of the dredged material for the intended purposes—such as whether the material is free from contaminants. Nor is there comprehensive information regarding the sites that are expected to be impacted—such as impacts on nearby seagrass beds. And there is no specific information provided so as to rebut the presumption that alternatives that do not involve special aquatic sites are available.

VII. Compensatory mitigation is required and necessary to maintain wetland function.

Under Section 401 of the Clean Water Act, USACE may not issue a dredge and fill permit unless the certifying authority issues a Section 401 water quality certification ("401 Certification") verifying compliance with existing water quality requirements. Here, the Corps will request the 401 Certification from the TCEQ for the proposed project.

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[15] *See, e.g., Utahns for Better Transp. v. U.S. Dep't of Transp.*, 305 F.3d 1152, 1187 n.13 (10th Cir. 2002), *as modified on reh'g,* 319 F.3d 1207 (10th Cir. 2003).

[16] 40 C.F.R. § 230.10(a)(2).

[17] *Hillsdale Envtl. Loss Prevention*, 702 F.3d at 1170.

[18] DEIS, p. 1-10.

[19] DEIS, App. N, p. 2-9.

Pursuant to TCEQ's rules, all certifications shall require appropriate and practicable compensatory mitigation.[20] If the impacts are so significant that the proposed discharge will violate state water quality standards ("WQS") or fail to achieve no overall net loss of the existing wetland resource base and wetland function, then certification may be denied even if a practicable alternative is not available.[21] These provisions suggest the compensatory mitigation requirement is a serious one.

This is confirmed by USACE's own detailed rules regarding mitigation, found at 33 C.F.R. § 320.4(r) (which address the general mitigation requirements for DA permits) and 33 C.F.R. § 332 (which address compensatory mitigation for losses of aquatic resources). The general compensatory mitigation requirements specify that compensatory mitigation requirements must be commensurate with the amount and type of impact that is associated with a particular permit.[22]

The Corps must ensure that the Port first takes all appropriate and practicable steps to avoid and minimize adverse impacts of spoils discharge to waters of the United States. Compensatory mitigation for any unavoidable impacts is then required to ensure that an activity requiring a section 404 permit complies with Section 404(b)(1).[23] During the 404(b)(1) compliance analysis, the district engineer may determine that a DA permit for the proposed activity cannot be issued because of the lack of appropriate and practicable compensatory mitigation options—like with TCEQ's rules, this suggests that compensatory mitigation is important.

The Section 404(b)(1) guidelines are set out at 40 C.F.R. Part 230. 40 C.F.R. § 320.10(a) provides that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." The Corps EIS takes the position that only inshore spoils placements are subject to this "least environmentally damaging practicable alternative" ("LEDPA") analysis. Nowhere is this limitation on application of the LEDPA principle explained.

The inshore placement areas are set out in Table 3 of DEIS Appendix N. They constitute roughly 4,663 acres. These acres will be covered with spoils for which the DEIS

[20] 30 Tex. Admin. Code § 279.11(c)(3).

[21] *Id*. at § 279.11(c)(4).

[22] *See* 33 C.F.R. § 332.3.

[23] 33 C.F.R. 332.1(c).

and its appendices provide absolutely no contaminant information.[24] Thus, even for inshore placement areas, it cannot be said that the LEDPA requirement has been met. Given that the Port plans no mitigation for the Alternative 1 action, it also cannot be said that the mitigation required by 33 C.F.R. § 320.4(r) will be had or is, in fact, unnecessary.

Permit applicants are responsible for proposing an appropriate compensatory mitigation option to offset unavoidable impacts. According to the Port's estimate, the use of dredged material would result in direct impacts to wetlands and submerged aquatic vegetation ("SAV")—specifically, direct impacts to 16.61 acres of tidal wetlands, 181.22 acres of non-tidal wetlands, and 6.88 acres of SAV. The Port has proposed zero mitigation.

The Port's general explanation is that the dredged material would be used to create some "net benefit" to the surrounding environment. First, these "net benefits" are not being treated as mitigation, and so there is no real attempt to show that they are commensurate with the amount and type of impact associated with the permit. For example, with regard to wetland impacts, the Port simply proposes that because the placement would create more wetland habitat than it would impact, it does not need to propose to mitigate for wetland impacts. This does not necessarily account for loss in wetland function.

Similarly, the Port surmises that the direct impacts to seagrasses are necessary because they are the result of restoring former DMPAs, and any new DMPA would result in significantly more impacts to seagrass than the proposed project. But this approach reveals why the Port's proposed "benefits" would not qualify as mitigation under the Corps' or TCEQ's rules.

First, restoration of the aquatic resource should generally be the first mitigation option considered because the likelihood of success is greater and the impacts to potentially ecologically important uplands are reduced compared to establishment, and the potential gains in terms of aquatic resource functions are greater, compared to enhancement and preservation.[25] The only "benefit" the Port offers in return for directly impacting 6.88 acres of seagrass is supposedly, the protection of Redfish Bay, because the spoil it will place will "restore" two former DMPAs. But DMPAs are not aquatic resources to be restored; rather, dredged spoil is a pollutant to be regulated, the discharge of which as fill into the aquatic ecosystem, is precisely the authorization being sought.[26]

Furthermore, preservation is not allowed as compensatory mitigation unless the preserved site will be permanently protected through an appropriate real estate or other

[24] DEIS, Appendix N, p. 2-8.

[25] 33 C.F.R. § 332.3(a)(2).

[26] 40 C.F.R. § 230.3(j); 40 C.F.R. § 230.1.

legal instrument (e.g., easement, title transfer to state resource agency or land trust).[27] That is not what the Port is proposing to protect Redfish Bay.

VIII. The alternatives analysis is deficient.

The alternatives analysis in the DEIS is deficient in large part because the purpose and need analysis is inaccurate. Further, the DEIS fails to provide specific detail regarding the projected environmental impacts and other factors that led to the identification of the preferred alternative. And finally, the alternatives analysis fails to include the requisite wide range of alternatives, considering the degree of adverse environmental impacts that are expected as a result of the preferred alternative.

NEPA requires that an EIS contain a detailed statement of the expected adverse environmental consequences of an action, the resource commitments involved in it, and the alternatives to it.[28] The following criteria have been used by reviewing courts to evaluate the adequacy of an EIS, particularly the alternatives analysis:

(1) whether the agency in good faith objectively has taken a hard look at the environmental consequences of a proposed action and alternatives;
(2) whether the EIS provides detail sufficient to allow those who did not participate in its preparation to understand and consider the pertinent environmental influences involved; and
(3) whether the EIS explanation of alternatives is sufficient to permit a reasoned choice among different courses of action.[29]

As explained elsewhere in these comments, the DEIS fails to properly define the Port's Preferred Alternative. The description excludes the Axis Midstream/Midway to Harbor Island Storage Terminal/Pipeline project and the Port of Corpus Christi/Harbor Island Terminal, even though these are connected actions. Having failed to accurately define the preferred alternative, the Corps cannot have, in good faith, objectively taken a hard look at the environmental consequences of the proposed action, including the environmental consequences of the connected actions. And without a rigorous analysis of the environmental consequences of the entire project, no meaningful alternatives analysis can be performed.

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[27] 33 C.F.R. § 332.3.

[28] 42 U.S.C. § 4332; *Kleppe v. Sierra Club*, 427 U.S. 390, 401–02 (1976).

[29] *Miss. River Basin Alliance v. Westphal*, 230 F.3d 170, 174 (5th Cir. 2000); *see also City of Dallas, Tex. v. Hall*, 562 F.3d 712, 718 (5th Cir. 2009) ("'[T]he range of alternatives that the [agency] must consider decreases as the environmental impact of the proposed action becomes less and less substantial.'") (quoting *Sierra Club v. Espy*, 38 F.3d 792, 803 (5th Cir. 1994)).

IX. The Corps' consideration of climate change impacts is deficient.

The DEIS considers climate change in only a few short sentences.[30] Though it acknowledges that Texas is expected to experience increasing temperature, unpredictable trends in precipitation, increased extreme rainfall events, and unpredictable drought trends (and any one of these trends could have untold impacts on the economies and livelihoods of Texas coastal communities), the DEIS concludes that none of these projections would be affected by any of the alternatives and that climate change will continue to impact the Texas coastal climate, regardless of which alternative is selected.

The DEIS erroneously limits its consideration of impacts related to climate change to "increased carbon dioxide emissions due to an increase in the number of vessels and reverse lightering operations with all alternatives." Not only does this fail to consider the potential for increase in vessels and total larger vessels should transportation become more "efficient" under the Preferred Alternative, it also wholly fails to consider the increase in total crude being transported and burned.

The impact of greenhouse gas emissions on climate change is certainly a part of a NEPA cumulative impact analysis,[31] but that analysis must include a quantification of the incremental impacts that the proposed project's emissions will have on climate change or on the environment more generally in light of other past, present, and reasonably foreseeable actions.[32] Thus, it is not only the increased emissions due to the increased number of vessels (which the DEIS does not quantify in any way) that must be considered, but also, the downstream and upstream impacts of the fossil fuel being transported.[33] It is reasonably foreseeable that an increase in the number of vessels and the size of the crude oil shipments will increase the total oil transported that will be burned and contribute to climate change.

The DEIS does not consider the Project's contribution to transport and burning of crude oil and fossil fuels.

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[30] DEIS, p. 4-13.

[31] *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin*., 508 F.3d 508, 550 (9th Cir. 2007).

[32] *See Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin*., 538 F.3d 1172, 1216 (9th Cir. 2008).

[33] *See, e.g., Sierra Club v. FERC*, 867 F.3d 1357, 1372 (D.C. Cir. 2017); *see also Utah Physicians for a Healthy Environment v. Bureau of Land Management*, 2021 WL 1140247 (D. Utah 2021) (agency calculated the socioeconomic benefits of the project but not the socioeconomic costs of greenhouse gas emissions).

X. The Corps' consideration of impacts on endangered and threatened species is deficient.

As with other sections of the DEIS, discussion of the preferred alternative's impacts on endangered and threatened species is woefully lacking. This deficiency appears to be a result of a failure to initiate consultation with the US Fish and Wildlife Service and NMFS *early* in the process—well in advance of preparing the DEIS.

The Endangered Species Act (ESA) directs all federal agencies to participate in conserving endangered and threatened species. Specifically, section 7(a)(1) of the ESA charges federal agencies to aid in the conservation of listed species, and section 7(a)(2) requires the agencies to ensure their activities are not likely to jeopardize the continued existence of federally listed species or destroy or adversely modify designated critical habitat.

Federal agencies must consult with the U.S. Fish and Wildlife Service and NMFS when any project or action they authorize may affect a listed species or designated critical habitat.

The Biological Assessment prepared by the Port acknowledges that a number of federally threatened and endangered species will be affected by the proposed channel dredging project. Among those species that the Port has determined may be affected, but are not likely to be adversely affected are: Sperm Whale, West Indian Manatee, Giant Manta Ray, Piping Plover, Red Knot, Whooping Crane, Eastern Black Rail, and Leatherback Sea Turtle. Among the species that are likely to be adversely affected are: Green Sea Turtle, Hawksbill Sea Turtle, Kemp's Ridley Sea Turtle, and Loggerhead Sea Turtle.

The biological assessment acknowledges the potential for adverse impacts to various sea turtles—both in-water impacts and nesting impacts. Yet, the assessment gives short shrift to any discussion of meaningful measures to avoid such impacts. For instance, the assessment notes that use of "hopper dredges" can increase the potential of mortality or injury for sea turtles.[34] Yet, there is no commitment to avoid use of such hopper dredges. To the contrary, the DEIS states that the construction contractor may opt to employ hopper dredges, and if hopper dredges are used, additional (but unspecified) best management

[34] App. D, p. 5-5.

practices would be required. This promise to use unspecified best management practices does nothing to ensure the continued existence of sea turtles.

The DEIS, Appendix D, further includes the unsupported conclusory statement that the channel deepening project is expected to "lower the risk of a collision between sea turtles and ships," because the project would decrease the volume of lightering vessel traffic. There is no discussion or estimate provided of collisions between sea turtles and lightering vessels in the Corpus Christi Ship Channel. Thus, this statement should be disregarded as it offers nothing meaningful to the biological assessment.

On the other hand, the DEIS acknowledges that increased work boat traffic associated with construction activity could increase vessel collision, contaminant spills and debris and trash, which could adversely impact sea turtles. The DEIS suggests that the likelihood of these adverse impacts can be greatly reduced when avoidance, minimization, and conservation measures are performed, such as those described in the biological assessment. A review of those proposed measures, however, reveals that they are nothing more than a plan to look for turtles, their nests, and their eggs each day, and to get them out of the way, if observed. This is not a "conservation" plan. This plan does nothing to ensure that the channel deepening project will not jeopardize the continued existence of the sea turtles or destroy or adversely modify their critical habitat. The general plan proposed in the DEIS simply proposes to move turtles and their nests out of the way of the project and to use dim lighting.

Regarding the various species that are considered likely to be affected, but not likely to be adversely affected, there is little basis for this determination. The DEIS simply presumes that once the project is complete, there will be less vessel traffic, and increased habitat and improved marshes. The DEIS concludes that the project would therefore not jeopardize the continued existence or the potential of recovery for the various affected species. But the DEIS provides no specifics—no data—to support these conclusory statements.

In sum, the biological assessment makes clear that several protected species will be affected by the proposed project. Yet, USFWD and NMFS have yet to weigh in with their biological opinions. This is likely a result of a failure to formally consult with these agencies *early* in the process. Consequently, the public has not had the benefit of these agencies' opinions. The comment period should be extended or reopened, once the agencies have completed their review and offered their opinions.

XI. Conclusion

Thank you for your consideration of these comments. Please contact us with any questions.

Sincerely,

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