UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
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May 19, 2026

Todd Schaible, Chief
Regulatory Branch
U.S. Army Corps of Engineers, Philadelphia District
Wanamaker Bldg., 100 Penn Square East
Philadelphia, PA 19107-3390

RE: Public Notice NAP-2020-00032-95, Tyler Kinney for NJDEP Fish & Wildlife

Dr. Mr. Schaible:

Reference is made to Public Notice (PN) NAP-2020-00032-95, dated July 9, 2025, which describes an application by Tyler Kinney on behalf of the New Jersey Department of Environmental Protection (NJDEP) Fish & Wildlife to restore and enhance a coastal back bay salt marsh and to improve public access for non-motorized vessels at the Lighthouse Center on the Barnegat Bay in Waretown, Ocean County, New Jersey. In our letters dated, September 9, 2025, and September 29, 2025, we determined that the project will have substantial and unacceptable impacts to aquatic resources of national importance in Barnegat Bay, including essential fish habitat (EFH) for winter flounder (*Pseudopleuronectes americanus*) and submerged aquatic vegetation (SAV), a Habitat Area of Particular Concern (HAPC) for summer flounder (*Paralichthys dentatus*), in accordance with Part IV, Paragraphs 3a and 3b, respectively, of the 1992 Clean Water Act (CWA) Memorandum of Agreement between our agencies. In our letters, we recommended that the project not be authorized as proposed. We also stated that our primary concern was related to activities in Project Area C, where the applicant proposes to place dredged material in three acres of SAV and subtidal shallows, resulting in the loss and degradation of these ecologically valuable habitats.

This letter serves to conclude the coordination initiated under previous letters regarding the project's substantial and unacceptable impacts to aquatic resources of national importance as well as conclude consultation pursuant to pursuant to Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Fish and Wildlife Coordination Act (FWCA).

Consultation History and Resolution of Prior Concerns
Since the issuance of our previous letters, our agencies, the applicant and their partners, the Nature Conservancy, the New Jersey Department of Transportation's Office of Maritime Resources, and the U.S. Fish and Wildlife Services' Coastal Program, and the applicant's consultant, WSP, have been working collaboratively to address the issues and concerns we raised in our comments. Notably, the following progress has been made to address our concerns:

- **Interagency Coordination:** An on-site interagency visit was conducted on September 30, 2025, to review the project and discuss habitat goals.

- **Refinement of Project Scope:** The applicant removed the nearshore feeder bar feature from the current application until further sediment transport modeling is completed.
- **Site-Specific Data and Evaluations:** The applicant provided an updated SAV survey conducted in October 2025, and provided plans for additional surveys during the peak growing season and prior to construction. An expanded alternatives analysis was also provided, which included details on why the applicant determined that the proposed marsh restoration is the most practicable nature-based design to prevent total marsh loss.
- **Evaluation of Effects**: The applicant provided an amendment to the EFH assessment with an evaluation of the short- and long-term direct, indirect, synergistic, and cumulative effects of the proposed project on EFH and other NOAA-trust resources.
- **Avoidance, Minimization and Mitigation**: The applicant provided a list of avoidance and minimization measures as well as a revised mitigation plan and revised monitoring and adaptive management plan.

While these steps have resolved many of the procedural and data gaps identified in our 3a and 3b letters, the project will still result in the loss of SAV. The applicant proposes an in-kind 1:1 mitigation ratio for a "zero net loss" of SAV. However, due to the ecological value of SAV and difficulty in achieving successful restoration, we continue to recommend a minimum of a 3:1 mitigation ratio for all permanent SAV/HAPC losses, as is typically required for impacts to SAV and in instances such as this one where the existing habitat is being enhanced or rehabilitated rather than created or re-established.

Magnuson Stevens Fishery Conservation and Management Act

The MSA and the FWCA require federal agencies to consult with one another on projects such as this may adversely affect EFH and other aquatic resources. In turn, we must provide recommendations to conserve EFH and other NOAA trust 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.

The project area has been designated as EFH for a number of federally managed species including summer flounder, winter flounder, black sea bass (*Centropristis striata*), bluefish (*Pomatomus saltatrix*), several species of skates, and others. SAV in the project area has been designated as a HAPC for summer flounder by the Mid-Atlantic Fisheries Management Council (MAFMC).

As discussed in our previous letters, the proposed project includes various restoration techniques across three project areas:

- Project Area A: Salt Marsh Habitat Restoration - Focuses on restoring approximately 35 acres of degraded marsh and open water areas using low-tech/low-cost techniques (i.e., using bundled native vegetation to accrete sediment in grid ditches, ditch clearing, and creating new runnels) to improve hydrology, encourage sediment accretion, and revegetation.

- Project Area B: Beneficial Use of Dredged Material and Public Access - Involves the placement of dredged material across approximately nine acres of a degraded marsh using dredged material from nearby state navigation channels and reopening a shoaled-in boat channel on the project site.
- Project Area C: Shoreline Restoration - Aims to repair marsh elevation deficits and reestablish a wave-attenuating natural beach along 1,300 linear feet of shoreline by placing dredged sandy material over approximately four acres of intertidal habitat directly along on the shoreline. These project elements will result in the loss of more than two acres of subtidal shallows and SAV habitat, for which a 1:1 compensatory mitigation ratio is proposed.

We appreciate that the project incorporates a number of best management practices and avoidance measures including:

- a seasonal work window that avoids both the SAV active growing season and when winter flounder eggs and larvae are present
- floating the dredge pipeline
- real time turbidity monitoring
- no anchoring or dragging equipment in SAV

We also appreciate that the applicant has considered an ecosystem approach to the restoration design, as we recommend in the 2024 Mid-Atlantic Coastal Marsh Restoration Guidance, authored with the US Fish and Wildlife Service. Although we agree that some habitat tradeoffs are necessary to restore the ecological functions to the marsh, we do not agree this tradeoff should include more than three acres of impacts to a historically persistent SAV bed. While we recognize that SAV coverage in portions of the project area were shown to be sparse in some areas of the most recent survey done in October 2025, the placement of fill material in areas where SAV is growing is considered an adverse effect on EFH and summer flounder HAPC regardless of the SAV coverage/density.

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 commercial, sport fish such as bluefish, summer flounder, spot (*Leiostomus xanthurus*), Atlantic croaker (*Micropogonias undulatus*), herrings (Clupeidae) as well as migratory and forage fish species including alewife (*Alosa pseudoharengus*) and blueback herring (*Alosa aestivalis*). It is also an important food source for waterfowl and provides nursery habitat for blue crabs (*Callinectes sapidus*). As stated above, SAV has been designated as a HAPC for summer flounder by the MAFMC. 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)). The New England Fishery Management Council has also highlighted the importance of SAV as EFH for winter flounder in the description of EFH for

winter flounder eggs in their Omnibus Habitat Amendment 2. 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.

It is unclear how much SAV will be disturbed by the project, due to the timing of the field survey conducted (i.e., end of the growing season) and because the revised EFH assessment only included disturbances for areas of SAV with a percent cover greater than 10 percent. As we indicated in an email to you on March 26, 2026, SAV impacts should be based on the areal extent of the existing habitat regardless of coverage. This is no different than how wetlands are treated. Wetland impacts are not calculated by subtracting unvegetated pockets within the marsh. From the information provided, the project team has determined the upper and lower limit of SAV growth, which is between -1 to -6 ft NAVD88. So all areas affected by the project within these elevations and where SAV is growing are considered to be impacts to SAV habitat if material is to be placed there. This is consistent with past practice in NJ and there is no justification for altering this for a single project, particularly when considering the cumulative effects of coastal development and water quality degradation that has impacted this important habitat.

As stated above, we continue to recommend that unavoidable impacts to SAV are compensated at a minimum of a 3:1 ratio as is common practice within NJ. While we appreciate that the overall project is intended to restore degraded wetlands, the proposed project will still have adverse impacts to one of our most ecologically important habitats. Given the overall historical decline of SAV within the estuary and the high degree of uncertainty and risk of restoration failure, a ratio of 1:1 for compensatory mitigation is inadequate. Further, the applicant proposes using areas that have existing SAV coverage as the mitigation site. While we agree that supplementing existing sparse beds may increase the likelihood of success, this method does not create new areas of SAV or restore former areas. As a result, this type of compensatory mitigation is considered to be enhancement or rehabilitation, which generally requires a higher mitigation ratio than creation or re-establishment. 3:1 is the ratio typically required for enhancement or rehabilitation.

EFH Conservation Recommendations
Pursuant to Section 305(b)(4)(A) of the MSA, we recommend the following EFH conservation recommendations be included as special conditions of any Department of the Army Permit issued to offset adverse impacts to EFH:

Seasonal Work Windows:

1. Prohibit in-water dredging and material placement between January 1 through May 31 of any year to protect winter flounder early life stages
2. Prohibit activities that generate suspended sediments in and near SAV beds when the vegetation is actively growing and flowering between April 15 to October 15 of any given year to avoid affecting the plant's ability to photosynthesize which is essential for the plant’s growth and survival. The minimum recommended buffer between sediment generating activities and the edge of any SAV beds is 250 feet if the sediments are 95% sand and 500 feet if less than 95% sand.

General Best Management Practices:

3. All waterborne equipment shall float during all stages of the tide.
4. No equipment or vessels shall be anchored or moored within SAV beds.

SAV Disturbance Area:

5. Provide us with a revised SAV map and calculation of SAV that will be temporarily and permanently impacted by the project following the May/June survey. This includes all areas of SAV, regardless of areal coverage.

SAV Mitigation:

6. Provide compensatory mitigation at a ratio of 3:1 for all unavoidable impacts to SAV/HAPC for summer flounder. Buoy Deployed Seeding units (BuDS) shall use eelgrass (*Zostera marina)* only.

Monitoring and Adaptive Management:

7. Monitor all wetland and in-water areas, inclusive of SAV, over a minimum of five years with qualitative data collection for a minimum of three years (e.g., post-construction one year after a full growing season, year three, year five). The monitoring may exceed five years if performance metrics are not sustained between year three and five or achieved by the end of the fifth year.
8. Conduct SAV monitoring during the growing season (April 15 to October 15), with preference between May through June, at the height of growth and prior to annual die off which is enhanced during warmer summer months. SAV monitoring shall specifically include mitigation/enhancement areas and a reference area located outside of the influence of the project. Monitoring areas shall also cover areas where SAV was directly and indirectly impacted to monitor for any recovery or indirect impacts. The mitigation plan shall be revised to account for additional loss should an area decrease by 20 percent or greater between pre- and post-construction surveys.
9. Success shall be defined by the Threshold Value and Quality Ratio as described in Seagrass Restoration Handbook UK & Ireland by Gamble et al. (2021), p. 65. This shall be related to eelgrass only, and is consistent with conservation recommendations we provide within other Mid-Atlantic states (i.e., Maryland). Primary, indicators used for the ratio should either be percent cover and/or shoot density and the area/extent of bed should also be determined. Recruitment of widgeon grass (*Ruppia maritima*) may be noted in monitoring surveys, but the overall success criteria is based on eelgrass, which will be the only species seeded/planted for enhancement.
10. Following one year after a full growing season, there should be demonstrated recruitment of eelgrass seedlings at a density of not less than one seedling per four square meters with a distribution over the extent of the initial planting area. Seedlings should also demonstrate persistence and growth over the monitoring period.
11. An offsite reference area shall be used to compare restored beds rather than conditions at the project site to account regional trends and natural variability and also ensures that the trajectory of the compensatory mitigation project is interpreted in the context of regional conditions.
12. The reference site and donor bed site(s) shall be provided to us prior to implementation.

13. Provide us with a copy of all monitoring reports.

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 the 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 effect pursuant to 50 CFR 600.920 (k). This response must be provided within 30 days after receiving our EFH conservation recommendations. In the case of a response that is inconsistent with our recommendations, you must explain your reasons for not following the recommendations at least 10 days prior to final approval.

Please also note that a distinct and 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 EFH conservation recommendations.

Conclusion

The adoption of the above listed EFH conservation recommendations as special conditions of the Department of the Army authorization provides a clear resolution to the concerns identified in our 3a and 3b letters. We look forward to continued coordination as this project moves into the implementation phase. If you have any questions, please contact Jessie Murray at (732) 872-3116 or jessie.murray@noaa.gov.

Sincerely,



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

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