UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930

September 20, 2024
Via electronic mail

Todd Schaible, Chief
Regulatory Branch
Philadelphia District
U.S. Army Corps of Engineers
1650 Arch Street
Philadelphia, PA 19107-3390

RE: Public Notice for NAP-2024-00443-100
Lacey Township Wide Dredging Project, Ocean County, New Jersey

Dear Mr. Schaible:

We have reviewed the Public Notice NAP-2024-00443-100 and associated essential fish habitat (EFH) assessment worksheet for Lacey Township's application for a township-wide maintenance dredging operation at six locations throughout the Township. Waterways to be dredged include established channels, lagoons, and canals within Windy Cove, Hancy's Pond, Worden's Oyster Pond, Stouts Creek, Sunrise Beach, and Bayside Beach in Ocean County, New Jersey. The proposed ten-year maintenance dredging program will target the removal of shoals within these areas and include disposal at the Oyster Creek Confined Disposal Facility (CDF), an upland facility in Lacey Township, Ocean County, New Jersey.

According to the information provided, the proposed project includes the use of a mechanical dredge via one large flat-top barge with a long reach or clam-shell excavator or a hydraulic cutterhead to remove a total of 101,260 cubic yards (CY) of sediment from 37.1 acres to a depth of 5-feet below the plane of mean low water (MLW) plus 1 foot of allowable overdepth. Each maintenance dredging event is anticipated to last approximately three months and ten dredging events are anticipated to be conducted within the ten-year maintenance period.

The Magnuson Stevens Fishery Conservation and Management Act (MSA) and the Fish and Wildlife Coordination Act (FWCA) require federal agencies to consult with one another on projects such as this that may adversely affect EFH and other aquatic resources. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH resulting from actions or proposed actions authorized, funded, or undertaken by that agency. This process is guided by the requirements of our EFH regulation at 50 CFR 600.905, which mandates the preparation of EFH assessments and generally outlines each agency's obligations in this consultation procedure. Because these construction activities will adversely affect EFH, we offer the following information to further avoid, minimize, or otherwise offset impacts to our trust resources.

Magnuson-Stevens Fishery Conservation and Management Act (MSA)
The project area has been designated as EFH under the MSA for a number of federally managed species including winter flounder (*Pseudopleuronectes americanus*), windowpane flounder (*Scophthalmus aquosus*), Atlantic herring (*Clupea harengus*), bluefish (*Pomatomus saltatrix*), Atlantic butterfish (*Peprilus triacanthus*), summer flounder (*Paralichthys dentatus*), several species of skates, and others. The project area also includes migratory corridors for anadromous fishes such as alewife (*Alosa pseudoharengus*), and blueback herring (*Alosa aestivalis*) (collectively, river herring). Anadromous fishes such as these serve as prey for federally managed species. As a result, adverse effects to their migration and spawning can be considered an adverse effect on EFH.

We have reviewed the EFH assessment for this project. Although we agree with your conclusion that the adverse effects of this project on EFH will not be substantial, measures to avoid, minimize, mitigate, or otherwise offset proposed adverse impacts to EFH and other aquatic resources should still be incorporated into the project planning and design.

Winter Flounder
Winter flounder typically migrate into shallow water or estuaries to spawn in the winter and early spring and have demersal eggs that sink and remain on the bottom until they hatch. After hatching, the larvae are initially planktonic, but following metamorphosis they assume an epibenthic existence. Young-of-the-year flounder tend to burrow in the sand rather than swim away from threats. These life stages are less mobile and thus more likely to be affected adversely by increased turbidity and the subsequent deposition of the suspended sediments. As a result, we recommend that in-water work that disturbs the sediments including sand and other material placement be avoided when winter flounder eggs and larvae are present, generally from January 1 to May 31.

Anadromous Fishes
Stouts Creek and Cedar Creek provide migratory and spawning corridors and nursery habitat for anadromous fish such as river herring. These species spend most of their adult life at sea, but demonstrate some degree of repeat spawning behavior and return to freshwater areas to spawn in the spring. Following spawning, some proportion of adults out-migrate to the ocean while their offspring rear in freshwater areas. As juveniles and adults, alosines are important forage for several species managed by the New England Fishery Management Council and the Mid-Atlantic Fishery Management Council and for which EFH has been designated. They provide trophic linkages between freshwater/estuarine and marine food webs. Juvenile Alosa species have also all been identified as prey species for bluefish, summer flounder, and windowpane flounder. As a result, actions that reduce the availability of prey species (i.e., alosines), either through direct harm or capture, or through adverse impacts to their spawning habitat may adversely impact federally managed fisheries and their EFH.

The activities associated with dredging can create undesirable turbidity that can impede migration. Increases in turbidity due to the resuspension of sediments into the water column during construction can degrade water quality, lower dissolved oxygen levels, and potentially release chemical contaminants bound to the fine-grained estuarine/marine sediments. Suspended sediment can also mask pheromones used by migratory fishes such as these to reach their

spawning grounds and impede their migration and can smother immobile benthic organisms and demersal newly-settle juvenile fish. In order to minimize the adverse effects of suspended sediment on migrating anadromous fish, we recommend in-water work be avoided from March 1 to June 30 any year during the upstream migration to their spawning grounds.

Submerged Aquatic Vegetation

Several locations within the project area have been mapped as containing submerged aquatic vegetation (SAV). SAV habitats are among the most productive ecosystems in the world and perform a number of irreplaceable ecological functions which range from chemical cycling and physical modification of the water column and sediments to providing food and shelter for commercially and recreationally important fishery species. SAV provides valuable nursery, forage and refuge habitat for a variety of migratory and forage fish species including alewife and blueback herring. It is also an important food source for waterfowl. SAV has been designated as a habitat area of particular concern (HAPC) for summer flounder by the Mid-Atlantic Fishery Management Council. HAPCs are subsets of EFH identified based on one or more of the following considerations: 1) the importance of the ecological function; 2) extent to which the habitat is sensitive to human-induced degradation; 3) whether and to what extent, development activities are stressing the habitat type; and/or 4) rarity of habitat type (50 CFR 600.815(a)(8)). In addition, the U.S. Environmental Protection Agency has designated SAV as a special aquatic site under the CWA Guidelines, due to its important role in the marine ecosystem for nesting, spawning, nursery cover, and forage areas for fish and wildlife.

According to the EFH assessment worksheet, the majority of the proposed dredging footprint is within established navigation channels, lagoons, and canals that are sited outside of mapped SAV beds. Our review of the historic SAV maps indicate five locations where SAV presently exists or historically occurred. SAV also has the tendency to move year to year. As such, locations mapped as containing SAV in the past should be surveyed during the growing season prior to dredging to document presence/absence of SAV within 500 feet of any area to be dredged. Increases in suspended sediments and the subsequent reduction in water transparency caused by dredging and other in-water construction activities can limit photosynthesis which, in turn, can reduce plant growth and survival. As a result, we recommend that activities that generate suspended sediments be avoided in and near SAV beds when SAV is actively growing and flowering to avoid affecting the plant's ability to photosynthesize and its growth and survival. We also recommend a minimum buffer between dredging area(s) and the edge of any SAV bed to be 250 feet if the sediments are 95% sand and 500 feet if less than 95% sand between April 15 and October 15 of any year.

Shellfish

The New Jersey Department of Environmental Protection's Bureau of Shellfisheries' 2012 Barnegat Bay (Lower) Hard Clam Distribution maps identify several locations within the project area as hard clam (*Mercenaria mercenaria*) habitat. Shellfish habitats provide ecological value to a variety of species including American eel (*Anguilla rostrata*) and winter flounder. Clams are also a prey species for a number of federally managed fish including skates, bluefish, summer flounder, and windowpane flounder. Infaunal species such as clams also filter significant volumes of water, effectively retaining organic nutrients from the water column. While none of the locations are considered to be high value shellfish habitat, we recommend that dredge

pipelines used are floated to avoid damage to existing shellfish habitat. We also recommend that the NJDEP Shellfisheries be contacted to ensure work proposed will not affect nearby shellfish leases adversely.

Essential Fish Habitat Conservation Recommendations
Pursuant to Section 305(b)(4)(A) of the MSA we request that you adopt the following EFH conservation recommendations (CRs) to minimize or offset adverse impacts on EFH.

For all sites:

- Dredge only existing, legal channels, lagoons, and canals that have been dredged before, and only to previously authorized depths. No overdredging should be permitted.
- Barge(s) used during construction should float at all stages of the tide.
- For sites located in or near special areas (i.e., wetlands, mudflats, SAV, shellfish habitat), which are identified below, float the dredge pipeline to avoid damage to these existing special areas. Where the pipeline must cross these habitats, minimize anchor placement in these areas and place/remove anchors in a manner that minimizes turbidity.

For Stouts Creek, which will be the only site to use a hydraulic cutterhead:

- The intake on the dredge plant should not be turned on until the dredge head is in the sediment and should be turned off before being lifted through the water column to minimize larval entrainment in the dredge.

For sites or portions of sites that extend outside of the lagoons entrances, which include Windy Cove, Hancy's Pond, Worden's Oyster Pond, Stouts Creek, and Sunrise Beach:

- Avoid dredging between January 1 and May 31 to minimize impacts to winter flounder early life stage EFH (i.e., eggs, larvae).

For sites located along Stout's Creek and Cedar Run, which include Windy Cove and Stouts Creek:

- Avoid dredging between March 1 and June 30 to minimize impacts to the upstream migration of river herring to their spawning habitat.

For sites located near wetlands, which include Hancy's Pond, Stouts Creek, and Bayside Beach:

- Maintain a minimum buffer of 25-feet between the top of the slope of any area to be dredged and any vegetated wetlands or mudflats. Wetlands and mudflats should be delineated in the field prior to dredging activities to ensure compliance.

For sites located in proximity to historically mapped SAV, which include Worden's Oyster Pond, Hancy's Pond, Stouts Creek, Sunrise Beach, and Bayside Beach:

- Should the applicant need to dredge during the SAV growing season of any given year, a visual survey should be conducted to document presence/absence of SAV within 500 feet of any area to be dredged.
- A minimum buffer between dredging area(s) and the edge of any SAV bed should be maintained between April 15 and October 15 of any year. The appropriate buffer is 250 feet if the sediments are 95% sand and 500 feet if less than 95% sand.

- Provide compensatory mitigation for any SAV that is present within the footprint of the areas to be dredged.

For sites located in historically mapped shellfish habitat, which include Hancy's Pond, Stouts Creek, and Bayside Beach:

- Contact NJDEP Shellfisheries to ensure work proposed will not affect nearby shellfish leases adversely, and adhere to recommendations made by NJDEP Shellfisheries to minimize or offset adverse impacts to shellfish.

Please note that Section 305(b)(4)(B) of the MSA requires you to provide us with a detailed written response to these EFH conservation recommendations, including a description of measures adopted by you for avoiding, mitigating, or offsetting the impact of the project on EFH. In the case of a response that is inconsistent with our recommendations, Section 305(b)(4)(B) of the MSA also indicates that you must explain your reasons for not following the recommendations. Included in such reasoning would be the scientific justification for any disagreements with us over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects pursuant to 50 CFR 600.920(k). This response must be provided within 30 days after receiving our EFH conservation recommendations and at least 10 days prior to final approval of this action. Please also note that further EFH consultation must be reinitiated pursuant to 50 CFR 600.920(j) if new information becomes available, or if the project is revised in such a manner that affects the basis for the above determination

Endangered Species Act

Federally listed species may be present in the project area. Consultation, pursuant to Section 7 of the Endangered Species Act (ESA) of 1973, may be necessary. We understand that you are currently working with our Protected Resources Division on submitting a request for ESA consultation. When project plans are complete, you should submit their determination of effects, along with justification for the determination, and a request for concurrence to nmfs.gar.esa.section7@noaa.gov. After reviewing this information, our Protected Resources Division would then be able to conduct a consultation under Section 7 of the ESA.

Conclusion

We look forward to our continued coordination with you on this project as it moves forward. If you have any questions or need additional information, please contact Jessie Murray in our Highlands, NJ field office at 732-872-3116 or Jessie.Murray@noaa.gov. Should you have any questions about the Section 7 consultation process in general, please contact Darcie Webb (978-281-9316; Darcie.Webb@noaa.gov).

Sincerely,

Louis A. Chiarella
Assistant Regional Administrator
for Habitat and Ecosystem Services

cc:

GARFO HESD – K. Greene
GARFO PRD – D. Webb
Philadelphia District ACOE – A. Kuklentz
NJDEP – M. Davis, K. Davis
USFWS – M. Ciappi, R. Conover
EPA – R. Montgomerie
MAFMC– C. Moore
NEFMC– C. O'Keefe
ASMFC– R. Beal