



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: September 24, 2021
Comment Deadline: October 24, 2021 Corps
Action ID Number: SAW-2021-01908

The Wilmington District, Corps of Engineers (Corps) received an application from the Town of Nags Head seeking Department of the Army authorization to dredge 975,000 cubic yards of beach-quality sediments from three offshore borrow sources, and deposit the material along a 4.5-mile section of oceanfront shoreline, in the Town Nags Head, Dare 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: Town of Nags Head
Attn: Mr. Andy Garman
Post Office Box 99
Nags Head, North Carolina 27959

AGENT (if applicable): Mr. Douglas Huggett
Moffatt and Nichol
310-B Greenfield Drive
Newport, North Carolina 28570

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:

Project Area (acres):	158 acres	Nearest Town:	Town of Nags Head
Nearest Waterway:	Atlantic Ocean	River Basin:	Atlantic Ocean
Latitude and Longitude:	35.870690N, -75.575723W		

Existing Site Conditions

The Town of Nags Head encompasses approximately 11 miles of ocean shoreline on a barrier island located at the northern end of North Carolina's Outer Banks. Variations in beach sediment grain size vary in the near shore zone, with the majority ranging between 0.17 millimeters (mm) to 0.23 mm. Sediments become coarser proceeding seaward in water depths greater than 30 feet about 1-3 miles offshore. These sediments are thought to be associated with relic deposits from former inlets and barrier ridges from earlier sea-level stands. The near shore zone is highly dynamic with exchanges of sand between the bar and the beach, resulting in a predominance of finer type sand.

The width of the berm of the island's dune system varies considerably with location along the town's beach and with the season. Previous beach nourishment actions were completed in 2011 and 2019. The 2019 project involved the deposit of more than 4.6 million cubic yards of sediment on the beach front. Since the 2019 project, more than 500,000 cubic yards of material have been lost mainly due to Hurricane Dorian in September of 2019.

Beach and terrestrial communities are considered sparsely populated due to the harsh conditions, including salt spray, wind, shifting sands, and soils with low water retention. Extensive coastal development is another factor that could limit species diversity and abundance. Vegetation along the uppermost portions of the dry beach includes beach spurge, sea rocket, and pennywort. The upper dune areas are more stabilized with vegetation consisting of American beach grass, panic grass, sea oats, broom straw, and salt meadow hay.

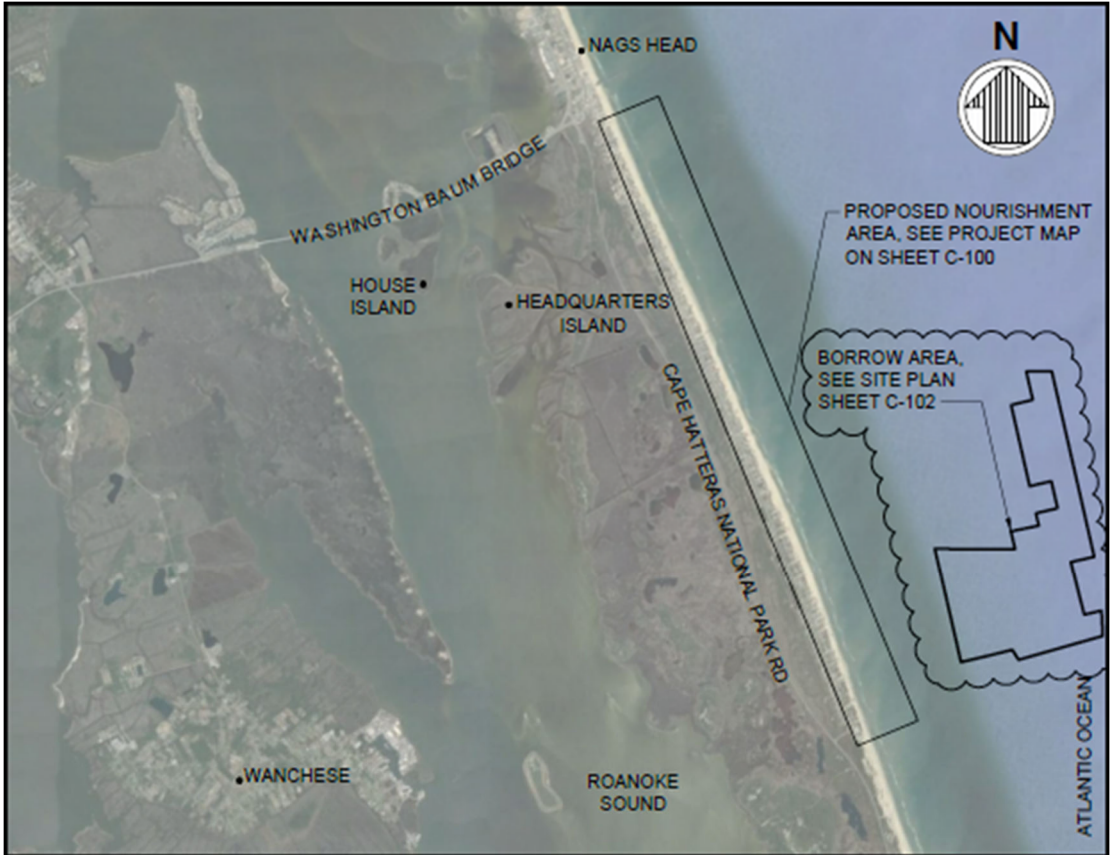
Organisms in the high-energy, sandy inter-tidal zones include mole crabs, coquina clams, amphipods, isopods, and polychaetes. These species are not commercially important, but serve as an important food source for surf-feeding fish and shore birds. According to data collected from the project area, the invertebrate community of the inter-tidal beaches is strongly seasonal.

Applicant's Stated Purpose

The Town of Nags Head is proposing a beach nourishment project anticipated to commence in the summer of 2022 to restore sand losses that have occurred since a summer 2019 nourishment project as a result of Hurricane Dorian. This placement of 750,000 cy of sand will restore protection to properties and infrastructure, and will help to maintain the recreational and ecological values of the beach.

Project Description

The proposed action will include sand placement along a 4.5-mile section of the Town's oceanfront shoreline. Beach quality sand would be dredged using a self-contained ocean-certified hopper dredge and/or a hydraulic pipeline dredge. Material will be obtained from borrow areas 2, 3, and 3A located 1.0-2.5 miles offshore of Nags Head. Placement onto the beach would be accomplished via submerged pipeline with direct pump-out. Once discharged, the sand will be shaped and graded according to the design template using earth-moving equipment such as bulldozers and excavators. The average fill density (volume of nourishment per linear foot of beach) is 48 cubic yards per linear foot of shoreline, which is equivalent to an average beach width of approximately 60 feet after natural profile adjustment.



Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: Impacts to waters of the U.S. and aquatic resources have been avoided and minimized to include: a) utilization of newly collected borrow area sediment sampling data to ensure that borrow material is compatible with the native beach characteristics, b) full compliance with threatened & endangered species protection provisions of National Marine Fisheries 2020 South Atlantic Regional Biological Opinion (SARBO), c) implementation of a beach monitoring program to locate, mark, avoid and possibly relocate turtles and/or turtle nests during construction, and d) implementation of a turbidity monitoring program during beach placement activities that will ensure State standards are met. The Applicant will also adhere to previously identified cultural resource buffers within borrow area and pipeline corridors, and to USFWS dune planting guidelines for North Carolina beaches.

Compensatory Mitigation

The proposed project will not impact a special aquatic site as described in Subpart E of the Section 404(b)(1) Guidelines and no compensatory mitigation is proposed.

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.

This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Implementation of the proposed project would impact (CHOOSE ALL THAT APPLY- marine substrate, estuarine substrate, water columns, emergent wetlands, submerged aquatic vegetation, artificial reefs, hardbottoms) (see project description) utilized by various life stages of the following species: (CHOOSE ALL THAT APPLY – coastal migratory pelagics, corals, golden crab, shrimp, snapper grouper, spiny lobster, Atlantic highly migratory species). Our initial determination is that the proposed action would not have a substantial individual or cumulative adverse impact on EFH or fisheries managed by Fishery Management Councils and the National Marine Fisheries Service (NMFS). Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the NMFS.

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

The Corps has initiated consultation 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:

Should historic properties, or properties eligible for inclusion in the National Register, be present within the Corps' permit area; the proposed activity requiring the DA permit (the undertaking) is a type of activity that will have no potential to cause an effect to an historic properties.

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).

Properties ineligible for inclusion in the National Register are present within the Corps' permit area; there will be no historic properties affected by the proposed work. The Corps subsequently requests concurrence from the SHPO (or THPO).

- Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; however, the undertaking will have no adverse effect on these historic properties. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; moreover, the undertaking may have an adverse effect on these historic properties. The Corps subsequently initiates consultation with the SHPO (or THPO).
- The proposed work takes place in an area known to have the potential for the presence of prehistoric and historic cultural resources; however, the area has not been formally surveyed for the presence of cultural resources. No sites eligible for inclusion in the National Register of Historic Places are known to be present in the vicinity of the proposed work. Additional work may be necessary to identify and assess any historic or prehistoric resources that may be present.

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 would not affect federally listed endangered or threatened species or their formally designated critical habitat.
 - The Corps determines that the proposed project may affect, not likely to adversely affect federally listed endangered or threatened species or their formally designated critical habitat.
- 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.
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- The Corps will consult under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.
 - The Corps has initiated 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 federally listed endangered or threatened species or their formally designated critical habitat. 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.

- The Corps is not aware of the presence of species listed as threatened or endangered or their critical habitat formally designated pursuant to the Endangered Species Act of 1973 (ESA) within the project area. The Corps will make a final determination on the effects of the proposed project upon additional review of the project and completion of any necessary biological assessment and/or consultation with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.

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 24, 2021 to:

NCDWR Central Office
Attention: Mr. Rick Trone, 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. As the application did not include the consistency certification, the Corps will request, upon receipt, concurrence or objection from the NCDCM.

- Based upon all available information, the Corps determines that this application for a Department of Army (DA) permit does not involve an activity which would affect the coastal zone, which is defined by the Coastal Zone Management (CZM) Act (16 U.S.C. § 1453).

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, October 24, 2021. Comments should be submitted to Mr. Josh Pelletier, Washington Regulatory Field Office, 2407 West Fifth Street , Washington, North Carolina 27889, at (910) 251-4605.