



United States Department of the Interior

FISH AND WILDLIFE SERVICE
3817 LUKER ROAD
CORTLAND, NY 13045

July 27, 1998

Colonel William H. Pearce
District Engineer, New York District
U.S. Army Corps of Engineers
26 Federal Plaza
New York, NY 10278

Attention: Mr. Roberto Barbosa

Dear Colonel Pearce:

The U.S. Fish and Wildlife Service (Service) has reviewed Public Notice 98-00290-Y3, dated June 16, 1998, by the applicant Hudson River Park Conservancy. This is the report of the Service and the Department of the Interior submitted in accordance with the provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.). This response is also provided pursuant to the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.). These comments are for use in your determination of 404(b)(1) guidelines compliance (40 CFR 230), and in your public interest review (33 CFR 320.4) relating to protection of fish and wildlife resources.

The applicant proposes to construct a 5-mile, multi-use park along the Hudson River. The proposed work would include creation of mooring fields, repair of bulkheads, repair and replacement of piers, construction of new water taxi stops, installation of a public vessel float, installation of floating bridges, construction of "get-downs," construction of a two-level boat house, repairing portions of piers for "ecological piers," construction of a marina, construction of a balcony, creation of a beach, repair and replacement of an esplanade, and construction of a high-level platform. The purpose of the project is to allow reuse of the deteriorated piers and waterfront in and along the New York side of the Hudson River and to increase public access to the Hudson River Waterfront. The work would occur in and adjacent to the Hudson River, at the Borough of Manhattan, New York County, New York.

Adverse impacts to fish and wildlife resources and their habitats are likely to occur should the project be approved. Based on the scrutiny of the project plan, the concerns of the Service include location of the project in areas used by migratory fish and birds, removal of fish habitat, non-point source water pollution, non-water dependent uses of some structures, and the potential for adverse cumulative impacts.

The proposed project is located in a Significant Water Habitat Complex. As stated in the Service's "Significant Habitats and Habitat Complexes of the New York Bight Watershed," dated November 1996, the proposed project falls within the Lower Hudson River Estuary Complex. The lower part of the Hudson River Estuary plays a significant role as a nursery

area for several marine and estuarine spawners such as American eel (*Anguilla rostrata*), Atlantic menhaden (*Brevoortia tyrannus*), fourbeard rockling (*Enchelyopus cimbrius*), bluefish (*Pomatomus saltatrix*), weakfish (*Cynoscion regalis*), northern pipefish (*Syngnathus fuscus*), longhorn sculpin (*Myoxocephalus octodecemspinosus*), winter flounder (*Pleuronectes americanus*), bay anchovy (*Anchoa mitchilli*), hogchoker (*Trinectes maculatus*), and mummichog (*Fundulus heteroclitus*). This part of the estuary is considered among the most productive systems for fisheries along the northern Atlantic Coast. This area is also important wintering habitat for young-of-the-year, yearling, and older striped bass (*Morone saxatilis*).

In addition to the wintering fish, the lower estuary provides habitat for significant populations of overwintering waterfowl such as canvas back (*Aythya valisneria*), scaup (*Athya* spp.), mergansers (*Mergus* spp.), mallard (*Anas platyrhynchos*), and Canada goose (*Branta canadensis*).

The above fish populations could be impacted by the proposed construction of structures over the water, ecological piers, and repair of existing pier structures. Pile fields, without the pier structure, have been found to provide habitat for fish species. However, with the pier structure or other structure which shades the pile field, the piles are no longer attractive to fish as habitat. Therefore, construction of any sort which will increase shading in and around pile fields could essentially remove fish habitat. The ecological piers, in addition to shading fish habitat, could attract undesirable species such as gulls and rats. Without maintenance, the ecological islands could deteriorate and eventually create piles of fill in fish habitat. The fish and waterfowl populations could also be impacted by the increased human activity associated with the repair and construction of the pier structures, "get downs," and marina areas. The increased boating and similar activities could prevent fish and waterfowl from using the lower Hudson River estuary, forcing them to move further to search for a less active area, and therefore potentially reduce their energy levels necessary for migration.

The construction of facilities over and adjacent to the river could increase non-point source pollution in the river. The increase in public use and activities associated with maintenance of the park and related facilities, as well as an increase in paved surface, could lead to greater amounts of vehicle fluids, herbicides and pesticides, and floatables washing into the river. This would further reduce the quality of the habitat for fish and wildlife use.

Several of the proposed structures are not necessary for water dependent uses. The buildings on the piers, floating bridges, and balconies are non-water dependent structures. These structures are not necessary for access to the water and will potentially degrade fish and wildlife habitat by shading and increase potential for non-point source pollution.

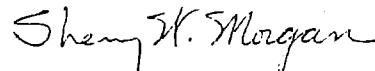
The Service is also concerned about the long-term, cumulative impacts of the proposed project combined with other projects in the vicinity. Other projects proposed for this area include the "Yonkers Downtown Waterfront Master Plan, Draft Generic Environmental Impact Statement," dated May 1998, the Corps' Hudson River Habitat Restoration project (1995), and Federal harbor deepening projects. While the applicant has prepared an Environmental Impact Statement for the project, this project is of sufficient size and scope that we recommend that the Corps conduct an independent analysis under NEPA to examine direct, indirect, and cumulative impacts of the proposed project.

The Service recommends that authorization for the proposed work be denied. This recommendation is based on an evaluation of the probable impacts to fish, wildlife, and their

habitats, and considers the balance between benefits and reasonably foreseeable detriments of the proposed activity on the public interest. It is the Service's position that the project will encourage the degradation of fish and wildlife habitats, and that the public benefits do not clearly exceed the public losses with respect to fish, wildlife, their habitats, and the public enjoyment and use thereof.

In light of the comments discussed in this letter, it is the opinion of the Service that the proposed project may result in substantial and unacceptable impacts to aquatic resources of national importance as defined in paragraph one, Part IV of the 1992 Memorandum of Agreement (MOA) between the Department of the Interior and the Department of the Army regarding Section 404(q) of the Clean Water Act. As outlined in Part IV, Section 3 of the MOA, please have your staff contact my Long Island Field Office in order to resolve any outstanding issues during the 25-day period following the closure of the Public Notice comment period. For further information please contact Assistant Field Supervisor, David Stilwell, at (607) 753-9334 or have your staff contact Christy Johnson-Hughes, of our Long Island Field Office, at (516) 581-2941.

Sincerely,



Sherry W. Morgan
Field Supervisor

cc: NYSDEC, Long Island City, NY (Env. Permits)
NYSDOS, Albany, NY (Coastal Resources)
EPA, Chief, Marine & Wetlands Protection Branch, New York, NY
NMFS, Highlands, NJ
FWS, Hadley, MA (L. Zicari)

References

U.S. Army Corps of Engineers. 1995. Hudson River habitat restoration, Hudson River, New York, Reconnaissance report. New York District, New York, NY.

U.S. Fish and Wildlife Service. 1996. Significant Habitats and Habitat Complexes of the New York Bight Watershed. Charlestown, RI. Pp 629-654.