

MEMORANDUM FOR RECORD

SUBJECT: Department of the Army Environmental Assessment and Statement of Findings for the Above-Referenced Standard Individual Permit Application

This document constitutes the Environmental Assessment, 404(b)(1) Guidelines Evaluation, as applicable, Public Interest Review, and Statement of Findings for the subject application.

1.0 Introduction and Overview: Information about the proposal subject to one or more of the Corps' regulatory authorities is provided in Section 1, detailed evaluation of the activity is found in Sections 2 through 11 and findings are documented in Section 12 of this memorandum. Further, summary information about the activity including administrative history of actions taken during project evaluation is attached (ORM2 Summary) and incorporated in this memorandum.

1.1 Applicant: Moda Ingleside Oil Terminal, LLC
POC: Mr. Clayton Curtis
1000 Louisiana, Suite 7100
Houston, Texas 77002-5029

1.2 Activity location: The project site is located on the north side of the Corpus Christi Ship Channel (CCSC) between approximate Stations 520+07 and 540+08 at 262 Coral Sea Road (formerly Naval Station Ingleside), Ingleside, San Patricio County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Port Ingleside, Texas.

Approximate central coordinates:

Latitude: 27.815509° North Longitude: 97.209526° West

1.3 Description of activity requiring permit: The applicant proposes the following regulated activities necessary to make improvements to Berth 2A within the existing East Basin: increase the permitted width of the West Ship Basin from 390 feet wide to 475 feet to allow construction of new barge docks (Berths 7A, 7B, 7C, 8, and 9), add a 1,700-foot-diameter turning basin at the West Ship Basin entrance to the CCSC, add a new deep-water ship dock in the West Ship Basin, and conduct maintenance dredging operations in both the East and West Ship Basins. Improvements at Berth 2A include constructing a pile-supported 35-foot by 70-foot barge platform, which will require moving the existing fender line approximately 38 feet waterward of its current location. Four breasting dolphins and four protection dolphins will be also be installed. The Berth 7 barge dock project includes construction of a barge loading facility within the adjacent upland facility landward of the existing bulkhead. Approximately 59.26 cubic yards of material will be placed to extend the existing bulkhead approximately 491 linear feet along the shoreline to create a new pile-supported barge dock to allow berthing on each side. In addition, 38 barge dolphins will be constructed for the barge dock area. The deep-water dock will consist of Berths 8 and 9, and will include construction of a sheetpile causeway, pile supported

approach, and an 80-foot by 120-foot pile supported loading platform. Twelve breasting dolphins and nine mooring dolphins will support Berths 8 and 9. Approximately 3.9 million cubic yards of material will be dredged to expand the West Basin and provide access to the new berths using both mechanical and hydraulic methods. Within the vicinity of the Berth 7 barge docks, existing bay bottom will be dredged to a depth of -15 feet mean lower low water (MLLW) with a 2-foot over dredge. For the remainder of the West Basin expansion, the proposed dredge depth will be -54 feet MLLW with a 2-foot over dredge and 2-foot advanced maintenance allowance. Turbidity curtains will be utilized during dredging operations to minimize any impacts to adjacent seagrasses, and dredged material will be placed in designated material placement areas. To stabilize the dredge side slope, the project will install approximately 1,350 linear feet of 44-foot-wide articulated block mattress. The condition of the dredge slope and block mattresses will be monitored for a period of five years by conducting annual hydrographic surveys of the basin. The overall dredge footprint will be approximately 43 acres including side slopes, of which 32.8 acres will be at the proposed finished depth. Navigational aids will be installed to mark the limits of the basin and prevent vessels from disturbing nearby seagrass area during operational movements. All dredged material will be placed on Berry Island. Potential dredged material placement areas (DMPAs) for any future dredging, including maintenance, will include all Federally authorized and constructed, upland confined, dredged material placement areas, Good Hope, Dagger Island, and Beneficial Use Sites as available.

- 1.3.1 Proposed avoidance and minimization measures: The applicant states that they have avoided and minimized the environmental impacts by project alterations, design changes, the addition of stabilization features to protect nearby resources, and the implementation of Best Management Practices (BMPs) into the project construction requirements. The project will utilize turbidity curtains to minimize turbidity in the water column and install approximately 1,350 linear feet of 44-foot-wide articulated block mattress to stabilize the dredge side slope to prevent erosion that might affect nearby seagrass beds.
- 1.3.2 Proposed compensatory mitigation: The applicant proposes to mitigate for the proposed impacts by a combination of restoration, establishment of seagrass beds, enhancement of existing wetlands and hard substrate, and preservation of a large Live Oak – Redbay Woodland/pothole wetland forest.

To compensate for the impacts to 8.86 acres of submerged aquatic vegetation and 0.95 acre of estuarine wetland, the applicant will construct approximately 2,000 feet of rock breakwater to provide protection from high wave energy to a dynamic shoreline that supports more than five acres of adjacent estuarine wetlands as well as create conditions conducive to seagrass establishment. The rock breakwater will also enhance the aquatic environment by providing hard substrate for establishment of oysters and associated marine organisms. Following construction of the breakwater, the applicant will plant 20 acres of seagrass landward of the structure within the vegetated bay bottom that historically supported dense seagrass beds.

Additionally, the applicant will preserve 70 acres of on-site forested land that includes a mosaic of pothole wetlands. The applicant will obtain the appropriate conservation easements and land management plans to preserve the acreages appropriately and in perpetuity.

- 1.4 Existing conditions and any applicable project history: The project site is a commercial marine terminal that has been in service for several years. The facility has a previously dredged area (East Slip and West Slip) that was originally authorized under Permit 17847 on December 15, 1987. There are no seagrasses present in the vicinity of the East Slip; however, the West Slip area does have a seagrass area and emergent wetlands present nearby that would be impacted by the proposed dredging and bulkhead extension. The area in which impacts resulting from the currently proposed project will be felt are confined to Ingleside Point next to the CCSC and adjacent shoreline. The impacts that are expected in that area from the proposed project are the dredging of 43 acres of aquatic habitat, which includes 8.86 acres of submerged aquatic vegetation and 0.80 acre of estuarine emergent wetlands. An additional 0.15 acre of estuarine emergent wetland will be lost due to indirect impacts resulting from the project. Also expected are temporary impacts to benthic populations and temporary turbidity associated with the proposed dredging operations.

The proposed project is an amendment to permit SWG-1995-02221 (formerly 17847), issued 15 December 1987, that authorized a dredging and filling operation, construction of a pier and bulkhead, periodic maintenance dredging and transportation of dredged material for the purpose of offshore disposal, and mitigation. Amendment (01), issued 24 August 1988, authorized a change in the configuration of the mitigation site. Amendment (02), issued 19 December 1990, authorized the enlargement of the previously authorized pier. Amendment application (03) requested the enlargement of a previously authorized turning basin; however, the application was withdrawn. Amendment (04), issued 26 November 1991, requested authorization to revise mitigation requirements. Amendment applications (05), (06), and (07) requested authorization to modify the size of the turning basin, the size of the pier and dredging extents, and placement of fill for facilities, respectively. These three applications were withdrawn. Amendment (08), issued 12 December 1995, authorized an extension of time for the placement of fill for facilities and the performance of maintenance dredging and placement of dredged material. Amendment (09), issued 31 October 1997, authorized the placement of fill in an additional 0.745 acre of wetlands for the construction of softball fields. Amendment (10), issued 6 December 2001, authorized an extension of time to complete the placement of fill into 7.6 acres of wetlands, and a 10-year extension of time to conduct periodic maintenance dredging of an existing basin. The permit was transferred from Naval Station Ingleside to the Port of Corpus Christi Authority (POCCA) on 12 February 2010. Amendment (11), issued 13 July 2011, authorized an extension of time to conduct a 10-year maintenance dredging program to restore previously authorized water depths of an existing turning basin. The permit was transferred from the POCCA to Oxy Ingleside Energy Center, LLC (Oxy) on 27

December 2012. Amendment (12), issued on 22 February 2015, authorized extending the size of the existing pier at the site and removal of eight storm anchor chains and anchor plates. . Amendment (13) was issued 7 September 2016 to deepen the authorized depth of the area composing the east and west slips from -45.7 feet MLLW to a depth of -56 feet MLLW, and include a 2-foot over-dredge allowance for a total possible depth of -58 feet MLLW, and placement of dredged material into Good Hope, DMPA No. 10, DMPA No. 13, and Berry Island. Amendment (14) was issued 21 November 2017 to expand the authorized dredge footprint to add an additional 4.9 acres of open water area dredged to a depth of -58 feet MLLW to Oxy's East Ship Basin. Dredged material from the expansion was placed in the Good Hope Placement Area. Oxy Ingleside Energy Center changed its name to MODA Ingleside Facilities, LLC on 29 November 2018. Amendment (15) was issued 12 September 2019 to increase the permitted width of the West Ship Basin from 390 feet wide to 475 feet and add a 1,700-foot-diameter turning basin at the West Ship Basin entrance to the CCSC.

1.5 Permit Authority: Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act.

2.0 Scope of review for National Environmental Policy Act (i.e. scope of analysis), Section 7 of the Endangered Species Act (i.e. action area), and Section 106 of the National Historic Preservation Act (i.e. permit area):

2.1 Determination of scope of analysis for National Environmental Policy Act (NEPA):

The determination of the scope of analysis for the Corps federal action is guided by Corps NEPA implementing regulations at 33 CFR 325, Appendix B. The scope is established to address the impacts of the specific activity requiring a Department of the Army (DA) permit and those portions of the entire project over which the Corps has sufficient control and responsibility to warrant federal review. When determining whether there is sufficient control and responsibility to include portions of the project beyond the limits of the Corps jurisdiction in the scope, factors from Appendix B that may be considered include:

- 1) Whether or not the regulated activity comprises “merely a link” in a corridor type project;
- 2) Whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity;
- 3) The extent to which the entire project will be within Corps jurisdiction; and
- 4) The extent of cumulative Federal control and responsibility.

Once the scope of analysis is defined under NEPA, this is the geographic area within which the Corps is responsible for evaluating effects of activities. Direct, indirect, and cumulative effects of the activities within this scope will be evaluated.

The scope of analysis includes the specific activity requiring a Department of the Army permit. Other portions of the entire project are included because the Corps does have sufficient control and responsibility to warrant federal review.

Final description of scope of analysis: In this instance the Corps' scope of analysis includes: structural improvements to the East Basin; the 491-foot bulkhead extension area along the shoreline; the structural improvements and 43-acre dredging footprint (including side slopes) in the West Basin; the Sunset Lake seagrass mitigation area, and 50-acre wooded habitat mitigation area along the eastern side of the facility to be preserved. The shoreward portion of the project is already fully developed so there is no need to expand the scope of analysis into that area.

2.2 Determination of the "Corps action area" for Section 7 of the Endangered Species Act (ESA):

Action area means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. "Action" is defined to mean all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States (US) or upon the high seas. In the context of this decision, the federal action being contemplated is authorization of an activity in waters of the US under one or more of the Corps regulatory authorities.

The action area includes those areas comprising waters of the US that will be directly affected by the proposed work or structures, as well as activities outside of waters of the US.

Final description of the action area: The action area will cover those areas as described in the final NEPA scope analysis.

2.3 Determination of permit area for Section 106 of the National Historic Preservation Act (NHPA):

The NHPA scope is defined as "permit area." The permit area for an undertaking is defined in 33 CFR 325, Appendix C. Permit area means those areas comprising waters of the US that will be directly affected by the proposed work or structures and uplands directly affected as a result of authorizing the work or structures. The following three (3) tests must all be satisfied for an activity undertaken outside of waters of the US to be included within the "permit area": 1) Such activity would not occur but for the authorization of the work or structures within the waters of the US; 2) Such activity is integrally related to the work or structures to be authorized within waters of the US (or, conversely, the work or structures to be authorized must be essential to the completeness of the overall project or program); and 3) Such activity is directly associated (first order impact) with the work or structures to be authorized.

The permit area includes only those areas comprising waters of the US that will be directly affected by the proposed work or structures, as well as activities outside of

waters of the US because all three tests identified in 33 CFR 325, Appendix C(g)(1) have been met.

Final description of the permit area: The permit area will cover those areas as described in the final NEPA scope analysis.

3.0 Purpose and Need:

- 3.1 Purpose and need for the project as provided by the applicant and reviewed by the Corps: Provide the maritime infrastructure necessary to accommodate the increasing demand by existing and committed, future customers at the Moda Ingleside Oil Terminal in a logistically safe and efficient manner.
- 3.2 Basic project purpose, as determined by the Corps: To dredge additional bay area and construct mooring structures to provide adequate depth and area for the berthing of deeper-draft ships that will be used to transport liquefied natural gas.
- 3.3 Water dependency determination: The activity does not require access or proximity to or siting within a special aquatic site to fulfill its basic purpose. Therefore, the activity is not water dependent in accordance with 40 CFR Part 230, Section 404(b)(1) Guidelines.
- 3.4 Overall project purpose, as determined by the Corps: Dredge additional bay area and construct mooring structures to provide adequate water depth and area for the deeper-draft vessels that will be used to transport liquefied natural gas.

4.0 Coordination:

- 4.1 The results of coordinating the proposal on Public Notice (PN) are identified below, including a summary of issues raised (see Table 1).

Were comments received in response to the PN? Yes

Was a public meeting and/or hearing requested and, if so, was one conducted? Yes, a public meeting/hearing was requested but was not held.

During the public interest review, we received approximately fifty-three requests from the general public to hold a public hearing in order to give them an opportunity to question the applicant about the proposed project. The intent of a public hearing is to solicit information or evidence that might assist us in the evaluation of this permit action, and not for cross examination of the applicant. Based on our review of all the information submitted during the public notice comment period, and subsequent evaluation process, we have determined that there is sufficient information to render a decision on this permit request. It is unlikely that any new information would be gained by holding a public hearing. Therefore, a public hearing will not be held.

Table 1 – PN Comments			
Agency and/or Person provided with notice of proposal	Response received	Date Received	Comments/Issues Raised
US Environmental Protection Agency (EPA)	Yes	5 March 2020	See below for discussion.
US Fish and Wildlife Service (FWS)	Yes	3 March 2020	See below for discussion.
National Marine Fisheries Service (NMFS) Habitat Conservation Division (HCD)	No		
National Marine Fisheries Service - Protected Resources Division (NMFS-PRD)	No		
US Coast Guard (USCG)	No		
Texas Commission on Environmental Quality (TCEQ)	Yes	9 March 2020	See below for discussion.
Texas Parks and Wildlife Department (TPWD)	Yes	9 March 2020	See below for discussion.
Texas General Land Office (GLO)	No		
Texas State Historic Preservation Officer (SHPO)	No		
State Representative J.M. Lozano	Yes	6 March 2020	Request for joint TCEQ/Corps public hearing
State Senator Judith Zaffrini	Yes	18 March 2020	Request for joint TCEQ/Corps public hearing
Adjacent Property Owners	No		
Other Agency	No		
Multiple responses from the general public	Yes	6-10 March 2020	See below for discussion.
Ingleside on the Bay Coastal Watch Assoc., Inc. (IOBCWA)	Yes	9 March 2020	See below for discussion

Additional discussion of submitted comments:

The EPA stated that it is unclear if all aquatic impacts have been identified, and if so, the quantity and quality of those impacts need to be identified along with efforts to avoid and minimize them in accordance with 404(b)(1) guidelines. In addition, it does not appear that the function for the types and quantities of aquatic resources

impacted by the proposed project would be adequately replaced. The EPA recommended:

- 1) An Alternative Analysis be submitted that evaluates the respective impacts of any practicable alternatives that meet the project purpose.
- 2) All potential direct, secondary, and cumulative impacts to the environment should be fully evaluated for each aquatic resource, particularly seagrasses, and those resources that are impacted should be adequately replaced.
- 3) The applicant should evaluate contemporary contaminant testing of dredged material prior to any disposal activities as the dredged material originates from an industrial area.
- 4) The applicant should develop a mitigation plan that meets all the criteria of the 2008 Final Mitigation Rule and addresses all unavoidable impacts to seagrasses, tidal flats and wetlands.

The FWS recommended that the proposed project be denied as currently proposed and made the following specific recommendations:

- 1) The FWS requests the Applicant's Alternatives Analysis, particularly since the applicant's East Basin appears to be sufficiently large to accommodate the activities proposed by the expansion of the West Basin area.
- 2) The applicant should provide the BMPs to be used to avoid impacts to the seagrasses during project construction activities.
- 3) In addition to the proposed slope stabilization, the applicant should evaluate and develop a plan to protect area seagrass beds immediately adjacent to the basins and along the east and west of the approach from vessel wakes.
- 4) The proposed mitigation is out-of-kind. The mitigation area should be located in an area where the in-kind emergent wetlands mitigation could occur.
- 5) The applicant should use the established mitigation rate of 3:1 for the seagrass creation site.
- 6) The proposed aquatic mitigation site is disjointed from the existing landscape on either side. The FWS requests that the applicant provide information on how this site will integrate with the existing landscape.
- 7) The NOAA and TPWD Seagrass Viewers indicate that there is already seagrass in the proposed aquatic mitigation area. If so, the area should be classified as a seagrass preservation site with the appropriate mitigation ratio. The FWS further recommends that if the site biological survey to evaluate the extent of

already present habitat being completed by Texas A&M University-Corpus Christi finds the site to be suitable for seagrass, the applicant should obtain additional acreage for creation of submerged seagrass vegetation for a total of 38.0 acres (26.6 acres at a 70% success rate).

8) Modifications of the area in or near the southern edge of Sunset Lake should be thoroughly explained and closely monitored to prevent changes to the piping plovers' and possibly the red knot's mudflat feeding and roosting areas. Migrating whooping cranes may also occur in the project area. The FWS recommends continuing informal consultation on these species.

Regarding the endangered West Indian manatee and sea turtles, the FWS recommended that the agency's recommended guidance for marine construction projects be added to the project plans.

The TPWD submitted two letters. The one from the Coastal Fisheries Division Regional Director (Letter No. 1) states that the seagrass survey results illustrated in the project plans seem inconsistent with historic aerial imagery and the extent of seagrass cover documented in the TPWD seagrass viewer. In this letter, TPWD made the following recommendations:

- 1) The TPWD stated the applicant's seagrass survey seems inconsistent with historic aerial imagery and the extent of seagrass cover documented in the TPWD seagrass viewer. The TPWD requested the opportunity to review the details of the seagrass survey report.
- 2) The TPWD requested the opportunity to review the applicant's Alternative Analysis, particularly why the East Basin cannot accommodate the activities proposed as the purpose for the expansion of the West Basin area.
- 3) The TPWD recommended that the applicant implement guidance recommended by FWS and the Texas Sea Turtle Stranding and Salvage Network in the event of encounters with the West Indian manatee or sea turtles.
- 4) The TPWD encourages the applicant to explore beneficial uses of suitable dredged materials that will benefit fish and wildlife resources within the vicinity of the project.

TPWD Letter No. 2 is from the Science and Policy Resources Branch of the Coastal Fisheries Division. In this letter, TPWD recommends the following:

- 1) If new onshore facilities are associated with this project, the Corps should determine if the project scope should be expanded to include these connected actions.

- 2) The applicant should identify the various stabilization options considered to avoid and minimize impacts to neighboring aquatic resources.
- 3) The project plans should be revised to include the location, extent, composition, and relative cover of each aquatic resource within the vicinity of the proposed project, including areas of shallow open water (i.e., less than 6 feet deep) and deep open water (i.e., 6 feet deep or greater). Areas that have been established, re-established, or enhanced for mitigation purposes should also be identified. Revised project plans should be submitted for resource agency review and public comment.
- 4) Complete project plans that identify the location and dimensions of Berths 1, 3, and 6, as well as any foreseeable improvements or changes to these berths, should be submitted for resource agency review and public comment. Berths 1, 3, and 6 should be included in the evaluation of on-site alternatives to avoid and minimize impacts to special aquatic sites and TPWD requests the opportunity to review and provide comments on the Alternatives Analysis.
- 5) TPWD prefers in-kind over out-of-kind compensation strategies to adequately replace the lost functions and services of the resources that would be impacted. While the woodland/pothole mosaic provides rare habitat with significant conservation value, it does not offset the function losses that would result from the proposed project amendment.
- 6) The applicant should coordinate with FWS to identify a site that avoids and minimizes impacts to piping plover and their designated critical habitat to the extent practicable.
- 7) A permittee-responsible compensatory mitigation project, or projects, should be developed to fully offset the suite of lost functions and services provided by the aquatic resources to be impacted. This can be achieved by developing an in-kind project that restores or enhances degraded habitat or establishes new habitat at a ratio that accounts for temporal losses of functions and reduces the uncertainty of project success. TPWD typically recommends that aquatic resource impacts be compensated through in-kind replacement at a minimum ratio of 3:1 and 2:1 for seagrass and estuarine marsh, respectively. Out-of-kind strategies and enhancement should be provided at higher ratios. The mitigation ratio for preservation, because it will not result in a net gain of aquatic resource functions, should be even higher to compensate for the net loss and should be done in conjunction with restoration, establishment, or enhancement projects.
- 8) The TPWD recommended that the applicant implement guidance recommended by FWS and the Texas Sea Turtle Stranding and Salvage Network in the event of encounters with the West Indian manatee or sea turtles.

- 9) The applicant is encouraged to explore beneficial uses of suitable dredged materials that will benefit fish and wildlife resources within the vicinity of the project.

The TCEQ stated that additional information is needed for review of the proposed project and requested the following:

- 1) A copy of the Alternatives Analysis should be provided for this project.
- 2) More detailed information is needed on what options were considered to minimize impacts, specifically to seagrass and emergent wetlands, and why they were eliminated.
- 3) A map showing the location of existing seagrass and emergent wetlands and the location of proposed impacts to the aquatic resources should be submitted.
- 4) A copy of wetland delineations, functional or conditional assessments, and any other ecological details for the proposed impact site and both mitigation sites should be provided, as well as documentation of the presence, extent, and condition of wetlands on all sites.
- 5) Applicant should provide a mitigation plan that includes objectives, site selection, the site protection instrument, baseline information, how the compensatory mitigation will provide required compensation for unavoidable impacts to aquatic resources, a mitigation work plan, maintenance plan, ecological performance standards, monitoring requirements, long-term management plan, adaptive management plan, financial assurances, and any other relevant information.
- 6) The applicant should include multiple ecological performance standards, an adequate monitoring period to verify long-term project success, and a detailed adaptive management plan as part of any mitigation plan for seagrass creation.

The IOBCWA stated there was concern that the project would impact local businesses due to increased air, water, noise and light pollution, and asked if an economic study had been conducted. The IOBCWA also asked:

- 1) how would the wetlands below McGloin's Bluff be protected from erosion;
- 2) has an environmental impact study been conducted;
- 3) how will threatened and endangered species be protected;
- 4) what studies have been done to eliminate impacts to shoreline, wetlands, and potential effects to Ingleside on the Bay's (IOB) shoreline;

- 5) has saltwater intrusion been considered; has drainage and runoff from Moda's property into Corpus Christi Bay and IOB been studied for environmental impacts;
- 6) does Moda have safeguards for the developmental effects to wetlands and local communities;
- 7) what controls will be used when dredging to protect sea grasses along the IOB shoreline;
- 8) is this permit being reviewed with the cumulative effects of other oil terminal developments in the immediate area pertaining to water quality, water opacity, and erosion caused by large passing vessels;
- 9) can the 50-acre mitigation area be expanded to protect the IOB community and provide habitat for displaced wildlife;
- 10) could a living shoreline be part of the mitigation plan;
- 11) will effects on air quality be monitored;
- 12) have TCEQ's water quality regulations been considered;
- 13) is there a catastrophic pollution control plan that includes IPB and Corpus Christi Bay;
- 14) have the effects of light and noise from large ships on IOB been addressed;
- 15) will archaeological sites be protected and preservation efforts enforced, and;
- 16) is there an emergency alert system to notify all nearby residents in the event of an emergency.

Approximately 80 additional comment letters were received from the general public. Nearly all the letters requested that an Environmental Impact Study be done to evaluate the proposed project's impacts, and a public hearing be held in order for the public to find out more about the project and voice their concerns. The following specific concerns were also expressed about how the project would affect the following points of public interest: Historic and Cultural Resources; Water Quality; Endangered Species; Fish and Wildlife Values; Essential Fish Habitat; Wetlands/Special Aquatic Sites; Shoreline Erosion and Accretion; Recreation; Aesthetics; Navigation; General Environmental Concerns; Economics; Water Supply and Conservation; Air Pollution; and Safety.

- 4.2 Internal coordination conducted within the Galveston District Corps (Corps) offices on: 17 January 2020

The Programs and Project Management Division, Real Estate (RE) Division, Operations Division (OD-Navigation Branch and OD-Operations Branch), Engineering and Construction Division (including area offices) (E&C), Southwestern Division Regional Planning and Environmental Center (RPEC), Project Management Office (PM), and the Regulatory Division’s Compliance Branch (RD-C) and Corps staff archeologist (RD-P) were coordinated with during the Internal Review period. Reference Table 2 for summary of responses received.

Table 2 – Corps Internal Coordination Comments			
Corps Office	Response received	Date Received	Comments/Issues Raised
RE	No		
OD-Navigation Branch	Yes	22 January 2020	No Objection
OD-Operations Branch	Yes	30 January 2020	See below for discussion.
E&C	Yes	22 January 2020	See below for discussion.
RPEC	No		
PM	No		
RD-C	No		
RD-P	Yes	21 January 2020	See Section 10.3

OD-Operations (OPS) submitted an electronic mail message on 30 January 2020 stating it had no issues with the project if the applicant proposed to place all material in Berry Island. OPS also requested that the applicant’s plans indicate that Berry Hill is the proposed placement area for the 3.9 million cubic yards of dredged material, and noted that if the applicant proposed to utilize any of the Federal Placement Areas, a Real Estate applicant must be submitted for approval.

4.3 Were comments and/or concerns forwarded to the applicant for response? Yes

EPA Responses:

Response to EPA Comment 1: A revised Alternatives Analysis was submitted that provides details of the numerous on-site and offsite alternatives that were evaluated during the design phase of the project.

Response to EPA Comment 2: EPA’s comment was noted by the applicant.

Response to EPA Comment 3: The material is proposed for placement at a privately owned confined dredged material placement area. The applicant will work with the landowner and the U.S. Army Corps of Engineers to evaluate the need for contaminant testing.

Response to EPA Comment 4: A completed 12-Step Mitigation Plan was submitted in conformance with the 2008 Final Mitigation Rule.

FWS Responses:

Response to FWS Comment 1: a revised Alternatives Analysis was provided with details of the numerous onsite and offsite alternatives that were evaluated during the project design phase. It was also noted that the East Basin alternative was not feasible since its orientation in relation to the setback line of the CCSC did not provide sufficient space to safely berth Suezmax vessels. In addition, if constructed here, the project could only result in the addition of one berth, and therefore, did not meet the project's purpose and need.

Response to FWS Comment 2: All applicable BMP's would be implemented to avoid impacts to existing seagrass.

Response to FWS Comment 3: The existing seagrass beds have persisted for decades adjacent to the existing site which includes regular nearby vessel traffic, including that from within the adjacent CCSC. It is the applicant's engineers' professional judgement that the slope stabilization measures provide adequate protection to avoided seagrass.

Response to FWS Comment 4: The applicant proposed a combination of in-kind and out-of-kind mitigation. The mitigation plan includes in-kind planting of 20 acres of seagrass, and the construction of a breakwater that will create conditions conducive to seagrass establishment and provide erosion protection to shoreline that currently supports approximately 40 acres estuarine wetlands. In addition, 70 acres of Live Oak-Red Bay Woodlands containing a mosaic of pothole wetlands will be preserved. Although out of kind, this is an extremely high-value habitat that is threatened by development.

Response to FWS Comment 5: The applicant proposes a mitigation plan which includes a 1.58 to 2.26:1 mitigation ratio (14 – 20 acres of seagrass) for unavoidable impacts to aquatic submerged vegetation, and will more than adequately replace the lost functions and services provided by the existing seagrass at the project site. With the combination of off-site, in-kind mitigation protection of at least five acres of eroding estuarine wetlands near Sunset Lake, and preservation of highly valued and threatened forested/pothole mosaic habitat that provides numerous benefits to the area, the proposed plan replaces the lost functions or services and complies with the mitigation policies.

Response to FWS Comment 6: The proposed aquatic mitigation site is located in the vicinity of, and adjacent to, existing seagrass beds. Portions of the proposed planting area located immediately adjacent to existing seagrass beds and are expected to integrate with these areas naturally. The portions of the proposed planting area located further to the southeast (towards the proposed breakwater), once established, are expected promote additional natural seagrass establishment in previously unvegetated bay bottom. Once the proposed planting area is established, as facilitated by the proposed breakwater, mitigated seagrass will promote higher water quality and clarity (vital for natural seagrass establishment), improved sediment

trapping, and erosion control that will likely promote the natural expansion of existing seagrass beds along the shoreline. Further, the proposed mitigation site is consistent with the historical habitat at the site as the proposed planting area historically supported large dense seagrass beds.

Response to FWS Comment 7: A seagrass/oyster survey conducted by the applicant's consultant found only 0.16 acre of existing seagrass in the proposed planting area. The applicant proposes to plant 20 acres of submerged aquatic vegetation in addition to the existing 0.16 acre of existing seagrass. This and the other parts of the plan will more than adequately replace the lost functions and services associated with the unavoidable impacts to submerged aquatic vegetation and wetlands at the impact site.

Response to FWS Comment 8: The mitigation project was designed to be consistent with the adjacent Texas General Land Office (GLO) breakwater, which is adjacent to the same shoreline. The project will utilize the same orientation, construction materials and methods. The piping plover and red knot utilize shoreline habitat for feeding and foraging, changes in the shoreline are not expected to be adversely affected by the breakwater or seagrass planting; however, the applicant will include shoreline monitoring in its mitigation plan and will report any significant changes along with recommended corrective measures. For the whooping crane, the applicant will make every effort to complete the project outside the whooping crane wintering season. The applicant will incorporate appropriate whooping crane protocols within the construction plans if any construction activities are to occur between October 15 to April 15.

Response to FWS Comment 9: To assure no impacts to the West Indian manatee occur as a result of the proposed project, the applicant proposes to: (a) advise all construction personnel that manatees may approach the proposed project area, (b) provide materials in English and Spanish to assist in identifying the mammal, (c) instruct all construction personnel not to feed or water the animal, and (d) contact the FWS and the Texas Marine Mammal Stranding Network (TMMSN) if a manatee is sighted.

To assure no impacts to sea turtle species, the applicant proposes to implement specific protocols in the event a sea turtle is identified within the work area. Construction and operations employees will also (a) be advised that sea turtles may approach the proposed project area (b) be provided materials, such as a poster, to assist in identifying the sea turtle, (c) be instructed not to feed or water the animal, and (d) take appropriate measures to cease work when necessary.

TPWD Responses (Letter No. 1):

Response to TPWD Comment 1: The applicant is confident that the seagrass survey results and impact estimates are accurate and depict current site conditions. The applicant's environmental consultant used the techniques previously coordinated with and approved by the Corps and other agencies to assess seagrass presence in the

project area. A description of these techniques was provided along with the seagrass survey data that was collected at the impact area. Factors that may have contributed to the inconsistency with the TPWD seagrass viewer were also discussed.

Response to TPWD Comment 2: A revised Alternative Analysis is included and provides details of the numerous on-site and off-site alternatives that were evaluated during the design phase of the project.

Response to TPWD Comment 3: See response to FWS Comment 9.

Response to TPWD Comment 4: The applicant evaluated the beneficial use of dredge material during construction of the seagrass mitigation site. However, the selected seagrass mitigation site contained existing suitable elevations and substrate type for the successful establishment of submerged aquatic vegetation, so the use of dredge material was not required.

TPWD Responses a (Letter No. 2):

Response to TPWD Comment 1(a): New onshore facilities are not needed for this project.

Response to TPWD Comment 2(a): A summary of the stabilization options that were considered was provided as well as the reasons for choosing articulated block mattress.

Response to TPWD Comment 3(a): A complete delineation of aquatic resources in the vicinity of the proposed project was completed and submitted to the USACE with the permit application. The submittal included a report detailing the wetland delineation survey as well as the marine survey to delineate submerged aquatic vegetation. An overview depicting the survey results was provided with the response.

Response to TPWD Comment 4(a): The naming and labeling of existing berths at the facility was described, which explained why there are no improvements or alterations proposed for Berths 1, 3, or 6.

Response to TPWD Comment 5(a): The establishment of 14 to 20 acres of submerged aquatic vegetation more than adequately replaces the lost functions and services of the 8.86 acres of submerged aquatic vegetation impacted by the proposed project. The project also proposes to impact 0.95 acres of estuarine wetland. The rock breakwater will provide protection to at least five acres of estuarine wetland habitat along the adjacent shoreline. However, there are more than 40 acres of estuarine wetland immediately behind the proposed breakwater within the Sunset Lake habitat. It is well documented that this shoreline has experienced significant historical erosion and it is likely that the protected wetlands will erode in the future. Lastly, the rare habitat with significant conservation value proposed for preservation will continue to contribute to the health and quality of the on-site estuarine wetland habitat that is avoided by this project.

Response to TPWD Comment 6(a): See Response to FWS Comment 8

Response to TPWD Comment 7(a): A completed 12-Step Mitigation Plan was submitted in conformance with the 2008 Final Mitigation Rule.

Response to TPWD Comment 8(a): See response to FWS Comment 9.

Response to TPWD Comment 9(a): See Response to TPWD Comment 4.

TCEQ Responses:

Response to TCEQ Comment 1: See Response to EPA Comment 1.

Response to TCEQ Comment 2: See Response to EPA Comment 1.

Response to TCEQ Comment 3: The wetland delineation and impacts assessment documentation were submitted by the applicant with the permit application. An overview of aquatic resources identified in the vicinity of the impact site and the impacts associated with the proposed project was provided with the applicant's response.

Response to TCEQ Comment 4: The 12-Step Mitigation Plan includes the full ecological descriptions for the impact areas as well as the mitigation sites. The wetland delineation and impacts assessment documentation were submitted by the applicant with the permit application. An overview of aquatic resources identified in the vicinity of the impact site and the impacts associated with the proposed project was provided with the applicant's response.

Response to TCEQ Comment 5: A completed 12-Step Mitigation Plan was submitted in conformance with the 2008 Final Mitigation Rule that addresses this comment.

Response to TCEQ Comment 6: A completed 12-Step Mitigation Plan was submitted in conformance with the 2008 Final Mitigation Rule that addresses this comment.

General Public Responses (The General Public Comments were summarized and the applicant's responses are to those summarized comments):

Response to requests for an EIS: The proposed project is not considered a major federal action and only includes improvements to an existing industrial site. The proposed project has been designed to avoid and minimize all impacts to the greatest extent practicable.

Response to Public Hearing request: The applicant does not agree that additional public meetings are warranted. Moda has been transparent with the neighboring community and has developed a project in an environmentally responsible manner. A public hearing would not reveal any new information than that already being considered by the USACE.

Response to archaeological concerns: The applicant submitted a Section 106 review request to the Texas Historical Commission (THC). As a result of this coordination, THC determined that there were no land-based concerns related to the project. The THC requested that a remote sensing survey for the proposed dredge area be conducted. The survey was completed in June of 2020 and did not identify any areas of marine concern that should be avoided during the project. The details of Moda's coordination with THC have been provided to the Corps' Staff Archaeologist.

Response to water quality concerns: Moda proposes to incorporate all BMPs appropriate for a project of this type. Moda will comply with all TCEQ requirements for dredge projects.

Response to threatened and endangered species concerns, fish and wildlife values, essential fish habitat, wetlands/special aquatic sites, shoreline erosion and accretion: The applicant submitted a threatened and endangered species evaluation, wetland delineation, and site survey as part of the permit application. These surveys were used to determine the unavoidable impacts resulting from the proposed project.

Response to recreation concerns: The proposed project does not impact recreation. The applicant has limited the size of the dredge area to only that necessary to achieve the project's purpose and need. Further, the proposed submerged side slope stabilization to protect the adjacent avoided seagrass areas in lieu of emergent protection will avoid creation of navigational obstructions, which will benefit water recreational users, as well as for the nearby special aquatic sites.

Response to aesthetic concerns: The project will take place in an existing commercial marine industry area. In addition, the proposed high value habitat preservation area was selected not only because of the high habitat value and contributions to the watershed, but also to ensure the aesthetics for the nearby private citizens remain natural and pristine.

Response to navigation concerns: The proposed project, including the dredge area was developed based upon best engineering practices and with input from the Pilots. All berthing facilities will be marked and lit according to all United States Coast Guard requirements.

Response to general environmental concerns: While general environmental comments do not succinctly identify concerns, the applicant has developed a 12-step mitigation plan in conformance with regulatory requirements that ensures all unavoidable impacts to sensitive resources are appropriately compensated.

Response to economic concerns: The proposed project ensures the applicant meets the demands of current and future committed customers. The project will meet the demands of the applicant's customer base and help ensure long-term viability and

long-term full-time employment for area residents. The project will also contribute to the economy by providing temporary construction jobs.

Response to water supply and conservation concerns: The applicant does not propose to impact private citizens' water supply.

Response to air pollution: The applicant is not proposing to construct any additional tanks or infrastructure for this project. The on-site tanks exceed TCEQ air permit requirements. With regards to air pollution generated by additional vessels berthing, the applicant's facility actually reduces pollutants that enter the air by reducing the time spent nearshore. Also, loading at the facility eliminates the longer voyage into the Inner Harbor of the CCSC.

Response to safety: The project was designed based upon engineering best practices, will adhere to all United States Coast Guard safety requirements, and will be constructed utilizing all safety and BMPs.

- 4.4 Was the applicant's response to the Public Notice comments and/or concerns coordinated with the Natural Resource Agencies? Yes The applicant's response was forwarded to the commenting agencies and to the IOBCWA on 11 September 2020.

The EPA responded on 24 September 2020 stating that it was unclear whether sufficient information had been provided to enable the Corps to make a legally defensible permit decision in regard to compliance with the 404(b)(1) Guidelines, and recommended information be clarified and provided to the Corps to aid in the permit evaluation. In addition, EPA stated it was not readily evident as to the alternatives evaluated, options considered to avoid and minimize aquatic impacts the maximum extent practicable, and whether secondary/cumulative impacts were considered. EPA also considered it unclear as to how restoring the waterline to prior channel alignment constituted avoidance and minimization to aquatic resources. Furthermore, the stated purpose to stabilize the site from further long-term erosion might not appear to necessarily constitute the need to reclaim land and impact all aquatic resources identified on the site.

The FWS responded on 28 September 2020 and made the following specific recommendations:

- 1) The project should have an adaptive management plan that includes a minimum of five years of monitoring the seagrasses during the active operation of the facility as a Suezmax-capable facility or a comparable monitoring schedule. The plan should include remedial actions if the seagrasses are shown to decline.
- 2) The mitigation plan should have a ratio of 3:1 compensation for seagrass impacts due to the importance of this habitat and the difficulty in restoring it. The FWS also pointed out that as part of the informal consultation letter sent on April 23,

2020, a total of 38.0 acres (26.6 acres at a 70% success rate) was the requested mitigation.

- 3) The proposed mitigation area should be rearranged if it is used as part of the mitigation, but out-of-kind mitigation should not be considered acceptable. The use of the forested and pothole wetland adjacent to the property as part of the mitigation for estuarine and seagrass losses is out of kind and unable to mitigate the losses of the other habitat types since they lack functional connectivity of any animal use between the seagrasses and the forested area. If the land adjacent to the facility is to be considered an out-of-kind mitigation for the estuarine wetland, it would need to include the pothole wetland habitat on the central and eastern half of the property and not just the forested area adjacent to the community. The current arrangement of the proposed mitigation area as a long linear tract creates predominantly edge habitat, which reduces the function of the area for more cryptic species.

The TPWD responded on 28 September 2020 with the following concerns:

- 1) Slope Stabilization: It does not appear that other stabilization options have been considered.
- 2) On-site Alternatives: The Alternatives Analysis does not appear to evaluate onsite alternatives which expand the basin into previously disturbed uplands at the project site.
- 3) Aquatic Resource Impacts: The proposed seagrass mitigation project does not provide adequate compensation for seagrass resources and TPWD recommended that seagrass impacts be compensated at a minimum ratio of 3:1. If out-of-kind compensation is sought for impacts to saltmarsh, it should also be compensated at a minimum ratio of 3:1. Project documents provided do not include any survey information of the proposed woodland preservation area and do not adequately describe the aquatic resources that would be preserved to offset impacts to seagrass and estuarine saltmarsh.
- 4) Beneficial Use: The beneficial use of dredged material is not limited for use at the applicant's mitigation site. If dredged material testing results from the project site indicate that the material to be dredged is suitable for disposal in aquatic environments, the applicant is encouraged to participate in the Coastal Bend Bays and Estuaries Program's Maritime Commerce and Dredging Implementation Team to identify and coordinate BU opportunities in the region to maximize outcomes for watershed resources and future disposal capacity.

The TCEQ responded on 25 September 2020 and stated that additional information is still needed for review of the proposed project and requested the following:

- 1) The applicant should provide rationale for the proposed breakwater design associated with the seagrass mitigation area and discuss any relevant

advantages or disadvantages (e.g., ecological, hydraulic, etc.) to the breakwater consisting of one contiguous structure versus multiple structures with gaps.

- 2) Impacts to wetlands should be mitigated in-kind whenever practicable. The applicant should consider preserving the 8.94 acres of estuarine wetlands to be avoided in lieu of the currently proposed mitigation. If the applicant chooses to continue with the proposed mitigation via preservation of forested pothole wetlands, more information should be provided on the baseline condition of this site. TCEQ accordingly recommended the applicant provide results of a survey delineating the extent (areal coverage in acres) and ecological condition of the pothole wetlands on this proposed mitigation site.

The IOBCWA responded on 18 September 2020 and stated that its concerns had not been resolved and reiterated its concerns. A 60-day extension of time to further review Moda's response was also requested. In addition, the following recommendations were submitted:

- 1) Proceed with a public hearing, perhaps facilitated by the Corps District Engineer.
- 2) Adopt Onsite Alternative 3 that expands the East Basin, modifying it as needed to prevent dock protrusion into the Ship Channel.
- 3) Have all ships use onshore power while loading; use landscaping, like tree plantings, or other barriers to shield IOB from irritating light; help develop an ongoing air monitoring system and action/evacuation plans to ensure citizen safety.
- 4) Instead of only placing a breakwater by Sunset Lake, construct breakwater(s) between MODA and IOB to prevent silting of existing seagrass, facilitate re-establishment of seagrass closer to IOB, to help mitigate against possible increased storm surge, and to limit harm from potential oil spills.
- 5) Conduct detailed hydrodynamic modeling of the cumulative effects of how MODA's leading alternatives impact IOB - coupled with plans for deepening, widening, and extending the Corpus Christi and La Quinta Ship Channels.
- 6) Explore together how to establish McGloin's Bluff as a historic preservation site - and possibly a site of additional cultural and ecological research.

The Surfrider Foundation responded on 22 September 2020 and stated that its concerns had not been resolved and requested an extension of time to "review and digest" Moda's response comments.

- 4.5 Were comments and/or concerns forwarded to the applicant for response? Yes, the comments were forwarded on 14 October 2020. The applicant responded on 12 November 2020 as follows:

Response to FWS comments:

Response to FWS Comment 1: The applicant will include a five-year monitoring plan for the seagrass bed adjacent to their facility. The monitoring plan will also include monitoring of a nearby reference bed for comparison. The monitoring plan will include remedial actions to be implemented if a decline in seagrass is documented that is not consistent with natural variations observed at the reference bed.

Response to FWS Comment 2: The applicant continues to maintain that the proposed mitigation plan provides substantial and sufficient benefits to the watershed and summarized the anticipated benefits. Also pointed out was that in addition to the in-kind mitigation measures, the applicant is proposing to preserve seventy acres of upland Live Oak-Redbay Woodland/pothole habitat that would not only benefit the watershed, but be a significant benefit to the adjacent residential subdivision, as well as to the area as a whole. In addition to ensuring that significant contributions to the watershed are realized in perpetuity, the preservation area would also provide significant contributions to the adjacent residential subdivision by providing a natural visual aesthetic between Moda's commercial site and the adjacent residential subdivision that would also reduce noise and light levels reaching the subdivision.

Response to FWS Comment 3: There will no net loss of aquatic resources. The applicant proposes to compensate for seagrass losses at a 2.26:1 ratio and wetland impacts at a minimum of 5.26:1 ratio through enhancement by protecting an eroding shoreline. Therefore, the applicant is not proposing to mitigate for unavoidable impacts out-of-kind. The further noted that the proposed seventy acres of preservation, at a ratio 7.13:1, is a very significant additional watershed benefit being offered. This will not just benefit the watershed, but will also provide wildlife and avian habitat, air quality benefits, noise reduction functions, and reduced light impacts to the adjacent residential subdivision, as well as the area as a whole.

Response to EPA comments:

Response to EPA Comment 1: See FWS Comment 1 Response

Response to EPA Comment 2: See FWS Comment 3 Response

Response to EPA Comment 3: The submerged land, owned by the POCCA is part of a 1,600-acre habitat area that the POCCA has dedicated to habitat creation, enhancement and restoration. The site is situated within submerged land with no private littoral ownership. Therefore, the area will remain natural, scenic, undeveloped and in an open condition in perpetuity. The land use agreement will be submitted to the USACE for review before the applicant begins work in any jurisdictional area.

Response to EPA Comment 4: The 12-Step Mitigation Plan includes financial assurances as required by the 2008 Final Mitigation Rule.

Response to TPWD comments:

Response to TPWD Comment 1: Slope stabilization options have been considered. Based upon engineering evaluations of the project, articulated block mattress, as proposed, is the conventional and most reliable method of submerged slope stabilization and is the currently approved stabilization method for Moda's existing dredge area.

Response to TPWD Comment 2: Moda's existing shoreline is already developed. It is not practical to deconstruct the existing berths, roads, pipelines, bulkheads, buildings and roads. The remaining undeveloped shoreline consists of wetland habitat with adjacent seagrass, and Moda has avoided impacts to this area to the maximum extent practicable.

Response to TPWD Comment 3: See Response to FWS Comment 3.

Response to TPWD Comment 4: The applicant considered several options for beneficial use of the dredged material. The applicant and its professional team concluded that it is not practical for the applicant to commit to the beneficial use of dredge material. The applicant proposes to use the adjacent privately owned confined dredge material placement area. The increased costs and risks to transport material to a remote location is a major consideration as is scheduling limitations and control of the project.

Response to TCEQ comments:

Response to TCEQ Comment 1: The GLO breakwater was constructed to increase sedimentation in the area and counter past erosion. As indicated by review of aerial imagery, and verified in the field, the gaps in the breakwater have created scour. The suspension of sediments resulting from scour would likely have a negative impact to the establishing seagrass community. Additionally, the scouring could result in areas too deep for seagrass establishment. Gaps are typically included with breakwater design to ensure adequate water circulation; however, adequate water circulation in this area is not a concern. If the final engineering analysis for the mitigation plan determines that gaps or gaps with staggered breakwaters are needed, they will be included within the final design.

Response to TCEQ Comment 2: See Response to FWS Comment 3.

Response to IOBCWA comments:

Response to IOBCWA General Comment: Regarding the IOBCWA requests for additional meetings and questions about Moda's veracity, the applicant noted that there were no permit related concerns raised by this comment for Moda to address.

Response to IOBCWA Recommendation 1: The applicant stated that it has held meetings with IOBCWA and even provided tours of the facility to IOBCWA and the IOB city council. In addition, all questions and comments received during the Public Notice comment period were addressed in the documentation provided to the Corps

on 11 September 2020, which was distributed to IOBCWA as well as the natural resource agencies. The submittal included an Alternatives Analysis, 12-Step Mitigation Plan, and a Response to Comments.

Response to IOBCWA Recommendation 2: The existing East Basin is not a feasible alternative to the proposed project. First, even if the intrusion into the setback zone of the federal channel were discounted, which is not possible, the purpose of the proposed project is to construct two additional berths. Construction in the East Basin would require removal of its existing berth. Therefore, only one new dock would be created, and the proposed new berth would remain necessary.

Response to IOBCWA Recommendation: 3: There are numerous considerations to implementing onshore power while loading ships including many out of the applicant's control, that make onshore power an unfeasible option. Landside infrastructure is necessary including technical equipment that includes switchgear, transformers and frequency converters, etc, and the local electrical system must be capable of meeting the increased demand without causing power interruptions to the local community, and most importantly the ships berthing must have the required retrofits and technology to utilize onshore powering.

With regards to landscaping, the applicant has proposed to preserve 70 acres of forested habitat separating Moda from IOB to reduce the light and sound impacts to the community. If the applicant's mitigation plan is accepted by the Corps, this will ensure the buffer remains in perpetuity. Further, the applicant will utilize all BMPs to reduce light and sound to the maximum extent practicable. The applicant has air monitoring systems in place as well as all required safety plans. These plans have been developed to meet all local, state, and federal requirements.

Regarding NO₂ and O₃ emissions and IOBCWA's figure showing the highest recorded NO₂ at 5.4 parts per billion (ppb), EPA guidelines consider NO₂ levels under 50 ppb to be good and state, "No health impacts are expected when air quality is in this range." The figure shows the highest value of O₃ at 22.5, which is also within the EPAs' "good" range with no cautionary health statements.

Response to IOBCWA Recommendation: 4: Construction of a breakwater between Moda and Ingleside on the Bay would likely result in increased impacts to existing seagrass beds. Further, a breakwater does not contain an oil spill and offshore breakwaters do not provide significant risk reduction from storm surges.

Response to IOBCWA Recommendation: 5: In total, the CCSC and La Quinta Channel cover approximately 1,385 surface acres. Moda's proposed project includes dredging of approximately 35.28 acres, including side slopes. This represents an approximate 2.5% change to the area, which is very minor in comparison to these major ship channels.

Response to IOBCWA Recommendation: 6: The applicant has coordinated with Texas Historical Commission and received written verification that there are no cultural resource concerns related to the proposed project and that there are no further development concerns related to the applicant's property. For the marine portion of the proposed project, Moda's consultant completed the marine survey under a Texas Antiquities Permit and in cooperation with the Texas Historical Commission. As a result of these efforts, no cultural resource concerns were identified.

- 4.6 Corps' evaluation of applicant's response: The majority of comments were in regard to cultural resources, EIS requests, pollution, environmental concerns (including fish and wildlife), recreation concerns, and threatened and endangered species.

In regard to cultural resources and archaeological issues, the applicant's response has satisfied those concerns. See also Sections 7.0 and 10.3 for further discussion.

In regard to requests that an EIS study be done for the proposed project, the applicant's response has satisfied those concerns. See also Section 10.1.2 for further discussion.

In regard to pollution concerns, the applicant's response has satisfied those concerns. See also Sections 4.3-4.6, 10.5, and 12.1 for further discussion.

In regard to impacts on the general environmental, including fish and wildlife, the applicant's response has satisfied those concerns. See also Sections 5.4, 8.3, and 9.6 for further discussion.

In regard to impacts on recreation, the applicant's response has satisfied those concerns. See also Section 6.4.3 for further discussion.

In regard to endangered species, the applicant's response has satisfied those concerns. See also Sections 7.0 and 10.3 for further discussion.

In regard to how the project would affect the public's interest, the applicant's response has satisfied those concerns. See also Section 7.1 for further discussion.

The Corps believes the applicant adequately addressed comments received regarding the compensatory mitigation plan. See also Section 8 for further discussion.

The Corps concurs with the applicant's responses on the remaining comments raised by all responders. There are no other unresolved issues regarding these topics.

- 4.7 Were comments raised that do not require further discussion because they address activities and/or effects outside of the Corps' purview or within the Corps purview but not relevant to the proposed project's review? Yes

If yes, provide discussion: After the closure of all comment periods (23 March 2021), the Sierra Club and the Karankawa Kadla jointly requested the Corps initiate a second public notice comment period and more meaningful participation for the proposed project based on: new directives and orders from President Biden; Corps failure to make public relevant agency records, Moda's request to reinstate its previously withdrawn permit application; continued concerns surrounding the destruction of Karankawa historic and cultural resources; and the increased risk of oil spills that would accompany this project. This request is not relevant to the proposed project's review. The Karankawa Nation is not a federally recognized tribe, and thus does not possess any special consultation rights (see Section 7). All public records pertaining to this project are available through the Freedom of Information Act (FOIA), and any FOIA requests received regarding our project review were provided with an appropriate response. Potential detrimental effects due to this project, such as oil spills, have been evaluated in our General Interest review and found to be of negligible, or less, concern (See Section 7.1). The applicant's permit withdrawal was due to the long period of time necessary to assemble a response to the numerous comments received during the public notice comment period, and when the response was submitted, we reinitiated our review at that point since it was still the same project, not a different one. A cultural survey was conducted by the applicant and coordinated with the SHPO and our staff archaeologist, both of whom concurred with the survey's findings (see Section 10.3.2). The applicant properly addressed all comments received during the Public Notice for this project.

We received approximately eighteen requests for the Corps to conduct an EIS for the proposed project. This request is within the Corps purview, but not relevant to the proposed project's review. An EIS is a document required by the NEPA for certain actions "significantly affecting the quality of the human environment". Not all federal actions require a full EIS. If the action may or may not cause a significant impact, a federal agency can first prepare a smaller, shorter document called an Environmental Assessment (EA). The finding of the EA determines whether an EIS is required. If the EA indicates that no significant impact is likely, then the agency can release a finding of no significant impact and carry on with the proposed action. This SOF serves as an EA by the Corps for the proposed action and documents our NEPA review. After reviewing the natural resource agency comments, the applicant's responses, the project plans, and the mitigation plan, it is our decision that an EIS is not required for the applicant's proposed dredging and facility improvements.

5.0 Alternatives Analysis:

(33 CFR Part 325 Appendix B(7), 40 CFR 230.5(c) and 40 CFR 1502.14). An evaluation of alternatives is required under NEPA for all jurisdictional activities. An evaluation of alternatives is required under the Section 404(b) (1) Guidelines for projects that include the discharge of dredged or fill material. NEPA requires

discussion of a reasonable range of alternatives, including the no action alternative, and the effects of those alternatives; under the Guidelines, practicability of alternatives is taken into consideration and no alternative may be permitted if there is a less environmentally damaging practicable alternative.

- 5.1 Site selection/screening criteria: In order to be practicable, an alternative must be available, achieve the overall project purpose (as defined by the Corps), and be feasible when considering cost, logistics and existing technology.

Criteria for evaluating alternatives as evaluated and determined by the Corps: A key provision of the 404(b)(1) guidelines is the “practicable alternative test” which requires that “no discharge of fill material shall be permitted if there is a practicable alternative to the proposed fill which would have a less adverse impact on the aquatic ecosystem.” This is especially true when the proposed project is not water dependent. The applicant must demonstrate that there are no less damaging sites available and that all onsite impacts to waters of the US have been avoided to the maximum practicable extent possible. For an alternative to be considered “practicable”, it must be available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purpose. The applicant considered the following siting criteria to determine the preferred alternative: 1) Allow optimal use of existing onshore infrastructure in a safe and efficient manner; 2) Close proximity to the CCSC; 3) Minimize required new dredging; 4) Minimize impacts to special aquatic sites; 5) Add at least one new dock capable of berthing two Suezmax vessels; 6) Provide dedicated barge facilities; 7) Provide practicable construction access such that the project can be constructed in a safe and efficient manner. Eight alternatives were considered based on the above siting criteria.

- 5.2 Description of alternatives:

- 5.2.1 No action alternative: The no action alternative results in no construction requiring a Corps permit, and may include either the applicant electing to modify the proposal to eliminate work in waters of the US, or denial of the permit. In this instance a permit authorizing the discharge of fill material into waters of the US would either not be required or be denied. In either case no fill would be authorized to be discharged into any waters of the US or special aquatic site.

- 5.2.2 Off-site alternatives:

Off-site alternative 1: A property in Aransas County with appropriate industrial zoning and a location along the shoreline was considered.

Off-site alternative 2: Nueces County was determined to have an existing channel both deep enough and wide enough to support Suezmax vessels, specifically the CCSC. A search of currently available property listings resulted in 28 properties for sale that were appropriately zoned for industrial development.

Off-site alternative 3: A search for potential properties in San Patricio County was conducted.

5.2.3 On-site alternatives:

This alternative involves dredging the width of the West Ship Basin from 390 feet wide to 475 feet to add a 1,700-foot-diameter turning basin at the West Ship Basin entrance to the CCSC. This alternative was designed to require dredging only the minimum amount of area necessary to meet the applicant's purpose of accommodating Suezmax and other supermax design oil tankers.

On-site alternative 1 (applicant's preferred alternative): This is the currently proposed project that involves increasing the permitted width of the West Ship Basin to allow construction of barge docks at Berth 7 and adding a new deep-water ship dock in the West Ship Basin.

On-site alternative 2: This alternative involved dredging a basin adjacent to Moda's entire waterfront.

On-site alternative 3: This alternative involved dredging a basin adjacent to Moda's western limit of the currently approved Dock 5 dredge flare area, as well as an additional dredge area located adjacent to the south of the CCSC.

On-site alternative 4. This alternative included constructing a new Dock 2-A perpendicular to the shoreline, and did not require any additional dredging. Consistent with the project's purpose and need, as well as the siting criteria, the proposed deepwater dock was required to accommodate two additional Suezmax vessels.

5.3 Evaluate alternatives and whether or not each is practicable under the Guidelines or reasonable under NEPA:

The No Action Alternative does not achieve the applicant's purpose and need for the project. Under this scenario the size of the West Ship Basin would not be increased by dredging additional area and the applicant would not be able to provide access to Suezmax vessels. This scenario would not be practicable because it would not satisfy the overall project purpose.

The offsite alternatives are not practicable based on the siting criteria. The Aransas County property (Offsite alternative 1) is situated along the Gulf Intracoastal Waterway (GIWW) which consists, generally, of a 12-foot deep by 125-foot wide channel. With a typical beam of 164 feet and draft of 45 feet, the GIWW is not a deep enough or wide enough channel to support Suezmax vessel traffic. No existing channel within Aransas County was capable of supporting Suezmax traffic.

Therefore, no Aransas County properties were further advanced for consideration as an offsite alternative.

None of the Nueces County properties (Offsite alternative 2) included a waterfront parcel adjacent to the CCSC, as the POCCA owns a significant portion of the waterfront land along the CCSC. Further, if properties situated along the CCSC within Nueces County were available, significant infrastructure would be necessary to lay pipeline from the existing onshore storage terminal to load vessels at a berthing dock in Nueces County. Accordingly, the Nueces County properties were considered unsuitable.

No available properties in San Patricio County (Offsite alternative 3) were found that met the siting criteria. A review of aerial imagery concluded that even if a property within this area were to be located, it is highly likely that construction of a new berthing dock would also result in impacts to existing seagrass beds. In addition to seagrass impacts, it is likely that other impacts would be associated with the installation of pipeline necessary to connect Moda's existing onshore tanks to the new dock.

The project site is an existing commercial marine facility that stores and exports crude oil and cannot relocate to a new location. The cost of rebuilding a new facility in a different location would be cost prohibitive. In addition, the environmental impacts associated with constructing a new facility would result in far more impacts than modifying the existing facility. Because of all of these factors, the offsite locations are considered unfeasible. The offsite scenarios would not satisfy the overall project purpose to accommodate the Suezmax vessels that will be utilizing the facility.

On-site Alternative 1 was the only practicable alternative derived because it was the only one that would allow access to the facility by Suezmax vessels with the least environmental impact and minimal construction and dredging. As an existing commercial marine facility, this site already has onshore infrastructure suitable for the applicant's needs and is in close proximity to the CCSC. Minimal dredging and construction at the facility will be necessary to achieve the applicant's purpose of berthing two Suezmax vessels and having dedicated barge facilities.

On-site Alternative 2 would involve a total dredge-area of approximately 66 acres, which would include impacts to approximately 20 acres of submerged aquatic vegetation and 4 acres of estuarine emergent wetland. Its components included a larger turning basin, separate barge docking areas, additional shoreline armoring, and use of additional adjacent upland areas to provide the infrastructure needed to provide land access and loading capabilities to the new docks. It was determined this alternative was unsuitable because it did not meet the siting criteria of minimizing new dredging and impacts to special aquatic sites. In addition, this alternative did not include any project components concerning barge docking space. The currently developed shoreline between deepwater dock 5 and 7 would not provide sufficient

water frontage to accommodate barge docking. The water frontage located west of the deepwater dock 8 is currently undeveloped and does not contain the required upland infrastructure to provide land access and loading capabilities to potential barge docks.

On-site Alternative 3 would involve a total dredge-area of approximately 16 acres as well as an additional dredge-area located to the south of the CCSC. This alternative was found to be unsuitable because the location in relation to deepwater docks 5 and 7 did not provide adequate operating space for the simultaneous maneuvering of pilot ships during Suezmax vessel arrival and/or departure.

On-site Alternative 4 only results in creating one additional berthing area as the existing 2A would be lost in the reconstruction. Further, a deepwater dock designed with perpendicular orientation results in encroachment of the CCSC setback zone. Therefore, it was determined that Onsite Alternative 3 was not a feasible project plan.

- 5.4 Least environmentally damaging practicable alternative under the 404(b)(1) Guidelines (if applicable) and the environmentally preferable alternative under NEPA: On-site Alternative 1 is the least environmentally damaging practicable alternative that will meet the applicant's purpose. The site for this alternative meets all the applicant's siting criteria. This alternative was designed to be the minimal size required to accommodate Suezmax vessels. This alternative would also utilize a previously dredged area for the Suezmax vessels ship basin, reducing the need for newly dredged area to only 32.8 acres and minimizing the amount of dredged material to be disposed. A smaller dredged area will result in less impacts to shallow water habitat. A smaller amount of dredged material will minimize the volume used in available DMPAs, increasing their useable life span for other dredging projects, and reduce the amount of sediment-laden decant water back into the environment.

6.0 Evaluation for Compliance with the Section 404(b)(1) Guidelines:

The following sequence of evaluation is consistent with 40 CFR 230.5

- 6.1 Practicable alternatives to the proposed discharge consistent with 40 CFR 230.5(c) are evaluated in Section 5. The statements below summarize the analysis of alternatives.

In summary, based on the analysis in Section 5.0 above, the no-action alternative, which would not involve discharge into waters, is not practicable.

For those projects that would discharge into a special aquatic site and are not water dependent, the applicant has demonstrated there are no practicable alternatives that do not involve special aquatic sites.

On-site alternatives 2 through 4 are not practicable since they would involve additional environmental impacts, would not provide sufficient area for maneuvering,

would impede navigability of the nearby channel, or would not provide the required docking area.

All off-site alternatives are not practicable since they would require relocating to a different area with deep water access and constructing a new facility and the necessary infrastructure.

It has been determined that there are no alternatives to the proposed discharge that would be less environmentally damaging. (Subpart B, 40 CFR 230.10(a)). The proposed discharge in this evaluation is the practicable alternative with the least adverse impact on the aquatic ecosystem, and it does not have other significant environmental consequences.

- 6.2 Candidate disposal site delineation (Subpart B, 40 CFR 230.11(f)). Each disposal site shall be specified through the application of these Guidelines:

Reference Table 3.

Table 3 – Candidate Disposal Site Delineation	
Depth of water at the disposal site	X
Current velocity, direction, and variability at the disposal site	
Degree of turbulence	
Stratification attributable to causes such as obstructions, salinity, or density profiles at the disposal site	
Discharge vessel speed and direction	
Rate of discharge	
Ambient concentration of constituents of interest	
Dredged material characteristics, particularly concentrations of constituents, amount of material, type of material (sand, silt, clay, etc.) and settling velocities	X
Number of discharge actions per unit of time	
Other factors of the disposal site that affect the rates and patterns of mixing	

Discussion: The project will involve the dredging of 32.8 acres of bay bottom area using both mechanical and hydraulic methods. The material will be deposited in existing authorized upland DMPAs. In addition, decant water will be monitored to maintain less than 300mg/l of total suspended solids so that the hydrology of the bay system will not be adversely affected. The applicant will employ turbidity curtains to minimize any impacts to adjacent seagrasses. Any turbidity that will result from the project will be localized and settle out of the water quickly.

- 6.3 Potential impacts on physical and chemical characteristics of the non-living environment (Subpart C, 40 CFR 230.20). Reference Table 3:

Table 3 – Potential Impacts on Physical and Chemical Characteristics						
Physical and Chemical Characteristics	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Substrate			X			
Suspended particulates/ turbidity			X			
Water			X			
Current patterns and water circulation		X				
Normal water fluctuations		X				
Salinity gradients		X				

Discussion: The project will have no effect of the physical and chemical characteristics of the substrate. The proposed work will place dredged material from the West Ship Basin expansion project into existing approved upland disposal areas. While the work would increase turbidity in the water column during construction, it is expected that due to the use of turbidity curtains, the turbidity levels will quickly return to normal levels. The project would only have a negligible effect on current patterns and circulation due to the project location and will not create any impediment to water movement.

6.4 Potential impacts on the living communities or human uses (Subparts D, E and F):

6.4.1 Potential impacts on the biological characteristics of the aquatic ecosystem (Subpart D 40, CFR 230.30). Reference Table 4:

Table 4 – Potential Impacts on Biological Characteristics						
Biological characteristics	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Threatened and endangered species		X				
Fish, crustaceans, mollusk, and other aquatic organisms			X			
Other wildlife			X			

Discussion: Threatened and endangered species may be affected but are not likely to be adversely affected by the proposed project. Construction and operations employees will receive instructions on what to do in the event one of these species is encountered during the project. These precautions have been included in the applicant’s mitigation plan.

The project would have a temporary effect on fish, crustacean, mollusk, and other aquatic organisms during construction, once construction is complete no adverse effects are anticipated. This discharge of fill material will have a negligible effect on other wildlife as the species that this project may displace are well adapted to humans and will easily relocate to other more suitable habitats.

6.4.2 Potential impacts on special aquatic sites (Subpart E, 40 CFR 230.40). Reference Table 5:

Table 5 – Potential Impacts on Special Aquatic Sites						
Special Aquatic Sites	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Sanctuaries and refuges	X					
Wetlands			X			
Mud flats	X					
Vegetated shallows			X			
Coral reefs	X					
Riffle pool complexes	X					

Discussion: The project will result in the dredging of approximately 32.8 acres of bay area and placement of the dredged material into existing approved upland DMPAs. The dredging operations are only expected to have a temporary impact of the surrounding waters. The applicant has proposed to utilize turbidity curtains during dredging operations so that any impacts from turbidity plumes are minimal, and buttress the slope of the dredged area with articulated concrete mattresses to prevent slumping. There will be a loss of wetland and seagrass habitat associated with the proposed project. The applicant’s compensatory mitigation plan will off-set these losses.

6.4.3 Potential impacts on human use characteristics (Subpart F, 40 CFR 230.50). Reference Table 6:

Table 6 – Potential Impacts on Human Use Characteristics						
Human Use Characteristics	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Municipal and private water supplies	X					
Recreational and commercial fisheries			X			
Water-related recreation		X				
Aesthetics			X			

Table 6 – Potential Impacts on Human Use Characteristics						
Human Use Characteristics	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar preserves	X					

Discussion: The proposed work will occur in an area developed for commercial marine activities. The proposed work will have negligible effects on aesthetics as the proposed project is in keeping with the current surroundings, and the project is contained within previously developed area of the applicant’s facility. There will be some loss of shallow water habitat that will have a negligible effect on recreational and commercial fisheries by reducing aquatic habitat utilized by fish game species. In addition, dredging activities may temporarily displace fishery species as they seek to avoid the project area and adjacent vicinity.

6.5 Pre-testing evaluation (Subpart G, 40 CFR 230.60):

The following has been considered in evaluating the biological availability of possible contaminants in dredged or fill material. Reference Table 7:

Table 7 – Possible Contaminants in Dredged/Fill Material	
Physical characteristics	X
Hydrography in relation to known or anticipated sources of contaminants	
Results from previous testing of the material or similar material in the vicinity of the project	
Known, significant sources of persistent pesticides from land runoff or percolation	
Spill records for petroleum products or designated (Section 331 of CWA) hazardous substances	
Other public records or significant introduction of contaminants from industries, municipalities, or other sources	
Known existence of substantial material deposits of substances which could be released in harmful quantities to the aquatic environment by man-induced discharge activities	

Discussion: There are no known sources of contaminants at the project site. The applicant is proposing to dredge 32.8 acres of bay area adjacent to previously dredged areas. The dredged material will be placed into existing previously approved upland disposal areas and will have the same characteristics as the material in the placement areas. The likelihood of contamination by contaminants is considered low;

however, the applicant plans to sample the dredge area prior to dredging. In addition, the material being placed into the approved DMPAs will be sampled during dredging activities.

It has been determined that testing is not required because the proposed material is not likely to be a carrier of contaminants because it is comprised of sand, gravel or other naturally occurring inert material.

6.6 Evaluation and testing (Subpart G, 40 CFR 230.61):

Discussion: N/A

6.7 Actions to minimize adverse impacts (Subpart H). The following actions, as appropriate, have been taken through application of recommendations of 40 CFR 230.70-230.77 to ensure minimal adverse effects of the proposed discharge. Reference Table 8:

Table 8 – Actions to Ensure Adverse Effects are Minimized	
Actions concerning the location of the discharge	X
Actions concerning the material to be discharged	X
Actions controlling the material after discharge	X
Actions affecting the method of dispersion	X
Actions affecting plant and animal populations	X
Actions affecting human use	X

Discussion: The applicant will utilize BMPs during construction operations and will provide compensatory mitigation for all impacts to waters of the US. See sections 1.3.1 and 6.2 of this document for discussions on the actions that the applicant is taking to minimize adverse impacts.

6.8 Factual Determinations (Subpart B, 40 CFR 230.11). The following determinations are made based on the applicable information above, including actions to minimize effects and consideration for contaminants. Reference Table 9:

Table 9 – Factual Determinations of Potential Impacts						
Site	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Physical substrate		X				
Water circulation, fluctuation and salinity			X			
Suspended particulates/turbidity			X			
Contaminants	X					

Table 9 – Factual Determinations of Potential Impacts						
Site	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Aquatic ecosystem and organisms			X			
Proposed disposal site			X			
Cumulative effects on the aquatic ecosystem			X			
Secondary effects on the aquatic ecosystem			X			

Discussion: As described above and within the cumulative effects section, the direct, indirect, and cumulative effects associated with the proposed placement of fill material into the subject wetlands would not cause further degradation of the watershed as a whole. For discussions on the factual determinations regarding the physical substrate, water circulation, fluctuation, and salinity, suspended particles/turbidity, the aquatic ecosystem, and the proposed disposal site see sections 6.2-6.7 of this document. For a discussion on the factual determinations regarding the cumulative and secondary effects that the proposed work would have on the ecosystem, see section 8.0 of this document.

- 6.9 Findings of compliance or non-compliance with the restrictions on discharges (40 CFR 230.10(a-d) and 230.12). Based on the information above, including the factual determinations, the proposed discharge has been evaluated to determine whether any of the restrictions on discharge would occur. Reference Table 10:

Table 10 – Compliance with Restrictions on Discharge		
Subject	Yes	No
Is there a practicable alternative to the proposed discharge that would have less adverse impacts on the aquatic ecosystem (notwithstanding an alternative that may have more aquatic resource impacts but was evaluated above because the alternative with the least aquatic resource impacts has other significant adverse environmental consequences)?		X
Will the discharge cause or contribute to violations of any applicable water quality standards?		X
Will the discharge violate any toxic effluent standards (under Section 307 of the Act)?		X
Will the discharge jeopardize the continued existence of endangered or threatened species or their critical habitat?		X
Will the discharge violate standards set by the Department of Commerce to protect marine sanctuaries?		X
Will the discharge cause or contribute to significant degradation of waters of the U.S.?		X

Table 10 – Compliance with Restrictions on Discharge		
Subject	Yes	No
Have all appropriate and practicable steps (Subpart H, 40 CFR 230.70) been taken to minimize the potential adverse impacts of the discharge on the aquatic ecosystem?	X	

Discussion: N/A

7.0 General Public Interest Review:

(33 CFR 320.4 and RGL 84-09). The decision 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 as stated at 33 CFR 320.4(a). To the extent appropriate, the public interest review below also includes consideration of additional policies as described in 33 CFR 320.4(b) through (r). The benefits which reasonably may be expected to accrue from the proposal are balanced against its reasonably foreseeable detriments.

7.1 All public interest factors have been reviewed and those that are relevant to the proposal are considered and discussed in additional detail. Reference Table 11 and any discussion that follows:

Table 11 – Public Interest Factors	Effects					
	None	Detrimental	Neutral (mitigated)	Negligible	Beneficial	N/A
1. Conservation						X
2. Economics					X	
3. Aesthetics				X		
4. General Environmental Concerns				X		
5. Wetlands			X			
6. Historic Properties	X					
7. Fish and Wildlife Values				X		
8. Flood Hazards				X		
9. Floodplain Values	X					
10. Land Use				X		
11. Navigation				X		
12. Shore Erosion and Accretion				X		
13. Recreation	X					
14. Water Supply and Conservation						X
15. Water Quality				X		
16. Energy Needs					X	
17. Safety				X		
18. Food and Fiber Production						X

Table 11 – Public Interest Factors	Effects					
	None	Detrimental	Neutral (mitigated)	Negligible	Beneficial	N/A
19. Mineral Needs						X
20. Consideration of Property Ownership				X		
21. Needs and Welfare of the People					X	

Discussion: The proposed work would have economic benefits for the applicant since the applicant would be able to accommodate Suezmax vessels for the export of petroleum products. The project would also benefit the needs and welfare of the general public by increasing the supply and availability of energy. The proposed work would improve navigation along La Quinta Channel as the proposed work will enhance navigational access to the site.

We received approximately 47 comments that the applicant’s proposed project would impact cultural resource and lands held sacred by the Karankawa Indians. The applicant did a survey of the permit area, the results of which indicated that no cultural resources would be adversely affected by the proposed undertaking. This report along with the proposed project plans were coordinated with the SHPO and the Corps’ staff archaeologist who concurred with the survey’s assessment. Also, considered is the fact that the Karankawa Nation is not a federally recognized tribe, thus they have no special consultation rights and are considered members of the general public. In addition, none of the applicant’s proposed plans show any work in the adjacent uplands that were the object of these commenters’ concern. See Section 10.3 of this document for information regarding how the Corps has determined that it has fulfilled its responsibilities under Section 106 of the NHPA.

The proposed work would have negligible effects on the environment, including wetlands and fish and wildlife values. The project would have a temporary negative effect during construction activities due to disturbances to the surrounding environment in the forms of added turbidity in the water column, added human presence, and noise higher than ambient levels. All of these effects would return to normal levels once the project is complete and construction activities have ceased. The project will also not change the current baseline in such a way that the public interests in this area will change. In addition, the proposed dredging will affect a minimum of undisturbed area, and turbidity associated with these operations will be temporary, of short duration (see Sections 1.3.1 and 6.2). In addition, the proposed project was coordinated with the natural resource agencies for comments and those comments were addressed (see Sections 4.3 through 4.6).

Four commenters were concerned about impacts to threatened and endangered species. The FWS made a determination of may affect, not likely to adversely affect.

See Section 10 of this document for information regarding how the Corps has determined that it has fulfilled its responsibilities under Section 7(a)(2) of the Endangered Species Act.

Approximately 38 comments regarding different pollution concerns (air, water, light, noise) were received. We found the potential effects from the project regarding these concerns to be negligible (see Sections 4.3 through 4.6, 10.5, and 12.1). In addition, all comments received during the Public Notice and subsequent coordination have been forwarded to the TCEQ for evaluation in that agency's water quality certification review for this project.

Eleven comments of concern were received about cumulative impacts. We have addressed this issue in Section 9 of this document.

In regard to aesthetics and land use, the project will be confined to an existing commercial marine facility. During construction activities, there would be short term, temporary adverse impact upon the aesthetics and land use of the project site caused by the presence of construction equipment and the generation of noise. However, it is expected that the activities would be performed during daylight hours, be temporary, and be within normal ranges for construction equipment. In all, the proposed work, construction of the structures, would temporarily, though not adversely impact the aesthetic and land use values.

- 7.1.1 Climate Change. The proposed activities within the Corps federal control and responsibility likely will result in a negligible release of greenhouse gases into the atmosphere when compared to global greenhouse gas emissions. Greenhouse gas emissions have been shown to contribute to climate change. Aquatic resources can be sources and/or sinks of greenhouse gases. For instance, some aquatic resources sequester carbon dioxide whereas others release methane; therefore, authorized impacts to aquatic resources can result in either an increase or decrease in atmospheric greenhouse gas. These impacts are considered de minimis. Greenhouse gas emissions associated with the Corps federal action may also occur from the combustion of fossil fuels associated with the operation of construction equipment, increases in traffic, etc. The Corps has no authority to regulate emissions that result from the combustion of fossil fuels. These are subject to federal regulations under the Clean Air Act and/or the Corporate Average Fuel Economy (CAFE) Program. Greenhouse gas emissions from the Corps action have been weighed against national goals of energy independence, national security, and economic development and determined not contrary to the public interest.
- 7.2 The relative extent of the public and private need for the proposed structure or work: The applicant is requesting the permit to conduct dredging operations and construct mooring facilities that will allow Suezmax vessels to utilize this commercial marine facility. The work will provide upgrades to the marine facility that will allow it to accommodate the new Suezmax vessels and so compete with other upgraded facilities. The improvements will also contribute in the marketing of petroleum

products on the world energy market, and thus meet the commercial as well as the public's, increased demand for these products.

- 7.3 If there are unresolved conflicts as to resource use, explain how the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work was considered.

Discussion: N/A

- 7.4 The extent and permanence of the beneficial and/or detrimental effects that the proposed work is likely to have on the public and private use to which the area is suited:

Detrimental effects are expected to be minimal and temporary.

Beneficial effects are expected to be more than minimal and permanent.

The detrimental effects associated with the loss of environmental habitat will be mitigated by the proposed compensatory mitigation plan. The beneficial effects of adequately meeting the public's need for the transportation of petroleum via marine shipping will continue until the public's need is no longer present. The benefits which reasonably may be expected to accrue from the proposal have been balanced against its reasonably foreseeable detriments.

See Section 4 for specific concerns and their resolution.

- 8.0 Mitigation:**
(33 CFR 320.4(r), 33 CFR Part 332, 40 CFR 230.70-77, 40 CFR 1508.20 and 40 CFR 1502.14)

- 8.1 Avoidance and Minimization: When evaluating a proposal including regulated activities in waters of the US, consideration must be given to avoiding and minimizing effects to those waters. Avoidance and minimization measures are described above in Sections 1 and 3.

Were any other mitigative actions including project modifications discussed with the applicant that were implemented to minimize adverse project impacts? (see 33 CFR 320.4(r)(1)(i)) No

- 8.2 Is compensatory mitigation required to offset environmental losses resulting from proposed unavoidable impacts to waters of the US? Yes

If no, rationale: N/A

- 8.3 Type and location of compensatory mitigation

The applicant proposes to mitigate for the proposed impacts by a combination of restoration, establishment of seagrass beds, enhancement of existing wetlands and hard substrate, and preservation of a large Live Oak – Redbay Woodland/pothole wetland forest. The preservation area sits approximately 0.5 mile west of the Moda terminal and abuts the eastern boundary of Starlight Drive and the northern boundary of Live Oak Street in Ingleside on the Bay, San Patricio County, Texas. The rock breakwater, wetland enhancement area, and seagrass planting area are located at Sunset Lake on Indian point. This is located in the western part of Corpus Christi Bay approximately 11 miles west of the project site and southwest of Portland, Nueces County, Texas.

- 8.3.1 Is the impact in the service area of an approved mitigation bank? No
If yes, does the mitigation bank have appropriate number and resource type of credits available? N/A
- 8.3.2 Is the impact in the service area of an approved in-lieu fee program? No
If yes, does the in-lieu fee program have the appropriate number and resource type of credits available? N/A
- 8.3.3 Selected compensatory mitigation type/location(s). Reference Table 12.

Mitigation bank credits	
In-lieu fee program credits	
Permittee-responsible mitigation under a watershed approach	
Permittee-responsible mitigation, on-site and in-kind	X
Permittee-responsible mitigation, off-site and/or out of kind	X

- 8.3.4 Does the selected compensatory mitigation option deviate from the order of the options presented in §332.3(b)(2)-(6)? No

If yes, provide rationale for the deviation, including the likelihood for ecological success and sustainability, location of the compensation site relative to the impact site and their significance within the watershed, and/or the costs of the compensatory mitigation project (see 33 CFR §332.3(a)(1)): N/A

8.4 Amount of compensatory mitigation: The applicant proposes to mitigate for losses of jurisdictional waters of the U.S. with a combination of restoration by establishment of 20 acres of seagrass beds, enhancement of existing wetlands and hard substrate by constructing an approximately 2,000-linear-foot rock breakwater, and preservation of 70 acres of on-site Live Oak-Redbay Woodland/pothole wetland forest that includes a mosaic of pothole wetlands.

Rationale for required compensatory mitigation amount: The proposed plan meets regulatory goals of watershed habitat diversity, habitat connectivity, retaining and

improving hydrologic resources, enhancing ecological benefits, and compatibility with existing land use.

- 8.5 For permittee responsible mitigation identified in 8.3.3 above, the final mitigation plan must include the items described in 33 CFR 332.4(c)(2) through (c)(14) at a level of detail commensurate with the scale and scope of the impacts. As an alternative, the district engineer may determine that it would be more appropriate to address any of the items described in (c)(2) through (c)(14) as permit conditions, instead of components of a compensatory mitigation plan. Presence of sufficient information related to each of these requirements in the applicant’s mitigation plan is indicated by “Yes” in following Table. “No” indicates absence or insufficient information in the plan, in which case, additional rationale must be provided below on how these requirements will be addressed through special conditions:

Table 13 – Permittee-Responsible Mitigation Plan Requirements		
Requirement	Yes	No
Objectives	X	
Site selection	X	
Site protection instrument		X
Baseline information	X	
Determination of credits	X	
Mitigation work plan	X	
Maintenance plan	X	
Performance standards	X	
Monitoring requirements	X	
Long-term management plan	X	
Adaptive management plan	X	
Financial assurances	X	
Other		

For any “No”, provide rationale on how the subject component(s) of the compensatory mitigation plan will be addressed as special conditions or why no special conditions are required: Details of a site protection instrument are still being negotiated with the Port of Corpus Christi, which owns the land where the proposed seagrass establishment will be located. A special condition will be added to the Corps authorization addressing this issue.

9.0 Consideration of Cumulative Impacts:

(40 CFR 230.11(g) and 40 CFR 1508.7, RGL 84-9) Cumulative impacts result from the incremental environmental impact of an action when added to all other past, present, and reasonably foreseeable future actions. They can result from individually minor but collectively significant actions taking place over a period of time. A cumulative effects assessment should consider both direct and indirect, or secondary, impacts. Indirect impacts result from actions that occur later in time or are farther removed in distance from the original action, but still reasonably foreseeable.

Every permit application must be considered on its own merits. Its impacts on the environment must be assessed in light of historical permitting activity, along with anticipated future activities in the area. Although a particular project may constitute a minor impact in itself, the cumulative impacts that result from a large number of such projects could cause a significant impairment of water resources and interfere with the productivity and water quality of existing aquatic ecosystems.

Cumulative impacts can result from many different activities including the addition of materials to the environment from multiple sources, repeated removal of materials or organisms from the environment, and repeated environmental changes over large areas and long periods. More complicated cumulative effects occur when stresses of different types combine to produce a single effect or suite of effects. Large, contiguous habitats can be fragmented, making it difficult for organisms to locate and maintain populations between disjunctive habitat fragments. Cumulative impacts may also occur when the timings of perturbations are so close in space that their effects overlap.

- 9.1 Identify/describe the direct and indirect effects of the proposed activity:
The direct impacts that this project will have on aquatic resources are the dredging of a 43-acre tidally influenced open-bay area. The dredged area includes approximately 8.86 acres of submerged aquatic vegetation and 0.80 acre of estuarine wetlands that will be directly affected by dredging (0.79 acre) and bulkhead placement (0.01 acre). Indirect impacts to 0.15 acre of wetland habitat will be incurred as a result of severed hydrology once the bulkhead is constructed. Also expected are temporary impacts to benthic organism populations and water clarity associated with the proposed dredging operations.
- 9.2 The geographic scope for the cumulative effects assessment is: Impacts resulting from the proposed project will be felt in a small portion of the North Corpus Christi Bay watershed, specifically, 8-digit hydrologic unit: 12110201. According to the 2006 National Land Cover Database, approximately 11.673% of the watershed is wetland, and 35.008% is open water. Corpus Christi Bay has a surface area of 124,796 acres with 127 miles of shoreline and an average depth of 11 feet. Freshwater inflow, which strongly influences estuarine productivity, enters into the Corpus Christi Bay system from the Nueces River and Oso Creek. On an average year, the Corpus Christi Bay system receives 314,000 acre-feet of freshwater from these sources. Approximately 12% of existing Texas seagrasses is contained in this system.
- 9.3 The temporal scope of this assessment covers: A review of the Corps regulatory database for the watershed spanning the past 5 years was performed. Similarly, the Corps analysis will estimate future impacts for the next 5 years.
- 9.4 Describe the affected environment: The area in which impacts resulting from the proposed project will be felt will be confined to Ingleside Point next to the CCSC and adjacent shoreline. The impacts that are expected in that area from the proposed

project are the temporary impacts to benthic populations and temporary turbidity associated with the proposed dredging operations. Within the vicinity of Berth 7, the applicant will dredge the existing bay bottom to a depth of -15 feet MLLW with an additional two feet of over dredge and another two feet of advanced maintenance. The remainder of the West Basin expansion will be dredged to a depth of -54 feet MLLW with an additional two feet of over dredge and another two feet of advanced maintenance. Approximately 32.8 acres of open water bay area, will be dredged to a depth to that depth creating a dredge footprint of approximately 43 acres including side slopes. The proposed dredging project is typical of those for other marine facilities when compared to other projects constructed in major Texas ports. Ten other projects with similar components to the current proposal have occurred since 2005.

Key issues of concern in this watershed are water quality and loss of special aquatic sites. The applicant's proposed project will not exacerbate any of these concerns.

Past and present actions, outside the Corps jurisdiction, that have been constructed include infrastructure, commercial and residential developments, parks and recreational areas, and industrial areas. While these actions did not require a Corps permit, they did require City and/or County approval prior to construction.

Past and present actions, within the Corps jurisdiction, that have been authorized for impacts within the scope of this assessment were analyzed by a review of the Corps regulatory database. Activities in the review area include permits issued for oil and gas development, private piers, erosion control, installation of utility lines, and dredging and filling permits associated with residential and commercial developments including marinas. Due to the age of many of the older permits and the limited nature of the information available, it is difficult to gauge the impacts of many of these permitted activities. Major dredging projects that have occurred in the past 60 years include the CCSC and La Quinta Channel, which receive regular maintenance dredging. In addition, at least five marine commercial facilities, as well as the former Naval Station Ingleside, have dredged large basins and access channels or enlarged existing ones in association with commercial ship traffic. Several small dredging projects are found along the nearby Ingleside Point associated with individual homeowners, residential development, and small commercial businesses. It is important to note that not every action that was authorized has resulted in a loss of Waters of the US. Many permits are authorized and not constructed for a variety of reasons. Nevertheless, a review of authorized activities does provide some indication of potential stressors, and potential impacts, on the environment. The aggregated effect of past actions within the last five years resulted in the authorization to impact approximately 89 acres of waters of the US. These permitted impacts also required compensatory mitigation resulting in the creation of 44.6 acres of waters of the US.

- 9.5 Determine the environmental consequences: Reasonably foreseeable future actions within this watershed include construction of this project and other planned

developments to meet future demands of a growing population. The impacts expected in the project area from the proposed dredging are temporary in nature and are primarily associated with the short-term suspension of sediment into the water column that will occur during dredging operations. The impacts expected in this area from the proposed project include possible impacts to the benthic community in the area to be dredged and the loss of wetlands. Any impacts to the benthic community will be temporary and that community will re-establish itself over time thereby offsetting temporal impacts to functional losses that occur as a result of this project. In addition, the applicant's mitigation plan will result in a no net loss of special aquatic site resources within this watershed.

Reasonably foreseeable future actions within this watershed include continued residential development, construction of new or expansion of several existing commercial marine terminals associated with liquefied natural gas processing facilities, expansion of the Port of Corpus Christi facilities, the La Quinta Gateway Project, the CCSC Improvement Project, and pending Corps permits for large dredge or fill activities. The need for these actions is expected to be driven by market demands, population increases, and economics. The impacts or expected impacts from these other actions are possible pollution associated with oil and gas exploration and transportation, upland habitat losses and disturbance; temporary impacts to water quality, development pressure on aquatic areas requiring Corps permits, and increases in human populations as the area becomes more developed.

- 9.6 Discuss any mitigation to avoid, minimize or compensate for cumulative effects: Associated compensatory mitigation requirements for projects requiring a Corps permit will help offset such losses. Most wetland impacts, excluding non-reporting nationwide permits, require a mandatory review process, which sequentially requires avoidance and minimization of impacts to the maximum extent practicable and consideration of compensation for unavoidable impacts.

Avoidance and minimization methods specific to this project are discussed in Section 1.3.1. The applicant has proposed to conduct dredging in open-water bay area for only the minimum amount needed to provide access for Suezmax vessels to the applicant's facility. The applicant's plan to use turbidity curtains will ensure that any turbidity plumes from the dredging activities will have only minimal impact on the aquatic environment. Additionally, the applicant has agreed to mitigate for losses of jurisdictional waters of the U.S. with a combination of restoration, establishment of seagrass beds, enhancement of existing wetlands and hard substrate, and preservation of Live Oak-Redbay Woodland/pothole forest. The applicant's adherence to these mitigation strategies ensures that the proposed work will not contribute to an adverse cumulative effect on the aquatic functions and values of the watershed.

9.7 Conclusions regarding cumulative impacts:

When considering the overall impacts that will result from the proposed activity, in relation to the overall impacts from past, present, and reasonably foreseeable future activities, the incremental contribution of the proposed activity to cumulative impacts in the area described in section 9.2, are not considered to be significant.

Compensatory mitigation will be required to help offset the impacts to eliminate or minimize the proposed activity's incremental contribution to cumulative effects within the geographic area described in Section 9.2. Mitigation required for the proposed activity is discussed in Section 8.0.

10.0 Compliance with Other Laws, Policies, and Requirements:

10.1 **Section 7(a)(2) of the Endangered Species Act (ESA):** Refer to Section 2.1 for description of action area for Section 7.

10.1.1 Has another federal agency been identified as the lead agency for complying with Section 7 of the ESA with the Corps designated as a cooperating agency and has that consultation been completed? No

10.1.2 Are there listed species, or designated critical habitat present or in the vicinity of the Corps' action area: Yes

Name of species and/or critical habitat considered: Green sea turtle, Kemps ridley sea turtle, hawksbill sea turtle, leatherback sea turtle, piping plover, red knot, whooping crane, and West Indian manatee.

Effect determination(s): May affect, not likely to adversely affect

Basis for determination(s): The proposed activity may affect, but is not likely to adversely affect piping plover (*Charadrius melodus*), red knot (*Calidris canutus rufa*), whooping crane (*Grus americana*), and West Indian manatee (*Trichechus manatus*) and/or their critical habitat (if project site is located within critical habitat) based on informal consultation with the FWS initiated on 25 March 2020. On 23 April 2020, the FWS made a determination of May Affect but Not Likely to Adversely Affect for nesting sea turtles, West Indian manatee, piping plover, red knot, and whooping crane with the use of protocols and precautions recommended by the FWS. Similarly, critical habitat for the piping plover is unlikely to be adversely modified.

10.1.3 Consultation with either the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service was initiated and completed as required, for any determinations other than "no effect" (see the attached ORM2 Summary sheet for begin date, end date and closure method of the consultation).

Based on a review of the information above, the Corps has determined that it has fulfilled its responsibilities under Section 7(a) (2) of the ESA. The documentation of the consultation is incorporated by reference.

10.2 Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Essential Fish Habitat (EFH):

10.2.1 Has another federal agency been identified as the lead agency for complying with the EFH provisions of the Magnuson-Stevens Act with the Corps designated as a cooperating agency and has that consultation been completed? No

10.2.2 Did the proposed project require review under the Magnuson-Stevens Act? Yes

10.2.3 EFH species or complexes considered: The following is a summary of the type of species listed in the Gulf of Mexico Fishery Management Plans: red drum, triggerfishes (Balistidae), jacks (Carangidae), wrasses (Labridae), snappers (Lutjanidae), tilefishes (Malacanthidae), groupers (Serranidae), and coastal migratory pelagic species, shrimps, stone crabs, and spiny lobsters.

Effect determination: Minimal adverse effect

Basis for determination: Effects to fish habitat are temporary and minimal. Baseline habitat conditions are expected to return once the project is complete.

10.2.4 Consultation with the National Marine Fisheries Service was initiated and completed as required (see the attached ORM2 Summary sheet for begin date, end date and closure method of the consultation).

Summary of NMFS EFH Comments:

No comments were received from the NMFS-HCD.

Based on a review of the information above, the Corps has determined that it has fulfilled its responsibilities under EFH provisions of the Magnuson-Stevens Act.

10.3 Section 106 of the National Historic Preservation Act (Section 106): Refer to Section 2.2 for permit area determination.

10.3.1 Has another federal agency been identified as the lead federal agency for complying with Section 106 of the National Historic Preservation Act with the Corps designated as a cooperating agency and has that consultation been completed? No

10.3.2 Known historic properties? No known cultural resources were present, but survey was needed.

Effect Determination(s): No effect/No historic properties affected

Basis for determination(s): The Corps staff archaeologist reviewed the project site for cultural resources and found that there are no previously recorded historic properties known to exist within the proposed permit area.

In addition, the project area was investigated for historic properties and none were found as documented in the reports titled "Marine Remote-Sensing Survey and Diving Assessment for Historic Properties Investigations Corpus Christi Ship Channel Improvements and La Quinta Ship Channel Extension Corpus Christi Bay, Texas" prepared by PBS&J and dated August 2003 and "Marine Archaeological Survey for the Moda Docks Dredging Project, Corpus Christi Bay, Nueces County, Texas" prepared by Gray & Pape Heritage Management and dated August 2020.

The Corps staff archeologist determined the project would have no effect to historic properties. Consequently, in accordance with the April 25, 2005, memorandum titled "Revised Interim Guidance for Implementing Appendix C of 33 CFR Part 325 with the Revised Advisory Council on Historic Preservation Regulations at 36 CFR Part 800" the Texas State Historic Preservation Officer concurred with that determination on September 2, 2020.

10.3.3 Consultation was initiated and completed with the appropriate agencies, tribes and/or other parties for any determinations other than "no potential to cause effects." (see the attached ORM2 Summary sheet for begin date, end date and closure method of the consultation).

Based on a review of the information above, the Corps has determined that it has fulfilled its responsibilities under Section 106 of the NHPA. Compliance documentation incorporated by reference.

10.4 **Tribal Trust Responsibilities:**

10.4.1 Was government-to-government consultation conducted with Federally-recognized Tribe(s)? No, consultation with tribes was not required.

Provide a description of any consultation(s) conducted including results and how concerns were addressed. N/A

The proposed action was coordinated with the tribes, as appropriate. The following is a summary of comments: No response was received from any federally recognized Native American Tribes and/or affiliated groups.

The Corps has determined that it has fulfilled its tribal trust responsibilities.

10.4.2 Other Tribal including any discussion of Tribal Treaty rights? N/A

10.5 Section 401 of the Clean Water Act – Water Quality Certification (WQC):

10.5.1 Is a Section 401 WQC required, and if so, has the certification been issued or waived? An individual water quality certification is required and qualifies as a Tier II project, as defined by the 2000 Memorandum of Agreement between the Corps and TCEQ.

The TCEQ has not yet acted on the applicant's request for water quality certification under Section 401 of the Clean Water Act. The Corps will provide the TCEQ with a copy of this permit decision document when finalized. The final permit decision document will contain the environmental assessment and §404(b)(1) analysis. The TCEQ will then make its determination whether the project will comply with state surface water quality standards in accordance with Section 401 of the Clean Water Act. The Corps will provide a permit decision to the applicant when the following procedures have been completed. The TCEQ will either provide its certification decision (issuance or denial), or request an extension from the Corps within 10 working days from receipt of the Corps decision document. If the TCEQ does not provide a certification decision or request an extension within the 10-day period, the Corps will presume waiver of certification in accordance with 33 CFR 325.2(b) and proceed with the issuance or denial of the permit. If TCEQ requests an extension of time, the Corps will determine the merit of the time extension request and the length of the extension based on 33 CFR 325.2(b) and notify TCEQ of its intended decision. If the Corps decides to deny or modify a request for extension, TCEQ will have 10 working days from the date it is notified of the intended action of the Corps on the request for extension in which to either certify or deny certification.

10.6 Coastal Zone Management Act (CZMA):

10.6.1 Is a CZMA consistency concurrence required, and if so, has the concurrence been issued, waived or presumed? An individual CZMA consistency concurrence is required; however, the project is also qualities as a Tier II project, as defined by the 2000 Memorandum of Agreement between the Corps and TCEQ. Therefore, the CZMA consistency will accompany TCEQ's WQC.

10.7 Wild and Scenic Rivers Act:

10.7.1 Is the project located in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system? No

The Corps has determined that it has fulfilled its responsibilities under the Wild and Scenic Rivers Act.

10.8 Effects on Corps Civil Works Projects (33 USC 408):

10.8.1 Does the applicant also require permission under Section 14 of the Rivers and Harbors Act (33 USC 408) because the activity, in whole or in part, would alter, occupy, or use a Corps Civil Works project? No, the appropriate non-Regulatory office has determined that there will be no effects to federal projects that require permission from the Corps.

10.9 Corps Wetland Policy (33 CFR 320.4(b)):

10.9.1 Does the project propose to impact wetlands? Yes

10.9.2 Based on the public interest review herein, the beneficial effects of the project outweigh the detrimental impacts of the project.

10.10 **Other (as needed):** N/A

11.0 Special Conditions:

11.1 Are special conditions required to protect the public interest, ensure effects are not significant and/or ensure compliance of the activity with any of the laws above? Yes

If no, provide rationale: N/A

11.2 Required special condition(s):

Special condition(s):

1. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. When structures or work authorized by this permit are determined by the District Engineer to have become abandoned, obstructive to navigation or cease to be used for the purpose for which they were permitted, such structures or other work must be removed, the area cleared of all obstructions, and written notice given to the Corps of Engineers, Galveston District, Regulatory Division, Corpus Christi Field Office (Corps), within 30 days of completion.

3. The permittee must install and maintain, at the permittee's expense, any safety lights, signs and signals required by U.S. Coast Guard, through regulations or

otherwise, on the permittee's fixed structures. To receive a U.S. Coast Guard Private Aids to Navigation marking determination, at no later than 30 days prior to installation of any fixed structures in navigable waters and/or prior to installation of any floating private aids to navigation, you are required to contact the Eighth Coast Guard District (dpw), 500 Poydras St. Suite 1230, New Orleans, LA 70130, (504) 671-2328 or via email to: D8oanPATON@uscg.mil. For general information related to Private Aids to Navigation please visit the Eight Coast Guard District web site at: <http://www.uscg.mil/d8/waterways/PATON.Home.asp>

4: The permittee will utilize Best Management Practices, including, but not limited to weighted turbidity curtains and screens, during all dredging and construction projects associated with this permit to minimize impacts to seagrass beds.

5: At least 15 days prior to the performance of hydraulic dredging operations, the permittee will submit a copy of the initial survey results of the identified seagrass beds in the vicinity of the project site's West Ship Basin to the CCRFO for review and approval. The permittee will also conduct a post-construction survey of these seagrass beds within 1 year after cessation of dredging activities to document the condition of the seagrass beds. The results of the post-construction survey will be submitted to the CCRFO for review no later than 45 days after the survey is performed. Content of the report should be provided in accordance with 4(b) and 4(c) of Regulatory Guidance Letter 08-03 dated 10 October 2008.

8: The permittee shall conduct an initial hydrographic survey of the West Ship Basin dredge slope and concrete mattresses prior to dredging activities. The permittee will also monitor the condition the dredge slope and mattresses for a period of at least five years by conducting annual hydrographic surveys of the basin within 30 days of the anniversary of the project initiation date and submit the results of these surveys to the CCRFO within 45 days of conducting the surveys.

9. Should the CCRFO determine that the post-construction survey report documents that significant impacts to seagrass beds at the project site have occurred, the permittee will be required to take necessary corrective measures, as directed by the CCRFO. Once the corrective measures are completed, the permittee will immediately notify the CCRFO and a determination will be made regarding success of the corrective measures. If it is determined by the CCRFO that the corrective measures are unsuccessful, additional requirements may be required by the CCRFO.

10. All construction of mitigation, including planting, must be complete within 12 months after start of construction within jurisdictional areas. The Permittee will notify the Corps of Engineers, Galveston District, Regulatory Division, Corpus Christi Field Office (Corps) in writing within 15 days of the initiation of work in jurisdictional areas. Monitoring and maintenance will proceed according to the mitigation plan.

11. The mitigation success criteria, as indicated in the mitigation plan included in Attachment “A” must be achieved for the mitigation requirement to be considered complete.

12. Should mitigation be determined to be unsuccessful by Corps personnel at the end of the monitoring period, the Permittee will be required to take necessary corrective measures, as approved by the Corps. Once the corrective measures are completed, the Permittee will notify the Corps and a determination will be made regarding success of the mitigation.

13. The Permittee will establish a deed restriction that applies to the 70-acre upland Live Oak-Redbay Woodland/pothole wetland preservation area as described in Attachment A (Permittee’s 1 December 2020 mitigation plan), and provide a copy of the deed restriction to the Corps for review and approval no later than 3 months from the date of issuance for the Department of the Army permit for the proposed West Ship Basin expansion project.

14. The Permittee will establish a land use agreement with the Port of Corpus Christi as outlined in Attachment A that applies to the submerged land designated for habitat creation, restoration, and/or enhancement, and provide a copy of the land use agreement to the Corps for review and approval no later than 6 months from the date of issuance for the Department of the Army permit for Moda Ingleside Oil Terminal, LLC. Prior to execution, the land use agreement must be approved in writing by the Corps.

Rationale: In accordance with 33 CFR 325.4 Conditioning of permits, the district engineer will add special conditions to Department of Army permits when such conditions are necessary to satisfy legal requirements or to otherwise satisfy the public interest requirements. The above special conditions are required for fulfillment of the public interest requirements specified according to 33 CFR 320.4(o)(3) Navigation, 33 CFR 320.4(g) Consideration of property ownership, and 33 CFR 332 Compensatory Mitigation for Losses of Aquatic Resources.

12.0 Findings and Determinations:


12.1 Section 176(c) of the Clean Air Act General Conformity Rule Review: The proposed permit action has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this permit will not exceed de minimis levels of direct or indirect emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps’ continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this permit action.

12.2 Presidential Executive Orders (EO):

- 12.2.1 EO 13175, Consultation with Indian Tribes, Alaska Natives, and Native Hawaiians: This action has no substantial effect on one or more Indian tribes, Alaska or Hawaiian natives.
- 12.2.2 EO 11988, Floodplain Management: This action is not located in a floodplain.
- 12.2.3 EO 12898, Environmental Justice: The Corps has determined that the proposed project would not use methods or practices that discriminate on the basis of race, color or national origin nor would it have a disproportionate effect on minority or low-income communities.
- 12.2.4 EO 13112, Invasive Species: There are no invasive species issues involved in this proposed project.
- 12.2.5 EO 13212 and EO 13302, Energy Supply and Availability: The review was expedited and/or other actions were taken to the extent permitted by law and regulation to accelerate completion of this energy related project while maintaining safety, public health and environmental protections.
- 12.3 Findings of No Significant Impact: Having reviewed the information provided by the applicant and all interested parties and an assessment of the environmental impacts, I find that this permit action will not have a significant impact on the quality of the human environment. Therefore, an environmental impact statement will not be required.
- 12.4 Compliance with the Section 404(b)(1) Guidelines: Having completed the evaluation above, I have determined that the proposed discharge complies with the Guidelines, with the inclusion of the appropriate and practicable special conditions to minimize pollution or adverse effects to the affected ecosystem.


12.5 Public interest determination: Having reviewed and considered the information above, I find that the proposed project is not contrary to the public interest.

PREPARED BY:

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Date: 2021.04.02 11:35:54 -05'00' Date: 2 April 2021

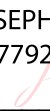
Mark Pattillo
Regulatory Project Manager

REVIEWED BY:

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Robert W. Heinly
Chief, Policy Analysis Branch
Regulatory Division, Galveston District

APPROVED BY:

MCPMAHAN.JOSEPH.ANTHONY.1107792  Digitally signed by MCPMAHAN.JOSEPH.ANTHONY.1107792623
Date: 2021.04.13 09:43:21 -05'00' Date: _____

Joseph McMahan
Chief, Regulatory Division
Galveston District