



PRESERVE OUR ISLANDS

Mr. Randel Perry
U.S. Army Corps of Engineers, Seattle District
Care of: GPT/BNSF Custer Spur EIS Co-Lead Agencies
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RE: Gateway Pacific Terminal EIS Scoping

January 18, 2013

Mr. Perry:

Preserve Our Islands is a non-profit environmental organization established over a decade ago. We hold a mission to preserve and protect vital shoreline habitats which are the backbone of a healthy Salish Sea as well as the species and social values dependant on the function of these important habitats.

We appreciate the opportunity to provide comment on the EIS Scoping for the Gateway Pacific Terminal proposal currently under consideration. While we will be detailing specific concerns and questions below, we first and foremost urge the regulatory agencies considering this proposal to take great care in ensuring the evaluation receives the “hard look” as required by NEPA.

In 2008 our organization was forced to take legal action against the USACE as a result of the agency’s clear violation of NEPA regulations during evaluations of another barging project proposed for construction in Puget Sound (Preserve Our Islands et al v. U.S. Army Corps of Engineers). Upon review, the court found the Northwest Office of the USACE had egregiously failed in their review of the project – as well as in their adherence to NEPA.

It is our hope that the USACE has taken that previous court ruling to heart and will be approaching review of this high-risk proposal with the care and diligence required by law.

In this comment letter we will be providing comment on the following issues:

- Scope of Analysis and Cumulative Impacts
- Consideration of Purpose and Need
- Marine Specific Impacts
- Environmental Justice and Tribal Impacts
- Peer Review

Scope of Analysis

In determining the scope of the required NEPA analysis, an agency must consider not only the proposed action, but also three types of related actions: “connected actions,” “similar actions,” and “cumulative actions.” 40 C.F.R. § 1508.25(a).

“Connected actions” means actions that are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

- i. Automatically trigger other actions which may require environmental impact statements;
- ii. Cannot or will not proceed unless other actions are taken previously or simultaneously; or
- iii. Are interdependent parts of a larger action and depend on the larger action for their justification.

“Cumulative actions” are those “which when viewed with other proposed actions have cumulatively significant impacts.”

“Similar actions”, are actions that when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. NEPA regulations direct that similar actions should be addressed jointly in a single impact statement when it would result in the best way to adequately assess the combined impacts of similar actions or reasonable alternatives.

The construction of the proposed port facility requires consideration of all three action types.

The Gateway Pacific Terminal would trigger connected actions including mining operations in distant locations, the development of rail transport lines and infrastructure to accommodate transport and processing, the long distance transfer of coal and the use of coal in unregulated energy production facilities in Asia.

In addition, similar actions - including other coal port facilities which are currently being proposed for the West coast must be considered. Not only would each individual action result in significant impacts, when combined, these impacts cumulatively grow and become even more substantial in weight.

For these reasons we join with the Affiliated Tribes of Northwest Indians, and countless environmental organizations and individuals calling for a Programmatic Environmental Impact Statement on the development of the proposed Northwest Coal ports and their connected, similar and cumulative actions. In the event a Programmatic EIS is not developed, the Gateway Pacific EIS must at a minimum still include evaluation of the impacts – direct, indirect and cumulative from all the connected and similar actions as well as from the individual project.

1. The EIS must consider the environmental, social and public health impacts from coal mining in the specific areas that would be targeted for source production.

2. The EIS must consider the environmental, social and public health impacts from land based transport of the coal.
3. The EIS must consider the impacts from the long distance transport of coal and other dry goods from the US to international destination ports and facilities.
4. The EIS must consider the impacts on climate change, ocean acidification and public health due to increased coal use – with a specific eye to use in countries outside of the US where emission related regulations are questionable or absent, thus resulting in significantly increased releases of CO2 and other harmful pollutants.
5. The EIS must consider the cumulative impacts from both the individual project itself, as well as the wide ranging and cumulative impacts from other connected and similar actions.

Consideration of Purpose and Need

NEPA regulations require an EIS to include a Purpose and Needs statement specifying the underlying purpose and need of the proposed project which the agency is considering and evaluating. This statement also directs subsequent development and evaluation of a range of alternatives, including the proposed action.

Although the purpose of the proposal – to export of up to 54 million dry metric tons per year of bulk commodities, mostly coal - has essentially been defined by the applicant, the EIS document must take a hard look the actual need, if any, for the proposed project rather than simply consider the applicant's economic interests.

The EIS must provide detailed substantiation and evaluation on the following issues:

1. Does demand for coal in China or other Asian countries document a “need” for US coal exports and for the proposed project?
2. The applicant claims there are not any shipping ports on the West coast currently available which are suitable for the coal and other dry goods transport being proposed. Is this accurate and even if so - are new port facilities for coal shipment required or could exports, if deemed necessary, be accommodated by existing port facilities in other regional locations?
3. The applicant arbitrarily claims the proposal will help revitalize the U.S. economy and be an economic boon to Whatcom County and Washington State. The EIS must document and detail what, if any, economic benefit would result from the proposed project, and how it would compare to the clear adverse impacts that would occur if the proposal were to be approved?

Marine Impacts

The proposal to develop the industrial barging facility and port, combined with the high increase in shipping traffic will result in significant marine impacts. The EIS must evaluate the direct, indirect and cumulative effects related to the following:

1. The EIS process must first ensure that baseline conditions in the project area have been documented. The baseline evaluations should include:
 - An eelgrass and macroalgae/vegetation survey for the entire proposed project area.
 - A fish species survey including diversity, abundance, distribution and biomass of species present or utilizing the greater project area site as well as throughout the greater Salish Sea area.
 - A fish spawning and juvenile use survey.
 - An assessment of the shellfish stock at the proposed project area.
 - An assessment of marine invertebrates present at the site.
 - An assessment of the use of the site and greater action area by marine mammals.
 - An assessment of the baseline underwater noise levels present in the project area and along the proposed project marine route.
2. What will the impact to vital nearshore habitats and dependent species be due to shading and littoral interruption/substrate changes that will occur from the introduction of the barging facility, and what will be the overarching impact of any ecosystem losses be?
3. What will the impact be to marine mammals and fish species due to the increased underwater noise that will result from project construction, coal barge loading and increased vessel traffic?
4. What marine impacts will occur due to the spillage of coal that is likely to occur during coal barge/ship loading?
5. Will increased vessel traffic result in an increased risk of an oil spill in the Salish Sea? And if so, what would the environmental impacts be?
6. What marine impacts will occur as a result of climate change resulting from increased coal plant emissions?
7. What marine impacts will occur due to increased ocean acidification resulting from coal plant emissions and fallout?
8. How do the resulting project impacts support or intersect with Federal and State recovery plans for Endangered species such as chinook, steelhead, bulltrout and the Southern resident killer whales and for other state or local Puget Sound Recovery planning?
9. What is the historical success rate of any mitigation measures that may be suggested?

10. What are the cumulative marine related impacts from the project to both species and habitat function when considering all the existing development and development that will occur in the reasonably foreseeable future?
11. The proposed project site is currently established as a State Aquatic Reserve and as a Marine Protected Area under the National System of Marine Protected Areas - designations applied only to sites documented to have unique and intact habitat functions representing areas to be protected for conservation purposes. What impacts would the project have on the habitats slated for protection as well as the intent of the programs themselves –from both a conservation science and social standpoint?

Environmental Justice and Tribal Impacts

Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” provides that “each Federal agency shall make achieving environmental justice 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 including tribal populations.” Additional documentation clearly emphasizes the importance of performing this review during the NEPA review process. To comply with this order, the EIS scope must include the following evaluations:

1. Population and economic composition of all the areas affected by the project – including source mining areas and all communities along transport rail lines must be documented and evaluated to determine whether minority populations, low-income populations, or Native American Tribal populations are present in the area affected by the proposed action, and if so, whether there may be disproportionately high and adverse human, economic health or environmental effects to these populations.
2. Similarly, the cultural, physical, environmental and economic interests specific to Tribal populations – even absent physical residential population presence, must be documented and evaluated. For example, how will the proposed project impact Treaty Rights, which require the preservation of habitat values supporting salmonid populations and shellfish harvest areas? And what will be the economic impact to the Tribes from the decrease in forage fish and salmon populations that may result from the project?
3. The Lummi Nation reports they have used the land and waters in the general Cherry Point project area for 175 generations - and that this location contains sacred sites and burial grounds that are invaluable to the tribe. We support their opposition to the project and request that the EIS provide an exhaustive evaluation to the cultural impacts resulting from the industrialization of an area known to have extremely high cultural significance to the Lummi Tribe.

Peer Review

On December 16, 2004 the White House Office of Management and Budget (OMB) released a memorandum related to the peer review of federal agency documentation. This Bulletin establishes that important scientific information shall be peer reviewed by qualified specialists before it is disseminated to the public by federal agencies. With this, the following peer review procedures should be implemented during the development of the EIS which is being produced for dissemination to the public:

1. Scoping, alternatives, study design, methods, data collection and analysis as well as interpretations should undergo peer review. This action is fundamental to a high-quality and legitimate EIS and a peer review committee should be developed and utilized at all stages of the EIS development. The peer review committee should consist of highly qualified members with independent expertise, training and experience in the field they represent.
2. All models, assessment and survey methods, and analytical methods must be well-documented and supported by peer review and should include decision criteria, a logic model for applying those criteria, and a monitoring and adaptive management component that deals directly with uncertainty.

We appreciate the outreach and attention given to public participation in this proposed project. It is our hope that the regulatory agencies now actually pay heed to the comments and concerns being presented into the record by the thousands of people working together to protect and preserve the important environmental, cultural, economic and public health values that the Gateway Pacific Terminal and other coal port proposals threaten.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Carey". The signature is fluid and cursive, with the first name "Amy" and the last name "Carey" clearly distinguishable.

Amy Carey, Executive Director
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