UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
ECOSYSTEMS, TRIBAL AND
PUBLIC AFFAIRS

May 17, 2011

Ms. Christine Stevenson
EHW2 EIS Project Manager
Naval Facilities Engineering Command, Northwest
1101 Tautog Circle
Silverdale, Washington 98315-1101

RE: U.S. Environmental Protection Agency (EPA) comments on the U.S. Navy (Navy) Trident Support Facilities Explosives Handling Wharf (EHW-2) Draft Environmental Impact Statement (DEIS). EPA Project Number: 09-024-DOD

Dear Ms. Stevenson:

The EPA has reviewed the Navy's EHW-2 DEIS and we are submitting comments in accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. Under our policies and procedures, we evaluate the environmental impact of the proposed action and the adequacy of the impact statement. We have assigned an Environmental Concerns – Insufficient Information (EC-2) rating to the DEIS. A copy of the EPA rating system is enclosed.

We recognize and appreciate the Navy's substantial effort to navigate the NEPA process for the EHW-2 project. The Navy's outreach - through the project website, agency and public meetings, and written materials - has been substantial. Also, the DEIS reflects meaningful research and, overall, adequately sets forth many of the environmental impacts of the action alternatives. Our comments are intended to help the Navy address what we believe to be the few, yet important, remaining informational gaps.

We also appreciate the Navy's responsiveness to our July 17, 2009 scoping comments. Notably, the DEIS's Mitigation Action plan is an important step toward developing an integrated and comprehensive adaptive management plan. The DEIS's disclosure of responsible parties, implementation schedules, planned funding, mitigation-specific performance criteria, monitoring and tracking mechanisms, and enforcement measures is especially responsive. Mitigation measures associated with anchor lines and overall vessel operations (oil and debris booms, restrictions for shallow water, guidance for thrust) are largely responsive to our vessel-related construction and operation impacts recommendations. Other examples of the DEIS's responsiveness to our scoping comments include the incorporation of lessons learned from existing facilities – such as the Carderock Pier Project; and indicating how climate change considerations relate to project decision making.

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Our primary environmental concern with the project is that the unavoidable high sound levels associated with pile driving would adversely impact fish, marine mammals, and other wildlife. Our informational concerns are that the DEIS does not contain sufficient information for EPA to assess whether the project's avoidance, minimization and compensation measures would fully protect the environment. To address avoidance and minimization concerns, our enclosed comments include recommendations related to the Range of Alternatives, and the relationship between the Mitigation Action Plan and the Test Pile Program NBK Bangor Waterfront. To address compensatory mitigation concerns – specific to this NEPA process - our enclosed comments include recommendations related to the scope of Clean Water Act Section 404 and the Navy's proposal to develop an In-Lieu Fee program.

Thank you for this opportunity to provide comments and if you have any questions, please contact myself or Erik Peterson at (206) 553-6382 or by electronic mail at peterson.erik@epa.gov. For Clean Water Act Section 404 questions please contact Linda Storm at (206)-553-6384 or by electronic mail at storm.linda@epa.gov.

Sincerely,

Christine B. Reichgott

Christine Reichgott, Unit Manager
Environmental Review and Sediment Management Unit

Enclosures
EPA Detailed Comments for the EHW-2 DEIS
EPA Rating System for Draft Environmental Impact Statements

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EPA DETAILED COMMENTS ON THE NAVY EXPLOSIVES HANDLING WHARF EIS

Range of Alternatives

We believe the FEIS should include additional information on alternatives considered which could further avoid and minimize the EHW-2's environmental impacts. Additional information on alternatives considered would help to better set the stage for meeting Clean Water Act requirements to demonstrate that the proposed alternative for the EHW-2 is the least environmentally damaging, practicable alternative to meet the project's purpose and need. We recommend, for example, that the FEIS describe efforts to consider alternatives to EHW-2 with the following elements:

- One large trestle, rather than a circle.
- Moving the near-shore trestle closer to EHW-1's trestle. Would this reduce fragmentation impacts to eelgrass and macroalgae?
- Eliminating the warping wharf. EHW-1 does not have one.
- Smaller overall size of the EHW-2 building – more similar to that of EHW-1.
- Higher overall trestle height, especially over the nearshore environment.
- Reduction of nighttime lighting.
- Alternative configuration and density of pilings to reduce environmental impacts.

Mitigation Action Plan

Test Pile Program

The EHW-2 DEIS Appendix F references the "Test Pile Program NBK Bangor Waterfront" with regard to confirming steel pile impact driving noise level predictions. We are concerned that the DEIS's Mitigation Action Plan does not incorporate or reference other, potentially relevant, findings from the Test Pile Program – such as testing the viability of ceasing impact pile driving if forage fish eggs are detected in the action area and covered with water.

Recommendation:

- We recommend the FEIS, especially the Mitigation Action Plan, incorporate - to the greatest extent possible - findings specified the Test Pile Program Draft EA's sections 4.2.6 – Reporting; 4.3 -Fish Mitigation and Monitoring; and, 4.4.10 Survey Report.[1] Consider, for example, appropriate adaptive management placeholders in the FEIS's Mitigation Action Plan. These placeholders would facilitate the incorporation of relevant environmental mitigation findings from Test Pile Program research as it becomes available.

Scope of Clean Water Act Section 404

We note that in addition to wetlands, streams, and near-shore habitats below the mean higher-high water mark (or ordinary high water mark in freshwaters), Section 404 covers all tidal waters where there is a discharge of dredged for fill material and all habitats in tidal waters and freshwater environments that are impacted by dredge or fill material placement, or wharf construction. Section 404 also covers construction of over-water structures that have the effect of fill (displacing tidal waters and submerged aquatic lands). For EHW-2, EPA believes all

[1] http://www.nmfs.noaa.gov/pr/pdfs/permits/nbkb_testpile_draftea_292011.pdf

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aquatic resources, including tidal and sub-tidal waters, are subject to requirements of the ACE's 404 permit requirements.

Based on our review of the DEIS, we are unsure whether the Navy's interpretation of activities and impacts to aquatic resources covered by Section 404 is consistent with the EPA's view of Section 404. The following statement from the DEIS, for example, appears to reflect an overly narrow interpretation of Section 404, "The proposed action involves fill in waters of the U.S. (see Section 3.14.2.1) and would require a CWA Section 404 permit, although that fill would not directly affect marine vegetation. The fill would consist of armor rock with a cover of backfilled beach material, which would be placed high on the beach, above where marine vegetation occurs." (p. 3.5-26). As noted above, Section 404 would not be limited to direct impacts on marine vegetation. Instead, Section 404 applies to all tidal waters and also covers the construction of over-water structures that have the effect of fill.

While DEIS statements such as the one quoted above give the impression that the Navy is interpreting Section 404 narrowly, the impact summary tables in the DEIS imply that the Navy has interpreted Section 404 more broadly. By disclosing which marine environment categories have a "Consultation and Permit Status" nexus with Section 404, the DEIS's impact summary tables appear to suggest that the Navy believes the following aquatic resource categories are covered by Section 404:

- Marine Vegetation,
- Benthic Communities Including Shellfish
- Surface Water and Groundwater
- Vegetation
- Wetlands

The DEIS does not contain sufficient information, however, for EPA to assess which specific impacts - within the marine environment categories identified above - the Navy believes would be subject to Section 404.

Recommendations:

- We recommend that the FEIS more explicitly disclose which impacts to aquatic resources would likely be covered by a Section 404 permit. Based on the activities and impacts to aquatic resources disclosed in the DEIS, EPA believes the following - and possibly others - would be subject to a Section 404 permit.
    - *Marine Vegetation*: shallow-water habitat, eelgrass, kelp, macroalgae.
    - *Benthic Communities Including Shellfish:* temporary disturbance of benthic community, pile footprints, over-water shading effects to sessile benthic organism productivity, loss of soft-bottom habitat, increase of hard surface habitat.
    - *Surface and Groundwater:* disturbance and regrading, wetland infill.
    - *Wetlands:* freshwater wetland infill, excavation/filling, pile driving for abutment.
- We recommend that the above impacts and activities - which EPA believes would be subject to Section 404 requirements - be discussed in the context of the FEIS Mitigation Action Plan's section on Compensatory Aquatic Mitigation. Consider

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including a table which lists all the aquatic resource types (and areas of water) that will be impacted. Such a table should disclose impacts by categories: direct, indirect, and cumulative.

- Note that where the DEIS states "The Compensatory Mitigation rule was developed to provide better wetland mitigation . . ." and "Any proposed activity that impacts a wetland still needs to be addressed in the following order" the word "wetland" should be replaced by "aquatic environment" or "aquatic resources".
- We recommend that the FEIS take into account relevant information from the Draft Guidance on Identifying Waters Protected by the Clean Water Act released by EPA and the ACE on April 27, 2011.[2]

Summary tables that combine the impacts and activities listed above with clear nexus for Section 404 "Consultation and Permit Status" (e.g., Tables 3.5-7, 3.7-5), is generally helpful and gives a sense of what aquatic resource impacts the Navy believes would be covered by Section 404. Because many of the impacts listed above would likely be covered by a Section 404 permit, we support the statement found in each of the associated impact summary tables, "Under all alternatives, the Mitigation Action Plan (see Appendix F) would compensate for the impacts of the EHW-2". However, we do not agree that the Mitigation Action Plan would fully compensate for the impacts to marine mammals, marine fish, and marine birds, particularly impacts due to underwater noise. The DEIS does not contain sufficient information to support that impacts to these aquatic resources would indeed be compensated.

It is EPA's view that the unavoidable adverse impacts, especially to marine mammals from underwater noise (E.g., "17,000–34,000 behavioral disturbance exposures due to impact and vibratory pile driving"), would be reduced by the Mitigation Action Plan, but not fully compensated. Stating that the impacts would be compensated understates the significance of the actual adverse impacts predicted to result from pile driving activities. Although certain impacts to marine fish and marine birds would likely be compensated through the Section 404 process, the DEIS as written does not sufficiently describe which specific impacts would be compensated. It is unclear whether and how impacts associated with underwater noise would be compensated - under any process.

Recommendation:

- We recommend that the FEIS - including impact summary tables such as Table 3.9-18, the Mitigation Action Plan and other FEIS components - more explicitly differentiate between which impacts to marine mammals, marine fish and marine birds would be reduced and which impacts would be compensated.

In-Lieu Fee Program

Consistent with *The Compensatory Mitigation Rule* we would generally support the use of an approved ILF program for compensatory mitigation in Hood Canal. We agree with the DEIS and note that, regardless of the mitigation strategy, "...Compensatory Mitigation should be determined based on the specific details of the impacted aquatic resources, the watershed, and viability of various Compensatory Mitigation projects that could mitigate the impacts." (p. 6-3).

[2] http://water.epa.gov/lawsregs/guidance/wetlands/upload/wous_guidance_4-2011.pdf

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We also support the development of an ILF program or programs in Hood Canal and note that the Navy's participation in the development of any such program would be a key part of ensuring that program's effectiveness and success.

The DEIS for EHW-2, however, does not contain sufficient information for EPA to determine whether the Navy's preference for an ILF program is possible as the means for providing compensatory mitigation for this project, primarily as a matter of timing. Our concern is that developing an ILF program would likely take too much time to develop in order to provide adequate compensatory mitigation for this project. The timing issue is important because, generally, compensatory mitigation for unavoidable adverse impacts that are authorized by ACE needs to occur either in advance of or concurrent with the permitted project.[3] We recognize that timing issues are different in the case of in-lieu fee programs. According to *The Compensatory Mitigation Rule*, "In-lieu fee programs must have approved instruments before they can be used to provide compensatory mitigation for DA permits." Section 332.8(a)(1) states, "All mitigation banks and in-lieu fee programs must have an approved instrument signed by the sponsor and the district engineer prior to being used to provide compensatory mitigation for DA permits."[4]

Recommendation:

- We recommend that the FEIS's section on Compensatory Aquatic Mitigation incorporate additional information related to the following points.
  - Potential compensatory mitigation projects and sites
    - Describe the aquatic resource types that would be provided as compensation at different sites and how this combination of resource type and mitigation site would likely offset the aquatic resource impacts of the EHW-2 project.
    - Discuss relevant mitigation strategies: preservation, rehabilitation, restoration, or, enhancement by aquatic ecosystem/resource type – nearshore habitat, eelgrass beds, kelp beds, freshwater wetlands, shellfish beds etc.
  - Elements of the proposed ILF program
    - Discuss the proposed credit debit tool's robustness.
    - Include information on the proposed cost accounting method for mitigation projects.
  - Developments in the Navy's ongoing compensatory mitigation process, such as a detailed conceptual mitigation plan, should be included in the FEIS to the maximum extent possible.
- Compensatory mitigation issues, such as those listed above, should be addressed in an interagency pre-application consultation meeting with the ACE.

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[3] See: *Wetland Mitigation in Washington State, Version 1* at http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/guidance/index.html, and, *Compensatory Mitigation for Losses of Aquatic Resources* at http://www.epa.gov/owow_keep/wetlands/wetlandsmitigation/index.html

[4] See Federal Register /Vol. 73, No. 70 /Thursday, April 10, 2008 /Rules and Regulations, pages 19615 and 19680 at http://www.epa.gov/owow/wetlands/pdf/wetlands_mitigation_final_rule_4_10_08.pdf

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- EPA will work with the Navy, the ACE, and all other appropriate federal and state agencies to develop more specific and detailed recommendations on an appropriate compensatory mitigation package for this project.

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U.S. Environmental Protection Agency Rating System for Draft Environmental Impact Statements Definitions and Follow-Up Action*

Environmental Impact of the Action

LO – Lack of Objections

The U.S. Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC – Environmental Concerns

EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO – Environmental Objections

EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU – Environmentally Unsatisfactory

EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 – Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 – Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 – Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987

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