

- Alliance for a Living Ocean
- American Littoral Society
- Arthur Kill Coalition
- Asbury Park Fishing Club
- Atlantic Highlands Arts Council
- Bayshore Regional Watershed Council
- Bayshore Saltwater Flyrodders
- Belford Seafood Co-op
- Belmar Fishing Club
- Beneath The Sea
- Bergen Save the Watershed Action Network
- Berkeley Shores Homeowners Civic Association
- Cape May Environmental Commission
- Central Jersey Anglers
- Citizens Conservation Council of Ocean County
- Clear Air Campaign, NY
- Clean Water Action
- Coalition Against Toxics
- Coalition for Peace & Justice/Unplag Salem
- Coastal Jersey Parrot Head Club
- Communication Workers of America, Local 1075
- Concerned Businesses of COA
- Concerned Citizens of Bensonhurst
- Concerned Citizens of COA
- Concerned Citizens of Montauk
- Eastern Monmouth Chamber of Commerce
- Environment NJ
- Fishermen's Conservation Association, NJ Chapter
- Fishermen's Conservation Association, NY Chapter
- Fishermen's Dock Cooperative, Pt. Pleasant
- Food and Water Watch, NJ
- Friends of Island Beach State Park
- Friends of Liberty State Park, NJ
- Friends of the Boardwalk, NY
- Garden Club of Allenhurst
- Garden Club of Bay Head and Mantoloking/Seaweeders
- Garden Club of Brielle/Bayberry
- Garden Club of Englewood
- Garden Club of Fair Haven
- Garden Club of Long Beach Island
- Garden Club of RFD Middletown
- Garden Club of Morristown
- Garden Club of Navesink
- Garden Club of New Jersey
- Garden Club of New Vernon
- Garden Club of Oceanport
- Garden Club of Princeton
- Garden Club of Ridgewood
- Garden Club of Rumson
- Garden Club of Sea Girt/Holly
- Garden Club of Short Hills
- Garden Club of Shrewsbury
- Garden Club of Spring Lake
- Garden Club of Terra Nova
- Garden Club of Washington Valley
- Great Egg Harbor Watershed Association
- Green Party of Monmouth County
- Green Party of New Jersey
- Highlands Business Partnership
- Hudson River Fishermen's Association
- Jersey Shore Captains Association
- Jersey Shore Parrot Head Club
- Jersey Shore Partnership
- Junior League of Monmouth County
- Keypoint Environmental Commission
- Kewans Club of Shadow Lake Village
- Leonardo Parry & Pleasure Boat Association
- Mantoloking Environmental Commission
- Marine Trades Association of NJ
- Monmouth Conservation Foundation
- Monmouth County Association of Realtors
- Monmouth County Audubon Society
- National Coalition for Marine Conservation
- Natural Resources Protective Association, NY
- NJ Beach Buggy Association
- NJ Environmental Lobby
- NJ Friends of Clearwater
- NJ Marine Education Association
- Nottingham Hunting & Fishing Club, NJ
- NYC Sea Gypsies
- NY Marine Education Association
- NY/NJ Baykeeper
- Ocean Wreck Divers, NJ
- PaddleOut.org
- Picatinny Saltwater Sportsmen Club
- Raritan Riverkeeper
- Religious on Water
- Rotary Club of Point Pleasant
- Rotary District #7540—Interact
- Saltwater Anglers of Bergen County
- Sandy Hook Bay Anglers
- Save Barnegat Bay
- Save the Bay, NJ
- SEAS Monmouth
- Shark Research Institute
- Shark River Cleanup Coalition
- Shark River Surf Anglers
- Sierra Club, NJ Shore Chapter
- Sisters of Charity, Mars Stella
- South Monmouth Board of Realtors
- Staten Island Tuna Club
- Strathmere Fishing & Environmental Club
- Sunrise Rod & Gun Club
- Surfers' Environmental Alliance
- Surfrider Foundation, Jersey Shore Chapter
- Surfrider Foundation, South Jersey Chapter
- TACK I, MA
- Unitarian Universalist Congregation/Monm. Cnty.
- United Boatmen of NY/NJ
- Viking Village
- WATERSPIRIT
- Women's Club of Brick Township
- Women's Club of Keypoint
- Women's Club of Long Branch
- Women's Club of Merchantville
- Women's Club of Spring Lake
- Zen Society, NJ



Ocean Advocacy
Since 1984

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VIA ELECTRONIC MAIL

January 19, 2021

RE: Draft Feasibility Report and Environmental Assessment for New York & New Jersey Harbor Deepening and Channel Improvements

Dear Ms. Baumert and Mr. Miller,

Clean Ocean Action (COA) submits the following comments in response to the New York & New Jersey Harbor Deepening Channel Improvements (NYNJHDCI) Integrated Feasibility Report and Environmental Assessment (EA). The NYNJHDCI study intended to determine if there is a technically feasible, economically justified, and environmentally acceptable recommendation for federal participation in a navigation improvement project in the New York and New Jersey Harbor. As detailed herein, COA urges the U.S. Army Corps of Engineers (USACE) to require a full Environmental Impact Statement (EIS) to better assess environmental impacts, assess cumulative impacts, consider future projects in the same region, and conduct a careful assessment of all alternatives.

Clean Ocean Action is a broad-based coalition of 115 conservation, environmental, fishing, boating, diving, religious, student, surfing, women's, business, civic and community organizations dedicated to the improvement of water quality and defending the marine ecosystem from Montauk, NY, to Cape May, NJ. COA welcomes and appreciates the opportunity to comment on this important matter, and appreciates the extension of the comment period to January 19, 2021.

In general, COA recognizes the need for waterborne commerce in its role as an environmental option for moving large volumes of cargo over vast distances when compared to air or truck transport. To this end, maintaining safe navigation is essential not only to waterborne commerce, but to protect marine life and ecosystems



from harm from collisions, groundings, and other accidents that result in chemical spills and habitat destruction. In this regard, COA has played a leading, proactive role in supporting dredging needs, as well as advocating for and recommending environmentally sound alternatives for dredged material management, such as treatment and beneficial reuse. With this context and experience, COA participated in both virtual public meeting sessions held in December 2020 and reviewed the documents pertaining to this project.

The USACE identified a preferred action called the Tentatively Selected Plan (TSP), which calls for the deepening of the channels from sea to Port Jersey – Port Authority Marine Terminal and Elizabeth – Port Authority Marine Terminal by up to 5 feet to a maintained depth of -55 feet mean low water. The TSP includes deepening Ambrose Channel, Anchorage Channel, the Kill Van Kull, Newark Bay Channel, South Elizabeth Channel, Elizabeth Channel, and the Port Jersey Channel. This includes the additional width required for structural stability and for the navigation of the design vessel to transit from sea to Elizabeth Port Authority Marine Terminal and Port Jersey Port Authority Marine Terminal. This will require the removal of over 32 million cubic yards of material from the aforementioned channels.

The USACE issued a Finding of No Significant Impact (FONSI), determining that the TSP will not “significantly adversely impact public health or safety, the quality of the human environment, threatened and endangered species, or state species of special concern.” **Clean Ocean Action firmly rejects this finding.** COA urges the Army Corps of Engineers to require a full, comprehensive Environmental Impact Statement (EIS) be completed for the New York/New Jersey Harbor channels in this study. A comprehensive EIS is necessary to evaluate all impacts, including cumulative, to wildlife and natural resources, communities, as well as to nearshore areas. Below is COA’s general and more specific rationale for this position.

Given the complexity and scope of this \$4 billion project, the Finding of No Significant Impact (FONSI) is unfounded and unacceptable. Further, the US Environmental Protection Agency (EPA) Region II Office does not “concur” with the FONSI. Overall, the Environmental Assessment (EA) fails to accurately, adequately, and fairly consider many factors; these factors include the following:

- no meaningful evaluation of alternatives, specifically the “no action” alternative;
- lack of clear and convincing need for the deepening project, especially when compared to existing economic needs in the region that have dramatically increased due to the pandemic;
- need for Congressional authorization and appropriations, as well as regional matching funds from New York and New Jersey;
- no detailed assessment of the impact of the pandemic on future markets and commerce, and the potentiality of more dependence on U.S. production rather than imports;
- lack of careful assessment of environmental impacts and consequences to local communities or ecosystems, including endangered species, especially from noise and resuspension of sediments;
- no detailed assessment of impact of climate change, including sea level rise impacts to the port and the region;
- incomplete, assumed, or unspecified dredged material management alternatives and options for 34 million cubic yards of material;
- upland alternative assessments for dredged material management must have careful review and public support;

- antiquated management options for dredged materials;
- lack of consideration of the legacy of contaminants in-and-around the Port of New York and New Jersey;
- expectant use of the Historic Area Remediation Site without due process; and
- lack of public involvement.

On the last point, it is disappointing, at best, that neither the USACE or the Port Authority of New York and New Jersey (PANYNJ) sought input or participation from non-governmental organizations in the NY/NJ region, particularly those with a history of public involvement in these issues. As mentioned above, Clean Ocean Action, as well as many other groups in the region, have had a keen role in port dredging issues for over 30 years. It harkens to the 1980-90s' archaic systems of public engagement, which should have evolved based on the success of the past.

In short, the case for this deepening project has not been made and the FONSI finding is unacceptable. Indeed, the attempt to fast track this massive project with an Environmental Assessment (EA) and FONSI is galling as the project is not expected to be completed until 2038, and does not yet have authorization and appropriations at the federal and state levels.

A more detailed review of these issues follows.

Lack of Need:

Section 1.2 of the CINS Feasibility Study and EA establishes the Purpose, Scope, and Need for Action. The whole of this section is only 400 words. Of these words, less than 110 words describe the need by stating the following:

The existing federal navigation channel was designed for the Regina Maersk (1,044 feet long, 140 feet wide, has a static draft of 46 feet, and a capacity to carry 6,400 Twenty-foot Equivalent Units (TEUs)). The vessels routinely calling on the harbor today are longer, wider, and have drafts deeper than the existing channel design vessel. These larger vessels have a greater risk of grounding, collision or marine casualty, and have resulted in limitations to operation within the harbor. The need for this investigation arises from inefficiencies currently experienced by vessels in the harbor where a significant share of the current fleet exceeds the capacity of the existing federal navigation channel. These inefficiencies are projected to continue in the future as vessel sizes are expected to increase.

It appears to be assumed that this statement without assessment is cause for fast-tracking the process with a thin EA, rather than a full EIS.

Clearly, the need to deepen the channels presented in the TSP is not justified. The proposed deepening is an enormous project with a large price tag to taxpayers. The plan is estimated to provide \$340.1 million in annualized benefits and have a Project First Cost (deepening to -55 feet MLLW) of \$4,052.3 million (which is over \$4 billion). In this time of grave economic downturn, struggle, and financial uncertainty, taxpayer dollars must be directed to the neediest of projects. This region has many pre-pandemic critical needs for public health, environmental justice, civic improvements and infrastructure (environmental and transportation). These have been expanded and made daunting by the pandemic. Further, as stated above, the project still needs authorization and approvals from federal and state levels.

The previous NY/NJ Harbor deepening project to 50-feet was just completed in 2016, just five (5) years ago. The PANYNJ and USACE now argue that because ships available to transport goods to ports of the world are larger and will continue to increase in size, the NY/NJ Harbor must accommodate these larger, deeper ships. While such ships may exist, there is no detailed analysis supporting the need to match this inflation of ship sizes with deeper channels. Container ships call upon the port every day and navigate the current channels without incident. As stated in the Public Notice, “[m]odern-day container ships may now enter the port fully loaded and safely.”

The Port is the number one port on the East Coast and has access to one of the most densely populated regions in the country. According to the NY District, the Port has access to 23 million local consumers and up to 100 million customers within 36 hours at markets all over the U.S. and Canada. This fact alone, along with the vast system of operations, makes the Port a premier port of call for those looking to import or export goods, regardless of the depth of its channels. To suggest that the Port must change its channel depths to accommodate shipping companies is truly a “tail wagging the dog” proposition.

Ports all over the world are successful without deepening to accommodate these bigger ships. According to Dr. Jean-Paul Rodrigue, Dept. of Global Studies & Geography, Hofstra University:

The Panama Canal is a limiting factor for ship transport worldwide, with a depth of 50 feet (the same as NY/NJ Harbor). Rodrigue says the Panama Canal at 50 feet has triggered a “race to the bottom” in the dredging of several East Coast ports such as Miami (50 feet achieved in 2014), New York (50 feet achieved in 2016) and Savannah (47 feet by 2022). Other ports have dredging plans. *Yet, such projects are very expensive and require careful consideration of the marginal benefits they convey*” (emphasis added).

Clean Ocean Action maintains that dredging beyond 50 feet is the point where marginal benefits begin. Based on the presented documents, the economic and environmental costs are not justified.

Moreover, it is impracticable to think ports can continuously be dredged deeper and deeper without end. Andy Lane, a partner in CTI Consultancy in Singapore, recently commented, “I think that the ports did get a little carried away” in expecting larger ships to call immediately.” According to an article in the January 15, 2020, Maritime Bulletin, “some ports have already introduced a size limit for ships because they are no longer wanting to take part in this rat race.” Rather than continually digging deeper, “U.S. ports on all coasts, and more relevantly the terminals, need to continue to focus on what is needed to increase productivity/vessel turn-around times to 'global standards' or beyond...Ports also need to remain cognizant that growth is going to be modest moving forwards.”

Environmental Assessment Data Outdated, FONSI Inappropriate

According to the NYNJHDCI study, USACE is using 25-year-old environmental assessments and impact analyses from previous harbor deepening projects in 1996 and from smaller, local projects thereafter. The environmental impacts consideration is woefully inadequate, flawed, and outdated. Waterways and channels have changed in the two-plus decades. Relying on conditions over two decades ago does not present real-time, up-to-date information on which to base a multi-billion-dollar tax-payer-paid project. Further, by the time the proposed deepening project is completed and in use – 2038-2087 -- the environmental assessments and information used for the project will be based on information almost 50 years old!

The USACE has failed to consider the cumulative environmental effects of multiple dredging events

when reviewing this proposal. The TSA identifies nine (9) channels to be deepened. There are also other dredging projects being proposed, under review, or ongoing in the Harbor. Therefore, the NYNJHDCI cannot be viewed in isolation if its full environmental impact is to be properly assessed. The New York State Department of Environmental Conservation (NYSDEC) and the New Jersey Department of Environmental Protection (NJDEP) must also concur with identified cumulative impacts.

On page 5 of NYNJHDCI Appendix A10, it is stated that the proposed deepening complies or “appears to meet requirements” for the Endangered Species Act, National Historic Preservation Act, Clean Water Act Sections 404(B)(1) and 401 compliance, and the Coastal Zone Management Act. However, there are no dates (only “TBD”) or references associated with the documents that support the FONSI for the NYNJHDCI.

Relying on old environmental analyses is irresponsible and unacceptable. This EA must be rejected and a full EIS must be completed.

Management of Dredged Materials

The recently enacted Water Resources Development Act of 2020 requires maximization of beneficial use of dredged material. Section 125 states:

Sec. 125. Beneficial Use of Dredged Material; Dredged Material Management Plans. This section renews the Congressional commitment to beneficial use of dredged material by: (1) establishing a national policy to maximize the beneficial use of material obtained from Corps projects; (2) increasing the number of beneficial use of dredged material demonstration projects to 35 projects; (3) requiring the Corps to calculate the economic and environmental benefits of the beneficial use of dredged material; (4) directing the Corps to develop five-year regional dredged material management plans; and (5) emphasizing greater coordination across the Corps' dredging contracts.

The EA and FONSI do little to examine the extensive beneficial reuse options for clean and HARS-suitable materials, especially for sustainable uses in the region due to climate change impacts. The HARS-unsuitable materials require much more careful assessment and determination of beneficial use through community engagement and participation. Again, the EA is unacceptable and must be rejected. A full EIS must be completed.

Moreover, the sediments in-and-around the Port of New York and New Jersey is renowned for the legacy of contaminants they contain, including oil-based contaminants, PAHs, heavy metals (i.e., arsenic, lead, zinc, and mercury), and some of the most persistent and harmful manmade chemicals -- PCBs, DDT, and dioxins, to name a few. The deepening plan is extensive and will require the dredging and management of 33,238,000 cubic yards of material (sediment, sand, and rock) from numerous shipping channels in NY/NJ Harbor. Undoubtedly, it is highly likely that some of the dredged material will contain the aforementioned harmful chemicals.

The study makes broad characterizations of the material and fails to clearly identify beneficial reuses for the material. According to the study, “The Tentatively Selected Plan reflects the least cost dredged material placement plan, which includes beneficially using dredged material by placing it either upland, at the HARS, or on a reef.” As stated above, this is too vague. A full EIS is needed to identify and evaluate alternatives.

Also, the Historic Area Remediation Site (HARS) is for material that meets legal criteria for type, quality, and amount of material. How and when will the over 21 million cubic yards of material (HARS-suitable sand and hard rock/till) anticipated for HARS placement be assessed and determined appropriate for HARS? Further, will HARS, which is reaching its capacity, be able to accommodate a sufficient amount of the materials from this project? The study also does not specifically identify upland alternatives. Further, where will the 830,000 cubic yards of “harder” rock be disposed? Importantly, what if upland alternatives are not available? The disposal options and placement of dredged material must be defined and reviewed in more detail in a full EIS, including evaluating new options for beneficial reuse for sustainability within the Port region.

Material Analysis Needed: Type and Contamination

The port sediments in the NY/NJ Harbor region contain a legacy of contaminants, as mentioned in the previous section of these comments. According to the NYNJHDCI study, “Typically, water bodies adjacent to or downstream from areas that have a history of industrial activity, especially prior to the introduction of environmental regulations in the 1970s, show the greatest potential for contaminated sediments.” Also, resuspension of these contaminants during dredging is an ongoing concern. The study states: “Dredging has the potential to release nutrients and/or contaminants from sediments, which can impact fishes, prey, and habitat.”

Further, Environmental Assessments conducted for previous projects that USACE is using in furtherance of its FONSI determination here have revealed bioaccumulation test results for toxins that were statistically significant in channels included in this current TSP. Also, sediments move over time and many of these channels may have accumulated silt and sediments that may be toxic since the last Environmental Assessments have been conducted. Indeed, the NYNJHDCI study indicates borings and laboratory test data from various channels from the late 1990s – more than 20 years ago – are being used to make determinations. This is scientifically indefensible and wholly unacceptable.

The study also identified the Historic Area Remediation Site (HARS) as the location for the placement of over 21 million cubic yards of dredged material (HARS-suitable sand and hard rock/till) from the project. Clean Ocean Action has concerns about the quality of sediment and materials for use as remediation material at the Historic Area Remediation Site (HARS), as well as the capacity of HARS. Current evaluations of this material must be done in order to continue the progress made in cleaning-up HARS. Other beneficial options for dredged material that is greater than 90% sand must also be considered.

It is unacceptable to approve this study and project, and rely on studies to determine contamination of material *after* project approval. It must not wait until pre-construction. According to the study:

“Prior to commencement of construction, dredged material will undergo evaluation procedures including chemical and biological testing in accordance with Federal guidance and regulations to provide information to reach a factual determination concerning Clean Water Act, Section 404 requirements (40 Code of Federal Regulations 230.11) and applicable state water quality standards. A water quality certification support letter from each affected state will be requested finalization of this integrated report.

This EA must be rejected and a full EIS must be completed.

NEPA Changes & Their Impacts

COA is further concerned that the approval of the study and project is moving quicker than in the past due to recent changes to the National Environmental Policy Act (NEPA) process during the Trump Administration that directs all Environmental Assessments be completed within an average of one year. This is a large, extensive, and expensive project. More time and effort are needed to identify and evaluate the environmental impacts from the deepening of these channels in this region.

Conclusion

Based on all of the above issues and concerns, the USACE's finding that an EA is sufficient since "*the recommended plan would not cause significant adverse effects on the quality of the human environment*" is unfounded and unacceptable.

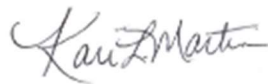
Clean Ocean Action has presented numerous deficiencies in the New York & New Jersey Harbor Deepening Channel Improvements (NYNJHDCI) Integrated Feasibility Report and Environmental Assessment. Clean Ocean Action joins with many groups throughout the region, including U.S. Environmental Protection Agency Region II, in asserting that this Environmental Assessment is unacceptable, and a comprehensive Environmental Impact Statement must be required and conducted for the proposed deepening of the channels included in the TSP.

In sum, Clean Ocean Action urges the U.S. Army Corps of Engineers to require a full Environmental Impact Statement (EIS) to better assess environmental impacts, assess cumulative impacts, consider future projects in the same region, and conduct a careful assessment of all alternatives. A written response to these comments is requested.

Respectfully submitted,



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Kari Martin
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CC: Open letter

References:

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