



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: August 9, 2023
Comment Deadline: September 9, 2023
Corps Action ID Number: SAW-2023-01591

The Wilmington District, Corps of Engineers (Corps) received an application from Dare County seeking Department of the Army authorization to perform maintenance dredging and increase the dredge spoil material capacity for a series of non-federal channels within the Oregon Inlet complex, In 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: 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 the Oregon Inlet complex and portions of the Pamlico Sound in Dare County, North Carolina.

Project Area (acres): 3,000 Nearest Town: Town of Nags Head
Nearest Waterway: Pamlico Sound River Basin: Pasquotank
Latitude and Longitude: 35.782054, -75.551862W

Existing Site Conditions

The project area encompasses portions of the Oregon Inlet complex and Pamlico Sound including the southern tip of Bodie Island and the north portion of Pea Island. The inlet connects the northern end of the Pamlico Sound to the Mid Atlantic Bight region of the Atlantic Ocean. Oregon Inlet is approximately 1.5 miles along its axis and 0.6 miles wide. Bodie Island, which forms the inlet's northern shoulder, is a part of the Cape Hatteras National Seashore (Seashore), which is administered by the National Park Service (NPS). The southern end of Bodie Island, including the Oregon Inlet campground and the Oregon Inlet Marina and Fishing Center, is primarily used for recreation. The southern shoulder of the inlet is home to the Pea Island National Wildlife

Refuge (Refuge). The Refuge lies within the boundaries of the Seashore and is administered by the U.S. Fish and Wildlife Service (USFWS). The Refuge consists primarily of barrier island beach, dunes, and coastal wetlands. A former U.S. Coast Guard Station building is at the northern end of Hatteras Island. The Station is listed on the National Register of Historic Places (NRHP). 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 proposed channels within the project area include Walter Slough, “The Crack”, and “The Shortcut”.

Applicant’s Stated Purpose

Dare County is seeking permit authorizations for actions that help maintain safe and reliable transportation routes through the waterways in central Dare County. The channels and waterways within Dare County are utilized by boat operators for both commercial and recreational purposes. A significant number of jobs in the tourism industry are related to sport fishing, which is dependent on having access within navigable waters from the docks and marinas in central Dare County through Oregon Inlet for access to the ocean fishing grounds. In addition, the US Coast Guard (USCG) Station Oregon Inlet is located directly adjacent to the OIFC where it’s personnel and fleet of vessels conducts search and rescue, boating safety, law enforcement, and marine environment protection operations. As stated by the USCG, “Should Walter Slough become impassible, Coast Guard service to the public would be significantly impaired”. Without having the ability to maintain navigable waters within the area, positive economic impacts may not be realized, and the safety of mariners would be jeopardized.

Project Description

The applicant’s proposed project includes the maintenance dredging within several navigation channels in proximity to Oregon Inlet. These include a channel locally known as “The Crack”, Walter Slough, and a channel previously maintained by the USACE that connects “The Crack” to the Oregon Inlet gorge referred to as “The Shortcut”. Dredging within these areas would be performed by a contracted cutterhead pipeline dredge, the Miss Katie, or the USACE’s dredge fleet, (namely the special purpose dredges Murden and Currituck, and the sidecast dredge Merritt.) The maintenance dredging is proposed to be conducted in two corridors. The “Walter Slough and the Crack Dredge Corridor” encompasses 230 acres and extends 1.5 miles from the Oregon Inlet Fishing Center and USCG Station Oregon Inlet to Range 17 of the federally authorized Manteo (Shallowbag) Bay navigation channel. The “Crack” dredge corridor extends southward approximately .9 miles from Walter Slough towards a deep-water channel near the southern tip of Bodie Island. The “Shortcut Dredge Corridor” is approximately 52 acres

and extends from the west of Basnight Bridge towards the inlet gorge. The proposed maintenance dredging will follow the best water and will be limited to a 100-foot-wide channel to a depth of -14ft MLLW.

Disposal options for the proposed project include existing nearshore disposal site off Pea Island, the deep scour holes west of the Basnight Bridge and conditional sidecasting. Material dredged from within the Walter Slough and The Crack Dredge Corridor and The Shortcut Dredge Corridor will primarily be disposed of by the Miss Katie or the USACE special purpose dredges within the confines of the 687-acre (29,901,698 sq ft) Deep Scour Hole Disposal Corridor located west of the Basnight Bridge or via bottom placement within the nearshore waters off Pea Island. The material placed within the Deep Sour Hole Disposal Corridor will be limited to areas containing depths sufficient to result in a post-disposal elevation no higher than -14' MLLW. This depth ensures that the authorized channel depth through this section of the federal channel (-14' MLLW) is maintained. The northern extent of the nearshore disposal site off Pea Island is located approximately 1,500 ft south of the inlet shoulder and spans 5,000 ft southward. Disposal of material within this area is limited to proximity of the -14 ft MLLW contour (Figure 3) and encompasses approximately 287 acres. The USACE is authorized to dispose of material dredged from the federally authorized channel in proximity to Oregon Inlet, into these open water sites as codified within the 1992 FONSI entitled "Maintenance Dredging and Dredged Material Disposal Plan Oregon Inlet and Vicinity Manteo (Shallowbag) Bay Project" and the 2004 FONSI entitled "Use of Government Plant to Dredge in Federally Authorized Navigation Projects in North Carolina" (USACE, 1992; USACE 2004).

Sidecast dredging is proposed to occur within both dredge corridors, however these actions will be limited for the creation of "pilot" cuts. These pilot cuts created by the sidecast dredges will serve to allow for the special purpose dredges into shallow shoaled areas. Sidecast dredging would be limited to operating outside of the fisheries moratorium of 1 April and 31 July.

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 performed by the Miss Katie and USACE special purpose dredges will occur on a year-round basis with the exception of side cast dredging which will be limited to operating outside of the fisheries moratorium 1 April and 31 July. A 100 ft no-dredge buffer will be imposed around SAV and shellfish resources when a special purpose or pipeline dredge will be used for maintenance dredging events and a 300 ft no-dredge buffer will be imposed around these resources when side cast dredging will occur. Furthermore, no material will be disposed within 100 ft of any known SAV or shellfish beds.

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 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 would impact marine substrate, estuarine substrate, water columns, emergent wetlands, submerged aquatic vegetation, artificial reefs and hard bottoms (see project description) utilized by various life stages of the following species; 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 any 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 diversely 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 December 7, 2023 to:

NCDWR Central Office
Attention: Ms. Stephanie Goss, 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, September 9, 2023. Comments should be submitted to Mr. Josh Pelletier, Washington Regulatory Field Office, 2407 West 5th Street, Washington, North Carolina, NC at (910) 251-4605. Comments may also be submitted to WashingtonNCREG@USACE.ARMY.MIL.