
Appendix E: Supplemental EA Compliance with Environmental Laws, Statutes, and Executive Orders



**U.S. Army Corps of Engineers
Caribbean District**

SUPPLEMENTAL EA COMPLIANCE WITH ENVIRONMENTAL LAWS, STATUTES AND EXECUTIVE ORDERS

This SEA requires compliance with specific federal laws, statutes, and Executive Orders (E.O.) relating to the environment. The following provides a summary of environmental compliance with each Act, E.O. or applicable statute.

1.1 NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (NEPA) (42 U.S.C. § 4321 ET SEQ.)

The RPN project study was authorized under Section 204 of the Flood Control Act of 1970 with the initial public meeting held on 16 March 1978. The Final EIS for the RPN Flood Control project was filed in December of 1985, which included a public-involvement program discussion in Appendix H.

The project was authorized under the Water Resources Development Act (WRDA) of 1986. A draft EA was circulated to discuss design modifications for a 30-day public review period with no comments received. The FONSI was signed in July 1992 and the Final EA and FONSI were filed in May 1993. An additional EA/FONSI was filed in 2002 to discuss design modifications to the Bechara Industrial Area after project construction commenced in 1995. A public scoping letter along with Notice of Intent for a Supplemental EIS in the Federal Register were published in 1999. After the public scoping period the project was modified to avoid adverse impacts to wetlands, and so the Notice was cancelled by a Notice of Cancellation on March 15, 2000. This 2002 EA/FONSI was coordinated with agencies and interested parties for a period of 45 days, beginning on February 22, 2001.

Design refinements and engineering changes to the previously authorized Project and their effects on the human environment are disclosed in this SEA prepared pursuant to NEPA and its implementing regulations. A Notice of Availability for the proposed FONSI, draft EA, and associated appendices will be made available to pertinent agencies and interested stakeholders for 30 calendar days to allow for review and comment. The Corps will update this SEA as appropriate following public review/comment. The project will be in compliance with the Act.

1.2 ANADROMOUS FISH CONSERVATION ACT OF 1965, AS AMENDMED (16 U.S.C. §§ 757A-757G)

The Act would not be applicable to this Project. “An Act to authorize the Secretary of the Interior to initiate with the several States a cooperative program for the conservation, development, and enhancement of the Nation’s anadromous fish, and for other purposes”. The project does not involve funding or resources that would affect conservation of anadromous fish. This Act does not apply.

1.3 ARCHAEOLOGICAL RESOURCES PROTECTION ACT (ARPA) (16 U.S.C. § 470aa-470mm)

This Act works to protect and preserve historical and cultural resources of Federal lands, including Indian lands through a permit system authorizing scholarly study and excavation of cultural properties, as well as provide sanctions for unauthorized use, removal, or damage to any archaeological resource. 16 U.S.C. §§ 470cc, 470ee-470ff; 36 CFR Part 296. The term resource includes human remains, pottery, basketry, bottles, weapon projectiles, rock carvings and paintings, tools, structures or portions thereof, graves, skeletal remains 16 U.S.C. § 470b (1). The Corps has determined that the project has no potential to affect cultural resources. However, if during construction activities, items that may have historic or archeological origin are observed, the Project Archaeologist must be notified to determine if initiating coordination with the appropriate federal and Commonwealth agencies and decide if archaeological investigation is required.

1.4 AMERICAN INDIAN RELIGIOUS FREEDOM ACT (42 U.S.C. §§ 1996 and 1996a)

The policy of the U.S. is to protect and preserve for American Indians, Alaska Native Groups and Native Hawaiians, their inherent rights of Freedom to believe, express, and exercise traditional religions. These rights include, but are not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremony and traditional rites. There are no federally recognized American Indians, Alaska Native Groups, or Native Hawaiians in Puerto Rico. The project is in compliance with this Act.

1.5 CLEAN AIR ACT OF 1963, AS AMENDED (42 U.S.C. § 7401 ET SEQ.)

The Municipality of San Juan where the project area is situated, has been designated as a nonattainment area for sulfur dioxide (SO₂) from 2018 through 2024 (EPA, 2022). SO₂ emissions are primarily associated with the combustion of sulfur-containing fuels (oil and coal). The primary source of SO₂ emissions in the area is the burning of fossil fuels by power plants and industrial facilities, which release significant amounts of SO₂ into the atmosphere. Additional sources of emissions include large vehicles and equipment that burn high-sulfur fuel, as well as other industrial processes. To avoid and minimize adverse effects to air quality would be achieved by the implementation of measures to reduce emissions from transportation and operations, including the use of Ultra Low Sulfur Diesel (ULSD) fuel in heavy equipment, idling restrictions, diesel equipment reduction, and the use of best available technology. Additionally, the project will ensure conformance with the approved state implementation plan (SIP), National Ambient Air Quality Standard (NAAQS) requirements, and the General Conformity Rule (40 CFR Parts 51 and 93) for actions occurring in air quality nonattainment areas. By incorporating these measures into the project construction and operation, the Corps expects to minimize temporary adverse impacts on air quality, with no significant long-term impacts, and ensure protection of public health and welfare, while being in compliance with the Act.

1.6 CLEAN WATER ACT OF 1972 SECTION 401 AND SECTION 404(b) (33 U.S.C. §§ 1341 AND 1344(b))

Pursuant to U.S.C 1391 Clean Water Act (CWA) Section 401, the Corps received a WQC from the Puerto Rico EQB on 11 June 1993. The proposed changes described in the Preferred Alternative add a material placement area to the Project. It is expected that a new WQC will need to be obtained confirmation. Confirmation for a new WQC will be determined in coordination with DNER-WQA. If the Project changes require a new WQC and new Project water quality requirements, the Corps will ensure compliance. The project will be in compliance with this Act and Puerto Rico's water quality standards.

Section 404(b)(1) of the CWA addresses the discharge of dredged or fill material into the navigable waters of the U.S. The act of discharging and the location of the discharge is not changing and has already been evaluated. Effects of the Project construction are substantially similar to the effects and determinations described in the prior 404(b)(1) Guidelines Evaluation (USACE 2025); additionally, this SEA contains an updated 404(b)(1) in Appendix D. The project will be in compliance with this Act.

The project's wetlands mitigation plan addressed the requirements of Section 404(b) of the CWA. The compensatory mitigation for the wetlands impacted from construction of the Preferred Alternative will be constructed within 5 years from the impacts.

1.7 COASTAL BARRIER RESOURCES ACT AND COASTAL BARRIER IMPROVEMENT ACT OF 1990, AS AMENDED (16 U.S.C. § 3501 ET SEQ.)

The Coastal Barrier Resources Act (CBRA) and the Coastal Barrier Improvement Act (CBIA) limit Federally subsidized development within the CBRA Units to limit the loss of human life by discouraging development in high-risk areas, to reduce wasteful expenditures of Federal resources, and to protect the natural resources associated with coastal barriers. CBIA provides development goals for undeveloped coastal property held in public ownership, including wildlife refuges, parks, and other lands set aside for conservation ("otherwise protected areas," or OPAs). These public lands are excluded from most of the CBRA restrictions, although they are prohibited from receiving Federal flood insurance for new structures. There are no designated coastal barrier resources in the Project area that would be affected by this project. Coastal Barrier Resource Systems (CBRS) unit PR-86P (Punta Salinas) is located over 5 nautical miles west of the project area. This Act is not applicable.

1.8 COASTAL ZONE MANAGEMENT ACT (16 U.S.C. § 1451 ET SEQ.)

The proposed work is within the Coastal Zone of Puerto Rico, and it will seek consistency with the Puerto Rico Coastal Management Plan.

A determination of consistency of the RPN project with the Puerto Rico Coastal Management Program was provided along with the Project EIS in 1985, and again in 1993. The 2002 EA/FONSI was also determined to be in compliance with the CZMA and received concurrence from the Puerto Rico Coastal Management Plan.

The Corps considered the proposed modifications and determined the project remains consistent with the Puerto Rico Coastal Management Program. The project has been and will continue to be in compliance with this Act.

1.9 ENDANGERED SPECIES ACT OF 1973, AS AMENDED (16 U.S.C. § 1531 ET SEQ.)

The project will be conducted in accordance with the Endangered Species Act (ESA). Consultation with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) has been ongoing regarding potential effects to listed species.

Initial consultation was reinitiated in 2013 with USFWS and NMFS. The consultation with USFWS concluded with a December 18, 2013, USFWS letter concurring with a “may affect, but not likely to adversely affect” (MANLAA) determination for the green and hawksbill sea turtles, the Antillean manatee and the PR boa. NMFS consultation concluded with a letter dated June 10, 2014, concurring that the project MANLAA sea turtles (green and hawksbill sea turtles).

Since then, NMFS has added five additional hard corals and five species – fish, mollusks, sharks, and rays – to the ESA-listed species. Of those ten species, nine were addressed in a 2023 Site Management and Monitoring Plan (SMMP) programmatic Essential Fish Habitat (EFH) and Section 7 ESA consultation. The consultation determined that nine species – the five hard corals, the Nassau grouper, giant manta ray, oceanic whitetip shark, and the scalloped hammerhead shark – are not likely to be jeopardized or result in adverse effects to designated critical habitat. Regarding the tenth species, the queen conch, the Corps determined that the proposed project would have no effect on the species or its habitat due to the presence of unsuitable habitat.

For the new area proposed for material management, four species were identified under USFWS jurisdiction: the Antillean manatee (mammal), the Puerto Rican boa (reptile), roseate tern (bird), and the palo de rosa (plant). The Corps issued a MANLAA determination for the first two species due to the potential but unlikely presence and encounter and found no effect on the last two species due to the presence of unsuitable habitat.

Informal consultation will be reinitiated with USFWS and NMFS upon release of this draft report to address the listed species for which the Corps has made a determination and concurrence from the USFWS or NMFS still needs to be sought.

The construction of the proposed project has been evaluated through previous NEPA documents (see Section 1.5 of this SEA). Adverse effects to T&E species will be avoided and/or minimized through implementation of standard protection conditions and Best Management Practices (BMPs) as described in Section 4.1.3. The Corps will include applicable Terms and Conditions in the Project plans and specifications. Specifically, NMFS’ Sea turtle construction conditions, Puerto Rican Boa Conservation Measures, and USFWS standard manatee conditions for in-water work will be implemented. T&E species

protection criteria will be included in the Contractor's Environmental Protection Plan (EPP).

Detailed information regarding ongoing consultation with NMFS and USFWS can be found in Appendix F "Environmental Consultations and Coordination" of this EA.

The Corps is complying with the Act through the NEPA review and ESA consultation processes. The project complies with this Act.

1.10 ESTUARY PROTECTION ACT OF 1968 (16 U.S.C. §§ 1221-1226)

The proposed project aims to restore and enhance estuarine wetland habitat in the Bechara area and the San Juan Bay Estuary. Estuarine wetland restoration and enhancement will improve environmental conditions in the Estuary such as water quality and EFH areas. In addition, the Corps will comply with several other regulations that support estuary protection, including CWA Section 401 WQC, CWA 404(b)(1) analysis, MPRSA Section 103 concurrence, and CZMA Federal Consistency Determination concurrence. These actions demonstrate an effort to protect and potentially improve the San Juan Bay Estuary, and compliance with the Act.

1.11 FEDERAL WATER PROJECT RECREATION ACT, AS AMENDED (16 U.S.C. §§ 460(L)(12)-460(L)(21))

Recreational resources are currently lacking in the area of the proposed project. Construction of the proposed project is expected to result in improved conditions for fish and wildlife, which in turn would enhance the aesthetic, and recreation and fish and wildlife value. While this SEA don't detail specific recreational facilities being built, the project objectives and benefits align with the spirit of the Act by integrating recreational and aesthetic considerations into a federal water project. The project is in compliance with this Act.

1.12 FISH AND WILDLIFE COORDINATION ACT OF 1958 (16 U.S.C. §§ 661-666C)

The Corps will comply with NMFS and USFWS consultations for the Preferred Alternative, directly addressing the coordination requirement of the Act. The SEA also details evaluation of potential impacts on threatened and endangered species, indicating a broader consideration of wildlife impacts. The proposed action acknowledges the presence of EFH within the Bechara area for several species, triggering a requirement to consult with the NMFS as mandated by the MSFCMA. Finally, the proposed project aims to improve conditions for fish and wildlife through mitigation, rendering insignificant negative impacts and potentially enhancing habitat, aligning with the Act's goal of preventing loss of wildlife values. The project is in compliance with the Act.

1.13 FARMLAND PROTECTION POLICY ACT OF 1981 (7 U.S.C. § 4201 ET SEQ.)

This Act is aimed at minimizing the conversion of farmland to non-agricultural uses. It encourages federal agencies to consider the impact of their programs on farmland and to

work with state, local, and private entities to protect agricultural land. The proposed project does not involve activities or resources that would impact or convert farmland. This Act does not apply.

1.14 MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT, AS AMENDED (16 U.S.C. § 1801 ET SEQ.)

This SEA identifies the presence of EFH within the Bechara area for species like blue marlin, white marlin, sailfish, and the Caribbean reef shark. The Act requires for federal agencies to consult with the NMFS regarding activities that may affect this habitat. This SEA states that the Corps will comply with the requirement by consulting with NMFS for the Preferred Alternative. Furthermore, the project aims to restore and enhance EFH in the area, aligning with the Act's goal of conserving and managing fisheries resources. The assessment of potential impacts to these species and their habitat demonstrates the commitment to minimizing adverse effects and promoting sustainable fisheries management as mandated by the Act. The project is in compliance with the Act.

1.15 MARINE MAMMAL PROTECTION ACT OF 1972 (16 U.S.C. §§ 1361 ET SEQ.)

This SEA evaluated potential impacts to marine mammals, including manatees, whales, and dolphins, within the project area. While the Bechara area is not considered a primary habitat for these species, particularly the Antillean manatee, the SEA acknowledges the potential for their presence and assesses potential impacts from vessel traffic, especially during use of the ODMDS. To mitigate these potential impacts, the project will follow standard Antillean manatee construction conditions for any in-water work as a precaution and implement protective measures, including requiring slow vessel speeds in areas with known or suspected marine mammal presence – measures already in place for the existing project. The SEA also states the Corps will comply with USFWS and NMFS consultations, further ensuring adherence to the MMPA's requirements. The project is in compliance with this Act.

1.16 MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT (16 U.S.C. §§ 1431 ET SEQ. AND 33 U.S.C. §§ 1401)

Ocean disposal is a component of the RPN Project for which the Corps has received MPRSA Sec 103 concurrence, but it is not a component of this SEA proposed material management area. The Corps will comply with MPRSA Sec 103 concurrence as necessary and in regard to any potential or not currently covered impacts from the RPN Project related to ocean dumping or other activities regulated under the MPRSA. This SEA is for upland disposal therefore, the Marine Protection, Research and Sanctuaries Act does not apply to the proposed action. This Act is not applicable to this portion of the project under this SEA.

1.17 MIGRATORY BIRD TREATY ACT (16 U.S.C. §§ 703-712) AND MIGRATORY BIRD CONSERVATION ACT (16 U.S.C. §§ 715-715D, 715E, 715F-715R)

A site-specific assessment was performed for the proposed project area that did not identify species protected under the Migratory Bird Treaty Act. The assessment did detect the presence of 35 bird species at the site, including eight with observed breeding activity, and the Puerto Rican oriole as a species of conservation concern. The SEA commits the Corps to consultations with the USFWS – a key agency for enforcing both Acts – for the Preferred Alternative. Although direct protections for listed species weren't triggered, this commitment to agency consultation demonstrates a proactive approach to considering potential impacts to migratory birds and their habitats, aligning with the intent of both Acts. The project also includes wetland restoration and vegetation planting, which would ultimately benefit bird species in the area. The project is in compliance with this Act.

1.18 NATIONAL HISTORIC PRESERVATION ACT OF 1966 (54 U.S.C. § 300101 ET SEQ.)

The Corps determined that the proposed project has no potential to affect historic properties. This determination is supported by the finding that no historic structures are present at the Bechara site and that prior disturbance and alteration of the area, including cut and fill activities, preclude the existence of any remaining historic properties. This assessment was conducted in accordance with Section 106 of the NHPA, ensuring that potential impacts to cultural resources were considered and appropriately addressed. The project is in compliance with the Act.

1.19 THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT (25 U.S.C. § 3001 ET SEQ.)

Federal agencies must make an inventory of all Indian human remains and funerary objects in its possession and control, attempt to identify the affiliated tribe, and repatriate the items to the appropriate group. This Act also applies to inadvertent discoveries, in that there is a required delay in the disturbance of a site containing human remains until consultation with affiliated tribes is accomplished. This Act applies to Federal owned lands, including Reservation lands. The project area does not include federally owned lands and is in compliance with this Act.

1.20 OUTER CONTINENTAL SHELF LANDS ACT (43 U.S.C. § 1331 ET SEQ.)

This Act primarily deals with the management of minerals, particularly oil, gas, and hard minerals, on the Outer Continental Shelf (OCS). This Act is not applicable as construction in the project will take place by a river and an estuarine channel within the San Juan Bay Estuary. Use of the Ocean Dredged Material Disposal Site (ODMDS), although is considered within the OCS, is not an activity specifically covered by the provisions off the Act. This Act is not applicable.

1.21 RIVERS AND HARBORS ACT OF 1899, SECTION 10 (33 U.S.C. §404 ET SEQ.)

The proposed work in the Bechara area presented in this SEA would not obstruct navigable waters of the United States. This SEA builds upon previous NEPA documents and ensures ongoing coordination with relevant agencies, including adherence to CWA Section 404(b)(1) guidelines – a key component of Section 10 compliance. The project's need for additional material management areas is evaluated within this regulatory framework. This SEA assesses potential environmental effects related to these alterations and to the responsible development within navigable waters under Section 10. The project is in compliance with this Act.

1.22 SUBMERGED LANDS ACT OF 1953 (43 U.S.C. § 1301 ET SEQ.)

The Project will occur on sovereign submerged lands of the Commonwealth of Puerto Rico. The Project will be coordinated with the Commonwealth of Puerto Rico with the release of this draft SEA. Therefore, the project will be in compliance with this Act.

1.23 UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT (42 U.S.C. §§ 4601-4655)

The proposed project area does not contain structures that would prompt the displacement of residents or businesses. Therefore, the provision of relocation assistance is not applicable. The lands encompassing the proposed project area are undeveloped and owned by the Commonwealth of Puerto Rico. This Act is not applicable.

1.24 WILD AND SCENIC RIVER ACT OF 1968 (16 U.S.C. § 1271 ET SEQ.)

No designated Wild and Scenic River reaches are within or in proximity of the proposed project area. No Wild and Scenic River reaches will be affected by the proposed project related activities. This Act is not applicable.

1.25 E.O. 11988, FLOODPLAIN MANAGEMENT

The proposed project demonstrates compliance with E.O. 11988, Floodplain Management, by prioritizing flood risk reduction as a primary objective of the overall RPN Project. The project was initially authorized specifically for flood control improvements and continues to aim at reducing flooding in the San Juan metropolitan area. The proposed MMA project incorporates design measures to mitigate local flooding and allows for drainage around the site, further reducing flood hazards. Furthermore, completing the RPN Project, facilitated by this MMA, is expected to reduce the impacts from flooding in the San Juan area, aligning with the intent of EO 11988 to avoid or minimize occupancy and modification of floodplains. The project also seeks to improve safety for communities and commuters through flood protection, contributing to the goals of the Executive Order. The project is in compliance with this Act.

1.26 E.O. 11990, PROTECTION OF WETLANDS

The proposed project in this SEA demonstrates compliance with Executive Order 11990, Protection of Wetlands, through careful assessment and mitigation strategies. The project will comply with all applicable conditions of the CWA Section 404(b)(1) analysis, which governs the discharge of dredged or fill material into wetlands. Additionally, implementing the Preferred Alternative will restore and improve EFH in the area, contributing to the overall ecological health of the San Juan Bay Estuary and offsetting potential wetland impacts. The project focuses on utilizing an existing material management area and incorporates best management practices (BMPs) to prevent erosion and sedimentation, further protecting surrounding wetland resources.

In addition, the developed Wetland Mitigation and Contingency Plan, prioritizes the avoidance, minimization, and compensation for unavoidable impacts to wetland resources. The plan explicitly details a strategy for compensatory mitigation to address significant, long-term impacts, aiming to achieve the national goal of “no net loss” of wetlands, as outlined in USACE and EPA guidance (2008). The plan’s development and implementation are directly linked to minimizing damage to these valuable resources and ensuring their long-term sustainability, aligning with the core principles of Executive Order 11990. Therefore, the project is in compliance with the Corps’ wetland policy and this Executive Order.

1.27 E.O. 13007, INDIAN SACRED SITES

This E.O. is directed towards executive branch agencies with statutory or administrative responsibility for the management of Federal lands. The proposed action would not affect Department of Defense owned or Corps managed lands. The Project is in compliance with this Executive Order.

1.28 E.O. 13045, PROTECTION OF CHILDREN FROM ENVIRONMENTAL HEALTH AND SAFETY RISKS

The proposed project in this SEA complies with Executive Order 13045, Protection of Children from Environmental Health and Safety Risks, primarily through its overarching goal of enhancing human health and safety. The purpose of the RPN Project is to reduce flood risk and minimize damage, directly improving safety conditions for communities and commuters – benefiting children as members of those communities. Furthermore, the project includes environmental commitments to avoid, minimize, or mitigate adverse effects, and will adhere to conditions related to water quality certifications and spill contingency plans, all of which help to provide safer conditions for children. The SEA process itself includes assessing potential environmental effects and implementing mitigation measures to reduce them to a less-than-significant level, demonstrating the Corps approach to safeguarding vulnerable populations, including children. The project is in compliance with this Executive Order.

1.29 E.O. 13089, CORAL REEF PROTECTION

The proposed project will have no effect on coral reefs. Transporting material to the ODMDS by the RPN Project may affect, but not likely to adversely affect corals, as determined in the 2023 SMMP (EPA and USACE 2023). In that instance measures to minimize or mitigate any potential impact to individual animals would be implemented. The project is in compliance with this Executive Order.

1.30 E.O. 13112, INVASIVE SPECIES

This SEA addresses concerns related to Executive Order 13112, Invasive Species, by acknowledging the significant presence of invasive exotic plant species at the Bechara site – approximately 32% of the plant species identified are considered invasive. While the documents don't detail specific invasive species control measures implemented during construction, the project anticipates that without action, native species will continue to face competition from these invasives. Furthermore, the restoration and enhancement of wetlands and seeding of native vegetation under the Preferred Alternative is intended to allow native species to reestablish and recolonize the area, aiming to control existing invasive species and manage further spread. The SEA demonstrates awareness of the issue and frames the project as contributing to a healthier ecosystem where native species can thrive. The project is in compliance with this Executive Order.

1.31 E.O. 13175, CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS

E.O. 13175 requires federal agencies to consult with Indian tribal governments on policies that have substantial direct effects on them. There are no federally recognized Indian tribes in Puerto Rico. This E.O. is not applicable.

1.32 E.O. 13186, RESPONSIBILITIES OF FEDERAL AGENCIES TO PROTECT MIGRATORY BIRDS

The RPN Project has undergone previous consultation with the U.S. Fish and Wildlife Service (USFWS) regarding threatened and endangered species, which inherently includes consideration of migratory bird species. This SEA for the proposed project states no species protected under the Migratory Bird Treaty Act were specifically identified at the site, it acknowledges the presence of 35 bird species, 86% of which are native to Puerto Rico, and breeding activity for eight species. Furthermore, the project's overall aim to restore and enhance wetlands and fish/wildlife habitat contributes to a healthier ecosystem that benefits migratory birds. The commitment to minimizing impacts on listed species and adherence to ESA regulations also supports the broader goal of protecting bird populations. The project is in compliance with this Executive Order.