



Smallest Capital in Alabama

Town of Dauphin Island

1011 Bienville Boulevard Dauphin Island, Alabama, 36528

Phone: (251) 861-5525 Fax (251)-861-2154

<http://TownOfDauphinIsland.Org>

September 6, 2018

COL Sebastien P. Joly, Commander
US Army Corps of Engineers
PO Box 2288
Mobile, Alabama 36628-0001

RE: Sand Island Beneficial Use Area Expansion

Dear COL Joly:

I am writing you as the Mayor of Dauphin Island and on behalf of our Town Council. I have considered the information provided in your August 8, 2018 Public Notice No. FP18-MH01-09 and reviewed your August 8, 2018 Environmental Assessment (EA) entitled "Sand Island Beneficial Use Area Expansion". Those two documents address the Mobile District's proposal to expand the existing Sand Island Beneficial Use Area (SIBUA) by approximately 3,305 acres to provide for the continued placement of beach quality sands dredged during maintenance of the Mobile Harbor Bar Channel. The expanded area would follow the Mobile Pass western ebb-tidal shoal that serves as the pathway for the transport of sand towards Dauphin Island. The alleged purpose of the expansion is to "...provide the return of sediment into the local littoral system and increasing placement capacity in the SIBUA consistent with established regional sediment management principles and goals."

I note that "shoreline erosion" is one of your evaluation factors as listed in the public notice. Poor sand management practices in the past has led to long-term shoreline erosion of this island that has been scientifically documented (Morton 2007) and the proper mitigation of future impacts requires placement of all dredged beach-quality sands in 20 feet of water or less at a location in the proposed expansion area such that the artificially-bypassed sand migrates into the

littoral system of the island shoals and beaches within several weeks/months. The required depths, less than 20 feet, have been scientifically developed in published literature (Douglass, Resio and Hands 1995 [note: this is a USACE report]; Douglass 1995; and Douglass 1996). This will re-establish the long-term littoral sand supply to Dauphin Island, that the ship channel maintenance has to temporarily interrupt, in a manner that truly is "consistent with established regional sediment transport principles and goals."

Based upon my review of the EA, I find it to be deficient for the following reasons:

A false narrative is provided that the SIBUA is functioning as the Corps said it would since use of this disposal site first began in 1999. As the Corps well knows, the truth is the SIBUA has never functioned effectively in bypassing all littoral drift sands dredged from the Bar Channel. The Corps admitted at the February 22, 2018 public meeting on the Mobile Harbor deepening study that half of the sands placed in the SIBUA on an average annual basis are accumulating in the site instead of moving to rejoin the littoral drift system. The numbers are quantified in the July 2018 Draft Mobile Harbor GRR/SEIS which states only 260,000 cubic yards (cy) of the 525,000 to 624,000 cy placed in the SIBUA on an average annual basis move out of the site. The remaining volume has accumulated over the years causing reduced depths to a point that hopper dredges are unable to operate efficiently within the site. The proposed expansion represents the second time the SIBUA will be enlarged for the same reasons – the first time occurring in 2009. Since 1999, the Corps has placed over 13,000,000 cy in the SIBUA. Since half of the sands remain within the site, that means almost 7,000,000 cy have accumulated in the SIBUA during the 20 years it has been used instead of nourishing Sand/Pelican Island and Dauphin Island. Further, the Corps has no proof as to where the sands leaving the SIBUA actually go. The Corps only assumes the sand moves to Dauphin Island. The ongoing erosion of the ebb tidal platform and Dauphin Island indicate that assumption may be seriously in error.

The Corps EA does not provide existing depth information within the proposed expansion area or tell the reader definitely at what depths sand will be placed. Examination of available bathymetric maps indicate depths could range from -5 ft MLW down to -30 ft MLW within the expansion area. As the Corps knows, a larger percentage of sands placed in waters less than -15 ft MLW have a greater chance of returning to the littoral drift system, with the percentage increasing with decreasing depth of placement. Additional information is required to explain at what depth the Corps plans to place sands in the proposed SIBUA expansion area and the type of dredge equipment the Corps will use for that work. If the Corps merely continues past disposal practices in waters deeper than -20 to -25 ft MLW in the new area, the Town fears Dauphin Island will continue to be robbed of half the littoral drift sands that naturally would have been transported to the island from the Fort Morgan peninsula absent dredging of the Bar Channel.

The purpose of the EA is to evaluate the effects of disposing sands dredged from the Bar Channel in the proposed expansion area. Much of the impact discussion presented is not appropriate for inclusion within the EA since it deals largely with the effects of dredged material disposal in Mobile Bay which has no relevance to the environmental conditions found within the proposed expansion area. With the exception of a very vaguely worded sentence or two, the EA provides absolutely no impact evaluation information to substantiate the Corps' contention that proposed expansion will provide for "...the return of sediment into the local littoral system and increasing placement capacity in the SIBUA consistent with established regional sediment

management principles and goals.” The EA Introduction states “...an additional level of analysis to evaluate transport rates leaving SIBUA as well as capacity available within depth constraints of dredging equipment was performed in an effort to balance safe and efficient dredged material placement practices, while ensuring sandy material dredged from the Bar Channel is maintained within the littoral system.” Unfortunately, the EA does not present the results of that analysis. So the Town and our residents have no way of knowing what the results imply for Dauphin Island’s future. Questions that are not answered by the EA are:

(1) What percentage of the 717,600 cy (624,000 existing + 93,600 deepening increment) of sands that will be placed on an average annual basis in the proposed SIBUA expansion are projected to move out of that area annually?

(2) Will all of the sands that move out of the SIBUA expansion actually rejoin the littoral drift system to restore and nourish the eroding shorelines of Sand/Pelican Island and Dauphin Island, or will the sands experience an uncontrolled sloughing in all directions, with the Corps not knowing where the sand actually goes?

(3) Since the disposal capacities of the original SIBUA established in 1999 and the first expansion in 2009 were each exceeded after only 10 years of use, respectively; what assurances can the Corps provide that the new 3,305-acre proposed expansion area will have the capacity to contain the projected total of 35,880,000 cy of sand to be dredged from the Bar Channel over the 50-year economic life of the 5-foot deepening project?

(4) Should half of the total of 35,880,000 cy of sand projected to be placed in the proposed SIBUA expansion over the next 50 years continue to accumulate in the area as is now occurring within the existing boundaries of the SIBUA, what effect will the removal of 17,940,000 cy from the littoral drift system have on the erosion of Dauphin Island?

(5) Is the Corps finally prepared to commit to placing sand in shallow waters on the ebb-tidal platform portion of the proposed SIBUA expansion to nourish Sand/Pelican Island and Dauphin Island?

(6) The statement is made on page 21 of the EA;

“Approximately 3,305 acres of shallow estuarine bottoms would be permanently changed as a result of the proposed action. However, this change would not result in bathymetric effects outside of the area of physical disturbance and based on the relative small size as compared to the remaining area in Mobile Bay, the permanent alternation would be minor. Impacts would be less than significant.”

Given the magnitude and permanence of what sounds like a significant impact, upon what did the Corps base its conclusion that an environmental impact statement is not required?

(7) Based on the absence of answers to the above crucial questions, upon what information does the Corps conclude in the EA that “...implementation of the proposed action would not have a significant adverse impact on the quality of the environment and an environmental impact statement is not required”?

(8) Given the critical role the proposed SIBUA expansion will play in the future maintenance of a deepened Bar Channel, why did the Corps elect to prepare a separate

EA and not include this project proposal in the GRR/Supplemental EIS now under preparation?

(9) Finally, has the Corps considered how the demonstrated ineffectiveness of the SIBUA to bypass 100% of the littoral drift sands intercepted by the Bar Channel affects the spirit and intent of item 5d in the August 14, 2009 Second Addendum to Litigation Settlement Agreement that ended the *Dauphin Island Property Owners Association and James W. Hartman, et. al. vs United States of America* Class Action lawsuit, in which the Town was a member of the Class?

Based on the significance of the above unanswered questions related to the proposed SIBUA expansion and whether or not the proposed action will actually counter Dauphin Island's serious erosion problem; on behalf of our entire community, I respectfully request a public hearing be held on Dauphin Island to allow our citizens the opportunity to ask questions and to provide input on this important proposal. I made a similar request on December 18, 2008 in connection with the first expansion of the SIBUA. However, the response I received from the Mobile District stated my request did "...not set forth the interest and manner that would provide additional information towards making a final decision for this action" and a public hearing was not held. I strongly believe the issues I have raised above point out that the present EA is deficient in regards to the most important issues that it should have addressed and that I have identified sufficient cause and justification to hold a public hearing on the proposed action so that our residents and property owners can voice their concerns and ask questions of the Corps staff.

In closing, the Town of Dauphin Island recognizes the enhanced economic impacts an expanded ship channel brings to our stretch of the Gulf Coast. At the same time, we also recognize such an expansion brings with it an opportunity to establish a more responsible and beneficial dredge material disposal practice that would support down drift regions of Coastal Alabama for future generations. Quite simply, sand accumulations within the channel must be removed on a regular basis while Dauphin Island, a mere stone's throw away, is sand starved and essentially vanishing before our very eyes. Surely, we can find a way to connect these dots and capitalize on this win-win opportunity!

I look forward to receiving your favorable reply.

Sincerely,



Jeff Collier
Mayor

cc: Senator Shelby
Governor Ivey
Congressman Byrne
Senator Jones

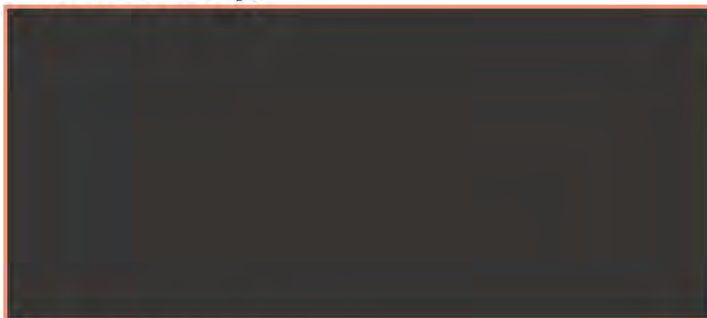
PD-E
PD-EC/Reynolds PR
PD-EC/Parson

September 5, 2018

Sirs,

I would like to state my objections against deeping and widening the Mobile Bay ship channel. I have property on Bon secure Bay in Baldwin county and have watched for years my land erode away due to the suction of currents going into the dredge channel. If you are not going to replace the sand to the privet property owners then you should stop dredging. When you come up with a plan to stop doing damage to others property, then I will support deeping the channel.

Yours Truly,



Gulf Shores, Al.

36542



P.O. Box 2682 Mobile AL 36652

September 4, 2016

COL Sebastien P. Joly, Commander
US Army Corps of Engineers
PO Box 2288
Mobile, Alabama 36628-0001

RE: Sierra Club film on the erosion of Dauphin Island

Dear COL Joly:

The Sierra Club Mobile Bay Group is proud to give the Mobile District the enclosed DVD of a draft of our new film entitled "A Disrupted System: Alabama's Disappearing Barrier Island". Although the film has not been completed, we believe it is appropriate to share the current version with you now as your staff prepares to consider public comments on your "Draft Mobile Harbor Integrated General Reevaluation Report with Supplemental Environmental Impact Statement".

The film deals with the ongoing erosion of Dauphin Island that has significantly reduced the width of the island's beaches and diminished the surface topography of its western end. A 2007 US Geological Survey report indicates the erosion began in the late 1950s and has accelerated in recent years. Connected to Dauphin Island's sand losses, has been the steady disappearance of the smaller Sand/Pelican Island situated immediately to the southeast. Sand/Pelican Island is an above-water surface expression of the enormous underwater western ebb tidal delta located south of the mouth of Mobile Bay. In the early 1970s, the east end of Sand/Pelican Island virtually surrounded the Sand Island Lighthouse and stretched to the northwest 6 miles to almost touch Dauphin Island. In the intervening 38 years, the eastern end of the island has steadily eroded so that 5 miles of open water now separate that island from the lighthouse. When the last one mile of Sand/Pelican Island disappears, in possibly a very few years from today, Dauphin Island's rate of erosion will increase. Since you are new to our area, I have enclosed several photos showing these features.

The Sierra Club is concerned about the erosion of Dauphin Island for a variety of reasons. One of the most important being that at over 14 miles in length, it is Alabama's only barrier island. Although much of the island's East End has been developed, it still provides many

ecological benefits for a variety of wildlife communities. In addition, Dauphin Island serves as an interim stop for littoral drift sand moving from Florida to eventually be carried by wave action and currents to nourish Mississippi's similar barrier islands. Serving as a sheltering boundary from the open Gulf, Dauphin Island helps maintain salinity within Mississippi Sound to its north at levels required by the Sound's vital nursery areas and Alabama's largest oyster reefs. Lastly, a strong barrier island is necessary to shield Alabama's largest expanse of coastal salt marsh and the several mainland fishing communities from the unforgiving wrath of tropical storms and hurricanes. So, this thin sliver of a strip of sand, while hosting a quaint little community, also provides many ecological and economic benefits to Alabama's western Gulf Coastline. Most of those benefits are often not appreciated or even understood by those who appreciate the island for its complete difference from the hustle and bustle of Gulf Shores and Orange Beach. Now that man has placed his development stamp on Alabama's short coastal region, time is running out for Dauphin Island, a geological feature that has existed for over 6,000 years. If the ongoing erosion is allowed to continue unchecked, the ability of this protective barrier to withstand the challenges of increasing Sea Level Rise will be significantly diminished.

We appreciate you reading this letter and for taking the time to watch our film. I think you will see the film honestly attempts to portray the cause of Dauphin Island's erosion without negatively placing blame on any entity or voicing opposition to the Mobile Harbor project. In making the film, the Sierra Club's goal has been for it to serve as a call for action by all responsible agencies and decision-makers before it becomes too late for the island and the eventual cost to correct the erosion problem greatly increases. We plan to begin sharing the film with those we hope will join in the effort to save Dauphin Island.

The members of our local Mobile Bay Group would welcome the opportunity to arrange a tour of Dauphin Island for you and to arrange a seminar type meeting to provide you with more in depth information on the topics touched upon in this letter and in the film. If you think that would be helpful, please give me a call at 421-3484. We look forward to working with you during your tour as the Mobile District Commander.

Sincerely,

A handwritten signature in cursive script that reads "Joseph Mahoney". The signature is written in dark ink and is positioned above the typed name.

Joseph Mahoney, Chair
Mobile Bay Group Sierra Club

November 2017

Legend

 Sand Island Lighthouse

Google Earth

Image Landsat / Copernicus
Image MASA


4 mi



 Sand Island Lighthouse

December 1984

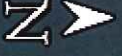
Legend

 Sand Island Lighthouse

Google Earth

Image Landsat / Copernicus

 Sand Island Lighthouse

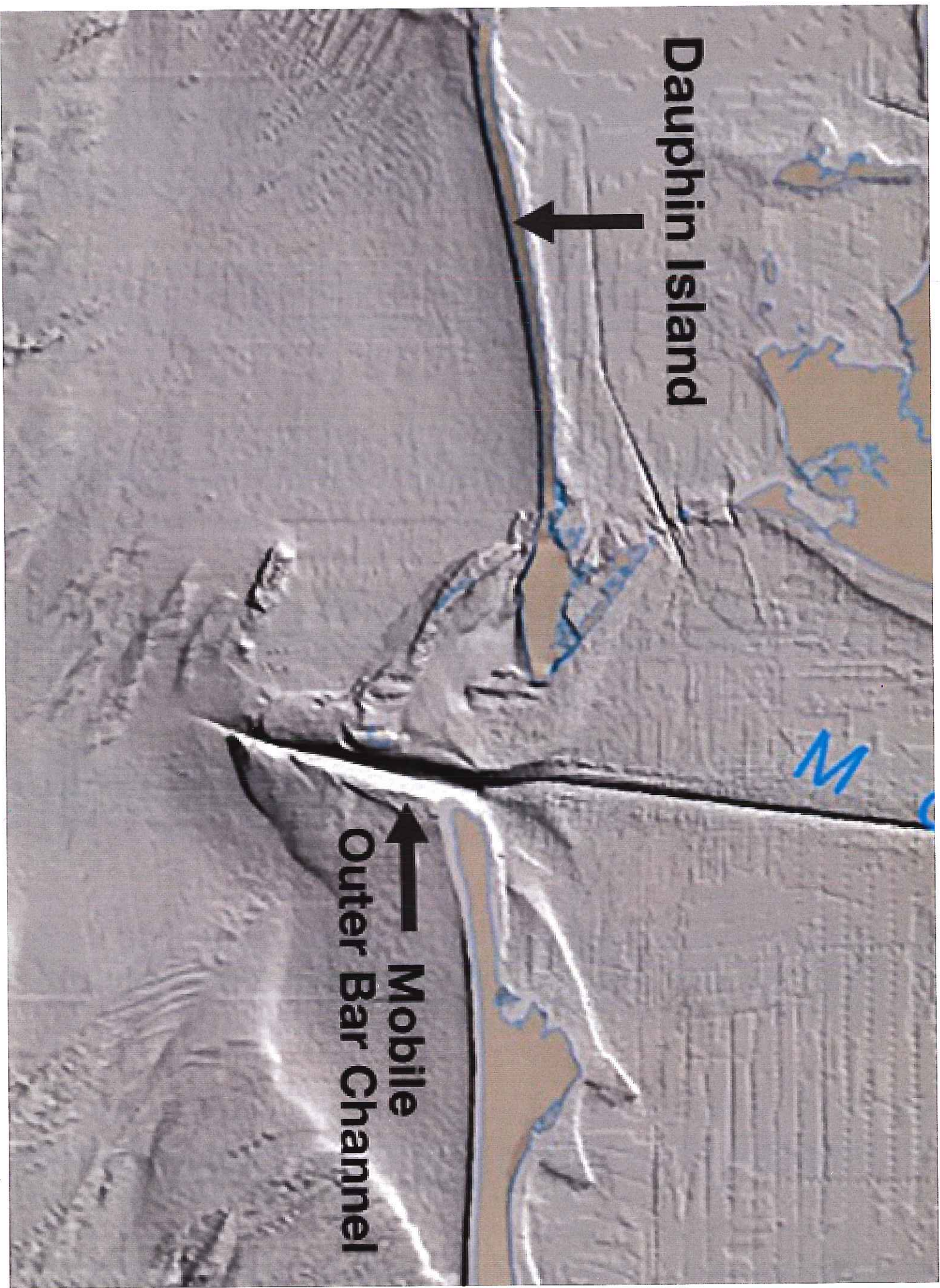


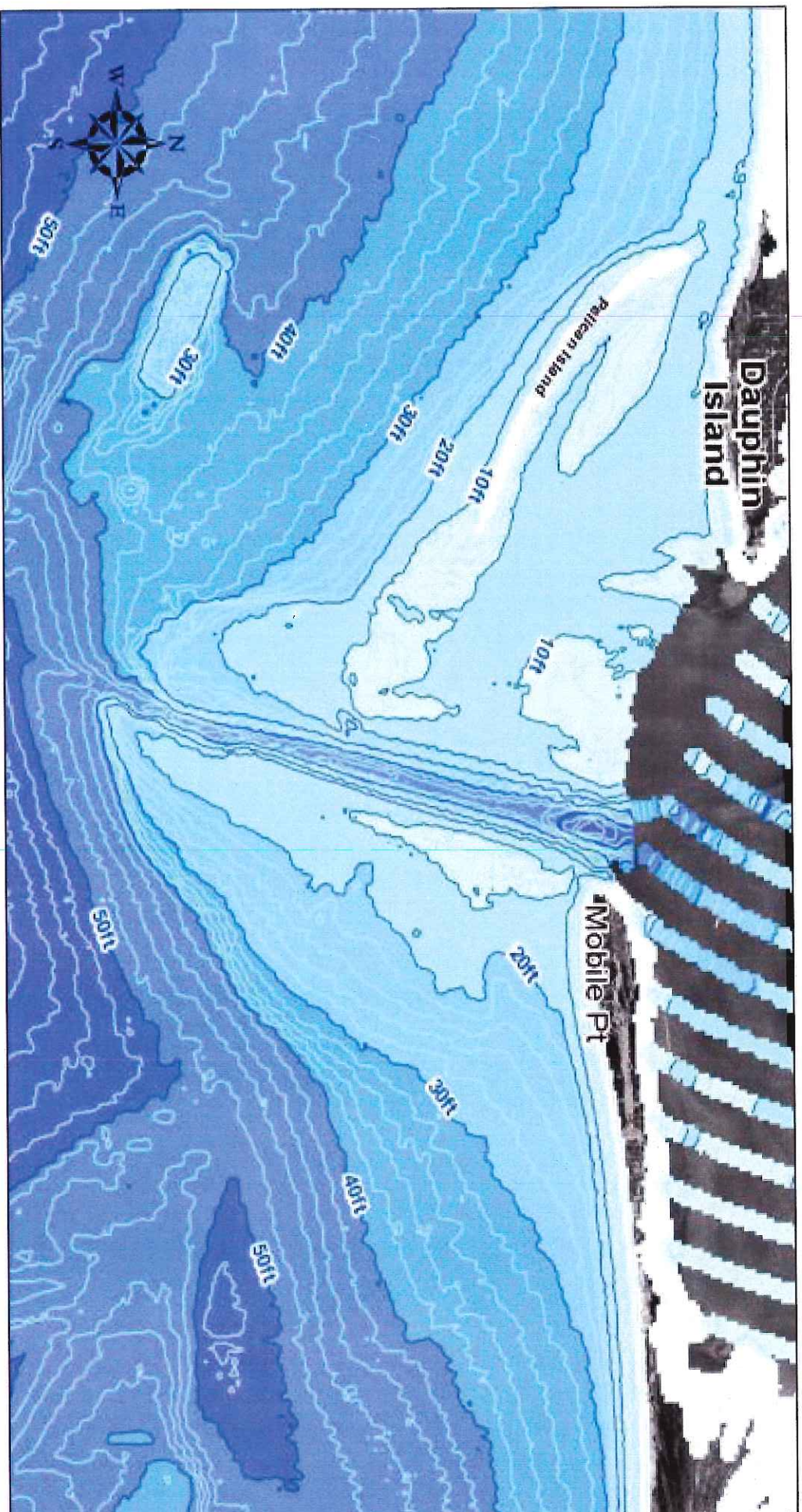
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Dauphin Island



**Mobile
Outer Bar Channel**





0 1 2 3 4
Kilometers

0 1 2
Miles

Mobile Harbor Bar Channel 1982/92 Bathymetry

1:150,000

Bathymetry interpolation distance limited to 500 ft.
Spatial Reference: StatePlane Alabama West,
Feet (FIPS 0102) NAD 1983.

FIGURE 2.28.a. Mobile Harbor Bar Channel, Alabama

DEAR COL. JOLY

We have seen Mobile Bay disintegrate from a beautiful clean clear recreational area to an eye sore & hazardous biohazard area. Correcting the problems is needed & ~~not~~^{don't} go further into destroying ~~the~~ the Mobile Bay.

Sage Lyons proposal to deepen & widen the port of Mobile to accomodate huge container ships is not acceptable in any form.

Lyons policies has misplaced much of the dredge material in the past & has destroyed Dauphin Island.

Lyons proposal to be voted on September 17,th is detrimental and will destroy the bay bottom. Please find a way to clean Alabama's beaches

Thank You,



BERKELEY, CA 94704

xGrew up

I LIVED IN MOBILE 20 YEARS & VISIT MY FAMILY & FRIENDS IN MOBILE & CARE ABOUT MY HOMETOWN & STATE



Mobile Bay Oyster Alliance
P.O. Box 570
Theodore, Alabama 36590

September 6, 2018

Col. Sebastian Joly
U. S. Army Corps of Engineers Mobile District
109 Saint Joseph St
Mobile, Alabama 36602

Subject: Meeting of September 7, 2018

Dear Col. Joly,

Thank you for allowing our organizations presence at the above meeting.

The Mobile Bay Oyster Alliance (MBOA) represents a rapidly growing coalition of organizations, business and individuals, all dedicated to the return of oyster habitat, oysters, and submerged aquatic vegetation to Mobile Bay. Our goal is creating a healthy shoreline for the return of this once thriving aquatic nursey system to Mobile Bay.

Some of our members have lived on the shores of Mobile Bay for 5-30 years. During that time frame we have witnessed an almost total loss of aquatic grasses and oyster reefs that once protected those shorelines. Now we watch as those shorelines erode at a fast pace, if they are not bulk headed or ripped.

Our concern is that the cumulative effect of vessel generated wave energy (VGWE), from large ships, is the primary cause for these losses to a once thriving ecosystem. This began in the 1960's, commensurate with the take-off of the Alabama State Docks, and worsened in the 1970's and 1980's, again commensurate with larger ships entering and exiting the Mobile Bay.

The current dredging proposal under review, will allow even larger ships to use our port, as well as increase the number of ships which visit yearly, as previous dredging projects have done in the past.

Numerous scientific studies have been conducted on VGWE around the world. All the studies end with the same conclusion: VGWE kills aquatic grasses, destroys oyster reefs and erodes shorelines.

Unless we stop VGWE, Mobile Bay will never be able to turn the corner and begin the process of reestablishing grass and oysters along its shoreline.



Mobile Bay Oyster Alliance
P.O. Box 570
Theodore, Alabama 36590

All the studies also recommend two options for eliminating VGWE,

1. Build breakwaters (very expensive)
2. Slow the Ships down (very inexpensive)

Vessel Speed Reduction Programs (VSRP) have already been implemented at numerous ports within the US, as around the world. We do not advocate slowing all ships down at all times, as there are smaller ships that do not produce damaging VGWE.

Our organization in no way wants to cause economic hardship to the Alabama State Docks, nor its employees. But, we must find a way to resolve the issue so we can both co-exist. The port can have its larger ships, and the citizens of Mobile and Baldwin counties can have their bay back.

Please consider a thorough scientific study, conducted by a third party, of the effects of VGWE on Mobile Bay be included within your EIS. Also, please consider addressing the effects these larger ships will have on VGWE without any protective measures.

Again, thank you for taking the time from your busy schedule to meet with us. We certainly hope we can go forward with the knowledge that we will be able to work together to find an amicable solution to this issue.

Sincerely

Robert Pettie

Robert@personsservices.com

Joe Hughey

joehughey@bellsouth.net

September 2, 2018

Colonel Sebastian Jolly
District Engineer
Corps of Engineers
P.O. Box 2288
Mobile, AL 36628 -0001

RE: Mobile Harbor, Corps of Engineers (COE) General Integrated Reevaluation Report (GRR) and Alabama State Port Authority (ASPA) Supplemental Environmental Impact Statement (SEIS) July 2018

NEPA Public Hearing

I am requesting a **30 day extension for the Comment Period** in order to allow the public additional time and opportunity for providing feedback, as this is one heck of an ASPA/COE proposal (4,000 pages... unbelievable.) In the 70's, 80's and 90's the National Environmental Policy Act (**NEPA's Public Hearings**) allowed people time to speak, ask questions, leave comments, all while being recorded on the Public Record. I request this kind of **Public Hearing** be held in **Mobile**. Show the public respect and have a properly held Public Hearing!

Poses Significant Impacts; threatens Mobile Bay's integrity

The ASPA's proposal is as bad as the Alabama State Dock's was in 1980 as this massive, destructive dredging project proposed for Mobile Bay will pose **significant impacts to and throughout** the Estuarine System. The operations will be **around the clock, 24 hours** a day with **years of continuous dredging...releasing huge turbidity and sediment loads (clouding)** which will diminish dissolved oxygen levels, shut out the sun's benefits and smother marine life and vegetation. During 70's 80's the Bay had large fish kills covering huge portions of the Bay due to excessive turbidity and sediment loads. The identified toxic and hazardous chemicals and materials in the sediments will be released and pose additional **risks** to water quality, marine life, and the potential for contaminating seafood then posing health threats to humans consuming them. Destruction of valuable baybottoms will result in the loss of their numerous benefits. They provide strength, stability and structure to estuaries, for burrowing habitat for microbes and worms while the surfaces provide for vegetative areas, crustaceans that live on their surface work with microbes making detritus (vegetable soup) for other marine life. Everything works together in the natural web of life...detritus feeds fish, then the birds and other wildlife—finally includes man—the chain of life.

Loss of benefits in destruction and removal will cause the loss of food sources both on top and underground provide benthic and micro organisms then there are also worms whereas the surface provides crustaceans for macro species and detritus—marine vegetable soup, they provide stability, support and strength
The routine handling, transporting, spraying and placement of multi millions of cubic yards of dredged material by the ASPA/COE is already questionable. I would bet there are more **unidentified impacts occurring then are being reported..**
The huge foreign vessels if allowed in our harbor pose the serious threat of releasing **deadly exotic species** into the Bay's waters which may be the last straw for this body of water.

The Selective Project only benefit the maritime industry

The projects "first phase costs" are projected to be \$387,762,000 million dollars creating a huge economic impact for the Nation's taxpayer, as they assume the responsibility for \$244,860,000 while the ASPA assumes the piddling \$142,981,000 share.
The COE's consideration and evaluation for the TSP will be for one user: *the maritime industry* and poses significant environmental impacts and threats for us and **no economic benefits accrued to the public**. The other alternatives considered are as bad and unacceptable, as the goal is allowing wider and deeper foreign vessels in our shallow bay causing 'significant impacts' that are not acceptable and are remiss.

Red Flag

Right off the bat ASPA violates the NEPA process in releasing a SEIS instead of the EIS. This raised a 'red flag' for me as they violated the process in deciding their project to be a spin off of their 1980 dredging project proposal, (38 years ago?) which was similar but not as bad and it was stopped.

The 1980 proposal was a widening and deepening project for the Mobile Bay Ship Channel, filling of 1,700 acres in **Arlington Point** for a container Port, proposed filling portions of the northeastern bay with islands and construct and develop a huge coal Transshipment island north of Fort Morgan.

Now in September 2018 I discover the Corps' knew about their 1978 Report that addressed the erosion occurring on Dauphin Island and concluded that the maintenance of the Bar Channel and capture of sediment loads from the littoral drift contributed to the erosion of Dauphin Island and they chose not to address the issue in the 1980 EIS, making it 'deficient.'

Citizens joined forces with the Alabama Fish & Wildlife Service (F&WS), there was a concerted effort in opposing the destruction of the 1,700 acres of the fabulous natural shallow embayment system containing highly productive and major submerged grass beds. Luckily the project was finally stopped.

Congressional Federal Permit

Very few people know that ASPA holds in hand a 32 year old Federal Permit they wrangled through Congress in 1986 (Sage Lyons was the attorney) and they plan to use it no matter what the outcome of this process. Is this Permit still **valid**?

It fully authorizes channel dimensions for a:

- 57' deep x 700' wide Bar Channel
- 55' deep x 550' wide Bay Channel except for upper 3,6 miles authorized to 650' wide
- 55' deep x 1,500 sq. ft. turning basin near Little Sand Island
- 55' deep x 600' wide below station 226+16 in the River Channel
- 40' deep x 600' wide above station 226+16 in the River Channel

These pompous asses think they have the right to do anything they want. They were caught violating the law in those days. People got involved, then Congress. Money dried up and they were stopped.

Topping Off...Roll On...Roll Off

ASPA has been using **Topping Off ...Roll On Roll Off** for years in the Gulf proving there is no **NEED** for this project. The **Topping Off Alternative in the Gulf of Mexico** has proven to be **economically feasible** for the Port and provides a **safer environmental alternative** for Mobile Bay.

ASPA other reason for channel changes was to allow the coal on McDuffie Island to be exported globally. This commodity has a very shaky history with major 'ups and downs in the global energy' market place plus the coal industry currently use 'lighters' to top off the coal barges and send them on their way. This lessens their **NEED** for the project. Jimmy Lyons's **antiquated 50 year plan** needs to be abridged, as it was not feasible in the 70's and life's pace is much faster nowadays. **Today's planners realistically** try to handle a situation in 5,10 or 20 years as social, economic and environmental situations constantly change and these are not the ole' rocking chair' days.

Mobile Bay Benefits

The reasons that stopped the project in the 80's are as valid as ever. Mobile Bay is a **vital National Estuarine System** that provides sediment for our beautiful white sandy **beaches**, storm buffering **dune systems** which supply habitat and havens for numerous Endangered species such as the Alabama Beach Mouse, turtles, birds, mammals and reptiles.

It creates the opportunity of providing thousands of jobs in recreational activities, in **commercial fishing industry** for individuals and families catching, handling and the sale of a diversity of seafood.

The Bay provides habitat, food and water supplies for 370 species (not 300 as stated in SEIS) of song, shore, water **birds** including the hundreds of thousands of birdlife during migratory periods. Coastal Alabama lies within the Mississippi Flyway.

It offers a variety of marine **vegetation** vital for the health of the Bay, dissolved oxygen, food and support for the estuary and contain a **diversity of micro/macro species**, such as worms, crustaceans and detritus, food sources for the variety of sport and commercial fisheries,

The invaluable **surface water areas** act as travel corridors, assimilate and disperse water and pollution loads, provides for commercial and recreational boating traffic.

The northern **Delta** is enjoyed for Alabama's hunters, fishermen, fisher-ladies and boating activities in freshwater systems. The local homeowner families plan opportunities for enjoying the bay's resources and having family **picnics** plus relaxing and enjoying esthetics. Well, you get the picture.

Mobile Harbor Bar Pilots

Thank goodness for the **Mobile Harbor Bar Pilots** guidelines for safe operation in the channel which are pertinent for this analysis as:

1. **traffic is limited to one way** when vessel beam exceeds 115' transiting the channel
Maximum combined draft of two meeting vessels **shall not exceed 85'**
2. Any two meeting vessels with a **combined length overall of 1,650'** or greater will **not be allowed** to meet in the channel **if combined drafts are greater than 75.**
3. Maximum combined **length** of any **two vessels** that will be allowed to **meet in the channel is 1,775 feet, regardless of draft.**

The **Mobile Bar Pilots** use **good safety practices** and good "**ole common sense**. The public should thank them as the Bay has been extremely lucky! The ASPA's proposal in allowing the larger vessels in our very shallow bay, just to speed up the process of unloading them, will increase the **potential** for causing catastrophic accidents. The COE needs to **protect the bay**, its **resources**, the thousands of **families** residing in their homes surrounding the bay, as their lives could be threatened in allowing these vessels in the Bay. We have been extremely lucky!

NEPA's Purpose and NEED

The heart of NEPA's analysis and the key aspect of an EIS are for an agency to define what they are trying to achieve by proposing an action they deem necessary. It serves as the basis for identifying reasonable alternatives which meet the purpose and need.

The reader compares and contrasts the **environmental effects** of the various alternatives with effects and impacts meaning the same thing. Included are **ecological, aesthetic, historic/cultural, economic, social, or health impacts on Human Beings**, whether adverse or beneficial, as they are part of the environment. That's why Congress used the phrase "**human environment**" in NEPA. Agencies then can describe and analyze a "**no action alternative**" meaning the agency did not act upon the proposal for agency action "no action" also means continuation of the current management plan." (from NEPA Document)

ASPA PURPOSE AND NEED

The ASPA insists their **PURPOSE** and **NEED** for the widening and deepening as being from **navigational problems** that exist for the increasing number and larger size vessels, as it does not allow passage for their large container vessels and cause:

- Congestion. Very much like **our** congested **roads and highways**
- Transportation delays and inefficiencies
- limited to one way traffic
- pose safety concerns
- not allow night access---thank heavens!

But ASPA's **GREED** and the only identified **NEED** for these huge Asian container vessels to enter our extremely shallow Port is to be **unloaded quicker**. Projects in the past have been stopped because of questionable **NEED**, especially when they were this expensive and destructive.

Climate change, Salinity, Eutrophication, Isostasy, Subsidence, SLR.

The Mobile Bay's ecosystem is presently being **imperiled** by natural events such as **climate change, salinity, erosion, isostasy, eutrophication, subsidence** and **sea level rise** (SLR). These terrors are upon us NOW and the political powers, **Mobile Bay National Estuary Program (MBNEP)** and sources of money need to be preparing for these major events and give them **priority** over projects such as this one as our **barrier islands** (Dauphin and Fort Morgan) and the **estuarine system** will become the **first victims**.

Dauphin Island (DI)-Erosion. Subsidence. Rising Sea Level, Eutrophication

Dauphin Island is very important for MANKIND, as it is one of Alabama's main protective barrier islands. Jeff Collier, The Mayor of Dauphin Island points out that "barrier islands shield their respective coastlines from direct impacts during storms and also provide another layer of protection for seafood operations and other waterfront industries."

The "Organized Seafood Association acknowledges that *DI plays a major role in helping to create conditions favorable for the propagation of commercial and recreational seafood*. Hydrologists and geologists try to warn us , but Man is arrogant and doesn't listen, especially if he is intent on having his way in doing a project. Mother Nature works beautifully by herself and sediment loads enter the littoral drift, flow eastward and naturally deposit onto the beaches. If the loads are removed then erosion will occur. Simple!

A COE 2010 study concluded "major changes in the island's configuration were always **associated** with **hurricanes** or tropical storms "directly **contradicting** a 2007 report from the **USGS** that" presented historical data showing the erosion on DI continued even in the **absence** of significant **storms**." Who is right?

*"In addition to the operational constraints hauling material from the Bay channel to the ODMDs permanently removes sediment from the natural system and is extremely costly and destructive! It is now perceived that the removal of sediment from the Bay's natural sediment system **may not be an environmentally sound method of disposing** of the dredged sediment and may have **long term negative** effects. By **reducing** the amount of sediment placed in the ODMDs, more of the bay sediment will subsequently be retained in the natural sediment transport system."* (Draft-EA-Addition of Open Bay Thin-Layer Disposal Option-May 2014)

Another significant ecological impact believed to be associated from Dauphin Island's deteriorated conditions attributed to shoreline erosion, is the low success rate of sea turtles nesting on the island, with low percentage of successful nests compared to Baldwin County's beaches. This issue warrants coverage because of the Endangered Species Act connection and also because DI provides a substantial portion of Alabama's total Gulf shoreline used for nesting by sea turtles. It's a possible "takings" type situation that may exist as an indirect impact of the ASPA/COE's Bar Channel maintenance program and the Mobile Harbor project's role in contributing to the erosion of Dauphin Island and the lowered turtle net success rate compared to other northern Gulf beaches,"

Someone with the Corp or an outside group who truly loves the Bay and its resources needs to reevaluate the way dredge material is being removed from the littoral drift, how it is being handled or mishandled and where it is finally placed.

Just how much have the thousands of drilling rigs' withdrawal of untold amounts of water, oil, gas, salt, sulfur in the near shore and offshore waters of the Gulf of Mexico contributed to the sinking of Dauphin Island? Has drilling operations in Mobile Bay and off our coasts in the Gulf caused **subsidence and isostasy** to occur in coastal Alabama from years of withdrawals? **Dredging operations** in the past and placing heavy loads of sediments in unstable bases have disturbed geological processes in **Mobile's coastal area** causing major isostasy problems.

What about problems with the rising sea levels...RSL? Pollution loads also play major roles in this issue and cause major impacts and threats natural areas, causes health problems, but is anyone considering the fact that a major reason for islands to be sinking are because of the oil/gas drilling operations in the Gulf and southern portion of Mobile Bay withdrawing huge amounts of water, oil, gas, salt sulfur from underground reservoirs and be a major causative factor in the sinking of Dauphin Island and other islands in the Gulf? Louisiana's coastal wetlands are sinking and the oil/gas industry is being blaming!

Eutrophication

Eutrophication is briefly discussed in the COE Documents as being a problem.

In Mobile Bay it could be a huge problem with all of the nutrients and trash coming from not only numerous watersheds, but fairly large and frequent releases of untreated domestic wastewaters (sewage) from Mobile and Baldwin Counties, runoff from agricultural lands, roadways and parking lots, shopping centers, and golf courses. Then there are the tons of turbidity and suspended solids released during dredging operations and open water disposal of the material along **both sides** of the channel. The open water spraying and layering of sediment loads over the water surface, plus filling of the relic shell areas ... all of which cause hypoxia events, loss of sunlight benefits, etc.. The document discusses the Gulf of Mexico as having problem on a continual basis. There should be more extensive monitoring and reporting required for the Mobile Bay area.

Something is definitely going on in coastal Alabama ...See attached Lagniappe photo and Article, December 3, 2015...strongly suggesting reasons for **shelving this project**. Dauphin Island desperately needs help and fast.

Bickering State & Federal Agencies

There has always been a great deal of bickering between state and federal agencies and posed problem as involved private citizens were trying to improve situations. There is an imperative need for everyone to work together as time may be getting short?. We did in the past and **achieved major success stories**.

Open Bay Disposal

The COE is supporting another badly planned option, ***open bay disposal*** and someone promotes the idea that it will contribute to the much needed conservation efforts for the protection of marshes, sea grasses, oyster reefs, and other ecological resources. HOGWASH! In the past open water disposal didn't help any of these things. What happened was the huge **turbidity** and **suspended solids** clouded the waters, smothered grass beds, killed fish and aquatic life and vegetation which led to major fish kills.

DI Sanctuary

There is also the URGENT NEED to protect the invaluable Dauphin Island Bird Sanctuary. If the coastal landforms go then so do the sanctuaries. These coastal landforms not only allow for the first 'take off' and last 'landing fields' for hundreds of thousands of birdlife during their migrations to South America and Mexico and North to areas in America and Canada.

Mobile Bay's Depth

Mobile Bay's present depth should be kept at 45' as deeper pose too many significant problems for the system and are extremely costly. The sediment rich rivers of the Delta to the north and the long shore currents from the Gulf in the south, deposit a steady load of mud and sand into the Bay. The constant sediment dump creates enough of a need to routinely dredge the Harbor and Ship Channel to the rational shallow depth of 45'. This depth is more **cost effective**, would **lessen loads** of material to be handled and disposed and the shallow depth would **lessen erosion** problems and **save** the taxpayer **money**. This is the time for using common sense!

National Significant Estuary

In 1995 EPA recognized Mobile Bay as being a **nationally significant estuary** of the United States and designated it as one of 28 National Estuary Programs in the Nation. The COE needs to better understand our precious ecosystem and its **National significance** before allowing additional **attempts to destroy** it. Read COE's 1980 EIS regarding the State Docks last major attempt in trying to destroy our Bay. Significant research was done in the past by local scientists who loved and respected the Bay and Delta.

Carte Blanche! No Mitigation!

The ASD/ASPA have been given 'carte blanche' **all of these years** in Mobile Harbor completely ignoring their responsibility and have made **NO** attempt to mitigate their impacts in their maintenance dredging operations for their special interest and the destruction of public lands. The F&WS determined 3-5,000 acres of public lands were destroyed in construction of numerous dike and filled projects which involved the destruction of surface water areas, bay bottoms, grass beds and wetlands for their dredging needs. Additional acreage of priceless wetlands within the harbor were threatened to be filled, but were stopped...by an alligator (read my book for that story) The 'fast lands' in Mobile Harbor are now identified as Blakeley Island, Pinto and McDuffie Islands which contain oil and chemical storage tanks, ship yards and the huge piles of coal that release deadly particles 24 hours a day. Surprisingly there still remain other wetlands, but these have been polluted by oil spills during past years, also with no mitigation

Alcoa Aluminum 'Mud lakes'-'Wildlife Refuge'

To give you an example of what can work, as long as the choice is protected from the greedy ones, is the Alcoa Aluminum mud lakes. Alcoa Aluminum needed additional lands in the 70's as their 6 mud lakes containing years of 'red bauxite mud,' (toxic/hazardous wastes) in their 6-700 acre areas on top of a 40' dike area on Blakeley Island were determined to be full. (See ATTACHED ADDENDUM)

In December 1976, **The Agreement** was signed by Governor Wallace, Alcoa Aluminum, Secretary of State-Agnes Baggett, John Hodnett -Commissioner of Conservation & Natural Resources, Mobile County Wildlife- Charles Butler, and Myrt Jones-MBAS, and promised the 'first' public mitigated lands in the Harbor area ...ever! The Agreement allowed the ASD/ASPA /COE to dump and recycle 35 million cubic yards of dredge material from Mobile Harbor for 35 years on the six prepared mud lakes. Then these 600-700 acres wildlife refuge areas would be turned over to the Al. Department of Conservation. They had been identified by local, National and foreign birders as being 'one of the best birding sites in coastal Alabama.'

(Enclosed are **photos** of the beautiful and lush **wildlife refuge** areas) on top of Alcoa's mud lakes-which was once and probably still are a toxic landfill that were 'recycled' into a highly productive and useful 'bird sanctuary.' A variety of birds used them as a resting, nesting, feeding area for raising their young. The lake area is in the southern reaches of the Mobile-Tensaw Delta.

Until...Sage Lyons, once a state Senator in 1986 who became the State Docks attorney, read the **Agreement** and made it **null and void**. Yet the Port Authority/COE continued to dump millions of cubic yards of dredged material from Mobile Harbor onto the mud lakes until their 35 years were up—**How could they do that??** Jimmy Lyons quietly had the lush and beautiful 6-700 wildlife refuge lands completely bulldozed. No one has taken any action against this complete destruction. Beautiful public lands, and the citizens and wildlife have lost ...AGAIN!

A Done Deal

Right from the beginning, the COE/ASPA GRR, along with the SEIS, seems to promote the ASPA's project as a **done deal**. Nothing new there as past EIS's from the COE invariably ended up in court. However the Corp's involvement in this project is being brought into question when the Executive Summary states that *GRR results are being used to determine **if the Federal Government should be participating in design and construction of potential navigation improvements at Mobile Harbor.*** This is significant. Should the Corps be involved in a project which has already cost the taxpayer millions of dollars for advancement of projects by the *special interest* group: the maritime industry? The answer to this is NO!

Require ASPA to Fund Project

The COE should not be involved! This is a waste of the Corp's valuable time as the federal agency may become involved in just another ASPA shenanigan. Deny this project and require the ASPA to handle it themselves. Let them try and fund the 'bloated' project through proper channel and not behind closed doors as they usually do. They can fund it as this state agency claims that "in 2014 the total economic value of the marine cargo and vessel activity at Mobile Harbor including the revenue added at each stage of moving an export to the port or an import from the marine terminal was estimated at nearly 24.8 billion and 149,432 jobs: there's plenty there to work with.

Welcomed other District Engineers

As President of the Mobile Bay Audubon Society (MBAS) for thirty years I made it a point to meet the new District Engineer of the COE every three years and welcome him. Colonel Drake Wilson was my first and the meeting was quite enjoyable for the both of us. He asked '**how could the Corp's image be improved?**' I suggested he form a Citizen Advisory Committee (CAC) from those of us receiving Public Notices and allow us to be involved in the Corp's coastal projects. Believe it or not, he **loved** the idea. Many Corps people were not happy that we were involved, but we didn't care as we worked on numerous coastal issues.

One day Committee members were handed the very small booklet regarding the Corps billion dollar proposal **Reanalysis of the Tenn-Tom Waterway**. It was their new proposal that involved cutting through and straightening numerous bends in the Tombigbee River from Demopolis to Mobile making a superhighway for coal barges. I called a Board meeting and was told the Society would file a lawsuit. During the next Committee meeting I made the COE aware of our decision and the F&WS and Environmental Defense Fund planned lawsuits as well. The project was quietly dropped from the Corps plans. Very few people know about this, but it happened ...and public involvement stopped it.

Lost SAV's -- Radcliff Dredging

Many of us were involved during the early days when the Department of Conservation and Alabama Water Improvement Commission now ADEM allowed Radcliff Dredging Operations to dredge and remove 4-6 feet of bottomlands (overburden) for the removal of prehistoric oyster shells to make chicken feed and cement. Their huge '**open water dredging and dumping**' operations' caused severe turbidity and suspended sediments loads to be released.

These loads spread throughout the bays waters (similar to the COE's open water spraying and layering of sediment loads they find so easy to deny cause impacts?) completely **destroying submerged grass beds (SAV's) severely muddying** the waters and **smothering aquatic marine life** in the shallow perimeters of Mobile Bay. The Save Our Bay became involved eventually stopping the State and Radcliff. Wouldn't this suffice as reasoning to discontinue the present open water spraying of dredge material? It violates the CWA, ESA and makes the Bay's water muddy and threatening. Would the Relic Shell Mined Areas be from their operations?

Unidentified Project Cost

All of this 'gobbly gook' about the ebb tidal shoals in the EIS... does this have anything to do with the littoral drift that Mobilians can relate to regarding the erosion problem on Dauphin Island? Which the **COE finally admits to contributing to?**

The COE/ASPA's capture and removal of millions of cubic yards of sand from the littoral drift eliminates it from being naturally placed on the beaches of Dauphin Island and helped erode the public beach. The Gehrig started Gulf dumping in the 90's and the COE finally admits in the SEIS there have been impacts. They consider the Gulf to be a **large ocean** that can handle their problems and minimize the impacts as not being too serious as the turbidity loads and suspended solids, heavy metals and mounds that have occurred may smother and kill aquatic organism, but new critters rebound in the area within 6 months or it may take several years of recovery." **Bad assumption and unacceptable** by a federal agency!

What's not being discussed in the SEIS is that the ocean dumping was stopped quickly by the ASPA/COE and the material was moved closer to shore at the new dump site, SIBUA, **because it was cheaper**. A few years later ASPA decided again the ocean is the place to go, but they may be changing their minds AGAIN as look at what they proposed in August 2018?

Extra! Extra ! Enlarge SIBUA???

The ASPA is not waiting for acceptance of their proposed Plan, as the Port people aren't really sure of what they want to do. Without **proper notification** they now want to enlarge the SIBUA... probably remembered why they stopped dumping in the ocean in the first place as it **costs too much**. The COE needs to **DENY** this Port request and wait and see what is **decided on this one**.

ASPA Does Handles Hazardous Wastes

The COE's claim is just **not true** as the Port does handle Toxic and Hazardous Wastes. Jimmy Lyons recently requested another Permit for Handling Hazardous Wastes within the Port through a Public Notice handled by the Alabama Department of Environmental Management (ADEM). They obviously have been handling these types of wastes for some time. **Enclosed** is a copy of the **PN** along with a copy of my **comments**.

The following are Comments and Corrections with regards to the SEIS:

Mobile Cruise Terminal isn't as active as one would hope.

2-48 Projected dredge material sites-

Alcoa's Mud Lake 6 —was el 42 now max. el. 46-capacity 3,388,000

Alcoa's Mud Lake 7_ was el 42 now max. el 46-capacity 8,562,000—no wonder

Lyons destroyed the acreage involving mud lakes 1-6 as he is so greedy the removal of the public's wildlife refuge areas now provides additional areas for him receiving more fill and money in the handling of more dredge material. Would someone please hold him accountable??? **He's a hopscotcher**

Dauphin Island Erosion

RE:2-49 In 2000 the people of Dauphin Island filed a lawsuit against the COE. It regarded the mile of beach that eroded over the years from the COE's removal of million of cubic yards of dredged material from the littoral drift. They lost the case, but recently a **Corps** person **admitted they lied** and **probably helped cause the erosion**.

Mayor Collier received **seven million dollars** from CIAP (Coastal Impact Assistance Plan) in 2016 to recover and restore the eroded area. An interesting point during their search for 'the white sands' needed for the fill as it was found in the COE's SIBUA. The seven million dollars should be considered a **major expense in this Harbor project**.

RE: 2-55 Mobile is one of the wettest cities in the Nation...yet there is very little mention of **droughts**...seems like the coastal area does experience these problems and wonders why **multi-year-drought conditions** weren't considered in the TSP as **salinity regimes** might be altered within Mobile bay to the point that oysters, submerged aquatic vegetation and other specified environmental resources could be adversely affected...there is the need to determine if such a problem could exist in permitting salinity changes which could encourage **oyster drills** and other potential problems. ...also the bay does experience times when there is very **little water in southern** portions, especially after cold fronts

2-56 We also have the National Weather Station out on Airport Blvd by the Municipal Airport. Not many people use the Brookley Airport—maybe the Chamber is promoting Brookley before it hatches

2- 61 widening and deepening plus tropical storms and hurricanes and abundant winds, tides, surges **allow** more **saline** waters and **sediment** loads to enter the bay

2-71 Mobile Bay has been identified as a **stressed estuary**, but haven't seen this mentioned.

2-73 Spelling—Maher should be Meaher (Mobile family) —it is in other places—pg 2-118

2-75—**Groundwater supplies**—are extremely important and vital in Mobile Bay area as many families depend on wells for water supplies. There are numerous industries in coastal Alabama that depend on wells for water supplies. Has there been such a study ... surveyed and no-one wants to lose water wells around Mobile Bay area from a badly planned project. So far the ASPA/COE have been lucky and so have the residents!

Dr. Eugene Odum

2-77 **Wetlands** —are one of the “most productive ecological components within the project area.” I would like to mention **Dr. Eugene Odum**, Founder of Ecology in Georgia who helped those of us in the environmental field (eco-warriors) save wetlands especially in the coastal area of Alabama from the COE/ASD's and others. He placed the economical and beneficial value of **\$83,000.00 per acre on wetlands**, as they provided Man **ecological benefits** in helping to clean up pollution loads to **tertiary treatment, plus numerous other benefits**. How much would an acre of wetlands be worth in today's economic market, as their acreage has been lessened considerably and should be even more valuable?

Dr. Bill Wolverton

Dr. Billy Wolverton, a scientist working with Mississippi Space Center was trying to find a closed system for the space shuttle and discovered the unique natural process that involved wetland vegetation and the **microbes** on the roots.

The closed system cleansed **the air** and **water of pollution loads**, provided **food** and **habitat** for marine life. He was teaching students at the Environmental Studies Center in Mobile and I asked him to be our banquet speaker. Peter Mannsfeld, Plant Manager of Degussa attended the banquet and knew of Wolverton's work with water hyacinths, but hadn't heard of this latest work. They joined forces as Mannsfeld was having problems getting permits from ADEM for one of their hazardous wastewaters releases and this natural process might do the job. The biological process treated it to the degree it could be released into Mobile Bay and the chemical company was the first to use Wolverton's process and continue to show off the process as a promotional tool at their facility.

Topping Off

ES 4. Costs of TSP, \$387.8 million. The savings would be tremendous if the COE required the ASPA to pay more on the project costs! Or deny the project and continue to use **topping off ...Roll On... Roll Off in the Gulf as it does the job.**

Support the NO PROJECT ALTERNATIVE

Dr. Will Schroeder-Stratification

ES-5 Citizens battled Degussa's proposed wastewater and the additional County's domestic waste loads to be released in their **new proposed outfall in the middle of the bay**. The audience was overjoyed at the Public Hearing when I used the **coffin to make the point** of the seriousness of the situation. Dr. Will Schroeder, local hydrologist made the statement in the lawsuit that there were several **stratification layers** that would **not allow** proper **dispersal** and **assimilation** of the waters and helped to stop the Chamber of Commerce's very bad idea

Projections, Models, Assumptions Guesswork

Mobile Bay is one of the few National natural ecosystems and I always have trouble believing in **projections, models, assumptions, guesswork** when it involves a fantastic system such as this one. A natural world cannot be put into a computer. Mother Nature doesn't play Man's games as it has its own fabulous biological systems that work so well together. Man can't seem to realize or recognize the beauty of these systems, which is a shame as they mess them up, badly. I truly feel sorry for the future generations

2.5.6.3 SAV's provide some of the same benefits as wetlands

2.5.6.7—why aren't the natural **values of bottomlands** discussed when dealing with benthic communities (closed community) —does the COE want people to believe they aren't as vital as they truly are so they can be destroyed for this project? If so you are violating the law and the **rights of the people** and the **estuary**.

2.33 Figure 2-33 Unreadable

2-5.6.9 —the COE needs to listen to Ralph Atkins and Avery Bates **as they are the experts** when it comes to Mobile Bay's **oysters and seafood**. Avery told me few years back how important it was to leave some of the **deep holes** alone in Arlington Point and other locations as they provide hiding places and safety for a variety of fish and marine life, even though at times there may be low levels of DO.

ASPA or COE could care less in placing huge amounts of dredged material and filled them up (these people seem to have limited knowledge at times) and the placement or spraying or whatever they did in Arlington Point has smothered and depleted the once abundant grass beds. Atkins and Bates have been in the business of growing and selling oysters and seafood all of their lives and in the old days the oysters were abundant and delicious, but the ASD/ASPA have questionable—maybe no knowledge or respect for protecting this once extremely productive Bay and marine life. There seems to be little control by anyone over the Port as the Bay's resources are suffering and could be in total decline as it has been a **stressed system** for many years.

When I was a youngster my family would take us and the floundering light and gig to look for flounder, soft shell or blue crabs in the abundant grass beds in Arlington Point. Our catch ended up feeding our neighbors as well as us. I am told they don't exist now - what a shame for the kids, marine life and the future.

5.10—The **West Indian Manatee** was identified but wasn't mention until later that this mammal is seen often in the waters of Dog River. Patrols should be made as there is potential for accidents with numerous recreational motorized boats that now travel this river and some at high speeds

In 8-22-18-- newspaper—the red tide in Florida has **killed 100 manatees**

2-5-12—**Air Quality**—and 2.5.22—**Enclosed 2017 letter** to Alabama Department of Environmental Management (ADEM) regarding the Air Pollution Loads in Mobile County and Lack of monitoring in areas of ASPA, Theodore Industrial Park and coastal transportation corridor which seriously threaten coastal resources and systems, human health, and shortens young people's lives, especially in the **Environmental Justice Neighborhood**. I just heard the emissions from these foreign ships are massive...another reason for leaving them in the Gulf.see additional article re: Coal Dust

Pg. 2-118 **Bon Secour NWR(BSNWR)**— 370 species ...not 300 noted in the document. The public might like to know that the reason Alabama has a BSNWR is the fact five members of the Audubon Society's became involved in 1979... right before developers planned to destroy all three of the first tracts...and helped save them...otherwise there would not be a BSNWR in coastal Alabama.

2.4.3-Maintenance Dredging— In December 9, 2015 the federal Gulf Coast Ecosystem Restoration Council approved funding an island project for the Corps and ASPA at a cost of \$2.5 million they had been actively pursuing. It was for the placement of a 1,200 acre dredged material disposal island planned in the Upper Bay south of the Causeway. The project has been delayed for 2-4 years without any explanation... after the **public** began **asking questions** about whether it represents a **beneficial use** of dredged material. This project was excluded from the ASPA/COE Report and are delaying starting the dredged material island until after the current report to deepen the ship channel is 'wishfully' and hopefully okayed. I wish them the **worst of luck!**

2.5.19 Socioeconomics—The SEIS doesn't mention that Baldwin County is the fastest growing county in Alabama.

2.5.20—**Air Transportation**—I question the information—Mobile Downtown Airport isn't the one passengers use, it should be the Mobile Municipal Airport or maybe they are calling it the Regional Airport on Airport Blvd. Sounds as if the Chamber of Commerce is maybe using questionable releases.

Regarding **Public transportation**—the city and county of Mobile should be ashamed of them selves, as mass transit doesn't exist. At one time bus service provided good service and covered the areas, but politics stopped them now there is **massive car congestion and major air pollution loads released and accidents occurring.**

Pg.127---The paragraph states "**Hazardous wastes are not handled by the ASPA**" **This is not true—see attached PN requested from ASPA to ADEM**

4.2.3.2-Beneficial Use of DM—use with caution as MB's sediment are found to have **toxic and hazardous materials-don't use in marine habitat** unless safe.

Pg 4-19 Beneficial use options---don't use unless safe sediments

5-24-Public & Occupational Health & Safety—good spot as any...the issue of concern is the COE's reliance and dependence on computerized modeling in concluding "ship waves do not represent a serious issue"—throw it out the window then listen, get out of the office and look at the problem and listen to the residents.. Oh by the way ship waves have caused serious problems along the bay shores for years—look at the 'rip rap' covering our shores, as people's properties are eroding and having to be bulk headed. The situation may pose life threatening situations, especially for young children. This would be a simple task for anyone to handle ...there just has to be some respect for one's problem and an interest in doing something about the problem. Large ship waves do occur and more frequently because there are more vessels and no speed limits imposed especially on large vessels. It's so simple—require limits—slow down the traffic in effect **lowering the potential for a catastrophic accident**—The Bay and Us have been extremely lucky
5-24 **ODMDS**—The COE/ASD's dumped in the 90's ... 60 miles out in Gulf, but it became too expensive so they moved closer to their new SIBUA. The COE finally admits there are impacts, such as heavy turbidity disrupting, destroying and killing some species with sediment loads, and mounding of bottom, up to 8-12" eliminating burrowers for 6 months or several years—quite a few impacts as the **ocean isn't that large or should it be placed in jeopardy by short sighted GREEDY people**

5.8.8.4-**Oysters**—finally recognize limited info—isn't Nature GRAND? Poorly understood due to the difficulty in **tracking oyster larvae** over time, reef recruitment dynamics is critical towards understanding how potential projects actions **will impact** oyster populations within a project footprint. Too late for Mobile Bay's oysters. When ASPA start with their sob story tell them to get rid of the Director and find some one who knows how to do things properly, appreciates an estuary and works with people, not behind closed doors and **doesn't steal and destroy public lands that are owed nature and the people?**

Question for the District Engineer

Colonel, this question is for you and other Corps personnel: when you consider this project think of your children, grandchildren, friends and others throughout this country.

Question: why widen and deepen the channels then remove the bay bottoms in Mobile Bay? Why place polluted dredge material in invaluable wetlands, spray over waters resettling on bottomlands, dump in open Bay and Gulf waters and anywhere else ASPA suggests? Exactly what kind of **legacy** will you be willing to pass on to the future? How will you answer their questions when they ask "Daddy, why can't I swim in the Bay, or why is 'red tide' wiping out the manatees, why is vibrio (flesh eating bacteria) killing people, air deposition loads making fish unsafe to eat, why are other marine animals dying? Daddy? Are you crying"?

CONCLUSION

COE refuse this horrible ASPA project as Mobile Bay will become a memory if it continues to be a victim of the ASPA. Please adopt the **No Project Alternative**.

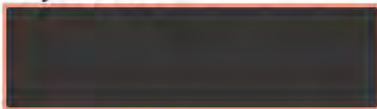
Myrt's Book

I'm not new to the ASPA as I've been involved as a private citizen in environmental issues in Coastal Alabama and worked within Harbor and Channel projects for over 40 years. My book is my **Testament** if you're interested in background. (Chronicle of An Eco-Warrior: Relating South Alabama Environmental Issues) It's on Amazon.

Respectfully yours,



Myrt Jones



ATTACHMENTS... pertinent to Myrt Jones's comments

Page 7—1. Lagniappe Photo “Island Barriers”, by Jason Johnson... of Dauphin Island following a Hurricane

2. “ article by Jason Johnson- “Dauphin Island poised to capitalize on restoration opportunities” December 3, 2015

3. Article by Tristan Baurick on what others are doing..... “Racing to save the barrier islands” August 3, 2018, Press Register

Page 9--- 1. Aerial of Alcoa's Deadly Lakes ...

2. **Alcoa Aluminum** /State Department of Conservation **Agreement**

3. Reclaimed into beautiful wildlife forested/shrub valuable mitigated refuge lands and contain freshwater lakes

4. Provided food, homes for variety of birds, wildlife-“one of the best birding sites in coastal Alabama-now completely destroyed by ASPA”

Pg. 12-----ASPA requesting Hazardous Wastes Permits from ADEM-July 7, 1018

Pg. 15---1. Myrt Jones comments on Alabama Ambient Air Monitoring...May 31, 2017

2. Article residents expressing concerns in historic districts of Mobile about ‘black silt’ released from McDuffie’s ‘sprawling’ coal terminal ...April 25, 1998

ISLAND BARRIERS

The debate over the causes of Dauphin Island's dramatic erosion continues, while officials pursue separate restoration and stabilization measures.

BY JASON JOHNSON



ope vs. AMIC redux

6

From the studio to the set

24

GoDaddy Bowl invites competitive

Katana

Racing to save the barrier islands

Press Registrar

Tristan Baurick NOLA.com 8/13/16

Why 5 Key Island
+ Chain of Islands

15.5 mcs - cutting 3,000
Ac. of beach + marsh

plus seawall 1.5 billion
over next 50 years
* protective role of barrier
islands

Ten miles from Louisiana's receding shore, on an island that was on the verge of sinking away, new land is growing at a rate of 200 feet per day.

A slurry of sand blasts from a 30-inch-wide pipe with the force of a fire hose. In foaming sheets, it spreads across the beach of Whiskey Island, making it thicker and wider by the minute. Backhoes and bulldozers finish the job, sculpting the sand into something resembling the island's younger self, before storms, oil spills and erosion took a heavy toll.

"Where we're standing was nothing but water — 12 feet deep — when we started this," said project manager John Huit, suppressing a pained grin, standing in rubber boots next to the gushing pipe.

The \$118 million restoration of Whiskey Island is one of the world's biggest land building projects. More than 15.8 million cubic yards of dredged sand — enough to fill the Superdome three times — have been spread across the island, creating nearly 2,000 acres of new

FIRST LINE OF DEFENSE

Whiskey Island's restoration, which is set to wrap up in early fall, amounts to only a fraction of the money and sand that Louisiana is pouring into the rescue of its chain of barrier islands. And for good reason. Growing smaller and fewer in number by the year, the more than two dozen barrier islands are Louisiana's first line of defense against hurricanes and storm surges, Gov. John Bel Edwards said.

The slim, sandy islands act as speed bumps, absorbing wind and wave power that would otherwise travel unimpeded through fragile wetlands and into south Louisiana's heartland.

Behind barrier islands, watery worlds meet and blend into something more complex. The sea, calmed by protected bays, mixes with river water rich in sediment and nutrients, giving rise to a third kind of ecosystem — one that teems with fish, shrimp and oysters. Suspended river sediment is slowed long enough to sink, eventually stacking into new land or building into new land or building

taken away.

"Some of these islands have a tiny footprint of land," said Erik Johnson, Audubon Louisiana's director of bird conservation. "They might seem to have very little value, but from a bird perspective they're irreplaceable."

Some bird species nest nowhere else, one being Louisiana's icon, the brown pelican. Seven barrier islands host 60 percent of the state's population of nesting pelicans.

Over the past 20 years, nearly \$817 million has been spent restoring the islands, bulking up 75 miles of beach and back-island marsh, according to a recent assessment by the state Coastal Protection and Restoration Authority. The state plans to invest another \$1.5 billion over the next 50 years.

'PERFECT HURRICANE'

On a warm August night in 1856, a raging hurricane made a direct hit on Isle Derniere, a 24-mile-long barrier island that guarded Terrebonne Parish's soft, marshy middle. French for "last island," Isle Derniere boasted a sprawling resort

popular with New Orleans' wealthiest families. Gale winds and towering waves broke the island in two and tore away the hotel, casinos, summer homes and all the island's trees.

"The wind blew a perfect hurricane; every building upon the island giving way, one after another, until nothing remained," an eyewitness told The Daily Picayune on Aug. 14, 1856. "The sea waved over the whole island. Those who were fortunate to find some object to cling to were seen floating in all directions."

More than 200 people drowned or were crushed by wreckage. The island, cut through, began to splinter further, eventually giving shape to Whiskey and three other islands — East Thibodaux and Racoon.

Had Derniere not been in the hurricane's path, the destruction would have been far worse on the mainland, saving a mosaic of fishing communities. But the protective role of barrier islands wasn't understood for another century, when, tragically, they were in danger of slipping away. Louisiana State University oceanographer Joe

Suhayda sounded the alarm in the early 1990s. With the help of computer scientist Vibhas Aravamudan, Suhayda produced models that showed what might happen in storms if the islands were gone.

A Category 3 hurricane thrown at the Louisiana coastline of 1930 would have left Houma high and dry, according to their model. The same hurricane let loose in 2020, when much of the barrier chain would have eroded away, put the city under three feet of water.

CHALLENGES ALL AROUND

Change is a constant for barrier islands. They begin life not as islands but as the outer edges of river deltas, dynamic landscapes that naturally shift and retreat and build anew. Louisiana's barrier islands took shape some 6,000 years ago as the Mississippi River altered course and abandoned sections of its much wider delta. The delta's sandy edges turned into islands.

The Gulf of Mexico has never been gentle with barrier islands. Waves and wind are constantly scraping at their sides, and storms occasionally break them into bits. But what the Gulf took away, the big river always restored. That changed after humans began to alter the Mississippi, hardening its banks and channeling its flow, sending its sediment pouring straight off the continental shelf at the river's mouth.

Meanwhile, rising global temperatures have contributed to the slow upward creep of sea levels. Subsidence, the gradual sinking of soft delta land, is also at play. Grand Isle, Whiskey and other large barrier islands are dropping by a half inch each year.

Then there's the oil industry, which has cut some barrier islands into pieces in the search for untapped reserves. Oil companies have tried fixes to shore up islands that support their infrastructure, but their preferred solution — rock embankments — has only sped up erosion, according to Darin Tee, a coastal resource scientist who manages state-backed barrier island projects.

Wave energy bounces off the rock and scours out sand under the water line. "Even-

Hammer 1.5 billion
next 50 years
entire role of barrier
islands

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Wave energy bounces off the rock and scours out sand under the water line. "Eventually the rocks collapse, and they sit there, preventing recovery because no new sand can get back to the island," Lee said.

Oil spills also take a toll. The BP Deepwater Horizon disaster in 2010 saturated several barrier islands. Cat Island on the edge of Barataria Bay soaked up BP oil like a sponge, killing the roots of grasses and mangrove trees.

Before the spill, Cat Island spanned six acres. Two years later, less than one lifeless acre remained. Now the island is a 10-foot-wide strip of sand.

Now!

MOBILE

Alcoa's 6 mud lakes



STATE OF ALABAMA

MOBILE COUNTY

It is a common goal of Aluminum Company of America, of the State of Alabama, of said State's Department of Conservation and Natural Resources, of public officials in the City and County of Mobile, Alabama, of sportsmen, conservationists, and public-spirited citizens that portions of Blakely Island and Polecat Bay be made into parks and wildlife sanctuaries and restored as a place of beauty to those who live and work in the area as well as to tourists and other visitors, and

WHEREAS, Aluminum Company of America (hereinafter referred to as "Alcoa") owns substantial acreage on Blakely Island in Mobile County, Alabama on which it has placed a number of settling basins and large quantities of bauxite residue, and

WHEREAS, Alcoa has recently acquired for expansion purposes a long-term lease on additional property, sometimes referred to as the E 1/2 of Lot 22 of Blakely Island, north of and adjacent to the property on which its present settling basins and bauxite residue are located, and

WHEREAS, there is a controversy between the State of Alabama and Alcoa as to the ownership of certain of the lands on which its said settling basins and bauxite residue are located, inasmuch as through the years Blakely Island, has expanded into what was formerly Polecat Bay, and

WHEREAS, it is the desire of the Department of Conservation and Natural Resources of the State of Alabama, of the State of

Alabama, of Alcoa and of various wildlife and environmental organizations and their members that to the extent possible the area in question, both land and water, become a wildlife haven and a place of beauty, and in furtherance of the desire of all parties hereto to avoid litigation over the ownership of any of said lands,

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the premises and of the mutual covenants and agreements herein contained the undersigned Aluminum Company of America, State of Alabama, Mobile Bay Audubon Society, and Mobile County Wildlife and Conservation Association have agreed and do hereby agree as follows:

ONE

In order to avoid and make unnecessary long-drawn-out, expensive and uncertain litigation over the ownership of certain of the lands on Blakely Island in Mobile County, Alabama, as each of Alcoa's settling basins reaches, in Alcoa's discretion, the maximum height to which it can be used, or following Alcoa's determination not to place a settling basin on any of said lands, said determination to be made prior to the expiration of thirty-five (35) years from the date hereof, Alcoa will enter into the reclamation thereof by planting grasses and trees and putting in lakes or ponds on top thereof in the manner described in the attachment hereto referred to in paragraph Seven hereof, so that said area may become parks and sanctuaries for birds and other wildlife. Should Alcoa determine not to place a settling basin on any of said

lands, said lands shall thereafter be treated, under the terms hereof, as though a settling basin on it had reached the maximum height to which it could be used. It is contemplated that the first of these areas can be reclaimed within two or three years from the date of this instrument, another in perhaps five years, and others periodically thereafter.

TWO

A. When Alcoa has completed its use of each settling basin and has reclaimed it for wildlife use, under the terms hereof, it will convey by quitclaim deed the property on which said settling basin is located to the State of Alabama. Said conveyances shall include not only Alcoa's interest in said lands, the title to which is in dispute, but also its ownership of that portion of the property as to which its title is unquestioned. Said conveyances shall also contain, as covenants running with the land, provisions restricting the use of said property to wildlife refuges and sanctuaries, conservation purposes or public parks.

B. It is agreed that after Alcoa makes conveyances under the terms hereof the said Department of Conservation and Natural Resources, Mobile Bay Audubon Society and Mobile County Wildlife and Conservation Association shall jointly make policy decisions affecting the management of said wildlife area, with said Conservation Department having the responsibility for implementing said decisions.

THREE

Alcoa will reserve from the conveyances of the aforesaid lands as to which its title is unquestioned, all oil, gas and

mineral rights therein, thereon or thereunder, but not including the bauxite residue therein or thereon, together with full rights of ingress and egress for the purpose of investigating, exploring, and prospecting for oil, gas and other minerals produced from said lands, and Alcoa and the State of Alabama will enter into a separate agreement whereby each will thereafter own one-half of the oil, gas and minerals and the aforesaid rights relating thereto in, on and under the portions of said lands added through the years. Any oil drilling or exploratory rights reserved hereunder shall be performed with the exercise of due diligence to preserve the wildlife nature and habitat of the area, and Alcoa agrees that it will avoid having any drilling operations on any of the reclaimed property, and that if any drilling operations for oil, gas or minerals (other than bauxite residue) are attempted, slant drilling will be done, so that the drilling equipment and wells will be on adjoining or nearby property rather than on the reclaimed property covered by this instrument. As an inducement to Alcoa to use slant drilling where any reclaimed property is involved, the State of Alabama agrees that it will give to Alcoa 50% of any income it receives in the forty year period next following the execution of this agreement from leasing, sale of royalties, or production of oil, gas or minerals from the property covered by this agreement.

Alcoa agrees it will give to the Department of Conservation and Natural Resources of the State of Alabama 10% of any income it receives in the forty year period next following the execution of this agreement from the oil, gas and minerals reserved by it in the conveyances to the State of Alabama herein above mentioned, whether from leasing, sale of royalties, or production of oil, gas or minerals.

FOUR

As to the E 1/2 of Lot 22 of Blakely Island on which Alcoa has only a long-term lease from the heirs of Augustine Meaher, it will reclaim said property promptly upon completion of its use of each settling basin placed thereon, to the end the State of Alabama and the public will get the benefit of it as a wildlife refuge, sanctuary or park at least for the balance of the term of Alcoa's lease. Alcoa agrees to complete its use of said property for settling basins a sufficient time before its lease and renewals thereof expire to enable it to reclaim said property for the purposes herein stated.

FIVE

In event EPA and/or other regulatory agencies fail or refuse to issue to Alcoa the necessary permits to use the lands covered by this agreement for the purposes herein contemplated, this agreement at the option of Alcoa, shall be null and void.

SIX

Alcoa and the Department of Conservation and Natural Resources of the State of Alabama will work over the ensuing forty years with designated representatives of Mobile Bay Audubon Society, of the Mobile County Wildlife and Conservation Association, the Environmental Protection Agency, and others interested in wildlife and conservation to determine those practices most advantageous to the area, and Alcoa will continue to work cooperatively with the Department of Conservation and Natural Resources, and with other conservation and environmental agencies to enhance wildlife and other natural resource values in and around Polecat Bay.

SEVEN

There is attached hereto, and by reference made a part hereof, a survey showing the boundaries and acreage covered by

this agreement, together with a description of the manner in which it is proposed to reclaim the present and future lakes on the property covered by this agreement. Alcoa agrees that before it will make any substantial change in the method proposed for the reclamation of said property, it will first receive in writing the consent of the State of Alabama or its Department of Conservation and Natural Resources to such change or changes. Such consent shall not be unreasonably withheld.

EIGHT

Alcoa agrees that after the first of said settling basins has been reclaimed, so long as Alcoa is using any of the lakes on said property as settling basins, it will expend or make available to the Department of Conservation and Natural Resources the sum of \$500.00 annually for continued plantings on said property, plus an additional amount of up to \$500.00 annually for use in matching local, state or federal funds to be used for the same purpose. Alcoa further agrees that so long as it is using any of the settling basins on any portion of said property, it will maintain the seepage ditches around said property, and the pumps necessary for the said ditches to serve their intended purpose.

ITEM NINE

It is further agreed by and between the parties hereto that this agreement is conditioned upon the following:

(a) Alcoa will not construct any new mud lake or settling basin or fresh water lake on any part of the added lands, the title to which is in dispute, other than so much thereof as has been added to lots 20, 19, the N 1/2 of lot 18 of Blakely Island,

as shown on attached drawings, until Alcoa has successfully completed at least one of the reclaimed settling basins under the terms of this agreement to the satisfaction of the Department of Conservation and Natural Resources of the State of Alabama.

(b) Determination as to whether or not said reclamation is satisfactory shall be made by said Department at the end of the first growing season following notice by Alcoa to the Department of Conservation and Natural Resources of the State of Alabama that it has successfully completed its reclamation of at least one of said settling basins. Notification of said determination as made by said Department shall be given in writing to Alcoa by said Department no later than twelve (12) months following the date of Alcoa's written notice to said Department that it has successfully completed its reclamation of one of said settling basins, and a failure on the part of the Department of Conservation and Natural Resources of the State of Alabama to make such determination and give notice thereof to Alcoa within said twelve (12) month period shall be conclusively construed as an acknowledgment by said Department that said reclamation has been successfully completed to the satisfaction of said Department.

(c) Acknowledgment that Alcoa has successfully completed its work in reclaiming at least one of said settling basins to the satisfaction of said Department shall not be withheld unreasonably, and the successful completion of the reclamation of one of said settling basins shall remove any further restriction against Alcoa's use of any of the lands covered by this agreement, under the terms hereof.

(d) At any time within thirty (30) days after said Department of Conservation and Natural Resources has given notice to Alcoa of its determination as to whether or not Alcoa's

reclamation of at least one of said settling basins is satisfactory, Alcoa shall have the option of declaring this agreement null and void, in which event Alcoa shall be relieved of all further obligations and liabilities hereunder.

IN WITNESS WHEREOF, we have hereunto set our hands and seals to quadruplicate counterparts, each of which may be treated as an original, on this the 21st day of December, 1976.

ALUMINUM COMPANY OF AMERICA

By AB Kachwala

Its Vice President

APPROVED:

George C. Wallace
Governor

ATTESTED:

Mrs. G. B. Baggett
Secretary of State

STATE OF ALABAMA

By John W. Fournet

Its Commissioner of Conservation and Natural Resources

MOBILE COUNTY WILDLIFE AND
CONSERVATION ASSOCIATION

By [Signature]

Its President

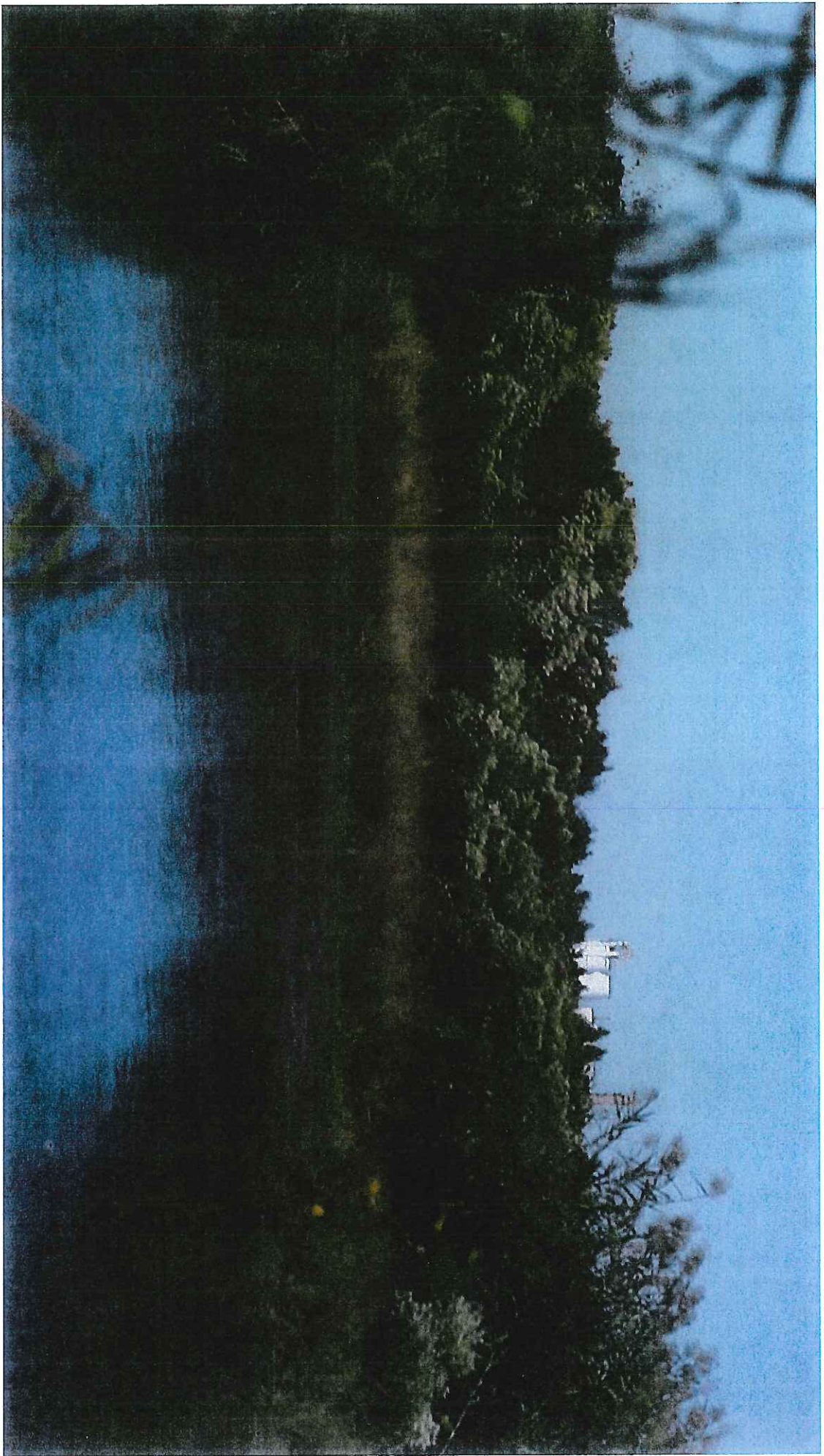
MOBILE BAY AUDUBON SOCIETY

By Myrtle Jones

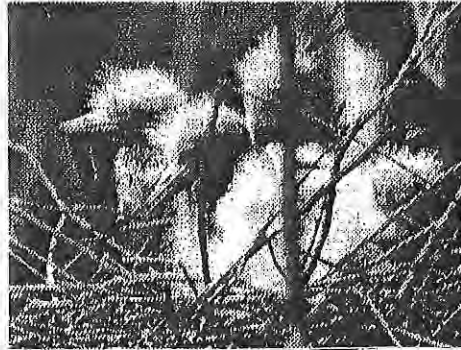
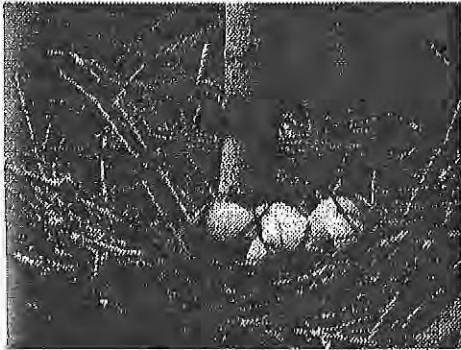
Its President

Alcoa's mud lakes recovered → Wildlife Refuge





all in Blakeley mud flats



3 attachments (10 MB) Download all Save all to OneDrive - Personal

little blue herons adolescents
little blue herons adolescents leaving the nest
Adult little blue heron



a cluster of Indigo buntings

July 7, 2018

Lance LeFleur, Director
ADEM
P. O. Box 301463
Montgomery, Al. 36130-1463

Let's wake up:
Governor Ivey
Mobile City Council
Mobile County Commission
Attorney General
Get copies of the permits... ADEM

Comments Re: Public Notice 421—Proposed Modification of **Hazardous Waste Permit** under (AHWMMA) ... request for comments within 45 days as of June 20th, 2018.

Al. **State Port Authority (SPA)** of Mobile, Alabama submitted an application for modification of its **Hazardous Waste Permit** for the solid waste management units which were apparently the **only alternative** considered or required in managing the hazardous waste at its facility (EPA I.D. Number ALD 058 221 326) located at 68 Virginia St., Mobile, Al. 36603.) ADEM determined this modification application to be complete and has **prepared a draft permit** in accordance with State regulations, a fait accompli.

Last month I realized that my name had been removed from ADEM's mailing list. Gee, I hope it was by accident Lance, because the other explanation would confirm my worst suspicions about you. If Alabama had a decent Attorney General or any official in this state who actually possessed a code of ethics, rest assured that I would report you. But, whatever, S.O.Sh..., am I right?

Alabama is a beautiful state, one to be proud of, but after reading this permit request by Jimmy Lyons of SPA for the Mobile Container Terminal and then seeing your rubber stamp of approval, I despair for its future.

The hazardous waste permit should be held in abeyance until the public has been properly notified. We pay the bills and those who live in the neighborhood should be allowed an opportunity for comment. A Public Hearing needs to be held in the Mobile area: not the usual COE dog and pony show, **an actual public hearing**. Why would they need additional monitoring wells? Is it because they are increasing the potential for groundwater contamination from **irresponsible land use**? Lance, why aren't you insisting on **minimization** with this request as required in the AHWMMA? Maybe even recycling? If groundwater **contamination** is detected by the additional monitoring wells what the hell do you plan to do about it? There are already several Superfund sites in the Harbor so one more won't matter?

With regards to the first application: Why does the SPA, Director Jimmy Lyons or applicant request "**revised groundwater protection standards for specific constituents**? Sounds like trouble already in this double talk?? Will the **specific constituents be modified to include revised groundwater protection standards??**

Have there been groundwater problems identified in the existing monitoring wells? If so, what are they? How are you addressing contamination... by adding the potential for more? No mitigation on the table? Great job, guys. Hope your kids and grandkids appreciate the world you're handing them.

Residents in coastal Alabama are becoming better informed about how their children's health is being threatened by contaminated groundwater and they are concerned about Mobile Bay's health being very **questionable** now-a-days. What hazardous /toxic impacts will threaten the Bay from these permits?

What does **"cargo containers are transshipped between different vessels or vehicles"** mean? Does it mean, watch out, people. We're moving some nasty stuff and plan to make a mess?

In the application it states **"two newly acquired parcels of land adjacent to the contiguous property...and requesting, a revision to the Operation...to remove dense aqueous phase liquid instead of the dedicated submersible pumps."**? Explain. Were the **"two newly acquired parcels of land adjacent to ASPA specifically in order for adding additional monitoring wells?"** Are levels of hazardous material spreading out from the old site??

On July 6th ASPA PN 421 requested the **second permit modification... .. to alter the design of the existing soil cover** on a portion of solid waste management unit (SWMU) 6 east. **...replace with concrete and structures** used to construct two truck exit lanes...**equipped with radiation portal monitors which requires installation of support stands, protection/safety bollards, and electrical conduits** and on and on...**installation of several bollards may require excavation near or into the 'contaminated material' associated with SWMU 6 East**

So...how bad is the contamination? How large an area is presently involved? How many acres? What sort of hazardous/toxic materials? Will it extend onto the other recently acquired lots? How is the contaminated soil handled?? What do the monitors display?? **"In addition the proposed permit modification includes provisions that require SWMU and areas of concern??? at the facility to be addressed."** Does this involve additional permit modifications? Sounds to me like the public is spending an awful lot of money without knowing why.

In the second notice **"The Director shall hold a public hearing upon receipt of a significant number of technical requests."** Technical requests? Gotta be kidding! How about all of my comments and concerns above-enough technicality ? Reread NEPA-only has to be concerns! . The public needs to know just what shenanigans folks like you are up to... especially if it threatens the health of every one who lives here.

For Jimmy Lyons and Lance: You need to educate yourselves, Google the impacts from badly planned projects which have impacted groundwater and threatened public health. Better yet read "Chronicle of An Eco-Warrior Relating South Alabama Environmental Issues- its all about the messes that have been occurring for years all over Alabama's coastal area ... SHAME ON YOU!

It's way past time for the Governor, Council, Commission, Attorney General and Director of the ASPA to become personally involved in protecting our unique coastal environment and public health as it's never too late to do what's right, and leave a legacy future generations can be proud of. Earn your salary or hit the road.

Sincerely,

Myrt Jones

July 11, 2018 mailed
 Also [redacted]
 Steven Marshall - Atty Gen'l
 Roy Ivey - Governor
 Mayor Stimpson + City Council
 County Comm.
 Eichold - Public Health
 + Lance

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

NOTICE OF PROPOSED MODIFICATION OF THE HAZARDOUS WASTE PERMIT UNDER THE ALABAMA HAZARDOUS WASTES MANAGEMENT AND MINIMIZATION ACT (AHWMMA) AND REQUEST FOR COMMENTS

PUBLIC NOTICE - 421

MOBILE COUNTY

Alabama State Port Authority (ASPA) of Mobile, Alabama submitted to ADEM an application for modification of its Hazardous Waste Permit for the solid waste management units which were used to manage hazardous waste at its facility (EPA I.D. Number ALD 058 221 326) located at 68 Virginia Street, Mobile, Alabama 36603. The Department has determined the facility's modification application to be complete and has prepared a draft permit in accordance with State regulations.

ASPA currently leases out the land for use as a container terminal, where cargo containers are transhipped between different vessels or vehicles. ASPA is the owner, and the Mobile Container Terminal operates the facility. The proposed modification to the Hazardous Waste Permit includes the following: the addition of two newly acquired parcels of land to ASPA's contiguous property, the addition of detected Appendix IX constituents to Table III.3, revised groundwater protection standards for specific constituents, revisions to the personnel list, and the extension of monitoring wells and a piezometer due to expansion of the container terminal. Also, the Corrective Measures Implementation Plan will be modified to include revised groundwater protection standards for specific constituents, a revised figure that includes the newly acquired parcels of land, and a revision to the Operation, Maintenance and Monitoring (OMM) Manual. The OMM revision is regarding the use of a portable diaphragm pump to remove dense aqueous phase liquid instead of dedicated submersible pumps. In addition, the proposed permit modification includes provisions that require any other solid waste management units and areas of concern at the facility to be addressed.

Copies of the fact sheet, permit modification application and draft AHWMMA permit are available for public inspection electronically via <http://adem.alabama.gov/newsEvents/publicNotices.cnt> and at the following location Monday – Friday (except legal holidays) during the hours of 8:00 a.m. to 5:00 p.m. A nominal fee for copying and/or mailing may be charged. Arrangements for copying should be made in advance.

Russell A. Kelly, Chief
Permits and Services Division
ADEM
1400 Coliseum Blvd.
[Mailing address: PO Box 301463; Zip 36130-1463]
Montgomery, Alabama 36110-2400
(334) 271-7714

*transhipped between
different vessels or
from different vehicle
countries*

Persons wishing to comment may do so, in writing, to the Department's named contact above within 45 days following the publication date of this notice. In order to affect final decisions, comments must offer technically substantial information that is applicable to the proposed permit.

A written request for a public hearing may also be filed within that 45-day period and must state the nature of the issues proposed to be raised in the hearing. The Director shall hold a public hearing upon receipt of a significant number of technical requests.

After consideration of all written comments, review of any public hearing record, and consideration of the requirements of the AHWMMA, the Federal Resource, Conservation and Recovery Act (RCRA) and applicable regulations, the Department will make a final determination. The Department will develop a response to comments, which will become part of the public record and will be available to persons upon request. Notice will be sent to any person requesting notice of the final action.

The Department maintains a list of interested individuals who are mailed legal notices regarding proposed permits. If you wish to receive such notices, contact the Permits & Services Division via telephone (334-271-7714), e-mail (permitsmail@adem.alabama.gov), or postal service (P.O. Box 301463, Montgomery, AL 36130-1463).

This notice is hereby given this 20th day of June, 2018, by authorization of the Alabama Department of Environmental Management.

Lance R. LeFleur
Director

Nondiscrimination Statement: The Department does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in the administration of its programs.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

NOTICE OF PROPOSED MODIFICATION OF THE HAZARDOUS WASTE PERMIT UNDER THE ALABAMA HAZARDOUS WASTES MANAGEMENT AND MINIMIZATION ACT (AHWMMA) AND REQUEST FOR COMMENTS

PUBLIC NOTICE – 421

Mobile County

Permit modification

Alabama State Port Authority (ASPA) of Mobile, Alabama submitted to ADEM an application for modification of its Hazardous Waste Permit for the solid waste management units which were used to manage hazardous waste at its facility (EPA I.D. Number **ALD 058 221 326**) located at **68 Virginia Street, Mobile, Alabama 36603**. The Department has determined the facility's modification application to be complete and has prepared a draft permit in accordance with State regulations.

under

ASPA currently leases out the land for use as a container terminal, where cargo containers are transshipped between different vessels or vehicles. ASPA is the owner, and the Mobile Container Terminal operates the facility. The permit modification was requested to alter the design of the existing soil cover on a portion of solid waste management unit (SWMU) 6 East. Portions of the soil cover, which is the current soil remedy at the SWMU, will be replaced with concrete and structures used to construct two truck exit lanes at the container terminal. The new lanes will be equipped with radiation portal monitors (RPM). The RPMs requires the installation of support stands, protection/safety bollards, and electrical conduits. Some of the areas disturbed by the construction will be backfilled with soil underneath a concrete cover. The truck exit lane construction will affect the existing roller compacted concrete, concrete stabilized base, and various depths of the approved soil cover. Also, the installation of several bollards may require excavation near or into the contaminated material associated with SWMU 6 East. In addition, the proposed permit modification includes provisions that require any other solid waste management units and areas of concern at the facility to be addressed.

Copies of the fact sheet, permit modification application and draft AHWMMA permit are available for public inspection electronically via <http://adem.alabama.gov/newsEvents/publicNotices.cnt> and at the following location Monday – Friday (except legal holidays) during the hours of 8:00 a.m. to 5:00 p.m. A nominal fee for copying and/or mailing may be charged. Arrangements for copying should be made in advance.

**Russell A. Kelly, Chief
Permits and Services Division
ADEM
1400 Coliseum Blvd.
[Mailing address: PO Box 301463; Zip 36130-1463]
Montgomery, Alabama 36110-2400
(334) 271-7714**

Persons wishing to comment may do so, in writing, to the Department's named contact above within 45 days following the publication date of this notice. In order to affect final decisions, comments must offer technically substantial information that is applicable to the proposed permit.

A written request for a public hearing may also be filed within that 45-day period and must state the nature of the issues proposed to be raised in the hearing. The Director shall hold a public hearing upon receipt of a significant number of technical requests.

After consideration of all written comments, review of any public hearing record, and consideration of the requirements of the AHWMMA, the Federal Resource, Conservation and Recovery Act (RCRA) and applicable regulations, the Department will make a final determination. The Department will develop a response to comments, which will become part of the public record and will be available to persons upon request. Notice will be sent to any person requesting notice of the final action.

The Department maintains a list of interested individuals who are mailed legal notices regarding proposed permits. If you wish to receive such notices, contact the Permits & Services Division via telephone (334-271-7714), e-mail (permitsmail@adem.alabama.gov), or postal service (P.O. Box 301463, Montgomery, AL 36130-1463).

This notice is hereby given this **6th day of July, 2018**, by authorization of the Alabama Department of Environmental Management.

**Lance R. LeFleur
Director**

Nondiscrimination Statement: The Department does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in the administration of its programs.

May 31, 2017

Lance LeFleur, Dir.

ADEM

P.O. Box 301463

Montgomery, AL 36130 1463

Heather McTear Toney, Reg. Adm.

USEPA

61 Forsythe Street SW

Atlanta, GA 30303

Re: Public Notice for State of Alabama Ambient Air Monitoring 2017 Consolidated Network Review- My comments on the Report

Causing death, even unintentionally, by ones action or inaction is the very definition of manslaughter. For years state agencies and some local political leaders in Mobile and Baldwin Counties have ignored their responsibilities regarding the extremely toxic air pollution loads released 24 hours a day and night, 7 days a week, and 365 days a year in our coastal area. In my opinion this is criminal and threatens to imperil the health and well-being of our most precious resource-the children!

Hi Folks,

ADEM's PN was released 5-26-2017 not 5-23-17. The 30 day comment period for public input has to be corrected and legally posted in order to comply and provide citizens the proper time to respond. We deserve that much consideration.

The Overview of Alabama's Monitoring Network recognizes the monitoring efforts of Birmingham, Huntsville, Montgomery, Phenix City. These agencies should be proud of their impressive job in protecting public health. ADEM oversees Coastal Alabama or Mobile/Baldwin Counties air quality surveillance systems and we are not being protected. Mobile and Baldwin Counties make up Coastal Alabama and is being represented by Mobile, Daphne, Fairhope, and Foley in ADEM's Report. Why aren't Gulf Shores and Orange Beach's population involved? This heavily populated area makes up the southern most isolated part of the state with hundreds of miles separating us from the northern municipalities and we are being treated as **orphans** in the state program. Presently there are **only 3 monitors** in both counties and no **NOX** systems in the area- this is required Baldwin County is considered Mobile's 'bedroom community' as quite a few residents travel the road system daily to work. Baldwin County is one of the fastest growing in the State and Mobile's pollution loads are probably causing some of their health problems. It would make sense to combine both populations and identify the area as having **623,399**. The transportation corridors in the southern terminus may meet the annual daily average count of **250,000 vehicles**, as there is the continuous 'bedroom community' traffic to and from Mobile; the 18 wheelers and variety of trucks from all parts of the Nation transporting goods, oil/chemicals; plus people from all over the country traveling to Disneyworld, New Orleans, football games and back again.

'Local politics' and their narrow minded plans believe a multi-billion dollar bridge over Mobile River and another 'elevated' structure crossing Mobile Bay will solve the traffic problems, the constant traffic jams, clogged highways and accidents that now exist. They are kidding themselves or have other reasons for this ludicrous plan. They aren't visionaries and are not considering need for alterative mass transit systems that could alleviate some of the problems, but continue to ignore the fact they will be adding additional air pollution loads from additional clogged roads, highways and waterways that will continue to threaten public health. These bridges are not a 'quick fix' as they will take years to build..

The 2017 Annual Report needs to be **rewritten and updated** to include the concerns and suggestions from the 20 plus people who wrote letters in 2016 specifically urging air monitors to be placed in appropriate areas around the State Docks and they are being ignored by ADEM. Mobile citizens believe themselves to be in serious jeopardy from the unknown toxic air pollution loads continuously released **now** from the numerous sources in the Port. I have been involved these many years and know the kinds of 'dirty' industries existing within the Theodore Industrial Park and their potential for threats to human health and suggest monitoring systems be placed in the area.

Presently there are **no specific air data** being collected in the immediate area of the **Port of Mobile and Theodore Industrial Park (TIP)** (the cement facility particulate loads have posed health threats for years) and no way of determining if these industrial areas comply with the NAAQS. In the industrial areas there are storage tanks, coal piles, 2-3 refineries, cement and mixed chemical plants. Air monitoring systems are therefore needed to determine to what degree the six criteria pollutants e.g. **Particulate Matter (PM's)**-Carbon Monoxide, Lead, Nitrogen Dioxide, Ozone and Sulfur Dioxide are affecting public health. A **suggestion for EPA**- Mobile should be checked for the non-criteria pollutants, such as PM 2.5's 'speciated compounds,' as they are monitored for special purposes and these industrialized areas release tons of 'everything' including PM's of all sizes loaded with toxic "**hitchhikers**."

This Report was hurriedly done, and covers the three agencies activities and needs, but ignores coastal Alabama's. Table 2 Alabama CBSA's 2017- lists Mobile and Baldwin as being Metropolitan Statistical Areas (MSA's). In 2016 Baldwin was identified as being Micropolitan but the 2017 document continues to use the 2016 Figure 1 Legend with the **old** colors)—this chart needs updating for Baldwin County.

In the 2017 Report -ADEM' closed down, relocated monitors near many school locations, added' new 'ones to the network, closed down a monitor in Childersburg as- 'its not required' 'due to its low design' 'isn't an MSA?' yet they placed one in this location? Mobile is unable to have the proper ones sited in order to determine to what degree lives are being threatened, yet 'they plan to cut limbs or a tree on one of our sites.'" The Port of Mobile's Blakeley Island and what was once wetlands on the west side of Mobile River now contain **seven petrochemicals complexes**. The storage tanks hold various chemicals (sulfuric acid is one) and millions of gallons of tar sand oil/crude oil. McDuffie Island and CMT Terminals handle tons of coal and frequently release un-monitored, un reported accidental spills and releases of coal dust containing PM's 2.5 as well as 10's.

I personally reported to ADEM during Mardi Gras 2017, an **air violation** coming from the conveyor system area on **CMT's property**. The company lied and told ADEM they weren't moving anything on the conveyor. Something was happening as there was a heavy distinct haze floating over the river towards Africatown and Cochrane Bridge.

Channel 10 TV News Investigates: In the air —May 2, 2016 -- excerpts from news stories-The petroleum storage industry and Mobile Chamber of Commerce through Keep Mobile Growing (KMG) promote their **economic impact** as being an estimated \$687 million for Mobile. That shouldn't make anyone jorous, as it is not known what the **true socio-economic-environmental costs** truly are occurring in the environment affecting the public health, and well-being?

EPA needs to consider including **air deposition loads** as an issue, as these unknown impacts are causing considerable impacts in Mobile River and Mobile Bay's ecosystem, water quality and marine resources. If we had economic figures for environmental effects on the natural world, the other side would stop boasting their economic impacts! These are two examples of how air pollution loads have impacted commercial and recreational fisheries.

In the early days, I served on District Attorney Jimmy Evans's committee involving the, "Fisherman's Right to Know" and the public and fishermen were made aware of the **dioxin** that was released in air and water pollution loads, from the two pulp- paper mills and were being found in the tissues of local fish. The other air deposition problem involves **mercury** contamination found in Mobile and Baldwin Counties' river systems (Fish, Fowl Rivers, Big Creek Lake and other water bodies) in the tissue of speckled trout and other fish. Fishermen are warned not to catch or eat these fish at times, because they can pose a health threat. Al. Power Company is the responsible party.

EPA's Enforcement and Compliance online records identify incidents from each of the seven petrochemical storage facilities currently operating on the Mobile River.

In 2014 **Alabama Bulk** previous Hunt Refinery emitted 3,245 pounds of toxic chemicals, including benzene, ethylbenzene and n-hexane--cancer and nervous system threats. In 2007 the facility paid \$15,500 for spilling 300 bbls. (12,600 gallons) crude oil and had another incident in 2013

Plains All American in Africatown (historic native American residential area) has the most chemical emissions of all the seven facilities and in 2011 the company emitted 230,000 pounds of toxic chemicals into the air including VOC's and benzene having a violation in 2015. The company provided a list of their **hazardous 'witches brew'** chemicals released into the air-benzene, cumene, ethylbenzene, formaldehyde, hexane, o-Xylene, toluene and xylene. These have entered our 'breathing' air round the clock for years.

Martin Energy Services emitted 6 pounds of toxic chemicals into the air in 2014 including ethylbenzene and polycyclic aromatic compounds and was reported to have two other violations in 2014.

Coast Guard Response reported **World Point Terminal** released 300 gallons ultra low sulfur diesel fuel a few months ago-2016.

ARC Terminals had a spill of methanol due to equipment failure and all of these spills entered Mobile River and eventually **Mobile Bay**

GCAC owned ARC previously paid \$101,500 fine in 2012 for violations, another in 2013 and four in 2014

ECHO database states there are more than **2,000 children** under the age of five living **within 3 miles** of the facilities and more than **8,000** under the age of 17.

ADEM still considers the companies to be "in compliance" and when Fox 10 asked Chief Ronald Gore-'Why.' He responded "I'm **not a doctor, toxicologist, or epidemiologist and depend on the EPA** to determine whether further controls are needed on petrochemical facility, or any other air pollution source to protect human health."

Hopefully this will encourage EPA to become actively involved in Coastal Alabama's needs

City politics pushed for more 'tank cities' in the city of Mobile and a young activist said- **"When you get zero traction with public officials, about public health concerns, it shows a dehumanizing nature of their public service."** The Mobile County Health Officer Dr. Bert Eichold warned city council members "that prolonged exposure to those chemical vapors could put people at risk for getting cancer."

People have been **coping and dying** for years from the mountain of coal and coal dust emitted from McDuffie Island and now there are additional piles of coal stored at Cooper, Marine and Timberlands (CMT). Both are run by the Alabama State Port Authority and are using the people's tax dollars to **pollute downtown and coastal Alabama**. Their numerous piles of coal release tons of PM's 2.5, 10--- 24 hours a day, 365 days a week. When coal dust enters the atmosphere 'hitchhikers' such as heavy metals, (mercury, cadmium, arsenic, nickel), mixed chemicals and VOC's attach their deadly loads to the small surfaces, then re-enters our air loads carrying the microscopic particles where they are easily inhaled by an individual, especially young people, lodged in the deep recesses of the lung where they gain access to the bloodstream, which then transports them to organs such as heart, brain and of course the lungs causing numerous diseases. Asthma and other respiratory problems, diabetes, ADHD, autism, cancer and the young children's immune systems are weakened to such a degree they become highly sensitive to peanuts and have to depend on Epipens, in case of an emergency.

On May 17-19, 2016 Channel 10 worked with the citizens in the neighborhoods of DeTonti Square, Convention Center, LoDa Entertainment District near Cathedral Square, Dearborn St., Church St and a home near Council Traditional Elementary School regarding the coal issue.

Residents collected samples of coal dust from their homes. If the dust was stuck the person would scrape it into a small container then use a white fabric and wipe or moisten with water to get a sample of the dust off their outside walls. The samples were taped shut and shipped to the out of state McCrone Associates Senior Research. Microscopist- Scott Stoeffler studied the samples under a microscope to identify the different components and all of the samples had coal dust of different amounts.

The Convention Center consisted of five percent-LoDa District was made up of 10%-DeTonti Square and So. Dearborn Street held up to 20% -the sample close to Council **Elementary School** contained approximately **30%**. Dr Stoeffler found them to be interesting samples and said "Normally I don't see quite this much coal dust in an outdoor sample."

Alan Lockwood works with the Physicians for Social Responsibility, a national organization that addresses health concerns in communities. His book about prolonged exposure to coal dust entitled 'The Silent Epidemic: Coal and the Hidden Threat to Health'" links coal exposure to all four of the leading causes of death in the United States: heart attack, cancer, respiratory diseases and stroke. He continues - "Children are most at risk, because their lungs are still developing. They take in more air per unit per weight than adults do and are sensitive to toxins and exposure to toxins during development. People with preexisting respiratory illnesses are also more at risk to coal dust exposure as **coal dust chemical and physical composition** make it especially threatening to human health. Coal contains metals like mercury, cadmium, nickel that are all toxic; contains VOC's that are potentially carcinogenic and the coal fine dust particles' injure health' regardless of what their composition is."

World Health Organization (WHO) reports –“PM’s are considered to be the most serious health threats for our coastal communities. PM’s, heavy metals and persistent organic pollutants are also found in the blood stream of **unborn babies** which significantly affect their **cognitive and neurological development**. As a result these children have behavioral deficits and learning impairments such as **Attention Spectrum Disorder-(ASD)—Attention Deficit Hyperactivity Disorder (ADHD; Autism; and lower IQ and adverse behavior.**

Children are more susceptible as they are **lower to the ground** where gasoline and diesel exhaust fumes expelled from cars and trucks linger. They also have higher respiratory, and metabolic rates than adults since their little lungs are still developing. Exposure makes them more susceptible to **deformities, pre-term births, low birth weight** and can actually **reduce their life expectancy**.

The population most vulnerable to **the inhalation of PM’s** are pregnant women, children and people with pulmonary diseases or asthma and the elderly. **Lowering pollution loads has proven to improve young people’s health problems and lives, so there are identified benefits** in controlling emissions.”

The WHO reports that key medical societies such as the American Medical; Heart; Lung; OB/GYN; Reproductive; Pediatrics and Cancer Society are concerned with the extremely heavy loads of PM’s affecting the young as they :

- Increase cancer rates

- Cause immune system anomalies in children leading to severe peanut allergies-

These children can’t enjoy a peanut butter/jelly sandwich because of GREED

- Cause congenital heart disease/lung problems

- Cause diabetes

- Cause an increase in asthma, worsening of pre-existing asthma in children AND chronic obstructive pulmonary disease in adults

- Cause higher rates of heart attacks and strokes in adults

Mobile ‘city politics and attorney,’ and Port Director, considers “further protective measures-too cost prohibitive,’ ‘ignore the findings’ and’ don’t consider coal dust hazardous in any way.’ Ron Gore of ADEM considers the two facilities to “be in compliance.”

Mobile set a precedent for not dealing with these kinds of political attitudes and deadly pollution loads that caused people to die a horrible death -cancer. The citizens were told the mills provided thousands of jobs and money into the local economy. For over 30 years people tried to ignore the thick heavy white plumes of smoke released from the two pulp and paper mills that smelled like ‘rotten eggs’(hydrogen sulfide) and laced with dioxin. In the 90’s the two facilities were told they had to ‘clean up their act-they laughed, bull dozed the facility and left.

Someone discovered there was an exceedingly high incidence of hematologic cancers occurring i.e. leukemia and lymphomas and people were dying. At about the same time, Fairhope residents were concerned about the very high incidence and types of cancer occurring in their city and did a house to house survey discovering numerous ‘cancer hot spots’, and also discovered the high incidence of Lou Gehrigs Disease (ALS). Many agencies came to their aid and it was determined the Eastern Shore had 48 times the national average for ALS?

Another local area of concern is the transportation of fossil fuels in mile long trains traveling hundreds of miles through residential and commercial areas. Loads of coal dust and particulates are released from these 'illegal' uncovered cars and the 'black' asphalt – explosive Canadian tar sands tankers threaten the welfare of anyone unlucky enough to live along their route or in the neighborhood near storage tanks, because of the potential for an explosion. In Mobile these cars and tankers wait for days on six tracks behind the GM&O Building to be unloaded while 'diesel' engines run continuously releasing additional loads of pollution threatening the nearby residents.

As an example-“in the Pacific Northwest in 2014 it was found that increased coal transportation by rail on the mile long trains threatened neighborhoods with-in **25 meters** from **2 rail lines** nearby. This was associated with **significant increased exposure** to diesel PM's and airborne coal dust because the diesel engines were having to run constantly to heat the tar sands while waiting to be unloaded at the coal terminal, built in the coastal harbor.”

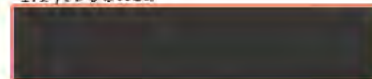
EPA's "**Integrated Review Plan for NAAQS for Particulate Matter**" is an ongoing and major study asking all kinds of questions to try and determine if the standards for these particularly dangerous particles should be lessened in order to truly protect human life. As an informed nurse-the answer is **YES and soon**. Numerous questions dealing with the causal relationship that exists for PM exposure thresholds and impacts from **oxides of nitrogen and sulfur on visibility, climate and environmental impacts** and effects of **deposition on metals, carbonaceous compounds and materials seem to be already answered. The Mobile neighborhoods** could provide answers regarding deposition on houses, cars and metal structures.

Mobile and Fairhope areas may need a SLAM, as the Report identifies 'the 'PM 2.5 Class 11 IFEM or ARM may not produce data of sufficient quality.' We need the best systems.

Not to long ago, Mobile and Birmingham were determined to be non-attainment areas for ozone and particulates. Presently they are in compliance. These two counties have air problems that easily tilt and on May 8, 9, and 10th 2017, Mobile had an Orange Ozone Alert that caused some of us to be victims, even while staying in the house, with red, burning, tearing eyes, sneezing and coughing spells and the summer is just starting. The alert extended to Orange Beach and Gulf Shores as well-quite an alert!

Sincerely,

Myrt Jones



Coal dust darkens their mood

APR 25 1998

Residents of historic district downtown say black grime floating over the river from State Docks is getting 'worse and worse'

REGISTER

By DANIEL CUSICK
Staff Reporter

The black silt lining the bottom of Emory Wilson's Eslava Street swimming pool is the kind of stuff you'd expect to see in a dirty bathtub. Black lines streak across the pool's vinyl floor, giving it a kind of waffle-iron motif.

But Wilson, 68, can't stand the black gunk in his pool, or for that matter on his patio furniture, his window sills, his porch railings, his front awning or his late-model Chevrolet that sits out front in the open air.

But every time he sets about cleaning them off — and he said he's been wiping them with a wet rag almost daily for the past six weeks — the black grime comes right back, usually overnight.

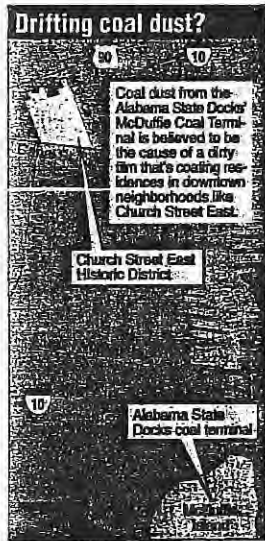
The source of the grime is no mystery to Wilson. McDuffie Island, home to the Alabama State Docks' sprawling coal terminal, is less than two miles from his home in the gentrified Church Street East historic neighborhood. On a dry, breezy day, the wind sweeps across the coal piles, picking up dust and carrying

it inland, Docks spokeswoman Sarah Teague said.

Coal dust has been a growing problem for the Docks since 1975, when the McDuffie Island terminal loaded its first ship. Man-made mountains of the soft black rock, brought in by Alabama mining giants Jim Walters Resources and Drummond Coal, sit uncovered across acres of

blackened fill dirt, waiting to be exported. The terminal can hold up to 2 million tons, said Teague, but it rarely fills to capacity.

An intricate maze of conveyors used to load coal onto ships may add to the dust, although Teague played down their role. "The conveyers would not have enough coal on them to



"I think it probably comes from the piles."

But Wilson, who once sold equipment to the Docks to install the conveyors, said: "I know what a conveyor does to material. When you've got those things running, it's almost like throwing it up into the air."

Since 1996, the Alabama Department of Environmental Management has tested for airborne coal dust at McDuffie every six days, finding the highest levels in the spring and the fall when wind currents pick up off Mobile Bay, said Ron Gore, chief of ADEM's air division.

Twice since last April, the monitor recorded dust counts above allowable limits for 24-hour periods — once on April 4, 1997, and again less than a month ago, on March 30. But the law allows for occasional such counts, and ADEM contends there's only so much the agency can do to control the problem.

"There's not really a standard" for regulating coal terminals, said Gore. At ADEM's urging, the Docks is compacting the coal so it's less susceptible to the wind, and spraying it with a glue-like substance, he said. "It's a common way to keep coal from blowing off the piles and roadways around there. We've also

heard that they're talking about a sprinkler system to keep the coal wet all the time," Gore said.

According to Teague, the Docks is making a good-faith effort to deal with the dust, which she acknowledged is a nuisance to downwind neighborhoods. The Docks has spent \$60 million in the past two years to upgrade the coal terminal to make it cleaner and more efficient, she said, and containment of coal dust and other "particulate" emissions were named a top priority in a recent meeting between Docks Director Jack Ravan and his managers.

"We do the best we can, and we will find even better ways to keep that coal settled," Teague said.

For a long time, however, people in Mobile didn't complain about the coal dust much. It was considered a part of life close to the waterfront, especially on poorer corners, where environmental issues often took a back seat to pressing economic concerns. But as downtown revitalization draws affluent families back to the central city, complaints about industrial side-effects like coal dust may get aired more often and with greater alarm, experts said.

"Generally speaking, the more-affluent people, the people who have more time to think about these things, they will be the ones who complain and want changes made," said Tina Sanchez, an environmental planner with the South Alabama Regional Planning Commission, a Mobile-based agency that advises cities on policy issues. "For the people who are struggling to pay rent and buy groceries and raise their families, complaining about coal dust is going to be at the bottom of their list."

The shifting priorities in the East Church Street neighborhood, where scruffy lots and abandoned houses once littered some blocks, is a prime example of how gentrification can lead to a re-evaluation of environmental health.

After a determined redevelopment effort that began in the early 1990s, Wilson and his wife, Sibbie, moved into their new brick home at 511 Eslava in April 1994. They and their neighbors take a lot of pride in the neighborhood's comeback and they want to make sure it stays on the right track. This is why the coal dust seems so insidious to them.

"I have three concerns," Wilson said Monday, sitting in his spacious living room. "First, I'm concerned for my health and the health of my neighbors. Second, I'm concerned about the maintenance, the everyday cleaning up that's necessary. And, of course,

I'm concerned about property values."

Wilson said he has a respiratory problem dating back several years. Although the dust hasn't brought on any new symptoms, he said he's concerned about the long-term effects.

Dr. Brian Hughes, a toxicologist with the Alabama Department of Public Health, saw little reason for alarm; however. "For people living near this stuff, I think the exposure would be intermittent and the levels of exposure would be quite low," said Hughes, who works in Montgomery and heard about the dust problem from a reporter. "It's more of an aesthetic hazard than anything else."

For coal dust to be dangerous, Hughes said, it has to be inhaled daily in large doses and over many years. That's why miners are susceptible to Black Lung Disease and other respiratory diseases. But, he said, people living near coal piles don't share the same risk. "Most people don't

have long enough exposures to the stuff, and when they're indoors, they have filters on their home's heating and cooling systems," he said. "Plus, there are plenty of other pollutants out there that could pose a greater risk."

As for the dust itself, ADEM's Gore said the agency will let the air monitor machine dictate the response. "As long as that monitor reads below the air-quality threshold, any other problems people have is just a nuisance."

Sanchez of the regional planning commission said the coal dust proves again that "buyer beware" is a warning to remember in real estate. "In my opinion, when you're going to buy a home you need to look at where the home is in relation to natural and man-made hazards. Is it downwind from a paper mill or a coal pile, and is it in a flood zone? These are things that a potential buyer might ask."

That advice doesn't take the sting away for the Wilsons, whose home is valued at about \$200,000. They're waiting for ADEM to analyze dust samples taken from their home and neighborhood last Wednesday. The lab tests should take three or more weeks, ADEM regulators told Wilson.

September 11, 2018

Colonel Sebastian Jolly
District Engineer
Corps of Engineers
P.O. Box 2288
Mobile, Al. 36628-0001

RE: Mobile Harbor, Corps of Engineers' (COE) General Integrated Reevaluation Report (GRR) and Alabama State Port Authority (ASPA) Supplemental Environmental Impact Statement (SEIS) July 2018

Dear Colonel Jolly,

NEPA Public Hearing

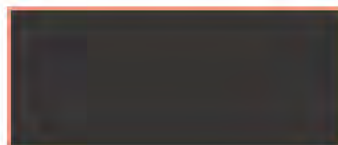
I continue to request a **30 day extension for the Comment Period in order** to help the COE realize they have a responsibility to make sure the public has the opportunity of being properly involved in the process, time for presenting their concerns, and there is the urgent legal need to make sure the public has been properly notified?

The ASPA's horrendous, destructive and costly project not only poses **major 'significant impacts'** to our shallow Mobile Bay, but further threatens coastal human health (read my 2017 letter to ADEM re: air pollution problems), as they are already deadly within the Port. These monster ships will add tremendous additional loads to an already dangerous situation, if allowed in the Harbor. During our meeting I also questioned the short time you say the COE has in my request of an extension for comments, but I just read that Trump's budget is very low for Ports and maybe this is why the COE/ASPA denies additional comment period? Both of you are attempting to get ahead of the Congressional budget being considered and passed?

People are just now becoming aware of the ASPA's EIS existence. Yesterday I appeared before a group of 50 and was overpowered with questions for over an hour... you will be receiving many more letters. They were extremely concerned about the catastrophic impacts from this costly and badly planned project of deepening, widening, destruction of the very important bay bottoms, as well as the questionable handling or mishandling of the monstrous loads of dredged material in **their** Mobile Bay system. Hopefully this poses the question of just how well the project has been in notifying the public?

During the 70's, 80's and 90's the citizens were allowed **proper NEPA public hearings** where a person was given the respect and opportunity of reading or speaking their concerns, asking questions and leaving written comments and everything being properly recorded in the public record. I request such a public hearing ...not the COE/ASPA's dog and pony shows the public has had to endure these past several years, as they violate the citizen's legal rights of being involved in the process.

Thanks for meeting with us..



*Add Home / comments
for Public Record*

Col. Sebastien Joly
District Engineer, Corps of Engineering
P.O. Box 2288
Mobile, AL 36628-0001

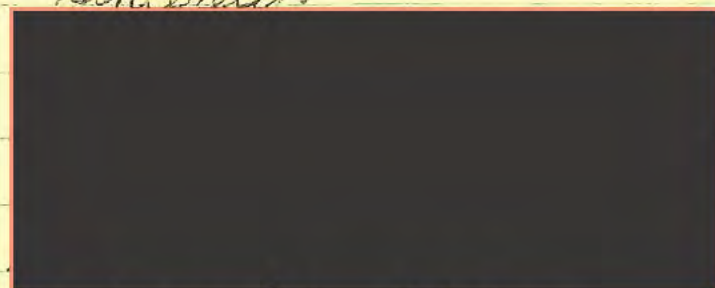
Dear Col. Joly,
Welcome to you and your family to Mobile.

In my opinion, Sage Lyons has proposed the widening and deepening of Mobile Bay to justify his agency's purchase of huge cranes. (cart before the horse)

In worldwide ports container ships anchor at sea and barges off load + bring to port. Lyons proposal will cause catastrophic damage to our once beautiful bay. His agency's activities has incrementally brought about damage through the years.

I beg you to stop the vote on September 17th and fully understand the consequences before your approval or disapproval.

Sincerely,



Mobile, AL 36608

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 205-745-3060

2829 2ND AVENUE SOUTH, SUITE 282
BIRMINGHAM, AL 35233-2838

Facsimile 205-745-3064

September 17, 2018

VIA E-MAIL (MobileGRR@usace.army.mil) AND U.S. MAIL

COL Sebastien P. Joly, District Commander
U.S. Army Corps of Engineers, Mobile District
Attention: PD – F
P.O. Box 2288
Mobile, AL 36602
MobileGRR@usace.army.mil

COPY

Re: Comments re: Notice of Availability of the Draft Mobile Harbor, Alabama General Reevaluation Report (GRR) with an Integrated Supplemental Environmental Impact Statement (SEIS)

Dear Colonel Joly,

On July 20, 2018, the Mobile District of the U.S. Army Corps of Engineers (the “Corps”) issued a Notice of Availability for a Draft General Reevaluation Report with an Integrated Supplemental Environmental Impact Statement (“GRR/SEIS”) concerning the dredging and widening of Mobile Harbor and the Mobile River for navigational purposes (“Project”). The Corps released this draft GRR/SEIS pursuant to the authority provided by the Water Resources Development Act of 1986, and its subsequent amendments.

The Southern Environmental Law Center submits this comment letter to express our substantial concerns about this proposed Project and the supporting GRR/SEIS. This Project is massive and will have significant direct, cumulative and indirect impacts on Mobile Bay (“Bay”), its waters, the surrounding ecosystems and the surrounding Mobile metropolitan area. This Project proposes to deepen and widen the federal navigation channel that bisects the entirety of the western portion of the Bay by up to, cumulatively, over five feet in the river, bay and bar channels. This dredging will consume approximately 40 miles of the whole of the navigation channel and Mobile River and include widening of channels, expansion of the Choctaw Turning Basin and incorporation of “bend easings” throughout. This Project increases the amount of disposal material from the navigation channels by millions of cubic yards and requires significant expansion of dredge sites throughout the Bay. This Project will also require long term maintenance for an undefined amount of time, potentially indefinitely, and could alter the entire ecosystem of the Bay.

As described in more detail below, the GRR/SEIS raises serious problems regarding compliance with the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 et seq. (2012); the federal Clean Water Act (“CWA”), 33 U.S.C. §§ 1251 et seq. (2012); and the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531 et seq. (2012), among other applicable laws. In addition, SELC has concerns that, due to the nature of this Project and the complexity and sensitivity of the ecosystems involved, the studies supporting many of the baseline assumptions in the GRR/SEIS have not been thoroughly reviewed by the public or outside parties. More complete studies are needed before this Project moves forward, as the long term health of Mobile Bay is at stake.

I. The GRR/SEIS Violates NEPA

A. Inadequate Cumulative and Indirect Impacts Analysis

Under NEPA, and its implementing regulations, the Corps is required to thoroughly assess the cumulative effects of a proposed project. 40 C.F.R. § 1508.25. The regulations define cumulative impacts as “impacts on the environment which result 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.” 40 C.F.R. § 1508.7. The cumulative impact analysis, according to a federal appellate court, “must be more than perfunctory; it must provide a useful analysis of the cumulative impacts of past, present, and future projects. . . . [A] cumulative impact analysis must be timely. It is not appropriate to defer consideration of cumulative impacts to a future date when meaningful consideration can be given now.” Kern v. U.S. BLM, 284 F.3d 1062, 1075 (9th Cir. 2002) (citation and internal quotation marks omitted). Furthermore, the cumulative impacts analysis must examine the “net” impact that all projects in an area may have on the environment. LaFlamme v. FERC, 852 F.2d 389, 402 (9th Cir. 1988) (citation omitted). Similarly, indirect impacts as defined in NEPA could be considered a subset of the cumulative impacts analysis, but distinguished by a cause and effect relationship to the proposed action. These impacts “may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.” 40 C.F.R. § 1508.8.

This Project is a key component of a much larger expansion envisioned by the Alabama State Port Authority (“ASPA”) and others for the Port of Mobile. In fact, the ASPA is already in phase 3 of a 5-phase expansion project that aims to grow the Port of Mobile’s annual capacity to 1.5 million TEUs.¹ ASPA CEO Jimmy Lyons has predicted a shift in port traffic from the West

¹ Port of Mobile announces \$49.5 million expansion, The Pulse (Dec. 20, 2017), <http://pulsegulfcoast.com/2017/12/port-of-mobile-announces-49-5-million-expansion> (last visited Sept. 17, 2018).

Coast to the Gulf Coast, especially in “the container sector.”² Lyons has also stated that the Project will further that vision: “This [Phase 3] expansion and our planned harbor deepening and widening program will provide both shippers and carriers with a cost effective, customer service oriented option.”³ Furthermore, these multi-phase expansions are already having impacts that reverberate around Mobile Bay and its environment. For example, Walmart has an added new 2.6 million square foot capacity import distribution center near Mobile, and a recently-completed Intermodal Container Transfer Facility, which serves five railroad companies, has just been completed as part of the expansion. A “roll-on/roll-off” terminal for shipping automobiles overseas is also in construction and will ultimately have a capacity of 160,000 vehicles per year.⁴ Upon the completion of the 5-phase expansion envisioned by ASPA, increases in container traffic will be accommodated by new large service cranes and more land area for more storage.⁵ In addition to steady and continued increases in container and automobile traffic, the Port of Mobile has already become one of the largest coal export and steel port operations in the United States.⁶

Cumulative and indirect impacts would not be limited to the Port of Mobile, but supporting waterways and environments would also see an increase in traffic due to this Project. As Mike Tagert, former Tennessee-Tombigbee Waterway Administrator, observed when the Panama Canal expansion was announced, “increased activity at the Port of Mobile will popularize inland waterways.”⁷ Indeed, the industry web site *Port Technology* observed that the Port of Mobile has “access to a vast network of inland connections across the South of the U.S., including two interstate systems, five railroads, and nearly 15,000 miles of inland waterway connections.”⁸

Given the known and multi-phase improvements planned for the Port of Mobile, and the number of related projects that directly hinge on this dredging, it is imperative that the Corps

² Gulf Ports Anticipate Panama Canal Expansion’s Benefits Area Development (2011), <http://www.areadevelopment.com/logisticsInfrastructure/directory2011/gulf-mexico-ports-panama-canal30023.shtml> (last visited Sept. 17, 2018).

³ Port of Mobile to get \$49.5M expansion, Birmingham Business Journal (Dec. 20, 2017), <https://www.bizjournals.com/birmingham/news/2017/12/20/port-of-mobile-to-get-49-5m-expansion.html> (last visited Sept. 17, 2018).

⁴ Frank McCormack, Port of Mobile Continues Legacy with Rapid Expansion, Waterways Journal Weekly (June 29, 2018), <https://www.waterwaysjournal.net/2018/06/29/port-of-mobile-continues-300-year-legacy-with-rapid-expansion/> (last visited Sept. 17, 2018).

⁵ Port of Mobile announces \$49.5 million expansion, The Pulse (Dec. 20, 2017), <http://pulsegulfcoast.com/2017/12/port-of-mobile-announces-49-5-million-expansion> (last visited Sept. 17, 2018).

⁶ Frank McCormack, Port of Mobile Continues Legacy with Rapid Expansion, Waterways Journal Weekly (June 29, 2018), <https://www.waterwaysjournal.net/2018/06/29/port-of-mobile-continues-300-year-legacy-with-rapid-expansion/> (last visited Sept. 17, 2018).

⁷ Gulf Ports Anticipate Panama Canal Expansion’s Benefits, Area Development (2011), <http://www.areadevelopment.com/logisticsInfrastructure/directory2011/gulf-mexico-ports-panama-canal30023.shtml> (last visited Sept. 17, 2018).

⁸ APM Plans Multit-Million Dollar Expansion for Alabama Port, Port Technology (Dec. 22, 2017), https://www.porttechnology.org/news/ampt_plans_multi_million_dollar_expansion_for_alabama_port (last visited Sept. 17, 2018).

consider and evaluate the cumulative and indirect environmental impacts that attaches to this Project when viewed through the lens of the Port of Mobile expansions. The impacts are not only “reasonably foreseeable”; they are happening in real time. The multi-phase expansions planned by ASPA are in the works, and the channel dredging Project is just one part of a much larger whole, yet, the Corps fails to adequately consider the cumulative and indirect impacts of this Project along with the planned port expansions in the GRR/SEIS. An analysis of these cumulative and indirect impacts of these phases should have been included in GRR/SEIS, and the draft GRR/SEIS is inadequate and violates NEPA.

B. Insufficient Alternatives Analysis

The alternatives analysis is “the heart of the environmental impact statement.” 40 C.F. R. § 1502.14. It requires federal agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(E). In conducting this analysis, the agencies must “rigorously explore and objectively evaluate all reasonable alternatives.” 40 CFR § 1502.14(a). The rule as articulated by one federal appellate court is representative: “[T]he evaluation of ‘alternatives’ mandated by NEPA is to be an evaluation of the alternative means to accomplish the *general* goal of an action; *it is not an evaluation of the alternative means by which a particular applicant can reach his goals.*” Van Abbema v. Fornell, 807 F.2d 633, 638 (7th Cir. 1986) (second emphasis added); see also Simmons v. U.S. Army Corps of Eng’rs, 120 F.3d 664, 666 (7th Cir. 1997) (“One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing ‘reasonable alternatives’ out of consideration (and even out of existence).”).

Ports are in a constant state of competition to attract shipping traffic. It is therefore not surprising that many ports are expanding, or are considering expansion and dredging projects, to attract large, post-Panamax ships. Port expansion projects, including deeper dredging, are already underway in the Gulf of Mexico in Tampa, New Orleans, Beaumont, Houston, and other ports.⁹ More are being contemplated in Corpus Christi and other ports.¹⁰ In the south Atlantic region, at least four port projects are planned or proposed—including Savannah, Jacksonville, Charleston, and Norfolk.

⁹ See, e.g., Masterplan: Vision 2030, Port Tampa Bay, <https://www.porttb.com/masterplan> (last visited Sept. 14, 2018); Mark Schleifstein, Dredging Mississippi River to 50 feet clears Corps approval hurdle, The Times-Picayune (Aug. 20, 2018), https://www.nola.com/environment/index.ssf/2018/08/dredging_mississippi_river_to.html (last visited Sept. 14, 2018); Sade Chick, 2016-2017 Strongest Financial Year in Port History, Port of Beaumont (Feb. 6, 2018), <https://www.portofbeaumont.com/2016-2017-strongest-financial-year-in-port-history/> (last visited Sept. 14, 2018); Navigation Information and Soundings, Port of Houston, <http://porthouston.com/channel-development/navigation-information-and-soundings/> (last visited Sept. 14, 2018).

¹⁰ See, e.g., Channel Deepening Study Open House, Port of Corpus Christi (Sept. 11, 2018), <http://portofcc.com/channel-deepening-study-open-house/> (last visited Sept. 14, 2018).

Notwithstanding the known expansion plans of multiple ports in the Gulf of Mexico and south Atlantic regions, the GRR/SEIS completely ignores the role of inter-port competitiveness in its alternatives analysis. For example, in forecasting future shipping traffic for the Port of Mobile, the GRR/SEIS considers forecasts from the DOE, USDA, and HIS GI Trade Forecast. GRR/SEIS at 2-14—2-16. But all three of those forecasts estimate the changes in country-wide demand and country-to-country demand flows. See id. None consider the potential Gulf of Mexico effects of changes to other ports, or any other factors that may influence the traffic demand for a specific port such as surrounding infrastructure or local supply or demand. Ignoring these facts frustrates a true alternatives analysis and violates NEPA, which must include an evaluation of whether another port or ports in the Southeast could accommodate the larger class of container ships with a higher cost benefit ratio and fewer impacts on the environment. In other words, a general objective of this Project could have been to accommodate the larger class of Post-Panamax vessels moving into Gulf of Mexico ports as opposed to simply evaluating alternative depths of deepening Mobile Harbor. A forecasting scheme and/or alternatives analysis that does not consider the arms race among ports competing for traffic, when it is known to be taking place, cannot be said to be “reasonable.”

Furthermore, each deepening project includes the expenditure of substantial federal funds, each project requires numerous federal permits, and each project presents significant environmental impacts on federally controlled coastal resources. Each project, when combined with others, could cause cumulative and synergistic impacts on the nation’s environment, including its major rivers and estuarine and marine systems. Without an analysis of the proposed projects, the U.S. could end up with port expansions that provide marginal benefits while resulting in significant destructive impacts on the environment, both in the Project’s affected areas for the Mobile Harbor and across the U.S. Under NEPA’s implementing regulations, the Corps must analyze proposed actions in the same EIS when it is the “best way to assess adequately the combined impacts of similar actions.” 40 C.F.R. § 1508.25(a)(3). In examining the impacts of the Project separately from other port expansions, the Corps has ignored a crucial aspect in the EIS—the determination of “whether the various agency actions, when combined, have an effect on the environment that might be overlooked if examined separately” Sierra Club v. Watkins, 808 F. Supp. 852, 863 (D.D.C. 1991) (citation omitted).

C. Improper Segmentation

The improper segmentation of closely related projects into distinct actions for purposes of preparing or avoiding environmental impact statements violates NEPA. See, e.g., Piedmont Heights Civil Club, Inc. v. Moreland, 637 F.2d 430, 439 (5th Cir. 1981);¹¹ see also, e.g., Fla.

¹¹ Fifth Circuit opinions decided on or before September 30, 1981 constitute binding precedent for the Eleventh Circuit, unless otherwise invalidated by a statute or subsequent case. *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981).

Wildlife Fed'n v. U.S. Army Corp. of Eng'rs, 401 F. Supp. 2d 1298, 1313 (S.D. Fla. 2005) (applying the “anti-segmentation rule” to a wetlands filling project). To determine whether an EIS should be stricken for failure to satisfy NEPA’s prohibition of improper segmentation, courts in the Eleventh Circuit consider “such factors as whether the proposed segment (1) has logical termini, (2) has substantial independent utility, (3) does not foreclose the opportunity to consider alternatives, and (4) does not irretrievably commit federal funds for closely related projects,” as well as “the independent utility of the project and the interdependence of several projects.” Piedmont, 637 F.2d at 439 (citations omitted).

Here, the GRR/SEIS improperly treats several projects as distinct that are interdependent with the dredging. For example, the Upper Mobile Bay Beneficial Use Wetland Creation Site is not mentioned in the GRR/SEIS, but it is a USACE project for “a 1,200 acre wetland creation site in the Upper Mobile Bay south of the US Highway 90/98 causeway,” which is very much an affected area of the Project. The Corps cannot assume, and treat separately, this disposal site for this analysis.¹² Similarly, as to expansion of the Sand Island Beneficial Use Area (SIBUA), where dredged sand is planned to be deposited, the GRR/SEIS acknowledges “the USACE, Mobile District is currently pursuing modifications to extend the SIBUA beyond its existing boundaries.” GRR/SEIS at 2-39. This modification has not yet been approved. The GRR/SEIS includes a table depicting the amounts of sand that will be able to be dumped at the SIBUA, including proposed additions of dredge materials. The GRR/SEIS then predicts a SIBUA expansion as part of its No Action Alternative. Id. at 5-3, 5-25, Table 2-21. Further, the GRR/SEIS acknowledges that the proposed northwest expansion of the SIBUA must first be the subject of a cultural resources study, which also has not been reported yet and is certainly not reported in the GRR/SEIS draft. Id. at 5-72. The prior assumption of a SIBUA expansion approval without reference to a completed environmental review makes this GRR/SEIS analysis deficient and improper segmentation of the NEPA analysis.

Finally, in July 2014 the Corps presented an Environmental Assessment (EA) finding no significant impact from a new, thin-layer disposal option of sand for Mobile Harbor, allowing it to create “a long term open bay thin-layer disposal option” for dredged sand. EA at 1. That EA, disseminated after the Panama Canal’s expansion project was underway and shortly before this dredging expansion project, may have been improperly segmented from the Project to avoid the more comprehensive EIS review. The GRR/SEIS neither addresses those projects fully (and the Upper Mobile Bay Beneficial Use Wetland Creation Site and the thin-layer disposal option, not at all) nor explains the independent utility, non-interdependence or absolute interdependence of these projects.

¹² Mobile Bay Watershed, Gulf Coast Ecosystem Restoration Council, at 1, [https://restorethegulf.gov/sites/default/files/Upper%20Mobile%20Bay%20Beneficial%20Use%20Wetland%20Cr' eation%20Site_0.pdf](https://restorethegulf.gov/sites/default/files/Upper%20Mobile%20Bay%20Beneficial%20Use%20Wetland%20Creation%20Site_0.pdf) (last visited Sept. 14, 2018).

D. Insufficient Air Quality Analysis

In a 2009 study reviewing air emissions at port facilities, EPA concluded that port developments have the potential to inflict “significant environmental and human health impacts, such as cancer and asthma,” on the surrounding human and natural communities. EPA Needs to Improve Its Efforts to Reduce Air Emissions at U.S. Ports, Report No. 09-P-0125 (Mar. 23, 2009). Emissions of greatest concern identified in the report include nitrogen oxides (NOx), particulate matter (PM), sulfur oxide (SOx), carbon monoxide (CO), hydrocarbons (HC), and air toxics, such as diesel exhaust. Id. The report goes on to explain that “[d]iesel and other emissions from port activities” harm onshore communities through “increased cancer rates, asthma, other respiratory and cardiovascular diseases, and premature death.” Id. EPA has recognized that impacts of diesel emissions from ports extend beyond local communities to “contribute significantly to regional air pollution.” Id. Similarly, a 2008 study by the National Oceanic and Atmospheric Administration found that commercial shipping results in “a significant impact on air quality and health on both local and regional scales.” Id. at 3.

The Port of Mobile is a significant industrial port, and as a result, air emissions from commercial activities in the port have created problems. For example, coal terminals at McDuffie Coal Terminal and Cooper Marine and Timberlands in the Project area have been a source of fugitive coal dust emissions for years, and these emissions have affected the citizens of Mobile.¹³ In addition, fuel storage tank farms in the Project area, and their hazardous wastes and emissions, have forced the city council to seek more restrictive local zoning ordinances.¹⁴

However, the GRR/SEIS ignores these current problems with air pollution from this Project. This is based, in part, on implausible assumptions in its economic analysis that the Project will not increase shipping traffic at the Port of Mobile.¹⁵ In fact, the GRR/SEIS predicts

¹³ Katie Weis, Coal Uncovered Parts 1-2, Fox News 10 (May 16 and 18, 2018) https://www.fox10tv.com/news/fox-news-investigates-coal-uncovered-part/article_6e8b1444-b2a6-50b0-ad2c-096a505dc67b.html (last visited Sept. 17, 2018).

¹⁴ John Sharp, After More than Two Years of Debate Mobile Passes an Oil Storage Tank Ordinance, AL.com (March 30, 2016) https://www.al.com/news/mobile/index.ssf/2016/03/after_more_than_two_years_of_d.html#incart_river_home (last visited Sept. 17, 2018).

¹⁵ Compare, e.g., GRR/SEIS at 5-64 (“Previous navigation analyses indicate that channel improvements alone will not have an impact on the forecasted demand of commodities handled at a particular port.”), with, e.g., Port of Mobile to get \$49.5M expansion, Birmingham Business Journal (Dec. 20, 2017), <https://www.bizjournals.com/birmingham/news/2017/12/20/port-of-mobile-to-get-49-5m-expansion.html> (last visited Sept. 12, 2018) (quoting Alabama State Port Authority CEO Jimmy Lyons stating that an “expansion and our planned harbor deepening and widening program will provide both shippers and carriers with a cost effective, customer service oriented option”); Frank McCormack, Port of Mobile Continues Legacy with Rapid Expansion, Waterways Journal Weekly (June 29, 2018), <https://www.waterwaysjournal.net/2018/06/29/port-of-mobile->

a *decrease* in the overall annual emissions associated with ship traffic due to the forecasted demand. GRR/SEIS at 5-64. The GRR/SEIS concludes that “the uncertainty of the mix and size of vessels using the port and the change in vessel travel time after channel deepening” make any precise calculation of annual emissions “not feasible.” *Id.* The GRR/SEIS then shifts and cites emissions forecasts prepared for a deepening project in Charleston Harbor to conclude that as a result of the Project emissions will fall “from approximately 1 to 3% pending on individual criteria pollutant.” *Id.* The GRR/SEIS fails to explain its application of the Charleston Harbor emissions forecasts, other than to note “the similarity of the proposed harbor navigation improvement scheme.” *Id.* Similarly, while concluding that the dredging project would result in a 25% increase in truck traffic, the GRR/SEIS skeletally concludes that the truck emissions “are not major emissions contributors” and, when the 1 to 3% decrease in shipping emissions is considered, “such an increase in truck traffic would unlikely result in significant air quality impacts.” *Id.* at 5-65. The GRR/SEIS similarly categorically dismisses a possible increase in emissions from the McDuffie Coal Terminal as being offset by the project’s overall emissions decrease, despite indicators showing that coal traffic will likely increase.¹⁶ These assumptions are all made without giving any mention to current air pollution problems at the port. NEPA requires the Corps to conduct a realistic analysis of the proposed dredging’s impacts on the Port of Mobile’s growth and to incorporate the results into its GRR/SEIS. *See* Corps Planning Guidance Notebook at 2-8 to 2-9 (describing accurate “without-project conditions” and “with-project conditions” as “critical to the success of the planning process”). Having so blatantly failed to realistically analyze the air quality impacts of increased shipping traffic as a result of the Project, the GRR/SEIS has ipso facto failed to adhere to NEPA’s requirements to consider all reasonably foreseeable, cumulative and indirect impact of the proposed action. 40 C.F.R. §§ 1508.7, 1508.8.

The GRR/SEIS also fails to assess the dredging project’s impacts on affected areas’ status under the Clean Air Act (“CAA”). The GRR/SEIS states only that the affected areas are presently in attainment for the all National Ambient Air Quality Standards (“NAAQS”). *See, e.g.,* GRR/SEIS Environmental Appendix C at 3-92. However, the GRR/SEIS fails to analyze and disclose whether the Project would push the impacted areas into non-attainment or maintenance status and what the dredging project’s incremental impacts on compliance, or lack thereof, with applicable NAAQS will be.

continues-300-year-legacy-with-rapid-expansion/ (last visited Sept. 17, 2018). <https://www.waterwaysjournal.net/2018/06/29/port-of-mobile-continues-300-year-legacy-with-rapid-expansion/> (last visited Sept. 12, 2018) (quoting Lyons as stating that easing harbor congestion is one benefit of the Project).

¹⁶ *See, e.g.,* Mike Marshall, *No more coal dust for downtown Mobile*, AL.com (Jan. 14, 2014), https://www.al.com/opinion/index.ssf/2014/01/no_more_coal_dust_for_downtown.html (last visited Sept. 17, 2018) (discussing the increased demand for coal shipping in light of “an all-Alabama \$1.2 billion mining project undertaken by Hoover-based Walter Energy” and the Alabama State Legislature’s 2012 approval of a series of tax breaks for coal companies).

II. The Proposed Project would Violate the Clean Water Act (“CWA”).

Although the Corps, as a matter of policy, does not issue itself permits for its own activities,¹⁷ it “authorizes” its own discharges, applying all applicable substantive requirements, including the Section 404 Guidelines found at 40 C.F.R. §§ 230.2, 230.10; 33 C.F.R. §§ 336.1(a), 337.6; See also Regulatory Guidance Letter (RGL) 88-09 (July 21, 1998, expired Dec. 31, 1990); RGL 05-06 (Dec. 7, 2005). As explained below, this Project violates the CWA in several respects.

A. The Project Fails to Satisfy the CWA and the 404(b)(1) Guidelines.

1. The Corps failed to set forth a proper statement of purpose and need and has not adequately considered alternatives.

Section 404(b)(1) of the CWA, 33 U.S.C. § 1344(b)(1), directs the EPA to issue Guidelines that define the circumstances under which dredged or fill material may be discharged into wetlands or other waters. 40 C.F.R. § 230.10. To implement the Guidelines (and NEPA, as discussed above), the Corps must first present a correct statement of a project’s “basic purpose.” See 40 C.F.R. § 230.10(a)(3). After the Corps defines the basic purpose of the Project, it must then determine whether that basic purpose is “water dependent.” See id. An activity is “water dependent” if it requires access or proximity within a wetland to fulfill its basic purpose. Id.

Although one can be teased from the GRR/SEIS here, such as deepen a harbor to get goods in and out of the country more efficiently, there is another purpose that the Corps has failed to clearly identify, the “overall project purpose.” 40 C.F.R. § 230.10(a)(2). As the Guidelines provide, unless one knows what the overall project purpose is, it is impossible to conduct a meaningful practicable alternatives analysis. Id. In addition, the Guidelines provide that the Corps shall not grant a Section 404 permit “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.” 40 C.F.R. § 230.10(a). An alternative “is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” 40 C.F.R. § 230.10(a)(2).

¹⁷ If the local sponsor opts to construct the project, it would have to obtain a permit from the Corps. RGL 88-09. (July 21, 1998, expired Dec. 31, 1990).

In the executive summary of the GRR/SEIS, the Corps states what appears to be the overall project purpose of the proposed Project. It provides as follows:

The principal navigation problem is larger vessels are experiencing transportation delays and inefficiencies due to limited channel depth and width. This problem is a result of increasing number and size of vessels entering and departing Mobile Harbor. The existing channel depths and widths limit vessel cargo capability, restrict many vessels to one-way traffic and in some areas limit transit operations to daylight hours only.

GRR/SEIS at ES-1. In short, this statement provides that 1) shipping companies are tending to use bigger vessels, 2) these bigger vessels are having difficulty getting in and out of existing ports, and 3) Mobile Harbor is one such port. Nowhere in this project purpose does the Corps suggest that Mobile Harbor is the harbor that should be deepened. Before the Corps should deepen Mobile Harbor, it should determine if it makes more sense to conduct another harbor project elsewhere. In all likelihood, the federal government will spend a significant amount of taxpayer money on this project. Before it does so, the Corps should make sure that it is a better investment for the country to deepen Mobile Harbor than another alternative.

It may make more sense to provide additional monies to other major ports in the Gulf of Mexico, such as the Port of Corpus Cristi and the Port of New Orleans. So far, the Corps has not evaluated other ports. This is contrary to a provision in the GRR/SEIS, which states the following:

A measure that *could be implemented by others* can be considered [an alternative] as long as it meets the objectives on its own or it can be a component of an alternative that meets the objectives in a way that is complete, effective, efficient, and acceptable.

GRR/SEIS at 3-2 (emphasis added). What this statement means in the Mobile Harbor context is that if the purpose of the Project is simply to improve the efficiency of trade, the Corps should consider whether the improvement of another port makes more sense than the proposed project. As part of its practicable alternatives analysis, the Corps must explain why it is more economical to deepen Mobile Harbor than to improve other ports in the Gulf.

2. The Corps failed to conduct a sufficient alternatives analysis for specific components of the Project as required under 404 (b)(1).

Even if the overall project purpose were confined to improving Mobile Harbor, the Corps still must discuss whether there are practicable alternatives to specific components of the Project. For example, the Corps includes a “3 Mile Widener for Passing” through the bay channel.

GRR/SEIS at ES-10. Widening this portion of the bay channel will require moving a significant amount of dredged material. So far the Corps has not discussed why the widener must be three miles long. Similarly, the Corps has not explained why the channel must be dredged to a depth of 52 feet in some places. See GRR/SEIS at Abstract. Other deepening projects such as the one in Savannah Harbor, are only going to a depth of 47 feet.¹⁸ The Georgia Ports Authority, which operates the Savannah Harbor, appears to believe that a depth of 47 feet will be sufficient to attract the larger Panamax III ships. Why does Mobile Harbor have to be deepened so much? Considering that the bay channel is over 30 miles long, deepening the channel more than necessary would be a costly. The Corps should clearly explain its reasoning for doing so.

In the 404(b)(1) Guidelines analysis, the Corps confuses the issue of alternatives still further by stating in its finding of compliance, that the scope of the 404(b)(1) Guidelines is much narrower than the project itself. The Corps states as follows:

The proposed action discussed in this EA and Section 404(b)(1) [sic] only encompasses the *recertification of an ongoing maintenance project*. Therefore, only ‘Action’ and ‘No Action’ alternatives have been evaluated in this assessment. It is believed that greater negative economic and environmental impacts will result from not re-issuing certification of continual maintenance dredging and disposal activities. Other Alternatives for dredging and disposal were evaluated in the 1980 EIS for Mobile Harbor Channel Improvements.

Appendix C, Attachment C-2 at 404(b)(1)-12 (emphasis added). It appears from this statement, that the Corps 404(b)(1) Guidelines analysis was written for a maintenance project rather than the deepening Project. If that is the case, the 404(b)(1) Guidelines analysis is invalid.

3. Section 404(b)(1) Bars Approval of Projects that Cause or Contribute to Violations of Water Quality Standards.

The Section 404(b)(1) Guidelines prohibit authorization of a discharge of dredged or fill material that “[c]auses or contributes . . . to violations of any applicable State water quality standard.” 40 C.F.R. § 230.10(b)(1). This is an independent inquiry than states do under Section 401 of the CWA. See 33 C.F.R. § 336.1(c)(2). In the 404(b)(1) Guidelines analysis, the Corps admits that it may if may not be able to meet those standards. The Corps states that “[p]reliminary findings show that action would be in compliance *to the maximum extent practicable*, with all water quality standards.” Appendix C, Attachment C-2 at 404(b)(1)-11 (emphasis added). Unless the Corps can definitively state that the Project will not “cause or

¹⁸ Savannah Harbor Expansion Project, Ga. Ports, <http://gaports.com/media/publications/gateway-to-the-world/savannah-harbor-expansion-project> (last visited Sept. 17, 2018).

contribute” to a violation of a State water quality standard,” the Project cannot go forward. 40 C.F.R. § 230.10(b)(1). Here, the Corps appears to lack sufficient information to make that claim.

Furthermore, the Corps has not completed its water quality testing. For example, the Corps states the following in the GRR/SEIS:

At this time, specific impacts associated with the new work sediment testing and evaluation during the PED phase of the study *are not known*. All current *presumptions* are that the new work material associated with project sampling would be similar to that already tested and should be suitable for placement within the identified placement areas.

GRR/SEIS at 5-9 (emphasis added). Since the Corps has not completed its water quality tests, the public has no way to determine whether or not state water quality standards have been met. Currently, the Corps is relying on presumptions that certain uncompleted tests will yield acceptable results. This is not sufficient. These tests should have been completed before the GRR/SEIS was issued so that the public could provide meaningful comments on water quality.

Another example of an incomplete and utterly confounding discussion surrounds the aquifers underlying the Mobile area. The discussion is contained in groundwater section of the GRR/SEIS, which is incomprehensible. See GRR/SEIS at 2-65. It is impossible to determine which aquifers are beneath Mobile Bay and which are not. And the Corps says nothing about whether the project could jeopardize the nearest underlying aquifer. The channel will be deepened by more than 5 feet in many places. If the dredges were to penetrate into a surficial aquifer that was hydrologically connected to a deeper aquifer, the result could be catastrophic. This issue has arisen in at least one other harbor deepening project (Savannah Harbor) and until the public is provided with sufficient information in the form of a scientific study, it will not have the opportunity to provide meaningful comments on this issue.¹⁹ Mobile cannot afford to have the Project jeopardize the integrity of its aquifers. A comprehensive study was performed to ensure that such a problem did not arise for the Savannah Harbor deepening.²⁰

In preparing its 404(b)(1) analysis, the Corps also fails to discuss the cumulative effects and the secondary effects the Project might have on the aquatic environment. In a conclusory fashion, the Corps simply states that the Project would not have any significant cumulative or secondary effects on the aquatic ecosystem. Appendix C, Attachment C-6 at 404(b)(1)-12. As the NEPA discussion provides, the Project would involve numerous cumulative and indirect

¹⁹ Savannah Harbor Expansion Project, Frequently Asked Questions (FAQs), U.S. Army Corps of Engineers (Apr. 4, 2016), <http://www.sas.usace.army.mil/Portals/61/docs/SHEP/SHEP%20FAQs%20-%20Apr2016.pdf> (last visited Sept. 17, 2018).

²⁰ Id.

impacts. The Corps must discuss cumulative effects and secondary effects in the context of the 404(b)(1) Guidelines.

The water quality assessment should also include a discussion of whether the project would have any impact on existing Total Maximum Daily Load determinations (TMDLs). There is a TMDL in Mobile Bay for pathogens.²¹ The Corps should address whether the Project will impact this TMDL.

B. The Project Does Not Qualify for a Section 401 Water Quality Certification from Alabama

Similar to the water quality assessment provided in the 404(b)(1) Guidelines analysis, the state of Alabama must make an assessment to ensure that the Project does not make it more difficult for the state to attain or maintain its water quality standards. If Alabama determines that it has a “reasonable assurance” that the Project will not violate its water quality standards, it will issue a water quality certification for the Project. 33 C.F.R. §§ 336.1(a)(1), (b)(8); see also 33 C.F.R. §§ 337.10, 338.2(c). That certification, or even a preliminary version of that certification, has not been provided to the public. Again, without this information, the public cannot provide meaningful comments on the Section 401 water quality certification at this time.

C. The GRR/SEIS does not comply with the public interest review requirements of the Clean Water Act

Under the Corps’ Section 404 regulations, the Corps must engage in a “public interest review.” 33 C.F.R. § 320.4(a). Under this review, the “[d]ecision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest.” See id. (listing relevant factors to be considered). There is no significant public interest review analysis in the GRR/SEIS. It must be completed and provided to the public.

III. The GRR/ SEIS does not comply with the Endangered Species Act

The 404(b)(1) Guidelines also require the Corps to comply with the Endangered Species Act (ESA). Section 7 of the ESA requires that each federal agency “shall, in consultation with and with the assistance of [the expert service agencies] insure that any action authorized, funded or carried out by such agency . . . is not likely to jeopardize the continued existence of any” listed species “or result in the destruction or adverse modification” of the species’ critical habitat. 16

²¹ See Final Total Maximum Daily Load (TMDL) for Mobile Bay, Pathogens, Alabama Department of Environmental Management Water Quality Branch (Aug. 2015) <http://adem.alabama.gov/programs/water/wquality/tmdls/FinalMobileBayPathogensTMDL.pdf> (last visited Sept. 17, 2018) (“[B]each monitoring continues to show exceedances of Alabama’s pathogen criteria.”).

U.S.C. § 1536(a)(1)-(2). Under the regulations implementing this consultation process, each federal agency is required to determine whether its activities “may affect” a listed species. 50 C.F.R. § 402.14(a). If it is determined that the agency action may affect listed species, formal consultation is required unless the U.S. Fish and Wildlife Service (“FWS”) or the National Marine Fisheries Service (“NMFS”) determines, based on the best available scientific evidence, that the action is “not likely to adversely affect” the species. 50 C.F.R. § 402.14(a)-(b).

If formal consultation is sought, such consultation will culminate in the issuance of a biological opinion. The “[b]iological opinion is the document that states the opinion of the Service as to whether or not the Federal action is likely to jeopardize the continued existence of the listed species or result in the destruction or adverse modification of critical habitat.” 50 C.F.R. § 402.02. NMFS’ and FWS’ joint regulations define [j]eopardize the continued existence of” as “to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.” *Id.*

Courts have explained that “even where baseline conditions already jeopardize a species, an agency may not take action that deepens the jeopardy by causing additional harm.” Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv., 524 F.3d 917, 930 (9th Cir. 2008). Additionally, under the applicable regulations, an action is “jeopardizing” if it keeps recovery “far out of reach,” even if the species is able to still cling to survival. *Id.* at 931. Jeopardy therefore can be found not only where an action plunges a species towards extinction, but where it suppresses the species below the path needed for recovery.

If the biological opinion concludes that the proposed action is not likely to jeopardize a protected species, the Project can be completed. If, however, the biological opinion concludes that “jeopardy or adverse modification exists, NMFS [or FWS] must suggest reasonable and prudent alternatives . . . that it believes would not violate section 7(a)(2) and that can be implemented by the action agency.” Aluminum Co. v. Administrator, 175 F.3d 1156, 1159 (9th Cir. 1999) (citing 16 U.S.C. § 1536(b)(3)(A)). If no reasonable and prudent alternatives exist, the action agency can seek an exemption, cancel the project, or continue with the project and risk violating the ESA. “The action agency is technically free to disregard the Biological Opinion and proceed with its proposed action, but it does so at its own peril,” as it could face liability under the ESA and invite a challenge under the Administrative Procedures Act. Bennett v. Spear, 520 U.S. 154, 170 (1997); see generally Nat’l Wildlife Fed’n v. Coleman, 529 F.2d 359, 371-72 (5th Cir. 1976).

In this case, the Corps lists a plethora of species that are threatened or endangered and located within or near the Project area. As provided in the 404(b)(1) analysis, the Corps quickly

whittled the number of species down to sea turtles, the Florida manatee, and the Gulf Sturgeon. The Corps began by assessing the sea turtles and Gulf Sturgeon. The Corps had this to say in reference to those species:

Potential impacts on the five species of listed sea turtles and Gulf sturgeon from hopper dredging activities were assessed in the 2003 Gulf Regional Biological Opinion (GRBO). In the opinion, NMFS concluded that sea turtles and Gulf sturgeon can be adversely affected by hopper dredges.

Appendix C at 404(b)(1)-10. This statement cuts against the project in several ways. Briefly, first, the Corps relies on a regional biological opinion that was conducted 15 years ago; second, the opinion does not appear to have any direct connection to the proposed project; third, the study found that hopper dredges *can* adversely affect sea turtles and Gulf Sturgeon; and fourth, the opinion covers the effects of hopper dredging on the sea turtle and the Gulf Sturgeon, when the project is going to employ cutterhead-suction dredges and mechanical excavators, in addition to hopper dredges. See GRR/SEIS at 4-14. Thus, any conclusion the Corps makes about the effects the Project will have on these species is unsupported.

The Corps's conclusion about the Gulf Sturgeon is also suspect for another reason. The Corps admits that the Gulf Sturgeon uses the project area during its migration season, which makes sense since Mobile Bay is the sturgeon's only path to the Tensaw Delta.²² Appendix C at 404(b)(1)-10-11. It then states that Mobile Bay is not a designated critical habitat for the sturgeon. Appendix C at 404(b)(1)-10-11. These statements, taken together, imply that because the project area is not a critical area for the sturgeon, the project cannot adversely affect the species. That is not so. A threatened or endangered species does not have to be located in a critical habitat area for that species to enjoy the protections of the ESA. See, e.g., Fisher v. Salazar, 656 F. Supp. 2d 1357, 1359 (S.D. Fla. 2009) ("Critical habitat may include geographical areas that are both inside of and outside of the geographical areas occupied by the species.").

The Corps has also not adequately addressed the impact the project could have on nesting turtles, such as the Loggerhead Sea Turtle. As the public has already raised in scoping comments, Dauphin Island's Gulf shoreline has a comparatively low percentage of successful sea turtle nests. The Corps should conduct additional research on whether the project will lead to further problems for the Loggerhead and other sea turtles, especially in light of the historical littoral drift questions raised by this Project.

Similarly, the Corps has made a less than convincing case that the project will have no adverse effect on the Bryde's whale. In its discussion of the whale, the Corps begins by pointing

²² Maurice F. Mettee, Fishes of Alabama, Encyclopedia of Alabama (last updated Nov. 30, 2016) <http://www.encyclopediaofalabama.org/article/h-1586> (last visited Sept. 17, 2018).

out that “[v]essel collisions are a significant source of mortality for a variety of coastal large whale species.” GRR/SEIS at 2-93. It then goes on to state that “[t]he northern Gulf of Mexico is an area of considerably high amount of ship traffic, which may increase the risk of vessel-whale collisions.” *Id.* Next, it adds that “[s]everal important commercial shipping lanes travel through the primary Gulf of Mexico Bryde’s whale habitat in the northeastern Gulf of Mexico, particularly vessel traffic from ports in Mobile, Pensacola, Panama City, and Tampa.” *Id.* All of these statements support a conclusion that Bryde’s whale may be adversely affected by the project, and the Corps provides no evidence that it will not. To comply with the ESA, the Corps must provide more information on this species and the impact that the Project will have on its continued existence.

As the Corps points out, the Bryde’s whale has not yet been listed as an endangered species. GRR/SEIS at 5-54. But that is immaterial for the purposes of this project. Under the ESA, the Corps would have to conference with NMFS if a project may adversely affect the continued existence of a species *proposed* to be listed, such as the Bryde’s Whale. 16 U.S.C. § 1536(a)(4). If the proposed species is subsequently listed prior to completion of the action, the Corps must review the action to determine whether formal consultation is required. 50 C.F.R. § 402.10(c).

Furthermore, the Corps’ “NEPA procedures must insure that environmental information is available to public officials and citizens *before* decisions are made and *before* actions are taken.” 40 C.F.R. § 1500.1(b) (emphasis added); see also Ohio Valley Envt’l Coalition v. U.S. Army Corps of Eng’rs, 674 F. Supp. 2d 783, 808-09 (S.D. W.Va. 2009) (concluding the Corps failed to comply with the NEPA by failing to provide the public with substantive information before the comment period); Sierra Nevada Forest Protection Campaign v. Weingardt, 376 F. Supp. 2d 984, 990 (E.D. Cal. 2005) (Ruling that NEPA regulations “require that an agency give environmental information to the public and then provide an opportunity for informed comments to the agency” (citing 40 C.F.R. §§ 1501.4, 1506.6)). According to the CEQ Guidelines, such procedures are necessary because “public scrutiny [is] essential to implementing NEPA.” 40 C.F.R. § 1500.1(b). It does not appear that the Corps has initiated any communication with NMFS, or with the FWS, concerning the project and its potential impacts on endangered species. Because of this delay, the public will be denied an opportunity to provide meaningful comments on the ESA elements of the project.

Conclusion

We appreciate the opportunity to submit these comments on the proposal to dredge the Mobile Harbor and Mobile River. For the reasons described herein, we believe the Project raises serious concerns under the National Environmental Policy Act, the Clean Water Act, the Endangered Species Act, and other state and federal laws and regulations. Our review of the GRR/SEIS reveals that the Corps has not considered the full scope and impact of this Project in

relation to the massive port expansions going on in the Bay, and that the Corps has simply failed to consider a sufficient range of alternatives for accommodating the anticipated larger class of containerships when reviewing this Project. The Corps also overlooks existing pollution problems in the Bay, such as air pollution, and the cumulative and indirect impacts this Project may exacerbate. The Corps' lack of compliance with 404 (b)(1) Guidelines and the Endangered Species Act further inhibits a full and adequate analysis of this Project before moving forward. The questions surrounding this Project are too great and too open-ended, and the health of the Bay too important, not to have a fully compliant environmental impact statement. For these and other reasons stated above, we respectfully request that the Corps remedy the significant flaws in the GRR/SEIS before proceeding with this Proposal.

Sincerely,



Keith Johnston
Amble Johnson
Bill Sapp



Naperville, IL 60564

RP-A
CJ PD-E
PD-EC

9/04/2018

US Army Corps of Engineers, Mobile District

109 Saint Joseph Street,

Mobile, AL 36602

Subject: Comments on draft report entitled "Mobile Harbor, Integrated General Reevaluation Report with Supplemental Environmental Impact Statement."

Dear Corps of Engineers:

I have reviewed portions of the above report with an eye on finding evidences for the conclusions that widening and deepening of the shipping channel would have no discernable impact on sediment transport throughout the project area, and result in minimal differences in the morphological change in the near shore areas of Dauphin Island as stated on pages ES-5, ES-6, and ES-7.

For the record let me state that I am a scientist by training with a large number of peer reviewed publications. Though not an expert on oceanography, I understand scientific modelling and have used modeling in my work.

Sediment transport is an issue of great concern for the property owners of Dauphin Island since the island has experienced significant beach erosion.

The sea bed level data in Fig. 3 B of Appendix A page 14 of the section entitled "Effects of the Proposed Navigation Channel Improvements on Sediment Transport in Mobile Harbor, Alabama" clearly show that (a) sediment is drifting from the eastern bank of the shipping channel into the channel as one would expect from the littoral drift along the Gulf Coast; (b) Sand/Pelican Island did largely disappear; and (c) the eastern shoreline of Dauphin Island has been eroding in the time frame of 2009-2015. This loss of beach is corroborated by my own observations. The Sandcastle Condominium on Dauphin Island's east end (in which I own a unit), lost 150-200 feet of beach on the east end in the 2006-2017 time frame. For any sediment transport model to be credible, these bathymetric data will have to be reproduced by the model simulations.

The Delft3D modelling results shown in Fig 4 on page 5, correctly confirm that sediment is drifting into the shipping channel from the eastern bank, and sediment is lost at some locations, and also gained at others along the western 5-meter contour line. However, the model totally misses to account for the erosion of the eastern shoreline of Dauphin Island that I pointed out above. Any reputable scientist will

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state that predictions from models that cannot explain the history (i.e., replicate actual observed historic conditions) have no value in predicting the future. I therefore conclude, the model is flawed, needs to be improved, and cannot be relied upon to support the conclusions on the effects of deepening the Bar Channel as stated on pages ES-5 and ES-7 of the Main Report.

It also appears that the authors of the report put a self-serving spin onto the interpretation of some of the other data. If the Mobile Harbor ship channel is deepened, the Corps stands to gain hundreds of millions of dollars of funding and has a self-interest in showing that the project has no negative environmental impacts. Table 3 on page 19 and Fig. 7 on page 21 show that with existing channel depths 45,860 cubic meters of sand drift into the shipping channel and must be dredged. According to modeled with-project conditions, the total volume of this sand is predicted to be less (i.e., 43,670 cubic meters), even with a deeper channel. This is interpreted as confirmation that deepening of the Bar Channel will have a negligible impact on sediment transport. However, in sections 6-9 and 13 of the channel more sand accumulates when the shipping lane is further excavated than if it were not. These two sections of the channel are just east of Sand Island and Dauphin Island. Re-nourishing of the islands by littoral drift of sand would normally occur in these two sections, but since the sand is removed the islands erode. I would interpret the data in Table 3 to confirm that dredging of the channel interrupts the littoral drift of sand to Sand Island and Dauphin Island and that deepening the channel will aggravate the problem. It would seem that the modeling results need to be reviewed by an independent entity.

In closing, let me reiterate that I understand the economic benefits of deepening the shipping lane. Yet, it appears that Dauphin Island will continue to suffer unduly negative consequences, unless needed mitigation measures are included in the project to effectively beneficially use the beach quality sands routinely dredged from the Bar Channel to counter the erosion of Dauphin Island. As a taxpayer who will pay for the deepening of the channel, I am deeply disturbed by the dishonesty of the Corps for not interpreting the data objectively.

Sincerely,

A large rectangular area of the document is redacted with a solid black box, obscuring the signature and any accompanying text.

cc.

Jeff Collier, Mayor

Dennis Knizley, DIPOA

Scott Douglas, South Coast Engineers

U.S. ARMY CORPS OF ENGINEERS
PUBLIC MEETING
MOBILE HARBOR GENERAL REEVALUATION REPORT

HELD AT THE MOBILE CONVENTION CENTER
1 WATER STREET
MOBILE, ALABAMA

SEPTEMBER 11, 2018 - 5:00-8:00 P.M.

1 I N D E X

2

3 Comments:

4 BY [REDACTED] - page 3

5 BY [REDACTED] - page 4

6 BY [REDACTED] - page 33

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*U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
MOBILE HARBOR IMPROVEMENT - PUBLIC COMMENTS*

Page 3

1 [REDACTED] MOBILE, ALABAMA:

2 We had asked them to change the format of
3 this because this kind of format is not conducive to
4 good conversation with the public. This helps to
5 control the conversation.

6 In February they had a town hall meeting.
7 That was very good. That will allow the Corps to
8 make their presentations and for the public to make
9 comment.

10 And, in my opinion, we tried to get them
11 to change the format once this was announced, and
12 they would not. So it's very frustrating. A lot of
13 people wrote letters to Colonel Joly to specifically
14 ask if they would change the format to a town hall.
15 I have no problems with that.

16 Until the town hall meeting, we were not
17 advised that the SIBUA -- only 50 percent of it is
18 left. So that sand never got into the littoral
19 drift system to nourish the shorelines of Dauphin
20 Island.

21 In fact, to go back to 1998, they had
22 somewhere in the neighborhood of probably 9 million
23 to 14 million cubic yards of sand in the littoral

1 drift system, and that's all related to the corp's
2 dredging process.

3 One of the biggest concerns that I have is
4 that Corps has made a decision to only -- and this
5 was told to us at the meeting on February 22nd --
6 that the Corps will only evaluate their impact as
7 the island exists today. So they're not addressing
8 the past history that goes back to the 1980 EIS
9 where they did not follow -- did not follow the law,
10 the 1935 law, which would require them to evaluate
11 the effects of the dredging on the 10 miles on both
12 sides of the channel.

13 And that being the case, even though they
14 say they did, they didn't. There are references in
15 that report about Dauphin Island, but there's no
16 study reference -- no study information. So they
17 should go back. Because an equal process says that
18 they are to study the change conditions -- past,
19 present, and future, and they're not doing that.

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* * * * *

21 [REDACTED] MOBILE, ALABAMA:

22 well, being a commercial fisherman for
23 most of my life, shrimping and oystering and

1 crabbing in Mobile Bay -- fishing -- I mean, we have
2 seen the bay go down. When I was nine years old on
3 a boat when my Papa was dredging ship channels, we
4 never saw things like we're seeing today and what we
5 have seen go away.

6 We are catching snapper at the coal docks,
7 helping people -- both recreational and commercial
8 fishermen -- where, when I was a boy, that was
9 unheard of. The habitat has changed so much by that
10 saltwater wedge that is coming up the bay. Now,
11 we're talking good science. It's not false science.

12 Things that we're hearing at this thing,
13 you see so much false science about no impact.
14 Tomorrow will be the anniversary of Frederic, the
15 hurricane. Today was the anniversary of 9/11.

16 Now after Frederic, we oystered and was
17 and there was nothing left on Cedar Point Reef
18 because of the wave action and the terrible silting
19 up. But there was oysters all the way down on the
20 west side of the bay. When the channel was
21 originally dug, all of that shell and reef they went
22 through, piled it on the west side. The reef was in
23 the bay already, or we wouldn't have got shell when

1 we dug the channel.

2 In other words, nature put them there.

3 And as they moved them over, they just got more
4 oysters on West Bay. This is the only place in
5 about 70 -- anywhere from 60 to 80 commercial
6 oystermen was able to work. Me, so many others --
7 my brother-in-law, his two brothers. Everybody had
8 that spot to work. We worked out of east Fowl
9 River. Can't work there. Right after that year,
10 the year after, they started opening the water
11 disbursement of channel mud, sand, silt. Killed
12 miles of oysters and covered them up. Parts of even
13 White House was covered up.

14 All right. We knew the damage that was
15 done by the silt. The silt moved -- the silt being
16 with the tide and stuff. And it was the same thing
17 when Radcliff was allowed -- the silt moved down
18 the bay, and the tide and the winds carried it for
19 miles. We started seeing reefs covered up. The
20 ships coming down the bay carrying massive weights,
21 almost like small tsunamis. Even the inshore reefs,
22 we started seeing them coming up -- covered up.

23 When the Corps permitted the pipeline to

1 come on Alabama Port Beach, we noticed it. We
2 called the conservation. The siltation covered up
3 anywhere from 75 to 85 percent of King's Bayou and
4 other small reefs around there. They didn't
5 properly put the spoil to where the spoil needed to
6 go.

7 The Corps that permitted them -- I called
8 up and said, "We have a problem with this corridor
9 coming on" -- I said, "You're covering up the reefs.
10 Y'all are letting them cover up the reefs."

11 The fellow on the phone told me -- said,
12 "You need to get a real job."

13 "Well, I just took it over from my grandpa
14 and dad and his grandpa. Been there for a lot of
15 years." In fact, the reefs they dug up and in other
16 areas they covered up, they were probably here when
17 the Indians got here. It was the law of nature.

18 The oysters up the bay, when they built
19 Brookley Field, they dug big holes. They pumped
20 them out to help make the airport. Well, just
21 recently, just a few years ago, they allowed them to
22 fill the holes up.

23 Well, in that process, I had a number of

1 fishermen called me and said -- let's see. It was
2 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
3 [REDACTED] [REDACTED] And all of them was
4 hollering, "We're finding dead oysters in our nets
5 where they was alive."

6 So the spoil they put in the holes, they
7 call it epoxy in the hole. But that hole is the
8 area the fish got in the freezing cold weather. If
9 they didn't get in the hole, they died; they froze
10 to death. So they're saying that the fish was being
11 smothered by lack of oxygen.

12 And guess what a fish and a crab has on
13 his back end? He's got something they call fins and
14 tail. When they see low D.O. -- dissolved oxygen or
15 hypoxia -- they swim out of it. The oyster can't
16 move. The clam can't move. How do you say --
17 that's elementary.

18 The elementary thing is when you don't
19 recognize what spoil does and high humidity does to
20 a living reef. It smothers it to death. And any
21 fish or any spat cannot set on shell because of
22 silt. Good biology or good science will not put in
23 the document that they put out there saying there

1 will be no damage. There's been no damage. There's
2 damage been going on for years.

3 Guess where Gaillard Island was placed?

4 [REDACTED] -- I don't know if you know him, but
5 he was the head environmentalist. He said, "I
6 needed that foundation of the shell and clamshell --
7 living reef -- for my rocks." "The rocks" being
8 Gaillard Island.

9 Nowadays guess who is making home the
10 ground rocks, in the rocks, and on the spoil? [REDACTED]

11 [REDACTED] said he's worked with the FDA. He said,
12 [REDACTED] we got a problem."

13 I said, "What?"

14 "11,000 nests -- 22,000 pelicans is on the
15 island." This six years, seven years ago.

16 Now, if 22,000 pelicans are allowed, they
17 don't use restrooms. You know that? Pelicans --
18 they just go and do what they naturally do.

19 Elevated levels of fecal. Too much fecal, it's not
20 good for the water, not good for the oysters can
21 live in it. But when it gets too high, you start
22 seeing D.O. and contamination, "stay out of this
23 water" and "you can't swim over here."

1 And that being, you killed the reef, you
2 eliminated -- I mean, you created a massive problem:
3 merge are multiplying by the thousands every year;
4 therefore, the poop is multiplying by the thousand
5 pounds or millions of pounds over the last four or
6 five years.

7 what do we do when we shallow the bay up?
8 We put stuff in the bay -- when you have MAWSS --
9 Mobile Area Water Sewer System -- that effluent that
10 is coming out of that pipeline mixed with the silty
11 turbidity -- and saltwater is heavier than
12 freshwater. If you shallow it up, you don't have
13 the proper dilution. For every gallon of effluent
14 it takes 1,000 gallons of water mixed with that --
15 what they call "dilution is the solution."

16 what happens, when you fill the bay up,
17 massive amounts -- thousands upon thousands, even
18 millions of cubic yards of silt. It makes things
19 like it created on the west side -- dumps. When you
20 say you're going to fill the old holes up, I'm going
21 to tell you, you're creating more what you call
22 stratification of water, water layering, because
23 you're having less dilution. And most of the water

1 now is being pushed out of the channel by the dump
2 that is already there. And it's going to be greater
3 now by the elevated sides on the west side and the
4 east side. Because they got plans -- both the west
5 side -- to put dumps and elevate these dumps.

6 You will never have an oyster reef.
7 Never. Why? You're killing the bottom. You're
8 killing the resources. A living reef and the
9 biomass it puts out, all of the shrimp and crabs and
10 all of the things -- that oxygen -- the water
11 filtration, it ceases to happen. The flat silty,
12 muddy bottom does not create oxygen.

13 These living creatures and bivalves -- the
14 clams, the oysters -- is habitat for critical,
15 critical seafood. You say it's not too critical for
16 me; I don't eat oysters. Not too critical for me; I
17 don't eat crab. But I tell you, I paid for my son
18 with crabs. And my occupation, I think -- not only
19 mine -- the seafood I catch, you get to eat when you
20 go to the restaurant: The fish, the shrimp -- the
21 tons of stuff that God blessed us with -- the
22 estuaries, the estuarine waters, the fresh coming
23 out and into the bay, that habitat is conducive to

1 having great reefs.

2 How come we seen them go away? How come?

3 You say, we've done that already. Well,
4 fishing on Cedar Point or oystering on Cedar Point,
5 and the gullies, Big Gully, coming on in -- first
6 you got Peter Gully, Big Gully, Dutch Gully, and
7 then you got Pass In Sweet. On the other side, you
8 have got -- the on the other side of Big Gully,
9 you've got Grant's Pass. This is -- historically
10 Fort Powell used to be in that area.

11 But on the other side, you have Redfish
12 Gully. Then you had Muscle Gully. This is where
13 what they used to call Peavey Island is on. And
14 then from there down, you had the sand reef.

15 All of the different ships and stuff
16 coming down that channel, throwing mountain seas --
17 I mean mountain seas -- you would holler at your
18 fellow oystermen, "You get down in the boat," and
19 they would turn around and see 4- to 6-foot waves
20 coming at you. Ships going down the channel 17, 16
21 knots, throwing at sea.

22 Have you ever seen -- you go in a bayou,
23 and they will have signs "No Wake Area"? They

1 didn't put that on oyster reefs or the ship channel.

2 So what happened?

3 All of them tons and tons of water --

4 remember, each gallon of water weighs 8 pounds.

5 When you have 6- to 8-foot waves coming at you, what

6 about all of that seafood that is along the coast?

7 All of the little juvenile crabs and all of the

8 shrimp?

9 If you're sighting oysters along that

10 beach there at Patty's Shoals and down that beach

11 and towards the cutoff, you don't sight there no

12 more. Because here comes a wave at you that will

13 throw you up in rocks if you're not careful now. It

14 used to be they would throw you up in the grass.

15 But what happens? All of the little

16 creatures that are along that coast, he gets throwed

17 up on dry land or up in the rocks. Some of them

18 don't live through that. why? Can't get back over;

19 until the next ship comes by, and he's dead by then.

20 But you say it's funny. It ain't funny if

21 you're trying to make a living. And if you want to

22 buy a flounder from a fellow that is down that beach

23 trying to catch you a flounder, you don't get to go

1 to the store. That flounder that once was a dollar
2 a pound is now so few that they're \$5 a pound and
3 you had to buy him out of China somewhere or
4 Louisiana.

5 Now, what I once received from my heritage
6 from my papa was a reef that I could feed my family
7 on. It was like manna. I know you know what "manna"
8 is. I could go out and get my limit, come back
9 home, get a good day's work. And I was kind of
10 proud of that.

11 My son, he didn't really particularly care
12 to oyster. But I taught him how to work; so did my
13 grandfather and my father. Can't do that now.
14 Reefs are closed. What reefs are left -- very few
15 reefs are left. Siltation has got worse. Sometimes
16 you never see any clear water. Why? Why is that?

17 You say, well, turbidity causes nobody
18 soft-shelling along the beach, nobody floundering at
19 night along the beach. You can't see the bottom.
20 why? Here comes another ship or crew boat that is
21 115 foot long. There you go. Losing hours and what
22 you call critical fishing time.

23 But the sad part about it is when you come

1 and see the Corps and they told you over the phone
2 "I need to get a job."

3 well, I hope and pray, if he eats seafood,
4 he don't have to eat them Korean oysters or from
5 China or some other place that don't have an EPA or
6 Clean Water Act.

7 Guess what statutory law 2222-1 -- well,
8 number two says, "This defines what pollutes our
9 water." Guess what's the number one thing on the
10 statutory law that I just quoted you: Dredge spoil.
11 why? Dredge spoil can kill a reef for generations.
12 Forever.

13 They put 10,000 cubic yards on what they
14 call the Denton Reef not too many years ago. Do you
15 remember Jeremiah Denton? There's a reef off of
16 Fowl River named after him. It's 10,000 yards.
17 Circled with riffraff. Guess how many oysters were
18 caught on there? None.

19 I sent my brother out there with a dredge
20 when they opened dredging. He was always against
21 it. And he said "Try that right in the middle of
22 what they got" -- and they found no shells. Only
23 silt and mud.

1 who benefited?

2 when you get silt and mud, the fish didn't
3 benefit. The oysters didn't benefit. The water
4 wasn't helped to be cleared. The oysters filter
5 feed roughly 50 gallons of water a day. All of that
6 is dead. Ships are going to get bigger and get
7 faster.

8 Just two weeks ago, I talked to [REDACTED]
9 [REDACTED] He shrimps in the channel. His Buddy,
10 CAPTAIN SID -- that's the name of the boat -- [REDACTED]
11 [REDACTED] - is dredging in the channel. Here come a
12 container ship.

13 He called him up and said, "Captain, would
14 you slow her down a little bit?"

15 He said -- this what the container ship
16 captain said: "I'm not going but 13 knots."

17 13 knots with a giant ship with a big
18 bubble on the bow raising the water up? Tearing the
19 beaches up? Washing the grass beds up? Flipping
20 over any oysters that might be growing? Smothering
21 it to death?

22 Now, you tell me somebody can tell you
23 there's no -- and they did. They told us in the

1 last meeting. The Corps said, by their scientists,
2 there will be no impact. Either my eyes are lying,
3 or somebody has been bought off. Thirty pieces of
4 silver is not worth generations of good habitat, if
5 you know what I mean.

6 My grandchildren will never see what my
7 grandfather showed me. why? we're killing
8 ourselves by allowing special interests -- I don't
9 care who it is -- if it's Radcliff, Mobil Oil, or
10 Standard, or whoever -- does not have the right to
11 destroy where we navigated all of our lives and
12 can't navigate now.

13 And to start our commerce that we brought
14 to Bayou La Batre -- Coden -- Alabama Port, Heron
15 Bay -- that was commerce where we had at one time 54
16 oyster shops. And most of them handled Alabama
17 oysters.

18 Guess what? we had roughly -- at the most
19 this year in Heron Bay, it only stayed open one
20 week. There was only 29 sacks caught from the
21 vessels that went out -- 29.

22 Now, the last day, there was four boats
23 went out. From hundreds -- I mean, 3-, 400 back in

1 the '60s -- to 4 and finding nothing? well, I
2 sure hope something changes.

3 I don't want to stop the ships from
4 running the channel. I don't want to stop anybody
5 from a job. But I don't think their rights -- the
6 property that is in this bay -- which is the
7 bottoms.

8 Law 9-12-20 says all of the river bottoms
9 and all of the bay bottoms are the property of the
10 state to be held in trust for the people of the
11 state.

12 Do you know what a judge said with Sanders
13 vs. the State of Alabama?

14 Sanders was told, "You are a business and
15 a trade, commercial fishermen." And, therefore, in
16 a precedent case, the U.S. Supreme Court, Traux --
17 T-R-A-U-X -- versus Corrigan -- a business is
18 considered property. And law 9-12-20, all of the
19 seafoods are considered property.

20 Now, if the bottom is property and the
21 seafood within the water is property, and that
22 property belongs to the people of the state --
23 because it also states that on page 290 of the

1 Alabama -- Title 9 of the Alabama Code, 1976.

2 Now, if the judge said that your business
3 or trade -- and guess what? In law 9-12-125, the
4 only persons that can sell seafood in this state is
5 licensed commercial fishermen.

6 You say, "Whoa. Wait a minute. All of
7 the seafood shops has to buy them from the fellow
8 that gets out there and catches them." If there's
9 none to catch, there's not to put on the market.

10 Even the recreational fishermen -- There's
11 no redfish because there's no reefs; there's no
12 speckled trout because grass beds have been
13 destroyed -- then the law of nature has been impeded
14 from doing what it's always done. So is that
15 lateral movement of the sand coming from east to
16 west.

17 We saw -- because I shrimp in Pelican
18 Bay -- years ago, even when Pelican Bay was
19 opened -- and they actually had a fishing pier on
20 Dauphin Island. The fishing pier is still there,
21 but it's filled with dirt under it called sand. And
22 it goes out west. It's been starved for a good
23 sand.

1 Twenty million cubic yards are put in the
2 offshore disposal area, never to meet back, to feed
3 Dauphin Island.

4 Back when I was shrimping, that cut was
5 open. And the sand and everything else -- when that
6 tide was falling to the west, it fed Dauphin Island
7 with healthy, good, beach-quality sand.

8 When you stopped that littoral movement
9 and haul it offshore and take it out of the natural
10 habitat that nature made -- the law of nature -- the
11 tide rises and falls east to west. When you impede
12 that, you destroy our only barrier island that is
13 crucial for seafood and the city of Bayou La Batre
14 and the estuaries of Grand Bay.

15 And not only that, we used to fish down
16 there off of Grand Batture and shrimp. Nothing from
17 Petit Bois across is still there. It's miles of
18 open water. Now we fill the gulf in Grand Bay. We
19 fill the gulf right there at the mouth of Bayou La
20 Batre. What do you mean? Giant swells that you
21 fill from the gulf -- never filled that 30 years
22 ago, 40 years ago.

23 What's happening? You starve something

1 like sand movement; you see the barrier islands go
2 away; you see elevated levels of selenium coming
3 straight in from the gulf. You impede the feeding
4 of the bay, Bayou La Batre bayou, Little River, and
5 all of the other little -- Henderson Bayou -- all of
6 the other little bayous that comes in these bays --
7 Fowl River, West Fowl River, Coden Bayou, all of the
8 little bayous that feed the freshwater into our bays
9 that make the estuarine system suitable.

10 Now, Dauphin Island is important to me. I
11 don't want to go lay on the beach. Don't get me
12 wrong. But I want that beach to stop at 40 plus
13 part per thousand, 35 parts per thousand of gulf
14 water that's impeding the oyster reefs by Falk's
15 oyster drills.

16 The habitat is suitable now for predators
17 that used to stay out because of the freshwater.
18 But now the dilution effect of the gulf has made the
19 gulf in the bay. I don't think that if we keep
20 letting Alabama lose its barrier island, and not
21 extend it back like it used to be, it's going to get
22 any better.

23 The Corps of Engineers can help. So far,

1 projects like this, when they say no mitigation
2 necessary, no habitat restoration -- let me tell
3 you. We call it mitigation, don't we? Guess what
4 the Old Testament called it? If you destroyed
5 somebody's property, they said "restitution."

6 If you give somebody a permit to destroy
7 it, it's almost buying a gun and handing it to him
8 and saying, "Look. I didn't do it. I just give him
9 the permit." There's a small line between killing
10 somebody and murdering somebody.

11 "What do you mean?"

12 If you murder somebody, you planned it.
13 Guess what is going on today. A plan to murder
14 Mobile Bay.

15 How do I know? I seen it happen time and
16 time again. Whether it's Kings Bayou Reef or
17 whether it's the White House Reef or where it's the
18 reefs up the bay -- I have seen them destroyed by
19 silt, covered up.

20 And for them to get in here and put it in
21 writing where "There's no wave action. Only
22 0.7 feet" -- Lord, help them. Because it ain't good
23 to lie to somebody. At least I don't think it is.

1 And my business is just supporting -- Bayou La
2 Batre's commerce is just supporting Mobile. why?

3 When you go to Destin or any other place
4 in Baldwin County, and they say, "where are y'all
5 getting your seafood?" They say, "From Bayou La
6 Batre." why? why Bayou La Batre? It's the seafood
7 capital of Alabama.

8 And old stinking fishermen like me have to
9 go out there and catch it for y'all. I love to do
10 it. I'd love for everybody to do it. Recreational
11 and commercial. It don't belong to one group. It
12 belongs to everybody in the state and in the
13 country. why?

14 well, it ain't the king's deer or fish.
15 It's the people's. We only are the ones that get
16 out from and catch it so you can set around and good
17 table like and enjoy it. And if you let somebody
18 destroy it, we're the losers. You are the loser.

19 And these congressmen say, "whoopie, look
20 what we're going to get done." well, let me tell
21 you. Congress can make some laws, and they have.
22 But every one of them stand up there and say, "I
23 swear to uphold the Constitution of the United

1 States," or "Wait a minute. I don't swear. I
2 affirm." Okay.

3 Alabama Constitution 279, "I swear to
4 uphold the Constitution of the United States and the
5 Constitution of Alabama. The rights of men, Alabama
6 Constitution -- I like it better for one reason.
7 Just a few things in there is great. Why?

8 Article 1, Section 1 says, "The rights of
9 men" -- it says, "We are endowed by our Creator to
10 have certain inalienable rights; that among these
11 rights, are life, liberty, and the enjoyment of
12 life."

13 What about the federal Constitution? It
14 says basically the same thing in a way. But if the
15 5th Amendment of the U.S. Constitution says you're
16 entitled to life, liberty, and property.

17 Now property being seafood, it doesn't
18 have to be just land, even though Jeff is losing
19 land all the time on Dauphin Island. But he ain't
20 the only one losing it. That Alabama Constitution
21 said, "Any laws that are made in 282 of that Alabama
22 -- it must show effect to the U.S. and the Alabama
23 Constitution."

1 So these people are saying they have got
2 the right to come in there and put false science --
3 my goodness -- Magnuson-Stevens Fishery Management
4 Act -- do you know what it says in part 2?

5 Part two -- and that's Title 301, Title 3
6 and 301, now, and it states on the 10 national --
7 number two, it says "you must use the best science."
8 The science I see here is flawed. It's so -- I'm
9 going to tell you. I would be ashamed to say I was
10 a scientist and say there's no damage to deepening
11 and widening the channel. I would be ashamed to
12 come in here and tell somebody -- look them straight
13 in the eye and say, "There will be nothing wrong
14 with the wake of 0.7 feet," when we seen as high as
15 8-, 7-, 6-, 4-foot waves, according to what size
16 ship you want to see and roll you up on the beach
17 and then say there's no wake over 7 foot.

18 They way they monitored it, I don't blame
19 it. You have Gaillard Island that said "we put
20 5/10th of -- north of Gaillard Island. Completely
21 covered from any ship wake, most of it by Gaillard
22 Island and the dumps that goes northward on the west
23 side. Somebody's science is flawed. Observation

1 tells me it's wrong.

2 There's two major things that you always
3 want to look for. The law of nature and the law of
4 revelation, if you're a scientist.

5 First of all, the water runs downhill from
6 the river. It runs out. The law of revelation --
7 [REDACTED] one time said -- this is a biologist.
8 He said, [REDACTED] we can't find no oysters up the
9 bay."

10 I said, [REDACTED] are you trying on the
11 bottom?"

12 He said, "Yes." He said, "Our graduate
13 students can't find no oysters." He said, "We want
14 to sample them to check and see if there are any
15 heavy metals."

16 So I said, "Come get on the boat with me."
17 I said, "I ain't going to show you all the reefs.
18 I'm just going to show you five of them."

19 And he said, "Everywhere you go, there's
20 oysters."

21 And I said, "Everything I own, I had to
22 pay for this bay. I had to know where fish was,
23 where the oysters was, and where the crab was."

1 Population gets real thick around a living reef --
2 population of fish, crabs, and especially oysters.

3 [REDACTED] got to see oysters where
4 they was. I didn't put them there. The Corps sure
5 didn't. The law of nature put them there. And he
6 put them there for everybody.

7 And "The profit of the earth" -- Solomon
8 said this in Ecclesiastes 5:9 -- "it belongs to all.
9 Even the king has to eat from his peers." Think
10 about that.

11 You own them as much as everybody. So
12 your brother that gets up there and says "And we put
13 in a proposal on that first-time container ship --
14 this little association right here, Organized
15 Seafood Association, put in a proposal when that
16 first container dock was built for mitigation of
17 covering up oysters in open Mobile Bay.

18 Guess what? Alabama State Docks said no.
19 No way. So now we're going to get a big change.
20 Because what I say and what all of my fellow
21 fishermen say -- some of them's got so apathetic
22 about coming to these meetings because they see the
23 scientists come up with their own idea of who is

1 going to impact what. And if they come to the point
2 like they have come to, "We are worth more than
3 y'all."

4 In America, in the 14th Amendment of the
5 U.S. Constitution, they said every citizen that is
6 born here naturally is entitled to life, liberty,
7 and property. But in the last part of that, it
8 says, "You're entitled to equal protection of the
9 law."

10 Think about this. Equal protection of the
11 law should be for me, should be for the Alabama
12 State Docks. When Mr. Jimmy Lyons has said no to
13 that proposal the first time, because we handed it
14 to him, being the head -- you want to hand something
15 to the people that are supposed to have power, don't
16 go to the servant. Go to the king that's handing
17 the bills.

18 And he thought, "No damage." But yet you
19 hear the fishermen saying different. And they knew
20 it, because we've had meetings with them at the
21 Lighthouse Restaurant. All the fishermen got there
22 across the bay, crabbers, telling them the damage
23 that they have seen.

1 I ain't got money to buy a scientist off.
2 I have seen it happen. The State Docks does. The
3 Corps of Engineers does. If you can put out data --
4 and we fight what observation and true facts are
5 just by men saying, "No damage is going to be done,"
6 and yet there's damage done.

7 I strongly suspect they're going to --
8 without any change of plans, you will see Mobile Bay
9 worth almost nothing living up the bay. You will
10 see people over there in Fairhope saying, "How come
11 I can't go swimming?" There's had a problem with
12 the fecal in the water and a problem with D.O.,
13 dissolved oxygen. We've seen it happen time and
14 time again. So there's reasons for it.

15 If you fill the bay up on both sides, you
16 make a channel, you lose all of your freshwater
17 coming out on top. And then you let a salt wedge
18 come through the bottom into the delta, changing
19 fish habitat, letting predators like oysters drills
20 eat up the costs, the clams. Everything that we
21 used to never see up the bay, we now see just on
22 already changed habitat.

23 But you go down as deep as they want to

1 go, you might be catching swordfish and marlin out
2 there. I'm just joking. But they are already
3 catching red snapper. Some of my friends, both
4 recreation and commercial, have seen it.

5 Forty-five years ago, thirty years ago, it
6 was not happening. Them fish have habitat --
7 especially salt water. The other fish that we have
8 come in here need freshwater. They like to have an
9 estuarine area -- not a gulf.

10 So, buddy, if it's any seafood left out
11 there in the future, wild caught is the best. why?
12 It's iron and omega 3. Some of our shrimp, like our
13 brown shrimp and our -- especially our hoppers --
14 what we call pink shrimp in Florida -- it's still
15 good for you. Fish, it's good for you. It helps
16 clean your veins out.

17 I had a fellow say, "well, I don't eat
18 menhaden." I said, "Are you on a" -- I was
19 talking to NOAA at the national marine fish venue
20 we had. And I looked at the fellow. He was kind of
21 like me, kind of stout.

22 And I said, "Do you take omega-3?"

23 "Yeah. My doctor has got me on omega-3."

1 And I said, "Guess where that omega-3
2 comes from?" I said, "That's fish oil." I said I
3 usually get it fresh out of the bay. But I said,
4 "You would be surprised how many pogies -- menhaden.
5 They use that oil for perfume, for omega-3 oil, when
6 they process it, that you might take it so that your
7 veins are cleaned for good cholesterol. So don't
8 say you're not eating pogies, because you might eat
9 some of his" --

10 Well, we could go on a little further
11 along. But that Magnuson-Stevens Act, that part 5
12 of the Magnuson Steven Act says "The value of the
13 fish does not determine who gets it;" or anything
14 like snapper, only the recreational fishermen can
15 catch it.

16 What happens is, when we let somebody have
17 a monopoly -- I don't care if it's AT&T or State
18 Docks on navigation -- we should never let somebody
19 totally have the right to navigate our bays or to
20 destroy our bays and to impact our little towns and
21 our little cities because this city is bigger.

22 A lot of little towns produce some good
23 people and good jobs. We're important too. We may

1 not drive a Mercedes or one of them expensive cars,
2 but a Ford truck will haul oysters and a Chevrolet
3 truck will too. And I have hauled a lot of oysters
4 to shop. Maybe you've gotten to eat some. Maybe
5 Jimmy got to eat some. But it was fun for me to get
6 up and go out there and work and catch them. And it
7 was fun to eat them too.

8 So whatever comes of this could be the
9 death of the bay. And these so-called scientists
10 with their science they call good science -- I don't
11 think so. You earn a good reputation by doing good
12 science. Bad science ain't good. And you can see
13 the results of it. So is Dauphin Island seen the
14 results it and Bayou La Batre and Coden and Heron
15 Bay and Fowl River.

16 But I want to tell you, Gulf Shores -- not
17 only Gulf Shores but Orange Beach eat a lot of good
18 seafood out of those towns. And it's from some
19 hard-working people on what nature put out there for
20 them. Just don't lose all of it. Let's don't let
21 them lose all of it.

22 Let's be good stewards. A good steward is
23 somebody that likes to be a good farmer. And I

1 think a lot of this was good farmers. But you can't
2 farm if you haven't got a field. That's a fact.

3 All right. I done said enough.

4 * * * * *

5 [REDACTED] MOBILE, ALABAMA:

6 okay. I was here tonight to talk about
7 the vessel wave energy study that the Corps did and
8 the results. And their study shows that there will
9 be more ships as support grows to 2035. But the
10 economic executive summary states that, without the
11 project, there will be more ships. And, in fact, it
12 doesn't matter that with or without the project
13 there are more ships, which means more ships waves,
14 which means more impact to the shoreline. And I
15 want that to be explained differently in the
16 environmental impact statement to clarify that,
17 either way, with or without the project, there are
18 more ships and more ship waves due to just growth.

19 The other question we had has to do --
20 let's see -- this is my associate's question: we
21 want an analysis done on the vessels speed reduction
22 program, how speed affects the waves, the
23 relationship. If there could be some analysis done

Comment 300

1 all over the bay -- not just north of Gaillard
2 Island -- on the fact of the ship waves to the
3 shoreline, rather than just strictly the north end
4 of the port where the channel is, where the ships
5 are going the slowest, but what about further down?
6 What is the effect of the waves as the ships speed
7 up? What is the relationship there?

8 And I also was concerned about the -- why
9 the Corps is making their passing lane at the far
10 end, or the south end, of the channel. Was there
11 ever any study done to show where the most efficient
12 port operation -- the placement of the passing lane
13 or parking lane to maximize the use of the berths of
14 the port.

15 Because, as it appears now with one-way
16 traffic on the larger ships, the ship will leave a
17 berth and have to travel all the way to the south
18 end of the channel before it could meet the ship
19 that is going to replace it in the same berth. And
20 that is probably a two-hour delay or four-hour
21 delay. It takes two hours to go down, and then it
22 has to wait two more hours for the next ship to come
23 up to that berth. Was there ever any consideration

1 made to put the different port configuration or
2 different channel configuration so that it would
3 maximize the operation of the ports.

4 Okay. I have one other. And it's a
5 little bit -- I noticed it in the projects. We have
6 one project right north of Fowl River on the marshy
7 area that they're intending to put shoreline
8 protection in front of the marsh. But it doesn't
9 appear that they did any study to show the effect of
10 the ship waves on the marsh. And the way the
11 shoreline protection is placed, they're facing
12 southeast; whereas, the ship waves come from the
13 northeast; so you're actually diverting ship waves
14 into the marsh. And I think you may be going to
15 cause a problem by doing that. You may need to
16 reconsider some of the parameters that you're
17 placing these -- using to place these shoreline
18 protection structures.

19 All right. Appreciate it.

20 (PROCEEDINGS ADJOURNED AT 8:00 P.M.)

21 - - -

22

23

1 C E R T I F I C A T E

2 STATE OF ALABAMA)

3 MOBILE COUNTY)

4

5 I do hereby certify that the foregoing
6 proceedings were taken down by me and transcribed using
7 computer-aided transcription and that the foregoing is
8 a true and correct transcript of said proceedings.

9 I further certify that I am neither of
10 counsel nor of kin to any of the parties, nor am I in
11 anywise interested in the result of said cause.

12 I further certify that I am duly licensed by
13 the Alabama Board of Court Reporting as a Certified
14 Court Reporter.

15 Signed this 17th day of September 2018.

16

17

18 L. ALAN PEACOCK, FAPR, CCR, RDR, CRC
19 NCRA REALTIME SYSTEMS ADMINISTRATOR
20 ALABAMA ACCR No. 13, Expires 9/30/18
21 MISSISSIPPI - CSR #1899, Expires 6/7/19
ILLINOIS - CSR # 084.004827, Expires 5/31/19
LOUISIANA - CCR #2015013, Expires 12/31/18
COURT REPORTER, NOTARY PUBLIC
STATE OF ALABAMA AT LARGE

22 My Notary Commission Expires: 10/9/2019

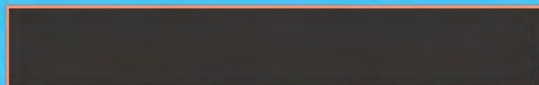
23

Comment 301



Comment: As a cynic, I see another nail being driven into the coffin what was once named The Bay of the Holy Spirit. We need the Bay for its resources and not as a money machine for a few individuals. The cumulative effect of "minimum impacts" is the death of us all.

Comment 302



Phone: _____

Organization: Sierra Club

Address: _____

Comment: ① Longterm costs of NOT doing Best Practices & what ^{costs of} we're losing from ^{those} maintenance practices. ~~(Move forward)~~

* ② Include public-private relations to use all types of dredge material. Every aspect should address SLR.

Concerns over ~~how~~ ^{where} Hoppers
disposed material

~~Corps permits dredging practices~~

Accountability of consequences
for other projects that may
be permitted by the Corps

From: [Rees, Susan I CIV USARMY CESAM \(US\)](#)
To: [Parson, Larry E CIV CESAM CESAD \(US\)](#)
Cc: [Reynolds, Lekesha W CIV \(US\)](#); [Jacobson, Jennifer L CIV USARMY CESAM \(US\)](#)
Subject: FW: [Non-DoD Source] EIS (UNCLASSIFIED)
Date: Tuesday, August 28, 2018 12:15:46 PM

CLASSIFICATION: UNCLASSIFIED

FYI

-----Original Message-----

From: John Valentine [<mailto:jvalentine@disl.edu>]
Sent: Tuesday, August 28, 2018 9:32 AM
To: Rees, Susan I CIV USARMY CESAM (US) <Susan.I.Rees@usace.army.mil>
Subject: [Non-DoD Source] EIS

Susan,

There are some errors in this paragraph:

Within the project area, SAV is found primarily along the northern shorelines of the bay and throughout the immediate shorelines. These areas are characterized by shoal grass (*Halodule wrightii*), manatee grass (*Cymodocea manatorum*), turtle grass (*Thalassia testudinum*), and widgeon grass (*Ruppia maritima*) (USACE, 2009a).

Based on the maps, manatee grass and turtle grass do not occur in the project area. likely the turtlegrass was actually *Valisneria*. Not sure about the manatee grass.

CLASSIFICATION: UNCLASSIFIED

From: [Rees, Susan I CIV USARMY CESAM \(US\)](#)
To: [Parson, Larry E CIV CESAM CESAD \(US\)](#)
Subject: FW: [Non-DoD Source] (UNCLASSIFIED)
Date: Tuesday, August 28, 2018 12:23:50 PM

CLASSIFICATION: UNCLASSIFIED

-----Original Message-----

From: John Valentine [<mailto:jvalentine@disl.edu>]
Sent: Tuesday, August 28, 2018 9:46 AM
To: Rees, Susan I CIV USARMY CESAM (US) <Susan.I.Rees@usace.army.mil>
Subject: [Non-DoD Source]

Also note the generic designations for the shrimp have changed, Penaeus is no longer a catch all
CLASSIFICATION: UNCLASSIFIED