



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

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In Reply Refer to:

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DEC 29 2008

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

Dear Mr. Arabatzis:

This letter documents re-initiation of formal consultation with the U.S. Army Corps of Engineers, Philadelphia District (Corps) for beach nourishment activities within the City of North Wildwood and the City of Wildwood, Cape May County, New Jersey. This letter supercedes the previously issued Tier 2 (streamlined) Biological Opinion (File No. 2008-F-0785) dated December 8, 2008, and addresses changes to the applicant's project description and the Corps' modified conservations measures (permit conditions). The Corps' proposed issuance of a 10-year Department of the Army permit (File No. CENAP-OP-R-2007-1181-24) addresses beach nourishment/maintenance activities to be conducted by the applicant, the New Jersey Department of Environmental Protection (NJDEP), on beaches between 2<sup>nd</sup> and 26<sup>th</sup> Avenues in the City of North Wildwood, and between East Juniper and East Poplar Avenues in the City of Wildwood, Cape May County, New Jersey (project area). The proposed permitted activity constitutes a Tier 2 (streamlined) individual project under the U.S. Fish and Wildlife Service's (Service) December 2005 Tier 1 Programmatic Biological Opinion (PBO) on the effects of beach nourishment and maintenance activities on the federally listed (threatened) piping plover (*Charadrius melodus*) and seabeach amaranth (*Amaranthus pumilus*).

### 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

- February 25, 2008 Via electronic mail, the Service and the Corps discussed potential effects that needed to be addressed in the consultation, specifically the impacts of dredging in Hereford Inlet to threatened and endangered species habitat. In addition, impacts to red knot (*Calidris canutus rufa*) needed to be addressed since it became a Federal candidate species after the issuance of the December 2005 Tier 1 Programmatic Biological Opinion.
- March 26, 2008 By letter, the Service sent the Corps recommended conservation measures to protect piping plover and seabeach amaranth to be included as permit conditions in the subject permit.
- September 18, 2008 By letter, the NJDEP Bureau of Coastal Engineering (BCE) informed the Corps and the Service of changes to the project, specifically modifications to the dredging site, addressing the Service's concerns regarding the potential impacts to the inlet beaches of North Wildwood and the threatened, endangered, and candidate species that utilize those beaches.
- November 26, 2008 The Service, Corps, and BCE continued to coordinate via electronic mail regarding permit conditions for the North Wildwood/Wildwood project area.
- December 8, 2008 The Service issued its Tier 2 streamlined Biological Opinion.
- December, 2008 Via electronic mail and telephone calls, clarifications were made by the BCE regarding the project description which caused the need for modifications to permit conditions by the Corps and re-initiation of formal consultation with the Service. The Service had several discussions with the NJDEP Endangered and Nongame Species Program and BCE regarding a reduced buffer at the southern end of the current nesting area based on the environmental features of the project area. These changes were incorporated into the Corps permit.

## PROJECT DESCRIPTION

Beach nourishment will occur between 2<sup>nd</sup> and 26<sup>th</sup> Avenues in the City of North Wildwood, and between East Juniper and Poplar Avenues in the City of North Wildwood, Cape May County, New Jersey. The design includes a berm taper extending approximately 600 feet into the

existing beach north of the 2<sup>nd</sup> Avenue terminal groin in the City of North Wildwood, as well as a berm and dune taper extending approximately 800 feet in the City of Wildwood. As a result of the increased elevation of the berm and the berm taper adjacent to the intersection of 2<sup>nd</sup> Avenue, approximately 2/3 of the terminal groin will be buried with sand. Approximately 7,900 linear feet (1.5 linear miles) of coastal shoreline will be affected.

The proposed borrow site for obtaining sand is an off-shore borrow area within Hereford Inlet, approximately one-half mile northeast of 2<sup>nd</sup> Avenue in North Wildwood. Approximately 1,438,055 cubic yards of sand will be pumped hydraulically via pipeline to the beach from the off-shore borrow site. The project will include restoration of eroded dunes to an elevation of 14.25 feet (NAVD 88), including dune stabilization with native vegetation and fencing; construction of a 400-foot (maximum) wide beach berm to an elevation of 6.75 feet (NAVD 88) and a foreshore slope of 25:1; reconstruction of handicap and vehicular accesses; and the extension of three deteriorated storm water outfall pipes at 2<sup>nd</sup>, 21<sup>st</sup>, and Poplar Avenues. Outside the beach nourishment area, to the northeast of Central and Walnut/Spruce Avenues, a fourth outfall pipe may be reconstructed. The reconstruction of the outfall pipe at Central and Spruce Avenues may include grouting and plugging the existing pipe at Central and Walnut Avenues and redirecting stormwater, via a new pipeline under Central Avenue, to the existing outfall pipe at Central and Spruce Avenues. The permit will be issued to include future reconstruction of the outfall pipe at Central and Spruce Avenues if lengthening of the pipe is needed to allow for proper discharge.

#### **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 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 permit conditions into the Tier 2 North Wildwood/Wildwood 10-year beach nourishment/maintenance permit.

#### **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, restoration, and permitted 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 the project area since issuance of the 2005 Tier 1 Programmatic Biological Opinion has become available. Portions of the project area have not been used by nesting piping plovers since 1996 (between 2<sup>nd</sup> and 26<sup>th</sup> Avenues). The area between East Juniper and East Poplar Avenues has no recorded nesting use by piping plovers. These sites have become degraded by erosion and do not provide suitable habitat. Piping plovers currently nest in the project area between Surf and New York Avenues (Hereford Inlet) with a nesting buffer that overlaps the 2<sup>nd</sup> and 26<sup>th</sup> Avenues nourishment portion of the project area. The nesting area also supports State-listed (endangered) least tern (*Sterna antillarum*) and State species of concern (currently proposed) American oystercatcher (*Haematopus palliatus*). Red knot, a Federal candidate species and State-listed (endangered) species, and black skimmer (*Rynchops niger*) (also State-listed as endangered), have also been known to use the inlet area for feeding and roosting activities during the fall and spring migrations. No seabeach amaranth plants were found within the project area during Service surveys in 2008, and none have previously been documented in North Wildwood or Wildwood.

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 and NJDEP regarding the North Wildwood/Wildwood 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 within the North Wildwood/Wildwood project area between 2<sup>nd</sup> and 26<sup>th</sup> Avenues have been degraded by beach erosion. No piping plovers have nested within that area since 1996. Currently piping plover nesting areas (with nesting buffers) do occur within a portion of the project area.

The Corps anticipates that work may extend into the 2009 or 2010 piping plover nesting season; however, no direct adverse impacts to the piping plover are anticipated. Based on the environmental conditions of the project area, the 1000 meter buffer has been reduced to approximately 375 meters at the southern end of the nesting area, ending at the 2<sup>nd</sup> Avenue terminal groin. This will allow work to be conducted from 2<sup>nd</sup> Avenue south towards 26<sup>th</sup> Avenue during the nesting season, if necessary. A series of mature dunes would provide a visual buffer (in addition to the 2<sup>nd</sup> Avenue terminal groin) from construction activities during the egg laying/incubation season for any work conducted south of the 2<sup>nd</sup> Avenue terminal groin. Movement of chicks outside the nesting area toward the 2<sup>nd</sup> Avenue terminal groin has not been observed and the likelihood of a change in this pattern is low. Ponds and ephemeral pools within the nesting area have been the primary foraging areas for chicks and adults. The low-wave inlet shoreline has also kept adults and chicks relatively close to the nesting area when foraging. The upper portion of the 2<sup>nd</sup> Avenue terminal groin will not be covered with sand for this project and will continue to act as a partial barrier for chick movement. Therefore, the protective buffer area around the nesting area has been reduced and shall include the entire Hereford Inlet shoreline

from the 2<sup>nd</sup> Avenue terminal groin northwest to the terminus of the beach at New York Avenue. This buffer may be modified if other nesting areas are identified during the life of the Corps permit. Taper construction north of the 2<sup>nd</sup> Avenue terminal groin will be constructed outside the nesting season. In addition, no seabeach amaranth has been documented. 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 previously occupied 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 at least one pair 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. 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. Past shoreline stabilization within the North Wildwood/Wildwood 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 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 North Wildwood/Wildwood project area will preclude formation of natural habitats and create sub-optimal beach and dune habitats for piping plover and seabeach amaranth along approximately 1.5 linear miles of Atlantic coastal shoreline.

## CONCLUSION

Actions and effects associated with the North Wildwood/Wildwood 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 North Wildwood/Wildwood 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 North Wildwood/Wildwood project are anticipated to result in harm in the form of reduced habitat quality along approximately 1.5 linear miles of Atlantic coastal shoreline and harassment of one pair 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 described in the 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 North Wildwood/Wildwood permit. 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 North Wildwood/Wildwood project.

The Corps has a continuing duty to regulate the activity covered by this incidental take statement. If the Corps: (1) fails to demonstrate clear compliance with the RPMs and their implementing terms and conditions in this Biological Opinion; or (2) fails to require Corps staff, contractors, cooperators, and/or permittees to adhere to the terms and conditions of the incidental take statement; and/or (3) fails to retain oversight to ensure compliance with these terms and conditions, the protective coverage of section 7(o)(2) 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 recommendation is directed to the Corps as the lead federal authority for this action.

1. To protect migratory shorebirds, particularly the Federal candidate red knot, the Corps should ensure that the NJDEP and/or the City of North Wildwood maintain protective fencing of sensitive habitats at the inlet year-round to minimize disturbance of red knot and other shorebird feeding and roosting activities, particularly during the fall and spring migrations.

#### **REINITIATION - CLOSING STATEMENT**

This concludes Tier 2 formal consultation on the effects of beach renourishment activities to be permitted by the Corps, Philadelphia District within the City of North Wildwood/Wildwood, 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.

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,



J. Eric Davis Jr.  
Supervisor