



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: July 29, 2022
Comment Deadline: August 29, 2022
Corps Action ID Number: SAW-2022-01501

The Wilmington District, Corps of Engineers (Corps) received an application from Dare County seeking Department of the Army authorization to increase the dredge spoil material capacity for a series of federally authorized channels within the County, in Manteo, 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: Dare County
Attn: Mr. Robert Outten
954 Marshall C. Collins Drive
Manteo, North Carolina 27954

AGENT (if applicable): Mr. Kenneth Willson
Coastal Protection Engineering
4038 Masonboro Loop Road
Wilmington, North Carolina 28409

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: The proposed project is located within portions of the Roanoke and Pamlico Sounds in Dare County, North Carolina. The area spans approximately 19 miles from north to south and bisects the mainland to the west and the barrier islands (Bodie Island and Pea Island) to the east. The northern project limit is located between the towns of Manteo and Nags Head and extends south to a location between Stumpy Point and Pea Island. The eastern extent of the proposed project is just offshore of Pea Island. Open waters and islands adjacent to the federal channels are also included in the project area.

Project Area (acres): 20,000
Nearest Waterway: Pamlico Sound
Latitude and Longitude: 35.788003N, -75.5842W

Nearest Town: Town of Manteo
River Basin: Pasquotank

Existing Site Conditions

The project area encompasses portions of the Roanoke and Pamlico Sounds spanning approximately 19 miles from north to south entirely within the Albemarle-Pamlico estuary system. The waters within the project area consist of federal and non-federal navigation channels as well as relatively shallow waters intermixed with sandy shoals. Areas of shellfish beds and submerged aquatic vegetation are present throughout the project area. Terrestrial areas within the project area are primarily man-made upland dredge areas containing varying degrees of vegetation.

The federally authorized channels within the project area include Manteo (Shallowbag) Bay ranges 4-17, including the Wanchese Channel, as well as Old House Channel Range 2. Historically maintenance dredging and emergency dredging events have occurred in these channels in order to maintain safe navigation.

Applicant's Stated Purpose

Dare County is seeking permit authorizations for actions that will increase the capacity to manage material dredged from the portions of the federal navigation's projects within the central portions of the County. In doing so, safe and reliable navigation for commercial and recreational boaters within the project area will be maintained. Without maintaining navigability within this area, the local, regional, and state economy will be impacted. The need of this proposed action is to reduce the strain on dredge material capacity over the next 2-3 years while additional long-term solutions are developed and permitted. Together, these actions will help to maintain the county's, region's, and state's economic viability while preserving environmental quality and human safety.

Project Description

The applicant's proposed project includes the continuation of routine and emergency maintenance dredging events within federally authorized channels within Dare County. These channels include portions of the Manteo (Shallowbag) Bay project specifically Ranges 4A-4B, 5-17 Extension, and Old House Channel Ranges 1-2. These channels all have an authorized depth of -14 MLLW ft (-12 ft MLLW plus 2 ft overdepth) with the exception of Ranges 4A and 4B which are authorized to -12 ft MLLW (-10 ft MLLW with 2 ft overdepth). All ranges are authorized with a width of 100 ft. Dredging of these channels would include the use of the USACE fleet of special purpose dredges as well as a modified hooper, identified as the Miss Katie.

Disposal options for the proposed project include deep scour holes located west of Oregon Inlet or via bottom placement within the nearshore waters off Pea Island as well as the creation of a new bird island in proximity to Old House Channel Range 2. The

island will be created through the open water placement of material dredged from within Old House Channel Range 2 through the use of a pipeline dredge. Once the dredged material becomes subaerial, the slurry of water and dredged material exiting the outflow pipe will be discharged in a direction away from the navigational channels. Temporary sand dikes may be needed to control the effluent flow of material. The discharge point will be moved to the high ground once the island begins to form and should no longer be discharging in open water. The island is proposed to be no larger than 25 acres above MHW and limited to an elevation of +15 NAVDD88 to maintain the suitable habitat types for birds. The proposed island would be constructed in areas between -4 and -6.8 feet NAVD water depths. Maximum capacity for the spoil island is over 678,589 cubic yards.

Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: The dredging activity will be limited to the federally authorized channels within the project area. Because these areas have been dredged in the past, biological resources such as SAV beds and oyster reefs are not anticipated to be within the dredging footprint and therefore those resources will not be directly impacted. In order to reduce potential affects to these resources associated with the open water disposal activity, a 300ft buffer will be imposed around any SAV or shellfish bed within the project area and no dredging or open water disposal will occur within this buffer.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: No compensatory mitigation is proposed, as no jurisdictional wetlands will be impacted as a part of 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.

- This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Implementation of the proposed project estuarine substrate, water columns, ,submerged aquatic vegetation, utilized by various life stages of the following species: 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.
- 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 applicant did not provide or satisfy all the elements required for a complete 401 certification request. Therefore, the 401 Certification process has not started. 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 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 120 days of the date of this public notice. 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 26, 2022 to:

NCDWR Central Office
Attention: Mr. Paul Wojowski, 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, August 29, 2022. Comments should be submitted to Mr. Josh Pelletier, Washington Regulatory Field Office, 2407 West Fifth Street , Washington, North Carolina 27889, at (910) 251-4605. Comments may also be submitted to WashingtonNCREG@usace.army.mil