



**US Army Corps
of Engineers®**
New York District

NEW YORK AND NEW JERSEY HARBOR DEEPENING CHANNEL IMPROVEMENTS

NAVIGATION STUDY

FINAL INTEGRATED FEASIBILITY REPORT & ENVIRONMENTAL ASSESSMENT

APPENDIX A8: Coordination & Correspondence



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK NEW YORK 10278-0090

October 7, 2019

Planning Division

Captain Jason Tama
Commander
Sector New York
212 Coast Guard Drive
Staten Island, NY 10305

Subject: Invitation to be a Cooperating Agency in the Environmental Review for the New York and New Jersey Harbor Deepening Channel Improvement (HDCI) Feasibility Study

Dear Captain Tama:

The U.S. Army Corps of Engineers, New York District (District), in cooperation with the Port Authority of New York and New Jersey (PANYNJ), is undertaking a feasibility study to examine measures to improve navigation within the constructed 50-foot New York and New Jersey Harbor. The study area is the constructed 50 foot New York and New Jersey Harbor that is located south of Manhattan, New York City, along the northern portion of Atlantic Seaboard, approximately 200 miles south of Boston, Massachusetts. The study area is located in New York's 7th, 8th, 10th, and 11th congressional districts. It consists of a network of federally improved channels and anchorages.

The feasibility study will analyze alternatives for navigation improvements related to potential channel modification. As part of the feasibility study, the District will prepare environmental compliance documents pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended. The NEPA documents will evaluate environmental impacts from reasonable project alternatives, including the No Action Alternative, and determine the potential for significant impacts related to potential features being considered for this study, including, but not limited to, widening, bend-easing, and/or deepening the existing navigation channel's dimensions.

Construction of the 50 foot New York and New Jersey Harbor Deepening Project (HDP) was completed in 2016. In March 2018, an Initial Appraisal Report, compliance with Section 216 of WRDA 1970 was completed to determine if there is potential Federal interest to undertake modifications to the existing HDP. The Initial Appraisal Report found "the accelerating expansion of the volume of trade that has taken place over the recent past has led to the design vessel [the Regina Maersk] in the New York and New Jersey Harbor Navigation Study being superseded in use in the [Port of New York and New Jersey] much sooner than anticipated in the 1999 Study." The Initial Appraisal Report made the recommendation to "investigate and determine if there is a Federal interest in continuing the project with the preparation of cost-shared feasibility

report for analyzing alternatives to address the identified problems though possible modifications of the [HDP].”

The primary problem is that existing constructed project is insufficient in meeting the variety of functions (requires containerships to light-load and face tide delays) that they are used for as part of normal harbor operations, which reduces vessel safety and cargo transportation efficiency. The purpose of channel improvements within NYNJ Harbor is to achieve transportation cost savings for vessels transiting study area channel segments. As containerships with greater capacity and deeper sailing drafts replace the fleet currently calling NYNJ Harbor, depth-related transportation costs will increase. Without improvements, ships at NYNJ Harbor will not realize economies of scale afforded by the larger container ships currently calling and projected to call in the future. Tide restrictions, light loading, or other operational inefficiencies will be compounded by the future fleet. The Kill Van Kull Channel only allows one direction traffic movement, which frequently necessitates that vessels wait to enter the channel in an anchorage, or, if they are larger than 11,000 TEU, in the Ambrose Channel or ocean. Vessels that are lightering at Gravesend and Red Hook Flats are light-loading due to anchorage depth.

The team is in the preliminary stages of the feasibility study and environmental impact analysis, and does not yet have a detailed timeline. As part of the environmental review process for this project, the District is required by law¹ to identify, as early as practicable, any federal and non-federal agencies that may have an interest in the project, and invite such agencies to become participating agencies in the environmental review process². This letter is a formal invitation to participate as a cooperating agency for the Study.

Should your agency choose to assume cooperating status, your agency's specific responsibilities as a cooperating agency will include:

- Attendance at and input during agency coordination meetings
- Comment and feedback on the schedule, overall scope of the NEPA document(s), significant issues to be evaluated, environmental impacts, study and assessment methodologies, range of alternatives and proposed compensatory mitigation, if applicable

¹ Section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348), as amended

² Designation as a "participation agency" or "cooperating agency" does not imply that the participating agency supports the proposed project or has any jurisdiction over, or special expertise concerning the proposed project or its potential impacts. A "participating agency" differs from a "cooperating agency," which is defined in regulations implementing the National Environmental Policy Act as "any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment" 40 CFR 4 - 1508.5.

- Guidance on relevant technical studies required as part of the NEPA analysis
- Identification of issues related to your agency's jurisdiction by law and special expertise
- Participation, as appropriate, at public meetings and hearings
- Timely review of the administrative and public drafts of the Draft Integrated Feasibility Report (IFR)/NEPA document and Final IFR/NEPA document;
- Providing staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

As a cooperating agency, you have the right to expect that the NEPA document will enable you to discharge your jurisdictional responsibilities. Likewise, you have the obligation to tell us if, at any point in the process, your agency's requirements are not being met. We expect that, at the end of the NEPA process, the NEPA document(s) will satisfy your NEPA requirements including those related to project alternatives, environmental consequences and mitigation.

If your agency does not wish to be a cooperating agency, your agency still has the opportunity to become a participating agency in the environmental review process. As a participating agency, you will be afforded the opportunity, together with the public, to be involved in defining the purpose of and need for the project, as well as in determining the range of alternatives to be considered for the project. These opportunities will build on the early participation opportunities that were provided during the Alternatives Analysis process. In addition, you will be asked to:

- Provide input on the impact assessment methodologies and level of detail in your agency's area of expertise;
- Participate in coordination meetings, conference calls, and joint field reviews, as appropriate;
- Review and comment on sections of the pre-draft or pre-final environmental documents to communicate any concerns of your agency on the adequacy of the document, the alternatives considered, and the anticipated impacts and mitigation.

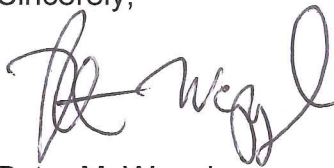
Your agency does not have to accept this invitation to be a cooperating agency or a participating agency. If, however, you elect not to become a cooperating agency, you must decline this invitation in writing, indicating that your agency has no jurisdiction or authority with respect to the project, no expertise or information relevant to the project, or does not intend to submit comments on the project³. The declination may be transmitted electronically to Mr. Jesse Miller, Project Biologist at Jesse.L.Miller@usace.army.mil.

³ Per Section 1005 of WRRDA 2017, which amends Section 2045 of WRDA 2007

In order to give your agency adequate opportunity to weigh the relevance of your participation as either a cooperating agency or a participating agency or both in this environmental review process, written response to this invitation is not due until thirty days upon receipt of this letter. Details will follow regarding further coordination on this project. An interagency meeting/conference call will be scheduled in the coming weeks.

The District looks forward to your response to this request and your role as a cooperating or participating agency on this study. If you have questions or would like to discuss in more detail the project or our agencies' respective roles and responsibilities during the study process, please contact Mr. Miller at (917) 790-8604 or email above.

Sincerely,

A handwritten signature in dark ink, appearing to read 'P. Weppeler', written in a cursive style.

Peter M. Weppeler
Chief, Environmental Analysis Branch

Enclosure Study Area Map

**U.S. Department of
Homeland Security**

**United States
Coast Guard**



Commander
United States Coast Guard
Sector New York

212 Coast Guard Drive
Staten Island, NY 10305
Staff Symbol : (s)
Phone: (718) 354-2353
Email: Joshua.W.Buck@uscg.mil

16591
December 2, 2019

Department of the Army
U.S. Army Corps of Engineers, New York District
Attn: P. M. Weppler
Jacob K. Javits Federal Building
26 Federal Plaza
New York, NY 10278-0090

Dear Mr. Weppler,

This is in response to your October 7, 2019 letter inviting the U.S. Coast Guard to serve as a cooperating agency for the New York and New Jersey Harbor Deepening Channel Improvement Feasibility Study. I am pleased to accept your agency's invitation. U.S. Coast Guard Sector New York personnel will make every effort to attend project meetings, and if unable to attend in person, will participate via teleconference or webinar as practicable.

We expect to assess the safety of navigation in and adjacent to the proposed deepening and channel improvement area, and provide analysis and recommendations to address potential interference with navigation or U.S. Coast Guard missions.

Additionally, as a cooperating agency, we are prepared to work with you on executing and satisfying our responsibilities under the National Environmental Policy Act. We expect that all navigational and other concerns will be addressed under appropriate sections of the Environmental Assessment.

If you have any questions or concerns, Mr. Jeff Yunker of my Waterways Management staff will be the primary point of contact. Mr. Yunker can be reached at (718) 354-4195, or at jeffrey.m.yunker@uscg.mil.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. P. Tama".

J. P. TAMA
Commander, Sector New York
U.S. Coast Guard



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK NEW YORK 10278-0090

October 7, 2019

Planning Division

Pete Lopez
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866

Subject: Invitation to be a Cooperating Agency in the Environmental Review for the New York and New Jersey Harbor Deepening Channel Improvement (HDCI) Feasibility Study

Dear Mr. Lopez:

The U.S. Army Corps of Engineers, New York District (District), in cooperation with the Port Authority of New York and New Jersey (PANYNJ), is undertaking a feasibility study to examine measures to improve navigation within the constructed 50-foot New York and New Jersey Harbor. The study area is the constructed 50 foot New York and New Jersey Harbor that is located south of Manhattan, New York City, along the northern portion of Atlantic Seaboard, approximately 200 miles south of Boston, Massachusetts. The study area is located in New York's 7th, 8th, 10th, and 11th congressional districts. It consists of a network of federally improved channels and anchorages.

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Federal interest in continuing the project with the preparation of cost-shared feasibility report for analyzing alternatives to address the identified problems through possible modifications of the [HDP].”

The primary problem is that existing constructed project is insufficient in meeting the variety of functions (requires containerships to light-load and face tide delays) that they are used for as part of normal harbor operations, which reduces vessel safety and cargo transportation efficiency. The purpose of channel improvements within NYNJ Harbor is to achieve transportation cost savings for vessels transiting study area channel segments. As containerships with greater capacity and deeper sailing drafts replace the fleet currently calling NYNJ Harbor, depth-related transportation costs will increase. Without improvements, ships at NYNJ Harbor will not realize economies of scale afforded by the larger container ships currently calling and projected to call in the future. Tide restrictions, light loading, or other operational inefficiencies will be compounded by the future fleet. The Kill Van Kull Channel only allows one direction traffic movement, which frequently necessitates that vessels wait to enter the channel in an anchorage, or, if they are larger than 11,000 TEU, in the Ambrose Channel or ocean. Vessels that are lightering at Gravesend and Red Hook Flats are light-loading due to anchorage depth.

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Should your agency choose to assume cooperating status, your agency's specific responsibilities as a cooperating agency will include:

- Attendance at and input during agency coordination meetings
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- compensatory mitigation, if applicable
- Guidance on relevant technical studies required as part of the NEPA analysis
- Identification of issues related to your agency's jurisdiction by law and special expertise
- Participation, as appropriate, at public meetings and hearings
- Timely review of the administrative and public drafts of the Draft Integrated Feasibility Report (IFR)/NEPA document and Final IFR/NEPA document;
- Providing staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

As a cooperating agency, you have the right to expect that the NEPA document will enable you to discharge your jurisdictional responsibilities. Likewise, you have the obligation to tell us if, at any point in the process, your agency's requirements are not being met. We expect that, at the end of the NEPA process, the NEPA document(s) will satisfy your NEPA requirements including those related to project alternatives, environmental consequences and mitigation.

If your agency does not wish to be a cooperating agency, your agency still has the opportunity to become a participating agency in the environmental review process. As a participating agency, you will be afforded the opportunity, together with the public, to be involved in defining the purpose of and need for the project, as well as in determining the range of alternatives to be considered for the project. These opportunities will build on the early participation opportunities that were provided during the Alternatives Analysis process. In addition, you will be asked to:

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Your agency does not have to accept this invitation to be a cooperating agency or a participating agency. If, however, you elect not to become a cooperating agency, you must decline this invitation in writing, indicating that your agency has no jurisdiction or authority with respect to the project, no expertise or information relevant to the project, or does not intend to submit comments on the project³. The declination may be transmitted electronically to Mr. Jesse Miller, Project Biologist at

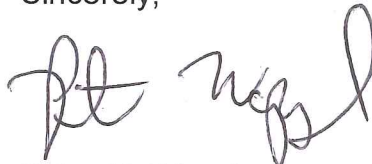
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Jesse.L.Miller@usace.army.mil.

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Sincerely,

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Peter M. Weppeler
Chief, Environmental Analysis Branch

Enclosure Study Area Map

cc:

Kluesner – Acting Regional NEPA Coordinator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

October 16, 2019

Peter M. Weppler, Chief
Environmental Analysis Branch
U.S. Army Corps of Engineers
New York District
26 Federal Plaza, 17th floor
New York, NY 10278-0090

Re: New York and New Jersey Harbor Deepening Channel Improvement (HDCI) Feasibility Study

Dear Mr. Weppler:

This is in response to your October 7, 2019 letter inviting the U.S. Environmental Protection Agency (EPA) to serve as a cooperating agency for the New York and New Jersey Harbor Deepening Channel Improvement Feasibility Study. EPA is pleased to accept your agency's invitation. EPA will make every effort to attend all project meetings. However, in those instances where we cannot physically attend, if conference lines are made available, we would be happy to participate by telephone or webinar.

We would like to remind you that our participation does not preclude our review under the National Environmental Policy Act and comment authority under Section 309 of the Clean Air Act. We look forward to working with you on this project, and to reviewing the preliminary environmental documents that you will prepare.

If you have any questions, please contact Lingard Knutson of my staff at (212) 637-3747. Ms. Knutson will be the main point of contact for this project.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "David W. Kluesner", is written over the "Sincerely yours," line.

David Kluesner, Acting Director
Strategic Programs Office



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK NEW YORK 10278-0090

October 7, 2019

Planning Division

Michael Pentony
Regional Administrator
Greater Atlantic Region Fisheries Office
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930

Subject: Invitation to be a Cooperating Agency in the Environmental Review for the New York and New Jersey Harbor Deepening Channel Improvement (HDCI) Feasibility Study

Dear Mr. Pentony:

The U.S. Army Corps of Engineers, New York District (District), in cooperation with the Port Authority of New York and New Jersey (PANYNJ), is undertaking a feasibility study to examine measures to improve navigation within the constructed 50-foot New York and New Jersey Harbor. The study area is the constructed 50 foot New York and New Jersey Harbor that is located south of Manhattan, New York City, along the northern portion of Atlantic Seaboard, approximately 200 miles south of Boston, Massachusetts. The study area is located in New York's 7th, 8th, 10th, and 11th congressional districts. It consists of a network of federally improved channels and anchorages.

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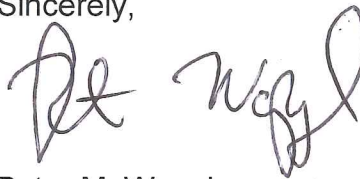
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Jesse.L.Miller@usace.army.mil.

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Sincerely,

A handwritten signature in dark ink, appearing to read 'Peter M. Weppeler', written in a cursive style.

Peter M. Weppeler
Chief, Environmental Analysis Branch

Enclosure Study Area Map

cc:

Greene – Mid-Atlantic Field Office
Chiarella – Habitat Conservation
Murray-Brown – Section 7



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930-2276

Peter Weppler, Chief
Environmental Analysis Branch
New York District
U.S. Army Corps of Engineers
26 Federal Plaza
New York, NY 10278-0900

OCT 21 2019

RE: New York and New Jersey Harbor Deepening Channel Improvement (HDCI) Feasibility Study, Cooperating Agency Invitation

Dear Mr. Weppler:

Thank you for your October 7, 2019, letter inviting us to be a cooperating agency on the preparation of environmental documents pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, regarding the feasibility study to examine measures to improve navigation within the constructed 50-foot New York and New Jersey Harbor (NYNJ Harbor). The study area consisted of a network of federally improved channels and anchorages within the NYNJ Harbor including channels within the Arthur Kill, Kill van Kull, Newark Bay and Upper Bay. Because this project is covered under the provisions of Section 1005 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), we accept your invitation to become a cooperating agency for this project.

Our role and degree of involvement is dependent on existing staff and fiscal resources, and our contribution to the process will be limited to participating in project meetings and providing written comments in response to your documents prepared as part of the National Environmental Policy Act (NEPA) process. We will provide technical information identifying aquatic species and habitats of concern, identification of issues to be considered and evaluated during the NEPA process and guidance on evaluating, avoiding, and minimizing project effects to our trust resources. At this time, we are unable to undertake any data collection, conduct analyses or to prepare any sections of the NEPA document as our staff and resources are fully committed to other obligatory programs of NOAA Fisheries.

Please note that our involvement as a cooperating agency does not constitute an endorsement of this project, nor does it obviate the need for consultations required under the Magnuson-Stevens Fishery Conservation and Management Act, Fish and Wildlife Coordination Act, and the Endangered Species Act.

We look forward to working with you and your staff as the project moves forward. If you have any questions regarding this matter, please contact Karen Greene in our Highlands, NJ field office at 320 872-3023 or karen.greene@noaa.gov for information regarding essential fish



habitat and other trust resources, or Edith Carson-Supino in our Protected Resources Division at (978) 282-8490 or edith.carson-supino@noaa.gov regarding threatened and endangered species listed by us under the ESA.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis A. Chiarella". The signature is fluid and cursive, with a long horizontal stroke at the end.

Louis A. Chiarella
Assistant Regional Administrator
for Habitat Conservation

cc: ACOE – J. Miller
J. Gallo
NMFS– M. Murray-Brown
E. Carson-Supino
K. Greene
D. Younkens



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
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October 7, 2019

Planning Division

Wendi Weber
Regional Director
U.S. Fish and Wildlife Service
Northeast Regional Office
300 Westgate Center Drive
Hadley, MA 01035-9587

Subject: Invitation to be a Cooperating Agency in the Environmental Review for the New York and New Jersey Harbor Deepening Channel Improvement (HDCI) Feasibility Study

Dear Ms. Weber:

The U.S. Army Corps of Engineers, New York District (District), in cooperation with the Port Authority of New York and New Jersey (PANYNJ), is undertaking a feasibility study to examine measures to improve navigation within the constructed 50-foot New York and New Jersey Harbor. The study area is the constructed 50 foot New York and New Jersey Harbor that is located south of Manhattan, New York City, along the northern portion of Atlantic Seaboard, approximately 200 miles south of Boston, Massachusetts. The study area is located in New York's 7th, 8th, 10th, and 11th congressional districts. It consists of a network of federally improved channels and anchorages.

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Construction of the 50 foot New York and New Jersey Harbor Deepening Project (HDP) was completed in 2016. In March 2018, an Initial Appraisal Report, compliance with Section 216 of WRDA 1970 was completed to determine if there is potential Federal interest to undertake modifications to the existing HDP. The Initial Appraisal Report found "the accelerating expansion of the volume of trade that has taken place over the recent past has led to the design vessel [the Regina Maersk] in the New York and New Jersey Harbor Navigation Study being superseded in use in the [Port of New York and New Jersey] much sooner than anticipated in the 1999 Study." The Initial Appraisal Report made the recommendation to "investigate and determine if there is a

Federal interest in continuing the project with the preparation of cost-shared feasibility report for analyzing alternatives to address the identified problems though possible modifications of the [HDP].”

The primary problem is that existing constructed project is insufficient in meeting the variety of functions (requires containerships to light-load and face tide delays) that they are used for as part of normal harbor operations, which reduces vessel safety and cargo transportation efficiency. The purpose of channel improvements within NYNJ Harbor is to achieve transportation cost savings for vessels transiting study area channel segments. As containerships with greater capacity and deeper sailing drafts replace the fleet currently calling NYNJ Harbor, depth-related transportation costs will increase. Without improvements, ships at NYNJ Harbor will not realize economies of scale afforded by the larger container ships currently calling and projected to call in the future. Tide restrictions, light loading, or other operational inefficiencies will be compounded by the future fleet. The Kill Van Kull Channel only allows one direction traffic movement, which frequently necessitates that vessels wait to enter the channel in an anchorage, or, if they are larger than 11,000 TEU, in the Ambrose Channel or ocean. Vessels that are lightering at Gravesend and Red Hook Flats are light-loading due to anchorage depth.

The team is in the preliminary stages of the feasibility study and environmental impact analysis, and does not yet have a detailed timeline. As part of the environmental review process for this project, the District is required by law¹ to identify, as early as practicable, any federal and non-federal agencies that may have an interest in the project, and invite such agencies to become participating agencies in the environmental review process². This letter is a formal invitation to participate as a cooperating agency for the Study.

Should your agency choose to assume cooperating status, your agency's specific responsibilities as a cooperating agency will include:

- Attendance at and input during agency coordination meetings
- Comment and feedback on the schedule, overall scope of the NEPA document(s), significant issues to be evaluated, environmental impacts, study and assessment methodologies, range of alternatives and proposed

¹ Section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348), as amended

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- compensatory mitigation, if applicable
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- Participation, as appropriate, at public meetings and hearings
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- Providing staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

As a cooperating agency, you have the right to expect that the NEPA document will enable you to discharge your jurisdictional responsibilities. Likewise, you have the obligation to tell us if, at any point in the process, your agency's requirements are not being met. We expect that, at the end of the NEPA process, the NEPA document(s) will satisfy your NEPA requirements including those related to project alternatives, environmental consequences and mitigation.

If your agency does not wish to be a cooperating agency, your agency still has the opportunity to become a participating agency in the environmental review process. As a participating agency, you will be afforded the opportunity, together with the public, to be involved in defining the purpose of and need for the project, as well as in determining the range of alternatives to be considered for the project. These opportunities will build on the early participation opportunities that were provided during the Alternatives Analysis process. In addition, you will be asked to:

- Provide input on the impact assessment methodologies and level of detail in your agency's area of expertise;
- Participate in coordination meetings, conference calls, and joint field reviews, as appropriate;
- Review and comment on sections of the pre-draft or pre-final environmental documents to communicate any concerns of your agency on the adequacy of the document, the alternatives considered, and the anticipated impacts and mitigation.

Your agency does not have to accept this invitation to be a cooperating agency or a participating agency. If, however, you elect not to become a cooperating agency, you must decline this invitation in writing, indicating that your agency has no jurisdiction or authority with respect to the project, no expertise or information relevant to the project, or does not intend to submit comments on the project³. The declination may be transmitted electronically to Mr. Jesse Miller, Project Biologist at

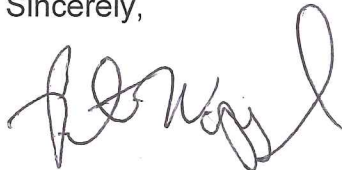
³ Per Section 1005 of WRRDA 2017, which amends Section 2045 of WRDA 2007

Jesse.L.Miller@usace.army.mil.

In order to give your agency adequate opportunity to weigh the relevance of your participation as either a cooperating agency or a participating agency or both in this environmental review process, written response to this invitation is not due until thirty days upon receipt of this letter. Details will follow regarding further coordination on this project. An interagency meeting/conference call will be scheduled in the coming weeks.

The District looks forward to your response to this request and your role as a cooperating or participating agency on this study. If you have questions or would like to discuss in more detail the project or our agencies' respective roles and responsibilities during the study process, please contact Mr. Miller at (917) 790-8604 or email above.

Sincerely,

A handwritten signature in dark ink, appearing to read 'P. Wepler', written in a cursive style.

Peter M. Wepler
Chief, Environmental Analysis Branch

Enclosure Study Area Map

cc:

Stilwell – NYFO
Schrading - NJFO



United States Department of the Interior



FISH AND WILDLIFE SERVICE

New Jersey Field Office

4 E. Jimmie Leeds Road, Suite 4

Galloway, New Jersey 08205 Tel: 609/646 9310

www.fws.gov/northeast/njfieldoffice/

Peter Wepler
Chief, Environmental Analysis Branch
New York District, U.S. Army Corps of Engineers
Jacob K. Javits Federal Building
New York, New York 10278-0090

NOV 7 2019

Subject: Environmental Review for the New York and New Jersey Harbor Deepening Channel Improvement (HDCI) Feasibility Study.

Dear Mr. Wepler,

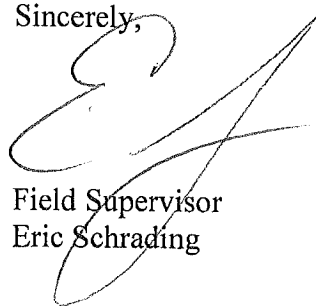
Reference is made to the U.S. Army Corps of Engineers, New York District's (Corps) letter dated October 7, 2019 regarding an invitation to become a cooperating or participating agency pursuant to the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321 *et seq.*) (NEPA) for the Subject Feasibility Study. The proposed Feasibility Study will analyze alternatives for navigation improvements related to potential channels modifications for the New York and New Jersey Harbor Deepening Channel Improvement (HDCI). The Feasibility Study encompasses the Area of Operation of two field offices of the U.S. Fish and Wildlife Service's (Service) Northeast Region (the New Jersey Field Office (NJFO) and the New York/Long Island Field Office). The Service has reviewed your request to be a cooperating or participating agency, and submits the following comments in accordance with the provisions of NEPA.

The Service agrees to serve as a participating agency in the preparation of the necessary NEPA documents for the proposed feasibility project. At this time and until further notice, the NJFO will be the lead Service office responsible for reviewing and consolidating comments on the subject project. This determination may change as more information becomes available on the geographic scope of the action area. For coordination purposes, the Service's role as a participating agency will be limited to: 1) participating in meetings, conference calls, site visits to obtain baseline information on the project area fish and wildlife resources; 2) evaluating the proposed projects impacts on fish and wildlife resources and their respective habitats; 3) assist the Corps in the development of measures to avoid, minimize, and compensate for any of those impacts; and 4) providing the necessary assistance in the assessment and documentation of potential effects of the feasibility study on federally listed species under the jurisdiction of the Service pursuant to the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) (ESA).

At this time, and until additional information is provided on the purpose/need and scoping process (40 CFR Part 1502.13 and 1501.7 respectively) of the project and whether this coordination status will involve a major commitment of resources, the Service may request a transfer of funds to meet our statutory obligations pursuant to the Fish and Wildlife Coordination Act (48 Stat. 401; 16 U.S.C. 661 *et seq.*).

The Service appreciates the opportunity to be a participating agency and to make comments in the planning stages of this feasibility report. Should you have any question regarding our commitment in our coordination status please contact Steve Mars of this office at 609-382-5267.

Sincerely,

A handwritten signature in black ink, appearing to be 'ES' with a large, sweeping flourish extending from the bottom right.

Field Supervisor
Eric Schrading

Cc:
USFWS (Region 5 ARD ES, NYFO/LIFO)
NJDEP, Division of Fish and Wildlife
NYSDEC, Region II



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK NEW YORK 10278-0090

October 7, 2019

Planning Division

Michael Moriarty
Director
FEMA Region II - Mitigation Division
One World Trade Center
New York, NY 10007

Subject: Invitation to be a Cooperating Agency in the Environmental Review for the New York and New Jersey Harbor Deepening Channel Improvement (HDCI) Feasibility Study

Dear Mr. Moriarty:

The U.S. Army Corps of Engineers, New York District (District), in cooperation with the Port Authority of New York and New Jersey (PANYNJ), is undertaking a feasibility study to examine measures to improve navigation within the constructed 50-foot New York and New Jersey Harbor. The study area is the constructed 50 foot New York and New Jersey Harbor that is located south of Manhattan, New York City, along the northern portion of Atlantic Seaboard, approximately 200 miles south of Boston, Massachusetts. The study area is located in New York's 7th, 8th, 10th, and 11th congressional districts. It consists of a network of federally improved channels and anchorages.

The feasibility study will analyze alternatives for navigation improvements related to potential channel modification. As part of the feasibility study, the District will prepare environmental compliance documents pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended. The NEPA documents will evaluate environmental impacts from reasonable project alternatives, including the No Action Alternative, and determine the potential for significant impacts related to potential features being considered for this study, including, but not limited to, widening, bend-easing, and/or deepening the existing navigation channel's dimensions.

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report for analyzing alternatives to address the identified problems though possible modifications of the [HDP].”

The primary problem is that existing constructed project is insufficient in meeting the variety of functions (requires containerships to light-load and face tide delays) that they are used for as part of normal harbor operations, which reduces vessel safety and cargo transportation efficiency. The purpose of channel improvements within NYNJ Harbor is to achieve transportation cost savings for vessels transiting study area channel segments. As containerships with greater capacity and deeper sailing drafts replace the fleet currently calling NYNJ Harbor, depth-related transportation costs will increase. Without improvements, ships at NYNJ Harbor will not realize economies of scale afforded by the larger container ships currently calling and projected to call in the future. Tide restrictions, light loading, or other operational inefficiencies will be compounded by the future fleet. The Kill Van Kull Channel only allows one direction traffic movement, which frequently necessitates that vessels wait to enter the channel in an anchorage, or, if they are larger than 11,000 TEU, in the Ambrose Channel or ocean. Vessels that are lightering at Gravesend and Red Hook Flats are light-loading due to anchorage depth.

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Should your agency choose to assume cooperating status, your agency's specific responsibilities as a cooperating agency will include:

- Attendance at and input during agency coordination meetings
- Comment and feedback on the schedule, overall scope of the NEPA document(s), significant issues to be evaluated, environmental impacts, study and assessment methodologies, range of alternatives and proposed compensatory mitigation, if applicable

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² Designation as a "participation agency" or "cooperating agency" does not imply that the participating agency supports the proposed project or has any jurisdiction over, or special expertise concerning the proposed project or its potential impacts. A "participating agency" differs from a "cooperating agency," which is defined in regulations implementing the National Environmental Policy Act as "any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment" 40 CFR 4 - 1508.5.

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As a cooperating agency, you have the right to expect that the NEPA document will enable you to discharge your jurisdictional responsibilities. Likewise, you have the obligation to tell us if, at any point in the process, your agency's requirements are not being met. We expect that, at the end of the NEPA process, the NEPA document(s) will satisfy your NEPA requirements including those related to project alternatives, environmental consequences and mitigation.

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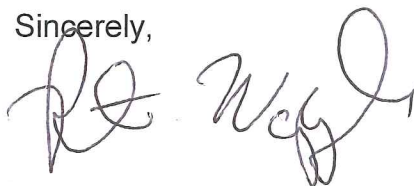
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Sincerely,

A handwritten signature in dark ink, appearing to read 'P. Weppler', written in a cursive style.

Peter M. Weppler
Chief, Environmental Analysis Branch

Enclosure Study Area Map

cc:

McKee – EPHP



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK NEW YORK 10278-0090

October 7, 2019

Planning Division

Jennifer T. Nersesian
Superintendent
Gateway National Recreation Area
National Park Service
210 New York Avenue
Staten Island, NY 10305

Subject: Invitation to be a Cooperating Agency in the Environmental Review for the New York and New Jersey Harbor Deepening Channel Improvement (HDCI) Feasibility Study

Dear Ms. Nersesian:

The U.S. Army Corps of Engineers, New York District (District), in cooperation with the Port Authority of New York and New Jersey (PANYNJ), is undertaking a feasibility study to examine measures to improve navigation within the constructed 50-foot New York and New Jersey Harbor. The study area is the constructed 50 foot New York and New Jersey Harbor that is located south of Manhattan, New York City, along the northern portion of Atlantic Seaboard, approximately 200 miles south of Boston, Massachusetts. The study area is located in New York's 7th, 8th, 10th, and 11th congressional districts. It consists of a network of federally improved channels and anchorages.

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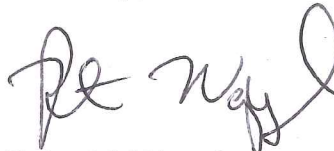
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Jesse.L.Miller@usace.army.mil.

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The District looks forward to your response to this request and your role as a cooperating or participating agency on this study. If you have questions or would like to discuss in more detail the project or our agencies' respective roles and responsibilities during the study process, please contact Mr. Miller at (917) 790-8604 or email above.

Sincerely,

A handwritten signature in dark ink, appearing to read "Peter M. Wepler", written in a cursive style.

Peter M. Wepler
Chief, Environmental Analysis Branch

Enclosure Study Area Map



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278-0090

November 9, 2020

Environmental Analysis Branch

Mr. Lou Chiarella
Assistant Regional Administrator for Habitat Conservation
U.S. Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, Mass. 01930-2276

Attention: Karen Green, Field Supervisor, Sandy Hook Field Office, NJ

Dear Mr Chiarella:

The purpose of this letter is to request Essential Fish Habitat (EFH) consultation under Magnuson-Stevens Fishery Conservation Management Act (MSFCMA) for the New York New Jersey Harbor Deepening Channel Improvement (HDCI) Study. As part of the planning process, the U.S. Army Corps of Engineers, New York District (District), in partnership with the Port Authority of New York and New Jersey, will be completing an Integrated Feasibility Study/Environmental Assessment that is identifying and evaluating navigation improvements in the existing 50' federal navigation channels that are required to accommodate larger vessels that are arriving in NYNJ Harbor (such as the *Malaccamax* design vessel). The tentatively selected plan (TSP) consists of one (1) meeting/passing efficiency zone, eight (8) channel widening features, and channel deepening up to -55 feet MLLW to New Jersey port terminals (Port Jersey Port Authority Marine Terminal, Elizabeth Port Authority Marine Terminal, and Port Newark, NJ).

With the attached EFH assessment, the District has determined that the proposed action is likely to adversely affect EFH listed species. Therefore, mitigation of those potential impacts has been incorporated into the project via implementation of best management practices that minimize significant adverse effects (Section 8, p. 28) and avoidance with the incorporation of seasonal restrictions (Conservation Recommendations, Section 8, p. 31), as amended and finalized in 2017, and provided by NMFS on the 50' Harbor Deepening Project (HDP) project (including the HDP O&M program).

A notice dated November 4, 2020, detailing the location and status of the HDCI Integrated Feasibility Report and Environmental Assessment was sent to agencies and stakeholders. Additionally, there will be a public information meeting scheduled in November allowing for another venue of public and agency input to the study. The draft report is located at the following link:

<https://www.nan.usace.army.mil/Missions/Navigation/New-York-New-Jersey-Harbor/NY-NJ-HDCI/>

The District requests that your review and assistance in this consultation process as to fulfill our consultation responsibilities under the EFH Amendment. If you have any questions or require further information, please Ms. Jenine Gallo at 917- 790-8617 or me at 917-790-8634.

Sincerely,

WEPPLER.PETER.M.

1228647353

Digitally signed by

WEPPLER.PETER.M.1228647353

Date: 2020.11.09 15:06:57 -05'00'

Peter Weppler

Chief, Environmental Analyses Branch

Enclosure

Cc. K. Green



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278-0090

November 9, 2020

Environmental Analysis Branch

Kimberly Damon-Randall
Assistant Regional Administrator for Protected
Resources National Marine Fisheries Service
55 Great Republic Drive
Gloucester, Massachusetts
01930

Dear Ms. Damon-Randall:

The purpose of this letter is to transmit the Biological Assessment (BA) conducted per the U.S. Army Corps of Engineers, New York District's (District) request for reinitiation of formal consultation under Section 7 of the Endangered Species Act (ESA) of 1977 (16 U.S.C. 1531 et seq.), regarding the New York New Jersey Harbor Deepening Channel Improvement (HDCI) Study. As part of the planning process, the District, in partnership with the Port Authority of New York and New Jersey, will be completing an Integrated Feasibility Study/Environmental Assessment that is identifying and evaluating navigation improvements in the existing 50' federal navigation channels that are required to accommodate larger vessels that are arriving in NYNJ Harbor (such as the *Malaccamax* design vessel). The tentatively selected plan (TSP) consists of one (1) meeting/passing efficiency zone, eight (8) channel widening features, and channel deepening up to -55 feet MLLW to New Jersey port terminals (Port Jersey Port Authority Marine Terminal, Elizabeth Port Authority Marine Terminal, and Port Newark, NJ).

The District has determined that the proposed action "may affect, likely to adversely affect" the listed species that may occur within the project area include:

- Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*)
- Loggerhead turtle (*Caretta caretta*)
- Green turtle (*Chelonia mydas*)
- Kemp's ridley turtle (*Lepidochelys kempī*)
- Leatherback turtle (*Dermochelys coriacea*)
- Right whale (*Eubalaena glacialis*)
- Fin whale (*Balaenoptera physalus*)

A notice dated 4 November 2020, and detailing the location and status of the HDCI Integrated Feasibility Report and Environmental Assessment was sent to agencies and stakeholders. Additionally, there will be a public information meeting scheduled in November allowing for another venue of public and agency input to the study. The draft report is located at the following link:

<https://www.nan.usace.army.mil/Missions/Navigation/New-York-New-Jersey-Harbor/NY-NJ-HDCI/>

The District requests that your review and assistance in this consultation process as to fulfill our consultation responsibilities under the ESA. If you have any questions or require further information, please Ms. Jenine Gallo at 917- 790-8617 or me at 917-790-8634.

Sincerely,

WEPPLER.PETER
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Peter Wepler
Chief, Environmental Analyses Branch

Enclosure

cc: Murray-Brown



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930-2276

December 11, 2020

Peter Wepler
Chief, Environmental Analyses Branch
Department of the Army
U.S. Army Corps of Engineers, New York District
Jacob K. Javits Federal Building
26 Federal Plaza
New York, New York, 10278-0090

RE: EFH Consultation for the New York-New Jersey Harbor Deepening Channel
Improvement Study for Port Jersey Port Authority Marine Terminal, Elizabeth Port
Authority Marine Terminal, and Port Newark, New Jersey.

Dear Mr. Wepler:

We have received your request for consultation and the accompanying essential fish habitat (EFH) assessment for the New York District (District), U.S. Army Corps of Engineers' New York-New Jersey Harbor Deepening Channel Improvement Study (HDCI). The HDCI involves deepening and widening the existing 50-foot deep (mean low water [MLW]) federal navigation channel to allow for the navigation of a Triple E Class vessel to transit from sea to Port Elizabeth and Port Jersey, New Jersey. The request for consultation was provided on November 9, 2020, following the issuance of a Public Notice of a Draft Finding of No Significant Impact (FONSI) and the Draft Integrated Feasibility Report and Environmental Assessment (Draft FR/EA). The Tentatively Selected Plan (TSP) identified in the draft FR/EA includes the dredging of 28,377,000 cubic yards (cy) of sediments to deepen a number of navigation channels in the study area including the Ambrose Channel, Anchorage Channel and Port Jersey Channel, the Kill Van Kull, Newark Bay Channel, South Elizabeth Channel and Elizabeth Channel by up to 5 feet. While not clearly stated, widening of these channels is also assumed to be included as part of the project based on some of the information in the EFH assessment.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires federal agencies to consult with us on projects such as this which may adversely affect EFH and other aquatic resources. In turn, we must provide recommendations to conserve EFH. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH resulting from actions or proposed actions authorized, funded, or undertaken by that agency. This process is guided by the requirements of our EFH regulation at 50 CFR 600.905, which mandates the preparation of EFH assessments and generally outlines each agency's obligations in this consultation procedure.



The Fish and Wildlife Coordination Act (FWCA) also requires federal agencies to consult with us on projects such as this that may result in the modification of a natural stream or body of water. The FWCA requires agencies to consider the effects that these projects would have on fish and wildlife and to provide for improvement of these resources. Under this authority, we work to protect, conserve and enhance species and habitats for a wide range of aquatic resources such as diadromous species, shellfish, and other commercially and recreationally important species that are not managed by the federal fishery management councils and therefore do not have designated EFH.

Magnuson Stevens Fishery Conservation and Management Act (MSA)

The project area has been designated as EFH under the MSA for winter flounder (*Pseudopleuronectes americanus*), windowpane (*Scophthalmus aquosus*), Atlantic sea herring (*Clupea harengus*), bluefish (*Pomatomus saltatrix*), Atlantic butterfish (*Peprilus triacanthus*), summer flounder (*Paralichthys dentatus*), Atlantic mackerel (*Scomber scombrus*), scup (*Stenotomus chrysops*), black sea bass (*Centropristis striata*), clearnose skate (*Raja eglanteria*), little skate (*Leucoraja erinacea*), winter skate (*Leucoraja ocellata*), red hake (*Urophycis chuss*), and others. EFH is defined as, “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” For the purpose of interpreting the definition of EFH:

- “waters” include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate;
- “substrate” includes sediment, hard bottom, structures underlying the waters, and associated biological communities;
- “necessary” means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem;
- “spawning, breeding, feeding, or growth to maturity” covers a species' full life cycle.

The activities proposed in the TSP including the deepening and widening of the channels in the study area will have an adverse effect on EFH and consultation with us is required under the MSA. The EFH final rule published in the Federal Register on January 17, 2002 defines an adverse effect as “any impact which reduces the quality and/or quantity of EFH” and further states that:

An adverse effect may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystems components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from action occurring within EFH or outside EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

The EFH final rule also states that the loss of prey may be an adverse effect on EFH and managed species. As a result, actions that reduce the availability of prey species, either through direct harm or capture, or through adverse impacts to the prey species' habitat may also be

considered adverse effects on EFH.

Our evaluation of this project has been complicated by the lack of detail in the EFH assessment and the FR/EA. The information provided is not sufficient for us to consider the EFH assessment complete. As a result, the EFH consultation cannot be initiated at this time. The assessment does not include a clear and detailed description of all of the construction activities proposed, the alternatives considered, a discussion of the avoidance or minimization measures adopted, a comprehensive evaluation of direct, indirect, individual, cumulative, and synergistic effects of all of the proposed activities on EFH, or provide compensatory mitigation for unavoidable impacts.

Due to the size and scope of the project and the potentially substantial adverse effects to NOAA Trust resources, expanded EFH consultation procedures are necessary for this project. An expanded EFH consultation allows the maximum opportunity for us to work together to review the project's impacts on EFH and to develop EFH conservation recommendations. For expanded consultations, you must submit your EFH assessment to us at least 90 days prior to a final decision on the action, and we in turn will respond within 60 days of submission of a full and complete EFH assessment.

To initiate the required EFH consultation with us, please provide a revised EFH assessment that fully evaluates all of the direct, indirect, individual and cumulative effects of the proposed project on EFH. The mandatory contents of an EFH assessment include:

- A full description of the action.
- An analysis of the potential adverse effects of the action on EFH and the managed species.
- The federal agency's conclusions regarding the effects of the action on EFH.
- Proposed mitigation, if applicable.

Additional information, such as the results of an on-site inspection to evaluate the habitat and the site-specific effects of the project, the views of recognized experts on the habitat or species that may be affected, a review of pertinent literature and related information, and an analysis of alternatives to the action including alternatives that could avoid or minimize adverse effects on EFH should also be provided as part of the expanded consultation.

Based upon the definition and description of adverse effect, the EFH assessment should also consider the full range of effects of the construction activities associated with the dredging, dredged material disposal, and mitigation. Additional information should also include an evaluation of the impacts of the proposed project including both temporary and permanent changes to the habitat such as the loss or conversion of aquatic habitat, water quality and flow changes, and impacts to prey species, as well as detailed plans for compensatory mitigation for the permanent loss of habitat. Also, while we appreciate the plethora of studies and documentation related to the original Harbor Deepening Project (HDP), references, when made to relevant materials, should be appropriately cited for a more efficient review.

We offer the following additional technical assistance comments to assist you in the development of the revised EFH assessment. As always, we are available to discuss this project

and the required EFH consultation with you or your staff if you have any questions or require clarification on our comments.

Project Description

As discussed in the EFH assessment, the TSP identified for this study includes deepening Ambrose Channel, Anchorage Channel and Port Jersey Channel, the Kill Van Kull, Newark Bay Channel, South Elizabeth Channel and Elizabeth Channel, by up to 5 feet to allow for the navigation of a Triple E Class vessel to transit from sea to Port Elizabeth and Port Jersey. A table is provided in the EFH assessment (Table 1) with the quantities and type of material to be dredged within each channel, which totals 28,377,000 cy. Widening is also assumed to be included as part of the project based on footnotes included in Table 1 and further mentioned throughout the EFH assessment. However, without a visual depiction of the proposed activities in comparison to existing conditions, it is unclear where the work is proposed, which areas will be widened and/or deepened, and the total area that will be disturbed. Additionally, Table 1 provides footnotes with undefined shorthand of what is assumed to be sub-areas of the channels, but it is difficult to understand what these footnotes are referencing.

The shallow habitat present within the project area is also discussed in the EFH assessment but the document lacks a visual depiction of where these areas exist and how the project will affect these areas. The limited figures provided are generalized and do not include cross sectional views and lack details to assist in the evaluation of effects. A revised EFH assessment should include site plans that can be:

- directly linked to Table 1 and the discussion of the HDCI Study Description (Section 3 of the EFH assessment),
- that are easily referenced,
- depict the project area,
- include existing versus proposed expansion areas with overlapping bathymetry; and
- include cross sections.

Additionally, the revised EFH assessment should provide a clear summary table which quantifies the total, permanent, and temporary impacts to the different water areas and habitats, including EFH for species with demersal life stages such as winter flounder, and that is consistent with the project plans. This information would assist in the evaluation of effects of this project on EFH and habitats used by NOAA trust species.

Of particular concern is the project details that appear to be missing by omission or lack of reference within the EFH assessment. The description of the HDCI within the EFH assessment fails to include any details on materials and methods, best management practices, and the final disposition of the 28,377,000 cy material to be dredged. It is also unclear from the EFH assessment how maintenance dredging and berth deepening (which is depicted on Figure 2 of the EFH assessment and captioned as “not to be deepened under the HDCI Project”), will be addressed. Without a clear project description, it is difficult to understand the full range of potential impacts and evaluate the effects of the proposed action on the aquatic environment and to NOAA trust resources.

Three impacts highlighted in the EFH assessment include:

- Physical disturbance and re-suspended sediments/re-deposition of suspended sediments (short-term direct and indirect impacts including potential burial and/or release of contaminants)
- Entrainment of early life stages (eggs and larvae) as a form of short-term direct impact due primarily due to hydraulic dredging and capture of eggs and possibly larvae in the dredge
- Loss of EFH function (i.e. loss of habitat) as a long-term indirect impact due to increased sedimentation and/or changes in depths, currents, substrate types, and/or in-water structures that reduce or eliminate the suitability of habitat for EFH-managed species.

However, as indicated in the EFH assessment, these impacts are based on 2017 conservation recommendations related to the original HDP. As stated in our February 7, 2017, those EFH conservation recommendations only apply to maintenance dredging within the channels identified in the HDP, and that any channel improvements proposed in the future would require additional consultation. Without a complete project description, it is unclear if the impacts discussed as part of the earlier consultation on the maintenance activities encompass the full suite of potential adverse effects that will result from further deepening and widening of the channels. Additionally, there is limited discussion as to where the impacts will occur and to what habitats, as well as an omission of potential effects due to erosion, sloughing of sidewalls, and resuspension of potentially contaminated materials.

According to the EFH assessment, it appears that some impacts to aquatic resources will be permanent, and include impacts to the shallow water habitat and EFH for winter flounder early life stages. Although the District recognizes that compensatory mitigation will be required for the shallow water impacts and states that a mitigation plan will incorporate benefits of the channel improvements, a mitigation plan has not yet been provided and the ecological benefits of the channel deepening and widening are unclear. Additionally, the EFH assessment discusses the District's involvement with several large-scale environmental programs in the NY/NJ Harbor that focus on improving shallow, aquatic habitat through the beneficial use of dredged material. While we recognize the work that has been done previously, including the list of past projects related to the original HDP related water quality improvements and enhancement of intertidal and subtidal habitat functions, and intentions to continue implementing such projects, the EFH assessment does not provide any detail on proposed plans to implement habitat enhancement or beneficial use of material related to the HDCl. The revised EFH assessment should clearly identify both the temporary and permanent impacts to all habitat types, explain measures taken to avoid and minimize those adverse effects, and provide a compensatory mitigation plan to offset any unavoidable losses. Additionally, if the District intends to provide habitat enhancement and beneficial use of material as part of the HDCl, those projects as well as their locations and details related to the work should be included in the revised EFH assessment.

We agree that some of the impacts of the dredging can be minimized through the use of implementing best management practices (BMPs) and seasonal work windows to protect sensitive life stages of federally managed species such as winter flounder and anadromous fish. However, the specific work windows referenced in the EFH assessment were developed for the

maintenance dredging of the channels identified in the HDP. As discussed in our February 7, 2017, letter, consultation with us is required for any future improvements that require new work dredging and the expansion of the width of some of the channels, or if blasting is proposed, and that additional EFH conservation recommendations may be provided.

Winter flounder

EFH for winter flounder has been designated in the project area. Winter flounder ingress into spawning areas within mid-Atlantic estuaries when water temperatures begin to decline in late fall. Tagging studies show that most return repeatedly to the same spawning grounds (Lobell 1939, Saila 1961, Grove 1982 in Collette and Klein-MacPhee 2002). Winter flounder typically spawn in the winter and early spring, although the exact timing is temperature dependent and thus varies with latitude (Able and Fahay 1998); however, movement into these spawning areas may occur earlier, generally from mid- to late November through December. Winter flounder have demersal eggs that sink and remain on the bottom until they hatch. After hatching, the larvae are initially planktonic, but following metamorphosis they assume an epibenthic existence. Winter flounder larvae are negatively buoyant (Pereira et al. 1999) and are typically more abundant near the bottom (Able and Fahay 1998). Young-of-the-year flounder tend to burrow in the sand rather than swim away from threats. Increased turbidity and the subsequent deposition of the suspended sediments can smother the winter flounder eggs and would adversely affect their EFH.

In your EFH assessment, you provide project minimization measures which specifically include seasonal restrictions protective of winter flounder early life stage (January 15 through May 31) for Port Jersey outer channel. We appreciate that the seasonal work windows have been incorporated into project planning based on previous maintenance dredging permits and coordination with us. However, for your planning purposes, should project activities widen the top dimensions of the channels beyond the boundaries originally identified as part of the HDP or impact areas less than 20 feet deep, sediment disturbing in-water work, such as dredging, should be avoided when winter flounder eggs and larvae may be present - between January 15 and May 31. This is consistent with the past discussions we have had with District staff regarding both the maintenance work as well as any proposed future improvements.

Anadromous Fishes

Alewife and blueback herring, collectively known as river herring, spend most of their adult life at sea, but return to freshwater areas to spawn in the spring. Both species are believed to be repeat spawners, generally returning to their natal rivers (Collette and Klein-MacPhee 2002). Because landing statistics and the number of fish observed on annual spawning runs indicate a drastic decline in alewife and blueback herring populations throughout much of their range since the mid-1960s, river herring have been designated as Species of Concern by NOAA. Species of Concern are those about which we have concerns regarding their status and threats, but for which insufficient information is available to indicate a need to list the species under the Endangered Species Act (ESA). We wish to draw proactive attention and conservation action to these species.

The project area serves as a migratory pathway to spawning and nursery habitat for these anadromous fish species. The activities associated with dredging can create undesirable turbidity and noise levels that can impede migration. Increases in turbidity due to the resuspension of sediments into the water column during construction can degrade water quality, lower dissolved oxygen levels, and potentially release chemical contaminants bound to the fine-grained estuarine/marine sediments. Suspended sediment can also mask pheromones used by migratory fishes such as these to reach their spawning grounds and impede their migration and can smother immobile benthic organisms and demersal newly-settle juvenile fish (Auld and Schubel 1978; Breitburg 1988; Newcombe and MacDonald 1991; Burton 1993; Nelson and Wheeler 1997). Noise from the construction activities may also result in adverse effects. Effects may include (a) non-life threatening damage to body tissues, (b) physiological effects including changes in stress hormones or hearing capabilities, or (c) changes in behavior (Popper et al. 2004).

Additionally, juvenile river herring are a food source for several federally managed species. Buckel and Conover (1997) in Fahay et al. (1999) reports that diet items of juvenile bluefish include *Alosa* species such as these. Juvenile *Alosa* species have also been identified as prey species for windowpane flounder and summer flounder in Steimle et al. (2000). The EFH final rule states that the loss of prey may be an adverse effect on EFH and managed species because the presence of prey makes waters and substrate function as feeding habitat and the definition of EFH includes waters and substrate necessary to fish for feeding. Therefore, actions that reduce the availability of prey species, either through direct harm or capture, or through adverse impacts to the prey species' habitat may also be considered adverse effects on EFH. As a result, activities that adversely affect the spawning success and the quality for the nursery habitat of these anadromous fish can adversely affect the EFH for juvenile windowpane and summer flounder by reducing the availability of prey items.

In the EFH assessment, you provide project minimization measures which specifically include seasonal restrictions protective of migratory and spawning anadromous fish (March 1 through May 31) for the Kill Van Kull and Newark Bay. We appreciate that the seasonal work windows have been incorporated into project planning. However, because it appears that the scope of the HDCI exceeds that considered as part of the maintenance dredging operations, the revised EFH assessment should consider avoidance of in-water work from March 1 to June 30 during the upstream migration of anadromous fish to their spawning grounds to minimize the adverse effects of suspended sediment and noise throughout the study area.

Cumulative Impacts

The EFH assessment does not adequately evaluate the cumulative effects of the proposed project. There is some mention of other projects ongoing within the Harbor as part of the cumulative effects section of the EFH assessment, but there does not appear to be any meaningful discussion. Cumulative impacts analyses are not restricted to spatial and temporal overlap of projects. Several small, medium, and large past, present, and future actions have not been considered. For example, large dredging (new and maintenance) and port projects are underway or have been proposed in the region such as maintenance dredging and other activities at the various port facilities operated by the Port Authority of NY and NJ, the NY NJ Anchorages project, as well as various construction and maintenance projects along the Hudson River, Upper

Bay, Newark Bay, and the Kill van Kull.

A full assessment of the cumulative effects of the proposed project should be undertaken that includes the consideration of the cumulative effects of all past, present, and reasonably foreseeable future actions on aquatic resources. Some of the issues that should be addressed include the cumulative effects of the loss of aquatic water column and benthic habitat on NOAA trust resources, loss of prey species, ballast water withdrawals, water discharges, increased vessel traffic (i.e. tugs), vessel collisions, and new dredging (e.g. berths and other dredging) and future maintenance dredging needs.

Endangered Species Act

Federally listed species may be present in the project area. Consultation, pursuant to Section 7 of the Endangered Species Act (ESA) of 1973, may be necessary. The District is responsible for determining whether the proposed action is likely to affect listed species. When project plans are complete, you should submit your determination of effects, along with justification for the determination, and a request for concurrence to nmfs.gar.esa.section7@noaa.gov. After reviewing this information, we would then be able to conduct a consultation under Section 7 of the ESA.

Conclusion

We hope that the information provided above will assist you in the development of a revised EFH assessment that evaluates fully all of the direct, indirect, individual and cumulative effects of the proposed project, provides a project schedule that minimizes impacts to EFH and other NOAA trust resources, and includes a mitigation plan for any unavoidable losses. We also look forward to working with you to pursue beneficial use options in the region. As always, please do not hesitate to contact Jessie Murray (Jessie.Murray@noaa.gov, 732-872-3116) in our Sandy Hook field office if you have any questions or need assistance.

Sincerely,

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Karen M. Greene
Mid-Atlantic Field Offices Supervisor
Habitat Conservation Division

cc: GARFO PRD - E. Carson-Supino
New York District ACOE - J. Gallo, J. Miller, K. Baumert, C. Alcoba
NJDEP - S. Biggins, K. Davis
FWS - S. Mars, S. Papa
EPA Region II - M. Finocchiaro, L. Knutson
NEFMC - T. Nies
MAFMC - C. Moore
ASMFC - L. Havel

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DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK NEW YORK 10278-0090

September 7, 2021

Environmental Analysis Branch

Ms. Karen Greene
National Marine Fisheries Service
Greater Atlantic Regional Fisheries Office
James J. Howard Marine Sciences Laboratory
74 Magruder Road
Highlands, NJ, 07732

RE: EFH Consultation for the New York-New Jersey Harbor Deepening Channel Improvement (HDCI) Study.

Dear Ms. Greene:

The U.S. Army Corps of Engineers (USACE), New York District (District) received your comments on the Harbor Deepening Channel Improvement (HDCI) Study essential fish habitat (EFH) assessment prepared by the District. The HDCI involves deepening and widening the existing 50-foot deep (mean low water (MLW) federal navigation channel to allow for the navigation of Triple E Class vessel to transit from the ocean to Port Elizabeth and Port Jersey, New Jersey. The request for consultation was provided to your office on November 9, 2020, following the issuance of a Public Notice of a Draft Finding of No Significant Impact (FONSI) and the Draft Integrated Feasibility Report and Environmental Assessment (Draft FR/EA) (which the draft EFH Assessment was appended). The Tentatively Selected Plan (TSP) identified in the draft FR/EA includes the dredging of approximately 33,238,000 cubic yards (cy) of sediments to deepen and widen the following navigation channels in the study area: Ambrose Channel, Anchorage Channel and Port Jersey Channel, the Kill Van Kull, Newark Bay Channel, South Elizabeth Channel and Elizabeth Channel by 5 feet.

The District identified nineteen (19) comments to which the responses are provided below.

1. Comment. While not clearly stated, widening of these channels is also assumed to be included as part of the project based on some of the information in the EFH assessment.

Response. Widening is identified, discussed, and analyzed in the draft subject document (and incl in the draft EA to which the Assessment is appended, as referenced), as follows:

- Chapter 3 Study Description, pg. 8 (incl. Figs 1&2 on pg. 9)
- Chapter 3 Table 1 TSP Channels Dimensions and Characteristics, p 11
- Chapter 4 Potential Impacts from HDCI Improvements, p. 13
- Chapter 7 EFH Species Assessment, Section 7.10, p. 26

- Chapter 8 EFH Assessment Summary, p 29
- Chapter 8 EFH Assessment Summary, p 31

2. Comment. Our evaluation of this project has been complicated by the lack of detail in the EFH assessment and the FR/EA. The information provided is not sufficient for us to consider the EFH assessment complete. As a result, the EFH consultation cannot be initiated at this time. The assessment does not include a clear and detailed description of all of the construction activities proposed, the alternatives considered, a discussion of the avoidance or minimization measures adopted, a comprehensive evaluation of direct, indirect, individual, cumulative, and synergistic effects of all of the proposed activities on EFH or provide compensatory mitigation for unavoidable impacts.

Response. Please see Response #1. The draft EFH Assessment provided to NMFS to support the HDCI study was developed using the same template used for the NYNJ Harbor Deepening Project (HDP) reinitiation of consultation in 2014 (see 2013 Summary Report), for which NMFS provided Conservation Recommendations (CRs). NMFS is aware and partner to the level of coordination related to implement and execute USACE's risk-informed based SMART Planning Principles (including its associated documents, which streamlines Feasibility Study phase analyses and reporting requirements). agreement between USACE and National Oceanic and Atmospheric Administration (NOAA) NMFS has been in receipt of several USACE-NAN EFH Assessments and other reports (i.e. . FR/EAs or EISs) that have successfully implemented the SMART paradigm by including statements that defer some technical analyses to the Pre-Engineering and Design (PED) phase of projects. The documents prepared for the HDCI provide the same level of "SMART- level" information and analyses as all previous studies and projects for which NMFS has provided CRs since SMARTs inception (2013). Specifically, the draft document references the previous HDP documents which provide a vast array of details regarding typical project site dredging equipment, best management practices, EFH analyses from 1999 through 2014, in addition to directly referencing the draft FR/EA, including all the technical appendices, which have been provided to support the HDCI study. While there's always opportunities to improve technical products, hence the coordination of our draft documents with the Federal partners, NFMS should not be delaying the initiation of EFH consultation on this study without providing a coordinated path forward. Please note that the information NMFS references as lacking can be found as follows: detailed description of the proposed Federal Action in Chapter 3; the Alternative considered in the EA (to which this Assessment is Appended as clearly noted in Ch 3; Conceptual Mitigation, including Avoidance and Minimization in Chapters 8 and 9; and Direct, Indirect, Cumulative Impacts in Chapter 4.

3. Due to the size and scope of the project and the potentially substantial adverse effects to NOAA Trust resources, expanded EFH consultation

procedures are necessary for this project. An expanded EFH consultation allows the maximum opportunity for us to work together to review the project's impacts on EFH and to develop EFH conservation recommendations. For expanded consultations, you must submit your EFH assessment to us at least 90 days prior to a final decision on the action, and we in turn will respond within 60 days of submission of a full and complete EFH assessment.

Response. As you are aware, the District seeks the maximum opportunity to work with NMFS on all studies/projects/actions. While the HDCI is a separately (uniquely) authorized modification of the HDP, it is still part of the HDP, which, in addition to the subject study's technical and report analyses, has over 20 years of environmental analyses and documentation, including peer reviewed empirical studies based on the District's extensive Aquatic Biological Sampling Program (ABS) studies, reports and papers, for which NMFS was an active collaborative partner. It is unclear to the District that NMFS claims that staff was not provided relevant and necessary (best available) information upon which to initiate consultation at this advanced stage of continuing interagency collaboration, coordination and partnering on the District's Civil Works Navigation Program. Specifically, as relates to the comments on the subject HDCI EFH analyses, the District refers your office to the over 20 years of studies, analysis and documentation summarized in the 2013 Summary Report, as well as noting the inclusion of all the required information in the HDCI EFH Assessment. Referencing the above data, the District believes it has met or nearly meets the Expanded Consultation requirements with HDCI's initial EFH submittal (consisting of a complete EFH Assessment as an Appendix to the FR/EA, an expansion and update of the 2013 Comprehensive Summary Report and the individually submitted draft EFH Assessment as requested by your staff and as submitted by us via email dated 9 November 2020).

4. Comment. To initiate the required EFH consultation with us, please provide a revised EFH assessment that fully evaluates all of the direct, indirect, individual, and cumulative effects of the proposed project on EFH.

The mandatory contents of an EFH assessment include:

- A full description of the action. Response. See Ch 3, pp 8-12, incl Table 1.
- An analysis of the potential adverse effects of the action on EFH and the managed species. Response. See Ch 4, 6, 7, 8
- The federal agency's conclusions regarding the effects of the action on EFH. Response. See Ch. 8
- Proposed mitigation, if applicable. Response. See Responses 2,3 and Ch 9.

Overall Response. Also, refer to Responses 1, 2, 3. The District maintains that the draft EFH Assessment delivered to NMFS on 9 November 2020 (using the HDP EFH Assessment template) meets the criteria to initiate consultation. While there are minor technical revisions underway per some of your comments, as would be expected when requesting comments on a draft document, none of them rises to the level of having to reinitiate consultation since it is permissible for our agencies to coordinate and collaborate to meet NMFS expectations as well as USACE's mission, including successful execution of the SMART schedule.

5. Comment. Additional information, such as the results of an on-site inspection to evaluate the habitat and the site-specific effects of the project, the views of recognized experts on the habitat or species that may be affected, a review of pertinent literature and related information, and an analysis of alternatives to the action including alternatives that could avoid or minimize adverse effects on EFH should also be provided as part of the expanded consultation.

Response. See Responses 1, 2,3,4 and Ch 5 HDP EFH Consultation History, and Ch 10 References.

6. Based upon the definition and description of adverse effect, the EFH assessment should also consider the full range of effects of the construction activities associated with the dredging, dredged material disposal, and mitigation. Additional information should also include an evaluation of the impacts of the proposed project including both temporary and permanent changes to the habitat such as the loss or conversion of aquatic habitat, water quality and flow changes, and impacts to prey species, as well as detailed plans for compensatory mitigation for the permanent loss of habitat.

Response. Chapters 4, 6,7, 8, and including the referenced draft FR/EA to which the Assessment is appended, contains the full range of analyses, including summaries, and reference to the predecessor documents. Chapter 10 includes all relevant references to support those analyses, which includes the comprehensive 2013 Summary Report. Chapters 8 and 9 have been revised based upon new study (an ongoing process throughout the life of a project) information that has since been developed, as well as due to personal communication (ongoing coordination and collaboration) between the District and NMFS.

7. Also, while we appreciate the plethora of studies and documentation related to the original Harbor Deepening Project (HDP), references, when made to relevant materials, should be appropriately cited for a more efficient review.

Response. See Response to Comments 2,3,4,5, and 6.

8. Widening is also assumed to be included as part of the project based on footnotes included in Table 1 and further mentioned throughout the EFH assessment. However, without a visual depiction of the proposed activities in comparison to existing conditions, it is unclear where the work is proposed, which areas will be widened and/or deepened, and the total area that will be disturbed.

Response. See responses to Comments 1, 4, 5. This information was not available for the draft FR/EA release schedule and its Appendices (including EFH Assessment) under SMART. A more detailed map has since been prepared depicting the areas proposed for deepening and widening. Please refer to Figure 3. Note: during the finalization of the report and optimization of plans during the PED phase of the project, these potential impact areas are subject to change.

9. Additionally, Table 1 provides footnotes with undefined shorthand of what is assumed to be sub-areas of the channels, but it is difficult to understand what these footnotes are referencing.

Response. Please be more specific regarding what footnotes are unclear.

10. The shallow habitat present within the project area is also discussed in the EFH assessment, but the document lacks a visual depiction of where these areas exist and how the project will affect these areas. The limited figures provided are generalized and do not include cross sectional views and lack details to assist in the evaluation of effects.

Response. See above responses to Comments 3, 8.

11. A revised EFH assessment should include site plans that can be:

- a) directly linked to Table 1 and the discussion of the HDCI Study Description (Section 3 of the EFH assessment),
- b) that are easily referenced,
- c) depict the project area,
- d) include existing versus proposed expansion areas with overlapping bathymetry; and
- e) include cross sections.

Response. See response to Comments 1, 2, 3, 4, 5, 6. As NMFS is aware, the District is currently in the Feasibility Phase of work, specific design level plans are not available in the Feasibility phase of our SMART studies. This level of detail will be available in Pre-Construction Engineering and Design and will be further coordinated with NMFS when available.

12. Additionally, the revised EFH assessment should provide a clear summary table which quantifies the total, permanent, and temporary impacts to the different water areas and habitats, including EFH for species with demersal life stages such as winter flounder, and that is consistent with the project plans. This information would assist in the evaluation of effects of this project on EFH and habitats used by NOAA trust species.

Response. Concur. A Summary Table has been included in the revised document (Ch 8, pg31).

13. Of particular concern is the project details that appear to be missing by omission or lack of reference within the EFH assessment. The description of the HDCI within the EFH assessment fails to include any details on materials and methods, best management practices, and the final disposition of the 28,377,000-cy material to be dredged. It is also unclear from the EFH assessment how maintenance dredging and berth deepening (which is depicted on Figure 2 of the EFH assessment and captioned as "not to be deepened under the HDCI Project"), will be addressed. Without a clear project description, it is difficult to understand the full range of potential impacts and evaluate the effects of the proposed action on the aquatic environment and to NOAA trust resources. Three impacts highlighted in the EFH assessment include:

- Physical disturbance and re-suspended sediments/re-deposition of suspended sediments (short-term direct and indirect impacts including potential burial and/or release of contaminants)
- Entrainment of early life stages (eggs and larvae) as a form of short-term direct impact due primarily due to hydraulic dredging and capture of eggs and possibly larvae in the dredge
- Loss of EFH function (i.e., loss of habitat) as a long-term indirect impact due to increased sedimentation and/or changes in depths, currents, substrate types, and/or in-water structures that reduce or eliminate the suitability of habitat for EFH-managed species.

Response. See Responses to All Previous Comments.

14. However, as indicated in the EFH assessment, these impacts are based on 2017 conservation recommendations related to the original HDP. As stated in our February 7, 2017, those EFH conservation recommendations only apply to maintenance dredging within the channels identified in the HDP, and that any channel improvements proposed in the future would require additional consultation. Without a complete project description, it is unclear if the impacts discussed as part of the earlier consultation on the maintenance activities encompass the full suite of potential adverse effects that will result from further deepening and widening of the channels. Additionally, there is limited discussion as to where the impacts will occur and to what habitats, as

well as an omission of potential effects due to erosion, sloughing of sidewalls, and resuspension of potentially contaminated materials.

Response. The District has initiated consultation for this study with submittal of the HDCI draft EFH Assessment document. Additionally, NMFS is also in receipt of the draft IR (FR/EA), as well as the predecessor documents referenced in support of the ongoing Navigation projects, as currently authorized. The District acknowledges and understands that the CRs received when consultation was reinitiated based on all the new data collected during the HDP and then transitioned to Maintenance Dredging in 2017 might be outdated and thus are being used as placeholders until such time the ongoing consultation for HDCI results in new CRs.

15. According to the EFH assessment, it appears that some impacts to aquatic resources will be permanent and include impacts to the shallow water habitat and EFH for winter flounder early life stages. Although the District recognizes that compensatory mitigation will be required for the shallow water impacts and states that a mitigation plan will incorporate benefits of the channel improvements, a mitigation plan has not yet been provided and the ecological benefits of the channel deepening and widening are unclear.

Response. A mitigation plan for the approximately 2 acre impacts to the regulated (under Clean Water Act and Coastal Zone Management Act) shallow water habitat is being developed as part of the Final FR/EA and will be provided as an Appendix. Benefits resulting from the implementation of the project will be both qualified and quantified, as feasible, during the Feasibility phase of the study, as required, and attributed to USACE's compliance responsibilities, including the EFH Amendment, as required, prior to undertaking any additional mitigation (including avoidance and minimization) for permanent impacts to essential, particularly sensitive, or regulated habitat. While the District recognizes that potential adverse effects to early life stages of WFL habitat are likely, it is also recognized that there are varying qualities and quantities of this habitat within the study area, and there are numerous paths available, in addition to seasonal restrictions designed to be protective of eggs (non-mobile), to USACE to offset these potentially adverse effects; such as pursuing opportunities to beneficially use dredged material to create, enhance or restore essential habitat via remediation of the Historic Area Remediation Site (HARS), creating new and/or improving existing reefs, targeted habitat enhancement projects such as that which was completed for adverse effects to the Port Jersey flats under the HDP, and restoration of borrow areas and pits, at a minimum.

16. Additionally, the EFH assessment discusses the District's involvement with several large-scale environmental programs in the NY/NJ Harbor that focus on improving shallow, aquatic habitat through the beneficial use of dredged material. While we recognize the work that has been done previously,

including the list of past projects related to the original HDP related water quality improvements and enhancement of intertidal and subtidal habitat functions, and intentions to continue implementing such projects, the EFH assessment does not provide any detail on proposed plans to implement habitat enhancement or beneficial use of material related to the HDCI. The revised EFH assessment should clearly identify both the temporary and permanent impacts to all habitat types, explain measures taken to avoid and minimize those adverse effects, and provide a compensatory mitigation plan to offset any unavoidable losses.

Response. The District has revised the EFH Assessment to include quantification of habitat from between the -7' MLLW to the -20' MLLW elevation (potential effects to the 0- to -6' MLLW elevation has already been defined). See Chapter 8 Summary Table and Figure 3.

17. Additionally, if the District intends to provide habitat enhancement and beneficial use of material as part of the HDCI, those projects as well as their locations and details related to the work should be included in the revised EFH assessment.

Response. See Responses to Comments 1,2,3,4,5,15,16. The District has included a proposed list of possible enhancement projects to be coordinated with NMFS. It is premature to attempt to identify actual viable sites at this early phase of the study. The HDCI Dredged Material Management Plan (DMMP), and the District's fulfillment of all such and related obligations under the Navigation Program (and all other business lines) should certainly be sufficient to appease NMFS concerns regarding USACE's commitment to such obligations, as well as our commitment to our own Environmental Operating Principles.

18. However, for your planning purposes, should project activities widen the top dimensions of the channels beyond the boundaries originally identified as part of the HDP or impact areas less than 20 feet deep, sediment disturbing in-water work, such as dredging, should be avoided when winter flounder eggs and larvae may be present - between January 15 and May 31. This is consistent with the past discussions we have had with District staff regarding both the maintenance work as well as any proposed future improvements.

Response. USACE will include, for planning purposes, CRs received for the HDP 50' project contracts, which varied based upon location (i.e., Lower Bay, Upper Bay, NB Complex) and proposed action and were temporally and spatially rooted in over 11 years of data collected during the Aquatic Biological Sampling (ABS) Program and over 3 years of data from the Migratory Finfish Program, both planned and coordinated with NMFS and documented in peer reviewed literature. Using the 2017 CRs is also

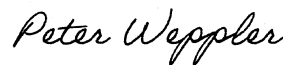
applicable in some areas. It is unreasonable to integrate overly restrictive CRs in all contact areas.

19. The revised EFH assessment should consider avoidance of in-water work from March 1 to June 30 during the upstream migration of anadromous fish to their spawning grounds to minimize the adverse effects of suspended sediment and noise throughout the study area.

Response. See response to Comment 18.

The District requests NMFS review of the comments and the enclosed revised EFH Assessment where the District considered the potential effects of the proposed alternative on Federally- managed species and their designated EFH. After your review, please provide EFH Conservation Recommendations. Thank you for your continued coordination and assistance with this study. If you have any questions or concerns, please contact Jenine Gallo at 917- 886-7055 or me at 917-790-8634.

Sincerely,



WEPPLER.PETER.M.1228647353 Digitally signed by WEPPLER.PETER.M.1228647353
Date: 2021.09.07 12:19:17 -04'00'

Peter Weppeler
Chief, Environmental Analysis Branch

Enclosure
cc. J. Murray



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930-2276

November 4, 2021

Peter Wepler
Chief, Environmental Analyses Branch
Department of the Army
U.S. Army Corps of Engineers, New York District
Jacob K. Javits Federal Building
26 Federal Plaza
New York, New York, 10278-0090

RE: EFH Consultation for the New York New Jersey Harbor Deepening Channel
Improvement Study for Port Jersey Port Authority Marine Terminal, Elizabeth Port
Authority Marine Terminal, and Port Newark, New Jersey.

Dear Mr. Wepler:

We have reviewed the revised essential fish habitat (EFH) assessment and additional supplemental information provided to us by the U.S. Army Corp of Engineers, New York District (District) in response to our December 11, 2020, technical assistance letter for the New York New Jersey Harbor Deepening Channel Improvement Study (HDCI). The HDCI involves deepening the existing 50-foot deep (mean lower low water [MLLW]) federal navigation channel to allow for the navigation of a Triple E Class vessel to transit from sea to Port Elizabeth and Port Jersey, New Jersey. The Tentatively Selected Plan (TSP) identified in the Draft Integrated Feasibility Report and Environmental Assessment (Draft FR/EA) includes the dredging of 33,238,000 cubic yards (cy) of sediments to deepen a number of navigation channels in the study area, which includes the Ambrose Channel, Anchorage Channel and Port Jersey Channel, the Kill Van Kull, Newark Bay Channel, South Elizabeth Channel and Elizabeth Channel by up to 5 feet. Dredging also includes the widening of some channels, including side slopes in some areas, which is needed for structural stability.

Based on the revised EFH assessment, potential impacts from the proposed project may include temporary disturbances due to entrainment of early life stages (i.e., eggs and larvae); temporary disturbances due to turbidity, burial, or release of contaminants from suspended sediments; and the permanent loss of habitat. A compensatory mitigation plan for permanent disturbances is proposed to be developed at a later time once sufficient project details have been evaluated during the Pre-construction Engineering and Design (PED) phase.



Magnuson Stevens Fishery Conservation and Management Act (MSA)

As discussed in our previous letter, the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and Fish and Wildlife Coordination Act (FWCA) require federal agencies to consult with one another on projects such as this that may adversely affect EFH and other aquatic resources. In turn, we must provide recommendations to conserve EFH. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH resulting from actions or proposed actions authorized, funded, or undertaken by that agency. This process is guided by the requirements of our EFH regulation at 50 CFR 600.905, which mandates the preparation of EFH assessments and generally outlines each agency's obligations in this consultation procedure.

The project area has been designated as EFH under the MSA for a number of federally managed species including winter flounder (*Pseudopleuronectes americanus*), windowpane (*Scophthalmus aquosus*), Atlantic sea herring (*Clupea harengus*), bluefish (*Pomatomus saltatrix*), Atlantic butterfish (*Peprilus triacanthus*), summer flounder (*Paralichthys dentatus*), Atlantic mackerel (*Scomber scombrus*), scup (*Stenotomus chrysops*), black sea bass (*Centropristis striata*), clearnose skate (*Raja eglanteria*), little skate (*Leucoraja erinacea*), winter skate (*Leucoraja ocellata*), red hake (*Urophycis chuss*), and others. The study area is also a migratory corridor for anadromous fish such as American shad (*Alosa sapidissima*), alewife (*Alosa pseudoharengus*), and blueback herring (*Alosa aestivalis*).

According to the revised EFH assessment, the proposed project anticipates permanent impacts to 46 acres of subtidal shallows within depths between -6-feet and -20-feet MLLW, which includes EFH for early life stage winter flounder habitat. Due to inconsistencies between the text, an unnumbered summary table of impacts, and Figure 3 within the EFH assessment, it is unclear if this is the total disturbance and the location of those disturbances. Specifically, the text indicates permanent impacts to 8.70 acres to "Upper Bay/KVK East" and 37.25 acres to "Newark Bay/KVK West," the summary table indicates permanent impacts to 8.70 acres to the Anchorage Channel and 37.25 acres to the Newark Bay Channel, and Figure 3 displays impacts in the Port Jersey Channel, Kill Van Kull, and Newark Bay Channels. Figure 18 within the Draft FR/EA Report, also presents different impacts and locations of those impacts. Additionally, the quantification of temporary impacts remains unclear.

While noise from construction is briefly indicated as a direct impact, blasting, which is briefly mentioned in the Draft FR/EA, is not included in the summary of impacts. The seasonal restrictions protective of anadromous fish (i.e. no dredging or blasting from March 1 to June 30) mentioned in the Draft FR/EA during blasting activities, should also apply within the migrating and spawning waters throughout the Kill Van Kull and Newark Bay channels.

Compensatory mitigation should be provided for the loss of shallow water habitat and EFH for winter flounder early life stages (i.e., areas less than 6 meters below mean low water [MLW]). The EFH assessment states that a functional assessment of the habitat will be evaluated with additional project details gathered during the PED and in conjunction with updated implementing policies, such as NOAA's Draft Mitigation Policy for Trust Resources, to develop a compensatory mitigation plan. The District anticipates that the HDCI will implement projects in

the NY/NJ Harbor similar to the original Harbor Deepening Project, which focused on water quality improvements and enhancement of intertidal and subtidal habitat functions through the beneficial use of dredged material. Because the areal extent of impact has not been clearly defined, it is premature for us to make a determination regarding the suitability of this approach. We recommend that the District continue to coordinate with us as these plans evolve, so that we may help to identify suitable locations, and develop appropriate mitigation ratios, goals, success criteria, performance measures, monitoring and maintenance plans, as well as adaptive management plans to help ensure long-term success of the proposed mitigation. Additionally, if the District intends to provide habitat enhancement and beneficial use of material as part of the HDCI, the specific locations of the sources of the dredged material, nature of the material (grain size, contaminants, etc.), and the details related to the dredging should be included in an updated or supplemental EFH assessment developed once the impact numbers have been refined and a conceptual compensatory mitigation plan is developed.

We appreciate that you intend to implement best management practices (BMPs) for this project, such as the use of closed clamshell buckets, restricted hoist speeds, and no barge overflow. We also agree that seasonal timing restrictions may be used to minimize impacts during construction to avoid sensitive life stages. However, as discussed in our letter dated February 7, 2017, the seasonal windows you propose in the EFH assessment were developed for and are applicable only to the maintenance dredging activities within the existing channels of the Harbor Deepening Project (HDP). In that letter, we also stated that seasonal windows are not applicable in private facilities within the project area or in federal navigation channels outside of the HDP, such as the channels within Raritan and Lower Bays. We also stated that additional EFH CRs may be provided for any new work associated with future improvements to the HDP, including the widening channels or changes to the side slopes, or if blasting was proposed, both of which are proposed as part of the HDCI Study.

Because the proposed improvements to the HDP, described in the HDCI Study include deepening and also widening of several channels within the study area, the seasonal restrictions described in our March 15, 2015, letter which include protections to the shallow areas adjacent to the channel that are EFH for winter flounder early life stages are applicable to the HDCI. These recommended seasonal restrictions do incorporate information from the biological sampling programs undertaken by the District as part of the original HDP and include shortened winter flounder and anadromous fish seasonal restrictions as compared to those we recommended prior to the biological sampling.

Essential Fish Habitat Conservation Recommendations

Pursuant to Section 305(b)(4)(A) of the MSA we are providing the following EFH conservation recommendations (CRs) to minimize adverse effects on EFH for winter flounder, summer flounder, windowpane, bluefish and skates:

Anchorage Channel:

- Seasonal protections are not necessary except in the following areas:
 - Port Jersey Channel, adjacent to shallow flats less than 6 meters deep at MLW. In these areas, dredging should be avoided from January 15 to May 31 to protect

winter flounder early life stages and their EFH. The seasonal restriction applies from edge of the existing channel adjacent to the shallow flats out for a distance equal to one-half the width of the channel. For example, if the channel is 500 feet wide, then the dredging should be avoided within 250 feet of the channel edge adjacent to the shallow flats less than 6 meters deep at mlw.

Kill Van Kill:

- Avoid dredging and blasting from March 1 to May 31 of each year to minimize impacts to migrating and spawning anadromous fishes which are prey species for federally managed bluefish, summer flounder, windowpane and skates.

Newark Bay:

- Avoid dredging from January 15 to May 31 in following reaches: North of Shooters Island Reach, the portion of the Newark Bay South Reach south of the South Elizabeth Channel, the Newark Bay Middle Reach north of the Elizabeth Channel, the Port Newark Pierhead Channel, the Newark Bay North Reach and Port Jersey Channel to protect winter flounder early life stages and their EFH. The seasonal restriction applies from edge of the existing channel adjacent to the shallow areas out for a distance equal to one-half the width of the channel. For example, if the channel is 500 feet wide, then the dredging should be avoided within 250 feet of the channel edge adjacent to the shallow flats less than 6 meters deep at mlw.
- Avoid dredging from March 1 to May 31 of each year to minimize impacts to migrating and spawning anadromous fishes which are prey species for federally managed bluefish, summer flounder, windowpane and skates.

These recommended seasonal restrictions are consistent with the discussions between our agencies regarding the difference between what is needed for the maintenance dredging of the existing channels, which does not generally impact the sides slopes and adjacent shallow areas, and what is necessary for deepening of the channels which results in widening, changes to the side slopes, and the loss of adjacent winter flounder early life stage EFH.

In addition:

- All blasting work should be designed to include 25 microsecond delays in the charge triggering when blast material volumes exceed 64 pounds per shot, regardless of the number of holes to be used in the blast unless otherwise negotiated.
- Coordinate with us to develop a sequential dredging plan in areas where seasonal constraints vary within a reach.
- Continue to coordinate with us in the development of a plan to compensate for all direct impacts to shallow waters and any indirect loss of habitat value within wetlands, shallow waters, and mudflats that may occur as a result of project implementation. Plans should include clear goals, success criteria, performance measures, a monitoring and

maintenance plan, as well as an adaptive management plan to help ensure long-term success of the proposed mitigation.

Please note that Section 305(b)(4)(B) of the MSA requires you to provide us with a detailed written response to these EFH conservation recommendations, including a description of measures adopted by you for avoiding, mitigating, or offsetting the impact of the project on EFH. In the case of a response that is inconsistent with our recommendations, Section 305(b)(4)(B) of the MSA also indicates that you must explain your reasons for not following the recommendations. Included in such reasoning would be the scientific justification for any disagreements with us over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects pursuant to 50 CFR 600.920(k). This response must be provided within 30 days after receiving our EFH conservation recommendations and at least 10 days prior to final approval of this action.

Please also note that further EFH consultation must be reinitiated pursuant to 50 CFR 600.920(j) if new information becomes available, or if the project is revised in such a manner that affects the basis for the above determination.

Endangered Species Act

Federally listed species may be present in the project area and consultation, pursuant to Section 7 of the Endangered Species Act (ESA) of 1973, may be necessary. We understand that you have submitted a request for ESA consultation and are currently working with our Protected Resources Division. Should you have any questions about the Section 7 consultation process in general, please contact Edith Carson-Supino (Edith.Carson-Supino@noaa.gov, 978-282-8490).

Conclusion

As always, we are available to work with you to discuss options for sequential dredging and other BMPs for dredging and blasting so that the channel improvements proposed in the Study can move forward expeditiously while still protecting valuable fishery resources and habitats, as well as compensatory mitigation opportunities to offset unavoidable impacts to EFH and other NOAA trust resources. We look forward to your response to our EFH recommendations on this project. As always, please do not hesitate to contact Jessie Murray (Jessie.Murray@noaa.gov, 978-675-2175) in our Sandy Hook field office if you have any questions or need assistance.

Sincerely,



Louis A. Chiarella
Assistant Regional Administrator
for Habitat and Ecosystem Services

cc: GARFO PRD – E. Carson-Supino
GARFO HESD – K. Greene, J. Murray
New York District ACOE – J. Gallo, J. Miller, K. Baumert, C. Alcoba
NJDEP – S. Biggins, K. Davis
FWS – R. Popowski, S. Sinkevich
EPA Region II – M. Finocchiaro
NEFMC – T. Nies
MAFMC – C. Moore
ASMFC – L. Havel



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278-0090

December 1, 2021

Environmental Analysis Branch

Ms. Karen Green
US Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Greater Atlantic Regional Fisheries Office
55 Great Republic Drive
Gloucester, Mass. 01930-2276

RE: EFH Consultation for the New York-New Jersey Harbor Deepening
Channel Improvement (HDCI) Study.

Dear Ms. Green:

The U.S. Army Corps of Engineers (USACE), New York District (District) is in receipt of your Conservation Recommendations (CR) for the Harbor Deepening Channel Improvement (HDCI) Study that were provided in your November 4, 2021 letter. The HDCI involves deepening and widening the existing 50-foot deep (mean low water (MLW) federal navigation channel to allow for the safe, efficient and cost-effective navigation of Triple E Class vessel to transit from the Atlantic Ocean to Port Elizabeth and Port Jersey, New Jersey. The request for consultation was provided to your office on November 9, 2020, following the issuance of a Public Notice of a Draft Finding of No Significant Impact (FONSI) and the Draft Integrated Feasibility Report and Environmental Assessment (Draft FR/EA) (which the draft EFH Assessment was appended). The Tentatively Selected Plan (TSP) identified in the draft FR/EA, now identified as the Recommended Plan in the Final FR/EA, includes the dredging of approximately 28,377,000 cubic yards (cy) of sediments to deepen and widen the following navigation channels in the study area: Ambrose Channel, Anchorage Channel and Port Jersey Channel, the Kill Van Kull, Newark Bay Channel, South Elizabeth Channel and Elizabeth Channel by 5 feet.

The District and NMFS Habitat Protection Division (HPD) and Protected Resource Division (PRD) staff conducted a conference call November 23, 2021 to seek clarification on the draft CRs and discuss potential features that could become part of project description. During this coordination the District informed NMFS that compensatory mitigation for permanent loss of EFH (as defined as impacts to habitat with water depths less than 6 meters (20 feet) MLW) would be achieved (the amount to be determined) by the District's proposal to restore and/or enhance the Sea Bright Offshore Borrow Area (SBOBA), including a monitoring program to be determined by a project created by a USACE-NMFS working group. Additionally, NMFS was informed that the District would similarly include other best management practices, such as deterrents, monitors and a biological monitoring program on blasting contracts, which would be designed by a USACE-NMFS working group to be site and project-specific.

Discussion focused on the following points:

1. Anchorage Channel:

Seasonal protections are not necessary except in the following areas: Port Jersey Channel, adjacent to shallow flats less than 6 meters deep at MLW. In these areas, dredging should be avoided from January 15 to May 31 to protect winter flounder early life stages and their EFH. The seasonal restriction applies from edge of the existing channel adjacent to the shallow flats out for a distance equal to of one-half the width of the channel. For example, if the channel is 500 feet wide, then the dredging should be avoided within 250 feet of the channel edge adjacent to the shallow flats less than 6 meters deep at mlw.

2. Kill Van Kill:

Avoid dredging and blasting from March 1 to May 31 of each year to minimize impacts to migrating and spawning anadromous fishes which are prey species for federally managed bluefish, summer flounder, windowpane and skates.

3. Newark Bay:

Avoid dredging from January 15 to May 31 in following reaches: North of Shooters Island Reach, the portion of the Newark Bay South Reach south of the South Elizabeth Channel, the Newark Bay Middle Reach north of the Elizabeth Channel, the Port Newark Pierhead Channel, the Newark Bay North Reach and Port Jersey Channel to protect winter flounder early life stages and their EFH. The seasonal restriction applies from edge of the existing channel adjacent to the shallow areas out for a distance equal to of one-half the width of the channel. For example, if the channel is 500 feet wide, then the dredging should be avoided within 250 feet of the channel edge adjacent to the shallow flats less than 6 meters deep at mlw.

Avoid dredging from March 1 to May 31 of each year to minimize impacts to migrating and spawning anadromous fishes which are prey species for federally managed bluefish, summer flounder, windowpane and skates.

District Response: The District tentatively concurs with the time of year (TOY) and location of the proposed CRs 1-3 but reserves the right to revisit them based in the Harbor Deepening Projects' (HDP) over eleven-year Aquatic Biological Sampling (ABS) program data, as well as the multi-year Migratory Finfish data, and the Total Suspended Solids (TSS) data. Upon receipt of NMFS 2015 CRs the District embarked on interagency coordination with the NMFS HPD team to refine the TOY recommendations in accordance with the empirical data collected under the HDP. The project team will be reinitiating this coordination and collaboration to identify the most appropriate CRs based in this data and other data, as may be relevant.

Additionally, it was agreed that NMFS and the District would use maps to identify where and how CRs would be implemented so as to make the affected construction contracts biddable and executable from an engineering and construction perspective.

Please note that the Port Jersey Channel is not located within Newark Bay and USACE uses Mean Low Low water (MLLW), not Mean Low Water (MLW) datum as pertains to elevations and bathymetry.

4. All blasting work should be designed to include 25 microsecond delays in the charge triggering when blast material volumes exceed 64 pounds per shot, regardless of the number of holes to be used in the blast unless otherwise negotiated.

District response. Do not concur. As discussed, the District recommends not specifying maximum underwater noise, maximum underwater overpressure, or a maximum charge weight per delay at this time because a test blast program will be conducted to collect site specific monitoring data prior to production blasting and dredging.

Multiple options may be implemented to minimize underwater overpressure and noise created by confined underwater blasting, including, as example:

- 1) Use of clean, crushed, stone stemming at the top of the blasthole,
- 2) Use of timed delays of at least 25 milliseconds between blastholes, and
- 3) Use of timed delays greater than 25 milliseconds between rows of blastholes.

Multiple options may be implemented to reduce the presence of fish, including as example:

- 1) Use of fish and mammal observers with sonar to image fish in the blast area prior to blasting,
- 2) Use of an acoustic fish startle system to move fish from the blast area prior to blasting,
- 3) Use of a series of small scare charges detonated in the water column at one-minute intervals prior to each blast, and
- 4) Use of fish and mammal observers to document potential fish take after each blast.

These mitigation and monitoring activities were undertaken by New England District (NAE) to reduce risk to potentially affected protected aquatic resources within their area of responsibility (AOR). As the District's AOR is different than NAEs, the District will coordinate an appropriate monitoring program with the NMFS team (HPD and PRD) for our AOR after blast plans are developed, and prior to award of blasting contracts.

We appreciate the long-standing collaborative partnering we've had with NMFS HPD and PRD teams and look forward to our continued partnership on the HDCI. If you have any questions or concerns, please contact Jenine Gallo at 917- 886-7055 or me at 917-790-8634.

Sincerely,

Peter Weppler

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Peter Weppler

Chief, Environmental Analyses Branch

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Enclosure

CC: J. Murray



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930-2276

December 10, 2021

Peter Wepler
Chief, Environmental Analyses Branch
Department of the Army
U.S. Army Corps of Engineers, New York District
Jacob K. Javits Federal Building
26 Federal Plaza
New York, New York, 10278-0090

RE: EFH Consultation for the New York New Jersey Harbor Deepening Channel Improvement Study for Port Jersey Port Authority Marine Terminal, Elizabeth Port Authority Marine Terminal, and Port Newark, New Jersey.

Dear Mr. Wepler:

Thank you for your December 1, 2021, letter following up on the November 23, 2021, conference call between staff from our Habitat and Ecological Services Division (HESD), Protected Resources Division (PRD), and the U.S. Army Corps of Engineers (USACE), New York District (District) on the New York New Jersey Harbor Deepening Channel Improvement Study (HDCI). As indicated in your letter, we originally provided the six essential fish habitat (EFH) conservation recommendations (CRs) listed below pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) following a November 6, 2021 consultation for the project:

1. Anchorage Channel:
Seasonal protections are not necessary except in the following areas: Port Jersey Channel, adjacent to shallow flats less than 6 meters deep at MLW. In these areas, dredging should be avoided from January 15 to May 31 to protect winter flounder early life stages and their EFH. The seasonal restriction applies from edge of the existing channel adjacent to the shallow flats out for a distance equal to of one-half the width of the channel. For example, if the channel is 500 feet wide, then the dredging should be avoided within 250 feet of the channel edge adjacent to the shallow flats less than 6 meters deep at MLW.
2. Kill Van Kull:
Avoid dredging and blasting from March 1 to May 31 of each year to minimize impacts to migrating and spawning anadromous fishes which are prey species for federally managed bluefish, summer flounder, windowpane and skates.
3. Newark Bay:
 - a. Avoid dredging from January 15 to May 31 in following reaches: North of



Shooters Island Reach, the portion of the Newark Bay South Reach south of the South Elizabeth Channel, the Newark May Middle Reach north of the Elizabeth Channel, the Port Newark Pierhead Channel, the Newark Bay North Reach and Port Jersey Channel to protect winter flounder early life stages and their EFH. The seasonal restriction applies from edge of the existing channel adjacent to the shallow areas out for a distance equal to one-half the width of the channel. For example, if the channel is 500 feet wide, then the dredging should be avoided within 250 feet of the channel edge adjacent to the shallow flats less than 6 meters deep at MLW.

- b. Avoid dredging from March 1 to May 31 of each year to minimize impacts to migrating and spawning anadromous fishes which are prey species for federally managed bluefish, summer flounder, windowpane and skates.
4. All blasting work should be designed to include 25 microsecond delays in the charge triggering when blast material volumes exceed 64 pounds per shot, regardless of the number of holes to be used in the blast unless otherwise negotiated.
5. Coordinate with us to develop a sequential dredging plan in areas where seasonal constraints vary within a reach.
6. Continue to coordinate with us in the development of a plan to compensate for all direct impacts to shallow waters and any indirect loss of habitat value within wetlands, shallow waters, and mudflats that may occur as a result of project implementation. Plans should include clear goals, success criteria, performance measures, a monitoring and maintenance plan, as well as an adaptive management plan to help ensure long-term success of the proposed mitigation.

According to your letter, the District has accepted in full and in part some of our conservation recommendations and declined to incorporate other recommendations. EFH CRs 1, 2, and 3 were tentatively accepted, but you anticipate reinitiating consultation to further refine both the timing and locations. We look forward to working with you and your staff to refine these recommendations as project plans are developed. As it relates to these CRs, we recognize the typo in CR 3 that the Port Jersey Channel is not located within Newark Bay and acknowledge that the USACE uses Mean Low Low water (MLLW), not Mean Low Water (MLW) datum as pertains to elevations and bathymetry.

EFH CRs 5 and 6 were also accepted, as indicated during the November 23, 2021, conference call and reiterated in your letter. Specifically, as it relates to CR 5, the District has agreed to develop maps to identify where and how the CRs would be implemented to achieve biddable and executable contracts from an engineering and construction perspective. Additionally, the District anticipates developing a proposal to restore and/or enhance the Sea Bright Offshore Borrow Area (SBOBA), including a monitoring program to be developed by a USACE-NMFS working group. We look forward to continued coordination with you and your staff as the development of the maps and mitigation proposal progresses, and look forward to assisting you in ensuring all goals and plans for the mitigation are appropriately addressed for the project.

Although the District recognizes the importance of blasting best management practices (BMPs), EFH CR 4 was not accepted. While the District did not agree with specifying maximum underwater noise, underwater overpressure, or charge weight, a mitigation and monitoring blast program is anticipated to be developed and used to minimize blasting impacts, similar to procedures that were undertaken by the New England District. As indicated in your letter, the District anticipates coordinating with both HESD and PRD to develop appropriate plans. The District also anticipates to include other BMPs, such as deterrents, monitors and a biological monitoring program on blasting contracts, designed by a USACE-NMFS working group to be site and project-specific. We agree with this response and appreciate the District's efforts to minimize blasting impacts through the development of a program and BMPs that are achievable for the site specific needs.

As always, a distinct and further EFH consultation must be reinitiated pursuant to 50 CRF 600.920 (j) if new information becomes available, or if the project is revised in such a manner that affects the basis for the EFH determination.

We continue to appreciate the collaboration and coordination between our agencies on this and other civil works project within the District as well as the efforts your staff have made to address our concerns. Should you have any additional questions or comments, please call Jessie Murray at (978-675-2175 or by e-mail (jessie.murray@noaa.gov)).

Sincerely,

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Karen Greene
Mid-Atlantic Branch Chief
Habitat and Ecosystems Services Division

cc: GARFO PRD – E. Carson-Supino
GARFO HESD – J. Murray
New York District ACOE – J. Gallo, J. Miller, K. Baumert, C. Alcoba
NJDEP – S. Biggins, K. Davis
FWS – R. Popowski, S. Sinkevich
EPA Region II – M. Finocchiaro
NEFMC – T. Nies
MAFMC – C. Moore
ASMFC – L. Havel



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278-0090

September 29, 2020

Environmental Analysis Branch

Mr. Eric Schradling
Field Supervisor
U.S. Fish and Wildlife Service
New Jersey Field Office
4 East Jimmie Leeds Road, Unit 4
Galloway, New Jersey 08205-4465

Mr. David Stilwell
Field Supervisor
U.S. Fish and Wildlife Service
New York Field Office
3817 Luker Road
Cortland, New York 13045

Dear Mr. Schradling and Mr. Stilwell:

The U.S. Army Corps of Engineers, New York District (District) is presently conducting the New York New Jersey Harbor Deepening Improvement (HDCI) Study. As part of the planning process, the District in partnership with the Port Authority of New York and New Jersey, will be completing an Integrated Feasibility Study/Environmental Assessment. The project is identifying and evaluating navigation improvements required in the existing federal navigation channels, including Ambrose and Anchorage Channels, and surrounding areas. These improvements are required to accommodate larger ships arriving in NYNJ Harbor, such as the *Malaccamax design vessel*. The tentatively selected plan consists of one (1) meeting/passing efficiency zone, eight (8) channel widening features, and channel deepening up to -55 feet MLLW to New Jersey port terminals (Port Jersey Port Authority Marine Terminal and Elizabeth Port Authority Marine Terminal, and Port Newark, NJ).

As part of this coordination, the District is contacting the U.S. Fish and Wildlife Service (USFWS) to request a Planning Aid Letter (PAL) as an update to the original Fish and Wildlife Coordination Act Report (FWCAR) dated December 16, 1999 on the original New York New Jersey 50-foot Harbor Deepening Project (HDP) pursuant to the Fish and Wildlife Coordination Act (FWCA of 1958, as amended (87 Stat. 401, as amended; 16 U.S.C. 661 et seq.) to ensure that there is equal consideration for fish and wildlife resources during the planning of the Corps proposed project. The HDCI Study is taking place under the same authorization and within the same physical footprint of the HDP. Please find attached a draft Scope of Work for more information.

In the past, the New Jersey Field Office led the coordination for the HDP FWCAR as well as for the Hudson Raritan Ecosystem Restoration Feasibility Study coordination.

In addition, all potential impacts (i.e. littoral habitat) associated with the HDCI construction are located in the state of New Jersey. For these reasons, the District anticipates that the ESA and PAL coordination for HDCI would be led by the New Jersey Field Office with assistance, as needed, provided by the New York Field Office.

If you have any questions or require additional information please contact Jesse Miller, Project Biologist at (917) 790-8604. Thank you for your consideration.

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Peter Wepler
Chief, Environmental Analysis Branch

Attachments



United States Department of the Interior

FISH AND WILDLIFE SERVICE

New Jersey Field Office
4 E. Jimmie Leeds Road, Suite 4
Galloway, New Jersey 08205
Tel: 609/646 9310
www.fws.gov/northeast/njfieldoffice/



In Reply Refer to:
2021-CPA-0023

October 27, 2021

Peter Weppler, Chief
Environmental Analysis Branch, New York District
U.S. Army Corps of Engineers
Jacob K. Javits Federal Building
26 Federal Plaza
New York, New York 10278-0090
Attention: Jesse Miller

Dear Mr. Weppler:

The U.S. Fish and Wildlife Service (Service) submits this Planning Aid Letter (PAL) for the subject New York New Jersey Harbor Deepening Channel Improvements (HDCI) Integrated Feasibility Study pursuant to the Fish and Wildlife Coordination Act of 1958 (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*) (FWCA). This PAL updates the December 16, 1999 report of the Secretary of the Interior as required by Section 2(b) of the FWCA. The purpose of this PAL is to provide an update on fish and wildlife resources and recommendations to the U.S. Army Corps of Engineers (Corps) regarding resource conservation issues for the planning stages of the Feasibility Study. The December 16, 1999 Section 2(b) FWCA Report contains relevant information on fish and wildlife resources associated with the HDCI and should also be referenced by the Corps in its planning stages. Comments provided in this PAL are based on information provided by the Corps (2020), site photographs, maps, and analysis of Geographic Information Systems data sets (ArcGIS® version 10.3.1). This PAL assists the Corps in formulating alternatives and evaluating the feasibility of channel improvements proposed in the HDCI.

AUTHORITY

Legislation relevant to natural resource protection for this study includes the FWCA, the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) (ESA), the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703-712) as amended (MBTA), and the Bald and Golden Eagle Protection Act (16 U.S.C. 668a-d) (BGEPA). The following comments do not preclude separate review and comments by the Service pursuant to the National Environmental Policy Act of 1973 (83 Stat. 852; as amended, 42 U.S.C. 4321 *et seq.*) and Clean Water Act of 1977 (86 Stat. 816, 33 U.S.C. 1344 *et seq.*) (CWA).

INTRODUCTION

The subject HDCI is authorized by Section 435 of the Water Resources Development Act of 1996 (Public Law 104-303) (U.S. Army Corps of Engineers 2020). The non-Federal sponsor is the Port

Authority of New York and New Jersey.

STUDY AREA

The study area includes primary channels in the New York New Jersey Harbor including the Ambrose Channel, Anchorage Channel, the Kill Van Kull, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, and Port Jersey Channel. The study area also includes the additional width required for structural stability and for the navigation of the design vessel to transit from sea to Elizabeth Port Authority Marine Terminal and Port Jersey Port Authority Marine Terminal. This project includes provisions for access to five marine terminals including Global Container (Bayonne), A.P. Moller, Maher, Port Newark Container, and Global Container (New York).

PROJECT DESCRIPTION

The 2016 completed Harbor Deepening Project's channels are maintained at -50 feet mean low low water (MLLW) and -53 feet MLLW in Ambrose Channel. The 2016 completed Harbor Deepening Project's channels were designed for the vessel Regina Maersk (1,044 feet long, 140 feet wide, with a static draft of 46 feet, and a capacity to carry 6,400 twenty-foot equivalent units [TEUs]). The fleet of container vessels regularly calling on the Port of New York and New Jersey now includes vessels that are depth constrained at the existing channel depth and experience maneuverability inefficiencies within the existing channel width.

This HDCI study's purpose is to determine if there is a technically feasible, economically justified, and environmentally acceptable recommendation for federal participation in a navigation improvements project in the New York and New Jersey Harbor (Corps 2020). Based on a forecast of the future fleet, the design vessel for this study is a Suezmax containership, Maersk Triple E Ultra Large Container Vessel Class (1,308 feet long, 193.5 wide, with a static draft of 52.5 feet, and a capacity to carry 18,000 TEUs). The Tentatively Selected Plan is deepening the pathways from sea to Elizabeth Port Authority Marine Terminal and Port Jersey Port Authority Marine Terminal by up to 5 feet (up to a maintained depth of -55 feet MLLW). The Tentatively Selected Plan involves deepening Ambrose Channel, Anchorage Channel, the Kill Van Kull, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, and Port Jersey Channel. The Tentatively Selected Plan also identifies the dredging of 28,377,000 cubic yards (cy) of sediments that will be placed in the Historic Area Remediation Site (HARS) or appropriately permitted upland disposal sites able to handle and properly store non-HARS suitable dredged materials.

FEDERALLY LISTED SPECIES

Red Knot

A final rule to list the red knot (*Calidris canutus rufa*) as threatened under the ESA was published on December 11, 2014, with an effective date of January 12, 2015. Small numbers of red knots may occur in the New York and New Jersey year-round, while large numbers of birds rely on Delaware Bay and Atlantic Coast stopover habitats during the spring (May 1 through June 15) and fall (late-July through October) migration periods, respectively. These small shorebirds fly up to 9,300 miles from south to north every spring and reverse the trip every autumn, making the red knot one of the longest-distance migrating animals. Red knots break their spring migration into non-stop segments of 1,500 miles or more, ending at stopover sites called staging areas. Red knots converge in large flocks on staging areas along the Delaware Bay and Atlantic Coast. Threats to the red knot include human disturbance, reduced food availability at staging areas, and loss of stopover habitat.

Available records indicate that, during spring and fall migration, red knots occasionally occur along the shoreline and marshes in the project area (eBird, 2021).

In addition, the Service is working on a proposed rule to designate critical habitat for the red knot. In a letter dated January 24, 2014, the Service requested input on how the Corps would be affected by future critical habitat designations for the rufa red knot. The Service is currently drafting a proposed critical habitat rule for this subspecies. Portions of the Corps' study area may overlap with areas under consideration for proposed designation as critical habitat.

Saltmarsh Sparrow

The Service is evaluating the saltmarsh sparrow (*Ammospiza caudacuta*) to determine if listing under the ESA is warranted. This species may also be present in the project area. Species being evaluated for listing do not receive any substantive or procedural protection under the ESA, and the Service has not yet determined if listing of this species is warranted.

The saltmarsh sparrow is a tidal marsh obligate songbird that occurs exclusively in salt marshes along the Atlantic and Gulf coasts of the United States. Its breeding range extends from Maine to Virginia including portions of 10 states. The wintering range includes some of the southern breeding states and extends as far south as Florida. Nests are constructed in the salt marsh grasses just above the mean high water level, and they require a minimum of a 23-day period where the tides do not reach a height that causes nest failure. Across its range, the saltmarsh sparrow is experiencing low reproductive success, due primarily to nest flooding and predation, resulting in rapid population declines. Forty-eight percent of nests across the breeding range failed to produce a single nestling from 2011 to 2015. Although it has not been quantified, there is strong evidence for range contraction at both the northern and southern limits of the breeding range. Furthermore, breeding individuals are not evenly distributed across the entire range, with approximately 78 percent of the breeding population breeding in marshes of the mid-Atlantic states.

While the species still occupies the majority of its historical range, the number of individuals within the breeding range has significantly declined since 1998. Based on surveys in 2012 the population was estimated at 60,000 individuals, having declined at an average of 9 percent per year across the range since 1998. Projecting those declines through 2020 we estimate that the current populations is approximately 28,215 individuals. This represents a decline of 87 percent from the 212,000 individuals estimated in 1998.

Numerous threats have been identified as impacting the saltmarsh sparrow and/or its habitat. We assessed the following threats acting on the saltmarsh sparrow: (1) habitat loss, fragmentation, and degradation; (2) the effects of climate change; (3) hybridization; (4) predation; (5) contaminants; and (6) other factors influencing the species such as disease and altered food webs.

Federally Listed Species under Purview of the National Oceanic and Atmospheric Administration (NOAA) - Fisheries

Federally listed threatened or endangered species under the jurisdiction of the NOAA Fisheries are known to occur in the vicinity of the project area. Pursuant to the ESA, the Corps is required to consult with the NOAA - Fisheries on potential adverse effects to the following species that may result from implementing project activities.

The Corps has already prepared a Biological Assessment as Appendix A1 (Corps 2020) pursuant to ESA for several federally listed species under the jurisdiction of the NOAA - Fisheries including the Atlantic sturgeon (*Acipenser oxyrinchus*), several sea turtle and whale species that occur in the project area. Further consultation for these species will be coordinated between the Corps and NOAA - Fisheries.

BALD EAGLE

Bald eagle (*Haliaeetus leucocephalus*) foraging habitat occurs throughout the Corps' study areas. Additionally, there are currently bald eagles nesting on the western end of Staten Island, New York and in Linden, New Jersey. The bald eagle was removed from the Federal List of Endangered and Threatened Wildlife effective August 8, 2007. The bald eagle continues to be protected under the Federal BGEPA and MBTA and also remains a State-listed species under the New Jersey Endangered and Nongame Species Conservation Act (N.J.S.A. 23:2A *et seq.*), which carries protections under the State land use regulation program. These Federal and State laws prohibit take of bald eagles. For the continued protection of bald eagles, and to ensure compliance with BGEPA, the Service recommends managing bald eagles in accordance with the National Bald Eagle Management Guidelines and all applicable State regulations. The Guidelines are available on the New Jersey Field Office's web site at <http://www.fws.gov/northeast/njfieldoffice/Endangered>.

OTHER MIGRATORY BIRDS

Shooters Island is part of the New York City Park system and continues to be an important sanctuary for a variety of nesting and feeding birds, particularly wading birds and some shorebirds. Noise associated with blasting and the operation of dredging equipment within close proximity of Shooters Island remains a concern as it relates to disturbance of migratory birds. The Corps should determine the exact areas of blasting and discuss this issue further with the Service, the NJDFW and the NYDEC. The Service recommends that no dredging or blasting occur within 1,000 feet of Shooters Island between March 1 and August 31 of any given year to reduce adverse effects to nesting wading birds. Additionally, should dredging and blasting occur at night, the Corps should avoid illumination of Shooters Island to reduce disturbance to roosting wading birds. The Corps should contact the Service prior to March 1 of any given year where dredging and blasting is proposed to occur within 1,000 feet of Shooters Island to allow the Service to determine if the time and distance restrictions are necessary.

ESSENTIAL FISH HABITAT

The NOAA - Fisheries has designated the back bays in the vicinity of the study area as Essential Fish Habitat (EFH) for the life stages of a variety of fish. The Magnuson-Stevens Act (90 Stat. 331; 16 U.S.C. 1801 *et seq.*) requires Federal agencies consult with the NOAA - Fisheries with respect to "any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any EFH identified under this Act." Adverse effect is defined as "any impact which reduces the quality and/or quantity of EFH." The rule further states that "an adverse effect may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and

their habitat and other ecosystems components, if such modifications reduce the quality and/or quantity of EFH." The Service recommends that the Corps contact the NOAA - Fisheries to determine whether EFH would be affected by project activities:

Karen Greene, Mid-Atlantic Field Offices Supervisor
NOAA/National Marine Fisheries Service
Habitat Conservation Division
James J. Howard Marine Sciences Laboratory 74 Magruder Rd.
Highlands, New Jersey 07732 (732) 872-3023 (office)

Additionally, it should be noted that king mackerel (*Scomberomorus cavalla*) and Spanish mackerel (*S. maculatus*) are not within in the project area, and cobia (*Rachycentron canadum*) are no longer federally managed. The revised list of species within the project areas includes winter flounder (*Pseudopleuronectes americanus*), windowpane (*Scophthalmus aquosus*), Atlantic sea herring (*Clupea harengus*), bluefish (*Pomatomus saltatrix*), Atlantic butterfish (*Peprilus triacanthus*), summer flounder (*Paralichthys dentatus*), Atlantic mackerel (*Scomber scombrus*), scup (*Stenotomus chrysops*), black sea bass (*Centropristis striata*), clearnose skate (*Raja eglanteria*), little skate (*Leucoraja erinacea*), winter skate (*Leucoraja ocellata*), red hake (*Urophycis chuss*) and the smoothhound shark complex (Atlantic stock). (This does not include additional species found near the HARS).

FISHERIES

Some of the species of interest within the project areas include winter flounder, diadromous fish and shellfish.

Winter Flounder

Winter flounder transit inlets to reach spawning areas within mid-Atlantic estuaries when water temperatures begin to decline in late fall and may also be affected by the placement of barriers within the estuary. Tagging studies show that most return repeatedly to the same spawning grounds (Lobell 1939, Saila 1961, Grove 1982 in Collette and Klein-MacPhee 2002). Winter flounder typically spawn in the winter and early spring, although the exact timing is temperature dependent and thus varies with latitude (Able and Fahay 1998); however movement into these spawning areas may occur earlier, generally from mid-to late November through December. Winter flounder have demersal eggs that sink and remain on the bottom until they hatch. After hatching, the larvae are initially planktonic, but following metamorphosis they assume an epibenthic existence. Winter flounder larvae are negatively buoyant (Pereira *et al.* 1999) and are typically more abundant near the bottom (Able and Fahay 1998). These life stages are less mobile and thus more likely to be adversely affected by any impact to benthic habitat.

Diadromous Fishes

Diadromous fishes such as river herring (alewife *Alosa pseudoharengus* and blueback herring *Alosa aestivalis*), American shad (*Alosa sapidissima*), striped bass (*Marone saxatilis*), and American eel (*Anguilla rostrata*) inhabit the New York Harbor estuary and its tributaries at certain stages in their life cycles.

River herring and shad spend most of their adult lives at sea, but return to freshwater areas in the Hudson River estuary to spawn in the spring (Waldman 2006). These species are believed to be repeat spawners, generally returning to their natal rivers (Collette and Klein-MacPhee 2002). Because landing statistics and the number of fish observed on annual spawning runs indicate a drastic decline in river herring populations throughout the mid-Atlantic since the mid-1960s, they have been designated as Species of Concern by NOAA. Species of Concern are those about which we have concerns regarding their status and threats, but for which insufficient information is available to indicate a need to list the species under the ESA. The goal of designating a species as a Species of Concern is to promote proactive conservation efforts for these species in order to preclude the need to list them in the future.

The New York Harbor estuary provides habitat for one of the largest populations of striped bass on the East Coast, with resident and/or migratory contingents found from the tidal freshwater Hudson River to the coastal Atlantic Ocean depending on the season (Gahagan *et al.* 2015). The spawning migration of resident and coastal contingents moving upriver to the freshwater reaches of the Hudson River occurs in the spring (Clark 1968). Late larvae and early juveniles favor shallow water with sluggish currents, and likely reside in nearshore shallows for increased feeding opportunities and reduced predation risk. Juveniles subsequently move downstream to overwinter in the lower Hudson River and upper New York Harbor (Dovel 1989).

Catadromous American eel spawn in the Sargasso Sea and transit inlets as elvers to migrate through estuarine habitats to freshwater tributaries. They inhabit these freshwater areas until they return to the sea as adults. According to the 2012 benchmark stock assessment, the American eel population is depleted in U.S. waters. The stock is at or near historically low levels due to a combination of historical overfishing, habitat loss, food web alterations, predation, turbine mortality, environmental changes, exposure to toxins and contaminants, and disease (ASMFC 2012). Active dredging within the proposed channel being considered in the feasibility study may impact these diadromous species by changing water quality.

Shellfish

Shellfish occur in the project area, including hard clam (*Mercenaria mercenaria*), soft shell clam (*Mya arenaria*), blue mussel (*Mytilus edulis*), oyster (*Crassostrea virginica*), and blue crab (*Callinectes sapidus*). These species and others are important food resources for fish and birds. Coen and Grizzle (2007) discuss the ecological value of shellfish habitat to a variety of managed species (e.g. American lobster (*Homarus americanus*), American eel, and winter flounder). Clams are a prey species for a number of federally managed fish including skates, bluefish, summer flounder and windowpane (*Scophthalmus aquosus*); siphons of hard clams provide a food source for winter flounder and scup (*Stenotomus chrysops*) (Steimle *et al.* 2000). Infaunal species such as clams filter significant volumes of water, effectively retaining organic nutrients from the water column (Nakamura and Kerciku 2000; Forster and Zettler 2004).

Blue mussel and oyster are filter feeders and thus improve water quality (Bain *et al.* 2007, Waldman 2008). Reef forming bivalves such as blue mussels and oysters support an increased diversity of finfish and invertebrates, cycle material between the water column and substrate and have the potential to enhance water quality (Dewey 2000; Nakamura and Kerciku 2000; Coen and Grizzle 2007; McDermott *et al.* 2008). Further, blue mussels are an important prey item for many animals in the Mid-Atlantic region (Newell 1989). Steimle *et al.* (2000) reported that blue mussel

spat were components of the diets of winter flounder, scup, black sea bass and tautog (*Tautoga onitis*). Although no known oyster reefs presently exist in the project area, scattered live oysters can be found in certain areas, indicating the presence of isolated populations.

Spawning, nursery, foraging, and overwintering habitats for blue crabs are found throughout the project area; blue crabs are commonly found on subtidal benthic habitat and are important food resources for predatory fish and birds (Bain *et al.* 2007, Waldman 2008). The blue crab winter dredge fishery in New York is concentrated in the lower portion of New York Harbor (Briggs 1998).

ENVIRONMENTAL CONTAMINANTS

The Port of New York and New Jersey is the second largest seaport in the United States, with an estimated regional economic input in excess of \$29 billion annually. It is also the largest petroleum distribution point in the United States. There are over 250 miles of engineered waterways in the Port District, allowing deepwater navigation in a harbor that is naturally only 19 feet deep. Historically, dredged materials were disposed in water, with relatively little attention paid to environmental consequences. Unfortunately, being in the oldest industrial watershed in the country, the harbor sediments are moderately to severely contaminated with a variety of industrial pollutants and are no longer considered suitable for ocean disposal (Douglas *et al.* 2003). Navigational channel maintenance and deepening inherently results in the resuspension, redistribution and exposure of sediments laden with toxic contaminants. The Service is particularly concerned about the potential for bioaccumulation and biomagnification into fish and wildlife resources of halogenated dioxins/furans, polychlorinated biphenyls (PCBs), legacy organochlorine pesticides, and certain metals such as mercury. In addition there are other classes of compound that can adversely affect fish and wildlife resources through a variety of metabolic modes of action including, but not limited to base-neutral semi-volatile organic compounds, endocrine disruptors, nano-plastics, fire suppression chemicals, plasticizers, and pharmaceuticals.

The primary Federal environmental statute governing transportation of dredged material for the purpose of dumping it into ocean waters (seaward of the baseline of the territorial sea) is the Marine Protection, Research, and Sanctuaries Act (MPRSA), also referred to as the Ocean Dumping Act (33 U.S.C. Section 1401 *et seq.*). In accordance with Section 103 of the MPRSA, the Corps is the permitting authority for ocean dumping of dredged material, subject to U.S. Environmental Protection Agency (EPA) review and concurrence that the material meets applicable ocean dumping criteria at 40 CFR Parts 227 and 228. Under MPRSA Section 103(d), if EPA determines the ocean dumping criteria are not met, dumping may occur only if EPA grants a waiver of the criteria. In accordance with Subsection 227.27(b), EPA and the Corps developed a testing manual to define procedures for evaluating the suitability of dredged material for ocean disposal that are based upon the biological testing requirements of the implementing regulations; the *Guidance for Performing Tests on Dredged Material Proposed for Ocean Disposal* (Corps and EPA 2016).

The Service has reviewed this guidance and considers it an acceptable roadmap for evaluating contaminant and toxicological characteristics of dredge materials and recommends its implementation in the proposed project. The Service also recommends that several of the parameters be modified as to be more informative of potential adverse impacts to fish and wildlife resources; these recommendations follow.

1. The guidance calls for the analysis of 22 PCB congeners. The Service recommends that the Corps use EPA Method 1668 (Chlorinated Biphenyl Congeners in Water, Soil, Sediment, Biosolids, and Tissue by HRGC/HRMS); this method allows for the quantification of all 209 PCB congeners including the 12 dioxin-like congeners. Total PCBs can then be calculated as the sum of the 209 congeners which is useful in evaluating potential risk or injury to fishes. An excellent review on the effects of total PCBs to fishes can be found in Berninger and Tillett (2019). Moreover, quantification of the 12 dioxin-like PCB congeners can then be incorporated along with dioxin and furan concentrations to produce total dioxin toxic equivalency for use in food web evaluations.
2. Although commonly conducted in tissues samples undergoing organic analysis, the Service did not find mention analysis of percent lipid in tissues. Percent lipid from tissues are used to normalize organic compound concentrations across species and age groups are an important component in the construction of contaminant food models using Biota Sediment Accumulation Factors and biomagnification models. The Service recommends that percent lipid is include tissue analyses of organic compounds.
3. With respect to sediment samples, the guidance calls for the analysis of 17 polycyclic aromatic hydrocarbon (PAH) parent compounds (frequently referred to as the EPA PAH₁₇ list). However, the PAH₁₇ list does not include the more biologically toxic alkylated PAHs. Therefore, the Service recommends that the Corps use the parent-alkylated PAH list (frequently referred to as the EPA PAH₃₄ list). The enhanced PAH₃₄ list allows for evaluating risks associated with sediment chemistry using the equilibrium partitioning (EqP) approach. EqP is well established for evaluating toxicity of PAH mixtures benthic organisms by calculating a Narcosis Equilibrium partitioning Sediment Benchmark expressed as Toxic Units.

The Service is available to assist the Corps in evaluating risk to fish and wildlife resources based on data generated under the aforementioned guidance. Those data should be shared with other natural resource agencies.

Additionally, sediment sampling pursuant to New York State Department of Environmental Conservation (NYSDEC) guidance: Designing a Dredging Sediment Sampling and Analysis Plan ([Designing a Dredging Sediment Sampling and Analysis Plan - NYS Dept. of Environmental Conservation](#)); and TOGS 5.1.9 (https://www.dec.ny.gov/docs/water_pdf/togs519.pdf) will be required as part of any NYSDEC permitting process, whether a permit is issued after sampling results or a blanket permit for the larger deepening is issued, and sampling gets done on a reach-by-reach basis. This sampling is required in addition to any sampling done to meet EPA requirements.

BENEFICIAL USE OF DREDGED MATERIAL

Consideration of opportunities to apply the Corps initiative of “Engineering with Nature” should be considered for the proposed project allowing the intentional alignment of natural and engineering processes to efficiently and sustainably deliver economic, environmental, and social benefits through collaborative processes. Similar to work completed by the Corps Philadelphia District to demonstrate the potential to engineer with nature to support and restore natural and nature-based features that contribute to coastal resilience. Opportunities to beneficially use clean sediment or

rock toward coastal resilience projects like marsh restoration and living shoreline projects should be considered as part of the proposed project.

MITIGATION

The Service considers the wetlands, shallow waters, mudflats, and beaches of the project area to be of high value to fish and wildlife resources and represent habitat components that have become scarce in the ecoregion. In accordance with the Service's Mitigation Policy (Federal Register, Vol. 46, No. 15, Jan. 23, 1981), our mitigation goal for this project is no-net-loss of in-kind habitat value. Given the high value of these habitat components in the project area to fish and wildlife resources, appropriate measures must be implemented to protect these remaining areas from any reduction in quality or quantity.

The 2016 completed Harbor Deepening Project (HDP) initially included 13 acres of mitigation at two locations in the watershed, Old Place Creek in Staten Island, New York and Woodbridge Creek in Woodbridge, New Jersey. Both of these projects involved restoration of low marsh habitat that was dominated by invasive common reed (*Phragmites australis*). However, due to limitations on availability of Old Place Creek at the time, the mitigation plan was successfully revised to restore approximately 143 acres of wetlands (1.5 million plants) at:

- Elders Point Marsh Island Restoration, Jamaica Bay, New York;
- Woodbridge Creek Ecosystem Restoration Project, Woodbridge, New Jersey;
- Salt Marsh Restoration at Key Span site, Staten Island, New York; and,
- Joseph P. Medwick Park, Carteret, New Jersey.

Post-construction monitoring was completed for all projects above.

The project's construction included 21 dredging contracts and construction of four marsh restorations. From 2009 through 2012, the original HDP was modified to include the restoration of two additional Jamaica Bay marsh islands (Elders West and Yellow Bar Hassock) through the beneficial reuse of dredged material. In 2010, with 100 percent non-federal sponsor funding, 339,235 cubic yards of sand was beneficially used for the restoration of Lincoln Park, New Jersey.

CUMULATIVE IMPACTS

Cumulative impacts analyses are not restricted to spatial and temporal overlap of projects. Several small, medium, and large past, present, and future actions have not been considered. For example, large dredging (new and maintenance) and port projects are underway or have been proposed in the region such as maintenance dredging and other activities at the various port facilities operated by the Port Authority of NY and NJ, the NY NJ Anchorages project, as well as various construction and maintenance projects along the Hudson River, Upper 8 Bay, Newark Bay, and the Kill van Kull.

A full assessment of the cumulative effects of the proposed project should be undertaken that includes the consideration of the cumulative effects of all past, present, and reasonably foreseeable future actions on aquatic resources. Some of the issues that should be addressed include the cumulative effects of the loss of aquatic water column and benthic habitat on NOAA trust resources, loss of prey species, ballast water withdrawals, water discharges, increased vessel traffic (*i.e.*, tugs), vessel collisions, and new dredging (*e.g.*, berths and other dredging) and future maintenance dredging needs.

CONCLUSIONS AND SUMMARY OF RECOMMENDATIONS

The Service concludes that the Harbor estuary and its adjacent marine and upland habitats provides high-quality habitats for fish and wildlife resources and that the proposed dredging project has the potential to adversely impact these resources both directly and indirectly. To minimize the impacts of any project that is proposed by the Corps, the Service provides the following summary of recommendations.

1. Consider bald eagles in accordance with the National Bald Eagle Management Guidelines and all applicable State regulations.
2. Continue to prohibit dredging and blasting within 1,000 feet of Shooters Island between March 1 and August 31 of any given year and avoid illuminating Shooters Island if dredging and blasting occurs at night. The Corps should contact the Service to determine if these restrictions are necessary prior to each nesting season. Should Shooters Island become abandoned or if its use as a breeding site for wading birds substantially declines, these recommended restrictions may be modified or rescinded.
3. Continue post construction benthic surveys and biological monitoring of fish and macroinvertebrates to determine the direct and indirect effects of project implementation.
4. Coordinate with the Service, NOAA - Fisheries, and State resource agencies for recommendations based on results.
5. Consider opportunities for maintenance and enhancement of benthic communities. These opportunities could be incorporated as compensatory mitigation for project impacts to fish and wildlife resources.
6. Coordinate with NOAA – Fisheries regarding consultation pursuant to EFH and ESA consultation to avoid adversely modifying EFH within the project area.
7. Adhere to the winter flounder early life stage (January 15 – May 31) and anadromous fish (March 1 – June 30) time of year restrictions.
8. Continue to evaluate the potential effect of altered water velocities, altered sedimentation rates, the resuspension and redistribution of environmental contaminants, and slumping of channel side slopes on wetlands, shallow waters, mudflats, and beaches.
9. Follow the *Guidance for Performing Tests on Dredged Material Proposed for Ocean Disposal* along with the following parameters:
 - a. The guidance calls for the analysis of 22 PCB congeners. The Service recommends that the Corps use EPA Method 1668 (Chlorinated Biphenyl Congeners in Water, Soil, Sediment, Biosolids, and Tissue by HRGC/HRMS); this method allows for the quantification of all 209 PCB congeners including the 12 dioxin-like congeners. Total PCBs can then be calculated as the sum of the 209 congeners which is useful in evaluating potential risk or injury to fishes. An excellent review on the effects of total PCBs to fishes can be found in Berninger and Tillett (2019). Moreover, quantification

of the 12 dioxin -like PCB congeners can then be incorporated along with dioxin and furan concentrations to produce total dioxin toxic equivalency for use in food web evaluations.

- b. Although commonly conducted in tissues samples undergoing organic analysis, the Service did not find mention analysis of present lipid in tissues. Present lipid from tissues are used to normalize organic compound concentrations across species and age groups are an important component in the construction of contaminant food models using Biota Sediment Accumulation Factors and biomagnification models. The Service recommends that percent lipid is include tissue analyses of organic compounds.
 - c. With respect to sediment samples, the guidance calls for the analysis of 17 PAH parent compounds (frequently referred to as the EPA PAH₁₇ list). However, the PAH₁₇ list does not include the more biologically toxic alkylated PAHs. Therefore, the Service recommends that the Corps use the parent-alkylated PAH list (frequently referred to as the EPA PAH₃₄ list). The enhanced PAH₃₄ list allows for evaluating risks associated with sediment chemistry using the equilibrium partitioning (EqP) approach. EqP is well established for evaluating toxicity of PAH mixtures benthic organisms by calculating a Narcosis Equilibrium partitioning Sediment Benchmark expressed as Toxic Units.
- 10. Coordinate with NYDEC regarding State sediment sampling requirements.
 - 11. Consider opportunities to beneficially use clean sediment or rock toward coastal resilience projects like marsh restoration and living shoreline projects should be considered as part of the proposed project.
 - 12. Provide the Service and NOAA-Fisheries with its plan to compensate for all direct impacts to shallow waters and any indirect loss of habitat value within wetlands, shallow waters, mudflats, and beaches that may occur as a result of project implementation and consider mitigation that includes high marsh habitat that reduces recontamination, benefits at-risk species like saltmarsh sparrow, and increases coastal resilience of wetlands as it relates to sea-level rise.
 - 13. Consult with the appropriate State agencies regarding potential impacts to State- listed species.

Any questions regarding these comments can be directed to Ron Popowski at Ron_Popowski@fws.gov.

Sincerely,

**ERIC
SCHRADING**

Eric Schrading
Field Supervisor

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SCHRADING
Date: 2021.10.27 16:25:42
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cc: Jesse.I.miller@usace.army.mil
Ron.Popowski@fws.gov
Steve.Papa@fws.gov
kelly.davis@dep.nj.gov
Colleen.Keller@dep.nj.gov
Knutson.Lingard@epa.gov
Karen.Greene@noaa.gov
Jessie.Murray@noaa.gov

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DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK NEW YORK 10278-0090

Environmental Analysis Branch

January 28, 2022

Mr. Eric Schrading
U.S. Fish and Wildlife Service
New Jersey Field Office
4 East Jimmie Leeds Road, Unit 4
Galloway, New Jersey 08205

Dear Mr. Schrading:

The United States Army Corps of Engineers (USACE), New York District (District) is in receipt of your draft Planning Aid Letter (PAL), dated August 27, 2021 submitting recommendations on the Harbor Deepening Channel Improvements (HDCI) study.

Please find our formal responses to the PAL attached. The District looks forward to working with your office throughout the Pre-Engineering and Design and Construction Phases of this study and thank you for your continued assistance and input to this process which helps us to advance the execution of this regionally significant project.

If you require any additional information, please feel free to contact Mr. Jesse Miller Jesse.L.Miller@usace.army.mil at 917-790-8729.

Sincerely,

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Date: 2022.01.28 09:18:14 -05'00'

Peter Wepler
Chief, Environmental Analysis Branch

Enclosure

cc: LIFO

USACE Responses to Draft PAL

USACE concurs with the U.S. Fish and Wildlife Service's (USFWS or the Service) overall Planning and Mitigation Recommendations. We are committed to coordination and collaboration with USFWS to advance our joint goals and obligations to ensure environmental protection and sustainability, as we offer corrections and responses to specific recommendations as follows:

ENVIRONMENTAL CONTAMINANTS

USFWS: The Port of New York and New Jersey is the third largest seaport in the United States, with an estimated regional economic input in excess of \$29 billion annually.

USACE: Please note the Port of New York and New Jersey is the second largest port.

USFWS: The Service also recommends that several of the parameters be modified as to be more informative of potential adverse impacts to fish and wildlife resources; these recommendations follow.

USACE: The parameters recommended by USFWS provide information used to model toxicity and biomagnification of analytes within the food web. However, the testing methods described in the current NYD/EPA Region 2 - Regional Testing Manual utilize direct measurement of toxicity and bioaccumulation in test organisms, as opposed to relying on modeled estimates. The methods currently used to consider contaminant risks (including PCBs and PAHs) include the application of multiplication factors based on previously collected data to account for uncertainties such as unmeasured congeners, 'steady state' uptake, contaminant trophic transfer, and interspecies differences in sensitivity. Therefore, the Corps believes that adding the recommended additional parameters would increase testing costs without providing any information that would materially change the decision as to whether the material meets HARS criteria.

CONCLUSIONS AND SUMMARY OF RECOMMENDATIONS

USFWS Recommendation 1: Consider bald eagles in accordance with the National Bald Eagle Management Guidelines and all applicable State regulations.

Corps Response: Concur, Bald eagles will be considered in this study, and the National Bald Eagle Management Guidelines are discussed in Section 2.9.3 "Bald Eagles Protected under the American Bald and Golden Eagle Act of 1972".

USFWS Recommendation 2: Continue to prohibit dredging and blasting within 1,000 feet of Shooters Island between March 1 and August 31 of any given year and avoid illuminating Shooters Island if dredging and blasting occurs at night. The Corps should contact the Service to determine if these restrictions are necessary prior to each nesting season. Should Shooters Island become abandoned or if its

use as a breeding site for wading birds substantially declines, these recommended restrictions may be modified or rescinded.

Corps Response: Concur.

USFWS Recommendation 3: Continue post construction benthic surveys and biological monitoring of fish and macroinvertebrates to determine the direct and indirect effects of project implementation.

Corps Response: Benthic recovery monitoring will continue. Any other future aquatic sampling is to be determined.

USFWS Recommendation 4: Coordinate with the Service, NOAA - Fisheries, and State resource agencies for recommendations based on results.

Corps Response: Concur, the Corps will continue to coordinate with resource agencies.

USFWS Recommendation 5: Consider opportunities for maintenance and enhancement of benthic communities. These opportunities could be incorporated as compensatory mitigation for project impacts to fish and wildlife resources.

Corps Response: Concur.

USFWS Recommendation 6: Coordinate with NOAA – Fisheries regarding consultation pursuant to EFH and ESA consultation to avoid adversely modifying EFH within the project area.

Corps Response: Concur.

USFWS Recommendation 7: Adhere to the winter flounder early life stage (January 15 – May 31) and anadromous fish (March 1 – June 30) time of year restrictions.

Corps Response: USACE will abide by the Conservation Recommendations issued by NMFS HPD and the affected states under their CWA and CZMA jurisdictions, specific to the HDCI.

USFWS Recommendation 8: Continue to evaluate the potential effect of altered water velocities, altered sedimentation rates, the resuspension and redistribution of environmental contaminants, and slumping of channel side slopes on wetlands, shallow waters, mudflats, and beaches.

Corps Response: The items listed will be considered in design to avoid and/or minimize impact to existing conditions.

USFWS Recommendation 9: Follow the *Guidance for Performing Tests on Dredged*

Material Proposed for Ocean Disposal along with the following parameters:

- a. The guidance calls for the analysis of 22 PCB congeners. The Service recommends that the Corps use EPA Method 1668 (Chlorinated Biphenyl Congeners in Water, Soil, Sediment, Biosolids, and Tissue by HRGC/HRMS); this method allows for the quantification of all 209 PCB congeners including the 12 dioxin-like congeners. Total PCBs can then be calculated as the sum of the 209 congeners which is useful in evaluating potential risk or injury to fishes. An excellent review on the effects of total PCBs to fishes can be found in Berninger and Tillett (2019). Moreover, quantification of the 12 dioxin-like PCB congeners can then be incorporated along with dioxin and furan concentrations to produce total dioxin toxic equivalency for use in food web evaluations.
- b. Although commonly conducted in tissues samples undergoing organic analysis, the Service did not find mention analysis of percent lipid in tissues. Percent lipid from tissues are used to normalize organic compound concentrations across species and age groups are an important component in the construction of contaminant food models using Biota Sediment Accumulation Factors and biomagnification models. The Service recommends that percent lipid is include tissue analyses of organic compounds.
- c. With respect to sediment samples, the guidance calls for the analysis of 17 PAH parent compounds (frequently referred to as the EPA PAH₁₇ list). However, the PAH₁₇ list does not include the more biologically toxic alkylated PAHs. Therefore, the Service recommends that the Corps use the parent-alkylated PAH list (frequently referred to as the EPA PAH₃₄ list). The enhanced PAH₃₄ list allows for evaluating risks associated with sediment chemistry using the equilibrium partitioning (EqP) approach. EqP is well established for evaluating toxicity of PAH mixtures benthic organisms by calculating a Narcosis Equilibrium partitioning Sediment Benchmark expressed as Toxic Units.

Corps Response: As stated above, the parameters recommended by USFWS provide information used to model toxicity and biomagnification of analytes within the food web. However, the testing methods described in the current NYD/EPA Region 2 - Regional Testing Manual utilize direct measurement of toxicity and bioaccumulation in test organisms, as opposed to relying on modeled estimates. The methods currently used to consider contaminant risks (including PCBs and PAHs) include the application of multiplication factors based on previously collected data to account for uncertainties such as unmeasured congeners, 'steady state' uptake, contaminant trophic transfer, and interspecies differences in sensitivity. Therefore, the Corps believes that adding the recommended additional parameters would increase testing costs without providing any information that would materially change the decision as to whether the material meets HARS criteria.

USFWS Recommendation 10: Consider opportunities to beneficially use clean sediment or rock toward coastal resilience projects like marsh restoration and living shoreline projects should be considered as part of the proposed project.

Corps Response: Concur, Potential beneficial use placement options to be considered during PED and will be discussed in Appendix A13 of the Final integrated FR/EA.

USFWS Recommendation 11: Provide full mitigation for the Harbor Deepening Project pursuant to the CWA and the Service's Mitigation Policy. In addition, compensate for additional impacts to fish and wildlife resources for direct impacts to shallow water habitats (0-15 feet deep) of approximately 1.92 acres as part of the HDCI.

Corps Response: USACE fully mitigated for regulated shallow habitat impacts, under the CWA (as defined by New York State as down to -6 feet MLLW) for the 50-foot Harbor Deepening Project. USACE will provide full mitigation for HDCI impacts to CWA-regulated shallow habitat. Updated analyses show impacts to 0.53 acres of said habitat, all in the States of New Jersey, where it is defined as down to a depth of -4 feet MLLW.

EFH habitat is not regulated nor defined as requiring compensatory mitigation, as is defined by regulation shallow habitat under CWA, as implemented by the affected states. USACE mitigates, per statute as required, for significant impacts to rare, regulated and otherwise special area habitats.

USACE is currently coordinating with NMFS on appropriate beneficial use projects under the HDCI designed to conserve, enhance, or protect the function of some essential habitat for particular species during the PED phase of the project.

USFWS Recommendation 12: Provide the Service and NOAA-Fisheries with its plan to compensate for all direct impacts to shallow waters and any indirect loss of habitat value within wetlands, shallow waters, mudflats, and beaches that may occur as a result of project implementation and consider mitigation that includes high marsh habitat that reduces recontamination, benefits at-risk species like saltmarsh sparrow, and increases coastal resilience of wetlands as it relates to sea-level rise.

Corps Response: USACE will consider this type of mitigation as practicable. The Mitigation Plan for the HDCI will be discussed in Appendix A11 of the Final integrated FR/EA

USFWS Recommendation 13: Consult with the appropriate State agencies regarding potential impacts to State- listed species.

Corps Response: Concur.



State of New Jersey

OFFICE OF PERMITTING AND PROJECT NAVIGATION

P.O. Box 420 Mail Code 401-07J Trenton, New Jersey 08625-0420

Telephone: (609) 292-3600

FAX: (609) 633-2102

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

SHAWN M. LATOURETTE
Acting Commissioner

January 19, 2021

Ms. Karen Baumert
Study Planner
New York District, U.S. Army Corps of Engineers
c/o PSC Mail Center
26 Federal Plaza
New York, NY 10278-0090

Mr. Jesse Miller
Project Biologist
New York District, U.S. Army Corps of Engineers
c/o PSC Mail Center
26 Federal Plaza
New York, NY 10278-0090

**RE: New York and New Jersey Harbor Deepening Channel Improvements
Draft Finding of No Significant Impact (FONSI) and Draft Integrated Feasibility
Report and Environmental Assessment**

Dear Ms. Baumert and Mr. Miller:

The New Jersey Department of Environmental Protection's (Department) Office of Permitting and Project Navigation (OPPN) distributed, for review and comment, the Draft Finding of No Significant Impact and Draft Integrated Feasibility Report & Environmental Assessment for the New York and New Jersey Harbor Deepening Channel Improvements Project (NYNJHDCI), published by the US Army Corps of Engineers (USACE) in November 2020. The NYNJHDCI study's purpose is to determine if there is a technically feasible, economically justified, and environmentally acceptable recommendation for federal participation in a navigation improvements project in the New York and New Jersey Harbor. The study focuses on a range of nonstructural and structural measures that have the potential to improve navigation efficiencies within the New York and New Jersey Harbor. These measures include, but are not limited to, channel widening, channel deepening, bend easing, improving vessel scheduling, relocating navigation aids, and increasing tugboat assistance.

Based on the information provided for review, the Department offers the following comments for your consideration:

Division of Land Resource Protection

Office of Dredging and Sediment Technology

The NYNJHDCI project will require a formal Federal Consistency pursuant to Section 307 of the Federal Coastal Zone Management Act (16 USC 1451 *et. seq.*), and Water Quality Certification (WQC) as required by Section 401 of the federal Clean Water Act (33 USC 1251 *et. seq.*) for the final selected project design. Based on our review of the Draft Feasibility Report/Environmental Assessment (Draft FR/EA), the Division of Land Resource Protection (DLRP) has no significant issues or major concerns with the USACE moving forward with further designs of this important project. DLRP does not foresee any problems that would preclude issuance of a Federal Consistency determination/WQC for the NYNJHDCI, provided that the USACE submits a Federal Consistency/WQC request for the final selected project design and the Division can confirm that the proposed project is consistent with its Coastal Zone Management rules. DLRP looks forward to coordinating with the USACE during the next phase of the project and to receiving the USACE's request for the WQC and Federal Consistency decisions.

The NJNYHDCI Draft FR/EA states that between 27MCY to 33MCY of dredged material will need to be managed by the USACE to complete the project. The dredged material is proposed to be beneficially used at the Historic Area Remediation Site (HARS), artificial reef sites, and/or upland placement. As the project design moves forward, DLRP recommends that the USACE consider the beneficial use of dredged material for use in engineering with nature projects and artificial reef sites in New Jersey, as well as the potential use of the material in beach nourishment projects along the Raritan Bayshore region. Proposed placement of dredged material may also require authorization through a federal consistency determination or permit as applicable.

DLRP recommends that the NY/NJ Regional Dredging Team be reconvened in the early stages of the project development. This will ensure that there will be adequate placement capacity for non-HARS suitable dredged material at upland sites in New Jersey and New York, and to maximize beneficial use of the remaining dredged material at the HARS, artificial reef sites, habitat restoration projects, and beach nourishment projects.

Section 6.4: Water Resources and Water Quality - It is stated that "sediments will be tested in accordance with the Evaluation of Dredged Material for Discharge in Waters of the U.S.-Testing Manual (USEPA, 1998) and the USACE Manual, Evaluation of Dredged Material Proposed for Disposal at Island, Nearshore, or Upland Confined Disposal Facilities – Testing Manual (USACE, 2003) prior to commencement of dredging to ensure appropriate placement/disposal of dredged material." It is noted that testing of the sediments to be dredged would also need to meet the requirements of the NJDEP as detailed in Appendix G of the Coastal Zone Management Regulations, N.J.A.C. 7:7 also referred to as the Department's Dredging Technical Manual. In addition, the NJDEP and NYDEC have coordinated sediment sampling and analysis plan protocols for dredging and dredged material placement in both states. The USACE is familiar with these protocols as they have been used for sampling of USACE maintenance dredging projects and previous NY/NJ Harbor Deepening contracts. The Draft FR/EA should be revised to reflect the New Jersey and New York sampling protocols that exist for the NY/NJ Harbor Complex.

It is recommended that the USACE work with the NJDEP Division of Fish and Wildlife to develop a comprehensive, mutually agreed upon, fisheries and avian species environmental windows for the entire project.

Appendix A3, Coastal Zone Management Act – It is noted that New Jersey Coastal Zone Management Regulations are now contained within N.J.A.C. 7:7 et. seq. and not N.J.A.C. 7:7E et seq. The Coastal Zone Management Act document within the Feasibility Study/Environmental Assessment should be updated to reflect the nomenclature and rule text accordingly https://www.nj.gov/dep/rules/rules/njac7_7.pdf.

Appendix A3, Coastal Zone Management Act – Intertidal/Subtidal Shallows – Pursuant to N.J.A.C. 7:7-9.15, intertidal and subtidal shallows are defined as all permanently or temporarily submerged areas from the spring high water line to a depth of *four* feet below mean low water. The NYNJHDCI FS/EA states that shallow subtidal habitat is defined as -6 feet below MLLW or shallower. When demonstrating compliance with this rule, it is requested that the USACE quantify the impacts to intertidal/subtidal shallows that will occur from -4 feet below MLLW and shallower as well as -6 feet below MLLW impacts from the project.

If you have any questions, please contact Suzanne Biggins at Suzanne.Biggins@dep.nj.gov.

Division of Coastal Engineering (DCE)

The DCE recommends that all dredged material that is suitable for beach nourishment be prioritized for beneficial reuse along New Jersey's Raritan & Sandy Hook Bayshore and/or Atlantic coast. The Department is in full support of projects that benefit and improve its ongoing coastal resilience efforts, while also leveraging available sand for proposed state and local projects and existing authorized USACE Hurricane & Storm Damage Reduction Projects, including:

- a. USACE Keansburg, East Keansburg, and Laurence Harbor Hurricane and Storm Damage Reduction Project
 - i. Keansburg - There is no periodic nourishment currently authorized for the project, and several areas of significant erosion have occurred which would benefit from additional sand placement (only renourishment was 2014 FCCE/Hurricane Sandy Emergency Beachfill).
 - ii. Laurence Harbor - Additional sand can be used to remediate shoreline after the ongoing Raritan Bay Slag Superfund Remediation in the area is completed.
- b. USACE Port Monmouth Hurricane and Storm Damage Reduction Project
 - i. The renourishment component of this project is currently intended to be implemented via truckfill. Beneficial reuse of material via hydraulic placement could be a less expensive alternative for the project.
- c. USACE Union Beach Hurricane and Storm Damage Reduction Project
 - i. The renourishment component of this project is currently intended to be implemented via truckfill. Beneficial reuse of material via hydraulic placement could be a less expensive alternative for the project.
- d. USACE Sea Bright to Manasquan Hurricane and Storm Damage Reduction Project

- i. The renourishment component of this project is currently intended to be implemented via hydraulic placement, so beneficial reuse of material could be easily incorporated and result in a cost savings to the government and non-federal sponsor.
- e. Readiness and Environmental Protection Integration Beneficial Reuse Projects
 - i. These projects are located along the Raritan Bayshore and are of close proximity to the deepening project. These projects are capable of accepting both coarse and fine grain material for beach nourishment and thin-layer placement, respectfully.

If direct placement of suitable sand is found to be cost prohibitive, sand should be deposited at the Sea Bright borrow area in lieu of HARS. The Sea Bright borrow area would require less transit time than HARS, which would result in a cost savings to the government and non-federal sponsor(s). Furthermore, USACE anticipates that there is currently an insufficient quantity of suitable sand available in the Sea Bright borrow area to sustain the 50-year authorization of the Sea Bright to Manasquan Project. ~~End dumping~~ Depositing material at the Sea Bright borrow area for future utilization would be especially beneficial to the Sea Bright to Manasquan project for this reason.

Also, all stone-type dredge material that is suitable for structural purposes, including revetments, jetties, groins, seawalls, living shorelines, etc. should be prioritized for beneficial reuse along New Jersey's Raritan & Sandy Hook Bayshore and/or Atlantic coast:

- a. Union Beach & Keansburg – If feasible, the material could be used to meet mitigation requirements on existing USACE Hurricane and Storm Damage Reduction Projects such as Union Beach and Keansburg. An example could be creating offshore reefs to meet these mitigation requirements.
- b. Keansburg – This material could also be used to construct breakwaters offshore at certain erosional hotspots in order to maintain the existing USACE beachfill template and prevent further erosion. Point Comfort in Keansburg is a prime example of one of the hotspots that could benefit from this.
- c. Laurence Harbor – One of the potential remediation tasks for the active Raritan Bay Slag Superfund site is to replace contaminated stone contained within the existing jetties and revetment near Cheesequake Creek. Depending on the size of material from the NY/NJ HDCI Project, suitable stone could be used for this purpose. This could be of great benefit to US EPA's efforts.

If you have any questions, please contact William Dixon at William.Dixon@dep.nj.gov or (732) 255-0767.

New Jersey Division of Fish and Wildlife

Marine Fisheries Administration

The Marine Fisheries Administration (MFA) is comprised of the Bureau of Marine Fisheries and the Bureau of Shellfisheries. Both Bureaus are charged with reviewing permits within the

context of the species they regulate, the habitat(s) of said species, and the user groups associated with those species and habitats. The MFA is submitting comments based on the documentation that was provided in the Draft FR/EA. Therefore, if the applicant deviates from the activities described in the Draft FR/EA, these comments are no longer valid and the MFA requests that the applicant submit such changes with ample time to review and comment prior to the anticipated commencement of activities.

The following summarizes the desktop analysis performed for the Special Areas (Subchapter 9) rules that are relevant to the MFA's responsibilities outline above and which are applicable to this project:

- a. 9.5 -Finfish migratory pathways- recommended February 1 – May 31 timing restriction.
- b. 9.36 -Endangered or threatened wildlife or plant species habitats- Shortnose and Atlantic sturgeon recommended February 1 – May 31 timing restriction.

Further, the MFA recommends a timing restriction of February 1 – May 31 to protect anadromous species spawning activities. Important finfish species may be impacted such as striped bass, American Shad, alewife and blueback herring, Atlantic sturgeon, and Short-nose sturgeon, the stocks of all of these anadromous species have been determined to be imperiled to varying degrees.

Also, the MFA recommends that all best management practices are used to reduce the resuspension of contaminated sediments. The Final EA would benefit from the USACE providing more recent data on resuspension of harmful chemicals from dredging contaminated sediments and details from the mitigation plan for intertidal and subtidal shallows.

Endangered and Nongame Species (ENSP)

Potential impacts need to be determined using the latest whale/sea turtle sightings for the area, it looks as though they have New York data as late as 2019. ENSP would agree that the NMFS provided recommendations in their Biological Assessment will help mitigate impacts. Every effort will be made to ensure that no marine mammals or sea turtles are in the vicinity prior to blasting along with adherence to the NMFS North Atlantic Right Whale seasonal timing restrictions in appropriate areas.

If you have any questions, please contact Kelly Davis at Kelly.Davis@dep.nj.gov.

Historic and Cultural Resources

As indicated in the documentation submitted, the proposed project will require consultation with the New Jersey Historic Preservation Office (HPO), pursuant to Section 106 of the National Historic Preservation Act, for the identification, evaluation and treatment of historic properties within the project's area of potential effects. The USACE has already initiated consultation with the HPO pursuant to the USACE's obligations under Section 106 of the National Historic Preservation Act of 1966, as amended, and it's implementing regulations, 36 CFR §800.

If additional consultation with the HPO is needed for this undertaking, please reference the HPO project number 20-0127 in any future calls, emails, submissions or written correspondence to help expedite your review and response.

If you have any questions, please contact Jesse West-Rosenthal at Jesse.West-Rosenthal@dep.nj.gov.

Air Quality

Bureau of Evaluation and Planning

1) Chapter 2 – Existing Environmental Conditions

The Draft FR/EA states, “The Preconstruction Engineering and Design phase is not anticipated to begin until after the signing of the Chief’s Report with construction estimated to begin in approximately 2025.”

Comment #1

If changes to the project and selected plan are made after additional analysis is completed, please revise the Overall Project Emission Estimates (22 September 2020) and the General Conformity-Related Emission Estimates Draft in Attachment A of Appendix A5 Clean Air Act/Draft Conformity Determination (Appendix A5) to reflect these changes. The emissions estimates for this project are above the de minimis levels in 40 CFR 93.153(b)(1) (Applicability) of the Federal General Conformity regulation and the air emissions must be fully offset. At this time, the de minimis levels are based on the Serious Classification for Ozone in the Northern New Jersey-New York-Connecticut nonattainment area. Mitigation is the preferred method to offset the air emissions generated from this project.

2) Chapter 5 – Tentatively Selected Plan

The Draft FR/EA states “The Tentatively Selected Plan reflects the least cost dredged material placement plan, which includes beneficially using dredged material by placing it either upland, at the HARS, or on a reef.”

Comment #2

Please clarify if the air emissions associated with the dredged material transportation and placement at an upland site, or at the HARS, or on a reef, are accounted for in the Overall Project Emission Estimates (22 September 2020 Draft) and in the General Conformity – Related Emission Estimates Draft in Attachment A of Appendix A5. If these air emissions are not accounted for, please revise the emission estimates in Appendix A5 to include them.

3) Chapter 5 – Tentatively Selected Plan

The Draft FR/EA states, “The maintained depth only differs from the authorized channel level in areas in which the channel bottom is composed of rock and or otherwise hard material. In rock-bottomed or hard-bottomed areas, an additional 2 feet of safety clearance is required.”

Comment #3

Please clarify if the air emissions associated with the additional 2 feet of dredging required for rock-bottomed or hard-bottomed areas are accounted for in the Overall Project Emission Estimates (22 September 2020) and in the General Conformity-Related Emission Estimates Draft in Attachment A of Appendix A5. If these emissions are not accounted for, please revise the estimates in Appendix A5 to include them.

4) Section 5.4- Uncertainty and Additional Analysis

The Draft FR/EA states, “Additional analysis will be completed after the draft integrated report is released to refine assumptions and confirm the national economic development plan.”

Comment #4

Comment 1 also applies to this portion of the project.

5) Section 5.4 - Uncertainty and Additional Analyses

The Draft FR/EA states, “It is not anticipated that any single refinement will affect the identification of the national economic development plan. However, refinements to multiple assumptions may jointly have an impact. Assumptions that will be reconsidered relate to...blasting, disposal and berth deepening.”

Comment #5

Comment 1 also applies to this portion of the project.

6) Chapter 9 – Draft Recommendation

The Draft FR/EA states, “I recommend that the selected plan for navigation improvements in the New York and New Jersey Harbor be authorized for construction as a Federal project, subject to such modifications as may be prescribed by the Chief of Engineers.”

Comment #6

If modifications to the selected plan are prescribed by the Chief of Engineers, please revise the Overall Emission Estimates (22 September 2020) and the General Conformity-Related in Attachment A of Appendix A5 to reflect these changes.

7) Appendix A5 – Clean Air Act Draft General Conformity Determination - .2 Background

Appendix A5 in the Draft FR/EA states, “USACE has coordinated this determination with the New Jersey Department of Environmental Protection (NJDEP), the New York State Department of Environmental Conservation (NYSDEC), and Region 2 of the U.S. Environmental Protection Agency (EPA).”

Comment #7

Coordination meetings with NJDEP, NYSDEC and EPA (Regional Air Team) resumed on December 15, 2020. Please revise this statement to indicate that coordination has been initiated by the USACE and that discussions on meeting the Federal General Conformity requirements for this project have begun.

8) Appendix A5 – Clean Air Act Draft General Conformity Determination-.4 Emission Offsets

Appendix 5 in the Draft FR/EA states, “USACE recognizes that the feasibility and cost-effectiveness of each offset option is influenced by whether the emission reductions can be achieved without introducing delay to the construction schedule that would prevent timely completion of the project to provide the benefits for which the project is being undertaken.”

Comment #8

On August 23, 2019, the USEPA issued a final rule (FR (Vol. 84, No. 164) reclassifying the New York-Northern New Jersey -Long Island (NY-NNJ-CT) nonattainment area to serious nonattainment for the 2008 ozone National Ambient Air Quality Standard. Since the New York-Northern New Jersey-Long Island (NY-NNJ-CT) nonattainment area has been reclassified to serious nonattainment, NJDEP strongly recommends mitigation measures that provide “real

reductions” should be implemented to meet the requirements of the Federal General Conformity regulation. Based on experience with the 50-foot New York/New Jersey Harbor Deepening Project, NJDEP recognizes that technical delays can occur and that purchasing credits to meet the requirements of the Federal General Conformity regulation may be an option to address these delays.

On April 4, 2018, Governor Murphy signed Executive Order 23, which “commits to ensure all New Jersey residents, regardless of race, ethnicity, color, national origin, or income, receive equal protection under the laws of this State, are able to live and work in a healthy and clean environment...” Implementing mitigation measures that provide “real reductions” affords an opportunity to meet Governor Murphy’s Executive Order by helping to improve air quality in the community and addressing environmental justice concerns.

9) Appendix A5 – Clean Air Act Draft General Conformity Determination-.4 Emission Offsets
Appendix 5 in the Draft FR/EA states, “USACE will demonstrate conformity with the New York and New Jersey State Implementation Plans by utilizing the emission offset options listed below. The demonstration can consist of any combination of options and is not required to include all options or any single option to meet conformity. The options (which are abbreviated here) for meeting general conformity requirements include the following:

- a. Emission reductions from project and/or non-project related sources in an appropriately close vicinity to the project location.
- b. Use of Surplus NOx Emission Offsets (SNEOs) generated under the Harbor Deepening Project (HDP) and/or subsequent projects for which SNEOs have been produced.
- c. Development of a Marine Vessel Engine Repower Program (MVERP) which replaces older, higher emitting marine engines with cleaner engines, the delta in emissions being used to offset project emissions.
- d. Use of Cross-State Air Pollution Rule (CSAPR) ozone season NOx Allowances with a distance ratio applied to allowances, similar to the one used by stationary sources.
- e. Rescheduling the project by elongating the construction schedule so as not to exceed the 100 tons per year threshold for NOx in any one calendar year. This option is least likely to be exercised.”

Comment #9

Comment #8 also applies to this portion of the project. The generation and use of SNEOs should be in accordance with the Final Surplus NOx Emission Offset Protocol Program (May 2014). This project is not scheduled to begin construction until approximately 2024, which affords an opportunity to develop mitigation measures that will provide “real reductions” which will benefit the surrounding communities. NJDEP supports the Corps commitment to develop an MVERP program to meet the requirements of the Federal General Conformity regulation.

10) Appendix A5 – Clean Air Act Draft General Conformity Determination-.4 Emission Offsets
Appendix A5 in the Draft FR/ EA states, “Due to the unpredictable nature of dredge-related construction, the project emissions will be monitored as appropriate and regularly reported to the RAT to assist the USACE in ensuring that the project is fully offset.”

Comment #10

Based on prior experience with the 50-foot NY/NJ Harbor Deepening Project and due to the unpredictable nature of the dredge-related construction, NJDEP recommends that monthly

updates on the air emissions estimates should be provided to the Regional Air Team to ensure that the project meets the requirements of the Federal General Conformity regulation.

11) Attachment A: Documentation of General Conformity Related Emission Estimates

Attachment A states, “Emission factors have also been sourced from a variety of documents and other sources depending on engine type and pollutant. Nonroad equipment NOx and other emission factors have been derived from EPA emission standards and documentation.”

Comment #11

Please cite the sources that were used to obtain the emission factors for the marine equipment (dredges, tugs and marine vessels).

12) Attachment A: Documentation of General Conformity Related Emission Estimates

Attachment A includes the NAN Harbor Deepening Channel Improvements General Conformity- related Emissions Estimated Draft Table and the 54’ NAN Harbor Deepening Channel Improvement Overall Project Emissions Estimates, 22 September 2020 Draft Table.

Comment #12

The 50-foot New York/New Jersey Harbor Deepening Project added 10% to the annual estimated emissions estimates as a contingency measure to prevent shortfalls and to ensure that the project would meet the requirements of the Federal General Regulation. Please clarify if 10% will be added to the annual estimated emissions estimates as a contingency measure. NJDEP recommends that 10% should be added to the annual estimated emissions to ensure compliance with the Federal General Conformity regulation. What other contingency measures will be put in place to ensure compliance if 10% is not added to the annual estimated emissions?

13) Appendix B1: Channel Design – 6.3.2. HARS Suitable and Non-HARS Suitable Material

Appendix B states, “Non-HARS suitable material will be disposed of at an upland disposal site; HARS suitable sediments will be disposed of at the HARS.”

Comment #13

Comment #2 also applies to this portion of the project.

If you have any questions, please contact Angela Skowronek at Angela.Skowronek@dep.nj.gov.

Air Mobile Sources

Diesel exhaust contributes the highest cancer risk of all air toxics in New Jersey and is a major source of NOx within the state. Therefore, NJDEP recommends that construction projects involving non-road diesel construction equipment operating in a small geographic area over an extended period of time implement the following measures to minimize the impact of diesel exhaust:

- a. All on-road vehicles and non-road construction equipment operating at, or visiting, the construction site shall comply with the three-minute idling limit, pursuant to N.J.A.C. 7:27-14 and N.J.A.C. 7:27-15. Consider purchasing “No Idling” signs to post at the site to remind contractors to comply with the idling limits. Signs are available for purchase from the Bureau of Mobile Sources at 609/292-7953 or <http://www.stopthesoot.org/sts-no-idle-sign.htm>.

- b. All non-road diesel construction equipment greater than 100 horsepower used on the project for more than ten days should have engines that meet the USEPA Tier 4 non-road emission standards, or the best available emission control technology that is technologically feasible for that application and is verified by the USEPA or the CARB as a diesel emission control strategy for reducing particulate matter and/or NOx emissions.
- c. All on-road diesel vehicles used to haul materials or traveling to and from the construction site should use designated truck routes that are designed to minimize impacts on residential areas and sensitive receptors such as hospitals, schools, daycare facilities, senior citizen housing, and convalescent facilities.
- d. While entering and leaving the project area, trucks should avoid neighborhoods as much as possible.

If you have any questions, please contact Kris Dahl at Kris.Dahl@dep.nj.gov.

Air Compliance and Enforcement

Stationary construction equipment may require air pollution permits. The applicant should review the requirements of N.J.A.C. 7:27-8.2(c) 1-21 for stationary permitting requirements.

Furthermore, dust emissions either windblown or generated from construction equipment should be controlled to prevent offsite impacts. The applicant should also be aware of potential offsite impacts of odors pursuant to N.J.A.C. 7:27-5.

If you have any questions or concerns, please contact Jeffrey Meyer at Jeffrey.Meyer@dep.nj.gov.

NJPDES Discharge to Surface Water

If a surface water discharge becomes necessary during construction (i.e., dewatering), a NJPDES Discharge to Surface Water permit will be needed.

Provided that the discharge is not contaminated, the appropriate NJPDES discharge to surface water permit will be the B7 - Short Term De Minimis permit (see <http://www.nj.gov/dep/dwq/gp-b7.htm>). This is determined by running a pollutant scan as described in the application checklist where the data can be collected up to a year in advance of the discharge. However, if the discharge is contaminated and the analytical results demonstrate levels greater than the limitations specified in Attachment 1 of the B7 permit (see <http://www.state.nj.us/dep/dwq/pdf/b7-deminimis-final-permit-5-20-15.pdf>), the appropriate NJPDES discharge to surface water permit will be the BGR – General Remediation Cleanup permit (see http://www.nj.gov/dep/dwq/gp_bgr.htm). The BGR permit can generally be processed in less than 30 days although a treatment works approval may be needed for any treatment.

If you have any questions, please contact Dwayne Kobesky at Dwayne.Kobesky@dep.nj.gov.

Thank you for providing the New Jersey Department of Environmental Protection with the opportunity to comment on the Draft Finding of No Significant Impact and the Draft Integrated Feasibility Report and Environmental Assessment for the New York and New Jersey Harbor Deepening Channel Improvements Project.

If you have any questions or would like to discuss this letter, please free to contact Katie Nolan at Katherine.Nolan@dep.nj.gov.

Sincerely,

A handwritten signature in black ink that reads "Megan Brunatti". The signature is written in a cursive, flowing style.

Megan Brunatti, Director
Office of Permitting and Project Navigation



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK NEW YORK 10278-0090

Environmental Analysis Branch

October 20, 2021

Patrick Foster
Regional Director
New York State Department of
Environmental Conservation – Region 2
Division of Environmental Permits
One Hunters Point Plaza
47-40 21st Street
Long Island City, New York 11101

Steven Watts
Regional Permit Administrator
New York State Department of
Environmental Conservation – Region 2
Division of Environmental Permits
One Hunters Point Plaza
47-40 21st Street
Long Island City, New York 11101

Dear Mr. Foster and Mr. Watts:

The United States Army Corps of Engineers (USACE), New York District (District) in cooperation with the Port Authority of New York and New Jersey (PANYNJ), is undertaking a feasibility study to examine deepening, widening and bend easing measures to improve navigation within the footprint of the constructed 50-foot channel for the Harbor Deepening Channel Improvements (HDCI) project.

The District is currently preparing the Final Integrated Feasibility Report/Environmental Assessment (IFR/EA). The Recommended Plan is deepening the pathways to Elizabeth – Port Authority Marine Terminal and Port Jersey – Port Authority Marine Terminal by 5 feet up to a maintained depth of -55 feet MLLW. The Recommended Plan involves deepening Ambrose Channel, Anchorage Channel, the Kill Van Kull, Newark Bay Channel, South Elizabeth Channel, and Elizabeth Channel, and Port Jersey Channel. This includes the additional width required for structural stability and for the navigation of the design vessel to transit from sea to Elizabeth Port Authority Marine Terminal and Port Jersey Port Authority Marine Terminal. Channel configurations were designed to avoid and minimize environmental and cultural resource impacts while still meeting navigation safety requirements.

The Recommended Plan will impact less than 2 acres (approximately 1.92 acres) of shallow subtidal habitat (-6 ft MLLW or shallower) under the State of New Jersey's jurisdiction, this acreage would be converted to deep water habitat, therefore the District would implement compensatory mitigation for this shallow water or littoral habitat, while also incorporating into the mitigation plan any benefits of the channel improvement. This District is not impacting any subtidal habitat under the State of New York's jurisdiction

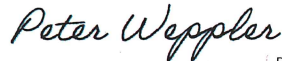
The District is committed to beneficially using dredged material, including placement at the Historic Area Remediation Site (HARS) for eligible sediments. Coordination for specific placement areas and coordinating other disposal areas will be finalized in the Preconstruction Engineering and Design (PED) phase. The District, in coordination with National Marine Fisheries Service, will adhere to fisheries windows for winter flounder and anadromous fish.

Please note that the IFR/EA was developed in adherence to the Corps' SMART Planning Civil Works Planning processes and schedules for Feasibility level studies. As such, the level of detail of some of the information (e.g., final designs, final compensatory mitigation plan) will not be developed until the Preconstruction Engineering Design Phase (PED) which occurs once a study has been authorized and appropriated for construction. Project permits will be applied for and obtained during the PED Phase. Therefore, the District will be requesting a Section 401 Water Quality Certificate in the PED Phase.

As part of the finalization of the IFR/EA, the District needs documentation from your agency stating that it does not foresee any problems that would preclude issuance of the Water Quality Certificate. This letter serves as a request for such documentation.

If you require any additional information, please feel free to contact Mr. Jesse Miller Jesse.L.Miller@usace.army.mil at 917-790-8729.

Sincerely,



WEPPLER,PETER.M.1228647353

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WEPPLER,PETER.M.1228647353
Date: 2021.10.20 09:46:59 -04'00'

Peter Weppler
Chief, Environmental Analysis Branch

January 25, 2022

Peter Weppler
Chief, Environmental Analysis Branch
US Army Corps of Engineers
New York District
26 Federal Plaza, Room 17-420
New York, NY 10278-0090

Dear Mr. Weppler,

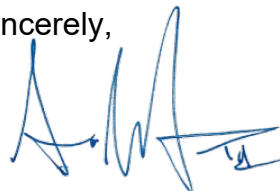
The purpose of this letter is to confirm that the New York State Department of Environmental Conservation (DEC), based on the limited information provided in your letter dated October 20, 2021, does not see any problems that would preclude issuance of a Water Quality Certificate for the Harbor Deepening Channel Improvements (HDCI) project.

The DEC recognizes that additional analysis will be required during both the Final Integrated Feasibility Report/Environmental Assessment (IFR/EA) and the Pre-Construction Engineering Design (PED) phase of the Project. The Corps will need to coordinate with New York State throughout IFR/EA and PED as the plan and Project elements are further refined.

The DEC awaits the Corps' submittal of their Water Quality Certification (WQC) application. Based on the DEC's review of previous Corps navigational dredging projects, DEC does not foresee any problems that would preclude the eventual issuance of a WQC, providing that any DEC comments are adequately addressed in the Corps' initial WQC application. The DEC will initiate the formal review process of the WQC once the Corps' application is submitted.

The DEC will continue working with the Corps to move the Project forward as expeditiously as possible. If you have any questions, please contact me at stephen.watts@dec.ny.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Stephen A. Watts III', with a stylized flourish at the end.

Stephen A. Watts III
Regional Permit Administrator



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK NEW YORK 10278-0090

Environmental Analysis Branch

January 31, 2022

Mr. Matthew Maraglio
Supervisor, Consistency Review Unit
Office of Planning, Development & Community Infrastructure
New York Department of State
Suite 1010
One Commerce Place,
99 Washington Avenue
Albany, New York 12231-0001

Subject: Consistency Determination for the Harbor Deepening Channel Improvements Project

Dear Mr. Maraglio:

The United States Army Corps of Engineers (USACE), New York District (District) in cooperation with the Port Authority of New York and New Jersey (PANYNJ), is undertaking a feasibility study to examine deepening, widening and bend easing measures to improve navigation within the footprint of the constructed 50-foot channel for the Harbor Deepening Channel Improvements (HDCI) project.

The District is currently preparing the Final Integrated Feasibility Report/Environmental Assessment (IFR/EA). The Recommended Plan is deepening the pathways to Elizabeth – Port Authority Marine Terminal and Port Jersey – Port Authority Marine Terminal by 5 feet up to a maintained depth of -55 feet MLLW. The Recommended Plan involves deepening Ambrose Channel, Anchorage Channel, the Kill Van Kull, Newark Bay Channel, South Elizabeth Channel, and Elizabeth Channel, and Port Jersey Channel. This includes the additional width required for structural stability and for the navigation of the design vessel to transit from sea to Elizabeth Port Authority Marine Terminal and Port Jersey Port Authority Marine Terminal.

The District has determined that the Harbor Deepening Channel Improvements Navigation Project is consistent with both New York State and New York City Waterfront Revitalization Program (WRP) Coastal Zone Management (CZM) policies and project implementation will be conducted in a manner consistent with these policies. This letter provides the New York State Coastal Management Program Consistency Review Unit with information to support the District's consistency determination under the Coastal Zone Management Act, Section 307 (c) (1) and (2), and 15 CFR 930.35(d). Attached to this letter is the Coastal Zone Management Act Appendix for the IFR/EA, which includes

the District's responses to each of the Coastal Zone Management policies. Thank you for reviewing the draft version of this appendix, your comments have been incorporated.

The District is requesting concurrence with the HDCI project's consistency determination.

If you require any additional information, please feel free to contact Mr. Jesse Miller Jesse.L.Miller@usace.army.mil at 917-790-8729.

Sincerely,

WEPLER.PETE³ Digitally signed by
WEPLER.PETER.M.122864735
R.M.1228647353 Date: 2022.01.31 16:14:43 -05'00'

Peter Wepler
Chief, Environmental Analysis Branch

encl

cc: Mr. Michael Marrella, Director of Waterfront and Open Space, NYCDOP

STATE OF NEW YORK
DEPARTMENT OF STATE

ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
[HTTPS://DOS.NY.GOV](https://dos.ny.gov)

KATHY HOCHUL
GOVERNOR

ROBERT J. RODRIGUEZ
SECRETARY OF STATE

April 7, 2022

Peter Weppler
Chief, Environmental Analysis Branch
U.S. Army Corps of Engineers
New York District

Re: F-2022-0077 (DA)
U.S. Army Corps of Engineers/New York District (Corps)
submission of a consistency determination for the New
York & New Jersey Harbor Deepening and Channel
Improvements Feasibility Study's Draft Integrated
Feasibility Report finalization.
Concurrence with Consistency Determination

Dear Peter Weppler:

The Department of State (DOS) has completed its review of the Corps' consistency determination regarding the proposed New York & New Jersey Harbor Deepening and Channel Improvements Feasibility Study - Integrated Feasibility Report, with the New York State Coastal Management Program.

The recommended plan identified, as described in your April 5, 2022 email, and within the feasibility study is described as follows:

The Recommended Plan is deepening the pathways to Elizabeth – Port Authority Marine Terminal and Port Jersey – Port Authority Marine Terminal by 5 feet to a maintained depth of -55 feet MLLW3. The Recommended Plan involves deepening Ambrose Channel, Anchorage Channel, the Kill Van Kull, Newark Bay Channel, South Elizabeth Channel, and Elizabeth Channel, and Port Jersey Channel. This includes the additional width required for structural stability and for the navigation of the design vessel to transit from sea to Elizabeth Port Authority Marine Terminal and Port Jersey Port Authority Marine Terminal. Channel configurations were designed to avoid and minimize environmental and cultural resource impacts while still meeting navigation safety requirements. Consistent with current New York District practice, the Port Jersey Channel is anticipated to be maintained by dredging every 10 years (about 7,400 cubic yards), the Anchorage Channel every seven years (about 5,300 cubic yards), and all other channels together in a single contract every three years (about 91,000 cubic yards).

USACE is committed to beneficially placing the dredged material that would be generated as a result of implementing any project recommended in this study (see 33 U.S.C. §2326). Accordingly, the Recommended Plan assumes material will be placed at the least cost environmentally acceptable location. This includes beneficially using dredged material by placing it upland, at the Historic Area Remediation Site, or on a reef consistent with the current 2008 Dredged Material Management Plan. USACE will develop a supplemental project-specific Dredged Material Management Plan during Preconstruction Engineering and Design to identify the full array of opportunities that coincide with the production of the dredged material.



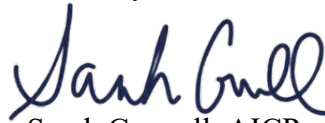
**Department
of State**

Pursuant to 15 CFR §930.41(d), DOS concurs with this Consistency Determination for the New York & New Jersey Harbor Deepening and Channel Improvements Feasibility Study's Draft Integrated Feasibility Report finalization, provided that once the project is authorized by Congress and is funded, additional Consistency Determination(s) for the final selected project designs with each contract will be submitted by the Corps, and that DOS can confirm that the proposed project components are consistent with the NYSCMP.

DOS looks forward to coordinating with the Corps during the next phase(s) of the project and to receiving the Corps' Consistency Determination(s) as they become available.

Please feel free to contact Jennifer Street at (518) 474-7247 or e-mail at: Jennifer.Street@dos.ny.gov and reference file no. F-2022-0077 (DA).

Sincerely,

A handwritten signature in blue ink that reads "Sarah Crowell". The signature is fluid and cursive, with the first name "Sarah" and last name "Crowell" clearly distinguishable.

Sarah Crowell, AICP
Director, Office of Planning, Development and
Community Infrastructure

SC/jls

cc: COE/NY District – Jessi Miller
DEC Region 2 – Steve Watts



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK NEW YORK 10278-0090

Environmental Analysis Branch

January 31, 2022

Mr. Michael Marrella
Director of Waterfront and Open Space
New York City Department of City Planning
120 Broadway, 31st Floor
New York, New York 102

Subject: Consistency Determination for the Harbor Deepening Channel Improvements Project

Dear Mr. Marrella:

The United States Army Corps of Engineers (USACE), New York District (District) in cooperation with the Port Authority of New York and New Jersey (PANYNJ), is undertaking a feasibility study to examine deepening, widening and bend easing measures to improve navigation within the footprint of the constructed 50-foot channel for the Harbor Deepening Channel Improvements (HDCI) project.

The District is currently preparing the Final Integrated Feasibility Report/Environmental Assessment (IFR/EA). The Recommended Plan is deepening the pathways to Elizabeth – Port Authority Marine Terminal and Port Jersey – Port Authority Marine Terminal by 5 feet up to a maintained depth of -55 feet MLLW. The Recommended Plan involves deepening Ambrose Channel, Anchorage Channel, the Kill Van Kull, Newark Bay Channel, South Elizabeth Channel, and Elizabeth Channel, and Port Jersey Channel. This includes the additional width required for structural stability and for the navigation of the design vessel to transit from sea to Elizabeth Port Authority Marine Terminal and Port Jersey Port Authority Marine Terminal.

The District has determined that the Harbor Deepening Channel Improvements Navigation Project is consistent with both New York City Waterfront Revitalization Program (WRP) and New York State Coastal Zone Management (CZM) policies and project implementation will be conducted in a manner consistent with these policies. This letter provides the New York City's WRP with the required information to support the District's consistency determination. Attached to this letter is the Coastal Zone Management Act Appendix for the IFR/EA, which includes the District's responses to both sets of Coastal Zone Management policies.

The District, requests that your office review the above proposed project for consistency with City's WRP Policies.

If you require any additional information, please feel free to contact Mr. Jesse Miller Jesse.L.Miller@usace.army.mil at 917-790-8729.

Sincerely,

WEPLER.PETE³ Digitally signed by
WEPLER.PETER.M.122864735
R.M.1228647353³ Date: 2022.01.31 16:13:11 -05'00'

Peter Wepler
Chief, Environmental Analysis Branch

encl

cc: Matthew Maraglio, Supervisor Consistency Review Unit, NYSDOS

Miller, Jesse L CIV USARMY CENAN (USA)

From: Allan Zaretsky (DCP) <AZARETSKY@planning.nyc.gov>
Sent: Wednesday, March 16, 2022 12:13 PM
To: Weppler, Peter M CIV USARMY CENAN (USA)
Cc: Miller, Jesse L CIV USARMY CENAN (USA); Jennifer Street (DOS) (jennifer.street@dos.ny.gov); Michael Marrella (DCP)
Subject: [Non-DoD Source] WRP Concurrence Review: New York and New Jersey Harbor Deepening Channel Improvements (WRP #22-012)

Hello,

We have completed the review of the project as described below for consistency with the policies and intent of the New York City Waterfront Revitalization Program (WRP).

New York and New Jersey Harbor Deepening Channel Improvements (HDCI) (DOS #F-2022-0027(DA)): The United States Army Corps of Engineers (USACE), New York District, in cooperation with the Port Authority of New York and New Jersey (PANYNJ), is undertaking a feasibility study to examine deepening, widening and bend easing measures to improve navigation within the footprint of the constructed 50-foot channel for the Harbor Deepening Channel Improvements (HDCI) project

Based on the information submitted, the Waterfront Open Space Division, on behalf of the New York City Coastal Commission, having reviewed the waterfront aspect of this action, finds that the actions will not substantially hinder the achievement of any Waterfront Revitalization Program (WRP) policy and provides its finding to the New York State Department of State (DOS). Please note that the proposed action(s) are subject to consistency review and approval by the New York State Department of State (DOS) in accordance with the New York State Coastal Management Program.

This determination is only applicable to the scope of project (HDCI feasibility study) assessed within the referenced LWRP review submission. Once the applicant (USACE) submits a Federal Consistency request for the final selected project design, the New York City Coastal Commission can confirm that any subsequent proposed project phases or components are consistent with its Coastal Zone Management rules. Further, any additional information or project modifications would require an independent consistency review.

For your records, this project has been assigned WRP # 22-012. If there are any questions regarding this review, please contact me

Allan Zaretsky, AICP

Senior Planner | WATERFRONT & OPEN SPACE DIVISION
Waterfront Revitalization Program Consistency Review

NYC DEPT. OF CITY PLANNING

120 Broadway, 31st Floor • NEW YORK, NY 10271
t 212.720.3448 • azaretsky@planning.nyc.gov

<http://www1.nyc.gov/site/planning/applicants/wrp/wrp.page>



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

January 14, 2021

Ms. Karen Baumert, Study Planner
New York District, U.S. Army Corps of Engineers
c/o PSC Mail Center
26 Federal Plaza
New York, NY 10278-0090

Re: New York-New Jersey Harbor Deepening Channel Improvements Navigation Study
Draft Integrated Feasibility Report and Environmental Assessment

Dear Ms. Baumert:

The U.S. Environmental Protection Agency (EPA) has reviewed the U.S. Army Corps of Engineers' (USACE) New York-New Jersey Harbor Deepening Channel Improvements Navigation Study Draft Integrated Feasibility Report and Environmental Assessment (NYNJHDCI) dated October 2020. The NYNJHDCI study's purpose is to determine if there is a technically feasible, economically justified, and environmentally acceptable recommendation for federal participation in a navigation improvements project in the New York and New Jersey Harbor. The preliminary analysis presented in this report identifies deepening the pathways from sea to Elizabeth – Port Authority Marine Terminal and Port Jersey – Port Authority Marine Terminal by four feet to a maintained depth of -54 feet MLLW as the national economic development plan because it maximizes net benefits.

EPA has several concerns about the information presented in the environmental assessment (EA) and analysis of environmental impacts. The EA does not fully discuss the impacts of port improvements at the Port Authority Elizabeth Marine Terminal to meet the new proposed depths. This impact assessment is required by the new Council of Environmental Quality National Environmental Policy Act regulations. The EA requires a more detailed environmental justice analysis and should incorporate thoughtful dialogue with the environmental justice community prior to the release of the EA. EPA is aware of several sites on the north shore of Staten Island with environmental considerations that require discussion and evaluation regarding any sediment removal outside of the existing channel footprint, and consideration of hydrological changes that may be caused by the deepening project. Because of these and other issues, EPA cannot concur with a finding of no significant impact for the project.

Attached to this letter are EPA's technical comments on the EA. Should you have any questions, please contact Mark Austin of my staff at (212) 637-3954. Thank you for the opportunity to comment.

Sincerely,

David W. Kluesner

David Kluesner, Director
Strategic Programs Office

**EPA Technical Comments on the NYNJHDCI October 2020
Attachment to EPA Comment Letter of January 14, 2021**

Executive Summary

Page 8 and Page 89. Please note that EPA was not included in any interagency meetings after the November 19, 2019 initial interagency meeting.

Figure 2 defines a Very Large Container Carrier as holding 11,000 to 15,000 TEUs, and Ultra Large Container Carriers as holding 18,000 TEUs and above. Page 39 also states that “The Port and industry tend to use the terms “very large container vessel (VLCV)” to describe vessels with TEU capacity between 11,000 and 15,000 TEU and “ultra large container vessel (ULCV)” to describe vessels with TEU capacity of 18,000 to 21,000 TEU.” At the same time, page 39 states that ULCV are calling at the Port of New York and New Jersey, using the CMA CGM Theodore Roosevelt, which has a capacity of 14,400 TEUs as an example of a ULCV. Please clarify whether ULCV’s are using the Port of New York and New Jersey and clarify vessel size definitions.

Chapter 4: Plan Formulation

While the USACE has determined that hydrologic, salinity, and ecological modeling can be deferred to the Preconstruction Engineering and Design phase, EPA has several concerns. After the original 50’ channel deepening, it is EPA’s understanding that the Atlantic Salt facility on the Kill Van Kull suffered instability to its wharf. Without modeling of the removal of the shallow sediment in areas of the Kill Van Kull, there may be other facility wharves that may also fail, possibly releasing contaminated industrial soil into the water. This should be discussed and analyzed for public review during the environmental review process.

EPA is also concerned that while the USACE states that erosion of the shoreline will not be increased by the use of ULCVs, the document does not discuss whether the ULCV’s will require more tugs to assist, and whether an increase in tugs will cause more shoreline erosion.

Tables 18, 19 and 21 state that “investment costs include the cost of mobilization, demobilization, the berth deepening associated cost...” The Port Authority of New York and New Jersey’s Port Master Plan 2050 also describes the enhancement of berths and wharves to meet capacity needs. If the Port Authority of New York and New Jersey is going to reconstruct berths at the Port Authority Elizabeth Marine Terminal to meet the channel deepening requirements, these actions are part of the impacts of the NYNJHDCI project and must be analyzed as part of Environmental Justice. These would be “close and causal” relationship, as per the Council of Environmental Quality National Environmental Policy Act implementing regulations, Section 1508, (g) (2).

Environmental Justice (EJ)

EPA appreciates that a discussion and analysis of EJ was included in the EA. Communities with EJ concerns are often composed of marginalized racial/ethnic, low-income/poor, rural, immigrant/refugee, and indigenous populations who live in areas disproportionately burdened by environmental hazards and stressors, unhealthy land uses, psychosocial stressors, and historical traumas, all of which drive environmental health disparities. However, EPA does not concur with the finding that there will be no disproportional impacts on communities with EJ concerns within the project’s action area.

As the EJ analysis conducted in the EA was broader in scope, the findings do not accurately reflect the localized effects of the blasting and drilling to the Staten Island North Shore communities. EPA

recommends focusing the EJ analysis to include those communities directly affected by the blasting and drilling, which are the communities located along Staten Island's North Shore. EPA recommends utilizing EPA's EJ SCREEN <https://www.epa.gov/ejscreen> to conduct an EJ analysis, the newest version of the American Community Survey (ACS) <https://www.census.gov/programs-surveys/acs>, and NYC's Environmental and Health Data portal <https://www1.nyc.gov/site/doh/data/data-home.page> to investigate further into the health concerns of the communities directly affected by the project.

- **Noise and vibration effects on communities with EJ concerns:** Blasting along the action area will impact nearby communities by increasing the noise and vibration levels. As mentioned in the EA, confined blasting has a peak level of 220dB at a range of one meter. The potential for disproportionate adverse effects on EJ populations, including low-income, minority, children and the elderly populations could occur as a result of the blasting. Studies have shown that there are direct links between noise and health. Problems related to noise include stress-related illnesses, high blood pressure, speech interference, hearing loss, sleep disruption, and lost productivity (EPA's Noise Effects Handbook, 1991). We are particularly concerned about the area along the Kill Van Kull Channel, which includes communities in the North Shore of Staten Island and the South Shore of Bayonne. EPA conducted an EJSCREEN analysis of the action area along the Kill Van Kull Channel with a one-mile buffer, which brought us to the following conclusions:

- The one-mile buffer around the Kill Van Kull channel is at or above the 80th percentile in the nation for seven of the eleven EJ Indexes and at or above the 90th percentile in the nation for three of the EJ Indexes.
- Specifically, the area is in the 82nd percentile in the nation for the EJ Index for Traffic Proximity and Volume. This is concerning because these communities are already disproportionately affected by noise levels associated with traffic. Conducting a project that increases noise levels for these communities would further compound this issue.
- This area also contains particularly sensitive buildings such as schools and public housing development buildings. For example, Port Richmond High School within census block group 360850213005 is already in the 86th percentile in the nation for Traffic Proximity and Volume and is less than 0.5 km from the Kill Van Kull Channel where blasting may occur.
- It is suggested that mitigation measures be instituted to assure that those at-risk populations, as well as all others, are protected from potential impacts. Additionally, there should be robust outreach and communication with the communities and populations in proximity to the project to assure that their concerns and needs are met, and that their interest and well-being are protected. Having an informed and engaged population helps to foster community buy-in.

- **Linguistic Isolation within communities with EJ concerns:** EPA recommends expanding this analysis to include consideration of linguistically isolated populations. Since the analysis did not identify these or others, we recommend that the identification of linguistically isolated populations be incorporated into a plan for meaningful involvement and consideration of communities; this would be done through outreach and consideration of feedback. As no mention of translated documents is contained in the draft EA, EPA recommends that major project documents be translated into the appropriate languages, and public information sessions have translation capabilities, as needed.

EPA can work with the USACE to provide a more detailed EJ analysis for the NYNJHCI project.

Hazardous, Toxic, and Radioactive Wastes

The EA does not include a discussion of, and potential impacts to, several contaminated sites nearby. Changes in depth to nearshore sediments on the Kill Van Kull may affect wharves and docks to these facilities. The New York sites can be found on the [DECinfo Locator](#). New Jersey sites can be found on [NJ-GeoWeb](#).

- The Archer-Daniels Midland Company Staten Island Warehouse site at 2393 Richmond Terrace on Staten Island was used by the Union Mini'ere du Haut-Katanga Company to store high-grade Belgian Congo uranium ore from 1939 to 1942. The Department of Energy is evaluating the site for radiological contamination and cleanup.
- The Jewett White Lead site at 2000-2012 Richmond Terrace is a New York State Superfund site located on the north shore of Staten Island that should be included in the EA analysis. While the on-site remedial actions are complete, residual lead soil contamination should be evaluated.
- The Storage Bins site at 2901 and 2945 Richmond Terrace was under the voluntary cleanup program in New York until 2012. The site contains lead, benzene and other hazardous substances and should be considered.
- EPA also notes that there are chromate-contaminated sites on the Bayonne shore of the Kill Van Kull that should be considered.

Air Quality

While the document does present a general conformity applicability analysis and draft general conformity determination, please note that the final determination will need to be presented to the public for comment separately. EPA also notes that should dredged material need to be placed out of the region (e.g. Pennsylvania), all transportation emissions within the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area will need to be included in the general conformity determination.

Placement of Dredged Materials:

The volume of material to be removed as a result of the proposed plan is between 27 MCY and 33 MCY, yet the discussion of placement of dredged materials is limited to the following statement: "Dredged material will be beneficially used and placed either upland, at the Historic Area Remediation Site (HARS) or on a reef." EPA will reserve more specific comments until such a time as USACE has identified more detailed placement options for the quantities and types of material to be removed. EPA urges the USACE to contact the New York and New Jersey artificial reef managers to discuss the availability of these options. Concerning the potential placement of 22 MCY of materials at the HARS, USACE should coordinate as soon as possible with EPA Region 2 regarding this option. EPA is also concerned that upland disposal sites for non-HARS suitable material in the region may not be available in the near future. Upland placement costs may affect the project economics. In addition, EPA suggests that estimated volumes of hard clay be estimated, and any possible beneficial use of the clay be explored.

Superfund

The USACE should discuss the NYNJHCI project with EPA Region 2 regarding the Newark Bay Study Area of the Diamond Alkali Superfund Site. EPA is requesting that the USACE meet with the

project manager of the study as soon as possible to determine what, if any, information should be included in the EA.

MEMORANDUM FOR RECORD

SUBJECT: New York-New Jersey Harbor Deepening Channel Improvements Study
EPA Comments and Draft Responses 29 July 2021

1. Reference is made to the Meeting held on 29 July 2021 regarding the subject study. The U.S. Army Corps of Engineers (USACE) New York District (District) briefed the meeting participants using a prepared excel spreadsheet. The following via conference call:

Port Authority of New York and New Jersey

- Matt Masters
- Patrick Thrasher

New York District

- Cheryl Alkemeyer
- Catherine Alcoba
- Karen Baumert
- Jenine Gallo

New York District (cont.)

- Peter Weppler
- Mark Lulka
- Jesse Miller
- Steve Weinberg
- Katherine Pijanowski

U.S. Environmental Protection Agency

- Arielle Benjamin
- Mark Austin

2. The purpose of the meeting was to review comments from the U.S. Environmental Protection Agency (EPA) on the Draft Feasibility Report and Environmental Assessment (FR/EA), dated January 14, 2021, and provide draft responses and a path forward. The District acknowledged that the FR/EA could evaluate environmental justice (EJ) in greater depth. However, it was noted that this was difficult to accomplish due to lack of guidance.
3. The District noted that the shared spreadsheet contained notes/draft responses, and that these were not official. Official responses would be provided in the Final FR/EA.
4. EPA Comment 1: The EA does not fully discuss the impacts of port improvements at the Port Authority Elizabeth Marine Terminal (PAEMT) to meet the new proposed depths. This impact assessment is required by the new Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) regulations.

District/Port Authority of New York and New Jersey (PANYNJ) Response: The proposed improvements are planned to occur between now and 2050, and while this project will benefit those improvements, they are not a direct impact to this

project. This is the basis, under the new CEQ NEPA regulations, for not evaluating the PAEMT improvements in the draft assessment. PANYNJ concurred and stated that all structures need to be rebuilt because of age, regardless of channel widening and deepening planned by USACE. PANYNJ would be obtaining their own permits when they plan to move forward. The Wharf Replacement Program is in the Port Master Plan, but it also authorized under a separate 2018 authority. The FR/EA will discuss further how the Master Plan is its own entity.

EPA Response: This makes sense, EPA will look into the Port Master Plan further. The Port Master Plan, including the Wharf Replacement Program, is a public document available on the PANYNJ Website.

Patrick Trasher provided the following links for the convenience of participants:

<https://www.panynj.gov/port/en/our-port/port-development/wharf-replacement.html>

<https://www.panynj.gov/port/en/our-port/port-development/port-master-plan.html>

5. EPA Comment 2: The EA requires a more detailed EJ analysis and should incorporate thoughtful dialogue with the EJ community prior to the release of the EA.

District Response: The District is waiting on guidance from Headquarters (HQ) on how to evaluate EJ for own regulations. Our senior leadership has reached out separately to these communities. Impacts highlighted were blasting, for which the District already has BMPs in place to prevent impacts. It is important to note that, while this project may allow ships of a larger size, less traffic is expected due to the increased capacity of said ships.

USACE requests that the EPA provide a template or checklist, if available. It is noted that every project is different, but assistance in identifying key variables would be beneficial.

EPA Response: Yes, EPA will go back to our team to develop a checklist if one does not already exist. Additionally, please use the EJ screen tool.

The purpose and need states the widening and deepening is in order to support larger ships. Is this due to increased demand? Will there be more of this in the future since ships will continue to get bigger?

District Response: By the time the District finished the previous Harbor Deepening Project (HDP) down to 50 feet, the design vessel had already been dwarfed. The District is not deepening simply to deepen. The deepening is

necessary for the safety of the ships that are already coming to the port. The District is unable to forecast 20 years into the future. This is larger than just supporting New York, this is to support the fleet across the globe. The vessels currently calling on port are not arriving fully loaded because of depth, which results in inefficiencies.

6. EPA Comment 3: EPA is aware of several sites on the north shore of Staten Island with environmental considerations that require discussion and evaluation regarding any sediment removal outside of the existing channel footprint, and consideration of hydrological changes that may be caused by the deepening project.

Corps Response: Detailed modeling of the hydrological changes will be completed during the Pre-Construction Engineering and Design (PED) Phase to inform sampling and best management practices (BMPs). It was decided to defer discussion to EPA Comment 12, which noted specific sites.

7. EPA Comment 4: Page 8 and Page 89. Please note that EPA was not included in any interagency meetings after the November 19, 2019 initial interagency meeting.

District Response: Clarification regarding the June 15, 2020 meeting will be added to the report. This meeting was an agency specify meeting to discuss mitigation in the State of New Jersey. The District will list the meetings in the report for which the EPA attended, and the EPA will be invited to interagency meetings in the future.

8. EPA Comment 5: Figure 2 defines a Very Large Container Carrier as holding 11,000 to 15,000 TEUs, and Ultra Large Container Carriers as holding 18,000 TEUs and above. Page 39 also states that “The Port and industry tend to use the terms “very large container vessel (VLCV)” to describe vessels with TEU capacity between 11,000 and 15,000 TEU and “ultra large container vessel (ULCV)” to describe vessels with TEU capacity of 18,000 to 21,000 TEU.” At the same time, page 39 states that ULCV are calling at the Port of New York and New Jersey, using the CMA CGM Theodore Roosevelt, which has a capacity of 14,400 TEUs as an example of a ULCV. Please clarify whether ULCV’s are using the Port of New York and New Jersey and clarify vessel size definitions.

District Response: USACE agrees that there is confusing language in the report regarding this subject. There is an inconsistency in the United States Coast Guard user manual and the generally accepted container classification. The terminology will be clarified in the report.

The EPA confirmed that simple clarification would address this comment.

9. EPA Comment 6: While the USACE has determined that hydrologic, salinity, and ecological modeling can be deferred to the Preconstruction Engineering and Design phase, EPA has several concerns. After the original 50' channel deepening, it is EPA's understanding that the Atlantic Salt facility on the Kill Van Kull suffered instability to its wharf. Without modeling of the removal of the shallow sediment in areas of the Kill Van Kull, there may be other facility wharves that may also fail, possibly releasing contaminated industrial soil into the water. This should be discussed and analyzed for public review during the environmental review process.

Corps Response: 6. In addition to the referenced modeling planned for PED, a structure inventory will be completed to evaluate and document existing conditions in the area. USACE is unaware of any instability caused by the construction of the previous deepening. USACE will use BMPs to avoid negative impacts to nearby areas and associated structures. USACE will mitigate for any unavoidable impacts, including, but not limited to damage to structures. A telephone number will be established for the community to provide any concerns during construction. Policy (specifically Section 1001 of the 2014 Water Resources Reform & Redevelopment Act) requires USACE to make decisions quicker than in the past, relying on existing information. However, all necessary data will be gathered and analyzed prior to construction. If EPA is aware of any prior structure damage, please provide this information to the District so that such impacts can be avoided as the study moves forward. Additional information regarding blasting will be added to the report.

EPA Response: Our understanding is that several smaller buildings were damaged in the area during the 50-foot HDP. The EPA recognizes that USACE is using BMPs. USACE should acknowledge in the report that issues may arise, and that you are using BMPs to avoid.

10. EPA Comment 7: While USACE states that erosion of the shoreline will not be increased by the use of ULCVs, the document does not discuss whether the ULCV's will require more tugs to assist, and whether an increase in tugs will cause more shoreline erosion.

District Response: Overall the project will result in a decrease in the number of vessels calling on port, because these larger vessels will be more efficient. Some ships will need fewer tugs, because the widenings will increase maneuverability and make turns easier. Studies have shown that erosion is related more to speed than to the size of a vessel. There is a program in the harbor to reduce vessel speed, and so long as the vessels are complying with that program, there should be no increase in erosion.

EPA Response: This information is missing from the report. A sentence or two should be added to explain this.

11. EPA Comment 8: Tables 18, 19 and 21 state that “investment costs include the cost of mobilization, demobilization, the berth deepening associated cost...” The Port Authority of New York and New Jersey’s Port Master Plan 2050 also describes the enhancement of berths and wharves to meet capacity needs. If the Port Authority of New York and New Jersey is going to reconstruct berths at the Port Authority Elizabeth Marine Terminal to meet the channel deepening requirements, these actions are part of the impacts of the NYNJHDCI project and must be analyzed as part of EJ. These would be “close and causal” relationship, as per the Council of Environmental Quality National Environmental Policy Act implementing regulations, Section 1508, (g) (2).

District Response: USACE will defer to the EPA and ask if there are specific points that should be discussed further. USACE commits to adding a clarified section about the Master Plan that described the independent activities of the Port.

EPA Response: That approach would suffice.

12. EPA Comment 9: Noise and vibration effects on communities with EJ concerns (See EPA letter for more details). It is suggested that mitigation measures be instituted to assure that those at-risk populations, as well as all others, are protected from potential impacts. Additionally, there should be robust outreach and communication with the communities and populations in proximity to the project.

District Response: USACE has extensive experience in dredging operations, including blasting, and applying BMPs, as necessary, as evidenced by the successful construction and completion of the HDP. USACE will conduct all necessary mitigation and outreach per our obligations to our regional partners, stakeholders, and the public. Vibration and noise monitoring will be employed for the initial test blast program, as well as the entirety of production blasting. Underwater blasting is unlikely to produce excessive noise, and most audible noise is likely to come from drilling the blast holes and from dredging - this is not expected to exceed the background noise levels of the busy port. USACE will hold neighborhood meetings and a point of contact will be established within the construction team. The team will add additional information regarding outreach to the report.

13. EPA Comment 10: EPA recommends expanding this analysis to include consideration of linguistically isolated populations. EPA recommends that major

project documents be translated into the appropriate languages, and public information sessions have translation capabilities, as needed.

District Response: USACE will do an analysis on linguistically isolated populations and develop a plan as necessary. The team does not foresee translating the entire document but could commit to translating fact sheets and executive summaries. If additional information is requested, the team will address it at that time.

EPA Response: That would cover this concern. On EJScreen in Southern Brooklyn and under the Bayonne Bridge in New Jersey, it shows that there are Russian, Italian, and Spanish linguistically isolated populations.

14. EPA Comment 11: EPA can work with USACE to provide a more detailed EJ analysis for the NYNJHCI project.

District Response: Thank you. This was previously discussed above.

15. EPA Comment 12: The EA does not include a discussion of, and potential impacts to, several contaminated sites nearby (See EPA letter for more details).

District Response: These sites will be included in the EA and HTRW appendix.

16. EPA Comment 13: While the document does present a general conformity applicability analysis and draft general conformity determination, please note that the final determination will need to be presented to the public for comment separately. EPA also notes that should dredged material need to be placed out of the region (e.g., Pennsylvania), all transportation emissions within the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area will need to be included in the general conformity determination.

District Response: The District is coordinating with the Regional Air Team to ensure continued compliance. The EPA's air group has been involved in this study.

17. Comment 14: The volume of material to be removed as a result of the proposed plan is between 27 MCY and 33 MCY, yet the discussion of placement of dredged materials is limited to the following statement: "Dredged material will be beneficially used and placed either upland, at the Historic Area Remediation Site (HARS) or on a reef." EPA will reserve more specific comments until such a time as USACE has identified more detailed placement options for the quantities and types of material to be removed. EPA urges the USACE to contact the New York and New Jersey artificial reef managers to discuss the availability of these options. Concerning the potential placement of 22 MCY of materials at the

HARS, USACE should coordinate as soon as possible with EPA Region 2 regarding this option. EPA is also concerned that upland disposal sites for non-HARS suitable material in the region may not be available in the near future. Upland placement costs may affect the project economics. In addition, EPA suggests that estimated volumes of hard clay be estimated, and any possible beneficial use of the clay be explored.

District Response: The Dredge Material Management Plan will be updated in PED. USACE has begun to investigate the volume of clay. Please note USACE attempts to beneficially reuse all appropriate material for multiple uses. HARS was used as an apples-to-apples comparison for cost, but the team is coordinating with groups to use material for reefs and other ecological projects. USACE will coordinate with the EPA Dredge Team moving forward. Any unavoidable impacts to shallow subtidal habitat will be mitigated. Requests have been received to use clean sand dredged for HDCI for coastal storm risk management projects. With a 10–15-year construction project it is difficult to say now where all sand will be placed.

The EPA stated that this alleviated their concerns.

18. EPA Comment 15: The USACE should discuss the NYNJHDCI project with EPA Region 2 regarding the Newark Bay Study Area of the Diamond Alkali Superfund Site. EPA is requesting that the USACE meet with the project manager of the study as soon as possible to determine what, if any, information should be included in the EA.

District Response: Since the spring the District has been holding bi-monthly meetings with the Newark Bay Study Area Team. Shapefiles for project footprints have been shared to assist in the evaluation of any potential impact and/or overlap.

The EPA was pleased with this response.

19. After addressing the above comments, the EPA inquired as to the schedule and path forward. The District responded that the team is in the process of addressing all comments received and updating the final report. Once all the edits are complete, the document will be sent to HQ for review and will be posted to the website for access. There will be a state and agency review in March prior to public release, however there will not be another public comment period.
20. HQ review would be followed by a Chiefs Report, which would recommend the project and conclude the feasibility phase of the project.

21. The District offered to share the Final FR/EA with EPA during the Agency Technical Review (ATR) with notes of changes. The ATR and agency review are currently scheduled to begin November 15, 2021.
22. If you have any questions or need additional information, please contact the undersigned at Jesse.L.Miller@usace.army.mil or 917-790-8604.

Jesse L. Miller
Project Biologist