

RESPONSE TO PUBLIC AND AGENCY COMMENTS



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United States Department of the Interior

FISH AND WILDLIFE SERVICE
Boqueron Field Office
P.O. Box 491
Boqueron, Puerto Rico 00622



February 2, 2004

Mr. Edwin Muñiz
Chief, Antilles Regulatory Section
Department of the Army
Jacksonville District Corps of Engineers, Antilles Office
400 Fernandez Juncos Avenue
San Juan, Puerto Rico 00901-3299

Re: SAJ-2002-6525 (IP-JER), Port of the
Americas, Ponce, SEIS

Dear Mr. Muñiz:

The interested agencies of the Department of the Interior have reviewed the above referenced Supplemental Environmental Impact Statement and Public Notice. Our comments are issued in accordance with the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*), and the Endangered Species Act of 1973, as amended (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*).

The Service has been consulting with the Corps and the applicant over the past three years on this project, and we commented on the previous Draft Environmental Impacts Statement expressing concern for various aspects of the project as it was then proposed. The alternative analysis for the project included an in-depth analysis of alternative sites around the island. The original preferred alternative included port development at both Guayanilla and Ponce Bays. We had expressed concern for substantial direct impacts in the Guayanilla Bay portion of the project to valuable marine and wetland habitats as well as potential impacts to the Antillean manatee. We were also concerned over the potential secondary and indirect impacts of the development of two separated deep-water ports, particularly for development in sensitive coastal wetlands between the two areas and in Guayanilla Bay. The new preferred alternative limits the port development to Ponce, Bay, thus minimizing the concerns for impacts near Guayanilla Bay and between the two ports.

EIS-1.1 The new preferred alternative for Ponce, would require dredging approximately 248 acres of submerged lands for the navigation channel and turning basin, excavation of approximately 45 acres of fastland in the port area for the berthing channel, filling of approximately 59 acres of wetlands adjacent to the port for container and cargo storage, expansion of the port storage area with an additional 135 acres of uplands, and development of approximately 132 acres of uplands for value added activities. Approximately 5.5 million cubic meters of dredge spoil material is expected to be produced, about 2.2 million cubic meters could be disposed of at the offshore Ponce ODMS disposal site.

Endangered Species

The Service concluded Section 7 Consultation under the Endangered Species Act in our letter dated December 16, 2003. Please refer to that letter for endangered species comments.

Fish and Wildlife Coordination Act Comments

The currently proposed alternative significantly reduces the potential impacts of the originally proposed project, including greatly reducing the concerns expressed for secondary, indirect, and cumulative impacts of two port developments. The remaining concerns for this project include impacts to subtidal special aquatic sites and wetlands in the Ponce area, and potential impacts to offshore reef areas from the dredging and offshore sediment disposal.

EIS-1.2 The subtidal habitats that would be impacted over the estimated 248 acres of dredging area are mostly fine muds with little or no vegetation, but includes approximately 39 acres of area with some paddle grass (*Halophila decipiens*), and 0.34 acres of mixed seagrass (*Thalassia* and *Syringodium*) and macroalgae. The 59 acres of wetlands that would be impacted are comprised mostly of scrub/shrub mangroves and mudflats. Much of this area has received some prior impacts from previous port development. The mitigation being offered would take place within some parcels of the Wirshing-Mayoral Estate to the east of the project site. While we concur that this may be an appropriate site, a detailed mitigation plan has yet to be developed. The SEIS specifies that this will be done using a rapid assessment procedure. Two separated areas are marked within the Wirshing farm for restoration mitigation. It is not clear if the rest of the farm, consisting of valuable coastal wetlands, will also be preserved. Preserving the existing coastal wetlands on this farm would help mitigate for the unavoidable impacts to seagrass beds, since all of the coastal wetlands in Ponce are under serious pressure for development.

EIS-1.3 We recommend that a permit not be issued until the wetland mitigation plan is finalized. The final wetland mitigation plan should be developed following the current Corps guidance regarding wetland mitigation plans as stipulated in RGL 02/2.

EIS-1.4 We do not object to the ocean disposal of the dredged sediments, providing that all the protocols are followed, however, there should be particularly strict monitoring of water quality downstream (to the west and inshore of) the disposal area and the dredging site with special attention to water turbidity. The shelf edge reefs of the south coast of Puerto Rico are some of the best coral reefs around the island, and they lie from 3 to 4 miles offshore of the coast. The coastal platform includes many other small emergent and submerged reefs to the west of Ponce.

EIS-1.5 Current estimates show that approximately 5.5 million cubic meters of sediments resulting from the dredging of the navigation channel would be disposed at the offshore Ponce ODMS.

EIS-1.1 Current estimates show that approximately 5.5 million cubic meters of sediments resulting from the dredging of the navigation channel would be disposed at the offshore Ponce ODMS.

EIS-1.2 This information has been updated and clarified with NMFS. A total of 97 acres of mixed mud-*Halophila* bottoms, plus 0.6 acres of mixed seagrasses and macroalgae, would be affected by the proposed action. It has been estimated that the *Halophila* component accounts for approximately 13% of the total 97-acre area (approx. 13 acres)

EIS-1.3 A final draft of a wetland mitigation plan will be submitted to the USACE during the last week of April. The plan calls for the inclusion in a conservation easement of additional lands surrounding the parcels targeted for restoration that would serve as buffer and/or transition zones.

EIS-1.4 A final draft of a wetland mitigation plan has been developed as per RGL 02/2 and will be submitted to the USACE during the last week of April.

EIS-1.5 Ocean disposal will be carried out as per the Site Management and Monitoring Plan for the Ponce Harbor Dredge Material Disposal Site, approved by USEPA on November 3, 2003. A 5-year baseline and long-term water quality and monitoring plan will also be implemented to assess impacts on turbidity and other physicochemical parameters in the vicinity of the disposal area and the Ponce Harbor during the construction and operation of the proposed project.

PERM-1.5 Water quality standards for turbidity should be particularly stringent, and we recommend that the new proposed standards for turbidity or stricter standards be applied to dredging operations and off shore disposal.

PERM-1.6 Based on the above, we concur with the overall findings of the SEIS, but recommend that a detailed mitigation plan and dredging/spoil disposal monitoring plan be completed prior to issuing this permit. Thank you for the opportunity to comment on this action. For questions regarding ESA comments please contact Marelisa Rivera , or for questions regarding FWCA comments contact Beverly Yoshioka of my staff at 787-851-7297 exts. 231 or 227, respectively.

PERM-1.5 Water quality standards criteria for turbidity will be enforced as part of the proposed construction and operation of the Project.

PERM-1.6 Please refer to EIS-1.3 and EIS-1.5.

Sincerely yours,



Carlos A. Díaz
Assistant Field Supervisor

bby/mtr
cc:
AFI, Ferdinand Quinoñes
DNER, San Juan
COE, Jacksonville
EPA, New York
EPA, San Juan
EQB, San Juan
NMFS, Boquerón
PRPB, San Juan



United States Department of the Interior

OFFICE OF THE SECRETARY
OFFICE OF ENVIRONMENTAL POLICY AND COMPLIANCE
Richard B. Russell Federal Building
75 Spring Street, S.W.
Atlanta, Georgia 30303

ER 04/49

March 2, 2004

Mr. Edwin Muniz
Chief, Antilles Regulatory Section
Department of the Army
Jacksonville District Corps of Engineers
400 Fernandez Juncos Avenue
San Juan, PR 00901

RE: SAJ-2002-6525 (IP-JER), Port of the Americas, Ponce, SEIS

Dear Mr. Muniz:

The Department of the Interior has reviewed the above referenced document. The US Fish and Wildlife Service provided you comments dated February 2, 2004 (copy attached). After careful review of their comments we have no additional comments to may on the Supplemental EIS. Please accept the attached letter as the office comments from the Department of the Interior.

If you should have any questions I can be reached at 404-331-4524.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory Hogue", written over a circular stamp or seal.

Gregory Hogue
Regional Environmental Officer

Attachement

cc:
FWS, R4
FWS, Boqueron
OEPC-WASO



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
9721 Executive Center Drive N.
St. Petersburg, Florida 33702
(727) 570-5317, FAX 570-5300

January 14, 2004 F/SER4:LC

Edwin E. Muñiz
Chief, Antilles Regulatory Section
Department of the Army, Corps of Engineers
400 Fernandez Juncos Avenue
San Juan, Puerto Rico 00901-3299

Dear Mr. Muñiz:

The National Marine Fisheries Service (NOAA Fisheries) has received your staff's letter and copy of the "Amended Essential Fish Habitat, Port of the Americas" (EFH Assessment) dated December 15, 2003. The Puerto Rico Infrastructure Financing Authority (AFI, in Spanish) has modified the Port of the Americas proposal to construct transshipment port facilities for Panamax and post-Panamax class vessels in Guayanilla Bay and Ponce Bay, Puerto Rico. The modified project will require the construction at Ponce Harbor of an inland navigation channel measuring approximately 4,000 feet long and 800 feet wide, filling of 59 wetland acres for the construction of port facilities, dredging of the existing navigation channel and turning basin to a depth of 50 feet, and disposal of 194.2 million cubic feet of dredged material in the Ponce Harbor Ocean Dredged Material Disposal Site (ODMDS).

By letter dated November 20, 2002 (copy enclosed), NOAA Fisheries provided comments, including essential fish habitat (EFH) conservation recommendations to the U.S. Army Corps of Engineers (COE) in response to the public notice published for the transshipment port project. While the elimination of planned port construction activities in Guayanilla Bay eliminates our concerns regarding the potential adverse impacts on EFH in the area of Guayanilla, our recommendations regarding the contemplated development activities in Ponce Harbor continue to reflect our concerns related to potential adverse impacts to EFH as the result of port development activities in Ponce. Specifically, NOAA Fisheries recommended that the extent of impacts to seagrass beds in Ponce Bay be determined and a mitigation plan be developed for unavoidable adverse impacts. In addition, impacts to wetlands and fishery resources should be documented and a mitigation plan for unavoidable adverse impacts be developed; an erosion and sediment control plan for construction and dredging activities should be developed and implemented, and the Site Management and Monitoring Plan for the Ponce ODMDS should be provided for our review. Based on our review of the EFH Assessment, AFI has not addressed our concerns regarding project impacts to seagrass beds and wetlands, as the result of port construction and dredging activities, nor to coral reefs and other fishery resources, caused by the transport of material from the dredging site to the ODMDS.

Seagrass beds, mangrove wetlands, and salt flats are categories of EFH designated by the Caribbean Fishery Management Council pursuant to the requirements of the Magnuson-Stevens Fishery



EIS-3.1

EIS-3.2

EIS-3.3

- EIS-3.1 Please refer to EIS-1.2 and EIS-1.3. Also, a final draft of a seagrass mitigation plan will be submitted to the USACE during the last week of April. The plan proposes the relocation of the *Halophila* bottoms to a nearby mitigation zone adjacent to Isla de Cardona and Las Hojitas Cay.
- EIS-3.2 The PTA will comply with the local (EOB) and federal (EPA) regulations concerning control of storm water volume and pollutant loads in runoff (SDEIS, table 1-2).
- EIS-3.3 The Site Management and Monitoring Plan for the Ponce Harbor ODMDS, approved by USEPA on November 2003, includes specific requirements on this issue that will be implemented during the dredging works.

Conservation and Management Act (Magnuson-Stevens Act). In addition, seagrass beds are classified as EFH habitat areas of particular concern due to their ecological importance for fishery resources. This designation reflects the high value of seagrass habitats to various life stages of spiny lobster, gray snapper, red hind, and a number of other federally managed species of commercial and recreational importance. Coral reefs, which may be impacted by the transit of sediment-laden barges from the dredged material site to the ODMDS, are also categories of EFH known to provide essential spawning, nursery, forage and refuge functions for federally managed species such as juvenile and adult Nassau grouper and schoolmaster, juvenile mutton snapper, and adult squirrelfish.

EIS-3.4	<p>The EFH Assessment states that 59 acres of mangrove and salt flat wetlands will be filled as part of the construction of an inland harbor in Ponce, but it does not indicate whether mitigation is planned to offset the loss of these wetlands. The EFH Assessment also indicates that the dredging of the navigation channel and turning basin will impact 139 acres of seagrass beds, but no mitigation is proposed to offset the impacts of dredging on EFH. Therefore, based on the information in the EFH Assessment, 59 acres of wetlands and 139 acres of seagrass habitat classified as EFH will be impacted as the result of port construction, but no mitigation for these impacts is proposed. In addition, the dredging of the navigation channel and turning basin will generate 194.2 million cubic feet of material to be disposed of in the Ponce ODMDS. Because the area between Ponce Bay and the ODMDS contains coral reefs, NOAA Fisheries is concerned about the effects of vessel traffic and accidental spills of materials on EFH areas. NOAA Fisheries is also concerned about the potential adverse impacts of the lack of designated offshore anchorage areas for the expanded port facilities given the extensive coral reefs that occur along the southern coast of Puerto Rico.</p>	EIS-3.4	Please refer to EIS-3.1.
EIS-3.5	<p>NOAA Fisheries has also determined, in accordance with Part IV.3(a) of the Memorandum of Agreement between the Department of Commerce and the Department of the Army regarding Section 404(q) of the Clean Water Act, that the filling of 59 acres of mangrove and salt flat wetlands and the dredging of 139 acres of seagrass beds will result in substantial and unacceptable impacts to species managed under the Magnuson-Stevens Act and other aquatic resources of national importance. In view of the above, the NMFS recommends that Department of the Army authorization not be granted. To ensure the conservation of EFH and associated fishery resources, NMFS recommends the following:</p>	EIS-3.5	This issue has been assessed in the DEIS as part of a Marine Traffic Risk Assessment included as Appendix AA.
EIS-3.6	<p style="text-align: center;">EFH Conservation Recommendations</p> <p>A permit for the project, as proposed, should not be issued. If the applicant wishes to pursue development of this project, it should be designed to incorporate the following recommendations:</p>	EIS-3.6	Consultation on the establishment of an additional and expanded mooring anchorage area for vessels, with adequate depth and isolated from sensitive benthic resources, has been initiated with the US Coast Guard.
EIS-3.7	<p>1. Silt curtains shall be installed around work areas to minimize sediment transport to nearshore seagrass beds and coral reefs in Ponce Harbor during dredging and excavation of the inland harbor;</p>	EIS-3.7	Please refer to EIS-3.1.
EIS-3.8	<p>2. Erosion control structures shall be placed along the shoreline to minimize runoff and the transport of sediment to nearshore seagrass beds and coral reefs during construction of the land-</p>	EIS-3.8	Silt curtains will be employed as described during construction in compliance with EQB and USEPA regulations. Please refer to EIS-3.2.
EIS-3.9		EIS-3.9	Said structures will be deployed as described during construction in compliance with EQB and USEPA regulations.

based transshipment port facilities. Structures placed for the purpose of erosion control shall meet the standards and requirements of other permitting agencies such as the Puerto Rico Environmental Quality Board;

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| EIS-3.10 | 3. A mitigation plan shall be developed and implemented for the estimated 139 acres of direct impacts to seagrass beds due to dredging of the navigation channel and turning basin and the estimated 59 acres of direct impacts to mangrove and salt flat wetlands due to construction of port facilities. The design of the mitigation plan shall be coordinated with NOAA Fisheries; | EIS-3.10 | Please refer to EIS-3.1. |
| EIS-3.11 | 4. A navigation route shall be established between Ponce Harbor and the ODMDS in order to avoid or minimize impacts to coral reefs due to accidental groundings and accidental spillage from sediment-laden barges; and | EIS-3.11 | Please refer to EIS-3.3. |
| EIS-3.12 | 5. An offshore anchorage area for the transshipment port facilities shall be designated in coordination with the U.S. Coast Guard and NOAA Fisheries in an area free of coral reefs to minimize the impacts of vessels awaiting access to the port on EFH. | EIS-3.12 | Please refer to EIS-3.6. |
| EIS-3.13 | Consistent with Section 305(b)(4)(B) of the Magnuson-Stevens Act and NOAA Fisheries' implementing regulation at 50 CFR 600.920(k), the COE is required to provide a written response to our EFH recommendations within 30 days of receipt. The response must include a description of measures to be required to avoid, mitigate, or offset the adverse impacts of the proposed activity. If the response is inconsistent with our EFH conservation recommendations, a substantive discussion justifying the reasons for not implementing those recommendations must be provided. If it is not possible to provide a substantive response within 30 days, the COE should provide an interim response to NOAA Fisheries, to be followed by the detailed response. The detailed response should be provided in a manner to ensure that it is received by NOAA Fisheries at least 10 days prior to final approval of the action. | EIS-3.13 | Most of the issues referenced in this letter were clarified on a meeting held on March 26 at the NMFS Regional Office in St. Petersburg. The information resulting from this discussion will be included in the body of the FEIS, currently under preparation. |

Thank you for the opportunity to provide EFH conservation recommendations for the proposed Port of the Americas project. Any questions related to this EFH consultation should be directed to Dr. Lisamarie Carrubba in our Puerto Rico Field Office at (787) 851-3700.

Sincerely,



Miles M. Croom
Assistant Regional Administrator
Habitat Conservation Division



UNITED STATES DEPARTMENT OF COMMERCE
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JAN 15 2004

F/SER3:BH

Mr. Edwin E. Muñoz
 Chief, Antilles Regulatory Section
 Jacksonville District Corps Of Engineers, Antilles Office
 400 Fernandez Juncos Avenue
 San Juan, PR 00901-3299

Dear Mr. Muñoz:

This is in reference to your letter dated December 10, 2003, with an attached biological assessment (BA) regarding the construction and operation of the Port of the Americas in Ponce, Puerto Rico. The completion of the Port of the Americas will allow the port to receive Post-Panamax type cargo ships. The construction includes in-water and upland dredging, pier construction, expansion of port facilities, and the development of upland facilities.

- | | | | |
|---------|---|---------|--|
| EIS-4.1 | After reviewing the BA, the National Marine Fisheries Service (NOAA Fisheries) cannot render a determination as to impacts to threatened or endangered species under NOAA Fisheries' purview because the BA lacks sufficient information to evaluate the project. In order for NOAA Fisheries to complete Endangered Species Act (ESA) section 7 consultation the following information or clarifications are requested. | EIS-4.1 | Please refer to EIS-3.13. |
| EIS-4.2 | <ul style="list-style-type: none"> - Which type of dredge is being used for in-water dredging activities? This is important as hopper dredges are known to take sea turtles. | EIS-4.2 | A cutterhead dredge will be used for the in-water dredging activities. |
| EIS-4.3 | <ul style="list-style-type: none"> - The BA mentions (page 26 section 3.1.2.3) that there are no sightings of hawksbill sea turtles in Ponce Bay. How many surveys and what type of surveys is this based on? According to the Puerto Rico Department of Natural and Environmental Resources (PRDNER) over the last 10 years there have been an average of 30 to 60 hawksbill nests per year on the nearby island of Caja de Muertos. The PRDNER also indicated that tagging studies have found Mona Island hawksbill turtles foraging in the Ponce area (Carlos Díez, personal communication, PRDNER). Based on this information, we request a re-analysis of the possible effects of the proposed action on hawksbill turtles. | EIS-4.3 | On a NMFS communication dated April 13, 2004, which concluded the USACE consultation responsibilities under section 7 of the Endangered species Act for species under NOAA Fisheries purview, it was determined that <i>"...the chances of the construction aspects of the proposed action affecting sea turtles are discountable"</i> . |
| EIS-4.4 | <ul style="list-style-type: none"> - The BA mentions (page 46 section 3.1.15.2) that sperm whales are not likely to be found in the vicinity of the project. Sperm whales and their calves can be found in the waters around Puerto Rico and can be affected by an increase in ship traffic around the Island. We would require a more thorough explanation as to why the change in shipping patterns will not affect sperm whales. | EIS-4.4 | On said letter, NMFS adds that <i>"...the chances of the proposed action affecting species of large whales are discountable"</i> . |
| EIS-4.5 | <ul style="list-style-type: none"> - The BA mentions (page 51 section 3.1.7.3) that the increase in port activity will not cause an increase in ship traffic in the areas where humpback whales are distributed. Based on this information, the BA states that the proposed action will not have a | EIS-4.5 | Please refer to EIS-4.4. On this regard, the letter also concludes that <i>"...the proposed action is not expected to increase the chances of an interaction between protected whales and large cargo vessels"</i> . |



significant impact on humpback whales. NOAA Fisheries believes that, although there may be no net increase in ship traffic in areas where humpbacks are distributed, the change in traffic patterns or the concentration of ships in new areas may have impacts on the whales. Therefore, we would require a more thorough explanation as to why the change in shipping patterns will not affect humpback whales, especially during their winter migrations into the Caribbean.

EIS-4.5

If after reviewing the above requested information, NOAA Fisheries believes that the proposed action is likely to adversely affect listed species under its purview, formal ESA section 7 consultation will be required. Section 7 allows NOAA Fisheries up to 90 days to conclude formal consultation with the Federal action agency, and an additional 45 days to prepare our biological opinion (unless NOAA Fisheries and the Federal action agency mutually agree to an extension). Therefore, our anticipated biological opinion completion date is 135 days from the date of our receipt of the information requested above. The ESA requires that, after initiation of formal consultation, the Federal action agency must make no irreversible or irretrievable commitment of resources that limits future options. This practice ensures agency actions do not preclude the formulation and implementation of reasonable and prudent alternatives that avoid jeopardizing the continued existence of endangered or threatened species, or destroying or modifying their critical habitats.

Incidental takes of marine mammals (listed or non-listed) are not authorized through the ESA section 7 process. If such takes may occur, an incidental take authorization under Marine Mammal Protection Act (MMPA) Section 101 (a)(5) is necessary. For more information regarding MMPA permitting procedures, contact Ken Hollingshead of our Headquarters' Protected Resources staff at (301) 713-2323.

If you have any questions about this ESA section 7 consultation, please contact Mr. Robert Hoffman, fishery biologist, at the number listed above.

Sincerely,



David Bernhart
Acting Assistant Regional Administrator
for Protected Resources

cc: F/PR
F/SER45

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File: 1514-22.f.1 (Puerto Rico)

F/SER/2002/01096

EIS-4.5

As previously mentioned, on a NMFS communication dated April 13, 2004, which concluded the USACE consultation responsibilities under section 7 of the Endangered species Act for species under NOAA Fisheries purview, it was determined that the effects of the proposed action on sea turtles and whales were discountable.



UNITED STATES DEPARTMENT OF COMMERCE
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January 30, 2004 F/SER4:LC

Edwin E. Muñiz
Chief, Antilles Regulatory Section
Department of the Army, Corps of Engineers
400 Fernandez Juncos Avenue
San Juan, Puerto Rico 00901-3299

Dear Mr. Muñiz:

The National Marine Fisheries Service (NOAA Fisheries) has reviewed your letter dated December 19, 2003, concerning the Supplemental Draft Environmental Impact Statement (SDEIS) prepared for the proposed Port of the Americas transshipment port facilities in Ponce Bay, Ponce, Puerto Rico. The project contemplates the excavation of an inland navigation channel measuring approximately 3,000 feet long and 800 feet wide, filling of 59 wetland acres for the construction of port facilities, dredging of the existing navigation channel and turning basin to a depth of 50 feet, and disposal of 194.2 million cubic feet of dredged material in the Ponce Harbor Ocean Dredged Material Disposal Site (ODMDS).

The SDEIS has been reviewed by NOAA Fisheries, and our comments and recommendations are attached. If you have questions related to the project or marine fishery resources, please contact Dr. Lisamarie Carrubba in our Puerto Rico Field Office at 787/851-3700.

Sincerely,

A handwritten signature in black ink, appearing to read "Miles M. Croom".

Miles M. Croom
Assistant Regional Administrator
Habitat Conservation Division



cc:
F/SER4
NMFS-PRD
CFMC
FWS-PR
EPA-PR
PRPB

Enclosure

NOAA Fisheries Comments on the Supplemental Draft Environmental Impact Statement (SDEIS) for the Port of the Americas transshipment facilities in Ponce Bay, Ponce, Puerto Rico

General Comments

EIS-5.1	<p>In general, the document contains repeated discrepancies regarding the scope of the project and current project design that appear to reflect a lack of editing of the document to remove references to the previously contemplated construction of two facilities, one in Guayanilla Bay and one in Ponce Bay, and the placement of fill in Ponce to extend an existing pier. In addition, the document contains discrepancies in terms of the dimensions of the proposed inland channel, which are given as 3,000 feet long, 800 feet wide, and 50 feet deep in contrast to the dimensions given in the December 2003 essential fish habitat (EFH) assessment prepared for the project and the SDEIS prepared for the Commonwealth of Puerto Rico. There are also discrepancies in terms of project-related impacts on existing fishery resources in Ponce Bay in the area of the proposed facilities. The dredging of the navigation channel, turning basin and berthing areas will result in the elimination of 139 acres of seagrass. The construction of land-based port facilities will directly affect 59 acres of mangrove and salt flat wetlands through fill placement. Mangrove and salt flat wetlands and seagrass are classified as EFH. The total indirect impacts of the operation of the transshipment port facilities on seagrass beds is difficult to estimate, but it is likely that the chronic, recurrent increases in turbidity as a result of the expected increase in vessel traffic from sixteen ships per month to up to 100 Post-Panamax vessels per month will result in the recession of seagrass beds within the flow path of the suspended sediment plume in the bay. In addition, the indirect impacts of incidental spills of oil, gasoline and other contaminants during port operations, the increase in stormwater runoff due to increases in impervious surfaces and elimination of wetlands and their related storm water retention capacity, and the increase in the potential of vessel groundings on coral reefs within the bay, in particular those adjacent to the navigation channel, have not been adequately assessed. Like mangrove wetlands and seagrass, corals are classified as EFH. Further, the dredging of the navigation channel and turning basin will generate 194.2 million cubic feet of material to be disposed of in the Ponce Ocean Dredged Material Disposal Site (ODMDS). Because the area between Ponce Bay and the ODMDS contains coral reefs, vessel traffic and accidental spills of materials could have direct impacts on EFH. Offshore anchorage of vessels, as well as the use of mooring areas in the bay located adjacent to coral reefs that do not currently have the depth to support Post-Panamax vessels, may also directly impact coral reefs. Thus, NOAA Fisheries is concerned that the direct, indirect and cumulative impacts of the project will be significantly greater than described in the document due to the increase in vessel traffic, the impacts of dredging on EFH, and impacts to offshore coral reef areas for anchorage and disposal of materials. Due to the presence of extensive seagrass beds, coral reefs, and colonized hardground along the southwest coast of Puerto Rico, the creation of new navigation routes and the augmentation in the number and size of vessels will impact fishery resources through alterations in water quality and mechanical damage from vessels. Declines in habitat quantity would affect federally managed species such as lane snapper, white grunt, banded butterflyfish, coney, mutton snapper, schoolmaster, gray snapper, and surgeonfish, all of which were identified in the SDEIS as present in the area of the proposed transshipment port facilities.</p>	EIS-5.1	The referenced discrepancies have been corrected in the body of the FEIS as per the contents of this letter.
EIS-5.2		EIS-5.2	The inland navigation channel will have a width of 800 ft at its widest point.
EIS-5.3		EIS-5.3	Please refer to EIS-1.2.
EIS-5.4		EIS-5.4	Please refer to EIS-3.1. Said plan will also include monitoring of existing seagrass along the navigation channel to assess potential effects of suspended sediments in the greater Ponce Harbor.
EIS-5.5		EIS-5.5	Please refer to EIS-3.2
EIS-5.6		EIS-5.6	Please refer to EIS-3.3 and EIS-3.5.
EIS-5.7		EIS-5.7	Designation of adequate additional mooring and offshore anchorage areas, away from sensitive resources, has been initiated with the US Coast Guard.
EIS-5.8		EIS-5.8	The Applicant does not agree with this opinion and will provide adequate monitoring and mitigation measures for EFH resources potentially affected by the proposed action.

Specific Comments

EIS-5.8	<p><u>Page ES-3.</u> This section provides a summary of the project. On this page, the use of some of the material dredged from the Ponce Harbor to fill areas in Guayanilla Bay is discussed. It is the understanding of NOAA Fisheries that Puerto Rico Port of the Americas Authority (PAA) no longer contemplates development of facilities in Guayanilla Bay. As we objected formally to the previous project design due to the impacts of fill on fishery resources in Guayanilla Bay, NOAA Fisheries believes that a clarification of project scope and design is needed to ensure that impacts to fishery resources in Guayanilla Bay are no longer anticipated.</p>	EIS-5.8 This portion of the text has been corrected in the body FEIS to reflect that the PAA no longer proposes the development of facilities in Guayanilla Bay.
EIS-5.9	<p><u>Page 2-6, Section 2.3.3.1.</u> This section discusses the values attributed to natural areas for the purpose of impact assessment in the SDEIS. Wetlands and seagrass beds were considered areas of high ecological value. While NOAA Fisheries agrees with this assessment, it is in contrast with the rest of the document, in particular the sections describing project impacts to EFH where it is stated that the seagrasses in the project area are of little ecological importance (see, for example, Page 3-30, Section 3.3.2.) The ecological importance of wetlands and seagrass should be reflected throughout the document in keeping with this section.</p>	EIS-5.9 The Applicant recognizes the ecological importance of wetlands and seagrass beds. The FEIS has been modified to show this. The design of the proposed action has gone through extensive modifications to avoid, and then minimize to the extent possible, impacts to the referenced resources. Unavoidable impacts will be mitigated as determined by the regulatory authorities.
EIS-5.9	<p><u>Page 2-28, Section 2.6.</u> This section describes past, present and future actions in the Port of Ponce. The description of the port facilities indicates that Ponce lacks sufficient space to fulfill project goals in terms of the total number of cargo containers that can be accommodated, even after the construction of additional warehouse and value-added facilities described in the SDEIS. Therefore, in this section, a description of where other port facility construction is contemplated to ensure all project goals are met should be included, and the impacts of additional construction on marine resources should be discussed as part of the cumulative impacts analysis contained in the SDEIS.</p>	EIS-5.9 This portion of the text has been corrected in the body FEIS to provide this additional information.
EIS-5.10	<p><u>Page 2-37, Section 2.10.</u> This section discusses the proposed mitigation for the placement of fill in 59 acres of wetlands dominated by mangroves and salt flats. The mitigation plan contemplates the restoration and enhancement of 108 acres of existing and historical wetlands within Finca La Esperanza. More details regarding the mitigation plan should be provided. It is not clear from the description in the SDEIS whether no net loss of mangrove and salt flat wetlands, which are also categories of EFH, will occur, because the proposed mitigation appears to be located within existing wetlands. In addition, mitigation must include a plan to offset the loss of 139 acres of seagrass due to dredging.</p> <p><u>Page 3-30, Section 3.3.2.</u> This section discusses the aquatic flora of the bay and argues that the port expansion will have little effect due, in part, to the discharge of wastewater to the bay. However, wastewater from the Ponce Wastewater Treatment Plant (WWTP) now discharges to a deep water outfall off the coast. The construction of this outfall was meant to improve water quality in Ponce Bay by eliminating a significant source of nutrient enrichment. Water quality studies associated with the outfall indicate that effluents are not transported to the bay. Therefore, the impacts of transshipment port construction and operation on water quality in the bay will be far more significant than the effects of the deep water outfall of the WWTP. This</p>	EIS-5.10 This section will be expanded in the FEIS. The mitigation strategy will pursue a no-net-loss of wetlands goal, as directed by the USACE. Please refer to EIS-3.1 for information o the seagrass mitigation plan.

EIS-5.11	<p>section also discusses the placement of fill to reclaim marine bottom in Ponce Bay. NOAA Fisheries was of the impression that the placement of fill in the bay was no longer contemplated as part of the project design. The description of the project design in the SDEIS should be clarified to reflect what is currently proposed. This section also contains a description of the marine bottom in the portion of the bay where dredging will occur. The marine bottom is characterized as muddy bottom with only one species of seagrass present. The EFH Assessment completed for the project, which found three species of seagrass present in 138 acres of the proposed dredging area, contradicts this description. The description of the marine bottom in the SDEIS should be revised to reflect the findings of the EFH Assessment.</p>	EIS-5.11	The body of the FEIS has been corrected to eliminate references to the placement of fill in the Ponce Bay. Please refer to EIS-1.2.
EIS-5.12		EIS-5.12	Please refer to EIS-1.2
EIS-5.13	<p><u>Page 3-37, Section 3.4.3 and Page 3-58, Section 3.11.3.</u> See comments for Page 3-30, Section 3.3.2.</p>	EIS-5.13	Please refer to EIS-5.11
EIS-5.14	<p><u>Pages 3-37 to 3-38, Section 3.5.</u> This section discusses the location of EFH in Ponce Bay and the potential project impacts to EFH as the result of project construction and operation. As stated previously, the SDEIS should be revised to reflect the findings of the EFH assessment, which concluded that 139 acres of seagrass will be impacted by dredging, as well as to reflect that the 59 acres of mangrove and salt flat wetlands that will be lost through placement of fill for the expansion of port facilities are categories of EFH. In addition, NOAA Fisheries does not concur with the conclusion the dredging will have temporary impacts to seagrass. The proposed dredging will increase the depth of the navigation channel and turning basin to a minimum of 50 feet. In Puerto Rico, the average maximum depth at which seagrass colonization occurs is 40 feet. Therefore, the new depths will be beyond those at which seagrasses can successfully grow. In addition, increases in turbidity as the result of project construction and operation will be recurrent and chronic. Due to the sensitivity of seagrasses to light penetration, the increase in turbidity as a result of increased vessel traffic is likely to result in the recession of seagrass beds in Ponce Bay. Corals are also a category of EFH. NOAA Fisheries believes that corals may be directly, indirectly and cumulatively impacted by the proposed port development due to increases in turbidity, as corals require high light levels and may be smothered by sediments, use of existing mooring areas adjacent to coral reefs and offshore anchorage in areas of coral reefs, and transport and disposal of dredged material in areas of coral reefs. The EFH impacts analysis should be rewritten to reflect all direct, indirect and cumulative impacts to EFH in the project area that will occur as the result of construction and operation of the transshipment port facilities.</p>	EIS-5.14	Please refer to EIS-1.2. The body of the FEIS has been modified to include this information.
EIS-5.15		EIS-5.15	EIS-5.15
EIS-5.16	EIS-5.16	EIS-5.16	Please refer to EIS-1.5.
EIS-5.17	EIS-5.17	EIS-5.17	Please refer to EIS-3.6.
EIS-5.18	<p><u>Page 3-46, Section 3.7.</u> This section discusses ecologically sensitive areas in the corridor from Guayanilla-Peñuelas to Ponce-Juana Díaz. The previous version of the transshipment port project contemplated the development of port facilities in both Ponce and Guayanilla. NOAA Fisheries presented formal objections to the project due to the anticipated effects on marine fishery resources of the development in two separate coastal bays in southwest Puerto Rico due, in part, to the potential impacts of development along the coast between the two ports. Given that the discussion in this section includes this corridor, the SDEIS should clarify whether future development in Guayanilla continues to be anticipated by PAA.</p> <p><u>Page 3-77, Section 3.16.</u> This section discusses the Ponce Harbor ODMDS and characterizes the</p>	EIS-5.18	The FEIS has been amended to specify that no future developments in Guayanilla are anticipated as part of the proposed action.

¹ Source http://www.sms.si.edu/irlspec/Halop_decipi.htm .
EIS Issue Table
Port of the Americas

EIS-5.19		<p>site as having no importance for marine biota. The U.S. Environmental Protection Agency (EPA) consulted with NOAA Fisheries regarding the potential impacts of ocean disposal of 194.2 million cubic feet of dredged material in the ODMDS as part of the development of the Site Management and Monitoring Plan (SMMP) for the area. Due to the presence of shelf edge resources along the northeast boundary of the ODMDS, EPA plans to restrict dumping to the southernmost portion of the ODMDS. In addition, NOAA Fisheries recommended that EPA establish a navigation route from Ponce Harbor to the ODMDS to minimize impacts to coral reefs as the result of accidental spills or groundings during transport of dredged material. The information in the SDEIS should be revised to reflect the modifications EPA made to the SMMP to minimize impacts to EFH resources in the area of the ODMDS.</p>	EIS-5.19	The FEIS includes a modified text to reflect the referenced modifications to the SMMP.
EIS-5.20		<p><u>Pages 3-77 to 3-79, Section 3.17.</u> This section discusses navigation in the Port of Ponce, including the use of mooring areas. There are two existing mooring areas, which are located toward the center and southeast of the port in areas containing coral reefs with depths from 30 to 50 feet. NOAA Fisheries believes the existing mooring areas are inappropriate for mooring of Post-Panamax vessels given the shallow depths of these areas and their proximity to coral reefs. Therefore, we recommend that the project description in the SDEIS include a description of new mooring areas that can accommodate Post-Panamax vessels, as well as offshore anchorage areas. These areas should be chosen in a manner that avoids or minimizes impacts to EFH.</p>	EIS-5.20	Please refer to EIS-3.6. An update on the USCG consultation status related to this issue will be included in the FEIS.
EIS-5.21		<p><u>Page 4-11, Section 4.3.2.3.</u> This section discusses the impacts of the proposed project on aquatic resources. As stated previously, NOAA Fisheries recommends that the SDEIS be revised to accurately reflect the impacts to EFH, including seagrass and wetlands, that will occur as the result of project construction and operation. Further, we do not agree with the opinion expressed in this section of the document that the excavation of an inland channel will result in the creation of 45 acres of marine habitat that can be colonized by submerged aquatic vegetation. The proposed channel will have a minimum depth of 50 feet and will be characterized by high turbidity levels and poor water quality due to the traffic of Post-Panamax vessels. NOAA Fisheries does not believe the creation of the proposed inland channel should be considered as offsetting proposed project impacts to EFH and associated fishery resources.</p>	EIS-5.21	Please refer to EIS-1.2. The FEIS includes this updated information.
EIS-5.22		<p><u>Page 4-18, Section 4.4.4.3, Pages 4-22 to 4-23, Section 4.5.3, Page 4-53, Section 4.16, and Page 4-114, Section 4.31.</u> See comments for Pages 3-37 to 3-38, Section 3.5.</p>	EIS-5.22	The Applicant is aware of this fact and has never intended to use it to offset impacts to EFH or fishery resources.
EIS-5.23		<p><u>Page 4-18, Section 4.4.5.</u> See comments for Pages 3-77 to 3-79, Section 3.17.</p>	EIS-5.23	Please refer to EIS-5.14 through EIS-5.17, where applicable.
EIS-5.24		<p><u>Page 4-19, Section 4.4.7.3.</u> This section discusses anticipated impacts to the marine water column as the result of project operation and construction. As stated previously, NOAA Fisheries believes that these impacts should not be considered temporary, as they will be recurrent and chronic as the result of anticipated increases in vessel traffic and will have a cumulative impact of seagrasses and corals in the project area. The SDEIS should be revised to reflect this cumulative impact, as well as to discuss monitoring that will be carried out during project construction and operation to identify the extent of these impacts on EFH and propose mitigation to offset additional adverse impacts that occur as a result of project construction and</p>	EIS-5.24	Please refer to EIS-5.20.
EIS-5.25		<p><u>Page 4-18, Section 4.4.5.</u> See comments for Pages 3-77 to 3-79, Section 3.17.</p>	EIS-5.25	The Applicant does not agree with this opinion as the vessel traffic is anticipated to increase from one to three additional moorings per day. However, a 5-year baseline and long-term water quality and monitoring plan will also be implemented to assess impacts on turbidity and other physicochemical parameters in the vicinity of the disposal area and the Ponce Harbor during the construction and operation of the proposed project.

	operation.		
EIS-5.26	<u>Pages 4-27 to 4-34.</u> These pages are out of order.	EIS-5.26	The FEIS has been corrected accordingly.
EIS-5.27	<u>Page 4-32, Section 4.8.3.</u> See comments for Page 2-37, Section 2.10.	EIS-5.27	Please refer to EIS-5.10.
EIS-5.28	<u>Page 4-66, Section 4.18.3.</u> This section discusses stormwater management in the area of the Port of Ponce. Stormwater is currently discharged through a north-south channel that discharges directly to the bay. As part of the construction of transshipment port facilities, PAA proposes to expand the existing channel. NOAA Fisheries recommends that the installation of sediment traps, oil and grease separators and other best management practices be included in the project design and discussed in the SDEIS to minimize contaminant transport in runoff to waters of the bay.	EIS-5.28	Please refer to EIS-3.2. Best management practices for the control of runoff and contaminant loads to the Ponce Bay will be employed during construction and operation of the Project.
EIS-5.29	<u>Pages 4-86 to 4-91, Section 4.22.</u> See comments for Page 3-46, Section 3.7.	EIS-29	Please refer to EIS-5.18.
EIS-5.30	<u>Page 4-91, Section 4.22.1.</u> This section discusses cumulative impacts to fish and wildlife that may occur as a result of the proposed transshipment port construction and operation. PAA states that development spurred by the proposed project will be limited to areas zoned for residential, commercial, industrial, and tourist development. NOAA Fisheries observes that zoning does not always reflect whether natural resources are present in the area of a proposed project. For instance, EFH is present in the area of the proposed transshipment port facility, and the development of the port must account for impacts to marine fishery resources. This section should be revised to reflect actual impacts to fishery resources that could occur as the result of development related to the expansion of port facilities in Ponce, to the extent that such future development can reasonably be foreseen.	EIS-5.30	No future developments are foreseeable beyond the extent of the proposed action, and the dredging activities it entails, that would potentially impact fishery resources over the Ponce Harbor.
EIS-5.31	<u>Pages 4-91 to 4-92, Section 4.22.2 and Page 4-93, Section 4.22.9.</u> See comments for Page 4-19, Section 4.4.7.3.	EIS-5.31	Please refer to EIS-5.25.
EIS-5.32	<u>Page 4-92, Section 4.22.3.</u> See comments for Page 4-11, Section 4.3.2.3.	EIS-5.32	Please refer to EIS-5.21 and EIS-5.22.
EIS-5.33	<u>Page 4-92, Section 4.22.6.</u> See comments for Page 4-91, Section 4.22.1.	EIS-5.33	Please refer to EIS-5.30.
EIS-5.34	<u>Page 4-93, Section 4.22.8.</u> This section discusses potential cumulative impacts of flooding as the result of the proposed project and associated projects and concludes that there will be no cumulative impacts. NOAA Fisheries believes that construction of both the transshipment port and related facilities, as well as the anticipated construction of housing and other facilities in the Ponce area as the result of port expansion, will have an effect on flooding due to the increase in impervious surface area and placement of fill in coastal wetlands. The SDEIS should be revised to reflect the potential for cumulative impacts of the loss of water retention areas due to wetland fill as development progresses in the area of the port, to the extent that such future development can reasonably be foreseen.	EIS-5.34	The Applicant objects to this opinion as the stormwater flow increase resulting from the increase in impervious surface area will be adequately managed by drains or retention structures throughout the facility. Moreover, future developments shall comply with the PR Planning Board Flood Zone Regulation and USEPA's stormwater management regulations.

EIS-5.35

Pages 4-98 to 4-99, Section 4.26.2., Page 4-99, Section 4.26.3, Page 4-99, Section 4.26.5, and Page 4-101, Section 4.28. See comments for Page 2-37, Section 2.10.

EIS-5.35 Please refer to EIS-5.10.

Summary Comments

Considering the importance to marine fishery resources of the seagrass and the coral habitats in the project area, all direct, indirect, and cumulative impacts of the project need to be adequately addressed. Specifically, anticipated increases in turbidity, dredging, anchorage, placement of fill in wetlands, and transport of dredged material should be included in assessments of project impacts to EFH. The extent of all adverse impacts to seagrass and corals should be documented fully in the SDEIS and a detailed mitigation plan be developed and included in project documents to ensure that all project impacts to EFH are offset fully.

Finally, in accordance with the Endangered Species Act of 1973, as amended, Section 7 consultation may be required for the project. Therefore, in addition to an EFH assessment, the SDEIS should address project impacts on threatened and endangered species under NOAA Fisheries' purview. In this regard, you may wish to contact Mr. Eric Hawk of our Protected Resources Division at 727/570-5312.



UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 Southeast Regional Office
 9721 Executive Center Drive N.
 St. Petersburg, Florida 33702
 (727) 570-5317, FAX 570-5300

February 13, 2004 F/SER4:LC

Edwin E. Muñiz
 Chief, Antilles Regulatory Section
 Department of the Army, Corps of Engineers
 400 Fernandez Juncos Avenue
 San Juan, Puerto Rico 00901-3299

Dear Mr. Muñiz:

The National Marine Fisheries Service (NOAA Fisheries) has reviewed public notice number SAJ-2002-6525 dated January 17, 2004 by the Port of the Americas Authority (PAA) for the construction of transshipment port facilities for Panamax and post-Panamax class vessels in Ponce Bay, Puerto Rico. According to the public notice, PAA proposes to construct an inland navigation channel measuring approximately 3,000 feet long and 600 feet wide, fill 59 wetland acres for the construction of port facilities, dredge the existing navigation channel and turning basin to a depth of 50 feet, and dispose of 194.2 million cubic feet of dredged material in the Ponce Harbor Ocean Dredged Material Disposal Site (ODMDS). A portion of the material excavated during the excavation of the inland navigation channel will be used to fill the 59 acres of mangrove and salt flat wetlands and the rest of the material will be disposed of in uplands on a nearby lot owned by PERCON. An additional 132 acres of upland adjacent to the expanded port will be developed for value-added activities.

EIS-6.1

By letter dated January 14, 2004 (copy enclosed), NOAA Fisheries recommended that a permit for the project not be issued at this time and provided essential fish habitat (EFH) conservation recommendations related to project redesign to avoid, minimize and mitigate for unavoidable adverse impacts to EFH and associated fishery resources. In particular, NOAA Fisheries recommended that sediment and erosion control measures be designed to minimize the transport of sediments to seagrass and corals during construction and dredging activities, a mitigation plan be developed for impacts to all EFH during the construction phase of the project, a navigation route be established between Ponce Harbor and the ODMDS that avoids or minimizes potential impacts to coral reefs due to accidental groundings and accidental spillage from sediment-laden barges, and an offshore anchorage area be designated to minimize the impacts on EFH of vessels awaiting access to the port.

EIS-6.2

EIS-6.3

EIS-6.4

EIS-6.5

Based on our review of the information contained in the public notice, PAA has not developed mitigation plans to offset the unavoidable adverse impacts to EFH and associated fishery resources. NOAA Fisheries maintains that adverse impacts resulting from the placement of fill



EIS-6.1

A draft of a seagrass mitigation plan will be submitted to the USACE during the last week of April. The plan proposes the relocation of the *Halophila* bottoms to a nearby mitigation zone adjacent to Isla de Cardona and Las Hojitas Cay.

EIS-6.2

The PTA will comply with the local (EQB) and federal (EPA) regulations concerning control of stormwater volume and pollutant loads in runoff.

EIS-6.3

The Site Management and Monitoring Plan for the Ponce Harbor Dredge Material Disposal Site includes specific requirements on this issue that will be implemented during the dredging works.

EIS-6.4

Consultation on the establishment of an additional anchorage area for vessels has been initiated with the Coast Guard.

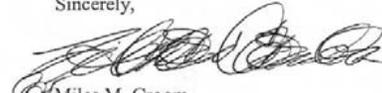
EIS-6.5

The referenced issues were clarified on a meeting held on March 26 at the NMFS Regional Office in St. Petersburg. The information resulting from this discussion will be included in the body of the FEIS, currently under preparation. Also, please refer to EIS-6.1.

EIS-6.6	<p>in 59 acres of mangrove and salt flat wetlands and the dredging of 220 acres of seafloor, of which 139 acres contain seagrass, must be addressed. In addition, although the total indirect impacts of the operation of the transshipment port facilities on seagrass beds is difficult to estimate, it is likely that the chronic, recurrent increases in turbidity as a result of the expected increase in vessel traffic from sixteen ships per month to up to 100 post-Panamax vessels per month will result in the recession of seagrass beds within the flow path of the suspended sediment plume in the bay. There will also be indirect impacts to coral reefs and seagrasses within the bay due to incidental spills of oil, gasoline and other contaminants during port operations, an increase in stormwater runoff due to increases in impervious surfaces and elimination of wetlands, and an increase in the potential of vessel groundings on coral reefs within the bay, in particular those adjacent to the navigation channel.</p>	EIS-6.6	Please refer to EIS-1.5.
EIS-6.7	<p>In view of the above and to ensure the conservation of EFH and associated fishery resources, NOAA Fisheries provides the following to supplement the EFH conservation recommendations in our letter of January 14, 2004:</p> <p style="text-align: center;">EFH Conservation Recommendations</p>	EIS-6.7	Please refer to EIS-6.2.
EIS-6.8	<p>1. New mooring areas shall be established in Ponce Bay that can accommodate post-Panamax vessels in areas free of corals and seagrasses. These new mooring areas would be in addition to offshore anchorages in areas free of coral reefs. The location of these anchorages shall be determined in coordination with NOAA Fisheries and the U.S. Coast Guard.</p>	EIS-6.8	Please refer to EIS-6.4.
EIS-6.9	<p>2. A baseline and long-term monitoring plan shall be developed and implemented during the construction and operation stages of the project to assess the impacts of water quality changes, in particular changes in turbidity and suspended sediments, on EFH and associated fishery resources within Ponce Bay. The plan shall include mitigation measures that will be implemented should additional adverse impacts to seagrass and corals be discovered due to project construction and operation.</p>	EIS-6.9	Please refer to EIS-1.5.
EIS-6.10	<p>3. The channel used to transport stormwater from the area of the port facilities directly to Ponce Bay shall be redesigned to include sediment traps, oil and grease separators and other best management practices to minimize contaminant transport in runoff to waters of the bay.</p> <p>In summary, NOAA Fisheries continues to recommend that no permit be issued for the proposed transshipment port complex at this time. As a reminder, Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act and NOAA Fisheries' implementing regulation at 50 CFR Section 600.920(k) require your office to provide a detailed response to our EFH conservation recommendations included in our letter of January 14, 2004, and supplemented herein at least 10 days prior to final approval of the action.</p>	EIS-6.10	These measures will be incorporated in the final design of the port facilities.

Thank you for the opportunity to provide comments on the public notice for the proposed Port of the Americas project. Any questions related to this project or marine fishery resources should be directed to Dr. Lisamarie Carrubba in our Puerto Rico Field Office at (787) 851-3700.

Sincerely,



Miles M. Croom
Assistant Regional Administrator
Habitat Conservation Division

Enclosure

cc:
F/SER4
✓F/SER43 - Ruebsamen
FWS - PR
PRPB
EQB - PR
EPA - NY
EPA - PR
DNER
USCG
CFMC
NMFS - PRD



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1886

JAN 22 2004

Colonel Robert M. Carpenter
District Engineer, Jacksonville District
U.S. Army Corps of Engineers
P.O. Box 4970
400 West Bay Street
Jacksonville, Florida 32232-0019

Dear Colonel Carpenter:

This letter is in reference to the supplemental draft environmental impact statement (SDEIS) that was issued on January 2, 2004 for the Port of Americas Project, located in Ponce, Puerto Rico. Specifically, we request a 14 day extension to the public comment period from the current due date of February 17, 2004, until March 2, 2004, for reasons outlined below.

As you know, EPA has been actively involved with this project for a number of years as it evolved from a two port project, to be located at Guayanilla and Ponce, until it was decided to pursue one port location to be sited entirely at Ponce. While EPA is pleased that the current proposal does not include the significant impacts to endangered West Indian Manatee habitat as earlier proposals did, we are disappointed the project was not re-scoped to identify issues/concerns associated with an inland mooring channel at Ponce. Moreover, it was our understanding, through conversations between our staff over the Summer of 2003, that the project had "stalled", and that the inter-agency meeting we requested in our February 5, 2003 scoping letter would be scheduled once the process had restarted. Unfortunately, we were not informed of the new inland channel alternative, nor was a meeting scheduled to identify potential issues with this alternative prior to the public release of the document. In addition, we initially received only two copies of the document at the beginning of the public comment period; this is inadequate given the number of EPA staff who will be reviewing the document. With the above in mind, EPA requests a 14 day extension to the public comment period for the current due date of February 17, 2004, until March 2, 2004.

Please have your staff contact Robert Hargrove, Chief of the Strategic Planning and Multi-Media Programs Branch at (212) 637-3495, if you have any questions concerning this letter.

Sincerely yours,

Walter Mugdan, Director
Division of Environmental Planning and Protection



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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MAR - 1 2004

Colonel Robert M. Carpenter
District Engineer
U.S. Army Corps of Engineers
Jacksonville District
P.O. Box 4970
Jacksonville, FL 32232-0019

Dear Colonel Carpenter:

This is in response to Public Notice No. SAJ-2002-6525 (IP-JER) regarding an application by the Port of the Americas Authority (PAA) requesting authorization under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act for the development of a transshipment port to be known as Port of the Americas, in Ponce, Puerto Rico. It also provides the Environmental Protection Agency's (EPA) review of the supplemental draft environmental impact statement (SDEIS) (CEQ #030581) for the proposed project. This review was conducted in accordance with Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609, PL 91-604 12(a), 84 Stat. 1709), and the National Environmental Policy Act (NEPA).

The proposed Port of the Americas (PTA) is one of several initiatives proposed by the Commonwealth of Puerto Rico to promote economic development of the southern region of the Island. Specifically, the project is designed to provide deep-draft, port facilities for Post-Panamax containerships in Puerto Rico, for transshipment of cargo containers to international and local markets. The stated goal of the project is to capture 1.5 million twenty-foot equivalent units (TEUs) per year of cargo. The SDEIS identifies extending the channel between Pier Nos. 7 and 8 of the existing port at Ponce Harbor 3,000 feet inland to allow for simultaneous berthing of two Post-Panamax ships as the applicant's preferred alternative. Additionally, this component entails dredging the navigation channel and berthing areas to a minimum of 50 feet to allow entry of Post-Panamax ships. Further, 132 acres of land adjoining the Port would be developed for the construction of value-added industries and infrastructure for port operations. This SDEIS modifies the project described in the September 13, 2002 draft environmental impact statement (DEIS) to a single terminal at Ponce Bay, with no proposed activities at Guayanilla Bay. The preferred alternative in the SDEIS is very similar to the original Ponce portion of the preferred alternative of the DEIS; however, approximately 70 acres of fill in Ponce Harbor has been eliminated from the scope of the project.

Wetlands and Aquatic Habitat Impacts

While we are pleased with the reductions in fill that have occurred from the original Guayanilla/Ponce proposal, EPA remains concerned that the applicant's new proposal would still require filling 59 acres of mangrove and salt flat wetlands. Additionally, the SDEIS does not discuss impacts to wetlands from the excavation of the mooring channel; however, our analysis of Figure 3-18 indicates that, in addition to the aforementioned filling, as much as 15 additional

EIS-8.1

EIS-8.1 The issues referred to have already been clarified on a meeting held on March 16 at the USEPA Regional Office in NY. The information resulting from this discussion will be included in the body of the FEIS, currently under preparation.

EIS-8.2	<p>acres of jurisdictional wetlands would be eliminated by this excavation. Further, according to data presented in Appendix E (Essential Fish Habitat), the dredging of the mooring channel will eliminate 139 acres of seagrass. This impact was not identified or discussed in the SDEIS. The mangroves, salt flats and seagrass beds in the Caribbean region, some of which would be impacted by this project, are unique and irreplaceable on a national or ecoregional basis. Seagrass beds and mangroves serve as prime fish habitat, and are considered special aquatic sites. In addition, the seagrass beds provide feeding habitat for endangered sea turtles and manatees, while salt flats provide habitat for endemic, migratory and wintering neotropical bird populations. After reviewing the Public Notice and the SDEIS, we do not believe that the proposed project, in its current form, complies with the Clean Water Act Section 404 (b)(1) Guidelines.</p>	EIS-8.2	<p>The proposed action would impact a total of 59 acres. The FEIS and the wetland mitigation plan make a distinction on how many acres will be filled and how many will be eliminated by the excavation. For the seagrass issue, please refer to EIS-1.2.</p>
EIS-8.3	<p>Our primary concern involves the 59 acres of fill in the proposed container storage area. Detailed project drawings and justification for the size and scope of the upland areas are needed to determine whether fill in aquatic areas can be avoided or whether there are opportunities to minimize unavoidable impacts. Without this information, an analysis cannot be completed to determine whether some (or all) of the container storage could be placed on the northern portion of the site, where the value-added component of the port is currently planned.</p>	EIS-8.3	<p>The FEIS includes an expanded section on the project concept development and progression towards minimizing unavoidable impacts. Also, the technical justification behind the location of the container storage area will be provided in said document.</p>
EIS-8.4	<p>Once avoidance and minimization have been clearly demonstrated, a comprehensive mitigation plan for the 59 acres of mangrove and salt flat and any other affected jurisdictional wetlands (i.e., the 15 +/- acres that would be impacted by the mooring channel) must be developed. The applicant indicates on page 4-32 of the document that appropriate mitigation will be provided for fill impacts. The document further states that wetlands to be impacted will be evaluated using a "rapid assessment procedure" to determine their ecological value. The results would be used to design the mitigation plan at "Finca La Esperanza," east of the proposed port site. Although such "rapid assessments" can be useful planning tools, we recommend a comprehensive analysis be performed for all aquatic resources in the project area. This information would be used to develop a complete mitigation plan for inclusion in the final SEIS document. This plan should contain a level of detail commensurate with recent joint Corps-EPA guidance on the development of mitigation plans. Lastly, the mitigation plan must also address the 139 acres of seagrass (as identified in Appendix E on Essential Fish Habitat) that would also be impacted.</p>	EIS-8.4	<p>Please refer to EIS-1.3 and EIS-8.1.</p>
EIS-8.5	<p>Alternatives Analysis</p>	EIS-8.5	<p>On March 2004, a Wetland Rapid Assessment Procedure was carried out by the USACE with support from personnel from USFWS, NMFS, and PREQB to evaluate wetland functions at the proposed impact site. For the wetland mitigation plan, please refer to EIS-1.2, EIS-1.3 and EIS-6.1.</p>
EIS-8.6	<p>Another aspect of avoidance and minimization as required by the 404(b)(1) Guidelines is a thorough alternatives analysis. We acknowledge that the SDEIS included a rather extensive analysis to distinguish sites; however, certain additional information should be documented. The SDEIS screened a total of 16 alternative sites for the PTA, which were evaluated for environmental and physical criteria to determine their suitability, including (but not limited to) the presence or absence of navigation channels, the need for dredge and fill, suitable acreage for upland development, adequate upland infrastructure, and environmental and archeological sensitivity. After the alternatives are screened, the SDEIS compares the alternatives of one terminal in Ponce Bay to two smaller ports located at both Ponce Bay and Guayanilla Bay. However, we believe additional information is needed to document why two of the alternative port sites considered in the initial screening (i.e., Roosevelt Roads Naval Station and Mayaguez Harbor) were eliminated from detailed consideration as practicable alternatives. For example,</p>	EIS-8.6	<p>The FEIS includes an expanded section on the analysis of the Roosevelt Roads and Mayagüez Harbor sites and rationale behind their dismissal as feasible alternatives to the proposed project.</p>

EIS-8.7	<p>while the SDEIS indicates that Roosevelt Roads Naval Station is unsuitable, in part, due to schedule constraints, we suggest that the final NEPA document should provide more detailed information obtained from the U.S. Navy regarding the Station's transfer/redevelopment schedule. With regard to Mayaguez Harbor, the amount of dredging should be quantified and more information as to why access to a transshipment port is a limiting factor should be provided. In addition, Table 2-1, comparing the physical and environmental criteria of the alternatives should include Ponce in order to illuminate differences between the alternatives.</p>	EIS-8.7	<p>Table 2-1 will be modified to indicate that it only shows information on those alternatives discarded for additional consideration as potential project sites.</p>
Cumulative Impacts			
EIS-8.8	<p>We suggest that the cumulative impacts analysis needs to more thoroughly address land-side transportation impacts. The document indicates a cargo throughput goal of 1.5 million TEUs per year, and assumes that "one third of half of the containers are loaded and unloaded during each ship's entry to port and that Puerto Rico is the final [destination] of fifteen percent of the cargo in containers." However, in a related matter, a February 22 <i>Journal of Commerce</i> article credits Edgardo Torres-Caballero, deputy secretary of Puerto Rico's Department of Economic Development with stating that the Port of the Americas is projected to be 70 percent import-export and 30 percent transshipment. Under either scenario, the project will result in a significant increase in the truck traffic on the local and regional road system.</p>	EIS-8.8	<p>The FEIS includes an expanded section to clarify the projected import-export/transshipment fractions.</p>
EIS-8.9	<p>The SDEIS indicates that "the existing roads and accesses to the Ponce terminal can handle the induced vehicular traffic without major delays in the initial period of port operation." However, it also indicates that the Puerto Rico Highway and Transportation Authority is developing several highway projects along the south coast of the island, in part to provide capacity for anticipated maritime transshipment operations. In addition to anticipated maritime traffic, the August 2000 DEIS, Section 4.22.12 states, "In the area of the Port of Ponce, ... several tourism and commercial developments generate nearly 2,000 jobs that reach the area in individual automobiles." The transshipment port, by providing jobs, will add even more individual auto trips. As such, the cumulative impacts of the port-generated traffic, commercially-generated traffic, tourist and residential traffic should be analyzed over time. This analysis must include the potential impacts associated with the reasonably foreseeable highway projects being developed by the Highway and Transportation Authority. Also, provide maps of likely routes any trucks would use, and determine whether the volume of traffic will affect the residential area northeast of the Ponce Harbor. Lastly, the final NEPA document should discuss measures to mitigate any adverse cumulative impacts that are attributable to the project.</p>	EIS-8.9	<p>The FEIS includes an expanded section to address land-based cumulative transportation impacts and to further detail the internal road ways incorporated in the project design. As is, highway PR-52 will experience the greatest impact from traffic generated by the PTA, though it would not compromise adequate service levels. Quantitative data supporting this fact will be provided in the FEIS.</p>
EIS-8.10	<p>In addition to the more substantive issues described above, enclosed is a list of points by section of the SDEIS that we believe should be clarified in the final document.</p> <p>In summary, we believe that the applicant has failed to adequately document compliance with the Clean Water Act Section 404(b)(1) Guidelines, and that, until further information is received, the proposed discharges of fill material would have a substantial and unacceptable impact on aquatic resources of national importance. This opinion resulted from the consideration of the values and functions of the wetlands and other special aquatic sites within the Project area. We therefore recommend the denial of a DA permit for this project, as currently described within the SDEIS. This letter is intended to satisfy the requirements for both Part IV 3(a) and 3(b) of the Section 404(q) MOA. In accordance with EPA policy, we have rated this supplemental draft</p>	EIS-8.10	<p>The FEIS includes an expanded Compliance with Clean Water Act Section 404(b) (1) appendix to address these issues.</p>

EIS-8.11

EIS as EO-2, indicating that we have environmental objections about potentially significant direct impacts to aquatic resources and that additional information is required.

We are willing to work closely with you and the PAA to address our concerns. If you have any questions regarding this matter, please contact me at (212) 637-5000, or have your staff contact Mr. Walter Mugdan, Director, Division of Environmental and Protection, at (212) 637-3724, or Mr. Carl-Axel P. Soderberg, Director of EPA's Caribbean Environmental Protection Division, at (787) 977-5870.

Sincerely,


James M. Kenny
Regional Administrator

Enclosure

cc: U.S. Army Corps of Engineers, San Juan, PR
U.S. Fish and Wildlife Service, Boqueron, PR
National Marine Fisheries Service, St. Petersburg, FL
P.R. Dept. of Natural and Environmental Resources, San Juan, PR
P.R. Planning Board, San Juan, PR

EIS-8.11 The additional information referred herein has been included in the body of the FEIS as per the contents of this letter.

Enclosure

EIS-8.12	Section 2.5.3.1 - Bullet 5 states that the dredging of the navigation channel, turning basin and berthing areas at the Ponce Harbor to 50 feet bmsl will affect an estimated 248 acres of marine bottom. However, in appendix L, Essential Fish Habitat, the total affected acreage is given as 359.4 acres. Please explain this discrepancy.	EIS-8.12	The correct figure is 248 acres. This inconsistency will be corrected in the FEIS.
EIS-8.13	Section 2.9 - Bullet 3 states that a narrow waterway would be excavated north of Pier 8 to promote recirculation of the water in the docking channel. Please describe the channel more fully and discuss any hydrodynamic modeling that would verify the recirculation of water in the new channel. The modeling in Appendices B and D does not discuss whether the channel will flush enough to prevent high Dissolved Oxygen levels.	EIS-8.13	The FEIS includes an expanded section that will quantitatively address this issue.
EIS-8.14	Section 3.3.2 - Bullet 2 discusses the Ponce regional wastewater plant ocean outfall. Please identify where the discharge is located, and whether increased vessel movements will affect the outfall discharge regime.	EIS-8.14	The FEIS includes an illustration showing the referenced outfall.
EIS-8.15	Section 3.3.2 - Bullet 6 discusses an area of the benthic habitat with a rich diversity of species that is "northeast of the proposed fill". Please clarify what fill is being referenced.	EIS-8.15	The FEIS clarifies this issue.
EIS-8.16	Section 3.4.3. As stated above, there is some discrepancy between the SDEIS and Appendix L concerning the total amount of baybottom to be dredged and the type of benthic habitat to be disturbed by the dredging of the navigation channel and turning basin.	EIS-8.16	Please refer to EIS-8.12.
EIS-8.17	Section 3.4.4. Areas are described as "east-northeast of the proposed fill area". Please clarify what fill is being referenced.	EIS-8.17	The FEIS clarifies this issue.
EIS-8.18	Section 4.4.2 Please clarify the discrepancy between Table 4-3 and Appendix L concerning acreage to be affected by the dredging of the navigation channel and turning basin.	EIS-8.18	Please refer to EIS-8.12.
EIS-8.19	Section 4.4.4.3. Please clarify the statement that no impacts on seagrass beds are anticipated in the Ponce Bay alternative with Table 3-1 (Benthic Habitat Assessment fo Ponce Bay) in Appendix L. According to Table 3-1, there are 124.5 acres of <i>Halophila</i> , 8.4 acres of <i>Halodule</i> and 6.1 acres of mixed algae and seagrasses.	EIS-8.19	This statement has been corrected in the FEIS to indicate the extent of seagrass impacts as described in EIS-1.2.
EIS-8.20	Section 4.4.7.3. Please discuss the actual method of excavation of the mooring channel and any best management practices that could be used to minimize the impacts of the excavation on the water column in Ponce Bay. Also, discuss any potential affects to the water column due to flushing of the mooring channel.	EIS-8.20	The FEIS text has been expanded to clarify the inland navigation channel construction method.
EIS-8.21	Section 4.12 - The Air Quality section of the SDEIS does not quantify emissions, and Appendix H could be improved by listing the equations used to arrive at the emissions estimates. For example, on page 4-44, indicate how the NOx levels calculated and how the emissions factors were chosen.	EIS-8.21	The FEIS text has been expanded to clarify these issues.
EIS-8.22	Section 4.16 - Please identify and list in Appendix L any best management practices for the transport of dredged material to a disposal site.	EIS-8.22	The FEIS text has been expanded to clarify these issues.
EIS-8.23	Section 4.21 - Indirect Impacts. Discuss in more detail the expected induced growth to the economy and population of the Ponce area due to the construction of the port.	EIS-8.23	The FEIS text has been expanded to clarify these issues.

STATE HISTORIC PRESERVATION OFFICE
Office of the Governor

February 6, 2004



Mr. Edwin E. Muñiz
Chief, Regulatory Section
U. S. Army Corps of Engineers
400 Fernández Juncos Ave.
San Juan, PR 00901-3299

SHPO 04-29-02-03 SUPPLEMENTAL DRAFT
ENVIRONMENTAL IMPACT STATEMENT, PORT OF THE
AMERICAS, PONCE, PUERTO RICO / 200206525 (IP-JER)

Dear mister Muñiz:

We have reviewed the following documents prepared for the
above referenced project:

1. Supplemental Draft Environmental Impact Statement (SDEIS) of December 2003.
2. U. S. Army Corps of Engineers Public Notice dated January 17, 2004
3. Copy of letter dated January 8, 2004 to U. S. Army Corps of Engineers from the Port of the Americas.
4. Underwater archaeological report titled *Archaeological Diver Identification and Evaluation of a Potentially Significant Anomaly Located in the Harbor at Ponce, Puerto Rico*

Regarding cultural resource issues, page 4-108 of the SDEIS concludes as follows:



Cuartel de Batallas
PO Box 9066581 San Juan PR 00906-6581 • Phone (787) 721-3737 Fax (787) 722-3622

"The Project is not expected to cause loss or destruction of significant prehistoric, historic, archaeological or cultural properties, structures or data. The Project is in compliance."

We disagree with this conclusion. We do not believe that, at present, the project is in compliance. The basis for the SDEIS' conclusion on page 4-108 is found on page 3-64, where it states that "A Phase IA Terrestrial Archaeological investigation was conducted in the general areas adjacent to the Ponce Bay" and that "The study concluded that there are no cultural or historical resources within the areas to be impacted by the Project near the Port of Ponce or its vicinity..." This last statement is incorrect.

A Phase IA archaeological survey provides information of known cultural resources in an area, as well as the probability of other cultural resources existing and not yet discovered. Page 98 (Section 7.3 Puerto de Ponce) of the archaeological report titled *Informe Prospección Arqueológica Fase 1-A Puerto de las Américas* concludes and recommends that "*Basado en la sensibilidad arqueológica de esta área, tanto prehistórica como histórica recomendamos la realización de una Fase IB para las parcelas de terreno que actualmente se encuentran libres de estructuras.*" In other words, the study recommends archaeological testing at the area of the Puerto de Ponce project site. In addition, this Phase IA report, in discussing the area of Puerto Viejo (Puerto Real), says that "*La presencia de este distrito a pocos metros del límite noroeste del Proyecto amerita consideraciones especiales en lo relativo a efectos negativos indirectos que pudiese ocasionar el desarrollo del mismo sobre esta zona histórica.*" We have repeatedly stressed the need to evaluate the historic significance of the Playa de Ponce, an area that will be enveloped on its eastern and northern boundaries by this undertaking.

EIS-9.1

EIS-9.1 To further characterize the site in terms of cultural and historical resources and, as per SHPO and ICP request, the APA is currently conducting a Phase IB Archaeological Investigation at the project site. Copy of this assessment will be appended to the FEIS.

The PTA's January 8, 2004 letter reacts to our November 14, 2003 communication regarding the still incomplete identification efforts for the Port of the Americas project. PTA states in their letter why they believe "that there is no need for additional historical investigations in the project areas." As in the SDEIS, PTA incorrectly interprets the results of the Phase IA report when they claim that the report "demonstrated that the project will not impact any historical or cultural resources." In addition PTA's letter incorrectly claims that the report titled "In-Transit [sic] Shed for Bulkhead Wharf- Ponce Harbor" was a "survey of the historical resources within the Ponce Harbor and Port area." Said report is not, nor was it intended to be, a survey of the "Ponce Harbor and Port area." Instead, it is an historic report with as built drawings of one specific historic building. It does, however, provide further evidence of the important role this area has played in the history of Puerto Rico in general, and Ponce in particular, and the need to carry out identification efforts consistent with federal standards of investigation.

As for the wetland mitigation area, regardless that the land area to be used is "limited to" 105 acres, it still needs to be archaeologically tested.

As for underwater cultural resources in the harbor, we have reviewed the report *Archaeological Diver Identification and Evaluation of a Potentially Significant Anomaly Located in the Harbor at Ponce, Puerto Rico*. We concur with the report's conclusion that the evaluated anomaly at the harbor bottom does not meet the criteria for eligibility to the National Register of Historic Places.

Overall, however, the Section 106 consultation process for this undertaking is not complete. We have repeated this on several occasions over the past twenty months of our review of this

EIS-9.2

EIS-9.3

EIS-9.2 Please refer to EIS-9.1.

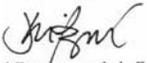
EIS-9.3 On a letter dated April 6, 2004, SHPO determined that no further investigations of the wetland mitigation site were to be carried out.

undertaking. Our letters of June 10, 2002, July 31, 2002, November 18, 2002, March 17, 2003, March 20, 2003, April 24, 2003 and November 14, 2003, previously sent to the U. S. Army Corps of Engineers, evidence our long standing concern regarding the need to complete the identification efforts in the Ponce area (including the wetland mitigation area in Finca La Esperanza).

With the present level of effort, we do not believe that the USACE will be able to evidence that they have made a reasonable and good faith effort to carry out appropriate identification efforts for historic properties for this undertaking.

If you have any questions please do not hesitate to contact our Office. We appreciate your interest in the rescue and preservation of our national heritage and reiterate our commitment to assist you in this endeavor.

Sincerely,


for: Enid Torregrosa de la Rosa, MSHP
State Historic Preservation Officer

ETD/MB

c. Milton Segarra
PTA



COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF NATURAL AND ENVIRONMENTAL RESOURCES

10 MAR 2004

MR EDWIN MUÑIZ
CHIEF ANTILLES REGULATORY SECTION
US ARMY CORPS OF ENGINEERS
400 FERNANDEZ JUNCOS AVENUE
SAN JUAN PR 00901-3299

Dear Mr. Muñiz:

**PORT OF THE AMERICAS
PONCE HARBOUR, PONCE**

**SAJ-2002-6525 (IP-JER)
C-9-2001-1060, 2002-62-0412 JP**

Technical personnel of the Department of Natural and Environmental Resources has reviewed the Permit Application mentioned above for the latest configuration of the proposed project. Our personnel has also reviewed the Environmental Impact Statement submitted as part of the Commonwealth of Puerto Rico permitting process.

We agree with the Corps determination that the proposed project is not likely or adversely affect the Antillean Manatee and the Brown Pelican, and would not have any effect on listed sea turtles, the Puerto Rican Nightjar, the Yellow-shouldered blackbird, and the Least Tern.

We have no concern with the plant species listed by the US Fish and Wildlife Service, because to the best of our knowledge these plants don't exist in the area. Buxus vahlii (Diablito de Tres Cuernos) is known only to exist in small areas of San Juan, the Guajataca State Forest and in Rincón. Trichilia triacantha (Bariaco) has been detected only in hills in Guánica, Yauco, Guayanilla and Cabo Rojo. Ottoschulzia rhodoxylon (Palo de Rosa) has been detected only in hills near Bayamón, the Public Forests in Cambalache, Susúa, Maricao and Guánica, in the Quebradillas-Isabela area, and in Sierra Bermeja (Cabo Rojo-Lajas). None of these species have been accounted in coastal flats associated with mangroves, salt flats and saline-estuarine wetlands.

P.O. BOX 8006600 PTA. DE TELER. SIGOR. SAN JUAN, P.R. 00908-6600
PHONE (787) 726-8774 FAX 723-6253

Mr. Edwin Muniz
Port of the Americas
Ponce Harbor, Ponce
SAJ-2002-6525 (IP-JER)
C-9-2001-1060, 2002-62-0412 JP

Page 2

This revised version of the application for the Port of the Americas involves the deposit of 380,000 m³ of fill material over coastal estuarine wetlands, mostly mangroves, although some salt flats would also be impacted. We have no records that these wetlands are an essential habitat for any plant or animal species. Furthermore, the Final Environmental Impact Statement for the Coastal Zone Management Program (NOAA 1978), states (P 62-63) that "New development, including diking, **filling** and dredging in existing or restorable mangrove wetlands shall be **permitted only** as follows:

1. Essential military facilities
2. Expansion of existing commercial fishing harbors, **ports** or airports...

Therefore, we have no objections to the action requested by the Port of the Americas Authority under Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Ocean Water Act and Section 103 of the Marine Protection and Sanctuaries Act.

Cordially,



Alberto M. Lázaro Castro
Deputy Secretary

AMLC/JATM/gh

cc: Autoridad del Puerto de Las Américas
Suite 404
355 Ave. Roosevelt
San Juan PR 00918

Ledo, Esteban Mujica Cotto
Presidente
Junta de Calidad Ambiental

Ing. Angel David Rodríguez
Presidente
Junta de Planificación
PO Box 41119 Mirillas Station
San Juan PR 00940



March 16, 2004

Mr. Edwin Muñiz
Chief, Antilles Regulatory Section
U. S. Corps of Engineers
400 Fernández Juncos Avenue
San Juan, Puerto Rico 00901

**PUBLIC NOTICE
SUPPLEMENTAL DRAFT ENVIRONMENTAL IMPACT STATEMENT (SDEIS)
FOR THE PORT OF THE AMERICAS, PONCE**

Dear Mr. Muñiz:

Regarding the Public Notice of reference, the Puerto Rico Highway and Transportation Authority (PRHTA) endorses the proposed project.

At present, our Construction Improvement Program includes the following projects, for the Ponce area, providing better traffic access to the Port of the Americas:

1. AC-200216 - Conversion to Expressway PR-2, Mayagüez-Ponce, Overpass on PR-2 and Access to "El Tuque", from kilometer 219 to kilometer 220.52
2. AC-200219 - Conversion to Expressway PR-2, Mayagüez-Ponce, Overpass Intersection Holiday Inn and Barriada "El Tuque", from kilometer 220.50 to kilometer 222.3
3. AC-200220 - Conversion to Expressway PR-2, Mayagüez-Ponce, Overpass at the Intersection of PR-2 on kilometer 22.5
4. AC-200229 - Conversion to Expressway PR-2, Mayagüez-Ponce, Overpass at the Intersection near Las Cucharas Detention Center (Centro de Detención Las Cucharas), from kilometer 217.2 to kilometer 219.5
5. AC-140013 - Overpass at the Intersection of Santiago de los Caballeros Avenue (PR-12) and the Plaza del Caribe Entrance
6. AC-140016 - Overpass at the Intersection of Santiago de los Caballeros Avenue (PR-12), and Caribe Avenue

*Highway and Transportation Authority • Department of Transportation and Public Works
PO Box 42007 • San Juan, Puerto Rico 00940-2007 Phone: (787) 721-8787*

Mr. Edwin Muñiz
Page 2
March 16, 2004

7. AC-000910 – PR-9, from PR-123 to Sta. 92 + 00.00 (“Estancias del Gulf”)
8. AC-000911 – PR-9, from Jardines del Caribe to PR-123
9. AC-000913 – PR-9, Phase II, from Sta. 92 + 00.00 (“Estancias del Gulf”) to PR-10

Enclosed is copy of the comments of the Access Control Office of this Authority, related to this project.

Cordially,


Irma M. Garcia
Director
Programming and Special Studies Area

 *AP MFR*
6701-ETR-ARR-MFR
CF:03-00010487

Attachment

February 20, 2004

Mr. Edwin E. Muniz
Chief, Antilles Regulatory Section
U.S. Army Corps of Engineers
400 Fernandez Juncos Avenue
San Juan, Puerto Rico 00901-3299

VIA U.S. MAIL, FACSIMILE AND E-MAIL

Dear Mr. Muniz:

I am writing to comment on the December 2003 Supplemental Draft Environmental Impact Statement (SDEIS) for the Port of the Americas (POA), which was noticed on January 12, 2004. These comments supplement but do not replace comments filed on the September 2002 Draft Environmental Impact Statement (DEIS) for the POA, which was noticed on September 23, 2002.

EIS-12.1

The SDEIS embodies many of the same deficiencies as the DEIS. As before, certain critical materials and documents are missing, and certain critical processes have not been completed. That being the case, the NEPA compliance process should be suspended until these documents are made available to the public and these processes are completed and their results documented to the public. It is premature on the part of the Corps to attempt to complete the NEPA compliance process for the POA if it is to be located in Ponce, Puerto Rico.

EIS-12.1 The Applicant disagrees with this statement. Please refer to the following replies.

EIS-12.2

1. Issuance of a SDEIS is premature because the status of triggering permit applications is unclear. Your October 10, 2002 Public Notice identified certain permit application numbers that coincided with the proposed action and were the reason for the Corps having prepared a DEIS. In November 2002, I filed a FOIA request to obtain copies of these permit applications. This request was fulfilled at about the time the Applicant submitted new permit applications to reflect the Ponce-only proposed action, i.e., March 2003 (see page 2-7 of the SDEIS), but the Corps forwarded the permit applications that reflected the joint Ponce-Guayanilla proposed action. These permit applications either already had been or were very quickly superseded by the March 2003 filings.

EIS-12.2 Not true. A Public Notice as a result of the permit application for the Ponce-only preferred alternative was published on January 17, 2004 by mail to a list of participants. The Public Notice was also published on the WWW at the following address, where it was shown for thirty days: http://www.saj.usace.army.mil/permit/public_notices/PR_VI_PNs.htm. As with any other permit application, once the document was deemed complete and the minimum requirements were met by the applicant, the USACE issued said Public Notice. The issuance of the Public Notice is indicative of the completeness of the permit application.

EIS-12.3

Why were the new permit applications not noticed as the previous permit applications were and why were comments not sought as required by 33 CFR 325.2? Also, the Corps must make a finding of completeness relative to the permit applications before it may proceed with complying with NEPA. There is no evidence that this has ever occurred.

2. Issuance of a SDEIS is premature because no offshore disposal site for dredged materials exists. Similar timing concerns exist relative to the ODMDS SMMP and associated rulemaking requirement as exist relative to noticing the permit applications. The SDEIS indicates that a draft SMMP was made available in July 2003 and that this was announced in the *Federal Register*. However, there is no indication that the Corps ever informed the public of the completion of this important step. (Incidentally, I have searched for this EPA *Federal Register* announcement but am not able to locate it. Could you please give me the citation?)

EIS-12.3 Not true. The Ponce ODMDS is listed as a Region II Final Dredged Material Site in 40CFR chapter I part 228: Criteria for the Management of Disposal Sites for Ocean Dumping §228.15 (d) (13).

While these procedural issues relative to the establishment an ODMDS are important, the fact that the ODMDS simply does not exist is even more important. The Ponce-only alternative is completely dependent upon the existence of a dredged materials disposal site. Until such a site exists, preparation of an EIS is premature and a waste of public resources. Currently, the Corps is

evaluating a proposed action that simply cannot be implemented. Between now and the time that it might become feasible, i.e., the time that EPA completes its ODMS rulemaking, much will have changed, rendering the existing SDEIS and whatever permits the Corps may have issued out-of-date. In all probability, revised permit applications will have to be re-submitted and another supplemental EIS will have to be prepared.

EIS-12.4

3. Issuance of a SDEIS is inadequate because the Corps has failed to demonstrate that an informal, rather than formal, Endangered Species Act (ESA) section 7 consultation is appropriate. Given the large number and variety of endangered species that will be potentially affected, it is unclear why an informal consultation (page 4-107) fulfills the requirements of section 7. The SDEIS needs to document why a formal consultation was not needed and was not initiated.

4. The SDEIS is improper because Ponce harbor is a "federal project," and the Corps does not have the authority to approve changes in the harbor's configuration. Unlike the DEIS, the SDEIS does admit that Ponce harbor is a "federal project" (see page 1-13) and it does cite the correct Congressional authorizations of the project and its configuration (see page 3-78). The "general navigation features of the project" are defined as "construction of a 36-foot deep, 600-foot wide channel from the Caribbean Sea approximately 2.8 miles up to the port, a 36-foot-deep, 400-foot-wide channel; and a 950-foot diameter, 36-foot deep turning and maneuvering basin adjacent to the main port berthing area."

However, rather than follow the procedures set out in ER-1105-2-100 (dated April 22, 2000), which governs how changes to the "federal projects" are effected, the SDEIS cites an RGL which expired in 1986 to rationalize its unlawful attempt to alter Congressionally-designated configuration without acquiring the requisite Congressional approval. The SDEIS argues that pursuant to RGL 84-17, the Corps has the authority to issue the permits for a Ponce POA because "the proposed activity is compatible with the existing Congressionally authorized project, it is in the public interest, and does not otherwise significantly interfere with authorized project purposes or intent."

EIS-12.5

Even if RGL 84-17 were still in effect, such an interpretation is based on a partial quotation from and strained reading of the RGL. The final and critical sentence from the RGL was omitted from the SDEIS. "When he [the district engineer] determines that the proposed activity would conflict with the project's Congressionally authorized purposes, established limitations or restrictions, or that it would limit an agency's ability to provide the necessary operation and maintenance functions, he will so notify the applicant and all interested parties of his determination. This notification should state the Corps is without administrative authority to approve such a change without specific Congressional action to dissolve the Federal interest or to modify the project."

What could be more in conflict with the "established limitations or restrictions" of the Ponce federal project than to increase the Congressionally-authorized depth of the channel and the turning basin from 36 feet to 50 feet and to increase the Congressionally-authorized width of the channel from 600 to 800 feet? The Congressionally-authorized diameter of the turning basin will also dramatically change, but the actual diameter of the proposed turning basin is not given in the SDEIS. The proposed action will fundamentally change the parameters authorized by Congress; it is not a mere modification or encroachment.

The subject of RGL 84-10 is: "Interference with Federal Projects." It was clearly written to address a proposed activity that was conceptually and physically separate from "federal projects"

EIS-12.4

The Applicant disagrees with this opinion. The USACE, as the action agency, has determined that a formal consultation under Section 7 of the Endangered Species Act was not necessary on the grounds that the proposed project was not likely to adversely affect listed species or critical habitats. Therefore, an informal consultation process was carried out pursuant to 40 CFR §402.02 and 40 CFR §402.13. Both the USFWS and NMFS have concurred with this determination, concluding that a formal consultation was not necessary.

EIS-12.5

Congress still has responsibility over the Federal project. Any proposed action beyond the Federal project limits is sole responsibility of the Applicant, in this case the Commonwealth, and does not require authorization from Congress.

themselves but which would incidentally impact on "federal projects". It was not written to address a proposed activity that was a reconfiguration/modification of the "federal project" itself.

EIS-12.6

5. The SDEIS is inadequate because the section on mitigating measures is inadequate. As set forth in 40 CFR 1502.14(f), 40 CFR 1502.16(b), 40 CFR 1508.20, and Appendix B section 9(b)(5)(c), DEIS's are to include appropriate mitigation measures. The SDEIS is an improvement over the DEIS, which included no mitigating measures at all. However, the SDEIS's section 2.10 is barely more than a page and too qualitative and vague to be meaningful.

EIS-12.7

6. The SDEIS is inadequate because reasonably available alternatives exist and they have not been adequately evaluated. The SDEIS continues to rely on the USACE 1999 and Frankel 2000 reports as the primary bases for site selection. The problems with this approach have been previously identified.

EIS-12.8

The issues associated with reasonably available alternatives identification are further compounded by the cursory and superficial treatment of the Roosevelt Roads Naval Station option. DOD is in the process of closing Roosevelt Roads Naval Station as a result of the Puerto Rican government's opposition to test bombing on Vieques. Roosevelt Roads has already or will shortly enter the Base Realignment and Closure (BRAC) Program. While the Roosevelt Roads harbor was not an available alternative prior to this development, it currently represents a reasonably available alternative now. Yet the SDEIS summarily dismisses Roosevelt Roads as a potential site for the transshipment port with a few sentences.

The whole purpose of BRAC is to transfer DOD facilities into private ownership and to promote reuse of former DOD-facilities that is economically attractive and of benefit to state and local communities. The transshipment port is an ideal use given the past uses of the Roosevelt Roads harbor and the presence of an up-to-date infrastructure. The Applicant, which is the Government of Puerto Rico, ought to be actively pursuing the alternative with the federal government. The alternative is reasonably available, and it should be presented in the SDEIS. Developing it would certainly take no longer than the Ponce-only alternative given the time barriers represented by the fact that no offshore disposal site for dredged materials exists and that the EPA must go through a rulemaking to designate such a site and the fact that the Corps is without authority to issue permits relative to a re-configuration of the Ponce harbor of the magnitude proposed by the Applicant in the absence of Congressional authorization.

EIS-12.9

7. The SDEIS continues to be inadequate because it continues to fail to consider several very vital issues that were raised during the scoping process. The SDEIS continues to list a number of issues the Corps declines to address. One of these issues is port safety. The problems with this omission have been previously documented. However, since the issuance of the DEIS, the Coast Guard has published several sets of security regulations affecting the configuration and operation of ports. Ignoring these regulations may have resulted in a port design that cannot be implemented. They should be reviewed to ensure the port design is still feasible. Otherwise, it may be necessary to alter the conditions of permits, revise environmental findings, and re-engage the public in decision-making.

Thank you for the opportunity to provide comments on the SDEIS.

Sincerely,



Kit R. Krickenberger, Ph.D.

EIS-12.6

The Applicant disagrees with this opinion. A comprehensive mitigation plan does not need to be included as part of the SDEIS, or FEIS. Said documentation will be submitted as part of the permit requirements.

EIS-12.7

The Applicant does not agree with this appreciation. Please refer to Chapter 2 of the FEIS for a detailed alternative analysis.

EIS-12.8

Even though the former RRNV may now appear as a reasonable available alternative, the Applicant eliminated this site from further consideration. It has been determined that such a development at this site would result in greater potential environmental impacts than the preferred alternative. In this case, not only dredging of the Ensenada Honda main navigation channel would have to be carried out, but also a large amount of fill, approximating 70 acres, would have to be placed adjacent to the proposed pier, as the current infrastructure is not adequate to handle a transshipment operation. Also, potential impacts to benthic resources, including coral reefs, as well as the large manatee population identified at the bay was considered when reaching this judgment.

EIS-12.9

The Applicant has engaged in consultations with the USCG with regards to this issue. USCG reviewed the conceptual design of the proposed action and provided technical input that was later incorporated in the preliminary design of the facility. The final design will incorporate several other measures consistent with the latest security regulation governing facilities of this type as per USCG directives.