UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701-5505
http://sero.nmfs.noaa.gov

February 4, 2019 F/SER47:FR/pw

(Sent via Electronic Mail)

Colonel Robert J. Clark, Commander
U.S. Army Corps of Engineers Wilmington District
69 Darlington Avenue
Wilmington, North Carolina 28403-1398

Attention: Sarah E. Hair

Dear Colonel Clark:

NOAA's National Marine Fisheries Service (NMFS) reviewed the Essential Fish Habitat (EFH) Assessment, dated October 26, 2018, for Action ID No. SAW-2015-02235. The Wilmington District provided the EFH Assessment by letter dated November 29, 2018. To accommodate larger ships, the North Carolina State Ports Authority (SPA) proposes to widen and deepen the existing Port of Wilmington Turning Basin in the Cape Fear River, New Hanover County. SPA's plan includes (1) mechanically dredging approximately 560,000 cubic yards from 17.76 acres of shallow and deep soft-bottom habitat and 1.4 acres of tidal marsh to establish a depth of -45 feet Mean Low Water and (2) installing a vertical, submerged, sheet-pile, toe wall along 1,416 feet of the eastern portion of the basin. The dredging would occur on the eastern and western sides of the present turning basin, and SPA would place the dredged material in the Eagle Island Confined Disposal Facility. The Wilmington District's initial determination is the proposed project may adversely affect EFH or associated fisheries managed by South Atlantic Fishery Management Council (SAFMC), the Mid-Atlantic Fishery Management Council (MAFMC), or the NMFS. As the nation's federal trustee for the conservation and management of marine, estuarine, and diadromous fishery resources, the NMFS provides the following comments and recommendations pursuant to the authorities of the Fish and Wildlife Coordination Act and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The SAFMC identifies shallow sub-tidal bottom and coastal marsh in estuarine waters as EFH in the fishery management plans for penaeid shrimp and the snapper-grouper complex. The SAFMC identifies these areas as EFH because fishes (e.g., gray snapper) and shrimp (e.g., white shrimp) concentrate in these habitats for feeding and refuge and experience high growth and survival rates when located in these habitats. The State of North Carolina designates portions of the Cape Fear River, including the entire proposed dredging area, as a Primary Nursery Area (PNA) for state-managed fishery species. This designation makes the location a Habitat Area of Particular Concern (HAPC) under the above SAFMC fishery management plans. HAPC's are subsets of EFH that are rare, particularly susceptible to human-induced degradation, especially important ecologically, or located in an environmentally stressed area. The MAFMC designates tidal creeks and the estuarine waters as EFH for summer flounder and bluefish. Other species of commercial or recreational importance found in the project area include red drum, Atlantic croaker, spot, Atlantic menhaden, bay anchovy, striped mullet, weakfish, Eastern oyster, and blue crab. A number of these species serve as prey for fish that are managed by the SAFMC (e.g., king mackerel, Spanish mackerel, and cobia) or for highly migratory fish managed by the NMFS (e.g., billfishes and sharks). The SAFMC provides additional information on EFH and federally managed

species in Volume IV of the *Fishery Ecosystem Plan of the South Atlantic Region*[1] and the *Users Guide to Essential Fish Habitat Designations by the South Atlantic Fishery Management Council*[2]. Detailed information about the EFH requirements of species managed by the MAFMC are included in separate amendments to individual fishery management plans and in technical reports prepared by the NMFS Northeast Fishery Science Center[3]. Lastly, the North Carolina Division of Marine Fisheries designates this area of the Cape Fear River as an anadromous fish spawning area. Anadromous fishes within the Cape Fear River of interest to the NMFS include American shad, hickory shad, blueback herring, striped bass, Atlantic sturgeon, and shortnose sturgeon. The Endangered Species Act (ESA) protects these sturgeon species, and the NMFS and others have focused considerable resources on restoring the migration corridors used by anadromous fish in the Cape Fear River.

The EFH Assessment does not describe measures the SPA will take to avoid or minimize effects to EFH from permanently altering approximately 20 acres of nursery habitat. The minimization measures discussed focus on the dredging process (e.g., installing and monitoring turbidity booms) and reporting to NMFS observation of impacts to sturgeon.

To compensate for the loss of 1.4 acres of tidal wetlands, the SPA proposes to create three acres of marsh on a large, intertidal flat adjacent to Shellbed Island in the lower Cape Fear River; SPA would do this work in association with The Audubon Society's ongoing efforts to restore oyster habitat at the site. By adding salt marsh to the effort, the SPA presumably believes the resulting habitat mosaic will achieve additional benefits. While the NMFS recognizes the value of habitat mosaics, a detailed analysis is needed to evaluate the effects from trading one form of EFH (intertidal and shallow-water unvegetated bottom) for another (salt marsh) when both are elements of nursery habitat.

To compensate for the loss of 1.68 acres of shallow bottom, the SPA proposes to donate $650,000 towards construction of the proposed modification to the rock-arch fishway at Lock and Dam Number 1. SPA indicates this donation is conditional upon what it views as timely completion of consultation under the ESA. While the NMFS supports the efforts to monitor and adaptively manage the rock-arch fishway at Lock and Dam Number 1, a detailed analysis is needed to determine how resources using the project area benefit from restoration work at Lock and Dam 1. If analysis shows this mitigation option is acceptable, it should not be contingent upon the consultation schedule.

The SPA considered alternative locations for the turning basin in the Cape Fear River and concluded augmenting the existing basin was most pragmatic and least detrimental to the environment. The proposed minimization measures in the EFH Assessment (termed conservation measures in the assessment) are limited to the water column during construction. The proposed mitigation for the loss of nursery habitat designated a PNA and HAPC is inadequate and needs formal evaluation to assess benefits relative to impacts. In the recently completed widening project in this same turning basin, which affected 6.4 acres of nursery habitat, the SPA put 13.4 acres of land adjacent to the Brunswick River into a conservation easement and paid $750,000 towards planning, permitting, and design of a fish passage structure at Lock and Dam No. 2 on the Cape Fear River.

EFH Conservation Recommendation

Section 305(b)(4)(A) of the Magnuson-Stevens Act requires the NMFS to provide EFH Conservation Recommendations for any federal action or permit, which may result in adverse impacts to EFH. Therefore, NMFS recommends the following to ensure the conservation of EFH and associated fishery resources:

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[1] Available at http://safmc.net/fishery-ecosystem-plan-ii-essential-fish-habitat-and-habitat-conservation-essential-fish-habitat/

[2] Available at http://safmc.net/download/SAFMCEFHUsersGuideFinalRevAug17_2.pdf

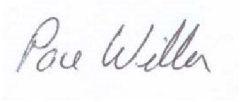
[3] Available at https://www.nefsc.noaa.gov/nefsc/habitat/efh//

- The NMFS recommends the permit application be held in abeyance until an acceptable mitigation plan is developed in coordination with the resource agencies.

Section 305(b)(4)(B) of the Magnuson-Stevens Act and its implementing regulations at 50 CFR 600.920(k), requires the Wilmington District to provide a written response to the EFH recommendation within 30 days of receipt. If it is not possible to provide a substantive response within 30 days, in accordance with the "findings" between the NMFS and the Wilmington District, an interim response should be provided. A detail response must then be provided prior to final approval of the action. The detailed response must include a description of measures proposed by the Wilmington District to avoid, mitigate, or offset the adverse impacts of the activity. If the Wilmington District's response is inconsistent with the EFH conservation recommendation, the District must provide a substantive discussion justifying the reasons for not following the recommendation. The detail response should be received by the NMFS at least ten days prior to final approval of the action.

Thank you for the opportunity to provide these comments. Please direct related questions or comments to the attention of Mr. Fritz Rohde at our Beaufort Field Office, 101 Pivers Island Road, Beaufort, North Carolina 28516-9722, or at (252) 838-0828.

Sincerely,



/ for

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

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