

10 DETERMINATION OF NEED FOR FORMAL CONSULTATION AND CONFERENCE

The purpose of a BA is to provide information from the action agency, in this case the Corps, to determine whether it should engage in formal consultation with the Services. The Services' Consultation Handbook explains that whenever a project has any components that are likely to adversely affect listed species and habitat, formal consultation is required, even if other components of the project, or in fact the project as a whole, benefit the species.

The effects analysis in Section 6 has identified a limited potential for dredging and disposal operations to adversely affect listed species. This potential is addressed by use of BMPs that are expected to eliminate or minimize potential adverse effects on the listed species. Any potential take of the species will be further addressed by an incidental take statement from the services.

The Project could affect shallow water and flats habitat in several potential ways. First, side-slope adjustments associated with channel deepening may cause a shift in the location of shallow water habitats associated with past beach nourishment sites. Side-slope adjustment will occur over a period of 5 to 10 years. This process will cause shallow water and flats habitat at six historical shoreline disposal sites to migrate laterally; however, the quantity and quality of shallow water and flats habitat is expected to remain constant. Second, shoreline disposal for beach nourishment will result in the placement of dredge materials in shallow water habitats at three locations. However, the three shoreline disposal sites are all highly erosive and do not contain many of the important habitat features that shallow water habitats typically include, such as low velocity, vegetation, and food sources. All three sites had previously been approved by NMFS for shoreline disposal because of their low productivity. Third, changes in water surface elevation have been evaluated to determine whether a potential exists for habitat opportunity to be reduced within shallow water areas. Water surface elevation could be affected between RM 80 and RM 146. The decrease could be up to 0.18 foot (approximately 2 inches) at the upstream end of the project.

A monitoring program and adaptive management process has been incorporated into the project to address uncertainty and risks identified in the BA.

The Project includes ecosystem restoration features intended to produce long-term benefits for listed species and their habitat. These features are discussed in Sections 3 and 8. The function and value of these projects is summarized in Table 8-2. These features include restoration of tidal habitat, restored access to stream rearing and important intertidal habitat, and significant reduction of invasive Purple loosestrife.

Based on the guidance in the Consultation Handbook, the Services' Consultation Regulations and Section 7 of the ESA, the Corps has determined that it is appropriate to request formal consultation for the 13 listed salmonid species, one proposed and one candidate species and marine mammals. The Corps will request USFWS confirmation that the existing BO for terrestrial species is still in effect, and will request the Services' consultation and conference on the proposed action. Reasons for requesting formal consultation and conferencing include:

- Although the dredging and disposal portion of the Project includes best management practices to address potential effects, the possibility remains that there may be some incidental take of species. Any incidental take, no matter how unlikely or small, would be an adverse effect that warrants formal consultation. In addition, it is important to engage in formal consultation that results in a biological opinion and a conference opinion that include incidental take statements that cover potential take.

- The BA identifies specific areas where there are uncertainties and risks. The conclusions regarding uncertainties and risks are based on the SEI process and considerable discussion with the Services. The Corps believes that it is important for this information to be confirmed and for the commitments to monitoring and adaptive management be reflected in a biological opinion.
- The Project includes an Ecosystem Restoration Component. This component includes activities that will have beneficial effects on listed species and their habitat and that will benefit a variety of terrestrial species. Through the reconsultation process, the Corps has added the restoration actions discussed in Section 8 to the Project. Formal consultation allows the Services to review the proposed Ecosystem Restoration features.