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May 4, 2013

Colonel Charles P. Samaris
District Engineer
Army Corps of Engineers
New England District
696 Virginia Road
Concord, MA 01742-2751

ATTN: Engineering and Planning Division
Ms. Barbara Blumeris

RE: IMPROVEMENT DREDGING OF THE FEDERAL
NAVIGATION PROJECT SEARSPORT HARBOR
SEARSPORT, MAINE

Dear Col. Samaris:

This comment letter is submitted on behalf of TBNT, a coalition of residents and small business owners living and working in the Upper Penobscot Bay region, including: Searsport, Stockton Springs, Belfast, and Islesboro. TBNT members seek to support, protect, and maintain the region's economy, environment, scenic character and quality of life. TBNT members do not oppose the proposed maintenance dredging detailed in the April 5, 2013, Feasibility Study and draft Environmental Assessment ("EA"), *if done responsibly*. However, TBNT members vehemently oppose the proposed "improvement" dredging project as: (1) unjustified and unwarranted based on existing and foreseeable needs; (2) unwise and unsupported by both the incomplete, out-dated and inadequate evidence developed by the Corps, and the more current evidence available through existing sources not considered as part of the Corps' assessment; and (3) improper under the requirements of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4331 *et seq.*, the Clean Water Act and other applicable statutory and regulatory requirements.

On July 26, 2000, Congress tasked the Corps with the responsibility of conducting a study of the port of Searsport to determine if it should be deepened from 35'. However, the April 5th Corps' proposals, prepared in response to that Resolution, fail to meet the essential requirements of applicable law and are unsupported by the substantial body of available competent evidence. The April 5th Corps' filings propose to use \$11.2 to \$13 million of limited taxpayer resources for an *optional* "improvement" dredging project, with no identified or discernible *public* benefit. The sole purpose of the dredging project, according to the Corps, is to increase the profits and convenience of primarily two oil companies (Sprague Energy and Irving Oil) by reducing their transportation costs by allowing larger ships to deliver petroleum products to Mack Point. This would be a grossly improper use of limited taxpayer funds *at any time*, but it is especially improper to propose such a use of taxpayer funding now in a period of fiscal austerity and budget reductions.

The funds required for the proposed “improvement” dredging would be better spent on improvements for existing port projects, actually in the works, in the ports in South Portland and Eastport, Maine, or for recovery efforts in coastal areas damaged by Superstorm Sandy and dredging projects in the Great Lakes region to aid existing commerce and manufacturing needs. Unlike this proposal, those projects would serve a significant *public* purpose and have local and congressional support. Sandy recovery and maintenance dredging should and must receive funding before an optional, ill-conceived and poorly evaluated project like the Searsport proposal, for which there is no specific or urgent need or use, and about which there will likely be significant public opposition for the same reasons raised in 2000.

The Feasibility Study and draft EA improperly rely on out-dated data on the costs and benefits of the proposed dredging project. There is no factual or legal support for the Finding of No significant Impact (“FONSI”) determination that accompanied the April 5th Feasibility Study and draft EA. NEPA mandates that a full Environmental Impact Statement (“EIS”) be conducted of the proposed “improvement” dredging project, to evaluate the significant, potential, regional impacts of the unprecedented dredging advocated in this proposal on the entire ecosystem and human environment of Penobscot Bay and the communities in and around the Bay.¹

No “improvement” dredging should be conducted without consideration of current and comprehensive scientific data, including: core samples from the entire depth and range of proposed dredge materials; a complete inventory of endangered and threatened species and an assessment of potential impacts on them; an evaluation of the economic impacts on the region using current data and information; a reassessment of the need for dredging based on the changes in the energy import markets and use of Mack Point since 2008; assessment of the contaminants in the dredge spoils and at the disposal sites; a determination of the potential impacts on the human environment; an assessment of the impacts on the lobster industry and the reputation and marketability of Pen-Bay lobsters; an assessment of the impacts on clamming in Upper Penobscot Bay; and public hearings conducted throughout the region – including on the islands that are the most impacted by the proposed dredging and disposal sites.

Public hearings and additional time for submission of public comments is necessary because the public has received very limited notice of this proposal, although its potential impacts are

¹ See, e.g., *Sierra Club v. Marsh*, 769 F.2d 868, 874 (1st Cir. 1985) (*Sierra I*) (“...a lengthy EA indicates that an EIS is needed.”); *Sierra Club v. Secretary of Transportation*, 779 F.2d 776 (1st Cir. 1985) (*Sierra II*); *Sierra Club v. Secretary of the Army*, 820 F.2d 513 (1st Cir. 1987) (*Sierra III*); *Sierra Club v. Marsh*, 701 F.Supp. 886 (D.Me. 1988) (*Sierra IV-A*); *Sierra Club v. Marsh*, 872 F.2d 497 (1st Cir. 1989) (*Sierra IV-B*); *Sierra Club v. Marsh*, 714 F.Supp. 539 (D.Me. 1989) (*Sierra IV-C*); *Sierra Club v. Marsh*, No. 88-0116, slip op. (D.Me. Nov. 1, 1989) (unpublished) (*Sierra IV-D*); *Sierra Club v. Marsh*, 907 F.2d 210 (1st Cir. 1990) (*Sierra IV-E*). The federal Council on Environmental Quality (“CEQ”) counsels that an EA is a “concise” document that “briefly” discusses the relevant issues and either reaches a conclusion that preparation of an EIS is necessary or concludes with a “Finding of No Significant Impact” (called, in environmental jargon, a “FONSI”). *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, 46 Fed.Reg. 18026, 18037 (1981) (calling on agencies “to limit EA’s to not more than approximately 10-15 pages”).

significant, wide-spread and long-lasting. For example, the article regarding the period for filing comments just appeared in the Working Waterfront Newspaper on April 29th – giving little time for impacted lobstermen to review the lengthy April 5th materials and file proper responses with the Corps of their objections and concerns.² Similarly, the Public Notice appeared after the last edition of the Islesboro Island News and the comment period will end prior to release of the next edition of the Islesboro Island News. Accordingly, the notice period provided was simply too short for the realities of information distribution systems in the rural communities that will be impacted. After the passage of thirteen years since the Congressional Resolution was enacted charging the Corps with the responsibility to do this Feasibility Study, providing the public a mere thirty (30) days to respond is an unacceptably short time-frame for compiling meaningful comments from interested individuals. Additional comment time should be provided and public hearings held.

I. Interests and Standing of the TBNT Commenters

TBNT is a not-for-profit organization, incorporated under the laws of the State of Maine. TBNT's members include owners of residential and business properties that abut or are in the neighborhoods immediately adjacent to Mack Point, Sears Island, Long Cove, Stockton Harbor, Belfast, Islesboro and the port of Searsport – all areas impacted by the proposed dredging and dredge spoils disposal detailed in the April 5th Corps' materials. TBNT members also include owners of businesses that are dependent upon, or enhanced by, maintaining the environmental integrity of Penobscot Bay. At least one TBNT member is on the Searsport Shellfish Committee. Individual TBNT members have been judicially granted standing to challenge prior proposals to develop Mack Point. Under Maine law, the standing of individual members confers standing on an incorporated organization like TBNT to similarly pursue such challenges on behalf of the organization's members.

TBNT's members are concerned that the adverse impacts of and pollution generated by the proposed "improvement" dredging portion of the dredging project detailed in the April 5, 2013, Corps' filings will severely, adversely and unreasonably affect their homes, businesses, environment, community and quality of life. In particular, they are concerned about the associated and inevitable, direct and indirect, primary and secondary, impacts caused by the development that this "improvement" dredging is intended to facilitate on Sears Island³ and at Mack Point. The adverse impacts of the increased ship, truck and rail traffic, that the proposed repurposing of the port of Searsport to a more heavily industrialized use could facilitate, will be severe and regional in nature. Such significant, regional, adverse impacts mandate that the Corps conduct a full Environmental Impact Statement ("EIS"), pursuant to the National Environmental Policy Act ("NEPA"). The draft FONSI determination is unfounded and unsupportable and must be withdrawn.

² <http://www.workingwaterfront.com/articles/Army-Corps-seeks-public-input-on-Searsport-dredging-project/15295/>

³ See, Exhibit 44 (2013 Maine Department of Transportation Work Plan), p. 1.

II. Background of this Dredging Proposal

In 2000, a proposal was made to deepen the channel in the port of Searsport to 37' in connection with a proposed development of a portion of Sears Island as a dry container port. Both the proposal to site a container port on Sears Island and the proposal to dump approximately 371,000 cubic yards (cy) of potentially contaminated dredge spoils in prime lobstering grounds off Vinalhaven and Rockland created considerable public backlash and criticism.⁴ As a result of the legitimate concerns raised about this proposed 2000 Searsport dredging proposal, the Corps was tasked by Congress with the responsibility to study the need for and feasibility of increasing the depth of the port of Searsport. Specifically, on June 26, 2000, Congress passed a Resolution authorizing the Army Corps of Engineers to conduct a study to determine whether there was justification for increasing the depth of the channel at Mack Point from 35'.

On April 5, 2013, the Corps issued a Feasibility Study and draft EA, FONSI and Clean Water Act (CWA) letter. The April 5, 2013, Feasibility Study, as well as a lengthy draft Environmental Assessment ("EA") and draft FONSI concerning the proposed dredging of the port of Searsport propose an even more radical dredging of Upper Penobscot Bay than has ever been proposed before. Rather than the 37' depth-increase proposed in 2000, this study now proposes an initial expenditure of more than \$11.2 million of State and federal taxpayer funds to remove *almost a million cubic yards* of dredge materials, to increase the depth of the channel to 40', widen the channel, create a new turn-around area, and increase the depth at the piers to 45' (43' with up to a 2' "overdepth").⁵

Only 37,000 cy of dredge materials would be removed to do the *maintenance* dredging required to maintain the current federally authorized 35' depth of the existing channel, turn around and pier areas. The so-called "improvement" dredging proposed would require dredging an unprecedented and potentially destructive 892,000 cy of dredge spoils from the channel and turn around and 31,000 cy of dredge spoils from the pier area. Under this "improvement" dredging proposal, both the existing entrance channel and turning basin would be deepened from their authorized depth of 35' to a depth of 40' mean lower low water (MLLW). In addition, the entrance channel would be widened from its current 500' at the narrowest point to 650', and a maneuvering area would be created in Long Cove adjacent to the east berth along the State Pier. The rectangular maneuvering area would have a length between about 875' on the west side and 1,066' on the east side and a width of 400'. This area would also be deepened to 40' MLLW.

⁴ <http://news.google.com/newspapers?nid=2457&dat=20000725&id=AKVJAAAAIBAJ&sjid=mA0NAAAAIBAJ&pg=1541,2777382>

⁵ The Maine Department of Transportation 2013 work plan indicates that the cost for this proposal is \$3 million in State taxpayer funds and \$10 million in federal taxpayer funds. See, Exhibit 44.

The purpose of the dredging project identified by the Corps is:

to improve the existing Federal navigation project for Searsport Harbor at Mack Point, Searsport, Maine to accommodate the deep draft vessels that use the existing terminals at the port. This improvement will reduce the transportation costs incurred by shippers due to tidal delays and light loading of vessels.”

30-Day Public Notice, p. 1. In an attempt to justify the unprecedented “improvement” dredging, the April 5th 30-Day Public Notice asserts that:

Since completion of the State Pier and upgrades to the petroleum terminal, the size of ships calling on Mack Point/Searsport Harbor has increased. As a consequence, the existing controlling depths in the Searsport Harbor navigation channel are inadequate for the existing and future vessel traffic.

30-Day Public Notice, p. 1. There is no record evidence to support this contention. Indeed, no data is provided on the characteristics and number of ships calling on the port of Searsport after 2008. Of the data provided through 2008, the record evidence demonstrates that fewer than 5% of all vessel traffic would have to light-load or wait for a high tide in order to use the port of Searsport under present conditions and depths, without the need for *any* dredging (even maintenance dredging).

More importantly, the current Corps’ claim that dredging is required to accommodate the deep draft vessels that use the existing terminals at the port is *expressly contradicted* by all of the Corps’ prior representations about Mack Point and the port of Searsport, published in the 2012 EA regarding the proposed DCP Searsport LLC LPG marine import terminal at Mack Point. In that 2012 EA, the Corps concluded that “*no dredging*” would be required to accommodate the 4 to 8 ocean-going, deep draft LPG tankers that the DCP facility would have been serviced by annually – ships with an anticipated draft of up to 39.7’. Exhibit 35.

TBNT Commenters incorporate the entire Administrative Record from the DCP Searsport LLC federal permitting process (Disc 2), including the EA and all supporting documentation to the permit, with this response as proof that the assertions of need for the proposed “improvement” dredging in the April 5, 2013, Feasibility Study, and draft EA, FONSI and CWA letter are arbitrary and capricious – unsupported even by the Corps’ own prior, *recent* findings about the safety and adequacy of this port area – *without any dredging* – for a significant increase in large, ocean-going, deep draft tanker traffic. (See, e.g., all Exhibits on Discs 1 and 2).

III. Summary of Deficiencies in the April 5th Submissions from the Corps

Despite having thirteen years to conduct a thorough assessment of the alleged need to deepen the channel and pier area of Mack Point, the cursory and out-dated analysis on which the Corps’ April 5th Feasibility Study and draft EA, FONSI and Clean Water Act (CWA) letter, is based fails to adequately consider the potentially significant environmental damage that the direct and indirect, primary and secondary consequences of the proposed “improvement dredging” would

wreak on the fragile environment of Upper Penobscot Bay, and the Bay as a whole from the dumping of almost a million cubic yards of dredge spoils that potentially contain significant contaminants (including mercury (Hg)). These drafts, and the out-of-date and incomplete data on which they are founded, do not support the extensive “improvement” dredging project proposed at Mack Point, Searsport, Maine. Rather, the only thing these documents reveal is the need for the Corps to do an EIS and conduct public hearings to fulfill the requirements of NEPA.

Although proceeding, *responsibly*, with maintenance dredging is warranted and appropriate, in light of the long period of time that has passed since such maintenance dredging in this area has been undertaken, there is no justification for spending the enormous sums of taxpayer dollars that the proposed “improvement” dredging project would require – especially in the absence of any *publicly beneficial* economic need or a pending project that requires such dredging to safely operate.

The April 5th Corps’ filings provide a woefully inadequate analysis of the risks, benefits or need for such a radical dredging proposal and change-in-purpose for the Mack Point facility and the port of Searsport. Specifically, the draft is flawed in the following specific ways:

- The CWA analysis fails to properly evaluate the potential contaminants in the dredged materials by assessing the historical data of prior discharges of petroleum products into the area from the petroleum storage facilities that have operated at Mack Point since the 1950s (the draft CWA letter specifically states that no review or evaluation of this historical discharge data has been undertaken as part of this EA process and feasibility study). See, CWA-4, ¶ 3.a.3; Feasibility, p. 194.
- The draft CWA analysis fails to properly evaluate the potential contaminants in the dredged materials, including, but not limited to mercury (Hg), by assessing the historical data and reports that are available (the draft CWA letter specifically states that no review or evaluation of this historical discharge data has been undertaken as part of this EA process and feasibility study). See, CWA-4, ¶ 3.a.5-6; Feasibility, p. 194.
- The sampling of proposed dredge materials fails to include sufficient core samples below 1.5’ to 2’, although the proposed dredging would require the removal of material from the existing channel of up to 8’ in depth, and new areas outside the existing channel and from the pier area of up to 11’.
- Most of the data and analysis on need, risks and benefits was compiled in 2007 and 2008 (or before) and fails to reflect the significant changes in the environment, use of the port, and the energy markets generally, that has occurred during the past five (5) years (no data on petroleum imports is included after 2008 – despite the well-known fact that there has been a sea change in the energy markets as a result of the natural gas fracking boom during the same five (5) year period of time – virtually eliminating the need for most imports of petroleum products to the United States, including to Searsport by ship). See, Feasibility, p. 15, Table 2.

- No real evaluation of the impacts on Eelgrass and the organisms that rely on Eelgrass is done.
- Much of the data relating to the impacts on threatened and endangered species, including North Atlantic salmon, Atlantic sturgeon and shortnose sturgeon is out-of-date (at least 5 years old) and fails to consider the significant resources invested in the Penobscot River project and other similar recovery projects since 2008.
- The Corps fails to consider the impacts of the “improvement” dredging on many threatened and endangered species; indeed, the Corps fails to even acknowledge the presence of many endangered and threatened species located in the areas that would be impacted by the proposed dredging and disposal.
- The Corps tries to discount the significance of the impacts of dredging on nesting eagles and osprey in the area and fails to properly evaluate such impacts, including the impacts of increased contaminants in the food supply on health and reproduction.
- The Corps fails to consider the impacts of dredging on the active seal population in Upper Penobscot Bay, most common of which are harbor seals, which are protected under the Marine Mammal Protection Act.
- The November-to-April dredging schedule ignores the impacts on birds on Sears Island and the adjacent undeveloped shore area, including endangered and threatened species of waterfowl (Barrow's Golden Eye, Common Golden Eye and Buffleheads) that winter on Sears Island, and fails to properly evaluate such impacts, including the impacts of increased contaminants in the food supply on health and reproduction.
- No real evaluation is made of the impacts of dredging on the human environment from increasing and redistributing contaminants, including mercury, from Upper Penobscot Bay to more pristine areas of the Bay – including the potential damage such contamination, or even the suggestion of such contamination, could have on the reputation and marketability of Pen-Bay lobsters – a major industry in the region.
- The assessment of the impact on clamming in Upper Penobscot Bay is based on out-of-date and/or inaccurate information.
- The adverse impact on water quality is ignored, misrepresented or understated.
- No *public* benefit nor public need is shown for the deepening of the channel and pier areas. The heavy industrial uses and petroleum imports that this project is intended to facilitate are neither needed nor appropriate under existing zoning limitations at Mack Point and Sears Island – limitations that the Feasibility Study and draft EA either ignored or simply failed to consider.

IV. Purpose, Need, and Alternatives

The only stated reason that the Corps provides for the “improvement” dredging of nearly a million cubic yards of potentially toxic dredge spoils is to: “reduce the transportation costs incurred by shippers [especially petroleum shippers Irving Oil and Sprague Energy] due to tidal delays and light loading of vessels.” 30-Day Public Notice, p. 1. Specifically, the stated benefit to be achieved by the taxpayer-funded “improvement” dredging project is: “In the with project, deepening the channel will allow shippers to shift to larger, more cost-effective vessels, thereby achieving the lower cost per ton of larger vessels.” Feasibility, p. 51 (p. 65 of 196). In sum, the project purpose is the expenditure of more than \$11.2 to \$13 million in State and federal taxpayer funds to potentially reduce the shipping costs that Sprague Energy and Irving Oil might incur, by allowing these petroleum companies to use larger ships. In other words – the purpose of this project is corporate welfare for oil companies that account for up to 80% of the imports to Mack Point (using the 2008 data that the Corps’ Feasibility Study relies upon).

As stated by the Corps in the Feasibility Study: “[T]he most significant benefit from channel deepening identified would be the improved safety and reliability of oil and gasoline shipments that would be achieved with the project.” Feasibility, p. 58 (p. 72 of 196).

The “Economics of the Recommended Plan” contemplate that:

The annualized economic cost for the selected plan (at 3-3/4 interest rate) is \$552,000 [of taxpayer-borne costs]. With expected average annual benefits of \$1,397,000 [primarily realized by Sprague Energy and Irving Oil, none of which is guaranteed to inure to the benefit of taxpayers in reduced fuel costs] and average annual cost of \$552,000 [paid by Maine and federal taxpayers] the benefit to cost ratio for the selected plan is 2.5 to 1 [with *public money* funding strictly *private gain*]. (See Table 22). The annual net benefits are \$845,000 [*for Sprague Energy and Irving Oil* – not the taxpaying public burdened with the costs and consequences of this dredging project].

Feasibility, p. 73 (P. 87 of 196).

The alleged benefits of this claimed purpose and need are far too insignificant to the public and taxpayers to justify the potentially devastating and long-term environmental harm and significant adverse impacts upon the human environment, public health and safety, several endangered and threatened species, and the reputation and profitability of Penobscot Bay’s lobstering industry – which is one of the most profitable commercial fisheries in the nation, accounting for nearly 40% of all Maine lobster production. None of these adverse impacts was adequately analyzed or assessed in the draft EA or Feasibility Study. Further, none of the claimed benefits are guaranteed to be passed on to the public who are funding the “improvement” project. Indeed, Sprague Energy and Irving Oil are free to pocket *all* of the alleged shipping-cost savings that could be realized from the use of larger tankers, without passing *any* of those savings on to consumers in the form of lower fuel costs. This is an improper use of limited taxpayer funds and an inadequate “benefit” *for the public* to justify an “improvement” dredging project, where all of

the projected benefits will inure to private corporate entities – not to the public that is being asked to pay *100% of the costs for the project*.

Further, the benefits analysis contained in the Feasibility Study is expressly contradicted by the Administrative Record developed by the Corps during the DCP Searsport LLC EA and permitting process. In the 2013 Dredging Feasibility Study, the Corps makes the specious claim that:

If channel deepening promotes increased use of Searsport Harbor by importers and exporters, this could also result in increased employment in the region. Employment could increase at the harbor itself, as increased shipments require additional dock workers, truckers, and other workers. Employment could increase at businesses located in the region which receive inputs at the harbor if they are able to become more competitive in the market place and obtain greater market share. If employment in the region increases, incomes and tax revenues in the region would also increase. These types of positive effects would be RED benefits to channel deepening.

Feasibility, p. 58 (p. 72 of 196). However, since the purpose of deepening the channel is to allow *larger ships* to make *fewer trips* (reducing Sprague Energy and Irving Oil's transportation costs), if anything, deepening the channel would result in potentially *reduced* shipments requiring *fewer* dock workers. Thus, employment could *decrease*.

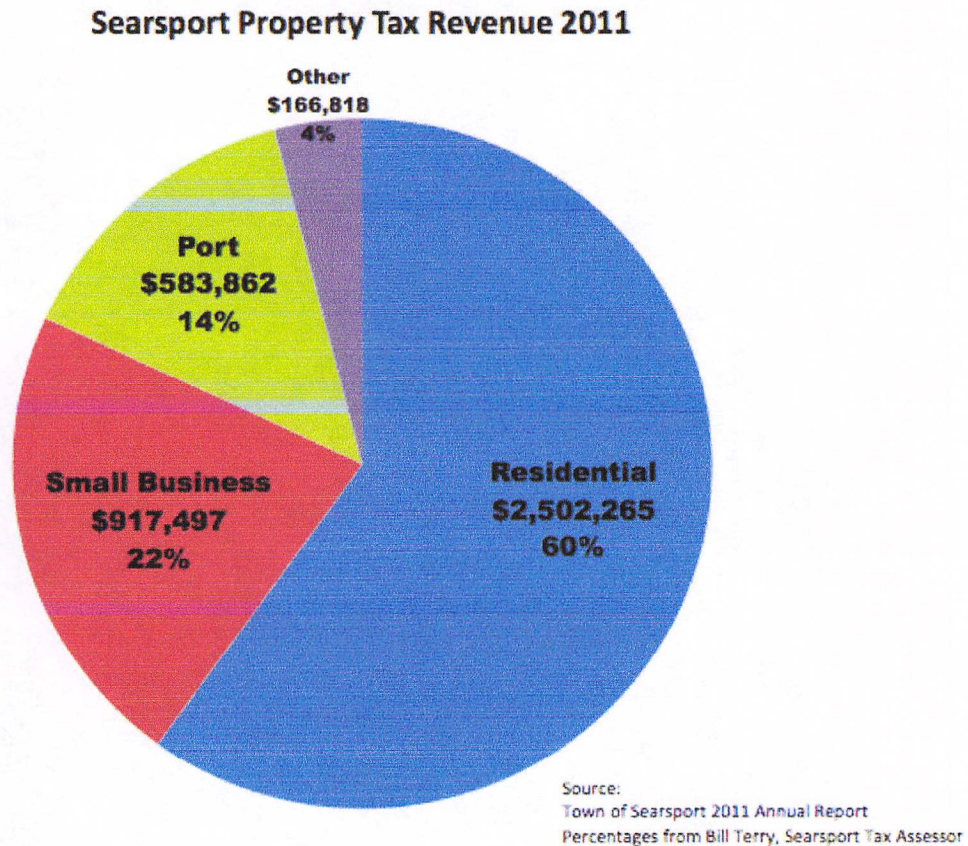
In the expert report prepared by Dr. Charles Colgan, submitted by DCP Searsport LLC to, and relied upon by, the Corps in the 2012 DCP Searsport LLC EA, it was established that: "Jobs in Searsport are dominated by the retail sector and by the leisure & hospitality [sector], particularly restaurants. Jobs in these sectors comprise a much bigger portion of the Searsport economy than in Waldo County as a whole." (Exhibit 17, Colgan, p. 2). A review of Colgan's Table 1 reveals that, in Searsport, 53.9% make a living at a retail trade and leisure & hospitality place of work – these are ecotourism-dependent and ecotourism-enhanced jobs.

	Searsport ⁷	Waldo County ⁸
Agriculture	0.0%	5.2%
Construction	2.7%	5.0%
Manufacturing	9.3%	12.7%
Wholesale Trade	10.5%	0.0%
Retail Trade	41.1%	15.2%
Transportation	1.6%	2.0%
Information	0.5%	1.2%
Financial Activities	3.6%	13.9%
Prof & Bus	4.6%	8.8%
Ed & Health	4.6%	17.9%
Leisure & Hospitality	12.8%	10.4%
Other Services	8.7%	3.7%
Public Admin	0.0%	4.1%

Table 1 Employment by Place of Work

Furthermore, in Searsport, the overwhelming majority (60%) of tax revenues come from residential property assessments, with an additional 22% of tax revenues coming from small businesses (which are predominantly in ecotourism-dependent or ecotourism-enhanced sectors like retail, hospitality and real estate).

Only 14% of Searsport's property tax revenues (less than \$600,000) come from properties in the Mack Point port area. Accordingly, increasing Sprague Energy's and Irving Oil's profits will provide little or no benefit to the tax base or economy of Searsport or the region as the Corps claims in the 2013 Dredging EA.



There is utterly no record support for the job creation and other economic claims made in the Corps' 2013 Dredging EA. Indeed, this EA fails to consider the significant threat to the existing regional economy and property values that the proposed additional industrialization of Mack Point and Sears Island and diminution of the environmental integrity of Penobscot Bay from dredging could cause. Such property devaluation played a major part in the denial of local zoning permits to DCP Searsport LLC by the Searsport Planning Board. *See*, Exhibits 1-5, 7, 9, 15, 18-20, and 22-31.

V. The Corps Previously Determined that No Dredging Was Required for Deep Draft Vessels Using Mack Point

More importantly, as noted above, the claimed purpose and need for this project is expressly contradicted by the Corps' own 2012 EA of the proposed DCP Searsport LLC LPG marine import terminal – in which the Corps concluded that construction of the largest LPG import terminal on the East Coast of the United States would not require any dredging of the port of Searsport or the channel, approaches and turn around at Mack Point, including at the very pier that the Corps now claims requires dredging from 35' to 45' (43' plus 2' of overdredge). Specifically, in 2012, the Corps claimed that “no dredging was required” for the 4 to 8 ocean-

going, deep draft LPG tankers that the now-abandoned DCP Searsport LLC marine import terminal would have brought to Mack Point annually.

According to the Corps' 2012 EA on the DCP project, the proposed DCP Searsport LLC LPG marine import, bulk storage and distribution terminal facility would have required annual servicing by a minimum of 4 to 8 ocean-going LPG tanker ships, with a draft of up to 39.7'.⁶ Each such vessel would have been required to be at the State of Maine dry cargo dock for 36 to 48 hours to off-load this dangerous cargo into the mile-long pipeline that would have been constructed to transfer the LPG from the ships to the 22.7 million gallon bulk storage tank. However, the Corps concluded that: "*no dredging is required.*" Exhibit 35, DCP EA at 31.

In contrast to the assertions in the current "improvement" dredging Feasibility Study and draft EA, in the 2012 DCP EA the Corps made the following observations about the adequacy of the waterway, channel and berths at Mack Point:

... The Dry Cargo Pier at the Mack Point Terminal has approximately 40 feet of water depth at low water, it is a new pier of sufficient size to safely accommodate the LPG vessels, and is constructed in accordance with the latest codes.... Waterways serving Mack Point are well suited to LPG vessel traffic. Penobscot Bay is wide and deep with plenty of room to maneuver and no blind turns; tides and currents place relatively few limits on ship movements; ship meeting and crossing situations will be limited and can be avoided; the ship transit route does not cross or pass any critical infrastructure such as bridges; there are multiple navigation routes into and out of the port; the port is not congested and does not have the amount of commercial, deep draft traffic that occurs at busier ports such as Portland; the terminal is well protected from the elements...

Exhibit 35, p. 2.

...[O]n April 9, 2012, the USCG Captain of the Port recommended to the Corps that the Penobscot Bay be considered suitable for LPG marine traffic. The Captain of the Port focused on the navigation safety and maritime security aspects of LPG vessel transits along the entire affected waterway ... and included an assessment of the risks posed by these transits and possible risk mitigation.... It was clear from presentations made by USCG and Penobscot Bay Pilots that the minor increase in shipping traffic (6-8 vessels/year) will not appreciably alter commercial shipping activity or navigation along well established routes in Penobscot Bay and approaches (up to 175 deep draft vessels/year in 2010).

⁶ In the LORA Analysis submitted in support of the DCP Searsport LLC EA, a description and photo were provided of the HASSI MESSAUD 2, a vessel that is 672 feet long, has a draft of 39.7 feet, and cargo capacity of 58,000 cubic meters. This ship is typical of the ships that in the past serviced the Sea-3 facility in Newington, NH, and was anticipated as being the type and size vessel that would have serviced the proposed DCP Searsport LLC LPG facility at Mack Point. The USCG and Corps analysis were based on this ship size and type. See, e.g., LORA Redacted Version, p. 10; Exhibit 35, p. 81 of 133.

Established transit routes will not change as a result of this project and because of the high number of petroleum vessels already transiting the region, the pilots and marine operators already operate at the highest level of safety. The LPG project won't change this....

Based on the testimony of the USCG and the pilots, the long established deep draft commercial use of the transit routes and the Mack Point terminals, the similarity of the LPG vessels to the size of vessels and types of cargo already accommodated in the region, and the relatively few number of LPG vessels that will visit the area per year, the Corps does not believe existing navigational use will be more than minimally impacted. The LPG vessels will complement existing petroleum, dry cargo, and containerized cargo vessels that already frequent the Mack Point terminals. ...

Exhibit 35, p. 42.

In the Analysis Supporting the Letter of Recommendation issued by the COTP Sector Northern New England on April 9, 2012, the following relevant statements and conclusions were made:

Sprague Energy Corporation owns and maintains a dock that handles liquid cargo and can accommodate vessels up to 700 feet in length, 106 feet beam and maximum draft of 35 feet. The Maine Port Authority owns and maintains a dock that handles dry cargo and can accommodate vessels up to 800 feet in length, 120 feet beam and a maximum draft of 39 feet....

LORA Redacted Version, p. 6; Exhibit 35, p. 77 of 133.

Deep draft ships of approximately the same dimensional size and draft as the proposed LPG carriers have been productively transiting the existing waterway and mooring at the Mack Point terminal for a number of years. Current vessel management practices, traffic routes, safety procedures, and navigational aids (ATON) have contributed to a successful and safely managed waterway and port area. *The current infrastructure and hydrographic characteristics of the waterway easily support the current volume of tankers and bulk ships plying the waterway enroute to Searsport and beyond.* An additional six to eight deep draft arrivals over a year's time would not alter this capacity....

LORA Redacted Version, p. 15; Exhibit 35, p. 86 of 133 (emphasis supplied).

The hydrographic characteristics of the Penobscot Bay waterway suitably support deep draft marine traffic. On average, approximately 135 tank vessels, ranging from 18,000 to 65,000 deadweight ton (DWT) capacity, and two dozen 75,000 DWT cargo carriers successfully transit to and from Mack Point Intermodal Cargo Terminal annually.

LORA Redacted Version, p. 59; Exhibit 35, p. 130 of 133 (emphasis supplied).

If the Corps concluded that, under current conditions, “*no dredging is required*” for the type of expanded, heavy industrial use of Mack Point that the proposed DCP Searsport LLC LPG terminal would have represented, than it is difficult to imagine what use of Mack Point in the foreseeable future could require the unprecedented “improvement” dredging project that the Corps now proposes. While TBNT Commenters are sure that Sprague Energy and Irving Oil would like the additional profits that taxpayer-funded dredging may generate for them – such strictly private benefits are not the sort of “benefit” that can justify the commitment of such significant sums of limited public resources nor justify imposing significant risks to the integrity of precious environmental resources.

VI. The True Purpose and Need for the “Improvement” Dredging

The true purpose and need for this project could best be described as: “*dredge it and they will come.*”

At best, the “improvement” portion of this proposed dredging project can be characterized as a speculative venture to attract new shipping business to the port of Searsport (business that may or may not be eligible for local permits under the Searsport zoning ordinances and Comprehensive Plan).⁷ The Maine Department of Transportation, with which the Corps “collaborated” on the drafting of the EA and Feasibility Study and which is an intended beneficiary of any new business generated by this project, reveals the speculative nature of this project in its February 2013 work plan (attached to this letter as Exhibit 44), identifying the purpose of the project as: “for potential port development on Sears Island...”.

However, the use of limited State and federal taxpayer dollars for a merely speculative venture, is unwise and unwarranted, when there are so many other pressing needs for these same, limited dollars, that should and must be done first. For example, these funds would be better spent on improvements for existing port projects, actually in the works, in the ports in South Portland and Eastport, Maine. Further, recovery of coastal areas damaged by Superstorm Sandy and dredging projects in the Great Lakes region to aid existing commerce and manufacturing needs – projects that have local support and support from the relevant congressional delegations – should and must receive funding before an optional, ill-conceived and poorly evaluated project like this, for which there is no specific or urgent need or use, and about which there will likely be significant public opposition for the same reasons raised in 2000.

⁷ See, Maine Department of Transportation Workplan (2013), Exhibit 44; and Eastern Maine Development Corporation (EMDC) Searsport -Bangor Logistics Corridor Project, Exhibit 16.
http://www.mobilizeeasternmaine.com/image_upload/EMDC%20Corridor%20Project%20June%202012.pdf

VII. Outdated Data

Throughout this Feasibility Study, the data used to justify the “improvement” dredging, or to assert a lack of significant impacts on the natural or human environment, was compiled on or before 2008. It is as though this material was gathered in 2008 or before and put on a shelf – only to be dusted off in 2013, as though nothing had materially changed with the passage of time. From data on the type of ships and cargo coming to Mack Point to the nature of lobstering and clamming in Upper Penobscot Bay (See, e.g., p. 22 where a 1999 lobster study is cited) to the incomplete and inadequate sampling of contaminants in the dredge materials – *nothing has been updated since 2008*. Use of such out-dated information to support an unprecedented “improvement” dredging proposal is arbitrary and capricious and unjustifiable under any theory. Even the price data used in the Feasibility Study is out-of-date – *using 2011 price levels*. See, e.g., Feasibility, p. 56 (p. 70 of 196), Table 19.

The EA relies on data in calculating the alleged NED benefits that were compiled in 2007 and 2008 and uses as its foundation the 2004 Reconnaissance Report. As a consequence, the Feasibility Study and draft EA are based on grossly out-dated economic data⁸ that fail to consider the changes in the energy markets and corresponding changes in demand for a deepwater marine import facility like Mack Point, where petroleum imports previously comprised up to 80% of the port’s use. Post-2008 petroleum imports are never studied as part of the draft EA and Feasibility Study. 2008 is the last year of data contained in these reports.

In light of the sea change in energy markets domestically and globally since 2008, as a result of the energy boom, the Feasibility Study and draft EA require substantial redrafting and reconsideration. The United States is swift becoming a net exporter of energy, eliminating the need for most fossil fuel import facilities like those at Mack Point. Thus, dredging to expand the energy import capacity at Mack Point is an anachronistic project goal that has been overtaken by events not considered by the Corps nor the Maine Department of Transportation in the preparation of these reports. Reliance on out-dated energy import data, to justify an unprecedented dredging project, to facilitate petroleum imports for which there is a diminishing need, would be arbitrary and capricious. The draft should be redone to properly consider current, accurate import data and economic information relating to the optimal economic uses for Penobscot Bay (including the commercial marine industries that actually bring in the most resources to the people and communities of this region – especially lobstering). Heavy industry and petroleum imports do not provide sufficient economic benefits to the region to justify the potential damage to the more profitable businesses (ecotourism and lobstering) that this proposed “improvement” dredging would cause.

⁸ The Feasibility Study and draft EA, FONSI and draft CWA letter also rely on out-dated and inadequate environmental data, a deficiency discussed in more detail below in this Comment letter.

VIII. The Development Goals of the Feasibility Study and EA are Inconsistent with the Local Zoning Restrictions

In addition, as noted above, the Feasibility Study and EA – issued on April 5, 2013 – fail to consider the limitations on development of Mack Point, under the Searsport zoning ordinances. The reality of the impact of these local limitations on the ability of projects, permitted by the Corps and the State of Maine, to obtain approval as safe and compatible with the restrictions in the local zoning ordinances was highlighted by the recent denial of local permits for the proposed DCP Searsport LLC LPG marine import terminal. That denial occurred on April 4, 2013, and thus was *not considered* as part of the Corps’ analysis.

The limits of local zoning must be factored in to this assessment, however. The Corps cannot justify dredging a million cy of potentially toxic materials from the bottom of Penobscot Bay for the purpose of facilitating development of increased commercial and petroleum shipping traffic that may not even be eligible for local permits. TBNT Commenters submit materials from the Searsport Planning Board’s proceedings relating to the DCP Searsport LLC LPG marine import terminal, bulk storage facility, and truck and rail distribution terminal and the relevant Searsport land use ordinances and Comprehensive Plan (attached as Exhibits 1-15, 17-32, 34 and 42) to demonstrate that the Feasibility Study and EA fail to properly analyze the limitations of Mack Point and Sears Island to support the heavy industrial uses that the dredging project is intended to facilitate in the port of Searsport.

Specifically, future development at Mack Point is limited to “light industry” and light industrial uses under the Comprehensive Plan and implementing ordinances. Exhibits 18 – 20 and 42. The developable third of Sears Island is further restricted in its development by the local ordinances to only those limited marine businesses that fit within the constraints defined in the Marine District provisions of the Searsport Land Use Ordinance and Comprehensive Plan and that meet the additional limiting provisions of the Searsport Site Plan Review Ordinance. Exhibits 36 and 42.

The Corps and the Maine Department of Transportation have seemingly ignored the fact that the existing bulk fuel storage tanks at Mack Point have been there since the mid-1950s – long before Searsport adopted zoning ordinances which limited future growth at Mack Point to light industry and future development on the developable portion of Sears Island to a limited range of marine enterprises outlined in the Searsport zoning ordinances as well and the Agreement reached on October 27, 2008, regarding the parameters for any future development of Sear Island. Exhibits 18-20, 36 and 42.

The EA and Feasibility Study are fundamentally flawed as a result of failing to acknowledge the zoning constraints applicable to Mack Point and Sears Island. The expenditure of limited taxpayer funds to dredge the port of Searsport to facilitate commerce that is incompatible with local zoning and thus ineligible for local permits is improper and would constitute a gross waste of taxpayer resources. The NED calculation – by failing to consider the limitations on acceptable commercial ventures capable of obtaining local permits – artificially has inflated the

alleged benefits of this proposed dredging project and thus is arbitrary and capricious if not corrected to include a thorough analysis of the impact of local zoning on the uses for the port of Searsport.

IX. Failure to Properly Consider Potential Contamination and Toxic Contaminants

The TBNT Commenters are also concerned that heavy metals deposited in sediment due to years of industrial applications and the importation of petroleum products at Mack Point and the port of Searsport could potentially be dredged up and re-released into the fragile ecosystem of Upper Penobscot Bay, adjacent rivers and streams, Long Cove, Stockton Harbor and Islesboro, and either drift ashore to affect clamflats in Long Cove, other adjacent Mainland areas, and Islesboro, or settle on the bottom and affect the tomalley in lobsters. Toxins known to exist in Upper Penobscot Bay, including high levels of mercury (Hg) could be spread through the dredge spoils created by the “improvement” dredging to areas where concentrations of such pollutants are currently low. Due to the close proximity of clamflats in Long Cove and Islesboro, dredging the industrial spoils near Mack Point will almost certainly result in closure of shellfishing until sanitation and toxicity testing can be done to ensure public health and safety.

Because each day of new dredging, during the proposed five (5) month dredging period, could potentially release toxins, closures would have to remain in effect throughout the project period and could contaminate lobsters and shellfish in some of the more productive lobstering grounds in Maine and the world. Consequently, toxins may affect marketability of lobster harvests – an unjustifiable risk to public health and the economy of the region (and State of Maine) that was virtually ignored by the Corps’ Feasibility Study, and draft EA, FONSI and CWA letter.

In the past, shipments have been turned back from Europe and Asia due to identification of contaminants within the tomalley of lobsters. Having such incidents occur can severely damage the marketability of a product such as lobster, thus driving down dockside prices for harvesters and damaging the reputation of the entire Midcoast Maine (or State of Maine) lobster industry. This type of uncertainty and significant risk to public health and safety further warrants preparation of an EIS. Particularly in the absence of any pressing or definable *public* economic benefit from the proposed dredging, to immediately offset the significant threat to the largest cash crop in the region (lobsters), the justification for the risks created by the unprecedented “improvement” dredging project proposed is unclear and requires significantly more analysis than that which has been done to date. See 40 C.F.R. §§ 1508.27(b)(2, 4, & 5).

Despite almost 100 years of industrial use of the port of Searsport for petroleum and chemical imports, and the potential for significant toxic materials in the sediments of this area resulting from this activity, the Corps’ draft CWA letter expressly notes that the Corps failed to consider historical data in the preparation of the draft CWA letter and EA or the Feasibility Study. For example, in January of 2008, the federal district court in Portland, Maine (J. Carter), ordered Phase I of a multi-phase study of mercury in the lower Penobscot River and Upper Penobscot

Bay estuary. The Penobscot River Mercury Study (Phase I of the Study: 2006-2007) determined that:

Clear evidence for Hg contamination of the lower Penobscot River and upper estuary was found in suspended particles and in sediments of the Penobscot system. Hg dissolved in water was not found to be elevated in the lower river and estuary as compared to reaches above the Veazie Dam. Hg attached to particles suspended in the water was found to be about 2X higher downstream of the Orrington site. It appears that river flows cause the suspension of significant amounts of small particles in the lower river that are contaminated with Hg relative to the upper reaches of the river. Hg in sediments was found to be significantly elevated in the lower Penobscot River and estuary....

The concentration of Hg in inshore sediments of the Penobscot estuary decreased with increasing distance from the mouth of the river. The high concentrations of Hg in the sediments of the lower Penobscot River and upper estuary are similar to other contaminated sites in N. America and Europe. Perhaps most significantly, *these concentrations are higher than NOAA levels of concern for toxic effects on aquatic life.*

Mercury in the offshore sediments of the Penobscot estuary were highest in the upper estuary and decreased in a regular pattern to Vinalhaven Island, where they were similar to those in the uncontaminated reference estuary. Hg concentrations in riparian wetlands located in the lower river and upper estuary were also high, but showed an abrupt decrease south of Verona Island. Taken together, these results indicate that *the most severe contamination of the Penobscot system is between Brewer on the lower river and about Fort Point or Sears Island in the upper estuary...*

Hg concentrations in the blood of three species of songbirds inhabiting wetlands adjacent to the lower Penobscot River in the Frankfort Flats area were found to be very high compared to songbirds in reference areas in other parts of Maine, and high compared to levels of concern for possible toxic effects on the birds themselves. Hg levels in cormorant eggs were relatively high compared to other locations in Maine, and were higher closer to HoltraChem, consistent with results for sediments, shellfish and fish. *Hg in cormorant eggs in the upper estuary approached or exceeded levels thought to impair reproduction.*

* * *

Some lobster in the upper estuary exceeded MDEP and USEPA criteria for protection of human health for consumption of MeHg in biota (25% of the lobster sampled in the upper estuary exceeded the Maine criterion and 6% exceeded the EPA criterion)....

<http://www.maine.gov/dep/spills/holtrachem/penobriver/phase1report.pdf>, Exhibit 37, p. 3-4 (emphasis supplied).

This study and the potential consequences of dredging almost a million cubic yard of dredge spoils from this area of the Upper Penobscot system near Sears Island and depositing it lower in Penobscot Bay, near the most productive lobstering grounds off Islesboro or near Vinalhaven, where the sediment does not now contain the levels of mercury found in the upper reaches of the system, were ignored by the draft EA and CWA letter and the Feasibility Study. The draft CWA letter indicates that this mercury study was not even reviewed or considered by the Corps. Feasibility Study, p. 194; CWA-4 at response to 3.a.3 (no check exists next to “Results from previous testing of the material or similar material in the vicinity of the project.”).

Similarly, the draft CWA letter indicates that the Corps failed to consider “Spill records for petroleum products or designated hazardous substances (Section 311 of CWA)” and “Public records of significant introduction of contaminants from industries, municipalities, or other sources.” *See, e.g.*, Feasibility Study, p. 194; CWA-4 at response to 3.a.5 and 6; *see*, available reports not considered at Exhibits 40 and 41. Failure to consider such materials, which are readily available through public sources and known to the Corps was arbitrary and capricious and demonstrates the need to conduct an EIS, *as required by NEPA*. See Exhibits 38 and 39 for examples of historical data on petroleum spill in or near Long Cove and the port of Searsport that is available and should have been considered by the Corps in the development of the Feasibility Study, and draft FONSI, EA and CWA letter.

X. Impacts of Dredge Spoils on Eelgrass Ignored

Although the Feasibility Study at 2.6.1 discusses the location of Eelgrass in relation to the actual channel and pier areas, this analysis ignores the potential devastating impacts of dredge spoils on Eelgrass located throughout Upper Penobscot Bay and particularly the Eelgrass located in proximity to the proposed disposal areas. Omission of any meaningful assessment of such impacts was arbitrary and capricious. Proper assessment through preparation of an EIS is needed prior to any dredging, especially “improvement” dredging. See chart indicating location of Eagle nests, Eelgrass, and known habitat of North Atlantic Salmon and shortnose sturgeon, Exhibit 43.

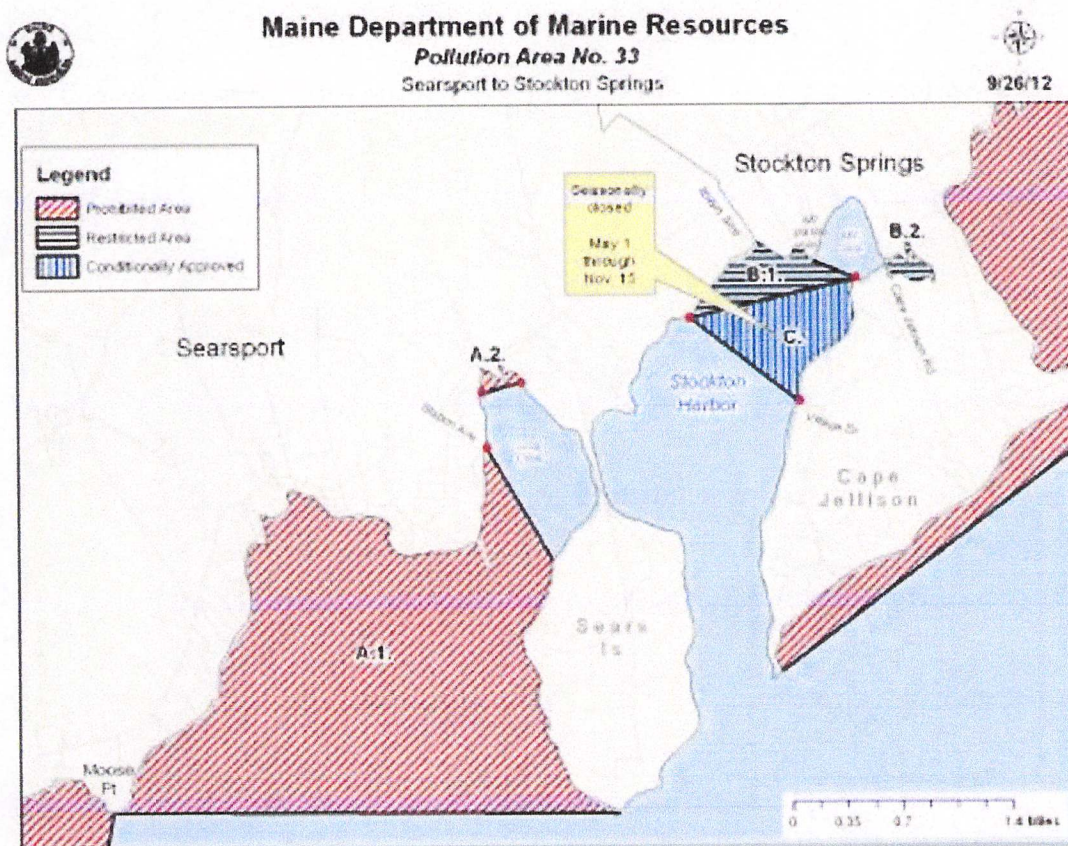
XI. Water Quality Violations

Pursuant to the 404(b)(1) Guidelines, no project can be permitted if it causes or contributes to non-attainment of any applicable state water quality standard. 40 C.F.R. § 230.10(b)(1). Maine classifies the “tidal waters located within a line beginning at the southernmost point of land on Kidder Point and running southerly along the western shore of Sears Island to the southernmost point of Sears Island; thence running due south to latitude 44°-25'-25"N; thence running due west to latitude 44°-25'-25"N, longitude 68°-54'-30"W; thence running due north to the shore of Mack Point at longitude 68°-54'-30"W; thence running along the shore in an easterly direction to point of beginning - Class SC.” 38 M.R.S.A § 469(6)(C). All other relevant estuarine and tidal waters

impacted by the proposed “improvement” dredging and disposal of dredge spoils, located in Waldo and Knox Counties, are classified as SB. 38 M.R.S.A § 469(3) and (6).

In recent years, residents of Searsport and Stockton Springs have devoted considerable efforts in pollution control measures, maintenance and seeding of clam spats to permit the reopening of the clamflats in Long Cove and near Sears Island for recreational clamming. Despite the significant adverse impacts on clamming caused by the construction of the Sears Island causeway without proper culverting, Long Cove has been reopened for clamming in recent years. All of Stockton Harbor is now open to clamming, although some areas have conditions and limits, and much of Long Cove is open for clamming. The Town of Searsport has issued an increasing number of recreational clamming licenses each year, with the number increasing from 42 in 2002 and rising to 275 in 2012. In 2012, the sale of these licenses generated more than \$6,000 for the Town – all of which was used to maintain and re-seed the clamflats.⁹

A map prepared by the Maine Department of Marine Resources, detailing the areas in Searsport and Stockton Harbor open for clamming is included here:



⁹ <http://clamsearsport.wordpress.com/about/>

The Feasibility Study and draft EA, FONSI and CWA letter failed to acknowledge or consider the re-opening of parts of Long Cove and Stockton Springs to recreational clamming. This omission is indicative of the errors rife throughout the Corps' filings as a result of the reliance on out-dated information, studies and reports.

The siltation and disturbance of contaminants in toxins that the proposed dredging project, especially the unprecedented amounts of dredging proposed for the "improvement" dredging portion of the project, could, and likely would cause, would have devastating impacts to the clamflats in Upper Penobscot Bay, particularly the Long Cove, Stockton Springs and Islesboro clamflats. Similarly, the significant adverse impacts that disposal of almost a million cubic yards of potentially contaminated dredge spoils, in either of the proposed disposal sites indicated, could and likely would cause, would require a complete shutdown of shellfish harvesting in communities in and around the Bay, in Knox and Waldo Counties, including: Islesboro, Belfast, Northport, Lincolnville, Rockport, Rockland, Vinalhaven, Searsport and Stockton Springs (if not more).

Class SB is the second highest water quality classification for estuarine and tidal waters. "Class SB waters must be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other estuarine and marine life. The habitat must be characterized as unimpaired." 38 M.R.S.A. § 465-B(2)(A). Disposal in SB waters cannot be permitted if it would cause the Department of Marine Resources (DMR) to close open shellfishing areas. 38 M.R.S.A § 465-B(2)(C).

Siltation of clamflats caused by the proposed dredging project would trigger mandatory public health reporting protocols and would almost certainly require a complete shutdown of shellfish harvesting for the duration of the dredging and disposal period. Because each day of new dredging could potentially release toxins, closures would have to remain in effect throughout the project period and potentially for several days and/or weeks afterwards.

DMR's shellfish protocols are based upon the U.S.D.A Food and Drug Administration's National Shellfish Sanitation Program (NSSP) and are required to safeguard public health.

Oysters, clams, mussels and scallops are filter feeders that pump large quantities of water through their bodies when actively feeding. During this process, molluscan shellfish can concentrate microorganisms, toxigenic micro-algae and poisonous or deleterious substances from the water column when they are present in the growing waters. Concentrations in the shellfish may be as much as 100 times that found in the water column. If human pathogens are concentrated to an infective dose, and if the shellfish are consumed raw or partially cooked, human disease can result. If toxigenic micro-algae are present and producing toxin,

human illness or death can occur, and cooking is not reliable as an effective barrier against intoxication.¹⁰

Accordingly, the proposed dredging would require immediate closure of shellfish areas any time discharge of pollutants may endanger public health – which would be throughout the entire five (5) month proposed dredging period. Because potential impacts endangering public health from siltation due to dredge spoils disposal cannot be determined in advance, there is clearly a significant chance that the proposed activity would result in closure of currently open shellfishing areas *and thereby violate state water quality standards*. Thus, the state cannot certify that the proposed activity will comply with water quality standards pursuant to section 401 of the CWA. *Without that water quality certification, the Corps cannot issue a Section 404 permit for the proposed activity.* 40 C.F.R. § 230.10(b)(1). In addition, siltation of the clamflats from dredging and dumping into April could bury clam spat sets (juvenile clams) in the above listed clamming areas, potentially disrupting the year class, causing impairment of habitat in violation of 38 M.R.S.A § 465-B(2)(A), and damaging the ecotourism and fishing economy and community. An EIS using updated, accurate and current information would take into account such critical information.

XII. Endangered and Threatened Species Ignored

The Feasibility Study and draft EA fail to acknowledge that several threatened bird species (Barrow's Golden Eye, Common Golden Eye and Buffleheads) use Sears Island as their wintering grounds, although the proposed dredging would occur in the winter months. Again, out-dated and incomplete data are being used to avoid doing the EIS that NEPA requires and the draft EA and Feasibility Study fail to provide an accurate assessment of potential impacts of the proposed project as a result. Failure to include such known and easily obtained information on potentially impacted endangered or threatened species in the analysis of the proposed project is arbitrary and capricious and constitutes a violation of NEPA. Such omissions also highlight the need for an EIS and public hearings to elicit accurate information.

XIII. Public Hearing Required

The regulations provide that “in case of doubt, a public hearing shall be held. 33 C.F.R. § 327(c). Here, public hearings should be held regarding this proposed project to determine what, if any, public support and need exists for the proposed improvement dredging project and an EIS

¹⁰ National Shellfish Sanitation Program, Sanitary Survey and the Classification of Growing Waters National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish 2007, Section IV, Guidance Documents, Chapter II, Growing Areas, .03 Sanitary Survey and the Classification of Growing Waters, available at:

<http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/Seafood/FederalStatePrograms/NationalShellfishSanitationProgram/UCM053724>

should be done, with current and more thorough data, to determine the purpose, need and alternatives, as well as the risks, costs and public benefits of this proposed “improvement” dredging project. As issued, the Feasibility Study and draft reports fail to justify such a project and the long-term, on-going and substantial environmental and economic costs it could impose on Penobscot Bay, as well as State and federal taxpayers – with not identified or discernible *public* benefit. The results are contradicted by even the Corps’ own prior recent findings and conclusions about the adequacy of this same port for deep draft, fuel vessels – conclusions just reached in 2012.

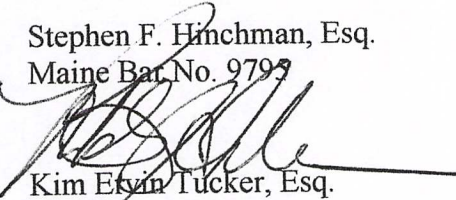
Further, as posted, the Public Notice is extremely difficult to read – with the last page (containing the deadline for filing comments) faded to the point that it is almost illegible.¹¹ The poor quality of this notice demonstrates a need for additional time for submissions and supports the need to public hearings.

CONCLUSION

For the foregoing reasons, to name just a few, the Corps should do an EIS on the reasons for the proposed “improvement” dredging (as required by NEPA); reassess the alleged benefits of “improvement” dredging, based on updated data and information; reevaluate the risks based on updated data, sampling and information; and hold public hearings throughout the region, including on the islands that will be most impacted by the dredging and disposal of dredge spoils.

Sincerely,

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¹¹ <http://www.nae.usace.army.mil/Portals/74/docs/PublicServices/PublicNotice/SearsportHarbor5April2013.pdf>

cc: The Honorable Susan Collins, United States Senator (ME)
The Honorable Angus King, United States Senator (ME)
The Honorable Chellie Pingree, United States Representative (ME 1st District)
The Honorable Michael H. Michaud, United States Representative (ME 2nd District)
The Honorable Carl Levin, Chair, Senate Armed Services Committee
The Honorable Frank A. LoBiondo, Chair, House Subcommittee on Coast Guard and
Maritime Transportation
The Honorable Rodney Ferlinghuysen, Chair, House Subcommittee on Energy and
Water Development, and Related Agencies
The Honorable John E. Baldacci, (former) Governor for the State of Maine
Barbara Blumeris, Office of District Engineer, U.S. Army Corps of Engineers,
New England District
Jay Clement, Maine Project Officer, US Army Corps of Engineers

- * Copies sent without exhibits.
- ** Original sent with two discs containing all referenced exhibits.

LIST OF TBNT EXHIBITS FOR ADMINISTRATIVE RECORD

DISC ONE

- Exhibit 1. SPB Findings 4-5-2013
- Exhibit 2. SPB Notice of Decision and Order, 4-17-2013
- Exhibit 3. Fannon Report
- Exhibit 4. Anderson Comments
- Exhibit 5. McMillen Report
- Exhibit 6. Italiaander Report
- Exhibit 7. Good Harbor Report
- Exhibit 8. Friends of Sears Island (FOSI) Ramsdell Testimony to SPB
- Exhibit 9. Elaine Tucker Real Estate Statistics
- Exhibit 10. Good Harbor Presentation Files
- Exhibit 11. Glad Jones Good Harbor Report Supporting Material
- Exhibit 12. Richard A. Clarke Letter dated February 12, 2013
- Exhibit 13. New England Supply and Transportation Outlook
- Exhibit 14. ACOE Nullification of DCP Permit
- Exhibit 15. TBNT-IIT-FOSI-Retirees' Post Hearing Brief in SPB 3-22-2013
- Exhibit 16. EMDC Corridor Project Report
- Exhibit 17. Colgan Report
- Exhibit 18. Searsport Site Plan Review Ordinance
- Exhibit 19. Searsport Land Use Ordinance
- Exhibit 20. Searsport Comprehensive Plan
- Exhibit 21. ACOE 60-Day Notice filed by TBNT and IIT, 3-20-2013
- Exhibit 22. 11-26-2012 SPB Hearing Transcript
- Exhibit 23. 11-27-2012 SPB Hearing Transcript
- Exhibit 24. 11-28-2012 SPB Hearing Transcript
- Exhibit 25. 11-29-2012 SPB Hearing Transcript
- Exhibit 26. 11-30-2012 SPB Hearing Transcript
- Exhibit 27. 1-17-2013 SPB Hearing Transcript
- Exhibit 28. 2-11-2013 SPB Hearing Transcript
- Exhibit 29. 2-12-2013 SPB Hearing Transcript
- Exhibit 30. 2-13-2013 SPB Hearing Transcript
- Exhibit 31. 2-25-2013 SPB Hearing Transcript
- Exhibit 32. DCP Request to SPB to withdraw Application, dated 4-2-2013
- Exhibit 33. DCP Surrender of Permit to ACOE, dated 4-9-2013
- Exhibit 34. DCP Request to MDEP to Surrender Permits, dated 4-5-2013
- Exhibit 35. ACOE Permit to DCP Searsport LLC, dated May 2012
- Exhibit 36. SIPI Joint Use Committee Report on Sears Island, dated October 27, 2008
- Exhibit 37. Penobscot River Mercury Study, filed 1-25-2008
- Exhibit 38. Crude River Oil Spill Report
- Exhibit 39. Review of Oil Spills Maine Coast, August 1973
- Exhibit 40. Irving Toxics Report EPA ECHO, 2-10-2013
- Exhibit 41. Sprague Energy Toxics Report EPA ECHO, 2-10-2013
- Exhibit 42. Marine District Criteria and Sears Island Map

DISC ONE (continued)

- Exhibit 43. IIT Map of Pen-Bay Eagles Nest, Eelgrass and North Atlantic Salmon
Habitat
- Exhibit 44. MDOT Work Plan 2013 to 2015

DISC TWO

ACOE Administrative Record from DCP Searsport LLC Application Review and
Permitting (1730 pages)