NOAA Fisheries

Greater Atlantic Regional Fisheries Office

Protected Resources Division

55 Great Republic Drive

Gloucester, MA 01930

Attn: Ms. Jennifer Anderson

Re: [PERMIT NUMBER OR PROJECT NAME]

Dear Ms. Anderson,

We are [carrying out/authorizing/funding] the proposed project as described below. This letter is to request Endangered Species Act (ESA) concurrence from your office for the [indicate name of the project]. We have made the determination that the proposed activity may affect, but is not likely to adversely affect, any species listed as threatened or endangered [add Critical Habitat if appropriate] by NMFS under the ESA of 1973, as amended. Our supporting analysis is provided below.

**Proposed Project**

INCLUDE A COMPLETE PROJECT DESCRIPTION

* Purpose of project
* Anticipated starting date
* Duration of project
* Applicable time of year restriction (please specify)

Describe all activities to be carried out

* Include any mitigation/minimization measures proposed as part of the action (special permit conditions, restrictions on equipment, time of year, etc.)
* If silt curtains or cofferdams, describe:
  + How will be installed
  + Size of area within the curtain or cofferdam
  + How long the structure will be present.
* If dredging, include the following information:
  + Dredge type
  + Volume of material to be removed
  + Authorized dimensions of channel and/or depths to be restored
  + Disposal location and estimate of number of trips
  + If maintenance is included, indicate the frequency and location of disposal
  + Time of year proposed and future time of year restrictions
  + Duration of work
* If pile driving, include the following information:
  + Number, diameter and type of piles
  + Installation/removal method
* If NPDES, include:
  + Description of the facility and what type of discharge
  + Any special permit conditions
  + Size of zone of dilution (when available) and/or dilution factor or description of the waterbody that helps explain rate of dilution
  + Any variances from water quality standards
* If there will be project vessels:
  + Approximate size and type of vessel (i.e., deep draft, cargo, barge etc.)
  + Available information on speed
  + Travel routes
  + Number of trips
  + Presence of lookout
* If in-water or over-water structures:
  + Describe the size of the structure and how it will be constructed/installed
* If aquaculture:
  + Describe layout of gear (include figures wherever possible)
  + Size of area impacted/leased and portion of area where gear will be deployed
  + Complete description of gear including vertical and ground lines, anchoring methods
  + Species being grown/raised
  + How gear will be marked and maintained
* If rip-rap or other material being placed on shoreline or bottom, provide description of type of material and how it will be placed (e.g., small rocks by hand)

**Description of the Action Area**

The action area is defined as “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action” (50CFR§402.02). For this project, the action area includes… PROVIDE A DESCRIPTION OF THE GEOGRAPHIC AREA WHERE ALL PROJECT EFFECTS/STRESSORS WILL BE EXPERIENCED, including latitude and longitude, and name of waterbody. This area is expected to encompass all of the effects of the proposed project.

To establish the Action Area, consider the project footprint (e.g., where the dredging will take place, where structures will be removed or installed etc.) as well as any other areas in which the effects of the action are likely to occur. Our ESA Section 7 consultation regulations define “Effects of the Action” to mean all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action. Thus, the action area for construction of a new marina may include, for example:

* Area affected by the dredging
  + Dredging area and disposal area
  + Transit route to disposal area
  + Extent of sediment/turbidity plume during dredging AND disposal
* Area affected by pile driving
  + How far does noise travel from the piles being installed
  + Extent of sediment disturbance
* Area affected by shading from the marina’s docks
* Area affected by vessel traffic
  + Number, type, and route of vessels associated with the dredging and/or marina construction to and from the project site as well as operations and functions at the project site and disposal area; new vessel traffic that may result from additional moorings/boat slips
* Area affected by the operation and maintenance of the new marina (an interdependent activity)
  + If there is any activity on land, include it. If the effects of land based activities do not extend into the water, then explain why no species will be exposed to effects of land-based activities and, thus, will not be considered further. If effects of land based activities extend into the water, include an assessment of those effects in the consultation.
* The extent of the consequences of other activities that are caused by the proposed action.

Estimate the maximum extent of the noise at the source and distance to relevant thresholds for species in the action area [Please see the Acoustic Tool on the [Technical Guidance](https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-consultation-technical-guidance) page]

Estimate the maximum extent of the sediment plume size, duration and characteristics for any sediment disturbing activity [Please see the [Turbidity Table](https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-effect-analysis-turbidity)]

Note: You are only stating the maximum extent of the stressors in the Action Area section. The analysis of the stressors will be done in the Effects Analysis section below.

DESCRIBE THE HABITAT IN THE ACTION AREA (e.g., depth, including tidal range, substrate type, presence of benthic resources including SAV or shellfish beds, salinity and any other relevant physical or biological features of the area).

**NMFS Listed Species (and Critical Habitat) in the Action Area**

* Provide a list of ESA-listed species and critical habitat that are present in the action area [Please see the [Species and Critical Habitat](https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-species-critical-habitat-information-maps) page]
* Include Federal Register citations and Species Recovery Plan citations for all listed species that are present in the action area [Please see the [Citations and References](https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-citations-and-references-all-species) page]
* For each species, explain the following:
  + Life stages present
  + Seasonality of presence; does it overlap with when the activity will take place?
  + What the individuals are doing there (i.e., foraging, migrating, spawning, overwintering etc.)
  + Duration of species presence (i.e., is it occasional, intermittent, or are they there for days or months at a time)
  + Explain why each species is expected to be in the area where effects will be experienced
  + Describe habitat used by the listed species in the action area
  + For CH, describe which physical and biological features are in the action area
  + Ensure that all of the details you provide are relevant to the action area
  + Do not include an extensive overview of species throughout its range or species presence within the waterbody unless it is needed to clarify the rest of your letter

**Effects Determination**

* Use the [Technical Guidance](https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-consultation-technical-guidance) webpage to identify the stressors associated with the activities under consultation. The “Effects of the Action” section should be organized by effect/stressors, which may result from multiple activities (e.g., you may have subheadings for water quality and vessel traffic and all activities resulting in those stressors would be discussed under those headings).
* For each stressor,
  + establish if individuals (or essential features of critical habitat) will be exposed to the effect/stressor and if so, which individuals (i.e., life stage, species) or aspect of critical habitat;
  + explain the consequence of that exposure;
  + if warranted, conclude that the activity will have effects that are extremely unlikely or insignificant (“unable to meaningfully measure, detect or evaluate”) or wholly beneficial (positive effects with no associated negative effects) and, consequently, incidental take is not anticipated to occur.
* It is critical that consultations analyze the effects of the action when added to baseline conditions; that is, what is the effect of the stressors when added to the baseline conditions (e.g., if the area already has high turbidity, you consider the effect of additional turbidity on top of an already turbid environment, or if you are considering vessel traffic you consider the effect of the addition of project related vessels to vessels that are already operating in the action area).
  + For example, “When this project is completed, it will not result in an increased number of vessels in the action area, and thus, there is no increased risk of vessel strike in the future. We have also considered the likelihood that an increase in vessel traffic related to the activities associated with the proposed project would generally increase the risk of interactions between sturgeon and vessels in the action area**, in addition to** baseline conditions. The use of a barge will cause a small, localized, temporary increase in vessel traffic. Given the extremely small increase in vessel traffic **above existing levels** in this reach of the Delaware River, there will be no measurable or detectable increase in the risk of vessel strike, and effects to sturgeon are insignificant.”

**Conclusions**

Based on the analysis that all effects of the proposed action will be insignificant and/or extremely unlikely, we have determined that [the proposed action] is not likely to adversely affect any listed species or critical habitat under NOAA Fisheries’ jurisdiction. We certify that we have used the best scientific and commercial data available to complete this analysis. We request your concurrence with this determination.

Sincerely,

Signature from AA

**Literature Cited**

Provide a complete citation for any references included in the letter (Please note: the literature cited is very important because in order to determine if we concur with your NLAA determination, we may need to review the literature that you used as a basis for your determination.)