

Alliance for a Living Ocean
American Littoral Society
Arthur Kill Coalition
Asbury Park Fishing Club
Bayberry Garden Club
Bayside Saltwater Flyrodiers
Belford Seafowl Co-op
Belmar Fishing Club
Beneath The Sea
Bergen Save the Watershed Action Network
Berkeley Shores Homeowners Civic Association
Cape May Environmental Commission
Central Jersey Anglers
Citizens Conservation Council of Ocean County
Clean Air Campaign
Coalition Against Toxics
Coalition for Peace & Justice
Coastal Jersey Parrot Head Club
Coast Alliance



Ocean Advocacy
Since 1984

Clean Ocean Action

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January 17, 2004

Lieutenant Colonel Robert J. Ruch
District Engineer, U.S. Army Corps of Engineers
Philadelphia District
Wanamaker Building
100 Penn Square East
Philadelphia, Pennsylvania 19107-3390

Ruth Ehinger
Manager, Office of Policy, Planning and Science
Department of Environmental Protection
401 E. State St.
PO Box 418
Trenton, NJ 08625-0418

Submitted via FACSIMILE

Re: Comments on the New Jersey Department of Environmental Protection's, Division of Fish and Wildlife, application (No. CENAP-OP-R-2004001135-1) for a Department of the Army permit for the deployment of artificial reef materials at 14 artificial reef sites and a new proposed site along the coast of New Jersey

Dear Lieutenant Colonel Ruch and Ms. Ehinger;

Clean Ocean Action submits comments on the New Jersey Department of Environmental Protection's, Division of Fish and Wildlife, application (No. CENAP-OP-R-2004001135-1) for a Department of the Army permit for the deployment of artificial reef materials at 14 artificial reef sites and one proposed site along the coast of New Jersey. Clean Ocean Action (COA) has reviewed the Public Notice as well as the application materials, which were provided under our Freedom of Information Act request that was received on January 18, 2005. COA strongly urges the U.S. Army Corps of Engineers (the "Corps") to deny the permit application based on extensive deficiencies in the application. Artificial reefs can provide habitat for marine life when appropriately sited and managed.

In sum, COA's concerns regarding the permit are as follows.

1. The list of "materials of opportunity" are outdated and do not reflect current New Jersey Department of Environmental Protection Policy

Communication Workers of America, Local 1034
Concerned Businesses of COA
Concerned Citizens of Bensonhurst
Concerned Citizens of COA
Concerned Citizens of Montauk
Dossil's Sea Roamers
Eastern Monmouth Chamber of Commerce
Environmental Response Network
Explorers Dive Club
Fisheries Defense Fund
Fishermen's Dock Cooperative
Fisher's Island Conservancy
Friends of Island Beach State Park
Friends of Liberty State Park
Friends of Long Island Sound
Friends of the Boardwalk
Garden Club of Englewood
Garden Club of Fair Haven
Garden Club of Long Beach Island
Garden Club of Montauk
Garden Club of Navesink
Garden Club of New Jersey
Garden Club of New Vernon
Garden Club of Oceanport
Garden Club of Princeton
Garden Club of Ridgewood
Garden Club of Rumson
Garden Club of Short Hills
Garden Club of Shrewsbury
Garden Club of Spring Lake
Garden Club of Washington Valley
Great Egg Harbor Watershed Association
Greater Point Pleasant Charter Boat Association
Hi-Mar Striper Club
Highlands Business Partnership
Highlands Chamber of Commerce
Hudson River Fishermen's Association/NJ
Interact Clubs of Rotary International
Jersey Coast Shark Anglers
Jersey Shore Audubon Society
Jersey Shore Captains Association
Jersey Shore Running Club
Junior League of Monmouth County
Junior League of Summit
Kiwanis Club of Manasquan
Kiwanis Club of Shadow Lake Village
Leonardo Party & Pleasure Boat Association
Leonardo Tax Payers Association
Main Street Wildwood
Marine Trades Association of NJ
Monmouth Conservation Foundation
Monmouth County Association of Realtors
Monmouth County Audubon Society
Monmouth County Friends of Clearwater
Montauk Fisherman's Emergency Fund
National Coalition for Marine Conservation
Natural Resources Protective Association
Navesink River Municipalities Committee
Newcomers Club of Monmouth County
NJ Beach Buggy Association
NJ Commercial Fishermen's Association
NJ Council of Dive Clubs
NJ Environmental Federation
NJ Environmental Lobby
NJ Marine Educators Association
NJ PIRG Citizen Lobby
NJ Sierra Club
NJ Windsurfing Association
Nottingham Hunting & Fishing Club
NYC Sea Gypsies
NY/NJ Baykeeper
NY Marine Educators Association
Ocean Advocates
Ocean Conservancy
Ocean County Citizens for Clean Water
Ocean Divas
Ocean Wreck Divers
Outreach/First Presbyterian Church of Rumson
Piscataway Saltwater Sportsmen Club
Raritan Bay Anglers Club
Raritan Riverkeeper
Riverside Drive Association
Rotary Club of Long Branch
Saint George's by the River Church, Rumson
Saltwater Anglers of Bergen County
Sandy Hook Bay Catamaran Club
Save Barnegat Bay
Save the Bay
SEAS Monmouth
Seaweeds Garden Club
Shark River Cleanup Coalition
Shark River Surf Anglers
Sheepshead Bay Fishing Fleet Association
Shore Adventure Club
Shore Surf Club
Sierra Club, Shore Chapter
Soroptimist Club of Cape May County
South Monmouth Board of Realtors
Staten Island Friends of Clearwater
Strathmore Fishing & Environmental Club
Surfers' Environmental Alliance
Surfrider Foundation, Jersey Shore Chapter
TACK I
Terra Nova Garden Club
Unitarian Universalist Congregation of Mon. County
United Boatmen of NY/NJ
United Bowhunters of NJ
Volunteer Friends of Boaters
Waterspirit
Women's Club of Brick Township
Women's Club of Keyport
Women's Club of Long Branch
Women's Club of Merchantville
Zen Society

2. The applicant has not adequately shown that the proposed work would not affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act.
3. The application does not adequately address the requirements of the New Jersey Coastal Management Program.

These concerns are discussed in detail below:

1. The list of Materials of Opportunity are outdated and do not reflect New Jersey Department of Environmental Protection's (NJ DEP) Policy Directive 2003-02 or Sept. 2004 NJ "Draft Artificial Reef Management Plan"
 - a. Obsolete subway cars should be removed from the list of material of opportunity. NJ DEP Commissioner Brad Campbell issued Policy Directive 2003-02, in April 2003, which placed an 8-year moratorium on the placement of subway cars and certain other artificial reef materials. There is no mention of the Directive in either the PN or the permit application. In addition to the moratorium the Directive also includes:
 - i. The formation of the Technical Reef Advisory Committee to monitor the 250 subway cars already deployed to determine whether they are appropriate materials of opportunity. Monitoring will include information on asbestos impacts, durability and stability, and fish usage.
 - ii. The requirement that all future artificial reef materials, including materials of opportunity, MUST:
 1. be pollution free
 2. be limited to thick, dense materials
 3. meet a standard of "*retaining a minimum of 90% of original structural integrity for 30 or more years*"
 - iii. The following materials are the only materials that are automatically deemed to meet the above listed standards:
 1. Ships/barges
 2. Dredged rock/rock
 3. Cast concrete forms, pipes, slabs and block
 4. Structural steel exceeding 0.25 inches thick
 5. Obsolete military vehicles
 6. Manufactured reef habitats made of concrete and steel.
 - b. Curiously, the ACOE application included over 25 pages of subway car related correspondence dated between 2000 and 2001 this information should be deleted from the record as it is irrelevant to the proposed application. Should the ACOE determine these documents are relevant to the application, please provide COA with a detailed justification.
 - c. Concrete-ballasted tires should to be removed from the list of material of opportunity:
 - i. NJ DEP discontinued the use of tires as reef material in 1998, "*...after DEP discontinued the use of tires in 1998, all county tire reef programs were terminated.*"¹

¹ New Jersey's Sept. 2004 updated "Draft Artificial Reef Management Plan, Page 53, Section 5.4.5

- ii. The document clearly states NJ DEP has rejected the appropriateness of tires as Artificial Reef material “*Lightweight materials, such as wood, fiberglass and tires, are unacceptable and are no longer used to build reefs.*”²
 - iii. Later in the document, they specifically state that auto tires are not used and have a potential to introduce chemical compounds into the marine environment. “*The use of manmade materials, such as auto tires (not used anymore), plastic (not used), concrete debris and ships, to construct reefs opens the potential for introducing chemical compounds into the marine environment.*”
 - d. Ocean Communications Cables (listed in Attachment B of the permit application) should be removed from the list of material of opportunity. In COA’s comments to NJ DEP on the Draft Artificial Reef Plan (submitted 12/06/04), COA questioned the appropriateness of using obsolete telecommunication cables as reef materials as there are several concerns about these materials (100’ diameter piles of cable 3’ to 10’ in profile). Cables clearly do not meet the specific conditions developed by NJ DEP and are therefore not appropriate artificial reef material.
 - i. A study analyzing failures of ocean communications cable cited commercial fishing operations as the most significant hazard to the cables resulting in damage⁴. On their own, these cables may be resistant to deterioration, but many of the older ones have already sustained significant damage while in place. These cables can contain contaminants such as copper wire cores, coal-tarred hemp or polyethylene plastic coverings and lead based stabilizers.
 - ii. The New Jersey Plan clearly states that environmentally hazardous material should not be used⁵ and plastic materials should not be used⁶:
- 2. Section 7 of the Endangered Species Act (ESA) requires a NOAA/NMFS consultation:
 - a. The PN states, “*A preliminary review of this application indicates that the proposed work would not affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended.*” A preliminary review is inadequate. Section 7(a)2 of the ESA requires all Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species. It is our understanding that your office has not yet requested a formal consultation with NOAA/NMFS as is required in Section 7 of the ESA. COA requests copies of any documents associated with the NOAA/NMFS consultation.
 - b. It has been reported that sea turtles become entangled in monofilament line that collects on some of the artificial reef material approved for New Jersey’s program. This contradicts the applicant’s statement #2.d. in the “Comments to Environmental Impact Check List”, “*...reefs would have no effects on reptiles*”. It is important that effects (or lack of) of reefs on marine mammals, birds, and reptiles are adequately investigated and if adverse effects are determined, NOAA/NMFS should recommend permit conditions to eliminate entanglement or other adverse effects.

² New Jersey’s Sept. 2004 updated “Draft Artificial Reef Management Plan Page 66, 2nd ¶

³ New Jersey’s Sept. 2004 updated “Draft Artificial Reef Management Plan, Page 80, Section 4, 1st ¶

⁴ A. J. Munitz. 1966. Analyzing Failures of Ocean Communications Cable. Undersea Technology 7: 45-49

⁵ New Jersey’s Sept. 2004 updated “Draft Artificial Reef Management Plan, Page 6, Section 7 (C)

⁶ New Jersey’s Sept. 2004 updated “Draft Artificial Reef Management Plan, Page 69, Section 6.2.7, 2nd Sentence and Page 81, 5th ¶, 1st Sentence

3. Section 307(c) of the Coastal Zone Management Act requires that applicant's for Federal licenses or permits that conduct an activity affecting land or water uses in a State's coastal zone must provide certification that the activity complies with the State's Coastal Zone Management Program. Additionally, any such certification by the state must reflect current state policies that stipulate requirements contained in the New Jersey Policy Directive 2003-02. The application does not contain information relating to such state certification; therefore, the application is incomplete.

COA believes the activities proposed in the application do not adequately address the requirements of the New Jersey Coastal Management Program, specifically that construction of artificial reefs is conditionally acceptable provided that at the time of deployment, and at all times after creation, various conditions are met, including: the reef materials shall not pose a threat to the marine environment, shall not be toxic, and shall not be hazardous (NJAC 7:7E-4.21(c)). The use obsolete subway cars are currently under an 8-year moratorium. Once conclusive results of these studies are completed, a determination can be made as to the compliance with this section of the state Coastal Zone Management Program.

As you are aware, 33 C.F.R. 322.5 requires that the District Engineer “*review the applicant's provisions for siting, constructing, monitoring, operating, maintaining, and managing the proposed artificial reef and shall determine if those provisions are consistent*” with various standards, including, in relevant part, “*the minimization of environmental risks and risks to personal health and property.*” If the applicant's provisions are not consistent with these standards, the District Engineer shall deny the permit.

In conclusion, based on all the above points, the information submitted by the applicant is inconsistent with the applicable standards, insufficient, and in some cases, incorrect; therefore, the permit application should be denied. A written response to these comments is requested.

Sincerely,

Cindy Zipf
Executive Director

Jennifer Samson, Ph.D.
Principal Scientist

Nicole Simmons
Water Policy Analyst

cc: open letter