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

January 22, 2025

Mark Reiss
Dredging, Sediments, and Ocean Section
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007-1866

RE: Continued Use of the Historic Area Remediation Site (HARS)

Dear Mr. Reiss:

We have reviewed the Essential Fish Habitat (EFH) Assessment Worksheet and materials dated November 24, 2025, for the proposed changes to and continued use of the Historic Area Remediation Site (HARS) located in the New York Bight Apex. The U.S. Environmental Protection Agency (EPA) Region 2 proposes to modify the HARS designation to allow for continued management of maintenance muds in a restricted area of the northeast portion of the HARS and to authorize creation of habitat features elsewhere in the HARS where remediation has been completed. This change in designation deviates from the existing use of the HARS which is for remediation purposes only. Under current management with no modification, the EPA and US Army Corps of Engineers (USACE) estimate that the dredged material remediation in the HARS would be complete sometime in the year 2027, after which no additional material would be deposited at the site.

The proposal is driven by a need to meet on-going and future dredge material disposal in the New York/New Jersey Harbor (Harbor) that have been identified by the USACE. The USACE estimates that over the next 20 years, approximately 51 million cubic yards of dredged material may be generated through USACE maintenance projects, permitted private projects, and new work projects occurring in the Harbor area. The capacity of the HARS for remediation is 5 million cubic yards. By changing the designation of the HARS to accept material beyond that which is needed for remediation, the USACE maintains options for disposing some of the dredged material that is estimated to be generated over the next 20 years within the Harbor area. The EPA proposes to allow the USACE to deposit suitable material in the HARS for the purpose of creating fish habitat. We previously provided scoping comments to assist you in the development of the National Environmental Policy Act (NEPA) document for the evaluation of dredged material management options in the New York Bight in our letter dated July 31, 2025.

We have no objection to the continued placement of suitable dredged material within the boundaries of the HARS including areas where remediation has been completed. However, we cannot agree that the placement of habitat features where remediation has been complete will create fish habitat as proposed by EPA. Insufficient information is available at this time to demonstrate that the placement of materials as proposed will result in new or improved fish habitat.

Magnuson Stevens Fishery Conservation and Management Act
The Magnuson Stevens Fishery Conservation and Management (MSA) and the Fish and Wildlife Coordination Act (FWCA) require federal agencies to consult with us on projects that may adversely affect EFH and other aquatic resources. Our 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. The FWCA also requires federal action agencies to consult with us "with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development" (16 USC 662).

As discussed in our July 31, 2025, letter, the marine waters of the project area, located in the New York Bight area of the Atlantic Ocean, provides important habitat for many aquatic species including both state and federally managed species and their forage, including the state managed species striped bass (*Morone saxatilis*), tautog (*Tautoga onitis*), and blue crab *(Callinectes sapidus*). The marine waters of the project area are also designated as EFH for a number of federally managed species including but not limited to Atlantic butterfish (*Peprilus triacanthus*), Atlantic herring (*Clupea harengus*), bluefish (*Pomatomus saltatrix*), black sea bass (*Centropristis striata*), red hake (*Urophycis chuss*), scup (*Stenotomus chrysops*), summer flounder (*Paralichthys dentatus*), winter flounder (*Pseudopleuronectes americanus*), windowpane flounder (*Scophthalmus aquosus*), longfin inshore squid (*Doryteuthis pealeii*), and a variety of skates. The project area is also EFH for highly migratory species including a number of sharks including sand tiger shark (*Carcharias taurus*), dusky shark (*Carcharhinus obscurus*), sandbar shark (*Carcharhinus plumbeus*) and others.

In the EFH assessment, it states that prior placement of dredged material maintenance muds in the HARS has inadvertently created fish habitat features through mounding of past dredge material placement and the placement of rock material that resulted in reef-like habitat. However, it appears this conclusion is based only on recent images of the benthic environment in the HARS. It does not appear that these images were compared with pre-placement benthic conditions or in areas adjacent to but outside or the HARS, nor does it appear that other benthic habitat data was collected prior to material placement and compared with similar data after such mounding and reef-like features were observed. There also does not appear to have been any fisheries surveys conducted to document fish use of the area or that that any quantitative analysis of habitat changes over time has been conducted to support the conclusion that fish habitat has been improved. In order to demonstrate that the placement of materials at the HARS has created features that improved habitat for fish, supporting information including pre-impact and post-placement surveys of the site should be provided. To the extent possible, a before-after-control-impact (BACI) study methodology should be used and data collection should occur over multiple seasons and years to account for interannual variability.

In addition, the EFH assessment does not include a plan for habitat creation based on an analysis of existing conditions and habitats within the HARS and regional habitat enhancement needs, nor

a plan for pre-placement and post-placement monitoring and analysis going forward to determine if placement of additional dredge materials after remediation is complete will result in fish habitat creation or enhancement. Similar to the methodology needed to demonstrate that the existing placement has improved fish habitat, the plan for future placement beyond what is needed for remediation should include comprehensive pre-, during, and post-construction monitoring of fish and benthos using the BACI methodology over multiple seasons and years to evaluate the existing and future conditions at the placement sites to demonstrate that improvements to fish habitat has been achieved.

Essential Fish Habitat Conservation Recommendations

Pursuant to Section 305(b)(4)(A) of the MSA we recommend that you adopt the following EFH conservation recommendations to avoid, minimize, or offset adverse impacts to EFH:

1) Refrain from changing the designation of the HARS to being suitable for the creation of habitat features until first developing a comprehensive plan for assessing the current habitat value and fish use of the HARS, determining habitat improvement needs, setting habitat creation targets, and establishing a monitoring plan to analyze the effectiveness of the habitat creation activities. Without this information or planning, it would be inappropriate to label future disposal of dredge or other materials as 'habitat creation' and it will be impossible to make any substantive conclusions about the success or failures of the work.
2) Alternatively, the HARS designation could be changed to simply allow the addition of suitable material beyond that which is necessary for remediation but without labeling the placement of the materials as habitat creation, restoration, or enhancement. This would eliminate the need for the aforementioned plan since there would be no assertion that fish habitat would be created or enhanced.

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. 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. 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 and Threatened Species- Endangered Species Act

Federally listed species may be present in the project area. The federal action agency will be responsible for determining whether the proposed action may affect listed species. Please be aware that we have recently provided on our website guidance and tools to assist action agencies with their description of the action and analysis of effects to support their determination. You can also find information about the temporal and spatial distribution of species and their different life stages on our interactive ESA Section 7 Mapper. If it is determined that the proposed action may affect a listed species, determination of effects, along with justification and a request for

concurrence to the attention of the Section 7 Coordinator, nmfs.gar.esa.section7@noaa.gov. After receiving a complete, accurate comprehensive request for consultation, in accordance with the guidance and instructions on our website, we would then be able to conduct a consultation under Section 7 of the ESA. Should project plans change or new information become available that changes the basis for this determination, further coordination should be pursued. If you have any questions regarding these comments, please contact Meagan Riley at meagan.riley@noaa.gov.

Marine Mammal Protection Act (MMPA)

As discussed in our July 31, 2025, letter, the MMPA prohibits the take of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 et seq.) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if the taking will be of small numbers, have a negligible impact on the affected species or stock, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Coordination with NMFS Office of Protected Resources will be needed as this effort moves forward to determine what, if any, authorization may be needed for any dredged material management actions are ultimately proposed. Additional information on the MMPA permits and authorizations can be found on the Office of Protected Resources' permits website.

Conclusion

While we have no objections to the continued placement of suitable dredged material at the HARS beyond what is needed for remediation, sufficient information has not been provided to demonstrate that the materials placed at the HARS thus far has resulted in improved fish habitat. Comprehensive monitoring and multi-season, multi-year surveys are needed to demonstrate fish habitat creation and improvements. Our staff is available to work with you on the development of these survey and monitoring plans should you continue to work to develop fish habitat improvement plans at the HARS. We look forward to continued coordination with you as plans for the future of the HARS and other dredged material management options in the New York Bight Apex continue to evolve. If you have any questions or need additional information, please contact Kira Dacanay at kira.dacanay@noaa.gov.

Sincerely,

Karen M. Greene 2026.01.22 08:20:55 -05'00'

For

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

cc. USACE - S. Ryba, P. Weppler, K. Vega
NOAA PRD - M. Riley
USFWS - E. Schrading
EPA Region 2 - M. Reiss, S. Nyer
MAMFC – C. Moore
NEFMC – C. O'Keefe
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