



United States Department of the Interior



In Reply Refer to:

2007-F-0380

FISH AND WILDLIFE SERVICE

New Jersey Field Office

Ecological Services

927 North Main Street, Building D

Pleasantville, New Jersey 08232

Tel: 609/646 9310

Fax: 609/646 0352

<http://www.fws.gov/northeast/njfieldoffice>

FEB 27 2007

Minas M. Arabatzis, Chief
Planning Division
Philadelphia District
U.S. Army Corps of Engineers
100 Penn Square East
Philadelphia, Pennsylvania 19107-3390

Dear Mr. Arabatzis:

This letter documents formal consultation for beach nourishment activities conducted by the U.S. Army Corps of Engineers, Philadelphia District (Corps) within the Cape May Inlet – Lower Township project area, from the U.S. Coast Guard (USCG) Training Center to Wilmington Avenue of Cape May City (Cape May), Cape May County, New Jersey. This project constitutes a Tier 2 individual project under the U.S. Fish and Wildlife Service's (Service) December 2005 Tier 1 Programmatic Biological Opinion on the effects of federal beach nourishment, renourishment, stabilization, and restoration activities along the Atlantic Coast of New Jersey within the Corps' Philadelphia District on the federally listed (threatened) piping plover (*Charadrius melodus*) and seabeach amaranth (*Amaranthus pumilus*). This Tier 2 (streamlined) consultation covers only this Cape May renourishment event from the USCG Training Center to Wilmington Avenue (October 1, 2006 to March 1, 2007) and potential impacts to federally listed species that may occur prior to any subsequent renourishment events. Subsequent renourishment events will be considered separate federal actions and will require individual Tier 2 consultations.

AUTHORITY

This response is provided 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 endangered and threatened species and does not address all Service concerns for fish and wildlife resources. These comments do not preclude separate review and comment by the Service directed to the Corps via the Fish and Wildlife Coordination Act (48 Stat. 401; 16 U.S.C. 661 *et seq.*) for any permits required pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*); or comments on any forthcoming environmental documents pursuant to the National Environmental Policy Act of 1969 (83 Stat. 852, as amended; 42 U.S.C. 4321 *et seq.*).

CONSULTATION HISTORY

- January 31, 2007 The Service received the Corps' January 26, 2007 letter requesting initiation of streamlined (Tier 2) formal consultation for the federal beach renourishment of Cape May Inlet – Lower Township pursuant to the December 2005 Tier 1 Programmatic Biological Opinion.
- February 2007 The Service and the Corps coordinated via electronic mail and telephone to exchange additional information.

PROJECT DESCRIPTION

Renourishment of the project is scheduled to begin after October 1, 2006 and conclude prior to March 1, 2007. Approximately 250,000 cubic yards of material will be placed on the USCG Training Center beach between Cape May Inlet and Wilmington Avenue of Cape May City on approximately 3.6 linear miles of oceanfront beach. The renourishment activities will replace sand to return the beach profile to the design criteria of a berm at an elevation of +6.7 feet NAVD with a variable width of 25 to 180 feet. Sand will be obtained from two borrow areas offshore of Cape May City and supplemented with material from the Cape May Inlet. While sand from the Cape May Inlet has not been used on this beach in the past, the sand is compatible (*i.e.*, 90 percent or greater clean sand fill material) with the existing beach and will not negatively impact piping plovers or seabeach amaranth. Re-nourishment of the project area is anticipated on a 2-year cycle.

ADHERANCE TO MEASURES TO MINIMIZE IMPACTS TO FEDERALLY LISTED SPECIES

Relevant conservation measures proposed by the Corps for protection of federally listed species and reasonable and prudent measures imposed by the Service to minimize take of federally listed species are specified within the Service's December 2005 Tier 1 Programmatic Biological Opinion and are applicable to all Tier 2 projects carried out under the Corps program. All applicable measures were incorporated as appropriate into the Tier 2 Cape May beach renourishment project.

STATUS OF THE SPECIES

Relevant biological and ecological information for the piping plover and seabeach amaranth was previously provided to the Corps in the Service's December 2005 Tier 1 Programmatic Biological Opinion. That information remains pertinent and was considered by the Service in formulating this Tier 2 (streamlined) Biological Opinion.

ENVIRONMENTAL BASELINE

The environmental baseline for the Corps overall program for federal beach nourishment, renourishment, stabilization, and restoration activities along the Atlantic Coast of New Jersey within the Philadelphia District was established and fully described within the Service's December 2005 Tier 1 Programmatic Biological Opinion. No seabeach amaranth plants were found within the project area during surveys for the plant in 2006 and none have been recorded on USCG Training Center or Cape May City since the plants rediscovery. No piping plovers nested on USCG Training Center or Cape May City beaches since 2005 and 2004, respectively. Adjacent to the renourishment project area (north), one pair of piping plovers nested on the USCG LORAN site and produced one fledgling in 2006 and six seabeach amaranth plants were found in 2005, however this site is separated by the Cape May Inlet. Therefore, the renourishment should have no effect on either piping plover or seabeach amaranth at the USCG LORAN site. All other information described within the December 2005 Tier 1 Programmatic Biological Opinion remains pertinent and was considered by the Service in formulating this Tier 2 Biological Opinion.

EFFECTS OF THE ACTION

Following review of the information provided by the Corps regarding the Cape May renourishment project, the Service has determined that the potential effects of the project are consistent with those addressed in the December 2005 Tier 1 Programmatic Biological Opinion and are hereby incorporated by reference. Beach habitats historically occupied by piping plovers or seabeach amaranth within the Cape May renourishment project area have been degraded by beach erosion and no piping plovers or seabeach amaranth were present within the project area in 2006. The work is being conducted outside the piping plover nesting season and most of the seabeach amaranth growing season; therefore, no direct adverse impacts to these species are anticipated. Past shoreline stabilization within the Cape May renourishment project area has interfered with formation and maintenance of natural habitats for piping plover and seabeach amaranth. The project perpetuates shoreline stabilization that has essentially stopped the natural process of shoreline retreat and, consequently, prevents the natural formation of optimal habitats for piping plovers and seabeach amaranth (*e.g.*, inlets and overwash areas). Further, the beach renourishment plan selected for the project area will result in creation of sub-optimal beach and dune habitats for piping plover and seabeach amaranth. Therefore, the Cape May renourishment project area will preclude formation of natural habitats and create sub-optimal beach and dune habitats for piping plover and seabeach amaranth along approximately 3.6 linear miles of Atlantic coastal shoreline.

CONCLUSION

Actions and effects associated with the Cape May renourishment project are consistent with those identified and discussed within the Service's December 2005 Tier 1 Programmatic Biological Opinion. After reviewing the size and scope of the project, the environmental baseline, the status of federally listed species within the project area, and the effects of the action, it is the Service's Biological Opinion that the October 2006 to March 1, 2007 Cape May renourishment project from the USCG Training Center to Wilmington Avenue is not likely to

jeopardize the continued existence of the piping plover or seabeach amaranth. No Critical Habitat has been designated for these species within the project area; therefore, no Critical Habitat will be affected.

INCIDENTAL TAKE STATEMENT

Section 9 of the ESA and the federal regulation pursuant to section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without special exemption. *Take* is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. *Harm* is further defined by the Service to include significant habitat modification or degradation that results in the death or injury to listed species by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering. *Harass* is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering. *Incidental take* is defined as take that is incidental to, and not the purpose of carrying out an otherwise lawful activity.

Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to, and not intended as part of, the agency action is not considered a prohibited taking under the ESA, provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement. Sections 7(b)(4) and 7(o)(2) of the ESA do not apply to the incidental take of federally listed plant species; therefore, no incidental take statement, and subsequently no reasonable and prudent measures nor terms and conditions, were provided for seabeach amaranth within the Service's December 2005 Tier 1 Programmatic Biological Opinion or are provided within this Tier 2 Biological Opinion.

The indirect effects of the Cape May renourishment project are anticipated to result in harm in the form of reduced habitat quality along approximately 3.6 linear miles of oceanfront beach annually over the anticipated 2-year life of the renourishment event. The type and amount of anticipated incidental take is consistent with that described in the Service's December 2005 Tier 1 Programmatic Biological Opinion and does not cause the total annual level of incidental take in the December 2005 Tier 1 Programmatic Biological Opinion to be exceeded.

REASONABLE AND PRUDENT MEASURES AND TERMS AND CONDITIONS

To be exempt from the take prohibitions of Section 9 of the ESA, the Corps must implement all pertinent reasonable and prudent measures and terms and conditions, as stipulated in the Service's December 2005 Tier 1 Programmatic Biological Opinion, to minimize the impact of anticipated incidental take of piping plovers. The Service has determined that no new reasonable and prudent measures, beyond those specified in the December 2005 Tier 1 Programmatic Biological Opinion, are needed to minimize the impact of incidental take anticipated for the Cape May renourishment project.

REINITIATION - CLOSING STATEMENT

This concludes Tier 2 formal consultation on the effects of beach renourishment conducted by the Corps, Philadelphia District within Cape May Inlet USCG Training Center to Wilmington Avenue in Lower Township, Cape May County, New Jersey. As provided in 50 CFR § 402.16, reinitiation of formal consultation is required where discretionary federal agency involvement or control over the action has been maintained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or Critical Habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or Critical Habitat that was not considered in this opinion; or, (4) a new species is listed or Critical Habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

As a reminder, this Tier 2 consultation covers the Cape May renourishment event (USCG Training Center to Wilmington Avenue, from October 2006 to March 1, 2007) only and potential impacts to federally listed species that may occur prior to any subsequent renourishment events. Subsequent renourishment events will be considered separate federal actions and will require individual Tier 2 consultations.

Please contact Stephanie Egger of my staff at (609) 646-9310, extension 47 if you have any questions regarding these comments or require further assistance regarding threatened or endangered species.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Staples". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John C. Staples
Acting Supervisor