



PUBLIC NOTICE

**US Army Corps
Of Engineers**
Wilmington District

Issue Date: February 15, 2024
Comment Deadline: March 15, 2024
Corps Action ID Number: SAW-2018-02230

The Wilmington District, Corps of Engineers (Corps) received an application on February 2, 2024 from the Town of Oak Island seeking Department of the Army authorization to place approximately 3 million cubic yards of beach fill along 9 miles of oceanfront to maintain protective dunes previously constructed, with a combination of near shore and off-shore sand sources in Oak Island, Brunswick County, North Carolina. The offshore sand source is located in Federal waters on the Outer Continental Shelf (OCS). The U.S. Department of Interior (DOI), Bureau of Ocean Energy Management (BOEM), has the sole regulatory authority over the use and conveyance of Outer Continental Shelf (OCS) sand resources under the OCS Lands Act (OCSLA). BOEM's connected action is the issuance of a negotiated agreement at the request of the Town of Oak Island for use of OCS sand resources to construct the project pursuant to its authority under the OCSLA. BOEM is a cooperating agency regarding this proposal and is coordinating closely with the Corps on specific aspects.

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 Oak Island
David Kelly
4601 E. Oak Island Drive
Oak Island, NC 28465

AGENT (if applicable): Moffat & Nichol
Dawn York
238 Princess Street
Wilmington, NC 28401

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 Town of Oak Island (Town) is situated on a 13-mile-long barrier island along the Atlantic Ocean, between the Cape Fear River Inlet to the east and Lockwood's Folly Inlet to the west in Brunswick County, North Carolina. Oak Island is a south facing beach and is separated from mainland Brunswick County to the north by tidal marshes and the Atlantic Intracoastal Waterway. The Town can be accessed by driving south from Wilmington on U.S. Highway 17 past the towns of Belville and Bolivia, then following SR 1500 south across the Atlantic Intracoastal Waterway (AIWW) to the Island.

The proposed borrow site locations include the Inner Ocean Bar (secondary location) located in the mouth of the Cape Fear River and the (primary location) is located 16.4 nautical mile off shore from the Oak Island Light. .

Project Area (miles): 9

Nearest Town: Oak Island

Nearest Waterway: Atlantic Ocean

River Basin: Cape Fear

Latitude and Longitude: 33.914089N, -78.17086W to about 33.90732, -78.102237

Existing Site Conditions

Oak Island is a 13-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 sites are described as Offshore Oak Island (OSOKI) “primary source” and Wilmington Harbor Inner Ocean Bar (IOB) “secondary source”. The OSOKI borrow area is located 16.4 nautical miles south-southwest of the Oak Island Light. This proposed source is within Bureau of Ocean Energy Management (BOEM) Outer Continental Shelf (OCS) lease blocks 6336, 6337, and 6338. The IOB is comprised of Smith Island Reach, Baldhead Shoal Channel Reach 1, and Baldhead Shoal Channel Reach 2 all within the mouth of the Cape Fear River.

The history of renourishment projects on Oak Island dates to 2001 with the introduction of the Wilmington Harbor deepening project administered by the United States Army Corps of Engineers (USACE) and the periodic maintenance of the harbor entrance regulated by the Wilmington Harbor Sand Management Plan (WHSMP). The initial project by the USACE deepened the Wilmington Harbor entrance channel in 2001 and placed material along the eastern and western portions of the Oak Island shoreline. Following the initial project, Oak Island has received beneficial reuse material from the maintenance dredging events in 2009 and 2018. In 2001 the USACE also conducted a restoration project across the central portion of the island. The material for this restoration project came from Yellow Banks, an upland borrow area, which unintentionally placed rocks on the beach still present today despite removal efforts by the Town. In 2009, the USACE dredged the Lockwood’s Folly River Crossing and placed material on the western end of Oak Island’s shoreline. In 2015 the Town sponsored the Lockwood’s Folly Habitat Restoration Project, which consisted of dredging Eastern Channel with beneficial placement of compatible material on the western end of Oak Island’s shoreline. After Hurricane Matthew (October 2016), the Town initiated a dune restoration project to place material along 4.4 miles of shoreline.

Before this project could be completed, Hurricane Florence (September 2018) impacted the Oak Island shoreline, further damaging the dunes. As a result of this further damage, the Town began efforts to restore additional dunes along the Town’s shoreline. While this effort was underway, in 2019, material from the AIWW at Lockwood’s Folly Inlet was beneficially placed on the western end of Oak Island’s shoreline by the USACE. The dune restoration took place in two phases, with the eastern portion of the Town restored in 2021 (728,063 cy) and the western portion in 2022 (768,063 cy). The eastern and western ends of Oak Island’s shoreline experience periodic renourishment as sand is readily available from the inlets on either end of the island with established programs by the USACE to dredge them and place beach-compatible material for beneficial use. The central portion of the island has not experienced a significant beach berm renourishment event since 2001.

Applicant’s Stated Purpose

According to the applicant the purpose of the proposed project is to:

- Repair the primary dune system to the authorized design level of protection to protect upland infrastructure along the Town’s Oceanfront.

- Construct a berm to serve as advanced fill to maintain the design level of protection for a 6-year renourishment interval.
- Enhance sandy beach habitat for nesting sea turtles and wildlife.
- Provide a recreational beach for public access.

Project Description

The 2024-2025 beach renourishment project consists of beach placement of up to 3 million cubic yards along the oceanfront of the Town of Oak Island from Station 210+00 to Station 680+00 approximately 47,100 ft.

The proposed borrow areas for this project include the OSOKI borrow area as the primary source and the Wilmington Harbor Inner Ocean Bar (IOB) as a secondary source. The Wilmington Harbor IOB borrow area will only be used if the U.S. Army Corps of Engineers (USACE) does not perform the anticipated maintenance dredging project in 2024-2025 with accompanying placement on Caswell Beach and the east end of Oak Island. The IOB borrow area comprises Smith Island Reach, Baldhead Shoal Channel Reach 1, and Baldhead Shoal Channel Reach 2 to the currently authorized template dredged by the USACE on a 2-to-3-year interval.

At this time under the USACE Civil Works federal program, the Town is coordinating with the USACE to develop a Memorandum of Understanding (MOU) to allow the placement of material from IOB on the east end of Oak Island and extend west, as completed in 2009 and 2018. Currently, it is unknown as to the volume and placement extent of material by the USACE. This will be determined by pre-construction surveys conducted by the USACE and/or selected Contractor as well as available budgets.

The proposed OSOKI borrow area is a 10,888 ft by 1,000 ft rectangle with an area of approximately 250 acres. The borrow area is subdivided into areas that vary in elevation based on the depth of compatible sediment at each vibracore location. The center of the borrow area is approximately 16.4 nautical miles south-southwest of the Oak Island Light. This proposed borrow area is within BOEM Outer Continental Shelf (OCS) lease blocks 6336, 6337, and 6386.

The proposed project is primarily a berm designed to provide advanced fill for a 6-year renourishment interval. The berm is proposed to be constructed at elevation 7.0 ft NAVD88, with the berm width varying from approximately 40 ft to 200 ft depending upon the historical volumetric erosion rates in that reach. Where escarpment and significant erosion of the built dunes constructed in the 2021 and 2022 renourishment projects is observed, the dunes will be repaired to the same template as authorized.

Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: The Town is committed to Reasonable Measures and Terms and Conditions listed under sand placement from beach nourishment activities in the USFWS Statewide Programmatic Biological Opinion for Sand Placement Projects and the 2020 South Atlantic Regional Biological Opinion.

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 (EFH)

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. 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 resources listed in or eligible for inclusion in the National Register of Historic Places are known to be present in the vicinity of the proposed work; however, the permit area has not been formally surveyed for the presence of cultural resources. Additional work may be necessary to identify and assess any cultural resources that may be present. This notice serves as a request to SHPO, THPO, and/or other interested parties to provide any information they may have regarding historic properties.

A submerged cultural resources survey has been conducted in the OSOKI borrow area. Results of this investigation are forthcoming and as part of consultation for the Section 106 review process will be provided to SHPO, the Catawba THPO and any other interested federally recognized Tribes that request

to be consulted. Preliminary results indicate that the OSOKI borrow area is clear of any hardbottom or cultural resources.

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:

- ☒ For the proposed project, the Corps has made the following determination for federally listed endangered or threatened species or their formally designated critical habitat.

Common Name	Scientific Name	Agency	Status	Critical Habitat	Effect Determination	Critical Habitat Determination
<i>Fish</i>						
Atlantic sturgeon	<i>Acipenser oxyrinchus oxyrinchus</i>	NMFS	Endangered	Occurs in area	LAA	NLAA
Shortnose sturgeon	<i>Acipenser brevirostrum</i>	NMFS	Endangered	None designated	LAA	--
<i>Sea turtles</i>						
Leatherback sea turtle	<i>Dermochelys coriacea</i>	NMFS, USFWS	Endangered	Not present	LAA	No Effect
Loggerhead sea turtle	<i>Caretta caretta</i>	NMFS, USFWS	Threatened	Occurs in area	LAA	LAA
Green sea turtle	<i>Chelonia mydas</i>	NMFS, USFWS	Threatened	Not present	LAA	No Effect
Hawksbill sea turtle	<i>Eretmochelys imbricata</i>	NMFS, USFWS	Endangered	Not present	NLAA	No Effect
Kemp's ridley sea turtle	<i>Lepidochelys kempii</i>	NMFS, USFWS	Endangered	Not present	LAA	No Effect
<i>Marine Mammals</i>						
North Atlantic right whale	<i>Eubalaena glacialis</i>	NMFS	Endangered	Occurs in Area	LAA	LAA
Fin Whale	<i>Balaenoptera physalus</i>	NMFS	Endangered	None designated	NLAA	--

Common Name	Scientific Name		Agency	Status	Critical Habitat	Effect Determination	Critical Habitat Determination
Sei Whale	<i>Balaenoptera borealis</i>		NMFS	Endangered	None designated	NLAA	--
Blue Whale	<i>Balaenoptera musculus</i>		NMFS	Endangered	None designated	NLAA	--
Sperm Whale	<i>Physeter macrocephalus</i>		NMFS	Endangered	None designated	NLAA	--
West Indian manatee	<i>Trichechus manatus</i>		USFWS	Endangered	Not present	NLAA	No Effect
	<i>Elasmobranchs</i>						
Smalltooth sawfish	<i>Pristis pectinata</i>		NMFS	Endangered	Not present	LAA	No Effect
Giant Manta Ray	<i>Manta birostris</i>		NMFS	Threatened	None designated	LAA	--
	<i>Birds</i>						
Piping plover	<i>Charadrius melodus</i>		USFWS	Threatened	Occurs in area	NLAA	NLAA
Red knot	<i>Calidris canutus rufa</i>		USFWS	Threatened	Occurs in area	NLAA	NLAA
Wood stork	<i>Mycteria americana</i>		USFWS	Threatened	None designated	NLAA	--
Roseate Tern	<i>Sterna dougallii dougallii</i>		USFWS	Endangered	None designated	NLAA	NLAA
	<i>Plants</i>						
Seabeach amaranth	<i>Amaranthus pumilus</i>		USFWS	Threatened	None designated	LAA	No Effect

☒ By copy of this public notice, the Corps initiates consultation under Section 7 of the ESA in purview of the USFWS and will not make a permit decision until the consultation process is complete. The Corps intends to rely on the 2017 North Carolina Coastal Beach Sand Placement Statewide Programmatic Biological Opinion to meet section 7 obligations and seeks a response from the USFWS for concurrence. In regard to the West Indian Manatee, the Corps will require the implementation of Guidelines For Avoiding Impacts To The West Indian Manatee.

- ☒ For the proposed project, the Corps has made the determination for federally listed endangered or threatened species or their formally designated critical habitat under purview of the National Marine Fisheries Services Protective

Resource Division (NMFS PRD). Consultation has been completed for this type of activity and the effects of the proposed activity have been evaluated and/or authorized by the (NMFS PRD) pursuant to the 2020 South Atlantic Regional Biological Opinion. A copy of this public notice will be sent to the NMFS PRD.

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 Inner Ocean Bar Maintenance Dredging 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 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 180 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 should do so in writing, within 30 days of the issue date of the notice by emailing comments to publiccomments@deq.nc.gov with the subject line of "401 Water Quality Certification" or by mail to:

NCDWR Central Office
Attention: Stephanie Goss, 401 and Buffer Permitting Branch
(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, March 14, 2024. Comments should be submitted to Brad Shaver, PM, Wilmington Regulatory Field Office, 69 Darlington Avenue, Wilmington, North Carolina 28403, or via email at Brad.e.Shaver@usace.army.mil. The Corps Project Manager can be contacted at (910) 251-4611. Comments may also be submitted to WilmingtonNCREG@usace.army.mil.