



In Reply Refer To:
2010-I-0193

United States Department of the Interior

FISH AND WILDLIFE SERVICE

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Ecological Services
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Grace Musumeci, Chief
Environmental Review Section
Strategic Planning and Multi-Media Programs Branch
U.S. Environmental Protection Agency, Region II
290 Broadway
New York, New York 10007-1866

APR 9 2010

Dear Ms. Musumeci:

This letter responds to your April 6, 2010 request to the U.S. Fish and Wildlife Service (Service) for concurrence with the U.S. Environmental Protection Agency's (EPA) determination that approval of the New Jersey Department of Environmental Protection's (NJDEP) adoption of saltwater aquatic life criteria for nickel into the New Jersey Surface Water Quality Standards (NJSWQS) (N.J.A.C. 7:9B) are not likely to adversely affect federally listed threatened and endangered species.

AUTHORITY

This response is provided pursuant to Section 7 of the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) (ESA) and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*). These comments do not address all Service concerns for fish and wildlife resources or the implementation of revisions to the NJSWQS.

SERVICE CONCURRENCE

The Service has reviewed your revised Biological Evaluation and additional supporting documentation regarding the effects of the adopted change in saltwater nickel criteria on federally listed species occurring within the action area. The EPA does not anticipate adverse impacts to federally listed species as a result of the proposed adoption of saltwater aquatic life criteria for nickel. Based upon a review of the information provided, the Service concurs with your determination of no effect for seabeach amaranth (*Amaranthus pumilus*) and not likely to adversely affect for northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*), piping plover (*Charadrius melodus*), roseate tern (*Sterna dougallii dougallii*), and sensitive joint-vetch (*Aeschynomene virginica*).

As requested by the Service during a March 3, 2009 meeting, outside of the scope of this consultation, the EPA provided a brief analysis of saltwater nickel criteria on the federal candidate species red knot (*Calidris canutus rufa*). Should red knot be listed, EPA will need to reinitiate consultation to more fully address potential adverse affects to red knot regarding enhanced toxicity of nickel in the presence of cyanide, such as within Delaware Bay. If additional information on federally listed or candidate species becomes available, or if project plans change, this determination may be reconsidered.

MARINE SPECIES

The Service provides the above determination with respect to federally listed threatened, endangered, or candidate flora and fauna under Service jurisdiction only. Except for sea turtle nesting habitat, principal responsibility for threatened and endangered marine species is vested with the National Marine Fisheries Services (NMFS). Of the federally listed sea turtles known to occur within New Jersey, only the loggerhead turtle (*Caretta caretta*) is known to occasionally nest within the State. The Service concurs with your determination of not likely to adversely affect nesting loggerhead turtles. To fulfill consultation requirements for marine species pursuant to Section 7(a)(2) of the ESA, the Service recommends that EPA re-initiate consultation with the NMFS regarding new information provided by the Service on enhanced toxicity of nickel in the presence of cyanide. The NMFS may be contacted at the following address:

National Marine Fisheries Service
Habitat and Protected Resources Division
Sandy Hook Laboratory
Highlands, New Jersey 07732
(732) 872-3023

Please contact Annette Scherer at (609) 383-3938, extension 34 if you have any questions regarding federally listed species, or myself at extension 26 for questions concerning environmental contaminants.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy Salsich". The signature is fluid and cursive, with the first name "Timothy" and last name "Salsich" clearly distinguishable.

Acting Supervisor