UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
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Philadelphia, Pennsylvania 19103-2029

1 3 JUL 2009

Colonel Andrew W. Backus, District Engineer
Department of the Army, Norfolk District
Corps of Engineers, Fort Norfolk
803 Front Street
Norfolk, Virginia 23510

Subject: Final Programmatic Environmental Impact Statement for Oyster Restoration in Chesapeake Bay Including the Use of a Native and/or Nonnative Oyster [CEQ # 20090185]

Dear Colonel Backus:

In accordance with Section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(2)(C), Section 309 of the Clean Air Act, 42 U.S.C. § 7609, and the Council on Environmental Quality (CEQ) regulations, 40 CFR Parts 1500-1508, the United States Environmental Protection Agency (EPA) has reviewed the Final Programmatic Environmental Impact Statement (PEIS) for Oyster Restoration in the Chesapeake Bay, and offers the following comments.

As a cooperating agency during development of the EIS, EPA provided technical assistance in the development of the Ecological Risk Assessment, served as a member of both the Project Delivery Team and Executive Committee, and provided technical and procedural recommendations throughout the EIS process. Our independent review authorities under Section 309 of the Clean Air Act require EPA to review and comment on all EISs. This review is distinct from our role as a cooperating agency, and is focused on environmental consequences of the proposed action and alternatives. In addition EPA is the primary representative for the federal government for the Chesapeake Bay Program.

This Programmatic EIS evaluated the direct and indirect ecological, environmental, economic and human health effects of the proposed action and several alternatives to restore oysters in the Chesapeake Bay. The proposed action called for introduction of a nonnative species, the Suminoe oyster (*Crassostrea ariakensis*) into the tidal waters of Maryland and Virginia, and a continuation of efforts to restore the native Eastern oyster *(Crassostrea virginica)* throughout the Chesapeake Bay, in order to restore the ecological role of oysters in the Bay and the economic benefits of a commercial fishery.

Two primary types of alternatives were examined: those involving the continued use of the native species, including aquaculture, and those involving the use of a nonnative Suminoe oyster species. Several combination alternatives were later developed when it became clear that

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no single component alternative would be as likely to achieve progress towards the established EIS purpose and need statement. As described in our December 15, 2008 comment letter on the Draft PEIS, EPA supported the native only combination Alternative 8A as representing the best choice among the alternatives presented. An overwhelming majority (approximately 95%) of those who commented on the Draft PEIS expressed support for Alternative 8A or opposed the proposed action.

In early April, 2009, the EIS Executive Committee, following several months of discussions with and among the participating agencies, concluded that, based on the current state of science, the use of nonnative oysters in the Chesapeake Bay poses unacceptable ecological risks. The Committee, therefore, adopted a native only oyster preferred alternative for the EIS. EPA wholeheartedly supports this choice as the best means for moving forward to revitalize the native oyster population, while providing for the protection and restoration of the physical, chemical and biological integrity of the Bay. This decision is consistent with the Chesapeake Bay Policy for the Introduction of Non-Indigenous Aquatic Species, which established a precautionary approach to proposed nonnative introductions, i.e., nonnative species should not be introduced unless and until sufficient studies have been conducted and evaluated to ensure that the risks associated with the proposed introduction are acceptably low. EPA looks forward to working collaboratively with all of the involved agencies to establish realistic monitoring and accountability measures and a performance based adaptive management methodology as the framework for guiding this process forward.

On May 12, 2009, President Obama signed the "Chesapeake Bay Protection and Restoration" Executive Order which calls on the Federal government to lead efforts at a renewed commitment to cleaning up pollution and restoring and protecting living resources of the Bay. The native oyster restoration efforts recommended in the Programmatic EIS should be guided by this Order, with the National Oceanic and Atmospheric Administration (NOAA) taking the lead for revising the Chesapeake Bay Program's Oyster Management Plan to serve as a unified federal-state strategy for restoration of native oysters.

EPA applauds the leadership of the Norfolk District Corps of Engineers, particularly Colonel Dionysios Anninos and Mark Mansfield, along with the States of Maryland and Virginia, in developing the EIS and making the process an inclusive and transparent one. This was a truly extraordinary study and the conclusions reached will serve as the foundation for oyster management decisions for years to come. As any Record of Decision is prepared and native oyster restoration plans developed, EPA recommends taking into consideration the following points:

- Oyster restoration on public oyster bottom should be for the purpose of establishing and protecting healthy, sustainable oyster reefs for aquatic habitat and other ecological benefits.
- To the extent that federal resources and efforts support the commercial harvest of oysters, we recommend that this be done through support of intensive aquaculture.
- Harvest on public oyster grounds should be allowed only under a strictly enforced harvest regime that is supported by reliable, contemporary stock monitoring data similar to the approach that is implemented in Delaware Bay.

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- The Corps, NOAA, and the States should establish a Chesapeake Bay oyster resource monitoring program that provides statistically defensible measures of the status and trends of the resource and supports an adaptive management approach to restoration.
- Any interagency workgroup established to further the development of plans for native oyster restoration should consider the findings contained in a recent report published by The Nature Conservancy entitled "Shellfish Reefs at Risk: A Global Analysis of Problems and Solutions".
- Additional attention should be given to identifying the low income and minority populations potentially most impacted by the significant reduction in oyster harvesting throughout the Bay. Targeted outreach and communication should be a part of future plans to maximize the involvement and participation of these populations in future oyster restoration and commercial oyster aquaculture activities.

Thank you for the opportunity to provide these comments, and to participate in the Oyster Restoration PEIS as a cooperating agency. EPA remains committed to continuing its support of restoring a viable oyster population in Chesapeake Bay. If you should have any questions regarding these comments, please contact Thomas A. Slenkamp, who can be reached at (215) 814-2750.

Sincerely,

John R. Pomponio, Director for
Environmental Assessment and Innovation Division

cc: John R. Griffin, Maryland Department of Natural Resources
L. Preston Bryant, Jr., Virginia Secretary of Natural Resources
Marvin E. Moriarty, U.S. Fish and Wildlife Service
Peyton Robertson, NOAA Chesapeake Bay Field Office
John V. O'Shea, Atlantic States Marine Fisheries Commission

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