



## PUBLIC NOTICE

**Comment Period Begins:** August 13, 2024

**Comment Period Ends:** September 13, 2024

**File Number:** NAE-1993-00054

**In Reply Refer to:** Charles Farris, Regulatory Division

**Phone:** (978) 318-8336

**Email:** [charles.n.farris@usace.army.mil](mailto:charles.n.farris@usace.army.mil)

The District Engineer, U.S. Army Corps of Engineers, New England District (USACE NAE), has received a permit application, file number NAE-1993-00054, to conduct work in waters of the United States from Essex Marina 35 Dodge Street, Essex, MA 01929. This work is proposed in the Essex River at 35 Dodge Street, Essex, MA 01929. The site coordinates are: Latitude 42.633056° N; Longitude -70.776111° W.

The proposed work would involve the dredging of approximately 8,920 cubic yards (cy) from shoaled areas totaling approximately 1.2 acres within the property's marina basin. The dredge material would be expected to be disposed of by the USACE offshore at the Isle of Shoals North (IOSN) Disposal Site or the Massachusetts Bay Disposal Site (MBDS). Essex Marina would like to implement the proposed project during the fall-winter season of 2024-2025. This marina is located adjacent to the Essex River Federal Navigation Project (FNP).

The work is shown on the enclosed plans titled "Essex Marina Dredging Project," on three sheets, and dated "May 2024."

**PURPOSE:** Since the last dredge in 1993, significant shoaling has developed around the facility that requires dredging to prevent the existing floats from bottoming out during low tides.

### **Dredged Material Disposal Mitigation Discussion**

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 one or both of the requested disposal site.

The Dredged Material Managing Team (DMMT) of the USACE NAE Planning Department provided the applicants with a sampling plan on April 27, 2023. Physical and chemical data were provided to the DMMT on March 27, 2024. Biological data was

provided to the DMMT by the applicant on May 9, 2024. The DMMT provided the final suitability determination to NAE Regulatory on July 1, 2024.

#### Conclusions of the Evaluation

This determination addresses the suitability of dredged material from the proposed maintenance dredging of the Essex Marina for unconfined open water disposal at the Massachusetts Bay Disposal Site (MBDS) or the Isles of Shoals North Disposal Site (IOSN). The USACE NAE finds that sufficient data have been provided to satisfy the evaluation and testing requirements of Section 103 of the Marine Protection, Research and Sanctuaries Act (MPRSA) and Section 404 of the Clean Water Act (CWA). Based on an evaluation of the project site and the material proposed to be dredged, 8,920 cy from shoaled areas totaling approximately 1.2 acres are suitable for unconfined open water disposal at MBDS or IOSN.

#### **For Section 103 Permits: (Cape Arundel, Portland, Mass Bay, RI Sound, Isle of Shoals):**

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. USACE NAE finds these sediments suitable for unconfined open water disposal at IOSN or MBDS as proposed.

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.

#### **Massachusetts Bay Disposal Site**

The Massachusetts Bay Disposal Site is frequently used for disposal of bottom sediments from various harbors in the Boston area. Approximately 300,000 cy of suitable sediments (the suitability was determined with a project-specific evaluation with an established interagency review process) are deposited at this site annually. The site is monitored through the USACE Disposal Area Monitoring System (DAMOS) program. The DAMOS studies show that the site is a low energy environment such that sediments deposited at this location will remain within the site's boundaries. The DAMOS monitoring has also shown that distinct dredged material mounds have been formed at the site. Levels of metals and organics in the sediments within the disposal site are generally above background levels, indicative of the industrial nature of the areas dredged that utilize the site. Sediment deposited at the disposal site has not been found to affect areas outside the disposal site. The Environmental Protection Agency has designated the Massachusetts Bay Disposal Site usable for disposal of dredged

sediments.

### **Isle of Shoals North Disposal Site**

Isle of Shoals North Disposal Site is located approximately 20 kilometers (km) (10.8 nautical miles [nmi]) east of Portsmouth, New Hampshire, in the Gulf of Maine. IOSN is circular in shape and approximately 2.5 km (1.3 nmi) in diameter. Current conditions at IOSN include water depths that range from approximately 90 meters (m) (295 feet [ft]) Mean Lower Low Water (MLLW) on the western boundary to 100 m (328 ft) in the eastern portion of the site. IOSN was designated as an Ocean Dredged Material Disposal Site (ODMDS) in September 2020 by the U.S. Environmental Protection Agency Region 1 (EPA Region 1) under Section 102(c) of the MPRSA. The site is managed by EPA Region 1 and USACE NAE following the Site Management and Monitoring Plan (SMMP) (USACE/EPA 2020). The site began receiving material in November 2020 from the Rye Harbor dredging project (USACE 2022).

### **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.

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.

The activities proposed here in **may** also require permission from the USACE pursuant to 33 U.S.C. under Section 14 of the Rivers and Harbors Act **because** it will alter or temporarily or permanently occupy or use a USACE federally authorized Civil Works project known as Essex River FNP. The proposed alteration involves dredging directly adjacent to the FNP. A permit pursuant to Section 10/404/103 shall not be granted until the Section 408 permission is issued. Through this public notice, we are soliciting information necessary to inform the USACE evaluation and review.

## **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 describes waters and substrate necessary for fish for spawning, breeding, feeding or growth to maturity.

The dredging portion of this project will impact approximately 52,272 SF of EFH. Habitat at this site can be described as fine sands and silts. Loss of this habitat may adversely affect species that use these waters and substrate. However, the District Engineer has made a preliminary determination that the site-specific adverse effect will not be substantial. Further consultation with the National Marine Fisheries Service regarding EFH conservation recommendations is being conducted and will be concluded prior to the final decision.

The dredged material disposal is proposed for IOSN Disposal Site or the MBDS. These are open water sites, which provides EFH. Habitat at these sites can be described as fine sands and silts. Loss of this habitat at either may adversely affect species that use these waters and substrate. However, the District Engineer has made a preliminary determination that the site-specific adverse effect will not be substantial. Further consultation with the National Marine Fisheries Service regarding EFH conservation recommendations is being conducted and will be concluded prior to the final decision.

## **NATIONAL HISTORIC PRESERVATION ACT**

Based on our initial review of the proposed project and coordination with the State Historic Preservation Officer and/or Tribal Historic Preservation Officer(s), no historic

properties were identified within the permit area the area of potential effects. Additional review and consultation to fulfill requirements under Section 106 of the National Historic Preservation Act of 1966, as amended, will be ongoing 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. In-water work would be restricted to between November 15 through February 15.

## **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.
- (x) Permit from local wetland agency or conservation commission.
- (x) Water Quality Certification in accordance with Section 401 of the Clean Water Act.

## **COMMENTS**

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. 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. Individuals 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 Charles Farris, Regulatory Division, at [charles.n.farris@usace.army.mil](mailto:charles.n.farris@usace.army.mil), (978) 318-8336, (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.

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.**

*Paul Maniccia*

Paul Maniccia  
Chief, Massachusetts Section  
Regulatory Division

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

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