

POA-2003-00502-M21 USACE 404 PN Comments CTR		Link to CTR USACE PN Comment Document:	https://hdrinc.sharepoint.com/b:/r/teams/POAPhase2MarineResources/Shared%20Documents/3_%20Cargo%20Terminals%20Permitting/15_%20COE%20			HDR Internal Comments		2024Aug20
HDR Responder	Completed (Y/N)	Section	Text From Document	Page No.	Comment	Column1	Response to Agency	Notes
		Cover Letter from USACE. The 4 proposed response requests from USACE are broken down for comment. The full text is provided for convenience	This is in regard to your application for a Department of the Army (DA) permit; file number POA-2003-00502-M21, Knik Arm. Enclosed is a copy of a letter from the EPA dated August 16, 2024, and an email from Eklutna, Inc. dated July 19, 2024. It is the policy of the DA to provide an applicant the opportunity to furnish a proposed resolution or rebuttal to all objections and other substantive comments before a final decision is made on a proposed project. In this regard, we would appreciate receiving any comments that you may have on this matter. In particular, we request that you address the following issues:	1	It is the policy of the DA to provide an applicant the opportunity to furnish a proposed resolution or rebuttal to all objections and other substantive comments before a final decision is made on a proposed project. In this regard, we would appreciate receiving any comments that you may have on this matter. In particular, we request that you address the following issues: 1. EPA's comment A. Evaluating the Potential Effects of the Discharges of Dredged or Fill Material.		Please see below in this comment matrix for response to EPA's comment A.	
		Cover Letter from USACE.	1. EPA's comment A. Evaluating the Potential Effects of the Discharges of Dredged or Fill Material. 2. EPA's comment B. Compensatory Mitigation. 3. NMFS general comment regarding Essential Fish Habitat.	1	2. EPA's comment B. Compensatory Mitigation.		See below in this comment matrix for response to EPA's comment B.	
		Cover Letter from USACE.	4. Eklutna, Inc.'s request to be considered as a material source. You may voluntarily elect to contact the EPA and Eklutna, Inc. in an attempt to resolve the matter but are not required to do so, since the DA alone is responsible for making the final decision on the application. However, you should be aware that all recommendations on projects proposed to be authorized by a permit must be given full consideration in making our public interest review determination, as required by law.	1	3. NMFS general comment regarding Essential Fish Habitat.		The Port provided a technical memorandum regarding EFH consultation in a separate submittal via Aconex on 8/26/2024.	
		Cover Letter from USACE.	The concerns expressed by the EPA and Eklutna, Inc. appear to this office to be substantive. In order to complete the public interest review these concerns must be addressed. Please give your immediate attention to this matter in order to expedite the evaluation process of your permit application. It is recommended that you provide us with your comments on the matter within 30 days of the date of this letter. Failure to do so could result in the denial of your permit unless there are substantive mitigating factors to preclude such a response.	1	4. Eklutna, Inc.'s request to be considered as a material source.		See below for the Port's response to Eklutna, Inc.'s request.	
		EPA: A. Evaluating the Potential Effects of the Discharges of Dredged or Fill Material.	The EPA is providing the following comments to support the Corps in making a defensible permit decision. Based on information reviewed, it is not clear that the proposed discharges comply with Guidelines, and additional information is requested to demonstrate compliance. Specifically, additional information may be required to characterize sediments in order to make a factual determination about the proposed in-water disposal of excavated sediments. Additionally, the EPA is concerned about the lack of proposed compensatory mitigation for the proposed discharges into 7.3 acres of WOTUS. The EPA is providing the following comments to support the Corps in making a defensible permit decision.	3	...additional information is requested to demonstrate compliance [with the Guidelines]. Specifically, additional information may be required to characterize sediments in order to make a factual determination about the proposed in-water disposal of excavated sediments.		The Port plans to provide additional information required to characterize sediments in order for the Corps to make a factual determination about the proposed in-water disposal of excavated sediments.	
		EPA: A. Evaluating the Potential Effects of the Discharges of Dredged or Fill Material.		4	Additionally, the EPA is concerned about the lack of proposed compensatory mitigation for the proposed discharges into 7.3 acres of WOTUS.		The Port plans to further minimize the quantity and size of the permanent fill associated with the ground improvement workpads. The Designer of record is unable to quantify the exact acreage, but 25% to 50% of each workpad will be restored once the ground improvements are complete. This will further reduce the acreage of permanent fill. Please see below for additional information regarding compensatory mitigation.	
		EPA: A. Evaluating the Potential Effects of the Discharges of Dredged or Fill Material.		4				
		EPA: A. Evaluating the Potential Effects of the Discharges of Dredged or Fill Material.		4	The EPA is concerned contamination may exist in and around the project area and there is the potential for the proposed dredged sediments to harbor contamination. Additional information is needed regarding the physical and chemical characteristics of the sediment to be disposed of at the Anchorage Harbor Open Water Dredged Material Placement Area to demonstrate that this proposal complies with the Guidelines. Specifically, additional information is needed to make a contaminant determination as required under 40 CFR § 230.11(d). Depending on the contaminant toxicity levels identified in the sediment to be mobilized, other practicable measures may be required to demonstrate compliance with the Guidelines, specifically 40 CFR § 230.10(a).		Acknowledged and understood. The Port will provide a Tier 2 Analysis with information on the physical and chemical characteristics of the sediment in accordance with the draft Alaska Dredged Material Evaluation Framework (ADMEF).	

		EPA: A. Evaluating the Potential Effects of the Discharges of Dredged or Fill Material.		4	In the past, the EPA has suggested the Corps' use the Seattle District Dredged Material Evaluation and Disposal Procedures User Manual (User Manual) for evaluating the suitability of dredged material for projects in Alaska. This manual was only recommended as regionally-specific interim guidance while the EPA, the Corps, and the Alaska Department of Environmental Conservation collaboratively developed the the Alaska Dredged Material Evaluation Framework (ADMEF), of which a draft was released in May 2024. The ADMEF provides a framework for assessing and characterizing dredged material to determine its suitability for aquatic discharge and for ensuring that DA permits comply with the Guidelines. The EPA recommends the Corps use the ADMEF for clear and consistent regional guidance on projects that would dispose of dredged sediments in-water.		The Port initially started work on the CTR anticipating use of the Seattle User Manual, but recently became aware of the Draft ADMEF. The Port will use the ADMEF procedures for the CTR.	
		EPA: A. Evaluating the Potential Effects of the Discharges of Dredged or Fill Material.		5	The ADMEF outlines how the tiered analysis provides the information needed to make a factual determination about the placement of dredged material as required by the Guidelines. There are four tiers of evaluation: 1. Site Evaluation and History, 2. Chemical Testing, 3. Biological Testing, and 4. Special Studies. Every project is subject to a Tier 1 Evaluation, which may be the only tier required for a suitability determination, or it may indicate further evaluation by the next tiers. The decision of whether or not to proceed to the next tier is the project proponent's decision and the option of disposing of material in an upland location instead of testing for an in-water discharge is always available. Information revealed by the four-tiered approach to characterize sediment for discharge into WOTUS may be used to refine the additional measures that may be required to demonstrate the discharges are the least environmentally damaging practicable alternative (LEDPA). The Guidelines indicate that the Corps is only able to issue a CWA Section 404 permit for the LEDPA.		Acknowledged and understood.	
		EPA: A. Evaluating the Potential Effects of the Discharges of Dredged or Fill Material.		5	The project materials reviewed by the EPA did not include enough information to satisfy a Tier 1 evaluation of the 50,000 cy of silt that the applicant is proposing to dredge and dispose of in the Anchorage Harbor Open Water Disposal Site. A full list of the components of a Tier 1 evaluation is provided in Section 4 of the ADMEF. Based on a review of the available information, the EPA recommends pursuing a Tier 2 evaluation rather than a Tier 1 analysis given the numerous recent spills reported in ADEC's Prevention Preparedness and Response Spills Database.		A basic review of the ADEC Prevention Preparedness and Response Spills Database and the Contaminated Sites Database revealed that several spills and 3 contaminated sites are within 1500 feet of the CTR. For this reason, the Port elected to perform a Tier 2 Analysis with chemical and physical testing of the sediment. The Tier 2 Analysis will be provided once the lab results are received.	
		EPA: A. Evaluating the Potential Effects of the Discharges of Dredged or Fill Material.		5	The EPA understands that the Port of Alaska has collected sediment samples from the project area and that they are currently undergoing laboratory analysis. The EPA recommends that the Corps evaluate the results of the sediment sampling using the guidance provided in the ADMEF in order to make a defensible permit decision. Without the opportunity to review a sampling and analysis plan for the sediments, it is unclear to the EPA if the current sampling efforts will be sufficient to inform the Corps' factual determination. Depending on what information gaps remain, additional chemical samples or further tiers of sediment characterization may still be needed.		The Port will provide a Tier 2 Analysis based on the criteria described in the ADMEF and the results of the laboratory analysis. If any data gaps remain, the Port understands that additional samples or further tiers of sediment characterization may be required.	
		EPA: A. Evaluating the Potential Effects of the Discharges of Dredged or Fill Material.		5	If the sediments evaluated in this proposal are found to not be suitable for in-water disposal, the applicant should identify an alternative upland disposal site for the dredged material. The EPA believes finding an alternative upland disposal site is prudent because, even if the 50,000 cy subject to evaluation as part of this project are found to be suitable for in-water disposal, continued maintenance dredging, redevelopment, and expansion at the Port of Alaska may require an upland disposal option in the future if contamination is detected in sediments at a later time.		If the sediments evaluated in this proposal are found to be not suitable for in-water disposal, the Port will identify an upland area where the material can be stockpiled for treatment or eventual transfer to an approved landfill.	
		EPA: B. Compensatory Mitigation		6	The Guidelines and 2008 Final Rule on Compensatory Mitigation are clear that compensatory mitigation is applicable for impacts to all types WOTUS from discharges authorized by DA permits. The Guidelines require that compensation be provided if it is practicable to provide. The applicant's mitigation statement does not clearly demonstrate that it would be impracticable to fully compensate for the functional impacts lost as a result of the proposed project. The applicant should seek mitigation credits from an approved mitigation bank or in-lieu fee program as proposed in their compensatory mitigation statement. If no in-kind credits are available, permittee responsible mitigation may still be required.		The Port would like the agencies to consider the 13 acres of inter-tidal and sub-tidal habitat that will be created as a result of Phase 2A of the PAMP at the North Extension Stabilization - Step 1 [NES1] project. Many of the same functions of the inter-tidal area being filled as a result of the CTR (Phase 2B of the PAMP) would be restored upon completion the NES1 project.	
		EPA: B. Compensatory Mitigation		6	final mitigation plan must be approved prior to issuance of an individual permit and must be incorporated into the permit by reference. The final mitigation plan must include the items described in paragraphs (c)(2) through (c)(14) of 40 C.F.R. § 230.94(c)(1)(i). Any final mitigation plan associated with a CWA Section 404 permit, should a permit be issued, must comply with the joint EPA/Corps Final Rule on Compensatory Mitigation for Losses of Aquatic Resources. The EPA would appreciate receiving a copy of any mitigation plan that the applicant provides to offset the unavoidable losses resulting from the proposed discharges.		While not formal compensatory mitigation, the Port would like to propose that the 13 acres of restored intertidal and sub-tidal habitat at NES1 be considered when making a determination of whether or not compensatory mitigation is necessary for the CTR. The shallow portion of the NES1 Project's restored habitat would function similarly to the areas being proposed for permanent fill in the CTR, thereby, providing some offset of impacts nearby and still on Port property.	
		NOAA/NMFS	The National Marine Fisheries Service has reviewed the Public Notice of Application for Permit provided on July 17, 2024 regarding the above referenced project. The purpose of this project is to replace Port of Alaska's aging docks and related infrastructure before it fails, to improve operational safety and efficiency; accommodate modern shipping operations; and improve resiliency to survive extreme seismic events and sustain ongoing cargo operations. The proposed scope of work includes the removal of existing	9	General Comments We have been in discussions on Port of Alaska improvement projects since 2005. The industrial area is already heavily impacted. We have no conservation recommendations that would mitigate impacts further. However, we do have concerns associated with acoustic impacts from proposed		The Port will work with USACE and NMFS to minimize and mitigate, where appropriate, impacts to EFH.	
				9	Moreover, your EFH assessment should describe proposed measures to ensure contaminated sediments, oil spills, and invasive species introductions do not further impact EFH near the project.		The Port will work with USACE to provide an EFH Assessment that describes proposed measures to ensure that contaminated sediments, oil spills, and invasive species introductions do not further impact EFH near the project.	

			scope or work includes the removal or existing infrastructure and the construction of newly configured general cargo terminals including ground improvement for shoreline stabilization, shoreline expansion and protection. As noted in your letter, you are currently gathering information regarding potential impacts and fishery and habitat resources in the project area of Anchorage Harbor. We offer the following comments regarding the proposed project. Essential Fish Habitat Consultation Process Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and the Fish and Wildlife Coordination Act require Federal agencies to consult with us on all actions that may adversely affect essential fish habitat (EFH) and other aquatic resources. The EFH consultation process is guided by the regulation at 50 CFR 600 Subpart K, which mandates the preparation of EFH assessments and outlines each agency's obligations. For any Federal action that may adversely affect EFH, Federal agencies must provide us with a written assessment of the effects of that action on EFH. The assessment must contain (50 CFR 600.920(e)): 1. A description of the action; 2. An analysis of the potential adverse effects of the action on EFH and the managed species; 3. The Federal agency's conclusions regarding the effects of the action on EFH; and	9	Our Impacts to Essential Fish Habitat from Non-Fishing Activities in Alaska (Limpinsel et al. 2023) provides information and potential conservation recommendations for your consideration including the following sections: 3.4.4 Urban and Suburban Development; 5.4.1 Dredging; 5.4.2 Materials Disposal and Filling Activities; 5.4.3 Disposal of Dredged Material; 5.4.4 Discharge of Fill Material; 5.4.5 Vessel Operations, Transportation, and Navigation; 5.4.6 Invasive Species; 5.4.7 Pile Installation and Removal; 5.4.8 Pile Driving; 5.4.9 Pile Removal; 5.4.10 Overwater Structures; and, 5.4.11 Flood Control/Shoreline Protection. Conservation recommendations we previously provided to minimize adverse effects to EFH for similar projects in the past have included construction timing windows, minimize pile driving noise, use of locally sourced clean fill and riprap, sediment testing, and the development of an oil spill response plan. Final conservation recommendations will be provided based on your EFH assessment and conclusion of effects. Also consider the following EFH resources while determining effects of your proposed project: a one-page EFH Fact Sheet and our Regional website, where you can find FAQs. Questions regarding these comments should be directed to Seanbob Kelly at seanbob.kelly@noaa.gov.		The Port submitted a technical memorandum regarding EFH to USACE on 8/26/2024. We will work with USACE to provide information on all of the project features/topics listed in the letter from NMFS.	
		Eklutna Inc.	I hope this message finds you well. I am writing in reference to the permit application for the replacement of cargo terminal infrastructure at the Port of Alaska, currently under review by the U.S. Army Corps of Engineers.	11	Given that the project site is located on lands that were originally Eklutna lands, we respectfully request special consideration for our alluvial gravel, hard rock, and non-organic fill sites. It is our belief that any material removed from this area should be replaced with material sourced from the indigenous area to preserve the cultural significance of the land.		We understand your concerns and will use fill from the immediate area, including material stockpiled from the de-construction of the Port's nearby North Extension Stabilization Step 1 Project for some of the fill used for the Cargo Terminals Replacement Project.	
				11	The land in and around the Ship Creek area has been used for generations by the Eklutna people for fish harvesting and other vital purposes. This historical and cultural connection makes it imperative that Eklutna land be used in the construction and development of this area. Specifically, we would like to propose that aggregate from the current Eagle River area be used for this purpose. Eklutna, Inc. possesses the necessary capabilities and materials to supply high-quality fill that would honor the cultural importance of our heritage. Utilizing Eklutna material for this project will ensure that the land maintains its historical and cultural integrity. We would greatly appreciate any consideration you could give to this matter. Ensuring the use of culturally significant materials from Eklutna would not only support the project's logistical needs but also uphold the cultural heritage of the area. Thank you for your attention to this request. We look forward to your response and hope to collaborate closely to maintain the cultural importance of this land.		The Port cannot direct the contractor to use Eklutna's mine/quarry, but we can inform the contractor that Eklutna, Inc. has sources of material that can be used for this project. Thank you for reaching out.	
		Chickaloon Village Traditional Council (separate submittal)	CVTC has received your notice of permit proposal for the Port of Alaska to remove existing infrastructure, construct of a newly configured cargo terminal and shore stabilization. CVTC offers the following comments:	1				
				1	1) Granted the project is primarily only on the terminals itself, the probability of cultural resources is very low after decades if not millennia of Port disturbance to what had been a major Tribal trading and fishing area. CVTC does not normally accept a 'desktop' survey of AHRS as the only research for cultural resources.		The Port will consult with SHPO and Tribes to help avoid adverse impacts to cultural resources. In addition, a plan to address any unanticipated discovery of cultural resources will be developed as part of the consultation.	
				1	2) Wildlife is likely to be impacted, potentially greatly by demolition and construction. Salmon entering Cook Inlet and heading to their respected spawning rivers and streams tend to follow the coastline which also brings in the belugas, porpoise, and seals in pursuit.		The Port is working with NMFS to address both EFH (salmon) and MMPA (beluga whales and porpoises) concerns. An EFH Assessment, Letter of Authorization and Biological Assessment and Opinion will be required for the CTR Project. These consultations and authorizations will require mitigation measures to be implemented to minimize impacts to these wildlife and fisheries resources.	
				1	3) Beluga and porpoise are particularly vulnerable to under water noise disturbance as they utilize sonar to hunt.		The Port understands this concern and will implement mitigation measures to avoid and minimize impacts to these important marine species.	

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