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**The Friends of Lydia Ann Channel
file suit against the U.S. Army Corps of Engineers over industrial barge fleeting,
storage, and service facility in Lydia Ann Channel**

(Port Aransas, TX — December 23, 2015)— The Friends of Lydia Ann Channel (“FLAC”) has filed a federal lawsuit against several officials of the U.S. Army Corps of Engineers (“USACE) in their official capacities for violations of several federal laws including the Endangered Species Act (“ESA”), the National Environmental Policy Act (“NEPA”), the Administrative Procedures Act (“APA”), the Marine Mammal Protection Act (“MMPA”), and the National Historic Preservation Act (“NHPA”), related to the USACE’s approval of a commercial industrial barge fleeting, storage, and service facility which is located within Redfish Bay State Scientific Area in the Lydia Ann Channel.

The lawsuit was filed Wednesday, December 23 in the United States District Court for the Southern District of Texas, Corpus Christi Division.

In its lawsuit, FLAC seeks redress for the near total abdication by the USACE of its responsibilities under federal law to protect from destruction the environmental, recreational, historical and archeological treasures located in and near the Lydia Ann Channel on the Texas Gulf Coast. Those treasures belong to the people of the State of Texas and of the United States of America. They are of particular importance to FLAC, as well as members of the public who swim, fish, hunt, boat, study and otherwise directly use and enjoy the unique resources now threatened by the USACE’s failure to follow the mandates of numerous federal laws intended to protect just such resources. Numerous members of the public are being directly subjected to the human health and safety threats posed by the massive amounts of toxic, explosive, and otherwise

hazardous chemicals now being brought into and stored in the Lydia Ann Channel, as the direct result of the USACE's failure to comply with federal law.

The USACE's failure to implement procedures to protect the Lydia Ann Channel and its unique resources.

On January 15, 2015, the USACE administratively approved a bare-bones permit application submitted by Lydia Ann Channel Moorings LLC ("LAC Moorings") to build an enormous commercial industrial facility extending almost two miles along the Lydia Ann Channel for the fleeting, storage and servicing of up to 240 industrial barges. The barge facility advertises that it accommodates "CDC barges," "hot oil barges" and "red flag barges." Red flag barges are barges which are carrying hazardous materials. Hot oil barges are generally considered to be barges carrying extremely heavy petroleum products such as tar or asphalt. Most alarmingly of all, CDC barges are barges which carry "*certain dangerous cargo*" ("CDC").¹

The USACE's permit was based on printed forms and a one-page explanation. Despite the enormous size of the proposed industrial barge facility, and the environmental, navigational and recreational importance of the Lydia Ann Channel, the USACE authorized the facility by issuing a Letter of Permission ("LOP") using an expedited, short-cut procedure intended for small, low-impact and non-controversial projects. The USACE approved the project without any public notice or public comment, without any review of alternative locations, and without conducting or requiring any environmental studies or analysis whatsoever.

Although the USACE was aware of the presence of multiple federally-listed species, including specifically whooping cranes, piping plover, rufa red knot, Atlantic hawksbill sea turtle, green sea turtle, Kemp's ridley sea turtle, leatherback sea turtle, and loggerhead sea turtle, within or directly adjacent to the proposed commercial industrial barge facility, the USACE performed no impact studies and required LAC Moorings to perform no such studies. Despite the known presence of endangered species, the USACE refused to consult with the United States Fish and Wildlife Service or the National Marine Fisheries Service as required under Section 7 of the Endangered Species Act.

After an initial meeting with representatives of other federal and state agencies in which insufficient and misleading information about the facility and its potential impacts was provided, the USACE Regulatory Division, which authorized the facility, failed to take action on the concerns and comments specifically expressed by those agencies, and by

¹ U.S. Coast Guard ("USCG") regulations define a barge fleeting facility as "a commercial area, subject to permitting by the Army Corps of Engineers, as provided in 33 CFR part 322, part 330, or pursuant to a regional general permit the purpose of which is for the making up, breaking down, or staging of barge tows."

other divisions of the USACE itself. Specifically, the numerous failures of the USACE in violation of federal law included:

- The USACE Regulatory Division ignored the serious concerns raised by the USACE Operation Divisions, Navigation Branch that the proposed “industrial barge facility” posed a hazard to navigation because it is in a bend of the Gulf Intracoastal Waterway (“GIWW”) and in a high-traffic area that is influenced by sea conditions.
- The USACE Regulatory Division ignored the concerns raised by the USACE Operation Divisions, Navigation Branch that until a safety set-back was established for the GIWW in the Lydia Ann Channel, the facility and the barges containing hazardous and dangerous cargo posed a serious threat to navigation and safety.
- The USACE ignored the comments of the Texas Parks and Wildlife Department (“TPWD”) regarding impacts on federally-listed sea turtles, which are protected by the Endangered Species Act.
- The USACE ignored the comments of the TPWD regarding impacts to federally-protected marine mammals, which are protected by the MMPA.
- The USACE failed to address or act on the comments of the TPWD regarding the need to identify, avoid, and compensate for impacts to seagrass beds.
- The USACE failed to address or act on the comments of the TPWD regarding the need for the applicant, LAC Moorings, to develop an emergency pollution action plan.
- The USACE failed to address or act on the comments of the TPWD regarding the need for the applicant, LAC Moorings, to provide information on how the mooring dolphins for the barge facility would be installed.
- The USACE ignored the comments of the TPWD regarding the need for the applicant, LAC Moorings, to coordinate with the Texas General Land Office Oil Spill Response Division and the U.S. Coast Guard to develop a risk assessment of the local habitats and a pollution response plan.
- After specifically instructing LAC Moorings to evaluate and consider impacts to certain known historical sites, the USACE ignored the adverse impacts to the Aransas Pass Light Station, which is listed on the National Register of Historic Places, and which is directly adjacent to the industrial barge facility.
- After specifically instructing LAC Moorings to evaluate and consider impacts to certain known historical sites, the USACE ignored adverse impacts to the recorded historic shipwreck of the tanker *John Worthington*, located directly adjacent to the barge service facility.

On September 9, 2015, Plaintiff sent the USACE a 23-page notice letter in accordance with Section 11(g) of the Endangered Species Act detailing the USACE’s violations of

Section 7 and Section 9 of the Endangered Species Act, as well as other failures to follow federal law before authorizing LAC Moorings to construct an almost two-mile long industrial barge facility in the middle of the Lydia Ann Channel.

Plaintiffs also notified the USACE that LAC Moorings provided the USACE with incomplete and misleading information about the facility actually constructed, which is much different from what the USACE permitted. The USACE's LOP expressly provides that the USACE may reevaluate or revoke the permit if LAC Moorings fails to comply with the permit, is found to have provided "false, incomplete or inaccurate" information to obtain the permit, or if "new information surfaces which this office did not consider in reaching the original public interest decision."

Three months after receiving Plaintiff's detailed, 23-page letter, and despite its authority to reevaluate the LOP based on the new information and actual operations and impact of the enormous barge facility, the USACE has done nothing.

What is at Stake - The Lydia Ann Channel and Redfish Bay State Scientific Area

Situated between the Aransas National Wildlife Refuge and the Padre Island National Seashore, the ecological, navigational and recreational importance of the Lydia Ann Channel cannot be overstated. It is a major conduit of tidal waters from the Gulf of Mexico to the Aransas Bay system, including Aransas, Copano, Mission, St. Charles and Redfish Bay. The Lydia Ann Channel is located within the Redfish Bay State Scientific Area and is directly adjacent to the Mission-Aransas National Estuarine Research Reserve. In June, 2000, Redfish Bay was designated a State Scientific Area by the Texas Parks and Wildlife Commission for the purposes of protecting and studying the native seagrasses. According to the Texas Parks and Wildlife Department website, "[Redfish Bay State Scientific Area] has about 50 square miles (32,000 acres) of prime fishing habitat, including 14,000 acres of submerged seagrass beds, dominated by turtle grass (*Thalassia testudinum*) and shoal grass (*Halodule beaudettei*). Redfish Bay contains the northernmost extensive stands of seagrass on the Texas coast and they are well worth the effort to protect them." see <http://tpwd.texas.gov/landwater/water/habitats/seagrass/redfish.phtml>. The ecological significance is evident from the Texas Parks and Wildlife Redfish Bay State Scientific Area Map:



The immediate area in which the Lydia Ann Channel is located is considered one of the best places on earth to fish for tailing red drum. As reported on coastalbendfishing.com “there are numerous cuts, flats and reefs along both sides of the Lydia Ann Channel and just about any of the bays’ game fish can be targeted along its path.”

This area has also been repeatedly hailed by *Texas Parks and Wildlife Magazine* as the best place in Texas to paddle and kayak. In the words of the magazine: “The Lighthouse Lakes trail, near Port Aransas, was the first official paddling trail, and it

offers kayakers a mix of mangrove mazes and open flats, with excellent fishing and birding opportunities and views of the Lydia Ann Lighthouse.”

The Channel is also home or adjacent to the habitat of at least eight endangered species including whooping cranes, piping plovers and five separate species of endangered sea turtles. At least one significant marine archeological site is located in the Lydia Ann Channel and one of the few 19th century lighthouses left on the Texas Coast, the Aransas Pass or Lydia Ann Lighthouse, originally built in 1857, still stands on the bank of the Channel.

A portion of the Intracoastal Waterway is routed through and follows the natural contours of the Lydia Ann Channel, both of which serve as a major navigational route for recreational and commercial vessels.

More information about FLAC can be found online at <http://savelydiaann.org>.

A copy of the Original Complaint can be found online at <http://savelydiaann.org>.

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