

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:

Mobil Oil Mariana Islands, Inc.,
Mobil Saipan Terminal

NPDES Permit No. MP0020397

NPDES No. 25-____

PETITION FOR REVIEW

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INTRODUCTION

Mobil Oil Mariana Islands, Inc. (Mobil) seeks the Environmental Appeals Board's review to rectify the lack of transparency and reasoned decision-making that pervaded the U.S. Environmental Protection Agency Region 9's issuance of the National Pollutant Discharge Elimination System (NPDES) Permit No. MP0020397 (the Final Permit). The Final Permit renews Mobil's authorization to intermittently discharge small volumes of stormwater comingled with trace effluent from Mobil's Saipan Terminal (Terminal) a handful of days per year through a storm sewer serving multiple industrial operations at a busy port. The Terminal's infrequent, controlled discharges are at best an insignificant potential source of pollutants that meet EPA's Ocean Discharge Criteria. And yet, this iteration of the Terminal's permit imposes Habitat Monitoring Provisions (Part II.E and Attachment F) that require Mobil to study the impacts of *all* the users of this storm sewer by conducting benthic habitat monitoring around the storm sewer's outfall. Under these provisions, Mobil will potentially have to deploy substantial resources, including boats and divers, to study an ecosystem primarily impacted by multiple sources other than the Terminal.

Despite proposing novel and potentially burdensome requirements, EPA did not publish information that would have enabled Mobil to make informed comments on the Habitat Monitoring Provisions. The fact sheet that Region 9 issued for public comment failed to even mention the Habitat Monitoring Provisions. Pressed by Mobil's comments to explain the basis for the Habitat Monitoring Provisions, EPA has offered multiple, shifting justifications for requiring monitoring that cannot be reconciled with the multiple facts and findings in the record. EPA's decision documents, including its response to comments, are so deficient that Mobil to this day does not know what provisions of the Clean Water Act, if any, Region 9 believes authorize the Habitat Monitoring Provisions.

Worse yet, EPA made—without any explanation in the record—multiple significant revision to the Habitat Monitoring Provisions in the Final Permit. Neither the final fact sheet nor response to comment document so much as mention changes to these requirements, leaving Mobil to guess the agency’s reasons for making them. Taken together, Region 9’s omissions and errors have forced Mobil to prepare this Petition without the benefit of proper notice of EPA’s reasons for acting or a full opportunity to comment.

Region 9 cannot impose these new Habitat Monitoring Provisions without first providing Mobil an adequate opportunity to comment and an explanation of the agency’s authority and reasons that reflects considered judgment. EPA’s failure to do so here is clear error, and Mobil asks that the Board vacate the Habitat Monitoring Provisions and remand to Region 9.

STATUTORY AND FACTUAL BACKGROUND

A. Statutory Framework

1. The Clean Water Act

Congress enacted the Clean Water Act (CWA or Act), 33 U.S.C. § 1251 *et seq.*, to protect the “integrity of the Nation’s waters,” *id.* § 1251, by among other things, creating a discharge permitting program. *See generally EPA v. California ex rel. State Water Res. Control Bd.*, 426 U.S. 200, 203-05 (1976). The Act broadly prohibits the discharge of pollutants to navigable waters unless authorized by an NPDES permit. *See* 33 U.S.C. §§ 1311(a), 1342. NPDES permits impose effluent limitations that restrict authorized discharges based on available treatment technologies (called technology-based effluent limitations) and the need to meet or implement water quality standards established pursuant to Section 303 (called water quality-based effluent limitations). *See* 33 U.S.C. §§ 1311, 1342; *see generally* EPA, *Permit Limits – TBELS and WQBELs*, <https://www.epa.gov/npdes/permit-limits-tbels-and-wqbels> [https://perma.cc/AY3T-253N] (last updated Sep. 12, 2025).

To help EPA develop and enforce these permits, Congress also authorized EPA to require monitoring in NPDES permits. Section 308(a) empowers the agency to require monitoring or other information gathering “[w]henever required to carry out the objective of [the CWA].” 33 U.S.C. § 1318(a). Congress contemplated that EPA would typically require monitoring to inform effluent limitations or when otherwise needed to assist the agency in implementing its obligations under the Act. *See id.* Section 402(a)(2) also authorizes EPA to impose “conditions on data and information collection, reporting, and such other requirements as [EPA] deems appropriate” to “assure compliance with” NPDES permits’ substantive requirements. *See* 33 U.S.C. § 1342(a)(2). By regulation, EPA has required monitoring to be “representative of the monitored activity.” 40 C.F.R. § 122.48(b). Thus, EPA’s guidance advises permit writers to identify monitoring locations that are representative of the “targeted wastestream.” EPA, *NPDES Permit Writers’ Manual* § 8.1.2 (Sep. 2010), https://www.epa.gov/system/files/documents/2025-09/pwm_2010_edits_2025_06.pdf [<https://perma.cc/HY28-HD5W>].

2. The Magnuson-Stevens Act

The Magnuson-Stevens Fishery Conservation and Management Act (the Magnuson-Stevens Act), 16 U.S.C. § 1801 *et seq.*, establishes a comprehensive national fishery conservation and management program designed to ensure sustainable fisheries management and to facilitate long-term protection of essential fish habitats. *See id.* § 1801. Essential fish habitats consist of waters and substrate necessary for federally managed species to spawn, breed, feed, and/or grow in maturity. *Id.* § 1802(10). The Magnuson-Stevens Act requires the national fishery conservation and management program to utilize and be based upon the best scientific information available. *Id.* § 1801(c)(3).

The Magnuson-Stevens Act requires each federal agency to consult with the National Marine Fisheries Service (NMFS) on “any action authorized, funded, or undertaken, or proposed

to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat.” 16 U.S.C. § 1855(b)(2). “If [NMFS] receives information . . . that [such an action] . . . would adversely affect any essential fish habitat . . . [NMFS] shall recommend to such agency measures that can be taken by such agency to conserve such habitat.” 16 U.S.C. § 1855(b)(4)(A).

B. The Saipan Terminal and Tanapag Harbor

Mobil operates the Terminal, a bulk fuel storage and distribution facility, at the Saipan Seaport in the Commonwealth of the Northern Mariana Islands (the Commonwealth). The Terminal discharges into a managed dredged area, where other entities conduct maintenance dredging that affect the localized benthic habitat. Ex. 4, July 30, 2025 Comments at 2. The Terminal intermittently discharges small volumes of stormwater, industrial wastewater, and hydrostatic test water into the Commercial Port Avenue storm sewer, where it combines with the Port’s and other Port tenants’ discharges before exiting to the Tanapag Harbor through a shared stormwater outfall (the Shared Outfall).¹ Approximately 90% of the Terminal’s flow consists of stormwater, Ex. 6, Final Fact Sheet at 4, and contributes “a very small proportion of the total flow discharged from the storm sewer to Tanapag Harbor.” Ex. 3, May 8, 2025 Comments at 3. Between January 2019 and October 2024, the Terminal only discharged for a total of 54 days (an average of 10.8 days/year), and most discharges lasted less than one hour. Ex. 6, Final Fact Sheet at 6. On the rare occasions the Terminal discharged, it averaged flows of only 16,003 gallons per day. *Id.*

Pollutants entering Tanapag Harbor come primarily from sources other than the Terminal’s infrequent, low-volume discharges. Multiple activities conducted at the Port

¹ Region 9 refers to this outfall as the “CPA outfall” or “CPA storm sewer outfall.” *E.g.*, Ex. 5, Final Permit at Part II.E.

contribute significant flows and quantities of pollutants to the storm sewer before discharging through the Shared Outfall. *See* Ex. 3, May 8, 2025 Comments at 3 (The “storm sewer drains the [Port’s] dock and the contiguous area. Vehicles, including many large trucks, containers, vessel loading and unloading and related port activities contribute pollutants that accumulate on the paved surface of the port.”). These activities take place within a drainage area over three times larger than the portions of the Terminal that drain to the storm sewer. *See id.* The Terminal also “collects and stores rainfall on the site in . . . storage tank containment areas so that it can be treated and discharged at a controlled rate.” *Id.* at 4. In contrast, the Port’s “drainage area has no containment and treatment.” *Id.* As a result, “constituents on the [Port’s] paved surfaces such as oil and fuel that may leak from vehicles, residues from vehicle exhaust, materials spilled from containers, and rubber from tires all are washed into the storm sewer and discharged to Tanapag Harbor from every rainfall event.” *Id.*

The Shared Outfall is also not the only source of pollutants entering Tanapag Harbor. For example, vessels and support activities in Tanapag Harbor can leak “fuels and lubricants into the harbor waters.” *Id.* at 3. Vessel exhausts also contribute “combustion byproducts to the surface water, especially when those exhausts are submerged.” *Id.*

The Commonwealth’s water quality standards designate Tanapag Harbor as a Class A Marine Water. Ex. 6, Final Fact Sheet at 4. The Commonwealth’s goal is to protect Class A Marine Waters for recreational purposes and aesthetic enjoyment. 65 N. Mar. I. Admin. Code § 65-130-101(b) (June 21, 2021).² The Commonwealth’s water quality standards permit other uses that are “compatible with the protection and propagation of aquatic life, fish, and shellfish

² https://www.deq.gov.mp/assets/permits-and-regulations-applications/t65_130_2021_water_quality_standards.pdf [https://perma.cc/795H-CBJ2].

consumption, and with primary contact recreation in and on the water without risk to human health.” *Id.*

C. Draft Permit and Fact Sheet

Since May 1, 2018, the Terminal has discharged into Tanapag Harbor under an NPDES permit that expired on April 30, 2023. Mobil timely filed an application seeking renewal on October 24, 2022, Ex. 6, Final Fact Sheet at 1, allowing the Terminals’ expired permit to remain in effect. *See* 40 C.F.R. § 122.6. The Terminal’s point of NPDES monitoring and compliance is Outfall 001, which discharges via a concrete-encased PVC pipe into the Commercial Port Avenue storm sewer system and through the Shared Outfall. Ex. 6, Final Fact Sheet at 4.

Region 9 provided Mobil pre-publication drafts of the permit and fact sheet in 2024. Ex. 8, 2024 Permittee Review Draft Permit; Ex. 9, 2024 Permittee Review Draft Fact Sheet. Neither document contained any mention of habitat monitoring. *Id.*

Region 9 published the Draft NPDES Permit No. MP0020397 (Draft Permit) and an accompanying Draft Permit Fact Sheet (Draft Fact Sheet) for public notice and comment on April 11, 2025. Ex. 1, Draft Permit; Ex. 2, Draft Fact Sheet. For the first time, the Draft Permit proposed a new Special Condition, Part II.E “Tiered Outfall Habitat Assessment and Reporting” along with Attachment F (the Habitat Monitoring Provisions). Ex. 1, Draft Permit at 22, 54. The proposed Habitat Monitoring Provisions required Mobil to develop and implement a single “habitat assessment plan” following a two-tiered approach to assess the condition of the benthic habitat in the vicinity of the Shared Outfall. *See id.* at 22. The Draft Permit did not require prior EPA approval of the habitat assessment plan. *See id.* Tier I required visual inspections of the Shared Outfall area “for presence of corals and percent area for corals, seagrass, and endangered species.” *Id.* Evidence of corals, seagrass, or endangered species within the 50-foot radius would trigger Tier II, which required Mobil to assess whether corals, seagrass, or endangered

species, or their habitat were being affected by the effluent from the Shared Outfall by “the most appropriate method,” such as sediment sampling or fish tissue sampling. *Id.* Tier II sampling would also include reference stations farther than the 50-foot radius of the Shared Outfall. *Id.*

The Draft Permit’s Attachment F further specified how to perform the habitat assessment. It demanded live boating techniques during outfall inspections and surveys, avoidance of certain benthic organisms protected by the Endangered Species Act or the Magnuson-Stevens Act, and the minimization of potential introduction of toxicopathological agents to corals. *Id.* at 54-55. Attachment F also required best management practices for Tier II boating and benthic sample collection, including restrictions on vessel and equipment operations. *Id.*

Despite introducing these new requirements in the Draft Permit, the accompanying Draft Fact Sheet provided Mobil and the public no notice of Region 9’s reasons for proposing the Habitat Monitoring Provisions. *See* Ex. 2, Draft Fact Sheet at 2, 24. For instance, the Draft Fact Sheet did not explain how any statute or regulation authorizes benthic habitat monitoring or how monitoring for species and their habitat advances the CWA’s goals. *See id.* In fact, the Draft Fact Sheet did not discuss the benthic monitoring at all, leaving Mobil and members of the public to guess Region 9’s reasons and authority for imposing these requirements. *See id.*

The Magnuson-Stevens Act required Region 9 to consult with NMFS concerning potential adverse impacts to essential fish habitat in Tanapag Harbor, *see* 16 U.S.C. § 1855(b)(2), but EPA did not conduct the consultation prior to the public comment period. EPA instead initiated consultation the same day it published the Draft Permit for public comment. *See* Ex. 6, Final Fact Sheet at 34. According to the Final Fact Sheet, consultation concluded when “NMFS concurred with EPA’s determinations in an email dated May 8, 2025.” *Id.* Thus, consultation-related documents were not published for public comment on the Draft Permit.

D. Mobil's Comments

Mobil submitted comments on May 8, 2025, and supplemental comments on July 30, 2025. Ex 3, May 8, 2025 Comments; Ex. 4 July 30, 2025 Comments. Mobil's initial comments cautioned that the Draft Fact Sheet provided "no mention [of] or regulatory/scientific justification" for the proposed Habitat Monitoring Provisions. Ex. 3, May 8, 2025 Comments at 3. In a July 17, 2025 meeting with Mobil, Region 9 asserted for the first time that a NMFS critical habitat rule for Indo-Pacific corals (adopted two days prior to the July 17 meeting with Mobil and months after EPA published the Draft Permit) and two proposed critical habitat rules for green sea turtles justified the new provisions. Ex. 4, July 30, 2025 Comments at 1; *see also* Ex. 7, Response to Comments at 1 (confirming the public comment period closed on May 12, 2025). Region 9 stated in the Draft Fact Sheet, however, that the discharges authorized by the Terminal's permit were not likely to adversely affect the proposed critical habitat for the green sea turtle or Indo-Pacific corals. Ex. 2, Draft Fact Sheet at 27-29.

Mobil's supplemental comments showed how the NMFS rules EPA identified could not provide a legal basis for the Habitat Monitoring Provisions because: (1) the final NMFS rule establishing critical habitat locations for Indo-Pacific corals excluded the location where the Terminal intermittently discharges as critical coral habitat;³ (2) the critical habitat rules relating to the green sea turtle were proposed rules; and (3) anticipated exclusions to the green sea turtle rules would apply if they were finalized. Ex. 4, July 30, 2025 Comments at 1-3. EPA subsequently retracted "critical habitats for Indo-Pacific corals" and "proposed ESA critical habitats for green sea turtles" as its purported "rationale[s] for the Tiered Outfall Habitat Monitoring requirement in the [F]inal [P]ermit." Ex. 7, Response to Comments at 6, 8.

³ EPA "considers the terms Saipan Lagoon, Saipan Harbor, and Tanapag Harbor all reference the same receiving water for the discharge." Ex. 7, Response to Comments at 6 n.2.

Mobil also raised that Region 9 did not impose the same Habitat Monitoring Provisions on other entities discharging through the Shared Outfall or elsewhere in the Pacific Island Territories. Ex. 4, July 30, 2025 Comments at 3-4. Mobil pointed out that industrial NPDES permits with similar determinations regarding the lack of potential impacts of facility discharges on green sea turtle and coral populations did not contain provisions like the Habitat Monitoring Provisions. *Id.* Mobil emphasized that the Terminal's discharges are at best an insignificant potential source of water pollutants discharged to the Tanapag Harbor, making imposition of the Habitat Monitoring Provisions both inequitable and unjustified. *See* Ex. 3, May 8, 2025 Comments at 3-5.

E. Final Permit and Fact Sheet

On September 30, 2025, Region 9 issued the Final NPDES Permit No. MP0020397 (Final Permit) and a Final Permit Fact Sheet (Final Fact Sheet). Ex. 5, Final Permit; Ex. 6, Final Fact Sheet. Region 9 also published a Response to Comments containing Region 9's responses to Mobil's initial and supplemental comments. Ex. 7, Response to Comments. The Final Permit is effective November 1, 2025.⁴ Ex. 5, Final Permit at 1.

The Final Permit substantially revised the Habitat Monitoring Provisions, but Region 9 neither identified nor explained these changes in its decision documents. *See generally* Ex. 6, Final Fact Sheet; Ex. 7, Response to Comments. Although Region 9 generally retained a two-tiered approach to benthic habitat assessment, it made extensive revisions to the Habitat Monitoring Provisions:

⁴ However, Part II.E and Attachment F will be stayed by operation of law as a consequence of filing this Petition. 40 C.F.R. § 124.16.

	Final Permit Revisions	Draft Permit
Scope of Tier I Requirements:	Visually monitor for presence of “corals, seagrass, <i>habitat substrate</i> or <i>federally-listed species</i> ” (emphasis added)	Visually inspect for presence of “corals, seagrass, and endangered species”
Prescription of Method for Tier I Visual Inspection:	Requires “use of still photographs and/or video of the habitat taken by underwater camera, remotely operated vehicle, or diver”	No specific methods prescribed but gives permittee the option of employing “remotely operated vehicle, diver, or <i>manned submarine</i> ” (emphasis added)
Tier I Submittal:	Tier I monitoring results must be submitted to EPA two years after the effective date of the permit	N/A (describes instead an assessment plan and assessment)
Scope of Tier II Triggers:	Evidence of “coral reefs, seagrass beds, <i>hard substrate</i> , or <i>other types of fish habitat</i> ” (emphasis added)	Evidence of “corals, seagrass, or endangered species”
Tier II Submittals:	Submittal of a Tier II sampling and monitoring plan to EPA and NMFS for review	N/A (describes instead an assessment plan and assessment)
	Submittal of Tier II monitoring data within four years of effective date of the permit	N/A (describes instead an assessment plan and assessment)
Scope of Plan Submitted to EPA:	Tier II only	Both Tiers I and II
EPA Approval of Plan:	Required before Mobil may begin Tier II monitoring unless EPA fails to respond within 60 days of submission	Not required. Submission of proposed plan required for “review and recommendations”
Attachment F Requirements:	Required best management practices in paragraphs 4 through 8 apply to <i>both</i> Tier I and Tier II monitoring	Required best management practices in paragraphs 4 through 8 only apply to Tier II monitoring

Ex. 1, Draft Permit at 22, 54; Ex. 5, Final Permit at 24, 59.

THRESHOLD PROCEDURAL REQUIREMENTS

Mobil satisfies the procedural requirements for seeking the Board's review:

1. Mobil has standing because it is the permittee and submitted comments on the Draft Permit. *See* 40 C.F.R. § 124.19(a)(2) (“Any person who filed comments on the draft permit . . . may file a petition for review [of a NPDES permit].”). Ex. 3, May 8, 2025 Comments; Ex. 4, July 30, 2025 Comments.
2. This Petition concerns issues that Mobil either (a) raised during the comment period or (b) could not reasonably ascertain during the public comment period because the issues arose only in the Final Permit or Response to Comments. *See* 40 C.F.R. § 124.13 (petitioners need only raise reasonably ascertainable issues during the public comment process); *see also In re Town of Ashland Wastewater Treatment Facility*, NPDES Appeal No. 00-15, Order Denying Motion for Reconsideration at 6 (Apr. 9, 2001)⁵ (“there is nothing in the regulations that constrains a petitioner’s ability to raise issues that were not reasonably ascertainable during the comment period”).
3. Mobil is timely filing this Petition with the Clerk of the Board within 30 days after Region 9 provided Mobil notice of its final permit decision. *See* 40 C.F.R. § 124.19(a)(3). Region 9 provided notice on September 30, 2025, making October 30, 2025, the deadline for filing this Petition.

STANDARD OF REVIEW

The Board grants review and remands when a permit decision was “based on a finding of fact or conclusion of law that is clearly erroneous.” 40 C.F.R. § 124.19(a)(4)(i)(A). When the Board reviews permits under this standard, EPA’s “acts of discretion must be adequately

⁵[https://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/All%20By%20Appeal%20Number/1525DE759FB7B4FD85257069005F7E7F/\\$File/ashland2.pdf](https://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/All%20By%20Appeal%20Number/1525DE759FB7B4FD85257069005F7E7F/$File/ashland2.pdf) [https://perma.cc/B4CF-MR9K].

explained and justified.” *In re Ash Grove Cement Co.*, 7 E.A.D. 387, 397 (EAB 1997) (citing *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 48 (1983)). Thus, the Board evaluates whether the permit issuer exercised “considered judgment.” *In re U.S. Dep’t of Energy & Triad Nat’l Sec., LLC*, 18 E.A.D. 797, 799-800 (EAB 2022). The permit issuer must “articulate with reasonable clarity” the reasons for its conclusions and the significance of the facts relied upon in the record. *Id.* at 813; *Ash Grove*, 7 E.A.D. at 417-18 (remanding permit where the record lacked a clear explanation for selection of permit limits). The record as a whole must show that the permit issuer “duly considered the issues raised in the comments” and ultimately adopted an approach that “is rational in light of all information in the record.” *Triad*, 18 E.A.D. at 800; *In re Gov’t of D.C. Mun. Separate Storm Sewer Sys.*, 10 E.A.D. 323, 342-43 (EAB 2002) (remanding NPDES permit for inadequate explanation on how permit ensured water quality compliance). Where a permit issuer provides inconsistent or conflicting explanations for its actions, the Board frequently finds the rationale is unclear and remands for further explanation. *E.g.*, *In re Chukchansi Gold Resort & Casino Waste Water Treatment Plant*, 14 E.A.D. 260, 281 (EAB 2009) (remanding NPDES permit for further consideration of state-required monitoring provisions); *In re Austin Powder Co.*, 6 E.A.D. 713, 719-20 (EAB 1997) (remanding permit where permitting authority gave differing explanations for permit determination).

The Board may also grant review when the petitioner shows the action was based on “an important policy consideration that the Environmental Appeals Board should, in its discretion, review.” 40 C.F.R. § 124.19(a)(4)(i)(B).

ARGUMENT

I. Mobil was deprived of a meaningful opportunity to comment on the Draft Permit and appeal the Final Permit.

The Board needs to vacate the Habitat Monitoring Provisions and remand the Permit to cure a permitting process rampant with errors that deprived Mobil and the public of a meaningful opportunity to comment and appeal to this Board. Region 9 acted contrary to its own regulations by providing no justification for the Habitat Monitoring Provisions in the Draft Fact Sheet that accompanied the Draft Permit. *See* Ex. 2, Draft Fact Sheet at 20-23; 40 C.F.R. § 124.8(a), (b)(4). Mobil identified this basic defect in the package published by the Region for public comment,⁶ but Region 9 failed to cure the problem by reissuing a new fact sheet for public comment. The agency compounded this error by failing to adequately address the issue in its response to comments.

Region 9 acted contrary to its regulations a second time when it failed to identify or explain the substantial changes to the Habitat Monitoring Provisions reflected in the Final Permit. The revisions were not a logical outgrowth of the draft provisions, further undermining the comment process and denying Mobil information it needs to properly petition this Board. EPA's errors go to the heart of the agency's obligation to "guarantee the public a meaningful role in the implementation of the [CWA]" and warrant vacating the Habitat Monitoring Provisions and remanding to EPA. *Waterkeeper All., Inc. v. EPA*, 399 F.3d 486, 503 (2d Cir. 2005).

A. Region 9 provided inadequate notice of its reasons for imposing the Habitat Monitoring Provisions.

Region 9's failure to explain the legal, factual, or scientific bases for the Habitat Monitoring provisions in the Draft Fact Sheet deprived Mobil of a meaningful opportunity to

⁶ Ex. 3, May 8, 2025 Comments at 3.

comment and constitutes clear error. EPA must ensure that permit applicants and the public have an opportunity to comment by providing a notice that is “detailed” and provides explanations for proposed permit terms that go beyond mere “‘conclusory’ statements.” *In re GSP Merrimack*, 18 E.A.D. 524, 549-50 (EAB 2021) (quoting *In re Pennzoil Expl. & Prod. Co.*, 3 E.A.D. 389, 392 & n.1 (Adm’r 1990)). The agency’s regulations further demand the fact sheet accompanying a draft permit to “set forth the principal facts and the significant factual, legal, methodological, and policy questions” that the Region considered and summarize “the basis for the draft permit conditions *including references to applicable statutory or regulatory provisions.*” 40 C.F.R. § 124.8(a), (b)(4) (emphasis added).

The Draft Fact Sheet included no mention of the Habitat Monitoring Provisions, let alone a discussion of their factual or legal basis. *See* Ex. 2, Draft Fact Sheet at 20-23 (discussing monitoring but omitting the Habitat Monitoring Requirements). This defect—identified in Mobil’s comments—deprived Mobil of a meaningful opportunity to comment and warrants remand.⁷

EPA’s addition of purported justifications to the Final Fact Sheet in response to Mobil’s comments fails to cure this defect for two reasons. *First*, after-the-fact revisions reflected in the Final Fact Sheet cannot cure Region 9’s failure to provide Mobil a meaningful opportunity to comment on the legal bases for these provisions. This Board has repeatedly recognized that *post hoc* explanations are no substitute for providing the public an opportunity to comment after first receiving notice of the agency’s reasons. *See, e.g., GSP Merrimack LLC*, 18 E.A.D. at 570 (agency’s explanation following the close of public comments cannot cure failure to provide opportunity for public comment). In such cases, the appropriate remedy is to remand the permit

⁷ Ex. 3, May 8, 2025 Comments at 3 (“There is no mention or regulatory/scientific justification for [the Habitat Monitoring Provisions] provided in the Fact Sheet.”).

for agency reconsideration and further public comment. *Id.* at 571 (remanding permit so that the agency may reconsider the issue and reopen the record for public comment).

Second, the Final Fact Sheet continues to contain no “references to applicable statutory or regulatory provisions” that are the basis for the Habitat Monitoring Provisions. *See* 40 C.F.R. § 124.8(b)(4). Although the Final Fact Sheet discusses these permit requirements, it cites no statutory or regulatory provisions that empower the agency to impose this requirement. *See* Ex. 6, Final Fact Sheet at 24-26. The agency cited only the Magnuson-Stevens Act and 33 U.S.C. § 1251(a), a provision that states one of Congress’s objectives in passing the CWA, but neither supplies the “basis” for the Habitat Monitoring Provisions. *Id.* at 25; *see also* Ex. 7, Response to Comments. Consequently, Mobil files this Petition without knowledge of which statutory or regulatory provisions, if any, Region 9 believes authorized imposing the Habitat Monitoring Provisions.

B. The region’s responses to Mobil’s comments were inadequate.

EPA’s failure to prepare an adequate fact sheet is not the only reason Mobil remains in the dark about the Habitat Monitoring Provisions’ legal bases. EPA also provided an inadequate response to Mobil’s comment regarding the Draft Fact Sheet’s failure to provide legal justifications. *See* Ex. 3, May 8, 2025 Comments at 3. EPA’s regulations require Region 9 to “describe and respond to all significant comments on the draft permit.” 40 C.F.R. § 124.17(a)(2). EPA’s responses “must address the issues raised” by the commenter and “be clear and thorough enough to adequately encompass the issues raised by the commenter.” *In re Wash. Aqueduct Water Supply Sys.*, 11 E.A.D. 565, 589-90 (EAB 2004) (remanding NPDES permit to issuing authority for “failing to respond, adequately or in some cases at all, to significant comments”).

EPA failed to address a foundational issue raised by Mobil’s comments: Region 9’s authority to impose the Habitat Monitoring Requirements. *See* Ex. 3, May 8, 2025 Comments at

3. Rather than respond to Mobil's straightforward comment, Region 9 instead described how these permit provisions "support[] the objective" of the CWA and the Magnuson-Stevens Act. Ex. 7, Response to Comments at 5; *see also* Ex. 6, Final Fact Sheet at 25. The Region nowhere explained what statutory or regulations provisions, if any, authorize EPA to impose the Habitat Monitoring Provisions or requirements like them.

Mobil will be deprived of an adequate right to appeal the Permit unless the Board grants review and remands for the agency to properly respond to Mobil's comments. As the Board has recognized, adequate comment responses are critical to "ensur[ing] that interested parties have an opportunity to adequately prepare a petition for review" and to facilitate "effective review on the merits under 40 C.F.R. § 124.19." *In re Amoco Oil Co.*, 4 E.A.D. 954, 980 (EAB 1993); *In re Ash Grove Cement Co.*, 7 E.A.D. 387, 431 (EAB 1997) ("The purpose of the response to comments . . . is to ensure that interested parties have full notice of the basis for final permit decisions and can address any concerns regarding the final permit in an appeal to the Board"). Left uncorrected, Region 9's failure to respond to Mobil's comments will impair Mobil's appeal rights and the Board's review of EPA's decision.

C. Region 9 provided no reasons for revising the Habitat Monitoring Provisions.

Mobil also asks the Board to rectify Region 9's failure to explain its extensive changes to the Habitat Monitoring Provisions.⁸ In addition to addressing comments, the agency's response to comments document must "[s]pecify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change." 40 C.F.R. § 124.17(a)(1). The Board has stressed that "[t]his requirement is not trivial" and "ensures that interested parties have an opportunity to adequately prepare a petition for review and that any changes in the draft permit are subject to effective review." *In re ConocoPhillips Co.*, 13 E.A.D. 768, 780 (EAB 2008) (cleaned up). Accordingly, "the Board has not hesitated to remand the permit to the permitting agency for further consideration" when the response to comments document fails to identify changed conditions and the permit issuer's reasons for making them. *Id.* (collecting cases).

Region 9's failure to identify or explain its changes to the Habitat Monitoring Provisions likewise warrants remand here. As described above, the Final Permit's Habitat Monitoring Provisions differ substantially from those in the Draft Permit. *See supra* at I.E. However, Region 9 neither identified these changes nor explained its reasons for making them in the Response to Comments. *See generally* Ex 7, Response to Comments; *see also* Final Fact Sheet at 24-26, 33-34 (discussions of Habitat Monitoring Provisions containing no explanation for changes). As the Board has recognized, omissions like hinder "the Board's ability to review the permit decision." *ConocoPhillips*, 13 E.A.D. at 784-85 (collecting cases).

⁸ Mobil could not raise these errors in its comments because they arose *after* the comment period closed. *See* 40 C.F.R. § 124.19(a)(4)(ii).

D. Region 9 failed to provide a meaningful opportunity to comment on the Final Permit's revised Habitat Monitoring Provisions.

The Region's unexplained changes to the Habitat Monitoring Provisions are also clearly erroneous because the Region did not provide an adequate opportunity to comment on them. Region 9's issuance of the Final Permit effectively debuted a new set of Habitat Monitoring Provisions, requiring for the first time:

1. Tier I monitoring for habitat substrate and *all* federally-listed species, as opposed to just endangered species. These additions represent a significant expansion of the Tier I requirements. Ex. 1, Draft Permit at 22; Ex. 5, Final Permit at 24.
2. Submittal of Tier I monitoring results to EPA two years after the effective date of the permit. Ex. 5, Final Permit at 24.
3. A dramatically expanded set potential Tier II monitoring triggers that include evidence of "hard substrate" or "other types of fish habitat.". *Id.*
4. Submittal of a Tier II sampling and monitoring plan to EPA and NMFS for review and approval. *Id.*
5. Submittal of Tier II monitoring data within four years of effective date. *Id.*
6. Application of best management practices in the Draft Permit's Attachment F Paragraphs 4 through 8 to *both* Tier I and Tier II monitoring, as opposed to just Tier II monitoring. Ex. 1, Draft Permit at 54; Ex. 5, Final Permit at 59.

EPA's failure to explain or even acknowledge these changes in the record warrants remand. Although EPA may make changes in a final NDPES permit, "the requirement that the public be provided adequate notice constrains an agency's latitude in modifying a final permit to those that are the *logical outgrowth* of the public comment process." *In re GSP Merrimack LLC*,

18 E.A.D. 524, 552 (EAB 2021) (cleaned up and emphasis added). Whether EPA’s revisions constitute a “logical outgrowth” turns on both “the evolution of the permit condition at issue, and the Region’s corresponding explanatory statements.” *Id.* at 559 (quoting *In re D.C. Water & Sewer Auth.*, 13 E.A.D. 714, 760 (EAB 2008)); *see also In re Springfield Water & Sewer Auth.*, 18 E.A.D. 430, 451 (EAB 2021) (considerations for whether a new comment period is needed to address revisions include “[w]hether the permit conditions were developed in response to comments” and “[w]hether the record adequately explains the permit issuer’s reasoning” for its revisions (citing *In re Dominion Energy Brayton Point, LLC*, 13 E.A.D. 407, 416 n.10 (EAB 2007))). Thus, the Board has remanded to EPA where the agency revised a permit but failed to provide any “explanatory statement” or otherwise signal its changes in its public notices. *GSP Merrimack*, 18 E.A.D. at 560-61.

Region 9’s omission of the Habitat Monitoring Provisions from the Draft Fact Sheet prevents the overhauled Habitat Monitoring Provisions from being a “logical outgrowth” of the Draft Permit. *See supra* at I.. The notice published by the Region for public comment “did not disclose the Region’s intentions,” leaving Mobil and the public to guess at the Region’s reasons for proposing the Habitat Monitoring Provisions and how they might change. *GSP Merrimack*, 18 E.A.D. at 568. Circumstances like these mean that a “final agency action cannot be considered a logical outgrowth of the proposed action” because “interested parties would have to divine the agency’s unspoken thoughts.” *Id.* (cleaned up). Absent the Board’s intervention, Mobil would be forced to implement monitoring provisions on which it had no meaningful chance to comment.

II. The CWA does not authorize the Habitat Monitoring Provisions.

EPA also cannot establish based on this record that it has authority to impose the Habitat Monitoring Provisions. Left to guess by the Region’s inadequate fact sheet and response to

comments, Mobil has identified two provisions that may potentially authorize EPA’s challenged action, but neither apply here: (1) Section 308, 33 U.S.C. § 1318, and (2) Section 402(a)(2), *id.* § 1342(a)(2). Neither section authorizes EPA’s attempt to impose monitoring requirements that the agency claims advance the goals of an entirely different statute—the Magnuson-Stevens Act. Moreover, the Habitat Monitoring Provisions do not assure compliance with the Act’s substantive requirements. In the absence of legal authority, Region 9 committed clear error that warrants the Board granting review. *See, e.g., In re Gov’t of D.C. Mun. Separate Storm Sewer Sys.*, 10 E.A.D. 323, 325 (EAB 2002) (remanding NPDES permit where EPA changed a monitoring location in a manner unauthorized under CWA regulations); *In re Upper Blackstone Water Pollution Abatement Dist.*, 14 E.A.D. 577, 589–90 (EAB 2010) (remanding where the agency failed to identify the statutory or regulatory basis for expanding the scope of its NPDES permitting authority beyond the permittee to separately owned and operated systems that only discharged to the permittee).

A. Region 9 cannot require monitoring to advance the goals of another statute or vague water quality objectives.

Section 308(a) does not empower Region 9 to require monitoring to advance the objectives of the Magnuson-Stevens Act. Although EPA enjoys “broad” authority to require permittees to conduct monitoring,⁹ Congress limited EPA’s power. One such limit restricts EPA’s authority to circumstances where monitoring (or other information collection) is “required to carry out the objective of [the Act].” 33 U.S.C. § 1318(a). To the extent EPA imposed the Habitat Monitoring Provisions to advance the objectives of the Magnuson-Stevens Act, it thus

⁹ *E.g., Ackels v. EPA*, 7 F.3d 862, 866 (9th Cir. 1993); *In re City of Port St. Joe & Fla. Coast Paper Co.*, 7 E.A.D. 275, 306 (EAB 1997).

exceeded its authority.¹⁰ Congress chose to authorize EPA to collect information only to advance the CWA’s objectives but not those of any other statute, and EPA cannot override that decision. *Cf. Lamie v. U.S. Tr.*, 540 U.S. 526, 538 (2004) (a word omitted in a statute cannot be read into it).¹¹

Region 9’s vague assertions that the Habitat Monitoring Provisions advance the CWA’s objectives likewise fail to provide the Region a basis to act. Although Congress empowered EPA to require monitoring “to carry out the objective of [the CWA],” it did not give EPA a license to selectively make demands on industrial permittees by simply claiming that its action “supports the objective of the [CWA]” to protect the nation’s waters. Ex. 6, Final Fact Sheet at 25; Ex. 7, Response to Comments at 5. Instead, Section 308(a) lists examples of how EPA may use monitoring to implement other specific components of the CWA, such as “developing or assisting in the development of any effluent limitation” or implementing a series of specific sections of the Act. 33 U.S.C. § 1318(a). These examples necessarily inform and limit the scope of Congress’s delegation of authority to advance the CWA’s objectives. *Dubin v. U.S.*, 599 U.S. 110, 124–25 (2023) (observing *maxim noscitur a sociis*, “a word is known by the company it keeps,” is often applied to avoid giving unintended breadth to Acts of Congress (*citing McDonnell v. U.S.*, 579 U.S. 550, 569 (2016))). Indeed, the D.C. Circuit has interpreted Section

¹⁰ See Ex. 7, Response to Comments at 5 (Habitat Monitoring Provisions “support[] the objective of ... the Magnuson-Stevens [Act] to promote the protection of essential fish habitat”); Ex. 6, Final Fact Sheet at 25 (habitat monitoring will advance the goals of the Magnuson-Stevens Act and “provide data for future [essential fish habitat] consultations”); *id.* at 33-34 (habitat monitoring will “provide baseline data about the benthic habitat within the immediate vicinity of the [Commercial Port Avenue] storm sewer outfall to inform future consultations” under the Magnuson-Stevens Act).

¹¹ EPA also cannot claim authority to impose monitoring requirements of any kind pursuant to the Magnuson-Stevens Act. That statute’s consultation provision grants EPA no information gathering authority. See 16 U.S.C. § 1855(b)(2)-(4). To the extent the Magnuson-Stevens Act authorizes information gathering, Congress conferred this power on NMFS, not EPA. See *id.* § 1881(a).

308(a) to empower EPA to impose only “requirements relating to the Administrator’s duties” under the Act. *NRDC v. EPA*, 822 F.2d 104, 119 (D.C. Cir. 1987).

Region 9, however, has not indicated that the Habitat Monitoring Provisions help implement any of the Act’s substantive provisions. The Region’s conclusory assertion that these monitoring requirements may “provide data for ... , as necessary, future permit conditions,” Ex. 6, Final Fact Sheet, identifies no statutory requirement or objective that they achieve. *See In re Dominion Energy Brayton Point, L.L.C.*, 12 E.A.D. 490, 494 (EAB 2006) (remanding NPDES permit for failure to provide more than conclusory reasons for the basis of imposing permit condition). Similarly, the Board cannot credit the Region’s vague claim that the Habitat Monitoring Provisions “ensures that the discharge is in compliance with applicable standards [and] designated uses,” Ex. 7, Response to Comments at 5, because monitoring does nothing to ensure receiving waters meet their applicable water quality standards. *Cf. Ash Grove*, 7 E.A.D. at 417(rejecting and remanding as illogical EPA’s claim that “monitoring either limits the quantity of mercury and thallium emitted from the facility or mitigates the effects of emissions”). Instead, EPA must achieve this purpose by imposing “limitations” that restrict a permittee’s operations or discharge quality. *See* 33 U.S.C. § 1311(b)(1)(C); *City & Cnty. of San Francisco v. EPA*, 604 U.S. 334, 355 (2025).

B. Region 9 cannot rely on its authority to require monitoring to ensure compliance with other provisions of the Act.

Region 9 also committed clear error to the extent it may have relied on Section 402(a)(2) to authorize the Habitat Monitoring Provisions. This provision allows EPA to collect information and require monitoring, among other actions, “to assure compliance with the requirements of paragraph (1).” 33 U.S.C. § 1342(a)(2). That paragraph specifies that those “requirements” are those imposed under “under sections 1311, 1312, 1316, 1317, 1318, and 1343.” *Id.* § 1342(a)(1).

The Habitat Monitoring Provisions’ requirements to collect habitat data, however, have no apparent relationship with the first four of these sections, all of which authorize the imposition of effluent limitations or treatment standards.¹² Region 9 also cannot claim that they assure compliance with Section 1318 for the reasons discussed above in Section II.A.

Finally, the record would not allow Region 9 to show that the Habitat Monitoring Provisions assure compliance with the requirements of 33 U.S.C. § 1343, which requires certain NPDES permits to meet EPA’s Ocean Discharge Criteria. The agency’s determination that the Terminal’s discharge meets the criteria made no reference to the Habitat Monitoring Provisions. *See* Ex. 6, Final Fact Sheet at 9-10. EPA instead based its Ocean Discharge Criteria determination solely on its assessment that “[t]his discharge is designed to be in compliance with *CNMI Water Quality Standards*.” *Id.* at 10.

III. The Habitat Monitoring Provisions impermissibly require Mobil to conduct monitoring that is unrepresentative of its discharge.

EPA committed clear error by requiring Mobil to conduct monitoring that will not specifically characterize the impact of the Terminal’s minimal discharges on benthic habitat. As Mobil explained in its comments and EPA acknowledged, the Terminal is a tiny portion of the effluent discharged from the Shared Outfall. Ex. 3, May 8, 2025 Comments at 3-4; Ex. 7, Response to Comments at 5. Mobil’s comments also identified how vessels and related operations daily contribute pollutants to Tanapag Harbor. Ex. 3, May 8, 2025 Comments at 3-4. Thus, the Habitat Monitoring Provisions’ requirement to gather information about benthic habitat within a fifty-foot radius of the Shared Outfall will capture water quality conditions that

¹² *See* 33 U.S.C. § 1311 (prohibiting unpermitted discharges and establishing effluent limitations); *id.* § 1312 (authority for water quality-related effluent limitations); *id.* § 1316 (authorizing standards of performance for pollutant discharges); *id.* § 1317 (establishing effluent standards for toxic pollutants and pretreatment standards).

primarily reflect the contributions of sources other than the Terminal. *See* Ex. 5, Final Permit at Part II.E.

Requiring Mobil to collect data that reflects water quality generally—rather than the impact of its discharge specifically—violates EPA’s regulations. The agency’s rules require monitoring in NPDES permits to “yield data which are representative of the monitored activity.” 40 C.F.R. § 122.48(b). The agency’s regulations, moreover, define “activity” to refer specifically to an “NPDES ‘point source.’” *Id.* § 122.2. Region 9 shirked its duty to ensure its monitoring requirements capture the specific habitat impacts resulting from the Terminal’s discharge by requiring Mobil to monitor conditions that reflect the contributions of a variety of sources.

IV. The record contradicts Region 9’s *post hoc* rationale for the Habitat Monitoring Provisions.

Region 9 responded to Mobil’s comments identifying the Draft Fact Sheet’s failure to explain the Habitat Monitoring Provisions by scrambling to identify a rationale. EPA first posited in a July 2025 meeting with Mobil that a final critical habitat rule and two proposed critical habitat rules issued by NMFS under the Endangered Species Act justified the monitoring requirements. *See* Ex. 4, July 30, 2025 Comments at 1. EPA then retracted this explanation in response to Mobil’s supplemental comments. *See* Ex. 7, Response to Comments at 6, 8. Region 9 pivoted to a new set of reasons in the Final Fact Sheet and response to comments, claiming that its Magnuson-Stevens Act consultation with NMFS “identified a need for habitat monitoring” that was “due to insufficient baseline data” for Tanapag Harbor. Ex. 6, Final Fact Sheet at 3, 25. The Region also asserted for the first time that the Habitat Monitoring Provisions would promote the CWA’s objectives, ensure compliance with water quality standards, and potentially provide a basis for unspecified future permit conditions. *See id.* at 25; Ex. 7, Response to Comments at 5.

This shifting story does not reflect EPA's exercise of considered judgment and warrant the Board's review. EPA's assertion that data gaps identified during consultation were the impetus for the Habitat Monitoring Provisions strains both credulity and the record.

Additionally, Region 9's Clean Water Act justifications rest on threadbare assertions rather than reasoned explanations. Under these circumstances, EPA committed clear error and the Board should intervene. *See In re Chukchansi Gold Resort & Casino Waste Water Treatment Plant*, 14 E.A.D. 260, 261 (EAB 2009) (remanding NPDES permit where EPA's explanations for monitoring conditions were "inconsistent and substantively lacking"); *In re Austin Powder Co.*, 6 E.A.D. 713, 719-20 (EAB 1997) (remanding a permit where the permitting authority gave differing explanations for its determination).

A. The record undermines Region's 9 assertion that data gaps identified during consultation are the reason EPA imposed the Habitat Monitoring Provision.

The timeline and other aspects of the record subvert Region 9's claim that the Habitat Monitoring Provisions are the "result" of the agency's consultation with NMFS under the Magnuson-Stevens Act identifying "insufficient baseline data." Ex. 6, Final Fact Sheet at 3, 25. EPA's assertion that consultation with NMFS "identified a need for habitat monitoring" cannot be reconciled with the fact EPA only initiated the consultation process on the same day it issued the draft permit. *See id.* at 34, 36. EPA thus drafted the original Habitat Monitoring Provisions *before consultation even started*, making it impossible for this process or any data gaps it may have identified to be the impetus for these monitoring requirements.

EPA's assertion that the Habitat Monitoring provisions address data gaps identified in consultation also conflicts with Region 9's conclusion that the Terminal's discharge satisfies the Ocean Discharge Criteria. Region 9 justifies the Habitat Monitoring Provisions as necessary to remedy gaps in the agency's understanding of "baseline conditions" in the vicinity of the Shared

Outfall and “[t]he potential adverse effects” caused by “discharged pollutants.” *Id.* at 25; *id.* at 33-34 (citing potential “adverse effects to ... habitat within the immediate vicinity of the [Shared Outfall]”); *see also* Ex. 7, Response to Comments at 5 (“There is minimal site-specific information regarding the benthic habitat characteristics in the vicinity of the Permittee’s outfalls.”). Among other things, Region 9 believes that benthic habitat could be adversely affected because “pollutant levels may exceed applicable water quality criteria” in the Terminal’s authorized zone of mixing. Ex. 6, Final Fact Sheet at 33.

EPA’s determination that the Terminal’s discharge meets the Ocean Discharge Criteria cannot be reconciled with this explanation. These criteria require EPA to consider, among other factors, “the composition and vulnerability of biological communities which may be exposed to discharged pollutants,” 40 C.F.R. § 125.122(a)(3), but EPA made an unqualified finding that Terminal’s discharge will not cause unreasonable degradation of the marine environment. *See* Ex. 6, Final Fact Sheet at 10. EPA’s justification for the Habitat Monitoring Provisions, however, indicates that Region 9 believes it lacks sufficient information to reach that determination.¹³ Moreover, the Region based this conclusion on a finding that the Terminal’s discharge complies with the Commonwealth’s water quality standards, Ex. 6, Final Fact Sheet at 10, while simultaneously requiring Mobil to conduct habitat monitoring based on concerns that these standards may be violated. *See id.* at 33 (“pollutant levels may exceed applicable water quality criteria” in the Terminal’s zone of mixing).

¹³ Where the agency lacks information sufficient to determine whether a discharge meets the Ocean Discharge Criteria, EPA’s regulations do not allow the Region, as it did here, simply to make a finding that the criteria will be met. Instead, the Region should have assessed, among other things, the risk of irreparable harm to the marine environment. *See* 40 C.F.R. § 125.123(c). The Region’s failure to comply with this requirement is itself clear error that warrants review.

B. Region 9's Clean Water Act justifications are conclusory and illogical.

EPA's attempts to suggest the Habitat Monitoring Provisions are consistent with the CWA rely on conclusory justifications that the Board should not credit. *First*, EPA asserts that the Habitat Monitoring Provisions "ensure[] that this discharge is in compliance with applicable standards, designated uses, and protection of essential fish habitat," without explaining how they accomplish this objective. Ex. 7, Response to Comments at 5. Monitoring unaccompanied by substantive requirements for controlling a permittee's discharge does nothing to *ensure* a permittee's discharge is consistent with water quality standards. *Cf. NRDC v. EPA*, 808 F.2d 556, 578 (2d Cir. 2015) (imposing permit requirements "without giving specific guidance on the discharge limits" a permittee must meet fails to "ensure compliance" with water quality standards). In the absence of a cogent explanation or logical connection between Region 9's rationale and the permit term it imposed, the Board should grant review. *See Ash Grove*, 7 E.A.D. at 417 (rejecting and remanding as illogical and inadequate EPA's claim that "monitoring either limits the quantity of mercury and thallium emitted from the facility or mitigates the effects of emissions").

Second, EPA's other justification rests on bald conclusions rather than reasoned analysis. The first states simply that the Habitat Monitoring Provisions "will gather information to maintain the biological integrity of the receiving water." Ex. 6, Final Fact Sheet at 25. This statement merely parrots the CWA's objective to "restore and maintain the . . . biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). EPA's attempt to provide support for this assertion consists only of a long quotation from the *Permit Writer's Manual* and a generic statement that the data could play some unspecified role in setting "future permit conditions." Ex. 6, Final Fact Sheet at 25. One cannot discern from these conclusory statements how EPA expects the Habitat Monitoring Provisions to achieve these purposes, such that they "do not

appear to reflect considered judgment.” *Ash Grove*, 7 E.A.D. at 417 (remanding because EPA failed to provide explanations supporting its assertion that monitoring would protect human health and the environment).

V. The Board should direct EPA to clarify the Agency’s approach to monitoring and NMFS consultation.

Finally, Mobil asks the Board to grant review to require EPA to articulate a clear framework for using NPDES permit monitoring to address issues raised during consultations with federal resource agencies. In addition to correcting clearly erroneous conclusions, the Board may grant review to address “important policy consideration[s].” 40 C.F.R. § 124.19(a)(4)(i)(B). As described above, EPA’s decision to impose permit requirements like the Habitat Monitoring Provisions implicates critical questions regarding the role of NPDES permit requirements in effectuating the goals of statutes intended to protect endangered and other species. These issues raise important questions of policy and statutory interpretation, but EPA’s threadbare justifications for the Habitat Monitoring Provisions suggest EPA has developed no coherent approach to this issue. The Final Permit presents a vehicle for EPA to develop one, and Mobil asks the Board to vacate the Habitat Monitoring Provisions and remand to the agency to clarify this important area of law.

CONCLUSION

Without the Board’s intervention, Mobil will be forced to implement monitoring requirements that were the product of a decision-making process lacking in transparency and reason. EPA provided Mobil no meaningful chance to comment on EPA’s reasons for requiring habitat monitoring, and the rationale EPA developed after the comment period rests on conclusory assertions that clash with the record. Mobil asks the Board to remedy these clear errors by vacating Part II.E and Attachment F, and remanding to Region 9.

October 30, 2025

Respectfully submitted,

/s/ Erika H. Spanton

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REQUEST FOR ORAL ARGUMENT

Petitioner, Mobil Oil Mariana Islands, Inc., respectfully requests oral argument before the Environmental Appeals Board on its petition for review of NPDES Permit No. MP0020397 because it believes oral argument will be of assistance to the Board.

STATEMENT OF COMPLIANCE WITH THE WORD/PAGE LIMITATION

In accordance with 40 C.F.R. § 124.19(d)(1)(iv) & (d)(3), I certify that this Petition does not exceed 14,000 words. Including headings, footnotes, and quotations but excluding the table of contents, table of authorities, table of attachments, statement requesting oral argument, and this statement of compliance, this Petition contains 8,883 words.

/s/ Erika H. Spanton

Erika H. Spanton

TABLE OF EXHIBITS

Exhibit No.	Name of Document
1	Draft NPDES Permit No. MP0020397 (Draft Permit)
2	Draft Permit Fact Sheet (Draft Fact Sheet)
3	May 8, 2025 Comments
4	July 30, 2025 Comments
5	Final NPDES Permit No. MP0020397 (Final Permit)
6	Final Permit Fact Sheet (Final Fact Sheet)
7	Response to Comments
8	2024 Permittee Review Draft Permit
9	2024 Permittee Review Draft Fact Sheet

CERTIFICATE OF SERVICE

I certify that on this 30th day of October, 2025, I caused to be served the foregoing Petition for Review in the matter of Mobil Oil Mariana Islands, Inc., NPDES Permit No. MP0020397 on the following persons, in the manner specified below.

By electronic filing to:

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, N.W.
WJC East Building, Room 3332
Washington, D.C. 20004

By e-mail:

Mike Martucci
Regional Administrator
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/s/ Erika H. Spanton
Erika H. Spanton