



United States Department of the Interior



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FEB 25 2010

Frank J. Cianfrani, Chief
Regulatory Branch
Philadelphia District
U.S. Army Corps of Engineers
100 Penn Square East
Philadelphia, Pennsylvania 19017-3390

Dear Mr. Cianfrani:

This letter documents formal consultation with the U.S. Army Corps of Engineers, Philadelphia District (Corps) for beach nourishment activities within the City of Sea Isle (Sea Isle), Cape May County, New Jersey. The Corps' proposed issuance of a 10-year Department of the Army permit (File No. CENAP-OP-R-2009-1615-24) addresses beach nourishment/maintenance activities on the beaches between 73rd and 94th Streets in Sea Isle (project area). The proposed permitted activity constitutes a Tier 2 individual project under the U.S. Fish and Wildlife Service's (Service) December 2005 Tier 1 Programmatic Biological Opinion (PBO) on the effects of federally implemented or permitted beach nourishment, renourishment, stabilization, restoration and maintenance activities on the federally listed (threatened) piping plover (*Charadrius melodus*) and seabeach amaranth (*Amaranthus pumilus*) along the Atlantic Coast of New Jersey within the Corps' Philadelphia District.

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.*).

permit condition, but was deferred to the NJDEP for its permitting process because least terns are a State-listed species. The Corps reached out to the applicant for specific information on the anticipated start and end dates in the project area between 90th and 94th Streets (90th Street would be approximately the 300-meter buffer from where least terns may nest immediately south of 94th Street).

January 29, 2010

By electronic mail, the Service sent the Corps recommendations to modify the permit conditions for the project.

January 29, 2010

By electronic mail, the Corps provided a revised copy of the proposed permit conditions and indicated that all changes the Service recommended had been made.

February 17, 2010

By electronic mail, the Service concurred with the Corps that through the revised permit conditions the authorized work would not likely have direct impacts to federally listed piping plover and seabeach amaranth; however, indirect effects are likely over the life of the permit.

PROJECT DESCRIPTION

The Sea Isle nourishment project is scheduled to begin in the spring of 2010 and extend into the piping plover nesting season with an anticipated end date of July 1, 2010. Approximately 700,000 cubic yards of sand will be pumped hydraulically along Sea Isle's beaches between 73rd and 94th Streets (5,400 linear feet or 1.02 linear miles of shoreline) via a pipeline to the beach from an offshore borrow site in Townsends Inlet. The design template calls for a 50-foot wide berm at an elevation of +6.7 feet NAVD88 and a 20-foot wide secondary berm at an elevation of +10.7 feet NAVD88. From 73rd Street south to 87th Street the beach berm will have a foreslope of 40:1. From 87th Street south to 94th Street, the foreslope will be 56:1.

The proposed borrow site is an area approximately 72.3 acres in size within Townsends Inlet between Sea Isle and the Borough of Avalon. The sand would be dredge by hydraulic method to a maximum depth of -21.27 feet NAVD88 or 19.02 feet below mean low water. Sea Isle is working jointly with the Borough of Avalon, as the two municipalities are proposing similar projects using the same proposed borrow area in Townsends Inlet. They propose to use the same contractor and equipment. The Borough of Avalon was issued a 10-year maintenance permit in 2007 to dredge sand from the Townsends Inlet borrow area and pump it onto their beach between 9th and 18th Streets (CENAP-OP-R-2006-6389-24).

The proposed Sea Isle permit allows for 10 years of maintenance of the fill area.

ADHERENCE 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, by the Corps as permit conditions for the proposed project.

STATUS OF THE SPECIES

Relevant biological and ecological information for the piping plover and seabeach amaranth was 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.

New site-specific information regarding piping plover and seabeach amaranth occurrence within and in the vicinity of the project area since issuance of the December 2005 Tier 1 Programmatic Biological Opinion has become available. Specifically, no piping plovers have nested since 2001 in Sea Isle and none within the nourishment area. The last pair that nested within Sea Isle in 2001 was between 64th and 65th Streets. One pair also nested at the adjacent site of Townsend's Inlet from 2001-2005.

No seabeach amaranth plants are known to have historically occurred within the project area or were found during the annual surveys within Sea Isle. However, seabeach amaranth has occurred within other areas of Sea Isle and neighboring Strathmere – Upper Township. Five and three plants were observed in Sea Isle in 2004 and 2005, respectively. In neighboring Strathmere - Upper Township, between 98 and 21 plants were observed between 2003 and 2005. 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 Sea Isle 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 previously occupied by piping plovers within the Sea Isle

project area have been degraded by beach erosion, and no piping plover or seabeach amaranth were present within the project area in 2009. However, nourishment of the Sea Isle beach may create moderately suitable habitat for piping plover and/or seabeach amaranth.

No seasonal restriction to protect piping plovers will be required for the 2010 nesting season provided work is confined to the proposed nourishment area located between 73rd and 94th Streets. The proposed nourishment area does not presently provide suitable piping plover nesting habitat and is located greater than 1,000 meters from a current nesting area. Therefore, no direct adverse impacts to these species are anticipated.

Following beach nourishment in other areas of New Jersey, piping plovers have established nesting in previously unoccupied sites, and seabeach amaranth has colonized suitable habitats created by the beach fill. However, piping plover nesting and 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 up to 1 to 2 pairs of piping plovers may nest or attempt to nest within the project area following the fill, and productivity is anticipated to be lower than on unstabilized beaches or stabilized beaches with habitat enhancement.

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 also be damaged or destroyed by recreational activities or beach management activities. Past shoreline stabilization within the Sea Isle 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 migration 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 habitat for piping plover and seabeach amaranth. Therefore, the Sea Isle project area will preclude formation of natural habitats and create sub-optimal beach habitat for piping plover and seabeach amaranth along approximately 5,400 linear feet (approximately 1.02 linear miles) of Atlantic coastal shoreline.

CONCLUSION

Actions and effects associated with the Sea Isle beach nourishment and maintenance 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 Sea Isle 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 Sea Isle project are anticipated to result in harm in the form of reduced habitat quality along approximately 1.02 linear miles of Atlantic coastal shoreline annually over the anticipated 10-year life of the permit and harassment of 1 to 2 pairs of piping plovers and their young from disturbance by beach management activities and beach recreation, resulting in reduced productivity. 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

Reasonable and prudent measures (RPMs) are measures necessary or appropriate to minimize the amount or extent of anticipated incidental take of the species. To be exempt from the take prohibitions of Section 9 of the ESA, the Corps must implement all pertinent RPMs and associated terms and conditions, pursuant to the Service's December 2005 Tier 1 Programmatic Biological Opinion, to minimize the impact of anticipated incidental take of piping plovers. The Corps has included the relevant RPMs and terms and conditions as non-discretionary permit conditions within the subject Sea Isle permit. The Service has determined that no new RPMs, beyond those specified in the December 2005 Tier 1 Programmatic Biological Opinion, are needed to minimize the impact of incidental take anticipated for the Sea Isle project.

The Corps has a continuing duty to regulate the activity covered by an incidental take statement. If the Corps: (1) fails to demonstrate clear compliance with the RPMs and their implementing terms and conditions in the December 2005 Tier 1 Programmatic Biological Opinion; or (2) fails to require Corps staff, contractors, cooperators, and/or permittees to adhere to the RPMs and terms and conditions of the incidental take statement; and/or (3) fails to retain oversight to ensure compliance with the RPMs and terms and conditions, the protective coverage of section 7(o)(2) of the ESA may lapse.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the ESA directs federal agencies to utilize their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or Critical Habitat, to help implement recovery plans, or to develop information. The following conservation recommendations are directed to the Corps as the lead Federal authority for the proposed permitted nourishment.

- (1) Ensure that impacts to State-listed endangered beach nesting birds (*i.e.*, least tern and black skimmer) from permitted beach nourishment activities are minimized.
- (2) Schedule and implement beach nourishment and associated permitted activities to avoid construction within 300 meters of least tern and/or black skimmer colonies during the nesting season. The least tern nesting season is generally late May to late August; the black skimmer nesting season is generally early June through September.

REINITIATION - CLOSING STATEMENT

This concludes Tier 2 formal consultation on the effects of beach nourishment activities to be permitted by the Corps, Philadelphia District within the City of Sea Isle, 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, pursuant to Conservation Measures identified in the PBO, should the nourishment create piping plover nesting habitat that is occupied by plovers prior to completion of the project, work must cease temporarily and the Service must be notified immediately to provide further guidance. If plovers are present, the Corps will be required to provide a Service-approved qualified monitor for the duration of construction activities to ensure piping plovers are not adversely affected by project activities. 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,



Acting Supervisor