



# A Deepening Crisis on the Delaware

If the Army Corps of Engineers gets its way, not only will the Delaware River be in peril—so will the legal foundations of America’s environmental laws.

By Maya K. van Rossum, Delaware Riverkeeper

The Delaware River, flowing 330 miles through New York, New Jersey, Pennsylvania and Delaware, is the last major river east of the Mississippi with no dams on its main stem. Once abundant with fish, crustaceans, birds and wildlife, it was so polluted by the 1950s that it contained a 20-mile oxygen-depleted dead zone near Philadelphia and Camden, N.J., through which no fish could pass. In the 1960s, citizen action and strong laws sparked a comeback for the Delaware, as for many other imperiled rivers. The Delaware has continued to recover in the ensuing decades, but it remains extremely vulnerable to any further environmental assaults.

Today, the bay at the river’s mouth is the second-largest stopover location in the Western Hemisphere for migrating shorebirds. Anywhere from 300,000 to more than a million birds stop there each year on their way north. What makes the bay so attractive to many of them are the eggs of the largest concentration of spawning horseshoe crabs along the Atlantic coast.

Of all the migrating birds, the red knot rufa is the most awe-inspiring. In spring, the red knots leave their wintering grounds at the southern tip of South America and fly north more than 3,000 miles nonstop, arriving on the shores of Delaware Bay literally starving. They time their arrival to coincide with the spawning of the horseshoe



A container ship travels up the Delaware River.

crabs, which lay billions of tiny, energy-rich eggs on the bay's beaches. The birds feast on the eggs to restore their body weight—which declines by as much as half during their two-to-three-day flight—then complete their spring migration with another nonstop flight of more than 3,000 miles to their breeding grounds in the Canadian Arctic.

This spectacle, however, has become less grand because the bay's horseshoe-crab population has declined by as much as 75 percent due to overharvest and an array of environmental harms. As a result, the number of red knots that appear each spring has fallen even more sharply. Where once as many as 150,000 were counted on the Delaware Bay shore, there are now less than 15,000.



In November 2004, spillage of heavy crude oil from the tanker Athos I darkened 115 miles of the Delaware River.

The Delaware also once supported the largest population of shortnose and Atlantic sturgeon in North America, and was known in the late 19th century as America's "caviar capital." About 75 percent of the sturgeon harvested in the U.S. lived there. Since then, habitat loss (primarily due to deepening and dredging), saltwater intrusion, poor-quality or polluted water, and boat and propeller strikes are among the harms that have contributed to the sturgeons' continuing decline. It has been estimated that there are now less than 1,000 shortnose sturgeon and less than 100 Atlantic sturgeon across the entire Delaware Estuary.

Yet, with these and other magnificent species so precariously poised on the brink of extinction, the federal government is barreling down on the Delaware River with a project that could do further, devastating harm. The agency that has the river in its line of sight is the Army Corps of Engineers, who propose to deepen the river's main navigation channel from a depth of 40 feet to 45 feet from Camden to the mouth of the Delaware Bay—a distance of 102 miles. The project was first authorized by Congress in 1992 and has been the subject of fierce debate ever since. The Corps is willing to violate laws, strip states of their legal rights, and spend over \$300 million to severely damage nearly one-third of the Delaware and a vast array of wetlands and wildlife, while also threatening thousands of jobs that depend on a healthy river and estuary.

The last full environmental review of the project, which was required by federal law, was released in 1997. The information it contains is deficient and based on old science. The status of the Atlantic sturgeon is not considered, nor are the recent declines of the horseshoe crab and the red knot rufa. The study also lacks recent data on increasing pollution and on the destruction of wetlands that are critical for protecting communities from catastrophic storms. Threats to drink-





The Athos I oil spill polluted 280 miles of river shoreline, as seen here at Riverwinds Beach in West Deptford, New Jersey.

ing-water consumed by more than eight million residents of the region are given short shrift. And there is much more information that the Army Corps of Engineers has chosen to ignore.

Moreover, the continuing claim of a self-interested few that the deepening is of vital economic importance is simply not true. According to the Army Corps, the economic benefits of the deepening would be enjoyed mostly by six oil facilities on the river, since reduced to five. Large oil tankers entering Delaware Bay are generally heavily laden with oil, and sit 50 feet or deeper in the water. For the tankers to rise high enough to navigate the 40-foot channel, they must off-load (“lighter”) a portion of their cargo onto smaller ships. If the channel is dredged to reach 45 feet, the tankers will still have to lighter, just a bit less. This would reduce costs for the oil companies, but it wouldn’t increase oil volume or refinery jobs because the Delaware River refineries already operate at capacity. It would, however, cut profits for the lightering company and probably cost jobs there.

Yet, remarkably, the oil companies themselves are not vocal supporters of the deepening plan. None of the five now operating on the river has ever committed to or invested in private chan-

nel deepening, nor in facility upgrades needed to take advantage of a deepened channel. Indeed, in the past, other refineries located there have even opposed the deepening, stating it would provide them with no benefit. Why should taxpayers fund a project to which the primary beneficiaries, members of a multi-billion-dollar industry, won’t contribute a dime?

The Army Corps itself has recognized that deepening would not expand oil or cargo deliveries along the river, that its only benefit would be increased efficiencies in shipping. In its most recent project-assessment, the Corps stated that “the mix and volume of cargoes coming to the benefiting terminals will be equivalent for either the current 40 foot or the proposed 45 foot channel depths. . . . There is no induced [i.e., increased] tonnage as a result of the deepening project.” In a letter to fellow agencies, the Corps explained, “The purpose of the deepening project is to make it possible to handle. . . cargo in a more efficient way. This efficiency takes the form of more-heavily-loaded vessels. With the deeper channel, fewer total vessel calls will be required . . .”

The Corps claims that deepening the river is necessary to “maintain navigation.” But navigation

Red knots depend on horseshoe crabs to fuel their spring migration and are among the species that could be harmed by deepening. It is a species already at risk of extinction because of horseshoe crab declines.



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Young Atlantic sturgeon caught by researchers in the Delaware River.

has never been at risk along the Delaware. Since 1990, without the “benefit” of a main channel deeper than 40 feet, the Port of Wilmington has grown nearly 300 percent in container-port traffic and the Port of Philadelphia nearly 400 percent, an increase exceeded by only three ports on the East Coast.

Other project supporters have repeatedly claimed that the deepening would deliver more goods and more jobs, but such claims directly contradict the Army Corps’s own claims for the project and have never been documented. Yet the Corps sits silently by and allows a misinformation campaign to operate at full force. It has also allowed Pennsylvania Governor Ed Rendell and Senator Arlen Specter to seize full local control over the project and stifle opposition from neighboring New Jersey and Delaware, which had successfully stalled the project for years. And the Army Corps sat silently by when, in a written agreement, Rendell falsely promised former New Jersey Governor Jon Corzine that Pennsylvania would “accept all spoils material from the project.” In fact, the plan has always been for all dredge spoils to be dumped in New Jersey and Delaware communities (over 80 percent to New Jersey), and none in Pennsylvania.

In the Army Corps’s view, the necessity of deepening to maintain navigation exempts the project from key environmental laws, thereby stripping Delaware and New Jersey of legal authority over the project. Through the Freedom of Information Act, the Delaware Riverkeeper Network learned that, in April 2009, in one of his last official acts in office, John Paul Woodley, the Bush-appointed Assistant Secretary of the Army (Civil Works), signed a legal finding that excluded the project from state-mandated requirements, including a Delaware Subaqueous Lands and Wetlands permit that was about to be denied after eight years of public process and consideration. E-mail messages documented that

the Army Corps crafted this last-minute strategy in anticipation of changed policy in the new administration. They could hardly have imagined that, in fact, the Obama administration would embrace this legal position as fully as if they had established it themselves.

Governor Rendell and Senator Specter contend that the project would create jobs, but this claim has never been documented or demonstrated. In fact, the harm being threatened to the fish and wildlife put thousands of existing jobs and businesses at considerable risk.

Recreational fishing is a major source of economic revenue in the region. Fishing in Delaware state waters, including the Delaware River, generates about \$29 million in earnings each year, supporting 1,605 jobs. In New Jersey, fishing in state waters, also including the Delaware, generates annually more than \$400 million in earnings and supports 16,750 jobs. The harvest of oysters from the Delaware Estuary generates up to \$80 million of annual income for the region, much of this in some of New Jersey’s poorest communities. The horseshoe crabs and shorebirds of Delaware Bay contribute significantly to a \$68-million-per-year ecotourism industry, providing crucial support to local economies in the off-season. The horseshoe crab is also critical to the biomedical industry. Its blood, drawn non-lethally, is used to test the safety of medical devices, vaccines and intravenous drugs. The U.S. Fish and Wildlife Service has estimated the value of this service to the biomedical industry at \$150 million.

Why are Rendell and Specter such strong supporters? The simple explanation seems to be that it’s an easy way to generate media attention and gain the votes of ill-informed citizens. It remains a mystery, however, why President Obama and Vice President Biden, a longtime Delaware senator, would allow the Army Corps to deliberately ignore the rights of states and other federal and state





A horseshoe crab from the Delaware Bay seeks a place to lay its eggs.

regulatory agencies. So doing, our national leaders put at risk the entire fabric of U.S. environmental protection law.

The manipulation and misrepresentation that surrounds the Delaware deepening continues despite revelations and challenges by a wide variety of credible agencies and sources. In 2002, the Government Accountability Office (GAO), an investigative arm of Congress, issued its first in-depth review of the proposed project. In a very pointed report, the GAO announced that the U.S. Army Corps of Engineers' analysis of the project's benefits was based on "miscalculations, invalid assumptions, and outdated information." The GAO was able to find credible support for only one-third of the \$40.1 million in annual benefits that the Corps had claimed for the project, and it demonstrated that, for every dollar spent on the project, only 49 cents of benefit would be returned.

Just this year, another GAO report concluded that the Army Corps still has not provided an accurate picture of the Delaware deepening and

Deepening threatens to expose bald eagle populations along the Delaware to dangerous toxins that devastated them in the past. The birds have been making a comeback as the result of careful protections.



its ramifications for the river and river communities. The GAO stated that, "Because of omissions, decision makers do not have sufficient updated information to judge the extent to which market and industry changes would affect the project's net benefits." There is no explanation for such obvious oversights, except incompetence or deliberate deception.

Every publicly available report that critically reviews the project has been unable to justify the deepening economically. The lightering company has documented that three ships are essential for it to efficiently and effectively deliver its services, and that a fleet reduction to two is not viable.

Moreover, since the project was first proposed, supporters have tried to convince the public that it would not threaten the Delaware River, and that it has cleared all environmental-protection hurdles. Nothing could be further from the truth. Many agencies and experts, basing their judgments on sound scientific principles, have documented the depth and breadth of the threats that deepening the river poses to the environment and to river communities. Those questioning the project include: the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Delaware River Basin Commission, the Delaware Department of Natural Resources and Environmental Control, the New Jersey Department of Environmental Protection, and the University of Delaware's Sea Grant Program. Their analyses have shown that the deepening would change water patterns in ways that would exacerbate erosion of wetlands that are important ecologically and provide storm-protection; that it would penetrate known toxic hot-spots, introduce heavy metals, pesticides, and other poisons into the river, and that its toxin-laden dredge spoils would be disposed of in areas where they would cause harm.

Potential victims of the project, in addition to horseshoe crabs, shortnose and Atlantic sturgeon and migratory shorebirds, include various sport fish, peregrine falcons and bald eagles. Deepening would also move the salt-water line upriver,



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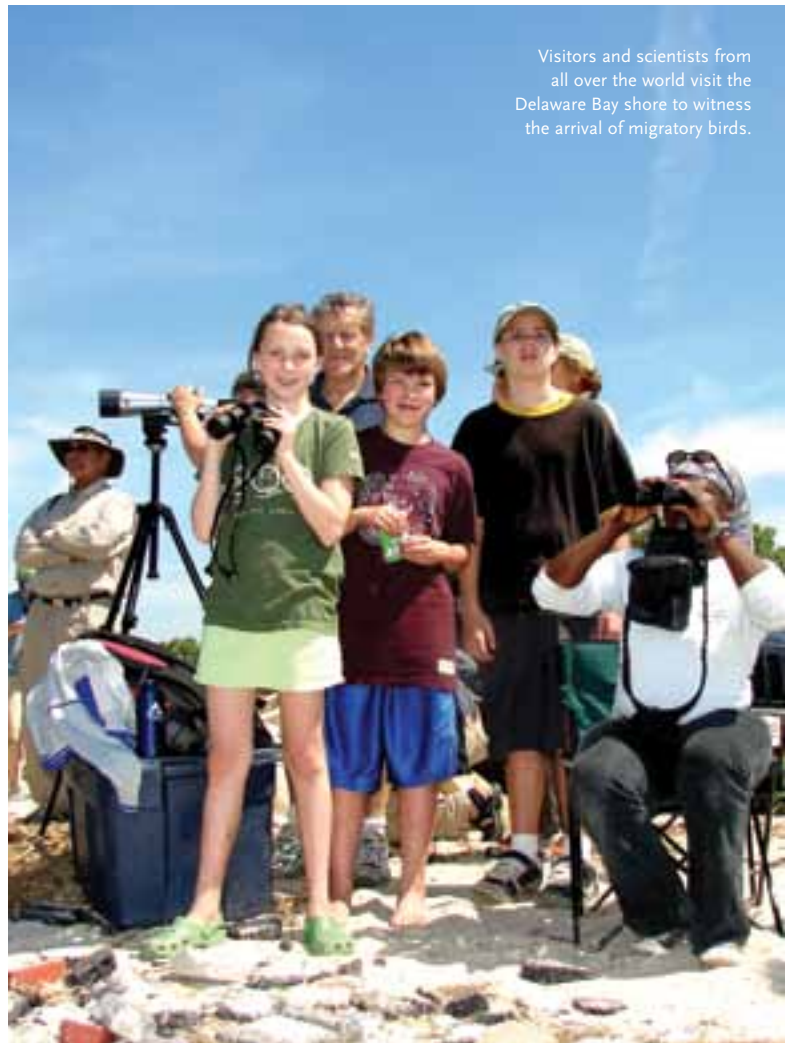
threatening oyster populations, drinking-water supplies, and estuarial salt marshes. And increasing the volume of oil tankers would also increase the threat of oil spills.

Where does deepening the Delaware stand today? The states of New Jersey and Delaware have brought legal actions against the project. And five environmental organizations, including the Delaware Riverkeeper and the National Wildlife Federation, represented by attorneys from the Delaware Riverkeeper Network's River Resources Law Clinic, are challenging the project in federal district courts on both sides of the river.

A legal and political victory for the Army Corps of Engineers would mean the unraveling of key protections stipulated in the National Environmental Policy Act, the Clean Water Act, the Clean Air Act and other laws. And it would sever the carefully crafted links between these federal laws and state environmental protection, many of which have been carefully constructed to fill gaps left by federal laws.

Anyone who values our nation's essential and hard-won safeguards for our vastly diverse and dazzling environment should write to President Obama, Vice-President Biden and Congressional representatives to express, as passionately as possible, his or her concern about what happens on the Delaware, and to appeal, as vehemently as possible, for an end to all funding, all support, all action that would result in the deepening of the river. The quality of every American's life depends on it.

For more information on this project, go to [www.delawariverkeeper.org](http://www.delawariverkeeper.org).



Visitors and scientists from all over the world visit the Delaware Bay shore to witness the arrival of migratory birds.