

**A CITIZEN PETITION SUBMITTED TO THE COMMISSION FOR
ENVIRONMENTAL COOPERATION PURSUANT TO ARTICLE 14 OF THE NORTH
AMERICAN AGREEMENT ON ENVIRONMENTAL COOPERATION**

Submitted by:

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INTRODUCTION

Pursuant to Article 14 of the North American Agreement on Environmental Cooperation (NAAEC), the Center for Biological Diversity, Greenpeace Mexico, Mr. Alfonso Aguirre, Ms. Shaye Wolf, American Bird Conservancy, Los Angeles Audubon Society, Pacific Environment and Resources Center, and Wildcoast, (the “Petitioners”) hereby submit the following Petition to the Secretariat of the Commission for Environmental Cooperation (CEC).

The Petitioners seek a finding that Mexico is failing to effectively enforce its General Law of Ecological Balance and Environmental Protection, the General Wildlife Law of Mexico and other environmental laws of Mexico within the meaning of NAAEC, Article 45(2) by permitting the construction of a Liquefied Natural Gas Re-gasification Terminal (the “Terminal”) immediately adjacent to the environmentally sensitive Coronado Islands and world’s largest-known breeding colony of the seabird Xantus’s Murrelet, *Synthliboramphus hypoleucus*. The Xantus’s Murrelet is listed as an endangered species under Mexican Law, NOM-059-ECOL-2001. It is also an official candidate species for listing under the United States Endangered Species Act, and is currently listed as a threatened species under the California Endangered Species Act. Mexico has decided to allow the construction of the Terminal despite its likely devastating impact on the principle breeding grounds of the imperiled Murrelet. From the Petitioners’ perspective, as a group of non-governmental organizations and individuals committed to studying the Xantus’s Murrelet and saving it from extinction, this Terminal could hardly be placed in a more damaging location. Accordingly, this Petition focuses on the harm to the Xantus’s Murrelet. However, the Terminal will also harm nine other breeding seabird species of the Coronado Islands including one which is listed as endangered under the U.S. Endangered Species Act and four which are listed as threatened or endangered under Mexican law, as well as other wildlife.

STATEMENT OF FACTS

I. The Xantus’s Murrelet and Other Wildlife of the Coronado Islands

The Coronado Islands support the largest known breeding colony of the endangered Xantus’s Murrelet. The Xantus’s Murrelet is a transborder species that breeds on a small number of islands in southern California and northern Baja California, and forages in the waters of Mexico, the United States and Canada. Xantus’s Murrelets are penguin-like black and white birds that use their wings to “fly” underwater where they forage for food.



Las Islas de los Santos Coronados, more commonly known simply as the Coronado Islands, are an archipelago of four small islands located about eight miles off the coast of Tijuana, Baja, California, Mexico, and only eleven miles southwest of the US-Mexico border at San Diego, California. These islands are extremely rich in biodiversity. They support ten endemic terrestrial species and subspecies of animals and plants found nowhere else in the world, several of which are protected by the federal NOM-059-ECOL-2001. In addition, they host one of the most diverse seabird colonies off the Baja California and California coast that includes ten species of breeding seabirds, six of which are listed as threatened or endangered in Mexico and/or the United States: the Ashy Storm-Petrel, Black Storm-Petrel, Brandt's Cormorant, California Brown Pelican, Cassin's Auklet, Double-crested Cormorant, Leach's Storm-Petrel, Pelagic Cormorant, Western Gull, and Xantus's Murrelet.¹

The Coronado Islands were determined to be an "Important Area for the Conservation of Birds" and a "Priority Maritime Region" by the Mexican Federal Commission of Biodiversity (CONABIO).² On July 3, 2003, the Mexican Federal Congress of the Union mandated that the relevant Federal agencies promote a decree to create a natural protected area for the Baja California Pacific islands, including the Coronado Islands.³ Despite its status as a planned Natural Protected Area, the SEMARNAT (Mexican Secretary of Environment and Natural Resources) incongruously approved the Coronado Islands as the location of the new Chevron-Texaco LNG Terminal. SEMARNAT approved the EIA for the Terminal on September 15, 2004.⁴

II. The Chevron-Texaco LNG Terminal Project

The proposed LNG Terminal would consist of a platform approximately 300 meters long that would serve as a receiving dock for the supply ships as well as house the LNG storage tanks and a re-gasification facility that would send natural gas via underwater pipeline to the mainland. From there the gas would go to the United States market, and eventually to the regional Mexican market. The Terminal would have the capacity to receive up to four large takers (80,000-160,000 cubic meter capacity each) per week and would be serviced by up to 115 permanent employees living on the platform. A main justification provided for building the platform in proximity to the Coronado Islands is the breakwater effect of Coronado Sur Island.⁵

¹ Exhibit A, p. 1 (*Potential Effects of a Liquefied Natural Gas Offshore Terminal on Seabirds at Coronado Islands, Baja California, Mexico*, Bradford Keitt, Island Conservation, COH Long Marine Lab, University of California, Santa Cruz, Ca, & Alfonso Aguirre, Grupo de Ecología y Conservación de Islas)

² Exhibit B, p. 2, ¶ 7 (Declaration of Mr. Alfonso Aguirre)

³ Congreso de la Unión. 2003. Punto de acuerdo para que se establezca el área atural protegida de las islas del pacífico de Baja California. LVIII Legislatura. Dirección General Adjunta de Proceso Legislativo. 23 de julio de 2003. México, D.F. 4 pp.

⁴ Exhibit B, p. 2, ¶ 9 (Declaration of Mr. Alfonso Aguirre)

⁵ Exhibit A, p. 1.

III. The Harm to the Xantus's Murrelet and Other Wildlife

The LNG Terminal will impact the Island's species on several levels: light pollution from the terminal and supertankers will have a particularly harmful effect; the potential for a catastrophic explosion is a grave risk; the direct disturbance through construction and general operation of the terminal and the supertankers supplying the terminal is a certain harm; the increased opportunity for spills and discharge of petroleum products also threatens the Island's species; as does the increased potential for rat introduction to the islands (rats can easily swim the 600 meters from the Terminal to the Island); and finally the intake, disinfection, and discharge of 188,000,000 gallons of chlorinated seawater per day threatens to disrupt the entire Island ecosystem.⁶

A. The Effects of the Dramatic Increase in Artificial Light

Of particular concern to the Murrelet and the four other threatened and endangered nocturnal seabird species of the Coronado Islands are the effects of light pollution inherent in the Terminal Project. Substantial lighting will be needed on and around the Terminal and LNG tankers for safety purposes during Terminal operation and construction. Sufficient lighting is necessary to insure that the Terminal is readily identifiable in the dark and that tankers can be offloaded in a safe and expeditious manner. Specifically, Chapter 6 of the EIA prepared for the Terminal Project⁷ entitled "Analysis and Evaluation of Risk" discusses the need for sufficient illumination of the Terminal and its tankers for safety purposes. To avoid tanker collision with the Terminal, the EIA states:

The tankers and Installation will be illuminated to conform to the existing Mexican and International regulations and will have sufficient illumination in all spaces and work areas associated with the transfer operations and mooring. These will include all the stairways and passageways between the principal operative stations, the diverse areas of the tankers and Installation, the mooring stations, etc. The "Expert in Docking" will determine if the illumination of the tanker is adequate. Furthermore, the tankers transferring the cargo at night will illuminate the area of the ocean around the ship to the satisfaction of the "Expert in Docking." The tankers also will have the anchor lights for a ship of its type while it waits anchored before docking at the Terminal.

EIA p. 6-25. The EIA also specifies that a "Security Zone" of 500 meter radius around the Terminal should be illuminated for safety purposes. EIA p. 6-35. Finally, to prevent airplane collision with the Terminal, the EIA states that all "elevated structures [of the Terminal] and LNG tankers" will be illuminated. EIA p. 6-26.

⁶ See Exhibit A, p. 1.

⁷ Petitioners do not have a copy of this EIA in English. It is a very large document over 600 pages in length. Petitioners have not provided a copy with this submission to avoiding a voluminous filing. However, Petitioners do have a copy as a pdf file in Spanish. The Petitioners would be happy to provide this document to the CEC upon request either as a pdf file or in hard copy. Petitioners believe their citations and translations of the EIA included in this submission are accurate.

Accordingly, the Terminal will introduce a huge amount of artificial light to the area. Indeed, the 500 meter “Security Zone” lighting will reach nearly to the shore of the South Coronado Island, a mere 600 meters away. The Terminal will run 24 hours per day, 7 days per week. Undoubtedly, the Terminal will illuminate the Island breeding sites of the Murrelet and four other nocturnal seabirds as well as the waters right where the Murrelets pair for breeding and socializing and depart the Island with their tiny chicks. Among all of the potential dangers of the construction and operation of the Terminal, the most significant source of harm to the Murrelet population will likely be the effects of light pollution.

While this Petition focuses on the Murrelet, light harms other nocturnal seabird species in similar ways. Nocturnal seabirds are active at their breeding colonies only at night, mainly as an adaptation to avoid predators during the day. Light affects nocturnal seabirds in two main ways: (1) light attracts nocturnal seabirds thereby disrupting their normal activities and causing mortality as birds fly into lights or structures around the lights; and (2) light can increase susceptibility to predation both by illuminating areas at sea and on the colony.

1. The Direct Impacts of Attraction to Artificial Light

Populations of the Xantus’s Murrelet are at great risk from the lights associated with the proposed LNG Terminal. It is well-documented that even low levels of light at night from lighted structures and vessels attract and disorient Xantus’s Murrelet chicks and adults, causing parent-chick separation and injury of adults.⁸ Parent-chick separation can lead to chick mortality because chicks are highly dependent on their parents after leaving the nest. Xantus’s Murrelet chicks leave the nest at two-days old to follow their parents to sea where they are fed until mature. On 3 separate occasions, a scientific researcher witnessed situations where a Murrelet chick on land had been disoriented by a single light bulb on a building and abandoned by its parents at the San Benito Islands, Baja California.⁹

At sea, small amounts of vessel lighting have been documented to cause parent-chick separation, where chicks swim away from their parents and continually circle the light source, at the Coronado Islands and at the Channel Islands.¹⁰ Researchers at the San Benito Islands have repeatedly seen adult Murrelets suffer injury at light sources due to exhaustion from continual attraction and fluttering near lights or collision with lighted structures.¹¹

⁸ Burkett, E.E., N.A. Rojek, A.E. Henry, M.J. Fluharty, L. Comrack, P.R. Kelly, A.C. Mahaney, and K.M. Fien. 2003. Report to the California Fish and Game Commission: Status Review of Xantus’s Murrelet (*Synthliboramphus hypoleucus*) in California. Calif. Dept. of Fish and Game Habitat Conservation Planning Branch Status Report 2003-01. A copy of this report is available on the Internet as a pdf file on the California Department of Fish and Game homepage at http://www.dfg.ca.gov/hcpb/species/t_e_spp/tebird/xantus/xamu_stat_revu.shtml . If the CEC has any difficulty locating this report the Petitioners would be happy to provide a copy.

⁹ Exhibit C, ¶ 5 (Declaration of Ms. Shaye Wolf)

¹⁰ Brad Keitt (Xantus’s Murrelet researcher, see Exhibit A), personal communication

¹¹ Exhibit C, ¶ 5 (Declaration of Ms. Shaye Wolf)

The Xantus's Murrelet will be especially susceptible to the nearshore Terminal lighting because they pair-bond and socialize in the nearshore waters of Coronado Islands while attending colonies from January to July.¹² Survey data indicate that the highest densities of Murrelets congregate on the east side of South Coronado Island where LNG platform construction is planned.¹³ Adding to the concern, scientific studies of nocturnal seabirds in Hawaii and Canada indicate that for rare or declining seabirds, such as the Xantus's Murrelet, artificial night-lighting close to breeding sites can significantly contribute to further decline.¹⁴

2. The Increased Susceptibility to Predation Caused by Light

Nocturnal seabird species are active at their breeding colonies only at night, mainly as an adaptation to avoid avian predators during the day. Studies indicate that lighting at night increases the susceptibility of nocturnal seabirds to predation by making birds more visible to predators and by increasing predator activity.¹⁵ At Santa Barbara Island in 1999, abnormally heavy light pollution from squid fishery vessels during the Xantus's Murrelet nesting season was correlated with significant increase in Murrelet predation by avian predators compared to previous years when the vessels weren't present or were present in very low numbers, 165 predated Murrelets in 1999 versus an average of 20 predated Murrelets in prior years.¹⁶ Accordingly, the increased night-lighting from the Terminal will likely cause similar increased predation of Murrelets on the Coronado colony by native avian predators.

In sum, the huge amount of artificial light associated with the Terminal Project will completely alter the environment around the Xantus's Murrelet's principal breeding colony on South Coronado Island. This light pollution will likely dramatically reduce Murrelet breeding success and likely dramatically increase Murrelet predation. As stated at the outset of this Petition, the Terminal could hardly be planned for a more destructive location from the perspective of the Murrelet and its defenders.

B. The Risk of a Catastrophic Explosion

The potential for an explosion of natural gas and resultant fire cloud at the Terminal pose an extreme burn hazard, especially for South Coronado Island only 600 meters from the platform. Release of natural gas from the Terminal or a tanker can produce a flammable vapor cloud more than three miles from the point of release, and thus could burn all four Coronado

¹² Exhibit A, p. 2.

¹³ Exhibit C, ¶ 6 (Declaration of Ms. Shaye Wolf)

¹⁴ Burkett, et al. 2003, see note 8, supra (studies cited)

¹⁵ Burkett, et al. 2003, see note 8, supra (studies cited)

¹⁶ Exhibit C, ¶ 3 (Declaration of Ms. Shaye Wolf)

Islands which fall within that radius, resulting in extensive mortality to nesting seabirds and other native wildlife.

C. The Disturbance from Terminal and Tanker Activity

Disturbances likely to be encountered during the construction of the Terminal include the noise and water turbidity associated with construction equipment and Terminal installation. During Terminal operation, noise is to be expected from the tankers themselves and the process of docking and offloading. The EIA states that the high level of ship traffic at the Terminal will create turbidity and that the ship traffic will scare foraging birds away from the Terminal area: “The water quality in the ocean could be affected temporarily owing to the transit of ships during the construction and operation of the Project; nevertheless, the birds that forage there will avoid the area owing to the level of ship traffic.” EIA p. 5-63.¹⁷

This sanguine assurance completely misses the point. South Coronado Island and its adjacent waters are the most significant breeding location and associated foraging area for the Xantus’s Murrelet. This species can not avoid this area – unless it is to abandon its most significant breeding location. Moreover, four surface-nesting seabird species on the Coronado Islands, including the endangered Brown Pelican, Double-crested Cormorant, Brandt’s Cormorant, and Pelagic Cormorant, are extremely susceptible to disturbance from human activity and noise. Studies have shown that even one event that flushes adult pelicans off their nests can lead to a loss of 80% or more of eggs to predation by other species.¹⁸

D. The Potential for Petroleum Spillage from Tankers

The increased potential for spills or leakage of petroleum products into the water and environment are inherent in any undertaking of this magnitude. The seabirds in the area will be at increased risk of petroleum spills or leakage of fuel or cargo from the many tankers and other vessels associated with this Terminal. Diving seabirds such as the Xantus’s Murrelets are at a particularly increased risk from oil spills.

E. The Risk of Rat Introduction to the Islands

Rat introduction to the Coronado Islands is another cause of great concern for the Xantus’s Murrelet and other wildlife. Rats are well-documented to cause declines in seabird populations by eating eggs, chicks, and even adults.¹⁹ Introduced rats (recently eradicated) on Anacapa Island, California, were shown to depredate Xantus’s Murrelet eggs and to have depleted the breeding population.²⁰ Rats can be transported via tanker to the Terminal from

¹⁷ See note 7, *supra*

¹⁸ Exhibit A, p.2

¹⁹ Burkett, *et al.* 2003, *see* note 8, *supra*

²⁰ Burkett, *et al.* 2003, *see* note 8, *supra*

which they can easily swim the 600 meters to the island and potentially establish a feral population. Such a feral population of rats would likely prey on the Xantus's Murrelet and other nesting birds and reduce their populations dramatically.

F. The Release of Chlorinated Water into the Sea

The Terminal will intake, disinfect, and discharge 188 million gallons of chlorinated seawater per day.²¹ This process will kill all (100% mortality) larval fish and larval invertebrates (i.e. crabs, lobsters, abalone) carried along in all 188 million gallons of this discharged water each day. See EIA p. 5-55.²² This large amount of larval mortality may alter the oceanic faunal community and food web around the Coronado Islands.

If the Terminal were to be built just across the border in U.S. waters, both U.S. Federal law and California State regulations under EPA 316(b) and the California Environmental Quality Act would require a rigorous scientific assessment of the impacts of huge amount of larval mortality caused by the Terminal. By placing the Terminal in Mexico, Chevron-Texaco is avoiding these laws. In this respect, and in many others, the Terminal is an energy maquiladora project reminiscent of the pre-NAFTA flight of environmentally destructive projects across boarders to avoid environmental safeguards. Fortunately, as discuss below, the Terminal also violates Mexican environmental law.

ARGUMENT

Article 5(1) of the NAAEC provides that “each Party shall effectively enforce its environmental laws and regulations through appropriate governmental action....” The applicable definition of an “environmental law” specifically includes “any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, ... through... the protection of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas.” NAAEC, Article 45(2). The statutes and regulations of Mexico discussed below meet this definition of environmental law.²³

²¹ Exhibit A, p. 1.

²² See note 7, supra

²³ The NAAEC provides an exception to the general duty to effectively enforce environmental law in Article 5(1) stating that:

A Party has not failed to “effectively enforce its environmental law” or comply with Article 5(1) in a particular case where the action or inaction in question by agencies or officials of the Party:

- (a) reflects a reasonable exercise of their discretion in respect of investigatory, prosecutorial, regulatory or compliance matters; or
- (b) results from *bona fide* decisions to allocate resources to enforcement in respect of other environmental matters determined to have higher priorities.

NAAEC Art. 45(1). This exception does not apply in the present case.

In approving the Terminal Project Mexico has failed to enforce its Ecology Law and its General Wildlife Law. Mexico has also approved the Terminal based on an insufficient EIA and in contravention of a natural protected area.

I. Mexico has Failed to Effectively Enforce its Ecology Law

Articles 79 to 83 of the Ecology Law (Ley de Ecología) regulate in general terms wild flora and fauna. Wild fauna is defined as all terrestrial animal species subject to natural selection processes that inhabit either temporarily or permanently on national territories, including once domesticated animals that have been abandoned or returned to their natural habitat. Any development of flora and fauna natural resources, areas or habitats, especially when endangered species are involved, must occur in a manner that does not alter the necessary conditions for the subsistence, development and evolution of such species. Pursuant to the Ecology Law, the following general criteria and measures are to be followed in managing wild flora and fauna.

1. Preservation of biodiversity and natural species habitat;
2. Continuation of the evolutionary processes of species and their genetic resources, including areas designated as representative for ecological systems for protection and research;
3. Preservation and development of endemic, threatened, endangered or specially protected species;
4. Combating the illegal trafficking of protected species;
5. Strengthening biological reproductive seasons and repopulating wildlife species;
6. Promoting the awareness and participation of public organizations and nongovernmental groups in activities related to the conservation of biodiversity;
7. Promoting wildlife research to discover its genetic, scientific and economic potential;
8. Preventing cruelty to animals;
9. Implementing alternative production activities in rural communities, to protect biodiversity; and
10. Using the traditional knowledge of indigenous peoples and communities, for the development of biodiversity protection policies.²⁴

Mexico has failed to adhere to standard number one in granting permits for the Terminal. By approving the Terminal Mexico will undermine the preservation of biodiversity and natural species habitat as discussed in the Statement of Facts, above. The Terminal poses substantial threats to the ten breeding seabird species of the Coronado Islands and to the ten additional terrestrial endemic species of plants and animals on the Coronado Islands, as well as other wildlife. The endangered Xantus's Murrelet's main breeding colony will be largely destroyed by light pollution from the Terminal project.

²⁴ North American Commission for Environmental Cooperation, Summary of Environmental Law in Mexico available on the CEC Internet site http://www.cec.org/pubs_info_resources/law_treat_agree/summary_enviro_law/publication/mxdoc.cfm?varlan=english&topic=17

Mexico has also failed to adhere to standard number two in granting permits for the Terminal. As explained in the Statement of Facts, above, the Coronado Islands were determined to be an “Important Area for the Conservation of Birds” and a “Priority Maritime Region” by the Mexican Federal Commission of Biodiversity (CONABIO). On July 3, 2003, the Mexican Federal Congress of the Union mandated that the relevant Federal agencies promote a decree to create a natural protected area for the Baja California Pacific islands, including the Coronado Islands.²⁵ Accordingly, the Coronado Islands are specifically the sort of area that should be designated as representative of ecological systems for protection and research. By approving the Terminal, Mexico threatens to halt the continuation of evolutionary processes and the preservation of genetic resources by destroying a vital seabird breeding area, most particularly the world’s largest breeding colony of the endangered Xantus’s Murrelet.

Similarly, Mexico has failed to adhere to standard number three in granting permits for the Terminal. By allowing the construction of the Terminal which threatens to destroy a vital Xantus’s Murrelet breeding area, Mexico is obviously failing to preserve an endangered species. In addition to the Xantus’s Murrelet, which is listed as endangered under Mexican law, four other seabirds which are listed as threatened or endangered under Mexican law will be harmed by the Project. Furthermore, as outlined in the declaration of Mr. Alfonso Aguirre, Exhibit B, the Mexican National Congress mandated that the Coronado Islands should be made a natural protected area. This mandate existed when the Mexican Government accepted the EIA for the Terminal. By permitting the Terminal in the middle of a planned natural protected area designed to benefit threatened and endangered species, Mexico is failing to protect such species in violation of standard number three.

Likewise, Mexico has failed to adhere to standard number five in granting permits for the Terminal. Standard number five requires Mexico to strengthen biological reproduction and repopulate wildlife species. Approving the Terminal Project that will destroy a vital breeding colony for an endangered species certainly fails to past muster under this requirement.

Finally, Mexico has failed to adhere to standard number seven in approving the Terminal. As recognized in the Mexican National Congress’ proposal to create a natural protected area the Coronado Islands are an important wildlife research area. See Exhibits B & C (Declarations of Alfonso Aguirre and Shaye Wolf). The creation of a natural protected area facilitates wildlife research. The location of the Terminal in the same area threatens to harm wildlife research by harming, or indeed eliminating, the objects of study, in particular the Xantus’s Murrelet.

II. Mexico has Failed to Effectively Enforce its General Wildlife Law

The General Wildlife Law (*Ley General de Vida Silvestre*), in conjunction with the Ecology Law, governs the conservation and sustainable use of wildlife and its habitat and is intended to harmonize the federal, state and municipal approaches within their respective jurisdictions, with regard to such matters in Mexican territory and in zones under Mexican

²⁵ Congreso de la Unión. 2003. Punto de acuerdo para que se establezca el área atural protegida de las islas del pacífico de Baja California. LVIII Legislatura. Dirección General Adjunta de Proceso Legislativo. 23 de julio de 2003. México, D.F. 4 pp.

jurisdiction. The law classified wild fauna and flora as exotic specimens or populations, feral species, harmful species, priority conservation species, at-risk species and migratory species. The aim of the national wildlife species and habitat policy is conservation through their protection and the optimum level of sustainable use. To achieve these goals, the law establishes the following principles to be fulfilled by the authorities:

1. Conservation of genetic diversity, as well as the protection, restoration and comprehensive management of natural habitats.
2. Preventive measures for maintaining the appropriate conditions for the evolution, viability and continuity of ecosystems, habitats and populations in their natural surroundings.
3. The application of available scientific, technical and traditional knowledge.
4. Public awareness of information on the importance of wildlife species and habitat conservation.
5. Participation of owners and rightful holders in conservation, restoration and the benefits derived from sustainable use.
6. Incentives enabling process orientation in the use of wildlife species and habitats.
7. Processes for assessing available information on species and habitat biology.
8. Improvement of the quality of life of captive wildlife species.
9. Criteria for sanctions that not only penalize but also translate into actions that contribute and stimulate the transition to sustainable development.²⁶

In approving the Terminal, Mexico has failed to adhere to standards number one, two, and three of the General Wildlife Law. As detailed in the Statement of Facts, above, the Terminal will not conserve genetic diversity or natural habitat. More importantly, because the Terminal approval process largely ignored the devastating impact of light pollution on the Xantus's Murrelet and other nocturnal seabirds, Mexico did not apply the best available scientific information, nor take adequate preventive measures to maintain vital breeding habitat. Indeed, the Terminal EIA assumes that the high level of ship traffic at the Terminal will create turbidity and that the ship traffic will scare foraging birds away from the Terminal area.²⁷ This misleading assurance ignores the fact that the Xantus's Murrelets use this very area for breeding and likely can not simply go elsewhere. Similarly, by discounting the effects of the release of 188 million gallons of chlorinated water daily and the corresponding destruction of larval marine life, the EIA again ignored the best scientific information. This omission is particularly troubling because, as discussed above, had the Terminal been sited in U.S. waters the necessary environmental review of the chlorinated water releases would have been much more searching.

²⁶ North American Commission for Environmental Cooperation, Summary of Environmental Law in Mexico available on the CEC Internet site http://www.cec.org/pubs_info_resources/law_treat_agree/summary_enviro_law/publication/mxdoc.cfm?varlan=english&topic=17

²⁷ See EIA p. 5-63 ("The water quality in the ocean could be affected temporarily owing to the transit of ships during the construction and operation of the Project; nevertheless, the birds that forage there will avoid the area owing to the level of ship traffic."). See also note 7, *supra*.

III. The EIA Approved by Mexico is Insufficient

The preparation of an EIA under Mexican law is designed to protect the environment. Accordingly, it is an environmental law within the meaning of NAAEC, Article 45(2). Here Mexico has failed to effectively enforce its environmental law by approving an insufficient EIA for the Terminal on September 15, 2004. See Exhibit B p. 2 ¶ 9 (Aguirre Declaration). The EIA for the Terminal is inadequate because it does not address the impacts of light pollution, catastrophic explosions, or rat introduction on the wildlife of the Coronado Islands. Furthermore, it insufficiently addresses the impacts of disturbance from tanker and Terminal activity, oil spills, and the uptake and discharge of chlorinated water.

The most significant impact of the Terminal on the Xantus's Murrelet and other breeding seabirds species of the Coronado Islands will be from light pollution as discussed above. The EIA does not consider the impact of light on these nocturnal species, particularly the Murrelet.

While the EIA does address the effects of noise and turbidity from the Terminal and tanker activity, oil spills, and the release of chlorinated water, it incorrectly concludes that the effects on seabirds, marine mammals, and marine biota will be “non-significant.” EIA Section 5.4.4. This conclusion does not withstand scrutiny. The EIA directly states that disturbance from ship traffic around the Terminal will cause seabirds to avoid the area. However, the EIA concludes this impact is non-significant. See EIA p. 5-63. This is nonsense. The noise and disturbance from the tankers will cause these species to avoid a significant breeding location. The EIA utterly fails to consider the significance of the predicted avoidance behavior in the context of the breeding colonies. Similarly, the EIA briefly considers the possibility of an oil spill from the Terminal or tankers on “marine biota” in general. EIA p. 5-57. The EIA is again, however, devoid of context and fails to acknowledge that an oil spill at the largest-known breeding colony of the endangered Xantus's Murrelet would likely devastate this population. Finally, concerning the release of chlorinated water, the EIA states that there will be 100% mortality of all fish and invertebrate larvae in the 188 million gallons of seawater used by the Terminal each day. EIA p. 5-55. However, the EIA concludes that the impact on the Coronado Island marine ecosystem will be “non-significant” based on a small sampling effort that does not justify the conclusion. The EIA states: “[s]pecific data from the site obtained in the spring of 2003 suggest that at least during this period, the volumes of plankton were relatively low and that the eggs of fish and larva form a small percentage of the total.” EIA p. 5-55. This assertion is not consistent with a prior paragraph in the EIA that states that “the sea surrounding the Coronado Islands contains a high diversity of fish, invertebrates, and marine mammals” and emphasizes the “well-structured food chain” of commercially and recreationally important fish and invertebrates at the Coronados. EIA p. 4-60. Accordingly, the EIA is internally inconsistent.

Finally, perhaps the most telling evidence that the EIA is inadequate and fails to consider important environmental impacts, is that the entirety of Chapter 2 of the EIA contains verbatim the analysis of a different LNG terminal project in Valladolid, Mexico. The Valladolid project is a land-based terminal and thus this section of the EIA does not address any specific impacts to marine species or island wildlife such as those the Coronado Terminal will produce.

IV. Terminal is to be Located Inside a Natural Protected Area

NAAEC includes within its definition of an “environmental law” regulations applicable to specially protected natural areas. NAAEC, Art. 45(2). The Coronado Islands are a specially protected natural area. By approving the Terminal project inside this protected area, Mexico is failing to effectively enforce its environmental law within the meaning of NAAEC.

The Coronado Islands were determined to be an “Important Area for the Conservation of Birds” and a “Priority Maritime Region” by the Mexican Federal Commission of Biodiversity (CONABIO).²⁸ On July 3, 2003, the Mexican Federal Congress of the Union mandated that the relevant Federal agencies promote a decree to create a natural protected area for the Baja California Pacific islands, including the Coronado Islands.²⁹ Despite this status, SEMARNAT approved the Terminal EIA inside the protected area. The EIA was submitted by Chevron-Texaco in September 2003, after the Congressional action mandating the protected area. However, the EIA states: “no evidence exists that islas Coronado have been declared a natural protected area nor are they in the process of being declared as such.” EIA p. 3-20. This is simply wrong. By approving the EIA in September 2004, while ignoring the Congressional action of July 2003 mandating the creation of the natural protected area, Mexico failed to effectively enforce its environmental law.

PETITIONERS SATISFY THE REQUIREMENTS OF ARTICLE 14

Article 14 of the NAAEC provides that, “the Secretariat may consider a submission from any non-governmental organization or person asserting that a Party is failing to effectively enforce its environmental law...” NAAEC, Art. 14(1). Petitioners file their submission pursuant to this provision.

I. This Petition Satisfies All of the Requirements of Article 14(1) of the NAAEC

Article 14(1)(a) - The Petition is written in an acceptable language (English). See NAAEC Art. 19.

Article 14(1)(b) – The Petitioners are the Center for Biological Diversity, Greenpeace Mexico, Mr. Alfonso Aguirre, Ms. Shaye Wolf, American Bird Conservancy, Los Angeles Audubon Society, Pacific Environment and Resources Center, and Wildcoast. The Petitioners and their interests in this matter are described below.³⁰

²⁸ Exhibit B, p. 2, ¶ 7 (Declaration of Mr. Alfonso Aguirre)

²⁹ Congreso de la Unión. 2003. Punto de acuerdo para que se establezca el área atural protegida de las islas del pacífico de Baja California. LVIII Legislatura. Dirección General Adjunta de Proceso Legislativo. 23 de julio de 2003. México, D.F. 4 pp.

³⁰ The organizational Petitioners qualify as “non-governmental organizations” under NAAEC Article 45(1). The individual Petitioners are persons under NAAEC Article 14(1).

The **Center for Biological Diversity** (“CBD”) is a non-profit corporation with over 12,000 members, dedicated to the preservation, protection, and restoration of biodiversity, native species, ecosystems, and public lands. CBD is actively involved in endangered species protection. CBD’s members and staff have educational, scientific, informational, research, moral, spiritual and recreational interests in the Coronado Islands and the Xantus’s Murrelet. CBD’s members regularly visit the Coronado Islands and plan to do so in the future. CBD members recognize the vital need to preserve the breeding habitat of the Xantus’s Murrelet. See Exhibit D (Declaration of Douglas L. Bevington).

Greenpeace Mexico, part of Greenpeace International, is a non-governmental organization that uses science to expose environmental problems. Among its primary missions are the protection marine biodiversity and the promotion of clean and sustainable energy. Greenpeace Mexico is concerned that Chevron- Texaco’s proposed liquefied natural gas terminal next to the Coronado Islands will have devastating social, economic, and environmental impacts for Mexico. Greenpeace Mexico has been educating the public about the dangers of the LNG Terminal to the Xantus’s Murrelet, an endangered seabird whose largest known nesting area is on the Coronado Islands. The potential harm to the Murrelet and other seabirds from the LNG Terminal would be a great loss for Greenpeace and for Mexico as whole. See Exhibit E (Declaration of Luis Arturo Moreno Vega).

Mr. Alfonso Aguirre, is a citizen of Mexico who currently resides in Ensenada, Baja California, Mexico. Mr. Aguirre is the General Director of the non-profit organization, Grupo de Ecologia y Conservacion de Islas, A.C., (GECI) whose mandate is to protect island ecosystems and preserve and restore their ecological processes. Mr. Aguirre holds a PhD in Social Sciences and undergraduate degrees in Oceanography and Aquaculture. Mr. Aguirre has been working intensively to protect the Coronado Islands. This work includes promotion of legal framework or status to protect the island, scientific research, practical conservation, and environmental education at all levels. Based on his work done on the Coronado Islands he personally attests to knowing that the resident and migrant bird populations on the islands are fragile and can suffer very severe and irreversible negative impacts derived directly and indirectly, from punctual and diffuse sources, immediate and accumulated effects from industrial facilities such as the proposed LNG Terminal. See Exhibit B (Declaration of Alfonso Aguirre).

Ms. Shaye Wolf is a Ph. D. Candidate in the Ecology and Evolutionary Biology Department at the University of California, Santa Cruz. Ms. Wolf’s dissertation research examines the relationships between oceanographic conditions and the breeding success and survival of two seabirds, the Cassin’s Auklet and the Xantus’s Murrelet at colonies in Mexico and the United States. Ms. Wolf has extensive experience in seabird-focused field research including the study of the Xantus’s Murrelet. Ms. Wolf worked with the Xantus’s Murrelet in 1996 and 1999 as one of two biologists who monitored the Xantus’s Murrelet population on Santa Barbara Island in Channel Islands National Park, California. Santa Barbara Island is the largest Xantus’s Murrelet colony in the United States. For this work, Ms. Wolf collected data on the timing of breeding, reproductive success, and threats to the Xantus’s Murrelet. In particular, Ms. Wolf’s research highlighted the impacts of nighttime light pollution from squid fishery vessels working near Santa Barbara and recreational vessels moored near the Island on the Xantus’s Murrelet. Ms. Wolf concluded that nighttime light pollution is one of the primary

threats to the Xantus's Murrelet. Ms. Wolf will face substantial harm as a result of the construction of the Terminal because she will lose the primary thrust of her educational research on the Xantus's Murrelet if they begin to decline in population as a result of the construction and operation of the Terminal. See Exhibit C (Declaration of Shaye Wolf).

The **American Bird Conservancy** ("ABC") is a not-for-profit membership organization dedicated to the conservation of wild birds and their habitats in the Americas. It works to conserve the Xantus's Murrelet and other imperiled bird species. ABC has offices in Washington, D.C., and The Plains, Virginia, and has staff in Colorado, Indiana, Maine, Maryland, Missouri, Montana, Oregon, and New Hampshire.

The **Los Angeles Audubon Society** non-profit corporation. The mission of the Los Angeles Audubon Society is to provide educational programs and services that build awareness of the importance of birds and other wildlife and to promote conservation and restoration of natural habitats, primarily in the Los Angeles area. It is one of hundreds of chapters of the national Audubon Society. The Los Angeles Audubon Society will face substantial harm as a result of the construction of the Terminal because its goal of restoration of natural habitats for the Xantus's Murrelet would be substantially defeated if the Terminal is built within their breeding grounds as proposed.

The **Pacific Environment and Resources Center** ("PERC") is a California non-profit corporation. Its mission is to protect endangered ecosystems around the Pacific Rim. To accomplish this mission, PERC supports efforts by local citizens who are impacted by the extractive industries throughout the region, from the Russian Far East to California. PERC is concerned that the Terminal will negatively impact both the local ecology and economy of Baja California. The impacts include those to the endangered Xantus's Murrelet, as well as the fishing and tourism economy on which that Baja residents depend. As this Terminal would primarily serve the California energy market, PERC does not believe this it is appropriate for a substantial amount of the projects impacts to fall on Mexico.

Wildcoast is an international conservation team dedicated to preserving endangered marine species and threatened coastal wildlands of the Californias. Wildcoast achieves this mission by working with local communities and organizations to create legal conservation structures and by promoting sustainable economic development. Wildcoast strongly opposes the Terminal proposed for the Coronado Islands. Wildcoast asserts that the facility will devastate a fragile marine ecosystem, and the economic base of thousands of fishermen, tourism outfitters, and coastal families.

Article 14(1)(c) – The Petitioners believe this submission and its Exhibits provide sufficient information to allow the Secretariat to review this submission. However, if the Secretariat would like additional documentary evidence, the Petitioners will provide whatever information the Secretariat requests.

Article 14(1)(d) – The Petition is aimed solely at promoting enforcement of the Mexican environmental laws rather than at harassing industry. The Petitioners have no ties to any industry and have no commercial interests in this matter.

Article 14(1)(e) – This matter has been communicated in writing to the relevant authorities of Mexico. As detailed in the Declaration of Alfonso Aguirre, the Petitioners have attempted to avail themselves of all potential redress under Mexican law. Exhibit B pp.2-3 ¶¶ 9-11. The Petitioners’ legal appeals in Mexico have proven fruitless in large part due a demand the Petitioners post an exorbitant bond of \$6.4 million to have their appeals heard and the to recusal of two Judges who declared themselves “not-competent” to review the case. Id.

Article 14(1)(f) - All Petitioners reside in the territory of NAAEC Parties Mexico and the United States. Petitioners Center for Biological Diversity, Ms. Shaye Wolf, American Bird Conservancy, Los Angeles Audubon Society, Pacific Environment and Resources Center, and Wildcoast reside in the United States. Petitioners Greenpeace Mexico, and Mr. Alfonso Aguirre reside in Mexico.

II. This Petition Satisfies All of the Requirements of Article 14(2) of the NAAEC

Article 14(2)(a) – This Petition alleges substantial harm to the Petitioners. See the description of the Petitioners, supra, under the discussion of Article 14(1)(b). See also Exhibits B, C, D, & E (Declarations of individual Petitioners and members of NGO Petitioners).

Article 14(2)(b) – The this Petition raises matters whose further study will advance the goals of the NAAEC. See e.g. NAAEC Art. 10(2)(i) & (j).³¹

Article 14(2)(c) – As discussed above in connection with Article 14(1)(e), the Petitioners have pursued private remedies available under Mexican law without success. See Exhibit B pp.2-3 ¶¶ 9-11. Petitioners have exhausted these options.

Article 14(2)(d) – This submission is not drawn exclusively from mass media reports as evidenced by the citation of scientific studies and the declarations of the Petitioners based on their personal expertise and knowledge.

CONCLUSION

For all of the reasons set forth above, the Petitioners respectfully request the Secretariat to determine that this submission satisfies the requirements of Article 14(1) of the NAAEC and to determine under Article 14(2) that this submission merits requesting a response from Mexico under Article 14(3). Petitioners would be happy to provide any additional argument, evidence, or documentation requested by the Secretariat to assist the Secretariat in evaluating this submission.

³¹ NAAEC Art. 10(2)(i) provides, “The Council may consider, and develop recommendations regarding: (i) the conservation and protection of wild flora and fauna and their habitat, and specially protected natural areas.” NAAEC Art. 10(2)(j) provides, “The Council may consider, and develop recommendations regarding: ... (j) the protection of endangered and threatened species.

Respectfully submitted,

Dated: _____

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³² All Petitioners can be contacted through counsel. In accordance with CEC Guideline for Submissions 3.4, the specific mailing address of each Petitioner is included on the following page.

Complete Mailing Addresses for Each Submitter
CEC Submission Guideline 3.4

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