

Summary
Maine Dredging Team Meeting
Department of Environmental Protection
Portland, Maine
October 4, 2019
10:00 A.M. – 12:00 P.M.

I. WELCOME AND INTRODUCTIONS. Acting chair, Todd Burrowes, Department of Marine Resources/Coastal Program (“DMR”), opened the meeting. At Mr. Burrowes’ request, attendees, including those participating by telephone or webinar, introduced themselves.

II. UPDATE ON STATUS OF ACTIVE ACOE DREDGING PROJECTS

A. Maintenance dredging projects and related matters. Wendy Gendron, Army Corps of Engineers (ACOE) provided updates on the status of the following currently active maintenance dredging projects and related matters:

- *Saco River.* The ACOE completed this project which included use of sandy dredged materials for beach nourishment at Camp Ellis. Ms. Gendron explained that woody debris in the dredged materials was inadvertently placed on the beach and had to be removed. Ms. Gendron commended federal, state, and local government colleagues and others who worked closely with the ACOE to accomplish removal of this material prior to the piping plover nesting season. In answer to a question, Ms. Gendron noted that the ACOE is aware that some additional dredging is needed near buoy six and that the ACOE will try to do that work during this fall-winter if the *Currituck* can be used and funds made available.

Tom Dobbins (Portland Harbor Commission) indicated that the Portland Harbor Commission would like to consult with the ACOE about options to finish maintenance dredging of areas in the federal channel not completed (due to lack of time) when the Harbor was last dredged. Mark Habel suggested that the Commission provide a chart which details those areas to facilitate discussion. Ivy Frignoca (Casco Baykeeper) suggested consideration of coordination of any such maintenance dredging with the dredging related to construction of the CAD cell planned for Portland Harbor.

- *Biddeford Pool and Wood Island.* The ACOE is awaiting funding for this project and that funds will be needed to mitigate adverse effects on eel grass. See section V, below. Ms. Gendron pointed out that although it’s not included in the President’s budget proposal, Congress may appropriate funding for the project. It was noted that Sen. Collins’ office recognizes the need for funding and unspent money appropriated for Portland Harbor dredging may be reprogrammed to address that need.
- *Cape Porpoise.* The ACOE has awarded the contract for this project which involves dredging about 30,000 cubic yards (cy), starting in mid-November 2019. Ms. Gendron noted that due to cost concerns the ACOE does not intend to dredge the project to its full

authorized depths and that the town has determined that the proposed depth (10' anchorage and 6' channel) are adequate to meet harbor users' needs. In response to questions, Ms. Gendron noted that it is unusual for the ACOE not to maintain a project to its authorized depth.

- *Wells Harbor*. The ACOE completed sampling and testing in the summer of 2019 needed for environmental assessment of the next maintenance dredging operation, funding for which is not currently available.
- *Kennebec River*. Maintenance dredging to provide a clear channel for a Navy ship transit is scheduled for 2020 following receipt of requisite state authorizations in the summer of 2019. Bill Kavanaugh (ACOE) explained that the ACOE is working closely with the Navy and with pertinent federal and state agencies to develop a programmatic approach to maintenance dredging of this FNP under which federal and state authorizations would allow dredging as needed to allow safe ship transit over a ten-year period within the late fall-early winter environmental window prescribed by natural resources agencies to the maximum extent practicable and thus avoid and minimize adverse effects on coastal resources and uses. The Navy's application to the ACOE for the necessary federal permit approval is pending. The Navy has not yet submitted comparable requests for state WQC and CZMA consistency authorizations. In response to a question, Mr. Kavanaugh explained that the measures to avoid and minimize potential adverse effects from the dredging and disposal operations on endangered species (Atlantic and short-nose sturgeon and Atlantic salmon) are developed in consultation with NMFS and include trained on-board observers and grates on the hopper dredge in-take.

Ms. Gendron briefly noted the status of the following additional active O&M projects for which the ACOE is awaiting funds needed for construction:

- *Union River* (in early planning stages; CAD cell construction anticipated for dredged materials would not be suitable for open-water disposal);
- *Josias River*;
- *Scarborough River* (ACOE looking for a suitable site for placement of dredged sand for beach nourishment);
- *Searsport Harbor* (maintenance dredging of existing project only; permit application for upland disposal location pending); and
- *Rye Harbor, NH* (dredged materials may be disposed at the Cape Arundel Disposal Site).

Ms. Gendron advised that the ACOE has received supplemental funding for the following storm damage-related project:

- *Isle of Shoals* (repair of three storm-damaged breakwaters, which is partly in Maine's, partly in New Hampshire's coastal waters); and

- *Kennebunk River* (emergency repairs to the north and south jetty and maintenance dredging).

B. Navigation improvement projects.

Mark Habel, Army Corps of Engineers (“ACOE”) provided an overview of the ACOE’s navigation improvement-related legal authorities and programs, which focus on commercial navigation needs, and provided an overview of the legal authorities governing open-water disposal of dredged materials.

1. Large-scale projects. Mr. Habel explained that the ACOE is not currently working on any deep-draft or other large-scale navigation improvement project study in Maine. Mr. Habel noted that the ACOE’s work on the Searsport Harbor navigation improvement project remains suspended pending identification by MDOT of a disposal option that meets state permitting requirements. Mr. Habel noted that the ACOE does not have and is hopeful that the next federal budget will include congressionally-appropriated funds necessary for the Piscataqua River turning basin project. Mr. Habel also pointed out that the location of the baseline from which the territorial sea is measured, and which determines in part the regulatory requirements applicable to disposal of dredged materials, is not well-defined east of Penobscot Bay.

2. Small-scale projects. Mr. Habel provided the following updates on the status of small-scale navigation improvement projects currently active in Maine:

- *Blue Hill Harbor.* The feasibility study is nearing completion. ACOE is working on issues related to design and siting of a combined aquatic disposal cell (“CAD cell”) in the upper end of the harbor where some sediments tested unsuitable for open-water disposal would be placed. Remaining dredged materials would be placed at a site previously used for dredged materials from maintenance of the Bass Harbor project.
- *Great Chebeague Island.* The ACOE is working to complete the feasibility study. As noted below, the project would involve compensatory mitigation to address adverse effects to eel grass in the channel to be dredged and the ACOE is exploring mitigation options. In response to a question, Mr. Habel explained that the ACOE does not itself regulate barge traffic and is not aware of concerns about potential project-related barge traffic which would use the stone wharf and landing on the island’s south end.
- *Belfast Harbor.* In cooperation with the City of Belfast, the ACOE has initiated a study regarding construction of a breakwater for Belfast Harbor. Mr. Habel suggested that the initial feasibility report (which must be limited to consideration of commercial benefits) may not show that the project is economically justified due to limited commercial use.
- *Surry.* The Town has contacted the ACOE to investigate channel improvements to support recent improvements to its waterfront.

- *Brooksville*. The ACOE is in the initial stages of assessing the feasibility of enhancing the channel and constructing a turning basin to lessen tidal restrictions on commercial fishing vessels.

B. Shore damage mitigation (WRDA Section 111). The ACOE/New England Division (“ACOE/NED”) has submitted its recommendation to ACOE headquarters that it terminate the spur jetty and beach nourishment project which the ACOE has proposed to address long-standing coastal erosion issues related to the ACOE-constructed jetty at Camp Ellis. Mr. Habel explained that the City of Saco (“City”), expressing preference for a larger project reconfigured to provide additional shoreline protection and for increased federal responsibility for related beach nourishment costs, has declined to sign the cooperation agreement necessary for the project to move forward. Mr. Habel explained that without a local sponsor the project cannot move forward. In response to a question, Mr. Habel indicated he is aware of news reports regarding a lawsuit challenging the ACOE’s failure to act to remediate erosion conditions at Camp Ellis but has seen no notice of such an action.

C. Other ACOE water resources-related projects. Kristine Reed (ACOE) provided a brief overview of the following other active ACOE non-dredging-related projects in Maine:

- *Pleasant Point* (shore protection (riprap), in cooperation with the Passamaquoddy Tribe);
- *Cherryfield Dam on the Narraguagus River* (modelling of fish passage options to be completed in the winter of 2020);
- *Stratton Island* (shorebird habitat enhancement under consideration at the Maine Audubon Society’s request; ACOE waiting for funding for federal interest determination);
- *Royal River* (in early stages of a marsh remediation project and an investigation of fish passage options at the dam and falls on the lower river); and
- *Meduxnekeag River* (investigating fish passage and habitat improvements in cooperation with the Houlton Band of Maliseets.)

III. UPDATE: SITING REGIONAL OFFSHORE DISPOSAL SITE

Regina Lyons (EPA) provided an update on the federal process for designation of a site in federal waters to serve the needs of southern Maine, New Hampshire, and northern Massachusetts for placement of environmentally-suitable dredged materials. Noting that she anticipates this will be the last ocean disposal site designated in New England, Ms. Lyons outlined the criteria which govern site designation under the Marine Protection, Research, and Sanctuaries Act (MPRSA) and its implementing rules. Ms. Lyons pointed out that if EPA “designates” an ocean disposal site in accordance with Section 102 of the Act, it may be used indefinitely; whereas if ACOE “selects” it under Section 103 of MPRSA, then it may be used for

a maximum of 10 years, unless it's designated later. Ms. Lyons explained that the Isle of Shoals North (IOSN) site proposed for designation would replace the Cape Arundel Disposal Site, which is scheduled to close in February 2021. Ms. Lyons outlined the steps in the federal site designation approval. She explained that the 30-day public comment period for the proposed rule and related draft environmental assessment (DEA) ends on October 18, 2019; that under its working timeline EPA would adopt the final rule designating the site in January 2020; and the site would be available for use 30 days after publication of the final rule adopted in the Federal Register. Ms. Lyons' explained the ways in comments may be submitted to EPA and suggested that the on-line Northeast Data Portal may be a useful resource for considering the environment in which IOSN is located and related siting issues.

IV. UPDATE: PORTLAND HARBOR CAD CELL

Bill Needelman, City of Portland ("Portland"), provided an update on the effort to site a confined aquatic disposal ("CAD") cell to serve the dredging needs of Portland Harbor and related dredging activities. Mr. Needelman discussed the 32 in-harbor, primarily dockside areas to be dredged to depths needed to service current uses, including berthing for lobster boats. He explained that about 270,000 cubic yards would be dredged and the dredged material unsuitable for open-water disposal at the Portland Disposal Site would be contained in the CAD cell. Mr. Needelman said that the CAD cell's location, near the Coast Guard facility in the harbor, was selected with significant input from lobstermen and other stakeholders. Kim Tucker (counsel for the Maine Lobstermen's Union) praised the coordination with local lobstermen regarding site selection. Mr. Needelman noted that the sampling and testing needed for submission of necessary state and federal permit approvals is complete and that DEP has requested health screening of workers who dredge contaminated berthing areas and construct the CAD cell. Mr. Needelman outlined the following schedule for the project's next major steps: submission of permit applications for the CAD cell (November 2019); target date for receipt of permit approvals (May 2020); construction of CAD cell (winter of 2020-21, an optimistic estimate); and dredging of some berthing areas and resulting deposit of material in the CAD cell (2021-26). Mr. Needelman said that the total cost of the project is about \$30 million, including dredging of the in-harbor areas it would serve; that the City of Portland is seeking federal funds from the Department of Transportation's BUILD program; and that anticipated tipping fees for use of the CAD cell would also help cover the cost. In response to questions, Mr. Needelman clarified that the CAD's permit applications (and size) are based on anticipated use by those in Portland and South Portland and its use by other communities is not planned but may be considered at a later date if anticipated tipping fees do not prove adequate; that the CAD cell is exposed at extreme low tide but the contaminants it houses will be capped and not exposed; that a channel to the CAD cell from the federal channel will need to be dredged to allow access (Coral Siligato (ACOE) noted that Section 408 permission from the ACOE will be required); and that the dockside dredging is maintenance dredging although many areas have not been dredged for a long time.

V. DISCUSSION: WETLANDS IN-LIEU FEE PROGRAM AS APPLIED TO ACOE CIVIL WORKS PROJECTS

Mark Habel advised that several ACOE dredging projects under active development in Maine, including the Biddeford Pool/Wood Island FNP, would involve adverse effects to eel grass that require mitigation. Mr. Habel indicated that the ACOE would prefer to make a payment to the state wetlands in-lieu fee program to satisfy this obligation and the NMFS has indicated it wants assurance that any such funds would be used for in-kind compensation that benefits eel grass resources. Mr. Habel observed that Maine's in-lieu fee program, which uses funds to support proposed restoration and enhancement projects, does not segregate funds based on the type of resources affected and as currently structured does not provide such assurance. Mr. Habel suggested that the state program be changed as needed to facilitate its use by the ACOE. Marybeth Richardson (DEP) acknowledged that use of the state in-lieu fee program to address eel grass impacts presents challenges; and that there is a need for continued discussion among ACOE, NMFS, and those administering the in-lieu fee program to identify a mutually acceptable approach. Jay Clement (ACOE) noted that issue of concern to NMFS is that, although under the in-lieu fee program funds collected for effects on marine resources are typically used for mitigation projects which benefit the marine environment, there is no assurance funds related to eel grass effects would be used to directly benefit eel grass resources. Mr. Clement explained that projects involving re-planting of eel grass have often been unsuccessful; that consequently resource managers may wish to think more broadly and consider water quality enhancement and comparable efforts aimed at improving or restoring environmental conditions that support eel grass as suitable mitigation projects; and that ideas on this topic are welcome. In response to questions, Mr. Clement clarified that the discussion on eel grass mitigation options is on-going and thus the schedule for the Biddeford Pool/Wood Island FNP can't be determined at this time; that The Nature Conservancy administers the state in-lieu fee program in coordination with DEP and ACOE, and that an inter-agency review committee determines which mitigation projects will be funded; and that use of money paid into the program due to adverse effects on eel grass for mapping of that resource would address a currently unmet funding need but may be problematic since the program is designed to ensure offset of losses to wetlands.

VI. UPDATE: 2020 WATER RESOURCES DEVELOPMENT ACT BILLS APPLICABLE TO ACOE NAVIGATION PROJECTS IN MAINE

In the context of discussion of maintenance dredging projects, ACOE staff noted that the agency anticipates inclusion of provisions in the next Water Resources Development Act (WRDA) to re-designate a six-foot channel in the Cape Porpoise FNP as an anchorage area to reflect current uses; and, potentially, to re-designate the upper end of the existing 30-foot channel in the Portland Harbor FNP to facilitate its use as an anchorage area. Tom Dobbins indicated that the Portland Harbor Commission is currently discussing this issue with Maine's congressional delegation. Mark Habel noted that the ACOE may be able to address this issue under its Section 408 authority to authorize occupation of that portion of the federal channel with specific WRDA authorization. Mr. Habel indicated that he is not aware of other WRDA bill provisions directly applicable to Maine projects.

VII. UPDATE: STUDY OF SOUTHERN MAINE COMMUNITIES' PURCHASE AND OPERATION OF DREDGING EQUIPMENT TO MAINTAIN FEDERAL NAVIGATION PROJECTS

In the absence of the scheduled presenter, Matt Burns (Maine Department of Transportation), this item was deferred for consideration at the next meeting.

VIII. OTHER BUSINESS. Mr. Burrowes invited meeting participants to raise additional matters for discussion and none were raised.

IX. DISCUSSION OF NEXT STEPS; ACTION ITEMS. Mr. Burrowes observed that there were no apparent specific action items other than those discussed in the context of presentations made at the meeting, including identification of how the ACOE may use the state in-lieu fee program to provide requisite compensation for loss or degradation of eel grass habitat.

X. ADJOURN. Mr. Burrowes adjourned the meeting.