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, 2015 F/SER47:JD/pw

(Sent via Electronic Mail)

Lt. Col. John Litz, Commander
Charleston District, Corps of Engineers
69A Hagood Avenue
Charleston, South Carolina 29403-5107

Attention: Courtney Stevens

Dear Colonel Litz:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice 2013-00202-2R (Revised), dated January 23, 2015. Shipyard Creek Associates, LLC, requests authorization from the Department of the Army to fill or dredge 42.38 acres (42 acres of dredging, 0.1 acres of fill, and 0.28 acres of potential sloughing along the channel) of wetlands and waters of the U.S. to facilitate development of the Shipyard Creek cargo terminal at the former Macalloy Site, Charleston County. The proposed compensatory mitigation is a combination of tidal wetland credits purchased from a mitigation bank and permittee-responsible mitigation. The Charleston District's initial determination is this project would not have substantial individual or cumulative adverse impacts on essential fish habitat (EFH) or federally managed fishery species. As the nation's federal trustee for the conservation and management of marine, estuarine, and anadromous fishery resources, the following comments and recommendations are provided pursuant to authorities of the Fish and Wildlife Coordination Act and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Consultation History
NMFS commented on this project when it was put on public notice on April 12, 2013. Due to impacts to a tidal creek and marsh vegetation, NMFS provided the following EFH conservation recommendation in a letter dated April 30, 2013:

- *The permit shall be held in abeyance until the applicant demonstrates all impacts to EFH from the proposed project have been minimized, accounted for, and an appropriate compensatory mitigation plan has been approved by NMFS.*

Description of the Proposed Project
The currently proposed project description is identical to the one in the original public notice with respect to details of the dredge footprint, installation of timber dolphins, and construction of a mooring area, wharf retaining wall, and toe wall. In lieu of hydraulic dredging and disposing of sediments in the Clouter Island Confined Disposal Facility (CDF), the applicant now proposes a mechanical dredge for the initial work with disposal in the Charleston Ocean Dredged Material Disposal Site (ODMDS). The applicant forecasts an annual need to maintenance dredge 49,000 cubic yards of sediment, presumably with a hydraulic dredge, and proposes to dispose the material in the Clouter Island CDF. Construction of terminal facilities, an internal roadway system, industrial rail siding, and roadway and intersection improvements to Pittsburg Avenue would occur in uplands. The applicant prepared a MPRSA Section 103 Sediment Evaluation Report, dated December 2014. This report followed a previous MPRSA Section 103 Sediment Testing and Analysis, dated September 2014.

Essential Fish Habitat in the Project Area
The site of the proposed project includes estuarine emergent vegetation, marsh edge, and intertidal mudflats; the South Atlantic Fishery Management Council (SAFMC) identifies these habitats as EFH for white shrimp (*Litopenaeus setiferus*) and brown shrimp (*Farfantepenaeus aztecus*). Salt marshes and intertidal mudflats are EFH because larvae and juveniles concentrate and feed extensively and shelter within these habitats. As a consequence, growth rates are high and predation rates are low, which makes these habitats effective nursery areas for shrimp. SAFMC provides detailed information on types and locations of EFH in a comprehensive amendment that applies to all fishery management plans prepared by SAFMC and in *Fishery Ecosystem Plan of the South Atlantic Region* (available from *www.safmc.net*).

The waters of Shipyard Creek, the tidal creeks connected to it, and the surrounding coastal marsh also serve as nursery and forage habitat for other species, such as red drum (*Sciaenops ocellatus*), black drum (*Pogonias cromis*), Atlantic menhaden (*Brevoortia tyrannus*), and blue crab (*Callinectes sapidus*). Many of these species are prey for fish managed under the Magnuson-Stevens Act, such as mackerels, snappers, groupers, billfish, and sharks. Red drum are important as a recreationally caught species, and estuarine wetlands within the project area provide habitat necessary for development and survival throughout all life stages of red drum.

Impacts to EFH
The impacts NMFS described in the April 30, 2013, letter remain applicable to the revised project. NMFS continues to believe not all impacts from the project are identified. For example, the sheet pile wall in front of the tidal creek on the southern portion of the project site could impede flow and access by fish to approximately 2 acres of marsh. In addition, the newly proposed use of a mechanical dredge (instead of a hydraulic dredge) may increase concentrations of suspended sediments in the water column.

It is unclear why the applicant submitted an additional MPRSA Section 103 sediment analysis report; however, NMFS reviewed the report for potential impacts to the Charleston ODMDS. On December 1, 2014, NMFS submitted comments on the September 2014, recommending the Charleston District not permit disposal of Shipyard Creek material in the Charleston ODMDS until a detailed review of the sediment testing results is completed. The December report did not provide additional detail to alter this recommendation. Several polynuclear aromatic hydrocarbons (PAHs), ammonia, and dioxin/furan levels exceeded ecological benchmarks. Bioassay tests had a high rate of mortality; however, when ammonia effects were ameliorated and when sediments were mixed with ambient water, there were no significant differences in survival rates among the test organisms between control and impact site samples. NMFS defers to the Environmental Protection Agency and the Charleston District to determine if sediments comply with ocean disposal regulations.

Compensatory Mitigation
The applicant proposes to purchase 4.6 salt marsh credits from the Congaree-Carton Mitigation Bank. This plan is problematic in two ways. First, NMFS maintains the applicant has not identified all the impacts requiring mitigation. Because not all the impacts are identified, the applicant has not justified that impacts have been avoided and minimized to the maximum extent practicable. Second, based on correspondence with the Charleston District, the Congaree-Carton Mitigation Bank has only 2.4 tidal credits available (email from Nat Ball, April 22, 2013). NMFS is a member of the Mitigation Banking Interagency Review Team, and it is unlikely additional tidal credits will be released to the Congaree-Carton Mitigation Bank in the near future. No other mitigation banks with an approved service area that includes Shipyard Creek have tidal credits available for sale. The applicant should pursue permitee-responsible mitigation. Once impacts from the project have been avoided and minimized, NMFS is available to work with the Charleston District, resource agencies, and the applicant to develop appropriate mitigation plan once all impacts from the project are identified and minimized.

Conservation Recommendations
NMFS finds the proposed filling and dredging of wetlands will adversely affect EFH. Section 305(b)(4)(A) of the Magnuson-Stevens Act requires NMFS to provide EFH conservation recommendations when an activity is expected to adversely affect EFH. Based on this requirement, NMFS provides the following:

EFH Conservation Recommendations

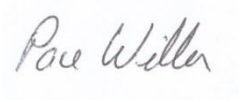
- The permit shall be held in abeyance until the applicant demonstrates all impacts to EFH from the proposed project have been minimized, accounted for, and an appropriate compensatory mitigation plan has been approved by NMFS.
- To minimize risk of aquatic organism exposure to contaminated sediments, the permit shall include best management practices for operation of the mechanical dredge to minimize suspension of sediments.

Section 305(b)(4)(B) of the Magnuson-Stevens Act and implementing regulation at 50 CFR Section 600.920(k) require the Charleston District to provide a written response to this letter within 30 days of its receipt. If it is not possible to provide a substantive response within 30 days, an interim response should be provided to NMFS. A detailed response then must be provided 10 days prior to final approval of the action. The detailed response must include a description of measures proposed by the Charleston District to avoid, mitigate, or offset the adverse impacts of the activity. If the response is inconsistent with an EFH conservation recommendation, a substantive discussion justifying the reasons for not following the recommendation must be provided.

In accordance with section 7 of the Endangered Species Act of 1973, as amended, it is the responsibility of the Charleston District to review and identify any proposed activity that may affect endangered or threatened species and their designated critical habitat. Determinations involving species under NMFS jurisdiction should be reported to NMFS Protected Resources Division at the letterhead address.

NMFS appreciates the opportunity to provide these comments. Please direct related correspondence to the attention of Ms. Jaclyn Daly-Fuchs at our Charleston Area Office at (843) 762-8610 or at Jaclyn.Daly@noaa.gov.

Sincerely,



/ for

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

cc:

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