



**US Army Corps
of Engineers**
Philadelphia District

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Philadelphia, PA 19107-3390
ATTN: CENAP-OP-R

Public Notice

Public Notice No. CENAP-OP-R-2016-180	Date July 21, 2017
Application No. CENAP-OP-R-2016-180	File No. CENAP-OP-R-2016-180-85
In Reply Refer to: REGULATORY BRANCH	

Reference is made to an application for a Department of the Army permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344), submitted by GHD, Inc. on behalf of the City of Rehoboth to install a wastewater outfall pipeline and diffuser via directional drilling and mechanical or hydraulic dredging in the Atlantic Ocean east of Deauville Beach, Rehoboth Beach, Sussex County, Delaware. The purpose of this notice is to respond to comments from the general public in response to our public notice for this application issued on September 2, 2016.

After a complete review of the permit application and in full consideration of the comments and recommendations received in response to our public notice, we have decided to issue a Department of the Army permit to the City of Rehoboth. No objections to the issuance of this permit were received from State, local and other Federal resource agencies (Delaware Department of Natural Resources and Environmental Control (DDNREC), Environmental Protection Agency (EPA), Fish and Wildlife Service, and the National Marine Fisheries Service (NMFS)) concerning the effects of the proposed work on resources within their jurisdictions.

The main concerns expressed in public comments received were water quality impacts from the discharge of the effluent into the receiving waters. The Corps legal authority is limited to regulating discharges of dredged or fill material into waters of the United States and structures or work in navigable waters of the United States, under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899, respectively. The Corps does not have the authority to regulate the operation of the wastewater outfall, and we do not have the authority to address violations of water quality standards as they pertain to the effluent quality. Section 402 of the Clean Water Act, administered by the DDNREC on behalf of the EPA, regulates the effluent standards.

Additionally, concerns were expressed that the alternatives to the ocean outfall were not analyzed thoroughly in the final Environmental Impact Statement (EIS) dated December 2012. The ocean outfall alternative achieves the project purpose and goal of the consent order (Civil Action Number 98C-12-023-THG) and eliminates nutrient inputs into the inland bays, while the other alternatives fail to eliminate nutrient inputs, thus not meeting the project purpose. The ocean outfall alternative is the least environmentally damaging practicable alternative.

Some commenters expressed concerns for federally protected threatened and endangered species within the project area. Section 7 of the Endangered Species Act (ESA) requires federal agencies to ensure their activities are not likely to jeopardize the continued existence of listed species or adversely modify designated critical habitats. Based on the endangered species maps

and information provided by NOAA's Protected Resource Division, the following species have been found within the project action area:

Whales

Humpback Whale (*Megaptera novaeangliae*)(35 FR 18319; Recovery plan: NMFS 1991)
North Atlantic Right Whale (*Dermochelys coriacea*)(73 FR 12024; Recovery plan: NMFS 2005)
Fin Whale (*Balaenoptera physalus*)(35 FR 18319; Recovery plan: NMFS 2010)

Fish

Atlantic Sturgeon (*Acipenser oxyrinchus oxyrinchus*)(77 FR 5880 and 77 FR 5914)
Shortnose Sturgeon (*Acipenser brevirostrum*)(32 FR 4001; Recovery plan: NMFS 1998)

Sea Turtles

Kemp's Ridley Turtle (*Lepidochelys kempii*)(35 FR 18319; Recovery plan: NMFS *et al.* 2011)
Leatherback Turtle (*Dermochelys coriacea*)(35 FR 849; Recovery plan: NMFS & USFWS 1992)
Loggerhead Turtle (*Caretta caretta*)(76 FR 58868; Recovery plan: NMFS & USFWS 2008)
Green Turtle (*Chelonia mydas*)(81 FR 20057; Recovery plan: NMFS & USFWS 1991)

In compliance with section 7 of the ESA, the Corps formally requested concurrence on June 10, 2016 that the project impacts to threatened and endangered species will be insignificant and/or discountable. On June 27, 2016 the NMFS concurred with our findings that the project is not likely to adversely affect the NMFS, ESA-listed species.

Some commenters expressed concerns for Essential Fish Habitat (EFH). The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act 1996 (Public Law 104-267), requires all Federal agencies to consult with the NMFS on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect EFH. The NMFS concurred with our findings on January 5, 2017 that the project may adversely affect EFH, however, those affects would not be substantial and temporary in nature. Conservation recommendations by the NMFS were added as special conditions.

The Corps finds that the project would not have unacceptable environmental or social effects, nor would it be contrary to the public interest.

If you should have any questions regarding this matter, please contact Michael D. Yost at (302) 736-9763, by e-mail at michael.d.yost@usace.army.mil or write to the above address.



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Chief, Regulatory Branch