



September 15, 2010

Commissioners
Delaware River Basin Commission
P.O. Box 7360
West Trenton, NJ 08628-0360

Dear Commissioners,

The Delaware Riverkeeper Network opposes passage of Agenda Item G up for consideration at the September 15, 2010 Commission meeting.

The Southport Development project involves the filling in of 12.28 acres of open water (.2 of which is emergent wetlands, 1.08 of which is shallow water habitat, and 3.62 of which is deep water habitat); 3.75 acres of nontidal wetlands; .73 acres of a tidal drainage area; filling in an unspecified amount of floodplain lands with 3 to 4 feet of fill in order to raise the area to above the 100-year floodplain (in fact to raise it to the 200 year floodplain); dredging a 35-acre area within the River to a 40+2 foot depth; impacts to approximately 4600 linear ft of existing shoreline; the permanent loss of 1.08 acres of submerged aquatic vegetation; and having a 116 acre development footprint which will necessarily be on riverside lands and result in the loss of potential terrestrial habitat.

This is clearly no small project.

That in response to public outcry and agency concerns the project has been reduced in size in terms of the amount of River fill tells us nothing about the project except that it was obviously over-designed in terms of the level of fill and harm. A reduction in the volume of fill does not speak to the harms that will result from the project as it is being proposed today, whether there are better alternatives available, and whether there is further opportunity to avoid River, environmental and community harm from the project.

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Southport Is a Reviewable Project by DRBC – It is Not Exempted Under Any Review Threshold or Exceptions.

Contrary to what you have been told in a May 19 email from staff, this project is not properly exempted from DRBC review via review thresholds or exemptions identified in the rules of Practice and Procedure.

According to the Rules of Practice and Procedure 2.3.2, projects that will have “a substantial effect on the water resources of the basin shall” be submitted to the Commission for review and approval. Section 2.3.5.B identifies projects that are presumed to have a substantial affect and, as relevant to Southport include:

- ✓ (5) “Deepening or widening of existing stream beds, channels, anchorages ... or the construction of new or enlarged channels, anchorages ... when the nature or location of the project would affect the quantity or quality of ... surface waters, or fish and wildlife habitat;” -- There is much evidence on the Southport record from a number of state and federal agencies that document the concerns for impacts to fish and wildlife habitat. With regards to surface water quality impacts I don’t believe the appropriate documentation has yet been amassed to determine what affect there might be, although we do know that the shallower reaches of the Estuary often have higher contaminant levels than the main channel. As recently as February 17, 2010 Greg Cavallo with the DRBC was questioning the sampling being proposed that would inform water quality issues – we don’t even know the outcome of the response to those concerns.
- ✓ (9) “Projects that substantially encroach upon the stream or upon the 100-year flood plain of the Delaware River or its tributaries;” -- Southport includes the filling of over 12 acres of the mainstem river. In addition, the project includes filling with 3 to 4 feet of fill an unspecified amount of Delaware River flood plain. Therefore, both because of the encroachment on the stream of the Delaware River (the open water fill), and the floodplain fill, this project is presumed, by DRBC Rules of Practice and Procedure, to have a substantial effect on the Delaware River and therefore must be reviewed and approved by the Commission.

The exceptions found in section 2.3.5.A. do not apply to this project.

- ✗ The exception found in (7) is for deepening, widening ... dredging of “streams within the Basin except the Delaware River and tidal portions of the tributaries thereto ...” -- Southport includes dredging to 40 feet a 35 acre area of the Delaware River according to the resolution; therefore, this dredging is specifically not included in the exemption.
- ✗ The exception found in (15) does include a 25 acre threshold for project review, but that applies to the “draining, filling or otherwise altering *marshes or wetlands* when the area affected is less than 25 acres” (*emphasis added*) this does not apply to open water fill or floodplain fill. The language of the Rules clearly distinguish between wetlands and the open waters of the River, they are not one and the same. Thus, the 25 acre review threshold does not apply to Southport which includes filling in over 12 acres of the Delaware River itself, including deep waters and shallow waters and an undisclosed amount of floodplain. Even the Army Corps in its delineation of jurisdiction does not attempt to characterize the river fill acreage as wetlands. Even the project sponsors in their materials submitted to PADEP states that the project would require the “filling of 13 acres of the Delaware River”. For DRBC staff

to try to apply the wetland/marshland review threshold to a project filling in the stream of the Delaware River when the DRBC staff themselves recognizes such areas as open water in their many discussions on the issue, is disingenuous at best.

The Public Has Been Denied the Ability to Review and Comment on the Resolution.

It is unjust to expect the public to gain access to all the relevant documents, to review them, digest them, and be able to provide informed comment on the Southport project or the proposed DRBC Resolution in the mere two week time frame the Delaware River Basin Commission has provided. The Army Corps has been working with Pennsylvania to press this project along for several years now, looking at documents, engaging in meetings, undertaking negotiations, and discussing issues related to this project with the project sponsors. No information on the project was made available with the draft resolution, nor was there provided any path by which one could access the information about the project or upon which the recommendation for the resolution was based – further compromising the public’s ability to get informed.

Further, the proposed Resolution was released just before a national holiday, during a time frame when many, if not most, in our region are engaging in their final holidays with family. This holiday limited further the opportunity for the public to get informed and engaged on this issue of concern to the region.

Therefore we urge you to reject this Resolution, or at a minimum delay consideration of the Resolution until a future Commission meeting so as to allow the public and others to properly consider this project, its supporting documentation, and provide thoughtful comment to the Commissioners.

The Resolution is Based on the Presumption of Thorough Agency and Public Review and Process By Others – This is Not a Sound Basis for the Recommendation and Sets Bad DRBC Precedent.

According to the Rules of Practice and Procedure, “Projects that substantially encroach upon the stream or upon the 100-year flood plain of the Delaware River or its tributaries” are among those that should be reviewed for compliance with the compact. River fill projects like Southport are specifically mentioned because they are of genuine and significant concern for the River and River communities. Setting aside this kind of major river fill project with such minimal consideration by the Commissioners and based on a very limited amount of information provided to Commission staff (as a fully body of information does not yet exist) does the Compact, the Commission and the public a tremendous disservice.

“The Commission is required to approve a project whenever it finds and determines that such project would not substantially impair or conflict with the Comprehensive Plan.” Other state and federal agencies will not be looking at this project through the lens of basinwide affects and/or the DRBC Comprehensive Plan. Each applicable law, and each participating agency, will be reviewing the project pursuant to their own guiding requirements, principals and laws. The “Comprehensive Plan [is] for the immediate and long-range development and use of the water resources of the Basin. The Plan shall include all public and private projects and facilities which are required, in the judgment of the Commission, for the optimum planning, development, conservation, utilization, management and control of the water resources of the Basin to meet present and future needs.” No other agency or review process mentioned in the proposed Resolution is considering the River

fill, floodplain fill, wetlands fill, and dredging associated with Southport in this bigger River use and/or protection context.

The proposed resolution talks about the level of public and agency review that various laws, to which the project would be subject, require for such a project. None of these are extraordinary. There is no reason, whatsoever, for the Commission to make an exception for Southport as compared to other projects simply because other laws apply.

Furthermore, the record demonstrates that the process associated with review of the Southport project by others is being manipulated and truncated inappropriately – so to the extent these other laws do apply they are not being applied in the usual manner, with the same level of rigor, with the same opportunity for agency and public review and input.

The public notice issued by the Army Corps on August 24 for the Section 404 Clean Water Act permitting process that should apply to Southport took place during high vacation time, the labor day weekend, and the start of school for many – facts the Army Corps is well aware of and a strategy they often avail themselves of to minimize public review and comment. In addition, they have provided only 30 days of comment, that includes the effort it will require to take a closer look at their files. Minimal information was provided with the public notice by which the public could become more informed about this project and upon which the public could base their comment.

DEP's permitting and review process has been compromised. In the minutes of a September 23, 2009 regulators meeting about the Southport project it was explained that project backers were seeking a decision by the PADEP and the USACE that the project was “permissible” prior to submitting a permit application. Providing such a decision is highly inappropriate and legally questionable. Without permit application materials the agencies should not be answering the question of whether a project is permissible, and if they were to provide such advance assurances they would be undercutting the legal permitting process and inappropriately circumventing the requirements of law and public policy.

And yet, at this September 23, 2009 meeting, PADEP assured that a permit could be obtained based only on preliminary design materials that would/could later be modified. Such a commitment of review and approval based on only preliminary information that all agree can change undercuts the legal, permitting, agency and public process. A permit decision is to be based upon the project proposed, not some advance speculation about what the project might ultimately look like. In fact, the minutes from this meeting assert that this preliminary design could be a simply “15% design” – 15% is no where near completion and demonstrates the inappropriate advance commitment of permitting authority and final decisionmaking.

The documents the Delaware Riverkeeper Network has reviewed regarding this project makes clear that review of Environmental Assessment materials, when that process is in fact undertaken, will be done piecemeal. The importance and value of NEPA reviews, be they EA's or EIS', is in their comprehensive nature and allowing for full information and therefore most complete and informed analysis over every element to be considered and reviewed. Providing piecemeal review and sign off robs the drafter, reviewer, and the public of the opportunity to allow later information identified or collected to inform earlier sections of review or drafting. An EA is intended to be a single, comprehensive document, reviewed and approved (or challenged) in its entirety – the

same goes for an EIS. The planned intent to piecemeal the NEPA process is a clear demonstration of the intent to smooth the road for this project to move forward rather than subject it to an appropriate level of complete, independent and rigorous review. Therefore, the public needs the Delaware River Basin Commission review process to take place – to ensure the public an opportunity to review and comment upon a complete project at a meaningful time and in a meaningful way – the NEPA process being proposed by the lead federal agency is going to rob the public of this opportunity, and will rob the project of the benefits of such rigorous review.

Furthermore, that the draft table of contents for the EA (a draft document that was prepared by project representatives for review and feedback from agency representatives) pre-identifies Southport as the preferred alternative demonstrates that from the perspective of the applicant, and likely the Army Corps who seems to be intimately involved with this project, does not expect to honor the spirit and substance of NEPA but is merely seeking to walk through the steps of the process so they can claim it has been honored. Asserting at this time that only an EA will be needed and that the outcome of that EA in terms of preferred alternatives has already been determined casts an advance shadow of illegality over this process and demonstrates the need for an independent agency with the interests of River communities as their priority maintain ultimate approval authority – i.e. the DRBC.

The documentation we have received from the Army Corps states that there will be an “enhanced EA” conducted for the project. Based on the record that exists at this time, there is ample reason to believe that a full environmental impact statement will be needed for this project. Modified NEPA reviews in an effort to skirt such a requirement of full analysis and review is not appropriate. Delaware Riverkeeper Network’s repeated requests for definition of an “enhanced EA” to the Army Corps have gone unresponded to. The law requires the preparation of an EA, not an enhanced EA or modified EA or piecemeal EA. It is important the law be honored and complied with. I would note, that according to Army Corps documents this decision to undertake an enhanced EA was “decided several years ago”. The basis for that decision, by whom it was made, when and for what reason is unknown and apparently undocumented as Delaware Riverkeeper Network has been submitting FOIA’s to the Army Corps for several years now and never received any such information.

Further, the statement by the Army Corps in their public notice for comment that the Army Corps is going to be deciding upon the level of NEPA documentation required as a result of the 404 permit application process is procedurally and legally inappropriate. The law mandates creation of an EA in order to determine the need for an EIS, that is the legal procedure that must be followed here.

The Army Corps has already demonstrated its active commitment to allowing Southport to move forward. At an October 29, 2009 meeting the Army Corps already offered to use spoils from an Army Corps Confined Disposal Facility for the project. This kind of pre-determined outcome, demonstrates an absolute bias for the project, and an inability to engage in objective review.

Multiple email communications, including the one attached dated February 11, 2008 from John Kennedy to Randy Brown as well as a memorandum drafted by “PADEP SERO” on the same date are clear that joint federal 404 and state 105 permitting for a project like Southport is not an option. And yet, July 2010 Weston Solutions submitted a Joint Application for Chapter 105 and

Section 404. PADEP conversations on this subject have been consistent and clear – no joint permitting. And yet now we see joint permitting. A joint permit process is a changed review process that diminishes the opportunity for public and other agency input and review. It is inappropriate for the Army Corps or PA DEP to diverge from law, policy and/or practice for Southport. And it is another demonstration of how the Army Corps and Pennsylvania are making dramatic exceptions for this project that are truncating the level of agency and public review and comment. Thus confirming the need for DRBC to retain its full authority over the Southport project and to not pass the proposed Resolution.

DRBC review and the open public process it ensures, are crucial for a project of this magnitude that sets such damaging precedent regarding filling in the River.

The Southport Development project involves the filling in of open waters, wetlands, floodplains, and dredging a vast area of the River for the ultimate benefit of private entities. The project will be undertaken by a private developer, and once complete the facilities will be leased to a private entity for their operations. As such this is a taking of public lands and a destruction of public natural resources for the purposes of serving private interests. Such damage to public interests to serve private gains is highly dubious, questionable and not acceptable. The use and abuse of our natural resources in this way should not be supported by regulatory agencies charged with protecting the public by in any way diminishing the rigor of the review, process and oversight that is provided. DRBC's proposed resolution is a deletion of a critical part of the environmental and public review process for a project of this magnitude and nature that we urge the DRBC Commissioners not to allow. This proposed Resolution in particular should be disavowed because it is counting upon the review by others as a replacement for DRBC review, and yet we can already see on the record that the other agencies the DRBC is counting on to do an independent and critical review of this project are either not intending to undertake such rigorous review or are being denied the level of information needed for such a review.

There is Not Enough Information on Which to Make This Decision, What Information Is Available Demonstrates Harm to River, including Fish and Wildlife, and Need for DRBC Review.

As a procedural matter, it is wholly inappropriate to be considering such a major action as to dismiss a project from DRBC review without the benefit of a National Environmental Policy Act Environmental Assessment and subsequent Environmental Impact Statement, both of which are key documents for providing full consideration of the environmental affects of the project and alternative options available for reaching its identified goals. Without that information neither the DRBC nor the public nor any other regulatory agency at the state or federal level can even begin to have the level of information necessary to consider this project.

This section of our letter quotes and discusses environmental harms of concern raised by a variety of other resource agencies with regards to Southport. This collection of quotes and references to the concerns of others emphasizes the lack of information that has been available on this project and that from the information that has been made available the threats of environmental harm are real, numerous and potentially significant.

Dredging Impacts on the Delaware Estuary Tides, a paper reprinted in 1993 documents that narrowing the Delaware River with fill projects increases the tides of the River. The ramification

has been, and is, to flood marshlands, forcing them to move inland. Currently there is a tremendous amount of development already existing along Delaware Estuary waters that prevents and/or inhibits the inland migration of many marshlands. The ramifications of over 12 acres of fill, individually and cumulatively with other fill that has happened and is proposed for the future, must be an important part of the consideration of the Southport project. Note that the airport recently selected an option in this same reach of river that also requires filling in part of the mainstem river. In addition, filling in the River, floodplains and wetlands must be considered in the context of flooding, and the affect on increasing flooding and flood damages in estuary communities.

Of note, the national Marine Fisheries Service in a December 1, 2009 meeting with the PRPA about the Southport project specifically stated that “the effects on hydrodynamics and sediment accumulation or erosion would need to be evaluated.” Has this body of work been done?

This reach of the River (according to the US Fish & Wildlife Service, July 19, 2004) is used by a wide variety of fish species including (but not limited to):

- ✓ In the deeper inter-pier areas: spot, striped mullet, bay anchovy
- ✓ In the shallower inter-pier areas: hogchoker, channel catfish, largemouth bass, spottail shiner.
- ✓ In addition this reach of river is used by American shad, blueback herring and striped bass.

This site has been found to be important striped bass spawning area. Because Big Timber Creek right across the river has been found to be one of the poorest sites (according to a 1994 study says NMFS) “it cannot be assumed that the surrounding areas are equally as important as this site. Striped bass return to the same areas over and over.”

The area, according to documents we have seen, is a nursery area for American Shad, themselves determined by ASMFC to be at depressed levels in the Delaware River.

According to US Fish and Wildlife the interpier area has particular ecological importance “because of the occurrence of fourspine stickleback, mudflats, and submerged and emergent vegetation.” “Furthermore, the area of the Delaware River downstream ... within the former Philadelphia shipyards is a significant spawning area for striped bass. In addition to the aquatic habitat values of this area, the shoreline around inter-pier 3B, although disturbed by concrete rip-rap, also supports shrubs and other vegetation that attract a variety of warblers and other songbirds.”

“...the Fish and Wildlife Service is concerned about the future development of these two sites.” [SouthPort and Piers 78-80-82] According to the Service Inter-pier areas 3A and 3B “should be left undisturbed, and every effort should be made to avoid or minimize adverse impacts to all of the other interpier areas.”

The PA Fish and Boat Commission has described the resident and anadromous fisheries located in this part of the River as “of considerable value both ecologically and recreationally.” (PA Fish and Boat Commission to the PRPA, Letter 6/1/04)

According to a 2004 Normandeau Associates report done for the project (Aquatic and Benthic Resources Study for Assessment and Improvements to Berthing Area South Port Project No. 03-

149.S prepared by Normandeau Associates March 2004) aquatic vegetation found in the proposed project area “is important for its function as a substrate for macroinvertebrates and as cover for small fish as well as a source of dissolved oxygen for the water. Vegetated intertidal and shallow subtidal habitat is not common along the Delaware River Philadelphia waterfront and should be considered ecologically important along this shoreline.”

The Normandeau study notes the presence of water celery in the subtidal Interpier Area 3B portion of the Southport project. In other contexts, NJDEP has articulated the importance of rebounding wild celery species in the estuary and the importance of protecting this protected species. (*NJDEP Briefing, Delaware River Main Channel Deepening Project, Supplemental Environmental Impact Statement (SEIS) Information, January 2007.*) To the extent we are talking about the same species of emergent vegetation, it seems clearly important that there be careful consideration of the impacts of Southport on this species.

Further, in documents we have seen, NMFS has expressed particular concern about the presence of water celery (*Valisneria*) because it has high wildlife value and it is not clear how readily it can be established at mitigation sites.

The site used to be on the National Priority List of contaminated sites, we are unclear as to its current status in this regard.

According to the National Marine Fisheries Service in a memo dated Nov 13, 2009,

- “Weston says that there are no shortnose sturgeon or Atlantic sturgeon on the site. The problem is the site was only sampled once in late October of 2003 by Normandeau Associates. NER’s PRD sent the PRPA a letter in 2004 disagreeing with their determination that shortnose were not on the site. The sampling was not done at the correct time of year and the[y] only looked in the pier areas.”
- Also according to this memo Weston did not evaluate whether a tidal ditch on the site provides habitat for glass eel. If this is the case then PA Fish and Boat will want the channel to remain tidal and that piping it and making it dark would be an issue of concern. Apparently the project plans to pipe the entrance of the channel. (*Note from DRN: Despite some discussion of this at a march 29 meeting recently seen, the outcome of this is not totally clear and does seem to include some culverting but not total piping and that the channel is in fact to be “realigned” but with little specifics given – without full access to the file or independent review we don’t really have full information.*)
- There is also a question about whether a portion of this tidal channel and the flooded embayment portion of the “ditch” might have been mitigation for something else. Apparently this “stormwater ditch” was part of a Norfolk Southern project, it was designed by Ken Anderson of PADEP to avoid impacting wetlands and it is being used by “hundreds of minnows” and yet its full usage by fish was not evaluated. The area is approximately 12 feet wide by 2000 feet long.
- As early as 2004 NMFS made clear to the PRPA that more than a single year of sampling would be required to characterize the habitat at the site and that they would have to be sure to sample at the right time of year. This sampling has not been done. Sturgeon and Asiatic clams are among the focused areas of sampling required.
- NMFS has also made clear that mapping of SAV, including eel grass, would be required and that June was the best month for this work.

- According to Fish and Boat representatives “the entire area from the interpier areas at the north end of the site all the way around to the south end of the site is valuable for young-of-year sturgeon, shad and striped bass.”

We have seen a new sampling plan discussed for the year 2010, but as noted in the bulleted list above, a single year data collection is not enough to characterize use and affects.

According to meeting minutes dated Oct 29, 2009 attended by various agencies, “Likely fish species of concern in the area could include the shortnose and Atlantic sturgeon. The fish habitat resource has been document in previous studies that have been done in support of other Southport Projects. Charlie stated that this type of habitat in the Delaware River is not common in southeast Pennsylvania.”

Studies regarding Atlantic Sturgeon are demonstrating the precariousness of this species in the Delaware Estuary and documenting the importance of protecting the freshwater reaches of the river as necessary for Atlantic and Shortnose Sturgeon habitat and reproduction. The failure to find Sturgeon, either Atlantic or Shortnose, in the acreage planned to be filled by Southport is not surprising considering that there are presumed to be less than 1,000 Shortnose sturgeon throughout the Delaware estuary and less than 100 Atlantic sturgeon. (See Delaware River State of the Basin Report, 2008) It is the value of this reach of the River as habitat for the Sturgeon that should be controlling in terms of the need for careful study and review, not whether any were found present during limited sampling by Normandeau in support of the project.

There has been an assertion by project representatives that 6 year old fish data would/could be used to assess the affects of this project. With regards to Atlantic and Shortnose sturgeon effects alone there have been important new information that has come to light in recent years about these species, their habitats, migrations, their population numbers in the Delaware River and their genetic status vis-a-vis other sturgeon populations in the United States. The Atlantic Sturgeon is under consideration for federal listing, and has been identified as genetically unique -- these alone raise the bar for consideration of impacts to Sturgeon and mandates the need for use of up-to-date fishery information.

While the Normandeau information discounts much of the habitat value of the area to be filled in by Southport due to bulkheading and other manmade harms, as well as the presence of macroinvertebrates tolerant of reduced dissolved oxygen conditions, the destruction that has been inflicted to date by manmade activities is not what should control the review of the value of this reach of the River. There are ongoing efforts at the Delaware River Basin Commission to address low Dissolved Oxygen levels in the Estuary. There are also many strategies for restoring damaged lengths of riverbank using proved, proven and available science and technology, including in the Philadelphia region. So the consideration of the habitat value of the acreage Southport proposes to fill should be driven by the environmental habitat and benefit this area could provide under restored condition, as water quality restoration efforts are currently underway and physical habitat restoration is a viable and available opportunity if the site were to remain undestroyed by the Southport project.

According to Barry Dubinski also at the Oct 29 meeting, “there are red-bellied turtles in the tidal area, state-listed plant species, and the bald eagle nest.” In fact, there has already been an effort to see the ability to remove the bald eagle nesting tree.

In documents we have seen the US Fish and Wildlife Service has express concerns about the loss of shallow water habitats, the disposal of dredged material for this project and the potential contaminants it might contain, as well as migratory fish concerns.

Concerns about the introduction of invasive terrestrial and aquatic species from visiting container ships has been raised and as far as we know not addressed.

NMFS has stated it “believes this project will have a very high impact to the fish and benthic environment and is skeptical an adequate mitigation plan can be crafted to compensate for the losses within the proposed project schedule.” (See notes from Dec 1, 2009 meeting with NMFS at Sandy Hook, NJ). From the notes it is unclear which version of the project NMFS was discussing with the PRPA at the time of this meeting (33 acres river fill or over 12 plus other changes) – but the fact that they speak so strongly to the Southport proposal at any point demonstrates the need for serious consideration of the project and its impacts and that the level of information required for such analysis has not yet been made available to the public or all of the regulatory agencies with an interest in this project.

The loss of the riverside lands to development, coupled with the loss of associated wetlands and water habitats will have an affect on birds that use the area either seasonally or year round. That areas surrounding the project site and ecosystems to be damaged are already developed does not diminish the affect to bird life, or other life as the project sponsors suggest in draft documents, in fact it enhances and magnifies the harm. The lesser the amount of habitat available in a reach of river for aquatic, land and bird life the more valuable that which is left behind. These left over havens of good habitat are sometimes the last vestiges available to support or sustain migratory, seasonal or permanent wildlife, bird life and/or aquatic life. Their value is not diminished by the loss of other available habitat nearby due to previous development; their value is instead magnified.

Other areas that need to be considered and so far have not been:

- The impact of noise and vibrations (hydro-acoustic affects) on fish from pile driving, it can be harmful and so analysis is needed.
- Contaminants from the site, oil spills, anti-fouling compounds, ballast water impacts.

Weston, a consultant working on this project, says that there are no options other than this project at this location. But it is clear from the record that consideration of other sites was given merely cursory review and were summarily dismissed for undemonstrated reasons. For example, pursuing a port project to the south of the Navy Yard was dismissed because while it would avoid filling in 33 acres (now over 12 acres) of the River it would require increasing the length of channel to be dredged from 200 ft to 800 ft. The level of comparative harm from filling over 12 acres vs dredging an additional 600 ft is not characterized or discussed in the materials we have had the opportunity to review to date.

Southport is a Threat to River Jobs; the Claims of Creating them are Not Supported in the Record.

Pre-Application materials assert that the Southport project is needed for the ports of Philadelphia to “remain competitive” and that it will result in 7,000 jobs. We seriously question these assertions and have long sought the documentation to support the claims. The Delaware Riverkeeper Network has been asking for years for such documentation and it has never been provided, nor is it provided in the materials you have received. It is not appropriate to accept this claim as fact for purposes of such an important decision.

The claims that Southport is needed for the Philadelphia ports to remain competitive is simply not true.

- Container vessel traffic to the Ports of Philadelphia, since 1990, have grown by 300%, this is a dramatic level of growth when one considers that in this same time frame the Port of Baltimore, a port at 50 feet, has only grown in container vessel traffic by 29%.
- Additionally, the need/desire for Southport has long been linked by the Philadelphia Regional Port Authority with the deepening of the Delaware River. The Army Corps has made clear on the record that deepening will not result in induced tonnage, in fact it will result in reduced vessel calls, and so assertions that Southport are needed to service a growing number of vessels that will be coming up because of Panama Canal expansion and deepening are not supported by the public record
- Furthermore, recall, the deepening, if it happens, is only to 45 feet, not the 50 plus feet that the mega container vessels aspire to.
- And finally, since the beginning of this year alone the Ports of Philadelphia have made a number of major port deals which demonstrate that port growth is happening regardless of there being no Southport project.

Southport is not needed to support, grow or keep the ports of Philadelphia competitive – the record and reality do not support such a claim.

Southport is a major river fill project that threatens a wide array of aquatic species and habitat. As such, its construction actually may hurt already existing jobs, and/or prevent the rehabilitation of lost fishery jobs. Consideration of the ramifications for jobs dependent on a healthy River and River species should be of equal value, import and priority in the decisionmaking process.

- By way of example, there are concerns about the ramifications of construction of Southport on Delaware River sturgeon. Shortnose sturgeon are federally endangered. Atlantic sturgeon are under consideration for listing and in fact the science is showing are in worse condition than the shortnose population of the River. There was a time when Delaware River sturgeon supported a \$16 million caviar industry; that figure adjusted for today’s values is over \$400 million. Further harm to Delaware River sturgeon also means harm to the resurrection of this important industry. At one point our River was the Caviar Capital of the United States – only through restoration of sturgeon populations can we reclaim that title, those jobs, and that high level of income for the region.

And this is but one species that is considered to be at potential risk of harm by the construction of Southport.

The River belongs to us all, not to the ports. And it is not okay to be sacrificing the River’s health, its ecosystems or critters for port development projects to the detriment of the rest of us that are so dependent upon this River for every aspect of our local lives.

Mitigation Does Not Allay Concerns

The mitigation options being discussed do not minimize the harms or concerns.

Many of our concerns are about process and information and accurate review of the project – ensuring DRBC has the time, information and opportunity it needs to make an informed decision about this project. That body of information has not been provided the Commissioners and is not yet fully available. The proposed mitigation cannot address this concern.

Our concerns are also about precedent – the precedent of taking the DRBC so fully out of a primary review and decisionmaking role on a project that fills in over 12 acres of the main stem river is damaging to the River and the DRBC’s regulatory authority. The proposed mitigation cannot address this concern.

Our concerns are about the array of environmental harms and the lack of complete information or analysis.

None of these get addressed by the mitigation proposed.

But also, the mitigation under consideration raises its own troubling set of issues. The mitigation is quite a distance from the reach of river and the habitats being harmed. The mitigation is all up in the Neshaminy tributary. But the harm is being done on the main stem river. There does not seem to be a correlation in the resources benefitting from the mitigation versus those harmed by the project. Further, the kinds of habitats being proposed don’t seem comparable to those being lost. There is no discussion in the mitigation of the important water celery (*Valisneria*) discussed by agencies concerned about this project. Even further, some of the mitigation isn’t mitigation at all, it is simply leaving in place fill and wetlands that already exist, in fact that is a major proportion of the primary mitigation option.

Jack’s Marina seems to be the major mitigation option. This option is to create intertidal habitat (7.64 acres) and then to simply maintain existing fill to provide for red bellied turtles and to maintain already existing wetlands. Leaving in place fill and wetlands that already exist is not mitigation as these things exist and can continue to exist without intervention by the PRPA for Southport.

Areas B and C only add (if they were to be taken on in addition to Jack’s Marina which it is not clear is being proposed, it seems maybe the proposal is for these areas in lieu of Jack’s Marina) an additional 1.14 acres of nontidal wetlands, and 5.2 acres of tidal drainage area and .3 acres of subtidal wetlands respectively. In terms of open water and wetland habitats harmed by Southport the total is 16.76 acres. The mitigation options, all three, only provide for 14.28 acres of new habitat. And there is nothing comparable for the harm inflicted by the dredging or floodplain fill. It is not at all clear how, or if, these figures, with or without the maintaining portions of the proposed mitigation, meets the ratios for mitigation articulated by the National Marine Fisheries Service.

The National Marine Fisheries Service communicated that it was important that the “mitigation project provides habitat to the fish species impacted in the Southport project area.” (See notes from Dec 1, 2009 meeting with NMFS at Sandy Hook, NJ). It is not at all clear that this is the case.

In addition, NMFS expressed particular concern about the water celery (*Valisneria*) because of its high wildlife value. NMFS has said that “it is not clear how readily this can be established at mitigation sites.” (See notes from Dec 1, 2009 meeting with NMFS at Sandy Hook, NJ). There is no discussion of this issue in the materials presented about mitigation that we have seen.

Further, NMFS has made clear that “Equal or better habitat would need to be created in out-of-kind replacement. Characterization of existing conditions at potential mitigation sites would be necessary and would need to include some characterization of benthic invertebrates in addition to physical characterization of substrate types in aquatic (non-uplands) settings.” (See notes from Dec 1, 2009 meeting with NMFS at Sandy Hook, NJ). It is not at all clear that this level of analysis and/or the information necessary to determine it has either been gathered or provided.

DRBC Decision Already Made in May? This is a Breach of Trust that Must be Remedied by Pulling Back the Resolution.

Finally, we must note, it is of grave concern that the decision regarding this Resolution seems to already have been made by the Commissioners without the benefit of public input or comment. An email sent by Carol Collier to all Commissioners on May 19, 2010 posits that she “wanted to make sure that no Commissioner has issues with that decision”, i.e. the decision that DRBC not review the project or subject it to the requirement for DRBC decisionmaking. What’s worse? A major reason for the recommendation not to review the project is based upon an obvious misapplication of the Rules of Practice and Procedure regarding the 25 acre review threshold that applies to wetlands and marshlands not open waters and floodplains or to deepening/dredging of a channel. In truth, there is no way to correct this breach of public trust or process except to remove the Resolution from the table until the matter has been the subject of full DRBC review and public hearing.

Respectfully submitted and requested,



Maya K. van Rossum
the Delaware Riverkeeper

Attachments:

Email dated February 11, 2008
Memo by PADEP SERO dated February 11, 2008
Minutes of September 23, 2009 regulators meeting
Minutes of October 29, 2009 regulators meeting
Notes from Meeting with NMFS at Sandy Hook, NJ, Dec. 1, 2009