



United States Department of the Interior



FISH AND WILDLIFE SERVICE

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MAY 23 2014

In Reply Refer To:
01EWF00-2014-CPA-0020

Sally Toteff, Southwest Regional Office Director
Washington State Department of Ecology
and
Brian Shay, City Administrator
City of Hoquiam
regarding
Westway and Imperium EISs
c/o ICF International
710 Second Avenue, Suite 550
Seattle, Washington 98104

Dear Ms. Toteff and Mr. Shay:

On April 4, 2014, the Washington State Department of Ecology (Ecology) and City of Hoquiam, Washington (City), announced their intent to prepare State Environmental Policy Act (SEPA) Environmental Impact Statements (EISs) for proposals submitted by the Westway Terminal Company (Westway) and Imperium Renewables (Imperium). Ecology and the City have determined that these proposals are likely to have significant adverse impacts to the human and natural environment. While the Westway and Imperium proposals are separate, requiring independent approvals and permits, the SEPA Co-Leads have opted for a single, or joint, scoping comment period. The SEPA Co-Leads held public meetings on April 24 and April 29, 2014, and requested SEPA scoping comments from the public by May 27, 2014. This letter transmits the U.S. Fish and Wildlife Service's (Service) SEPA scoping comments.

Westway and Imperium each independently operate existing bulk fluid storage and transloading/shipping operations at the Port of Grays Harbor (Port). Westway's current operations store, transload, and ship methanol. Imperium's current operations store, transload, and ship biodiesel. The Westway and Imperium proposals would redevelop portions of the Port's Terminal 1 facility and would expand existing and construct new bulk fluid storage and transloading/shipping infrastructure. Both proposals would accommodate future crude-by-rail deliveries and shipping (CBR).

The Westway proposal is described as follows (Ecology 2014b):

“Westway proposes expanding its existing bulk liquid storage terminal to allow for the receipt of crude oil unit trains, storage of crude oil from these trains, and shipment of crude oil by vessel and/or barge from Port of Grays Harbor Terminal 1.” “Five new storage tanks would be constructed ... [with a] total storage capacity of 1 million barrels (42 million gallons). The annual maximum throughput would be 17.8 million barrels (749.9 million gallons) per year. The tanks would be surrounded by a concrete containment wall.” “The existing rail facility on the site would be expanded from two short spurs ... to four longer spurs, with a total of 80 loading/unloading spots. The rail car containment area would have the capacity to contain the total volume of a single rail car plus an allowance.” “A new pipeline would connect the new tanks, via an existing pipeline bridge, to the Port’s Terminal 1. Work performed on the terminal dock would be limited to the addition of loading arms and parts of a marine vapor combustion system. There would be no in-water work.” “[Westway] estimates that terminal operations would handle 458 unit trains a year (loaded and empty) or 1.25 trains per day. [Westway] estimates that the terminal operations would handle 99 to 119 barges a year (198 to 238 entry and departure transits), or approximately one every two days.”

The Imperium proposal is described as follows (Ecology 2014c):

“Imperium proposes to expand its existing bulk liquid storage terminal to allow for the receipt, storage, and shipment of biofuels ... and feedstocks for biofuel production ... petroleum products including naphtha, gasoline, vacuum gas oil, jet fuel, No.2 fuel oil, No. 6 fuel and kerosene; crude oil; and renewable fuels such as renewable diesel and renewable jet fuel. Imperium is also applying for permits to store these bulk liquids. The bulk liquids could be shipped by rail, trucks, ships, or barges to and from the facility from the Port of Grays Harbor Terminal 1.” “Up to nine storage tanks would be constructed ... [with a] total storage capacity of up to 720,000 barrels (30.2 million gallons). The annual maximum throughput for the entire Imperium facility, including the expansion, would be 30 million barrels (1.26 billion gallons) per year. The tanks would be surrounded by a concrete containment wall.” “The existing rail facility would be expanded. Approximately 6,100 feet of track in multiple new rail spurs would be constructed ... The rail car containment area would have the capacity to contain the total volume of a single rail car plus an allowance.” “Pipelines would be installed connecting Terminal 1 with the tank farm ... following a similar route as the existing Imperium tank farm piping. A marine vapor combustion unit would be installed ... [and] a new building or buildings would be constructed ... to replace existing mobile trailers ... No in-water work is proposed.” “[Imperium] estimates that the terminal operations would handle a maximum of 730 unit trains a year (loaded and empty) or 2 trains per day. [Imperium] estimates that the terminal operations would handle up to 200 ships or barges a year (400 entry and departure transits), or one per day.”

The SEPA Co-Leads have requested scoping comments and public input on the following: study disciplines, areas, and items for the EISs; potentially significant impacts, and the methods of study or analysis needed to assess these impacts; recommended measures to avoid, minimize,

and mitigate (or offset) impacts; and, alternatives. The study disciplines or areas include Earth, Air, Water, Plants and Animals, Environmental Health, Land and Shoreline Use, Recreation, Historic and Cultural Preservation, and Transportation.

The Service's Washington Fish and Wildlife Office has responsibility for managing or co-managing a variety of Federal trust resources, including sensitive species which are listed under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), their habitats and designated critical habitat, Federal wildlife refuges, and other fish and wildlife trust resources. Along the lower Chehalis River, and in Grays Harbor, these trust resources include the following: 1) Coastal/Puget Sound bull trout (*Salvelinus confluentus*, threatened), 2) marbled murrelet (*Brachyramphus marmoratus*, threatened), 3) western snowy plover (*Charadrius alexandrinus nivosus*, threatened), 4) streaked horned lark (*Eremophila alpestris strigata*, threatened); 5) designated critical habitat for the bull trout, western snowy plover, and streaked horned lark; 6) the Grays Harbor National Wildlife Refuge (Grays Harbor NWR), located on Bowerman Basin in Hoquiam, Washington; 7) Grays Harbor shorebird, waterfowl, and migratory bird populations; and 8) jointly managed Tribal, commercial, and recreational fisheries (fin fish and shellfish). The Service is committed to implementing the goals, objectives, and policy principles outlined in our *Native American Policy* (U.S. Department of the Interior, 1994) and *Secretarial Order 3206* (U.S. Department of the Interior and U.S. Department of Commerce, 1997). The Service shares in the Federal government's responsibility for accomplishing greater recognition and protection of treaty-protected resources and rights.

Thank you for the opportunity to provide SEPA scoping comments. Thank you also for holding the public meetings convened on April 24 and April 29, 2014. The meetings were well attended, and many of the Service's concerns were shared by the participants.

Our summary comments, concerns, and suggestions, organized by study discipline or area (Water, Plants and Animals, Environmental Health, Transportation, etc.), are provided below. These comments are summary in nature. We would welcome the opportunity to further engage on these proposals and issues with Ecology, the City, the Port, and other interested stakeholders.

Earth

This discipline or study area should include consideration of seismic events, seismic preparedness, tsunami events, and tsunami preparedness.

Stakeholders have voiced concern that existing Port infrastructure is vulnerable to seismic instability and resulting liquefaction. New and expanded bulk fluid storage and transloading/shipping infrastructure would be put at-risk, and resulting environmental costs and damages could be severe, in the event of a large earthquake.

Ecology and the City should investigate the seismic stability and readiness of existing Port infrastructure, and make this information (including geotechnical and engineering analyses) available to the public.

Concerns have also been voiced that existing Port infrastructure is vulnerable to tsunamis. New and expanded bulk fluid storage and transloading/shipping infrastructure would be put at risk, and resulting environmental costs and damages could be severe, in the event of a large earthquake and resulting tsunami.

Ecology and the City should investigate the risks associated with a major event along the Cascadia Subduction Zone (Ecology 2014d), and should document tsunami preparedness, and the readiness and vulnerabilities of existing Port infrastructure. Ecology and the City should make this information (including geotechnical and engineering analyses) available to the public.

Air

Carbon-dioxide emissions are a cause for ongoing ocean acidification. Ocean acidification poses well-documented threats to marine food webs, sensitive marine and coastal resources, and Tribal, commercial, and recreational fisheries.

During 2009, the Washington State Legislature approved the *State Agency Climate Leadership Act E2SSB 5560*, which established greenhouse gas (GHG) emission reduction limits for State agencies. This State law directs agencies "...to quantify GHG emissions, develop strategies to meet the GHG reduction targets, and report on actions taken to reduce GHG emissions (See RCW 70.235.050 and RCW 70.235.060)" (Ecology 2014e).

Ecology and the City should document and assess how these proposals would contribute to increased carbon-dioxide and GHG emissions. And, because these emissions would act cumulatively with the emissions associated with other petroleum and coal export facilities/proposals pending in Washington State, the EIS(s) should provide comprehensive information explaining how fossil fuel exports from ports in Washington State do or do not comport with the leadership direction established in State law.

Water

Our comments regarding potential water quality issues and concerns are included below, under *Plants and Animals*, and *Environmental Health*.

Plants and Animals

Grays Harbor and the lower portions of its major tributaries provide habitat for threatened anadromous bull trout originating from coastal Washington core areas to the north (the Quinault, Queets, and Hoh River core areas). Current information indicates that the major tributaries do not support bull trout spawning, rearing, or local populations. However, Grays Harbor is designated as bull trout critical habitat, and this habitat is essential to maintaining connectivity between the Olympic Peninsula Management Unit's bull trout core areas and local populations. Both historical and more current surveys indicate that bull trout are present in Grays Harbor and the lower Chehalis River from mid-February through early-July. Bull trout have been captured, or detected in the nearshore waters, infrequently and in low numbers. Most recently, during April 2014, when biologists working for the Washington State Department of Transportation

reported having successfully captured and released without harm a single subadult bull trout that was entrained within their bridge pontoon casting basin in Aberdeen, Washington (Mike McDowell pers. comm. 2014).

The threatened marbled murrelet is a wide-ranging seabird known to occur in the coastal and inland marine waters of California, Oregon, Washington, and Canada (British Columbia). The species nests in mature coniferous forests located less than 70 miles from marine waters. The marbled murrelet faces a variety of threats, including loss of nesting habitat, decline in forage fish resources, and oil spills. Populations located in Washington have experienced significant declines since the species was listed in 1992. Available summer and winter survey data for Grays Harbor document low numbers throughout the year, generally near the mouth. And available anecdotal data, including Christmas bird counts conducted from 1995 to 1999, and again in 2009, place nearly every documented occurrence of the species close to the mouth of Grays Harbor (i.e., at the “Bottle Beach,” “John’s River Road,” or “Ocean Shores” bird count stations)(USFWS 2010).

Habitats located on Damon Point and at Oyhut State Wildlife Recreation Area (Oyhut) are designated as critical habitat for the threatened western snowy plover (77 FR 36805; June 19, 2012; Unit WA 2 – Damon Point). The species occupies sandy beaches, inland dune systems, salt flats, mud flats, seasonally exposed gravel bars, and dredge spoil sites. Western snowy plovers forage in the tide zone and typically nest nearby (i.e., on the upper beach). Oil spills and habitat loss are recognized as threats to this species across its range (77 FR 36754; June 19, 2012).

Threatened streaked horned larks nest and winter on Damon Point and at Oyhut, where critical habitat has been designated (78 FR 61561; October 3, 2013; Unit 3A – Damon Point/Oyhut). Low-growing vegetation and an open landscape provide the physical and biological habitat features that are essential to the species. Habitat loss and inbreeding depression are recognized as threats to this species.

According to draft planning documents (USFWS 2014, p. 1-3):

“The [Grays Harbor] estuary’s 94 square miles of open water, saltmarshes, and mudflats provide crucial habitat for a variety of wildlife and aquatic species, including hundreds of thousands of shorebirds.” The “Grays Harbor estuary is one of four major staging areas for migrating shorebirds [on the Pacific Coast of] North America, and hosts one of the largest concentrations of shorebirds ... south of Alaska. In 1996, [the estuary] was designated as a Western Hemisphere Shorebird Reserve Network Site of Hemispheric Significance, and a Washington Important Bird Area.” “Neotropical songbirds stopover on their north and south migrations and some are residents throughout the year.”

“In 1996, the greater Grays Harbor estuary ... was designated ... as a Western Hemisphere Shorebird Reserve Network Site of Hemispheric Significance in the Pacific Flyway. The relatively undisturbed estuary habitats were identified as subtidal (open water), intertidal (mudflat), rocky shore (harbor mouth), intertidal emergent (salt marsh and scrub/shrub), palustrine forested (forested wetland/willow), palustrine emergent, and

palustrine emergent spoil (fill). To receive [this] designation, the site must support over 500,000 shorebirds during a year (WHSRN 2009).” “The greater estuary ... provides spring and fall stopover habitat where shorebirds can forage on abundant invertebrates and rest during migration ... [and] provides habitat and food for wintering shorebirds. Most of the shorebirds identified ... as having primary importance within the region use the greater Grays Harbor estuary.” (USFWS 2014, p. 1-27)

Grays Harbor and its major tributaries support large and important fisheries, both fin fish and shellfish. These fisheries are important (socially, economically, and culturally) to the citizens of Grays Harbor, the State of Washington, and to the Quinault Indian Nation (QIN), whose usual and accustomed areas include Grays Harbor. These fisheries support traditional industries that are vital to the economy of the region and the State, including fishing, crabbing, tourism, shellfish culturing, boat building, and marine support services.

Based on the information that’s available to us today, the Service believes that redevelopment proposals bringing CBR to properties managed by the Port, including but not limited to the current Westway and Imperium proposals, would pose unacceptable risks to fish and wildlife trust resources managed and co-managed by the Service. These proposals would dramatically increase the Port’s throughput of hazardous materials.

Recently, when assessing the economic viability of the Grays Harbor Navigation Improvement Project, the U.S. Army Corps of Engineers (Corps) and Port assumed that petroleum would become the dominant commodity moved through the Port by 2017 (Corps 2014, pp. 22, 24, 26, 29). “[Oil] tankers do not play a major role in the commodity movements within the Port of Grays Harbor. This is expected to change in the near (1 year) to intermediate (5 year) future” (p. 22) “[Petroleum] forecasts ... were taken from Permits (Hoquiam 2013) and other public and private sources” (p. 24). The Corps and Port have assumed that petroleum will account for approximately 80 percent of the Port’s throughput (by tonnage) by 2017, and will continue in this pattern for the foreseeable future (p. 26).

Proposals bringing CBR to properties managed by the Port, including but not limited to the current Westway and Imperium proposals, would present a corresponding, inherently higher cumulative risk over time of significant hazardous material releases to the terrestrial and aquatic environments. These risks would be significant wherever the rail network traverses over or through wetlands and watercourses associated with the lower Chehalis, Satsop, Wynochee, Wishkah, and Hoquiam Rivers, including the lower Chehalis River tidal surge plain (WDNR 2014).

We have serious concerns regarding proximity of these proposals to the Grays Harbor NWR and vulnerable habitats that support ESA-listed species. The Grays Harbor Federal Navigation Channel (Channel) runs the length of the Gray Harbor NWR at close proximity, lies directly south of Damon Point and Oyhut at a distance of approximately 1.5 miles, and traverses more than 12 linear miles of fairly pristine subtidal estuarine and marine habitat (“downstream” of the Port). Vast acreages of biologically productive and important sand and mud flat, saltmarsh, shallow shoals, sand islands, and spits surround the Port and Channel. The Service believes, and

would argue, that these are Aquatic Resources of National Importance, per the resource-based threshold factors implementing Section 404(q) of the Clean Water Act (EPA, 2011).

The current Westway and Imperium proposals would dramatically increase rail and marine vessel transport volumes of hazardous materials. We and other interested stakeholders have communicated a long list of concerns regarding transport safety, security, spill response and readiness, and inherent vulnerability along the entire transport corridor (Meeting Notes, Public Meetings, April 24 and 29, 2014). Please see below, where we have highlighted some of these concerns (*Environmental Health, Recreation, Historic and Cultural Preservation, and Transportation*).

Adequately addressing these concerns will require that Ecology and the City conduct and make publically available a comprehensive evaluation of rail infrastructure, local responder, and spill response readiness and deficiency. Ecology and the City should demonstrate in a convincing way that bulk fluid storage and transloading/shipping operations at the Port will be held to the highest possible performance standards. And, the dramatic increase that these proposals would cause to marine vessel traffic must be evaluated for associated cumulative risk over the functional life of the proposed facilities (e.g., a 50-year minimum of operations).

The Grays Harbor Safety Committee, of which Ecology and the City are participating members, should broaden its scope to better address these concerns, and should invite and encourage the active participation of additional members (e.g., concerned citizen and environmental groups, the QIN). The Harbor Safety Plan(s) should be assessed for adequacy in light of current and future bulk fluid proposals, and should be revised as necessary with input from all interested stakeholders.

In the absence of comprehensive regional and State-wide planning, which today appears lacking, we hope and expect that Ecology will outline, openly communicate to the public, and apply acceptable siting criteria. As evidenced by participation at the public meetings convened on April 24 and April 29, 2014, there is significant local community opposition to siting CBR operations on the lower Chehalis River and Grays Harbor (Meeting Notes, Public Meetings, April 24 and 29, 2014). Furthermore, there is a strong emerging State and regional consensus that CBR proposals pose unacceptable risks, and that associated costs and damages may exceed the economic benefits that accrue to local communities and the State.

In addition to these principle concerns regarding potential impacts to biological resources, Ecology and the City should also address ship wake erosion (shoreline forms and stability), ship wake stranding (effects to juvenile fish), and the incidence of marine mammal vessel strikes.

Environmental Health

This discipline or study area should include consideration of oil spill prevention, preparedness, and response, risk of fire or explosion, and potential releases of toxic or hazardous materials.

The Service is aware that stakeholders have communicated a long list of concerns regarding transport safety, security, spill response and readiness, and inherent vulnerability along the entire

transport corridor (Meeting Notes, Public Meetings, April 24 and 29, 2014). Ecology and the City should address and explain how the “patchwork quilt” of authorities and responsibilities will, or will not, function to adequately address each of these concerns.

We also recognize, concerns have been voiced that the existing rail infrastructure is deteriorating, deficient, vulnerable, and the cause for an ongoing pattern of accidents and events (e.g., recent derailments between Aberdeen and Montesano)(Q13Fox.com, 2014). Concerns regarding the risk of fire or explosion, and rail proximity to community resources (schools, churches, town centers, etc.), have also been voiced. We understand that stakeholders have expressed doubt whether local first responders will have the staff and resources to address and mitigate these risks. And, first responders themselves have questioned the adequacy of current resources made available for the purposes of ensuring marine vessel safety and a prompt and effective spill response on the waters of the lower Chehalis River and Grays Harbor (Meeting Notes, Public Meetings, April 24 and 29, 2014).

Ecology and the City should not fail to consider the unique properties and behavior exhibited by some of the “new” oil products. The highly volatile light crude originating from the Bakken shale deposits in Montana and North Dakota, and the diluted bitumen originating from the tar sands in Alberta, are both very different products from those originating from our conventional, historic sources. Gary Shigenaka, of the Office of Response and Restoration at the National Oceanic and Atmospheric Administration, has described some relevant and important differences (G. Shigenaka pers. comm. 2014): Bakken crude is highly incendiary and volatile, it presents an extreme risk of ignition, explosion, and fire, and may present hazards too great to allow for an immediate or prompt first response; recoverable product may persist for as little as 4 to 8 hours after release to waters, and (based on limited observations) is quick to dissipate as a thin sheen that may often be unrecoverable using conventional technologies; diluted bitumen (or “dil-bit”) contains proprietary diluents of uncertain chemical composition, and is highly variable in its properties and behavior; there have been recent, high-profile, spill events where diluted bitumen appears to have mixed with soils/sediments, or encountered other site-specific conditions, that caused some of the released material to sink rather than float (e.g., the 2010 Enbridge Line 6B release to the Kalamazoo River, Michigan); and again, diluted bitumen may often be unrecoverable using conventional technologies.

Ecology and the City should consider the findings of the *Report on Implementation of the Oil Pollution Act of 1990* (U.S. Department of Homeland Security, United States Coast Guard, Updated April 9, 2014):

“The level of funds in the Oil Spill Liability Trust Fund (OSLTF) at the end of FY 2004 was \$842 million. Based on past spending trends and current forecasts, the OSLTF is expected to be depleted by FY 2009 ... By FY 2007, the level of funds ... may not be sufficient to cover all anticipated uses ... a single major or catastrophic oil spill could have a significant impact on the OSLTF balance and these projections.”

“There have been 19 oil spill incidents since 1992 that are known to have resulted in removal costs and damages in excess of liability limits. All such incidents involved vessel spills.”

“The long-term viability ... is questionable unless additional sources of revenue can be identified and put into place ... The current structure of the OSLTF as it has evolved is not self-sustaining. Despite a continuing demand on its resources, its principal revenue sources ... have expired.”

“The OSLTF is the ultimate insurer for oil spill removal costs and damages when those responsible do not pay. In many incidents, liable responsible parties cannot be located, do not have the ability to pay, or have defenses or limits to their liability. Therefore, recoveries from liable parties cannot fully reimburse the removal costs and damages.”

“The impact ... is significant and far-reaching. First, if the OSLTF would not be available to fund cleanup of oil discharges, Federal responses will either have to be terminated or funded from alternative revenue sources such as annual Federal appropriations. Second, without a viable OSLTF, those persons that incur removal costs or damages as a result of an oil spill may not be compensated. Significantly, state and local governments will be deprived of important compensation for their qualifying spill response projects.”

When ruling to invalidate the SEPA Mitigated Determination of Non-Significance issued at an earlier date for proposals brought by Westway and Imperium, the State of Washington Shoreline Hearings Board ruled that, “...an appropriate evaluation of SEPA impacts by the Co-leads did not require Westway to make a showing of compliance with RCW 88.40.025 (a statute requiring a facility to demonstrate financial responsibility in an amount determined by Ecology to compensate the affected state and local counties and cities for damages from a worst case spill of oil into the waters of the state), and further that nothing in the SMA or local SMP required such a showing” (Washington State Shoreline Hearings Board 2013). This determination should heighten stakeholder concerns that spill response capacities may be inadequate, and that the burden of these responsibilities will be borne by the citizens of the State, local governments, and local communities.

There is a strong emerging State and regional consensus that CBR proposals pose unacceptable risks, and that associated costs and damages may exceed the economic benefits that accrue to local communities and the State.

Land and Shoreline Use

Ecology, the City, the Port, and other parties with regulatory authority, including the Coast Guard, should carefully consider proximity to vulnerable and irreplaceable coastal and marine ecological resources when making siting determinations. The Service recognizes that the Port has a responsibility to manage public resources for economic development and other legitimate objectives. However, the Port must also mitigate and manage associated risks and potential effects to public resources that are not their own. Port operations are a preferred, water-dependent use of State-owned aquatic lands, but such use should not damage coastal, estuarine, and marine habitats that cannot be replaced. Siting determinations must evidence a thorough consideration of these factors.

Based on the information that's available to us today, the Service believes that redevelopment proposals bringing CBR to properties managed by the Port, including but not limited to the current Westway and Imperium proposals, would pose unacceptable risks to fish and wildlife trust resources managed and co-managed by the Service. Ecology, the City, the Port, and other parties with regulatory authority, should fairly consider alternatives that would achieve the same or similar economic development objectives. If better, safer, and more compatible uses of the Port's facilities are not given equal and fair consideration, they should expect that the Service and other interested stakeholders will seek every opportunity to reinforce our stated concerns.

Recreation

Congress authorized the establishment of the Grays Harbor NWR in 1988. Managed by the Service as part of the National Wildlife Refuge System, Grays Harbor NWR was established in 1990. The refuge encompasses approximately 1,500 acres of intertidal mudflats, salt marsh, and uplands, located on Bowerman Basin.

According to draft planning documents (USFWS 2014, pp. 1-2, 1-3):

"The Refuge only occupies two percent of the [Grays Harbor] estuary land base, but [supports] up to fifty percent of the migrating shorebirds." "The Service owns approximately 1,408 acres, and leases 64 acres from the Port of Grays Harbor." "The Refuge provides important migratory habitat for a variety of shorebirds ... Unique conditions found in Bowerman Basin ... make it a migratory shorebird focal feeding and resting place. This basin is ... the last area to be flooded at high tide and first to be exposed as the tide recedes, affording thousands of migrating shorebirds the maximum time ... to forage for food."

"The Refuge receives an annual visitation of approximately 13,000 [people] ... [and] Refuge staff conduct environmental education programs." (USFWS 2014, p. 1-3) The Grays Harbor NWR, City of Hoquiam, and Grays Harbor Audubon Society host the annual Grays Harbor Shorebird Festival.

"The Refuge System is the world's largest network of public lands and waters set aside specifically for conserving wildlife and protecting ecosystems." "The needs of wildlife and their habitats come first on refuges, in contrast to other public lands that are managed for multiple uses. Refuges are guided by various federal laws and executive orders, Service policies, and international treaties. Fundamental are the mission and goals of the National Wildlife Refuge System ... and the designated purposes of the refuge unit, as described in ... legislation, executive orders, or other documents establishing, authorizing, or expanding a Refuge." (USFWS 2014, p. 1-7).

The "purposes for establishing [the] Grays Harbor NWR [include]: (1) [to] conserve fish and wildlife populations and their habitats, including but not limited to those of western sandpiper, dunlin, red knot, long-billed dowitcher, short-billed dowitcher, other shorebirds, and other migratory birds, including birds of prey; (2) to fulfill international treaty obligations of the United States with regard to fish and wildlife and their habitats; (3) to conserve those species

known to be threatened with extinction; and (4) to provide an opportunity, consistent with the purposes set forth in paragraphs (1), (2), and (3), for wildlife-oriented recreation, education, and research.” (USFWS 2014, p. 1-10).

The Service believes, and would argue, that the Grays Harbor NWR is an Aquatic Resource of National Importance, which provides irreplaceable biological and ecosystem services, and affords important opportunities for wildlife-oriented recreation, education, and research.

We have serious concerns regarding proximity of the proposals to the Grays Harbor NWR. The Grays Harbor Channel runs the entire length of the Gray Harbor NWR at close proximity. Based on the information that’s available to us today, the Service believes that redevelopment proposals bringing CBR to properties managed by the Port, including but not limited to the current Westway and Imperium proposals, would pose unacceptable risks to this valuable national resource.

Historic and Cultural Preservation

Grays Harbor supports large and important fisheries, both fin fish and shellfish. These fisheries are important, socially, economically, and culturally, to the citizens of Grays Harbor, the State of Washington, and to the QIN, whose usual and accustomed areas include Grays Harbor. These fisheries support traditional industries that are vital to the economy of the region and the State, including fishing, crabbing, tourism, shellfish culturing, boat building, and marine support services.

The U.S. Department of the Interior recognizes the sovereignty of Native American governments, and Federal courts have recognized the treaty-reserved rights of Tribes: “The treaty right to fish is a property right of the tribes and is protected under the Fifth Amendment of the U.S. Constitution, our treaties, and the U.S. Supreme Court affirmation of this right.” (Treaty Indian Tribes in Western Washington, 2011) “The QIN has the right to take fish at its usual and accustomed fishing grounds, which include the Chehalis River and Grays Harbor ... [These are] resources our members depend upon, now and in the future.” (QIN 2014, pp. 1, 3)

When commenting on the Corps’ Grays Harbor Navigation Improvement Project, the QIN stated, “As a trustee required to protect the QIN’s treaty resources, the [Corps] must be held accountable for and be fully transparent about the potential for its actions to facilitate development of [petroleum exports]. We do not believe it has ... The Corps cannot separate [the Grays Harbor NIP] from the ... [pending] proposals ... It is simply not realistic and not responsible ... We demand full answers to our questions and a full explanation of how [the Grays Harbor NIP] was justified.” (QIN 2014, p. 3) And, “The QIN does not oppose progress or increased growth in Grays Harbor. We do oppose irresponsible development that threatens the Federally-protected treaty rights and resources our members depend upon now and in the future ... We have many concerns ... including ... increasing vessel transits.” (QIN 2014, p. 3) The QIN has stated that it will “...continue to vehemently oppose ... [Port redevelopment] projects proposed by Imperium, Westway, and U.S. Development.” (QIN 2014, p. 2)

The QIN has voiced legitimate concerns about the current Westway and Imperium proposals, and about the protection of their treaty-reserved rights. The Service is committed to greater recognition and protection of these rights. We hope and expect that the siting determinations reached by Ecology and the City will give protection of treaty-reserved rights the high priority consideration that it warrants and demands.

Transportation

This discipline or study area should include consideration of rail infrastructure, traffic, and safety, and marine vessel traffic and safety.

The current Westway and Imperium proposals would dramatically increase rail and marine vessel transport volumes of hazardous materials. Proposals bringing CBR to the Port, including but not limited to the current Westway and Imperium proposals, would present a corresponding, inherently higher cumulative risk over time of significant hazardous material releases to the terrestrial and aquatic environments. These risks would be significant wherever the rail network traverses over or through wetlands and watercourses associated with the lower Chehalis, Satsop, Wynochee, Wishkah, and Hoquiam Rivers, including the lower Chehalis River tidal surge plain (WDNR 2014).

We and other interested stakeholders have communicated a long list of concerns regarding transport safety, security, and inherent vulnerability along the entire transport corridor (Meeting Notes, Public Meetings, April 24 and 29, 2014). Concerns have been voiced that the existing rail infrastructure is deteriorating, deficient, vulnerable, and the cause for an ongoing pattern of accidents and events (e.g., recent derailments between Aberdeen and Montesano) (Q13Fox.com, May 17, 2014). The bar entrance at the mouth of Grays Harbor is widely regarded as the “second most dangerous harbor entrance on the west coast”, second only to the Columbia River bar. Concerned citizens have recalled the events of December 1988, when the fuel barge *Nestucca* spilled 231,000 gallons of heavy fuel oil offshore to the entrance of Grays Harbor; the spill killed or injured an estimated 56,000 seabirds, and fouled beaches from Coos Bay, Oregon (in the south), to Vancouver Island, B.C. (in the north) (Ecology 2010). Commercial fisherman, speaking with an intimate knowledge and experience of weather conditions in Grays Harbor, have warned that typical winter weather conditions and storm events can render the bar entrance impassable for days on end (Meeting Notes, Public Meetings, April 24 and 29, 2014).

These rail and marine vessel transport conditions, arguably deficiencies, suggest a high likelihood of release(s) and damage to the human and natural environments over the functional life of the proposed facilities (e.g., a 50-year minimum of operations). Bar conditions, the widely fluctuating wind, wave, tidal, and shoal conditions that prevail inside Grays Harbor, and the properties and behavior of “new” oil products, all combine to suggest that spill response and containment will be difficult, and perhaps unreliable or ineffective, if approached with conventional practices.

Adequately addressing these concerns will require that Ecology and the City conduct and make publically available a comprehensive evaluation of rail infrastructure, local responder, and spill response readiness and deficiency. Ecology and the City should demonstrate in a convincing

way that bulk fluid storage and transloading/shipping operations at the Port will be held to the highest possible performance standards. And, the dramatic increase that these proposals would cause to marine vessel traffic must be evaluated for associated cumulative risk over the functional life of the proposed facilities (e.g., a 50-year minimum of operations).

The Grays Harbor Safety Committee should broaden its scope to better address these concerns, and should invite and encourage the active participation of additional members. The Harbor Safety Plan(s) should be assessed for adequacy in light of current and future bulk fluid proposals, and should be revised as necessary with input from all interested stakeholders.

In the absence of comprehensive regional and State-wide planning, we hope and expect that Ecology will outline, openly communicate to the public, and apply acceptable siting criteria. As evidenced by participation at the public meetings convened on April 24 and April 29, 2014, there is significant local community opposition to siting CBR operations on the lower Chehalis River and Grays Harbor (Meeting Notes, Public Meetings, April 24 and 29, 2014). Furthermore, there is a strong emerging State and regional consensus that CBR proposals pose unacceptable risks, and that associated costs and damages may exceed the economic benefits that accrue to local communities and the State.

In addition to these principle concerns, Ecology and the City should also address rail car disruptions to local community access and continuity (including timely access to essential services), and related disruptions to local businesses and economies. The QIN have stated that increasing vessel transits would threaten their Federally-protected treaty rights and resources (QIN 2014, p. 3), an acute issue that will require satisfactory resolution if the Westway, Imperium, or other future bulk fluid proposals are to go forward.

Other (Including Economic Justification or Cost-Benefit Analyses)

When conducting an economic analysis of the Grays Harbor Navigation Improvement Project, the Corps and Port failed to account for important externalities, including social and environmental risks and damages. “Cost[s] that are accumulated outside of the actual vessels entering or exiting the harbor, such as fixed cost, tug assistance cost, pilot cost, terminal fees, and externalities, are not captured by the model ... Hinterland transportation costs are not included in the model ... [and] External factors such as weather, emergencies, laws, or policies are not captured in the model.” (Corps 2014, p. 43)

Similarly, during 2013, when Westway and Imperium commissioned a report evaluating the economic impacts of their Port redevelopment proposals, important externalities were excluded from consideration. The report clearly states and acknowledges, “The analysis ... does not measure non-economic and environmental costs and benefits” (ECONorthwest 2013, p. 10).

These failures to account for social and environmental risks and damages should be remedied. If not remedied, these economic analyses will be incomplete, and will offer decision-makers and the public only a partial description of true long-term costs and benefits.

Ecology and the City should monetize and provide to the public a thorough and comprehensive accounting of all the foreseeable risks, costs, and damages that are likely to result from the current Westway and Imperium proposals. This documentation should address impacts in each discipline or study area (i.e., Earth, Air, Water, Plants and Animals, Environmental Health, Land and Shoreline Use, Recreation, Historic and Cultural Preservation, and Transportation).

The Service and other interested stakeholders believe that these proposals pose a significant threat to traditional industries that are vital to the economy of the region and the State, including fishing, crabbing, tourism, shellfish culturing, boat building, and marine support services. There is a strong emerging State and regional consensus that CBR proposals pose unacceptable risks, and that associated costs and damages may exceed the economic benefits that accrue to local communities and the State.

Ecology, the City, the Port, and other parties with regulatory authority, should fairly consider alternatives that would achieve the same or similar economic development objectives. If better, safer, and more compatible uses of the Port's facilities are not given equal and fair consideration, they should expect that the Service and other interested stakeholders will seek every opportunity to reinforce our stated concerns.

We appreciate the opportunity to comment and express our concerns regarding these proposals. If you or your staff have any questions, if our comments require further explanation, or you would like to meet and further discuss the SEPA process, please contact Ryan McReynolds (ryan_mcreynolds@fws.gov; 360-753-6047) or Bridget Moran (360-753-6044; bridget_moran@fws.gov), of this office.

Sincerely,



for Ken S. Berg, Manager
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cc:

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WDFW, Montesano, WA (S. Kalinowski)
Coast Guard, Portland, OR (R. Berg)
PMSA, Seattle, WA (Capt. M. Moore)

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PERSONAL COMMUNICATIONS

Mike McDowell pers. comm., 18 April 2014.

Gary Shigenaka pers. comm., 30 April 2014.

Meeting Notes, Public Meetings - SEPA Scoping, Westway and Imperium Expansion Projects (Port of Grays Harbor), April 24 and 29, 2014.