



DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, CORPS OF ENGINEERS
ATTN: REGULATORY BRANCH
10 S. HOWARD STREET
BALTIMORE, MD 21201

DEC 9 2016

Operations Division

Mr. Chris Judy
Maryland Department of Natural Resources, Fisheries Service
Chesapeake Shellfish Program
Tawes State Office Building, B-2
580 Taylor Avenue
Annapolis, Maryland 21401-2397

Dear Mr. Judy:

This is in reference to the resubmitted application dated July 17, 2015, by the Maryland Department of Natural Resource (MDNR) requesting a Department of the Army (DA) permit, **CENAB-OP-RMN (MD DNR/FISHERIES SERVICE/MAN O' WAR SHOAL DREDGING) 2009-61802-M04**, to dredge five million bushels of oyster shell from the Man O'War Shoal (MOW) in the Chesapeake Bay, near the mouth of the Patapsco River, Baltimore County, Maryland. The project purpose is to obtain a supply of shell to be used for the restoration of oyster populations and oyster fisheries in the Bay.

The federal and state resource agencies met with you and other MDNR representatives on November 22, 2016 to discuss MDNR's response to the various comments received during the Corps' public interest review of the proposed project. The intent of the meeting was to provide clarification of what the agencies required for evaluation of the application, particularly from the Corps and the National Marine Fisheries Service (NMFS) concerning the EFH and ESA consultations. The NMFS, Habitat Conservation Division (HCD) has followed-up on this meeting with an e-mail to the Corps and dated December 5, 2016. It summarizes their comments and information needs which have also been included below. A copy is enclosed for your reference. As discussed at the meeting, the Corps requests that you please provide the following:

- 1) The application and the plans, must be revised to remove the area that has had shell plantings (...the western end of shoal) during the period of 2013 to 2016 to negate any potential shell dredging of these areas. Provide coordinates of both the areas that have been planted and the remaining shoal area that is subject to dredging.
- 2) Attachment #1 needs additional editing/revisions to accurately present the proposed project and its conclusions concerning the project's impact on the aquatic resources and fisheries. This includes revising all of the assessments of impacts to correlate with the proposed revision that sediment and shell bits are to be pumped back into the dredge cuts. As questioned by NMFS, HCD, "How is

the use of the habitat that remains the same or different than what is there now, particularly for federally managed species with designated essential fish habitat in the area and their prey?”

- 3) Please confirm whether the State of Maryland law allows for deposition of sediment and shell bits back into the dredge cut as proposed.
- 4) Since specific dredge cut locations have not yet been determined, the EFH Assessment must apply to the entire extent of the shoal that has the potential of being dredged as proposed by this project. As discussed, recent data on oyster density and use is necessary for an accurate assessment rather than limiting conclusions based on 1995 survey data. A patent tong survey is to be completed of the entire potential dredge area to provide data that will be used in completing the EFH Assessment and making the final permit decision.
- 5) Please provide a description of how the dredge cut locations are determined, which includes the measures taken to avoid and/or minimize impacts to existing aquatic resources. Provide from past core samples, the percentage of silts, sand, clays, shell, etc. in the area of the proposed cuts. Also of interest is a description of the specific factors, etc. that MDNR will use to determine where the dredged shell is to be placed.
- 6) Concerning the testing, please describe how the final reference sites are selected and address what specific assurances there are that each of them will be undisturbed by the proposed dredging. Recognize that our evaluation of this application will include consideration of the need for additional requirements/ permit conditions concerning the dredging and testing (i.e. monitoring, turbidity shut-down threshold, specific time-of-year restriction, etc.).
- 7) For the Corps to complete informal consultation under Section 7 of the Endangered Species Act (ESA) with the NMFS, Protected Resources Division (PRD), please provide the Corps the following information (NOTE: We recognize some of this may be in Attachment #1 but it would be helpful to reference the related page(s). There may be a need for additional but minor clarification when writing our documentation):
 - For the dredging operation, specify the kind and number of vessels to be used, the number of trips per day, the dredging time of year, whether sonar is used, the use of any pile-driving activity in the vicinity of MOW action area, and the potential for discharge of pollutants (e.g., fuel spills).
 - Address potential injury or mortality of sturgeon or sea turtles due to capture, impingement, or entrainment and measures taken to avoid these instances. Provide a detailed description of the proposed shell dredging operation, including the disposal of the remaining sediment and shell fines.
 - Address turbidity in the “action area” including its impacts on foraging (e.g. smothering prey species), the increase of total suspended solids (TSS) and

its duration and impacts, the extent of the resulting turbidity plume including its location (use of coordinates?), and the "direction" of its dispersion.

We request that you submit the required information by April 1, 2017. If additional time is needed to address and respond, please coordinate this request with this office. When you do submit the requested information, please reference the application name and number cited above.

If you have any questions concerning this matter, please contact me at (410) 962-6080 or by e-mail at abbie.hopkins@usace.army.mil.

Sincerely,

A handwritten signature in black ink that reads "Abigail A. Hopkins". The signature is written in a cursive style with a large initial "A".

Abigail A. Hopkins
Project Manager, Maryland Section Northern

Enclosure

Cc:
MDE, Tidal Division – Justin Berezna
NMFS, HCD – Kristy Beard
NMFS, PRD – Brian Hopper
EPA – Mike Mansolino
FWS – Chris Guy

From: [Kristy Beard - NOAA Federal](#)
To: [Hopkins, Abigail A CIV CENAB CENAD \(US\)](#); [Karen Greene - NOAA Federal](#); [Brian D Hopper](#)
Subject: [EXTERNAL] Re: MOW
Date: Monday, December 05, 2016 5:25:27 PM

Hi Abbie,

We appreciate the Corps, MDE, BPW, FWS, and MDNR taking the time to discuss the information needs for the Man O'War Shoal shell dredging permit application. As discussed at the meeting, it is necessary to have information on what is currently using the area in order to (1) describe what the anticipated impacts of the proposed action are, (2) to properly "assess the ecological consequences of removing shell from the shoal" – a stated goal of the project, and (3) determine dredging locations while minimizing impacts to existing resources. Our follow-up comments are below.

We recognize that, given the time lapse between a permit decision and the occurrence of dredging in year two, MDNR would prefer surveys conducted after permit issuance with the future dredging contractor to assist in determining the specific locations of dredging. Because MDNR is requesting that the EFH assessment consider all of Man O'War shoal and not specific cut locations, it is important to have recent data on oyster use, and the last time a patent tong survey was conducted to determine oyster densities across the bar was in 1995. However, there was a patent tong survey done in 2015 in the area of Man O'War that falls within the sanctuary boundary. Of 154 samples, only two oysters were collected and no spat were found (Attachment 1) – as discussed at the meeting, this is the type of information that is important in analyzing the potential impacts of the proposed project. We reiterate our recommendation that MDNR also conduct a pre-construction survey prior to the issuance of a permit to determine current density of oysters in order to analyze the impacts of the proposed dredging.

MDNR still needs to analyze the impact of changing the bottom depth and habitat by removing shell and partially backfilling the cut with sediment and shell "fines". How is the use of the habitat that remains the same or different than what is there now, particularly for federally managed species with designated essential fish habitat in the area and their prey? Attachment 1 continues to state in various places that shell would be left at the bottom of the cut and the type of habitat would not be changed.

MDNR should describe how they will determine dredging locations while minimizing impacts to existing resources.

MDNR should describe how they would determine what "undisturbed reference sites" they would use and how they would determine that these areas are not affected by the project. MDNR's response to this question lists possible reference sites, but does not indicate how they would choose the sites or determine that they are not impacted.

We appreciate the clarification in MDNR's responses to our questions and in the meeting that the proposed dredged shell is not the sole material to be used to meet habitat needs and the estimated 11 million bushel need for restoration (8.5M

bushels), Industry (2M bushels) and aquaculture (0.5M bushels) over the life of the five-year permit. As discussed in the meeting, if MDNR has not yet determined what the shell allocation to each use will be, they should describe how they will make that determination. Attachment 1 states that MDNR intends to use the shell “primarily to restore oyster habitat and oyster populations” but their answers to our questions don’t make it clear that this will be the case. For example, the response to NMFS (22) says that “if the ratio of shells allocated to aquaculture is minimal and to sanctuaries is maximized, then there is an overall emphasis given to sustainable uses for the shells” – but it doesn’t say that the use of shell for sanctuaries will be maximized.

MDNR should explain why they don’t intend to continue monitoring during dredging in year 5, should it continue.

Thanks!

Kristy

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*Kristy Beard
Marine Habitat Resource Specialist
Habitat Conservation Division*

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Blocked<http://www.nmfs.noaa.gov/>