# Appendix D Correspondence





# GARFO ESA Section 7: NLAA Program Verification Form

(Please submit a signed version of this form, together with any project plans, maps, supporting analyses, etc., to <a href="mailto:mths.gar.esa.section7@noaa.gov">mth "USACE NLAA Program: [Application Number]"</a> in the subject line)

# Section 1: General Project Details

Appl	ication	Number:	NAP-MR-2022-2032			
Reini	tiation:		Yes			
Applicant(s):			U.S. Aı	my Corps of Er	gineers, Philadelphia District	
Permit Type:			Civil W	/orks/Federal N	avigation	
Anticipated project start date (e.g., 10/1/2020)			December 2022			
(e.g.,	12/31/2	project end date 2022 – if there is no permit ate, write "N/A")	February 2032			
Proje	ct Type	Category (check all that apply to	entire	action):		
	Aquaculture (shellfish) and artificial reef creation			Mitigation (fish/wildlife enhancement or restoration)		
<b>✓</b>	Dredging and disposal/beach nourishment			Bank stabilization		
Piers, ramps, floats, and other structures				If other, describe project type category:		
Town	ı/City:	Heislerville	Zip:		08324	
State	:	New Jersey	Water body:		Maurice River	

1 - Updated September 2020

# Responses

Section 7 ESA consultation was completed with NMFS on 09/22/2022.

## Project/Action Description and Purpose

(include relevant permit conditions that are not captured elsewhere on form):

The project area is located in Maurice River Township, Cumberland County, New Jersey. Maurice River Township is located 33 miles southwest of Atlantic City, New Jersey and 50 miles south of Philadelphia, Pennsylvania. The project area includes the Maurice River navigation channel at the confluence with the Delaware Bay up to Bivalve (dredging) and the northwest reach of the of the Heislerville Wildlife Management Area and dike (placement). Maintenance dredging of a portion of the lower Maurice River federal navigation channel (from approximately Station 1+500 to Station 13+000) to authorized depth of 7 ft MLLW with 2 ft allowable over-depth.

USACE proposes to beneficially place the dredged sediments in a flooded marsh section (approx. 20 acres) fronting the Heislerville dike to increase substrate elevations and restore an intertidal mudflat that has been degraded through excessive inundation and erosion. The initial placement will occur within an old railroad bed located bayward of the Heislerville dike.

Type of Botto	om Habitat Modified:	Permanent/Temporary: Area (acres):		
Sand (saline)		Temporary	•	12.00
Silt/Mud/Clay (sal:	ine)	Temporary		27.00
Select Type of Bot	tom Habitat	Select Permanent	or Temporary	
Project Latitu	de (e.g., 42.625884)	39.227900		
Project Longi	tude (e.g., -70.646114)	-75.021100		
Mean Low W	ater (MLW)(m)	0.00		
Mean High W	ater (MHW)(m)	2.00		
Width (m)	Stressor Category	Max extent (m)		t (m)
of water	(stressor that extends furthest		of stressor	into the water body:

body in water body – e.g., turbidity plume; sound pressure wave): action area: turbidity 3,138.00

732.00

#### Section 2: ESA-listed species and/or critical habitat in the action area:

$\checkmark$	Atlantic sturgeon (all DPSs)	<b>√</b>	Kemp's ridley sea turtle
	Atlantic sturgeon critical habitat Indicate which DPS:	$\overline{\mathbf{V}}$	Loggerhead sea turtle (NW Atlantic DPS)
<b>✓</b>	Select DPS Shortnose sturgeon	<b>✓</b>	Leatherback sea turtle
	Atlantic salmon (GOM DPS)		North Atlantic right whale
	Atlantic salmon critical habitat (GOM DPS)		North Atlantic right whale critical habitat
$\overline{\mathbf{V}}$	Green sea turtle (N. Atlantic DPS)		Fin whale

<sup>\*</sup> Please consult GARFO PRD's ESA Section 7 Mapper for ESA-listed species and critical habitat information for your action area at: https://www.fisheries.noaa.gov/new-england-midatlantic/consultations/section-7-species-critical-habitat-information-maps-greater.

Section 3: NLAA Determination (check all applicable fields): If the Project Design Criteria (PDC) is met, select Yes. If the PDC is not applicable (N/A) for your project (e.g., the stressor category is not included for your project activity, or for PDC 2, your project does not occur within the range of the GOM DPS of Atlantic salmon), select N/A. If the PDC is applicable, but is not met, leave both boxes blank and provide a justification for that PDC in Section 4.

a) G	ENER	AL PDC	
Yes	N/A	PDC #	PDC Description
<b>V</b>		1.	No portion of the proposed action will individually or cumulatively have an adverse effect on ESA-listed species or designated critical habitat.
	<b>✓</b>	2.	No portion of the proposed action will occur in the tidally influenced portion of rivers/streams where Atlantic salmon presence is possible from April 10–November 7.  Note: If the project will occur within the geographic range of the GOM DPS Atlantic salmon but their presence is not expected following the best available commercial scientific data, the work window does not need to be applied (include reference in project description).
		3.	No portion of the proposed action that may affect shortnose or Atlantic sturgeon will occur in areas identified as spawning grounds as follows:  i. Gulf of Maine: April 1–Aug. 31  ii. Southern New England/New York Bight: Mar. 15–Aug. 31  iii. Chesapeake Bay: March 15–July 1 and Sept. 15–Nov. 1  Note: If river specific information exists that provides better or more refined time of year information, those dates may be substituted with NMFS approval (include reference in project description).
<b>V</b>		4.	No portion of the proposed action that may affect shortnose or Atlantic sturgeon will occur in areas identified as overwintering grounds, where dense aggregations are known to occur, as follows:  i. Gulf of Maine: Oct. 15–April 30 ii. Southern New England/ New York Bight: Nov. 1–Mar. 15 iii. Chesapeake Bay: Nov. 1–Mar. 15  Note: If river specific information exists that provides better or more refined time of year information, those dates may be substituted with NMFS approval (include reference in project description).
	<b>√</b>	5.	Within designated Atlantic salmon critical habitat, no portion of the proposed action will affect spawning and rearing areas (PBFs 1-7).
	<b>√</b>	6.	Within designated Atlantic sturgeon critical habitat, no work will affect hard bottom substrate (e.g., rock, cobble, gravel, limestone, boulder, etc.) in low salinity waters (i.e., 0.0-0.5 parts per thousand) (PBF 1).

Yes	N/A	PDC #	PDC Description				
7	$\Box$	7.	Work will result in no or only temporary/short-term changes in water				
Ľ			temperature, water flow, salinity, or dissolved oxygen levels.				
<b>V</b>		8.	If ESA-listed species are (a) likely to pass through the action area at the time of year when project activities occur; and/or (b) the project will create an obstruction to passage when in-water work is completed, then a zone of passage (~50% of water body) with appropriate habitat for ESA-listed species (e.g., depth, water velocity, etc.) must be maintained (i.e., physical or biological stressors such as turbidity and sound pressure must not create barrier to passage).				
	$\checkmark$	Any work in designated North Atlantic right whale critical habitat must have no effect on the physical and biological features (PBFs).					
V		10.	The project will not adversely impact any submerged aquatic vegetation (SAV).				
<b>V</b>		11.	No blasting or use of explosives will occur.				
		•					
1) T	1		The state of the s				
			ressors are applicable to the action				
(6	eneck a	iii that ap	ply – use Stressor Category Table for guidance):				
<b>7</b>	Soun	d Pressur	e				
<b>7</b>	Impi	ngement/	Entrapment/Capture				
<b>V</b>	Turbidity/Water Quality						
	Entar	nglement	(Aquaculture)				
V	Habit	tat Modif	ication				
<b>7</b>	Vess	el Traffic					

			Stressor Ca	tegory		
Activity Category	Sound Pressure	Impingement/ Entrapment/ Capture	Turbidity/ Water Quality	Entanglement	Habitat Mod.	Vessel Traffic
Aquaculture (shellfish) and artificial reef creation	N	N	Y	Y	Y	Y
Dredging and disposal/beach nourishment	N	Y	Y	N	Y	Y

			Stressor Ca	tegory		
Activity Category	Sound Pressure	Impingement/ Entrapment/ Capture	Turbidity/ Water Quality	Entanglement	Habitat Mod.	Vessel Traffic
Piers, ramps, floats, and other structures	Y	N	Y	N	Y	Y
Transportation and development (e.g., culvert construction, bridge repair)	Y	N	Y	N	Y	Y
Mitigation (fish/wildlife enhancement or restoration)	N	N	Y	N	Y	Y
Bank stabilization and dam maintenance	Y	N	Y	N	Y	Y

# c) SOUND PRESSURE PDC

#### Information for Pile Driving:

If your project includes non-timber piles\*, please attach your calculation to this verification form showing that the noise is below the injury thresholds of ESA-listed species in the action area. The GARFO Acoustic Tool is available as one source, should you not have other information:

 $\underline{https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-consultation-technical-guidance-greater-atlantic}$ 

\*Sound pressure effects from timber and steel sheet piles were analyzed in the NLAA programmatic consultation, so no additional acoustic information is necessary.

COIL	constitution, so no additional accustic information is necessary.					
	Pile material	Pile	Number	Installation method		
		diameter/width (inches)	of piles			
a)	Select pile material			Select installation method		
b)	Select pile material			Select installation method		
c)	Select pile material			Select installation method		
d)	Select pile material			Select installation method		

Yes N/A PDC#	PDC Descript	ion			
	If pile driving is occurring during a time of year when ESA-listed species may be present, and the anticipated noise is above the behavioral noise threshold, a "soft start" is required to allow animals an opportunity to leave the project vicinity before sound pressure levels increase. In addition to using a soft start at the beginning of the work day for pile driving, one must also be used at any time following cessation of pile driving for a period of 30 minutes or longer.  For impact pile driving: pile driving will commence with an initial set of three strikes by the hammer at 40% energy, followed by a one minute wait period,				
			ts at 40% energy, with one-mi	inute waiting	
	•	Ü			
	For vibratory pile installation: pile driving will be initiated for 15 seconds at reduced energy followed by a one-minute waiting period. This sequence of 15 seconds of reduced energy driving, one-minute waiting period will be repeated two additional times, followed immediately by pile-driving at full rate and energy.				
☐ <b>✓</b> 13.	Any new pile supported structure must involve the installation of $\leq 50$ piles (below MHW).				
14.		er noise (pressure) ESA-species in the	is below (<) the physiologica e action area.	l/injury noise	
d) IMPINGEMENT/	ENTRAINME	NT/CAPTURE P	DC		
Information for Dree	lging/Disposa	l:			
Type of dredge:		Hydraulic/Cutterhead			
Maintenance dredging		Yes	If "Yes", how many acres?	35.00	
If maintenance, when	was the last	1996			
dredge cycle? New dredging:		No	If "Yes", how many acres?		
Estimated number of	deadaina	NO	ii ies, now many acres?		
events covered by per		4			
ESA-species exclusion					
required (e.g., cofferd		Yes			
curtain):					
If no exclusion measu explain why:	res required,	Select reason why no exclusion measures are required			
Information for Inta	ke Structures	:			
Mesh screen size (mm	) for				
temporary intake:					

Yes	N/A	PDC #	PDC Descript					
		15.		ical, cutterhead, and low volume hopper (e.g., CURRITUCK,				
ľ			~300 cubic ya	ard maximum bin capacity) dredges may be used.				
		16.	No new dreds	No new dredging in Atlantic sturgeon or Atlantic salmon critical habitat				
	ш		(maintenance	dredging still must meet all other PDCs). New dredging outside				
				atlantic sturgeon or salmon critical habitat is limited to one time dredge events				
				e.g., burying a utility line) and minor ( $\leq 2$ acres) expansions of areas already				
				ubject to maintenance dredging (e.g., marina/harbor expansion).				
		17.		cofferdams, turbidity curtains, or other methods to block access of				
	Ш	17.						
				nimals to dredge footprint is required when operationally feasible or beneficial and ESA-listed species are likely to be present (if presence is limited to rare,				
				viduals, exclusion methods are not necessary).				
		18.		takes related to construction must be equipped with appropriate				
ات				reening (as determined by GARFO section 7 biologist and/or				
				Chapter 11 of the NOAA Fisheries Anadromous Salmonid Passage				
			Facility Desig	n) and must not have greater than 0.5 fps intake velocities, to				
			prevent impin	gement or entrainment of any ESA-listed species life stage.				
$\overline{V}$		19.	No new perm	anent intake structures related to cooling water, or any other				
	1011			ities (e.g. water treatment plants, power plants, etc.).				
				ing Activity (excluding disposal):				
		s turbidity						
	measures required (e.g., turbidity			Yes				
curta	in):							
If no	turbidi	ty contro	l measures					
requi	red, ex	plain why	/:	Select reason why no turbidity control measures are required				
			dged Materia	l Disposal:				
	sal sit			Nearshore placement/nourishment				
		umber of	trips to					
	sal site		•	4				
		sposal site	·	07M 0 117 M 10 11 D1 11 1 10 10 10				
			ions required	CZMA Coastal Zone Management Consistency Determination and CWA Section 401				
				Water Quality Certification				
	(NAE: for offshore disposal, include Group A, B, C, or relevant							
Long Island Sound consultation):								
Yes	N/A	PDC #	PDC Descript	ion				
_	IN/A	20.		cofferdams, turbidity curtains, or other methods to control				
$ \checkmark $		20.						
				quired when operationally feasible or beneficial and ESA-listed				
				tely to be present (if presence is limited to rare, transient				
	_	21		urbidity control methods are not necessary).				
1	<b> </b>	21.		nore disposal may only occur at designated disposal sites that have				
	ات			ect of ESA section 7 consultation with NMFS, where a valid				
			consultation i	s in place and appropriate permit/special conditions are included.				

(e.g., no chronic ia). scharge ntreated		
chronic ia). scharge		
ia). scharge		
scharge		
ntreated		
-		
s;		
vertical lines		
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LLW with no		
er marker		
i marker		
4		
installed		
k, heavy,		
a rigid		
PDC Description  No conversion of habitat type (soft bottom to hard, or vice versa) for		
J1		

1	h) VESSEI	TRAFFIC PDC			
Inforn	nation for V	essel Traffic:			
		y Project Vessel Ty	rpe	Number of Vessels	
a)	Dredge vesse	1		1	
b)	Crew suppor	vessel		1	
c)	Select tempor	ary vessel type			
	Type of Non-Commercial or Aquaculture Vessels Added — only include if there is a net increase directly/indirectly resulting from project)			Number of Vessels (if sum > 2, PDC 33 is not met and justification required in Section 4)	
a)	Select type of	non-commercial or aquac	ulture vessels		
b)		non-commercial or aquac			
	Type of Commercial Vessels Added (only include if there is a net increase directly/indirectly resulting from project)			Number of Vessels (if > 0, PDC 33 is not met and justification required in Section 4)	
a)					
b)					
traffic, land-ba vessel				ease in vessel traffic post-construction. During operation, on one small vessel may be used to transport crew on/off the dredge	
Yes :	N/A PDC	1			
✓	30.	10 knots and dre	edge vessel spe	ting within the action area to speed limits below eeds of 4 knots maximum, while dredging.	
<b>✓</b>	31.	Maintain a 1,500-foot buffer between project vessels and ESA-listed whales and a 150-foot buffer between project vessels and sea turtles unless the vessel is navigating to an in-water disposal site/activity. If the vessel is navigating to an in-water disposal site/activity, refer to and include the conditions contained in the appropriate GARFO-USACE/EPA consultation for the disposal site.			
<b>V</b>	32.		The number of project vessels must be limited to the greatest extent possible, as appropriate to size and scale of project.		
<b>V</b>	33.				

# Section 4: Justification for Review under the NLAA Program

If the action is not in compliance with all of the General PDC and appropriate stressor PDC, but you can provide justification and/or special conditions to demonstrate why the project still meets the NLAA determination and is consistent with the aggregate effects considered in the programmatic consultation, you may still certify your project through the NLAA program using

this verification form. Please identify which PDC your project does not meet (e.g., PDC 9, PDC 15, PDC 22, etc.) and provide your rationale and justification for why the project is still eligible for the verification form.

To demonstrate that the project is still NLAA, you must explain why the effects on ESA-listed species or critical habitat are **insignificant** (i.e., too small to be meaningfully measured or detected) or **discountable** (i.e., extremely unlikely to occur). **Please use this language in your justification.** 

PDC#	Justification
PDC#	
PDC#	
PDC#	

PDC#		
Coation	5: USACE Verification of Determination	
Section		
	In accordance with the NLAA Program, USACE has do complies with all applicable PDC and is not likely to ac	
П	In accordance with the NLAA Program, the USACE ha	as determined that the action is
—	not likely to adversely affect listed species per the justi conditions provided in Section 4.	fication and/or special
	USACE Signature:	Date:
CON	IN BARBARA Digitally signed by	
	9064718 CONLIN.BARBARA.E.1229064718 Date: 2022.09.22 15:29:24 -04'00'	09/22/2022
	V	
G	C CAPPO C	
section	6: GARFO Concurrence	
✓	In accordance with the NLAA Program, GARFO PRD	
✓	determination that the action complies with all applicab	
		ble PDC and is not likely to
	determination that the action complies with all applicated adversely affect listed species or critical habitat.  In accordance with the NLAA Program, GARFO PRD determination that the action is not likely to adversely a	concurs with USACE's affect listed species or critical
	determination that the action complies with all applical adversely affect listed species or critical habitat. In accordance with the NLAA Program, GARFO PRD determination that the action is not likely to adversely a habitat per the justification and/or special conditions pr	concurs with USACE's affect listed species or critical rovided in Section 4.
	determination that the action complies with all applical adversely affect listed species or critical habitat. In accordance with the NLAA Program, GARFO PRD determination that the action is not likely to adversely a habitat per the justification and/or special conditions pr GARFO PRD does not concur with USACE's determined.	concurs with USACE's affect listed species or critical royided in Section 4.
	determination that the action complies with all applical adversely affect listed species or critical habitat. In accordance with the NLAA Program, GARFO PRD determination that the action is not likely to adversely a habitat per the justification and/or special conditions pr	concurs with USACE's affect listed species or critical rovided in Section 4. nation that the action complies , and recommends an
	determination that the action complies with all applical adversely affect listed species or critical habitat. In accordance with the NLAA Program, GARFO PRD determination that the action is not likely to adversely a habitat per the justification and/or special conditions pr GARFO PRD does not concur with USACE's determin with the applicable PDC (with or without justification), individual Section 7 consultation to be completed indep Program.	concurs with USACE's affect listed species or critical royided in Section 4. nation that the action complies and recommends an pendent from the NLAA
	determination that the action complies with all applical adversely affect listed species or critical habitat.  In accordance with the NLAA Program, GARFO PRD determination that the action is not likely to adversely a habitat per the justification and/or special conditions pr GARFO PRD does not concur with USACE's determin with the applicable PDC (with or without justification), individual Section 7 consultation to be completed indep Program.  GARFO Signature:	concurs with USACE's affect listed species or critical rovided in Section 4. nation that the action complies , and recommends an
RILE	determination that the action complies with all applical adversely affect listed species or critical habitat. In accordance with the NLAA Program, GARFO PRD determination that the action is not likely to adversely a habitat per the justification and/or special conditions pr GARFO PRD does not concur with USACE's determin with the applicable PDC (with or without justification), individual Section 7 consultation to be completed indep Program.	concurs with USACE's affect listed species or critical royided in Section 4. nation that the action complies and recommends an pendent from the NLAA





# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 2

290 BROADWAY NEWYORK, NY 10007-1866

October 17, 2022

Peter R. Blum, P.E. Chief, Planning Division Philadelphia District U.S. Army Corps of Engineers

RE: Environmental Assessment for Maurice River Federal Navigation Channel and Beneficial Use of Dredged Material, Cumberland County, New Jersey

Dear Mr. Blum.

In accordance with our responsibilities under Section 309 of the Clean Air Act (CAA) and the National Environmental Policy Act (NEPA), the US Environmental Protection Agency (EPA) has reviewed the Draft Environmental Assessment (EA) prepared by the US Army Corps of Engineers (USACE). The CAA Section 309 role is unique to EPA, providing EPA the authority to review and comment in writing on the environmental impact of any major Federal agency action and to make EPA's written comments available to the public.

This Draft EA has been developed to address potential environmental impacts from the maintenance dredging of the Maurice River and beneficial use of dredged material in Cumberland County, New Jersey. This will maintain a safe navigation channel for commercial and recreational vessels while simultaneously use the dredged materials to rebuild and bolster a nearby inter-tidal mudflat.

The four alternatives analyzed include: (1) No Action; (2) Dispose of dredged material in a confined disposal facility in Cape May; (3) Place dredged material at East Point beach for the purpose of a beneficial use to provide storm and erosion protection; (4) Dredge the lower navigation channel and place the dredged material within the Heislerville Wildlife Management Area northwest region near the Heislerville dike. The Lead Agency has selected Alternative 4 as the preferred alternative to meet the purpose and need through the proposed action. Upon review, EPA has provided the attached comments for USACE's consideration.

Thank you for the opportunity to provide comments on this Draft EA. EPA looks forward to the receipt and review of the Final EA, and we are committed to continuing to work with your team throughout the NEPA process and in the future, especially as more projects led by USACE in the region come to fruition. Should you have questions on our comments noted above or related to this project, please contact Anne Schaffer at 212-637-4347 or schaffer.anne@epa.gov.

Sincerely

Mark Austin

Mark Austin

Environmental Review Team Lead

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# EPA Comments Maurice River Draft Environmental Assessment (EA) October 17, 2022

#### General

Since the current imbalance/deficit in the sediment budget has resulted from historic diking and
leveeing of the system, were there discussions on incorporating methods to address these
underlying causes of the sediment imbalance (i.e redesigning the levees and embankments) in
general? It would be helpful to include this information in the EA.

#### **Executive Summary**

EPA encourages the USACE of include a map within the Executive Summary that can provide
a visual aid of which areas are planned to be dredged and which areas will be the sites of
deposit of the dredged materials. As it currently stands, the Executive Summary provides a
succinct outline of the project as a whole, but it is difficult to fully understand locations of the
affected areas.

#### **Section 1: Introduction**

- Page 12 (22 in PDF)
  - "Overall, the project targeted 15 primary areas along the dike within the area shown in Error! Reference source not found.." This error and similar errors throughout the document should be corrected.
- A discussion of conducted and planned public outreach should be included in the EA.
   Meaningful public participation is a critical element to the environmental review process.
   Planned future outreach to the nearby community should be included in the EA for prior to and during the construction period.

#### Section 2: Purpose and Need

 While the adverse impacts on the coastal ecosystem without the implementation of the Proposed Action are well documented, it is suggested that the EA include additional discussion of the current need for navigational dredging. The necessity of the project is implied based on the last dredging of the channel and the erosion on the coasts, but an implicit statement in this section regarding an urgent need would be appropriate.

## Section 5: Environmental Effects

• Conformity refers to the requirement that an agency of the federal government must take into account (i.e., conform to) the provisions of the air pollution prevention and control program (i.e., implementation plan) established by a state or tribe, when any activity proposed for a federal action causes regulated emissions to occur within nonattainment or maintenance areas under state/tribal jurisdiction. Specifically, pursuant to Clean Air Act section 176(c), a federal agency must ensure that any activity it undertakes would not cause new violations of the NAAQS, increase the frequency or severity of existing violations, or delay attainment or interfere with milestones used to mark the progress of attaining or maintaining the NAAQS. The EPA regulations implementing this CAA "conformity" requirement for general federal

The Heislerville Wildlife Management Area (WMA) is owned and managed by the NJDEP. The USACE is responsible for maintaining the Federal authorized navigation channel within Maurice River and has proposed, in coordination with the NJDEP, to beneficially place the dredged sediments within the flood (former) saltmarsh within the WMA.

The Executive Summary has been updated. Additional figures have been added to the main report. The table of contents includes a list of all figures and tables.

The EA has been updated and the error message removed.

The EA presents the environmental organizations and local governmental agencies that participated in the Beneficial Use placement design plan.

The EA has been revised to include discussion on the need for maintenance dredging of the navigation channel. actions are found at 40 CFR part 93 subpart B. The EA should make clear the General Conformity attainment status of the project area.

- EPA encourages USACE to include data in the Final EA that informs the public about the short-term impacts to local levels of air pollutants from construction and operation of the dredging operations.
- Executive Order 13990 (E.O. 13990, 86 FR 7037; January 20, 2021) urges agencies to "consider all available tools and resources in assessing greenhouse gas (GHG) emissions and climate change effects of their proposed actions, including as appropriate and relevant, the 2016 GHG Guidance". Further discussion of and minimization strategies for construction related emissions should be included within the EA. Additionally, further discussion of emissions and sequestration from changes in submerged aquatic vegetation as well as other wetland vegetation would be beneficial to the analysis. Helpful tools that can be applied to estimate GHG emissions can be found at https://ceq.doe.gov/guidance/ghg-accounting-tools.html.
- Section 5.1.5: EPA supports the development of a detailed environmental monitoring plan
  prior to project implementation. Further, EPA suggests that an Adaptive Management Plan be
  developed to clearly document how Best Management Practices will be applied, monitored and
  updated according to performance.
- EPA recommends that USACE continue to coordinate and consult with National Marine Fisheries Service and US Fish and Wildlife Service to minimize impacts to threatened, endangered and other protected species.

The BU component of placement within the Heislerville WMA will not result in additional air emissions of the operation.

For the current federal maintenance dredging project, a General Conformity determination is not required since the emissions for the federal action are below the *de minimis* levels set forth in the Clean Air Act regulations for a small hydraulic pipeline dredge for an 8-week operation.

The project site is being monitored before, during, and post-construction. There has been no identified submerged aquatic vegetation in the project area.

The project will apply Best Management
Practices and Adaptive Management for future
placements based on lessons learned during
the initial placement as well as from other
similar saltmarsh enrichment projects in New
Jersey using channel dredged material.

The USACE will continue to coordinate and consult with the NMFS and the USFWS for future placements and monitoring results.



# UNITED STATES DEPARTMENT OF COMMERCE National Oceanic and Atmospheric Administration NATIONAL MARINE FISHERIES SERVICE GREATER ATLANTIC REGIONAL FISHERIES OFFICE 55 Great Republic Drive Glouspeter, MA (1930), 2736

October 25, 2022

Peter R. Blum P.E. Chief, Planning Division U.S. Army Corps of Engineers, Philadelphia District Attn: Environmental Resources Branch CENAP-PL-E Wanamaker Bldg., 100 Penn Square East Philadelphia, PA 19107-3390

RE: Maurice River Federal Navigation Channel and Beneficial Use of Dredged Material, Cumberland County, New Jersey Draft Environmental Assessment

Dear Mr. Blum

We have reviewed the Draft Environmental Assessment, Maurice River Federal Navigation Channel and Beneficial Use of Dredged Material, Cumberland County, New Jersey (draft EA) developed by the U.S. Army Corps of Engineers (USACE), Philadelphia District (District). The draft EA evaluates the proposed maintenance dredging of the lower Maurice River Federal Navigation Channel in Maurice River Cove and beneficial placement of the dredged material for salt marsh habitat restoration in the Heislerville Wildlife Management Area (WMA) in Cumberland County, New Jersey. Approximately 75,000 cubic yards (CY) of sediment is anticipated to be dredged to seven feet mean lower low water (MLLW) with two feet overdepth between December 2022 and March 2023, and placed over approximately 20 acres of marsh in an area adjacent to the Heislerville dike. Because the draft EA does not contain all of the mandatory components of an essential fish habitat (EFH) assessment as identified in 50 CFR 600.920(e)(2), consultation with us as required by the Magnuson-Stevens Fishery Conservation and Management Act (MSA) cannot be initiated at this time.

The MSA and Fish and Wildlife Coordination Act (FWCA) require federal agencies to consult with us on projects such as this that may adversely affect essential fish habitat (EFH) and/or result in modifications to a natural stream or body of water. In turn, we must provide recommendations to conserve EFH and other NOAA trust resources. 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. Because the dredging and fill placement proposed as part of this project will adversely affect EFH and other NOAA trust resources, consultation with us under both the MSA and FWCA is required.



Initially, the draft EA included information to address the FWCA and the MSA and was submitted to the NMFS for review and consultation on September 16, 2022. The NMFS responded on October 25, 2022 indicating that the draft EA did not provide sufficient information to initiate consultation. Subsequently, a stand-alone EFH assessment was submitted to NMFS on 18 November 2022.

Our evaluation of this project has been complicated by the lack of a clearly identified EFH assessment in the draft EA or a separate, stand-alone EFH assessment. Although the cover letter accompanying the draft EA mentions the incorporation of the EFH assessment in the document, there was no specific section or appendix dedicated to the EFH assessment as required by the EFH regulations. According to the Final Rule at 50 CFR 600.920 (e)(1) and (f), "if the EFH Assessment is contained in another document, the Federal agency must identify that section of the document as the EFH Assessment." Additionally, a number of mandatory components, such as description of the proposed action, which should include detailed construction plans and materials and methods for construction, are not included in the document. Also lacking is a discussion of the alternatives considered for the dredged material placement (including measures to avoid and minimize impacts to the aquatic environment). In addition, because a component of the proposed action is to place fill in EFH to achieve the District's secondary project objective of "beneficially using the material dredged from the navigation channel to rebuild and bolster a nearby inter-tidal mudflat," a clear explanation of the placement activities, the expected results (i.e., habitats to be created or restored), and a monitoring and adaptive management plan are also necessary. This information is needed to ensure that project objectives are met and substantial and unacceptable impacts to EFH and our trust resources do not result from habitat conversions that the fill placement will likely cause. Because this information was not included in the draft EA and there is no identified EFH assessment in the document, you have not provided us with sufficient information to initiate consultation with us under the MSA at this time.

To initiate consultation, either a stand-alone EFH assessment or a revised EA that includes all of the mandatory components outlined in 50 CFR 600.920 (e)(2), fully describes the proposed action, and evaluates the direct, indirect, individual, and cumulative effects of the project on EFH must be provided to us. As discussed with your staff, our EFH worksheet is not sufficient for a project of this scope. In addition, this consultation must be completed prior to the commencement of construction. This requirement is also consistent with the USACE's November 3, 2017, Memorandum from the Commanding General on compliance with the MSA for maintenance dredging. Furthermore, in accordance the EFH regulations, the EFH assessment should be provided to us at least 60 days before a final decision on an action is made, or at least 90 days if the action would result in substantial adverse impacts, regardless of whether it is contained in the draft EA or a stand-alone document.

We offer the following technical assistance comments under the MSA and FWCA to assist you in the development of the EFH assessment as well as the final EA. As always, we are available to discuss this project, needed information and analysis, and the EFH consultation with you or your staff if you have any questions or require clarification on our comments.

#### **General Comments**

The draft EA provides a conceptual plan for the beneficial use of dredged material from the Maurice River Federal Navigation Channel. However, a number of important details that are needed to evaluate the project fully are not included in the document. Specifically, we are missing detailed construction plans, materials and methods for construction, the alternatives and measures to avoid and minimize impacts to the aquatic environment, and a monitoring and adaptive management plan. In addition, while we appreciate that one of the project's objectives

is to beneficially reuse dredged material, it is unclear what types of habitats you intend to create (i.e., high marsh, low marsh, mudflat) and how these habitats will be achieved and maintained. Maps, figures, and photographs presented throughout the draft EA provide some context as to current conditions of the project area, but no specific plans are provided to identify what types of habitats you plan to create, the elevations of those habitats, and how much dredged material volume is needed to achieve those elevations.

In order to demonstrate that the use of the dredged material at this site is ecologically beneficial, site-specific plans, including detailed cross sections that clearly depict current and proposed conditions should be provided to us. All special aquatic features such as existing wetlands, mudflats, and shellfish habitat in the area should be clearly delineated on the project plans. Site plans should not only depict all existing and proposed features habitats and plan features, but also should do so at an appropriate scale, include bathymetry and grading with respect to mean high water (MHW) and mean low water (MLW), and provide a clear summary of the habitats that are anticipated to be temporarily and permanently disturbed and/or converted. Climate change and sea level rise should also be more meaningfully discussed and incorporated into the project design.

The draft EA mentions that approximately 75,000 CY of dredged material of predominantly fine-grained sediment will be placed during the initial dredging and placement operation. Spraying and spreading the material is briefly mentioned, as is the use of containment, which may include turbidity curtains, coir logs, and/or hay bales, and earthen berms. It is unclear what type of equipment will be used to spray and spread the material and if work will be done primarily from the water, or if earthmoving equipment will be used on the marsh. Additionally, the draft EA mentions a turbidity curtain will be used, similar to that used during the Mordecai Island restoration, but details on the location, installation methods and effects are lacking. The revised EA and the EFH assessment should clearly describe how the dredged material will be placed and contained, the methods and equipment that will be used, and how these activities may affect NOAA trust resources.

As mentioned above, plans that show the intended elevations or the proposed containment measures have not been provided. In addition, there are few details on how long construction will take to complete, how many placements of material will be required to achieve project goals, and when, where, and how material will be placed to minimize impacts to NOAA trust resources. It is also not clear from the draft EA if planting will be done once target elevations are achieved. There is no discussion of how wetlands will be restored, how long restoration will take, and if any reference marshes are being used to guide the restoration design and implementation. In addition, if the District intends for this to be a multi-year, phased project, the revised EA and the EFH assessment should clearly state this, and the potential effects to EFH and other NOAA trust resources should also be considered for the entire duration of the construction of the project (i.e., each time there is in-water work anticipated, each fill placement activity). Additionally, should planting be a part of the restoration goal, the revised EA should include specific planting plans that incorporate all materials and methods.

According to the draft EA, you intend to employ a science-based approach to project construction. The draft EA mentions multiple times that the project intends to use lessons learned

3

The stand-alone EFH assessment provided to the NMFS included the additional information requested in the NMFS letter. The final EA was updated to include the revised information. The stand-alone EFH Assessment is in Appendix A.

in design, construction and monitoring from other wetland restoration projects. While we support this approach, the specific details of the projects used and the lessons learned were not identified or included in the draft EA. Because we have not yet received monitoring reports from the other projects, some of which were required to be provided to us as a condition of authorization, it is unclear how well those projects worked or what lessons learned are to be applied to this project and how. These details should be outlined and provided in the revised EA and EFH assessment.

According to the draft EA, "in order to evaluate the project's intended objective to enhance wetlands and system resilience at the placement site, monitoring will occur before, during, and post-construction. Information gathered will provide opportunities to apply adaptive management to future placements both here and at other estuarine saltmarshes with comparable hydrodynamic and morphologic conditions." While we agree with this approach and appreciate that you intend to collect this information, the draft EA does not include details on the specific criteria that will be measured, how the information will be collected, what evaluation criteria will be used to trigger adaptive management measures, and what those measures might be. A site specific construction monitoring and adaptive management plan should be developed. This plan should be used throughout the duration of project construction to monitor changes in habitats and aid in determining fill placement locations. Adaptive management measures should be developed to address changes to the placement area in between sediment placements. This construction monitoring and adaptive management plan is separate and distinct from a needed postconstruction monitoring and maintenance plan. This post-construction plan should address monitoring and management once any fill placement is complete and track progress towards clearly defined restoration goals, which are also lacking in the draft EA. Reference marshes used as part of monitoring should also be included into these plans and include the rationale for their selection.

#### Magnuson Stevens Fishery Conservation and Management Act

The lower Maurice River and surrounding creeks, marshes, shellfish, and mudflats have been designated EFH for various life stages of species managed by the New England Fishery Management Council (NEFMC), Mid-Atlantic Fishery Management Council (MAFMC), South Atlantic Fishery Management Council (SAFMC), and NOAA Fisheries. These areas provide feeding, spawning, resting, nursery, and staging habitat for a variety of commercially, recreationally, and ecologically important species. Species for which EFH has been designated in the project area include, but are not limited to. Atlantic butterfish (Peprilus triacanthus), bluefish (Pomatomus saltatrix), black sea bass (Centropristis striata), scup (Stenotomus chrysops), summer flounder (Paralichthys dentatus), windowpane flounder (Scophthalmus aquosus), and little skate (Leucoraja erinacea). These areas are also designated EFH for several Atlantic highly migratory species (i.e., tuna, swordfish, billfish, small and large coastal sharks, and pelagic sharks) including, but not limited to, sandbar shark (Carcharhinus plumbeus), smoothhound shark complex (Mustelus mustelus) Atlantic stock, and sand tiger shark (Carcharias taurus). NOAA has listed the sand tiger shark as a Species of Concern. The confluence of the Maurice River with Delaware Bay has also been designated as Habitat Areas of Particular Concern (HAPC) for sandbar shark. HAPCs are a subset of EFH that are either rare, particularly susceptible to human-induced degradation, especially important ecologically, or located in an environmentally stressed area.

The Maurice River and connected aquatic features are also important habitat for anadromous fish such as alewife (*Alosa pseudoharengus*), blueback herring (*Alosa aestivalis*), and American shad (*Alosa sapidissima*), which use the many areas in and around the Maurice River as migratory, nursery, resting, and foraging habitat. These Alosa species have complex life cycles where individuals spend most of their lives at sea then migrate great distances to return to freshwater rivers to spawn. American shad (stocks north of Cape Hatteras, NC), alewife, and blueback herring are believed to be repeat spawners, generally returning to their natal rivers to spawn.

As stated above, the information provided in the draft EA was not sufficiently detailed to initiate consultation under the MSA. Additionally, while your cover letter may have included language that stated the District is initiating consultation, NOAA Fisheries makes the decision on the initiation of the EFH consultation once we have determined that all information has been provided for us to fully evaluate effects of the project on EFH.

To initiate the required EFH consultation with us, please provide an EFH assessment that fully evaluates all of the direct, indirect, individual and cumulative effects of the proposed project on EFH with your EFH determination.

The mandatory contents of an EFH assessment include:

- · A 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, if appropriate, the assessment should also include:

- 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.
- An analysis of alternatives to the action. Such analysis should include alternatives that could avoid or minimize adverse effects on EFH.
- · Other relevant information.

The level of detail in an EFH assessment should be commensurate with the complexity and magnitude of the potential adverse effects of the action. A detailed EFH assessment should be developed and submitted to us once the information discussed above and data gaps identified in this technical assistance letter are filled including:

- A full and complete evaluation of all of the impacts of the proposed project on EFH.
  - Consider all of the direct, indirect, individual, and cumulative effects of the action on EFH and federally managed species.
  - o Include temporary and permanent changes to the habitat such as the loss or

conversion of aquatic habitats and impacts to prey species from all of the

- · Project plans that clearly show all of the work proposed and the habitats affected.
- A clear and detailed description of all of the construction activities proposed including materials, methods, and timeframes for construction.
- A full and complete analysis of alternatives to the action, which includes alternatives that could avoid or minimize adverse effects on EFH.
- Data information and analyses needed to support the project objectives (i.e., projects used for techniques and lessons learned).
- A construction monitoring and adaptive management plan.
- A planting plan (if applicable).
- · A post-construction monitoring and maintenance plan.

The EFH assessment should consider the full range of effects of the construction activities associated with the placement of material as well as each time material will be placed in the project area. The analysis of effects should focus on impacts that reduce the quality and/or quantity of the habitat or result in conversion to a different habitat type for all life stages of species with designated EFH within the study area. Simply stating that fish will move away or that the project will only affect a small percentage of the overall population is not a sufficient analysis of the effects of an action on EFH. Also, since the intent of the EFH consultation is to evaluate the direct, individual and cumulative effects of a particular federal action on EFH and to identify options to avoid, minimize or offset the adverse effects of that action, it is not appropriate to conclude that an impact is minimal just because the area affected is a small percentage of the total area of EFH designated. The focus of the consultation is to reduce impacts resulting from the activities evaluated in the assessment. Similarly, a large area of distribution or range of the fish species is also not an appropriate rationale for concluding the impacts of a particular project are minimal. For the purposes of this study, the effects of the proposed action on EFH for prey items such as anadromous fish and shellfish are of particular concern.

Lastly, the proposed schedule for the project is concerning given the draft status of the EA and the need to initiate and complete EFH consultation with us as required by the MSA. As mentioned in your cover letter, and in the draft EA, the first dredging and placement is scheduled to occur between December 2022 and March 2023. As stated above, the EFH assessment should be provided to us at least 60 days before a final decision on an action is made, or at least 90 days if the action would result in substantial adverse impacts. As a result, there does not appear to be sufficient time for you to provide us with the information needed to initiate and complete consultation prior to construction, or for any EFH conservation recommendations that we may issue to be incorporated into the project design and the associated contract requirements

#### **Endangered Species Act**

Threatened or endangered species under our jurisdiction including federally listed species Atlantic sturgeon (Acipenser oxyrhynchus) and sea turtles may be present in the project area. As the lead federal action agency, you are responsible for determining the nature and extent of effects and coordinating with our Protected Resources Division as appropriate. Our Protected 7 Resources Division's website contains guidance and tools to assist action agencies with their

6

ESA consultation with the NMFS Protected Resources Division was completed on September 22, 2022.

description of the action and analysis of effects to support their determination. Should you have any questions about the section 7 consultation process, please contact Meagan Riley at (978) 281-9339 or by email (<a href="mailto:meagan.riley@noaa.gov">meagan.riley@noaa.gov</a>).

#### Conclusion

As always, we are available willing to work collaboratively with the District and other federal, state, and local agencies and stakeholders on the further development of a plan that identifies practicable solutions to achieving the project goals while minimizing adverse impacts to NOAA trust resources. We are also available to discuss data gaps, information needs, and the required EFH consultation materials with you or your staff if you have any questions about our comments. If you would like to discuss this matter further, please contact Jessie Murray at (732) 872-3116 or Jessie Murray@noaa.gov with our Habitat and Ecosystem Services Division.

Sincerely,

GREENE.KAREN.M.1 Digitally signed by GREENEKAREN.M.1365830785 Date: 2022.10.25 17:56:13 -04700'

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

cc:

Philadelphia District – B. Conlin, M. Chasten GAR PRD – M. Reilly, C. Vaccaro NJDEP – K. Davis, S. Biggins, C. Keller FWS – E. Schrading EPA – R. Montgomerie, M. Finocchiaro MAFMC – C. Moore NEFMC – T. Nies ASFMC – L. Havel

7



# EASTERN SHAWNEE CULTURAL PRESERVATION DEPARTMENT

70500 East 128 Road, Wyandotte, OK 74370

October 26, 2022 USACE Philadelphia 100 Penn Square East Philadelphia, PA 19107

RE: Public Notice: Maurice River Federal Navigation Channel, Dredged Material, Cumberland County, New Jersey, Cumberland County, NJ

Dear Mr. Public Notice,

The Eastern Shawnee Tribe has received your letter regarding the above referenced project(s) within Cumberland County, NJ. The Eastern Shawnee Tribe is committed to protecting sites important to Tribal Heritage, Culture and Religion. Furthermore, the Tribe is particularly concerned with historical sites that may contain but not limited to the burial(s) of human remains and associated funerary objects.

As described in your correspondence, and upon research of our database(s) and files, we find our people occupied these areas historically and/or prehistorically. However, the project proposes **NO Adverse Effect** or endangerment to known sites of interest to the Eastern Shawnee Tribe. Please continue project as planned. However, should this project inadvertently discover an archeological site or object(s) we request that you immediately contact the Eastern Shawnee Tribe, as well as the appropriate state agencies (within 24 hours). We also ask that all ground disturbing activity stop until the Tribe and State agencies are consulted. Please note that any future changes to this project will require additional consultation.

In accordance with the NHPA of 1966 (16 U.S.C. § 470-470w-6), federally funded, licensed, or permitted undertakings that are subject to the Section 106 review process must determine effects to significant historic properties. As clarified in Section 101(d)(6)(A-B), historic properties may have religious and/or cultural significance to Indian Tribes. Section 106 of NHPA requires Federal agencies to consider the effects of their actions on all significant historic properties (36 CFR Part 800) as does the National Environmental Policy Act of 1969 (43 U.S.C. § 4321-4347 and 40 CFR § 1501.7(a). This letter evidences NHPA and NEPA historic properties compliance pertaining to consultation with this Tribe regarding the referenced proposed projects.

Thank you, for contacting the Eastern Shawnee Tribe, we appreciate your cooperation. Should you have any further questions or comments please contact our Office.

Sincerely,

Paul Barton, Tribal Historic Preservation Officer (THPO) Eastern Shawnee Tribe of Oklahoma

(918) 666-5151 Ext:1833

No response required.



# State of New Jersey

PHILIP D. MURPHY Governor

SHEILA Y. OLIVER Lt. Governor DEPARTMENT OF ENVIRONMENTAL PROTECTION Office of Permitting and Project Navigation 401 East Street, Mail Code 401-071, P.O. Box 420 Trenton, New Jersey 08625-0420 Phone: (609) 229-3600 Fax: (609) 292-1921 www.nj.gov/dep/pcer

SHAWN M. LaTOURETTE Commissioner

October 31, 2022

Peter R. Blum Chief, Planning Division U.S. Army Corps of Engineers, Philadelphia District 100 Penn Square East, 7th Floor Wanamaker Building Philadelphia, PA 19107-3390

RE: NJDEP Comments on the Draft Environmental Assessment Maurice River Federal Navigation Channel and Beneficial Use of Dredged Material Cumberland County, New Jersey

Dear Peter Blum,

The New Jersey Department of Environmental Protection's (Department) Office of Permitting and Project Navigation (OPPN) has distributed, for review and comment, the National Environmental Policy Act (NEPA) required Draft Environmental Assessment (DEA) for a proposed dredging and reuse of the dredged material at the lower Maurice River Federal navigation Channel in Cumberland County, New Jersey. The proposal is to conduct maintenance dredging to the authorized depth of 7 feet MILLW with 2 feet allowable overdepth in the winter of 2022/2023. The dredged material is proposed to be placed within the northwest reach of the Heislerville Wildlife Management Area.

Based on the information provided and the representations made within the DEA, the Department offers the following comments for your consideration:

### Watershed and Land Management

#### Office of Dredging and Sediment Technology

On September 15, 2022, the Division of Land Resource Protection received a request for a Federal Consistency (FC) Determination pursuant to New Jersey's Coastal Zone Management Program and Water Quality Certification pursuant to the Clean Water Act for the proposed maintenance dredging and beneficial use of the dredged material in a habitat restoration project. The FC/WQC is still under review, and the Division anticipates rendering a decision by November 17, 2022.

If you have any questions regarding this information, please contact Suzanne Biggins at  $\underline{Suzanne.Biggins@dep.nj.gov}.$ 

#### Coastal Permitting

A Federal Consistency will need to be applied for in order to conduct the proposed activities.

If you have any questions regarding this information, please contact Becky Mazzei at <a href="mailto:Becky.Mazzei@dep.nj.gov">Becky.Mazzei@dep.nj.gov</a>.

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Concurrence with our Federal Consistency Determination and Water Quality Certification was received from the NJDEP on November 16, 2022.

#### Freshwater Wetlands

If you have any questions regarding freshwater wetlands, please contact Max Dolphin at Maxwell.Dolphin@dep.nj.gov.

#### Flood Hazard Areas

If you have any questions regarding flood hazard areas, please contact Todd Stueber at Todd.Stueber@dep.nj.gov.

#### **Tidelands**

If you have any questions for the Bureau of Tidelands Management, please contact Marty Mosen at Martin.Mosen@dep.nj.gov.

#### New Jersey Fish and Wildlife

#### Marine Resource Administration (MRA)

The MRA 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 MRA is submitting comments based on the documentation that was provided by the applicant. The MRA assumes that the applicant will not perform any activities outside of the ones prescribed in the application. Therefore, if the applicant deviates from the activities in this application, these comments are no longer valid and the MRA 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 MRA's responsibilities outlined above and which apply to this project:

#### 9.2 Shellfish habitat

The project will take place within a designated tongers area.

#### 9.3 Surf clam areas

N/A

#### 9.4 Prime fishing areas

The project location is considered a prime fishing area.

#### 9.5 Finfish migratory pathways

Anadromous I (March 1- June 30)

#### 9.6 Submerged vegetation habitat

N/A

#### 9.13 Shipwreck and artificial reef habitats

N/A

#### 9.36 Endangered or threatened wildlife or plant species habitats

The Delaware Bay is a known area for sturgeon as they migrate between the ocean and the Delaware River, which is considered critical habitat for Atlantic Sturgeon.

#### MRA Recommendations

The dredging portion of the proposed project is expected to transect known oyster habitat and potential resource as mentioned in section 5.2.2 Benthic Macroinvertebrates. The MRA recommends that the US

USACE has coordinated with the NJDEP Division of Shellfisheries. Impacts to oysters due to dredging is not expected. If any oyster lumps are encountered within dredging areas, they will be transplanted by the NJDEP.

No dredging and placement activities will occur between March 1 and June 30.

Army Corps of Engineers mitigate the dredging efforts by transplanting any oyster resource within the defined dredging area to an established oyster reef to be selected by the MRA. The oysters that would otherwise be removed due to dredging activities and therefore destined for the placement area would be taken away from the already limited resource available to the oyster tonging fishery in the area.

The Maurice River and the Delaware Bay provide an important migratory pathway for several anadromous fish species that migrate towards river systems to spawn each Spring. The proposed project area is located within the mouth of the Maurice River, an important system that provides habitat for federally endangered Atlantic sturgeon, striped bass, and annual river herring spawning runs. Striped bass are one of the most economically and culturally important fishery resources in New Jersey, and the stock has recently been assessed as overfished and experiencing overfishing. River herring have significant ecological importance to coastal marine ecosystems coastwide, and populations are currently depleted. Any activities that may cause disturbance to habitats potentially used by these fish during spawning runs should be limited. Therefore, MRA recommends the Anadromous Time of Year Restriction on all proposed in-water project activities (March 1 – June 30) to avoid disruption of habitat and fish behavior during this Spring spawning migration period.

The Maurice River supports a considerable amount of recreational fishing opportunities for shore-based and vessel-based fishing. Thus, per Special Areas rule 9.4, the general area within and near the project sites are considered prime fishing areas because they offer advantageous public access to marine fishing resources. Additionally, disturbances to the existing benthic and vertical habitat by the proposed dredging may cause displacement of target fish species, causing further temporary impacts to anglers who use these areas. Due to the project's close vicinity to these Special Areas, MRA requests that the applicant avoids any impedance or disturbance of the nearby public fishing activities to the greatest extent possible.

The Delaware Bay is a known area for sturgeon as they migrate between the ocean and the Delaware River, which is considered critical habitat for Atlantic Sturgeon. Therefore, MRA recommends reporting any sturgeon sightings that occur during the proposed project to the following link: <a href="https://survev123.aregis.com/share/d94e3bbfcf03404289222c0118e04449">https://survev123.aregis.com/share/d94e3bbfcf03404289222c0118e04449</a>

MRA requests that proper containment measures during sediment placement be used to reduce sediment transport and turbidity. It is requested that the measures outlined in the DEA (turbidity curtain, coir logs, hay bales, and berms) are adhered to.

The MRA has two ongoing surveys within the project area and requests that the lead biologists for these surveys be notified prior to work taking place so that adjustments to survey times/locations can be made to minimize any impact to the surveys. Project lead contact information can be found below.

Brian Neilan-Brian.Neilan@dep.nj.gov
Andrew Hassall-Andrew.Hassall@dep.nj.gov

If you have any questions regarding this information, please contact Joe Corleto at Joseph.Corleto@dep.nj.gov.

#### **Historic Preservation**

Based on the documentation submitted, the proposed project is being undertaken by the United States Department of the Army, Corps of Engineers (Corps). Therefore, the project will require the Corps to consult with our office, 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. As a result, the HPO looks forward to consultation with the Corps, pursuant to their obligations under Section 106 of the National Historic Preservation Act of 1966, as amended, and it's implementing

Consultation with the NMFS for threatened and endangered species was completed September 22, 2022. The NMFS determined, in accordance with the NLAA program, that the action complies with all applicable PDC and is not likely to adversely affect listed species.

The NJDEP noted that vessels currently transiting Maurice Cove daily at high tide are dragging along the bottom, creating conditions of elevated turbidity within prime fishing area. Maintenance dredging in this reach will eliminate vessels from hitting bottom.

USACE initiated consultation with the SHPO pursuant to Section 106 with a letter dated September 15, 2022 and a second letter dated February 1, 2023.

regulations, 36 CFR §800. The HPO will notify the Office of Permitting and Project Navigation of any developments as consultation moves forward.

In addition, if future project activities require any Freshwater Wetlands permits, Waterfront Development permits, and/or Upland Development permits issued by the State of New Jersey's Division of Land Use Regulation, Highland Preservation Area Approval Permits, as well as environmental assessments under Executive Order 215, further consultation with the HPO will be necessary.

If you have any questions regarding this information, please contact Jesse West-Rosenthal at <a href="Jesses.West-Rosenthal@dep.ni.gov">Jesses.West-Rosenthal@dep.ni.gov</a>. If additional consultation with the HPO is needed, please reference the HPO project number 22-1643 in any future calls, emails, submissions, or written correspondence to help expedite review and response.

#### Office of Transactions and Public Land Administration

The project as proposed will not impact local or non-profit Green Acres encumbered parks.

If you have any questions regarding Public Land Compliance, please contact Maude Snyder at Maude.Snyder@dep.nj.gov. If you have any questions regarding Public Land Administration, please contact Adria Wentzel at Adria.Wentzel@dep.nj.gov.

#### NJPDES Stormwater

If more than one acre will be disturbed, a general permit for Construction Activities, (5G3) may be required. The permit application process is available online at <a href="http://www.state.nj.us/dep/DWQ/5G3.htm">http://www.state.nj.us/dep/DWQ/5G3.htm</a>.

If you have any questions regarding this information, please contact Eleanor Krukowski at (609) 633-9286 or at Eleanor. Krukowski@dep.ni.gov.

#### Air Permitting

The applicant should review the requirements of N.J.A.C. 7:27-8.2(c) 1-21 for stationary permitting requirements. This includes but is not limited to, construction equipment-stationary construction equipment or emergency generators, may require air pollution permits if it is located on the site for longer than one year N.J.A.C. 7:27-8.2(d)15. There are general permits for boilers and emergency generators (<a href="https://www.state.nj.us/dep/aqpp/gp.html">https://www.state.nj.us/dep/aqpp/gp.html</a>) if the units can meet the prescribed requirement in the general permits.

Idling Vehicles- any vehicles involved on the project must adhere to the idling standards (less than 3 minutes) in N.J.A.C. 7:27-14 and 15.

Air pollution including odors that are detectable offsite that are injurious to human health or would result in citizen complaints are prohibited. N.J.A.C. 7:27-5.2.

Fugitive Dust - dust emissions either windblown or generated from construction activities should be controlled to prevent offsite impacts or material tracked onto the roadways. N.J.A.C. 7:27-5.2.

If you have any questions regarding this information, please contact Danny Wong at Danny.Wong@dep.nj.gov.

#### Air - Bureau of Evaluation and Planning

Draft Environmental Assessment - Section 4.1.3 - Air Quality

Section 4.1.3 of the draft EA states, "Air quality is generally good in the Delaware Bay region; however, the Maurice River project area is located within the Philadelphia-Wilmington-Atlantic City, PA- NJ-MD-

USACE has received concurrence with our Federal Consistency Determination under NJDEP's Coastal Zone Management Program and a CWA Section 401 Water Quality Certification from NJDEP's Division of Land Resource Protection on November 16, 2022.

DE nonattainment area for the 8-hour ozone NAAQS and is classified as "marginal." "Marginal" is the lowest classification, meaning that the ozone levels in this area are closer to the standard than in those areas with a higher classification."

#### Commen

On September 15, 2022, the U.S. Environmental Protection Agency finalized actions to reclassify 28 nonattainment areas classified as marginal for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The Philadelphia-Wilmington-Atlantic City nonattainment area will be reclassified from "marginal" to "moderate" for the 2015 ozone NAAQS. The action has been submitted for publication in the Federal Register. More information on the reclassification can be found at the following link: <a href="https://www.epa.gov/ground-level-ozone-pollution/final-determinations-attainment-attainment-date-extensions-0">https://www.epa.gov/ground-level-ozone-pollution/final-determinations-attainment-attainment-date-extensions-0</a>

#### Draft Environmental Assessment - Section 5.1.3 - Air Quality

Section 5.1.3 of the draft EA states, "The preferred plan would result in maintenance of existing regional air quality conditions. There would be some minor, short-term effects during dredging operations. Air emissions are expected to be below the de minimis threshold for a marginal ozone nonattainment area in a high wind area typical of a coastal environment. A General Conformity determination is not required. The project is not considered regionally significant under 40 CFR 93.153(i)."

#### Commen

Section 93.157 (d) (Reevaluation of Conformity) of the Federal General Conformity regulation (40 CFR 93, 153) states, "If the Federal Agency originally determined through the applicability analysis that a conformity determination was not necessary because the emissions for the action were below the limits in 93.153 (b) and changes to the action would result in the total emissions from the action being above the limits in 93.153 (b), then the Federal agency must make a conformity determination."

If there are any changes to the preferred plan, including changes to construction and dredging operations, the General Conformity Applicability Analysis and air emission estimates should be revised to reflect the changes; and if necessary, prepare a Conformity Determination in accordance with 93.157 (d) of the Federal General Conformity regulation (40 CFR, part 93, Subpart B).

#### <u>Draft Environmental Assessment - Section 5.1.3 - Air Quality</u>

"Maintenance dredging of the authorized Maurice River federal channel will likely continue to occur periodically... The initial dredging and placement operation is anticipated to occur between January and March 2023, with an anticipated placement of approximately 75,000 cubic yards (cy) of predominantly fine-grained sediments. Monitoring of placement elevations and sediment consolidation via traditional and remote sensing techniques will be conducted by USACE, ERDC, and UP, and will occur prior to, during, and post-placement operations. Lessons learned from the first placement in Winter 2023 will inform the design and construction of the follow-on dredging and placement operation in one to two years, based on elevation and consolidation data from the first placement."

#### Comment

Ensure that the design and construction of the future follow-on dredging and placement operations are evaluated through the NEPA process and meet the requirements of the Federal General Conformity regulation (40 CFR, part 93, Subpart B).

If you have any questions regarding this information, please contact Connor Milligan at Connon.Milligan@dep.nj.gov.

The dredging and placement action will result in temporary impacts to local air quality conditions. Air emissions are expected to be below the *de minimus* threshold for a marginal ozone nonattainment area in a high wind area typical of a coastal environment for the 8-week operation. A General Conformity determination is not required. The project is not considered regionally significant under 40 CFR 93.153(i).

If any changes to the project occur, the USACE will consult with the Division of Air Quality and ensure that future dredging and placement operations are in compliance with the NEPA evaluation.

#### Pinelands Commission

The National Parks and Recreation Act of 1978 established and generally delineated the geographic boundaries of the area known as the "Pinelands National Reserve" (PNR).

Subsequently, in 1979, the State of New Jersey passed the Pinelands Protection Act. The Pinelands Protection Act delineated the geographic boundaries of the "Pinelands Area." The Pinelands Commission exercises direct regulatory authority in the state delineated "Pinelands Area."

The dredging and the deposition of dredge material is not located in the state delineated "Pinelands Area." However, the dredging and disposition of dredge material will be located within the federally delineated "Pinelands National Reserve."

The proposed dredging and deposition of dredge material appears to be subject of the New Jersey Coastal Area Facility Review Act regulations which require that coastal development be consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978 creating the "Pinelands National Reserve" and the State of New Jersey Pinelands Protection Act of 1979.

In February of 1988, the Commission entered into a Memorandum of Agreement (MOA) with the New Jersey Department of Environmental Protection (NJDEP) to formalize a framework for coordinating the activities of NJDEP's Coastal Management Program and the Pinelands Comprehensive Management Plan (CMP) in those portions of the PNR located in the Coastal Zone. That MOA provides that NJDEP will implement the CMP within the coastal zone and consider comments submitted to NJDEP by the Pinelands Commission on applications for development in the PNR.

The CMP requires that all development, including the deposition of dredged material on a parcel, be designed to assure quality of surface and groundwater be protected and maintained. Information must be provided to the Commission demonstrating that the deposition of dredged material will not degrade the quality of surface and groundwater. In the absence of such a demonstration, the proposed deposition of the dredged material on the parcel would be inconsistent with the water quality standards of the CMP.

The CMP prohibits development in wetlands and requires up to a 300-foot buffer to wetlands. The deposition of any dredged material in wetlands or the required buffer to wetlands would be inconsistent with the wetlands protection standards of the CMP.

If you have any questions regarding this information, please contact Ernie Deman at Ernest.Deman@pinelands.nj.gov.

#### Delaware River Basin Commission

According to DRBC Regulation 18 CFR 401.35(a)(8) periodic maintenance dredging is not a reviewable project; however, if the project includes deepening, widening, cleaning or dredging existing stream beds or relocating any channel, and the placement of fill or construction of dikes, on the Delaware River and tidal portions of tributaries thereto, and streams draining more than one state, it is reviewable.

DRBC has concern regarding the screening/sampling of dredge spoils using the EPA 1668A analysis method for PCB congeners and sequestering of PCB contaminated sediments in an appropriate/secure facility that will prevent their reintroduction into the environment.

If you have any questions regarding this information, please contact David Kovach at David Kovach@drbc.gov.

USACE has received concurrence with our Federal Consistency Determination under NJDEP's Coastal Zone Management Program and a CWA Section 401 Water Quality Certification from NJDEP's Division of Land Resource Protection on November 16, 2022 for the proposed plan.

Sediments to be dredged from the channel reach were chemically tested for PCBs and were compared to the NJDEP Residential and Nonresidential Remediation Standards for Soil (N.J.A.C 7:26D Remediation Standards) and there were no exceedances.

Thank you for giving the New Jersey Department of Environmental Protection the opportunity to comment on the DEA for the proposed project. Please contact Ryan Carter at <a href="Ryan.Carter@dep.nj.gov">Ryan.Carter@dep.nj.gov</a> or at (609) 292-3600 if you have any questions or concerns.

Sincerely,

David Pepe, Director Office of Permitting and Project Navigation



# State of New Hersey

PHILIP D. MURPHY Governor

SHEILA Y. OLIVER Lt. Governor DEPARTMENT OF ENVIRONMENTAL PROTECTION
Division of Land Resource Protection
Mail Code 501-02A
P.O. Box 420
Trenton, New Jersey 08625-0420

www.nj.gov/dep/landuse

SHAWN M. LATOURETTE

November 16, 2022

Peter R. Blum Chief, Planning Division U.S. Department of the Army Army Corps of Engineers – Philadelphia District 100 Penn Square East Philadelphia, Pennsylvania 19107-3390

e: Federal Consistency Determination and Water Quality Certificate Project: Maurice River Federal Navigation Channel Dredging and Beneficial Use of Dredged Material Within the Heislerville WMA File No. 0600-22-0001.1 CDT220001

County: Cumberland

Dear Mr. Blum:

The New Jersey Department of Environmental Protection (NJDEP) Division of Land Resource Protection (Division), acting under Section 307 of the Federal Coastal Zone Management Act (P.L. 92-583) as amended, has reviewed the U.S. Army Corps of Engineers-Philadelphia District (ACOE) September 19, 2022, request for authorization for the above referenced project.

The Division has determined that the project is conditionally consistent with New Jersey's Coastal Zone Management Rules N.J.A.C. 7:7-1.1 et seq. (amended on October 5, 2021), and the applicable Rules guiding issuance for a Section 401 Water Quality Certificate, provided that the conditions outlined below are met to the satisfaction of the NJDEP.

#### **Project Description**

The project consists of the hydraulic dredging of 75,000 cubic yards (cy) of material from the Maurice River Federal Navigation Channel. The material will be beneficially used within the Heislerville Wildlife Management Area (WMA) as source material for the habitat restoration project within the management area. The overall restoration project consists of raising the elevation of intertidal mudflat, restoring marsh edge, and habitat restoration through placement of dredged material in eroded marsh platform to raise elevation. Future maintenance dredging of the federal navigation channel will also be placed on the Heiserville WMA for habitat restoration in consultation with the NJDEP, Division of Fish and Wildlife.

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The NJDEP CZM Federal Consistency determination concurrence.

More specifically, the initial placement of 75,000 cy of fine-grained material from the federal navigation channel will occur within the old railroad bed located waterward of the Heislerville dike and is designed to raise the elevation of the marsh platform adjacent to the dike and to restore intertidal subtidal shallows adjacent to the marsh in this area. Containment consisting of a turbidity curtain at the edge of the intertidal and subtidal shallows will serve to build marsh elevation adjacent to the dike structure. A secondary placement area, located across the Maurice River Cove from the Heislerville dike, will receive dredged material from future dredging cycles to restore degraded marsh platform and to restore marsh edge and intertidal/subtidal shallows.

The placement of the dredged material at both placement sites will utilize various sediment spraying and spreading techniques previously utilized and authorized at the ACOE Seven Mile Island Innovation Laboratory (SMILL) located in Cape May County.

The ACOE submitted the following documentation in support of the federal consistency determination:

- Draft Environmental Assessment-Maurice River Federal Navigation Channel and Beneficial Use of Dredged Material, Cumberland County, New Jersey, September 2022
- New Jersey Coastal Zone Consistency Statement for Applicable Rules, Coastal Zone Management Rules for the Maurice River Federal Navigation Channel and Beneficial Use of Dredged Material, Cumberland County, New Jersey
- > Figure 19-Proposed Dredged Material Placement Areas, Primary and Secondary Locations
- Section 106 Consultation with the NJDEP, Historic Preservation Office and the USACOE.

#### This consistency determination is issued subject to compliance with the following conditions:

 Dredging is prohibited during the time of year specified below, to minimize adverse effects to marine fisheries. These timing restrictions apply to any given year under the term of the permit.

Aquatic Resource	Prohibited Period
Anadromous Fish Atlantic Sturgeon and Shortnose Sturgeon	March 1st to June 30th

- 2. Prior to initiation of dredging, the ACOE shall deploy all soil and sediment control measures as outlined in the Environmental Assessment to minimize turbidity to adjacent waterways during placement of material within the habitat restoration project area within the WMA. Physical measures that will be utilized to avoid impacts to habitat (e.g., installation of a floating turbidity barrier) shall be implemented prior to the commencement of authorized activities and monitored weekly, maintained in working condition, and kept in place until project completion.
- 3. The NJDEP Division of Fish and Wildlife has two ongoing surveys within the project area and requests that the lead biologists for these surveys be notified prior to work taking place so that adjustments to survey times/locations can be made to minimize any impact to the surveys. Project lead contact information is as follows: Brian Neilan, <a href="mailto:Brian.Neilan@dep.nj.gov">Brian.Neilan@dep.nj.gov</a> and Andrew Hassall, <a href="mailto:Andrew.Hassall@dep.nj.gov">Andrew.Hassall@dep.nj.gov</a>.

No dredging or placement activities will occur between March 1 and June 30.

During the operation, stabilization measures will be implemented to minimize adverse effects such as turbidity curtains, earthen berms, and/or coir logs.

The NJDEP lead biologists for surveys will be notified of the dredging schedule.

This Federal Consistency is authorized pursuant to all parties following the guidelines set forth, and agreed upon, for the construction of the proposed project. Pursuant to 15 CFR 930.44, the Division reserves the right to object and request remedial action if this proposal is conducted in a manner, or is having an effect on, the coastal zone that is substantially different than originally proposed.

Thank you for your attention to and cooperation with New Jersey's Coastal Zone Management Program. If you have any questions regarding this determination, please do not hesitate to call Suzanne Biggins of our staff at (609) 292-2023 or via email at Suzanne.biggins@dep.nj.gov.

Colleen Keller, Assistant Director Division of Resource Protection Watershed and Land Management

Stinson, Lena [DEP]
Chasten, Monica A CIV USARMY CENAP (USA); Conlin, Barbara E CIV USARMY CENAP (USA)
Dovle, Erick (DEP); Golden, Glenn [DEP]; Castaldi, Tasha [DEP]
[Non-DoD Source] Maurice River Draft BA
Friday, October 14, 2022 3:02:30 PM
Blaurice River Draft EA Comments.docx

Cc: Subject: Date: Attachments:

Hi Monica and Barbara,

Attached are OCE's comments for the Maurice River Draft EA. Let me know if you have any questions or need anything else!

Thanks, Lena

Lena Stinson

Environmental Engineer

NJDEP - Division of Resilience Engineering & Construction

Office of Coastal Engineering 1510 Hooper Ave., Suite 140

Toms River, NJ 08753 Phone: (609) 414-0549 lena.stinson@dep.nj.gov

#### Maurice River Draft Environmental Assessment

#### NJDEP - OCE Comments

#### General questions/comments about placement:

- The executive summary describes a 20-acre impact for the first year placement and a 35-acre impact for two potential placement areas.
  - o Is the primary placement area 20 acres and secondary placement area 15 acres?
  - o Please call out both total areas in Figure 19.
- When filling the primary placement area at what point will the placement switch to the secondary placement area, is there a design elevation for each area?
  - If so, please include.
- Will the primary placement area always be filled first or in future placements will the area be determined based on priority?
- Section 7.0 states the second placement will occur in 1-2 years.
  - o Is this dependent on whether or not the channel needs to be dredged?
  - Will every periodic dredging moving forward place beneficial reuse in the Heislerville WMA northwest region?
- Is a planting plan proposed as part of the placement? Is it necessary to rebuild and bolster the intertidal mudflat?
- Please inform NJDEP-OCE & FWS prior to start of dredging.

#### Document Specific Comments:

- Section 1.4.2: Prior Nonfederal Actions
  - o 1997 Maurice River Dike
    - "Top elevation of the dike is 11.4 feet". OCE 1996 plans show the top elevation
      of the dike ranging from 4.7' to 11.4'. Please update.
    - "A toe width ranging from 12 to 35 feet". The top width of the dike was built to 12', therefore the toe width shouldn't also be 12'. OCE 1996 plans show a toe width of 35' max. Please update.
  - o 2018 Heislerville Dike Repair
    - The second to last sentence in this section appears to have a broken link. Please update.
- Section 3.4: Alternative 4
  - A reference is made to the turbidity curtain used in the Mordecai Island restoration. If referring to this please include a visual.
- Figure 19
  - o The notes, table, words and callouts in this figure are difficult to read. Please enlarge.
  - Please include the aerial year.
  - Please enlarge scale (& ensure accuracy).
  - MR10, 11, & 12 aren't described in the legend, please include & provide the core results.
- Section 4.1.5: Water Levels, Water and Sediment Quality

The placement design plan has been revised. Both the primary and secondary placement areas are 9 acres each. Revised figures have been added to the EA.

The deposition area during future placements will be designed by the monitoring team within the identified footprint prior to construction based on consolidation and adaptive management strategies.

Future channel maintenance dredging will be based on need and budgetary allowances. Placement of future dredged sediments will occur at either the primary or secondary location. NJDEP-OCE and FWS will be notified prior to dredging.

The final report has been corrected and a figure showing a turbidity curtain has been added. Figure 19 has been revised.

- o Please update the final EA with results from the 2022 sediment quality study.
- o Include a map with the locations of the soil samples, & the boring results.
- o In table 3 list the soil classifications by sediment size
- Section 6.0: Environmental Compliance
- Was this Draft EA provided to NJFWS?
- Section 7.0: Monitoring and Adaptive Management
  - o Can the surveys taken as part of monitoring be provided to OCE?
  - o What is the frequency and duration of the monitoring that will occur with this project?

The 2022 sediment and water quality results has been added to Appendix B of the final EA. The full chemistry report is available upon request. The NJDEP's Division of Fish and Wildlife has reviewed the report.

The draft EA was available for review by the NJFWS. Monitoring efforts have been added to the report. Surveys and monitoring results will be provided to OCE.

Wilson, Erin E. (DNREC)
Conlin, Barbara E. CIV USARMY CENAP (USA)
[Non-Dob Source] Re: USACE Naurice River Federal Navigation Channel and Beneficial Use of Dredged Material Subject:

Monday, October 31, 2022 3:30:27 PM

Outlook-0kwz5umr.png Outlook-3hlazfdy.png Outlook-Imygg4o.png

USACE Maurice River Navigation and Beneficial Use Project letter 2023.0003.pdf

Hi Barb,

The public comment period for this project has closed and no comments were received.

So far I have received the attached and below comments from DNREC subject matter experts:

Division of Fish and Wildlife

## Dredging

- anadromous species no dredging from March 1 June 30 to allow time for young of the year to grow large enough to be less vulnerable to habitat-altering activities and migrate out of the system
- horseshoe crabs no dredging from April 15 June 30 to avoid impacts to spawning horseshoe crabs

#### Placement

- Colonial waterbirds disturbance from this project may interrupt vial nesting activities such as egg incubation and protection/feeding of chicks. If the proposed project area or the adjacent areas support colonial waterbirds (e.g., herons, egrets, gulls and/or terns) or American oystercatcher (Haematopus palliates), no work should occur at this site from April 1 - September 15. Coordinate with NJ Fish and Wildlife to minimize impacts to these species.
- o Marsh nesting birds (including black rail) tidal wetland restoration activities, such as through the beneficial use of dredged material, can negatively affect marsh vegetation necessary for breeding marsh birds in the short-term, even if these activities aim to improve wetland condition in the long-term. Sediment application to the marsh surface, or associated construction activities, may also destroy marsh bird nests. Activity should not take place from April 1 - July 31. Coordinate with NJ Fish and Wildlife to minimize impacts to these species.
- Migratory shorebirds (including red knot) the Delaware Bay shoreline provides critically important habitat for migratory shorebirds, including the federally threatened red knot (Calidris canutus rufa). Red knot and other migrating shorebirds stop-over to acquire food resources, including horseshoe crab eggs, and gain weight to reach their optimum body condition before completing their migration to their Arctic nesting grounds. If migratory shorebirds are known to

No dredging or placement operations will occur between March 1 and June 30.

Dredging occurs in-water. Placement operations will occur in subtidal and intertidal areas.

Dredging and placement operations will not occur where marsh birds nest. NJDEP Division of Fish and Wildlife supports the proposed project.

Dredging and placement operations will not occur on the Delaware Bay shoreline.

occur in the project area, activities should not occur from April 15 - June 7 to avoid interrupting activity during this critical stage of their migration. Section 7 consultation with the U.S. Fish and Wildlife Service may be necessary. Coordinate with NJ Fish and Wildlife to minimize impacts to these species.

Please let me know if you have any questions or comments in response to this feedback,

Erin

#### Erin Wilson, CC-P Environmental Scientist, Delaware Coastal Programs Division of Climate, Coastal and Energy



J 302-739-9283 9 100 W. Water St., Ste. 7B, Dover, DE 19901

From: Wilson, Erin E. (DNREC)

Sent: Tuesday, October 18, 2022 2:03 PM

To: Conlin, Barbara E CIV USARMY CENAP (USA) <Barbara.E.Conlin@usace.army.mil>; Chasten, Monica A CIV USARMY CENAP (USA) < Monica.A.Chasten@usace.army.mil>

Cc: Biggins, Suzanne <suzanne.biggins@dep.nj.gov>; jeff.payne@noaa.gov <jeff.payne@noaa.gov> Subject: USACE Maurice River Federal Navigation Channel and Beneficial Use of Dredged Material

Thank you for providing the Delaware Coastal Management Program (DCMP) with the USACE federal consistency determination for the Maurice River Federal Navigation Channel and Beneficial Use of Dredged Material project, received on October 3, 2022. The DCMP is reviewing the activity per our NOAA-approved interstate consistency authority under 7 DE Admin. Code 2201, subsection 4.4.1.1.1.2.

Pursuant to 15 CFR 930, subpart I, we are required to notify the federal agency, the state in which the activity will occur, and the Director of NOAA of our intent to review this project within 30 days of receipt of the federal consistency determination.

This project began a 20-day public comment period on October 9, 2022. I will notify you if any comments are received.

Thank you,

Erin

Erin Wilson, CC-P

The 20-day public comment period closed with no public comments received.



# STATE OF DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY STATE STREET COMMONS 100 W. WATER STREET, SUITE 6A DOVER, DELAWARE 19904

PHONE (302) 739-9402

SECTION

October 10, 2022

Ms. Kimberly Cole DNREC Delaware Coastal Programs 100 W. Water St., Suite 7B Dover, Delaware 19904

RE: Federal Consistency Application Review for USACE Maurice River Navigation and Beneficial Use Project (2023.0003)

Dear Ms. Cole,

The Division of Air Quality (DAQ) appreciates the opportunity to comment on the air quality impacts of the USACE Maurice River Navigation and Beneficial Use Project (2023.0003) as provided by Delaware Coastal Management Program, dated October 9, 2022.

Based on the environmental information provided, the U.S. Army Corps of Engineers (USACE) proposes to conduct maintenance dredging in the lower Maurice River Federal Navigation Channel in the Maurice River Cove in Cumberland County, New Jersey to the authorized depth of 7 feet below mean lower low water with two feet of overdepth. Approximately 75,000 cubic yards of dredged material would be beneficially placed over approximately 20 acres of wetlands within the northwest reach of the Heislerville Wildlife Management Area. During the placement operation, stabilization measures will be implemented to minimize adverse effects to the environment, such as turbidity curtains, earthen berms, and/or coir logs. The initial sediment placement will be monitored to observe sediment properties and will inform the second placement operation. Subsequent placements of dredge material would serve to restore approximately 35 acres of saltmarsh and intertidal mudflat habitat that are degrading due to excessive flooding.

The site improvements are forecasted to have no significant impact on air quality. Project managers are advised to seek out and to comply with all Delaware Air Quality Regulations so as to not exceed air quality emission thresholds. To reduce emissions associated with the actual rehabilitation phase of each project, for example, DAQ recommends that retrofitted on road and non-road diesel engines be used. This includes equipment that is used on-site, as well as, equipment that is used to transport materials to and from the site.

No retrofitted on-road or non-road diesel engines will be used. An in-water dredge will access the project site.

Additionally, a federal action is defined in 7 DE Admin. Code 1135 as "any activity engaged in by a department, agency, or instrumentality of the Federal government, or any activity that a department, agency or instrumentality of the Federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.)." Federally funded projects require action and would, therefore, need to comply with 7 DE Administrative Code 1135. Please note that the following regulations in Table 1 – Potential Regulatory Requirements may apply:

Table 1: Potential Regulatory Requirements				
Regulation	Requirements			
7 DE Admin. Code 1106 - Particulate Emissions from Construction and Materials Handling	Use dust suppressants and measures to prevent transport of dust off-site from material stockpile, material movement, and use of unpaved roads.     Use covers on trucks that transport material to and from site to prevent visible emissions.			
7 DE Admin. Code 1135 – Conformity of General Federal Actions to the State Implementation Plan	Require, for any "federal action," a conformity determination for each pollutant where the total of direct and indirect emissions would equal or exceed any of the de minimus levels (See Section 3.2.1)			
7 DE Admin. Code 1145 – Excessive Idling of Heavy Duty Vehicles	Restrict idling time for vehicles having a gross vehicle weight of over 8,500 pounds to no more than three minutes.			

For a complete listing of all Delaware applicable regulations, please look at our website: <a href="http://regulations.delaware.gov/AdminCode/title7/1000/1100/index.shtml">http://regulations.delaware.gov/AdminCode/title7/1000/1100/index.shtml</a>. Should the applicant have any questions or comments, please contact DNREC DAQ staff - Deanna Cuccinello in the Dover office at (302) 739-9402.

Sincerely,

James Coverdale Environmental Program Manager

James Coverdale

No dust will be generated from the proposed activity.



# DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF CLIMATE, COASTAL AND ENERGY STATE STREET COMMONS 100 W. WATER STREET, SUITE 7B DOVER, DELAWARE 19904

PHONE (302) 739-9283

December 28, 2022

Barbara Conlin Philadelphia District Corps of Engineers 100 Penn Square East Philadelphia, PA 19107

RE: Delaware Coastal Management Program — Federal Consistency Determination Concurrence for USACE Maurice River Navigation and Beneficial Use (FC 2023.0003)

Dear Ms. Conlin.

COASTAL

**PROGRAMS** 

The Delaware Coastal Management Program (DCMP) of the Delaware Department of Natural Resources and Environmental Control (DNREC) has completed its review of the above referenced project, dated and received by this office on October 3, 2022. The review request was submitted on behalf of the U.S. Army Corps of Engineers (USACE), Philadelphia District. On December 15, 2022, the DCMP and USACE mutually agreed to extend the project deadline to December 30, 2022.

# PROPOSED ACTION

The USACE proposes to conduct hydraulic maintenance dredging in the lower Maurice River Federal Navigation Channel in Maurice River Cove, Cumberland County, New Jersey to the authorized depth of seven feet below mean lower low water with two feet of over-depth to remove critical shoaling in priority areas to maintain a safe and reliable navigation channel for commercial and recreational vessels. Currently, vessels transiting the river mouth are scraping bottom at high tide, which stirs up bottom sediments multiple times daily. To prevent further turbidity, the dredge cutterhead would not be engaged until resting on the bottom and would be shut down before being raised from the bottom. Dredging would not occur from March 1 to June 30 to minimize impacts to anadromous species.

Additionally, USACE proposes to beneficially use the dredged materials in an eroding and flooded marsh to create natural infrastructure, to provide added protection and resilience in an area adjacent to the Heislerville Dike, and to restore habitat in a degrading marsh in the northwest reach of the Heislerville Wildlife Management Area. Sediment placement would use a phased approach, with

The DNREC CZM Federal Consistency determination concurrence.

the initial operation utilizing a pipeline to pump approximately 75,000-100,000 cubic yards of dredged material into a flooded marsh area over approximately nine acres. The initial placement would be monitored to observe sediment properties and to inform subsequent placement operations after one or two years of approximately 25,000-50,000 cubic yards of material. Stabilization measures would be implemented to minimize adverse effects to the environment during the placement operation, such as turbidity curtains, earthen berms, hay bales, and/or coir logs.

A secondary placement area across Maurice River Cove from the primary placement area has been identified for sediment enrichment, which would utilize methods of spraying and spreading dredged material to distribute sediment across degraded marsh lost to erosion, creating a landscape of marsh elevation to intertidal shallows over approximately nine acres. The secondary placement area would be used if the primary placement area requires additional sediment consolidation time between maintenance dredging cycles. Either placement area would receive sediment enrichment in future maintenance dredging cycles.

Proposed monitoring and data collection plans would occur for a minimum of five years postplacement and include pre-placement data and imagery collection and sediment sampling, during placement time-lapse photography and turbidity and sediment settling monitoring, and postplacement surface elevation measurement, topographic and bathymetric data collection for a minimum of three years, and quantification of natural and nature-based features benefits for Heislerville Dike.

# FEDERAL CONSISTENCY UNDER THE COASTAL ZONE MANAGEMENT ACT

Pursuant to the Coastal Zone Management Act (CZMA) of 1972 administered by the National Oceanic and Atmospheric Administration (NOAA), as amended, each federal agency activity within or outside the coastal zone that can have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of the NOAA-approved state coastal management program. Under the CZMA implementing regulations, Federal Consistency with Approved Coastal Management Programs (15 CFR 930), subpart C, federal agencies are advised to provide state agencies with a consistency determination at the earliest practicable time in the planning or reassessment of an activity, and also before the federal agency reaches a significant point of decision-making in its review process. The term "consistent to the maximum extent practicable" in 15 CFR 930.32 means fully consistent with the enforceable policies of a management program unless full consistency is prohibited by existing law applicable to the federal agency.

In New Jersey, the DCMP has interstate consistency authority to review projects related to dredging, filling, mining, and excavation of 50,000 or more cubic yards of material, excluding beach nourishment projects, occurring below the high tide line of the Delaware River and Bay from Artificial Island to Cape May.

#### PUBLIC PARTICIPATION

In accordance with 15 CFR 930.42, the public was invited to participate in the review of the USACE Maurice River Navigation and Beneficial Use project. Public notice of this proposed action was published in the Delaware State News, The Wilmington News Journal, and DNREC public notices list service on October 9, 2022. The public was given 20 days to comment on this notice. No public comments were received in response to this notice.

#### FEDERAL CONSISTENCY ANALYSIS

The DNREC DCMP coordinates the review of consistency determinations with agencies administering the enforceable and advisory policies of the program. The following agencies participated in this review:

DNREC Division of Air Quality

DNREC Division of Fish and Wildlife

DNREC Division of Waste and Hazardous Substances

DNREC Division of Water, Wetlands and Waterways Section

DNREC Division of Watershed Stewardship

Department of State, State Historic Preservation Office

New Jersey Department of Environmental Protection

The proposed activity is to be implemented in a manner consistent with the enforceable policies of the DCMP under 7 DE Admin. Code 2201, Section 5.0 including but not limited to: 5.1 Wetlands Management, 5.3 Coastal Waters Management, 5.4 Subaqueous Lands and Coastal Strip Management, 5.11 Living Resources, and 5.20 Air Quality Management.

According to the information provided, the project is not likely to have significant impact on air quality. To reduce emissions associated with the rehabilitation phase of the project, Division of Air Quality recommends using retrofitted on-road and non-road diesel engines, including equipment that is used on site and equipment that is used to transport materials to and from the site.

Division of Fish and Wildlife recommends time of year restrictions for dredging activities from March 1 to June 30 to minimize impacts to anadromous species and from April 15 to June 30 to avoid impacts to horseshoe crabs during spawning season. Additionally, Division of Fish and Wildlife recommends time of year restrictions for material placement activities from April 1 to September 15 to minimize impacts to colonial waterbirds, from April 1 to July 31 to minimize impacts to marsh nesting birds, and from April 15 to June 7 to avoid interrupting migratory shorebirds if they are known to occur in the project area. Coordination with New Jersey Fish and Wildlife is recommended. Also, Section 7 consultation with U.S. Fish and Wildlife Service may be necessary if the project would impact federally threatened red knots (Calidris canutus rufa).

Divisions of Water and Watershed Stewardship noted that dredging should be suspended if water quality conditions deteriorate in the vicinity of dredging or the placement site until water quality conditions have improved.

## CONCURRENCE

Based on its review and pursuant to 15 CFR 930, the DCMP concurs that the USACE Maurice River Navigation and Beneficial Use project as proposed is consistent to the maximum extent practicable.

Pursuant to 15 CFR 930.46, USACE shall notify the DCMP of any proposed modifications to activities after receiving a decision from the DCMP. Modifications will be subject to supplemental federal consistency review if effects to any coastal use or resource will be substantially different than originally described.

Please be advised that this federal consistency review does not negate the need for other authorizations that may be required.

Thank you for the opportunity to evaluate this federal agency activity. If you have any questions, please contact me or Erin Wilson of my staff at (302) 739-9283.

Sincerely,

Kimberly B. Cole, Administrator Delaware Coastal Management Program

KBC/ew

cc: File FC 2023 0003
Deanna Morozowich, DNREC DAQ
Danielle Ellis, DNREC DFW
Davna Budinger, DNREC DWHS
Matthew Jones, DNREC DWS
Matthew Jones, DNREC DWS
Sarah Carr, DOS SPHO
Suzame Biggins, NJ DEP
Gary Nickerson, NJ DEP

The DCMP will be notified if any modifications to the project are proposed.



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

January 17, 2023

Peter R. Blum P.E. Chief, Planning Division U.S. Army Corps of Engineers, Philadelphia District Attn: Environmental Resources Branch CENAP-PL-E Wanamaker Bldg., 100 Penn Square East Philadelphia, PA 19107-3390

RE: Maurice River Federal Navigation Channel and Beneficial Use of Dredged Material, Cumberland County, New Jersey Draft Environmental Assessment

Dear Mr. Blum:

We have reviewed the Essential Fish Habitat (EFH) Assessment provided to us for the Maurice Channel and Maintenance Dredging and Beneficial Use of Dredged Material, Cumberland County, New Jersey developed by the U.S. Army Corps of Engineers (USACE), Philadelphia District (District). The standalone EFH assessment was provided to us in response to our October 25, 2022, technical assistance letter commenting on the Draft Environmental Assessment (draft EA) for the project. The EFH assessment evaluates the proposed maintenance dredging of the lower Maurice River Federal Navigation Channel in Maurice River Cove and beneficial placement of the dredged material for saltmarsh habitat restoration in the Heislerville Wildlife Management Area (WMA). According to the EFH assessment, approximately 75,000 - 100,000 cubic yards (CY) of sediment is anticipated to be dredged to 7 feet below mean lower low water (MLLW) with 2 feet overdepth between January and March 2023, and placed over 9-acres of marsh in an area adjacent to the Heislerville dike. A subsequent maintenance cycle, one to two years post initial placement and consolidation, is expected to dredge and place an additional 25,000 - 50,000 CY of sediment in a secondary 9-acre area of marsh.

In our previous letter, attached herein, we cited a number of missing mandatory components needed in order for us to initiate consultation under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Fish and Wildlife Coordination Act (FWCA). We specifically requested detailed information on the sediment placement at the Heislerville WMA including construction plans, materials and methods for construction, the alternatives considered for placement (including measures to avoid and minimize impacts to the aquatic environment), and a monitoring and adaptive management plan. We also provided a detailed list of questions and comments on the draft EA.

While we appreciate the submission of a standalone EFH assessment, which incorporates additional information on species and habitats affected, as well as a more robust impact assessment, we are still missing several necessary components originally requested. Specifically,



NMFS letter providing Conservation Recommendations, pursuant to the Magnuson Stevens Fishery Conservation and Management Act. USACE response letter is dated January 25, 2023.

we still have not been provided with detailed methods for construction, as well as accompanying construction/site plans, for the placement site. The monitoring plan provided also lacks detail (e.g., objectives, materials and methods, specific lessons learned). Additionally, it is unclear how or when our detailed comments on the draft EA will be incorporated into a subsequent document.

Similar to other recent consultation requests for the District, the proposed schedule for the project is concerning given the draft status of the EA and missing components of the EFH consultation. As mentioned in the EFH assessment, the first dredging and placement is scheduled to occur between January and March 2023, which is not sufficient time for us to provide any sort of meaningful review of the proposed placement/habitat restoration activities or for you to incorporate of our potential conservation recommendations into the project design and specifications.

#### Magnuson Stevens Fishery Conservation and Management Act

Your request for EFH consultation includes two maintenance dredging events in the lower Maurice River and two placements of dredged material at the Heislerville WMA over a 10-year period. We have reviewed the EFH assessment provided to us and while it appears that the effects of the dredging have been evaluated fully, the assessment does not fully evaluate the effects of the dredged material placement. In order for us to issue site-specific EFH conservation recommendations, we must be able to evaluate the direct, indirect, individual, and synergistic effects of a proposed action. Without the requested details on the placement of the dredged material, this cannot be accomplished. As a result, we are only able to consult with you on the two dredging events and the initial placement of material at the Heislerville WMA. Additional consultation with us is necessary for future dredged material placements. This will allow us to evaluate the results of the initial placement, its effects on EFH and other NOAA trust resources, and the effectiveness of the placement in achieving the goals of the project. With the information developed by monitoring and assessing the results of the initial placement, we will be able to provide site-specific EFH conservation recommendations to minimize adverse impacts to EFH while also improving the ecological value of the marsh to be restored. We recognize that the placement site is a NJ state wildlife management area. We expect that the Division of Fish and Wildlife would have developed a restoration plan with goals, objectives, performance measures and success criteria, as well as a plan to monitor the site as part of their responsibilities as land managers and stewards. This information should have been included in the EFH assessment.

As discussed in our previous letter, the lower Maurice River and surrounding creeks, marshes, and mudflats provide feeding, spawning, resting, nursery, and staging habitat for a variety of commercially, recreationally, and ecologically important species. EFH has been designated in the project area for a number of species such as Atlantic butterfish (Peprilus triacanthus), bluefish (Pomatomus saltatrix), black sea bass (Centropristis striata), scup (Stenotomus chrysops), summer flounder (Paralichthys dentatus), windowpane flounder (Scophthalmus aquosus), little skate (Leucoraja erinacea), and others. The project area is also designated EFH for several Atlantic highly migratory species including, but not limited to, sandbar shark (Carcharhinus plumbeus), smoothhound shark (complex; Atlantic stock), and sand tiger shark (Carcharias taurus). As previously mentioned, NOAA has listed the sand tiger shark as a Species of Concern. Additionally, the confluence of the Maurice River with Delaware Bay has also been designated as Habitat Areas of Particular Concern (HAPC) for sandbar shark. The Maurice River and

connected aquatic features are also important habitat for anadromous fish such as alewife (Alosa pseudoharengus), blueback herring (Alosa aestivalis), and American shad (Alosa sapidissima), which spend most of their lives at sea then migrate great distances to return to freshwater rivers to spawn. In addition, the Delaware Bay is also one of the most important areas for horseshoe crabs (Limulus polyphemus) in the world.

In our previous letter, we cited a number of important details necessary for us to fully evaluate the direct, indirect, individual, and synergistic effects of the proposed project on EFH and other NOAA trust resources. We continue to have concerns that a number of these details, summarized below, remain missing from the EFH assessment.

- A comprehensive description of the construction materials and methods, which includes when, where, and how the dredged material will be placed as well as how best management practices (BMPs) will be incorporated.
- Complete construction plans including cross sections that clearly depict current and proposed conditions, all special aquatic features, elevations, and proposed BMPs (i.e., containment measures).
- Specific lessons learned in design, construction, and monitoring from other wetland restoration projects and how they are being used to inform project design and construction.
- A complete monitoring and adaptive management plan that incorporates project/restoration goals and specific performance measures.

The EFH assessment provided some of the details requested, such as the intended equipment to be used for dredging and sediment placement (i.e., shallow draft hydraulic pipeline with a controlled outfall). However, except for the general locations of the dredging and placement site, the assessment does not include details on how the sediment would be placed and where. We appreciate that some BMPs have been incorporated into the project design, such as ensuring the cutterhead will only be activated once embedded in the sediment, and not while suspended in the water column. We also appreciate that the project schedule intends to avoid construction between March 1 and June 30 to be protective of anadromous fish migrating into the Maurice River. Some details, such as the use of a permanent turbidity curtain, require more explanation. For example, the EFH assessment references the use of a turbidity curtain similar to that of one used for the Mordecai Island restoration, which was permanently left in place. However, there was no information provided as to where the curtain is proposed, why this method is suggested, what impacts it will have on the aquatic environment, or any other details on its use or potential impact as suggested from the reference project. Additionally, there is mention of the potential use of coir logs, and/or hay bales, and earthen berms for containment, but it is not clear where these measures may be used.

The EFH assessment lacks a comprehensive set of construction plans and details. As we previously mentioned, plans should provide both existing and proposed habitats and plan design details at an appropriate scale. Plans should also clearly identify and summarize habitats that are anticipated to be permanently or temporarily disturbed, including where placement activities are intended to occur. While general maps of the placement locations have been provided and the project description mentions that you do not intend to place material above low marsh elevations

due to grain size, it remains unclear how much sediment will be placed and where as well as the existing and proposed elevations. The narrative also describes that placement of sediments will not exceed 3.5 feet NAVD88, but again without plans, it is unclear how this elevation relates to existing tide lines and habitats.

As we previously mentioned, we appreciate the science-based approach to construction and incorporation of lessons learned from previous restoration and beneficial use project successes and failures. However, the details of those referenced projects and the lessons learned in design, construction, and monitoring remain unclear. In order for us to understand and evaluate the effects of the proposed marsh restoration, we need to understand what lessons have been learned, what methods and techniques worked, what did not, and how these lessons are applicable to this project.

Lastly, while we appreciate the outline provided for the monitoring plan, the restoration goals for the project (e.g. target elevations/habitats) as well as the specific methods that will be used to inform performance measures and goals have not been clearly defined. It is also not clear if reference marshes will be used during monitoring, or if the proposed five years of post-placement monitoring is intended for each placement activity. Pre- and post-monitoring mention leveraging Seven Mile Island Innovation Lab monitoring, R&D efforts and lessons learned, but how and what will be leveraged has not been described. Additionally, there is no mention of when (i.e., time of year) or how often monitoring will occur, potential adaptive management measures that the project may require, or how the results of monitoring will be disseminated.

# **EFH Conservation Recommendations**

We have documented the inadequacies of the EFH assessment, a number of which were presented in our October 25, 2022, technical assistance letter. Typically, in cases where the EFH assessment is not complete, we either withhold issuing EFH conservation recommendations until a complete assessment is provided, or we base our recommendations on the available information. Based upon the information available, we recommend the following EFH conservation recommendations pursuant to Section 305(b)(4)(A) of the MSA, which are only applicable to the maintenance dredging and one, initial placement of material at the Heislerville WMA. Consultation must be initiated for any additional placement of dredged material at the site, or any other location.

- Continue to avoid dredging between March 1 and June 30, protective of migrating anadromous fish.
- Avoid dredging between April 1 and September 30 to minimize impacts to spawning and early life stage horseshoe crabs.
- Avoid dredging from May 1 through September 15 to minimize impacts to sandbar shark pupping and nursery HAPC.
- Coordinate with NJDEP Shellfisheries to ensure work proposed will not affect nearby shellfish leases adversely.
- 5. Any pipelines should be floating to avoid damage to existing mudflats and shellfish beds. In areas where the pipeline must cross these habitats, minimize anchor placement. Anchors should also be placed and removed/moved in a manner that minimizes turbidity and damage to any shellfish beds in the project area.

- Dredge only existing, legal channels that have been dredged before, and only to previously authorized depths.
- Prior to dredging and placement, provide us with construction details and plans as well as a complete monitoring and adaptive management plan for the placement of material at the Heislerville WMA.
  - Plans should incorporate all habitat details with elevations (both existing and proposed) as well as cross sections.
  - b. Provide supporting details from referenced projects/lessons learned.
  - Project goals and performance measures should be clearly presented to help inform materials and methods for monitoring.
  - d. Provide examples of adaptive management measures that may be employed and examples that may trigger adaptive management.
  - e. Provide us with copies of annual monitoring reports.

Please note that Section 305 (b)(4)(B) of the MSA requires that you provide us with a detailed written response to our EFH conservation recommendations, including the measures you have adopted to avoid, mitigate, or offset the impact of the project on EFH. In the case of a response that is inconsistent with NMFS' 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 effect pursuant to 50 CFR 600.920 (k). Please also note that 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 above EFH conservation recommendations.

#### Conclusion

As always, we are available to work collaboratively with you and other federal, state, and local agencies and stakeholders on the further development of a plan that identifies practicable solutions to achieving the project goals while minimizing adverse impacts to NOAA trust resources. We are also available to discuss data gaps, information needs, and the required EFH consultation materials with you or your staff if you have any questions about our comments. If you would like to discuss this matter further, please contact Jessie Murray at (732) 872-3116 or Jessie Murray@noaa.gov with our Habitat and Ecosystem Services Division.

Sincerely,

GREENE.KAREN Greene.KAREN.A.1365830785
M.1365830785
Date: 2023.01.1715:27:19

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

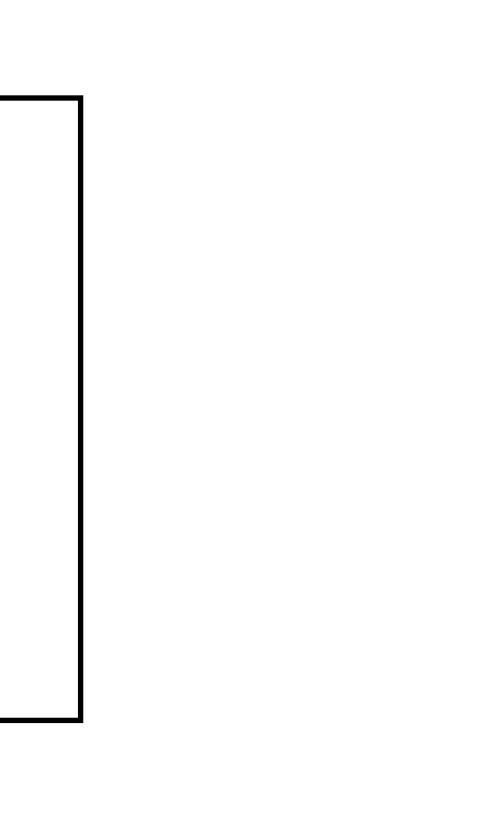
Attachment: October 25, 2022 Technical Assistance Letter

4

cc

Philadelphia District – B. Conlin, M. Chasten GARFO HESD – K. Greene GARFO PRD – M. Reilly, C. Vaccaro NJDEP – K. Davis, C. Keller, G, Nickerson FWS – E. Schrading EPA – M. Finocchiaro MAFMC – C. Moore NEFMC – T. Nies ASFMC – R. Beal

6





# United States Department of the Interior



FISH AND WILDLIFE SERVICE New Jersey Field Office 4 East Jimmie Leeds Road, Suite 4 Galloway, New Jersey 08205 (609) 646-9310

In Reply Refer To:

January 24, 2023

Peter Blum, Chief Planning Division Philadelphia District U.S. Army Corps of Engineers 100 Penn Square East Philadelphia, Pennsylvania 19107 Email: Monica.A.Chasten@usace.army.mil

Reference: Maurice River Federal Navigation Channel and Beneficial Use of Dredged Material Project in Cumberland County, New Jersey 2023-0035573

The U.S. Fish and Wildlife Service (Service) has reviewed the above-referenced proposed project pursuant to the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) (ESA) to ensure the protection of federally listed endangered and threatened species. The following comments do not address all Service concerns for fish and wildlife resources and do not preclude separate review and comment by the Service as afforded by other applicable environmental legislation.

A known occurrence or potential habitat for the following federally listed or proposed listed species is located on or near the project's action area. However, the Service concurs that the proposed project is not likely to adversely affect federally listed or proposed listed species for the reasons listed below.

Species	Basis for Determination
Eastern black rail (Laterallus jamaicensis jamaicensis), threatened and rufa red knot (Calidris camutus rufa), threatened	Several occurrences for foraging rufa red knot and Eastern black rail are in close proximity to the project action area. Tidal marsh habitat in the action area is currently degraded due to erosion. The project may benefit Eastern black rails by improving marsh habitat. Two areas along the Maurice River to beneficially use and place dredged materials were identified by the U.S. Army Corps of Engineers in an email from January 18, 2023. To minimize impacts of the proposed work, activities within the secondary beneficial use placement area will be seasonally restricted from April 1st to September 1st ovoid the Eastern black rail breeding window and rufa red knot spring migration.
	Activities within the more degraded beneficial use primary placement area will be seasonally restricted from April 1st to August

nltaa.doc 12/30/2022

USFWS concurrence letter citing that the proposed project is not likely to adversely affect federally listed or proposed listed species.

	31st, with any pumping activities before September 15st requiring a site assessment by the reviewing U.S Fish and Wildlife Service biologist within 6 hours or less before pumping is to begin.  Additionally, dredging activities impacting low marsh will not occur until after September 15st.  These timing restrictions cover rufa red knot foraging activities as
	well.
piping plover (Charadrius	No activities are proposed within suitable habitat for these species.
melodus), threatened	Thus, no effects are expected.
roseate tern (Sterna dougallii),	
endangered, northern long-eared	
bat (Myotis septentrionalis),	
endangered, American chaffseed	
(Schwalbea americana),	
endangered, sensitive joint-vetch	
(Aeschynomene virginica),	
threatened, and swamp pink	
(Helonias bullata), threatened	
Saltmarsh sparrow	Species present. This species is not required to be analyzed for ESA
(Ammodramus caudacutus),	Section 7 consultation at this time but is included to streamline
priority at-risk species	consultation should this species become listed in the future. The
· · · · · · · · · · · · · · · · · · ·	timing restriction displayed above covers saltmarsh sparrow habitat
	use in the area.

On July 5, 2022, the U.S. District Court of the Northern District of California vacated the 2019 regulations implementing section 7 of the Endangered Species Act (ESA). On September 21, 2022, the Ninth Circuit Court of Appeals granted a request to stay the U.S. District Court of the Northern District of California's July 5, 2022, order that vacated the 2019 ESA regulations. As a result, the 2019 regulations are again in effect, and the Service has relied upon the 2019 regulations in issuing our written concurrence on the action agency's 'may affect, not-likely-to-adversely-affect' determination. However, because the outcome of the legal challenges to the 2019 ESA regulations is still unknown, we considered whether our substantive analyses and conclusions would have been different if the pre-2019 regulations were applied in this informal consultation. Our analysis included the prior definition of "effects of the action." We considered all the "direct and indirect effects" and the "interrelated and interdependent activities" when determining the "effects of the action." We then considered whether any "effects of the action" that overlap with applicable ranges of listed species would be wholly beneficial, insignificant, or discountable to the species. As a result, we determined the substantive analysis and conclusions would have been the same, irrespective of which regulations applied.

Except for the above-mentioned species, no other federally listed or proposed threatened or endangered flora or fauna under Service jurisdiction are known to occur within the proposed project's impact area. Therefore, no further consultation pursuant to the ESA is required. If additional information on federally listed species becomes available, or if project plans change, this determination may be reconsidered.

2

Consultation will be re-initiated if additional information on federally listed species becomes available or project plans change.

Please refer to this office's web site at <a href="https://www.fws.gov/office/new-jersey-ecological-services/">https://www.fws.gov/office/new-jersey-ecological-services/</a> for further information including federally listed and candidate species lists, procedures for requesting ESA review, the National Bald Eagle Management Guidelines, and contacts for obtaining information from the New Jersey Natural Heritage and Endangered and Nongame Species Programs regarding State-listed and other species of concern.

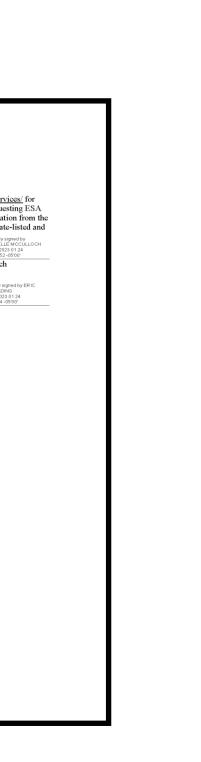
Reviewing Biologist:

DANIELLE Digitally signed by DANIELLE MCCULLOCH Date 2023 01 24 09:11-52-05'00'

Danielle McCulloch

Authorizing Supervisor: ERIC | Digitally signed by ERIC | SCHRADING | SCHRADING | SCHRADING | 1102 04-0500

Eric Schrading





#### DEPARTMENT OF THE ARMY

U.S. ARMY CORPS OF ENGINEERS, MARINE DESIGN CENTER
100 SOUTH INDEPENDENCE MALL WEST
PHILADELPHIA PA 19106-3400

January 25, 2023

**Environmental Resources Branch** 

Louis A. Chiarella Assistant Regional Administrator National Marine Fisheries Service Habitat and Ecosystems Services Division James J. Howard Marine Sciences Laboratory 74 Magruder Road Highlands New Jersey 07732

Dear Mr. Chiarella:

The U.S. Army Corps of Engineers (USACE), Philadelphia District has received your letter dated January 17, 2023 providing conservation recommendations (CRs) for the proposed maintenance dredging of the Maurice River Federal Navigation Channel and Beneficial Use of Dredged Material, Cumberland County, New Jersey. The project proposes to dredge approximately 75,000 - 100,000 cubic yards (CY) of sediment from the Federally authorized Maurice River navigation entrance channel to 7 feet below mean lower low water (MLLW) with 2 feet overdepth for the initial construction. The dredged sediments will be pumped into two 9-acre placement areas within a flooded marsh of the Heislerville Wildlife Management Area (WMA). The placement areas will be monitored for consolidation and a secondary dredging and placement operation for approximately 25,000 – 50,000 CY of sediment may occur in 1-3 years. The objective of beneficial placement of the channel maintenance dredged material is sediment enrichment within a flooded (former) and degrading marsh area. This is not a habitat restoration project.

In accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) of 1996, the proposed action was evaluated with respect to its potential direct, indirect, and cumulative effects on Essential Fish Habitat (EFH). A draft Environmental Assessment (EA) was provided to you on September 15, 2022 and a stand-alone EFH assessment was provided to your office on November 18, 2022. After a review of the species designated for the Maurice River/Delaware Bay project area, we concluded that this project is not likely to adversely affect EFH. Section 305 (b)(4)(B) of the MSA requires that we provide a written response to your EFH CRs, applicable to the initial maintenance dredging operation and one subsequent maintenance dredging operation, including a one-time incremental addition of channel sediments within the Heislerville WMA.

CR1. Continue to avoid dredging between March 1 and June 30, protective of migrating anadromous fish.

No dredging or dredged material placement will occur between March 1 and June 30 of any given year

USACE response letter to NMFS letter dated January 17, 2022.

CR2. Avoid dredging between April 1 and September 30 to minimize impacts to spawning and early life stage horseshoe crabs.

The dredging and beneficial use placement operation for this project requires a minimum 6-month dredging period for successful completion. Dredging operations typically require a longer dredging period when they occur over fall and winter seasons due to inclement weather conditions (i.e., storms, ice) which pose severe safety risks to crew for beneficial use placements and slow down production. USACE will accommodate the CR to the maximum extent possible by delaying the proposed dredging start. Depending on availability of the contract dredge however, the operations may begin in early September in order to meet the March 1 time-of-year restriction. Horseshoe crabs seek out sandy beaches during their reproductive season (May/June). The eggs are laid on coastal beaches which are not abundant in the project vicinity. The likelihood of horseshoe crabs occurring in the nearshore dredging or placement area in the fall is low as both adults as well as juveniles after hatching migrate offshore to deeper waters in the bay and ocean to feed over winter (Swan, 2005).

CR3. Avoid dredging from May 1 through September 15 to minimize impacts to sandbar shark pupping and nursery HAPC.

As noted above, in order to have sufficient time to accomplish the required dredging and placement, mobilization of the dredging operation will need to begin in early September. Although the Delaware Bay is designated as HAPC for sandbar shark, numerous studies conducted within the Delaware Bay note that neonates and juvenile sandbar sharks migrate to warmer waters beginning in the fall, after spending the summer months in the Delaware bay (Rechiskey and Wetherbee, 2003; Springer, 1960). Tagging studies by Mercer and Pratt (2001) found that sandbar sharks primarily use the southwestern portions of the bay as pupping grounds which is not near the project area. Juveniles feed in the Delaware Bay during the summer months. In order to minimize turbidity within the surrounding waters within Maurice River cove and adjacent Delaware Bay, the EA and EFH assessment noted that stabilization measures will be implemented to minimize adverse effects and include the use of turbidity curtains, earthen berms and/or coir logs. Adult sharks occupy the central deeper waters within the bay during the summer months and migrate out of the bay after their reproductive season. Initiating dredging operations in September will allow for neonates to develop over several months into larger juveniles with greater swimming capability to avoid the activity area and migrate out into deeper waters in the fall.

CR4. Coordinate with NJDEP Shellfisheries to ensure work proposed will not affect nearby shellfish leases adversely.

The USACE coordinated with the NJDEP Bureau of Shellfisheries during the draft EA review phase. The Bureau noted that although the proposed channel dredging is near known oyster populations, the Bureau concluded that the proposed work will not affect nearby shellfish resources adversely. Tidal and wind-generated currents within Maurice River cove will dissipate dredging-induced water turbidity rapidly. The flooded marsh system within the proposed placement area is subject to high turbidity due to chronic erosive forces occurring. Several studies have demonstrated that shellfish are capable

of withstanding elevated turbidity levels for short time periods with no significant metabolic consequences or mortality (Wilbur and Clarke, 2001; Norkko et al., 2006). The U.S. EPA estimates 70-90% of the Delaware Estuary's fish and shellfish depend on healthy wetland habitats. The objective of the proposed sediment placement within the flooded marsh area is to support marsh viability by adding elevation incrementally.

CR5. Any pipelines should be floating to avoid damage to existing mudflats and shellfish beds. In areas where the pipeline must cross these habitats, minimize anchor placement. Anchors should also be placed and removed/moved in a manner that minimizes turbidity and damage to any shellfish beds in the project area.

The pipeline will be floated and will enter the placement area from the Heislerville dike. Anchors will be placed and removed in a manner that minimizes turbidity and potential damage to the substrate.

CR6. Dredge only existing, legal channels that have been dredged before, and only to previously authorized depths.

Dredging is proposed to occur only within the defined boundaries of the Federally authorized channel. Only approximately 11,500 linear feet of the 24 miles of authorized Maurice River Navigation Channel will be dredged.

CR7. Prior to dredging and placement, provide us with construction details and plans as well as a complete monitoring and adaptive management plan for the placement of material at the Heislerville WMA.

- a. Plans should incorporate all habitat details with elevations (both existing and proposed) as well as cross sections.
- b. Provide supporting details from referenced projects/lessons learned.
- c. Project goals and performance measures should be clearly presented to help inform materials and methods for monitoring.
- d. Provide examples of adaptive management measures that may be employed and examples that may trigger adaptive management.
- e. Provide us with copies of annual monitoring reports.

Upon their completion and prior to initiation of dredging, plan drawings will be submitted to your office. The construction operation and monitoring plan are described in the EA and stand-alone EFH Assessment. Construction entails the use of a hydraulic dredge and pipeline placement of the dredged slurry. These two reports also address the following:

- The stabilization measures that will be implemented to minimize adverse effects
  of turbidity flow (e.g. turbidity curtains, earthen berms and/or coir logs).
- Adaptive management will occur on-site during the operation and include the above-mentioned stabilization methods and evaluation of the placement site prior to a future placement operation to determine if a longer consolidation period is recommended.
- The project goal is to beneficially use the dredged channel sediments in a degraded (flooded) marsh area to augment elevation and provide enhanced storm protection to the Heislerville dike within the Heislerville WMA.

3

- Lessons learned during a previous BU project at Gull Island have provided guidance for implementation of the proposed Maurice River dredging and BU placement operation, as cited by Fall et al., 2022; Chasten et al., 2022.
- The placement area will be monitored before, during, and after construction to document substrate elevations to inform future adaptive management needs.
- · Monitoring reports will be provided to you upon availability.

Pursuant to 50 CRF 600.920(j), EFH consultation will be reinitiated if any new information becomes available or if the project is revised in such a manner that affects the basis for the EFH conservation recommendations. The USACE Philadelphia District is committed to continuing to work closely with Federal and State resource agencies, prior to and during project construction. If you have any further questions regarding this project, please contact Ms. Barbara Conlin of the Environmental Resources Branch at (215) 656-6557, email <a href="mailto:Barbara.E.Conlin@usace.army.mil">Barbara.E.Conlin@usace.army.mil</a> or Ms. Monica Chasten of the Operations Division at (215) 656-6683, email <a href="Monica.A.Chasten@usace.army.mil">Monica.A.Chasten@usace.army.mil</a>.

Sincerely,

LEARY.ADRIAN.138 Digitally signed by LEARY.ADRIAN.1384973384 Date: 2023.01.25 18:45:20 -0500\*

FOR Peter R. Blum, P.E. Chief, Planning Division

Cc:
GARFO HESD - Jessie Murray, Karen Greene
GARFO PRD - M. Reilly, C. Vaccaro
NJDEP - K. Davis, C. Keller, G, Nickerson
FWS - E. Schrading, D. McCulloch
EPA - M. Finocchiaro
MAFMC - C. Moore
NEFMC - T. Nies
ASFMC - R. Beal

4

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HPO Project # 22-1643-4 HPO-C2023-019



# DEPARTMENT OF THE ARMY U.S. ARMY CORPS OF ENGINEERS, MARINE DESIGN CENTER 100 SOUTH INDEPENDENCE MALL WEST PHILADELPHIA PA 19106-3400

**Environmental Resources Branch** 

February 1, 2023

Katherine Marcopul, PhD.
Deputy State Historic Preservation Officer
Mail Code 501-04B
State of New Jersey
Department of Environmental Protection
Historic Preservation Office
P.O. Box 420
Trenton, NJ 08625-0420

Dear Dr., Marcopul:

The U.S. Army Corps of Engineers, Philadelphia District (USACE) prepared a draft Environmental Assessment (EA) titled: *Draft Environmental Assessment, Maurice River Federal Navigation Channel and Beneficial Use of Dredged Material, Cumberland County, New Jersey.* A letter to you dated September 15, 2022, provided a link to a USACE website for accessing the draft report.

This letter serves to notify you that the proposed maintenance dredging and beneficial use placement of the dredged material plan has been slightly modified to reduce the size of the placement areas from 35 acres to 18 acres and the operation has been delayed from December 2022 to September 2023. These changes will be presented in the final EA.

The objective of this effort remains the same: to maintain safe navigable depths within the authorized lower channel in Maurice River cove for commercial and recreational vessels and to beneficially use the dredged material to keep the sediments within the natural system to provide sediment enrichment of a degraded (flooded) saltmarsh within the Heislerville Wildlife Management Area (WMA). The first-year placement operation will hydraulically dredge approximately 75,000-100,000 cubic yards from the lower channel between stations 1+500 to 13+000 and the in-water work is expected to take a minimum of about 12 weeks. The dredged material slurry will be pumped into either the primary or secondary placement areas (Figure 1).

In a second maintenance cycle in 1-3 years, an additional 25,000-50,000 cy is anticipated to be dredged between stations 1+500 to 13+000, where needed, to the authorized depth of 7 ft MLLW with 2 ft allowable over-depth. Additional future maintenance dredging cycles will occur as needed, pending surveying and funding. The initial dredging operation will employ a hydraulic pipeline dredge and

Second letter to NJ SHPO requesting concurrence with the USACE "no effect" determination.

HPO Project # 22-1643-4 HPO-C2023-019

2

will occur within a September to February environmental window.

The EA report presents the alternatives analyses, recommended plan, and an evaluation of potential impacts to the affected environment. Monitoring of placement operations will be conducted, and lessons learned will inform the design and construction of future placements within the Heislerville WMA.

The Area of Potential Effect (APE) currently includes maintenance dredging of the lowermost portion of the Maurice River Federal Navigation channel between stations 1+500 and 13+000 in Maurice River cove and the placement of the sediments on an eroding natural system in two areas within the northwest reach of the Heislerville Wildlife Management Area adjacent to the Heislerville Dike.

The Maurice River Federal Navigation Channel has been authorized to a depth of 7 ft MLLW with 2 ft allowable overdepth. This portion of the APE has been previously dredged and will not impact historic properties since it will not be impacting any previously undisturbed areas. The two areas selected for sediment placement have been eroding steadily since the 1950s. Although these two areas are close to the archaeology sensitivity grid, there are no recorded historic properties. The deposition of sediment in this area would only serve to stabilize. cover, and protect if any archaeological resources are within these areas. Therefore, USACE has determined that the proposed action will have No Effect on historic properties eligible for or listed on the National Register of Historic Places pursuant to 36CFR800.4(d)(1).

We request your review of the EA and your concurrence with our No Effect determination. If you have any questions or comments please contact our District Cultural Resource Specialist, Nikki Minnichbach via email at nicole.c.minnichbach@usace.army.mil or by phone at 215-656-6556. Thank you for your participation in the Section 106 review process.

Sincerely,

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LEARY.ADRIAN.1384973384 Date: 2023.02.01 22:18:58 -05'00'

FOR Peter R. Blum, P.E. Chief, Planning Division

I concur with your finding that there are no historic properties affected within the project's area of potential effects. Consequently, pursuant to 36 CFR 800.4(d)(1), no further Section 106 consultation is required unless additional resources are discovered during project implementation pursuant to 36 CFR 800.13.

Katherine J Marcopul
Katherine J Marcopul 3/3/2023 Deputy State Historic Preservation Officer

2



Figure 1. Maurice River Federal Navigation Channel and Beneficial Use of Dredged Material, Cumberland County, New Jersey



February 3, 2023

Peter R. Blum P.E. Chief, Planning Division U.S. Army Corps of Engineers, Philadelphia District Attn: Environmental Resources Branch CENAP-PL-E Wanamaker Bldg., 100 Penn Square East Philadelphia, PA 19107-3390

RE: Maurice River Federal Navigation Channel and Beneficial Use of Dredged Material, Cumberland County, New Jersey Draft Environmental Assessment

Dear Mr. Blum:

We have reviewed your January 25, 2023, response to our Essential Fish Habitat (EFH) conservation recommendations (CRs) for the proposed for the Maurice Channel and Maintenance Dredging and Beneficial Use of Dredged Material, Cumberland County, New Jersey developed by the U.S. Army Corps of Engineers (USACE), Philadelphia District (District). The project includes maintenance dredging of the lower Maurice River Federal Navigation Channel in Maurice River Cove and beneficial placement of the dredged material for saltmarsh habitat restoration in the Heislerville Wildlife Management Area (WMA). This project proposes to enrich a degraded (i.e., flooded) marsh by placing sediment in two 9-acre areas of shallow benthic habitat.

We have reviewed the responses to our EFH CRs provided and appreciate the efforts you and your staff have made to address our concerns. However, some of the responses appear inconsistent with the CRs or omit important elements provided in the recommendations. Additionally, we want to reiterate that the CRs provided are only applicable to the maintenance dredging and a single placement event of material at the Heislerville WMA. Consultation must be initiated for any additional placement of dredged material at the site, or any other location because sufficient information is not available for the direct, indirect, individual, or synergistic effects of the proposed placement to be evaluated. As a result, we cannot provide EFH CRs for that action at this time. Additionally, while not presented as a CR, we requested how or when our detailed comments on the draft EA will be incorporated into a subsequent document. It remains unclear how our comments will be incorporated into the final EA and when that document will be distributed.

# Corps Responses to our EFH CRs

In our letter, dated January 17, 2023, we provided your staff with seven (7) EFH CRs pursuant to Section 305 (b)(4)(A) of the Magnuson Stevens Act to avoid, minimize, or otherwise offset adverse impacts to EFH and federally managed species:



Consultation will be re-initiated for any subsequent placements.

All agency comments received have been addressed in the final report.

- Continue to avoid dredging between March 1 and June 30, protective of migrating anadromous fish.
- Avoid dredging between April 1 and September 30 to minimize impacts to spawning and early life stage horseshoe crabs.
- Avoid dredging from May 1 through September 15 to minimize impacts to sandbar shark pupping and nursery HAPC.
- Coordinate with NJDEP Shellfisheries to ensure work proposed will not affect nearby shellfish leases adversely.
- 5) Any pipelines should be floating to avoid damage to existing mudflats and shellfish beds. In areas where the pipeline must cross these habitats, minimize anchor placement. Anchors should also be placed and removed/moved in a manner that minimizes turbidity and damage to any shellfish beds in the project area.
- Dredge only existing, legal channels that have been dredged before, and only to previously authorized depths.
- 7) Prior to dredging and placement, provide us with construction details and plans as well as a complete monitoring and adaptive management plan for the placement of material at the Heislerville WMA.
  - a) Plans should incorporate all habitat details with elevations (both existing and proposed) as well as cross sections.
  - b) Provide supporting details from referenced projects/lessons learned.
  - Project goals and performance measures should be clearly presented to help inform materials and methods for monitoring.
  - d) Provide examples of adaptive management measures that may be employed and examples that may trigger adaptive management.
  - e) Provide us with copies of annual monitoring reports.

In your response letter, you indicated that EFH CRs numbered 1, 4, 5, and 6 either have been addressed or will be incorporated into the project. CRs 2, 3, and 7 will also be incorporated, but with caveats. We appreciate the efforts you and your staff have made to address our concerns. However, the responses for CRs 2, 3, and 7 appear inconsistent with the CRs or omit important elements provided in the recommendations. The responses to both CRs 2 and 3 are that USACE will accommodate the CRs "to the maximum extent possible," but may require operations begin prior to the end of the recommended seasonal restrictions for both horseshoe crabs and sandbar sharks depending on the availability of the contract dredge. We appreciate that the project has been designed with a construction schedule that incorporates a safety buffer for inclement weather and a strict adherence to CR1 seasonal restrictions. Should construction be necessary within the recommended seasonal windows for horseshoe crab and sandbar shark due to dredge availability, we encourage sequencing dredging as practicable (i.e., dredging the innermost areas first).

The response to CR7 appears to partially incorporate our recommendations, such as confirming that finalized plan drawings and annual monitoring reports will be provided to us. However, it remains unclear if the construction plans will incorporate the remaining requested information (i.e., habitat details, elevations, location of stabilization methods, and cross sections). The response also describes how other elements, such as the construction operation and monitoring plan described in the EA and EFH assessment address elements of CR7. However as discussed in

2

USACE will coordinate with the dredging contractor to avoid recommended seasonal restrictions and consider north to south.

Final design plans include all required details.

our previous comments, the information in these documents was not sufficient for us to evaluate the effects of the placement of dredged material on EFH and other NOAA trust resources. Further, it is unclear how or when our detailed comments on the draft EA will be incorporated into a subsequent (and assuming final) document. From our initial review of the draft EA and standalone EFH assessment, elements related specifically to when, where, and how the dredged material will be placed were unclear. Additionally, measures such as the use of a permanent turbidity curtain continue to require more explanation. While citations were provided for lessons learned on a previous project, the physical documents and specific lessons learned were not provided or explained. A similar reference document and explanation remained missing for the use of a turbidity curtain similar to that of one used for the Mordecai Island restoration. We have consistently stated that we support a science-based approach that facilitates learning, but have not yet been provided the science and information referenced from other projects, such as the Mordecai Island project or the Seven Mile Island Innovation Laboratory so we are able to understand the basis of your project (and future projects). Therefore, we continue to request that you provide us with the physical documents.

Additionally, we still have not been provided with sufficient details incorporated into a single monitoring and adaptive management plan, as requested. The response provided to CR7 states that the goal of the project is to "beneficially use the dredged channel sediments in a degraded (flooded) marsh area to augment elevation and provide enhanced storm protection to the Heislerville dike within the Heislerville WMA." However, there is no reference to target elevations/habitats to be achieved and there are no performance measures. Your response also mentions this is not a restoration project, and while there are no planting elements included, the project goal is to augment elevations in degraded marsh using a science-based approach. This statement is not consistent with the information in the draft EFH which states that, "the preferred alternative plan entails placing dredged channel sediments to 1) create natural infrastructure in an eroding flooded marsh to provide added protection and resilience in an area adjacent to the Heislerville dike; and 2) restore habitat in a rapidly degrading (flooded) marsh in the Northwest Reach of the Heislerville Wildlife Management Area." Even if the intent of the dredged material placement is just to augment elevations in the existing marsh, the same monitoring and adaptive management requirements are necessary so we may learn from the results of the sediment placement (i.e., the science-based approach). As such, we encourage you to continue to work with us on developing formal and complete monitoring and adaptive management plans. These plans should be transferable to other projects to support the science-based approach to beneficial use of dredged material. This includes incorporating specific details on methods (i.e., time of year, how often, events that trigger adaptive management, how results will be disseminated) so this project may not only inform future placements but help streamline future beneficial use project reviews as we all learn together.

#### Conclusion

As mentioned, we appreciate that you have adopted our EFH CRs 1, 4, 5, and 6 and continue to recommend that all details requested in CRs 2, 3, and 7 are incorporated as well. While we do not intend to seek higher level review of your decision on this project, our intent is to draw proactive attention the importance of providing details for monitoring with the intention of not only disseminating lessons learned but for streamlining future project reviews for similar

3

All comments received from the natural resource agencies have been evaluated and incorporated into the final report where appropriate.

No permanent turbidity curtain is included in the plan.

Lessons learned are described in the cited reference Fall *et al.*, 2022.

The monitoring plan outline is included in Section 7 of the final report.

The draft report has been revised in preparation of the final EA report.

All results of the monitoring efforts will be provided to NMFS once available.

beneficial use projects. In addition, please note that 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. As mentioned, the CRs provided are only applicable to the maintenance dredging and a single placement event of material at the Heislerville WMA. Additionally, while not presented as a CR, we request that the final EA be provided to us upon completion.

Thank you for the opportunity to provide these comments. Should you have any additional questions or comments, please call Jessie Murray at (732) 872-3116 or by e-mail (jessie.murray@noaa.gov).

## Sincerely,

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cc:
Philadelphia District – B. Conlin, M. Chasten
GARFO PRD – M. Reilly, C. Vaccaro
NJDEP – K. Davis, C. Keller, G, Nickerson
FWS – E. Schrading
EPA – M. Finocchiaro
MAFMC – C. Moore
NEFMC – T. Nies
ASFMC – R. Beal

4

Both the draft and final EA reports and appendices are posted to the USACE webpage.