



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: October 22, 2019
Comment Deadline: November 21, 2019
Corps Action ID Number: SAW-2018-02230

The Wilmington District, Corps of Engineers (Corps) received an application from the Town of Oak Island to dredge Jay Bird Shoals and discharge the dredged material along the shoreline of Oak Island for beach nourishment.

Specific plans and location information are described below and shown on the attached plans. This Public Notice and all attached plans are also available on the Wilmington District Web Site at:

<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>

Applicant: Town of Oak Island
Mr. David Kelly
4601 E. Oak Island Drive
Oak Island, North Carolina 28465

AGENT (if applicable): Mr. Johnny Martin
Moffatt and Nichol
4700 Falls of the Neuse Road, Suite 300
Raleigh, North Carolina 27609

Authority

The Corps evaluates this application and decides whether to issue, conditionally issue, or deny the proposed work pursuant to applicable procedures of the following Statutory Authorities:

- Section 404 of the Clean Water Act (33 U.S.C. 1344)
- Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)
- Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413)

Location

Location Description: Oak Island is located in Brunswick County, North Carolina. It is roughly 27 miles south of the City of Wilmington and 30 miles east of the South Carolina state line. The specific project area is located near the middle of the Oak Island

shoreline, and the limits of the project extend from about 33.914089, -78.17086 to about 33.90732, -78.102237.

The dredge area within Jay Bird Shoals is located about 1 mile from the shoreline of Oak Island/Caswell Beach along the northern part of the shoal feature.

Nearest Town: Oak Island

Nearest Waterway: Atlantic Ocean and Cape Fear River

River Basin: Cape Fear

Latitude and Longitude: 33.914089, -78.17086 to 33.90732, -78.102237

Existing Site Conditions

Oak Island is a 12-mile-long barrier island located west of Cape Fear with an east-west orientation, facing the Atlantic Ocean to the south and separated from mainland Brunswick County to the north by tidal marshes and the Atlantic Intracoastal Waterway. The west end of Oak Island is backed by a narrow fringe of tidal marsh that separates the island from a waterway known as the Eastern Channel.

The proposed dredge site in the project area is located within Jay Bird Shoals. Jay Bird Shoals is an accretional feature formed by processes of longshore drift and prevailing wind and wave conditions. Jay Bird Shoals is composed primarily of marine soft-bottom habitat.

The proposed project area's discharge site is located along the center of the barrier island. The proposed project area is composed primarily of sandy wet and dry beach, vegetated dune systems and un-vegetated subtidal and intertidal marine and estuarine bottoms.

Oak Island has a history of nourishment projects dating back to 2001 with the introduction of the Sand Management Plan associated with the Wilmington Harbor navigation project. In 2001, the US Army Corps of Engineers conducted a sand placement project, known as the Sea Turtle Habitat Restoration Project, across the central portion of the island within the boundaries of the proposed project. The material for this proposed project came from Yellow Banks, an upland borrow area, which unintentionally placed rocks on the beach, which are still present today.

The Oak Island shoreline experienced shoreline and dune erosion during Hurricanes Matthew (2016) and Florence (2018). Approximately 586,291 cubic yards (cy), above -25ft NAVD88, was lost during Hurricane Matthew and 68,072 cy was lost during Hurricane Florence. In 2017/2018, as a result of Hurricane Matthew, FEMA provided funding for construction of a temporary protection measure in the form of an "emergency berm" which placed approximately 120,000 cy of material to provide immediate protection.

Applicant's Stated Purpose

The Applicant's stated purpose for the proposed project is to provide protection to infrastructure from a 25-year return period storm event.

Project Description

The applicant proposes to dredge a portion of Jay Bird Shoals and place the dredged material along the shoreline of Oak Island for beach nourishment. The proposed disposal area would extend approximately 4 miles from about 33.914089, -78.17086 to about 33.90732, -78.102237 and would involve the discharge of dredged material into approximately 122 acres of waters of the United States, specifically 72 acres of intertidal open waters and 50 acres of subtidal open waters. The proposed dune/berm would be constructed at 13.5 to 14.5 feet NAVD88.

The applicant has identified an approximate 304-acre sand source site for the acquisition of beach-compatible material suitable for placement along the Oak Island shoreline. The applicant proposes to dredge approximately 1.1 million cubic yards of material from Jay Bird Shoals to address sediment losses, as well as ensure improved beach widths along this portion of Oak Island. Sediment identified within the Jay Bird Shoals borrow site will be excavated by a hopper or cutterhead dredge and pumped by submerged pipeline to the disposal area. Three different zones and dredge depths have been identified in Jay Bird shoals with the intention to maintain the integrity of the shoal and minimize the effect on the nearshore wave environment. Zone 1 will be dredged to a depth of -26 ft NAVD88 and will involve the removal of approximately 4-11 feet of material. Zone 2 will be dredged to -31 ft NAVD88 and will involve the removal of approximately 5-6 feet of material. Zone 3 will be dredged to -27 feet NAVD88 and will involve the removal of approximately 5-12 feet of material. One exclusion zone has been identified to avoid impacts to a potential submerged wire or cable. A copy of the geotechnical report and project drawings is posted with this public notice at the following link: <http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Public-Notices/>

Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment:

1. All sand placement, dredging, and associated construction activities would adhere to a 16 November to 30 April environmental window.
2. All material placed on the beach and in associated dune systems would consist of beach compatible sand that meets NC Technical Standards for Beach Fill Projects (15A NCAC 07H .0312).

3. Pipelines will be equipped with spreaders to reduce effluent discharge velocities during sand-slurry placement.
4. Town of Oak Island will monitor for shoreline change along Caswell Beach to ensure no impact to adjacent shorelines.

Compensatory Mitigation

The applicant did not propose a compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment. The project will have no direct or indirect effects on wetlands or other special aquatic sites.

Essential Fish Habitat

The proposal would involve dredging of approximately 304 acres of subtidal ebb shoal habitat and filling of approximately 72 acres of intertidal habitat and 50 acre of subtidal habitat utilized by various life stages of red drum, Spanish mackerel, summer flounder, shrimp and other snapper-grouper, pelagic, migratory and demersal fish. Our initial determination is that the proposed action would not have a substantial adverse impact on EFH or Federally managed fisheries. Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the National Marine Fisheries Service. An EFH assessment for this project is currently in preparation and no DA permit will be issued for this project until all requirements under the Magnuson-Stevens Fisheries Conservation and Management Act have been met.

Cultural Resources

Pursuant to Section 106 of the National Historic Preservation Act of 1966, Appendix C of 33 CFR Part 325, and the 2005 Revised Interim Guidance for Implementing Appendix C, the District Engineer consulted district files and records and the latest published version of the National Register of Historic Places and initially determines that no historic properties, nor properties eligible for inclusion in the National Register, are present within the Corps' permit area; therefore, no historic properties will be affected.

The applicant completed a magnetometer, multibeam and side-scan sonar survey to conduct an archaeological assessment of the proposed dredge area within Jay Bird Shoals. A magnetometer anomaly in the form of a line running northeast to southwest across the borrow area was identified. The anomaly does not appear to be a cultural resource, it is likely a modern cable or pipe. At this point a 50 ft buffer on both sides of the anomaly is being proposed to avoid the feature. According to the survey, 10 others items were identified, which appear to consist of a tire and other small objects.

The Corps will coordinate our "No effect" determination with the State Historic Preservation Office. No permit will be issued until the requirements of Section 106 of the National Historic Preservation Act are satisfied.

Endangered Species

Pursuant to the Endangered Species Act of 1973, the Corps reviewed the project area, examined all information provided by the applicant and consulted the latest North Carolina Natural Heritage Database. Based on available information:

The Corps determines that the proposed project may affect West Indian manatee (*Trichechus manatus*). By copy of this public notice, the Corps initiates consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.

The Corps determines that the proposed project may affect other federally listed endangered or threatened species or their formally designated critical habitat. However, consultation has been completed for this type of activity and the effects of the proposed activity have been evaluated and/or authorized by the National Marine Fisheries Service (NMFS) in the South Atlantic Regional Biological Opinion or its associated documents, including 7(a)(2) & 7(d) analyses and Critical Habitat assessments. A copy of this public notice will be sent to the NMFS.

Also, the Corps determines that the effects of the proposed activity have been evaluated and/or authorized by the United States Fish and Wildlife Service (USFWS) in the North Carolina Coastal Beach Sand Placement Statewide Programmatic Biological Opinion (SPBO). The applicant intends to comply with the terms and conditions and reasonable and prudent measures required by the SPBO. A copy of this public notice will be sent to the USFWS.

Section 408

Interested parties are hereby notified that an application has been received for Department of the Army Section 408 (Section 14 of the Rivers and Harbors Act of 1899; 33 U.S.C. 408) approval to conduct proposed work within the limits of the federally constructed Sea Turtle Habitat Restoration Project, as described above in the Existing Site Conditions Section and shown on the attached maps. Written comments are being solicited from anyone having an interest in the requested alteration. Comments received will become part of the U.S. Army Corps of Engineers' (USACE) administrative record and will be considered in determining whether to approve the request. Comments supporting, opposing, or identifying concerns that should be considered by the USACE in its decision process are welcome. Comments providing substantive information and/or a rationale for the commenter's position are the most helpful.

This public notice is not a paid advertisement and is for public information only. Issuance of this notice does not imply USACE endorsement of the project as described.

The decision whether to grant the requested permission for federal project modification under Section 408 will be based on several factors and will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably

foreseeable detriments. Review of the request for modification will be reviewed by a USACE technical review team and will consider, but not necessarily be limited to, the following factors:

1. Impair the Usefulness of the Project Determination. The review team will determine if the proposed alteration would limit the ability of the project to function as authorized, or would compromise or change any authorized project conditions, purposes, or outputs. The decision whether to approve a request for modification would be based on a determination of no impairments.
2. Injurious to the Public Interest Determination. Proposed alterations will be reviewed to determine the probable impacts, including cumulative impacts, on the public interest. Evaluation of the probable public interest impacts of the proposed alteration to the USACE requires a careful weighing of all relevant factors in each particular case. Factors that may be relevant to the public interest depend upon the type of USACE project being altered and may include, but are not limited to, conservation, economic development, historic properties/cultural resources, environmental impacts, water supply, water quality, flood hazards, floodplains, residual risk, induced damages, navigation, shore erosion or accretion, and recreation. The decision whether or not to approve an alteration to a federal project will be determined by the consideration of whether benefits are commensurate with risks. If the potential detriments are found to outweigh the potential benefits, then it may be determined that the proposed alteration is injurious to the public interest.
3. Environmental Compliance. A decision on a Section 408 request is a federal action, and therefore subject to the National Environmental Policy Act (NEPA) and other environmental compliance requirements. While ensuring compliance is the responsibility of the USACE, the requester provides all information necessary to satisfy applicable federal laws, executive orders, regulations, policies, ordinances, and any other environmental requirements. The NEPA and other analyses completed to comply with environmental statutes, such as the Endangered Species Act, should be commensurate with the scale and potential effects of the activity that would alter the federal project. The scope of analyses for the NEPA and environmental compliance evaluations pursuant to Section 408 are limited to the area of alteration and adjacent areas that may be directly or indirectly affected by the alteration. A preliminary determination has been made that an environmental impact statement is not required for the proposed action.
4. Technical Analysis. The USACE will ensure that the requester provides all technical plans, maps, drawings, and specifications to facilitate a thorough review of the proposal. A USACE-led Agency Technical Review (ATR) is being conducted to determine any potential adverse impacts to the federal project.

Any comments received will be considered by the USACE in determining whether to issue, modify, condition or deny a permission for this proposal if received before the comment period expiration date. To make its decision, the USACE will review comments

received to supplement and inform its assessment of impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments will be taken into consideration in the preparation of an appropriate document pursuant to the NEPA (e.g. Environmental Assessment). Comments will also be used to determine the need for a public hearing and to determine overall public interest in the proposed action.

It should be noted that materials submitted as part of Section 408 requests become part of the public record and will be available to the general public under the provisions of the Freedom of Information Act (FOIA). Individuals may submit a written request to obtain materials under the FOIA or make an appointment to view the project file at the USACE Wilmington District's Office of Counsel.

Other Required Authorizations

The Corps forwards this notice and all applicable application materials to the appropriate State agencies for review.

North Carolina Division of Water Resources (NCDWR): The Corps will generally not make a final permit decision until the NCDWR issues, denies, or waives the state Certification as required by Section 401 of the Clean Water Act (PL 92-500). The receipt of the application and this public notice, combined with the appropriate application fee, at the NCDWR Central Office in Raleigh constitutes initial receipt of an application for a 401 Certification. Unless NCDWR is granted a time review extension, a waiver will be deemed to occur if the NCDWR fails to act on this request for certification within sixty days of receipt of a complete application. Additional information regarding the 401 Certification may be reviewed at the NCDWR Central Office, 401 and Buffer Permitting Unit, 512 North Salisbury Street, Raleigh, North Carolina 27604-2260. All persons desiring to make comments regarding the application for a 401 Certification should do so, in writing, by November 21, 2019 to:

NCDWR Central Office
Attention: Mr. Mac Haupt, 401 and Buffer Permitting Unit
(USPS mailing address): 1617 Mail Service Center, Raleigh, NC 27699-1617
Or,
(physical address): 512 North Salisbury Street, Raleigh, North Carolina 27604

North Carolina Division of Coastal Management (NCDCM):

The application did not include a certification that the proposed work complies with and would be conducted in a manner that is consistent with the approved North Carolina Coastal Zone Management Program. Pursuant to 33 CFR 325.2 (b)(2) the Corps cannot issue a Department of Army (DA) permit for the proposed work until the applicant submits such a certification to the Corps and the NCDCM, and the NCDCM notifies the Corps that it concurs with the applicant's consistency certification.

Evaluation

The decision whether to issue a permit will be based on an evaluation of the probable impacts including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values (in accordance with Executive Order 11988), land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving the discharge of dredged or fill materials in waters of the United States, the evaluation of the impact of the activity on the public interest will include application of the Environmental Protection Agency's 404(b)(1) guidelines.

Commenting Information

The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials, including any consolidated State Viewpoint or written position of the Governor; Indian Tribes and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Requests for a public hearing will be granted, unless the District Engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing.

The Corps of Engineers, Wilmington District will receive written comments pertinent to the proposed work, as outlined above, until 5pm, November 20, 2019. Comments should be submitted to Ronnie Smith, Regulatory Division, 69 Darlington Avenue, Wilmington, North Carolina 28403 , at (910) 251-4829.

Distribution:

- 372 Adjacent Property Owners
- 1 Mr. Chad Hicks, Town of Caswell Beach, 1100 Caswell Beach Road,
Caswell Beach 28465
- 1 Mr. Doug Huggett, North Carolina Division of Coastal Management
- 1 Oak Island Post Office, 5703 E. Oak Island Drive, Oak Island, North
Carolina 28465
- 1 Honorable David Rouser, 1605 Longworth House Office Building,
Washington, DC 20515
- 1 Dr. Twyla Cheatwood, National Marine Fisheries Service
- 1 Mr. Tony Able, Chief, Wetlands Regulatory Section
- 1 Mr. Pete Benjamin, U.S. Fish and Wildlife Service
- 1 Mr. Roy Crabtree, Nation Marine Fisheries Service
- 1 Mr. John Barbour, NC State Property Office, 1320 Mail Service Center,
Raleigh, North Carolina, 27699-1321
- 1 Ms. Renee Gledhill-Early, NC State Historic Preservation Office, 4617 Mail
Service Center, Raleigh, NC 27601