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Re: Comments on Texas GulfLink, LLC, National Environmental Policy Act Final Environmental Impact Statement, Docket No. MARAD-2019-0093

Dear Mr. Clark and Dr. Houston:

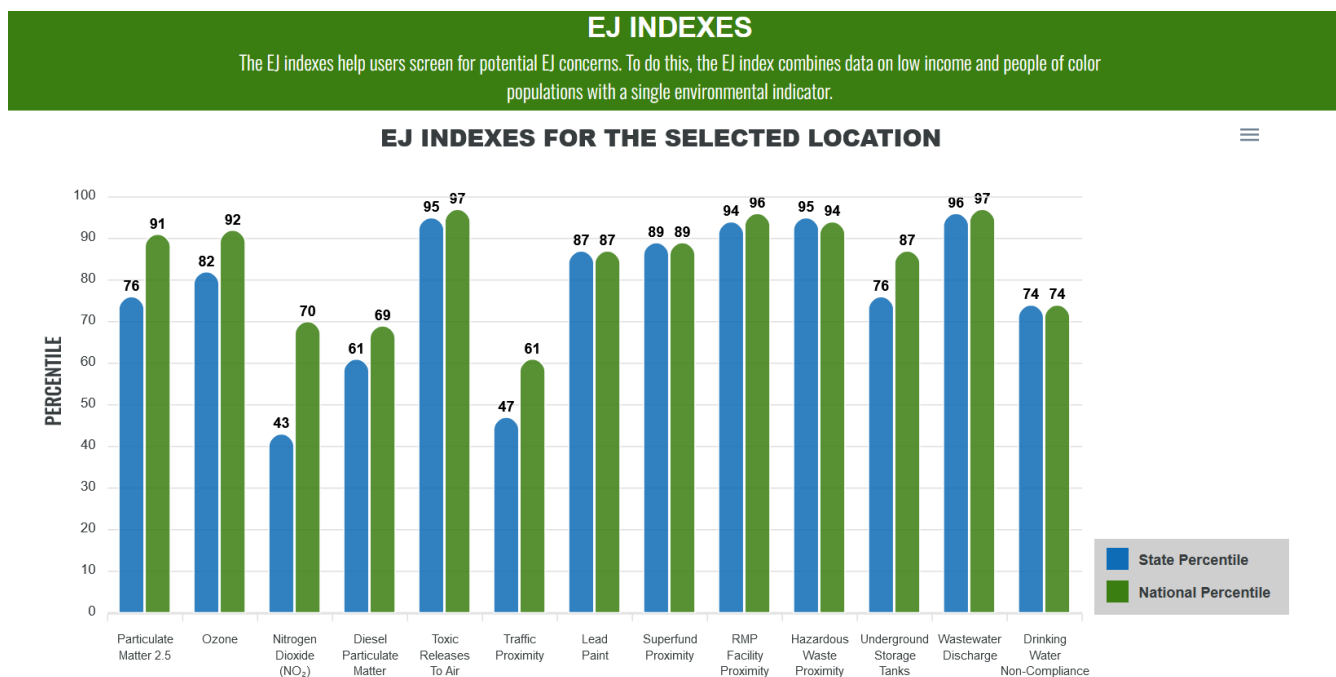
The undersigned groups (“Commenters”) submit the following comments to the Maritime Administration (“MARAD”) and U.S. Coast Guard (“USCG”) on the Final Environmental Impact Statement (“FEIS”) for Texas GulfLink LLC’s license application for its Deepwater Port Project, Docket No.: MARAD-2019-0093 (“GulfLink” or the “Project”) to export crude oil off the Texas coast near Freeport. Many Commenters joined previous comments objecting to GulfLink’s Supplemental and original Draft Environmental Impact Statements (“SDEIS” and “DEIS,” respectively), which we filed during open public comment periods on November 29, 2022, November 8, 2021, and January 22, 2021.¹ While the FEIS makes several changes to the SDEIS, it continues to dismiss the extensive environmental and environmental-justice concerns Commenters and thousands of members of the public have raised about the Project and the EIS, and the FEIS continues to deeply underreport and fail to analyze the harm this Project would cause.² We therefore incorporate by reference all our previous comments on the SDEIS and DEIS, and all literature cited therein.

¹ See Comment Ltrs. submitted by Sierra Club, Center for Biol. Diversity, and Earthjustice et al., MARAD-2019-0093-3061 (Nov. 29, 2022), MARAD-2019-0093-2929 (Nov. 8, 2021), MARAD-2019-0093-2783-89 (Jan. 27, 2021).

² See App’x C to FEIS (providing responses to public comments).

As the FEIS explains, GulfLink could load 15 VLCCs per month.³ That equals nearly 1 million barrels of oil per day or 360 million barrels of oil per year.⁴ This would increase export capacity by about 25 percent of the current total U.S. crude-oil export volumes.⁵ GulfLink’s massive oil export terminal would bring immense threats to coastal communities and ecosystems, which include spills, noise, air pollution, loss of wetlands and more, all in an area already bearing the brunt of some of the worst concentrated industrial pollution in the nation.

Figure 1. EPA EJScreen EJ Indexes, showing Environmental Justice Burdens compared to state and nation for Freeport, Texas and 3-mile surrounding area (higher percentile means higher risk of harm relative to state/nation):⁶



As the figure above shows, Freeport and the surrounding area bears one of the most environmentally unjust pollution burdens in the nation on criteria ranging from air toxics, to ozone pollution, to hazardous waste releases.

³ FEIS at 2-2.

⁴ Each VLCC could carry up to 2 million barrels of oil. FEIS at 2-2. Two million barrels per VLCC * 15 VLCCs per month * 12 months = 360 million barrels of oil per year or 986,000 barrels of oil per day (360 million barrels/365 days).

⁵ FEIS at 1-8 (providing range of 1.8 to 4.1 million barrels per day). In 2023, the United States averaged 4.1 million barrels per day of oil exports. EIA, U.S. Crude Oil Exports (Mar. 18, 2024), <https://www.eia.gov/todayinenergy/detail.php?id=61584>.

⁶ For full results, see attached Ex. 1, EPA EJScreen Report for 3-mile radius centered on Freeport, Texas, <https://ejscreen.epa.gov/mapper/index.html?wherestr=freeport%2C+tx>.

GulfLink, on its own, would be responsible for well over one-hundred million tons per year of upstream and downstream greenhouse gas emissions, contributing substantially to increasingly severe climate change impacts,⁷ in glaring contrast to our government’s stated commitment to tackle the problem for current and future generations and to enable climate-justice communities to pursue a just transition from fossil fuels. But even worse, MARAD and USCG compound each of these harms cumulatively because of MARAD’s April 2024 decision also to finalize the license for the Sea Port Oil Terminal (“SPOT”), a 730-million-barrel-per-year oil export project that would load VLCCs just seven nautical miles from GulfLink.⁸ These two projects would represent a nearly 75 percent increase in combined export capacity on current volumes, unleashing in one small area an onslaught of new oil-export traffic and environmental consequences resulting from the projects.⁹

MARAD and USCG utterly fail to explain why they appear set to license two of these massive projects to burden the very same area, which would be a textbook example of facilitating environmental injustice and adverse cumulative impacts. And it fails to comply with the Deepwater Port Act. As we explained at length in our comments on the DEIS,¹⁰ the Act allows the agencies to license only terminals that timely apply to build in the same “application area,” “within which construction of the proposed deepwater port would eliminate, at the time such application was submitted, the need for any other deepwater port within that application area.”¹¹ Here, GulfLink’s proposed pipeline crosses the application area the agencies set and published in a public notice for SPOT, but GulfLink failed timely to submit notice and a full application afterward.¹² Perhaps in an effort to paper over this problem, the agencies attempted to retroactively remove SPOT’s pipeline route

⁷ FEIS at 5-51.

⁸ See FEIS at 2-69; Ex. 2, Signed SPOT Final License Agmt, MARAD-2019-0011-8126 (Apr. 7, 2024).

⁹ GulfLink and SPOT combined would have about 3 million barrels per day of oil export capacity compared to 2023 U.S. oil export volumes of 4.1 million barrels per day. See EIA, U.S. Crude Oil Exports (Mar. 18, 2024), <https://www.eia.gov/todayinenergy/detail.php?id=61584>.

¹⁰ See Comment Ltr. by Sierra Club, Center for Biol. Diversity, and Earthjustice et al. at 102-104, MARAD-2019-0093-2783-89 (Jan. 27, 2021).

¹¹ 33 U.S.C.A. § 1504(d). The timeliness requirement is that any subsequent applicants, like GulfLink here, must “submit a notice of intent to file an application with the Secretary not later than 60 days after the publication of notice” of the application area, and then file a “completed application no later than 90 days after publication of such notice.” *Id.*

¹² See Comment Ltr. by Sierra Club, Center for Biol. Diversity, and Earthjustice et al. at 102-104, MARAD-2019-0093-2783-89 (Jan. 27, 2021).

from the application area, so it would not overlap with GulfLink.¹³ But as we explained, that is unavailing because it fails to comport with Congress’s timeliness requirement—coming after the statutory deadline expired—and it narrows SPOT’s application area arbitrarily and capriciously to avoid GulfLink, when both Projects would draw oil export traffic from the same regions of West Texas, to the same port region.¹⁴

The national interest in securing a clean energy future, the urgent need to meaningfully address the climate crisis, and the imperative to halt the environmental injustice facing frontline communities that time and again are asked to bear the full brunt of a petrochemical and oil-and-gas buildout, all weigh heavily against licensing the Project.¹⁵ Approving the GulfLink project now would lock in decades of fossil fuel dependence and infrastructure, and pollute Gulf communities already experiencing climate disaster, including this summer’s Hurricane Beryl, without any substantial benefit to local residents.

The comments below aim to avoid repeating previous comments. Instead, they highlight concerns specific to the FEIS and changed circumstances since the SDEIS. Commenters call on MARAD and USCG to revise the FEIS and ensure their record of decision will apply the latest regulatory standards, properly analyze the no-action alternative, protect against severe flooding and spills at the Jones Creek Terminal, model and address ozone and PM_{2.5} pollution risks, mitigate environmental justice impacts from air pollution, properly account for and protect against the high risk of oil spills, and mitigate harm to species that goes beyond the narrow bounds of the Biological Opinions on which the FEIS relies.

I. MARAD and USCG Must Apply the Latest CEQ NEPA Regulations and Guidance, which were Issued Before the Release of FEIS, let alone any Final Decision.

Between the time of GulfLink’s SDEIS and the FEIS, the Council on Environmental Quality (“CEQ”) released final revised regulations to govern federal agencies’ implementation of the National Environmental Policy Act (NEPA), as well as updated guidance on addressing greenhouse gas emissions and climate-change

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *See* 33 U.S.C. § 1503(c).

impacts in NEPA reviews.^{16, 17} It is unclear the degree to which the FEIS recognizes and applies these changes. In at least one place, MARAD and USCG suggest the CEQ rules will apply “to the extent practicable” in the ongoing NEPA review of the Project.¹⁸ MARAD and USCG must apply the CEQ regulations and guidance now in force in revising the FEIS and in making a determination in the record of decision. CEQ makes clear that MARAD and USCG have the authority to apply these new regulations and guidance, even though the agencies began drafting the EIS before these rules took effect.¹⁹ And generally courts require agencies to apply the NEPA regulations “in effect at the time of the [final] orders.”²⁰ Consistent with that, the Deepwater Port Act implementing regulations specify that applications “can and should reflect *reasonably foreseeable* environmental regulations in planning, operating and decommissioning a deepwater port,” even if they are not yet in force such as the CEQ regulations and guidance are now.²¹ Indeed, all the new CEQ rules and guidance went into effect while MARAD and USCG were still reviewing the *draft* EIS, before the FEIS’s publication and well before any “order” in the form of a record of decision. MARAD and USCG must apply the currently-in-force CEQ regulations and guidance in completing their review of the Project.

¹⁶ The latest, Phase II CEQ regulations were published May 1, 2024, and went into effect on July 1, 2024. *National Environmental Policy Act Implementing Regulations Revisions Phase 2*, 89 Fed. Reg. 35442 (May 1, 2024). They are based on draft rules first published in July 2023. *Id.* at 35447. CEQ’s guidance on evaluating climate change impacts went into effect even earlier, at the start of 2023. *National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change*, 88 Fed. Reg. 1196, 1212 (Jan. 9, 2023).

¹⁷ Also in the time since the SDEIS, Congress enacted amendments to NEPA that among other things, enshrine case law that agencies must use a “reasonably foreseeable” test in assessing environmental impacts and use reliable data and studies in crafting an EIS. See Fiscal Responsibility Act of 2023, Pub. Law 118-5 (June 23, 2023). The revised CEQ regulations implement those amendments, codify case law and standard practice in NEPA reviews, and update the regulations to better address environmental justice and climate change. See 88 Fed. Reg. at 35443–44.

¹⁸ See FEIS at 3-475 (explaining FEIS applies the 2023 CEQ climate guidance “to the extent practicable”).

¹⁹ See 40 C.F.R. § 1506.12 (July 1, 2024) (“An agency may apply the regulations in this subchapter to ongoing activities and environmental documents begun before July 1, 2024,” the latest regulations’ effective date); 88 Fed. Reg. at 1212 (making clear guidance went into effect immediately in January 2023).

²⁰ *Healthy Gulf v. FERC*, 107 F.4th 1033, 1039 n.1 (D.C. Cir. 2024).

²¹ See 33 C.F.R. § 148.708 (emphasis added). “Although a regulation is of no effect until it has been officially promulgated, to minimize the subsequent impact that potential regulations may have on a licensee, an applicant can and should reflect reasonably foreseeable environmental regulations in planning, operating, and decommissioning a deepwater port.” *Id.*

II. MARAD and USCG Fail to Properly Analyze the No-Action Alternative by Ignoring Reasonably Foreseeable Limits on Reverse-Lightering, Failing to Consider the Impact of the SPOT Project, and Relying on Outdated Oil Supply and Demand Modeling.

The FEIS's no-action alternative and the environmental-impacts analyses that rely on it rest on a completely unreasonable and unsupported assumption. The agencies assume GulfLink would induce little or no VLCC traffic in the area, despite adding 360 million barrels of VLCC-specific loading capacity per year. They reach that conclusion by assuming that, in the absence of GulfLink, VLCC traffic could increase by the same enormous volumes anyway, with onshore ports instead loading the additional crude oil onto VLCCs using shuttle tankers in a process called "reverse-lightering."²² As the FEIS states, operating the Project then "could reduce the number of shuttle tanker transits in the Houston Galveston Texas City ports area in the future by avoiding the need for reverse lightering."²³ We call this the "lightering substitution theory." And the FEIS uses this theory to find in nearly every environmental impact section of the FEIS that the Project could *reduce* all sorts of environmental harms associated with those exports, ranging from spills,²⁴

²² The FEIS defines reverse-lightering loading as the process in shallow-water port areas of partially or fully loading VLCCs with "ship-to-ship transfers from smaller tankers (hereafter referred to as 'shuttle tankers') at an offshore location." FEIS at AD-1.

²³ FEIS at 2-65.

²⁴ For example, the FEIS specifies in relation to cumulative oil-spill threats to endangered or threatened species, like the piping plover, the red knot, or sea turtles:

As discussed in Section 5.3.6, implementation of the Proposed Action and other proposed DWP projects is *expected to reduce the amount of crude oil tanker traffic in the vicinity as compared to the No Action alternative*. In the case that both the Proposed Action and SPOT are approved and operational, the number of shuttle tanker transits in the Houston Galveston Texas City ports area in the future could be reduced by avoiding the need for reverse lightering. See Appendix AD for a qualitative analysis of the potential impacts to reverse lightering from the proposed actions. *The reduction in tanker transits would reduce the risk of associated oil spills and the resulting risk to sea turtles.*

FEIS at 5-37 to 5-38 (emphasis added).

vessel noise impacts on species,²⁵ vessel strike risk to species,²⁶ air pollution,²⁷ congestion in the Port of Freeport,²⁸ etc. The only exception—one that shows the illogic of the lightering substitution theory—is in the FEIS’s treatment of greenhouse gas emissions, which we discuss further below.

The lightering substitution theory is GulfLink’s self-serving justification for the Project and is completely unreasonable. Adopting it whole cloth into the FEIS violates NEPA’s command to analyze the no-action alternative’s reasonably foreseeable consequences, a required component of any EIS.²⁹ The no-action alternative is important because MARAD has broad discretion to choose it and reject GulfLink’s license—and here it should do so.³⁰ Additionally, the no-action alternative is central to the accuracy of the rest of the NEPA review, as it provides the “baseline against which the proposed action and other alternatives are compared.”³¹ To establish a proper baseline, agencies must engage in “reasonable forecasting” of the no-action alternative’s foreseeable consequences.³² As explained below, the lightering substitution theory is flawed and does not reflect reasonably foreseeable benefits from denying the license, because the FEIS: 1) ignores the physical limits on expanding reverse-lightering loading in already-congested onshore ports, 2) ignores the impact of MARAD’s recent approval of a license for the SPOT project in the same area, and 3) continues to rely on inapt oil-market data that fails to account for current and any reasonably foreseeable energy policies as required.

²⁵ See, e.g., FEIS at 3-191, 5-28 (“This reduction in tanker transits would reduce potential exposures of marine mammals to vessel noise compared to the current baseline.”).

²⁶ FEIS at 5-28.

²⁷ FEIS at 8-1 (“Operation-related activity would result in a long-term increase in offshore marine traffic within lease blocks A-36 and 423, but would also avoid long-term impacts from marine traffic near Freeport, such as air and greenhouse gas emissions from the reduction to reverse lightering from the Proposed Action.”)

²⁸ FEIS at 3-467 to 3-468, 5-43. “Proposed Action operation would generate tanker (including VLCC) trips to the DWP. These tankers would not be new traffic to the Texas Gulf Coast region but would instead be tankers that might otherwise lighter near Galveston or Freeport.” FEIS at 3-467 to 3-468.

²⁹ See 42 U.S.C. § 4332; 40 C.F.R. §§ 1502.14(c), 1502.16(a)(2) (July 1, 2024).

³⁰ See 33 U.S.C. § 1503(c).

³¹ See FEIS at 2-65; 40 C.F.R. § 1502.16 (July 1, 2024).

³² *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 735 (9th Cir. 2020).

A. MARAD and USCG’s lightering substitution theory fails to consider that serious vessel and port congestion in the region would put a physical limit on expanding reverse-lightering.

There is no reason to believe that the sheer volume of reverse lightering contemplated in the no-action alternative is even physically possible, let alone likely, because the ports in the area are already extremely congested. If ports could only accommodate a lesser amount of additional shuttle tanker traffic to carry out further reverse-lightering loading, the environmental benefits of choosing the no-action alternative would be substantial. But the FEIS simply fails to account for existing port congestion and the limits it would place on the ability for reverse lightering to expand in either the no-action alternative section or in its analysis of nearly every one of the Project’s likely environmental impacts. MARAD and USCG at a minimum must study overall port congestion to determine whether it is feasible to add the additional tanker traffic it presumes in the no-action alternative—enough shuttle tanker traffic to export the same amount of oil as GulfLink’s full capacity.

Instead, the agencies repeatedly cite and rely heavily on an appendix (Appendix AD) that just adopts the lightering substitution theory to calculate avoided reverse-lightering trips. While the FEIS cautions that Appendix AD is not an exact prediction but a “qualitative” assessment, the calculations there only explore the one, farfetched scenario in which every VLCC GulfLink load would have instead been reverse-lightered, failing to account for any limits on reverse-lightering, like congestion.³³ It thus concludes that GulfLink could avoid as many as 1,440 shuttle-tanker trips per month in the Houston Galveston Texas City ports area.³⁴

Absent GulfLink creating an entirely new port offshore, there is no basis to assume such an incredible increase in oil-tanker traffic is even physically possible at existing ports. In the “Houston Galveston Texas City ports area” that the FEIS claims would handle such a surge in reverse-lightering, congestion is already

³³ See FEIS at AD-1 (stating that the purpose of the appendix is to estimate “the number of shuttle tanker trips necessary to achieve each project’s assumed crude oil exports via VLCC”).

³⁴ See FEIS at 2-65; FEIS at AD-1 (stating that the purpose of the appendix is to estimate “the number of shuttle tanker trips necessary to achieve each project’s assumed crude oil exports via VLCC”), AD-5 (providing a chart with estimates of avoided reverse-lightering shuttle tanker trips). Appendix AD provides two estimates based on whether the reverse-lightering would be done with relatively large shuttle-tankers (requiring 720 trips) or smaller shuttle tankers (requiring 1,440 trips). But Appendix AD in both cases assumes the lightering substitution theory that reverse-lightering could expand without restraint. See FEIS at AD-1, AD-4.

severe, as USCG and MARAD’s own statements make clear. In USCG’s 2021 Ports and Waterways Safety Assessment (“PAWSA”) report for these same ports, USCG and port stakeholders recognized that the area is already severely impacted by vessel traffic and port congestion—near the worst-case level on USCG’s nine-point scale, with scores of 8.6/9 and 8.2/9 respectively.³⁵ And the report found that the ports’ mitigation measures were not sufficient to address the congestion.³⁶ That should not be a surprise: the Port of Houston is the busiest port in the United States by total tonnage, even before adding neighboring ports that also handle large cargo volumes, like Freeport and Texas City.³⁷ Even the FEIS—in isolated instances in other sections—recognizes there is “severe congestion” at “[i]nshore ports in the Houston region.”³⁸ And in direct contrast to the central conceit of the no-action alternative and analysis of the Project’s impacts, the document determines that any further expansion of onshore terminal traffic must be “dismissed as alternatives to the Proposed Action” because they “would increase ship traffic in *these already busy ports*.”³⁹ As the FEIS observes, there are relatively few Gulf Coast onshore oil terminals with the capability to expand their capacity, not to mention, doing so on the order of GulfLink’s one million barrels per day, and in the same area as the Project.⁴⁰ Those statements about congestion appear in the FEIS only where they serve GulfLink’s interest in rejecting onshore alternatives to the Project. But that does not make the concern about congestion any less relevant where it should undermine GulfLink’s case—in the no-action alternative’s assumption of high levels of reverse-lightering at those same onshore ports.

There is one environmental impact, greenhouse gases, where the FEIS admits the lightering substitution theory may not prove true and actually applies that logic. The FEIS there evaluates a scenario “in which reverse lightering would not be displaced and would continue to occur after construction of the Proposed Action.”⁴¹ This forces the FEIS to acknowledge, again correctly, that removing constraints on export capacity by adding GulfLink “could lead to increased

³⁵ Ex. 3, USCG, Ports and Waterways Safety Assessment and Workshop Report, Houston/Galveston, Texas City p. 6 (approved by USCG Mar. 30, 2021), [https://www.navcen.uscg.gov/sites/default/files/pdf/pawsa/WorkshopReports/Houston-Galveston-Texas%20City%20PAWSA%20Report%20\(2021\).pdf](https://www.navcen.uscg.gov/sites/default/files/pdf/pawsa/WorkshopReports/Houston-Galveston-Texas%20City%20PAWSA%20Report%20(2021).pdf). [hereinafter: PAWSA].

³⁶ Ex. 3, PAWSA at 8.

³⁷ See U.S. DOT, 2024 Port Performance Freight Statistics, at 10 (Jan. 2024), <https://www.bts.gov/sites/bts.dot.gov/files/2022-01/2022-Port-Performance-Freight-Statistics-Program-Supply-Chain-Feature-accessible.pdf>.

³⁸ See, e.g., FEIS at 2-67, 2-70.

³⁹ FEIS at 2-70 (emphasis added).

⁴⁰ See FEIS at 2-68.

⁴¹ FEIS at 3-495.

emissions that would not otherwise occur.”⁴² But inexplicably, the FEIS did not acknowledge the same potential elsewhere or factor it into its environmental analyses of other harms from the Project, including oil spills, air pollution, impacts to species, and vessel congestion, among other harms.

In light of the obvious problem of port congestion, and the pivotal nature of the lightering substitution theory, MARAD and USCG must at least study the issue of congestion. NEPA review requires conducting “new scientific or technical research,” if “essential to a reasoned choice among alternatives, and the overall costs and time frame of obtaining it are not unreasonable.”⁴³ To give an example of what such a study might consider, Coastal Bend community and environmental groups recently filed an expert report, authored by Nuka Research, on vessel congestion in the Port of Corpus Christi. They submitted it for consideration in the Deepwater Port Act docket for the Bluewater Texas Terminal (“Bluewater”) project that would be located near that port.⁴⁴ Bluewater is a nearly identical oil-export project to GulfLink, and in Bluewater’s DEIS, MARAD and USCG likewise rely on the same lightering substitution theory.⁴⁵ But as the Nuka Research report found in analyzing vessel traffic data, MARAD and USCG’s lightering substitution theory was *physically impossible* in the Port of Corpus Christi because there would not be sufficient oil-terminal dock space and hours in the day to load the number of shuttle-tankers necessary to carry out the agencies’ assumed levels of reverse lightering.⁴⁶ The Nuka report was conservative in its analysis, not examining other factors that very likely would further constrain reverse-lightering loading trips, such as congestion in shipping channels leading from the Gulf of Mexico into the port, the volume of liquified natural gas (LNG) tankers and other large vessels also using the port, and the frequency of weather-related port closures.⁴⁷ In GulfLink’s case, for instance, U.S. Department of Transportation statistics show that the Port of Freeport handles nearly 3-times as much LNG or liquified petroleum gases (LPG) by weight as crude oil, raising the potential that the considerable LNG or LPG

⁴² FEIS at 5-47.

⁴³ 42 U.S.C. § 4336.

⁴⁴ Ex. 4, Comment of Indigenous Peoples of the Coastal Bend et al., in Docket No. MARAD-2019-0094 (filed July 24, 2024). The portion of this exhibit from pdf pages 6 to 21 are hereinafter cited as the “Nuka Report,” using the original pages numbers from the report.

⁴⁵ See Ex. 4, Nuka Report at 1.

⁴⁶ Ex. 4, Nuka Report at 9. “However, from examining available dock time based on 2022 AIS data, the same amount of oil cannot be exported via reverse lightering (as assumed in the DEIS No-Action Alternative) given the time and space constraints of the Port. In addition, as noted above, the DEIS fails to address the possibility that congestion in the number of vessels entering and exiting the Port independently makes even this increase impossible with current port infrastructure.” *Id.*

⁴⁷ See Ex. 4, Nuka Report at 9-11.

tanker traffic, in addition to overall lack of crude-oil dock space, would pose a severe constraint on expanding crude-oil reverse-lightering.⁴⁸

As the Nuka Research study illustrates, it would be feasible and reasonable for MARAD and USCG to study congestion-related constraints that could greatly impact their analysis. But even in the event the agencies were nonetheless to conclude the “overall costs and time frame of obtaining” the study are unreasonable, the FEIS must at least consider a range of potential alternatives and/or the worst-case scenario that GulfLink would not primarily displace reverse-lightering loading.⁴⁹ And in that event, the environmental impacts of the Project from increasing vessel traffic and oil exports would be substantial compared to the no-action alternative.

B. MARAD and USCG ignore that even accepting their flawed lightering substitution theory, the SPOT Project would displace reverse-lightering without GulfLink.

The FEIS skews the no-action analysis further in ignoring the fact that just several months ago, MARAD executed a final license for SPOT to construct a deepwater port to load VLCCs just seven nautical miles from where GulfLink would build.⁵⁰ SPOT would be an *even larger*, 2-million barrel per day port to fully load VLCCs offshore. SPOT would have access to the same crude oil in the Houston region as GulfLink and therefore, under the agencies’ theory, displace the same expected future reverse-lightering loading from the same onshore ports.⁵¹ Yet the FEIS acts for purposes of the no-action alternative as if SPOT’s approval does not

⁴⁸ See U.S. DOT Bureau of Transp. Statistics, Port Profiles 2024, Port of Freeport, TX, <https://explore.dot.gov/views/PortProfiles2024/ProfileDashboard?%3Aembed=y&%3AisGuestRedirectFromVizportal=y> (last visited Aug. 20, 2024).

⁴⁹ 42 U.S.C. § 4336.

⁵⁰ FEIS at 2-69; see Ex. 2, Signed SPOT Final License Agmt, MARAD-2019-0011-8126 (Apr. 7, 2024).

⁵¹ FEIS at 2-67 to 2-68. Indeed, the primary reason GulfLink seeks to locate in the Freeport area is to access the same regional pipeline network and oil-storage hub as SPOT. “The Applicant’s Regional Screening Analysis considered proximity to the Houston Market heavily because current crude oil export volumes are primarily driven by excess production of crude oil from west Texas, including Bryan Mound SPR and other existing pipeline corridors in the region.” *Id.* SPOT’s FEIS used closely similar language. See SPOT FEIS at 2-64, MARAD-2019-0011-5032 (July 28, 2022) (“Furthermore, crude oil sources from excess production capability, at the time of this EIS, are primarily located in the Permian Basin in west Texas and the Eagle Ford Basin in south Texas. Thus, this analysis focuses on new, existing, and proposed infrastructure capable of delivering and storing crude oil from these basins.”), <https://www.regulations.gov/document/MARAD-2019-0011-5032>.

exist, stating that in the absence of GulfLink, “the purpose of the Proposed Action to fully load VLCCs offshore . . . when exporting domestic crude oil would not be satisfied.”⁵² This willful blindness is simply incorrect and logically inconsistent. Even if the agencies could assume that a new deepwater port would simply substitute for expected, future reverse-lightering trips—which we dispute as described above—surely SPOT could achieve that result in whole or in large part without the need for GulfLink. And to the extent GulfLink were simply to add additional export capacity and induce further new VLCC traffic in the region, it would pose greater environmental harms than envisioned in the FEIS.

Because MARAD has already approved the SPOT project, it is even less likely that GulfLink could deliver any benefit compared to the no-action alternative in terms of avoided reverse-lightering loading. Yet, the FEIS utterly fails to reckon with this fact in touting potential benefits of GulfLink and dismissing the no-action alternative.

C. MARAD and USCG’s lightering substitution theory improperly relies on EIA oil data that fails to account for the Inflation Reduction Act and similar climate policies impacting the global market.

The final error the FEIS makes in rejecting the no-action alternative is in claiming that indefinite record U.S. oil production would bring the same massive influx of oil for export to Freeport and the wider region regardless of the Project.⁵³ The agency impermissibly and selectively relied on a single source, U.S. Energy Information Agency (EIA) reports from 2021 and 2022, to conclude that U.S. oil production trends would continue at then-current levels, even though EIA now warns against using its energy reports for making such projections. An EIS must use “reliable data and sources,”⁵⁴ and that includes accounting for those sources’ inherent limitations. And agencies should rely on modeling that considers a range of outcomes where necessary to forecast: “agencies shall use projections when evaluating reasonably foreseeable effects . . . [which] may employ mathematical or other models that employ a range of possible future outcomes.”⁵⁵ Even if an agency

⁵² FEIS at 2-66.

⁵³ See FEIS at 2-66.

⁵⁴ 42 U.S.C. §§ 4332, 4336; see 40 C.F.R. § 1506.6(b) (July 1, 2024) (“In preparing environmental documents, agencies shall use high-quality information, including reliable data and resources, models, and Indigenous Knowledge.”).

⁵⁵ 40 C.F.R. § 1506.6(b) (July 1, 2024).

cannot feasibly model an exact estimate of an impact, the agency must at least analyze a range of potential outcomes qualitatively.⁵⁶

Here, the FEIS relies selectively only on the EIA reports from 2021 and 2022, for the proposition that future U.S. oil production could remain at record levels for decades into the future, ignoring the EIA's more recent warnings weighing against using these reports as forecasts.⁵⁷ MARAD and USCG notably ignored the more recent, 2023 Annual Energy Outlook. In the 2023 edition, EIA added a Foreword that explains the limitation in relying on EIA Outlooks as a forecast in the manner that the FEIS does here.⁵⁸ Namely, the EIA emphasizes that its "reference case" scenario "presumes no new policy or laws over the modeled time horizon," and should only be thought of as "the experimental control" against which to judge future scenarios.⁵⁹ Accordingly, the EIA warns with respect to the reference case that "*judgments about energy futures should never be based on a single projection.*"⁶⁰

Even worse, none of the EIA's Annual Energy Outlooks (not even the 2023 report, and certainly not the prior reports the FEIS cites) account for even major existing climate policies from the last several years, with the Inflation Reduction Act as one example, that could accelerate a global transition away from reliance on crude oil.⁶¹ In fact, in July 2023, the EIA announced that it would not release a 2024 Annual Energy Outlook, but would wait until 2025, so that it could update its

⁵⁶ E.g., *National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change*, 88 Fed. Reg. 1196, 1205 (Jan. 9, 2023) ("Where information regarding direct or indirect emissions is not available, agencies should make best efforts to develop a range of potential emissions.")

⁵⁷ See FEIS at 1-7 to 1-11, 2-66, 9-57 to 9-58 (listing FEIS citations to U.S. EIA reports). For example, the FEIS relies on the claim, from the 2021 EIA Annual Energy Outlook, that "United States crude oil production is expected to reach 13.2 MMb/d by 2025 and remain at that level or above through 2048 (USEIA 2021a)." FEIS at 1-7.

⁵⁸ Ex. 5, EIA, 2023 Annual Energy Outlook, 1 (Mar. 2023), https://www.eia.gov/outlooks/aeo/pdf/AEO2023_Narrative.pdf.

⁵⁹ *Id.* The same is true of all other scenarios modeled by EIA. *Id.*

⁶⁰ Ex. 5, EIA, 2023 Annual Energy Outlook, 1 (Mar. 2023) (emphasis added), https://www.eia.gov/outlooks/aeo/pdf/AEO2023_Narrative.pdf.

⁶¹ See Ex. 5, EIA, 2023 Annual Energy Outlook, 1 (Mar. 2023) ("By retooling NEMS in 2024, the next AEO in 2025 will more comprehensively address existing laws and regulations in the Reference case, including up-to-date provisions in the Inflation Reduction Act and regulatory actions that could be finalized in the coming months."), https://www.eia.gov/outlooks/aeo/pdf/AEO2023_Narrative.pdf.

underlying forecasting model to begin to account for the Inflation Reduction Act.⁶² This change requires “substantial updates” and promises to deliver a “framework better suited to address ongoing changes in the U.S. energy sector.”⁶³ And beyond just the Inflation Reduction Act, EIA is working on adjusting “to model a wider range of future scenarios” that will “appropriately treat uncertainty around technologies” that are only at the earliest stages of commercial development in projecting the future energy system, as well as address net-zero emissions pathways.⁶⁴ The upshot is that while the EIA is working to create a model that could forecast future pathways for the energy market, it has not achieved that yet.

Until then, as described at length in prior comments, numerous other independent organizations have detailed forecasts of crude oil demand that do address existing and potential future climate and energy policy—for example, the International Energy Agency, an intergovernmental body of which the United States is a member.⁶⁵ The FEIS acknowledges the existence of these forecasts, and that they might even have merit, yet rejects them anyway without justifying why the FEIS would instead rely on the EIA reports that disclaim providing equivalent or sufficient analysis.⁶⁶ This is arbitrary and capricious and fails to comport with the agencies’ NEPA obligations.

III. MARAD and USCG Fail to Require Sufficient Flood Protection in Spite of the Serious Risk of Harm from Spills and Floods at the Jones Creek Terminal.

MARAD and USCG have overlapping legal obligations to evaluate and protect against flood risks. NEPA requires the agencies to take a hard look at flooding risks to the Project, including worsening risks due to climate change.⁶⁷ The Deepwater

⁶² Ex. 6, EIA, Press Release, Statement on the Annual Energy Outlook and EIA’s Plan to Enhance Long-Term Modeling Capabilities (July 26, 2023), <https://www.eia.gov/pressroom/releases/press537.php>.

⁶³ *Id.*

⁶⁴ See Ex. 5, EIA, 2023 Annual Energy Outlook, 2 (Mar. 2023)

⁶⁵ See IEA, Current Membership, <https://www.iea.org/about/membership>; SDEIS Comments of Sierra Club et al. pp. 6–8, MARAD-2019-0093-3061 (Nov. 29, 2022) (discussing and attaching then-current 2022 IEA World Energy Outlook). The IEA’s more recent 2023 World Energy Outlook was published in October 2023, IEA, World Energy Outlook 2023, <https://www.iea.org/reports/world-energy-outlook-2023>.

⁶⁶ See, e.g., FEIS at 1-8, 5-49 to 5-50.

⁶⁷ See 40 C.F.R. § 1502.16(a)(6), (9) (July 1, 2024); see also CEQ, National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg 1196, 1197 (Jan. 4, 2023) (specifically calling on agencies to use climate science to “to evaluate potential future impacts (such as flooding, high winds, extreme heat, and other

Port Act goes even further in requiring substantive action. It requires the licensing agencies to “minimize[] the danger to” the Project “from storms, earthquakes, or other natural hazards.”⁶⁸ In doing so, the agencies cannot focus solely on mild storms or flooding risks; rather they need to “[i]nclude safeguards . . . to minimize the possibility and consequences of pollution incidents such as spills and discharges . . . under *maximum operating loads and the most adverse operating conditions*.”⁶⁹ And as we described in comments on the SDEIS, Executive Orders 1198 and 13960 require agencies to “minimize potential harm to or within the floodplain,” generally the 500-year floodplain.⁷⁰ Far from showing GulfLink’s Jones Creek terminal—which would be built in a previously undeveloped floodplain to hold up to 8.5 million barrels of crude oil next to the Village of Jones Creek, near environmental justice communities⁷¹—could handle the “most adverse operating conditions,” or 500-year flooding, the agencies failed to ensure GulfLink could withstand even relatively more likely storms, both now and as climate change impacts accelerate in the future.

MARAD and USCG acknowledge in the FEIS the need to change the facility design to address flooding and spill risk that the Jones Creek oil storage terminal would pose, but GulfLink’s meager design changes in response do very little to address the glaring problem of onsite flooding that Commenters and numerous members of the public have raised throughout the permitting process. The entire site lies within the 100-year floodplain, in a special flood hazard area facing threat from heavy rainfall and storm surge.⁷² We continue to object to locating such a massive oil tank farm in this floodplain, as outlined at length in our comments on the SDEIS. The main justification the FEIS makes for this site is GulfLink’s

climate change-related impacts) and what those impacts will mean for the physical and other relevant conditions in the affected area.”)

⁶⁸ 33 C.F.R. § 148.720(h).

⁶⁹ 33 C.F.R. § 148.725(b) (emphasis added).

⁷⁰ Exec. Order No. 11988, “Floodplain Mgmt.,” 42 Fed. Reg. 26951 (May 24, 1977); *see* Exec. Order No. 13960, “Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input,” 80 Fed. Reg. 6425 (Jan. 30, 2015) (amending the definition of “floodplain” in Exec. Order No. 11988). Deepwater Port Act implementing regulations similarly require evaluating the Project on how well it would “minimize wetlands loss, flood damage, the need for federally-funded flood protection or flood relief, or any decrease in the public value of the flood plain as an environmental resource.” 33 C.F.R. § 148.730(d).

⁷¹ *See* FEIS at 2-9 to 2-10, 3-36 (describing location and capacity of Jones Creek terminal); FEIS at 3-549 to 3-550, 3-561 (depicting Jones Creek-area census tracts that are predominately low-income and/or person of color communities at risk of environmental injustice).

⁷² FEIS at 3-36.

proprietary desire to source oil from facilities that ExxonMobil leases at the U.S. government's Bryan Mound Strategic Petroleum Reserve, without ever addressing whether GulfLink could instead source and store oil further inland at an existing facility, along existing pipeline networks to the coast.⁷³ And unfortunately, far from adequately addressing the problem, the FEIS not only dismisses upland alternatives but describes only relatively modest design changes GulfLink made in response to "feedback from the local community about flooding."⁷⁴ Namely, since the SDEIS, GulfLink increased the size of the stormwater detention pond and overflow areas onsite, clarified it would elevate buildings above the 100-year flood level, and stated it would develop and comply with flood- and hurricane-preparedness plans.⁷⁵ Based on this, the FEIS concludes impacts from flooding "would not be expected," but still notes that the impacts from any floods could range as high as "major," "depending on the severity of the event."⁷⁶

Indeed, serious flooding problems are readily foreseeable. Even after the modest design changes, the FEIS does not show the terminal is either designed or modeled to withstand flooding from greater than a 100-year rainstorm (let alone 500-year flooding), or from a Category 3 or worse hurricane.⁷⁷ While the site would have oil-spill containment dikes rising 2.5-4' above the ground, these are designed to contain the oil from just one tank and rainwater from a 25-year/24-hour storm *in* the facility until they can be cleaned and drained out later, not to secure larger spills or more extreme stormwater, or to keep hurricane storm surge *out*.⁷⁸ Indeed, even if the secondary containment dike was strong enough to levee the site against some storm surge flooding without breaching (which the FEIS notably does not even certify), it is far too low to handle a major hurricane (i.e., Category 3 or greater). As the agencies describe, National Oceanic and Atmospheric Administration ("NOAA") data show that even a Category 2 storm surge might overtop portions of the berm, bringing surges as high as 3' to the site. And a Category 3 or worse storm more clearly would do so under NOAA's modeling, with

⁷³ See FEIS at 2-75.

⁷⁴ FEIS at 2-9, 3-43.

⁷⁵ FEIS at 2-9 to 2-10, 3-44, 3-359.

⁷⁶ FEIS at 3-360.

⁷⁷ See FEIS at 3-43 (describing modeling showing that the site could handle 100-year or 50-year storms), 3-360 (explaining NOAA modeling indicates that terminal's berms would be overtopped in storm surge from a Category 3 or worse hurricane). A Category 3 or worse hurricane is relatively likely to occur; as the FEIS explains, in the last 30-year period, the Atlantic hurricane season has produced an average of 3 major hurricanes per year. FEIS at 3-358.

⁷⁸ See FEIS at 2-47 ("The secondary containment for the tanks would consist of impervious concrete or engineered clay and would be sized to accommodate the contents of the tank plus sufficient freeboard for precipitation."), 3-30 to 3-31.

surge heights of 6' or more.⁷⁹ Instead of considering measures to address this undisputed risk, however, the FEIS simply throws up its hands. It relies on hope, stating, “[i]deally,” after being overtopped in such a storm, “the storm surge could be contained within the containment system until the storm passes.”⁸⁰ This is plainly insufficient to protect nearby residents and communities from flood damage to the site that could unleash spills and other harms during a major hurricane. MARAD and USCG must examine requiring more stringent flood protection, including superior flood walls and higher elevations of the tanks and structures onsite, in order to comply with the hard look requirement of NEPA, as well as the Deepwater Port Act’s and Executive Orders’ more specific and searching flood-protection mandates to mitigate against severe floods.

Further still, the FEIS fails to take into account at all the increasingly severe flooding that could occur in future years due to climate change, particularly the likelihood of increasingly threatening storms and sea-level rise.⁸¹ Nowhere does the FEIS address this issue when it comes to the flood-protection design of the Jones Creek Terminal.⁸² Indeed, the only flood modeling mentioned in the FEIS is a study done by the applicant using 2018 data that is more than six years old.⁸³ That falls far short of the agencies’ obligations under Executive Orders, NEPA and the Deepwater Port Act itself, and the agencies must deny the application or examine more stringent flood control alternatives at the site. Taking into account these climate-related impacts is part of MARAD and USCG’s responsibility under NEPA, as underscored in CEQ’s newly revised NEPA regulations and guidance on climate-change impacts. Agencies must analyze “the effects of climate change on the proposed action and alternatives” and “risk reduction measure, resiliency, or adaptation measures” informed by “relevant science and data on the affected environment and future conditions.”⁸⁴ Citing Executive Orders 11988 and 13690 on flood risks, which we described at length in our SDEIS comments, CEQ calls for agencies to “consider the likelihood of increased temperatures and more frequent

⁷⁹ FEIS at 3-359 to 360 (stating “[a]s predicted by NOAA’s storm surge hazard maps, a storm surge of Category 3 or greater would overtop the secondary containment berm”).

⁸⁰ FEIS at 3-360.

⁸¹ See Fifth U.S. Nat’l Climate Assessment, Chapter 9: Coastal Effects (2023), <https://nca2023.globalchange.gov/chapter/9/>.

⁸² See FEIS at 3-43 to 3-45, 3-358 to 3-360.

⁸³ See FEIS at 3-43 (describing Kimley-Horn hydrology study done for GulfLink).

⁸⁴ 40 C.F.R. § 1502.16(a)(6), (9) (July 1, 2024); see also CEQ, National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196, 1197 (Jan. 4, 2023) (specifically calling on agencies to use climate science to “to evaluate potential future impacts (such as flooding, high winds, extreme heat, and other climate change-related impacts) and what those impacts will mean for the physical and other relevant conditions in the affected area.”)

or severe storm events over the lifetime of the proposed action, and reasonable alternatives (as well as the no-action alternative).⁸⁵ And as already described, the Deepwater Port Act requires the agencies to “minimize the possibility” of spills “under the most adverse operating conditions.”⁸⁶

These harms could disproportionately affect environmental-justice communities in Jones Creek and downstream toward the coast.⁸⁷ Accordingly, agencies should “identify any communities with environmental justice concerns” near the Project “and consider how impacts from the proposed action could potentially amplify climate change-related hazards such as storm surge, heat waves, drought, flooding, and sea level change.”⁸⁸ The guidance calls on agencies to engage with communities in design of the action or selection of alternatives and to consider alternatives that “can reduce disproportionate effects on such communities,” specifically describing minimizing flooding risk from coastal petrochemical infrastructure.⁸⁹ While the FEIS explains that GulfLink will comply with local flood control requirements, it nowhere describes how it worked to address the concerns of frontline residents who are likely to suffer the most immediate consequences from flooding and the risk of spills.⁹⁰

The FEIS, by leaving out any measure to address even today’s worst storms, let alone the worsening storm conditions over the Project’s lifetime, has failed to meet its legal mandate. Additionally, we urge the agencies to deny GulfLink’s Deepwater Port Act application based in part on the worrisome flood risks, or at a minimum to examine much more serious flood protection at the site to protect neighboring communities from flooding and spills during a major hurricane, severe rain events, and the worsening storms in the future.

IV. MARAD and USCG Continue to Fail to Model or Address Ozone Impacts, and do not Address New Air Quality Standards for PM_{2.5} Pollution.

While MARAD and USCG now acknowledge that the Houston-Galveston-Brazoria region impacted by this Project is in “severe” nonattainment for ozone, that recognition does not address the much larger failings in their review to protect the area from further ozone pollution. The FEIS fails to cure the agencies’ failure to

⁸⁵ 88 Fed. Reg. at 1208–09.

⁸⁶ 33 C.F.R. § 148.725(b) (emphasis added).

⁸⁷ See FEIS at 3-549–50, 3-561.

⁸⁸ 88 Fed. Reg. at 1209.

⁸⁹ 88 Fed. Reg. at 1209–10.

⁹⁰ FEIS at 3-359.

adequately analyze GulfLink’s indirect, direct, and cumulative air quality impacts, particularly for ozone pollution.⁹¹

In addition, the FEIS fails to evaluate a new and significant air quality issue: the Project’s air quality harms in the region based on EPA’s recently revised National Ambient Air Quality Standard (“NAAQS”) for annual PM_{2.5} exposure. The FEIS erroneously relies on the old, higher PM_{2.5} NAAQS of 12 µg/m³, rather than the lower NAAQS of 9 µg/m³ that is now in effect.⁹² This standard went into effect in May 2024, prior to the FEIS’s publication. The revision aims “to protect millions of Americans from harmful and costly health impacts, such as heart attacks and premature death”⁹³ based on scientific evidence that “shows that long- and short-term exposures to PM_{2.5} can harm people’s health, leading to heart attacks, asthma attacks, and premature death. Large segments of the U.S. population, including children and older adults, people with heart or lung conditions, communities of color, and low socioeconomic status populations, are at elevated risk of adverse health effects from PM_{2.5}.”⁹⁴ Notably, Harris County has background air quality levels well above this new standard—Texas’ preliminary values for 2023 show Harris County at 12.3 µg/m³—and thus the County is slated to be in nonattainment for PM_{2.5} based on this new standard.⁹⁵ Brazoria County is listed as unclassifiable based on preliminary determinations.⁹⁶

⁹¹ See SDEIS Comment Ltr. submitted by Sierra Club, Center for Biol. Diversity, and Earthjustice et al. at 40–44, MARAD-2019-0093-3061 (Nov. 29, 2022). Notably, EPA still has not issued a draft permit for GulfLink’s offshore stationary source emissions. See EPA, Air Permitting for Deepwater Port Act Projects in the South Central Region, <https://www.epa.gov/caa-permitting/air-permitting-deepwater-port-act-projects-south-central-region> (last visited August 28, 2024).

⁹² FEIS at 3–478. The FEIS also relies on GulfLink’s air quality analyses from its application to demonstrate compliance with the NAAQS for all pollutants, but GulfLink’s analyses are based on the old NAAQS for PM_{2.5}. See FEIS at 5-52, 3-489, 3-589 (citing Appendix W to FEIS).

⁹³ EPA, *Reconsideration of the National Ambient Air Quality Standards for Particulate Matter*, 89 Fed. Reg. 16202 (Mar. 6, 2024); EPA, *National Ambient Air Quality Standards (NAAQS) for PM*, <https://www.epa.gov/pm-pollution/national-ambient-air-quality-standards-naaqs-pm> (last visited August 20, 2024).

⁹⁴ EPA, *Final Rule to Strengthen the National Air Quality Health Standard for Particulate Matter – Fact Sheet*, <https://www.epa.gov/system/files/documents/2024-02/pm-naaqs-overview.pdf>.

⁹⁵ See TCEQ, *Texas Preliminary PM_{2.5} Design Values (DV) (July 2024)*, https://www.tceq.texas.gov/downloads/air-quality/sip/pm/designations/pm25_prelim2023dvmap.pdf; TCEQ, *Potential State Designations for Informal Public Comment*, https://www.tceq.texas.gov/downloads/air-quality/sip/pm/designations/potentialstatedesignations_publiccomment.pdf.

⁹⁶ See *id.*

In light of EPA’s new public health standard, the air quality analyses must be revised to address GulfLink’s total PM_{2.5} impacts (direct PM_{2.5} and secondary PM_{2.5}), including from onshore, offshore stationary, and offshore mobile sources, and cumulative impacts with SPOT and other proposed or permitted sources.

Lastly, “Significant impact levels” (“SILs”) are an improper basis for evaluating cumulative impacts from GulfLink and other projects, like SPOT.⁹⁷ The FEIS’s cumulative impacts analysis for air quality is deficient to the extent it relies on the air quality impacts of GulfLink and other nearby projects that are individually below the SILs for determining the significance of the Project’s cumulative air quality impacts.⁹⁸

V. MARAD and USCG Fail to Evaluate Harm to Environmental Justice Communities from Air Pollution Impacts Below the NAAQS, Despite Acknowledging the Severe Health Risks Nearby Communities Face.

While the FEIS fails even to address whether the Project would worsen cumulative impacts in excess of the NAAQS for ozone and PM_{2.5}, as explained above, it also does not address whether even pollution below the NAAQS could create a significant health risk for the overburdened, nearby environmental-justice communities. Environmental justice populations may be more susceptible to environmental degradation than the general population precisely because they already must breathe so many different air pollutants at once (e.g., not just ozone or PM_{2.5} in isolation, but both and also cancer-causing air toxics) or are more likely already to suffer from preexisting conditions, like respiratory disorders and cancer, that EPA acknowledges air pollution even below the NAAQS could worsen. Indeed, the FEIS notes that the region impacted by the Project already experiences “higher incidents of certain cancers including nasal, lung, hepatic, and stomach cancers.”⁹⁹ Environmental justice communities in the area therefore could be disproportionately adversely impacted by emissions from normal operation, excess emissions events, or from large and small crude oil spills either on- or offshore.¹⁰⁰

⁹⁷ See *Healthy Gulf v. FERC*, ---F.4th---, 2024 WL 3418863, at *6 (D.C. Cir. July 16, 2024) (holding the “Commission’s approach to assessing cumulative NO₂ effects was arbitrary” where the agency relied on the individual project’s incremental effects being insignificant based on SILs); 40 C.F.R. § 1508.1(g)(3) (2022).

⁹⁸ See, e.g., FEIS at 5-45, 3-489.

⁹⁹ FEIS at 3-577.

¹⁰⁰ *Id.*

Notably, the existence of or compliance with another permitting regime does not relieve the agency of its NEPA duties to disclose and evaluate the full scope of the Project's direct, indirect and cumulative effects.¹⁰¹ By omitting this critical analysis, the FEIS fails to take a "hard look" at the Project's potential disparate impacts on environmental justice communities, notwithstanding compliance with the NAAQS.¹⁰² In fact, EPA explains in NEPA review guidance on evaluating environmental justice impacts that assessing generalized compliance with national standards, like the NAAQS, may not adequately capture environmental-justice harms:

Focusing the analysis [on the relevant environmental justice context] may show that potential impacts, which are not significant in the NEPA context, are particularly disproportionate or particularly severe on minority and/or low-income communities. As mentioned previously, disproportionately high and adverse effects should trigger the serious consideration of alternatives and mitigation actions in coordination with extensive community outreach efforts.¹⁰³

Thus, a finding that project impacts would be insignificant in general does not mean that those effects will not disproportionately impact EJ communities, or that such disproportionate impacts are not cause for concern.¹⁰⁴ Moreover, as discussed throughout this submission and in other comment submissions on the DEIS and SDEIS, MARAD and USCG have failed to evaluate the full severity of many of the Project's impacts.

One instance of such failings is the insufficient assessment of air quality impacts on environmental justice communities; particularly, how GulfLink's pollutant emissions in an already impaired air quality region for both ozone and PM_{2.5} would affect the health and welfare of local environmental justice communities. The FEIS makes the determination that the Project's air quality

¹⁰¹ 40 C.F.R. §§ 1502.16(a)-(b), 1508.7, 1508.8; see *Sierra Club v. FERC*, 827 F.3d 36, 45 (D.C. Cir. 2016).

¹⁰² *Gulf Restoration Network v. U.S. Dep't of Transp.*, 452 F.3d 362, 367 (5th Cir. 2006).

¹⁰³ EPA, *Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses* § 3.2.2. (Apr. 1998), https://www.epa.gov/sites/default/files/2015-02/documents/ej_guidance_nepa_epa0498.pdf (hereinafter "EPA EJ Guidance"). EPA reiterated this same point in 2016 guidance. EPA, *Promising Practices for EJ Methodologies in NEPA Reviews: Report of the Federal Interagency Working Group on Environmental Justice & NEPA Committee* at 39 (2016), https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf.

¹⁰⁴ EPA EJ Guidance § 3.2.2.

impacts are not anticipated to be significant,¹⁰⁵ relying entirely on the fact that the Project's various stationary sources each individually would be considered a Clean Air Act minor source under the relevant emission thresholds. For instance, the Jones Creek Terminal's volatile organic compound ("VOC") and nitrogen oxide ("NOx") emission rates would each be less than 50 tons per year ("tpy") and other criteria pollutant emissions would be less than 250 tpy.¹⁰⁶ But the FEIS provides no further evaluation of what the Project's total air pollutant emissions from all stationary and mobile sources combined would add to the region's already declining air quality, nor does it explain the Project's potential adverse and disproportionate air pollution impacts from ozone and PM_{2.5} on EJ communities.

Moreover, MARAD and USCG failed to consider the susceptibility of environmental justice communities to air pollution even at levels below the NAAQS. Here, the FEIS explains that nearby environmental justice communities are already suffering from elevated cancer rates from exposure to increased air emission levels. But the agencies failed to analyze the more specific health risks that GulfLink's pollution could worsen, such as: 1) increased levels of existing asthma or respiratory disease by income, 2) greater age disparities than the general population, and 3) general lack of access to health care.¹⁰⁷ MARAD and USCG's conclusion of non-significance, based on the erroneous premise that there will be no air pollutant limit violations, fails to recognize that the facility's large air pollution emissions in this region could cause harmful health impacts even without individual NAAQS exceedances. The FEIS also fails to account for how the Project's additional PM_{2.5} and ozone-causing pollution would exacerbate existing harmful air quality levels above the NAAQS in the surrounding region.¹⁰⁸ Particulate matter, nitrogen-dioxide, and ozone are recognized as pollutants for which no threshold of exposure fully protects human health.¹⁰⁹ EPA sets the NAAQS in a context of assessing "acceptable" risks, not eliminating all risk.¹¹⁰ Further, risks tolerated by when setting one-size-fits-all nationwide regulations may be amplified in the context of EJ communities.¹¹¹ For example, although the current NAAQS for ozone is 70 parts per

¹⁰⁵ FEIS at 3-481.

¹⁰⁶ *Id.*

¹⁰⁷ CDC Agency for Toxic Substances and Disease Registry, *Environmental Justice Index Indicators*, (Aug. 19, 2022), <https://www.atsdr.cdc.gov/placeandhealth/eji/indicators.html>.

¹⁰⁸ See *supra* Section IV (air quality section).

¹⁰⁹ *Am. Trucking Ass'n, Inc. v. EPA*, 283 F.3d 355, 359-360 (D.C. Cir. 2002); EPA, NAAQS for Nitrogen Dioxide, 75 Fed. Reg. 6,474, 6500 (Feb. 9, 2010).

¹¹⁰ *Murray Energy Corp. v. EPA*, 936 F.3d 597, 609 (D.C. Cir. 2019).

¹¹¹ See e.g., *Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68, 86, 92 (4th Cir. 2020) (finding the Board's state law EJ analysis incomplete when it failed to consider "the potential degree of injury to the local population independent of NAAQS").

billion, EPA has recognized that ozone levels of 65, or even 60 parts per billion adversely impact short- and long-term respiratory mortality, and significantly impact.¹¹² Even if MARAD and USCG are able to demonstrate that the individual and cumulative impact of air pollution are not likely to exceed the NAAQS, this does not demonstrate that the cumulative effect of air pollution impacts on human health will be insignificant, particularly in more vulnerable EJ communities.

And in reality, environmental justice communities may be exposed to multiple pollutants, wherein no individual pollutant exceeds a significance threshold, but the cumulative effect of exposure to numerous pollutants at elevated concentrations causes concerning health impacts.¹¹³ Thus, the risk of multiple exposures may not be captured by the NAAQS and, accordingly, is an insufficient gauge in evaluating effects under NEPA, particularly to EJ communities. Nor does a determination regarding NAAQS exceedance fulfill the agency's NEPA obligation to disclose and explain the type and degree of on-the-ground effects to EJ communities posed by the project. The FEIS simply fails in this respect.

MARAD and USCG should also include additional, community-based knowledge of areas of environmental justice concern that the demographic analysis might not capture. As noted in the FEIS, avoidance of impacts, such as from oil spills and air pollution, may be more difficult in environmental justice communities located at the frontlines of these events.¹¹⁴ EJ communities situated closer to operational facilities will receive more concentrated emissions than those communities further away where crude oil constituents will have dissipated in the air,¹¹⁵ and would be more likely to bear the brunt of unpermitted releases, such as excessive emissions events when facilities lose power or suffer damage in a storm. MARAD and USCG should further evaluate project alternatives and mitigation measures that avoid or reduce heightened impacts to environmental justice communities. And finally, MARAD and USCG must conduct this environmental-justice analysis considering the cumulative impacts of both GulfLink and SPOT.

¹¹² EPA, Regulatory Impact Analysis of the Proposed Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone, at 5-78 (2014), <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100L0HZ.txt>.

¹¹³ CEQ, *Environmental Justice Guidance under the National Environmental Policy Act* at 9 (Dec. 10, 1997) (“Agencies should consider . . . multiple or cumulative exposures to human health or environmental hazards in the affected population”), https://www.epa.gov/sites/default/files/2015-02/documents/ej_guidance_nepa_ceq1297.pdf.

¹¹⁴ FEIS at 3-576.

¹¹⁵ *Id.*

VI. MARAD and USCG Continue to Improperly Avoid Analysis of the Risks of Oil Spills.

The FEIS's discussion of the Project's oil spill risk suffers from the same deficiencies as the discussions in the DEIS and the SDEIS.¹¹⁶ The FEIS continues to withhold critical information regarding the specifics of GulfLink's oil spill response plans, even though the agencies are relying on these plans to conclude that the company could mitigate the consequences of any oil spill.¹¹⁷ The FEIS also continues to rely on the flawed Risknology report (Appendix L of the FEIS), which has not been updated since the SDEIS and is not a true oil spill risk assessment because it does not quantify the frequency and probability of oil spills of varying sizes across the 30-year lifespan of the Project. As explained in detail in our previous comments on the DEIS and the SDEIS, these errors violate NEPA.

In their responses to our comments on the SDEIS, MARAD and USCG defend the Risknology report and their analysis of oil spill risk by claiming that 1) our comments misread the GulfLink oil spill risk figure in the FEIS (Figure 4.6.1-1) because the figure's y-axis shows frequencies rather than probabilities of oil spills (i.e., the agency's own figure is mislabeled), 2) the FEIS clarifies how to interpret the exceedance curve in Figure 4.6.1-1 to be more discernable to the public, 3) the FEIS's cumulative impact analysis of oil spills is adequate, and 4) an analysis of varying ranges of oil spill sizes and frequencies would be "duplicative" of the analysis of the worst credible discharge scenario presented in the Risknology report.¹¹⁸ None of these responses cures the flaws of the oil spill risk analysis.

First, it is unclear how MARAD and USCG reached the conclusion that the y-axis of Figure 4.6.1-1 in the FEIS depicts frequencies when the figure's y-axis itself

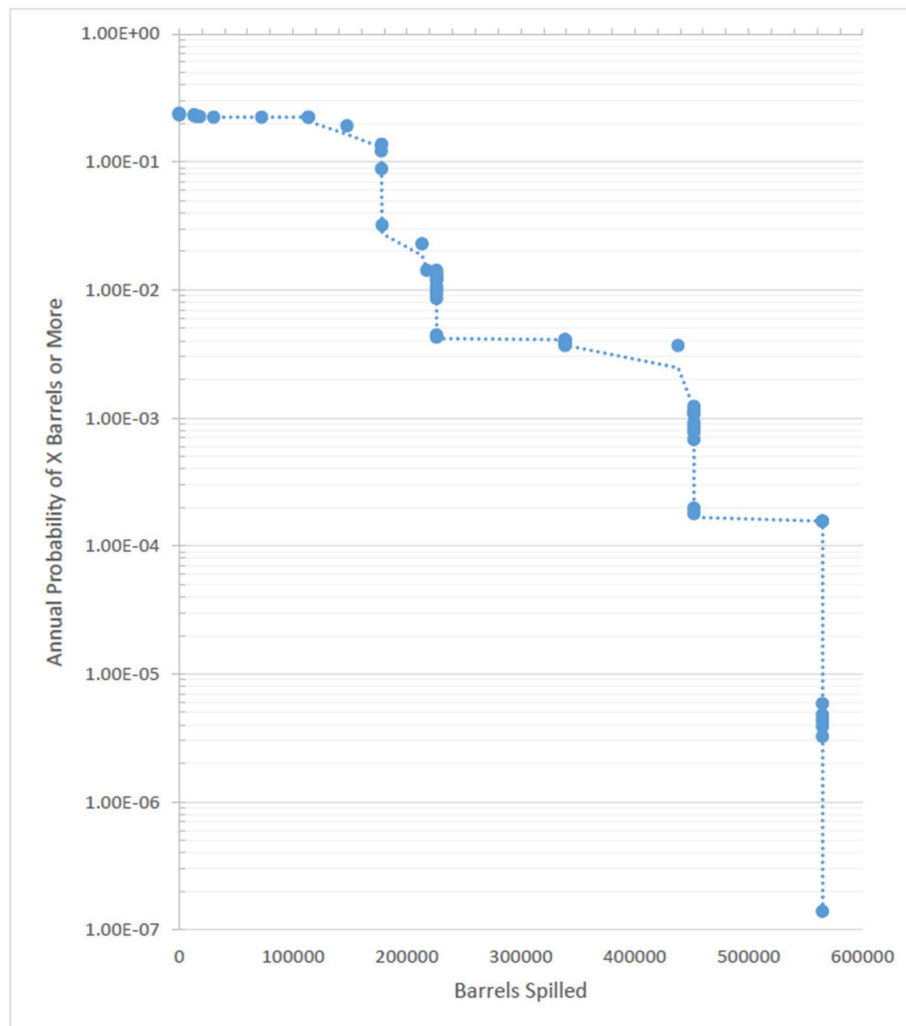
¹¹⁶ See DEIS Comment Ltr. submitted by Sierra Club, Center for Biol. Diversity, and Earthjustice et al. at 19–43, MARAD-2019-0093-2783–89 (Jan. 27, 2021); SDEIS Comment Ltr. submitted by Sierra Club, Center for Biol. Diversity, and Earthjustice et al. at 12–19, MARAD-2019-0093-3061 (Nov. 29, 2022).

¹¹⁷ In the SDEIS, MARAD and USCG noted that GulfLink "has multiple plans in place, as discussed in BMP B46, to . . . respond quickly and effectively to an [oil spill] incident to minimize adverse effects." See, e.g., SDEIS at 3-71. The FEIS instead states that GulfLink "would have" such plans in place in the future. See, e.g., FEIS at 3-72. It is unclear how the agencies have concluded that the oil spill response plans would be sufficient to mitigate oil spills when it appears that GulfLink may not have developed some of these plans yet. This lack of clarity further highlights the need for the public to access crucial information regarding GulfLink's oil spill response plans.

¹¹⁸ FEIS, Appx. C, C-365 to C-367.

states that it is depicting the “[a]nnual [p]robability of X [b]arrels or [m]ore” of oil spilled (see figure reproduced below).¹¹⁹

Figure 2. Texas GulfLink Offshore Oil Spill Risk



In any case, if the y-axis of this figure depicts annual frequency of oil spills instead of annual probability, then this figure confirms that the likelihood of large oil spills (each year and over the 30-year lifetime of the Project) is very significant.¹²⁰ Dr. Susan C. Lubetkin, an expert in environmental risk statistics and analysis, has assumed that the figure depicts frequencies per year (as MARAD

¹¹⁹ FEIS at 4-27.

¹²⁰ See Ex. 7, Susan C. Lubetkin, PhD, Technical Comment on the Offshore Oil Spill Risk Analysis in the Texas GulfLink Deepwater Port License Application Final Environmental Impact Statement at 1, 4-8, 42-61 (Aug. 28, 2024) (hereinafter “Lubetkin Technical Comment”).

and USCG claim¹²¹) to calculate the expected number of spills over the 30-year lifetime of the Project, the probabilities of exceedance per year, and the probabilities of exceedance over the Project's lifetime. Dr. Lubetkin's calculations show that oil spill volumes between 30,291 and 70,000 barrels ("bbl") are expected to be exceeded per year, and that there is over a 50% chance of a spill over 113,500 bbl each year.¹²² More than 21 spills exceeding 113,500 bbl—and two spills exceeding 226,000 bbl—are expected to occur over the 30-year lifetime of the Project.¹²³ There is also almost a 10% chance of a spill exceeding 213,000 bbl to occur each year, with around a 95% chance of at least one such spill occurring in the Project's lifetime.¹²⁴ The spill volume that is expected to occur at least once over the Project's lifetime is between 226,000 and 335,000 bbl.¹²⁵ NEPA requires that this crucial information about the risks of oil spills be disclosed to the public in a clear manner.¹²⁶ The FEIS has not done so.

Second, in our comments on the SDEIS, we noted that MARAD and USCG must provide more information to the public regarding how to interpret Figure 4.6.1-1 above.¹²⁷ NEPA requires agencies to present information in an accurate and clear manner in order to facilitate informed public participation. As mentioned, here, the agencies acknowledge that the figure itself is mislabeled.¹²⁸ Additionally, in the FEIS, MARAD and USCG attempt to "clarify" how to interpret Figure 4.6.1-1 by stating that "Figure 4.6.1-1 is presented on a logarithmic scale (NRC 1996)" and that "[a]dditional information regarding how to read exceedance curves can be found on the National Weather Service Climate Prediction Center Website (NOAA 2002)."¹²⁹ This addition, however, does nothing to help the public understand how to interpret the exceedance curve depicted in Figure 4.6.1-1. For example, the NOAA webpage cited provides no graphs of exceedance curves that would help the average reader identify exceedance curves or understand what Figure 4.6.1-1 depicts.¹³⁰

¹²¹ See also FEIS at 4-26 (stating that this figure "shows the expected frequency (per year) of exceeding a specified spill quantity due to any and all potential spill scenarios").

¹²² Ex. 7, Lubetkin Technical Comment at 1, 5-7, 52-56.

¹²³ *Id.* at 1, 5-6, 8, 52-54, 58-59.

¹²⁴ *Id.* at 1, 5-8, 52-59.

¹²⁵ *Id.* at 1, 5-6, 52-53-54.

¹²⁶ See *Friends of the Earth v. Haaland*, 583 F. Supp. 3d 113, 147 (D.D.C. 2022) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)).

¹²⁷ SDEIS comments at 17.

¹²⁸ *Id.*

¹²⁹ FEIS at 4-26.

¹³⁰ NOAA, Understanding the "Probability of Exceedance" Forecast Graphs for Temperature and Precipitation (2022), <https://www.cpc.ncep.noaa.gov/pacdir/NFORdir/INTR.html>; see Ex. 7, Lubetkin Technical Comment at 1-2, 9-10.

Third, MARAD and USCG claim that the FEIS has sufficiently considered the cumulative probabilities of oil spills from the Project because it apparently discusses “the low probability of overlapping spills from multiple projects occurring at the same time.”¹³¹ This response misses the point. Our comments on the SDEIS noted that the agencies have failed to present the cumulative probabilities of oil spills over the 30-year lifetime of the GulfLink Project.¹³² The allegedly low probability of simultaneous spills occurring at multiple projects in the Gulf of Mexico at one point in time has nothing to do with the cumulative probability of oil spills—and the cumulative impacts from such oil spills—occurring from the GulfLink Project *over the course of the Project’s lifetime*. Moreover, to properly analyze cumulative impacts from multiple projects, MARAD and USCG must also look at the cumulative probability and cumulative impacts of oil spills over the lifetime of these projects. Cumulative impacts include impacts not just from simultaneous spills occurring at one point in time but also from successive spills occurring over the lifetime of the projects.¹³³

Lastly, MARAD and USCG incorrectly claim that assessing risks of spills smaller than the worst credible discharge scenario is unnecessary because such an assessment would “duplicate” the analysis of the worst credible discharge scenario.¹³⁴ This is false. As explained in our comments to the SDEIS, analysis of the frequencies and probabilities of a comprehensive range of spill sizes over the course of the Project’s 30-year lifetime is necessary to accurately understand the risks of oil spills from the Project.¹³⁵ Indeed, other agencies such as the Bureau of Ocean Energy Management (“BOEM”) and the Bureau of Land Management (“BLM”) routinely estimate a wide range of spill sizes, ranging from very small spill events to catastrophic spill events, in their NEPA analyses of oil spill risks.¹³⁶ MARAD and USCG must do the same here.¹³⁷

¹³¹ FEIS, Appx. C, C-366 to C-367.

¹³² SDEIS Comment Ltr. submitted by Sierra Club, Center for Biol. Diversity, and Earthjustice et al. at 18, MARAD-2019-0093-3061 (Nov. 29, 2022).

¹³³ Ex. 7, Lubetkin Technical Comment at 2, 11.

¹³⁴ FEIS, Appx. C, C-366 to C-367.

¹³⁵ SDEIS comments at 14-19.

¹³⁶ Ex. 7, Lubetkin Technical Comment at 2, 12-16.

¹³⁷ *Id.* at 2, 12-22.

VII. MARAD and USCG's Reliance on the Biological Opinions Does Not Suffice to Discharge their NEPA Review of the Project's Impacts to Wildlife.

The FEIS fails to cure the agencies' failure to take the legally required hard look at the Project's numerous effects on Gulf wildlife, including the Rice's whale, Kemp's ridley sea turtle, eastern black rail, and other species protected under the Endangered Species Act ("ESA"). Instead, the FEIS largely points to the conclusions the National Marine Fisheries Service ("NMFS") and U.S. Fish and Wildlife Service reached in their biological opinions issued under section 7 of the ESA,¹³⁸ including the determinations that the Project is not likely to adversely affect Rice's whales; and is likely to adversely affect but not jeopardize sperm whales, sea turtles, giant manta rays, oceanic white tip sharks, and eastern black rails to dismiss the significance of the Project on these species.¹³⁹

This is insufficient. "Clearly, there can be a significant impact on a species even if its existence is not jeopardized."¹⁴⁰ Indeed, numerous courts have instructed that the ESA and NEPA have different purposes and analytical requirements and a non-NEPA document therefore cannot substitute for the analysis required by NEPA.¹⁴¹ For example, "the ESA's Section 7 consultation process differs from the cumulative impacts analysis required by NEPA in a number of important ways," including that "the ESA only requires agencies to consider the cumulative impacts of non-federal actions, while NEPA requires agencies to consider the cumulative impacts of all actions."¹⁴² Such differences are especially important when it comes to evaluating and disclosing the impacts of the Project on critically endangered species like the Rice's whale, whose very existence is threatened by federal and non-federal actions alike.

Moreover, the FEIS ignores that NMFS has issued a proposed rule to designate waters from the 100-meter isobath to the 400-meter isobath in the Gulf of Mexico as Rice's whale critical habitat,¹⁴³ fundamentally undermining the FEIS's conclusion that Rice's whales are unlikely to be in the Project area and thus not at

¹³⁸ 16 U.S.C. § 1536(a)(2).

¹³⁹ See, e.g., FEIS at 3-277, 3-307, 3-315-16, 3-320, 3-321.

¹⁴⁰ *Makua v. Rumsfeld*, 163 F. Supp. 2d 1202, 1218 (D. Haw. 2001).

¹⁴¹ See, e.g., *Pacific Rivers Council v. U.S. Forest Service*, 689 F.3d 1012, 1030-32 (9th Cir. 2012) (rejecting the argument that the agency could incorporate by reference a biological assessment as a substitute for NEPA analysis); see also *Or. Env't'l Council v. Kunzman*, 817 F.2d 484, 494 (9th Cir. 1987) ("an agency may not circumvent its obligation to provide a clear assessment of environmental impacts simply by placing [vital] analysis in an appendix.").

¹⁴² *Fund for Animals v. Hall*, 448 F. Supp. 2d 127, 136 (D.D.C. 2006).

¹⁴³ *Endangered and Threatened Species; Designation of Critical Habitat for the Rice's Whale*, 88 Fed. Reg. 47,453 (July 24, 2023).

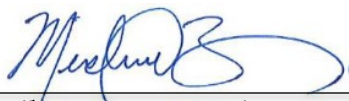
risk from noise pollution and collisions from tankers that would fill at GulfLink. Without fully evaluating the risks of the Project to ESA-protected species, MARAD cannot possibly understand how the Project will negatively affect “the declared national policy of saving endangered species,”¹⁴⁴ and therefore cannot reasonably determine whether the Project is in the national interest as required by the Deepwater Port Act.¹⁴⁵

VIII. Conclusion

For the foregoing reasons, we request MARAD and USCG remedy the errors contained in the FEIS and ensure adequate information and analyses are included prior to issuing a record of decision. Moreover, on the basis of the information in the record currently, the agencies must deny the Project a license.

Thank you for your consideration.

Sincerely,



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¹⁴⁴ *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 185 (1984); see also *id.* (concluding that the ESA “reveals a conscious decision by Congress to give endangered species priority over the ‘primary missions’ of federal agencies”).

¹⁴⁵ 33 U.S.C. §1503(c)(3).

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