Hudson-Raritan Estuary Ecosystem Restoration Feasibility Study

Appendix J
Coastal Zone Management
(Federal Consistency Determinations)

Draft Integrated Feasibility Report & Environmental Assessment
February 2017

Prepared by the New York District, North Atlantic Division, U.S. Army Corps of Engineers

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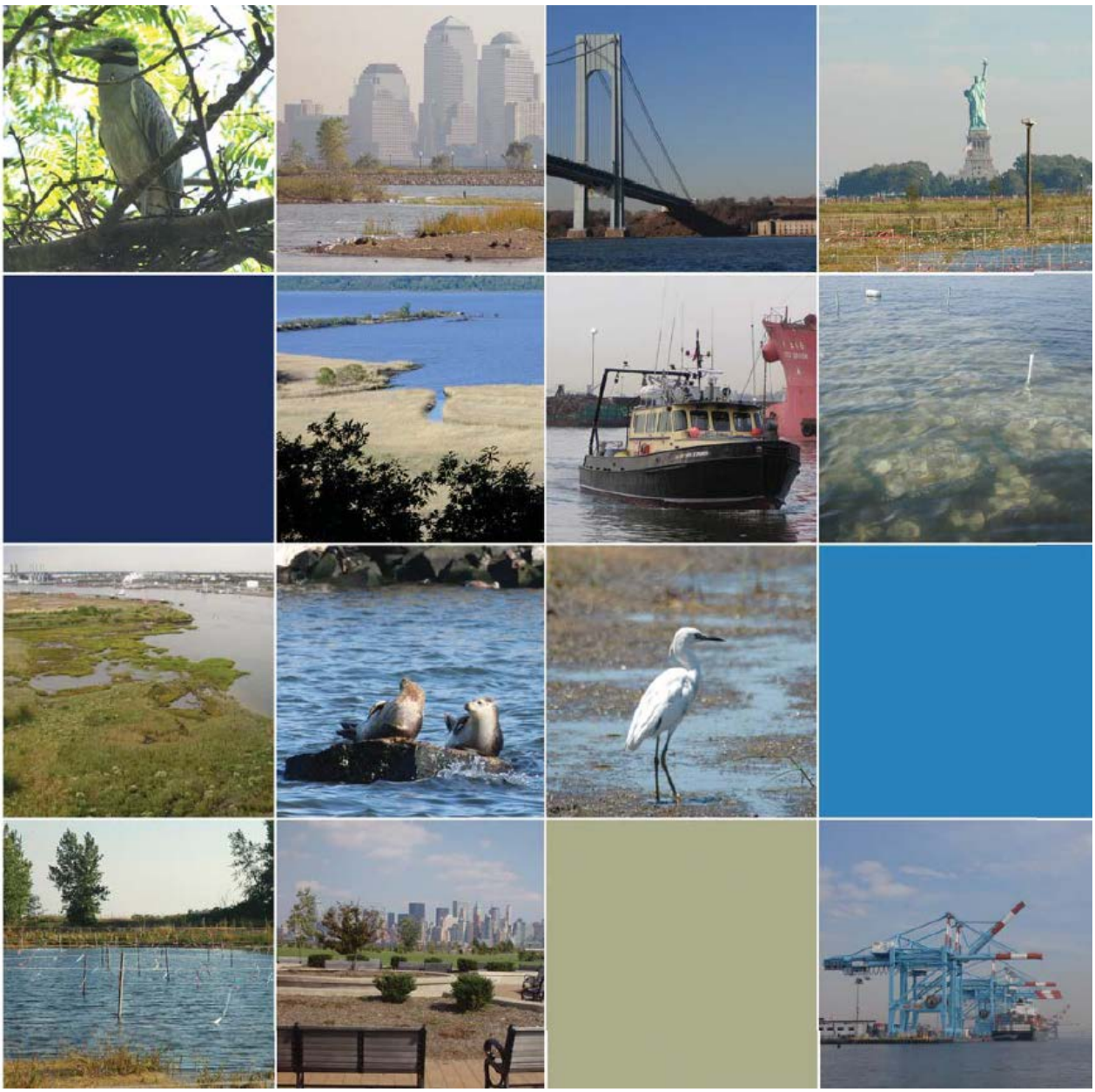

Introduction to Federal Coastal Consistency Determinations for New York and New Jersey

The following federal coastal consistency determinations for the Hudson-Raritan Estuary (HRE) Ecosystem Restoration Feasibility Study (HRE Feasibility Study) tentatively selected plan are draft documents prepared by the United States Army Corps of Engineers (USACE), New York District for submission to the New York State Department of State and the New Jersey Department of Environmental Protection. The determinations will be submitted to the New York State Department of State and New Jersey Department of Environmental Protection for review when the integrated feasibility report and environmental assessment (FR/EA) is published and becomes a public document. The federal coastal consistency determinations will provide the State of New York and the State of New Jersey, respectively, with the USACE's consistency determination under Coastal Zone Management Act (CZMA) Section 307(c)(1) and 15 Code of Federal Regulations Part 930, Sub-part C, for the action proposed in the FR/EA.

The CZMA (16 United States Code 1451 et seq.) was enacted in 1972 to protect coastal resources from growing demands associated with commercial, residential, recreational, and industrial uses. The CZMA allows coastal states to develop a coastal zone management plan whereby they designate permissible land and water use within the state's coastal zone. States then have the opportunity to review and comment on federal agency activities that could affect the state's coastal zone or its resources.

Federal agency activities potentially affecting a state's coastal zone must be consistent, to the maximum extent practicable, with the enforceable policies of the state's coastal management program. For purposes of federal consistency, the enforceable policies of a state's coastal management program consist of management programs adopted by a coastal state in accordance with the provisions of Sections 305 and 306 of the CZMA and approved by the Assistant Administrator for the Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration, United States Department of Commerce. In addition, the enforceable policies of a state must be legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a state exerts control over private and public land, water uses, and natural resources in the coastal zone and which are incorporated in a management program as approved by the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, either as part of the program approval described above or as a program change in accordance with the procedures detailed in 16 United States Code 1455(e). Typically, a state's coastal zone management program will focus on the protection of physical, biological, and socioeconomic resources.

Review of federal agency activities is conducted through the submittal of a consistency determination or a negative determination. A federal agency shall submit a consistency determination when it determines that its activity may have either a direct or an indirect effect on a state's coastal zone or resources. In accordance with 15 Code of Federal Regulations Part 930.39, the consistency determination shall include a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program and should be based upon an evaluation of the relevant enforceable policies of the management program.

Pursuant to 15 Code of Federal Regulations Part 930.41, each state has 60 days from the receipt of the consistency determination in which to concur with or object to the consistency determination, or to

request an extension under 15 Code of Federal Regulations Part 930.41(b). Federal agencies shall approve one (1) request for an extension period of 15 days or less.

Federal Coastal Consistency Determination for Hudson-Raritan Estuary Ecosystem Restoration Feasibility Study Tentatively Selected Plan

This document provides the State of New York with the United States Army Corps of Engineers' (USACE's') consistency determination under Coastal Zone Management Act Section 307(c)(1) and 15 Code of Federal Regulations Part 930, Subpart C, for the following proposed action:

Federal Agency Action

Under the Hudson-Raritan Estuary (HRE) Ecosystem Restoration Feasibility Study (HRE Feasibility Study), the USACE proposes to construct sponsor-supported restoration within the HRE. USACE has prepared an integrated feasibility report and environmental assessment (FR/EA) for this proposed action, which is being submitted for review simultaneously with this consistency determination.

Purpose and Need

The purpose of the proposed action is to restore and sustain a mosaic of habitats within the human-dominated landscape important to the people of the HRE region and the nation, in a cost-effective and socially-feasible manner, with minimal risks, and supported by monitoring and adaptive management to ensure meeting the restoration objectives. The need for the proposed action comes from recognizing that valuable natural resources in the HRE have declined to a point that the ecosystem may no longer be self-sustaining without immediate intervention to curtail significant ecological degradation.

Alternatives

The USACE is considering one (1) action alternative and the no action alternative:

- **No Action Alternative** – The no action alternative would be the state of the HRE study area under the anticipated future condition if no action were implemented by the USACE, New York District (with its respective non-federal sponsor) under the HRE Ecosystem Restoration Feasibility Study Authorization. Under the no action alternative, in addition to the region's continued ecosystem degradation, ongoing and planned restoration and conservation actions, undertaken by agencies, municipalities, and non-governmental entities may continue to occur.

- **Tentatively Selected Plan** – Under the tentatively selected plan (TSP), the USACE, in partnership with its non-federal sponsors, would restore an estimated 351 acres of estuarine wetland habitat and 12 acres of freshwater riverine wetland habitat, 81 acres of coastal and maritime forest habitat and 5.5 acres of riparian forest habitat, and 57 acres of oyster habitat. Additional riparian buffer also would be restored, and two (2) fish ladders would be installed and three (3) weirs would be modified to promote fish passage.

A detailed description of the TSP is provided in Chapter 4 of the FR/EA and the no action alternative is described in Chapter 5.

Consistency Assessment Forms

Completed New York City Waterfront Revitalization Program Consistency Assessment Forms for the 21 TSP restoration sites that are located within New York City's Coastal Zone are provided below. Four (4) additional TSP restoration sites are located in New York, but outside both New York City's Coastal

Zone and New York State's Coastal Area, and their restoration would have no effects on any coastal use or resource. Additional TSP restoration sites are located in New Jersey.

Conclusion

Based on the findings of the analyses of how the proposed action would affect each of the policies of the state's federally approved coastal management program, presented in the Consistency Assessment Forms, and other findings of the FR/EA, the USACE finds that the proposed action would result in no or minimal adverse impacts to the coastal zone resources of New York. The proposed action is fully consistent to the maximum extent practicable with the enforceable policies of the New York Coastal Zone Management Program.

Consistency Assessment Forms

Federal Coastal Consistency Determination for Hudson-Raritan Estuary Ecosystem Restoration Feasibility Study Tentatively Selected Plan

This document provides the State of New Jersey with the United States Army Corps of Engineers' (USACE's) consistency determination under Coastal Zone Management Act Section 307(c)(1) and 15 Code of Federal Regulations Part 930, Subpart C, for the following proposed action:

Federal Agency Action

Under the Hudson-Raritan Estuary (HRE) Ecosystem Restoration Feasibility Study (HRE Feasibility Study), the USACE proposes to construct sponsor-supported restoration within the HRE. USACE has prepared an integrated feasibility report and environmental assessment (FR/EA) for this proposed action, which is being submitted for review simultaneously with this consistency determination.

Purpose and Need

The purpose of the proposed action is to restore and sustain a mosaic of habitats within the human-dominated landscape important to the people of the HRE region and the nation, in a cost-effective and socially-feasible manner, with minimal risks, and supported by monitoring and adaptive management to ensure meeting the restoration objectives. The need for the proposed action comes from recognizing that valuable natural resources in the HRE have declined to a point that the ecosystem may no longer be self-sustaining without immediate intervention to curtail significant ecological degradation.

Alternatives

The USACE is considering one (1) action alternative and the no action alternative:

- **No Action Alternative** – The no action alternative would be the state of the HRE study area under the anticipated future condition if no action were implemented by the USACE, New York District (with its respective non-federal sponsor) under the HRE Ecosystem Restoration Feasibility Study Authorization. Under the no action alternative, ongoing and planned restoration and conservation actions, undertaken by agencies, municipalities, and non-governmental entities would continue.

- **Tentatively Selected Plan** – Under the tentatively selected plan (TSP), the USACE, in partnership with its non-federal sponsors, would restore an estimated 351 acres of estuarine wetland habitat and 12 acres of freshwater riverine wetland habitat, 81 acres of coastal and maritime forest habitat and 5.5 acres of riparian forest habitat, and 57 acres of oyster habitat. Additional riparian buffer also would be restored, and two (2) fish ladders would be installed and three (3) weirs would be modified to promote fish passage.

A detailed description of the TSP is provided in Chapter 4 of the FR/EA and the no action alternative is described in Chapter 5.

Coastal Zone Management Compliance Statements

Completed New Jersey Coastal Zone Management Compliance Statements for the seven (7) TSP restoration sites that are located within New Jersey's Coastal Zone are provided below. One (1) additional TSP restoration site is located in New Jersey, but outside the state's coastal zone, and its

restoration would have no effects on any coastal use or resource. Additional TSP restoration sites are located in New York.

Conclusion

Based on the findings of the analyses of how the proposed action would affect each of the enforceable policies of the state's federally approved coastal management program, presented in the Coastal Zone Management Compliance Statements, and other findings of the FR/EA, the USACE finds that the proposed action would result in no or minimal adverse impacts to the coastal zone resources of New Jersey. The proposed action is fully consistent to the maximum extent practicable with the enforceable policies of the New Jersey Coastal Zone Management Program.

Coastal Zone Management Compliance Statements