INTRODUCTION

1. Description of this Document
This document is a USACE EIS that provides a comprehensive environmental analysis to aid in the decision-making process regarding issuance of the DA permit for the proposed Choctaw Point Terminal project in Mobile, Alabama, per the CWA and Rivers and Harbors Act of 1899. The Choctaw Point Terminal project involves the construction and operation of a modern, world-class container handling facility in the City of Mobile, Mobile County, Alabama. References used in this EIS are listed in Appendix A, and relevant correspondence, including comments received on the Draft EIS and responses to these comments, are presented in Appendix B.

The USACE is preparing the EIS in accordance with 33 CFR Part 325, Appendix B, and CEQ regulations implementing the Procedural Provisions of the NEPA (40 CFR 1500-1508). The NEPA (42 U.S.C. 4321 et. seq.) is the “basic national charter for protection of the environment,” directing Federal agencies to inform the public of and to consider the natural and human environmental consequences of actions they propose or provide financial assistance, permit authorization, or regulatory authority that may significantly affect the environment.

Construction of marine terminal facilities is water-dependent and typically results in the discharge of dredge and fill materials into waters of the U.S. Section 10 of the Rivers and Harbors Act (33 U.S.C. 401) prohibits building structures or work in or affecting navigable waters of the U.S., and Section 404 of the CWA (33 U.S.C. 1344) prohibits the discharge of dredge and fill material into waters of the U.S. without prior permit approval from the USACE, a Federal agency. The Choctaw Point Terminal project is considered a Federal action because the project as proposed (the Proposed Action) is seeking permit issuance from the USACE, Mobile District, to discharge dredge and fill material into waters of the U.S. and to develop marine facilities in or adjacent to navigable waters of the U.S. During the Federal permit review process, the USACE, Mobile District, determined that an EIS would be necessary to address the environmental consequences of the proposed project and to aid in the decision regarding issuance of the DA permit for this proposed project. The determination to prepare an EIS is based upon potential impacts to aquatic resources and other impacts associated with the Proposed Action.

This introductory chapter describes the EIS, gives the project background, and summarizes the USACE’s procedures for implementing NEPA and the Federal, State, and local regulations, policies, and plans associated with the development of the proposed Choctaw Point Terminal project.

1.2 Project Background
On December 17, 2001, the ASPA submitted a Joint Permit Application and Notification to the USACE, Mobile District, and the ADEM for the Choctaw
Point Terminal project. A copy of the Permit Application is presented in Appendix C. The Proposed Action involves the construction and operation of a world-class, deep water, integrated intermodal terminal complex adjacent to the Mobile River and Garrows Bend in the City of Mobile, Mobile County, Alabama (Figure 1-1).

The project proposal encompasses approximately 370 acres of lands for development of the overall project. Section 3.0 provides a more detailed description of the program components of the Choctaw Point Terminal project proposal.

This EIS analyzes the potential impacts of constructing and operating the Choctaw Point Terminal project at the proposed location described above. Alternatives to the proposed project are also analyzed within this EIS.

1.2.1 Role of ASPA

1.2.1.1 Authorizing Legislation and Powers of the ASPA

Commerce in and out of the Port of Mobile has existed since the early part of the 17th Century but it was not until 1826 that the U.S. Congress first authorized funds for the development of a navigation channel in Mobile Bay (the Bay). In 1920, the Alabama Legislature submitted a constitutional amendment to the people for development of Alabama’s seaport with State financial assistance. The amendment was passed in 1922, and the State Docks Commission was established with the power to build, operate, and maintain wharves, piers, docks, quays, grain elevators, cotton compresses, warehouses, and other water and rail terminals, structures, and facilities. The State Docks Commission, which operated as a self-supporting, enterprise agency of the Executive Branch of the State government since 1928, was the predecessor of the ASPA.

Section 33-1-1 of the Code of Alabama allows the ASPA, acting as an agent for the State of Alabama, to engage in “works of internal improvement, and of promoting, developing, constructing, maintaining and operating all harbors, seaports or riverports within the state or its jurisdiction, including the acquisition or construction, maintaining and operating at seaports and riverports of harbor watercraft and terminal railroads, as well as all other kinds of terminal facilities.” Section 33-1-12 gives the ASPA the power to acquire, purchase, install, lease, construct, own, hold, maintain, equip, use, control, and operate wharves, piers, docks, quays, grain elevators, cotton compresses, warehouses, other water and rail terminals, and other structures.
Section 1-.04 of the Alabama Coastal Area Management Program (ACAMP), ADEM Administrative Code R. 335-8, designates the Port of Mobile as a Special Management Area. Such areas are defined within Section 1-.01 as “those specific areas within coastal Alabama that may require special management and regulatory emphasis due to their unique or special values, characteristics or significance.” More specifically, the port is recognized as a Geographical Area of Particular Concern (GAPC), which is one type of Special Management Area.

Within the ACAMP, the specific boundaries of the Port of Mobile GAPC, an area that includes the Garrows Bend project area, are described. ADEM Administrative Code R. 335-8-1-.04 (1)(a)(1) states that “within the Port of Mobile GAPC, uses which are water dependent or water related and improve or promote port operations and development shall be permissible.” The proposed Choctaw Point Terminal project meets those criteria and conditions required to qualify the project as consistent with the intent of the ACAMP.

1.2.1.2 Role of the ASPA for the Proposed Action

The ASPA is the proponent for and proposed developer of the Proposed Action. The ASPA is the applicant for the permits and approvals described in Section 1.4 and would be responsible for compliance with any such permits issued and the implementation of any mitigation measures required by the permits.

Traditionally, the ASPA facilities in Mobile have responded to the needs of Alabama industry by concentrating on handling high-volume, dry bulk cargoes, coal, and non-containerized general cargo. In recent years, the Alabama economic profile has moved away from heavy industries that require or produce large volumes of dry bulk materials toward a new class of companies moving into the state that require efficient and cost-effective access to container handling facilities and intermodal transportation networks (M&N 2002).

The Choctaw Point Terminal represents the focal point of the ASPA development strategy to meet the changing profile of Alabama business. It is designed to offer major shippers efficient and cost-effective transportation opportunities into the burgeoning mid-west market areas by taking advantage of its geographical location, deep water access, and the high quality of intermodal connections from the Port in the east-west and north-south directions. In 2000, a Constitutional Amendment was passed (63% to 37%) by the voters of Alabama that included providing up to $100 million to invest in the ASPA (Amendment #1 2000). The construction of a world-class container facility, including an intermodal rail facility, was one of the proposed improvements earmarked for these funds.

On May 18, 2000, Alabama Governor Siegelman said, “Reviving the State Docks is not only vital for the city of Mobile’s economic goals, it is vital for the long-range economic development goal for the State of Alabama. With the advent of Alabama as a leading automotive manufacturing state, and with Mercedes being the state’s largest exporter, it’s now imperative that we revive the State Docks so
that the Port of Mobile thrives as one of the premier ports of trade in the nation and in the world.” The State Docks conducts trade with more than 125 nations. The financial and employment impacts of the State Docks is spread throughout all 67 counties in the state, with eight of the top ten affected counties located in the northern half of the state. The Alabama Commerce Commission described the Port of Mobile as vital to Alabama’s economic future and identified the need for a container facility to fully participate in expanding overseas trade.

1.2.2 Previous Port Development in Mobile

1.2.2.1 Federal Channel Improvements

The proposed Choctaw Point Terminal would be a component of the Port of Mobile. The following is a brief description of the Mobile Harbor navigation project.

The Port of Mobile is located on the Mobile River at the head of Mobile Bay. The Mobile Harbor project includes an approach channel from the Gulf through the mouth of the Bay, referred to as the bar channel; a Bay channel connecting the Gulf entrance to the Bay with the Port of Mobile; the lower segment of Mobile River up the Mobile River to the Cochrane-Africatown Bridge; three separate connecting channels (Chickasaw Creek Channel, Arlington Channel, and Garrows Bend Channel); and the maintenance by snagging of Three Mile Creek. Channel dimensions of the existing Mobile Harbor navigation project consist of the following (USACE 2001):

- A 47-foot-deep by 600-foot-wide channel from the Gulf of Mexico for about seven miles to Mobile Bay;
- A 45-foot-deep by 400-foot-wide channel from the mouth of Mobile Bay for a distance of approximately 29 miles to the upstream end of the McDuffie Terminal near the mouth of Mobile River;
- A 40-foot-deep channel with the width varying from 700 feet near the Mobile River mouth, to 500 feet near the Cochrane-Africatown Bridge (U.S. Highway 98), a distance of about six miles;
- A 40-foot-deep by 800-foot – 1,000-foot-wide by 2,500-foot-long turning basin opposite the Alabama State Docks between river miles 1.0 to 1.5;
- A 40-foot-deep by 1,000-foot-wide by 1,600-foot-long turning basin just south of the Cochrane-Africatown Bridge;
- A 25-foot-deep by 250-foot-wide channel from the main ship channel up Chickasaw Creek for approximately 2.8 miles;
- Arlington Channel (See Section 1.2.2.2);
- Garrows Bend Channel (See Section 1.2.2.2); and
- A 40-foot-deep by 400-foot-wide channel (Theodore Ship Channel) from the main ship channel in Mobile Bay to the shoreline, a distance of about 5.3 miles, including a 300-foot-wide by 1,200-foot-long anchorage area and a 40-foot-deep by 300-foot-wide by 10,000-foot-long landcut section, a 42-acre, trapezoidal-shaped turning basin that is 40 feet deep, continuing with a 12-
foot-deep by 100-foot-wide by 6,500-foot-long barge channel, with a 300-foot by 300-foot turning basin at the western terminus of the channel.

The Mobile Harbor Deepening was authorized in the Water Resources Development Act of 1986 (PL 99-662). This act provides for development to deepen and widen the Bay entrance channel to 57 feet by 700 feet for 7.4 miles; deepen and widen the Bay channel to 55 feet by 550 feet for 27 miles; deepen and widen an additional 3.6 miles of Bay channel to 55 feet by 650 feet; and provide a 55-foot deep anchorage area and turning basin in the vicinity of Little Sand Island. The authorized improvements are being constructed in phases. The first phase was constructed to 45 feet in the Bay channel to the existing McDuffie Terminal just downstream from the Choctaw Point Terminal project. The second phase extended the 45-foot channel upstream an additional 1,600 feet to the upstream end of the McDuffie Terminal. On May 29, 1998, the ASPA requested that the USACE, Mobile District, provide assistance with actions necessary to extend the 45-foot Bay channel northward 2,100 feet. The requested Limited Reevaluation Report (LRR) was completed in January 2000 and was approved by USACE, Headquarters, in July 2000 (USACE 2000). An additional 1,200-foot extension of the 45-foot channel to serve the Mobile River Terminal just upstream of the Choctaw Point Terminal project has also been evaluated. The LRR for the 1,200-foot extension was approved by the USACE in March 2002. In the future, additional channel modifications for the authorized improvements would be subject to separate evaluations and documentation.

1.2.2.2 Arlington and Garrows Bend Channels

The Arlington and Garrows Bend Channels are located on the west side of Mobile Bay, approximately two miles south of downtown Mobile (Figure 1-2). Both channels have authorized depths of 27 feet but are maintained at lesser depths as discussed below. The Arlington Channel provides a 150-foot-wide channel extending west from the Mobile Ship Channel approximately 1.6 miles to an 800-foot by 600-foot turning basin. From there, the 150-foot-wide Garrows Bend Channel extends northeast approximately 1.1 mile to the 250-foot by 800-foot Garrows Bend Turning Basin before continuing as a 150-foot-wide channel for approximately 0.2 mile. Currently, the Arlington Channel and Turning Basin are maintained at –18 feet to meet U.S. Coast Guard (USCG) requirements. The first segment of the Garrows Bend Channel and Turning Basin requires maintenance to –14 feet for the McDuffie Island Coal Terminal.
Dredging of the Arlington Channel was recently completed to accommodate a new USCG vessel. The work consisted of maintenance dredging the Arlington Channel portion of the Federally-authorized Mobile Harbor navigation project. A cutterhead pipeline dredge removed and disposed of approximately 450,000 cubic yards of material lying above the plane of –21 feet. The existing confined disposal area on McDuffie Island was modified and utilized for disposal of dredged material from the Arlington Channel maintenance project (USACE 2001).

1.2.2.3 Existing Port Facilities

In a 1998 report entitled *Port Series Number 18, Mobile, Alabama*, the USACE Institute for Water Resources identified the 153 public and private piers, wharves, and docks that make up the Port of Mobile. Fifty (50) of these facilities are on the west bank and thirty-seven (37) are on the east bank of the Mobile River; nineteen (19) are on Three Mile Creek; fourteen (14) are on the Industrial Canal; five (5) are on the Arlington Channel; four (4) are on the Garrows Bend Channel; and nine (9) are on the Theodore Ship Channel. Information on facilities in the vicinity of the Choctaw Point Terminal project is presented in more detail in Section 4.8.4. Detailed information on all of the facilities in Mobile Harbor is available at [www.iwr.usace.army.mil/ndc/ps/ps18.pdf](http://www.iwr.usace.army.mil/ndc/ps/ps18.pdf).

1.2.3 History of Choctaw Point Terminal Proposal

Initial measures to address needs for increased port expansion and development began in the 1970s with the purchase of land in the Choctaw Point-Garrows Bend area. A 1978 resolution approved by the Governor reads in part:

“The Alabama State Docks Department by resolution duly adopted on December 21, 1978 and approved by the Governor of Alabama has declared that the acquisition of said land is necessary for the construction, operation, and expansion of the Alabama State Docks facilities and has authorized commencement of these proceedings to condemn the parcels of land hereinafter described for the uses and purposes herein set forth.”

In May 2002, Moffatt & Nichol Engineers presented a Development Master Plan (Master Plan) to the ASPA (M&N 2002). The Executive Summary from the Master Plan is presented in Appendix D. The conceptual plan presented in the Master Plan and the Joint Permit Application has been further refined and is evaluated in this EIS.

1.2.4 Region of Influence

The Region of Influence (ROI) for an EIS is typically the geographic area over which a proposed project is expected to have direct, indirect, or cumulative
impacts on a particular resource. The ROI may change for each resource, depending upon the potential for a specific impact to affect a given geographic area.

The market analysis conducted for the Choctaw Point Terminal project determined that transportation cost savings could be realized for international trade routes serving the Gulf of Mexico. The analysis identified a 22-state region in the Central U.S. and portions of Canada that could potentially benefit from transportation cost savings (M&N 2002). The proposed project also has economic implications for the State of Alabama as discussed in Section 1.2.1.2. Some impacts would be more regional in nature with most occurring in Mobile and Baldwin Counties, Alabama. A smaller and more detailed study area may be appropriate for some resources, such as aquatic resources, floodplains, cultural resources, water quality, and other resources which represent site-specific impacts. In some instances, the effects would be realized on a broader scale. For example, the economic implications would be recognized on state and regional levels. For other resources, the effects would be primarily of a localized or site-specific nature. Most of the direct project impacts would occur on the project site shown in Figure 1-1. For these reasons, ROIs are defined based on the specific resource being impacted.

1.3 The NEPA Process
The NEPA requires Federal agencies to interpret and administer policies, regulations, and public laws of the U.S. in a manner that encourages and facilitates public involvement and restores and enhances the quality of the human environment. The ASPA is seeking permit approval for the Choctaw Point Terminal project from the USACE to build structures and work in navigable waters of the U.S. and to discharge dredge and fill material into waters of the U.S. under Section 10 of the Rivers and Harbors Act and Section 404 of the CWA, respectively. As the Federal agency administering the requested Federal permits, the USACE, Mobile District, is the lead agency in NEPA compliance and the associated evaluation of the natural and human environmental consequences of the Proposed Action. The Project Approval Framework, (see Section 1.4), provides a description of other Federal, State, and local government requirements for the proposed Choctaw Point Terminal project.

1.3.1 NEPA Public Involvement
The USACE encourages full public participation in the NEPA process to promote open communication and better decision-making. All persons and organizations that have a potential interest in the proposed Choctaw Point Terminal project are invited to participate in the NEPA environmental analysis process.

A formal Public Information Management Strategy (PIMS) has been developed to provide ongoing and continuing opportunities to inform the public and gather input. These efforts include the use of workshops, Public Hearing, news releases, websites, fact sheets, exhibits, etc. A Public Hearing was conducted on November 13, 2003, at the Mobile Convention Center, Mobile, Alabama.
1.3.2 Notice of Intent
The Notice of Intent (NOI) to prepare an EIS is the first formal step in the NEPA public involvement process. It notifies the public that an EIS will be prepared. The agency proposing the action publishes the notice in the *Federal Register* prior to the start of the scoping process. The NOI includes a description of the Proposed Action and gives the name and address of an agency contact person. The NOI announcing the USACE’s intent to prepare an EIS for the Choctaw Point Terminal project was published in the *Federal Register* on January 23, 2002.

1.3.3 Scoping
The NEPA regulations recommend that the environmental review process include a scoping process in which interested parties and agencies provide input on issues and concerns that should be addressed in the EIS (40 CFR Part 1501.7). This input may include recommendations for alternatives to the Proposed Action, views on potentially beneficial or adverse impacts of the Proposed Action, and suggested mitigation measures. Scoping is intended to identify public and agency issues and concerns early in the EIS process, to ensure that issues of little significance do not consume time and effort, and to avoid delays caused by an inadequate EIS.

Input is solicited primarily through agency and public scoping meetings. Although informal comments are welcome at any time during the process, the scoping period and the scoping meeting provide formal opportunities for the public to submit comments on the environmental impact analysis process. All comments received during the USACE’s environmental review process are reviewed and considered for inclusion within the EIS.

Agency and public comments received in response to the USACE and ADEM Joint Public Notice (Public Notice Number AL01-04269-U) served as a source of input for the Choctaw Point Terminal project.

1.3.3.1 Agency Scoping
An agency pre-scoping meeting was held with relevant Federal, State, and local agencies on February 6, 2002, at the Mobile District office of the USACE. The meeting was held to discuss issues regarding the environment, land use, socio-economics, emergency management, utilities, infrastructure, and transportation. The administrative record for this EIS provides a list of the agencies invited and those who attended. During the scoping process, a number of informal meetings were held with various agencies and other stakeholders. Agency representatives raised issues to be addressed within the EIS and agreed to provide relevant background material. The U.S. Fish and Wildlife Service (USFWS) provided written comments regarding the project. A copy of their letter is included in Appendix B. The ADCNR also provided data on ongoing fishery studies in Garrows Bend.
1.3.3.2 **Public Scoping**

A public scoping meeting was held on February 21, 2002, at 6:30 p.m. in Room 204A at the Mobile Convention Center, Mobile, Alabama. On February 4, 2002, the USACE issued a public notice stating the date, time, and location for the public scoping meeting. The meeting was a joint scoping meeting to present information and receive input concerning the Choctaw Point Terminal project and a Federal action for the Garrows Bend Restoration project. The two actions are in close proximity and could involve common features and/or impacts.

USACE, Mobile District, staff members conducted the meeting, and representatives of the applicant were in attendance to address questions related to the proposed project. Citizens and agency representatives attended the public scoping meeting. Handouts explaining the purpose of the public scoping meeting and how to voice opinions were available at the registration desk.

All attendees were invited to make oral comments and submit written comments or suggestions concerning relevant environmental and socio-economic issues. A comment sheet was given to each attendee. The attendee could either return the comment sheet at the conclusion of the meeting or mail the card directly to the USACE by March 21, 2002. A court reporter recorded the meeting, and transcripts of the oral comments were prepared. No public comments were made.

1.3.4 **Cooperating Agencies**

The USACE invited each of the Federal and State resource agencies that have permit authorization or regulatory authority to participate as a cooperating agency for the EIS. Other agencies with particular expertise were also asked to become cooperating agencies. A cooperating agency is one with regulatory jurisdiction or a particular area of expertise with respect to the Proposed Action. The following agencies are the cooperating agencies. The EPA, USFWS, and NMFS elected to cooperate in the preparation and review of the document. The ASPA, ADEM, ADCNR, Alabama Department of Transportation (ALDOT), and the AHC elected to participate as cooperating state agencies. The City of Mobile and the Mobile Bay National Estuary Program (MBNEP) are cooperating local agencies.

On October 8, 2002, the USACE provided the Draft Description of Proposed Action and Alternatives (DOPAA) to the cooperating agencies for their review and comments. Comments were requested by October 26, 2002. The AHC provided comments on the Draft DOPAA ([Appendix B](#)).

1.3.5 **Public Workshop**

On November 7, 2002, the USACE held two separate open-house public workshops. Both were held at the same time in adjoining rooms. The purpose of the Arlington and Garrows Bend Channels workshop was to present the evaluation framework for the EIS for the environmental restoration of areas adjacent to Arlington and Garrows Bend Channels, Mobile Harbor Federal Navigation Project in Mobile County, Alabama. The purpose of the Choctaw Point Terminal workshop was to present the framework for this EIS, which is being prepared to explore the potential environmental impacts of the Port’s
proposed project to enhance and expand its container and intermodal operations and alternatives to that action (DA Permit Application AL01-04269-U). The workshops provided a general overview and reasons for the projects; how an EIS is typically organized; and how the general public is included in this EIS process. Displays illustrated project areas and boundaries, potentially affected areas, and other topics representing stakeholder and agency interests. Project managers and key personnel for both EIS projects were present to answer questions and receive input from the general public. Handouts with project descriptions, maps, and comment sheets were provided to the attendees. The workshops were arranged so that the public could participate in either or both workshops. Issues and concerns expressed by workshop participants concerning the Choctaw Point Terminal project included potential impacts to wetlands, aquatic habitat, and cultural resources; alternative uses for the project site; and alternative site locations that they felt warranted further evaluation (see Section 3.5).

1.3.6 Public Review of Draft EIS
The Draft EIS was made available for public review and comment. A Notice of Availability (NOA) of the Draft EIS was published in the Federal Register on October 17, 2003, and the Mobile Register newspaper on November 5, 2003. In addition, copies of the Draft EIS were provided to the Mobile Public Library (main branch) and were available on USACE, Mobile District, and ASPA websites. Agencies, organizations, and individuals were invited to review and comment on the document. The review period provided the public an opportunity to comment on the analysis of environmental impacts or on other aspects of the EIS process.

1.3.7 Public Hearing
The USACE conducted a Public Hearing on November 13, 2003, to solicit comments concerning the adequacy of the Draft EIS and the merits of the alternatives analyzed. The Public Hearing was a joint hearing to address both the Choctaw Point Terminal project and the proposed Federal action for the Garrows Bend Restoration project. This Public Hearing took place during the public comment period following the publication of the NOA of the Draft EIS. The location and time of the Public Hearing was announced in the Mobile Register newspaper and through other means the USACE, Mobile District, uses to announce public hearings for Permit Actions. A transcript of the Public Hearing was prepared and is available for review at the USACE, Mobile District.

1.3.8 Final EIS
The USACE has considered all comments, both individually and collectively, provided by the public and agencies on the Draft EIS. The Final EIS incorporates changes suggested by comments on the Draft EIS, as appropriate, and contains responses to comments received during the review period. The Final EIS also incorporates additional information obtained since the Draft EIS was issued. A copy of this Final EIS is being provided to those who commented on the Draft EIS and others who request a copy. Copies of the Final EIS are being mailed to selected Federal, State, and local agencies. Copies will also be placed in the Mobile Public Library (main branch) for review, and a NOA of the Final EIS will
be published in the *Federal Register*. No sooner than 30 days following the NOA of the Final EIS, during which time further comments may be submitted for USACE consideration, the USACE will prepare a Record of Decision (ROD). The ROD will include any conditions or mitigation measures associated with the Proposed Action.

1.4 Project Approval Framework

The proposed Choctaw Point Terminal project is subject to regulatory review by several Federal, State, and local government agencies. These agencies have planning, review, and regulatory powers over the Proposed Action and its alternatives as a result of established Federal, State, and local regulations, policies, or plans. Section 1.3 briefly describes the NEPA Federal requirements and the USACE’s responsibilities under NEPA. This section provides a summary of additional Federal, State, and local requirements as they relate to NEPA and permit approval.

1.4.1 Federal Agency Responsibilities

1.4.1.1 Section 10 of the Rivers and Harbors Act

Section 10 of the Rivers and Harbors Act requires permit authorization from the USACE for any obstruction or alteration to navigable waters of the U.S. or for any excavating from or depositing of material in such waters. Authorization from the USACE is in the form of a permit instrument. The proposed project would require construction of wharves, bulkheads, dredging, and filling that would impact navigable waters of the U.S.

1.4.1.2 Section 404 of the Clean Water Act

Section 404 of the CWA requires permit approval from the USACE to discharge dredge and fill material into waters of the U.S. Anyone seeking to discharge dredge and fill material into waters of the U.S. in the State of Alabama is required to submit a Joint Permit Application and Notification to the USACE and ADEM. The proposed project includes the discharge of dredge and fill materials. The ASPA submitted a Joint Permit Application for the Choctaw Point Terminal project to the USACE on December 17, 2001 (M&N 2001).

On January 28, 2002, the USACE issued Public Notice Number AL01-04269-U to inform the public of and solicit public and agency comments on the proposed project. On January 23, 2002, the USACE issued a NOI to prepare an EIS to address the environmental consequences of the proposed Choctaw Point Terminal project and aid in the decision-making process regarding issuance of the permit for the proposed project. As a result of the notices, the USACE received a letter from the ADCNR concerning the proposed project (*Appendix B*).

In addition to the NEPA process, the USACE will also conduct a Section 404(b)(1) Evaluation and public interest review of the applicant’s proposal. Section 404(b)(1) requires the applicant to consider alternatives to the proposal and to comply with environmental standards in accordance with the CWA. A Draft Section 404(b)(1) Evaluation for the proposed action is presented in *Appendix P*. 

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1.4.1.3 National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) of 1966 requires the USACE to consult with the SHPO and consider the impact that the permit action may have on historic and archaeological properties that are included on, or are eligible for, the NRHP prior to granting the Permit Action. For permit applications, the USACE uses the procedures outlined in 33 CFR 325, Appendix C, to fulfill the requirements set forth in the NHPA and other applicable preservation laws and executive orders. Local historical and archaeological societies may also be useful sources of information. Other agencies that may be involved in consultation include Tribal Historic Preservation Officers (THPOs) and any interested parties, such as concerned citizens or local historic preservation organizations. In the event that conflict resolution is required between any of the consulting parties, the Advisory Council on Historic Preservation (ACHP) is included in the process for the purpose of mediation. In 1999, revised implementation regulations that combine the SHPO review of NEPA documentation and the Section 106 consultation process were published in the Federal Register. By letter dated January 16, 2004, the Deputy SHPO stated that the Draft EIS adequately addressed concerns regarding cultural resources associated with the Choctaw Point Terminal project (see Appendix B).

1.4.1.4 Endangered Species Act

Section 7 of the Endangered Species Act requires the permit applicant to consult with the USFWS and the NMFS to determine whether the proposed project is likely to jeopardize the continued existence of any Federally-listed endangered or threatened species or result in the destruction of or substantial damage to critical habitat for the species. If, through consultation, it is determined that such species may be present, a Biological Opinion must be conducted in cooperation with the USACE, USFWS, and NMFS to identify any endangered species or threatened species likely to be affected by the Permit Action. The Biological Opinion must be completed prior to project construction and within 135 days after the date on which initiated or within another period mutually agreed upon by the USACE, USFWS, and NMFS. Informal consultation began with the USFWS on August 15, 2003, and with the NMFS on August 25, 2003 (see Appendix B). By letter dated March 19, 2004, the USFWS stated that no further consultation on endangered species will be required. By letters dated January 13, 2004, and February 13, 2004, NMFS stated that consultation under Section 7 of the Endangered Species Act was complete pending completion of consultation regarding Essential Fish Habitat (see Appendix B).

1.4.1.5 Magnuson-Stevens Fishery Conservation Management Act

The Magnuson-Stevens Fishery Conservation Management Act (MSFCMA) requires the USACE to consult with the NMFS regarding any proposed project’s potential to adversely affect EFH. EFH includes all fisheries that are Federally managed under the MSFCMA. The MSFCMA mandates that the USACE respond in writing to EFH conservation recommendations from NMFS and fishery management councils within a given time period. The USACE provided an interim reply to NMFS’ letter dated January 5, 2004, on January 6, 2004 (see Appendix B).
1.4.1.6 Coastal Zone Management Act
Section 307(c) of the Coastal Zone Management Act requires the permit applicant to comply to the maximum extent practicable with the ADEM ACAMP. In addition, the act requires that ADEM evaluate the proposed Choctaw Point Terminal project to determine if the proposed impacts are in compliance with the regulations contained within the ACAMP. A certified statement of compliance must be issued by ADEM if applicable provisions of the ACAMP are met (USACE internet August 2002).

1.4.1.7 Clean Air Act
Part 60 of the Clean Air Act requires the USACE to evaluate potential emissions that may be generated through area and stationary point sources. Specifically, air emissions associated with the Choctaw Point Terminal project that were evaluated include those possibly generated through fuel combustion in stationary sources and those generated through transportation sources.

1.4.1.8 Floodplain Management
Executive Order 11988 requires the USACE to determine if proposed projects would impact a floodplain. If proposed activities occur in floodplains, the order specifies that the potential effects be fully evaluated. Alternatives must be considered for the avoidance of adverse effects and incompatible development if actions are planned within a floodplain. The proposed Choctaw Point Terminal project includes actions in the floodplain that were evaluated. A conditional letter of map revision (CLOMR) will be submitted to FEMA to address proposed changes to hydraulics and floodplain elevations. LOMR(s) would be submitted to FEMA after project construction.

1.4.1.9 Environmental Justice
Executive Order 12898 requires the USACE to identify and address any disproportionately high and adverse human health or environmental effects of proposed projects on minority and low-income populations. Identification of potential impacts were accomplished in a manner consistent with the guidance policies and evaluation criteria established by the Interagency Working Group on Environmental Justice. Potential impacts of the Choctaw Point Terminal project are identified and addressed in this EIS.

1.4.1.10 Protection of Children
Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, requires the USACE to ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health or safety risks. Potential impacts of the Choctaw Point Terminal project were identified and addressed in this EIS.

Conformance with the provisions of other applicable Federal environmental statutes, regulations, and Executive Orders is also required.
1.4.2 State Agency Responsibilities

Section 401 of the CWA requires the ADEM to certify that the discharge of dredge and fill material into waters of the U.S. complies with Alabama state water quality standards. This discharge of dredge and fill material for the Choctaw Point Terminal project would require Section 401 water quality certification. The USACE cannot issue the DA permit without Section 401 water quality certification.

Section 402 of the CWA requires the ADEM to authorize and issue a NPDES permit to discharge pollution to waters of the U.S. The applicant proposes to discharge stormwater effluent into the Mobile River and Garrows Bend during construction and operation of the proposed Choctaw Point Terminal project that would be regulated under the NPDES permit program. NPDES stormwater permits are required for both the construction and post-construction phases of the project.

The applicant is proposing construction in the coastal zone; therefore, Coastal Zone Consistency Certification will be required from ADEM. The applicant is also proposing the use of bulk petroleum storage to allow periodic refueling of equipment. A Spill Prevention Control and Countermeasure (SPCC) Plan will be developed.

1.4.3 City and County Responsibilities

The City of Mobile administers the National Flood Insurance Program (NFIP) within the city limits. Close coordination will be maintained with the City of Mobile Engineering Department to ensure that construction in the vicinity of the existing Tennessee Street Drain Floodway does not adversely increase the flood risk in the area and is in conformance with local plans. Activities involving fill in the floodplains as well as the processing of CLOMR and LOMR(s) will be coordinated with the City of Mobile. The development of proposed public access and public use facilities will also be coordinated with the City of Mobile. No specific County requirements have been identified. Coordination will be maintained with both the City of Mobile and Mobile County.