



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Washington State Habitat Office
510 Desmond Drive SE, Suite 103
Lacey, WA 98503

January 2, 2013

GPT/Custer Spur EIS
c/o CH2M HILL
1100 112th Avenue NE, Suite 400
Bellevue, WA 98004

Re: Scoping Comments on the Gateway Pacific Terminal/Custer Spur Environmental Impact Statement.

Dear Sir or Madam:

Thank you for giving us the opportunity to participate in the scoping process and comment on your Environmental Impact Statement (EIS). SSA Marine Inc. is proposing to build a multi-modal dry bulk commodity facility named the Gateway Pacific Terminal, which will include rail and vessel dock support in Ferndale, Washington. The in- and over-water structures will impact waters of the United States which support living marine resources at Cherry Point including federally protected fish and marine mammals. The State of Washington Department of Natural Resources manages the Cherry Point Aquatic Reserve where the pier is proposed.

The project also includes interrelated actions which were identified by the lead agencies in the EIS. The Burlington Northern-Santa Fe Railway (BNSF) will modify a six-mile-long rail connection from the Cherry Point industrial area to the BNSF mainline at the unincorporated community of Custer, Washington.

As noted in our Strategic Plan, the National Marine Fisheries Service (NMFS) is responsible for stewardship of the Nation's living marine resources and their habitats within the United States' Exclusive Economic Zone. Our mandates and authorities are derived from numerous statutes, most significantly the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). The NMFS will also consult with tribes affected by this project as part of our federal treaty trust responsibilities. Under the ESA, the NMFS will consult with the Army Corps of Engineers, State of Washington Department of Ecology, and Whatcom County (collectively referred to as the Co-Lead Agencies) for the following species and critical habitats:



Table 1. Federally listed Threatened and Endangered Species.

Species	ESU or DPS	Original Listing Notice	Listing Status Reaffirmed	Critical Habitat	Protective Regulations
Chinook salmon (<i>Oncorhynchus tshawytscha</i>)	Puget Sound	3/24/99 64 FR 14308 Threatened	8/15/11 76FR50448 Threatened	9/02/05 70 FR 52630	6/28/05 70 FR 37160
Steelhead (<i>O. mykiss</i>)	Puget Sound	5/11/07 72 FR 26722 Threatened	8/15/11 76FR50448 Threatened	In development	9/25/08 73 FR 55451
Yelloweye rockfish (<i>Sebastes ruberrimus</i>)	Puget Sound/ Georgia Basin	4/28/2010 75 FR 22276 Threatened	Not applicable	In development	In development
Canary rockfish (<i>S. pinniger</i>)	Puget Sound/ Georgia Basin	4/28/2010 75 FR 22276 Threatened	Not applicable	In development	In development
Bocaccio rockfish (<i>S. paucispinis</i>)	Puget Sound/ Georgia Basin	4/28/2010 75 FR 22276 Threatened	Not applicable	In development	In development
Killer whale (<i>Orcinus orca</i>)	Southern Resident	11/18/2005 70 FR 69903 Endangered	January 2011 5 Year Review Endangered	11/29/2006 71 FR 69054	04/14/2011 76 FR 20870 ESA section 9 applies
Steller Sea Lion (<i>Eumetopias jubatus</i>)	Eastern DPS	11/26/1990 55 FR 49204 Threatened	05/05/1997 62 FR 24345 Threatened	08/27/1993 58 FR 45269	ESA section 9 applies
Humpback Whale (<i>Megaptera novaeangliae</i>)		12/02/1970 35 FR 18319 Endangered	Not applicable	Not designated	ESA section 9 applies
Blue whale (<i>Balaenoptera musculus</i>)		12/02/1970 35 FR 18319 Endangered	Not applicable	Not designated	ESA section 9 applies
Fin whale (<i>Balaenoptera physalus</i>)		12/02/1970 35 FR 18319 Endangered	Not applicable	Not designated	ESA section 9 applies
Sei whale (<i>Balaenoptera borealis</i>)		12/02/1970 35 FR 18319 Endangered	Not applicable	Not designated	ESA section 9 applies
Sperm whale (<i>Physeter macrocephalus</i>)		12/02/1970 35 FR 18319 Endangered	Not applicable	Not designated	ESA section 9 applies

The NMFS will also conduct an Essential Fish Habitat (EFH) consultation with the Co-Lead Agencies for 46 groundfish, four coastal pelagic species, and three Pacific salmon species:

Table 2. Species of fishes found in Puget Sound with designated EFH.

Groundfish Species	redstripe rockfish <i>S. proriger</i>	Dover sole <i>Microstomus pacificus</i>
spiny dogfish <i>Squalus acanthias</i>	rosethorn rockfish <i>S. helvomaculatus</i>	English sole <i>Parophrys vetulus</i>
big skate <i>Raja binoculata</i>	rosy rockfish <i>S. rosaceus</i>	flathead sole <i>Hippoglossoides elassodon</i>
California skate <i>Raja inornata</i>	rougheye rockfish <i>S. aleutianus</i>	petrale sole <i>Eopsetta jordani</i>
Longnose skate <i>Raja rhina</i>	sharpchin rockfish <i>S. zacentrus</i>	rex sole <i>Glyptocephalus zachirus</i>
Ratfish <i>Hydrolagus colliei</i>	splitnose rockfish <i>S. diploproa</i>	rock sole <i>Lepidopsetta bilineata</i>
Pacific cod <i>Gadus macrocephalus</i>	striptail rockfish <i>S. saxicola</i>	sand sole <i>Psettichthys melanostictus</i>
Pacific whiting (hake) <i>Merluccius productus</i>	tiger rockfish <i>S. nigrocinctus</i>	starry flounder <i>Platichthys stellatus</i>
black rockfish <i>Sebastes melanops</i>	vermilion rockfish <i>S. miniatus</i>	arrowtooth flounder <i>Atheresthes stomias</i>
bocaccio <i>S. paucispinis</i>	yelloweye rockfish <i>S. ruberrimus</i>	
brown rockfish <i>S. auriculatus</i>	yellowtail rockfish <i>S. flavidus</i>	Coastal Pelagic Species
canary rockfish <i>S. pinniger</i>	shortspine thornyhead <i>Sebastolobus alascamus</i>	anchovy <i>Engraulis mordax</i>
China rockfish <i>S. nebulosus</i>	cabezon <i>Scorpaenichthys marmoratus</i>	Pacific sardine <i>Sardinops sagax</i>
copper rockfish <i>S. caurimus</i>	lingcod <i>Ophiodon elongatus</i>	Pacific mackerel <i>Scomber japonicus</i>
darkblotch rockfish <i>S. crameri</i>	kelp greenling <i>Hexagrammos decagrammus</i>	market squid <i>Loligo opalescens</i>
Greenstriped rockfish <i>S. elongatus</i>	sablefish <i>Anoplopoma fimbria</i>	Pacific Salmon Species
Pacific ocean perch <i>S. alutus</i>	Pacific sanddab <i>Citharichthys sordidus</i>	Chinook salmon <i>Oncorhynchus tshawytscha</i>
quillback rockfish <i>S. maliger</i>	butter sole <i>Isopsetta isolepis</i>	coho salmon <i>O. kisutch</i>
redbanded rockfish <i>S. babcocki</i>	curlfin sole <i>Pleuronichthys decurrens</i>	Puget Sound pink salmon <i>O. gorbuscha</i>

The NMFS will evaluate the potential effects to all living marine species, namely all species listed above, by all construction and future operation of the proposed terminal, and all interrelated and interdependent actions including effects from transportation of products, which are reasonably certain to occur. The NMFS will also evaluate indirect and cumulative effects that potentially affect the marine species listed above, from activities that are reasonably certain to occur including but not limited to coal burning/consumption.

To meet the requirements of the ESA, MSA, and MMPA¹, the COE intends to conduct interagency consultations with NMFS regarding all marine species listed above. For a complete evaluation, NMFS requires adequate information on relevant changes to the environmental baseline which could have potential effects to protected species and their habitat. The EIS and biological assessment should include an accurate and thorough description of the environmental baseline, a complete description of all parts of the action, and details on how those actions affect the environmental baseline.

The environmental baseline describes the condition of the environment prior to construction and future operation of the project². We are aware that SSA Marine is gathering physical and biological baseline data and information of the project site where the pier, rails, and storage areas are being constructed. SSA Marine Inc. (the applicant) is also collecting information where species will be affected by railroad modifications at Custer. We are aware that modifications at Custer will involve at least one water crossing, which may affect anadromous salmonids and that the EIS will address those effects. The proposed project is reasonably certain to create additional activities that will impact the environment further than the project location and Custer Spur.

The pier and facilities at Cherry Point are being built to facilitate shipment of bulk commodities overseas. The pier facilitates the larger action, which is the transportation of the product from the source to their customers overseas. The construction and operation of the pier and facilities at the Gateway Pacific Terminal depends on the transportation of these products. Therefore, the effects from transportation of the products are considered interrelated actions and require analysis under section 7 of the ESA. Transportation of the products includes vessel and rail traffic.

The applicant estimated the number of additional vessel crossings that the project will create. These vessel crossings are expected to add to the existing vessel traffic in the Salish Sea vessel lanes and off-shore within the EEZ. The off-shore crossings may overlap with migratory corridors of ESA-listed and non-ESA-listed whales. Please include information on transportation corridors including routes and number of crossings from the pier to the edge of the EEZ, characteristics of the vessels (speed, size, and sound produced), and any proposed conservation measures to minimize the risk of vessel collision with whales (e.g., routes that minimize overlap with migratory corridors, and slower speeds and watchstander protocols within

¹ The NMFS is tasked with implementation of section 101(a)(5) of the MMPA of 1972, as amended (16 U.S.C. 1371(a)(5)), which provides a mechanism for allowing, upon request, the "incidental", but not intentional, taking, of small numbers of marine mammals by "harassment", referred to as Incidental Harassment Authorizations (IHAs) or Letters of Authorization (LOAs). Because ESA-listed marine mammals are protected under both the MMPA and ESA, take of these animals must be authorized under both Acts. Section 7(b)(4) of the ESA requires that any incidental take be authorized pursuant to section 101(a)(5) of the MMPA in order to also provide take exemption under the ESA. Please visit the website www.nmfs.noaa.gov/pr/permits/incidental.htm for more information on how to apply for an IHA or LOA for both ESA-listed and non-ESA-listed marine mammals that may occur in the area within which sound pressure levels are above the acoustic thresholds.

² The legal definition (non-plain language definition) of the "environmental baseline" includes the past and present impacts of all Federal, state, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of state or private actions which are contemporaneous with the consultation in process (50 CFR 402.02).

migratory corridors). The potential effects of increased vessel traffic include vessel strikes with marine mammals, prop wash, vessel noise to marine organisms, and vessel wakes which could strand fish, potentially alter vegetation growth (e.g., eelgrass), or cause shore erosion.

The construction and operation of the new facilities will increase rail traffic throughout the western United States as bulk commodities are transported to and from the facility and their sources. The NMFS is aware of major railroad routes along the Columbia River where numerous ESA-listed salmonids live and along the Puget Sound shoreline which provides important nearshore habitat for salmonids and forage. Please include information on the train routes and the anticipated number of crossings per day.

Construction of the new facility will also include pile driving, which can cause injury or disturbance to marine mammals and fish³. Please include information on pile driving sound, any proposed conservation measures to minimize sound levels and species exposure and evaluate effects to fish and marine mammals.

Studies have demonstrated tons of coal dust is often blown off storage piles, during intermodal transfer, and during transport. The applicant is proposing several measures such as covered belts to minimize dust and runoff. Nonetheless, wind drift will occur and must be estimated during each phase including rail and vessel transport, intermodal transfer, conveyer belt transfer, and storage. Studies have demonstrated tons of coal dust is often blown out of transport carts and onto environments adjacent to railways. Please also include proposed conservation measures to reduce wind drift and studies that support estimates.

The transportation of this coal facilitates the consumption of the products, which increases carbon emissions which may contribute to changes weather patterns, warmer waters, or ocean acidification; all of which can have measurable effects on protected species or their habitat. The NMFS recognizes climate change as a threat to the health of our oceans and our marine living resources. For a complete analysis of the effects of the project to our protected species and habitats, please provide an estimate the carbon output of burning the maximum capacity of coal shipped overseas⁴.

The NMFS is aware that many impacts to the environment and effects to our protected species and habitats are unavoidable. However, under section 7 of the ESA, Federal agencies are required to avoid and minimize effects to threatened and endangered species. The NMFS requests alternatives and measures to minimize effects from every part of the proposed action, interrelated action, or future effects to living marine species. The proposed action will impact an extensive amount of upland wetlands. The applicant should propose alternatives to avoid as

³ Until formal guidance is available, NMFS uses conservative thresholds of sound pressure levels from broad band sounds that cause behavioral disturbance (160dBrms re: 1 μ Pa for impulse sounds and 120 dBrms re: 1 μ Pa for continuous sound) and injury (180 dBrms re: 1 μ Pa for whales and 190dBrms re: 1 μ Pa for pinnipeds) (70 FR 1871). For activities that produce sound above acoustic thresholds, it will be necessary to evaluate sound propagation from the source and estimate the area within which sound levels are above the acoustic thresholds.

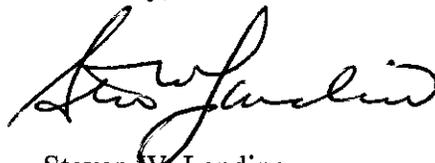
⁴ Without an estimate of how much coal is being shipped annually, the NMFS must analyze worst case scenario erring on the side of caution and giving the benefit of the doubt to the species. The NMFS is aware of a contract with Peabody Energy for the shipment of up to 24 million tons of coal per year to overseas markets but maximum capacity could be up to 48 to 54 million tons.

much wetlands as possible to reduce their effects to water quality on site. We recognize the proposed project as a part of a larger action. The larger action (i.e., transport of products) will have effects far beyond the facilities being built and improvements at Custer. The applicants should propose alternatives to reduce effects (including but not limited to coal dust, vessel strikes, vessel wake) throughout the entire action including transportation from the source to the edge of the EEZ. Considering the extent of the action and the potential for fish bearing rivers and nearshore marine areas to be exposed to coal dust, the applicant should establish baseline conditions and monitor them throughout the life of the project to determine if minimization methods to reduce drift are properly working or to monitor toxicity from dust in riverine or marine settings. If drift suppression in any stage of transportation or storage is not meeting expectations, the applicant should have a contingency plan to either fix errors or stop shipment of the product until the issues are resolved.

The indirect and cumulative effects of shipping coal may have profound effects to living marine species worldwide and within our EEZ as coal is burned. The applicant should take steps to reduce the carbon footprint caused by the operation of their facilities. Assuming there will be little or no control of how the coal is consumed overseas, the applicant should propose measures to reduce carbon emissions within their company. This reduction could be accomplished by maximizing non-fossil fuel energy in any portion of their project from transportation to operation of the facilities at the Gateway Pacific Terminal, reducing present carbon emissions within their company (e.g., retrofitting existing buildings to become more energy efficient, or reducing carbon emissions from their present fleet of vehicles), purchasing carbon credits, purchasing or setting aside large forest tracts, or aiding research and development of “clean” energy.

The NMFS will continue to work with you throughout the EIS process, and consultations through the various laws and regulations under our purview. If you have any questions or comments regarding this letter or NMFS’ involvement with this subject, please contact Joel Moribe of the Washington State Habitat Office at (206) 526-4359, or by electronic mail at joel.moribe@noaa.gov.

Sincerely,



Steven W. Landino
Director
Washington State Habitat Office

cc: Randel Perry, U.S. Army Corps of Engineers
Alice Kelly, State of Washington Department of Ecology
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