



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
NORTHEAST REGION  
One Blackburn Drive  
Gloucester, MA 01930-2298

JUL 27 1998

Colonel William H. Pearce  
District Engineer  
U.S. Army Corps of Engineers  
26 Federal Plaza  
New York, NY 10278-0090

Dear Colonel Pearce:

The National Marine Fisheries Service (NMFS) has reviewed the announcement for a public hearing and request for public comments filed by your Regulatory Branch on behalf of the Hudson River Park Conservancy. The applicants have requested authorization for generic construction activities in and adjacent to the Hudson River at the west side of Manhattan, New York County, New York. As indicated in the Public Notice (Number 98-00290-Y3), the applicant seeks authorization of a park development within a waterfront corridor between Battery Park Place and West 59th Street. The proposed park would be situated within approximately 550 acres, much lying in or over the Hudson River. Under the conceptual plan, a variety of new uses would be applied to existing and proposed structures in and over the Hudson. Many of these activities are not water dependent and could adversely impact extraordinarily important resources and habitats. Based on the limited available information, we have determined that authorization will result in substantial and unacceptable impacts to aquatic resources of national importance, and we recommend that your office not issue the permit. This letter is in accordance with Part IV, Paragraph 3(b) of the 1992 Clean Water Act Section 404(q) Memorandum of Agreement between the Department of Commerce and Army Corps of Engineers.

The lower Hudson River provides extensive and vital habitats to a broad diversity of aquatic resources. Despite stresses related to urban development and pollution, more than a billion dollars have been spent in the last two decades to improve water quality in the lower Hudson River. Those improvements have had a profound impact in the reach between Battery Park and the George Washington Bridge. Although the exact nature of the local ecological functions has not been documented thoroughly, this portion of the Hudson supports many marine and estuarine species at critical stages in their life cycle, including striped bass (*Morone saxatilis*), winter flounder (*Pleuronectes americanus*), bluefish (*Pomatomus saltatrix*), tomcod (*Microgadus tomcod*), black sea bass (*Centropristis striata*), bay anchovy (*Anchoa mitchilli*), cunner (*Tautoglabrus adspersus*), American eel (*Anguilla rostrata*), weakfish (*Cynoscion regalis*) and a variety of crustaceans.



In addition to harvested and forage species, the lower Hudson River habitats seasonally support federally listed, endangered or threatened marine species including shortnose sturgeon (*Acipenser brevirostrum*) and Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*) and loggerhead (*Caretta caretta*) sea turtles. Federally authorized activities that take place in habitats used by these species require evaluation pursuant to Section 7 of the Endangered Species Act. Certain marine mammals, including harbor seals (*Phoca vitulina*) and harbor porpoise (*Phocoena phocoena*), also have been documented in the general vicinity.

NMFS is not opposed to creating public access in this reach of the Hudson River. However, the area supports habitats and living marine resources that warrant heightened scrutiny of projects that could diminish these resources. Substantial construction activities are proposed in, over and adjacent to the river, but the project plans do not contain sufficient detail to allow evaluation of the effects on species managed under the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, and Emergency Striped Bass Act.

The present proposal indicates that the possible activities include the use of decking or platform structures. Such structures have been shown to markedly diminish use by aquatic resources. Data collected in this region by the NMFS in association with Rutgers University indicates that retaining or installing new decking over portions of the River would reduce the suitability of the areas as habitat for many estuarine fish species. Without a thorough discussion of the structures to be modified or created, their specific characterization and their utility to the public, it is difficult to compare the environmental impacts with potential public benefits. Until the conceptual designs are presented with an appropriate level of information, we are unable to (1) assess their impacts fully, (2) identify possible mitigative measures or (3) determine the acceptability of their impacts.

In conclusion, in the absence of a more detailed impacts assessment and better defined project plan, we recommend that the present application be denied. To address these issues, we have begun to explore with the applicant and your staff (as well as other advocacy groups) methods and procedures that could resolve these problems and be contained in a generic authorization for the park. The most efficient method of resolving this matter may be to apply a structured framework to define the scope and purposes of the project, document the expected impacts, and take appropriate measures to minimize unavoidable impacts in accordance with the National Environmental Policy Act. Should you wish to discuss this matter further, please contact Diane Rusanowsky at (203) 783-4228.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon C. Rittgers", with a long horizontal flourish extending to the right.

Jon C. Rittgers  
Acting Regional Administrator

cc: USEPA - Region II  
USF&WS - Cortland, Islip  
NYSDOS - Albany  
NYSDEC - Region II  
Nancy Haley - PR, Milford