

Appendix R
National Marine Fisheries Service (NMFS)
Endangered Species Act, Section 7 Consultation

OCT 5 2006



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

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OCT 3 2006

F/SER31:KR

Mr. Nathaniel Ball
Project Manager
Charleston District, Corps of Engineers
69A Hagwood Avenue
Charleston, SC 29403-5107

Dear Mr. Ball:

This responds to the Corps of Engineers' (COE) March 29, 2006, letter regarding the South Carolina State Ports Authority's (SCSPA) proposal to construct a container terminal at the Charleston Naval Complex (CNC) along the Cooper River in North Charleston, South Carolina. You determined that the proposed project is not likely to adversely affect North Atlantic right whales and humpback whales and requested National Marine Fisheries Service (NMFS) concurrence, pursuant to section 7 of the Endangered Species Act (ESA). In addition to humpback and North Atlantic right whales, five species of sea turtles (loggerhead, green, Kemp's ridley, hawksbill, and leatherback), three other species of whales (blue, fin, and sei) and the shortnose sturgeon protected by the ESA and under NMFS' purview may be found in or near the project site and are included in this consultation.

On April 5, 2006, NMFS received a request from the COE for section 7 consultation under the ESA on a proposed port expansion project. The request included a description of the proposed project, including a DEIS. NMFS requested additional information April 27, 2006, and received a response on May 17, 2006. Due to concerns over the potential effects of increased shipping traffic on right whales, NMFS initiated formal consultation on May 17, 2006. Ongoing discussions (phone, meeting, etc.) occurred throughout June to August to discuss potential harm avoidance measures. NMFS received an addendum to the project description dated September 14, 2006, that included measures described below.

The COE is proposing to issue a Clean Water Act permit to the SCSPA for the construction of a container terminal at the CNC. The SCSPA plans to meet anticipated import/export cargo handling needs by expanding the Port of Charleston (POC) with the new container terminal, which will be located at the southern end of the CNC. Increased vessel traffic is an interrelated and interdependent activity that would not occur but for the port expansion and effects of such activities must be considered under section 7 consultations 50 CFR 402.02. According to the SCSPA, there are approximately 5,000 vessel transits of the Charleston Harbor approach channel per year. In 2012, the new container port will increase container traffic by approximately 12 percent at full capacity.



The proposed project includes the development of 13.6 acres of wharf structure on the west side of the Cooper River. The wharf structure will be 3,510 feet long and 18 feet above mean low water (MLW) and will be developed with an estimated 6 container cranes of sufficient size to service the future fleet of post-Panamax container vessels expected to call at POC. Post-Panamax is a term used to describe ships that cannot fit through the Panama Canal. The SCSPA proposes to develop 201.4 acres of lighted paved area for container processing and storage and 37.3 acres of paved area for support operations and facilities. The portion of the container yard that extends into the Cooper River will be excavated and backfilled. This section will extend 1,000 feet into the Cooper River. The SCSPA will develop approximately 25 acres of storm water management facilities. These facilities will store and treat runoff from the wharf, container yard, and support area. Stormwater will be detained and treated before being discharged into Shipyard Creek through a series of controlled outfall structures.

The SCSPA will develop a 12-acre berth adjacent to the wharf structure measuring 150 feet wide by 3,510 feet long. This berth will be excavated to a depth of -50 feet MLW. A 76.3-acre turning basin and access channel will extend approximately 850 feet from the existing federal navigation channel to the proposed berth. The total dredged material volume will be approximately 5.3 million cubic yards (including side slopes, turning basin, berths, wharf, and container support area). Annual maintenance dredging of the turning basin is expected to be approximately 80,000 cubic yards (initial rates may be higher). All materials will be dredged from the berth, access channel, and turning basin by hydraulic dredge and will be placed in the Daniel Island Confined Disposal Facility (CDF), which is located on the southern end of Daniel Island between the Wando River and the Cooper River. The CDF consists of three diked cells with a combined area of 651 acres. The SCSPA will install a sediment suspension system in the berth area to help minimize future sedimentation within the berth immediately adjacent to the face of the wharf structure. The sediment suspension units will be attached to the wharf piles at a depth of -50 feet MLW. When activated, the system will create a current over the bottom that will help minimize future sedimentation in the berthing area. The system is not expected to increase turbidity over baseline levels.

In all, the project will result in a permanent loss of 10.5 acres of tidewater marsh, 2.4 acres of subtidal waters (<2 feet), 49.2 acres of deep water (>2 feet), 3,042 linear feet of shoreline, and 2.1 acres of mudflats.

The SCSPA has included aerial survey flights for right whales as a harm avoidance measure in their project design. The surveys will benefit *all* shipping in the vicinity of the POC, not just the additional shipping resulting from this project. Aerial survey flights will be conducted throughout the right whale migration period (November through April) for a period of 5 years to detect and alert mariners to the presence of right whales. These flights will occur daily (weather permitting) during daylight hours and will be staffed by trained whale observers using the standard protocols used in current right whale aerial survey contracts. Flights will occur in the approximate area of 30 nautical miles north and south of the POC approach channel from shore out to 25 nautical miles. Observers will locate and relay whale observations in real time to ships in the area via the United States Coast Guard (USCG), and/or direct from survey crews to ships via VHF radio to help ships avoid interactions with whales. All data collected by the aerial

surveys will be shared with NMFS to further the knowledge about whale behavior, location, and population status in the area. Whale observations will also help ascertain if there are whale 'hot spots' off the coast that should be avoided by shipping interests. Additionally, the flights will further our knowledge about migratory and mother/calf behaviors in an area where this data is currently deficient. Use of the data will help establish appropriate recommendations for locations of shipping lanes for the POC. This will further reduce risk of whale/ship interactions in the area. Similar work being carried out in other areas with similar shipping practices has shown the potential to decrease the risks to right whales by about 30 percent (L. Garrison, NMFS SEFSC, pers. comm.).

The POC already participates in education and outreach activities and will continue to do so in the future. Education and outreach helps raise awareness among mariners to alert them to the right whale/vessel collision problem so mariners may take effective actions to avoid collisions with whales. This measure currently affects existing traffic and will be expanded to include all ships calling on the POC.

Included in this consultation are five species of sea turtles (loggerhead, green, Kemp's ridley, hawksbill, and leatherback), the shortnose sturgeon, and five species of whales (blue, fin, sei, humpback, and North Atlantic right) protected by the ESA and under NMFS' purview that may be found in or near the project site or in areas affected by increased shipping. Sea turtles (loggerhead, green, hawksbill, leatherback, and Kemp's ridley) pass through the shipping lanes on a year-round basis. Humpback and North Atlantic right whales are coastal animals that may be found off the coast of South Carolina fall through spring. Blue, fin, and sei whale distribution numbers are not well known for the areas off South Carolina; however, their concentrations in these areas are thought to be low compared to more northern latitudes. The project is not located in critical habitat for any listed species under NMFS' jurisdiction.

NMFS has analyzed the routes of potential effects on sea turtles, shortnose sturgeon, and whales from the proposed action and, based on our analysis of the project, determined that the potential effects are limited to the following: Direct effects from pile-driving, dredging, and increased shipping traffic and indirect effects from water quality impacts associated with construction (i.e., turbidity and noise).

Hydraulic dredges have only very rarely been implicated in strandings of sea turtles or sturgeon, probably because they advance at such a slow pace and are noisy, giving mobile sea turtles and sturgeon ample opportunity to get out of the way. The temporary turbidity effects associated with dredging are also not expected to adversely affect federally-listed species.

NMFS concludes that the project's effects on sea turtles and shortnose sturgeon are discountable or insignificant based on the following: The probability of a pile being driven on a mobile listed species is very low; sea turtles and shortnose sturgeon potentially present in the project area are highly mobile and are likely to temporarily avoid the area during construction due to project noise. The increase in turbidity will be temporary. Foraging habitat for sea turtles and shortnose sturgeon will not be lost as this is an industrial area with little or no foraging opportunities.

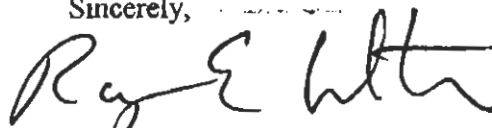
NMFS concludes that the project's effects on blue, fin, and sei whales are discountable or insignificant based on the following: Blue, fin, and sei whales are not coastal whales and are found generally offshore; additionally, the aerial surveys provided by the SCSPA will further reduce potential for interaction.

NMFS concludes that the project's shipping related effects on humpback and North Atlantic right whales are discountable or insignificant based on the following: We know that ship strikes are one of two main sources of anthropogenic mortality to right whales, that an increase in ship traffic will increase threats to right whales, and the Port of Charleston's proposed project will increase ship traffic in this region. However, the harm avoidance measures proposed by the SCSPA, combined with other measures already in place, will reduce the potential for ship strikes. The POC expansion project will increase shipping in the region by approximately 12 percent at full build-out. However, the measures proposed will prevent harm from the proposed project by providing information necessary to determine appropriate shipping lane recommendations prior to vessels actually using the POC expansion facilities. Moreover, the harm avoidance measures will reduce ship/whale interaction risks for all vessels (>5,000 annually) calling on the POC by alerting ships to whales in the area.

This concludes the COE's consultation responsibilities for this project under section 7 of the ESA for species under NMFS' purview. Consultation must be reinitiated pursuant to 50 CFR 402.16 and shall be requested by the Federal agency or by the Service, where discretionary Federal involvement or control over the action has been retained or is authorized by law, if there is new information that reveals effects of the action that may affect listed species or critical habitat (when designated) in a manner or to an extent not previously considered, if the identified action is subsequently modified in a manner that causes an effect to listed species or critical habitat that has not been considered, if the harm avoidance measures are not carried out as described in this letter, or if a new species is listed or critical habitat is designated that may be affected by the identified action.

Thank you for your continued cooperation and assistance in the conservation of threatened and endangered species under NMFS' purview. If you have any questions, please contact Karla Reece, ESA biologist, at (727) 824-5312, or by e-mail at karla.reece@noaa.gov.

Sincerely,



Roy E. Crabtree, Ph.D.
Regional Administrator

File: 1514-22.F.1 SC
Ref: I/SER/2006/01801