NORTHWEST ENVIRONMENTAL DEFENSE CENTER
10015 S.W. Terwilliger Blvd., Portland, Oregon 97219
Phone: (503) 768-6673 Fax: (503) 768-6671
www.nedc.org

January 22, 2013

Via Email to comments@eisgatewaypacificwa.gov
Randel Perry
U.S. Army Corps of Engineers, Seattle District
Care of: GPT/BNSF Custer Spur EIS Co-Lead Agencies
1100 112th Ave. Northeast, Suite 400
Bellevue, WA 98004

Alice Kelly
Northwest Regional Office
Department of Ecology

Tyler Schroeder
Planning and Development Services
Whatcom County

Re: Scoping Comments on the Proposed Gateway Pacific Terminal and Custer Spur Expansion Project

Dear Mr. Perry:

The Northwest Environmental Defense Center ("NEDC") respectfully submits these comments to the United States Army Corps of Engineers ("Corps") and Co-Lead Agencies, including the Whatcom County Planning and Development Services ("County") and the Washington State Department of Ecology ("Ecology"), regarding the "Notice of Intent to Prepare a Joint Environmental Impact Statement (EIS) for the Gateway Pacific Terminals Bulk Dry Goods Shipping Facility and the Custer Spur Rail Expansion Projects" ("NOI").[1] NEDC appreciates the opportunity for early involvement at this stage of the process.

Pacific International Terminal, Inc.'s proposed Gateway Pacific Terminal ("GPT") and Burlington Northern Santa Fe Railway's proposed Custer Spur Rail Expansion ("rail project") are of significant interest to NEDC based on the imminent adverse environmental impacts that will result if the projects are constructed. Given NEDC's mission to protect and conserve the natural resources of the Pacific Northwest, we are concerned about the far-reaching environmental impacts of what may become the largest coal export terminal in North America. We hope that the Corps recognizes the magnitude of these proposed projects and request that the Corps carefully evaluate the project and its alternatives, as detailed below.

[1] 77 Fed. Reg. 58531 (Sept. 21, 2012).

I. Under NEPA and SEPA, the Corps and Co-Lead Agencies must consider actions, alternatives, and impacts of the proposed GPT and rail project.

The National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4332(2)(C), requires federal agencies to prepare an Environmental Impact Statement ("EIS") for "major Federal actions significantly affecting the quality of the human environment." The Washington State Environmental Policy Act ("SEPA"), WAC 197-11, applies to decisions by state and local agencies within Washington State, requiring state officials to identify possible environmental impacts that may result from governmental decisions. Both NEPA and SEPA require agencies to consider a range of actions, alternatives, and impacts in an EIS.[2]

Because the EIS for the GPT and rail project will be undertaken as a joint environmental analysis under NEPA and SEPA, the scope of actions, alternatives, and impacts that must be included in the EIS depends on whether either NEPA or SEPA requires such inclusion.[3] Therefore, the scope of the Corps' EIS may be broader than an EIS prepared under NEPA or SEPA individually.

This comment focuses mainly on air and water quality issues associated with the GPT and rail project. The purpose of this comment is to highlight the range of actions, alternatives, and impacts related to the GPT and rail project that should be included in the resulting EIS. First, the comment suggests clarifications that the Corps should request from Pacific International Terminal, Inc. to present a concise and accurate statement of purpose and need in the EIS. Second, the comment suggests connected, cumulative, and similar actions that the Corps and Co-Lead Agencies must consider in the EIS, including alternative reasonable courses of action and mitigation measures. Finally, NEDC identifies impacts to air and water quality that will result if the GPT and rail project are constructed.

II. The Corps and Co-Lead agencies should request that the applicant clarify the statement of purpose and need.

The statement of purpose and need is central to a proper EIS because it will provide the guideposts for the analysis of actions, alternatives, and effects. 40 C.F.R. § 1502.13.[4] As such, the EIS must include a concrete and accurate statement of the purpose and need that reflects the true intent of the project. Unfortunately, the statement of purpose and need, and the underlying

[2] 40 C.F.R. § 1508.25 (defining "scope" as "the range of actions, alternatives, and impacts to be considered" in an EIS); WAC 197-11-060(1) (stating that environmental review is considered the "scope" for an EIS and "consists of the range of proposed activities, alternatives, and impacts to be analyzed in an environmental document").
[3] 40 C.F.R. §1506.2(c) ("Where State laws . . . have [EIS] requirements in addition to but not in conflict with NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of federal laws so that one document will comply with all applicable laws.").

[4] An appropriately crafted purpose and need statement is similarly essential to ensure the proper scope of review is conducted under the Clean Water Act. *See* 33 U.S.C. § 1344(b)(1); 40 C.F.R. § 230.10(a) (prohibiting the "discharge of dredged or fill material . . . 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.").

assumptions set forth in the Project Information Document ("PID"), fails to comply with NEPA.[5] For the EIS to provide meaningful information to the applicant, involved government agencies, and the public, and to meet the Corps' obligations under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act, NEDC asks that the Corps and Co-Lead Agencies clarify each of these issues with additional detail in the EIS.

The project purpose should reflect the genuine intent of the applicant's proposal. Section 3.1 of the PID states that the purpose of the GPT is the operation of a "multimodal marine terminal . . . for export and import of multiple dry bulk commodities." A full reading of the PID, however, reveals that the only concrete purpose of the project in the short- to medium-term is to serve as a coal export facility. To the extent that Pacific International Terminal, Inc. plans to export only coal, the statement of purpose and need should accurately reflect those plans.

For example, the PID states that the Eastern Loop will be designed initially to handle coal.[6] Section 4.3.1.2 of the PID details the infrastructure that will be constructed for the Eastern Loop to handle coal. Infrastructure to support other commodities at the initial build-out stage is not indicated. The PID states that the Eastern Loop will be constructed first, and storage for non-coal commodities will be constructed in stage two of construction. Similarly, the Corps has described the GPT as a "proposed coal terminal facility . . . with a planned throughput capacity of roughly 30 million tons."[7] Ecology's webpage for environmental review of the GPT and rail project states the facility will be capable of handling the import and export of up to 54 million dry metric tons per year, but "mostly exporting coal."[8] An accurate statement of purpose and need would identify the GPT as a coal export facility.

The PID is too vague, given the firm plans that are in place for the large-scale export of coal. Rather, the project purpose could state that the GPT intends to provide coal and non-coal bulk export facilities throughout the medium term, with flexibility to redesign these facilities as necessary to meet demand in the long-term. Based on this more accurate statement of the project's purpose, the alternatives in the EIS should range from not building the port at all, to not building more capacity to accommodate the growing demand, to considering alternative cities for the export terminals and alternative means of transportation (such as covered rail cars and bulk container ships). A more accurate explanation of the project's purpose will serve the goals of NEPA by focusing the analysis in the EIS on pertinent alternatives and mitigation and facilitating higher quality public comments that are more on-point.[9] The Corps should ensure that the

---

[5] Pacific International Terminals, Inc., Project Information Document at 4-3 (February, 2011) (hereafter cited as "PID").

[6] *Id.* ("Initially, it is anticipated that the East Loop would predominantly handle low-sulfur, low-ash coal."); *see also id.* at 4-51 ("It is anticipated that in the first 10 years, the Terminal would likely manage exports of low-sulfur, low-ash coal, Canadian potash, and locally produced calcined petroleum coke.").

[7] U.S. Army Corps of Engineers Releases the U.S. Port and Inland Waterways Modernization: Preparing for Post-Panamax Vessels Report (June, 2012), *available at* http://www.iwr.usace.army.mil/index.php/us-port-and-inland-waterways-modernization-strategy.

[8] *See* Ecology, Environmental Review: Gateway Pacific Terminal at Cherry Point Proposal, *available at* http://www.ecy.wa.gov/geographic/gatewaypacific/.

[9] *See, e.g.*, CEQ, Letter to Secretary of Transportation Mineta (May, 2003) (stating that "Thoughtful resolution of the purpose and need statement at the beginning of the process will contribute to a rational environmental review process and save considerable delay and frustration later in the decisionmaking process."), *available at* http://ceq.hss.doe.gov/nepa/regs/CEQPurpose2.pdf.

project purpose accurately reflects the intent of Pacific International Terminal, Inc.

III. In the alternative, the Corps and Co-Lead Agencies should consider preparing a programmatic EIS to better account for the cumulative impacts of the numerous pending coal export terminal projects.

A programmatic analysis is prudent given NEPA's goals. Currently, there are at least four total permit applications pending for coal export facilities in the Pacific Northwest. Several other facilities are being contemplated as well. The facilities currently seeking permits include: this facility in Whatcom County, Washington; Millennium Bulk Logistics' application for a facility in Longview, Washington; an export facility in Coos Bay, Oregon; and two related facilities at the Port of Morrow and Port Westward, both located along the Columbia River in Oregon. Two additional permit applications are expected shortly for facilities at the Port of St. Helens, Oregon, and Hoquiam, Washington.

In this instance, given the numerous coal export terminals under consideration, and the significant regional, national and international impacts that will result from these terminals and the related activities, a programmatic EIS is likely the best vehicle to discuss and analyze these impacts and address potential alternatives in compliance with NEPA. *LaFlamme v. Federal Energy Regulatory Commission*, 852 F.2d 389, 401-02 (9th Cir.1988) (holding that where several foreseeable similar projects in a geographical region have a cumulative impact, they should be evaluated in a single EIS). Indeed, NEDC notes Ecology's strong desire to undertake a programmatic analysis for these projects, [10] and we recommend that the Corps follow this lead.

If the Corps fails to produce a programmatic EIS, these similar and cumulative actions must nonetheless be addressed in the EIS on this terminal, as discussed in detail below.

IV. Actions that the Corps needs to address in the EIS.

CEQ's regulations require the range of actions being considered include not only the project proposal, but all connected and similar actions that could contribute to cumulative effects.[11]

A. The Corps should address connected actions.

Connected actions are actions that are closely related and should be discussed in the same EIS.[12] The regulations explain that connected actions: (1) automatically trigger other actions that may require an EIS; (2) cannot or will not proceed unless other actions are taken previously or simultaneously; (3) are interdependent parts of a larger action and depend on the larger action for their justification.[13] The Corps' NOI explains that the GPT and rail project are interrelated projects that may have significant individual and/ or cumulative impacts on the human

[10] Ecology's Comments on Coyote Island Terminals (May, 2012), *available at* http://www.ecy.wa.gov/geographic/coyoteisland/20120507_ECYcomments.pdf (also attached as an appendix to this comment).
[11] 40 C.F.R. § 1508.25.
[12] 40 C.F.R. 1508.25(a)(1).
[13] *Id.*

environment.[14] NEDC agrees with the Corps' assessment that the GPT and rail project are part of a larger project to increase capacity for coal exports. The Corps properly is considering the two projects in the same EIS.

The Corps should include as connected actions the mining activities in the Powder River Basin. Seven companies operate mines in the Powder River Basin, the nation's largest coal-producing region. The United States Bureau of Land Management ("BLM") leases coal units to these companies.[15] The GPT and rail expansion will not proceed unless the coal mining in the Powder River Basin continues. Because the coal leases in the Powder River Basin and the GPT and rail expansion on the Washington coast are interdependent parts of the larger action of increasing coal exports, all should be considered together in a single EIS.

Similarly, the GPT and rail project are expected to increase rail traffic. The projects will add about 30 miles of coal trains daily to the BNSF rail line that runs along the Puget Sound coast. Infrastructure will necessarily need to be updated, even though BNSF has yet to submit proposals. As the GPT likely cannot achieve its stated purpose without such rail improvements, the Corps should seek this information from BNSF and include an analysis of these projects in the EIS as connected actions.

B. Cumulative actions must be included in the EIS.

The Corps must also address cumulative actions, "which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement."[16]

As discussed above, there are at least four total permit applications pending for coal export facilities in the Pacific Northwest and several other facilities are under consideration. NEDC agrees with Ecology[17] and the Environmental Protection Agency[18] that due to the multiple pending proposals for coal export facilities in the Pacific Northwest, the cumulative environmental impacts of these facilities should be analyzed together. *See Kleppe v. Sierra Club*, 427 U.S. 390, 409 (1976) ("when several proposals for coal-related actions that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together."); s*ee also City of Tenakee Springs v. Block*, 778 F.2d 1402, 1407 (9th Cir. 1985) (holding that where there are large scale plans for regional development, NEPA requires both a programmatic and site-specific EIS).

[14] 77 Fed. Reg. 58531.
[15] BLM Economic Evaluation of Coal Properties, H-3070-1, *available at* http://www.blm. gov/pgdata/ etc /medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.29194.File.dat/h3070-1.pdf.
[16] 40 C.F.R. § 1508.25(a)(2).
[17] Ecology's Comments on Coyote Island Terminals (May, 2012), *available at* http://www.ecy.wa.gov/ geographic/coyoteisland/20120507_ECYcomments.pdf (also attached as an appendix to this comment).
[18] Environmental Protection Agency Comments on Public Notice for Permit Application under Section 10 of the Rivers and Harbors Act for a Coal Transloading Facility, Port of Morrow, Oregon (April 2012), *available at* http://www.coaltrainfacts.org/docs/COE-Public-Notice-Port-of-Morrow-Coal-Transloading-Facility.pdf.

C. The Corps should consider similar actions.

Alternatively, the other proposed export terminals must be considered as "similar actions," and the effects and alternatives reviewed as such. The CEQ regulations defines "similar actions" as those "which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating the environmental consequences together, such as common timing or geography."[19] The regulations state that agencies should analyze similar actions in the same EIS when doing so is "the best way to adequately assess the combined impacts of similar actions or reasonable alternatives to such actions."[20] The Supreme Court has described reasonable foreseeability in the context of NEPA as a tort-like analysis, invoking the requirement of a "reasonably close causal relationship" and proximate cause.[21] Here, it is reasonably foreseeable that each of the pending coal export facilities described in the previous subsection will actually be constructed given that many of the projects are actively seeking permits.

V. The Corps Must Consider a Reasonable Range of Alternatives in the EIS.

The purpose of an EIS is, inter alia, to "inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment."[22] CEQ's regulations require the Corps to consider a no action alternative.[23] In addition, the Corps must consider other reasonable courses of action and mitigation measures that are not in the proposed action.[24]

NEDC expects the Corps will rigorously explore and objectively evaluate all reasonable alternatives, including consideration of alternatives that are not within the scope of the lead agency.[25] NEDC has identified other reasonable actions that meet the applicant's stated purpose and need. We expect that the Corps will address and objectively evaluate these alternatives in the EIS.

A. Other reasonable courses of action exist that the Corps must objectively consider in the EIS.

The PID explains there is a need for a bulk export terminal in the Puget Sound Region to support Post-Panamax vessels and to facilitate trade, especially through exports. A recent report from the Corps on modernization of United States ports in preparation for Post-Panamax vessels

[19] 40 C.F.R. § 1508.25(a)(3).
[20] *Id.*
[21] *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004).
[22] 40 C.F.R. § 1502.1.
[23] 40 C.F.R. §1508.25(b)(1).
[24] The alternatives provided in the EIS may be used to complete the Corps' evaluation of alternatives as required under section 404(b)(1) of the Clean Water Act ("Guidelines"). 40 C.F.R. § 230.10(a)(4). If the Corps intends to rely on the analysis in the EIS to meet its obligation to comply with the Guidelines, however, the alternatives analysis will need to contain more specific information than would otherwise be necessary under NEPA. *Id.* (noting that the "NEPA documents may address a broader range of alternatives than required to be considered" under the Guidelines "or may not have considered the alternatives in sufficient detail to respond to the requirements of the[] Guidelines.").
[25] 40 C.F.R. § 1502.14.

explains, however, that modernization and increased capacity to support these vessels is primarily needed in the Southeastern United States.[26] In addition, both the PID and the Corps' report indicate that three separate Panamax-ready ports already exist in the Pacific Northwest Region. These include Seattle and Tacoma, both of which are located in the Puget Sound, along with Prince Rupert in Canada. NEDC recognizes the PID's explanation that none of these facilities are preparing for bulk export expansion. However, the PID's explanation is misleading.

For example, the PID is misleading because it cites to outdated and incorrect information. The PID cites to the Port of Seattle's Harbor Development Strategy for Marine Cargo from 1986 as an example of a port plan that is preparing for containerized cargo as opposed to bulk cargo. Yet the Port of Seattle's annual report from 2011 shows that Seattle's largest export was wheat, a bulk cargo. Analysis of harbor and port plans at both Seattle and Tacoma indicates that these ports are, in fact, preparing for increased exports of bulk cargo.[27] And both of these ports have channel depths that can support Post-Panamax vessels.

Given that the PID's statement of need is strongly contradicted by reports from both of Washington's existing major deep-water ports, the Corps should require Gateway Pacific International, Inc. to provide updated the information regarding other ports in the region. With current, accurate information regarding the status of other existing ports, the Corps should then consider such sites as viable alternatives to meet Gateway Pacific International, Inc.'s statement of purpose and need. If the Corps eliminates these alternatives, it should include a specific explanation as to why Seattle's and Tacoma's ports are insufficient to meet demand and why it is inappropriate to consider expansion of these ports as an alternative to the GPT and rail project.

In comparing the environmental impacts of the proposed action with reasonable alternatives, the Corps should assess the relationship between the proposed short-term uses of the environment and the maintenance and enhancement of long-term productivity. In particular, the Corps should compare the permanent loss of environmental resources with the potential short term economic value to be gained. The coal industry admits that coal markets are traditionally volatile.[28]

B. The Corps must consider additional practicable alternatives pursuant to the Clean Water Act.

The Clean Water Act's Guidelines state that where a proposal includes a discharge to a special aquatic site that does not require access or proximity to or siting within the specific aquatic site to achieve its basic purpose, practicable alternatives that do not involve special

---

[26] United States Army Corps of Engineers, *Port and Inland Waterways Modernization: Preparing for Post-Panamax Vessels* (2012), *available at* http://www.iwr.usace.army.mil/index.php/us-port-and-inland-waterways-modernization-strategy, (noting that this region has the fewest 50-foot channels capable of supporting these vessels but has the greatest forecasted trade growth).

[27] *See* Port of Seattle, Extraordinary History Bright Future 10 (2010), *available at* http://viewer.zmags.com /publication/1df518e3 (top export commodities from Seattle by value are bulk commodities); Port of Tacoma, Strategic Plan 2012-2022 at 5 (2012) (providing that the second long-term goal for the Port is to "double dry bulk throughput to 12 million metric tons"), *available at* http://www.portoftacoma.com/File. ashx?cid=5781.

[28] *See* Building a Coal Terminal on the West Coast, *available at* www.coalage.com (discussing a previously failed coal export terminal at the Port of Portland).

aquatic sites are presumed to be available.[29] There is a presumption that all practicable alternatives to the proposed discharge that do not involve a discharge into a special aquatic site will have a less adverse impact on the aquatic ecosystem.[30]

Here, the GPT would include discharges to a special aquatic site. Special aquatic sites[31] include sanctuaries and refuges designated under state law to be managed principally for the preservation and use of fish and wildlife resources.[32] The proposed wharf and a majority of the proposed trestle for the GPT will be built on state-owned tidelands, which have been recognized by the State of Washington as part of the Cherry Point Aquatic Reserve.[33] The Washington Department of Natural Resources ("WDNR") is charged with managing the Reserve, and adopted a management plan in 2010 that identifies environmental protection of the Reserve over and above all other management actions. The order setting aside the Reserve states that preventing further habitat degradation and maintaining Cherry Point's unique habitat is critical to Chinook salmon, a listed species under the Endangered Species Act. As such, the discharge of fill material into tidelands designated as part of the Reserve constitutes a discharge to a special aquatic site.

Although an export facility undeniably requires close proximity to navigable waters to load vessels, there does not appear to be a reason that this export facility must access navigable waters through the designated Reserve tidelands. A water dependent activity is not any activity that requires close proximity to navigable waters. Rather, the regulations define a water dependent activity as one requiring "access or proximity to or siting within *the* special aquatic site in question to fulfill its basic purpose." 40 C.F.R. § 230.10(a)(3). The basic purpose of providing an export facility does not require access or proximity to or siting within the Reserve, the special aquatic site in question, to achieve its basic purpose. The Corps should presume that practicable alternatives not involving a discharge to the Reserve are available. Pacific International Terminal, Inc. will have the burden of clearly demonstrating that practicable alternatives not involving the special aquatic site are not available.

VI. Effects of the proposed GPT and rail project on air and water quality.

NEPA requires agencies to include in an EIS an analysis of the "adverse environmental effects" and "the environmental impact of the proposed action" for actions "significantly affecting the quality of the human environment."[34] The CEQ's regulations state that the following effects of a federal action must be taken into account in an EIS: ecological ("such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems"); aesthetic; historic; cultural; economic; social; and health. These effects may be

[29] 40 C.F.R. § 230.10(a)(3) (explaining that the permit applicant must "clearly demonstrate" that practicable alternatives that do not involve the special aquatic site are not available).
[30] *Id.*
[31] 40 C.F.R. § 230.4(q-1) ("Special aquatic sites means those sites identified in subpart E").
[32] 40 C.F.R. § 230.40(a).
[33] *See* State of Washington Department of Natural Resources, Commissioner of Public Lands, Withdrawal Order for Cherry Point State Aquatic Reserve, August 1, 2000; *available at* http://www.dnr.wa.gov/Publications/aqr_rsve_chpt_comm_order.pdf.
[34] 42 U.S.C. § 102(C)(ii). *See also* 40 C.F.R. § 1502.1 (explaining that one of the purposes of an EIS is to "provide a full and fair discussion of significant environmental impacts").

"direct, indirect, or cumulative." The Corps' regulations largely mirror the CEQ's regulations.[35]

SEPA requires consideration of "environmental impacts" in an environmental review.[36] SEPA defines environmental impacts as "effects upon the elements of the environment," including the natural and built environment.[37] Some examples of effects on the natural environment that must be taken into account include the earth, such as geology and the soils; air, including air quality, odor, and climate; water, including water quality, floods, and public water supply; and energy and natural resources, such as the amount required or rate of use.[38] Elements of the built environment include environmental health, such as noise or releases to the environment affecting public health such as toxic or hazardous materials; land and shoreline use, including aesthetics; and transportation.[39] Just as under NEPA, these impacts must be taken into account regardless of whether they are "direct," "indirect," or "cumulative."[40]

Based on the project description in the NOI, it is clear that the GPT and rail project will have numerous direct, indirect, and cumulative impacts, including impacts to local economies, communities, human health, and the environment. Increased rail traffic at the site and throughout Washington is likely to cause traffic delays.[41] That same increased rail traffic is likely to decrease property values for homes near the freight rail lines. Direct, indirect, and cumulative impacts to fisheries in the region of the GPT and rail project will be substantial. Traditionally, the region has supported salmon and lingcod fisheries and a recreational, commercial, and tribal Dungeness crab fishery. Direct adverse impacts to the local herring population, on which the salmon and lingcod fisheries depend, would cause significant damage to the existing fisheries.

The following sections detail air and water quality impacts that NEDC believes will occur as a result of the GPT and rail project. Each of these impacts is an "effect" under NEPA, SEPA, or both, as explained above. Therefore the Corps and Co-Lead agencies are legally required to analyze these effects in the EIS.

A. Direct effects.

Direct effects are those caused by the action that occur at the same time and place.[42] Outlined below are some of the direct effects to air and water quality that are likely to result from the GPT and rail expansion.

[35] 33 C.F.R. § 325 app. B.7.b (stating that NEPA analysis should include direct, indirect, and cumulative impacts).
[36] WAC 197-11-060(4)(a).
[37] WAC 197-11-444.
[38] *Id.*
[39] *Id.*
[40] WAC 197-11-060(4).
[41] *See* Dan Seedah and Robert Harrison, *Measuring the Impact of Intermodal Rail Movements in State Transportation Planning*, The University of Austin, Texas, *available at* http://www.trforum.org /forum/downloads/2010_91_Impact_Intermodal_Rail_State_Planning.pdf.
[42] 40 C.F.R. § 1508.8(a).

1. Permanent loss of wetlands.

Construction of the GPT and rail loops on wetlands and uplands will result in permanent loss of waters of the United States. The destruction will have direct adverse impacts on the fragile ecosystems that depend on those wetlands. The permanent loss of wetlands is estimated at 145 acres from the GPT and an additional 17 acres from the rail project. The proposed wharf and a majority of the proposed trestle for the GPT will be built on state-owned tidelands, which have been recognized by the State of Washington as part of the Cherry Point Aquatic Reserve.[43] The Washington Department of Natural Resources ("WDNR") is charged with managing the Reserve, and adopted a management plan in 2010 that identifies environmental protection of the Reserve over and above all other management actions.

The Corps should address how the proposed GPT and rail project intend to move forward given this contrary standard for the tidelands. The WDNR's management standard for the region should weigh heavily in favor of the Corps' objective analysis of the other reasonable alternatives that would not directly impact protected tidelands owned by the state.

2. Direct effects from coal dust.

The direct adverse impacts to the environment from coal dust and fugitive emissions are major issues that the Corps must analyze in the EIS. Fugitive toxic coal dust from trains will have a direct adverse effect on the immediate environment. The most likely problem criteria pollutants are $PM_{2.5}$ and PM_{10} emissions, which have been shown to negatively impact human health. Coal dust emissions also contain hazardous air pollutants ("HAPs").

The on-site storage of coal will contribute to coal dust emissions, which will have direct adverse effects on air quality, water quality, and human health. The GPT will include 80 acres of uncovered storage within its East Loop. The site will be designed to store large quantities of coal for at least ten years according to the PID. The potential for coal dust to escape from the stockyard is substantial, and the dust collection systems employed, including compaction, fogging systems, sprayers, perimeter soil berms and site maintenance, may not be sufficient to keep criteria emissions within reasonably safe levels. This is especially true during high wind events. There is also a risk that coal dust would disperse from the project site into the air during routine maintenance of the terminal and its component parts.

BNSF estimates that each uncovered train car loses between 500 pounds and one ton of coal dust en route.[44] Trains entering the property through the Custer Spur and within the vicinity of the East Loop as well as during transfer operations to and from the stockyard are likely to have fugitive emissions that contribute to the coal dust released. The EIS must analyze the potential fugitive emissions from the proposed uncovered coal storage site and rail unloading facilities at the GPT, and their impact on surrounding air quality. The Corps should undertake a

[43] *See* State of Washington Department of Natural Resources, Commissioner of Public Lands, Withdrawal Order for Cherry Point State Aquatic Reserve, August 1, 2000; *available at* http://www.dnr.wa.gov/Publications/aqr_rsve_chpt_comm_order.pdf.

[44] *See* How Much Coal Dust Will there Really Be, Sightline Daily (July 30, 2011), *available at* http://ecotrope.opb.org/2012/07/10753/ (providing information recorded from BNSF website).

detailed wind study at the site to support the fugitive emissions analysis.

NEDC recommends that the impact of all fugitive emissions originating from within the GPT property be modeled both on and off the property. Special attention should be paid to modeling ambient air concentrations in and around the East Loop and the Custer Spur, as this is where the greatest risk to GPT worker safety and the safety of those working and residing near the GPT is likely to exist. East Loop workers will be within close proximity to a major coal stockyard and encircled by multiple open-air coal trains at any given time. NEDC also requests the Corps consider a fully enclosed East Loop stockyard as an alternative for comparing the fugitive emissions modeling. The cost of this alternative should consider the potential health savings that would accrue from indoor enclosure of the East Loop stockyard.

On top of uncovered coal storage and uncovered rail cars, the Puget Sound is generally subject to a lot of rain and wind. It is estimated that there will be 80-100 acres of open coal heaps in close proximity to the Cherry Point Aquatic Reserve in an area subject to inclement weather. Given the high likelihood of direct adverse impacts on the environment, fugitive coal dust and potential spills are direct adverse impacts to the water quality that the Corps should consider in the EIS.

Since the magnitude of these impacts and effective management of coal dust is unknown or uncertain, it will be difficult for Gateway Pacific International, Inc. to mitigate the direct adverse impacts to the air and water quality. The amount of coal dust released into the air and water from open, continuously turned-over, coal heaps in storage at the GPT is unknown. Combine that uncertainty with our knowledge that coal dust is difficult to control and harmful to air and water quality, and coal dust becomes a significant issue. The Corps should carefully analyze the direct effects of coal dust on, inter alia, air and water quality as a result of constructing the GPT and rail project.

3. Likely direct effects on air and water quality during terminal construction.

There will be considerable vehicle and vessel use at the site during both stages of construction. Due both to the increase in personnel at the site for construction and the large vehicles required to transport construction materials, emissions of pollutants into the air will increase during construction. The delivery of pilings for the wharf and trestle by barge will also increase air pollutant emissions. The scoping process should include a discussion of the detrimental effects that additional vehicle and vessel emissions stemming from construction activities will have on air quality in the area.

Similar concerns exist for water quality during the construction phases of the GPT and rail project. NEDC expects that Pacific Terminals International, Inc. will seek a stormwater construction permit for the development phase. Based on the average weather along the Puget Sound coast, the permit conditions for construction will be crucial to avoiding any unnecessary direct adverse effects during the construction phase.

4. Direct effects from increased train and vessel traffic.

Carcinogenic diesel emissions from the increase in vessel and locomotive traffic will have a direct adverse effect on the environment, especially air quality. The GPT would add approximately 30 miles of coal trains daily to the BNSF line that runs along the Puget Sound coast. The GPT will have the capacity to berth three cargo vessels at any given time. The terminal could support Capesize and Panamax vessels, which are some of the largest cargo vessels available. These cargo ships have the capacity to create significant diesel emissions, both in transit and while docked.[45]

NEDC recommends that the EIS examine the reasonably foreseeable air emissions from the operation and maintenance of the vessels along with any necessary support vessels such as tugs, pilots, and other escort vessels. These emissions should be accounted for within the North American Emissions Control Area (i.e. roughly to a distance of 200 nautical miles from the GPT), as ship emissions induced by the GPT are most likely to impact overland air quality management districts within this vicinity. The analysis should include an investigation of the types of fuel being used, as well as the efficiency of the technology used to operate the vessels. Likewise, the EIS should examine the direct adverse effects of increased locomotive traffic due to greater carcinogenic diesel emissions.

NEDC applauds the developer for including preparations for shore-power (cold-ironing) at the GPT.[46] We recommend that the Corps incorporate reasonable mitigation measures such as cold-ironing, the use of effective scrubbing technology on ships, and the use of cleaner fuels by incoming cargo ships in the EIS. These mitigation measures should be compared against the baseline of ambient air quality that would be expected to occur but for these mitigation measures.

5. Air modeling and direct impacts to visibility.

NEDC is disappointed in the lack of information that has been made publicly available. The PID states that the project's Air Quality Impact Analysis would be completed by April of 2011, but this study does not appear to have been made publicly available during the scoping process. As such, it is difficult for NEDC to provide the best possible scoping comments because we are forced to work off the PID as the sole document from the project developer regarding air quality.

The PID's discussion of air quality impacts makes no mention of HAPs. The Corps should evaluate the direct effects of these pollutants in the EIS. Specifically, the EIS should address the HAPs likely to be emitted from diesel emissions from trains, trucks, and vessels. The EIS should also address that HAPs can and will vary depending on the type of bulk commodity being exported. A list of potential export commodities that contain hazardous materials should be included in the EIS and the impact of fugitive emissions of each type of commodity identified should be evaluated. For example, coal contains mercury, a listed HAP.

The PID explains that ozone will not be evaluated in the Air Quality Impact Analysis

[45] *See* EPA, Ocean Vessels and Large Ships, *available at* http://www.epa.gov/oms/oceanvessels.htm.
[46] *See* PID at 4-22.

because "sophisticated air quality models" are required (e.g. CALPUFF). This is a significant mistake that the Corps must address. The Corps should re-evaluate the Air Quality Impact Analysis to appropriately model ozone. Cargo ships are extraordinarily high emitters of NOx (and other criteria pollutants), a listed ozone precursor. Indeed, these ships could represent the largest NOx emitters in far Northwest Washington. For example, the county of Santa Barbara notes that more than half of its ambient NOx originates from vessels.[47] Although shipping emissions are not the direct result of emissions occurring on the GPT site itself, shipping emissions are the result of induced demand, a growth induced effect that must be included in the EIS. Because these emissions can occur in such close proximity to the GPT (i.e. during terminal operations), NEDC has included these types of emissions under direct impacts, although they may also be addressed as indirect impacts. In addition to ozone formation occurring due to shipping emissions, other criteria pollutant emissions from ships associated with the GPT should be analyzed in the Air Quality Impacts Analysis, including non-NOx ozone precursors.

6. Direct adverse effects of increased emissions in the region on visibility.

Visibility impacts are typically a serious issue with NOx emissions and ozone formation along with PM emissions due to light scattering and diffusion. The closest Class I area for regional haze purposes is North Cascades National Park. The park boundary is approximately 50 miles from the GPT (Mount Shuksan is 52 miles in distance). Given the proximity of the GPT to this Class I area and the serious visibility impairment that may occur from the increase in large vessel traffic, the Corps should require Gateway Pacific International, Inc. to model visibility impacts on North Cascades National Park. The EIS should include the modeling results along with input from the Federal Land Manager ("FLM") for North Cascades National Park. NEDC recognizes that the project developer may be reluctant to undertake this analysis; however, the high likelihood of visibility impacts leaves little choice but to make the assessment.

B. Indirect effects of the GPT and rail project.

Indirect effects are those caused by the action that are later in time but are still reasonably foreseeable.[48] These include growth inducing effects, i.e. increased economic demand, and other effects related to induced changes in land use, population density, and related effects on air and water and other natural systems.[49]

1. Indirect impacts on air and water quality due to increased coal train and vessel traffic.

There are likely to be negative impacts due to the heightened amount of rail usage attendant to the project. There are currently 35 daily trains between Seattle and Everett and about 14 daily trains between Everett and Brownsville, British Columbia, according to the Whatcom Transportation Plan. The number of trains per day will increase by 16 to 18 (8 or 9 loaded and 8 or 9 returning). Each of these trains will be made up of 125-150 cars and be

[47] Murphy and McCaffrey, The Need to Reduce Marine Shipping Emissions: A Santa Barbara County Case Study 3, *available at* http://www.sbcapcd.org/itg/download/awma03finalpaper.pdf.
[48] 40 C.F.R. § 1508.8(b).
[49] *Id.*

approximately a mile and a half in length.[50] Loaded trains will weigh approximately 131.5 tons per car and will require four or five locomotives. Each single coal train thus will have four or five times the air quality and general impacts of a single-locomotive train. Each of the diesel-burning locomotives will release particulate matter and other emissions that will degrade the air quality in local towns abutting the rail. Air quality studies in Spokane[51] and California[52] have shown that neighborhoods in close proximity to rail lines with heavy traffic have significantly increased rates of cancer.

In addition, coal cars are typically left uncovered during transport. BNSF has said that *each car* loses between 500 pounds and one ton of coal dust en route.[53] This billowing coal dust can damage the ballast and the rail, causing derailments. The effect of this dust in the open has not been systematically studied, leaving communities ignorant and vulnerable. The effect of coal dust inhalation in closed situations, however, has been well documented and can have detrimental effects on human health and welfare.[54]

NEDC requests that this issue be studied in depth in the EIS, including actual measurements of coal fugitive emissions from coal cars in transit if necessary. Mitigation methods to be discussed in detail in the EIS should include use of surfactants, sealants, and other potential means of reducing fugitive emissions from coal trains. Use of these mitigation methods should be measured from actual coal cars if the information is not currently available. NEDC recognizes that this may take considerable effort, but we believe that the potential health impacts are severe enough that this level of analysis is justified in order to determine the best available mitigation.

These trains will have a negative impact not just on local air quality, but regional air quality as well, through diesel emissions and fugitive emissions. Although Whatcom County is currently in attainment for all criteria pollutants as noted in the PID, prevention of significant deterioration ("PSD") increments are finite resources. Coal trains in the quantities required to provide 30 million tons of coal per year to the GPT (and eventually as much as 48 million tons per year) will likely have an adverse impact on PSD increments. Therefore, NEDC strongly suggests that the impact of these coal trains on local increments in the vicinity of the train routes be calculated. These increments should be used to develop the baseline for modeling air quality impacts that will occur directly on the GPT site (discussed in prior section).

Increased vessel traffic equals an increased risk of spills. Although the risk may be small, such an event poses a catastrophic threat to water quality and the ecosystems that depend on those waters. This is especially true given the close proximity of the proposed coal storage

---

[50] *See* http://www.coaltrainfacts.org/key-facts.
[51] Spokane Regional Clean Air Agency, *Health Risk study for the Burlington Northern / Santa Fe Railroad Spokane Yard* 6-9 (September, 2011), *available at* http://www.coaltrainfacts.org/docs/BNSF-Spokane-Railyard-Health-Study.pdf.
[52] California Environmental Protection Agency Air Resources Board, *Health Risk Assessment for the BNSF Railway Stockton Railyard* 12-18 (November 2007), *available at* http://www.coaltrainfacts.org/docs/bnsf_stockton_hra.pdf.
[53] *See* How Much Coal Dust Will there Really Be, Sightline Daily (July 30, 2011), *available at* http://ecotrope.opb.org/2012/07/10753/ (providing information recorded from BNSF website).
[54] *See, e.g.*, National Public Radio, *Black Lung Makes a Deadly Resurgence* (July 14, 2012), *available at* http://www.npr.org/2012/07/14/156772226/black-lung-makes-a-deadly-resurgence.

areas to the Cherry Point Aquatic Reserve.[55] Thus the potential adverse effects are significant. Exacerbating the problem, Washington's oil response spill program is facing budget cuts.[56] The two leading causes of oil spills from vessels are equipment failure and human error.[57] Because neither cause can be eliminated, mitigation measures will be limited in their ability to reduce the risk of spills. The Corps should address the increased risk of oil spills due to increased vessel traffic resulting from the GPT in the EIS as an indirect effect.

Greater vessel traffic also increases the risk of introducing invasive species through ballast water carried from Asian ports that is discharged into the Puget Sound. Like the risk of oil spills, although the chance of occurrence might be slim, the result would be devastating. The United Nations identified the introduction of invasive species into new environments through ballast water as one of the four greatest threats to the world's oceans. Hence the Corps should address the indirect impact of induced increased vessel traffic and the increased risk of introducing invasive species to the region.

2. Indirect impacts on the Cherry Point Aquatic Reserve.

The Corps should include an analysis of the indirect impacts on the Cherry Point Aquatic Reserve resulting from the nearby construction of the GPT and rail expansion. The Reserve is made up of important habitat such as mixed microalgae, which is critical for salmon and herring, kelp, eelgrass beds, a salt marsh, and two freshwater streams. The Reserve houses significant bird habitat. The wetlands in the Reserve support many species of marine and migratory birds. The Reserve is also home to marine life such as Dall's porpoise, Stellar and California sea lions, gray whales, harbor seals, Southern Resident Killer Whales, humpback whales, seals, and Pacific harbor porpoise. Construction of a major import and export terminal, and the associated increased use of the area, will necessarily have an impact on the Reserve and the species that live there. These impacts should be thoroughly discussed in the Corps' EIS.

Construction of the GPT and rail project will indirectly affect ecosystems that depend on the myriad of wetlands within the Gateway Pacific Terminal Watershed and the Birch Bay Watershed. The project site is within both of these watersheds. The permanent loss of wetlands in these watersheds, which are associated with Terrell Creek and Lake Terrell, will likely indirectly affect the heron rookery supported by Lake Terrell wetlands. Downstream indirect effects due to the destruction of wetlands include negative changes to stormwater, soil erosion and sedimentation, and likely changes in flooding patterns.

Given the intricacy of these riparian habitats and the ecosystems that depend on them, it is unlikely that the Corps will be able to ensure the quality of existing natural resources is maintained. It is important that the Corps acknowledge these adverse environmental effects to the wetland habitats at Cherry Point that cannot be avoided, and at the same time acknowledge

[55] *See* Washington State Department of Natural Resources, Cherry Point Aquatic Reserve website, *available at* http://www.dnr.wa.gov/ResearchScience/Topics/Aquatic Habitats /Pages /aqr_rsve_cherry_point.aspx.
[56] *See* EarthFix, *NW Readiness for Oil Spills Drops as Risks Increase*, Nov. 28, 2011, *available at* http://earthfix.opb.org/water/article/oil-spill-preparedness/.
[57] *See* The Pacific States Oil Spill Task Force website, *available at* http://www.oilspilltaskforce.org/.

that the same type of environment is not reproducible through restoration or re-creation efforts.[58] Rather, the permanent loss of wetlands threatened by the GPT and rail project and the associated indirect effects of the loss are irreversible and irretrievable commitments of resources.

3. Indirect impacts on greenhouse gas releases and global climate.

On October 5, 2009, President Obama signed Executive Order 13514[59] to make the reduction of greenhouse gas ("GHG") emissions a priority for all federal agencies. The order requires agencies, inter alia, to "measure, report, and reduce their greenhouse gas emissions from direct and indirect activities."

In response to the order, CEQ issued Draft Guidance to federal agencies on February 18, 2010, offering guidance for analyzing the effects of greenhouse gas emissions and climate change when describing the environmental effects of a proposed agency action in accordance with NEPA. CEQ's draft GHG guidance, which represents CEQ's most up-to-date interpretation of NEPA, states that for larger projects, both direct and indirect GHG emissions should be considered in scoping and ultimately quantified in the EIS.[60] This is consistent with EPA's finding that GHGs endanger the public health and welfare.[61]

The EIS should include an accounting of greenhouse gas emissions associated with all aspects of the project, including but not limited to: (1) pre-construction; (2) construction; (3) operation; (4) maintenance; (5) decommissioning; (6) increased rail and ship transportation, reasonably expected to occur due to operation of the export terminal; (7) increased coal combustion, reasonably expected to occur due to operation of this export terminal; and (8) increased coal extraction, reasonably expected to occur due to operation of this export terminal. Some of these impacts may be viewed as direct or indirect impacts. Items (1)-(5) should address both stationary and mobile emissions sources. Items (7)-(8), which relate specifically to coal, are addressed further in the following section. All of the above sources of emissions should be estimated over the life of the project and in cumulative fashion. This analysis is mandated by SEPA, which requires inclusion of climate impacts in an EIS.

4. Reasonably foreseeable climate impacts of coal exported from the GPT.

Gateway Terminal International, Inc.'s proposal has the potential to directly contribute to GHG emissions by exporting up to 48 million metric tons of coal and petroleum coke to developing countries in the Pacific Rim each year once the GPT is fully constructed. To put this number in perspective, this is 0.6% of all worldwide coal produced in 2011, 1.3% of the coal

---

[58] *See* C.B. Craft, J. Bertram and S. Broome, *Coastal Zone Restoration* (2008), *reprinted in* Applications in Ecological Engineering, 59-65, (Erik Jorgensen, ed., Elsevier B.V. 2009).
[59] 74 Fed. Reg. 52,117 (Oct. 8, 2009).
[60] *See* DRAFT NEPA GUIDANCE ON CONSIDERATION OF THE EFFECTS OF CLIMATE CHANGE AND GREENHOUSE GAS EMISSIONS, *available at* http://ceq.hss.doe.gov/nepa/regs/Consideration_of_Effects_of_GHG_Draft_NEPA_Guidance_FINAL_02182010.pdf.
[61] 74 Fed. Reg. 66,496 (Dec. 15, 2009).

produced in China, and 8.2% of the coal produced in India.[62] Greenhouse gas emissions resulting from coal burning are undisputed.[63] Although the mechanism for creating greenhouse gases (fossil fuel burning in end-user countries) is separated from the GPT facility by geography, the climate impacts of increased greenhouse gas emissions from coal burning are, by definition, local. These emissions will have a direct impact on U.S. citizens that NEPA is designed to inform. Given that the GPT may become the largest coal export facility in North America, a detailed analysis of GHG releases from coal combustion in end-user countries is in the strong public interest.

The GPT EIS should include an analysis of reasonably foreseeable GHG emissions due to coal burning in end-user countries that will be facilitated by the GPT, as required by SEPA and NEPA. The potential climate impacts resulting from coal exported from the GPT are reasonably foreseeable because increased GHG emissions resulting from increased coal burning are an immediate result of increased coal exports. In short, the causal chain from mining coal to burning coal is unquestionably clear. The Corps is thus legally required to account for GHG releases due to combustion of coal exported through the GPT.[64]

Although the EIS should focus heavily on quantifying GHG emissions from coal combustion given the concrete plans to export coal through the GPT, the EIS should include an accounting of *any* potential bulk export commodities that may be exported through the GPT that would ultimately result in the release of GHGs in end-user countries. Calcined petroleum coke is one example. This accounting should include both the GHG release potential of each unit of a commodity exported (e.g., per ton exported) as well as the maximum GHG release potential of each commodity over the lifetime of the GPT. For example, the EIS should include a calculation of expected GHG releases due to mining, transporting, and combusting each ton of coal exported through the terminal. The EIS should then extrapolate this calculation over the lifetime of the project to account for all coal that may be exported through the GPT.

C. Cumulative effects of the GPT and rail project.

Cumulative impacts are impacts on the environment that result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.[65] Regarding the temporal component of cumulative effects analysis, the Ninth Circuit has further stated that an agency must "rationally explain its decision [to limit the scope of cumulative effects to a certain point in the future] in the context of project-specific effects."[66] Clearly implicit in this case's holding is that an agency, at the minimum, must take cumulative effects into account for a period of time *after* construction has been completed and operation of the facility has commenced in full because such effects are reasonably foreseeable.[67]

---

[62] World Coal Association, Coal Statistics, *available at* http://www.worldcoal.org/resources/coal-statistics/.
[63] *See, e.g.*, EPA's May 2012 proposal to implement new source performance standards for power plants burning fossil fuels, including coal.
[64] *See Sylvester v. U.S. Army Corps of Engineers*, 884 F.2d 394, 400 (9th Cir. 1989) (explaining environmental impacts under NEPA in terms of causal chains, some necessarily longer than others).
[65] 40 C.F.R. § 1508.7 (noting that "[c]umulative impacts can result from individually minor but collectively significant actions taking place over a period of time.").
[66] *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1077 (9th Cir. 2011).
[67] *Id.*

The Corps should consider the cumulative impacts on the environment that will result from the incremental impact of the GPT when added to the other reasonably foreseeable future coal export terminals that are proposed for construction in the Pacific Northwest. For example, Ecology commented on the cumulative impacts for the Coyote Island Terminal at the Ports of Morrow and Westward, explaining that cumulative impacts would foreseeably result from each of these facilities being constructed together.[68] There are as many as seven coal export terminals proposed for construction in Oregon and Washington. Should the Corps choose to exclude any of these proposed projects, it must rationally explain its decision to limit the scope of cumulative effects of the GPT. Because completion of these projects is reasonably foreseeable, NEDC believes it is unlikely that the Corps would be able to rationally explain excluding the cumulative effects of these additional coal export terminals.

The effects of coal mining should also be considered in the cumulative impacts analysis. Coal mines in the Powder River Basin are degrading local aquifers and drinking water supplies.[69] The Corps should consider this type of present action that is part of the bigger system as a cumulative impact. When the incremental adverse impact to water quality is considered in the cumulative with the adverse impacts to water quality from mining operations in Montana and Wyoming, the GPT and rail project will have significant adverse impacts on water quality. Because each of these projects is projected to continue far into the future (based on the consistently high demand for coal in China), over time these actions will, in the cumulative, result in an irretrievable commitment of our natural resources. The Corps should consider in the EIS the ongoing threats to water quality and how the incremental increased threat from the GPT and rail project will cause a cumulative adverse impact.

D. The Corps must address uncertain or unknown information.

When the information is incomplete or unavailable, the Corps must make clear that the information is lacking, the relevance of the information to the evaluation of foreseeable significant adverse effects, summarize the existing science, and provide its own evaluation based on theoretical approaches.[70] Some direct effects that remain uncertain include but are not limited to the impacts to habitat and water quality from the shade footprint of the pier and ship operations; impacts from ballast water exchange; water quality deterioration from construction and operation of the facility; vessel traffic impacts; and public access issues. NEDC expects that any studies or monitoring information conducted by Pacific International Terminals, Inc., or its contractors regarding these issues will be made publicly available during the comment period for the EIS.

The effect of coal dust from uncovered rail cars or open-air storage leaching into local drinking water supplies is largely unknown. As the potential for this leaching to occur is very

[68] *See* attached comment from Ecology (beginning at page A-1): Ecology's Comments on Coyote Island Terminals (May, 2012).
[69] *See* Western Organization of Resource Councils, *Exporting Powder River Basin Coal: Risks and Costs* (2011), *available at* http://www.coaltrainfacts.org/docs/Exporting_Powder_River_Basin_Coal_Risks_and_Cost.pdf.
[70] 40 C.F.R. § 1502.22.

high for the GPT and rail project, the Corps should seek out studies assessing these impacts, or require Pacific International Terminal to complete the necessary research. This information is essential for the Corps to make an informed, objective analysis of the project. Without such information, the Corps' analysis comparing the proposed action to other reasonable alternatives will be misguided and misleading to the public. The extent to which coal dust in the water might affect the marine plants and animals is unknown.

Conclusion

NEDC requests that the Corps and Co-Lead Agencies respond to these comments. We trust that the Corps' NOI reflects the honest intentions of the agency to prepare an EIS and request notification when the draft is completed. Based on the controversy involved, the adverse impacts to the environment and the uncertainty of how effective mitigation measures might be, NEDC does not believe that the Corps may reasonably decide not to prepare an EIS. If, however, for some reason the Corps decides not to proceed with an EIS, NEDC expects to be timely notified of such a change in the decision and to be given ample opportunity to comment before the decision becomes final.

In sum, NEDC believes a programmatic EIS is necessary to account for the cumulative impacts of the numerous pending coal export terminal projects. Under either a programmatic EIS or the proposed project-specific EIS, NEDC expects that the Corps will provide a complete and thorough review of this project, taking into consideration the various concerns voiced through public comment.

Sincerely,

Marla Nelson
Legal Fellow

JJ England
Jamie Jones
Jordan Schoonover
Air Group Project Coordinators

Jane Stermer
Shanna Fricklas
Merissa Moeller
Philip Thoennes
Jeffrey Speir
Air Group Volunteers

ENCLOSURE

Washington State Department of Ecology's Comments on Public Notice of Permit Application for Coyote Island Terminals LLC; US COE Number NWP-2012-56

1. There are Numerous Coal Export Proposals Pending in Oregon and Washington:

Coyote Island Terminals seeks to ship coal from locations in Oregon to overseas markets. The proposal would entail the coal traveling by train from the Powder River Basin to the Port of Morrow, then loaded onto barges and traveling on the Columbia River to Port Westward. At Port Westward, the coal would then be loaded onto Panamax vessels and shipped to Asia. At full build-out, the facility proposes to annually ship 8.8 million tons of coal.

There are permit applications pending for three other coal export facilities in the Pacific Northwest. SSA Marine has submitted an application for a coal export facility in Whatcom County, Washington at Cherry Point, with annual export of 48 million tons at full build-out. Millennium Bulk Logistics (a subsidiary of Ambre Energy, like Coyote Island Terminals) has submitted an application for a coal export facility in Longview, Washington with annual export capacity of 44 million tons at full build-out. A dredging permit at Coos Bay, Oregon is currently under appeal, with expectations that the dredging will accommodate a coal export facility with approximate annual export capacity of 10 million tons. All of these facilities would entail transport of coal by train from the Powder River Basin to their Oregon and Washington locations, followed by shipment overseas to Asian markets. There are also two other permit applications expected at two separate sites at the Port of St. Helens, Oregon and Hoquiam, Washington.

2. The National Environmental Policy Act (NEPA) Requires Consideration of Cumulative Impacts:

We believe that NEPA provides a helpful and instructive process for and requires consideration of cumulative impacts. In 40 C.F.R. §1508.7, the Council on Environmental Quality (CEQ) has defined cumulative impacts as:

> "The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions."

In 1997, CEQ issued comprehensive guidance on cumulative impacts analysis under NEPA.[1] In its guidance, CEQ notes that: "The range of actions that must be considered includes not only the project proposal, but all connected and similar actions that could contribute to cumulative effects." "Similar actions" are defined in 40 C.F.R. §1508.25(3) as "reasonably foreseeable or proposed agency actions [with] similarities that provide a basis for evaluating the environmental consequences together, such as common timing or geography." According to CEQ, "the goal of cumulative effects analysis, like that of NEPA itself, is to inject environmental considerations into the planning process as early as needed to improve decisions."

Cumulative impacts result from geographic and temporal crowding of environmental disturbances. In Table 1-2 of its guidance, CEQ enunciates and describes eight principles of cumulative impacts analysis. In setting forth these principles, CEQ recognizes that: "[i]ndividual effects from disparate activities may add up or interact to cause additional effects not apparent when looking at the individual effects one at a time" and that "repeated actions may cause effects to build up through simple addition (more and more of the same type of effect), or different actions may produce effects that interact to produce cumulative effects greater than the sum of the effects."

In Table 2-1 of its guidance, CEQ poses seven questions to assist federal agencies in identifying potential cumulative impacts. In the present situation, two questions are particularly relevant: (1) "Is the proposed action one of several similar past, present, or future actions in the same geographic area?" and (2) Do other activities (whether governmental or private) in the region have environmental effects similar to those of the proposed action?"

Like CEQ, courts have recognized the need for cumulative impacts analysis under NEPA. It is also helpful to look at what the courts have said about federal agency responsibility in doing cumulative impacts analyses. In the important cumulative impacts case of *Kleppe v. Sierra Club*, 427 U.S. 390(1976), the Supreme Court stated: "[W]hen several proposals for coal-related actions that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together." And in 2004, the Ninth Circuit Court acknowledged that NEPA requires a federal agency to analyze the cumulative impacts of non-federal actions even if the federal agency has no control over those actions, and that in order to justify the need for a cumulative impacts analysis, it is enough to identify the *potential* for cumulative impacts, not that such impacts will necessarily occur. *Resources Limited, Inc. v. Robertson*, 35 F.3d 1300, 1306 (9th Cir. 2004).

Several cases have also specifically addressed the responsibility of the Army Corps of Engineers to consider cumulative impacts in the context of NEPA. For example, in *Te-Moak Tribe of Western Shoshone v. Dep't of Interior*, 608 F.3d 592 (9th Cir. 2010), the Ninth Circuit Court concluded that the Corps was required to take a hard look at increased vessel traffic associated

[1] Considering Cumulative Effects Under the National Environmental Policy Act, Council on Environmental Quality, January 1997, *available at* http://ceq.hss.doe.gov/nepa/ccenepa/ccenepa.htm.

with a new dock at BP's Washington State oil refinery, including consideration of cumulative impacts of the dock when combined with existing and proposed future projects. The District Court of Wyoming concluded in a 2005 case that, before issuing a §404 permit under the Clean Water Act, the Corps was required to consider all cumulative impacts to the "natural and physical environment" rather than confine its analysis to wetlands impacts. *Wyoming Outdoor Council v. US Army Corps of Engineers*, 351 F.Supp. 2d 1232, 1241 (D. Wyo. 2005). In a case involving a NEPA determination for multiple casinos on the Mississippi coast, the D.C. District Court concluded that cumulative impacts alone can constitute grounds for an EIS under NEPA. *Friends of the Earth v. US Army Corps of Engineers*, 109 F.Supp. 2d 30, 42-43 (D. D.C. 2000).

The Coyote Island Terminals' proposal could result in potential environmental impacts of considerable importance. This potential is magnified when considered cumulatively along with impacts from other similar projects in the region. Areas of concern that merit a hard look, at a minimum, include:

- Increased vessel traffic on the Columbia River, including navigational and maritime safety concerns
- Protection of water quality, including increased risk of spills in the Columbia River
- Coal dust emissions at the facility and during product transit
- Emissions of other air pollutants, including diesel particulate and greenhouse gases
- Increased rail traffic, including railroad capacity, increased noise, and delay times for emergency vehicles at rail crossings

Some of these impacts are addressed in more detail below.

3. Cumulative Impacts to the Columbia River System have the Potential to Be Significant:

As noted above, multiple new coal terminals are currently proposed along the river that would increase vessel traffic, would increase risks to maritime safety and environmental protection. Infrastructure concerns such as anchorages, fuel transport, and pilot availability should be addressed as they affect the level of risk presented by an increase in vessel traffic. Facility and vessel operations need to be described in more detail to determine the full level of impacts. However, using the Public Notice for Permit Application as our source of information, we have determined, at a minimum, that the following issues should be considered in an EIS.
We have also identified some areas where more information is needed.

For background, in 2010, the number of vessels entering the Columbia River bound for Washington or Oregon ports, was 1,467 cargo vessels and 116 tank ships. At maximum capacity under the Port of Morrow proposal, there would be 156 more cargo ships. Additionally, 1,248 more barge trips would substantially increase barge traffic upriver. Thus, for this project alone, there would be an 11% increase in cargo vessel traffic and an even more significant increase in barge traffic upriver. The cumulative impact from all the planned coal projects would be even

greater. This sizable increase cannot simply be folded into the current infrastructure or operational processes on the Columbia River. In addition, the Columbia River system is a confined river system with multiple ports, a breaking coastal bar at the entrance, and no federal vessel traffic system, all of which increase the potential for risk. Vessel impacts from this project (singly and cumulatively) could be significant and should be analyzed.

The coal is proposed to travel by barge from the Port of Morrow to Port Westward. However, very little information was provided on the plan for Port Westward operations or structures. No information is provided on the enclosed transloading barge or its operations. No information is provided on how the barges and ship will be secured while at Port Westward. If Coyote Island Terminals proposes to use the current World War II-era dock in the area, additional studies and surveys should be conducted to verify the stability of the structure for the proposed operations and depths. If permanent anchors will be utilized, additional information is needed on how these will be installed and used. The environmental impacts of the various options should be considered.

Assuming the enclosed transloading barge will remain in one place, information on how the vessel will be fueled and what vessel emissions will be released should be provided and analyzed. Depending on the operations, the barge may have office or living spaces onboard, so there should be information on how the sewage and gray water will be discharged.

A description of how the coal will be transported from the barge to the vessel is missing. If the system is not fully enclosed, the potential for releases of coal dust exists. Also, how will the coal dust that is collected be handled? And at the Port of Morrow, will the conveyor system be fully or partially enclosed? How will coal dust be controlled there? The environmental impacts associated with coal dust should be considered.

Oil spill risk should also be considered. Will oil be stored on site to fuel tugs? As no land-side facility is proposed, in the case of a spill, where will spill response equipment be located? Will barge personnel be trained in spill response and booming operations? Oil spill response equipment, personnel and training need to be better described.

There are also navigational concerns that should be considered. First, navigation concerns should be addressed for Port Westward due to the narrow width of the river at that location and the nearness of the navigational channel. The significant increase in barge traffic from the Port of Morrow to Port Westward must pass through several locks and transit along a depth-constrained channel with areas of potential shoaling. What are the proposed lengths, beams and depths of the barges? How will the increase in barge traffic be managed to prevent near-misses or groundings? Safety factors should be considered, such as requiring the use of Automatic Identification System (AIS) on board each tug and tow and improved AIS monitoring capability for the upriver portion of the Columbia River. These potential impacts should be analyzed in an EIS.

4. Increased Rail Traffic Could Result in Potential Environmental Impacts:

The Public Notice states that there will be eleven coal trains traveling weekly to the Port of Morrow at full build-out. Ecology assumes that the trains will be making round trips. Thus, it appears that this proposal would result in 22 additional train trips to and from the proposed facility, or slightly over 3 trips per day. We understand that the trains will travel on BNSF tracks from the Powder River Basin, traveling through Spokane, and then continuing southwest through Washington until crossing the border in the south to Oregon.

The trains associated with at least two of the other proposed facilities are expected to travel this same route in Washington. Those proposals at full build-out could result in approximately 18 daily trips (Gateway) and 16 daily trips (Millennium Bulk). Thus, a minimum of 37 coal trains might daily transit the same route. The rail traffic from some of the other proposals may also travel the same route, further adding to the potential for environmental impacts of increased traffic.

In 2006, the Washington State Transportation Commission published a Statewide Rail Capacity and System Needs Study.[2] The study shows a rail system that is at, or over, capacity in several critical areas along the rail line. Specific to the present proposal, Figure 3 in the study shows that rail capacity is constrained along much of the BNSF route from Sandpoint to Oregon and is congested in the Spokane area. Figure 4 in the study shows Spokane as a "choke point" in the rail system. Rail capacity issues are an important challenge for this proposed project, especially when considered cumulatively with the other proposals.

The increase in coal train traffic also presents the potential for other environmental impacts of concern. For example, coal dust is known to be emitted from uncovered coal cars during transit. The length and number of trains could result in longer wait times at at-grade crossings for emergency personnel and members of the traveling public. Increased trains could result in noise impacts and increased air emissions, including diesel particulate emissions. The potential for these and other types of impacts have not gone unnoticed by communities located along this corridor. Many are expressing strong concerns about the potential for significant environmental impacts that could occur from the cumulative impacts of these proposals. These communities' concerns and these potential impacts should be considered in an EIS for the proposal.

5. The Corps' Regulations and NEPA Require Consideration of Both Direct and Indirect Impacts that would be Proximately Caused by a Proposal:

Some of the impacts identified in this letter, such as those associated with facility operations, are direct impacts of the project. Some of the impacts, such as those arising from increased vessel

[2] The study can be found at http://www.wstc.wa.gov/Rail/RailFinalReport.pdf.

and rail traffic, may be more properly described as "indirect" impacts, which CEQ defines in 40 C.F.R. §1508.8(b) as those impacts "which are caused by the action and are later or farther removed in distance, but are still reasonably foreseeable." Both direct and indirect impacts must be considered under NEPA.

All impacts which are "proximately caused" by the proposal under consideration should be analyzed in a NEPA document. In *Dep't of Transp. v. Public Citizen,* 541 U.S. 752 (2004), the Supreme Court defined proximate cause as "a reasonably close causal relationship between the environmental effect and the alleged cause." Consistent with this standard, courts have required federal agencies to take a hard look at indirect impacts that would be proximately caused by a proposal, even if those impacts are well outside of the immediate vicinity of the proposal and/or are further removed in time from the proposal itself. For example, the Ninth Circuit Court held that BLM needed to look at the indirect impacts of transporting and processing refractory ore prior to making permit decisions on a mine proposal. *South Fork Band Council of Western Shoshone v. Dep't of Interior*, 588 F.3d 718, 725-26 (2009).

Corps' regulations define the scope of what the Corps considers under NEPA. Typically, the Corps focuses its analysis on "impacts of the specific activity requiring a permit and those portions of the entire project over which the district engineer has sufficient control and responsibility to warrant federal review." 33 C.F.R. Part 325, App. B §7(b). In urging the Corps to look at cumulative impacts associated with increased vessel and rail traffic, Ecology notes that it is not asking the Corps to expand the scope of its NEPA analysis beyond what is required under the Corps' regulations. Rather, vessel and rail impacts are indirect impacts that are expected to be proximately caused by the proposal that is pending before the Corps. For that reason, those impacts are appropriately considered in an EIS.

6. Conclusion:

Because of the confluence of several coal export proposals in the Oregon-Washington region, it is imperative that a federal agency consider the cumulative impacts of these proposals. In fact, in 40 C.F.R. §1508.25(a)(3), CEQ authorizes agencies to analyze similar actions in the same EIS, and notes that an agency "should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement."

Should the Corps decline to do this broader cumulative impact analysis as part of a single EIS, it is still imperative that agencies making permit decisions on individual projects consider the direct, indirect, and cumulative impacts of those decisions.