

June 17, 2022

The Honorable Michael Connor  
Assistant Secretary of the Army for Civil Works  
U.S. Department of the Army  
108 Army Pentagon  
Washington, D.C. 20310

Ms. Janet Coit  
Assistant Administrator for Fisheries  
Department of Commerce-NOAA Fisheries  
1315 East-West Highway, 14th Floor  
Silver Spring, MD 20910

Dear Secretary Connor and Assistant Administrator Coit,

The undersigned associations represent states, local governments and special districts, and entities in navigation, flood control, stormwater management, water supply and wastewater treatment, and recreation across the country. We thank your staff for the May 13 webinar regarding NOAA Fisheries and the Assistant Secretary of the Army for Civil Works (ASACW) memorandum. Your staff essentially reiterated the January 6 presentation outlining the new path your agencies are charting with respect to Endangered Species Act section 7 consultations for existing structures. Our concerns were summarized in the attached slides.

As was previously noted, the memorandum between the two agencies has broad implications for our members who contribute significant financial resources to operate and maintain critical water and waterways infrastructure. Many of our members are non-Federal cost-sharing partners in U.S. Army Corps of Engineers (USACE) Civil Works (CW) projects. These CW projects are essential to protecting communities from flooding, boosting national, regional and local economies from movement of goods, providing needed water supply, recreational opportunities and energy generation to regions.

As public entities, our members are required to maintain their water and waterways infrastructure, through user fees, taxes and other limited revenue sources. Since our members are public, all funds are reinvested back into the infrastructure. As a result, we work closely with federal agencies to ensure that upgrades and maintenance are done in a cost-effective manner, while being respectful of the environment. This ensures that our infrastructure functions as intended.

The agencies indicated on the May 13 webinar that the January 5 memo is a clarification of existing authorities, but our associations continue to have deep concerns over this change and how the memo will be implemented nationally, based on experiences in the Pacific Northwest (PNW) region. Our members have documented multiple year delays in PNW projects. This has led to significant public safety risks and environmental compliance issues with other federal agencies. Moreover, many maintenance projects that historically underwent informal consultations must go through the formal consultation process which requires more time, studies, and funds that may not have been originally budgeted. Furthermore, the conservation calculator tool, formulated strictly for the PNW, did not go through public review and was not developed to address assets with multi-decade service lives, such as those at public ports.

Furthermore, our members are concerned that this action will have significant impacts to rural and underserved communities and their ability to protect their populations. Rural and underserved

communities do not have the staff or funding to bring on consultants for the already complicated permitting processes. These communities often have structures that have deferred maintenance. Additional permitting actions and mitigation requirements will cause them to further delay critical maintenance of these essential structural projects.

In addition, we are at a critical juncture fighting climate change with generational infrastructure funding that can significantly improve our resilience. It is imperative that any changes or clarifications to federal regulatory processes are clear, effective, and implementable to be able to utilize the infrastructure funding from the Bipartisan Infrastructure Law and improve our communities. Based on our members' experiences in the Pacific Northwest, this action has not met objectives in the Biden-Harris Permitting Action Plan since there has been limited public input, permitting times have increased, and the conservation calculator is not effective or transparent.

During the May 13 webinar, we reiterated our request and willingness to work with the agencies on nationwide implementation of the memo. We seek a dialogue that will allow your agencies to develop an approach that provides appropriate protection of the environment while allowing essential maintenance to be performed by public entities in a timely and cost-effective manner. Through constructive conversations, our public entities can provide valuable insights on how the memorandum may impact other parts of the country, along with potential troubleshooting suggestions, creating a win-win for non-Federal sponsors, stakeholders and federal agencies. We strongly feel this dialogue needs to take place before the agencies pursue further implementation of the January 5 agreement.

Thank you again for the May 13 briefing. We welcome further engagement opportunities, both nationally and regionally, to have deeper conversations about this memorandum and its nationwide application to maintenance permits for existing structures moving forward. We look forward to your reply on the next steps on this endeavor.

American Association of Port Authorities  
Gulf Ports Association of the Americas  
Maritime Exchange for the Delaware River and Bay  
National Association of Counties  
National Association of County Engineers  
National Association of Regional Councils  
National Association of Flood and Stormwater Management Agencies  
National League of Cities  
National Marine Manufacturers Association  
National Water Supply Alliance  
National Water Resources Association  
National Waterways Conference  
North Atlantic Ports Association  
Northwest Marine Trade Association  
Pacific Northwest Waterways Association  
Washington Maritime Federation