



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

December 13, 2022

Distributed electronically

Coral Siligato, Project Manager
U.S. Army Corps of Engineers, New England District
696 Virginia Road
Concord, MA 01742-2751

RE: Amendments to Water Quality Certification No. 2021-404I-005 for the Hampton Harbor North Jetty Repair and Reconstruction Project

Dear Ms. Siligato,

On May 18, 2022, the New Hampshire Department of Environmental Services (NHDES) granted with conditions Water Quality Certification No. 2021-404I-005 (the Certification) to the New England District of the U.S. Army Corps of Engineers (USACE) for the Hampton Harbor North Jetty Repair and Reconstruction Project (the Project) in accordance with section 401 of the federal Clean Water Act and under the authority of NH RSA 485-A:12, III. NHDES granted the Certification in response to a request for certification and Application for Water Quality Certification that NHDES had received from USACE on January 20, 2022. On October 18, 2022, NHDES received a request from USACE to amend the Certification to acknowledge that the Project is estimated to take four to seven months to complete, instead of four months to complete, and to authorize USACE to begin marine-based work for the Project earlier than specified in the Certification, which was August 1. The purpose of this letter is to inform you that NHDES is amending the Certification in accordance with Conditions E-3 and E-4 of the Certification and to respond to USACE's request.

Condition E-3 of the Certification specifies the following: **“Proposed Modifications to the Project:** The Applicant shall consult with and receive prior written approval from NHDES regarding any proposed modifications to the Project that could have a significant or material effect on the findings or conditions of this certification, including any changes to operation of the Project. If necessary, to ensure compliance with New Hampshire surface water quality standards and associated management objectives, NHDES may alter or amend this certification in accordance with condition E-4.”

Condition E-4 of the Certification specifies the following: **“Modification of Certification:** The conditions of this certification may be altered or amended at any time by NHDES to ensure compliance with New Hampshire surface water quality standards and associated management objectives, when authorized by law, and, if necessary, after notice and opportunity for hearing.”

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NHDES amends the Certification as follows (changes shown in ***bold italics***):

Paragraph C-53:

“On December 14, 2021, NHFGD [the New Hampshire Fish and Game Department] informed NHDES by email that land-based activities from September 1 to March 15 would be sufficient to avoid impacts to piping plover (see Findings D-21 and D-23). ***On October 17, 2022 NHDES, NHFGD, and the Applicant met to discuss, among other things, the Applicant’s proposal to begin marine-based work for the Project earlier than August 1 based on feedback the Applicant received from contractors during unsuccessful bidding of the Project. The contractors were looking to extend in-water work when certain conditions (e.g., weather, ocean conditions, availability to transport certain materials) are more suitable for the Project. During the meeting, NHFGD stated that it was necessary, for the protection of anadromous fish, to only allow the Applicant to begin marine-based work no earlier than July 1. NHFGD stated that certain anadromous fish, including river herring, could be migrating near the Project area in April, May, and June; and Project impacts, including noise, could have a significant harmful impact on migrating fish prior to July 1.***”

Paragraph C-64:

“***401 Certification Public Comment Period:*** NHDES issued a draft section 401 Water Quality Certification for public comment from April 1, 2022 to 4 p.m. on May 2, 2022. ***NHDES published draft amendments to the certification from November 8, 2022 to 4 p.m. on December 9, 2022.***”

Paragraph D-3:

“***Applicant’s Proposal:*** [...] The Applicant estimates that the Project will take approximately four ***to seven*** months to complete, with marine-based work beginning no earlier than ~~August~~ ***July*** 1, land-based work starting no earlier than September 15, and completion of all work by March 15. [...]”

Paragraph D-23:

“***Actions Taken to Minimize Adverse Impacts:*** [...] Marine based work may begin ~~August~~ ***July*** 1 while land-based work will be restricted to a September 15 to March 15 construction window in order to protect the Federally threatened piping plover and to minimize impacts to reactional activities that occur in the vicinity of the Project (see Fact C-53 and Finding D-21); [...]”

Paragraph D-24:

“***Antidegradation:*** [...] Given that implementation of the Project is short-term (i.e., estimated to take approximately four ***to seven*** months) [...]”

Paragraph E-10:

“***Construction Activities:*** Unless otherwise authorized or directed by NHDES in writing, the Applicant shall:

- a. implement the Project in accordance with information provided in the Application, including, but not limited to, starting marine-based work no earlier than ~~August~~ ***July*** 1, starting land-based work no earlier than September 15, and completing all work by March 15; [...]”

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If you have questions regarding this certification, please contact James Tilley, NHDES Water Quality Certification Supervisor, at (603) 271-0699 or james.w.tilley@des.nh.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Rene J. Pelletier". The signature is fluid and cursive, with a large initial "R" and "P".

Rene J. Pelletier, P.G.
Director, NHDES Water Division

cc:

Elizabeth Waterhouse (USACE)
Coral Siligato (USACE)
Joseph Mackay (USACE)
Kaitlyn Shaw (NOAA)
Cheri Patterson (NHFGD)
Michael Dionne (NHFGD)
Brendan Clifford (NHFGD)
Seth Prescott (NHDNCR)
Phillip Bryce (NHDNCR)
Meredith Collins (NHDNCR)
Ted Diers (NHDES)
Erin Holmes (NHDES)
Chris Williams (NHDES)
Chris Nash (NHDES)
Eben Lewis (NHDES)