



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 01930-2276

MAR - 9 2020

Tammy R. Turley  
Department of the Army  
U.S. Army Corps of Engineers  
New England District  
696 Virginia Road  
Concord, MA 01742-2751

**Re: Offshore and Nearshore Disposal Sites from Maine to Connecticut**

Dear Ms. Turley:

We have completed our consultation under section 7 of the Endangered Species Act (ESA) in response to your emails received on January 16, 2020, January 24, 2020, and March 4, 2020, regarding the above-referenced proposed project. We reviewed your consultation request document and related materials contained within those emails. Because you made a "no effect" determination for North Atlantic right whale critical habitat, right whale critical habitat was not considered in this consultation. Based on our knowledge, expertise, and your materials, we concur with your conclusion that the proposed action is not likely to adversely affect any National Marine Fisheries Service (NMFS) ESA-listed species. Therefore, no further consultation pursuant to section 7 of the ESA is required.

While we agree with your rationale for your not likely to adversely affect (NLAA) determination, we offer several clarifications. In your cover letter, you say that you determined that the continued use of the disposal sites will not affect Atlantic salmon critical habitat. However, in the biological assessment, you make the determination that the continued use of the disposal sites may affect, but is not likely to adversely affect Atlantic salmon critical habitat. We concur with this determination. You go on to state that this consultation does not involve the effects of dredging activities. To clarify, the biological assessment does not evaluate the effects of the dredging activities within specific action areas where the Army Corps of Engineers (ACOE) may carry out, fund, or authorize work, and you will coordinate these activities with us through individual consultations, programmatic consultations, and/or established procedures as applicable.

In your Consultation History section, you mention that the most recent consultation (dated October 23, 2018) for the Cape Arundel Disposal Site (CADS) concurred with the determination that the disposal at CADS was not likely to adversely affect whales. Since the 2018 consultation, a more recent consultation with disposal at CADS was completed for the Rye Harbor Federal Navigation dredging project. In that biological assessment, (we concurred with the NLAA determination on November 1, 2019), you explained that the ACOE was not aware of any reported sightings of whales near the CADS and that right and/or fin whales were not expected to be present in the CADS given the depths there (approximately 100 feet). While we do not expect whales to be present in either the CADS or Saco Bay Disposal Site (SBDS) (see Section 7 mapper) based on the best available information, the project vessels could enter the areas where we expect whales to be present while on their way to and from those disposal sites. Because of this, special conditions for a given project will be determined on a case-by-case basis during consultation on the specific dredging activities carried out, funded, or authorized by the ACOE.



In the Designated Atlantic Sturgeon Critical Habitat section, you state that the action area will only overlap with designated Atlantic sturgeon critical habitat when specific dredging activities occur in the applicable rivers mentioned in the biological assessment and dredged material is transported to the disposal site. To clarify, the only possible stressor that could overlap with the action area would be the vessel traffic to and from the disposal site because the other effects of dredging activities are considered separate from this consultation. That said, no effects of vessel traffic to designated Atlantic sturgeon critical habitat are expected. Therefore, effects of this action on designated Atlantic sturgeon critical habitat will not be considered further.

In the Turbidity section of the Effects Analysis, there was no mention of the effects of increased suspended sediments on whale prey species. The temporary plumes from disposal are not expected to disturb pelagic prey, and therefore will not disturb the foraging patterns of whales. As such, the effects of increased turbidity on whales and their prey are too small to be meaningfully measured or detected, and are insignificant. We also add that the expected plumes from disposal will be temporary. Therefore, the effects of increased turbidity on sturgeon, turtles, and whales are insignificant.

In the Water Quality section of the Effects Analysis, it reads that the “impacts on water quality are extremely unlikely to negatively affect listed species and are discountable.” To clarify, the impacts on water quality are extremely unlikely to occur and are discountable.

Reinitiation of consultation is required and shall be requested by the lead federal agency or by us, where discretionary federal involvement or control over the action has been retained or is authorized by law and: (a) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered in the consultation; (b) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this consultation; or, (c) If a new species is listed or critical habitat designated that may be affected by the identified action. No take is anticipated or exempted. If there is any incidental take of a listed species, reinitiation would be required. Should you have any questions about this correspondence please contact Edith Carson-Supino at (978) 282-8490 or by email (Edith.Carson-Supino@noaa.gov). For questions related to Essential Fish Habitat, please contact Mike Johnson ((978) 281-9130; Mike.R.Johnson@noaa.gov) and Alison Verkade ((978) 281-9266; Alison.Verkade@noaa.gov) with our Habitat Conservation Division.

Sincerely,



Jennifer Anderson  
Assistant Regional Administrator  
for Protected Resources

EC: Johnson, NMFS/HCD; Verkade, NMFS/HCD; Penta, USACE; ECO: GARFO-2020-00091  
File Code: \Non-Fisheries\ACOE\Informal\2020\New England\USACE Offshore and Nearshore Disposal Sites from ME to CT