



February 20, 2018

Department of Natural Resources & Environmental Control
Wetlands & Subaqueous Lands Section
89 Kings Highway
Dover, DE 19901

Email submitted to: gayle.calder@state.de.us

Dear DNREC:

The Delaware Riverkeeper Network opposes issuance of a 401 Water Quality Certification and Subaqueous Lands Permit to the US Army Corps of Engineers to place approximately 300,000 cubic yards of a rock/cobble/sand/gravel mix in the deep hole located on the South side of the Inner Wall of the Harbor Refuge Breakwater located approximately 3,000 feet North of the Cape Henlopen Point in the Delaware Bay, Sussex County, Delaware. The Delaware Riverkeeper Network is opposed to this Army Corps Sand & Rock Dumping Project because it poses a critical threat to the Atlantic sturgeon of the Delaware River and all of the United States Atlantic Sturgeon populations already identified as at risk of extinction due to previous ill-advised projects, actions and activities. Not only does this Army Corps Sand & Rock Dumping Project pose a serious, imminent and irreparable danger to all five distinct population segments of U.S. Atlantic Sturgeon, but the Army Corps didn't even recognize and consider this major threat in the readily available application and materials easily accessible to the public.

The Delaware Riverkeeper Network urges an additional 60 days for written comment as well as a series of public hearings to consider this ill-advised project and to allow the public to weigh in on its devastating consequences for protecting the Delaware River's genetically unique population of Atlantic Sturgeon as well as all five Distinct Population Segments of Atlantic Sturgeon, including the four that have been listed as endangered under the federal endangered species act (New York Bight which includes the Delaware River population, Chesapeake Bay, Carolina, South Atlantic) and including the fifth that has been listed as threatened (Gulf of Maine). Atlantic Sturgeon have also been identified by the State of Delaware as being endangered.

The Delaware River Deepening project is already taking its toll on the Atlantic Sturgeon of the Delaware River and its habitat. Dredging, rock blasting, ship strikes and more are already taking from

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our genetically unique population. We have less than 300 spawning adults left of our Delaware River line of Atlantic Sturgeon. It is reprehensible that the Army Corps and DNREC would allow further damage to be inflicted to this genetically unique line already on the brink of extinction. Further, it is reprehensible for the Army Corps and DNREC to even consider allowing damage to a unique and irreplaceable foraging ground that is critical for supporting Atlantic sturgeon growth and reproduction of all 5 distinct population segments all already on the path to extinction if strong action is not taken to prevent it.

While we certainly appreciate the Army Corps' stated desire to prevent loss of the lighthouse at issue, this desire cannot be pursued in a way that will advance loss of an entire species, or any of its genetically important distinct population segments. In truth, we believe the assertion that the Army Corps seeks to secure the lighthouse is merely a rouse, designed to provide a justification for an ill-advised and uninformed project they are seeking to pursue.

Furthermore, while the Army Corps would like to start its Sand & Rock Dumping Project immediately, the fact is that this is a situation that has been developing for 100 years. The Army Corps' press for a rush decision despite the devastating impacts to be inflicted on Atlantic Sturgeon populations is reprehensible, indefensible and wrong. The sense of urgency conveyed by the Army Corps in its application materials, and its press for rushed judgement by February 10, 2018 is -- plain and simple - - manufactured.

According to scientists, the deep hole at the eastern end of the outer breakwater at the Harbor of Refuge is well-documented as a congregation area for Atlantic in the months spanning April through October. The physical properties of this geographic site are the reason it is so special and important for the sturgeon. The sites physical properties and geographic location also mean that this site is itself unique, and therefore irreplaceably important to the support, growth, and propagation of the Atlantic sturgeon.

The deep hole at the south end of the Harbor of Refuge being targeted by the Army Corps of Engineers for its Sand & Rock Dumping Project provides unique and critical habitat for the Atlantic Sturgeon of the Delaware River and indeed all five federally listed distinct population segments (DPSs) in the United States. In fact, experts have described this deep hole as "one of the most important marine/estuarine habitats to adult and sub-adult Atlantic sturgeon from all five federally listed distinct population segments (DPSs) in the United States." The type of habitat at issue, as well as this precise geographic area, are identified in peer review scientific publications as being preferred marine habitat and likely providing unique and crucial foraging area and a physiological refuge. Scientific research has identified this precise area as being well used for all estuarine and marine life history phases of Atlantic sturgeon, including migratory sub-adults, pre-spawning adults and post-spawning adults.

Not only is this area identified by scientists as being important for foraging and growth, it is also identified as important for supporting Sturgeon spawning and reproduction. Because Atlantic sturgeon do not feed while engaged in spawning runs, the existence of this critical foraging area that supports growth and gonad production becomes all the more important for supporting spawning and reproductive success.

The deep hole area to be devastated by the Army Corps Sand & Rock Dumping Project may be one of the most critical feeding and aggregation sites currently known for the Atlantic sturgeon anywhere in their range, particularly the genetically unique Delaware River populations. And yet, the proposal to dump sand and rock on these critically important subaqueous lands has not received any of the needed evaluations of probable impacts to sensitive environmental resources nor the Atlantic sturgeon. In fact, the Army Corps Sand & Rock Dumping Project application and materials provide no evaluation of environmental impacts, no recognition of federal or State of Delaware "endangered" resources utilizing this area, and no evaluation of possible alternatives to minimize or eliminate environmental impacts. Of further concern, neither the application form nor the documents made easily available upon seeing the public notice even mentions the Atlantic sturgeon, let alone highlighting their endangered status and the potentially devastating consequences of this project for the species. It is not even clear if there was any consultation with the National Marine Fisheries Service or the well-known fishery scientists of the region that focus on Atlantic Sturgeon populations and health.

Clearly, the requested 401 Water Quality Certification and Subaqueous Lands Permit to the US Army Corps of Engineers to place approximately 300,000 cubic yards of a cobble/sand/gravel mix in the deep hole located on the South side of the Inner Wall of the Harbor Refuge Breakwater located approximately 3,000 feet North of the Cape Henlopen Point in the Delaware Bay, Sussex County, Delaware must be denied outright. At a minimum, the public deserves adequate time to review and comment upon this proposal that the Army Corps attempted to slip under the radar with its misplaced pressure tactics for a swift decision -- including multiple public hearings accessible to all facets of the public, including those residing in Delaware and those residing outside the state who will be impacted equally by the devastating consequences this project may propose for all five distinct population segments of Atlantic sturgeon.

Sincerely,

A handwritten signature in blue ink that reads "Maya K. van Rossum". The signature is written in a cursive, flowing style.

Maya K. van Rossum
the Delaware Riverkeeper