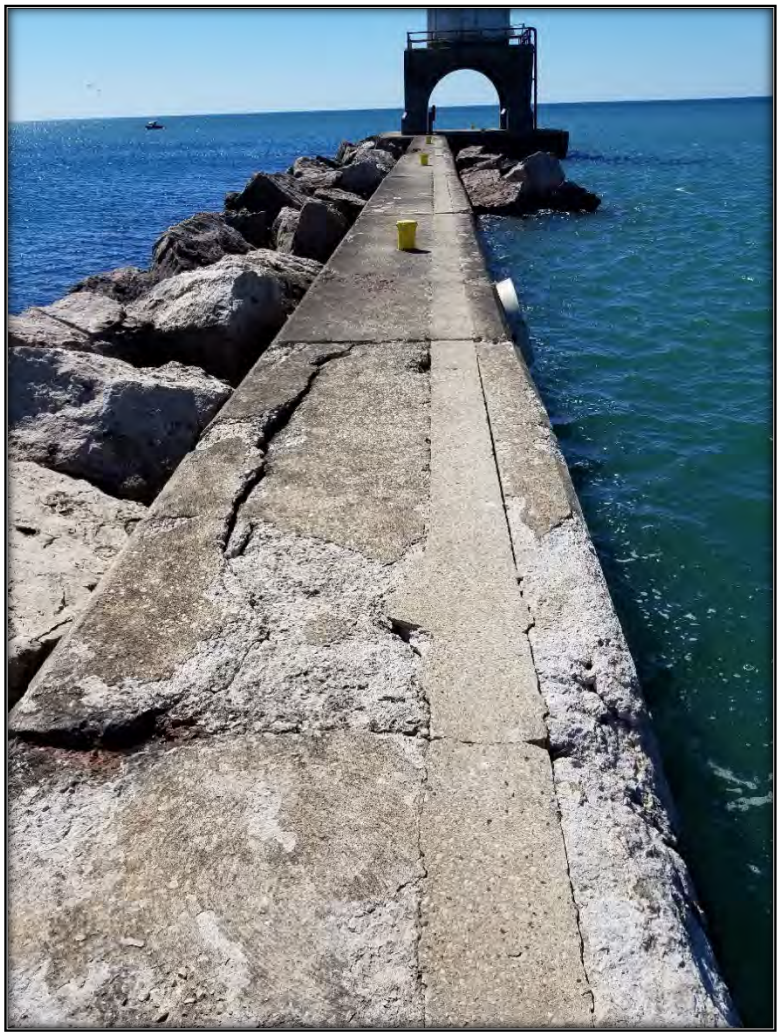
Draft Supplemental Environmental Assessment

Port Washington Breakwater Repair

Port Washington, Wisconsin



US Army Corps of Engineers
Chicago District

September 2023

DRAFT FINDING OF NO SIGNIFICANT IMPACT (FONSI)

PORT WASHINGTON HARBOR NORTH BREAKWATER REPAIR

PORT WASHINGTON, OZAUKEE COUNTY, WISCONSIN

The U.S. Army Corps of Engineers, Chicago District (USACE) has conducted an environmental analysis in accordance with the National Environmental Policy Act of 1969, as amended. The Supplemental Environmental Assessment (SEA) dated (to be determined [TBD]) for the Port Washington Harbor North Breakwater Operations and Maintenance Project addresses the need to support the navigability of Port Washington Harbor, Ozaukee County, Wisconsin.

The SEA, incorporated herein by reference, evaluated two alternatives that include the No Action plan and USACE's Preferred Alternative, setting new amor stone as well as resetting dislodged armor stones along the north breakwater.

For the Preferred Alternative, the potential effects were evaluated, as appropriate. A summary assessment of the potential effects of the Preferred Alternative are listed in Table 1:

Table 1: Summary of potential effects of the preferred alternative.

	Insignificant effects	Insignificant effects as a result of mitigation	Resource unaffected by action
Aesthetics	☐	☐	☒
Air quality	☒	☐	☐
Aquatic resources/wetlands	☐	☐	☒
Invasive species	☐	☐	☒
Fish and wildlife habitat	☒	☐	☐
Threatened/Endangered species/critical habitat	☐	☐	☒
Historic properties	☐	☐	☒
Other cultural resources	☐	☐	☒
Floodplains	☐	☐	☒
Hazardous, toxic & radioactive waste	☐	☐	☒
Hydrology	☐	☐	☒
Land use	☐	☐	☒
Navigation	☐	☐	☒
Noise levels	☒	☐	☐
Public infrastructure	☒	☐	☐
Socioeconomics	☒	☐	☐
Environmental justice	☐	☐	☒
Soils	☐	☐	☒
Tribal trust resources	☐	☐	☒
Water quality	☒	☐	☐
Climate change	☐	☐	☒

All practicable and appropriate means to avoid or minimize adverse environmental effects were analyzed and incorporated into the Preferred Alternative. Best management practices (BMPs) will be implemented, as appropriate, to minimize impacts. In order to minimize impacts to threatened and endangered species, or migratory species, work will not be conducted during critical life stages (i.e. breeding or nesting).

No compensatory mitigation is required as part of the Preferred Alternative.

Public review of the draft SEA and FONSI will occur during September 2023 at which time this section of the FONSI will be updated.

Pursuant to Section 7 of the Endangered Species Act of 1973, as amended, the Corps determined that the Preferred Alternative would have “no effect” on the federally listed northern long-eared bat, tricolored bat (proposed endangered), rufa red knot, Hine’s emerald dragonfly, monarch butterfly (candidate), and eastern prairie fringed orchid. Documentation of the analysis for the ‘no effect’ determination is included in Section 3.4.5 of the SEA.

Pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended, the U.S. Army Corps of Engineers determined that historic properties would not be adversely affected by the Preferred Alternative and the Wisconsin State Historic Preservation Office concurred with the determination on August 1, 2023. The Miami Tribe of Oklahoma submitted a letter on May 5, 2023, indicating no historic properties or sites would be affected.

Pursuant to the Clean Water Act of 1972, as amended, the discharge of dredged or fill material associated with the Preferred Alternative has been found to be compliant with section 404(b)(1) Guidelines (40 CFR 230). The project would be conducted under Nationwide Permit (NWP) 3, which provides for the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit of the most recently authorized modification. In accordance with Section 401 of the Clean Water Act, the State of Wisconsin has issued Section 401 Water Quality Certification for a variety of NWPs, including NWP 3. The project would comply with NWP 3 requirements and State of Wisconsin regional permit conditions.

A determination of consistency with the Wisconsin Coastal Zone Management Program pursuant to the Coastal Zone Management Act of 1972 has been sought from the State of Wisconsin Department of Administration in a letter dated August 22, 2023. The U.S. Army Corps of Engineers believes that the Preferred Alternative is consistent with state Coastal Zone Management plans and shall be implemented in order to minimize adverse impacts to the coastal zone.

All applicable environmental laws have been considered and coordination with appropriate agencies and officials has been completed.

All applicable laws, executive orders, regulations, and local government plans were considered in evaluation of alternatives. Based on this report, the reviews by other Federal, State and local agencies, Tribes, input of the public, and the review by my staff, it is my determination that the Preferred Alternative would not cause significant adverse effects on the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

Date

Kenneth P. Rockwell
Colonel, Corps of Engineers
District Commander

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Chapter 1 Purpose & Need

1.1 National Environmental Policy Act and Related Procedures

The National Environmental Policy Act (NEPA) (42 United States Code [USC] 4321 et seq.), the Council on Environmental Quality (CEQ) NEPA regulations (Phase I) (40 Code of Federal Regulations [CFR] Parts 1500 to 1508), and the U.S. Army Corps of Engineers' (USACE) NEPA implementing regulations (33 CFR Part 230) require that the USACE consider the potential environmental effects of a proposed action before making a decision on the proposed action. This Supplemental Environmental Assessment (SEA) to the Port Washington Harbor Breakwater Operations and Management Environmental Assessment (USACE, 2022) includes the direct, indirect, and cumulative effects of repairing the existing north breakwater at Port Washington Harbor. This SEA provides the USACE, other decision makers, and the public with the information needed to make an informed decision about the breakwater repair activities.

1.2 Project Location & Authorization

Port Washington Harbor is an authorized federal navigation harbor located in Port Washington, Wisconsin on the western shore of Lake Michigan (Figure 1). The harbor is located approximately 30 miles north of Milwaukee, 50 miles south of Manitowoc and 120 miles north of Chicago. The harbor supports mainly recreational navigation and also serves as a harbor of refuge (i.e., a port, inlet, or other body of water normally sheltered from heavy seas by land and in which a vessel can navigate and safely moor). The project site encompasses the entire north breakwater of the Port Washington Harbor. The project was authorized by the River and Harbor Acts of July 11, 1870 (River and Harbor Act [RHA] 1870; 16 Statute [Stat.] 223); August 14, 1876 (RHA 1876; 19 Stat. 132); August 30, 1935 (Public Law [PL] 74-409; 49 Stat. 1028); July 3, 1958 (PL 85-500; 72 Stat. 297; 72 Stat. 305; 72 Stat. 319).

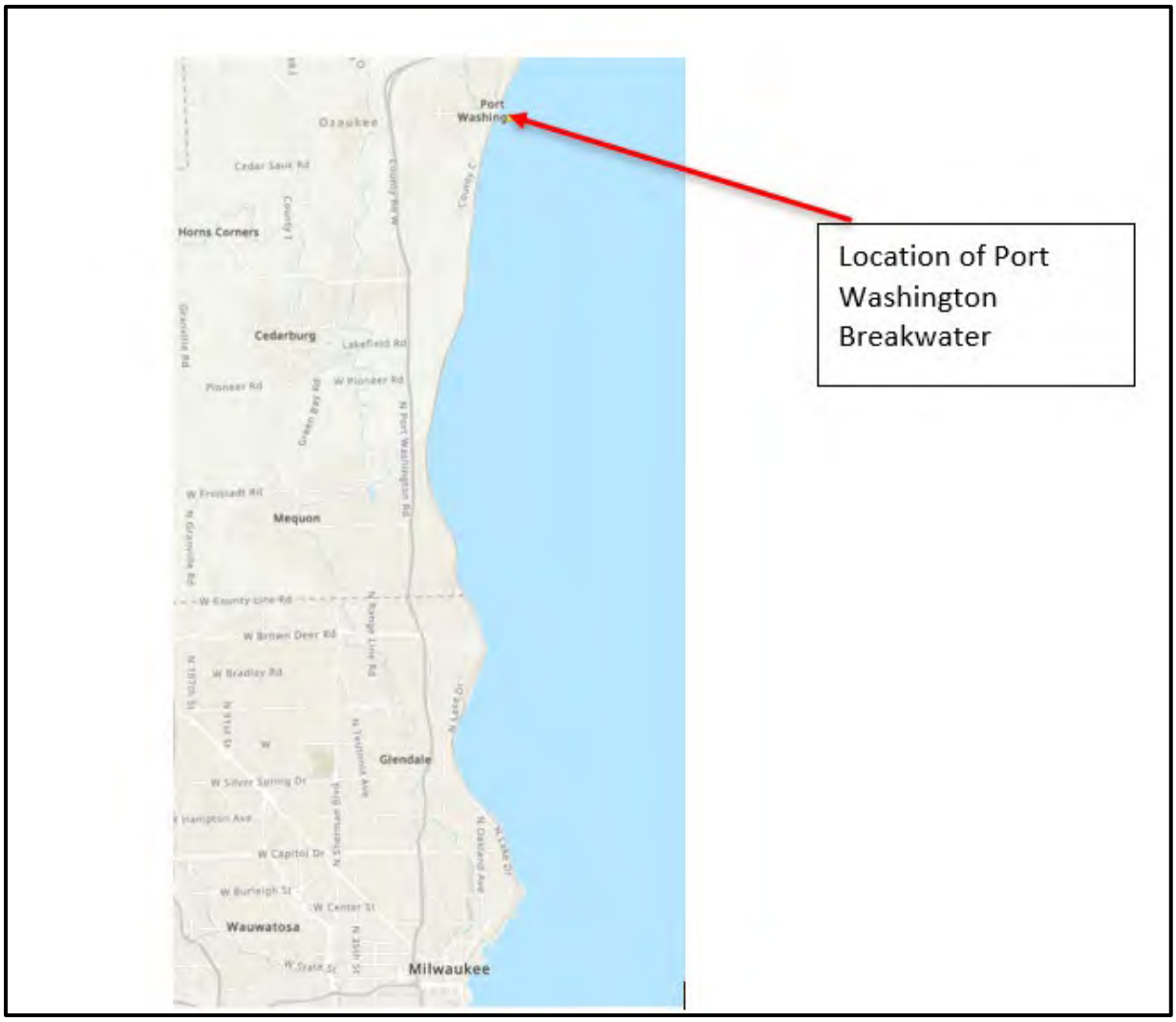

Figure 1: Port Washington Breakwater Project Vicinity Map.

Figure 2: Project Map Showing the North Breakwater

1.3 Purpose & Need

The primary purpose of this federal action is to support the navigation functions of Port Washington Harbor by maintaining safe passage for vessels entering and exiting the harbor.

The project is needed because armor stone along the north breakwater has become dislodged and moved by wave action. In addition, voids have developed in the structure as armor stone has settled over the years. All of the above has caused the structural integrity of the breakwater to be threatened.

1.4 Related NEPA Documentation, Previous Studies & Projects

This SEA was prepared to comply with NEPA of 1969, as amended. Nationwide Permit 3 will be used for implementation of the project, therefore, a 404(b)(1) Evaluation pursuant to Section 404 of the Clean Water Act does not need to be prepared. This SEA addresses the maintenance and repair of the existing north breakwater.

- River and Harbor Act of July 11, 1870, as amended, authorized the Port Washington Harbor project, which includes operation, maintenance and repair when needed.

- USACE Vicksburg, 1951. Wave Action and Breakwater Location, Port Washington Harbor, Wisconsin, Model Investigation; Technical Memorandum No. 2-334.

- River and Harbor Act of 1954 (Title I) and Flood Control Act of 1954 (Title II). Subcommittee on Public Works, United States Senate. An Act Authorizing the Construction, Repair, and Preservation of Certain Public Works on Rivers and Harbors for Navigation, Flood Control and for Other Purposes.

- River and Harbor Act Section 107, 1960, as amended. Construction of a small boat harbor within the existing harbor authorized by the Chief of Engineers, June 12, 1975.

- USACE Chicago, 1974. Final Environmental Impact Statement; Small-Boat Harbor Improvements at Port Washington Harbor, Wisconsin.

- USACE Vicksburg, 1977. Design for Small Boat Harbor Improvements, Port Washington Harbor, Wisconsin; Hydraulic Model Investigation; Technical Report H - 77-1.

- USACE Chicago, 1978. Environmental Assessment of Proposed Modifications to Authorized Section 107 Small-Boat Harbor at Port Washington Harbor, Wisconsin.

- Southeastern Wisconsin Regional Planning Commission, 1987. Unpolluted Dredge Materials Disposal Plan for the Port Washington Harbor, City of Port Washington, Ozaukee County, Wisconsin.

- USACE Detroit, 1994. Permit to Other Federal Government Department or Agency to Use Property Located at the Port Washington Harbor Federal Navigation Project, Ozaukee County, Wisconsin.

- USACE Chicago. 2022. Environmental Assessment for the Port Washington Harbor Breakwater Operations and Maintenance, Ozaukee County, Wisconsin. U.S. Army Corps of Engineers – Chicago District, Chicago, IL. 30 pp.

1.5 History of Port Washington Harbor Breakwaters and Maintenance

In April 1967, the City of Port Washington submitted an application for a study of the feasibility of constructing additional small-boat navigation improvements at Port Washington Harbor, Wisconsin. In response to that request, the USACE Chicago District completed a study under the authority of Section 107 of the River and Harbor Act of 1960, as amended. An Environmental Impact Statement (EIS) dated August 1974 and titled "Small-Boat Harbor Improvements at Port Washington, Wisconsin" was prepared to accompany that report.

The preferred alternative of improvement provided for rubble-mound breakwaters arranged to form a protected small-boat harbor area of about 13.5 acres in the northwest portion of the existing outer harbor. In addition, approximately 71,000 cubic yards of clean sediment was excavated and disposed of in an established open water disposal area in Lake Michigan, 2.25 miles east-northeast of the north breakwater light.

In 2022, the USACE Chicago District reset dislodged armor stones and redesigned the side slopes to the crest of the south breakwater at Port Washington Harbor. The armor stone at the east end of the south breakwater (approximately 390 linear feet) had been dislodged due to wave action and was threatening the operational integrity of the south breakwater. The side

slope redesign of the south breakwater included additional armor stone up to the crest that maintained the original 1.5:1 slope of the structure but broadened the width of the original breakwater from about 60 feet to approximately 90-100 feet. With the broadening of the width of the south breakwater, it was necessary to add an additional 4,000-8,000 tons of stone to the breakwater.

Chapter 2 Proposed Alternatives

This SEA evaluates alternatives for the repair and maintenance of the north breakwater at Port Washington Harbor.

2.1 List of Alternatives

There are two alternatives considered to support navigability of the Port Washington Harbor.

1. **No Action Plan –** Under the no action alternative, USACE would not place or reset armor stone on the north breakwater at Port Washington Harbor. The no action alternative would not adversely impact cultural and archaeological resources. Physical, biological, and social resources, however, could be impacted in that if breakwater repairs are not made, the structure will further deteriorate, thereby limiting safe access to the harbor and potentially reducing employment, business, and recreational activity in the area by limiting the recreational, commercial, and transportation capabilities of the harbor.

2. **Breakwater Repair -** The Breakwater Repair alternative proposes the placement of new armor stone and resetting existing armor stone as needed along the north breakwater, reaches E and E-1. In addition, this alternative includes the placement of armor stone on the harbor side of the north breakwater, reaches A, B, and C as well as the placement of armor stone on the harbor and lake side of reach D. Approximately 8,295 tons of new stone will be placed. The Breakwater Repair alternative would provide a more stable and long-lasting structure, better maintaining safe passage for vessels entering and exiting the port. All repairs would be conducted by barge.

2.2 Preferred Alternative

Breakwater Repair is the Preferred Alternative. The Port Washington north breakwater, constructed in 1936, currently requires stabilization. USACE proposes to reset dislodged armor stones and place new armor stone as needed along the north breakwater, reaches E and E-1 (Figure 3 and Figure 4). Additionally, new armor stone will be placed on the harbor side of the north breakwater, reaches A, B, and C (Figure 5, Figure 6, and Figure 7) as well as on the harbor and lake side of reach D (Figure 8). The preferred alternative does not include side slope redesign or broadening the width of the structure's footprint. Approximately 8,295 tons of new armor stone would be placed on the existing north breakwater structure in addition to the resetting of armor stone that has become dislodged over time. The preferred alternative would provide a more stable and long-lasting breakwater structure, better maintaining safe passage for vessels entering and exiting the port. All repairs are anticipated to be performed from a barge. However, if due to depth of water stone placement cannot be performed from a barge, off land placement would be permitted.

USACE armor stone specifications require stone to be clean and free of contaminants and organic debris. Sources are required to be newly quarried stone, to be approved by USACE assessment and inspection. The specifications do not identify required sources, however all armor stone for projects on the west side of Lake Michigan in the last 10 years has come from

one of seven established and licensed commercial quarries, all of which are in Wisconsin. In order to feasibly perform this work, the stone will be transported by trucks from quarries to stone docks in Manitowoc, Milwaukee, or Menomonee, from where they will be transported by barge to the site. All transportation is performed in compliance with federal, state and local regulations.

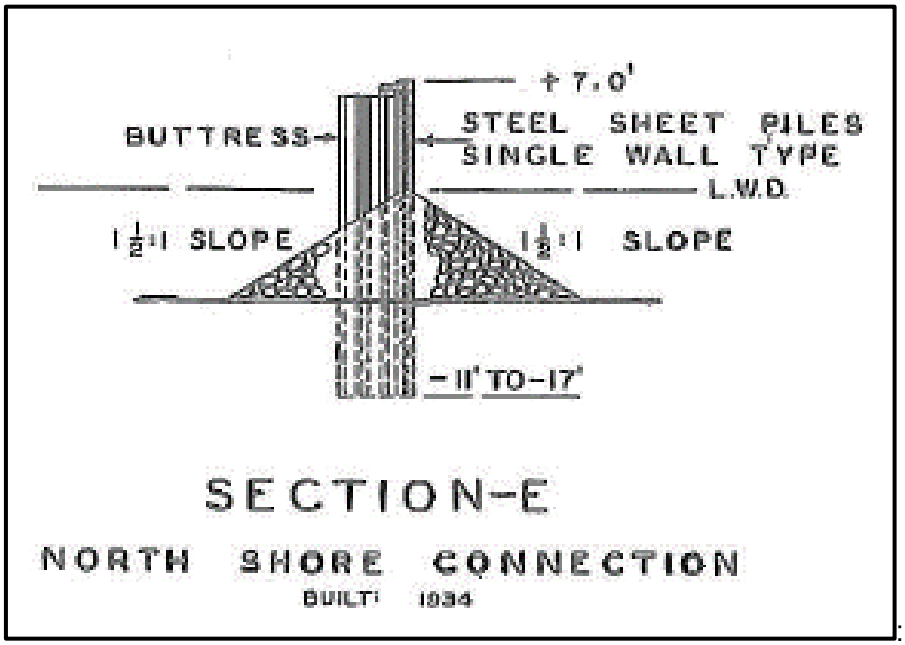

Figure 3: Typical Cross Section, Reach E.

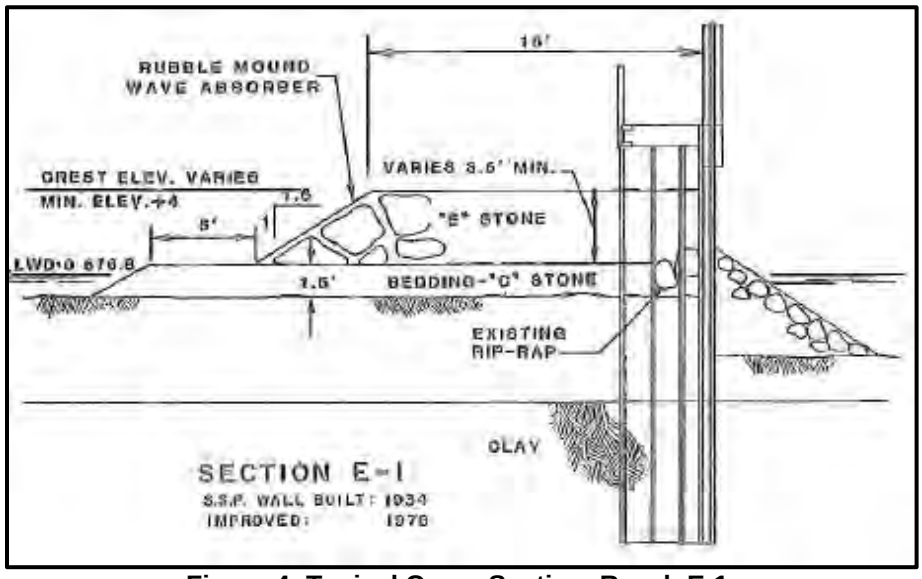

Figure 4: Typical Cross Section, Reach E-1.

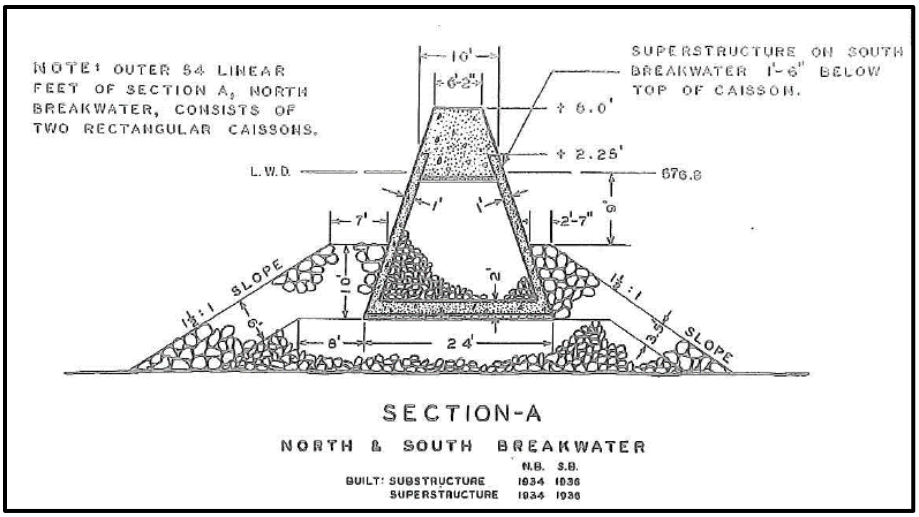

Figure 5: Typical Cross Section, Reach A

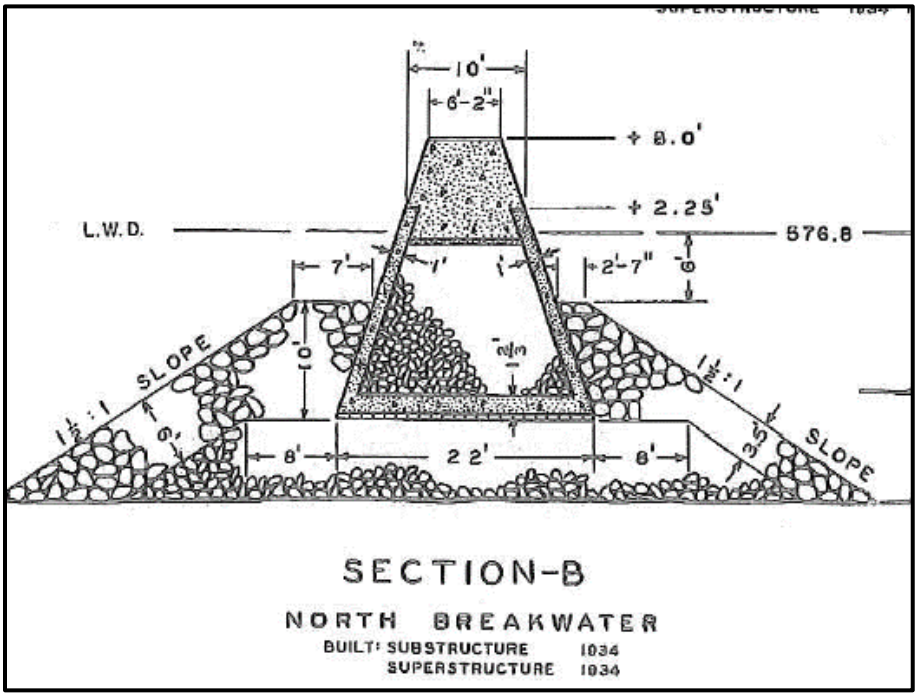

Figure 6: Typical Cross Section, Reach B

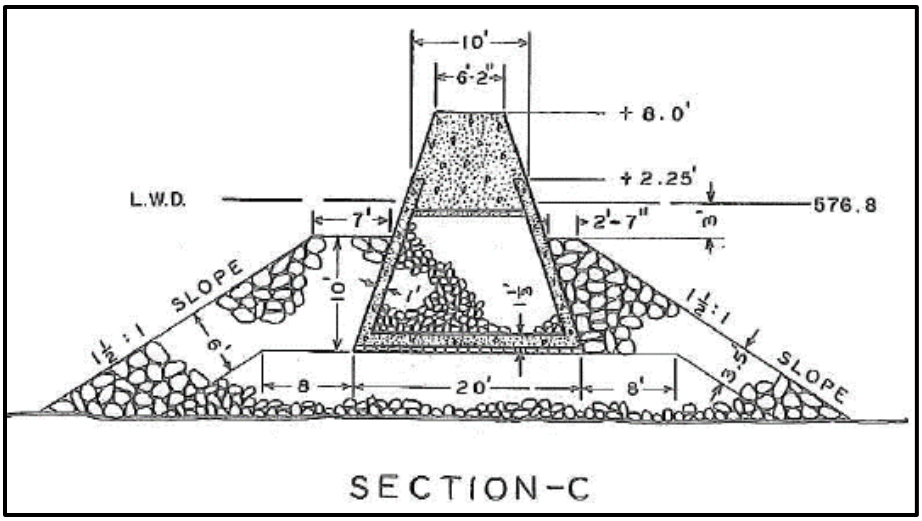

Figure 7: Typical Cross Section, Reach C

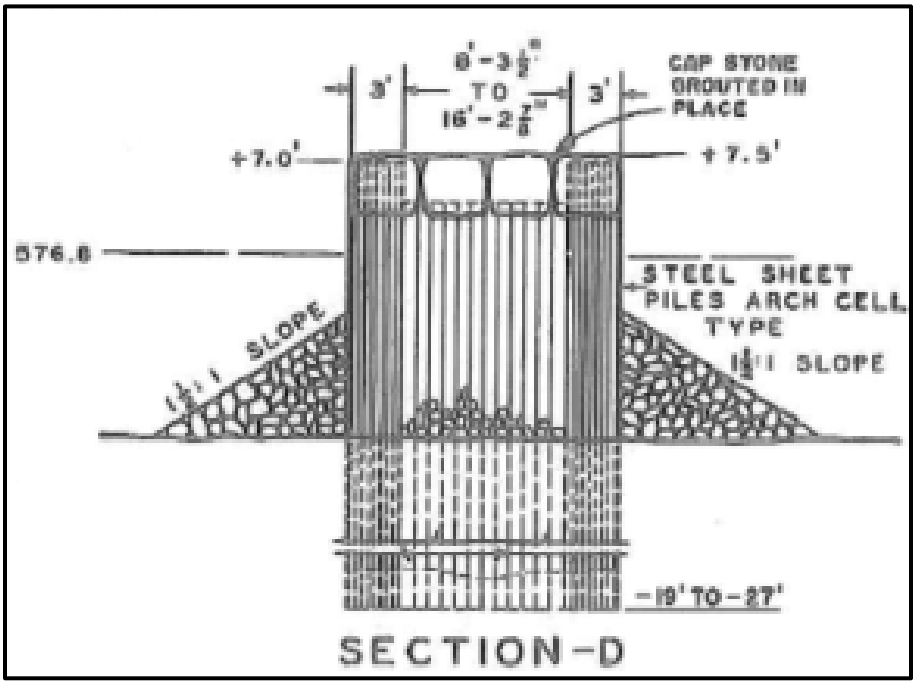

Figure 8: Typical Cross Section, Reach D.

2.2.1 Miscellaneous Project Details

The preferred alternative may require the construction of temporary upland structures. The type and location of temporary structures and/or construction materials cannot be determined at this time, since they would be incidental to the contractor's methods for the work being performed. Examples are work and storage areas, access roads, and office facilities. Temporary structures would be at USACE-approved locations within project boundaries or rights-of-way, outside of any wetlands, areas containing federal or state protected species or their critical habitat, or properties listed on or eligible for listing on the National Register of Historic Places or state listed properties. Temporary activities will include appropriate precautionary measures to prevent erosion and sedimentation or other undesirable environmental impacts. These construction aids would be removed when no longer needed and their sites would be restored to pre-project conditions upon project completion.

All construction activities will be carried out in accordance with federal and state laws, regulations, and local ordinances. Some variation in design details may occur as a result of unanticipated design improvements, site conditions, or cost-saving measures. Any variations that result in a significant change to the project design or environmental impacts would be further evaluated under NEPA.

2.3 Compliance with Environmental Protection Statues, Executive Orders, and Regulations

As discussed in detail below, the preferred alternative is in full compliance with appropriate statutes, executive orders and regulations, including the National Historic Preservation Act of 1966, as amended; Fish and Wildlife Coordination Act, as amended; Endangered Species Act of 1973, as amended; Coastal Zone Management Act (CZMA), 16 USC 1451, 1456 et seq. and implementing regulations at 15 CFR Part 930; Section 10 of Rivers and Harbors Act of 1899; Clean Air Act of 1963, as amended; National Environmental Policy Act of 1969, as amended; Executive Order 12898 (Environmental Justice), Executive Order 11990 (Protection of Wetlands); Executive Order 11988 (Floodplain Management); and the Clean Water Act of 1972, as amended.

Chapter 3 Affected Environment and Environmental Consequences

3.1 No Action Plan

Under the no action plan, there would be no placement of armor stone on the north breakwater at Port Washington Harbor. This alternative would not adversely impact cultural and archaeological resources. Physical, biological, and social resources, however, could be impacted in that if breakwater repairs are not made, the structure will further deteriorate, thereby limiting safe access to the harbor and potentially reducing employment, business, and recreational activity in the area by limiting the recreational, commercial, and transportation capabilities of the harbor.

3.2 Alternative Impacts

This chapter identifies those environmental, cultural, and social resources that could potentially be affected by the proposed armor stone placement during north breakwater repair activities at Port Washington Harbor.

3.3 Physical Resources

3.3.1 Climate and Climate Change

Existing Condition

The climate of the project area is predominantly continental with some modification by Lake Michigan. The National Oceanic and Atmospheric Administration's (NOAA) Online Weather Data were queried for the Port Washington, Wisconsin area. Daily and monthly normals for temperature, precipitation, and snowfall between 1991 and 2020 were available (NOAA 2023a). The mean winter high temperature is 30.8°F while the mean winter low temperature is 14.6°F (January). The mean summer high temperature is 78.7°F while the mean summer low temperature is 61.5°F (July). Annual total precipitation normal for the Port Washington area is 33.88 inches (Table 1 and Figure 4). In winter, total snowfall is generally heavy with an annual total snowfall normal for the area of 46.9 inches. The majority of snowfall occurs between

December and March with total snowfall normals ranging from 6.0 inches (i.e., March) to 13.2 inches (i.e., January) during this timeframe (Table 2 and Figure 5).

Table 1: Monthly Climate Normals (1991-2020) for the Port Washington, Wisconsin Area (NOAA 2023a).

Month	Total Precipitation Normal (inches)	Mean Max Temperature Normal (°F)	Mean Min Temperature Normal (°F)	Mean Avg Temperature Normal (°F)
January	1.76	30.8	14.6	22.7
February	1.48	33.5	15.7	24.6
March	1.91	41.9	25.4	33.7
April	3.78	51.0	35.4	43.2
May	3.90	61.3	44.8	53.0
June	4.17	71.5	54.8	63.2
July	3.61	78.7	61.5	70.1
August	3.68	78.4	61.6	70.0
September	3.08	71.3	53.7	62.5
October	2.56	59.2	41.6	50.4
November	2.13	46.4	30.6	38.5
December	1.82	35.8	20.5	28.2
Annual	**33.88**	**55.0**	**38.4**	**46.7**

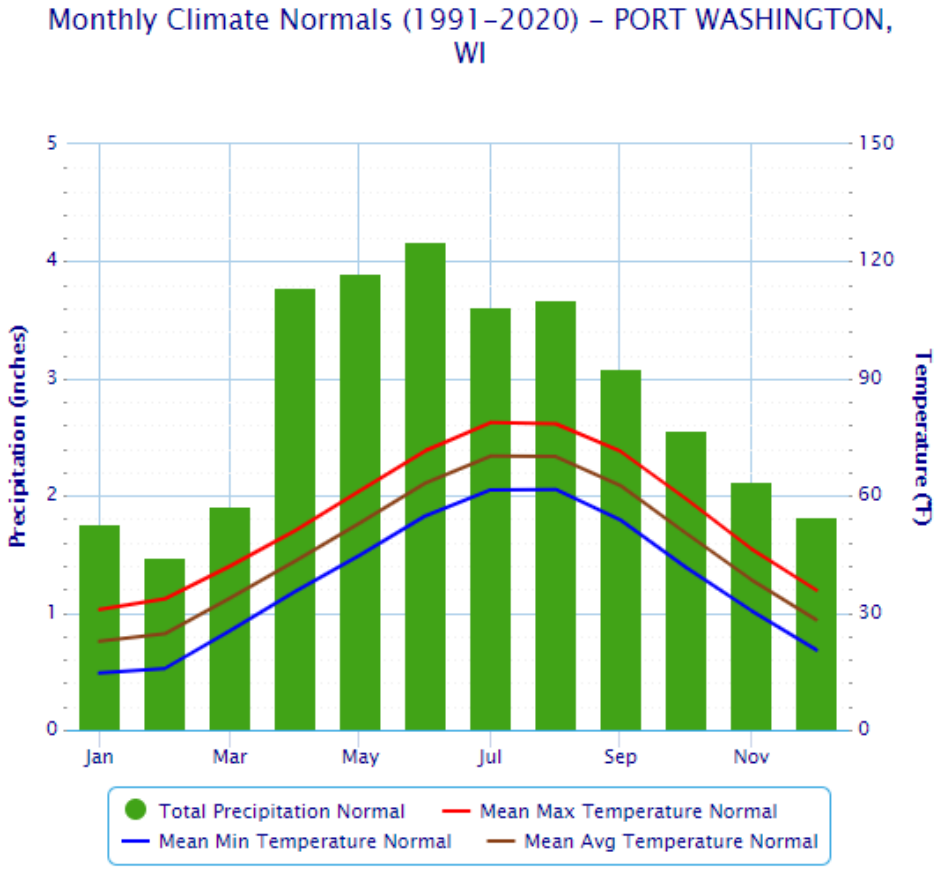

Figure 9: Monthly Climate Normals (1991-2020) for the Port Washington, Wisconsin Area (NOAA 2023a).

Table 2: Snowfall Normals (1991-2020) for the Port Washington, Wisconsin Area (NOAA 2023a).

Month	Total Snowfall Normal (inches)
July	0.0
August	0.0
September	0.0
October	0.0
November	0.9
December	10.7
January	13.2
February	10.7
March	6.0
April	0.8
May	0.0
June	0.0
Annual	**42.3**

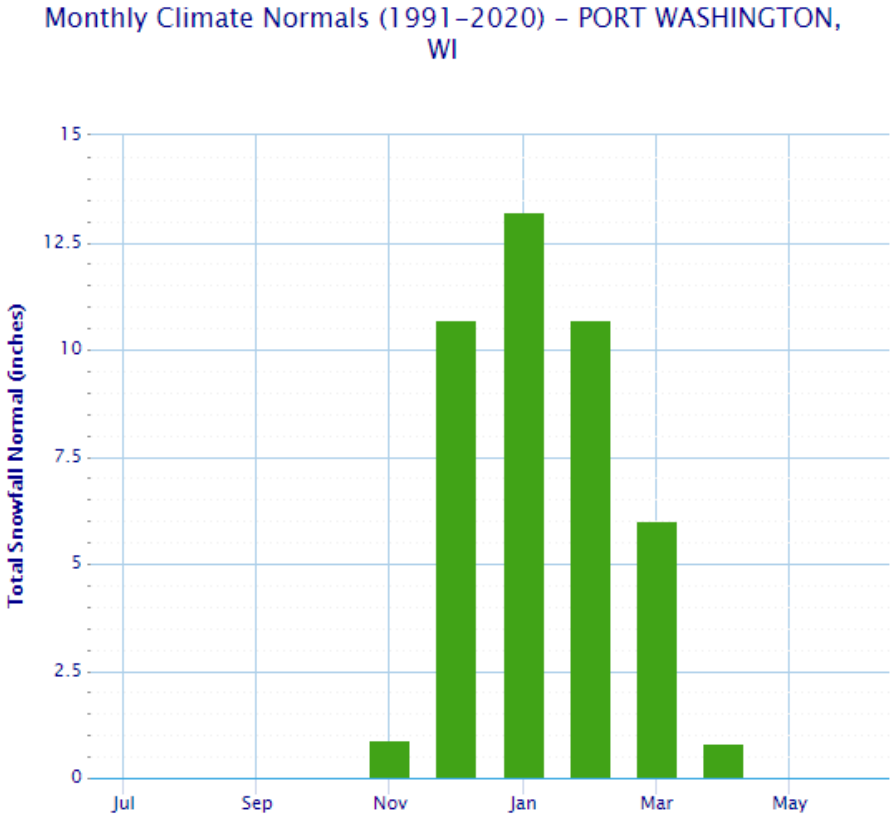

Figure 10: Snowfall Normals (1991-2020) for the Port Washington, Wisconsin Area (NOAA 2023a).

Port Washington lies within the Great Lakes Region of the USACE's literature review report focused on summarizing observed and projected climate and hydrologic patterns at the watershed scale (USACE, 2015). According to the Fourth National Climate Assessment, 42% more precipitation is falling in the Great Lakes Region now as compared with the first half of the 20th century, and that the precipitation is concentrated in larger events.

Based on a review of four studies (USACE, 2015), total annual precipitation within the Port Washington Area is expected to have a small increase when compared to the historic record and precipitation extremes are projected to see a large increase. It is noted that consensus between the studies is low, and although most studies indicate an overall increase in observed average precipitation, there is variation in how these trends manifest both seasonally and geographically.

Regarding temperatures, the Great Lakes Region has observed an increase in temperatures and additional increases in temperature are predicted for the future. In addition, for the Great Lakes Region, "nearly all studies note an upward trend in average temperatures, but generally the observed change is small. Some studies note seasonal differences with possible cooling trends in fall or winter." There is a strong consensus within the literature that temperatures are projected to continue to increase over the next century.

The Wisconsin Initiative for Climate Changes Impacts scenarios suggest that two to three additional heavy precipitation events, defined as daily precipitation rate of two or more inches, can be expected per decade in Wisconsin by the mid-21st century. This would correspond to a 25 percent increase in the frequency of heavy precipitation. Kunkel et al. (2013) reported that the multi-model mean change in the number of days with precipitation greater than one inch from the nine North American Regional Climate Change Assessment Program simulations varies from little or no change in the southeastern and eastern portion of the Midwest region to an over 30% increase in the northern portion of the region by mid-century. The percentage increases in frequency are projected to be larger for more extreme precipitation events (e.g., precipitation rates greater than one inch, two inches, three inches, and four inches). More generally, Schoof et al. (2010) found that based on downscaled climate projects from ten Global Climate Models, intense precipitation events in the Midwest are likely to either continue at their current frequency or increase in frequency, regardless of the sign of the change in total precipitation.

Preferred Alternative Impact

Construction of the preferred alternative would have a short-term, direct negligible impact on climate primarily due to the generation of GHG emissions from fossil fuel combustion during construction activities. The U.S. Environmental Protection Agency's (EPA) source permitting applicability threshold for GHG emissions is 75,000 carbon dioxide equivalents (CO_2e) tons per year. Although GHG emissions were not calculated for this project, a small construction project including the building and demolition of buildings typically generates approximately 1,604.2 tons of CO_2e annually. For the proposed, construction would only take approximately 4 months. Considering the time needed to construct the project would be less than a year, it is likely that the amount of GHG emissions generated during construction would be less than the small construction project emissions of 1,604.2 CO_2e tons annually. In addition, this number is well below the threshold of 75,000 CO_2e tons per year used by the EPA for permitting. Long-term the preferred alternative would have no direct or indirect adverse effect on climate or GHG emissions since fossil fuels would not be needed for the operation of the breakwater.

3.3.2 Geology

Existing Conditions

The City of Port Washington lies on the western shore of Lake Michigan and directly east of a major subcontinental divide between the Mississippi River and the Great Lakes – St. Lawrence River drainage basins. The bedrock formations underlying the area consist of the Milwaukee

Formation and Niagara Dolomite. The Milwaukee Formation includes shale and shale limestone and dolomite in the bottom third with the formation underlying the City of Port Washington. Niagara Dolomite bedrock is also found in the area. There are no geologic sites of importance in the City of Port Washington (City of Port Washington, 2015).

Preferred Alternative Impact

The preferred alternative does not include any dredging or drilling activities that would have the potential to adversely impact an important geologic resource. Instead, the preferred alternative includes the placement of clean armor stone and/or resetting of displaced armor stone along the north breakwater of the Port Washington Harbor. Armor stone would be placed and/or reset on existing armor stone and/or the existing lake bottom. The placement and resetting of armor stone would have no short-term direct or indirect impact on geologic resources. Similarly, the operation of the breakwater is passive, therefore, no long-term direct or indirect impact on geologic resources would occur with implementation of the preferred alternative.

3.3.3 Sediment Quality

Existing Conditions

Port Washington Harbor is a federal navigation channel. The authorized depths are 21 feet for the turning basin and entrance channel, and 18 feet for the interior basin. The sediment is dredged regularly to maintain these depths and the dredged material is placed in the Milwaukee Confined Disposal Facility (CDF). Factors potentially affecting sediment quality in the harbor include effluent from industries and stormwater discharges. Sediment quality is monitored by USACE and was last sampled in 1999. The sediment is characterized as silty sand with a high percentage of fines and clays. The sediment quality in the harbor is generally good. Sediment quality issues are related to sediment particle distribution and point sources. These localized issues do not significantly detract from the overall high quality of the sediment in Lake Michigan.

Preferred Alternative Impact

The preferred alternative includes the placement of clean armor stone and/or the resetting of existing armor stone that has been displaced due to wave action. The preferred alternative does include the dredging of sediment, and armor stone to be placed/reset will be on either existing armor stone or the existing lake bottom. Since there would be no excavation of sediment there would be no short-term direct or indirect impact to sediment in the project footprint. Similarly, operation of the north breakwater is passive and would not require any dredging. Therefore, long-term there would be no direct or indirect impact to sediment in the project footprint due to the implementation of the preferred alternative.

3.3.4 Water Quality

Existing Condition

Lake Michigan is an extremely important resource for drinking water supply, industrial water supply, fishing, recreation, and waterborne commerce. The City of Port Washington draws its raw water from Lake Michigan through two intake pipes located off-shore and away from the harbor. Water enters the intakes, both of which are constructed of cast iron, and flows by gravity to shore wells. The first intake was installed in 1948, is 18 inches in diameter, 3,450 feet long, and terminates 38 feet below the lake surface. The second intake was installed in 1969, is 16 inches in diameter, extends out into Lake Michigan for a distance of approximately 2,500 feet from shore, and terminates 30 feet below the lake surface. In 1993, the utility installed larger

cones and fiberglass gratings in order to alleviate frazil ice problems. Since that modification, the utility has experienced no further problems with frazil ice.

Factors potentially affecting water quality in the near shore lake zone include combined sewer overflows, stormwater discharges, tributary streams, and boat harbors. Water quality of Lake Michigan in the vicinity of Port Washington is monitored by the Wisconsin Department of Natural Resources. In general, the water quality of the near shore zone is good, although near shore issues with bacteria (*Escherichia coli*) are not uncommon on public beaches. Beach water quality issues are related to a number of factors, including the beach/shore configuration, point sources, wildlife, and human use. These localized issues do not significantly detract from the overall high quality of Lake Michigan water.

Preferred Alternative Impact

Construction of the preferred alternative would cause short-term direct increases in turbidity. The placement of armor stone, picking up and resetting displaced armor stone, and the maneuvering of barge(s) from which work is to be performed are all activities that would disturb sediment thereby causing a minor temporary increase in turbidity during construction. In addition, the potential need to fuel or lubricate equipment on the work barge used to place the armor stone could cause an unexpected spill to occur thereby temporarily impacting water quality. To minimize the short-term direct impact to water quality during construction, best management practices (BMP) such as use of floating containment booms to control spills, would be implemented if necessary. In addition, the Contractor will be required to maintain a spill plan and response materials on site. The project would also be conducted under nationwide permit (NWP) 3 – Maintenance, effective February 25, 2022, through March 14, 2026. In accordance with Section 401 of the Clean Water Act, the State of Wisconsin has issued Section 401 Water Quality Certification for NWP 3. The project would comply with NWP 3 requirements and State of Wisconsin regional permit conditions. Therefore, with the implementation of BMPs and adherence to NWP 3 requirements and State of Wisconsin regional permit conditions, the short-term direct impact to water quality from project construction would be less than significant. Operation of the breakwater is passive, therefore, no long-term direct or indirect impacts to water quality would occur.

3.3.5 Air Quality

Existing Condition

The federal Clean Air Act requires the EPA to set national ambient air quality standards (NAAQS) for six criteria pollutants that are considered harmful to public health and the environment. These include carbon monoxide, lead, nitrogen dioxide, particulate matter, ozone, and sulfur oxides. Areas not meeting the NAAQS for one or more of the criteria pollutants are designated as “nonattainment” areas by the EPA. Ozaukee County is part of the larger Milwaukee-Racine, Wisconsin air monitoring region. Ozaukee County is listed as non-attainment for ozone, for the revoked 1-hour ozone standard (1979), the revoked 8-hour ozone standard (1997), and the current 8-hour ozone standard. The most recent year of non-attainment is 2023[1].

Table 3: Non-attainment Status for Ozaukee County, Wisconsin.

NAAQS	Area Name	Most Recent Year of Nonattainment	Current Status	Classification
1-Hour Ozone (1979) – NAAQS revoked	Milwaukee-Racine, WI	2004	-	Severe-17
8-Hour Ozone (1997) – NAAQS revoked	Milwaukee-Racine, WI	2011	Maintenance (since 2012)	Moderate
8-Hour Ozone (2015)	Milwaukee, WI	2023	-	Moderate

[1]EPA Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants (aka "Green Book"), accessed on August 17, 2023, at https://www3.epa.gov/airquality/greenbook/anayo_wi.html.

Preferred Alternative Impact

The local air quality in Ozaukee County is considered 'non-attainment' under the Clean Air Act. Due to the small scale and short duration of this project, the main sources of releases would be vehicle emissions and dust associated with the construction activities. The project does not include any stationary sources of air emissions, and a General Conformity Analysis was not completed. The temporary mobile source emissions from this project are minor in terms of the NAAQS and the State Implementation Plan. The project is not expected to be a significant source of greenhouse gas emissions. All construction equipment would be in compliance with current air quality control requirements for diesel exhaust, fuels, and similar requirements. USACE follows Engineering Manual (EM) 385-1-1 for worker health and safety and requires all construction activities to be completed in compliance with federal health and safety requirements.

All equipment operation, activities, or processes performed by the Contractor shall be in accordance with all federal, state, and local air emission and performance laws and standards. Also required is an Air Pollution Control Plan that details provisions to assure that dust, debris, materials, trash, etc. do not become airborne and travel off the project site. Air pollution control shall comply with NR 415, Wisconsin Administrative Code. Considering the above, construction of the project is expected to have a short-term direct less than significant impact on air quality in the localized area. Long-term, the breakwater operation would be neutral in terms of air quality, with no features that either emit or sequester air pollutants to a large degree, including greenhouse gas emissions. Therefore, there would be no long-term direct or indirect adverse impacts to air quality due to operation of the preferred alternative.

3.3.6 Limnology

Existing Condition

Lake Michigan's lakewide annual average water surface elevation from 1918 to December 2020 is approximately 602.69 feet (International Great Lakes Datum [IGLD] 85) (Table 4). The lake has a total surface area of 22,404 square miles (mi^2), with an average depth of 279 feet and a maximum depth of 923 feet. At its greatest extent, Lake Michigan is 307 miles long and 118 miles across. Only a relatively small amount of water flows out the bottleneck straits between lakes Michigan and Huron, meaning Lake Michigan holds its water a long time, nearly 100 years. Lake Michigan is bordered by 1,659 miles of shoreline, of which 495 miles of shoreline are located in Wisconsin.

The natural hydrology and littoral hydraulic processes have been completely altered from their natural state. Sand is now transported and trapped at many different points due to the numerous structures along the whole southern basin of Lake Michigan. The project area is subject to very large waves during northerly storms.

Table 4: Characteristics of Lake Michigan

Great Lake	Water Surface Area (mi^2)	Surface Elevation (IGLD, feet)	Length (miles)	Breadth (miles)	Maximum Depth (feet)	Drainage Area (mi^2)
Lake Michigan	22,404	602.69	307	118	923	67,900

Water levels within lakes Michigan and Huron have been recorded since 1918. The lake wide period of record average (1918 to present) is currently 578.8 feet (IGLD 85) (NOAA-GLERL, 2023). Table 5 depicts the monthly observed water levels for 2020, the monthly and annual averages, and the monthly minimum and maximums. The data for these lakes (i.e., Michigan and Huron) are presented together since hydrologically they are considered one lake.

Table 5: Final 2022 Mean Water Levels by Month and Long-term (1918-2022) Mean, Max, & Min Monthly Mean Water Levels (Based on Gage Networks) (Feet, IGLD85) for Lakes Michigan-Huron (USACE, 2023).

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
2022	*579.40*	*579.20*	*579.17*	*579.59*	*579.89*	*580.05*	*580.09*	*580.02*	*579.76*	*579.40*	*579.23*	*578.94*	*579.56*
Mean	**601.51**	**601.31**	**601.18**	**601.28**	**601.61**	**601.87**	**602.10**	**602.17**	**602.17**	**602.10**	**601.97**	**601.74**	**601.74**
Max	602.72	602.49	602.40	602.62	602.92	603.15	603.22	603.22	603.22	603.38	603.31	603.05	
	2020	2020	1986	1986	2019	2019	2019	2019	2019	1985	1985	1985	
Min	599.84	599.61	599.54	599.48	599.61	599.90	600.26	600.43	600.46	600.72	600.43	600.13	
	1926	1926	1926	1926	1926	1926	1926	2007	2007	1925	1925	1925	

Preferred Alternative Impact

Construction of the preferred alternative does include placement of armor stone along the north breakwater, but the amount of stone to be placed is minimal when compared to the size of Lake Michigan. In addition, the armor stone is being placed on an already existing structure within the lake and the overall footprint of the breakwater structure would not change from the structure's original design. Due to the minimal amount of material being placed on an existing structure, there would be no short-term direct or indirect adverse impacts to lacustrine processes. Similarly, since placement of the armor stone would be on existing structure that has already disrupted lacustrine process, the long-term operation of the breakwater would not have any additional long-term direct or indirect adverse impacts to lacustrine processes beyond those already experienced under the existing condition.

3.4 Ecological Resources

3.4.1 Macroinvertebrates

Existing Condition

Several studies on aquatic macroinvertebrates in southern Lake Michigan have been completed. Garza and Whitman of the United States Geological Survey investigated macroinvertebrate assemblages of southern Lake Michigan and observed macroinvertebrates from forty taxa. Approximately 81% of the observed taxa consisted of a species of segmented worm (*Chaetogaster diastrophus*) and a variety of round worms (*Nematoda* spp.). Nalepa et al.

(1998) also conducted surveys throughout southern Lake Michigan and their study identified three main groups of macroinvertebrates including Amphipods (Diporeia), worms (Oligochaeta), and bivalves (Sphaeriidae). Other populous macroinvertebrates within Lake Michigan include the non-native zebra and quagga mussels (*Dreissena polymorpha* and *D. burgensis*).

Preferred Alternative Impact

The preferred alternative includes placing armor stone along the existing north breakwater. Placement of stone on existing stone would likely smother aquatic macroinvertebrates that are present where the material is to be placed. In addition, the placement/resetting of stone would temporarily increase turbidity in the area which in turn would affect filter-feeding macroinvertebrates. Considering a majority of the macroinvertebrates that are likely present in the project footprint are pollution and disturbance tolerant species, the construction of the project would not have a significant impact on the macroinvertebrate community within the project area. Therefore, construction of the project would have a short-term less than significant direct impact (i.e., placement of armor stone) and indirect impact (i.e., turbidity) on macroinvertebrates. Long-term, it is anticipated that macroinvertebrates adjacent to the project footprint would recolonize the area as well as any newly placed armor stone. In addition, the operation of the breakwater is passive which would not disturb macroinvertebrates. Therefore, there would be no long-term direct or indirect adverse impacts to aquatic macroinvertebrates in the area.

3.4.2 Fishes

Existing Condition

In general, the surf zone fish assemblage of Lake Michigan would be the target community that occurs within the project vicinity at Port Washington Harbor. The shallow surf zone fish assemblage typically consists of longnose dace (*Rhinichthys cataractae*), emerald shiner (*Notropis atherinoides*), sand shiner (*Notropis stramineus*), and spottail shiner (*Notropis hudsonius*), with less frequent presence of lake chub (*Couesius plumbeus*), mimic shiner (*Notropis volucellus*), mottled sculpin (*Cottus bairdii*), juvenile yellow perch (*Perca flavescens*), and juvenile smallmouth bass (*Mircropterus dolomieu*). The recent increase in abundance and range by the banded killifish (*Fundulus diaphanus*) has now also made this fish a typical surf zone species. Species presence was determined utilizing the Chicago Region Fish Database (Veraldi unpublished data); specimens are vouched at the Milwaukee Public Museum and include U.S. Geological Survey Wisconsin Fish Data.

Preferred Alternative Impact

Appropriate erosion control measures would be taken to minimize potential adverse impacts of the stone placement/replacement activities on the aquatic ecosystem. General construction scheduling and sequencing would minimize impacts to any spawning fish present in the project area. For this effort, no construction would occur between March 01 and June 15 to minimize impacts to fish during their critical life stages. Best Management Practices such as erosion control fabric, silt fencing, and containment booms would be implemented to minimize any temporary upland sources of turbidity, spill or debris impacts associated with the proposed activities. Overall, the placement/replacement of stone has the potential to smother nekton and increase turbidity in the area which in turn would affect sight feeding fish species. With the implementation of BMPs and construction scheduling to avoid fish spawning windows, the preferred alternative would have a short-term less than significant direct impact (i.e., armor stone placement) and indirect impact (i.e., turbidity) on fish. Long-term, it is anticipated that fish

species could utilize the newly placed stone as shelter, therefore, there would be no long-term adverse direct or indirect impacts to the surf zone fish community.

3.4.3 Amphibians & Reptiles

Existing Condition

Reptiles and amphibians that may be present in the area include those that utilize beach habitat. These are quite limited along the coast of Lake Michigan, and may include painted turtle (*Chrysemys picta*), red ear slider (*Pseudemys scripta*), snapping turtle (*Chelydra serpentina*) and the garter snake (*Thamnophis sirtalis*). The existing breakwater structure could also support mudpuppy (*Necturus maculosus*) salamanders, which spend their entire life underwater and forage along rocky shoals.

Preferred Alternative Impact

Although there are limited areas of food, cover, and reproduction habitat for reptiles and amphibians in the project footprint, the existing north breakwater could support mudpuppy salamander. Since mudpuppy salamander could be present, the placement of armor stone could potentially crush any individuals that are amongst the existing breakwater where stone would be placed/reset. Turbidity is not expected to have an impact on mudpuppy salamander as it is believed that they use their sense of smell to locate food. To minimize impacts to these species during construction, BMPs such as construction scheduling and sequencing to minimize impacts to any reproducing salamanders and the use of floating containment spills would be implemented. With the implementation of BMPs, construction of the preferred alternative would have a short-term less than significant direct adverse impact to amphibians and/or reptiles. Once construction is complete, any aquatic salamanders present near the project area would be expected to recolonize the project footprint. In addition, operation of the breakwater is passive and would have no impact on aquatic amphibians and/or reptiles. Therefore, long-term the preferred alternative would have no adverse direct or indirect impacts to amphibians or reptiles.

3.4.4 Birds

Existing Condition

The open water of Lake Michigan provides resting and foraging habitat for many waterfowl such as divers, mergansers, terns, gulls, and raptors. According to the eBird citizen scientist observations associated with The Cornell Lab of Ornithology, common birds observed at the Port Washington Marina/Harbor, which is located approximately 0.25 miles from the existing breakwater, include: red-breasted merganser (*Mergus serrator*), Canada goose (*Branta canadensis*), herring gull (*Larus argentatus*), ring-billed gull (*Larus delawarensis*), common merganser (*Mergus merganser*), double-crested cormorant (*Phalacrocorax auratus*), and common tern (*Sterna hirundo*).

Preferred Alternative Impact

Harbor breakwaters are inhospitable structures where birds do not typically nest, although pelicans, terns, and gulls may congregate there seeking a safe place to roost during the night. The open water of Lake Michigan provides resting and foraging habitat for these and other bird species such as mergansers and divers, as well as raptors. These and other avifauna would temporarily avoid the immediate breakwater repair area because of the presence of construction equipment and noise from the construction equipment.

Principal spring bird migration months are March, April, and May, while fall migration lasts from mid-August to about the middle of November. Following the spring migration, any birds

occupying the structure are primarily nuisance species using the breakwater for loafing. Many other bird loafing opportunities exist within their daily flight patterns. Therefore, the preferred alternative would have a short-term less than significant indirect impact (i.e., noise from construction equipment) on bird species during construction. Once construction is complete avifauna are expected to return to the north breakwater for loafing and/or roosting during the night. The long-term operation of the north breakwater is passive which would not disrupt any bird species that may use the north breakwater. Therefore, the preferred alternative would have no long-term Therefore, the preferred alternative would have a short-term less than significant impact to birds using the project area, and no long-term impact to resident or migratory birds.

3.4.5 Threatened & Endangered Species

Existing Conditions

Federal

A query of the U.S. Fish and Wildlife Service's (USFWS) Environmental Conservation Online System Information for Planning and Consultation (ECOS-IPaC) on June 30, 2023, resulted in an official species list (Project Code: 2023-0099962) of federally listed species that may be present within the project area. Obtaining the official species list from ECOS-IPaC fulfills the requirement for federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action". Federally listed species for the Port Washington Harbor vicinity (Table 6) include the northern long-eared bat (*Myotis septentrionalis* [threatened]), tricolored bat (Perimyotis subflavus [Proposed Endangered]), rufa red knot (*Calidris canutus rufa* [Threatened]), Hine's emerald dragonfly (*Somatochlora hineana* [Endangered]), monarch butterfly (*Danaus plexippus* [Candidate]) and eastern prairie fringed orchid (*Platanthera leucophaea* [threatened]). There is no designated critical habitat in the project vicinity.

Table 6: Federally Listed Species with the Potential to Occur in the Project Area.

Species Name	Federal Status	Preferred Habitat	Potential to Occur
Northern Long-eared Bat (*Myotis septentrionalis*)	Endangered	During summer roost underneath bark, in cavities or in crevices of both live trees and snags. During winter hibernate in caves and mines.	**Unlikely to Occur;** lack of suitable habitat.
Tricolored Bat (*Perimyotis subflavus*)	Proposed Endangered	Non-hibernating seasons primarily roost among live and dead leaf clusters of live or recently dead deciduous hardwood trees. During hibernation, found in caves.	**Unlikely to Occur;** lack of suitable habitat.
Rufa Red Knot (*Calidris canutus rufa*)	Threatened	Preferred wintering and migration habitats are muddy or sandy coastal	**Unlikely to occur;** lack of suitable habitat.

		areas, specifically, bays and estuaries, tidal flats, and unimproved tidal inlets.	
Hine's Emerald Dragonfly (*Somatochlora hineana*)	Endangered	Found in spring fed wetlands, wet meadows, and marshes.	**Unlikely to Occur;** lack of suitable habitat.
Monarch Butterfly (*Danaus plexippus*)	Candidate	Prefer grassland ecosystems with native milkweed and nectar plants.	**Unlikely to Occur;** lack of suitable habitat.
Eastern Prairie Fringed Orchid (*Platanthera leucophaea*)	Threatened	Found in mesic prairie to wetlands, such as sedge meadows, marsh edges, and bogs.	**Unlikely to Occur;** lack of suitable habitat.

Northern Long-eared Bat

Status. The northern long-eared bat (*Myotis septentrionalis*) is federally listed as endangered.

Distribution and Habitat. Northern long-eared bats are found in 37 states, including Wisconsin, and eight Canadian provinces (USFWS, 2023a). During summer, northern long-eared bats roost singly or in colonies underneath bark, in cavities, or in crevices of both live and dead trees. Males and non-reproductive females may also roost in cooler places, live caves and mines. The species is thought to be opportunistic in selecting roosts, using tree species based on suitability to retain bark or provide cavities or crevices. The species has also been found, rarely, roosting in structures like barns and sheds. In winter, northern long-eared bats hibernate in caves and mines. Foraging typically occurs at dusk when the species flies through the understory of forested hillsides and ridges feeding on insects (USFWS, 2023a).

Potential for Occurrence. There are no live or dead trees present on the Port Washington Harbor's north breakwater. The nearest forested area is approximately 0.10 mile west of the project area with other forested areas occurring to the southwest but at a slightly greater distance (about 0.42 mile). Due to no trees being present on the breakwater for roosting or foraging, northern long-eared bats are not expected to occur within the project area.

Tricolored Bat

Status. The tricolored bat (*Perimyotis subflavus*) was proposed for listing as endangered on September 13, 2022.

Distribution and Habitat. Tricolored bats are known from 39 states, including Wisconsin (USFWS, 2022). They are also known to live in Guatemala, Honduras, Belize, Nicaragua, and Mexico. During the non-hibernating seasons tricolored bats primarily roost among live and dead leaf clusters of live or recently dead deciduous hardwood trees. In the southern and northern portions of its range, tricolored bats will also roost in Spanish moss (*Tillandsia usneoides*) and Usnea trichodea lichen, respectively. In addition, tricolored bats have been observed roosting

during summer among pine needles, eastern red cedar (*Juniperus virginiana*), within artificial roosts like barns, beneath porch roofs, bridges, concrete bunkers, and rarely within caves. During hibernation, tricolored bats are found in caves and mines; although the southern United States, where caves are sparse, tricolored bats often hibernate in road-associated culverts, as well as sometimes in tree cavities and abandoned water wells (USFWS, 2020).
Potential for Occurrence. Tricolored bats are primarily found in the western half of Wisconsin although hibernating bats have been found in Door County and northeastern Wisconsin. In addition, the Port Washington Harbor's north breakwater contains no vegetation on it; therefore, no suitable roosting or foraging habitat is available. Because the species is typically found in western Wisconsin and mature forest, the species is not expected to occur in the project's action area. It is important to note, however, that the Port Washington Harbor Lighthouse is located at the end of the north breakwater and this artificial structure could provide suitable roosting habitat during the summer. Overall, due to tricolored bats primarily being found in the western half of Wisconsin and the lack of suitable habitat on the project footprint, tricolored bats are not expected to occur within the project's action area.

Rufa Red Knot

Status. The rufa red knot (*Calidris canutus rufa*) is federally listed as threatened.

Distribution and Habitat. The rufa red knot winters at the tip of South America in Tierra del Fuego, in northern Brazil, throughout the Caribbean, and along the U.S. coasts from Texas to North Carolina. The red knot breeds in tundra of the central Canadian Arctic from northern Hudson Bay to the southern Queen Elizabeth Islands. During migration, red knots require a reliable network of coastal and inland staging areas with abundant, high-quality prey timed when birds are present and allowing particularly high rates of weight gain. Alkaline or saline lakes in the northern plains (U.S. and Canada) may be both staging areas and stopover habitats. Other inland stopover habitats may include riverine wetlands and sandbars, and manmade impoundments.

Potential for Occurrence. The red knot occurs uncommonly during migration along coastal sandy beaches in Wisconsin from mid-May to early-June in spring and from mid-July to early November in fall. The species may pass through the action area during spring and fall migration but does not breed in Wisconsin. The closest coastal sandy beach areas where red knot may stopover during migration are the Port Washington North Beach that is 0.25 miles north of the project area, and Port Washington South Beach that is 0.56 miles south of the project area. Therefore, the species is not expected to occur in the projects action area due to lack of suitable habitat.

Hine's Emerald Dragonfly

Status. The Hine's emerald dragonfly (*Somatochlora hineana*) is federally listed as endangered.

Distribution and Habitat. The current range of the Hine's emerald dragonfly includes four states, including Wisconsin, and one Canadian Province (USFWS, 2023b). Hine's emerald dragonfly lives in wetlands that are dominated by graminoid, or grass-like plants, and fed primarily by water from a mineral source or fens. Important characteristics common to wetlands inhabited by Hine's emerald dragonfly appear to be groundwater fed, with shallow water that is slowly flowing through vegetation, dolomitic bedrock or calcareous limestone, and coinhabited by crayfish. Areas of open vegetation serve as places to forage. Forest edge, trees or shrubs, near or

adjacent, to fens provide areas which may concentrate prey and provide protected areas for Hine's emerald dragonfly to perch and roost (USFWS, 2023b).

Potential for Occurrence. The project action area is a breakwater with no adjacent wetland habitat, wetland vegetation, or shallow groundwater fed streams. Since the project area lacks any suitable habitat for Hine's emerald dragonfly, this species is not expected to occur.

Monarch Butterfly

Status. The monarch butterfly (*Danaus plexippus*) is a candidate species for listing on the Endangered Species Act.

Distribution and Habitat. Monarch butterflies occur through North America with overwintering sites in both Mexico and along the California coast. For breeding, monarchs lay their eggs on milkweed plants (mostly *Asclepias spp.*) and monarch caterpillars only feed on milkweed plants.

Potential for Occurrence. No milkweed or other vegetation grows on the Port Washington Harbor's north breakwater. Due to no milkweed or vegetation being present on the breakwater, monarch butterfly is not expected to occur within the project area.

Eastern Prairie Fringed Orchid

Status. The eastern prairie fringed orchid (*Platanthera leucophaea*) is federally listed as threatened.

Distribution and Habitat. The range of the eastern prairie fringed orchid includes 13 states, including Wisconsin (USFWS, 2023c). The eastern prairie fringed orchid occurs in a wide variety of habitats, from mesic prairie to wetlands such as sedge meadows, marsh edges, even bogs. Full sun is required for optimum growth and flowering and a grassy habitat with little or no woody encroachment. A symbiotic relationship between the seed and soil fungi, called mycorrhizae, is necessary for seedlings to become established. These fungi help the seeds assimilate nutrients in the soil (USFWS, 2023c).

Potential for Occurrence. The north breakwater contains no soil for vegetation growth, only armor stone. In addition, there are no wetlands adjacent to the breakwater where eastern prairie fringed orchid might potentially occur, although it is more likely to occur in wet prairie. Due to no growth medium being present or wetlands, eastern prairie fringed orchid is not expected to occur within the project area.

State of Wisconsin

State listed endangered species were reviewed for the project area by the Chicago District. The Wisconsin Department of Natural Resources (WDNR) list of state listed species occurring within Ozaukee County (WDNR, 2023) are listed in Table 7.

Table 7: Wisconsin State listed threatened and endangered species, Ozaukee County.

Scientific Name	Common Name	Scientific Name	Common Name
Empidonax virescens	Acadian Flycatcher	*Lanius ludovicianus*	Loggerhead Shrike
Acris blanchardi	Blanchard's Cricket Frog	*Lepomis megalotis*	Longear Sunfish
Hendersonia occulta	Cherrystone Drop	*Falco peregrinus*	Peregrine Falcon
Orobanche fasciculata	Clustered Broomrape	*Regina septemvittata*	Queensnake

Platanthera leucophaea	Eastern Prairie Fringed Orchid	*Villosa iris*	Rainbow Shell
Venustaconcha ellipsiformis	Ellipse	*Cypripedium arietinum*	Ram's-head Lady's-slipper
Triantha glutinosa	False Asphodel	*Buteo lineatus*	Red-shouldered Hawk
Eurybia furcata	Forked Aster	*Lythrurus umbratilis*	Redfin Shiner
Pterospora andromedea	Giant Pinedrops	*Speyeria idalia*	Regal Fritillary
Cicindela hirticollis rhodensis	Hairy-necked Tiger Beetle	*Amerorchis rotundifolia*	Round-leaved Orchis
Carex formosa	Handsome Sedge	*Ranunculus cymbalaria*	Seaside Crowfoot
Plantago cordata	Heart-leaved Plantain	*Trillium nivale*	Snow Trillium
Somatochlora hineana	Hine's Emerald Dragonfly	*Rhionaeschna mutata*	Spatterdock Darner
Somatochlora incurvata	Incurvate Emerald	*Calephelis muticum*	Swamp Metalmark
Drosera linearis	Linear-leaved Sundew	*Elymus lanceolatus ssp. psammophilus*	Thickspike
Myotis lucifugus	Little Brown Bat	*Bartramia longicauda*	Upland Sandpiper

Preferred Alternative Impact

Federally Listed Species

The USACE determined that the preferred alternative would have 'no effect' on the northern long-eared bat, tricolored bat, rufa red knot, Hine's emerald dragonfly, monarch butterfly, and eastern prairie fringed orchid. This is because construction activities are planned to take place along the harbor's existing north breakwater away from coastal beaches, coastal wetlands, prairies, and woodlands, which are the preferred habitats for these species, and would not directly impact any established terrestrial habitats.

Wisconsin State Listed Species

Potential state listed species that could be within the project area include surf zone fish species such as the longear sunfish and redfin shiner. Appropriate erosion control measure would be taken to minimize potential adverse impacts of the stone placement/replacement activities on the aquatic ecosystem. General construction scheduling and sequencing would minimize impacts to any spawning fish present in the project area. Best Management Practices such as erosion control fabric, silt fencing, and containment booms would be implemented to minimize any temporary upland sources of turbidity, spill, or debris impacts associated with the proposed activities. Overall, the placement/replacement of armor stone has the potential to disturb state listed fish species that may be within the project area. However, this would be a short-term less than significant direct (i.e., placing armor stone) and indirect impact (i.e., turbidity) to state listed fish species. Long-term it is anticipated that fish species could utilize the newly placed and/or reset armor stone as shelter and/or foraging habitat, therefore, there would be no long-term adverse direct or indirect impacts to state listed fish species.

3.4.6 Natural Areas & Nature Preserves

Existing Conditions

There are several unique and diverse State Natural Areas in Ozaukee County Wisconsin, including Cedarburg Bog, Cedarburg Beech Woods, Fairy Chasm, Huiras Lake, Kurtz Woods, Riveredge Creek and Ephemeral Pond, and Sapa Spruce Bog. These sites vary in distance from the offshore Port Washington breakwater from approximately 5 to 17 miles.

Preferred Alternative Impact

Construction activities are planned to take place along the harbor's existing north breakwater away from coastal beaches, coastal wetlands, prairies, and woodlands and would not directly impact any established natural areas or nature preserves. In addition, the proposed breakwater repairs would only be placing/resetting armor stone on existing armor stone, so there would be no direct disturbance to Lake Michigan bottom. Therefore, the preferred alternative would have no short-term direct or indirect impacts to the area. Long-term, the preferred alternative would provide additional structural diversity to the rubble mound habitat that is the north breakwater, but it is unlikely to significantly impact the rubble mound habitat's productivity. Therefore, long-term the preferred alternative is expected to have a negligible/minor direct beneficial impact on habitat benefits but these habitat benefits wouldn't be realized in an established natural area or nature preserve.

3.5 Cultural & Social Resources

3.5.1 Social Setting

Existing Condition

Demographics

Port Washington Harbor is located in the City of Port Washington, Wisconsin. The estimated July 1, 2022, population was 12,753, 21.1% of whom are under the age of 18 years. The median household income is $70,333. Port Washington is the 77th largest city in Wisconsin and the 2,711th largest city in the United States. The city of Port Washington lacks a substantial minority population and has a low-income population on-par with the larger geographic area (Table 8).

The U.S. Census Bureau's American Fact Finder and Quick Facts (U.S. Census Bureau, 2023) for Port Washington, Ozaukee County, and the State of Wisconsin were reviewed for socioeconomic information, which is presented in Table 8.

Table 8: U.S. Census data for Port Washington, Ozaukee County, and Wisconsin.

Category	Port Washington	Ozaukee County	Wisconsin
Total Population	12,753	93,009	5,892,539
Under 18 years	23.7%	20.7%	21.1%
Under 5 years	6.9%	4.9%	5.3%
White	90.9%	93.2%	86.6%
Black or African American	1.7%	2.1%	6.6%
American Indian and Alaska Native	0.5%	0.3%	1.2%
Asian	1.8%	2.7%	3.2%
Native Hawaiian and Other Pacific Islander	0.0%	0.0%	0.1%
Hispanic or Latino	2.2%	3.6%	7.6%
Two or more races	3.7%	1.7%	2.2%
High School Graduate or Higher	96.4%	97.4%	92.9%
Bachelor's Degree or Higher	36.3%	50.4%	31.5%
Median Household Income	$70,333	$86,915	$67,080
Below Poverty Level	6.2%	4.7%	10.8%

Environmental Justice

As defined in Executive Order 12898 and CEQ guidance, a minority population occurs where one or both of the following conditions are met within a given geographic area:

- The American Indian, Alaskan Native, Asian, Pacific Islander, Black, or Hispanic population of the affected area exceeds 50 percent.
- The minority population percentage of the affected area is meaningfully greater than the minority population percentage in the general population or other appropriate unit of geographic analysis.

A minority population also exists if more than one minority group is present and the aggregate minority percentage meets one of the above conditions. The selection of the appropriate unit of geographic analysis could be a governing body's jurisdiction, a neighborhood, census tract, or other similar unit. Note that the Hispanic/Latino population is a multi-racial group, which may overlap with other minority groups.

According to the EPA's Environmental Justice Screening and Mapping Tool (Version 2.2), the portion of the City of Port Washington encompassing the project area (Figure 11) does not appear to have a minority population that exceeds 50 percent or is meaningfully greater than the minority population percentage when compared to Ozaukee County or the State of Wisconsin. According to the EPA's EJScreen tool, the minority population within a 2-mile buffer of the project area is nine percent which falls within the 42nd percentile for the state and the 20th percentile for the U.S. meaning 58 percent of the state and 80 percent of the U.S. have a greater minority population than the City of Port Washington, respectively.

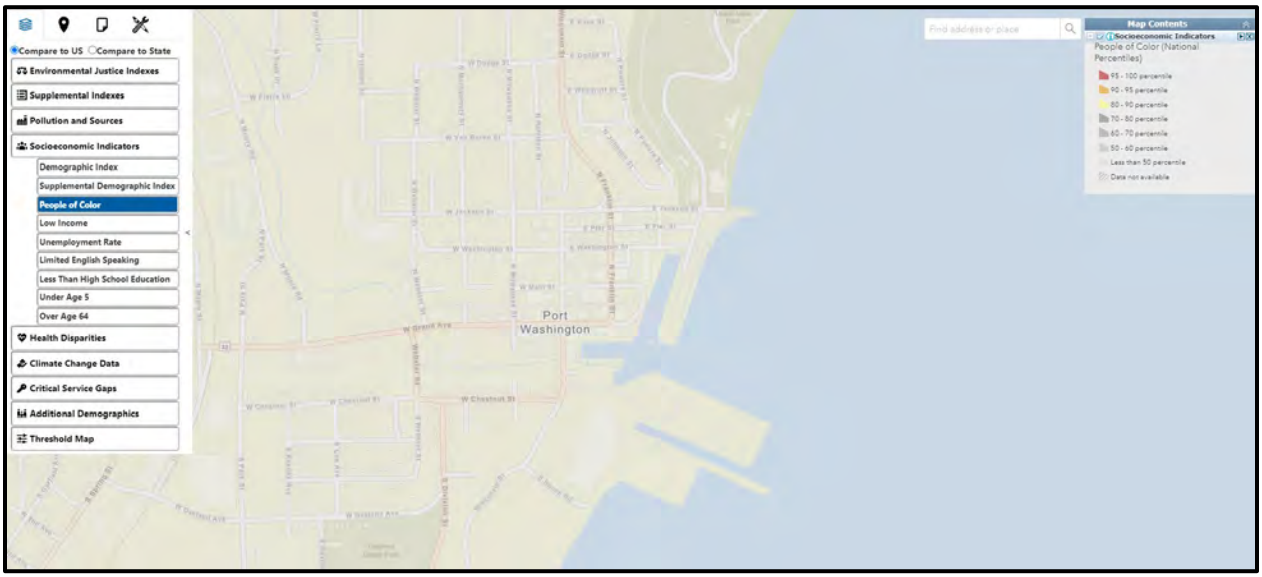

Figure 11: EJ Screen Map Showing Percentiles for a Minority Population Within the Project Area.

Executive Order 12898 does not provide criteria to determine if an affected area consists of a low-income population. For this assessment, the CEQ criteria for defining a minority population has been adapted to identify whether or not the population in an affected area constitutes a low-income population. An affected geographic area is considered a low-income population (i.e., below the poverty level, for purposes of this analysis) where one or both of the following conditions are met within a given geographic area:

- The poverty rate of the total population is above 50 percent.
- The percentage of individuals in poverty is meaningfully greater than in the general population or other appropriate unit of geographic analysis.

According to the EPA's Environmental Justice Screening and Mapping Tool (Version 2.2), the portion of the City of Port Washington encompassing the project area does not appear to have a low-income population that exceeds 50 percent of the area or is meaningfully greater than the low-income population percentage when compared to Ozaukee County or the State of Wisconsin. According to EPA's EJScreen tool, 23 percent of the population within a 2-mile buffer of the project area is considered to be low-income (Figure 12). The percentage for the project area falls within the 47th percentile for the state and the 42nd percentile for the U.S. meaning 53 precent of the state and 58 percent of the U.S. have a greater low-income population than that City of Port Washington.

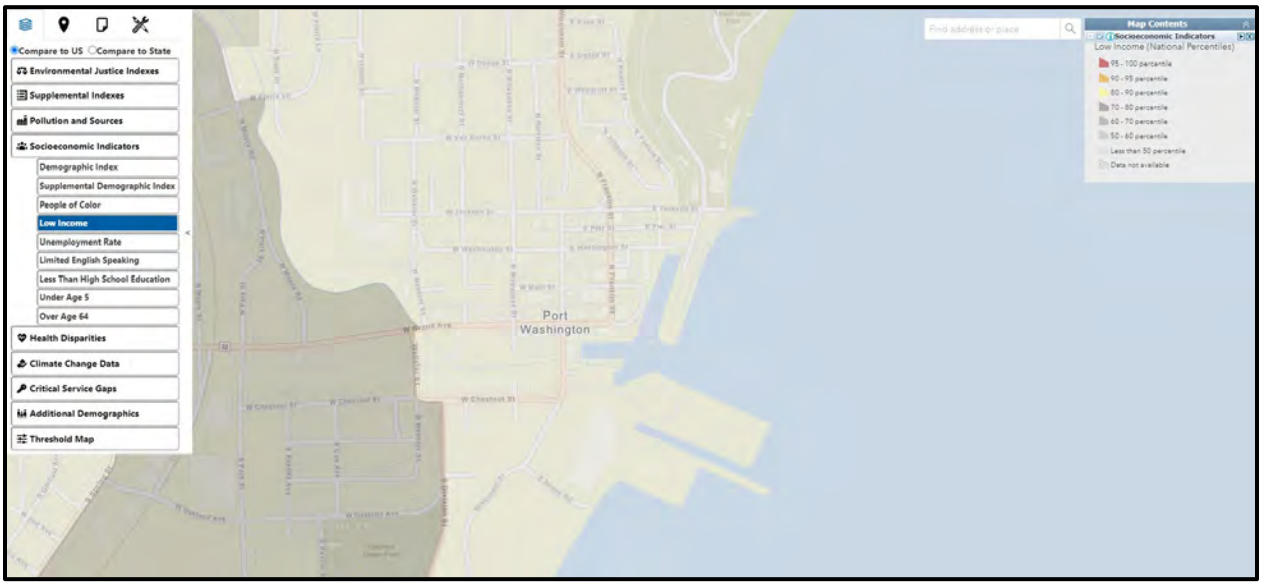

Figure 12: EJ Screen Map Showing Percentiles for a Low-Income Population Within the Project Area.

Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks) requires each federal agency to 1) make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children; and 2) ensure that the agencies policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks.

According to the EPA's Environmental Justice Screening and Mapping Tool (Version 2.2), the portion of the City of Port Washington encompassing the project area appears to be meaningfully higher when compared to the state and the U.S. (Figure 13). According to EPA's EJScreen tool, seven percent of the population is under the age of five, 17 percent of the population is over the age of 64, and 76 percent of the population is age six to 63. The percentage of the population under the age of five falls within the 74th percentile for the state and the 70th percentile for the U.S. meaning 26 percent of the state and 30 percent of the U.S. have a greater population under the age of five than the City of Port Washington.

Figure 143: EJ Screen Map Showing Percentiles for an Under Age 5 Population Within the Project Area.

Economically Disadvantaged Communities

Executive Order 14008 (Tackling the Climate Crisis at Home and Abroad) established the Justice40 Initiative. The Justice40 Initiative made it a goal of the federal government that 40 percent of the overall benefits of certain federal investments flow to disadvantaged communities that are marginalized, underserved, and overburdened by pollution. The categories of investment are: climate change, clean energy and energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, remediation, and reduction of legacy pollution, and the development of critical clean water and wastewater infrastructure. In 2021, formal Interim Implementation Guidance of the Justice40 Initiative directed all federal agencies to identify which of their programs are covered under the Justice40 Initiative. The following programs have been identified by USACE as covered by the Justice40 Initiative:

- Aquatic Ecosystem Restoration – Construction
- Aquatic Ecosystem Restoration – Investigations
- Flood and Storm Damage Reduction Program – Construction
- Flood and Storm Damage Reduction Program – Investigations
- Continuing Authorities Program
- Floodplain Management Services
- Planning Assistance to States
- Tribal Partnership Program (Section 203 of WRDA 2000, as amended)
- Pilot Programs on the Formulation of Corps of Engineers Projects in Rural Communities and Economically Disadvantaged Communities (Section 118 of WRDA 2000)
- Pilot Program for Continuing Authority Projects in Small or Disadvantaged Communities (Section 165 of WRDA 2020)
- Formerly Utilized Sites Remedial Action Program

The Climate and Economic Justice Screening Tool (CEJST) was used to identify if there are any disadvantaged communities within the Port Washington census tract that are marginalized and overburdened by pollution and underinvestment.

As seen in Figure 14, the Port Washington census tract is not considered disadvantaged as it does not meet any burden thresholds or at least one associated socioeconomic threshold.

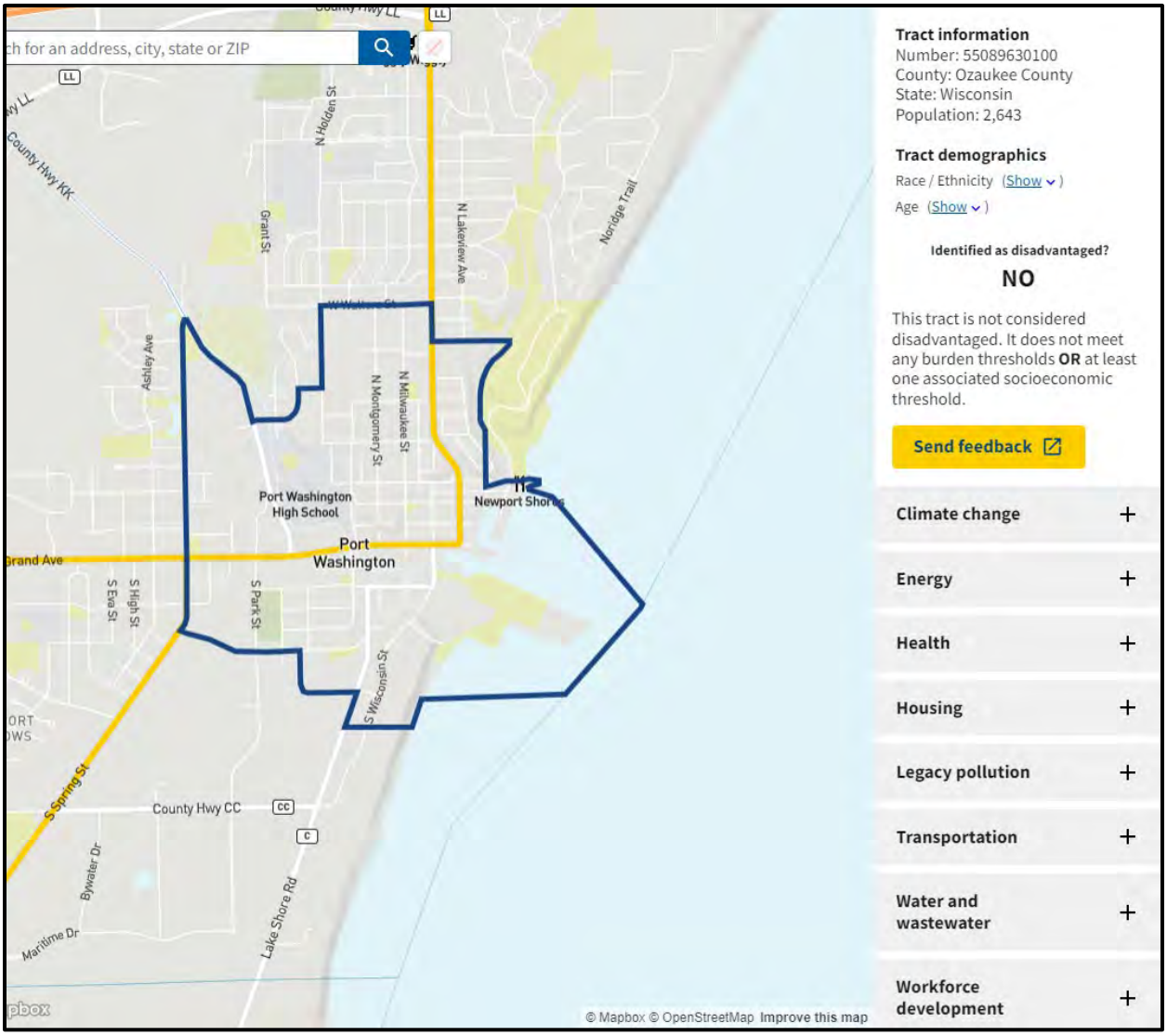

Figure 15: CEJST Map of Port Washington Census Tract Which Contains the Preferred Alternative Footprint.

Preferred Alternative Impact

The Chicago District conducted an evaluation of potential environmental justice impacts using minority and low-income populations as criteria. This evaluation was conducted to ensure that no minority and/or low-income population in the area were disproportionately affected due to activities from this project.

Given the above, the construction of the preferred alternative will not have a disproportionate adverse effect on a minority population, low-income population, or an economically disadvantaged community. There is a meaningful difference in the percent of the population under age five within a 2-mile radius of the project area when compared to the state and the U.S. However, the preferred alternative includes resetting/setting armor stone on an existing

breakwater which is an activity not expected to create safety risks or health risks to children above and beyond the current condition. Therefore, short-term the preferred alternative will not have a disproportionate impact on children under age five in the project area. Long-term, the preferred alternative would provide a more stable and long-lasting structure, better maintaining safe passage for vessels entering and exiting the port. Since the preferred alternative would provide a long-term benefit by maintaining safe passage for vessels the operation of the preferred alternative will not have a disproportionate adverse effect on a minority population, low-income population, economically disadvantaged community, or children under age five in the project area.

3.5.2 Archaeological & Historic Properties

Existing Condition

The USACE has coordinated its review of cultural resources impacts under Section 106 of the National Historic Preservation Act (NHPA). The Area of Potential Effect (APE) for the undertaking encompasses the project area, including staging and access routes, and totals approximately 77 acres. The USACE believes that the APE is sufficient to identify and consider potential effects of the proposed project.

The USACE has conducted a records search and literature review of the project APE on the Wisconsin Historic Preservation Database and the National Register of Historic Places (NRHP). The Port Washington North Breakwater Light (AHI 230572) and the Port Washington North Breakwater (AHI 233424) are both listed on the Wisconsin State Register of Historic Places and sit within the project APE. Both properties contribute to the NRHP listing (100003160) for the Port Washington North Breakwater Light. Water-based resources adjacent to the APE include shipwrecks of the Bohemian (47OZ0276, ASI 26529) and the Toledo (47OZ0193, ASI 25523) as well as the Port Washington South Breakwater. While the South Breakwater is not listed on the NRHP, given its age, the impact on Port Washington shipping, and the fact that other similar structures have been listed, the Corps Detroit District determined in 2017 that the structure was potentially eligible for listing on the NRHP.

Preferred Alternative Impact

The construction of the preferred alternative would have no short-term direct or indirect impacts to the Port Washington North Breakwater Light or the Port Washington North Breakwater because the project would not diminish either property's primary historic purpose of providing a safe harbor at Port Washington and the undertaking would better preserve the Port Washington North Breakwater's structure for the long term. The Port Washington North Breakwater Light is not in danger of damage during this project for the following reasons: 1) all work on the north breakwater near the lighthouse (reach A) would be limited to the placement of new armor stone in the water surrounding the breakwater on the harbor side; 2) no vibratory work such as jack hammering, breaking the structure, or driving sheet pile would occur; and 3) the original optics of the Port Washington North Breakwater Light were removed in the 1960s and replaced with a more durable plastic Type D9 Cylindrical Light. Construction of the preferred alternative would also have no short-term direct or indirect impacts to shipwrecks as project barge staff would be given a map showing the locations of shipwrecks to ensure they are avoided. The Port Washington South Breakwater is not part of the current maintenance effort and would therefore not be impacted during construction. Long-term, the operation of the project would be passive, therefore no direct or indirect impacts would occur to the resources discussed above.

Given the information above, the Corps has determined that the project would not adversely impact the potential NRHP eligibility of the Port Washington South Breakwater or the NRHP listing of the Port Washington North Breakwater Light and the associated Port Washington North Breakwater. Therefore, the Corps has determined that the proposed undertaking would result in no adverse effect to historic properties. A finding of No Adverse Effect to Historic Properties was submitted to the Wisconsin State Historic Preservation Office (SHPO) on July 28, 2023. The SHPO agreed with the Corps finding on August 1, 2023.

3.5.3 Recreation

Existing Condition

The City of Port Washington maintains many parks and beaches throughout the city limits, five of which are near to the Harbor: Rotary Park, Coal Dock Park, Coal Dock Park Prairie Restoration Marker, Port Washington Avian Sanctuary, and Port Washington South Beach Park. Within the harbor is a recreational marina that is used by recreational boaters and charter companies to dock their boats. The breakwater itself may be used for fishing, bird watching, or other pedestrian recreation.

Preferred Alternative Impact

Proposed activities associated with the north breakwater repair would have short-term, direct adverse effects on recreation, but would not result in significant impacts in these areas. Recreational fishing, should it occur within the proximity of the project site, could potentially be impacted during implementation due to construction activities that would likely alter fish behavior in the area (e.g., scare fish away). In addition, other recreational opportunities such as swimming and boating could potentially be impacted short-term due to construction related noise and temporary increases in turbidity. Noise from barges and cranes, if used, would generally be in accordance with local noise ordinances. Noise and aesthetic impacts from the armor stone placement efforts would be limited to the north breakwater area. Overall, the preferred alternative would have a short-term less than significant direct (e.g., construction activities) and indirect (e.g., turbidity, alter fish behavior) impact to recreation. Long-term, the operation of the north breakwater would be passive. In addition, repair of the north breakwater would provide a more stable and long-lasting structure, better maintaining safe passage for recreational vessels entering and exiting the port. Given the above, the preferred alternative would have no long-term adverse impacts to recreation but would have a direct beneficial effect on recreation.

3.6 Hazardous, Toxic & Radioactive Wastes (HTRW)

Existing Condition

EPA's EnviroMapper online tool and the WIDNR Bureau for Remediation and Redevelopment Tracking System (BRRTS) were used to determine whether any environmental issues attributed to unresolved contaminated sites would impact construction activities or armor stone re-setting and placement. Although various environmental compliance sites and regulated activities exist around and adjacent to the harbor, no sites are located on or adjacent to the north breakwater. There are no sites within the harbor proper or within Lake Michigan.

Preferred Alternative Impact

There are no identified regulated sites on or adjacent to the Port Washington Harbor north breakwater. The armor stone placement/replacement would not impact any regulated or

unresolved environmental sites. There are no identified HTRW impacts associated with the preferred alternative.

3.7 17 Points of Environmental Quality

The 17 points are defined in Section 122 of the Rivers, Harbors and Flood Control Act of 1970 (P.L. 91-611). Effects to these points are discussed as follows:

Noise – Temporary increases in noise from armor stone off-loading machinery could be noticeable by Coal Dock Park visitors. Construction material off-loading operations would be water-based and located nearly 300 yards from the park. Therefore, noise impacts are expected to be minimal and temporary. Ambient noise levels would return once construction is complete.

Displacement of People – The proposed north breakwater construction material placement will not displace any people.

Aesthetic Values – The proposed breakwater repair will not obstruct or otherwise diminish the visual quality of the adjacent lighthouse.

Community Cohesion – The proposed armor stone placement would not disrupt community cohesion.

Desirable Community Growth – The proposed armor stone placement would not affect community growth.

Desirable Regional Growth – The proposed armor stone placement would not affect regional growth.

Tax Revenues – The proposed armor stone placement would not affect tax revenues.

Property Values – The proposed armor stone placement would not affect property values.

Public Facilities – The proposed armor stone placement would restore the north breakwater's structure and function and help to maintain public and semi-public facilities.

Public Services – The proposed armor stone placement would allow public services to continue, including recreation, public safety, and economic driven activities.

Employment – The proposed armor stone placement would provide short term beneficial employment impacts during construction activities through the hiring of construction personnel.

Business and Industrial Activity – The proposed breakwater repair would promote local business and industry that supports critical infrastructure construction and water recreation.

Displacement of Farms – There are no farms within the project area; none will be displaced.

Man-made Resources – The proposed construction material placement would positively affect the north breakwater structure, function, and durability.

Natural Resources – The proposed construction material placement would have potential short-term less than significant impacts to natural resources; however, there would be no long-

term impact on natural resources. Refer to the individual discussions under Section 3.4 Ecological Resources.

Air Quality – The proposed Port Washington Harbor breakwater repair location is within an air quality non-attainment area. Due to the small scale, short duration, and nature of the armor stone replacement project, emissions will be limited to temporary vehicle/equipment emissions. Temporary vehicle emission impacts would meet current federal regulations. Greenhouse gas emissions are expected to be negligible.

Water Quality – The proposed north breakwater would have temporary, minor, localized impacts on water quality during construction material placement activities, particularly in the form of turbidity.

3.8 Cumulative Impacts

A cumulative impact is defined as "the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions" (40 CFR § 1508.7). Cumulative impacts can result from individually minor, but collectively significant actions taking place over a period of time. These actions include on-site and off-site projects conducted by government agencies, businesses, or individuals that are affecting or would affect the same environmental resources as would be affected by the preferred alternative.

NEPA requires assessment of cumulative impacts in the decision-making process. This section describes USACE methods for identification of cumulative actions and the results of the cumulative impact analysis.

The cumulative action identification and analysis methods are based on the policy guidance and methodology originally developed by CEQ (1997) and an analysis of current case law. Cumulative impacts were determined by adding the impacts of the preferred alternative with other past, present, and reasonably foreseeable future actions. Four primary steps were employed to assess cumulative impacts of the preferred alternative.

Step 1: Identify Potentially Affected Resources

In this step, each resource adversely affected by the preferred alternative is identified. If there is no or negligible adverse impacts to a resource, there is no cumulative impact, and that resource should not be included in the cumulative impact assessment. The resource categories considered for cumulative impacts include water quality, air quality, ecological resources, recreation, and noise.

Step 2: Establish Boundaries (Geographic and Temporal)

In identifying past, present, and reasonably foreseeable actions to consider in the cumulative impact analysis, affected resource-specific spatial and temporal boundaries were identified. The spatial boundary is where impacts to the affected resource could occur from the preferred alternative and therefore where past, present, and reasonably foreseeable future actions could contribute to cumulative impacts to the affected resource. This boundary is defined by the affected resource and may be a different size than the project area.

The temporal boundary describes how far into the past and forward into the future actions should be considered in the impact analysis. The temporal boundary is guided by CEQ guidance on considering past action and a rule of reason for identifying future actions.

For all resources, consideration of past actions is reflected in the existing condition. A default future temporally boundary of 50 years from the baseline condition was used as an initial timeframe; however, the impacts are based on their likelihood of occurring and whether they can be reasonably predicted.

Step 3: Identify the Cumulative Action Scenario
Past, present, and reasonably foreseeable future actions to be included in the impact analysis for each specific affected resource were identified.

Port Washington Harbor – The first lighthouse was constructed at Port Washington Harbor in 1849. During the 1870's, the harbor was dredged which significantly increased maritime industry. In the 1930's, construction of the Port Washington Harbor's breakwaters occurred and the current harbor lighthouse. This was followed by the construction of the Port Washington marina in the 1980's which allowed for recreational fishing and boating. The Port Washington Harbor does serve as a deep draft commercial harbor that is maintained. Maintenance dredging of approximately 11,000 to 16,000 cubic yards of material is required on a 10- to 15-year cycle. The harbor was lest dredged in 2003. In 2022, the south breakwater was repaired by USACE due to similar issues that the north breakwater is experiencing.

Port Washington Downtown and Lakefront Plan – Development of a new downtown centric plan for the City of Port Washington that was adopted June 20, 2023. The plan study area encompasses downtown Port Washington, the Port Washington Marina, and adjacent areas and corridors generally bounded by East Kane Street to the north; the We Energies (WE) south bluff land to the south; Lake Michigan and the Port Washington lighthouse to the east; and Sauk Creek to the west.

Step 4: Analyze Cumulative Impacts
For each resource, the actions identified in Step 3 are analyzed in combination with the impacts of the alternative being evaluated. Only resource categories that would result in at least minor impacts due to implementing the Preferred Alternative are considered for the cumulative impact assessment. The resource categories considered for cumulative impacts include water quality, air quality, ecological resources, recreation, and noise.

Water Quality: The construction of the Port Washington Harbor and the maintenance of the harbor would have impacted water quality in the past and partly established the water quality conditions that are experienced today. Future maintenance dredging and potential construction of features that are part of the Port Washington Downtown and Lakefront Plan would have temporary impacts on water quality during construction activities. However, cumulatively no impact to water quality is anticipated as repair of the north breakwater would only cause minor temporary impacts and it is anticipated to occur prior to (i.e. not concurrent with) the next maintenance dredging activity or construction of any features part of the Port Washington Downtown and Lakefront Plan.

Air Quality: The construction of the Port Washington Harbor, operation of the harbor as a deep draft harbor and recreational port, and maintenance of the harbor would have impacted air quality in the past and partly established the air quality conditions that are experienced currently. The continued use of the harbor by commercial and recreational vessels produces a fairly constant source of emissions that impact air quality year-round. In addition, maintenance of the harbor would impact air quality while dredging activities are occurring. The combination of implementing the preferred alternative and continued commercial and recreational vessels in

the harbor during construction could have a cumulative affect on air quality in the immediate area; however, these activities generally have a less than significant impact and the combination of these activities occurring at the same time is not expected to have a significant impact on air quality in the area. Once construction of the preferred alternative is complete the operation would be passive and air quality would continue to be impacted by commercial and recreational vessel activity as well as maintenance dredging. Construction of features that are part of the Port Washington Downtown and Lakefront Plan are not expected to overlap with implementation of the preferred alternative.

Ecological Resources: The construction of the Port Washington Harbor, operation of the harbor as a deep draft harbor and recreational port, and maintenance of the harbor would have impacted the ecological resources present within the harbor area in the past and have partly contributed to the assemblage of species that are currently common in the area. The continued use of the harbor by commercial and recreational vessels has the potential to disturb avian species loafing on the breakwaters as well as alter the behavior of aquatic species in the area, although most have likely habituated to vessel activity. In addition, maintenance of the harbor would have an impact on ecological resources, especially macroinvertebrates which would reside in the sediments potentially being excavated to maintain the harbor's depth. The combination of implementing the preferred alternative and continued commercial and recreational vessels in the harbor during construction could have a cumulative effect on ecological resources in the immediate area; however, these activities generally have a less than significant impact, especially since BMPs would be implemented to minimize impacts to ecological resources such as fish during project construction. Once construction of the preferred alternative is complete the operation would be passive, and the set/reset armor stone would provide shelter habitat for fish, macroinvertebrates, and mudpuppy salamander. Features that are part of the Port Washington Downtown and Lakefront Plan are not expected to overlap with implementation of the preferred alternative and would have no cumulative impact.

Recreation: The construction of the Port Washington Harbor, operation of the harbor as a deep draft harbor, and maintenance of the harbor would have impacted the recreational resources present within the area in the past and continue to contribute to the recreational resources present in the area currently. The continued use of the harbor by recreational vessels continues to provide the harbor with recreational value. Maintenance dredging of the harbor could potentially have a less than significant impact to recreation and commercial vessels if these vessels are not permitted to use certain areas while dredging is occurring. Implementing the preferred alternative would not include preventing recreational or commercial vessels from using the harbor of the marina while construction is occurring; therefore, there would be no cumulative impact on recreation. Maintenance dredging is not expected to occur during implementation of the preferred alternative nor construction of features in the Port Washington Downtown and Lakefront Plan. Overall, there would be no cumulative impact to recreation in the area.

Noise: The construction of the Port Washington Harbor, operation of the harbor as a deep draft harbor, and maintenance of the harbor would have had various degrees of impact to ambient noise levels in the area in the past and would continue to contribute to the ambient noise levels in the area currently. The continued use of the harbor by recreational vessels and commercial vessels would still impact ambient noise levels in the area due to boat motor operation. Maintenance dredging of the harbor would also contribute to altering ambient noise levels; however, maintenance dredging is not expected to occur at the same time as the preferred alternative is constructed. Implementing the preferred alternative would contribute construction noise which would cumulatively combine with recreational and commercial vessels operating in the area to alter the ambient noise levels. However, the cumulative noise of recreational and

commercial vessels combined with construction equipment placing armor stone is not expected to significantly increase the ambient noise levels beyond what is currently experienced. Operation of the preferred plan is passive, therefore, ambient noise levels once construction is complete would continue to only be impacted by the operation of commercial and recreational vessels. Construction of features in the Port Washington Downtown and Lakefront Plan are not expected to overlap with implementation of the preferred alternative and would have no cumulative impact.

3.9 Irreversible and irretrievable commitment of Resources

The preferred alternative would not entail significant irretrievable or irreversible commitments of resources. Long-term sustainability actions were included for the benefit of environmental resources.

3.10 Short-term uses of Man's Environment and long-term productivity

NEPA, Section 102(2)(C)(iv) calls for a discussion of the relationship between local short-term uses of man's environment and maintenance and enhancement of long-term productivity in an environmental document. The preferred alternative would repair the north breakwater and positively affect the function and durability of the structure as part of keeping the harbor navigable. This repair would lead to wave attenuation that would reduce water turbidity and provide calmer conditions for navigational purposes. Under the no action alternative, no project would be implemented, therefore, physical, biological, and social resources could be impacted in that the structure will further deteriorate, thereby limiting safe access to the harbor and potentially reducing employment, business and recreational activity in the area by limiting the recreational, commercial, and transportation capabilities of the harbor.

Port Washington Harbor north breakwater repairs will have no impact on harbor access or navigation. The harbor will remain open and navigable and will function normally during the construction period. The contractor will accommodate the passage of commercial and recreational vessels during construction. Breakwater repair activities will not impede traffic into and out of the harbor.

Chapter 4 Conclusions & Compliance

Port Washington Harbor North Breakwater maintenance activities would not result in significant adverse environmental effects, nor would they be expected to result in any significant cumulative or long-term adverse environmental effects. Adverse effects would be negligible, to include short-term noise and air emissions from equipment operation; temporary, minor turbidity from stone placement operations; and temporary displacement of some macroinvertebrate, fish, amphibian, and bird species and associated recreational fishing activities. Macroinvertebrates, fish, amphibians, birds, and recreational fishermen would return upon completion of construction. The analysis detailed below documents these conclusions. The placement site is currently Lake Michigan bottom and is directly adjacent to the existing breakwater bounding the recreational Port Washington Harbor. It is anticipated that the preferred alternative would have no adverse, long-term effects to geologic resources since all stone placement would be surficial.

4.1 Compliance with Environmental Statutes

The proposed breakwater repair and maintenance project at Port Washington Harbor has been reviewed pursuant to the following Acts and Executive Orders: Fish and Wildlife Coordination Act of 1958; National Historic Preservation Act of 1966; National Environmental Policy Act of 1969; Clean Air Act of 1970; Farmland Protection Policy Act (Subtitle I of Title XV of the Agriculture and Food Act of 1981); Executive Order 11593, Protection and Enhancement of the

Cultural Environment, May 1971; Coastal Zone Management Act of 1972; Endangered Species Act of 1973; Clean Water Act of 1977; Executive Order 11988, *Floodplain Management*, May 1977; Executive Order 11990, *Wetland Protection*, May 1977; Executive Order 12898, *Environmental Justice*, February 1994. The proposed action has been found to be in compliance with these Acts and Executive Orders as described below.

- Fish and Wildlife Coordination Act of 1958: Coordination was commenced with USFWS and WIDNR with the provision of a scoping letter sent April 27, 2023. Coordination under the Fish and Wildlife Coordination Act would be completed once the USFWS and WIDNR have reviewed the Draft SEA during the 30-day public review period.

- Executive Order 13186 – *Responsibilities of Federal Agencies to Protect Migratory Birds* – Federal agencies shall restore or enhance the habitat of migratory birds and prevent or abate pollution or detrimental alteration of the environment for migratory birds. This project lies within a significant portion of the Mississippi Flyway along the western shoreline of Lake Michigan that particularly favors both ecological and economically valuable species including neo-tropic migrants and waterfowl. The short duration of the armor stone placement work would have no long-term detrimental impacts to migratory birds.

- National Historic Preservation Act of 1966: Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108)) requires federal agencies to take into account the effects of proposed federal undertakings historic properties included or eligible for the National Register of Historic Places. The implementing regulations for Section 106 (36 CFR § 800) requires federal agencies to consult with various parties, including the Advisory Council on Historic Preservation, the SHPO, and Indian tribes, to identify and evaluate historic properties, and to assess and resolve effects to historic properties. The USACE has consulted with the Wisconsin SHPO, the Forest County Potawatomi Community of Wisconsin, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana, Hannahville Indian Community of Michigan, Citizen Potawatomi Nation of Oklahoma, Little Traverse Bay Bands of Odawa Indians of Michigan, Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin, Menominee Indian Tribe of Wisconsin, Miami Tribe of Oklahoma, and the Prairie Band of Potawatomi Nation to assist in identifying properties which may be of religious and cultural significance. The Miami Tribe responded on May 5, 2023, with no objections to the proposed project. A finding of No Adverse Effect to Historic Properties was submitted to the Wisconsin SHPO on July 28, 2023. The Wisconsin SHPO agreed with the USACE finding on August 1, 2023.

- National Environmental Policy Act of 1969: This SEA has been prepared in accordance with NEPA; the CEQ, *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act* (40 CFR Parts 1500-1508); and the Corps of Engineers, Policy and Procedure for Implementing NEPA (33 CFR Part 230).

- Clean Air Act of 1970: The proposed Port Washington Harbor breakwater repair location is within an air quality non-attainment area. Due to the small scale, short duration and nature of the armor stone replacement project, emissions will be limited to temporary vehicle/equipment emissions. Temporary vehicle emission impacts would meet current federal regulations. Greenhouse gas emissions are expected to be negligible. Overall, the project is *de minimis* in terms of emissions.

- Farmland Protection Policy Act: Project exempt as it is located entirely within Lake Michigan.

- Coastal Zone Management Act of 1972: The project site is within the Wisconsin Coastal Zone which is defined as all counties bordering the Great Lakes. The project will protect the public interest by helping to preserve harbor safety and access. The USACE has determined that the proposed activities would be "consistent to the maximum extent practicable" (as defined in 16 USC 1456, Coastal Zone Management Act, approved 1978) with the enforceable policies of the Wisconsin Coastal Management Program (WCPM). A determination of consistency with the Wisconsin Coastal Zone Management Program pursuant to the Coastal Zone Management Act of 1972 has been sought from the State of Wisconsin Coastal Management Program in a letter dated August 22, 2023. The Corps anticipates a response from the State of Wisconsin Coastal Management Program within 60-days of the above letter having been received. The U.S. Army Corps of Engineers believes that the preferred alternative is consistent with state Coastal Zone Management plans and shall be implemented in order to minimize adverse impacts to the coastal zone.

- Endangered Species Act of 1973: The USACE determined that the preferred alternative would have 'no effect' on northern long-eared bat, tricolored bat, rufa red knot, Hine's emerald dragonfly, monarch butterfly, or eastern prairie fringed orchid. Documentation of the analysis for the 'no effect' determination is included in Section 3.4.5 of the SEA.

- Clean Water Act of 1972: Pursuant to the Clean Water Act (CWA), as amended, the discharge or fill material associated with the preferred alternative has been found to be compliance with section 404(b)(1) Guidelines (40 CFR 230). The project would be conducted under NWP 3 – Maintenance, effective February 25, 2022, through March 14, 2026. In accordance with Section 401 of the Clean Water Act, the State of Wisconsin has issued Section 401 Water Quality Certification for NWP 3. The project would comply with NWP 3 requirements and State of Wisconsin regional permit conditions.

- Executive Order 11988, *Floodplain Management*, May 1977: The project site is within Lake Michigan and does not impact floodplains.

- Executive Order 11990, *Wetland Protection*, May 1977: The project does not impact coastal or terrestrial wetlands as there are none present within the project area. The proposed breakwater repairs would not require any disturbance to Lake Michigan bottom.

- Executive Order 12898, *Environmental Justice*, February 1994: The project does not disproportionately impact a low-income or minority populations.

- Executive Order 13653, *Preparing the United States for the Impacts of Climate Change*, November 2013: The project does not affect the climate. Additional fossil fuels would be needed during the breakwater repair process for the operation of associated construction vehicles. However, there would be no measurable impact on climate, even though there may be localized increases in greenhouse gas emissions during construction.

This SEA concludes that the proposed Port Washington Harbor breakwater maintenance and repair project: 1) would not have significant cumulative or long-term adverse environmental

impacts; 2) would have benefits that outweigh the minor and mostly short-term impacts that may result; and 3) does not constitute a major federal action significantly affecting the quality of the human environment.

4.2 Summary of Compliance with Environmental Statutes

Table 9: Environmental Compliance

Federal Policy	Compliance*
Archeological Resources Protection Act, 16 U.S.C. 470aa, et seq.	Full Compliance
Clean Air Act, as amended, 42 U.S. C. 7401-7671g, et seq.	Full Compliance
Clean Water Act (Federal Water Pollution Control Act), 33 U.S.C. 1251, et seq.	Full Compliance
Coastal Zone Management Act, 16 U.S.C. 1451, et seq.	Partial Compliance
Endangered Species Act, 16 U.S.C. 1531, et seq.	Full Compliance
Environmental Justice (Executive Order 12898)	Full Compliance
Farmland Protection Policy Act, 7 U.S.C. 4201, et. seq.	Not Applicable
Federal Water Project Recreation Act, 16 U.S.C. 4601-12, et seq.	Full Compliance
Fish and Wildlife Coordination Act, 16 U.S.C. 661, et seq.	Partial Compliance
Floodplain Management (Executive Order 11988)	Full Compliance
Invasive Species (Executive Order 13122)	Full Compliance
Migratory Bird Treaty Act, as amended, 16 U.S.C. 703-712, et seq.	Full Compliance
National Environmental Policy Act, 42 U.S.C. 4321, et seq.	Partial Compliance
National Historic Preservation Act, as amended, 54 U.S.C. 300101, et seq.	Full Compliance
Protection & Enhancement of the Cultural Environment (Executive Order 11593)	Full Compliance
Protection of Wetlands (Executive Order 11990)	Full Compliance
Rivers and Harbors Act, 33 U.S.C. 403, et seq.	Full Compliance
Watershed Protection and Flood Prevention Act, 16 U.S.C. 1001, et seq.	Full Compliance
Preparing the United States for the Impacts of Climate Change, as per instructions provided in Preparing Federal Agency Climate Change Adaptation Plans in Accordance with EO 13653 (Executive Order 13653)	Full Compliance
Tackling the Climate Crisis at Home and Abroad (Executive Order 14008)	Full Compliance

Full Compliance: Having met all requirements of the statute.
Partial Compliance: Anticipated full compliance upon completion of Final EA.
Not Applicable: No requirements for the statute required.

4.3 Finding of No Significant Impact (FONSI)

This SEA for the Port Washington Harbor north breakwater repair and maintenance project has found that there would be no long term, significant negative effects resulting from implementation of any of the proposed activities. A 30-day Agency and Public Review period will be held in the August/September 2023 timeframe. After the 30-day public review period, all pertinent comments received will be incorporated into the Draft SEA to finalize the document. The Final Supplemental Environmental Assessment document and supporting appendices will be made available on the Chicago District's Civil Works webpage for maximum distribution. The Draft FONSI has been posted at the front of this SEA.

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Appendix A – Nationwide Permit 3

Nationwide Permit 3 - Maintenance
Effective Date: February 25, 2022; Expiration Date: March 14, 2026
(NWP Final Notice, 86 FR 73522)

Nationwide Permit 3 - Maintenance. (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

(c) This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows.

After conducting the maintenance activity, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Authorities: Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (Sections 10 and 404))

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

2021 Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. **Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from

the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. **Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. **Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. **Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-

construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. **Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. **Removal of Temporary Structures and Fills.** Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. **Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. **Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. **Wild and Scenic Rivers.** (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: http://www.rivers.gov/.

17. **Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. **Endangered Species.** (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding "activities that are reasonably certain to occur" and "consequences caused by the proposed action."

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and

designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.

(e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world

wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.nmfs.noaa.gov/pr/species/esa/ respectively.

19. **Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. **Historic Properties.** (a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the

historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. **Discovery of Previously Unknown Remains and Artifacts.** Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. **Designated Critical Resource Waters.** Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

23. **Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental

effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual

and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine

credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. **Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. **Water Quality.** (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. **Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual

coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. **Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. **Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

29. **Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____
(Transferee)

_____
(Date)

30. **Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. **Activities Affecting Structures or Works Built by the United States.** If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. **Pre-Construction Notification.** (a) *Timing*. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete.

The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification*: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse

environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the

name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification*: The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination*: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

2021 District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually

satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed

mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

2021 Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

2021 Nationwide Permit Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm

surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a "water of the United States." If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

ADDITIONAL INFORMATION

Information about the U.S. Army Corps of Engineers Regulatory Program, including nationwide permits, may also be accessed at
http://www.swt.usace.army.mil/Missions/Regulatory.aspx or
http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx

Appendix B – Agency Coordination

SHPO

From: leslie.eisenberg@wisconsinhistory.org <leslie.eisenberg@wisconsinhistory.org>
Sent: Tuesday, August 1, 2023 3:53 PM
To: Jordan, Alexis M CIV USARMY CELRC (USA) <Alexis.M.Jordan@usace.army.mil>
Subject: [URL Verdict: Neutral][Non-DoD Source] SHPO Review: 23-1593/OZ - Port Washington Harbor- North Breakwater Repair and Maintenance Project

Good afternoon, Alexis,

I have completed my review of WHS #23-1593, Port Washington Harbor- North Breakwater Repair and Maintenance Project and find that no eligible properties will be adversely affected.

If your plans change or cultural materials/human remains are found during the project, please halt all work and contact our office.

Please use this email as your official SHPO concurrence for the project. If you require a hard copy signed form, please contact me and I will provide you a signed copy as soon as possible.

Sincerely,

Leslie

Leslie Eisenberg
Compliance Archaeologist & Interim NAGPRA Representative
State Historic Preservation Office

Wisconsin Historical Society
816 State Street, Madison, WI 53706
608.264.6507
leslie.eisenberg@wisconsinhistory.org

Wisconsin Historical Society
Collecting, Preserving, and Sharing Stories Since 1846

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, CHICAGO DISTRICT
231 SOUTH LASALLE STREET, SUITE 1500
CHICAGO IL 60604

July 28, 2023

Environmental & Cultural Resources Section
Planning Branch

Ms. Daina Penkiunas
State Historic Preservation Officer
Wisconsin Historical Society
816 State Street
Madison, WI 53706

SUBJECT: FY23 Port Washington Harbor North Breakwater Repair and Maintenance Project, Ozaukee County, Wisconsin

Dear Ms. Penkiunas:

The U.S. Army Corps of Engineers (Corps) proposes to conduct maintenance repairs on the north breakwater at Port Washington Harbor in Ozaukee County, Wisconsin (Figure 1). The purpose of the repairs is to stabilize the existing breakwater in areas where the armor stone has been dislodged (undertaking). As part of our review under Section 106 of the National Historic Preservation Act, the Corps has determined that the proposed federal action is an undertaking that has the potential to affect historic properties. This letter provides a brief project description, documents the area of potential effect (APE), summarizes the efforts to identify historic properties, and provides agency findings as provided at 36 C.F.R. § 800.4. We request your agreement with our finding that there will be no adverse effect to historic properties by the proposed undertaking.

Constructed in 1934, the Port Washington North Breakwater is a man-made structure located on the western shore of Lake Michigan that has been subject to numerous repairs as part of ongoing routine operation and maintenance (the most recent in 2017). The proposed project involves resetting existing armor stone and placing approximately 8,295 tons of new armor stone at the Port Washington North Breakwater within areas in need of repair. This would ensure the breakwater's continued function in providing for the safe and efficient navigation of vessels entering and exiting the harbor. Existing armor stone would be reset and new armor stone would be placed at reaches E and E1. New armor stone would also be placed on the harbor side of reaches A, B, and C as well as the harbor and lake side of reach D. The footprint of the north breakwater would not be altered as a result of these repairs. All work would be conducted from the water by barge and no ground disturbance would occur. Materials would be staged at the adjacent Coal Dock Park, which sits to the southwest of the north breakwater (Enclosure 1).

The undertaking is in Section 28, Township 11 North, Range 22 East in Port Washington, Ozaukee County, Wisconsin (Figure 2). The Area of Potential Effect (APE) for the undertaking encompasses the project area, including staging and access routes, and totals approximately 77 acres. The Corps believes that the APE is sufficient to identify and consider potential effects of the proposed project.

The Corps has conducted a records search and literature review of the project APE on the Wisconsin Historic Preservation Database and the National Register of Historic Places (NRHP). The Port Washington North Breakwater Light (AHI 230572) and the Port Washington North Breakwater (AHI 233424) are both listed on the Wisconsin State Register of Historic Places and sit within the project APE. Both properties contribute to the NRHP listing (100003160) for the Port Washington North Breakwater Light. The proposed project would not diminish either property's primary historic purpose of providing a safe harbor at Port Washington and the undertaking would better preserve the Port Washington North Breakwater's structure for the long term. The Port Washington North Breakwater Light is not in danger of damage during this project for the following reasons: 1) all work on the north breakwater near the lighthouse (reach A) would be limited to the placement of new armor stone in the water surrounding the breakwater on the harbor side; 2) no vibratory work such as jack hammering, breaking the structure, or driving sheet pile would occur; and 3) the original optics of the Port Washington North Breakwater Light were removed in the 1960s and replaced with a more durable plastic Type D9 Cylindrical Light. Water-based resources adjacent to the APE include the shipwrecks of the Bohemian (47OZ0276, ASI 26529) and the Toledo (47OZ0193, ASI 25523) as well as the Port Washington South Breakwater. While the South Breakwater is not listed on the NRHP, given its age, the impact on Port Washington shipping, and the fact that other similar structures have been listed, the Corps Detroit District determined in 2017 that the structure was potentially eligible for listing on the NRHP. These properties would not be affected by the proposed undertaking and the project barge staff would be given a copy of the map including the shipwrecks' locations to ensure they are avoided (Figure 3). Given the information above, the Corps has determined that the project would not adversely impact the potential NRHP eligibility of the Port Washington South Breakwater or the NRHP listing of the Port Washington North Breakwater Light and the associated Port Washington North Breakwater.

The Corps is making a good faith effort to gather information from affected Tribes identified pursuant to 36 C.F.R.§ 800.3(f). We have notified the Citizen Potawatomi of Oklahoma, the Forest County Potawatomi Community of Wisconsin, the Fort Belknap Indian Community of the Belknap Reservation of Montana, the Hannahville Indian Community of Michigan, the Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin, the Little Traverse Bay Bands of Odawa Indians of Michigan, the Menominee Indian Tribe of Wisconsin, the Miami Tribe of Oklahoma, and the Prairie Band Potawatomi Nation to assist in identifying properties which may be of religious and cultural significance.

The Corps has made a reasonable and good faith effort to identify historic properties that may be affected by this undertaking. The proposed project is part of the ongoing operation and maintenance of the Port Washington North Breakwater, would not significantly alter its form or function, is limited to the existing project footprint, and would not involve any ground disturbance. While the Bohemian and Toledo shipwrecks and the Port Washington South Breakwater, are adjacent to the APE, they would not be impacted by the proposed

undertaking and the contractor would be provided with their locations to ensure they are avoided during the transport of materials to the project site on Lake Michigan. Consequently, the project would not adversely impact the NRHP status of the listed Port Washington North Breakwater Light and the contributing Port Washington North Breakwater nor the NRHP eligibility of the Port Washington South Breakwater. Based on the information above, the Corps has determined that the proposed undertaking would result in no adverse effect to historic properties.

The Corps requests your review and agreement with our finding of No Adverse Effect to Historic Properties. If you have any questions or desire additional information, please contact the project archaeologist, Ms. Alexis Jordan, at alexis.m.jordan@usace.army.mil or (312) 846-5445.

Sincerely,

Alex Hoxsie

Alex Hoxsie
Chief, Environmental & Cultural Resources
Chicago District

Enclosure 1: Port Washington Breakwater Repair FY23 90 (July-07-23)

Figure 1: Project Vicinity Map

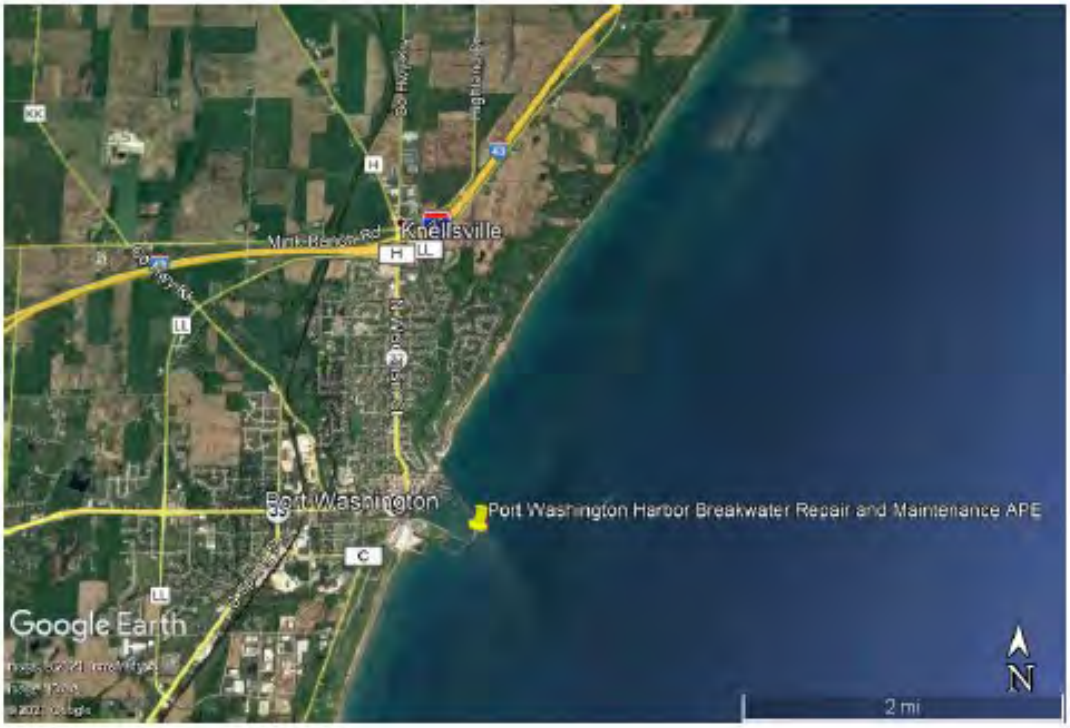


Figure 2: Project APE Map

Figure 3: Project APE and Historic Structures

USFWS

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Minnesota-Wisconsin Ecological Services Field Office
3815 American Blvd East
Bloomington, MN 55425-1659
Phone: (952) 858-0793 Fax: (952) 646-2873

In Reply Refer To:
Project Code: 2023-0099962
Project Name: Port Washington - North Breakwater Repair

June 30, 2023

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

This response has been generated by the Information, Planning, and Conservation (IPaC) system to provide information on natural resources that could be affected by your project. The U.S. Fish and Wildlife Service (Service) provides this response under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d), the Migratory Bird Treaty Act (16 U.S.C. 703-712), and the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*).

Threatened and Endangered Species

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and may be affected by your proposed project. The species list fulfills the requirement for obtaining a Technical Assistance Letter from the U.S. Fish and Wildlife Service under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. The Service recommends that verification be completed by visiting the ECOS IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS IPaC system by completing the same process used to receive the enclosed list.

Consultation Technical Assistance

Please refer to refer to our Section 7 website for guidance and technical assistance, including step-by-step instructions for making effects determinations for each species that might be present and for specific guidance on the following types of projects: projects in developed areas, HUD, CDBG, EDA, USDA Rural Development projects, pipelines, buried utilities, telecommunications, and requests for a Conditional Letter of Map Revision (CLOMR) from FEMA.

06/30/2023

We recommend running the project (if it qualifies) through our **Minnesota-Wisconsin Federal Endangered Species Determination Key (Minnesota-Wisconsin ("D-key"))**. A demonstration video showing how-to access and use the determination key is available. Please note that the Minnesota-Wisconsin D-key is the third option of 3 available d-keys. D-keys are tools to help Federal agencies and other project proponents determine if their proposed action has the potential to adversely affect federally listed species and designated critical habitat. The Minnesota-Wisconsin D-key includes a structured set of questions that assists a project proponent in determining whether a proposed project qualifies for a certain predetermined consultation outcome for all federally listed species found in Minnesota and Wisconsin (except for the northern long-eared bat- see below), which includes determinations of "no effect" or "may affect, not likely to adversely affect." In each case, the Service has compiled and analyzed the best available information on the species' biology and the impacts of certain activities to support these determinations.

If your completed d-key output letter shows a "No Effect" (NE) determination for all listed species, print your IPaC output letter for your files to document your compliance with the Endangered Species Act.

For Federal projects with a "Not Likely to Adversely Affect" (NLAA) determination, our concurrence becomes valid if you do not hear otherwise from us after a 30-day review period, as indicated in your letter.

If your d-key output letter indicates additional coordination with the Minnesota-Wisconsin Ecological Services Field Office is necessary (i.e., you get a "May Affect" determination), you will be provided additional guidance on contacting the Service to continue ESA coordination outside of the key; ESA compliance cannot be concluded using the key for "May Affect" determinations unless otherwise indicated in your output letter.

Note: Once you obtain your official species list, you are not required to continue in IPaC with d-keys, although in most cases these tools should expedite your review. If you choose to make an effects determination on your own, you may do so. If the project is a Federal Action, you may want to review our section 7 step-by-step instructions before making your determinations.

Using the IPaC Official Species List to Make No Effect and May Affect Determinations for Listed Species

1. If IPaC returns a result of "There are no listed species found within the vicinity of the project," then project proponents can conclude the proposed activities will have **no effect** on any federally listed species under Service jurisdiction. Concurrence from the Service is not required for **no effect** determinations. No further consultation or coordination is required. Attach this letter to the dated IPaC species list report for your records.
2. If IPaC returns one or more federally listed, proposed, or candidate species as potentially present in the action area of the proposed project – other than bats (see below) – then project proponents must determine if proposed activities will have **no effect** on or **may affect** those species. For assistance in determining if suitable habitat for listed, candidate, or proposed species occurs within your project area or if species may be affected by project activities, you can obtain Life History Information for Listed and Candidate Species on our office website. If no impacts will occur to a species on the IPaC species list (e.g., there is no habitat present in the project area), the appropriate determination is **no effect**. No further consultation or coordination is required. Attach this letter to the dated IPaC species list report for your records.

3. Should you determine that project activities **may affect** any federally listed, please contact our office for further coordination. Letters with requests for consultation or correspondence about your project should include the Consultation Tracking Number in the header. Electronic submission is preferred.

Northern Long-Eared Bats
Northern long-eared bats occur throughout Minnesota and Wisconsin and the information below may help in determining if your project may affect these species.

This species hibernates in caves or mines only during the winter. In Minnesota and Wisconsin, the hibernation season is considered to be November 1 to March 31. During the active season (April 1 to October 31) they roost in forest and woodland habitats. Suitable summer habitat for northern long-eared bats consists of a wide variety of forested/wooded habitats where they roost, forage, and travel and may also include some adjacent and interspersed non-forested habitats such as emergent wetlands and adjacent edges of agricultural fields, old fields and pastures. This includes forests and woodlots containing potential roosts (i.e., live trees and/or snags ≥3 inches dbh for northern long-eared bat that have exfoliating bark, cracks, crevices, and/or hollows), as well as linear features such as fencerows, riparian forests, and other wooded corridors. These wooded areas may be dense or loose aggregates of trees with variable amounts of canopy closure. Individual trees may be considered suitable habitat when they exhibit the characteristics of a potential roost tree and are located within 1,000 feet (305 meters) of forested/wooded habitat. Northern long-eared bats have also been observed roosting in human-made structures, such as buildings, barns, bridges, and bat houses; therefore, these structures should also be considered potential summer habitat and evaluated for use by bats. If your project will impact caves or mines or will involve clearing forest or woodland habitat containing suitable roosting habitat, northern long-eared bats could be affected.

Examples of unsuitable habitat include:

- Individual trees that are greater than 1,000 feet from forested or wooded areas,
- Trees found in highly developed urban areas (e.g., street trees, downtown areas),
- A pure stand of less than 3-inch dbh trees that are not mixed with larger trees, and
- A monoculture stand of shrubby vegetation with no potential roost trees.

If IPaC returns a result that northern long-eared bats are potentially present in the action area of the proposed project, project proponents can conclude the proposed activities **may affect** this species **IF** one or more of the following activities are proposed:

- Clearing or disturbing suitable roosting habitat, as defined above, at any time of year,
- Any activity in or near the entrance to a cave or mine,
- Mining, deep excavation, or underground work within 0.25 miles of a cave or mine,
- Construction of one or more wind turbines, or
- Demolition or reconstruction of human-made structures that are known to be used by bats based on observations of roosting bats, bats emerging at dusk, or guano deposits or stains.

If none of the above activities are proposed, project proponents can conclude the proposed activities will have **no effect** on the northern long-eared bat. Concurrence from the Service is not required for **No**

Effect determinations. No further consultation or coordination is required. Attach this letter to the dated IPaC species list report for your records.

If any of the above activities are proposed, and the northern long-eared bat appears on the user's species list, the federal project user will be directed to either the range-wide northern long-eared bat D-key or the Federal Highways Administration, Federal Railways Administration, and Federal Transit Administration Indiana bat/ Northern long-eared bat D-key, depending on the type of project and federal agency involvement. Similar to the Minnesota-Wisconsin D-key, these d-keys helps to determine if prohibited take might occur and, if not, will generate an automated verification letter.

Please note: On November 30, 2022, the Service published a proposal final rule to reclassify the northern long-eared bat as endangered under the Endangered Species Act. On January 26, 2023, the Service published a 60-day extension for the final reclassification rule in the Federal Register, moving the effective listing date from January 30, 2023, to March 31, 2023. This extension will provide stakeholders and the public time to preview interim guidance and consultation tools before the rule becomes effective. When available, the tools will be available on the Service's northern long-eared bat website (https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis). Once the final rule goes into effect on March 31, 2023, the 4(d) D-key will no longer be available (4(d) rules are not available for federally endangered species) and will be replaced with a new Range-wide NLEB D-key (range-wide d-key). For projects not completed by March 31, 2023, that were previously reviewed under the 4(d) d-key, there may be a need for reinitiation of consultation. For these ongoing projects previously reviewed under the 4(d) d-key that may result in incidental take of the northern long-eared bat, we recommend you review your project using the new range-wide d-key once available. If your project does not comply with the range-wide d-key, it may be eligible for use of the Interim (formal) Consultation framework (framework). The framework is intended to facilitate the transition from the 4(d) rule to typical Section 7 consultation procedures for federally endangered species and will be available only until spring 2024. Again, when available, these tools (new range-wide d-key and framework) will be available on the Service's northern long-eared bat website.

Whooping Crane
Whooping crane is designated as a non-essential experimental population in Wisconsin and consultation under Section 7(a)(2) of the Endangered Species Act is only required if project activities will occur within a National Wildlife Refuge or National Park. If project activities are proposed on lands outside of a National Wildlife Refuge or National Park, then you are not required to consult. For additional information on this designation and consultation requirements, please review "Establishment of a Nonessential Experimental Population of Whooping Cranes in the Eastern United States."

Other Trust Resources and Activities
Bald and Golden Eagles - Although the bald eagle has been removed from the endangered species list, this species and the golden eagle are protected by the Bald and Golden Eagle Act and the Migratory Bird Treaty Act. Should bald or golden eagles occur within or near the project area please contact our office for further coordination. For communication and wind energy projects, please refer to additional guidelines below.

Migratory Birds - The Migratory Bird Treaty Act (MBTA) prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Service. The Service has the responsibility under the MBTA to proactively prevent the

mortality of migratory birds whenever possible and we encourage implementation of recommendations that minimize potential impacts to migratory birds. Such measures include clearing forested habitat outside the nesting season (generally March 1 to August 31) or conducting nest surveys prior to clearing to avoid injury to eggs or nestlings.

Communication Towers - Construction of new communications towers (including radio, television, cellular, and microwave) creates a potentially significant impact on migratory birds, especially some 350 species of night-migrating birds. However, the Service has developed voluntary guidelines for minimizing impacts.

Transmission Lines - Migratory birds, especially large species with long wingspans, heavy bodies, and poor maneuverability can also collide with power lines. In addition, mortality can occur when birds, particularly hawks, eagles, kites, falcons, and owls, attempt to perch on uninsulated or unguarded power poles. To minimize these risks, please refer to guidelines developed by the Avian Power Line Interaction Committee and the Service. Implementation of these measures is especially important along sections of lines adjacent to wetlands or other areas that support large numbers of raptors and migratory birds.

Wind Energy - To minimize impacts to migratory birds and bats, wind energy projects should follow the Service's Wind Energy Guidelines. In addition, please refer to the Service's Eagle Conservation Plan Guidance, which provides guidance for conserving bald and golden eagles in the course of siting, constructing, and operating wind energy facilities.

State Department of Natural Resources Coordination
While it is not required for your Federal section 7 consultation, please note that additional state endangered or threatened species may also have the potential to be impacted. Please contact the Minnesota or Wisconsin Department of Natural Resources for information on state listed species that may be present in your proposed project area.

Minnesota
Minnesota Department of Natural Resources - Endangered Resources Review Homepage
Email: Review.NHIS@state.mn.us

Wisconsin
Wisconsin Department of Natural Resources - Endangered Resources Review Homepage
Email: DNRERReview@wi.gov

We appreciate your concern for threatened and endangered species. Please feel free to contact our office with questions or for additional information.

Attachment(s):

- Official Species List
- USFWS National Wildlife Refuges and Fish Hatcheries
- Migratory Birds
- Wetlands

OFFICIAL SPECIES LIST

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Minnesota-Wisconsin Ecological Services Field Office
3815 American Blvd East
Bloomington, MN 55425-1659
(952) 858-0793

PROJECT SUMMARY

Project Code: 2023-0099962
Project Name: Port Washington - North Breakwater Repair
Project Type: Breakwaters - Maintenance/Modification
Project Description: Project centers around the Port Washington North Breakwater located in Port Washington, WI. The project would include resetting stones that have become dislodged from the breakwater as well as placing additional stone where necessary. The footprint of the breakwater would not change. The proposed project could begin as early as 2024.

Project Location:

The approximate location of the project can be viewed in Google Maps: https://www.google.com/maps/@43.387779800000004,-87.86202554927522,14z

Counties: Ozaukee County, Wisconsin

ENDANGERED SPECIES ACT SPECIES

There is a total of 6 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries[1], as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

1. NOAA Fisheries, also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

MAMMALS

NAME	STATUS
Northern Long-eared Bat *Myotis septentrionalis* No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Endangered
Tricolored Bat *Perimyotis subflavus* No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/10515	Proposed Endangered

BIRDS

NAME	STATUS
Red Knot *Calidris canutus rufa* There is **proposed** critical habitat for this species. Species profile: https://ecos.fws.gov/ecp/species/1864	Threatened

INSECTS

NAME	STATUS
Hine's Emerald Dragonfly *Somatochlora hineana* There is **final** critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/7877	Endangered
Monarch Butterfly *Danaus plexippus* No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

FLOWERING PLANTS

NAME	STATUS
Eastern Prairie Fringed Orchid *Platanthera leucophaea*	Threatened

No critical habitat has been designated for this species.
Species profile: https://ecos.fws.gov/ecp/species/601

CRITICAL HABITATS

THERE ARE NO CRITICAL HABITAT'S WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

YOU ARE STILL REQUIRED TO DETERMINE IF YOUR PROJECT(S) MAY HAVE EFFECTS ON ALL ABOVE LISTED SPECIES.

USFWS NATIONAL WILDLIFE REFUGE LANDS AND FISH HATCHERIES

Any activity proposed on lands managed by the National Wildlife Refuge system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

THERE ARE NO REFUGE LANDS OR FISH HATCHERIES WITHIN YOUR PROJECT AREA.

MIGRATORY BIRDS

Certain birds are protected under the Migratory Bird Treaty Act[1] and the Bald and Golden Eagle Protection Act[2].

Any person or organization who plans or conducts activities that may result in impacts to migratory birds, eagles, and their habitats should follow appropriate regulations and consider implementing appropriate conservation measures, as described below.

1. The Migratory Birds Treaty Act of 1918.
2. The Bald and Golden Eagle Protection Act of 1940.
3. 50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)

The birds listed below are birds of particular concern either because they occur on the USFWS Birds of Conservation Concern (BCC) list or warrant special attention in your project location. To learn more about the levels of concern for birds on your list and how this list is generated, see the FAQ below. This is not a list of every bird you may find in this location, nor a guarantee that every bird on this list will be found in your project area. To see exact locations of where birders and the general public have sighted birds in and around your project area, visit the E-bird data mapping tool (Tip: enter your location, desired date range and a species on your list). For projects that occur off the Atlantic Coast, additional maps and models detailing the relative occurrence and abundance of bird species on your list are available. Links to additional information about Atlantic Coast birds, and other important information about your migratory bird list, including how to properly interpret and use your migratory bird report, can be found below.

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, click on the PROBABILITY OF PRESENCE SUMMARY at the top of your list to see when these birds are most likely to be present and breeding in your project area.

NAME	BREEDING SEASON
American Golden-plover *Pluvialis dominica* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds elsewhere
Bald Eagle *Haliaeetus leucocephalus* This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.	Breeds Dec 1 to Aug 31

NAME	BREEDING SEASON
Black Tern *Chlidonias niger* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/3093	Breeds May 15 to Aug 20
Black-billed Cuckoo *Coccyzus erythropthalmus* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9399	Breeds May 15 to Oct 10
Bobolink *Dolichonyx oryzivorus* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 20 to Jul 31
Canada Warbler *Cardellina canadensis* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 20 to Aug 10
Cerulean Warbler *Dendroica cerulea* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/2974	Breeds Apr 22 to Jul 20
Chimney Swift *Chaetura pelagica* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds Mar 15 to Aug 25
Eastern Whip-poor-will *Antrostomus vociferus* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 1 to Aug 20
Golden-winged Warbler *Vermivora chrysoptera* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/8745	Breeds May 1 to Jul 20
Henslow's Sparrow *Ammodramus henslowii* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/3941	Breeds May 1 to Aug 31
Lesser Yellowlegs *Tringa flavipes* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9679	Breeds elsewhere
Long-eared Owl *asio otus* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/3631	Breeds Mar 1 to Jul 15

NAME	BREEDING SEASON
Marbled Godwit *Limosa fedoa* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9481	Breeds May 1 to Jul 31
Red-headed Woodpecker *Melanerpes erythrocephalus* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 10 to Sep 10
Ruddy Turnstone *Arenaria interpres morinella* This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA	Breeds elsewhere
Rusty Blackbird *Euphagus carolinus* This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA	Breeds elsewhere
Short-billed Dowitcher *Limnodromus griseus* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9480	Breeds elsewhere
Western Grebe *aechmophorus occidentalis* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/6743	Breeds Jun 1 to Aug 31
Wood Thrush *Hylocichla mustelina* This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 10 to Aug 31

PROBABILITY OF PRESENCE SUMMARY

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read and understand the FAQ "Proper Interpretation and Use of Your Migratory Bird Report" before using or attempting to interpret this report.

Probability of Presence (■)

Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

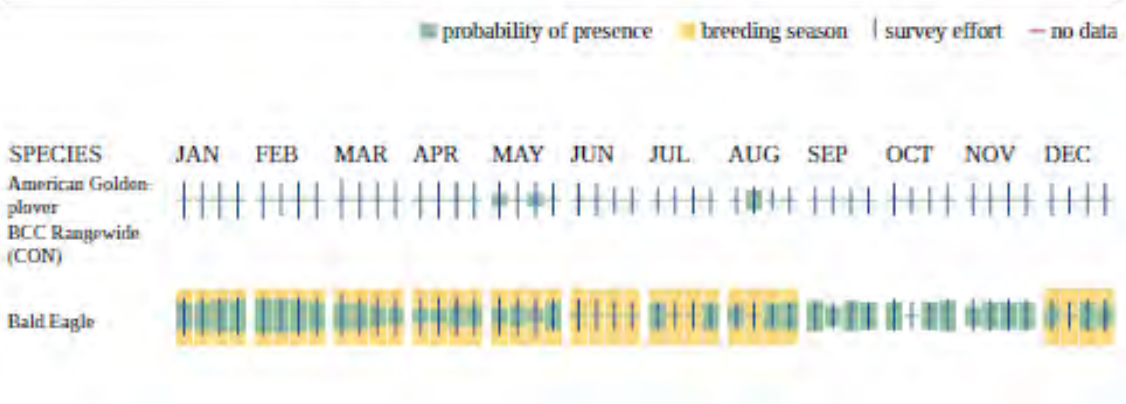
1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.
2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is 0.25/0.25 = 1; at week 20 it is 0.05/0.25 = 0.2.
3. The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.

Breeding Season (▪)
Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.

Survey Effort (|)
Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps. The number of surveys is expressed as a range, for example, 33 to 64 surveys.

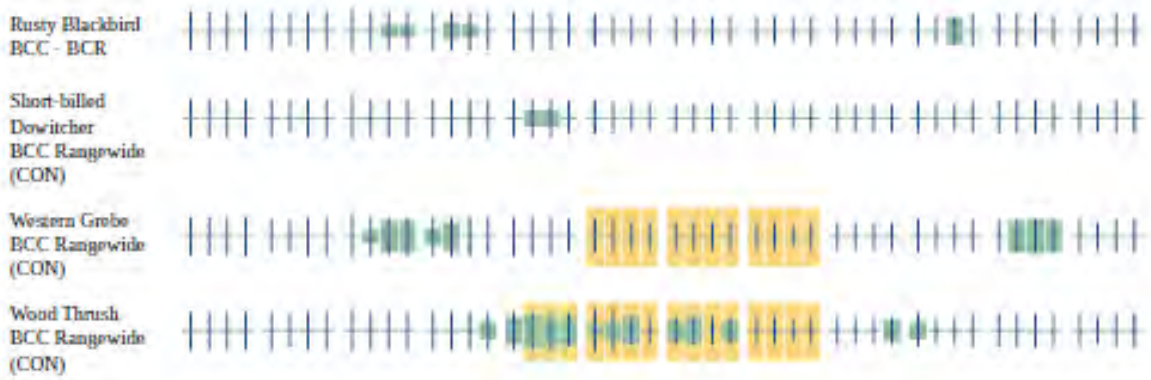
No Data (–)
A week is marked as having no data if there were no survey events for that week.

Survey Timeframe
Surveys from only the last 10 years are used in order to ensure delivery of currently relevant information. The exception to this is areas off the Atlantic coast, where bird returns are based on all years of available data, since data in these areas is currently much more sparse.



06/30/2023 5


Non-BCC Vulnerable
Black Tern BCC Rangewide (CON)
Black-billed Cuckoo BCC Rangewide (CON)
Bobolink BCC Rangewide (CON)
Canada Warbler BCC Rangewide (CON)
Cerulean Warbler BCC Rangewide (CON)
Chimney Swift BCC Rangewide (CON)
Eastern Whip-poor-will BCC Rangewide (CON)
Golden-winged Warbler BCC Rangewide (CON)
Henslow's Sparrow BCC Rangewide (CON)
Lesser Yellowlegs BCC Rangewide (CON)
SPECIES
JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
Long-eared Owl BCC Rangewide (CON)
Marbled Godwit BCC Rangewide (CON)
Red-headed Woodpecker BCC Rangewide (CON)
Ruddy Turnstone BCC - BCR



Additional information can be found using the following links:

- Birds of Conservation Concern https://www.fws.gov/program/migratory-birds/species
- Measures for avoiding and minimizing impacts to birds https://www.fws.gov/library/collections/avoiding-and-minimizing-incidental-take-migratory-birds
- Nationwide conservation measures for birds https://www.fws.gov/sites/default/files/documents/nationwide-standard-conservation-measures.pdf

MIGRATORY BIRDS FAQ

Tell me more about conservation measures I can implement to avoid or minimize impacts to migratory birds.

Nationwide Conservation Measures describes measures that can help avoid and minimize impacts to all birds at any location year round. Implementation of these measures is particularly important when birds are most likely to occur in the project area. When birds may be breeding in the area, identifying the locations of any active nests and avoiding their destruction is a very helpful impact minimization measure. To see when birds are most likely to occur and be breeding in your project area, view the Probability of Presence Summary. Additional measures or permits may be advisable depending on the type of activity you are conducting and the type of infrastructure or bird species present on your project site.

What does IPaC use to generate the list of migratory birds that potentially occur in my specified location?

The Migratory Bird Resource List is comprised of USFWS Birds of Conservation Concern (BCC) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the Avian Knowledge Network (AKN). The AKN data is based on a growing collection of survey, banding, and citizen science datasets and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle (Eagle Act requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the Rapid Avian Information Locator (RAIL) Tool.

What does IPaC use to generate the probability of presence graphs for the migratory birds potentially occurring in my specified location?
The probability of presence graphs associated with your migratory bird list are based on data provided by the Avian Knowledge Network (AKN). This data is derived from a growing collection of survey, banding, and citizen science datasets.

Probability of presence data is continuously being updated as new and better information becomes available. To learn more about how the probability of presence graphs are produced and how to interpret them, go the Probability of Presence Summary and then click on the "Tell me about these graphs" link.

How do I know if a bird is breeding, wintering or migrating in my area?
To see what part of a particular bird's range your project area falls within (i.e. breeding, wintering, migrating or year-round), you may query your location using the RAIL Tool and look at the range maps provided for birds in your area at the bottom of the profiles provided for each bird in your results. If a bird on your migratory bird species list has a breeding season associated with it, if that bird does occur in your project area, there may be nests present at some point within the timeframe specified. If "Breeds elsewhere" is indicated, then the bird likely does not breed in your project area.

What are the levels of concern for migratory birds?
Migratory birds delivered through IPaC fall into the following distinct categories of concern:

1. "BCC Rangewide" birds are Birds of Conservation Concern (BCC) that are of concern throughout their range anywhere within the USA (including Hawaii, the Pacific Islands, Puerto Rico, and the Virgin Islands);
2. "BCC - BCR" birds are BCCs that are of concern only in particular Bird Conservation Regions (BCRs) in the continental USA; and
3. "Non-BCC - Vulnerable" birds are not BCC species in your project area, but appear on your list either because of the Eagle Act requirements (for eagles) or (for non-eagles) potential susceptibilities in offshore areas from certain types of development or activities (e.g. offshore energy development or longline fishing).

Although it is important to try to avoid and minimize impacts to all birds, efforts should be made, in particular, to avoid and minimize impacts to the birds on this list, especially eagles and BCC species of rangewide concern. For more information on conservation measures you can implement to help avoid and minimize migratory bird impacts and requirements for eagles, please see the FAQs for these topics.

Details about birds that are potentially affected by offshore projects
For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the Northeast Ocean Data Portal. The Portal also offers data and information about other taxa besides

birds that may be helpful to you in your project review. Alternately, you may download the bird model results files underlying the portal maps through the NOAA NCCOS Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf project webpage.

Bird tracking data can also provide additional details about occurrence and habitat use throughout the year, including migration. Models relying on survey data may not include this information. For additional information on marine bird tracking data, see the Diving Bird Study and the nanotag studies or contact Caleb Spiegel or Pam Loring.

What if I have eagles on my list?
If your project has the potential to disturb or kill eagles, you may need to obtain a permit to avoid violating the Eagle Act should such impacts occur.

Proper Interpretation and Use of Your Migratory Bird Report
The migratory bird list generated is not a list of all birds in your project area, only a subset of birds of priority concern. To learn more about how your list is generated, and see options for identifying what other birds may be in your project area, please see the FAQ "What does IPaC use to generate the migratory birds potentially occurring in my specified location". Please be aware this report provides the "probability of presence" of birds within the 10 km grid cell(s) that overlap your project; not your exact project footprint. On the graphs provided, please also look carefully at the survey effort (indicated by the black vertical bar) and for the existence of the "no data" indicator (a red horizontal bar). A high survey effort is the key component. If the survey effort is high, then the probability of presence score can be viewed as more dependable. In contrast, a low survey effort bar or no data bar means a lack of data and, therefore, a lack of certainty about presence of the species. This list is not perfect; it is simply a starting point for identifying what birds of concern have the potential to be in your project area, when they might be there, and if they might be breeding (which means nests might be present). The list helps you know what to look for to confirm presence, and helps guide you in knowing when to implement conservation measures to avoid or minimize potential impacts from your project activities, should presence be confirmed. To learn more about conservation measures, visit the FAQ "Tell me about conservation measures I can implement to avoid or minimize impacts to migratory birds" at the bottom of your migratory bird trust resources page.

WETLANDS

Impacts to NWI wetlands and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local U.S. Army Corps of Engineers District.

Please note that the NWI data being shown may be out of date. We are currently working to update our NWI data set. We recommend you verify these results with a site visit to determine the actual extent of wetlands on site.

LAKE

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WCMP

DEPARTMENT OF THE ARMY
CHICAGO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
231 SOUTH LA SALLE STREET, SUITE 1500
CHICAGO IL 60604

August 22, 2023

Environmental & Cultural Resources
Planning Branch

Kathleen Angel
Federal Consistency and Coastal Hazards Coordinator
Wisconsin Coastal Management Program
101 E. Wilson Street, 9th Floor
P.O. Box 8944
Madison, WI 53708

SUBJECT: Federal Consistency Determination for Port Washington Breakwater Repair, Port Washington, Wisconsin

Dear Ms. Angel:

The U.S. Army Corps of Engineers (Corps) is writing regarding a proposed repair to the north breakwater of Port Washington Harbor located in the City of Port Washington, Wisconsin. Port Washington Harbor is an authorized federal navigation harbor located approximately 30 miles north of Milwaukee, 50 miles south of Manitowoc, and 120 miles north of Chicago (Enclosure 1). The purpose of the proposed project is to support the navigation functions of Port Washington Harbor by maintaining safe passage for vessels entering and exiting the port. The project is needed because armor stone along the north breakwater has become dislodged and moved by wave action. In addition, voids have developed in the structure as armor stone has settled over the years. In 2021, the Corps prepared an Environmental Assessment (EA) for repairs to the south breakwater at Port Washington Harbor, which were implemented in 2022. Therefore, a Supplemental Environmental Assessment (SEA) to the 2021 EA has been prepared for the proposed north breakwater repairs. The public review period for the (SEA) is anticipated to occur in August/September 2023. Contract award of the proposed project is anticipated to occur in spring 2024 with project construction complete by fall/winter 2024. The Corps has evaluated the proposed maintenance project and the following provides our determination pursuant to the Coastal Zone Management Act.

PROJECT DESCRIPTION

The proposed project would occur within the existing footprint of the north breakwater of Port Washington Harbor (Enclosure 2). The proposed project would reset dislodged armor stones and place new armor stone as needed along the north breakwater, reaches E and E-1 (Enclosure 3). Additionally, new armor stone will be placed on the harbor side of the north breakwater, reaches A, B, and C as well as on the harbor and lake side of reach D (Enclosure 3). The proposed project does not include side slope redesign or broadening the width of the north breakwater's footprint. Approximately 8,295 tons of new armor stone would be placed on the existing north breakwater structure in addition to resetting of armor stone that has become dislodged over time. The proposed project would provide a more stable and long-lasting breakwater structure, better maintaining safe passage for vessels entering and exiting the port.

All repairs are anticipated to be performed from a barge. However, if due to depth of water stone placement cannot be performed from a barge, off land placement would be permitted.

COASTAL ZONE MANAGEMENT ACT (CZMA of 1972)

Since the proposed project is a federal project, the Corps is required to evaluate whether the activity would affect any coastal use or resource under the Coastal Zone Management Act. The proposed project would occur within the state boundary, on the landward side, of Wisconsin's coastal zone boundary established under the State of Wisconsin's Coastal Management Program. During construction, minor turbidity would be generated from the setting/resetting of armor stone. There are no wetlands that would be disturbed by the project and the project would not extend the footprint occupied by the structure currently. The setting/resetting of armor stone could smother aquatic macroinvertebrates and nekton that could be present amongst the existing breakwater. However, scheduling to avoid fish spawning windows would minimize potential impacts to nekton and aquatic macroinvertebrates adjacent to the project area are expected to recolonize the new/reset armor stone. With the implementation of best management practices and scheduling to avoid fish spawning windows, the Corps has determined that the proposed project is consistent to the maximum extent practicable with the Coastal Zone Management Act. In addition to the above determination, applicable state coastal policies were reviewed for consistency according to 15 CFR 930.33(a)(1).

SPECIFIC STATE COASTAL POLICIES

The Corps reviewed the list of coastal policies from Appendix C "Specific State Coastal Policies, "Wisconsin Coastal Management Program: A Strategic Vision for the Great Lakes," dated October 2007. Below is a list of the policies that appear to be applicable to the proposed project within Port Washington Harbor. In addition, each identified policy includes an evaluation of the proposed maintenance project for consistency with the State of Wisconsin Coastal Management Program. For this evaluation, Port Washington Harbor is a navigable waterway as defined by the Public Trust Doctrine. The Public Trust Doctrine states that a navigable waterway within the state is "any waterway which it is possible to float a canoe or small watercraft at some time during the year."

Coastal Water Quality and Quantity and Coastal Air Quality

Policy 1.2: An interim goal is the protection and propagation of fish and wildlife and the maintenance of water quality to allow recreation in and on the water to be achieved. (See Wis. Stats. § 283.001(1)(b))

Consistency of Project: The proposed project has the potential to smother aquatic macroinvertebrates, smother nekton, and cause minor turbidity that could disrupt sight-feeders. However, the project will implement best management practices to reduce turbidity and will schedule construction outside of fish spawning windows to minimize potential impacts. The minor amount of turbidity generated by the project is not anticipated to impact recreation in or on the water. Long-term, operation of the breakwater is passive and would have no impact to fish and wildlife propagation, maintenance of water quality, or recreation. Overall, the implementation of BMPs, and scheduling construction outside fish spawning windows would mean that the proposed project is consistent to the maximum extent practicable with Policy 1.2.

Policy 1.4: Disposal in the waters of the state of the following defined pollutants shall be restricted: dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (See Wis. Stats. §§ 283.01(13), 283.31(1), and 29.601. See also managed uses #8 and #9)

Consistency of Project: The proposed project includes the resetting of existing armor stone that has been displaced by wave action and also includes the placement of approximately 8,295 tons of new armor stone. The minimum amount of new stone to repair the north breakwater and make a more stable and long-lasting breakwater structure would be placed within Lake Michigan. In addition, the new armor stone to be placed would be clean and free of contaminants and organic debris. Given the above, the proposed project is consistent to the maximum extent practicable with Policy 1.4.

Policy 1.15.1: No person may conduct an activity for which the Wisconsin Department of Natural Resources denies a required water quality certification. No person may violate a condition imposed by the department in a water quality certification. (See Wis. Stats. § 281.17(10))

Consistency of Project: The proposed project complies with Corps Nationwide Permit (NWP) 3 (Maintenance), therefore, it has been determined to be consistent with the 404(b)(1) guidelines. Projects in compliance with NWP 3 have been granted 401 Water Quality Certification by the Wisconsin Department of Natural Resources. The proposed project would comply with NWP 3 requirements and State of Wisconsin regional permit conditions. Given the above, the proposed project is consistent to the maximum extent practicable with Policy 1.15.1.

Coastal Natural Areas, Wildlife Habitat and Fisheries

Policy 2.22: No person may discharge dredged or fill material into a nonfederal wetland unless the discharge is authorized by a water quality certification issued by the Wisconsin Department of Natural Resources. No person may violate any condition imposed by the department in a water quality certification. The department may not issue a water quality certification for a nonfederal wetland unless it determines that the discharge will comply with all applicable water quality standards. (See Wis. Stats. § 281.36(2)(a))

Consistency of Project: The north breakwater to be repaired has no wetlands within or adjacent to the structure's footprint. Therefore, the setting/resetting of armor stone would not occur within a nonfederal wetland. In addition, the proposed project complies with NWP 3 (Maintenance) for which 401 Water Quality Certification has been granted by the Wisconsin Department of Natural Resources. The proposed project would comply with NWP 3 requirements and State of Wisconsin regional permit conditions. Given the above, the proposed project is consistent to the maximum extent practicable with Policy 2.22.

Community Development

Policy 4.6: The State Historical Society shall review and comment upon the actions of any state agency or political subdivision that may have an adverse effect upon historical properties, and ameliorate the adverse effects. (See Wis. Stats. §§ 1.11 and 44.34(10). See also SCA #1, 5, and 6)

Consistency of Project: Pursuant to section 106 of the National Historic Preservation Act of 1966, as amended, the Corps determined that historic properties would not be adversely affected by the proposed project and the Wisconsin State Historic Preservation Office concurred with the determination on August 1, 2023. Given the above, the proposed project is consistent to the maximum extent practicable with Policy 4.6.

Policy 4.8.1: Public access facilities shall allow for public rights of navigation, related incidental uses and other uses which are appropriate for the waterway. Waterway uses shall be equally available to all waterway users and include enjoyment of natural scenic beauty and serenity. These public rights and uses may be provided by any combination of publicly and privately owned access facilities which are available to the general public free or for a reasonable fee. The Wisconsin department of natural resources shall exercise its management and regulatory responsibilities to achieve this goal and to assure that levels and types of use of navigable waters are consistent with protection of public health, safety and welfare, including protection of natural resources. (See Wis. Stats §§ 281.31 and 281.12 and Wis. Admin. Code NR 1.90, 1.91 and 1.92.)

Consistency of Project: During construction of the proposed project, recreational and commercial vessels will still be able to use the Port Washington Harbor. Once construction is complete, the north breakwater will be a more stable and long-lasting structure that will better maintain safe passage for vessels entering and exiting the harbor. Given the above, the proposed project is consistent to the maximum extent practicable with Policy 4.8.1.

Policy 4.11: Unless an individual or a general permit has been issued or authorization has been granted by the legislature, no person may deposit any material or place any structure upon the bed of any navigable water where no bulkhead line has been established or beyond a lawfully established bulkhead line. Exemptions from permit requirements for the placement of a structure or the deposit of material only apply where the structure or material is located in an area other than an area of special natural resource interest and does not interfere with the riparian rights of any other riparian owners. (See Wis. Stats. § 30.12(3m))

Consistency of Project: In addition to resetting dislodged armor stone, the proposed project also includes the placement of approximately 8,295 tons of new armor stone that would be clean and free of contaminants and organic debris. The resetting/setting of armor stone would occur within the existing footprint of the north breakwater and the footprint would not be expanded to cover any additional area of Lake Michigan bottom. In addition, pursuant to the Clean Water Act of 1972, as amended, the discharge of the above fill material complies with NWP 3. Therefore, it has been determined that the proposed project is consistent with the 404(b)(1) guidelines. Projects in compliance with NWP 3 have been granted 401 Water Quality Certification by the Wisconsin Department of Natural Resources. Given the above, the proposed project is consistent to the maximum extent practicable with Policy 4.11.

In accordance with 15 CFR Part 930.39(a), based on the evaluation of the applicable enforceable policies contained in Appendix C of the State of Wisconsin Coastal Management Program, the Corps has determined that the proposed maintenance project of Port Washington Harbor's north breakwater complies with the policies of Wisconsin's approved Coastal Management Program and will be conducted in a manner consistent with such policies to the maximum extent practicable.

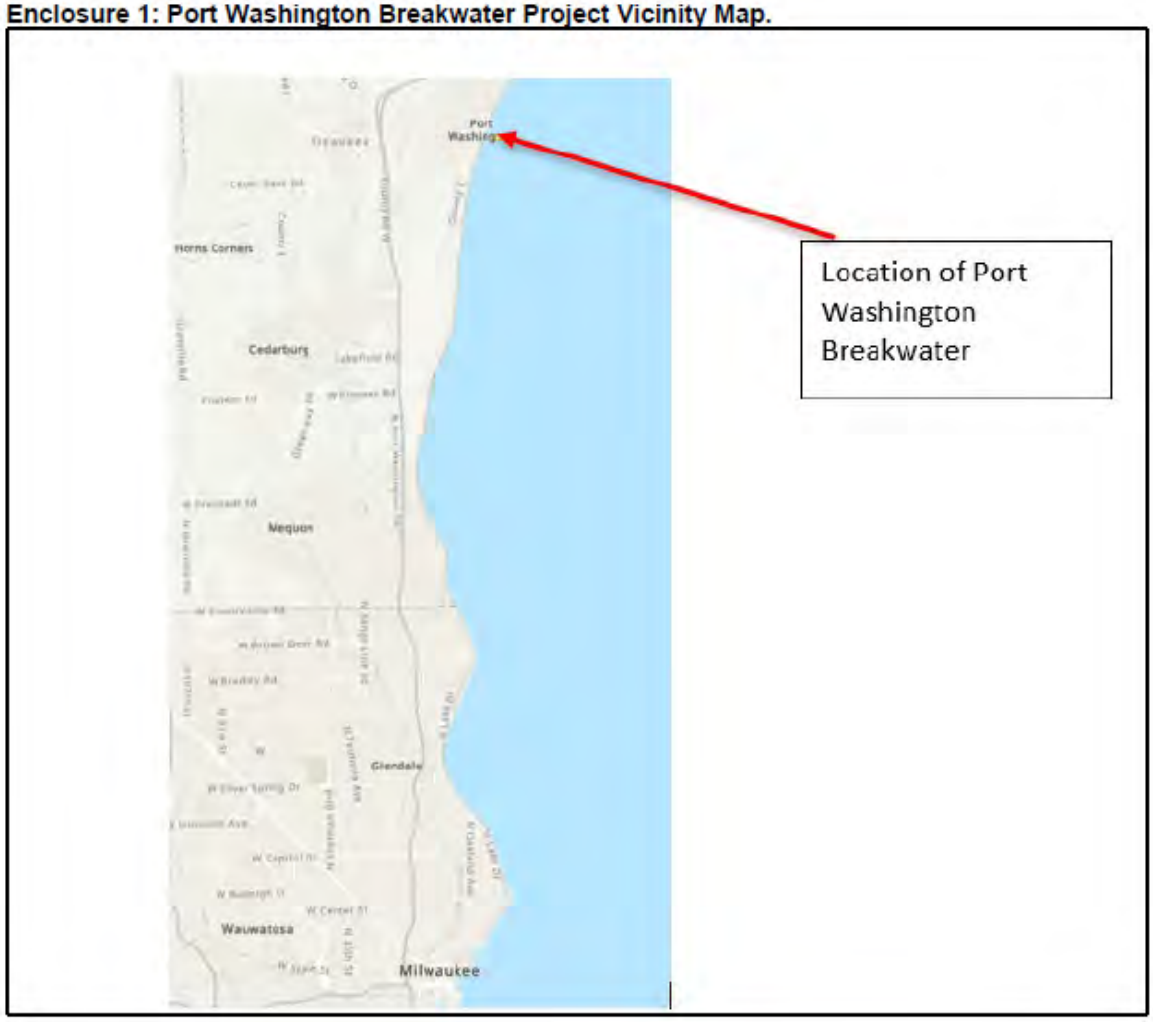
We request your concurrence with this determination within 60 days from receipt of the consistency determination. Wisconsin's concurrence will be presumed if its response is not received by the Corps within 60 days plus any extension, if requested as applicable pursuant to 15 CFR 930.41(b). Please contact Shawna Herleth-King at shawna.s.herleth-king@usace.army.mil or 312-846-5407 if you have any questions or need any additional information.

Sincerely,

Alex Hoxsie
Environmental & Cultural Resources

Enclosures (3)

Enclosure 1: Port Washington Breakwater Project Vicinity Map.



Enclosure 2: Project Map Showing the North Breakwater Location within Port Washington Harbor.

Enclosure 3: Typical Cross-Sections for North Breakwater Reaches to be Repaired.

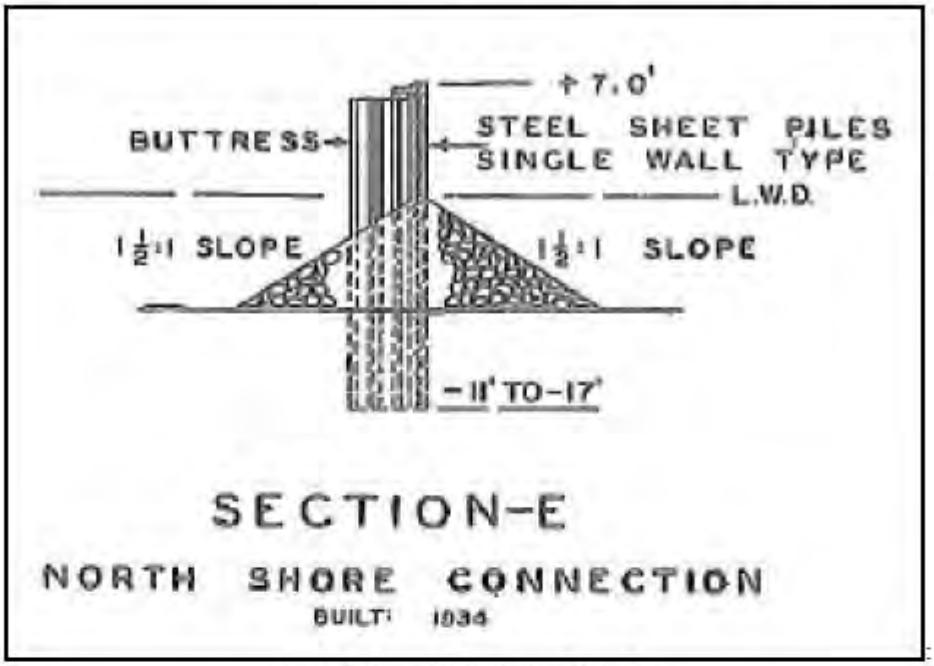


Figure 1: Typical Cross Section, Reach E.

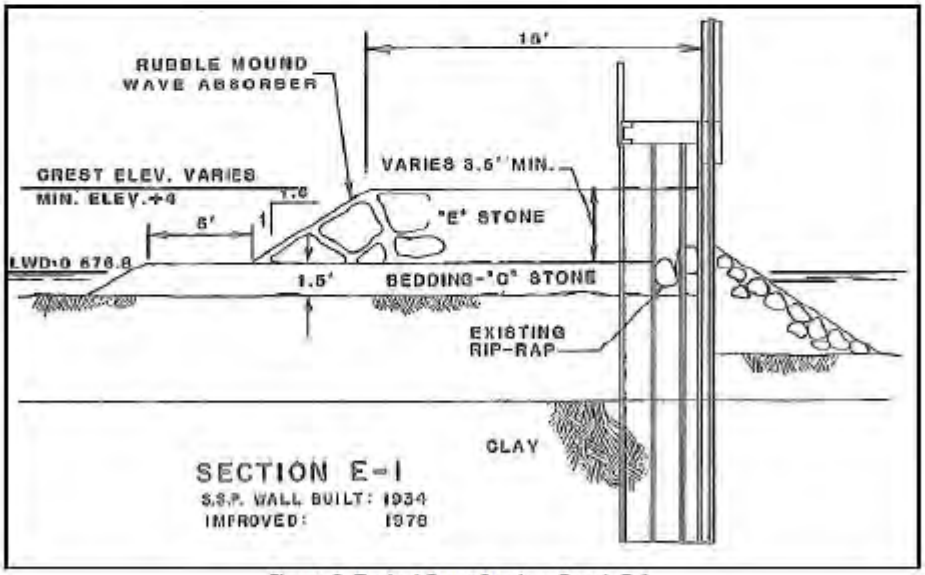


Figure 2: Typical Cross Section, Reach E-1.

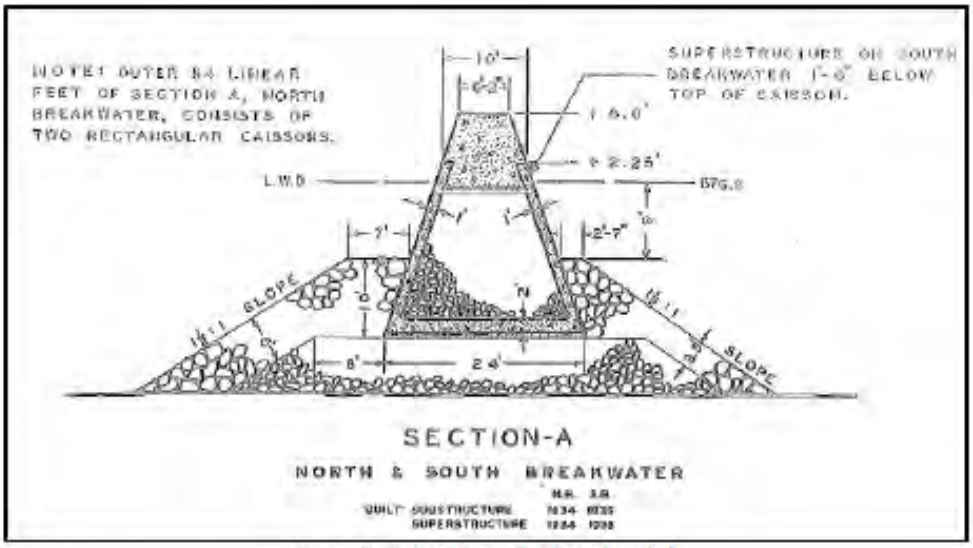


Figure 3: Typical Cross Section, Reach A

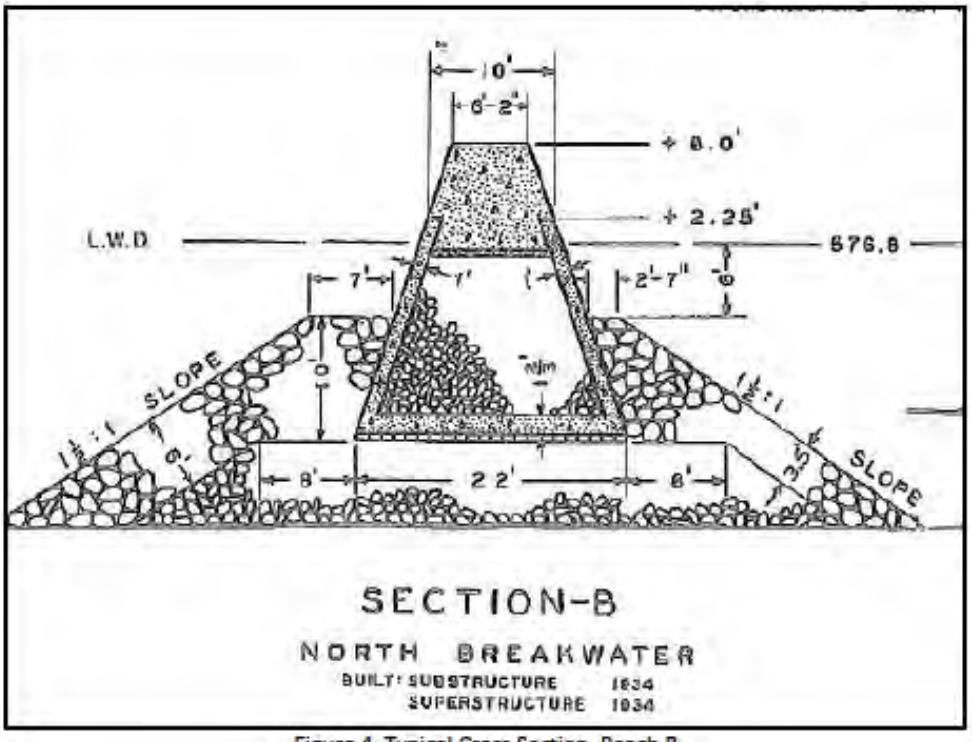


Figure 4: Typical Cross Section, Reach B

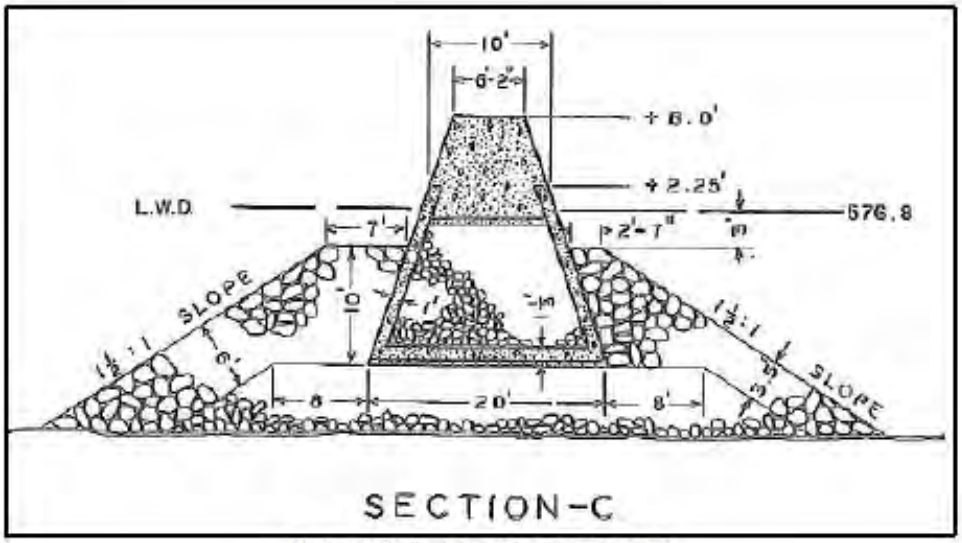


Figure 5: Typical Cross Section, Reach C

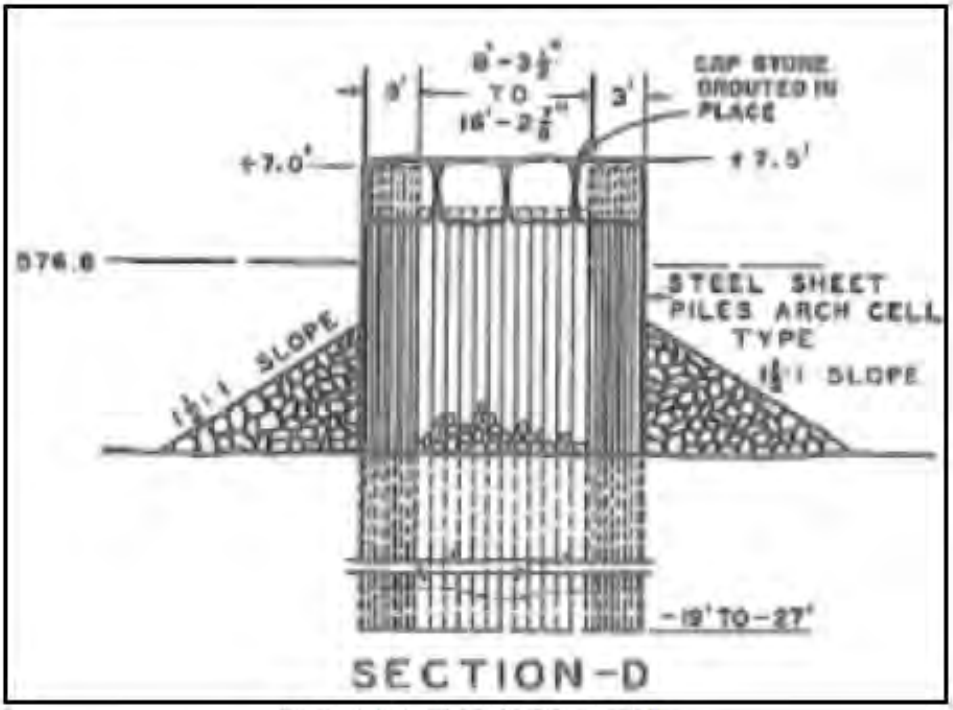


Figure 6: Typical Cross Section, Reach D.

Appendix C – Public Coordination

Scoping Distribution List

Contact Information for Tribes with Interests in Ozaukee County, Wisconsin		
Tribal Name: Forest County Potawatomi Community of Wisconsin		
Contact Name	**Title**	**Mailing Address**
Ned Daniels, Jr.	Chairman	P.O. Box 340 Crandon, WI 54520
Ben Rhodd	THPO	P.O. Box 340 Crandon, WI 54520
Tribal Name: Fort Belknap Indian Community of the Fort Belknap Reservation of Montana		
Contact Name	**Title**	**Mailing Address**
Michael Black Wolf	THPO	656 Agency Main Street Harlem, MT 59526-9455
Jeffery (Jeff) Stiffarm	President	RR1, Box 66 Harlem, MT 59526-9455
Tribal Name: Hannahville Indian Community, Michigan		
Contact Name	**Title**	**Mailing Address**
Kenneth Meshigaud	Chairperson	N14911 Hannahville B1 Rd, Wilson, MI 49896
Tribal Name: Citizen Potawatomi Nation, Oklahoma		
Contact Name	**Title**	**Mailing Address**
Dr. Kelli Mosteller	THPO	1601 S. Gordon Cooper Drive, Shawnee, OK 74801
John “Rocky” Barrett	Chairman	1601 S. Gordon Cooper Drive, Shawnee, OK 74801
Tribal Name: Little Traverse Bay Bands of Odawa Indians of Michigan		
Contact Name	**Title**	**Mailing Address**
Regina Gasco-Bentley	Chairperson	7500 Odawa Circle Harbor Springs, MI 49740
Melissa Wiatrolik	THPO	7500 Odawa Circle Harbor Springs, MI 49740
Tribal Name: Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin		
Contact Name	**Title**	**Mailing Address**
John Johnson	President	P.O. Box 67, Lac du Flambeau, WI 54538
Sarah Thompson	THPO	P.O. Box 67, Lac du Flambeau, WI 54538
Tribal Name: Menominee Indian Tribe of Wisconsin		
Contact Name	**Title**	**Mailing Address**
Gena Kakkak	Chairperson	PO Box 910 Keshena, WI 54135
David Grignon	THPO	PO Box 910 Keshena, WI 54135
Tribal Name: Miami Tribe of Oklahoma		
Contact Name	**Title**	**Mailing Address**
Douglas Lankford	Chief	PO Box 1326 Miami, OK 74355

Diane Hunter	THPO	PO Box 1326 Miami, OK 74355
Tribal Name: Prairie Band of Potawatomi Nation		
Contact Name	**Title**	**Mailing Address**
Raphael Wahwassuck	THPO	16281 Q Road, Mayetta, KS 66509
Joseph Rupnick	Chairperson	16281 Q Road, Mayetta, KS 66509
Contact Information for State & Local Office-holders, Stakeholders and Coordinating Agencies		
Contact Name	**Title**	**Mailing Address**
Tammy Baldwin	United States Senator	709 Hart Senate Office Building Washington, D.C. 20510
Ron Johnson	United States Senator	517 East Wisconsin Avenue, Suite 408 Milwaukee, WI 53202
Glenn Grothman	Congressman	6th Congressional District of Wisconsin 1511 Longworth House Office Building Washington, DC 20515
Ted Neitzke IV	Mayor	100 W. Grand Avenue P.O. Box 307 Port Washington, WI 53074
Duey Stroebel	State Senator, Senate District 20	18 South, State Capitol P.O. Box 7882 Madison, WI 53707
Robert Brooks	State Representative, Assembly District 60	Office of Rep. Rob Brooks – 60th Assembly District 216 North P.O. Box 8952 Madison, WI 53708
Daina Penkiunas	State Historic Preservation Officer	Wisconsin Historical Society 816 State Street Madison WI 53706
Jennifer Tyler	Acting Deputy Director	Environmental Protection Agency Region 5 77 West Jackson Boulevard (E-19J) Chicago, IL 60604-3507
Liz Pelloso	NEPA Reviewer (POC for Corps)	Environmental Protection Agency Region 5 77 West Jackson Boulevard (E-19J) Chicago, IL 60604-3507

Nick J. Utrup	Fish and Wildlife Biologist (POC for Corps)	U.S. Fish and Wildlife Service Minnesota-Wisconsin Ecological Services Field Office 3815 American Boulevard East Bloomington, MN 55425
Mike Thompson	WDNR Regional Director	Wisconsin Department of Natural Resources Southeast Region Headquarters 2300 N. Dr. Martin Luther King Jr. Dr. Milwaukee, WI 53212
Michael Szabo	Environmental Engineer Supervisor	Wisconsin Department of Natural Resources Milwaukee Service Center 1027 West St. Paul Ave. Milwaukee, WI 53233
Kendra Fisher	Environmental Engineer Supervisor, Compliance Supervisor	Wisconsin Department of Natural Resources Milwaukee Service Center 1027 West St. Paul Ave. Milwaukee, WI 53233
Jesse Bennett	Water Resources Management Specialist, Nonpoint Source Coordinator Regional	Wisconsin Department of Natural Resources Milwaukee Service Center 1027 West St. Paul Ave. Milwaukee, WI 53233
Mike Halstead	Harbors & Waterways Program Specialist	Wisconsin Department of Transportation 4822 Madison Yards Way Madison, WI 53705
Kathleen Angel	Federal Consistency and Coastal Hazards Coordinator	Wisconsin Coastal Management Program Division of Intergovernmental Relations 101 East Wilson Street, 9th Floor PO Box 8944 Madison, WI 53708-8944
James Killian	Water Resources Management Specialist	Wisconsin Department of Natural Resources P.O. Box 7921 Madison, WI 53707-7921
Sarah Szabo	Water Regulator/Zoning Specialist	Wisconsin Department of Natural Resources 2984 Shawano Avenue Green Bay, WI 54313-6727

Dennis L. Cherny	Harbor Master	Port Washington Department of Marina & Harbor Facilities 106 N. Lake Street P.O. Box 307 Port Washington, WI 53074
Lisa Rathke	Assistant Harbor Master	Port Washington Department of Marina & Harbor Facilities 106 N. Lake Street P.O. Box 307 Port Washington, WI 53074
Bill Schanen IV	Commodore	Port Washington Yacht Club 430 N. Lake Street Port Washington, WI 53074

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, CHICAGO DISTRICT
231 SOUTH LASALLE STREET, SUITE 1500
CHICAGO IL 60604

April 27, 2023

Planning Branch
Planning, Programs and Project Management

Dear Recipient:

The U.S. Army Corps of Engineers, Chicago District (USACE) will be preparing a supplemental National Environmental Policy Act (NEPA) document on the potential impacts associated with the proposed Port Washington Harbor North Breakwater repair and maintenance project in Port Washington, Ozaukee County, Wisconsin (Enclosure 1). The purpose of the project is to repair the north breakwater structure, located on the western shore of Lake Michigan, by filling existing voids with either dislodged stone or new stone while not increasing the overall footprint of the north breakwater structure. The design will maintain the original 1.5:1 slope of the structure. New armor stone ranging in size between about 2.3-to-10-ton stone would be placed in addition to resetting existing armor stone as needed along the north breakwater sections (i.e., A, B, C, D, D-1, E, and E-1) (Enclosures 2 and 3). A previous Environmental Assessment was completed for repairs to the south breakwater in 2022; since that time, USACE has determined additional work is required on the north breakwater as well.

Constructed in 1936, the Port Washington Harbor north breakwater is a man-made structure that has been subject to numerous repairs as part of ongoing routine operation and maintenance. The armor stone at the north end of the breakwater (approximately 2,500 linear feet total comprised of sections A, B, C, D, D-1, E, and E-1) has been dislodged and moved by wave action and needs to be reset to maintain operational integrity. Additional stone will likely be required to fill in all the voids that exist within the north breakwater repair sections. The proposed project would provide a more stable and long-lasting structure, better maintaining safe passage for vessels entering and exiting the port. All repairs would be conducted by barge.

As part of the NEPA scoping process, USACE is seeking comments or concerns regarding potential impacts from the proposed project. If you have any comments or concerns, please provide them in writing by May 29, 2023, to Ms. Shawna Herleth-King, Biologist, via email at shawna.s.herleth-king@usace.army.mil.

Sincerely,

BUCARO.DAVID.F.1245178677

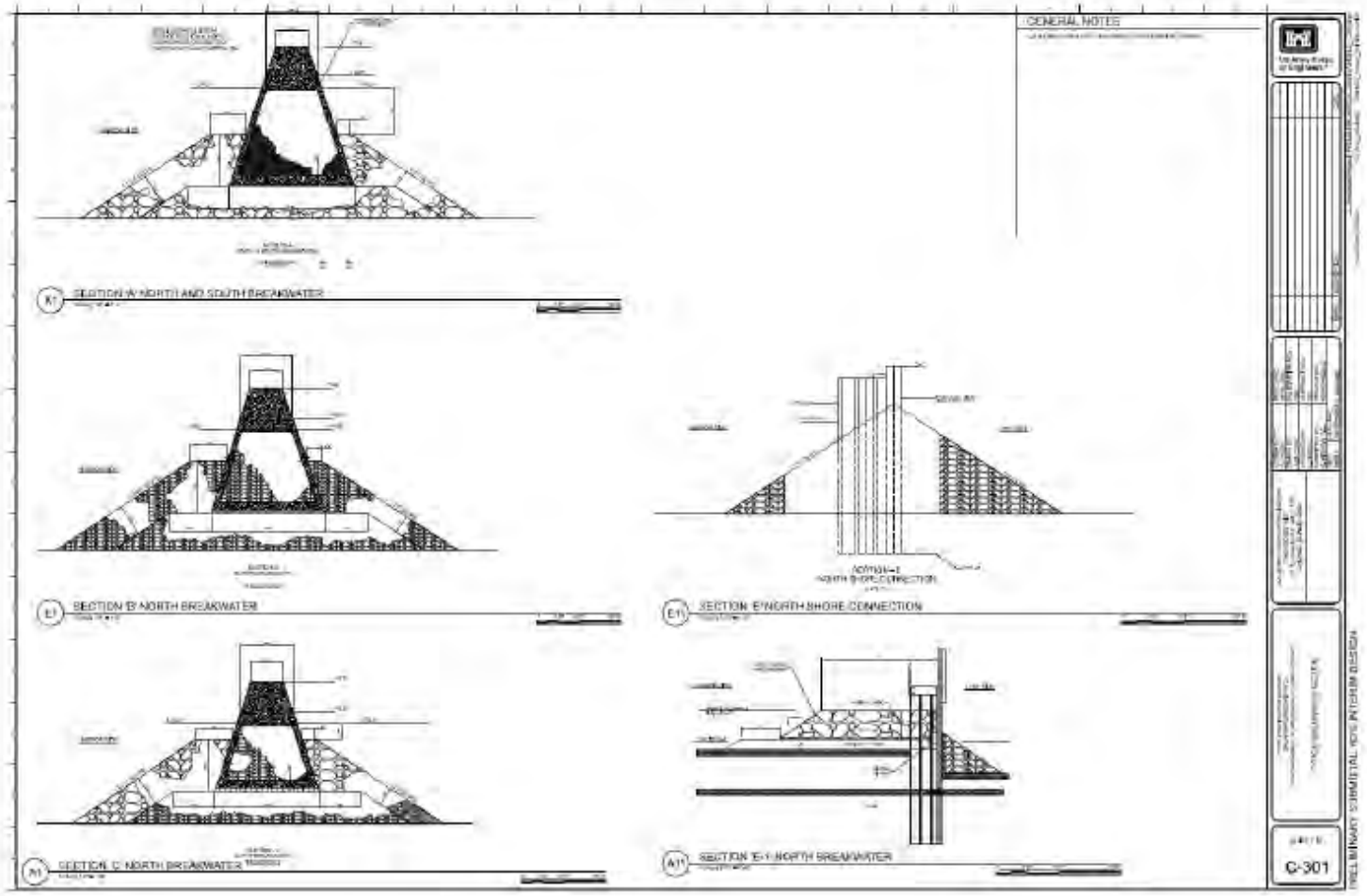
David F. Bucaro, P.E., PMP, WRCP
Chief, Planning Branch

Enclosures
1 – Project Vicinity Map
2 – Existing Breakwater Dimensions
3 – Proposed Breakwater Repairs
4 – Scoping Distribution List

Enclosure 1 – Project Vicinity Map

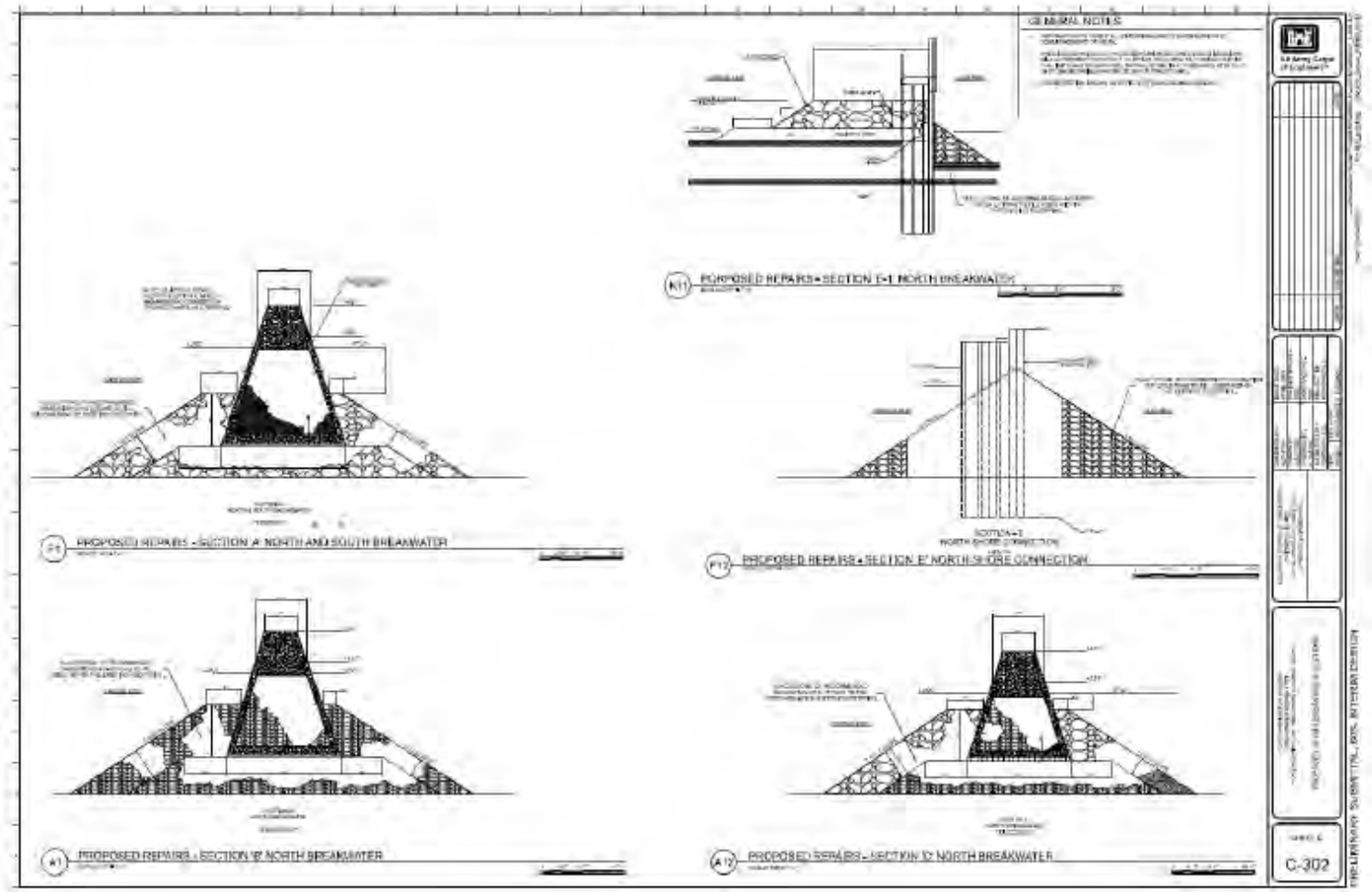
April 27, 2023 NEPA Scoping Letter - Port Washington Harbor North Breakwater Repair and Maintenance

Enclosure 2 – Existing Breakwater Dimensions



April 27, 2023 NEPA Scoping Letter - Port Washington Harbor North Breakwater Repair and Maintenance

Enclosure 3 – Proposed Breakwater Repairs



April 27, 2023 NEPA Scoping Letter - Port Washington Harbor North Breakwater Repair and Maintenance

Miami Tribe of Oklahoma
3410 P St. NW, Miami, OK 74354 • P.O. Box 1326, Miami, OK 74355
Ph: (918) 541-1300 • Fax: (918) 542-7260
www.miamination.com

Via email: shawna.s.herleth-king@usace.army.mil

May 5, 2023

Shawna Herleth-King
LRD Regional Technical Specialist
US Army Corps of Engineers
231 South LaSalle Street, Suite 1500
Chicago, Illinois 60604

Re: Port Washington Harbor North Breakwater Repair & Maintenance, Ozaukee County, Wisconsin – Comments of the Miami Tribe of Oklahoma

Dear Ms. Herleth-King:

Aya, kweehsitoolaani– I show you respect. The Miami Tribe of Oklahoma, a federally recognized Indian tribe with a Constitution ratified in 1939 under the Oklahoma Indian Welfare Act of 1936, respectfully submits the following comments regarding Port Washington Harbor North Breakwater Repair & Maintenance in Ozaukee County, Wisconsin.

The Miami Tribe offers no objection to the above-referenced project at this time, as we are not currently aware of existing documentation directly linking a specific Miami cultural or historic site to the project site. However, given the Miami Tribe's deep and enduring relationship to its historic lands and cultural property within present-day Wisconsin, if any human remains or Native American cultural items falling under the Native American Graves Protection and Repatriation Act (NAGPRA) or archaeological evidence is discovered during any phase of this project, the Miami Tribe requests immediate consultation with the entity of jurisdiction for the location of discovery. In such a case, please contact me at 918-541-8966 or by email at THPO@miamination.com to initiate consultation.

The Miami Tribe accepts the invitation to serve as a consulting party to the proposed project. In my capacity as Tribal Historic Preservation Officer I am the point of contact for consultation.

Respectfully,

Diane Hunter

Diane Hunter
Tribal Historic Preservation Officer

Division of Transportation
Investment Management
Bureau of Transit, Local Roads, Railroads & Harbors
Local Transportation Programs & Finance Section
PO Box 7913
Madison, WI 53707-7913

Tony Evers, Governor
Craig Thompson, Secretary
Internet: www.dot.wisconsin.gov

Telephone: 608-266-1010
E-mail: michaels.halsted@dot.wi.gov

Mark Grams
City of Port Washington
100 West Grand Avenue, Box 307
Port Washington, WI 53074

February 25, 2020

Subject: Harbor Assistance Program Grant Application for Port Washington Breakwater

Dear Mr. Grams,

Thank you for your application to the Wisconsin Harbor Assistance Program (HAP) for the repair of a breakwater structure that currently protects Port Washington Harbor. Unfortunately, the project is not recommended for funding at this time.

The Harbor Advisory Council recognizes Port Washington as a vibrant and active marina. While the public access component along the breakwater adds to recreation opportunities and the overall appeal of the Port, the Council believes previous and substantial federal investment has adequately preserved the functionality of the breakwater to protect the harbor. Harbor Assistance Program grants are intended to construct and/or repair port infrastructure to maintain or increase commodity or commercial passenger movement capabilities.

The Port may reapply for a HAP grant in the future, provided new information demonstrates the existing breakwater structure is inadequately protecting the harbor. The Council recommends pursuing additional funding from the Wisconsin Coastal Management Program and Department of Natural Resources.

Please let me know if I can be of any assistance.

Sincerely,

Mike Halsted
Harbors and Waterways Program Manager
(608) 264-8426

[URL Verdict: Neutral][Non-DoD Source] RE: Scoping Notification: Port Washington North Breakwater Repair, Port Washington, WI

Reply | Reply All | Forward | ...

PL Pelloso, Liz <Pelloso.Liz@epa.gov>
To Herleth-King, Shawna S CIV USARMY CELRC (USA)
Cc Bucaro, David F CIV USARMY CELRC (USA); Hoxsie, Alex R CIV USARMY CELRC (USA); Kennedy, Patrick J CIV USARMY (USA); Jordan, Alexis M CIV USARMY CELRC (USA)
Wed 5/3/2023 1:16 PM

Follow up. Start by Wednesday, May 3, 2023. Due by Wednesday, May 3, 2023.

Shawna,

EPA's NEPA program is in receipt of your scoping document for the proposed Port Washington North Breakwater Repairs, Port Washington, Wisconsin. EPA Region 5 reviews and provides scoping comments as time allows. At this time, due to staffing constraints, EPA will not be reviewing the scoping document for this project. However, please continue to send us NEPA documents for review, including the forthcoming EA.

To ensure that NEPA documents are routed in a timely manner to our NEPA staff in the future, please send all NEPA-related documents and requests electronically to the EPA Region 5 NEPA email box at R5NEPA@epa.gov.

Thanks!
Liz Pelloso

Liz Pelloso, PWS
National Environmental Policy Act Team
EPA Region 5
Phone: 312-886-7425
Email: pelloso.liz@epa.gov

[URL Verdict: Neutral][Non-DoD Source] RE: Scoping Notification: Port Washington North Breakwater Repair, Port Washington, WI

Reply | Reply All | Forward | ...

HM Halsted, Michael S - DOT <michaels.halsted@dot.wi.gov>
To Herleth-King, Shawna S CIV USARMY CELRC (USA)
Fri 6/2/2023 10:31 AM

Follow up. Start by Friday, June 2, 2023. Due by Friday, June 2, 2023.

port-wash_HAP-2020-letter.pdf
.pdf File

Hi Shawna – Regarding the request for comments on the Port Wash breakwater project NEPA process. WisDOT Harbor Advisory Council evaluated the project in 2019/2020 for a Harbor Assistance Program grant application. At the time WisDOT considered the main purpose of the project was not structural but rather recreation (for pedestrian and boat traffic), see letter attached. Has this changed? Is the breakwater structure in jeopardy? I have photos over the eroding concrete on the surface of the structure from 2019 I can send upon request.

Also, there is no longer an established harbor facility engaged in waterborne commerce as in the past. The Port's focus appears to have shifted toward recreation. We do what we can to evaluate eligibility for all projects and perhaps someday a freight hub or passenger cruise operations (with overnight accommodations) will be established at Port Washington.

Thanks for including WisDOT on your review list. We have no comments regarding the merits of the project or potential impacts evaluated during the NEPA process.

Sincerely,

Mike Halsted
WisDOT Harbors & Waterway Program Manager
(608) 264-8426