

Note: All comments are listed by pdf page # rather than by document page numbers.

- *Page 2 general comment:*
 - As a threshold matter, significant public controversy over the potential environmental effects associated with a federal action can trigger (by itself) the need for an EIS. (See, 40 C.F.R. § 1508.27(b)(4) and Humane Soc'y of the U.S. v. Locke, 626 F.3d 1040, 1057 (9th Cir. 2010). Recommend the Coast Guard seriously consider its level of NEPA review for the project.

- *Page 2 in reference to "This EA serves as a concise public document to briefly provide sufficient evidence and analysis":*
 - This EA is about 100 pages long and there are approximately 650 pages of appendices. The use of "concise" or brief seems inappropriate.

- *Page 10 in reference to "Any potential direct and indirect effects in all resource areas would not reach a level of significant impact.":*
 - Substantial public controversy over the potential environmental effects can warrant preparation of an EIS.

- *Page 11:*
 - Corps authorities should say "Section 404 is under the CWA. Section 10 is under the River and Harbor Act (RHA) of 1899."

- *Page 13 in reference to Purpose and Need:*
 - Criteria used later to eliminate potential alternatives from detailed review must flow from the P&N statement. Currently, Chapter 2 lists the following criteria to eliminate potential alternatives:
 - must occur within existing ROW (this criteria is probably inappropriate)
 - do not fulfill the purpose and need (this is redundant)
 - are not technically or economically feasible
 - result in greater social or environmental impacts than the Proposed Action Alternative

Those screening criteria need to be stated in the P&N somewhere -- i.e., "Alternatives considered must. . . [list criteria]."

- *Page 14 in reference to statement of need:*
 - The statements of purpose and need are often combined in one section in EAs and EISs.

- *Page 14 in reference to "This rail corridor moves key commodities such as wheat, corn, and soybeans":*
 - It would be more appropriate and transparent to include all types of freight carried by BNSF on this corridor.

- *Page 26 in reference to “Reasonable alternatives for improving operational efficiency within the Project area are limited due to the linear nature of the existing rail line and the existing BNSF-owned property (i.e., ROW).”:*
 - The lack of a ROW is not generally a criteria for eliminating a potential alternative -- although it may be a reason not to pick it in the end. Also, criteria for eliminating alternatives must flow from the Purpose and Need Statement, and we did not see anything in that section that limited alternatives to those that must occur in the existing ROW.
- *Page 26 in reference to “eliminated because they do not fulfill the purpose and need of the Project; are not technically or economically feasible for BNSF to construct, operate, and maintain; or they result in greater social or environmental impacts than the Proposed Action Alternative”:*
 - As stated above, criteria used to eliminate potential alternatives must flow from the P&N statement. Are these criteria listed in the P&N statement?
- *Page 27 in reference to the range of alternatives selected:*
 - The potential design alternative of extending the north end of the lake bridge with pilings to eliminate or potentially reduce the losses to the aquatic environment from the reduction in fill is not included. This design alternative would fit the purpose and need of the project and needs to be included.
- *Page 27 In reference to the term “Constructability”:*
 - Is this "technical feasibility"? If so, the same terminology used above should be used here.
- *Page 28 in reference to “A new track east of the existing main line track meets the purpose and need for the Project, but was determined not to be practical as it has greater social and environmental impact than the Proposed Action Alternative as summarized in the following bullets”:*
 - An alternative that meets the P&N, must be carried forward for detailed evaluation. Also, the fact that this alternative has greater social and environmental impacts than the proposed action is a reason not to pick this alternative in the end, but not a reason to eliminate it early in the NEPA document. You can try to include a requirement in the P&N statement that says "Alternatives considered must have no greater social and environmental impacts than the Proposed Action Alternative," but that would likely be determined too narrow a criteria.

I have seen a requirement in a P&N statement saying "Alternatives considered must be environmentally acceptable." With that criteria, any alternative (including the proposed alternative) would be eliminated if the environmental effects are substantially greater than other action alternatives.

- *Page 28 in reference to “and would cost approximately \$30 million more to construct due to”:*
 - Above it states that this alternative was eliminated for social and environmental impacts. Here, it appears to have replaced social impacts with economic impacts. Need to determine if it's eliminated for two criteria or three. If social impacts are involved, those need to also be listed in this paragraph.
- *Page 29 in reference to “incorporation of property outside the proposed Project limits as well as the need to purchase or acquire new ROW to meet up with the existing track configuration”:*
 - Again, actions outside the agency's authority must still be considered under NEPA. What criteria in the P&N statement does incorporation of outside property or acquisition of new ROW violate? If the P&N statement says "alternatives must not require acquisition of new real estate interests," that requirement would likely be found too narrow under NEPA.
- *Page 29 in reference to “operationally impractical, highly inefficient”:*
 - Does this rise to the level of technically infeasible? If so, it should state that and explain it fully.
- *Page 29 in reference to “impose an unreasonable cost on rail customers”:*
 - Again, increased cost is not generally a reason to eliminate an alternative early in the NEPA document, unless it makes it economically infeasible (cost prohibitive).
- *Page 29 “There are no public at-grade crossings located within the Project corridor between BNSF MP 2.9 and 5.1; therefore, this alternative would greatly expand the Project area across the railroad network in North Idaho.”:*
 - How does this fact result in this alternative not satisfying the P&N? Did the P&N Statement include a requirement that alternatives must not greatly expand the Project area? Did the P&N state that alternatives should limit the Project footprint, if possible? If not, this statement does not help. And, such a requirement may be viewed as an inappropriate limitation under NEPA -- i.e., too narrow a scope.
- *Page 29 in reference to “Eliminating public at-grade crossings reduces safety risks and provides convenience for vehicle traffic, but it does not substantially affect railroad operations because trains have the ROW through those crossings.”:*
 - It is not clear what is meant by this statement. Why does that matter?
- *Page 29 in reference to “This alternative does not address the efficiency of trains crossing the Project area and therefore does not meet the purpose and need for the Project.”:*

- How can the statement be worded (as done above), that the current rail system can handle more traffic, but at the same time say this alternative does not address the efficiency of trains?
- *Page 30 in reference to “The determination to grade separate a crossing is made by the appropriate road authority using their own calculations or other driving factors.”:*
 - Remember, NEPA requires a federal agency to consider options outside its authority, if it would satisfy the P&N.
- *Page 30 in reference to “Based on the large number of grade crossings and road authorities in North Idaho (approximately 24 public at-grade crossings are located within 20 miles of Sandpoint Junction), it is not feasible or practical for BNSF to pursue this alternative.”:*
 - Why? This should be explained further. Why is it not technically feasible?
- *Page 30 in reference to this alternative would cost substantially more than a new main line track adjacent to the existing main line.”:*
 - Cost is not generally a reason to eliminate an alternative from consideration, unless the cost is so high as to make it economically infeasible. "Substantially more than a new main line track" sounds like a reason not to pick the alternative in the end, but not a reason to eliminate it early in the NEPA document.
- *Page 31 in reference to Section 3.0:*
 - It would be beneficial for this first paragraph to include a description of what is found within the area (e.g., lake, land, structures, etc.) and also account for the environmental resources that were considered, but not evaluated -- for example:

"This section describes the existing affected environment (existing condition of resources) and evaluates potential environmental effects on those resources for each alternative. Although only relevant resource areas are specifically evaluated for impacts, the agency did consider all resources in the proposed project area and made a determination as to which could be eliminated from further review based on minimal or no effect (Table 3-1):"
- *Page 47 in reference to “The Fish and Wildlife Coordination Act (1934) directs federal agencies to prevent the loss and damage to fish and wildlife resources. Consultation with the USFWS is required when activities result in the control of, diversion, or modification to any natural habitat or associated water body, altering habitat quality and/or quantity for fish and wildlife.”:*
 - This description of the FWCA is not really accurate. See <https://www.fws.gov/laws/lawsdigest/FWCOORD.HTML>

The 1934 Act had very little teeth. The 1946 amendment required consultation with the Fish and Wildlife Service and the fish and wildlife agencies of States where the "waters of any stream or other body of water are proposed or authorized, permitted or licensed to be impounded, diverted . . . or otherwise controlled or modified." It does not apply to altering "habitat." The 1958 amendments added provisions to require equal consideration and coordination of wildlife conservation with other water resources development programs. The 1958 amendments also titled the law as the Fish and Wildlife Coordination Act.

- Also, why is the FWCA mentioned here? It is not referenced again in this draft EA. Will the proposed action trigger FWCA coordination? If so, the EA should state that and also (when final) explain what the outcome of the coordination was (ie., was mitigation incorporated?).
- *Page 54 in reference to "Due to the limited duration and spatial extent of construction activities, the Proposed Action Alternative is not expected to significantly impact fish and wildlife not listed under the Endangered Species Act (ESA).":*
 - The fact that a fish species is listed does not somehow make effects to that fish species more significant under NEPA. The question to ask here is whether that fish species reacts to the construction activities in a more dramatic way? If not, effects are similar to other fish.

Now, it's possible that if the construction activities are expected to jeopardize the continued existence of the species, that would be an important effect (context and intensity) to disclose in the NEPA document. But, again, simply because a fish is listed does not generally make the effect more significant.

- *Page 55 in reference to "The outcome of consultation under Section 7 may include a Biological Opinion with an Incidental Take statement, a Letter of Concurrence and/or documentation of a no effect finding.":*
 - Section 7 consultation is not required for a "No effect" finding.
- *Page 55 in reference to "in Table 8":*
 - I would be good to mention that Table 8 was developed from a list the USFWS provided at request and state the date it was created.
- *Page 58 in reference to "Jacobs has had informal, technical assistance discussions with USFWS to review impacts, methodology, and mitigation opportunities, including phone calls and email communications in August, September, October, and November 2017 and June 2018, and meetings in March, May, and July 2018; these efforts are ongoing.":*
 - This EA, when final, will need to explain how USCG complied with the ESA -- i.e., the outcome of the Section 7 consultation process.

It is possible that an EA will identify an ESA consultation gap (i.e., ESA consultation is ongoing), but it should also state that the gap will be addressed in the final FONSI (if a FONSI is determined appropriate) before it is signed.

- *Page 61 in reference to "Consultation.....is ongoing":*
 - Is it expected that the consultation will still be ongoing when the EA is released for public comment? If not, this language should be modified.
- *Page 61 in reference to "Compensatory mitigation for the 0.88-acre of nearshore/bull trout critical habitat fill.":*
 - The ESA does not require compensatory mitigation -- only conservation measures to avoid or minimize effects. All other unavoidable effects can be included in the incidental take statement.

The compensatory mitigation being stated here is to compensate losses to aquatic functions and is required by the clean water act not ESA.

- *Page 62 in reference to "Project activities are likely to adversely affect individual adult and subadult bull trout in proximity to the Project during construction. In addition, the project may adversely affect some primary constituent elements of bull trout critical habitat.":*
 - We recommend stating the determinations made in the BA here -- i.e., likely to adversely affect bull trout, but not adversely modify or destroy critical habitat.
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- *Page 62 in reference to "The Archaeological Resources Protection Act applies when a project may involve archaeological resources located on federal or tribal land. The Archaeological Resources Protection Act requires that a permit be obtained before excavation of an archaeological resource on such land can take place.":*
 - Unless this is likely to occur, we would remove this reference to ARPA.
- *Page 64 in reference to "The Section 106 process":*
 - The Section 106 process outlined here is incomplete. For example, No. 4 states agencies only consult on an adverse effect finding. That is not true. We also consult on a no adverse effect finding and a no historic properties present/affected finding.
- *Page 64 in reference to "Identify cultural resources and evaluate them for NRHP eligibility, resulting in the identification of historic properties":*
 - Why is it stated here, "Identify cultural resources. . .resulting in identification of historic properties"? Historic properties are broader than just cultural resources.

- *Page 64 in reference to “Steps 1 through 4 have been initiated, and coordination has started with various interested parties including Native American Tribes. A summary of consultation and coordination completed with SHPO and Tribes is provided in Section 5.1. SHPO concurrence with the findings and recommendations discussed in the Cultural Resources and Historic Built Resources sections below was provided on August 8, 2018.”:*
 - This paragraph should reference Appendix I. Also, language should be updated as the process has been completed and the SHPO has already provided its concurrence with our "No adverse effect" finding in the Cultural Resources Report.

And we recommend stating the agencies finding (No adverse effect) in this paragraph, or the paragraph below.

- *Page 64 in reference to “The Cultural Resources Technical Report does not recommend additional archaeological evaluation or monitoring for the Proposed Action Alternative since no adverse effect and no effect determinations are recommended.”:*
 - Why no mention of consultation with interested tribes -- or at least reference to an offer to consult?
- *Page 88 in reference to “Irretrievable material resources used would include steel, concrete, gravel, and other construction materials. Such materials are not presently in short supply and would not be expected to limit other unrelated construction activities. Energy resources including natural gas, petroleum-based products (e.g., gasoline, diesel, lubricants), and electricity would be irretrievably lost. Gasoline, diesel, and lubricants would be used for the operation of construction vehicles. Consumption of these energy resources would not substantially increase demand on their availability in the region. The use of human resources for construction is considered an irretrievable loss only in that it would preclude such personnel from engaging in other work activities. However, the use of temporary construction workers for the Proposed Action would represent employment opportunities, and is considered beneficial.”:*
 - Why is this being evaluated? Is there a requirement in law/regulation? The ESA (Section 7(d)) uses this terminology, but we have not readily seen this in an EA before?
- *Page 96 in reference to Section 5.0:*
 - Given that NEPA is considered the "Umbrella" environmental law, the Corps generally includes a section in both EAs and EISs that is titled "Compliance with other Laws/Regulations," which identifies the requirements of other environmental laws/regs (e.g., ESA, NHPA, CWA, etc.) and describes how we have complied with those laws.

This EA attempts to do that in Chapter 3 (to some extent) but does not consistently do so. We recommend either that Chapter 3 be modified to

clearly describe how the USCG has complied with such laws/regulations, or add a new Chapter to do that.

- *Page 96 in reference to “The USCG initiated government-to-government Section 106 consultation with Native American Tribes on January 25, 2018.”:*
 - May be beneficial to also mention in Chapter 3 above.
- *Page 96 in reference to “Tribal consultation would be ongoing through the EA process.”:*
 - May want to state that the result of such consultation will be described in the final FONSI (if a FONSI is determined appropriate after public comment).
- *Page 96 in reference to “BNSF submitted application for the WQC to IDEQ on December 27, 2017.”:*
 - The federal agencies request 401WQC which was requested by the Corps at the same time the Corps issued its public notice for the project.
- *Page 98 in reference to “IDL held two public hearings on May 23, 2018 as part of the Joint Application process with the USACE and IDEQ for administration of the IDL Encroachment Permit, USACE Section 404/Section 10 permit, and IDEQ Section 401 Water Quality Certification.”:*
 - The Joint Application for Permits is tool for applicants to utilize a single application form they can use for multiple agencies when proposing projects. It is not a process between the agencies. The decisions made by the state of Idaho and Corps are reviewed under separate processes, under our respective regulations.
 - The Corps attended IDL’s public hearings to support the public process of the State. The IDL hearings were only for the State’s process and not the Corps’.