



STATE OF DELAWARE

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF CLIMATE, COASTAL AND ENERGY

STATE STREET COMMONS

100 W. WATER STREET, SUITE 7B

DOVER, DELAWARE 19904

**COASTAL
PROGRAMS**

PHONE
(302) 739-9283

August 2, 2024

Thomas Olson
Sea Colony Recreational Association
PO Box 480
Bethany Beach DE, 19930

RE: Delaware Coastal Management Program — Federal Consistency Certification for Sea Colony Beach Renourishment (FC 2023.0092)

Dear Mr. Olson,

The Delaware Coastal Management Program (DCMP) of the Delaware Department of Natural Resources and Environmental Control (DNREC) has completed its review of the above referenced project. This letter is in response to the federal consistency certification dated June 29, 2023, and received July 27, 2023, submitted by Gahagan & Bryant Associates, Inc. on behalf of Sea Colony Recreational Association.

PROPOSED ACTION

Sea Colony Recreation Association, Inc. proposes to conduct periodic beach renourishment activities over a 10-year period, by hydraulic or hopper dredge, along a 2,350 linear foot stretch of shoreline extending from the southern town limits of Bethany Beach to the northern limits of the private community of Middlesex Beach, Sussex County, Delaware. Approximately 150,000 cubic yards of material per event would be sourced from Borrow Areas "E" and/or "Fenwick Shoals" and placed on the beach in the same template used for the surrounding beaches. The work would be conducted in conjunction with periodic nourishment of the federal projects at Bethany Beach and South Bethany.

FEDERAL CONSISTENCY UNDER THE COASTAL ZONE MANAGEMENT ACT

Pursuant to the Coastal Zone Management Act (CZMA) of 1972, as amended, any applicant for a required federal license or permit to conduct an activity, in or outside of the coastal zone, that can have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone

of that state, shall provide a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program. The National Oceanic and Atmospheric Administration (NOAA) is required to review and approve a proposed state management program for it to become effective. Under the CZMA implementing regulations, Federal Consistency with Approved Coastal Management Programs (15 CFR 930), subpart D, state agencies are directed to develop a list of federal license or permit activities to be included as part of the management program, with the federal license or permit activities described in terms of the specific licenses or permits involved. Any applicant for a federal license or permit selected for review by a state agency should obtain the views and assistance of the state agency regarding the means for ensuring that the proposed activity will be conducted in a manner consistent with the management program.

PUBLIC PARTICIPATION

In accordance with 15 CFR §930.61, the public was invited to participate in the review of the Sea Colony Beach Renourishment project. Public notice of this proposed action was published in the Delaware State News, The Wilmington News Journal, and DNREC public notices list service on August 13, 2023. The public was given 30 days to comment on this notice. No public comments were received in response to this notice.

FEDERAL CONSISTENCY ANALYSIS

The DNREC DCMP coordinates the review of consistency determinations with agencies administering the enforceable and advisory policies of the program. The following agencies participated in this review:

DNREC Division of Air Quality
DNREC Division of Fish and Wildlife
DNREC Division of Waste and Hazardous Substances
DNREC Division of Water
DNREC Division of Watershed Stewardship

The proposed activity is to be implemented in a manner consistent with the enforceable policies of the DCMP under 7 DE Admin. Code 2201, Section 5.0, including, but not limited to: 5.2 Beach Management, 5.3 Coastal Waters Management, 5.4 Subaqueous Lands and Coastal Strip Management, 5.11 Living Resources, and 5.20 Air Quality Management.

For beach replenishment activities, DNREC Division of Fish and Wildlife (DFW) stated that, although unexpected, if piping plovers (*Charadrius melodus*) or American oystercatchers (*Haematopus palliatus*) are observed in the project area, work should cease and DFW should be contacted for further recommendations. Additionally, red knot (*Calidris canutus*) may be present on the beach in the deposition zone. If red knots are observed regularly, DFW should be contacted to determine appropriate recommendations to minimize potential impacts.

The Atlantic coast is a migratory pathway for many species of sea turtles, including the federally listed endangered Kemp's ridley (*Lepidochelys kempii*) and leatherback (*Dermochelys coriacea*)

sea turtles, as well as the federally listed threatened loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) sea turtles. The Atlantic coast is also utilized by several cetacean and pinniped species, including the federally listed endangered humpback (*Megaptera novaeangliae*) and fin (*Balaenoptera physalus*) whales. Additionally, the federally listed endangered Atlantic sturgeon (*Acipenser oxyrinchus*) utilize Delaware's Atlantic coast, bays, and the Delaware River. Species migrating through or foraging in the vicinity of the borrow areas could be impacted by the proposed activity.

The Delaware Bay and its nearby coastal waters are used extensively by sandbar (*Carcharhinus plumbeus*) and sand tiger (*Carcharias taurus*) sharks, which are listed as NOAA species of concern. To avoid impacts to important shark species, winter may be the best time to conduct this work. Additionally, if a cutter head is used to complete this project, caging should be considered.

Sand resource areas that have been historically harvested in Delaware's nearshore Atlantic coast have included relic shoals that provided ideal surf clam (*Spisula solidissima*) habitat and rocky habitat that support important commercial and recreational species, such as black sea bass (*Centropristis striata*) and summer flounder (*Paralichthys dentatus*). Areas with coarse sediments on the surface sufficient to support unique epibenthic communities important to these fish species should be avoided in dredging borrow material.

To avoid impacts to rare and important species, DNREC Division of Fish and Wildlife advised that dredging activities not take place from March 16 through December 14.

Additionally, please be advised that the use of public sand resources for this project will be addressed as part of state environmental permitting process.

CONDITIONAL CONCURRENCE

Based on its review and pursuant to 15 CFR 930, the DCMP conditionally concurs that the Sea Colony Beach Renourishment project as proposed above is consistent with the policies of the DCMP. To be consistent with the DCMP's enforceable policies, the following condition must be satisfied as they relate to enforceable policies 5.1.9, 5.1.10, 5.2.4, 5.3.1, 5.3.1.19-20, 5.3.1.23, 5.4.18, and 5.4.20-21:

- The applicant must obtain the necessary state wetlands, subaqueous lands, and/or coastal construction permits/authorizations related to survey activities, or any other activity associated with the project within waters, wetlands, and/or beaches regulated by the State of Delaware.

Failure to comply with 15 CFR §930.4 as it relates to the conditions above will result in this conditional concurrence being considered an objection. Under this scenario, the applicant is advised that pursuant to 15 CFR part 930, subpart H, and within 30 days from receipt of this letter, a request may be submitted to the Secretary of Commerce to override the objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the DCMP and the federal permitting or licensing agency. The Secretary may collect fees for administering and processing your request.

Pursuant to 15 CFR 930.66, Sea Colony Recreational Association shall notify the DCMP of any proposed modifications to activities after receiving a decision from the DCMP. Modifications will be subject to supplemental federal consistency review if effects to any coastal use or resource will be substantially different than originally described.

Please be advised that this federal consistency review does not negate the need for other authorizations that may be required.

Thank you for the opportunity to review and respond to the Sea Colony Beach Renourishment federal consistency certification. If you have any questions, please contact me or Jennifer Holmes of my staff at (302) 739-9283.

Sincerely,



Kimberly B. Cole, Administrator
Delaware Coastal Management Program

KBC/jlh

cc: FC File 2023.0092

Mike Yost, USACE Philadelphia District
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