DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1715
BALTIMORE, MARYLAND 21203-1715

JUN 25 2014

# FINDING OF NO SIGNIFICANT IMPACT

## SHALLOW WATER OYSTER RESTORATION IN HARRIS CREEK OYSTER SANCTUARY, MARYLAND

The Baltimore District of the U.S. Army Corps of Engineers (USACE-Baltimore) is proposing to extend oyster reef restoration into shallower water depths than is currently permitted. Existing National Environmental Policy Act (NEPA) documentation in 1996, 1999, and 2009 evaluated the impacts of oyster reef restoration at water depths that maintain at least an 8 foot water column above restored reefs for navigational purposes. Currently, one foot of material is placed on the bottom to restore reef habitat which limits restoration to water depths deeper than 9 feet mean lower low water (MLLW). USACE has prepared a supplemental environmental assessment (EA) documenting the expected project impacts of expanding oyster restoration and rehabilitation activities for reef bar construction and seeding by USACE into water depths between 6 to 9 feet. This would maintain at least a 5 foot water column above restored reefs within the Harris Creek oyster sanctuary. The Maryland Department of Natural Resources (MD DNR) has previously received a permit from the Regulatory Branch of USACE-Baltimore (CENAB-OP-RMN (MD DNR Fisheries/Harris Creek/Oyster Restoration/Alternate Materials & Oyster Shell) 2012-61332-M24) to construct all the sites being evaluated (74 acres across 34 sites) by this supplemental EA for restoration by USACE.

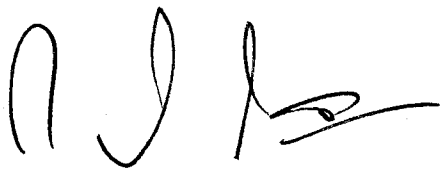
In 1996, USACE-Baltimore District produced a report entitled *Chesapeake Bay Oyster Recovery Project, Maryland* that identified six Oyster Recovery Areas (ORA's) including the Choptank River complex. Three years later, a 1999 supplemental EA was conducted to evaluate the impacts associated with constructing 18 acres of seed bar habitat in Eastern Bay located in Queen Anne's County, Maryland. In May 2002, the Baltimore District prepared an additional decision document to include project construction beyond 2000 and to increase the total project cost. This construction, known as Phase II, continues today. In May 2009, the Baltimore District completed a separate stand-alone EA that evaluated the use of alternate substrate materials for constructing reef habitat due to the shortage of fossilized shell entitled *Chesapeake Bay Oyster Restoration Using Alternate Substrate, Maryland.* These reports are hereby incorporated by reference.

The supplemental EA was prepared in accordance with the provisions of NEPA of 1969, as amended. Potential impacts from the proposed action were assessed with regard to the physical, chemical, and biological characteristics of the aquatic and terrestrial ecosystem, endangered and threatened species, hazardous and toxic materials, aesthetics and recreation, cultural resources, commercial and recreational fishing, boating and navigation, other waterway uses, and the general needs and welfare of the public. This EA documents the overall effects of the proposed action and finds that there will be minor, temporary impacts during construction to benthic organisms, local turbidity, recreational and commercial fishermen, fish (eggs, larval, and juvenile stages), noise, and aesthetics for residents. Specific attention was given to potential impacts to navigation by reducing the navigational clearance from 8 to 5 ft MLLW. MD DNR completed a waterways assessment, input was provided by the United States Coast Guard, and USACE-Regulatory screened all sites through the MD DNR permitting process. Any sites that posed a

problem for navigation were eliminated. Another primary concern was the potential impact the use of alternate substrates (stone) may pose for commercial crabbers who use trotlines. To minimize potential impacts, input from commercial crabbers was sought through public outreach. Further, the use of granite for reef restoration is minimized and many granite sites will have mixed shell placed on top of the stone to reduce the potential for the stone to catch trotlines.

In accordance with Section 404 of the Clean Water Act, a Section 404(b)(1) analysis was conducted for the proposed action. The analysis determined that expanding oyster restoration into shallower waters would not result in negative impacts to the aquatic environment. On June 10, 2013 USACE (Baltimore Operations Division) signed a FONSI and issued a permit under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act to allow MD DNR to restore 136 acres of shallow water oyster reef habitat (between 6 – 9 ft MLLW) in Harris Creek (Permit #2012-61332-M24). MD DNR also received a Wetlands License from the Maryland Board of Public Works (12-WL-131) and a Water Quality Certification from the Maryland Department of the Environment to perform the shallow water reef restoration. Subsequently, MDNR has decided to restore a portion, 62 acres of the permitted project. This supplemental EA is specific to the remaining 74 acres and work will be completed under MD DNR's Water Quality Certification.

Upon reviewing the EA, I find that the potential negative impacts to benthic and open water habitat associated with the implementation of the project will occur over a small area and will be minimal and short-term. The project will produce a net beneficial impact to the environment through the creation of habitat for oysters and other species associated with oyster communities and does not constitute a major federal action significantly affecting the quality of the human environment. Based upon this finding, preparation of an environmental impact statement (EIS) is not required.



J. Richard Jordan, III
Colonel, Corps of Engineers
District Engineer