



PUBLIC NOTICE

Comment Period Begins: April 2, 2024

Comment Period Ends: April 22, 2024

File Number: NAE-2024-00823

In Reply Refer to: Heather S. Stukas, Regulatory Division

Phone: (978) 318-8678

Email: heather.s.stukas@usace.army.mil

The District Engineer, U.S. Army Corps of Engineers, New England District (USACE), has received a permit application to transport dredged material for ocean dumping by the City of Portland. This material would be transported from Casco Bay within Portland Harbor, approximately 10.6 nautical miles offshore to an approved disposal site where it will be dumped. The transportation route begins at coordinates 43.648083°N; -70.102906°W and ends at coordinates 43.648083°N; -70.102906°W.

The work involves the evaluation of a previously authorized Section 103 of the Marine Protection, Research and Sanctuaries Act authorization (Section 103), for the transportation of dredge material from the construction of a confined aquatic disposal (CAD) cell to the designated Portland Disposal Site (PDS). The construction of the (CAD) cell and all other components remain authorized under the Department of the Army permit number, NAE-2017-01950 issued on April 1, 2021, except for the Section 103 activities currently being evaluated. In accordance with the regulations, Section 103 authorizations have a three-year limit: "Permits from the date of permit issuance issued for the transport of dredged material for the purpose of disposing of it in ocean waters will specify a completion date for the disposal not to exceed three years." 33 CFR 235.6 (c) The applicant was unable to complete the Section 103 component of the project and is re-seeking new authorization.

The Department of the Army permit number, NAE-2017-01950, was originally posted for public notice on May 19, 2020.

The transportation route is shown on the enclosed plan titled "Portland Harbor CAD Cell Section 103 Transportation Route, NAE-2024-00823," one sheet, and dated "April 1, 2024."

The previously Department of the Army permit number, NAE-2017-01950 adequately address avoidance and minimization impacts and compensate unavoidable impact to Casco Bay (Portland Harbor).

Applicant: City of Portland
389 Congress Street
Portland, Maine 04101

AUTHORITY

Permits are required pursuant to:

- Section 10 of the Rivers and Harbors Act of 1899
- Section 404 of the Clean Water Act
- Section 103 of the Marine Protection, Research and Sanctuaries Act.
- Section 14 of the Rivers and Harbors Act of 1899 (33 USC 408)

The decision whether to issue a permit will be based on an evaluation of the probable impact 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 may reasonably 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, cultural value, fish and wildlife values, flood hazards, flood plain value, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people.

The USACE is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. The USACE will consider all comments received 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 and/or an environmental impact statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Where the activity involves the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of disposing it in ocean waters, the evaluation of the impact of the activity in the public interest will also include application of the guidelines promulgated by the Administrator, U.S Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act, and/or Section 103 of the Marine Protection Research and Sanctuaries Act of 1972, as amended.

Need for Ocean Dumping and alternatives:

The alternatives considered in the dredged material disposal analysis fall into four general categories: beneficial use, upland disposal, confined disposal, and open-water disposal. The feasibility of disposal alternatives was analyzed relative to the physical and chemical quality of the dredged material, the volume of material to be dredged, the availability of suitable disposal and beneficial use sites, and the cost of disposal. When applicable, the biological quality of the disposal of the material at the disposal site was also used to evaluate the feasibility of the open-water disposal alternative.

Based on the characteristics of the dredged material, the lack of suitable alternate disposal or beneficial use sites and costs, the most feasible, practical, cost-effective and environmentally acceptable alternative for the disposal of dredged materials from the proposed dredging is disposal at the requested disposal site.

Testing Information

The dredged material has undergone physical, chemical, and biological testing and has satisfied the criteria for ocean disposal of dredged material as specified in Part 227 of the Ocean Dumping Act regulations. It is our preliminary determination that the material is acceptable for disposal at this disposal site.

Portland Disposal Site

The Portland Disposal Site is periodically used for the disposal of suitable bottom sediments dredged principally from the Portland Harbor/Fore River area (the suitability was determined with a project-specific evaluation with an established interagency review process). The quantity of sediments deposited at the site varies considerably each year and peaks when the Federal Channel in Portland Harbor is maintained (approximately every 10 years). Since 1982, an annual average of 160,000 cubic yards of sediments have been deposited. The site has been monitored through the USACE Disposal Area Monitoring System (DAMOS). DAMOS studies show that the site is a low energy environment, such that sediment deposited at this location will remain within the site's boundaries. Levels of metals and organics in the sediments within the disposal site are generally low and in most instances are not substantially greater than background levels, indicative of the relatively uncontaminated nature of many of the areas dredged that utilize the site. Previous research has shown that areas outside the disposal site have not been found to be affected by sediment deposited within the site. The DAMOS monitoring has also shown that distinct dredged material mounds have been formed at the site. The Portland Disposal Site has been designated by EPA for the disposal of dredged material only.

Any permit issued for this project will include special conditions requiring scows to come to a complete stop when disposing of the material at the disposal site. There will also be a time of year restriction included as a special condition which prohibits dredging during ecologically sensitive times of years.

ESSENTIAL FISH HABITAT

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires all federal agencies to consult with the National Marine Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). Essential Fish Habitat includes waters and substrate necessary for fish for spawning, breeding, feeding or growth to maturity. USACE does not anticipate adverse effects to EFH from the transportation of dredged material.

NATIONAL HISTORIC PRESERVATION ACT

USACE has initiated consultation with the Maine Historic Preservation Commission and Maine's Indian Tribes pursuant to Section 106 of the National Historic Preservation Act of 1966 as amended. The District Engineer has made the preliminary determination that the proposed work is not likely to affect properties listed in, or eligible for listing in, the National Register of Historic Places. USACE will continue review and consultation to fulfil requirements under the Historic Preservation Act as part of the permit review process.

ENDANGERED SPECIES CONSULTATION

The USACE has reviewed the application for the potential impact on federally-listed threatened or endangered species and their designated critical habitat pursuant to section 7 of the Endangered Species Act (ESA) as amended. It is our preliminary determination that the proposed activity for which authorization is being sought is designed, situated or will be operated/used in such a manner that it is not likely to adversely affect) a listed species or their critical habitat. We are coordinating with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service on listed species under their jurisdiction and the ESA consultation will be concluded prior to the final decision.

OTHER GOVERNMENT AUTHORIZATIONS

The states of Connecticut, Maine, Massachusetts, New Hampshire and Rhode Island have approved Coastal Zone Management Programs. Where applicable, the applicant

states that any proposed activity will comply with and will be conducted in a manner that is consistent with the approved Coastal Zone Management Program. By this public notice, we are requesting the state concurrence or objection to the applicant's consistency statement.

The following authorizations have been applied for, or have been, or will be obtained:

- (X) Permit, license or assent from State.
- () Permit from local wetland agency or conservation commission.
- () Water Quality Certification in accordance with Section 401 of the Clean Water Act.

COMMENTS

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; 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 and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. People submitting comments are advised that all comments received will be available for public review in their entirety and will be considered a matter of public record.

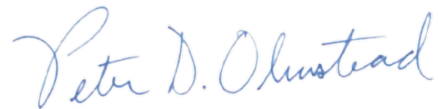
Comments should be submitted in writing by the above date. If you have any questions, please contact Heather S. Stukas, Regulatory Division, at heather.s.stukas@usace.army.mil, (978) 318-8678, (800) 343-4789 or (800) 362-4367.

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 a public hearing shall specifically state the reasons for holding a public hearing. The USACE holds public hearings for the purpose of obtaining public comments when that is the best means for understanding a wide variety of concerns from a diverse segment of the public.

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The initial determinations made herein will be reviewed in light of facts submitted in response to this notice. Copies of letters of objection will be forwarded to the applicant who will normally be requested to contact objectors directly in an effort to reach an understanding.

THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK.



Peter D. Olmstead
Chief, Maine Section
Regulatory Division

Please contact Ms. Tina Chaisson at bettina.m.chaisson@usace.army.mil or (978) 318-8058 if you would like to be removed from our public notice mailing list.

Portland Harbor CAD Cell
Section 103 Transportation Route
NAE-2024-00823, dated April 1, 2024

