



US Army Corps  
Of Engineers  
Wilmington District

# PUBLIC NOTICE

Issue Date: March 23, 2020  
Comment Deadline: April 24, 2020  
Corps Action ID Number: SAW-2020-00462

The Wilmington District, Corps of Engineers (Corps) received an application from the NCDOT-Ferry Division seeking Department of the Army authorization to dredge and perform maintenance on a 2.5-mile segment of the Hatteras-Ocracoke ferry route identified as Sloop Channel in Hyde County, North Carolina.

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:

<https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Public-Notices/>

**Applicant:** NCDOT-Ferry Division  
Brian Doliber  
159 Lucinda Lane  
Powells Point, North Carolina 27966

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

The project area runs from the Southdock Ferry Basin on Ocracoke Island west into the Pamlico Sound approximately 2.5-miles following the NCDOT Hatteras-Ocracoke ferry route to where the route turns north. The western terminus of the project extends through an area approximately 3000 linear feet in length identified as “The Reef”.

Project Area (acres): 68                      Nearest Town: Ocracoke  
Nearest Waterway: Pamlico Sound        River Basin: Tar-Pamlico  
Latitude and Longitude: 35.224364N, -75.78765W

## **Existing Site Conditions**

The project area is the southern segment of the Hatteras-Ocracoke ferry route within the Pamlico Sound. This segment of the ferry channel extends from the Southdock Ferry Terminal west for 2.5-miles to the northern turn at “The Reef”. “The Reef” portion of the project area is approximately 3000 linear feet and is comprised of sands that shoal and cause an irregular channel with depths that fluctuate and become problematic for continuous ferry traffic. This section is also identified as the “dog leg” on project maps.

## **Applicant’s Stated Purpose**

The purpose of this project is to allow for the safe passage to and from Ocracoke and Hatteras for both private and commercial vessels by being prepared to address shoaling by utilization of both sidecast and pipeline dredging.

## **Project Description**

The project involves the use of a sidecast dredge or a pipeline dredge to maintain Sloop Channel, which is the southern segment of the Hatteras to Ocracoke ferry route. NCDOT obtained a permit to perform maintenance dredging on the entrance channel to Sloop Channel at the Southdock Ferry Terminal for a 10-year period. That permit allows for the channel to be maintained at a width of 225’ and 12’ deep at Mean-Low-Low-Water (MLLW). This project requests to maintain the 2.5-mile segment of Sloop Channel at the same width and depth of the adjoining permit area of the ferry terminal with 3:1 side slopes. The area within the 2.5-mile long Sloop Channel that would require frequent dredging is the western 3000 linear feet identified as the “dog leg” section within the “The Reef”. This area has a history of shoaling to depths less than 7 feet and widths less than 225 feet, which is problematic and unsafe to ferry traffic. If the entirety of the “dog-leg” section required dredging to the dimensions based on the most recent survey, there would be approximately 126,423 cubic yards of material removed. Dredging activities will be limited to working outside the anadromous fish moratorium of April 1 through September 30. Depending on the severity of shoaling in the channel, dredging projects would last between three to twelve weeks.

## **Avoidance and Minimization**

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

The applicant proposes to implement the use of the US Fish and Wildlife (USFW) “Guidelines for Avoiding Impacts to the West Indian Manatee” and implement an in-water work moratorium from April 1 to September 30 for protection of anadromous species. When the project requires the use of a pipeline dredge NCDOT-Ferry Division will utilize the existing spoil disposal area at the Southdock facility. This disposal area is owned by the National Park Service who has issued a special use permit (SUP) to the

NCDOT. The SUP is conditioned to protect and monitor endangered species that may utilize the spoil area seasonally.

### **Compensatory Mitigation**

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment:

No compensatory mitigation has been proposed for this project.

### **Essential Fish Habitat**

The Corps' determination is that the proposed project may adversely affect EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the National Marine Fisheries Service.

- The Corps will consult under the Magnuson-Stevens Act and will not make a permit decision until the consultation process is complete.

### **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, there will be no historic properties affected. The Corps subsequently requests concurrence from the SHPO (or THPO).

The District Engineer's final eligibility and effect determination will be based upon coordination with the SHPO and/or THPO, as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps-identified permit area.

### **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 federally listed endangered or threatened species or their formally designated critical habitat.

The Corps will consult under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.

### **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 April 13, 2020 to:

NCDWR Central Office  
Attention: Ms. Amy Chapman, Transportation 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. As the application did not include the consistency certification, the Corps will request, upon receipt, concurrence or objection from the NCDCM.

### **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 at the federally constructed Hatteras

Inlet, as described above 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.

## **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, April 24, 2020. Comments should be submitted to Kyle Barnes, Washington Regulatory Field Office, 2407 West Fifth Street, Washington, North Carolina 27889, at (910) 251-4584.