



United States Department of the Interior



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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 Borough of Harvey Cedars of Long Beach Island Township (Barnegat Inlet to Little Egg Harbor Project Area), Ocean 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 the initial Harvey Cedars nourishment event and potential impacts to federally listed species that may occur prior to any 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.*).

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 Harvey Cedars beach nourishment 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 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. New information regarding the status of seabeach amaranth within the project area since issuance of the December 2005 Tier 1 Programmatic Biological Opinion has become available. Specifically, no seabeach amaranth plants were found during surveys for the plant and no piping plovers have nested in over 10 years within the nourishment area. 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 Harvey Cedars nourishment 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 Harvey Cedars nourishment project area have been degraded by beach erosion and no piping plover or seabeach amaranth were present within the project area in 2008. Therefore, no direct adverse impacts to these species are anticipated.

Following beach nourishment in other portions of the Corps' program area, piping plovers have reestablished nesting in historical areas and seabeach amaranth has colonized suitable habitats created by the beach fill. However, piping plover productivity on such stabilized beaches (where no habitat enhancement occurs) is generally lower than on unstabilized beaches where over-wash zones and/or tidal pools are available. Therefore, it is likely that one to two pairs of piping plovers may nest within Harvey Cedars following the fill and productivity is anticipated to be lower than on unstabilized beaches. Impacts to the piping plover associated with nourishment activities such as increased human disturbance, increased recreational activities, incompatible beach management practices, and increased predation are likely to occur and were addressed in the December 2005 Tier 1 Programmatic Biological Opinion. Without management, as addressed in the December 2005 Tier 1 Programmatic Biological Opinion, seabeach amaranth plants may be damaged or destroyed by recreational activities or beach management activities.

Past shoreline stabilization within the Harvey Cedars nourishment 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 nourishment 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 Harvey Cedars nourishment project will preclude formation of natural habitats and create sub-optimal beach and dune habitats for piping plover and seabeach amaranth along approximately 1.98 linear miles of Atlantic coastal shoreline.

CONCLUSION

Actions and effects associated with the Harvey Cedars nourishment 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 Harvey Cedars nourishment project 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 Harvey Cedars nourishment project (including all additional options) are anticipated to result in harm in the form of reduced habitat quality along 10,500 linear feet (approximately 1.98 miles) of Atlantic coastal shoreline and harassment of one to two pairs of

pipng plovers and their young from disturbance by beach management activities and beach recreation, resulting in reduced productivity. This level of take is consistent with the level of take anticipated within the December 2005 Tier 1 Programmatic Biological Opinion.

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 Harvey Cedars nourishment project.

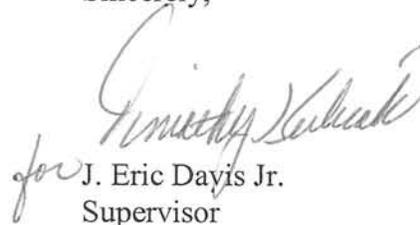
REINITIATION - CLOSING STATEMENT

This concludes Tier 2 formal consultation on the effects of initial beach nourishment conducted by the Corps, Philadelphia District in Harvey Cedars, Long Beach Island Township, Ocean 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 only the initial Harvey Cedars nourishment event (beaches between Bergen and Salem Avenues) 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 at (609) 383-3938, extension 47 if you have any questions regarding these comments or require further assistance regarding threatened or endangered species.

Sincerely,


for J. Eric Davis Jr.
Supervisor