5 Public Outreach, Agency Coordination, and Consultation

5.1 PURPOSE, NEED, AND REQUIREMENTS FOR PUBLIC OUTREACH AND AGENCY COORDINATION

In 1977, the CEQ promulgated regulations associated with the implementation of NEPA, as enacted in 1970. These regulations and associated procedural requirements for compliance are stipulated in 40 CFR Part 1503 (http://www.nepa.gov/nepa/regs/ceq/1503.htm#1503.3) and include procedures for obtaining, submitting and responding to public comments for an EIS.

The USACE's policy and guidance requires work in addition to the minimum public outreach and agency coordination standards outlined in 40 CFR Part 1503, to include a pre-scoping or conceptual-level scoping phase and a public scoping phase before issuing the draft EIS. During these additional phases, the lead agencies provided opportunities to engage affected and interested parties in the planning and development stages of the EIS process, including the process of defining alternatives. The purposes of pre-scoping and public scoping phases are to

- introduce the public to the lead agencies and the planning process;
- inform the public and decision makers about the project;
- assess support for the project;
- gather information;
- coordinate with citizens, interest groups, and agencies;
- provide a mechanism for citizens to participate in the planning process; and
- provide for fiscal accountability.

The lead agencies for this Programmatic EIS (i.e., USACE, DNR, and VMRC) engaged various groups of stakeholders in the EIS process: watermen and industry representatives (recreational and commercial anglers, boaters, and aquaculture firms); local, regional, State, and Federal agencies; academic institutions; and environmental, historical, and biological resource protection organizations. Collectively, these groups have informed the lead agencies regarding the scientific, socioeconomic, cultural, legal, and policy factors of the project. The lead agencies involved the stakeholder groups early on and continuously throughout the course of the project and have accepted and carefully considered their feedback.

5.2 PUBLIC OUTREACH AND AGENCY COORDINATION PROCESS

5.2.1 Participants

5.2.1.1 Agency Coordination

According to January 30, 2002, CEQ guidance to the heads of Federal agencies on implementing the procedural requirements of NEPA, lead agencies preparing a PEIS are required to determine if other Federal agencies are interested and appear to be capable of assuming the responsibilities of becoming a cooperating agency under 40 C.F.R. § 1501.6. "Cooperating agency" as defined under this title includes any other Federal agency that has jurisdiction by law or that has special expertise with respect to any environmental issue that should be addressed in the PEIS.

The 2002 guidance states: "The benefits of enhanced cooperating agency participation in the preparation of NEPA analyses include: disclosing relevant information early in the analytical process; applying available technical expertise and staff support; avoiding duplication with other Federal, State, Tribal and local procedures; and establishing a mechanism for addressing intergovernmental issues. Other benefits of enhanced cooperating agency participation include fostering intra- and intergovernmental trust (e.g., partnerships at the community level) and a common understanding and appreciation for various governmental roles in the NEPA process, as well as enhancing agencies' ability to adopt environmental documents. It is incumbent on Federal agency officials to identify as early as practicable in the environmental planning process those Federal, State, Tribal and local government agencies that have jurisdiction by law and special expertise with respect to all reasonable alternatives or significant environmental, social or economic impacts associated with a proposed action that requires NEPA analysis."

USACE is the lead Federal agency for preparing this PEIS. VMRC (on behalf of the Commonwealth of Virginia) and DNR (on behalf of the State of Maryland) are the lead State agencies. The U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (FWS), and National Oceanic and Atmospheric Administration (NOAA) are cooperating Federal agencies. Additional review and assistance was provided by the Maryland Environmental Service (MES), the Potomac River Fisheries Commission (PRFC), and the Atlantic States Marine Fisheries Commission (ASMFC). EPA will be responsible for rating the environmental impact of the proposed action and the adequacy of the PEIS document. The lead agencies established a project delivery team (PDT) to coordinate with State, Federal, and regional agencies whose goals, objectives, policies, and regulations are implicated in, or would be affected by the outcome of the process. The PDT includes representatives of USACE's Norfolk and Baltimore Districts, DNR, VMRC, NOAA, EPA, FWS, and PRFC.

The PDT met monthly to discuss the schedule for the project, development of the alternatives, content of the PEIS, the status of research and availability and findings, the status of the peer review process and findings, legal requirements, and other project-delivery issues. The goal of the PDT was to share information among the participating agencies and, to the extent possible, to ensure that affected agencies were comfortable with the findings and that potential legal and programmatic implications were addressed before completion of the PEIS. PDT

meetings were open to the public and were listed on DNR's Oyster *In Focus* Web site. PDT members reviewed summaries of these meetings were for accuracy.

The lead agencies also established an Executive Committee that was responsible for the management of the PEIS project, including active collaboration with senior management from the Federal cooperating agencies and a Management Team that was responsible for executing the activities defined by the Executive Committee.

5.2.1.2 Research Review Committees and Peer Review Groups

Several research-review committees and peer-review groups were established to provide guidance regarding appropriate research projects and schedules, the accuracy of the findings of the research and assessment efforts, and suggestions for next steps, in order to support the scientific integrity of the PEIS. The following text describes the roles and membership of the research-review committees and peer-review groups, as well as the roles of other groups of stakeholders in completing one of the major assessments for this PEIS: the Cultural and Socioeconomic Assessment.

Cultural and Socioeconomic Assessment – A cultural and socioeconomic assessment, which assessed the cultural value of oyster restoration and the socioeconomic importance of different approaches for restoring oysters to a diverse range of stakeholders, was completed as part of the supporting documentation for the PEIS. This study involved informal and structured interviews with and two cumulative surveys of stakeholders, including commercial watermen, oyster aquaculturists, shellfish processors and shippers, scientists investigating oysters and marine-estuary ecosystems, environmentalists who are active in efforts to restore Chesapeake Bay, recreational fishers, and owners of seafood restaurants in the region.

A report entitled *Oyster Restoration in the Chesapeake Bay: A Cultural & Socioeconomic Assessment* (Paolisso and Dery 2008) reports findings about the cultural value of oyster restoration and the socioeconomic importance of different approaches for restoring oysters in the Bay for a diverse range of stakeholders within the Chesapeake region. The PEIS includes an analysis of this information.

Review Committees and Peer Review Groups – In addition to providing information and opportunities to comment on the content of the PEIS, the lead agencies established research-review committees and peer-review groups to provide scientific and technical insight to inform the project and associated research and assessment efforts. Each advisory group or committee included stakeholders from the research community who are experts in their respective fields:

- Scientific Advisory Committee (SAC) – This group was composed of all of the principal investigators involved with the Oyster PEIS research effort designed to satisfy the critical gaps in knowledge identified in the 2000 NRC report.
- Ecological Risk Assessment Advisory Group (ERAAG) – This group was composed of Federal agency risk assessment specialists and was established to assist in the development of the ERA framework and advise on the technical content of the ERA.

- OAP – This group was established to provide peer review and to provide technical guidance on suitable data sources/input parameters for the modeling and assessment projects in support of the PEIS, including determining the adequacy of available information to inform a decision and the degree of risk associated with each alternative.
- Peer Review Groups (PRGs) – These groups provided independent review of research results to be incorporated into the PEIS assessments; specifically, research that was funded for the PEIS, but was not published in a scientific peer reviewed journal. Each PRG was composed of two to five nationally recognized members of the scientific community. The peer review effort was divided among PRGs according to research and assessment subject matter and expertise (e.g. larvae transport, natural resource economics, etc.). Each PRG's review included an evaluation of: the clarity of the hypotheses, if applicable; the validity of the research design; the quality of data collection procedures; the robustness of methods employed; the appropriateness of the methods for the hypotheses being tested; the extent to which the conclusions follow from the analysis; and the strengths and limitations of each research project. The PRG's comments and/or peer review reports were provided to the research or assessment project principal investigators. Responses from the principal investigators on how the peer review comments would be addressed in continued research efforts and/or final research project documentation were requested.
- The ASMFC, Interstate Shellfish Transport Committee (ISTC) – This committee is comprised of shellfish technical representatives from each of the Atlantic coastal states from Maine through Florida, the District of Columbia, the PRFC, the National Marine Fisheries Service (NMFS), and the FWS. This group provided technical input from a coastal perspective. They reviewed and developed consensus statements on issues related to the methodology and analytical results of research, modeling and assessment projects being completed to support the PEIS, and forwarded the consensus statements to the PDT.

The lead agencies and principal investigators of research projects and assessments periodically updated the advisory groups, as well as the Executive Committee and Management Committee, on project and research advancements as appropriate throughout the course of the Oyster PEIS project.

5.2.1.3 Other Stakeholder Groups

In addition to soliciting Cooperating Agency input through the PDT process and technical guidance through the establishment of advisory groups, the lead agencies initiated and/or accepted written correspondence from the following interested agencies, organizations, industry representatives, and academic institutions:

- FWS
- Virginia Department of Historic Resources
- NMFS Habitat Conservation Division
- National Park Service
- EPA

- Maryland Historic Trust
- Virginia Department of Conservation and Recreation's Division of Natural Heritage
- NOAA
- Florida Fish & Wildlife Conservation Commission
- South Carolina Department of Natural Resources
- Virginia Office of the Governor
- Harris Seafood
- Delaware River Keeper
- State of Rhode Island
- Anne Arundel County Watermen's Association
- Coastal Conservation Association (CCA)
- The Nature Conservancy (TNC)
- Virginia Seafood Council (VSC)
- National Wildlife Federation
- Defenders of Wildlife
- International Council for Exploration of the Seas (ICES)
- Maryland Department of the Environment (MDE)
- Audubon Society of Maryland – D.C.
- ASMFC
- Maryland House of Delegates – Del. Dan Morhaim
- Maryland Department of Natural Resources
- Virginia Institute of Marine Science (VIMS)

Additional information on the content of the correspondence can be found in Appendix G: Agency Coordination.

5.2.2 Communication Methods

Communication methods used by the lead agencies to distribute information included: television, radio, newspapers, fliers, electronic mail, postal mail and Web sites.

Public presentations of the project proposal, and research and assessment findings provided at public meetings, conferences, trade shows and fairs, were advertised with fliers and newspaper postings, as well as in radio and television announcements.

Maryland Public Television recorded interviews with representatives from the lead and Cooperating Agencies on the progress of the PEIS. PEIS briefings were also provided in numerous newspaper articles throughout the course of the project, available in hardcopy and electronic format including via the Chesapeake Bay Program's *Bay News* electronic mail list server distribution.

Information sharing was geared toward electronic and internet submissions due to its potential for immediate mass distribution, high accessibility, low cost and low environmental impact. The lead agencies maintained a continuously updated postal and electronic mail server interest list used to coordinate advisory group reviews and provide project updates to interested

parties. Work group meetings were announced on Web sites and through electronic mail distributions.

A project Web site was established to facilitate public input within and outside the Chesapeake Bay region (DNR's Oyster *In Focus* Web site http://www.dnr.state.md.us/dnrnews/infocus/oysters.asp). The scheduling of public meetings and project accomplishments, including updates on key research components, were publicized in press releases available on the Web site. A calendar of meetings and events was also posted on the Oyster *In Focus* Web site throughout the course of the project, beginning with the first posting on April 21, 2003. A copy of the presentation given by the lead agencies at the January 28, 2004 and February 5, 2004 public scoping meetings was posted to the Oyster *In Focus* Web site, along with summaries of the meetings and written public comments provided during the public scoping period. The Oyster *In Focus* Web site also contains

- copies of the project Purpose and Need Statement and funding authorization
- a list of the PEIS alternatives
- links to the PEIS press releases and progress reports
- overviews of the research, modeling and assessment frameworks, peer review plan and a list of research projects
- a diagram of the peer review process and copy of the approved peer review plan (for compliance with the 2004 Office of Budget and Management bulletin)
- a link to the NRC Report on Nonnative Oysters in the Chesapeake Bay
- a link to the STAC report *Identifying and Prioritizing Research Required to Evaluate Ecological Risks and Benefits of Introducing Diploid Crassostrea ariakensis to Restore Oysters to Chesapeake Bay*
- a list of PEIS working group membership and responsibilities
- links to project Web sites created by NOAA and PEIS research institutions, including the University of Maryland (UMD) (containing contact information for the research Principal Investigators) and VIMS (including a timeline for VIMS involvement in the project and associated efforts and links to research work products and background documents)
- a link to ICES' 1994 *Code of Practice on the Introductions and Transfers of Marine Organisms*

Copies of Oyster PEIS "Progress Reports", news releases and a link to the *In Focus* Web site were provided on the USACE-Norfolk District Oyster PEIS homepage: http://www.nao.usace.army.mil/OysterPEIS/homepage.asp. Public notices and events related to the Oyster PEIS project were posted to the VMRC public information webpage: http://www.mrc.state.va.us/public-info.shtm.

Updates on the scientific and technical components of the project, including research and assessment findings, were presented at PDT meetings and NOAA (PEIS) Quarterly Research

Review meetings. These review meetings were an opportunity for the Federal and State agencies and the research community to receive summaries of critical research findings directly from, and pose questions directly to, the research principal and/or associate investigator. Opportunities were provided for the public to participate in the research review meetings via Internet Webcast. NOAA posted summaries of the Quarterly Research Reviews to its Web site: http://noaa.chesapeakebay.net/nonnativeoysterresearch.aspx along with:

- a list of funded PEIS research
- an explanation of the PEIS process
- a summary of the findings of the NRC report *Nonnative Oysters in the Chesapeake Bay* and a link to purchase the report
- links to the STAC report and 2005 ICES code
- work products and information distributed at scientific conferences

5.2.3 Process

5.2.3.1 Project Authorization and Funding

Federal authorization for the USACE – Norfolk District to initiate the Oyster PEIS project was established by Section 510 of Water Resources Development Act of 1996, as amended by Title 1, Department of Defense – Civil, Department of the Army, Corps of Engineers – Civil, Construction General provisions of the Energy and Water Appropriations Act. Federal project funding was established by H.R.2754: *Making Appropriations for Fiscal Year Ending September 30, 2004*. http://thomas.loc.gov/cgi-bin/bdquery/z?d108:h.r.02754.

5.2.3.2 Scoping Meetings and Proposal Development Prior to Publication of the Notice of Intent

A pre-scoping stakeholder workshop was held in October 2003 in Annapolis, Maryland to obtain perspectives from researchers and stakeholders with regard to their expectations of the PEIS proposal and process for its evaluation. The meeting screened the proposal for issues that needed to be addressed and identified critical research issues on which research plans were developed.

A pre-scoping planning meeting was called in November 2003 following the development of the Memorandum of Understanding (MOU) between the lead Federal and State agencies. In the meeting, a group of upper-level project managers from Federal and State lead agencies, later forming the Management Team, agreed to the development of a Scientific Advisory Committee (SAC) to guide research, a peer review panel to review the PEIS, and a Web site for sharing information on the PEIS.

On November 18, 2003, a pre-scoping research workshop was held to discuss the desired output and necessary inputs to the model of the dispersal of *C. ariakensis* larvae and potential impacts to water quality, as well as input data available and additional input data needed for the

modeling effort. Following the meeting, the UMD submitted a proposal to the lead agencies for the hydrodynamic modeling of the larval transport of *C. ariakensis*.

In December 2003, an additional pre-scoping research workshop was held by the technical advisory committee, for the Chesapeake Bay Program (CBP; Chesapeake Bay Program STAC), in cooperation with the NRC, to identify and prioritize research required to evaluate ecological risks, benefits and alternatives related to the potential introduction of *C. ariakensis*. A timeline for research was developed in this meeting. It was recommended that the finalized STAC report, released in March 2004, be used as a foundation for further *C. ariakensis* research.

On December 4, 2003, a meeting was held to discuss the economic analysis requirements needed to evaluate alternatives in the PEIS. Shortly thereafter, the UMD submitted a proposal to the lead agencies for the economic assessment. Also in December 2003, the ASMFC became an active participant in the programmatic PEIS process.

On December 10, 2003, an additional pre-scoping planning meeting was held by representatives from the cooperating Federal and State agencies and the PRFC, who would become the initial members of the PDT. Discussion included the creation of a PDT with representatives from the cooperating Federal agencies; inclusion of representatives from the ASMFC on the PDT and in a research review work group; language specifications for the Notice of Intent (NOI); and the presentation of the proposal at the public meetings. The USACE – Norfolk District agreed to request that all of the Cooperating Agencies designate personnel for assignment to the PDT. Edits to the draft NOI were incorporated and publication of the NOI and the initiation of public meetings was set for to January 2004 to allow for additional PDT review.

On December 17, 2003, a pre-scoping meeting involving PDT members was held to discuss and clarify the language for the NOI. The USACE agreed to distribute briefing materials to non-governmental organizations.

Seven preliminary alternatives to the proposed action were developed at pre-scoping meetings and workshops, held with the prospective lead agencies, cooperating agencies, researchers, and other stakeholders. These alternatives were presented in the NOI, published in the Federal Register on January 5, 2004.

5.2.3.3 Public Scoping Process

Project-specific outreach began in 2004 with the publication of the formal NOI in Volume 69, Number 2, pages 330 through 332 of the Federal Register, which is available via the internet as well as in hardcopy form. The lead agencies also published the NOI and summaries of the NOI in newspapers, including the following, and on the DNR Web site established for the Oyster PEIS project (DNR Oyster *In Focus* Web site: http://www.dnr.state.md.us/dnrnews/infocus/notice_of_intent2.asp):

- Richmond Times Dispatch
- The Daily Press
- The Virginian Pilot

- The Eastern Shore News
- The Baltimore Sun
- Evening Capital
- Star Democrat
- Daily Banner

The NOI was posted in about 150 locations in Virginia in tackle shops, marinas, post offices, courthouses and other public areas.

In addition, the lead agencies distributed copies of the NOI to interested parties, including the:

- Maryland Department of Agriculture
- Maryland Seafood and Aquaculture Task Force
- Maryland Oyster Roundtable Steering Committee and Interest List
- Maryland Oyster Roundtable and Interest List
- Maryland Sportfish Advisory Commission
- Maryland Tidal Fish Advisory Commission
- Maryland Coastal Bays Fishery Advisory Commission
- Maryland Watermen's Association
- Maryland County Oyster Committees
- Maryland CBF
- Maryland Coastal Bays Program
- Maryland CCA
- Maryland Saltwater Sportfishing Association
- PEIS research community (future SAC)

Copies of the NOI were subsequently posted to Web sites of interested parties, including the Maryland Watermen’s Association Web site.

In addition to introducing the purpose and intent of the PEIS process, the preliminary alternatives, and providing a description of the scoping process, the NOI identified

- the lead and cooperating agencies
- scheduled dates for public scoping meetings
- a deadline for submittal of public comments (set at three weeks beyond the last public scoping meeting)
- names, affiliations, and contact information for submitting public comments
- key issues for research and assessment
- applicable legislation and regulations for environmental review and consultation

Public comment on the overall scope of the Oyster PEIS, including the purpose and need, list of alternatives to be evaluated, and project schedule were collected from the participants at

the two public meetings held in both the Commonwealth of Virginia and State of Maryland on January 28, 2004 and February 5, 2004, respectively. Each public scoping meeting provided a briefing and presentation on the state of *C. virginica* in the Chesapeake Bay and its tributaries, the status of restoration efforts, preliminary programmatic PEIS alternatives, and the proposed action of the programmatic PEIS.

Participants at the public scoping meetings were organized into discussion groups and asked to identify the top five project priorities. Responses were used to further develop the PEIS alternatives, coordination process and research and assessment components.

In addition to hosting the January 28, 2004 and February 5, 2004 public meetings, the lead agencies provided an internet forum for individuals that were unable to attend the public meetings to provide comments: http://www.dnr.state.md.us/dnrnews/infocus/oystercomments.html. Approximately 36 posts were made. These internet postings included positions on the proposed action and alternatives and suggestions for research and management strategies.

5.2.3.4 Finalization of Alternatives

Comments produced by the public as well as Federal agencies, and State and local governments, were used to assist the USACE, DNR, VMRC, NOAA, EPA, and FWS representatives in defining the issues that would be evaluated in the PEIS. All public scoping comments were collected, reviewed, and discussed at a PDT meeting on March 26, 2004. Workshops and meetings were held at the PRFC office in Colonial Beach, Virginia to further refine the alternatives. A workshop held on February 1, 2006, provided data specifically for the refinement of the aquaculture alternatives. The PDT and representative members of the research community, CBP, Oyster Recovery Partnership (ORP) and aquaculture community attended. A meeting on the harvest moratorium alternative was held November 15, 2006.

5.2.3.5 Briefings and Updates

Over the course of the project, the lead agencies gave many briefings on the PEIS project including regular briefings to the ASMFC Policy Board. Briefings included updates on the research findings and project schedule and provided opportunities for public input. Venues at which project information was provided include fairs, trade shows, scientific conferences, and local and regional government and advisory organization public meetings including, but not limited, to

- 2004 Maryland Trade Association show
- 2004 Maryland State Fair
- 2005 and 2006 Interstate Shellfish Sanitation Conference (ISSC), Annual Interstate Seafood Seminars
- October 18, 2004 ORP Board of Directors' meeting
- 2006 Annual CBP Citizens Advisory Committee meeting

- February 22, 2005 DNR Monitoring and Non-Tidal Assessment (MANTA) noon seminar series
- April 16, 2005 annual Maryland Tributary Strategies Team meeting
- NOAA noon seminars
- October 15, 2005 Horn Point, Aquaculture and Restoration Ecology Laboratory public open house
- CBP's Chesapeake Bay seminar series
- January 12, 2006 Maryland Outdoor Caucus meeting
- 32nd East Coast Commercial Fishermen's & Aquaculture Trade Exposition
- 2006 Science & Seafood Seminar Series – *Savor the Bay*
- March 15, 2006 CBP, Scientific and Technical Advisory Committee (STAC) meeting
- April 13, 2006 Caroline County Health Department Tidewater Environmental Health Association meeting
- May 12, 2006 Oyster CAC annual meeting
- September 6, 2006 Blue Ribbon Oyster Panel meeting
- September 14, 2006 PRFC meeting
- May 14, 2007 Chesapeake Bay Commission meeting
- December 6, 2006 NOAA, Fisheries Office of Policy Seminar on Policy Development and Analysis Techniques
- March 18, 2004, April 20, 2006, July 20, 2006 and May 17, 2007 CBP Implementation Committee meetings
- Estuarine Research Federation 2007 Biennial Conference
- December 4-5, 2007 Oyster Management Workshop
- March 10 and April 9, 2008 Briefings to the Oyster Advisory Commission
- April 23, 2008, Briefing to ASMFC, ISTC and the CBP, STAC

5.2.4 Public Outreach and Agency Coordination Following Publication of Draft PEIS

On October 14, 2008, the lead agencies convened a press conference to announce their intent to release the Draft PEIS to the public on October 17, 2008. The Draft PEIS was released according to that schedule. The Notice of Availability (NOA) for the Draft PEIS was published in the EPA Federal Register (Vol. 2, No. 202, p. 61859) on October 17, 2008, simultaneously with the distribution of hardcopies and CDs of the document to the 35 libraries and 90 agencies and individuals included in the PEIS distribution list included in Section 8.

The USACE – Norfolk District's updated PEIS Web page was activated on October 17, 2008, and contains a downloadable copy of the Draft PEIS, a copy of the NOA, peer review

reports for the Draft PEIS, related research and assessment documents, and a link to other supporting documentation. The USACE – Norfolk District monitored download activity during the public comment period; Figures 5-1 and 5-2 summarize that activity. In addition, DNR's PEIS Web page was updated to include a list of frequently asked questions concerning the PEIS and a copy of the October 14, 2008, press release.

During the 60-day public comment period following the publication of the Draft PEIS (October 17 – December 15, 2008), the lead agencies coordinated a series of public meetings – three each in Maryland and Virginia - to receive comments on the document. The dates, locations, and times of the meetings were announced in the October 14, 2008, press release and were included in the NOA. The press release emphasized the importance of public input in this process and encouraged public participation in the meetings. The USACE – Norfolk District issued subsequent press releases during the week before the first public meeting and on the day before the first meeting to promote involvement. On October 17, 2008, the NOA was distributed via email to approximately 200 representatives of the cooperating Federal agencies; resource agencies in Maryland, Virginia, Delaware, Georgia, South Carolina, North Carolina, New Jersey, New York, and Connecticut; various research institutions; and members of the general public who previously had indicated their interest in the project. The meeting dates also were advertised on the USACE – Norfolk District's Web site (http://www.nao.usace.army.mil/OysterEIS/Public Comment.asp) and DNR's Web site (http://www.dnr.state.md.us/dnrnews/infocus/oysters.asp).

According to the USACE – Norfolk District's Public Affairs Office, 58 media articles covering the Draft PEIS were released to an estimated audience of more than 3 million during the months of October and November, 2008. Several of these articles advertised the dates, locations, and times of the public meetings. Specifically, the schedule of public meetings was announced in articles that appeared in the Washington Post (Washington, D.C.), The Star Democrat (Easton, Maryland), The Daily Times (Salisbury, Maryland), and the Daily Banner (Cambridge, Maryland) on October 17, 2008, and in the Eastern Shore News on October 18, 2008, for a combined circulation of approximately 700,000 people.

Table 5-1 lists the dates and locations of the public meetings and indicates the approximate number of participants and their affiliations. All of the public meetings concerning the Draft PEIS were scheduled for 6:00 p.m. to 9:00 p.m. and followed a uniform agenda. The lead agencies procured an independent contractor who specializes in meeting facilitation and team-building to facilitate the meetings. As part of this service, the facilitator provided bulleted lists of participants' key concerns relayed during the meetings. The participants were asked to confirm the facilitator's summary at the close of each meeting.

Dr. William Richkus of Versar, Inc., manager of the PEIS Writing Team, opened the meetings with an overview of the Draft PEIS, which consisted of a visual presentation and handouts (Appendix G, Attachment D: Public Meeting Materials). A question-and-answer session followed during which Dr. Richkus answered participants' questions about technical content of the Draft PEIS.

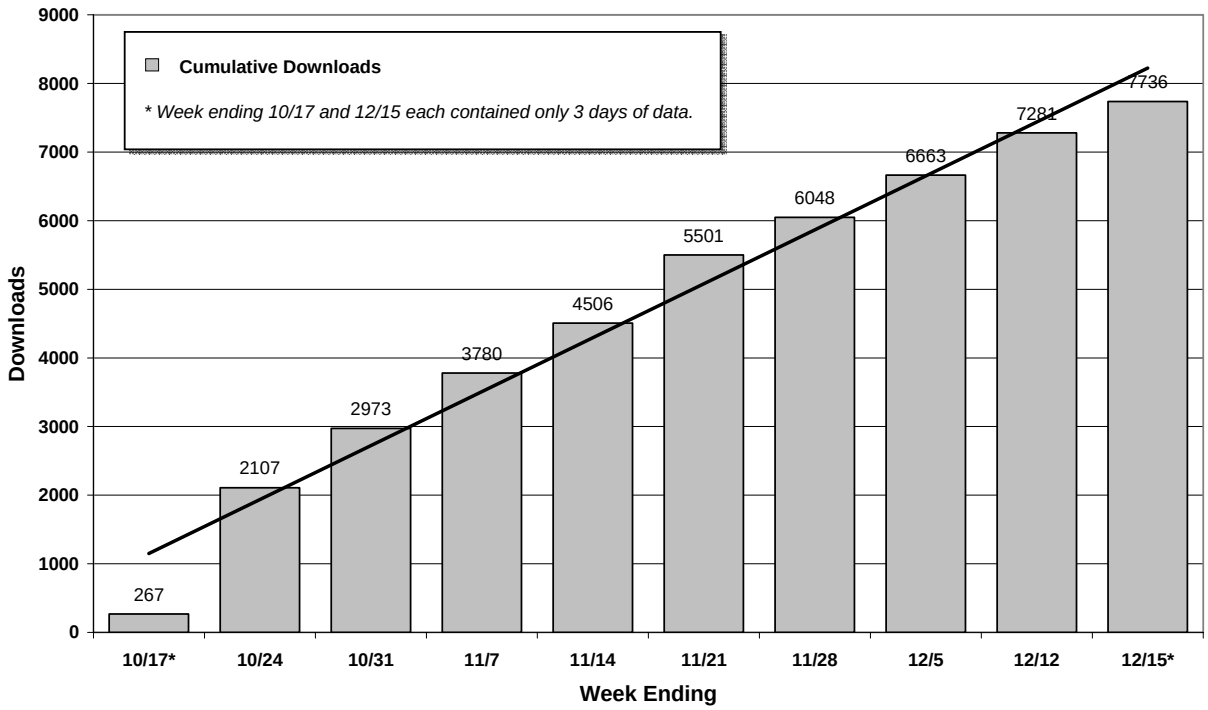

Figure 5-1. Cumulative downloads of the Draft PEIS from USACE's PEIS Web page during the public comment period (October 17 through December 15, 2008).

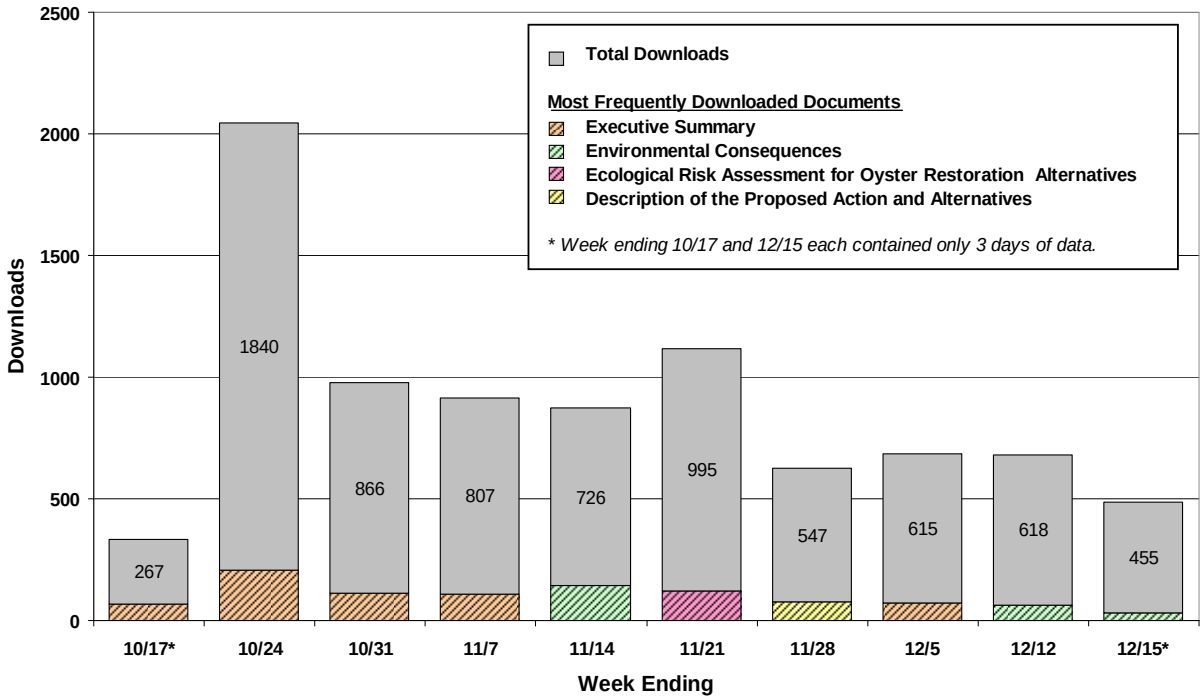

Figure 5-2. Weekly downloads of the Draft PEIS from USACE's PEIS Web page showing the most frequently downloaded sections of the document.

Table 5-1. Public Meetings for the Draft PEIS for Oyster Restoration

Number of Participants	Affiliations of Participants	
November 5, 2008 – Potomac River Fisheries Commission – Colonial Beach, VA		
~ 50	PEIS Management Team TNC NOAA	EPA VMRC VSC Members of the general public
November 7, 2008 – Virginia Marine Resources Commission – Newport News, VA		
~ 30	PEIS Management Team CBF TNC	FWS VIMS VSC Members of the general public
November 10, 2008 – Nandua High School – Onley, VA		
~ 50	PEIS Management Team CBF Eastern Shore Post Elizabeth River Project	Lynnhaven River Now TNC VMRC VSC Members of the general public
November 12, 2008 – Calvert Marine Museum – Solomons, MD		
~ 50	PEIS Management Team CBF CCA	TNC NOAA VSC Members of the general public
November 13, 2008 – Miller Senate Building – Annapolis, MD		
~ 90	PEIS Management Team ASMFC CBF CCA TNC	USACE – Baltimore District EPA CBP FWS VSC Members the general public
November 14, 2008 – Minnette Dick Hall – Cambridge, MD		
~ 60	PEIS Management Team CBF Maryland State legislature	Maryland Watermen's Association TNC VSC Members of the general public

ASMFC - Atlantic States Marine Fisheries Commission
CBF - Chesapeake Bay Foundation
CBP - Chesapeake Bay Program
CCA - Coastal Conservation Association
EPA - Environmental Protection Agency
FWS - U.S. Fish and Wildlife
NOAA - National Oceanic and Atmospheric Administration
PEIS - Programmatic Environmental Impact Statement
PRFC - Potomac River Fisheries Commission
TNC - The Nature Conservancy
USACE - U.S. Army Corps of Engineers
VIMS - Virginia Institute for Marine Science
VMRC - Virginia Marine Resources Commission
VSC - Virginia Seafood Council

Written and oral comments were submitted during the public meetings. Attendees were requested to indicate on the sign-in sheet if they wished to make a formal statement during the meeting. Following the technical question-and-answer session, those individuals were invited to speak before the audience. After those statements, the facilitator invited the audience to comment. When the audience offered no further comments, the facilitator informed the attendees of the date, time, and location of the next meeting and adjourned the meeting. Each meeting was recorded on audiotape to ensure accurate documentation of the oral comments. A subcontractor to DNR prepared detailed summaries of the proceedings of each of the public meetings (Appendix G, Attachment E: Public Meeting Documentation).

5.2.5 Overview of Comments on the Draft PEIS

During the 60-day comment period, the USACE – Norfolk District received comments from 2,175 respondents in the form of letters, emails, and statements offered during the public meetings. A total of 92 individuals provided comments during one or more of the public meetings. A variety of concerned residents, business owners, and representatives of watermen's associations and other non-profit organizations provided testimony during those proceedings; attendance records and summaries for each meeting are included in Appendix G. Formal responses to comments are presented in Appendix I. All comments received during the public comment period were considered, and copies of all letters and emails received prior to the closing date of the comment period (December 15, 2008) are included in Appendix J.

5.2.5.1 Government Agencies

A total of 30 Federal, State, and local resource agencies, government commissions, and committees and one academic institution, the Virginia Institute for Marine Science (VIMS), submitted letters of comment on the Draft PEIS. VIMS' comments were submitted with the Commonwealth of Virginia's comments and are grouped with "Agency Comments" in Appendix J.

The following Federal agencies submitted written comments: NOAA, U.S. Department of the Interior, and EPA. Each of those agencies formally expressed support for Alternative 8a. The main issues raised by the Federal agencies included

- creation and sustainability of critical habitat
- scientific uncertainty concerning the Suminoe oyster
- economic consequences of a moratorium
- the need to improve enforcement of harvest prohibitions for oyster sanctuaries and managed reserves
- human health risks associated with introducing the Suminoe oyster
- interactions between native and nonnative species and biodiversity loss
- irreversibility and widespread effects of the proposed action
- economic viability and risks of cultivating the Suminoe oyster, including the potential for triploid reversion
- policy issues concerning introduction of a nonnative species

Resource agencies representing states along the Atlantic seaboard submitted comments, including agencies in Florida, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, and Maine. State agencies' raised concerns about the proposed action, specifically regarding the susceptibility of the Suminoe oyster to environmental stressors and the uncertainty regarding the spread and biological interactions of the species. The majority of the State agencies requested the use of only the native species in all future restoration efforts. Multi-state and advisory commissions including the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, the Delaware River Basin Fish and Wildlife Management Cooperative, and Citizens Advisory Commission to the Chesapeake Bay Executive Council also provided formal comments in

opposition to the proposed action, citing the potential for adverse ecological consequences, human health risks, the Suminoe oyster's susceptibility to environmental stressors, and insufficient economic information for comparing the costs of the alternatives. Comments provided by eight State agencies, commissions, and committees specifically supported Alternative 8a or opposed the proposed action. The office of Meyera E. Oberndorf (Mayor, Virginia Beach, Virginia) submitted a letter endorsing Alternative 8a. The office of Virginia Delegate Albert C. Pollard submitted a letter supporting Alternative 8b. The following agencies, commissions, and offices did not indicate support for a specific alternative: Maryland Department of the Environment, Maryland Department of Planning, Maryland Port Administration, Virginia Department of Environmental Quality, and the Delaware River Basin Commission. Table 5-2 and Figure 5-3 summarize the documented preferences of Federal, State, and local agencies for specific combinations of alternatives.

Although it is not officially a governmental agency, the Scientific and Technical Advisory Committee (STAC) provides guidance to EPA's Chesapeake Bay Program and consists of appointed members selected from Federal and State agencies, universities, research institutions, and private industry. STAC formally recommended Alternative 8a. STAC's letter provides a detailed justification for that decision and identifies the members' assessments of the limitations of the Draft PEIS.

In a formal letter, VIMS commented that a single alternative could not meet ecological and economic needs and, therefore, that those needs should be considered separately to evaluate the alternatives. Nevertheless, VIMS formally endorsed Alternative 8a based on positive and negative findings regarding the Suminoe oyster.

5.2.5.2 Nongovernmental Organizations

A total of 32 nongovernmental organizations provided comments on the Draft PEIS. In addition to various environmental organizations, several organizations from Maryland and Virginia that are affiliated with the seafood industry provided comments on the Draft EIS. Sixteen of the responding groups expressed concerns about the ecological risks of introducing a nonnative species and encouraged continued efforts to restore the native species. Ten organizations favored Alternative 8c but requested the elimination of the harvest moratorium from that alternative. The remaining organizations expressed no clear support for any particular alternative. Figure 5-3 illustrates the documented preferences of nongovernmental organizations for specific combinations of alternatives.

5.2.5.3 Individuals

A total of 2,091 citizens submitted letters, postcards, emails, and oral comments concerning the Draft PEIS. Six representatives of businesses associated with the oyster industry commented. Table 5-2 shows the documented preferences of those businesses regarding the combinations of alternatives evaluated in the Draft PEIS. Citizens submitted 410 identical postcards and 1,341 emails supporting CBF's official position on the Draft EIS (Appendix J, p. J-468). Approximately 95% of the individuals who commented expressed

Table 5-2. Documented preferences of governmental agencies, businesses associated with the oyster industry, and nongovernmental organizations regarding combinations of alternatives for restoring oysters in Chesapeake Bay.

AGENCY or ORGANIZATION	DOCUMENTED PREFERENCE*			
	None Stated	8a	8b	8c
Federal Agencies and Commissions				
Environmental Protection Agency (EPA)		X		
National Oceanographic and Atmospheric Administration (NOAA)		X		
Department of the Interior (DOI) - including the Fish and Wildlife Service (FWS)		X		
Chesapeake Bay Program (CBP) – Scientific and Technical Advisory Commission (STAC)		X		
CBP – Citizens Advisory Committee (CAC)		Native only		
State and Local Agencies and Commissions				
VA Institute of Marine Sciences (VIMS)		X		
NC Marine Fisheries Commission		Native only		
SC Department of Natural Resources		X		
ME Department of Marine Resources		Native only		
NY Department of Environmental Conservation (DEC)		X		
DE Division of Fish and Wildlife, NJ Division of Fish and Wildlife, and NY DEC (joint position)		X		
DE DNREC Natural Resources and Environmental Control		Native only		
DE River Basin Fish and Wildlife Management Cooperative		Native only		
DE River Basin Commission	X			
VA Department of Environmental Quality	X			
VA DEQ - Waste Division	X			
VA DEQ - VA Dept. of Agriculture and Consumer Services	X			
VA DEQ - Michelle Henicheck	X			
VA DEQ - Tidewater Regional Office/ VA DEQ - Piedmont Regional Office	X			
VA DEQ - Office of Air Data Analysis	X			
VA Department of Historic Resources	X			
VA Department of Conservation and Recreation - Kristal McKelvey	X			
VA Department of Conservation and Recreation - Robert S. Munson	X			
VA Department of Game and Inland Fisheries	X			
VA Department of Health	X			
Hampton Roads Planning District, Virginia	X			
VA Delegate Albert C. Pollard, Jr. District 99			X	
VA Beach Mayor, Meyera E. Oberndorff		X		
MD Port Administration	X			
MD Department of Planning	X			
MD Department of the Environment	X			
FL Fish and Wildlife Conservation Commission		Native only		
Atlantic States Marine Fisheries Commission (ASMFC)		X		
Gulf States Marine Fisheries Commission		X		

Table 5-2. (Continued)

AGENCY or ORGANIZATION	DOCUMENTED PREFERENCE*			
	None Stated	8a	8b	8c
Businesses				
Bevans Oyster Co./A.J. Erskine			X	
Hazelwood Oyster Farms, Inc./Thomas A. Hazelwood				X (Supports proposed action)
Marinetics/Bob Maze		Native only		
Oyster King 1, Inc./Andrew Murdza		Native only		
Mason Seafood/Tommy Mason				X
Rappahannock River Oysters, LLC/Ryan Croxton		Native only		
Non-governmental Organizations				
VA Seafood Council			X	X
Elizabeth River Project		X		
Defenders of Wildlife		X		
Chesapeake Bay Foundation (CBF)		X		
Chesapeake Bay Seafood Industry Association				X
MD Conservation Council		X		
Smithsonian Environmental Research		X		
Natural Resources Defense Council		X		
Lynnhaven River Now		X		
VA Aquarium and Marine Science Center Foundation		X		
The Nature Conservancy		X		
Rappahannock Preservation Society		Native only		
Shore Drive Community Coalition		Native only		
The National Aquarium, Baltimore		X		
South Arundel Citizens for Responsible Development, Inc.		Native only		
South River Federation		X		
Southern Maryland Audubon Society		X		
National Wildlife Federation		X		
Partnership for the DE Estuary		Native only		
Oyster Reef Keepers of VA		Native only		
Coastal Conservation Association		X		
Virginia Watermen's Association	X			
Queen Anne's County Seed Committee				X
Queen Anne's County Watermen's Association	X			
Maryland Watermen's Association				X
Maryland Oystermen's Association				X
Dorchester County Watermen's Association				X
Talbot County Shell Association				X
Calvert County Watermen's Association				X
Kent County Watermen's Association				X
St. Mary's County Watermen's Association				X
Friends of the Rappahannock	X			

* Some agencies, businesses, and organizations did not specify a preferred alternative; those are noted as None Stated. Some indicated that they preferred the use of only native oysters in any future restoration efforts, which was interpreted to be analogous to Alternative 8a for accounting in this table.

8a – Eastern oysters only: Enhance efforts to restore Eastern oysters; impose a harvest moratorium and compensation program for the oyster industries; cultivate Eastern oysters.

8b – Eastern oyster and triploid Suminoe oysters: Enhance efforts to restore Eastern oysters; impose a harvest moratorium and a compensation program for the oyster industries; cultivate Eastern oysters; cultivate triploid Suminoe oysters.

8c – Eastern oyster and diploid and triploid Suminoe oysters: Introduce diploid Suminoe oyster; enhance efforts to restore Eastern oysters; impose a harvest moratorium and a compensation program for the oyster industries; cultivate Eastern oysters; cultivate triploid Suminoe oysters.

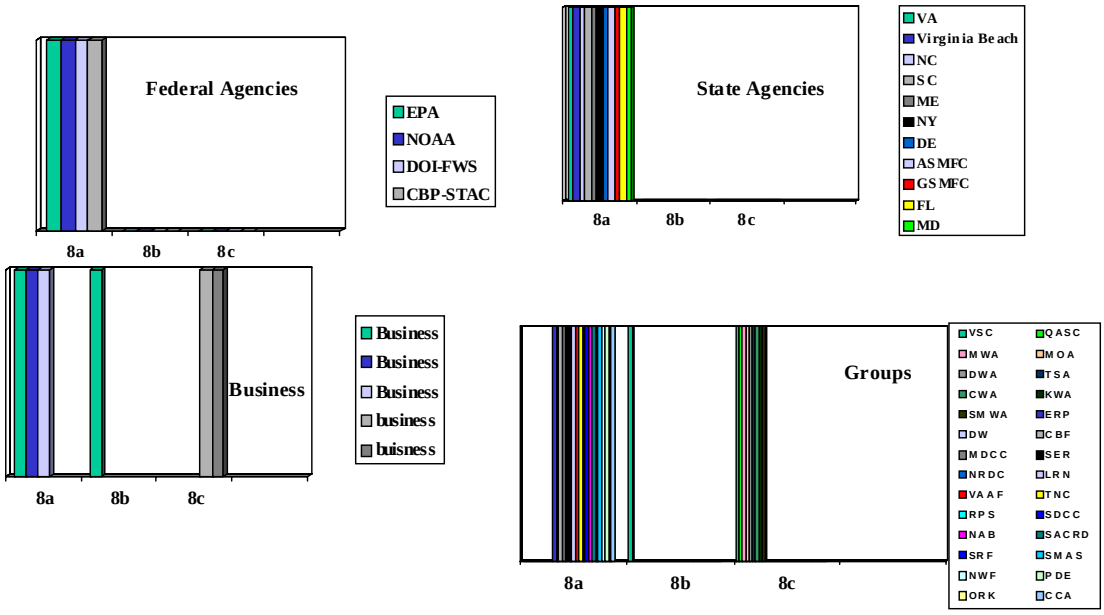

Figure 5-3. Illustration of the documented preferences of major groups for one of the combinations of Alternative 8 specified in the Draft PEIS.

support for Alternative 8a or opposed the proposed action. Approximately 2.6% (56) supported Alternative 8c; 0.2% (4) supported Alternative 8b; and 0.05% (1) endorsed the proposed action only. Approximately 2.4% (51) did not specify support for a particular alternative. Some individuals including some seafood businesses and watermen, opposed the inclusion of a harvest moratorium as part of Alternatives 8b or 8c. Figure 5-3 illustrates the documented preferences of seafood businesses for specific combinations of alternatives.

5.3 REQUIRED CONSULTATIONS

The preferred alternative (Alternative 8a) establishes a broad general direction for future oyster restoration programs to be implemented by the USACE and the States of Maryland and Virginia using only the native Eastern oyster. Preferred Alternative 8a does not define specific projects in specific locations or specify the scope of any individual element of a comprehensive restoration effort. As a result, it is not possible to identify which Federal or State statutes will be applicable and will require coordination with Federal regulatory agencies, State agencies, or both. Section 2.6 listed statues that may be applicable to future programs; this section provides greater detail concerning several of the statutes that would require consultation if they apply to a specific implementation plan.

Any future restoration programs designed to implement the preferred alternative will be likely to require permits from the USACE under Section 404 of the Clean Water Act, Section 10 of the River and Harbors Act, or both because any restoration action probably will involve either placing new substrate on the bottom of the bay or manipulating existing substrates. The USACE will review applications for such permits to determine if the proposed actions are within its jurisdiction and if they would be covered under a nationwide permit or would require individual

permits. In some cases in which an individual permit is necessary, the applicant could be required to prepare an appropriate document in compliance with NEPA regulations to facilitate the permitting decision, as noted in Section 2.6. The following statutes have specific consultation requirements that may have to be met before certain actions can be implemented.

5.3.1 Endangered Species Act (ESA) Section 7 Consultation

Section 7(a)(2) of the ESA [16 USC §1536(a)(12)] requires every Federal agency, in consultation with and with the assistance of the Secretaries of the Interior, Commerce, or both to ensure that any action it authorizes, funds, or carries out in the United States or upon the high seas is not likely to jeopardize the continued existence of any species listed as endangered or threatened, or result in destruction or adverse modification of critical habitats for listed species. This PEIS focuses on describing a proposed action and alternative management strategies for attempting to restore the abundance and functions of oysters in Chesapeake Bay and identifies the strategy preferred by the lead agencies. Federal permits may be required later at the project or site-specific level after the lead agencies develop specific, detailed plans for implementing their preferred alternative. At that point, the appropriate permitting agencies will conduct further environmental review, including consultation under Section 7(a)(2) of the ESA, if necessary.

5.3.2 Virginia Department of Conservation and Recreation Consultation

Virginia's Department of Conservation and Recreation (DCR) has requested coordination for project review of any land-based activities in Virginia's Natural Area Preserves (Section 3.10.2) that may result from this PEIS (DCR 2008). According to a Memorandum of Agreement between DCR and Virginia's Department of Agriculture and Consumer Services (VDACS), DCR represents VDACS in comments regarding potential effects on state-listed threatened and endangered species of plants and insects. The primary contact for such consultation is

Kirstal McKelvey
Coastal Zone Locality Liaison
Virginia Department of Conservation and Recreation
217 Governor Street
Richmond, Virginia 23219-2010
(804) 692-0984

5.3.3 Essential Fish Habitat Consultation

The Magnuson-Stevens Fishery Conservation and Management Act requires Federal agencies to consult with the Secretary of Commerce, through the NMFS, with respect to "any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by such agency that may adversely affect any Essential Fish Habitat (EFH) identified under this Act" [16 USC § 1855(b)(2)]. When the responsible Federal agency determines that an action may adversely affect EFH, the agency must initiate consultation with NMFS [16 USC §1855(b)(2)]. To carry out this EFH consultation the responsible Federal agency must submit an EFH assessment containing "a description of the action; an analysis of the potential adverse effects of the action on EFH and the managed species; the Federal agency's conclusions

regarding the effects of the action on EFH; and proposed mitigation, if applicable" to the NMFS. NMFS may request the responsible Federal agency to include additional information in the EFH assessment, such as the results of on-site inspections, views of recognized experts, a review of pertinent literature, an analysis of alternatives, and any other relevant information [50 CFR § 600.920(e)(4)]. Depending on the kinds and magnitudes of effects on EFH, compensatory mitigation may be necessary to offset permanent and temporary effects of the project. If the project were expected to result in substantial adverse effects on EFH, an expanded EFH consultation could be necessary [50 CFR § 600.920(i)].

The implementation of a management strategy to restore the abundance and functions of oysters in Chesapeake Bay may result in future, site-specific projects that, if authorized by the USACE, could affect EFH and thereby trigger the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. This PEIS describes the general kinds of effects that could result from the kinds of site-specific projects for restoring oysters in Chesapeake Bay that might be associated with the preferred alternative. The analysis provided in the PEIS will be used to guide the development of any EFH assessments required for future EFH consultations on site-specific proposals. For any future, site-specific project that requires an authorization from the USACE, the USACE will make a determination about whether the project would adversely affect any EFH in the project area. If adverse effects are possible, the USACE will initiate an EFH consultation by providing an EFH assessment to the NMFS' Northeast regional office. The primary NMFS contact for the required EFH consultation is

NMFS Northeast Regional Habitat Conservation Division
One Blackburn Drive
Gloucester, Massachusetts 01930-2298
Phone: (978) 281-9277

5.3.4 Fish and Wildlife Coordination Act Consultation

The Fish and Wildlife Coordination Act of 1958 (FWCA), as amended (Pub. L. 85-624; 16 U.S.C., et seq.) requires equal consideration of fish and wildlife resources when evaluating water resources development programs and projects. It provides authority for the involvement of FWS and NMFS in evaluating effects on fish and wildlife and requires Federal agencies that construct, license, or permit water resources development projects to first consult with the FWS or NMFS, as appropriate, regarding the potential effects on fish and wildlife resources and measures to mitigate those effects; therefore, in order to comply with the FWCA, the USACE will consult with the FWS and NMFS prior to making a permit decision or authorization required for future actions related to this PEIS.

5.3.5 National Historic Preservation Act Section 106 Consultation

Section 106 of the National Historic Preservation Act (NHPA) requires the head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or Federally assisted undertaking to take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places. The Advisory Council on Historic Preservation (ACHP) Regulations at 36 CFR Part 800 set forth the procedures that Federal agencies must follow to comply with

Section 106 of the NHPA. The Section 106 compliance process is undertaken in consultation with the State Historic Preservation Office (SHPO), Tribal Historic Preservation Office(s) (THPO), and other interested parties to identify historic properties that may be affected by the project, to assess the potential for adverse effects on those properties and, if the potential for an adverse effect is found, to seek ways to avoid, minimize, or mitigate the adverse effects. Section 36 CFR 800.8 of the ACHP regulations outlines the procedures for coordinating Section 106 compliance with the National Environmental Policy Act (NEPA) process. In that process, consulting parties provide information about specific historic properties that may be affected by the proposed project during the NEPA scoping phase. The NEPA document then provides an assessment of the potential for adverse effects on those properties and identifies proposed measures to mitigate the potential adverse effects. Prior to, or within the time allowed for public comment on the NEPA document, the SHPO, THPO, ACHP, or other consulting party may object that preparation of the NEPA document has not met the standards set forth in the ACHP regulations, or that the substantive resolution of the effects on historic properties proposed in the NEPA document is inadequate. If such an objection is received, the matter is referred to the ACHP, which has 30 days to provide an opinion on the objection. The responsible Federal agency must consider the opinion of the ACHP in reaching a final decision on the issue of the objection and must prepare a summary of the decision that contains the rationale for the decision and evidence of having considered the ACHP's opinion.

This PEIS describes the general kinds of effects on historic properties that could result from the kinds of site-specific projects for restoring oysters in Chesapeake Bay that might be associated with implementing the preferred alternative. The analysis provided in the PEIS will be used to guide consultations on site-specific proposals. For any future, site-specific project, the appropriate responsible Federal agency will make a determination about whether the project would adversely affect any historic properties in the project area. If adverse effects are possible, the responsible Federal agency will initiate a consultation by contacting the appropriate SHPO. The SHPOs for Maryland and Virginia are

J. Rodney Little, Director and SHPO
Maryland Historical Trust
Division of Historical and Cultural Programs
100 Community Place
Crownsville, Maryland 21031-2023

Kathleen Kilpatrick, Director
Virginia Department of Historic Resources
2801 Kensington Avenue
Richmond, Virginia 23221