

**Summary**  
**Maine Dredging Team Meeting**  
**Department of Transportation**  
**Augusta, Maine**  
**March 13, 2020**  
**10:00 A.M. – 12:00 P.M.**

**I. WELCOME AND INTRODUCTIONS.** Chair, Matt Burns, Department of Transportation (“MaineDOT”), opened the meeting. At Mr. Burns’ request, attendees, including those participating by telephone or webinar, introduced themselves.

**II. UPDATE ON STATUS OF ACTIVE ACOE DREDGING PROJECTS**

**A. 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 Section 111 Camp Ellis project is no longer under active consideration by the ACOE.

**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 about 10,000 cubic yards (c.y.) of sediments tested unsuitable for open-water disposal would be placed. Remaining dredged materials would be placed at a previously-used open water disposal site. Mr. Habel said that the ACOE anticipates submission of its request for water quality certification and CZMA consistency concurrence in the summer of 2020.
- *Great Chebeague Island.* As noted below, this project would involve compensatory mitigation to address adverse effects to eel grass in the channel to be dredged and the ACOE intends to make a payment to the state in lieu fee program to address its mitigation obligations. Mr. Habel said that the ACOE anticipates submission of its request for water quality certification and CZMA consistency concurrence in the summer of 2020.

Mr. Habel said that the ACOE is in the early stages of study of the following potential small harbor navigation projects:

- *Surry (Patten Bay)* - channel improvements to support recent improvements to its waterfront); and
- *Brooksville (Bucks Harbor/Becky's Cove)* - enhancing the channel and constructing a turning basin to lessen tidal restrictions on commercial fishing vessels.

**B. Other ACOE water resources-related projects.** Mr. Habel (ACOE) noted that in recent years there have been an increasing number of ACOE ecosystem restoration-related projects in Maine. Mr. Habel noted a brief overview of the following active ACOE non-dredging-related projects in Maine which would be funded under various program authorities:

- *Pleasant Point* (shore protection (riprap), in cooperation with the Passamaquoddy Tribe) – state approvals have been issued;
- *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) – Mr. Habel indicated that this project is a top priority for funding under the ACOE's Section 204 program which focuses on beneficial uses of dredged material;
- *Royal River* (in early stages; marsh remediation project and investigation of fish passage options at the dam and falls on the lower river);
- *Meduxnekeag River* (investigating fish passage and habitat improvements in cooperation with the Houlton Band of Maliseets);
- *Pleasant River* (culvert replacement and marsh restoration); and
- *New Meadows River* (improving water quality and enhancing inter-tidal and salt marsh habitat).

In response to a question, Mr. Habel indicated that the ACOE does not anticipate that the Royal River project will reduce the need for dredging. He noted that dams on the lower river have served as sediment traps and removal of them, for example, to improve fish passage may result in increased sedimentation in the federal navigation project area and a need for more frequent maintenance dredging.

**C. Maintenance dredging projects and related matters.** Wendy Gendron (ACOE) and her ACOE colleagues provided updates on the status of the following currently active and recently-completed maintenance dredging projects and related matters:

## 1. Projects completed in 2019 - 2020

- *Kennebec River* (maintenance dredging to provide a clear channel for a Navy ship transit). Pursuant to a memorandum of agreement with the ACOE the Navy is providing funding while the ACOE handles the project planning, environmental compliance, and construction aspects of the project. This approach reflects the fact that Bath Iron Works, a Navy contractor, is the sole commercial user of the project. The ACOE anticipates maintenance dredging of the project every three years.

In response to questions, ACOE staff explained that pursuant to terms of regulatory approvals the ACOE will be conducting annual bathymetric surveys to monitor in-river sedimentation and will provide information about the sediment monitoring protocol to NMFS as requested; that MGS has recommended and supports in-river disposal to keep the dredged material (more than 98% of which is sand) in the system; and that the sandy dredged material disposed in the river does not accrue contaminants or migrate up-river and re-shoal. In response to a question, Todd Burrowes (DMR) clarified that MGS has suggested consideration of an alternative nearshore placement site which is about a mile northwest of the currently-used site and closer to Popham Beach State Park, and may be preferable in terms of beach nourishment.

- *Cape Porpoise (maintenance dredging; project reconfiguration)*. The ACOE's post-dredge survey indicates the amount of eel grass adversely affected is as anticipated and that the ACOE will contact the state in-lieu fee program to make the appropriate compensatory mitigation payment. Senator Collins' staff advised that language suggested by the ACOE to reconfigure the project is included in the pending Senate Water Resources Development Act (WRDA) bill and that committee action on that bill is not yet scheduled.
- *Kennebunk River* (removal of severe shoaling in entrance channel and various shoals in the entrance channel). Chris Mayo (Kennebunkport harbormaster) shared his appreciation and that of the local fishing community for the ACOE's work on this project. Mr. Mayo said that marina operators have noted shoaling and resulting need for dredging in areas up-river of those dredged. Ms. Gendron indicated the ACOE will follow up and survey when possible, noting multiple competing demands.

## 2. Upcoming, funded projects

- *Biddeford Pool and Wood Island*. The funding for this project includes @\$530,000 for mitigation of adverse effects on eel grass. See Section V, below. The ACOE intends to submit its requests for water quality certification and CZMA consistency certification in April 2020.
- *Wells Harbor*. This project involves dredging a portion of the project pursuant to existing state authorizations which allow the project to be done in the summer and will take 5 -15 days. Denis Nault (DMR) noted that this is only project in Maine where

dredging occurs outside the customary fall-winter dredging window. Ms. Gendron explained that the ACOE will coordinate with the state and seek a new water quality certification and CZMA consistency concurrence for subsequent projects after expiration of the current authorizations in 2021, including an anticipated whole-harbor dredging project.

- *Rye Harbor, NH* (dredged materials may be disposed at the Cape Arundel Disposal Site or the Isles of Shoals North disposal site, if available for use).
- *Isles of Shoals*. This project involves repair of three storm-damaged breakwaters and is partly in Maine's, partly in New Hampshire's coastal waters. The ACOE intends to design the project for construction within the existing project footprint and, of necessity due to weather and sea state conditions, not to do the construction work during the winter. In response to a question, Mr. Habel (ACOE) clarified that the ACOE considers historic, modest, and high sea-level rise projections, recognizes that sea-level rise is an important consideration for project design, and that the design is also driven by cost considerations.

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* (CAD cell construction or upland disposal option needed for dredged materials not be suitable for open-water disposal);
- *Wells Harbor* (initial analysis of a full-harbor dredge has been done);
- *Josias River* (town has requested maintenance dredging and the ACOE is evaluating disposal options and other issues);
- *Scarborough River* (ACOE is investigating options for nearshore placement of dredged material for beach nourishment); and
- *Searsport Harbor* (maintenance dredging of existing project only; ACOE coordinating with MaineDOT on upland disposal of dredged material).

### **III. UPDATE: SITING REGIONAL OFFSHORE DISPOSAL SITE**

Jeannie Brochi (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. Ms. Brochi said that the new EPA Region 1 administrator supports finalization of the EA and adoption of the final rule to designate the Isles of Shoals North disposal site (IOSN). Ms. Brochi said that IOSN will be available for use 30 days after adoption of the final rule which is planned for this summer. Ms. Brochi explained that the final EA will include responses to comments received.

In response to a question, Ms. Brochi explained that DMR's suggestion that state fisheries agencies be notified prior to each use of IOSN to facilitate timely notice to commercial fishermen and avoidance of gear conflicts will be addressed in the EA and that EPA will be back in touch with DMR to discuss that recommendation.

#### **IV. UPDATE: PORTLAND HARBOR CAD CELL**

Chair Matt Burns (MaineDOT) explained that the City of Portland, City of South Portland, MaineDOT, and the Portland Harbor Commission are working in partnership to advance a Portland Harbor commercial revitalization project, which involves maintenance dredging of berthing areas in Portland Harbor and construction of a combined aquatic disposal (CAD) cell in the harbor for disposal of dredged material not suitable for ocean disposal. Mr. Burns explained that the group will submit a \$20 million BUILD grant proposal to the U.S. Department of Transportation for federal funding for the project. He noted that MaineDOT plans to provide \$5 million in matching funds and that tipping fees would provide an additional \$5 in matching funds.

In response to questions, Bill Needelman, City of Portland ("Portland"), explained that dredged material from construction of the CAD cell will be placed in the Portland Disposal Site subject to anticipated confirmation that it is suitable for open water disposal; that comments from review agencies are being addressed in preparation for submission of permit applications; and that, in coordination with the permitting process, permission from the ACOE to construct a channel to the CAD cell from the federal channel is being sought through the ACOE's "408 process." Mr. Needelman, Kim Tucker (counsel /Maine Lobstering Union), and others offered praise for the stakeholder engagement process for the project.

Jay Clement (ACOE) said that the ACOE anticipates it will issue two public notices (one for construction of the CAD cell, the other for dredging of berthing areas) regarding the federal permits required for the project. In response to a question, Mr. Clement clarified that the ACOE's "408 process" involves determination that the Portland Harbor federal navigation project would not be adversely affected by the proposed CAD cell project.

#### **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 mitigation requirements. Mr. Habel noted that natural resources agencies have raised issues about this approach since the in-lieu fee program, jointly established by DEP and ACOE and administered by The Nature Conservancy, does not have a ready mechanism which ensures that the amount of funds paid as a result of adverse effects on eel grass will be used for a project designed specifically to benefit eel grass. Mr. Randall (ACOE) explained that due to its obligation to maintain federal navigation projects, the ACOE intends to address eel grass mitigation requirements for the Biddeford Pool/Wood Island, Chebeague Island, and other pending projects by payment into the state in-lieu fee program. Mr.

Randall noted that ACOE also intends to work with DEP, NMFS, and other agencies to consider potential changes going forward to the state in-lieu fee program to improve its effectiveness in ensuring no net loss of eel grass and other subtidal habitat.

Mike Johnson (NMFS) said that this is not a new issue since the state in-lieu fee program has existed for about a decade during which time ACOE and DEP-permitted projects with effects on eel grass and other sub-tidal habitats have paid compensation into the program. Mr. Johnson suggested consideration of why the program does not routinely receive proposals for eel grass projects and structural changes to it that may be appropriate to incent submission of such proposals. Mr. Johnson expressed disappointment that the ACOE intends to address eel grass impacts from the Biddeford Pool/Wood Island FNP, which at 5-10 acres is large for a project in New England, through compensation payments to the program as currently constituted. Based on experience with the Portland CAD cell project, Mr. Needelman said that identification of and consultation with applicants to address potential issues regarding use of the in-lieu fee program to address effects on eel grass and other sub-tidal habitat should occur as soon as possible in the regulatory process.

In response to questions, Jay Clement (ACOE) clarified that the ACOE is open to consideration of novel eel grass mitigation projects, such as those which involve reduction of nutrient loading or green crab predation. Mr. Clement emphasized that a qualifying project needs to show quantifiable, tangible results since the program's overall purpose is to ensure that losses in wetlands functions and values are offset by gains.

**VI. OTHER BUSINESS.** Mr. Burns invited meeting participants to raise additional matters for discussion. Kim Tucker (counsel, Maine Lobstering Union) suggested that dredging projects conducted in the area from Orrington to the southern end of Islesboro should be addressed in a special manner due to mercury contamination in the sediment, using the enhanced testing regime ordered by the court in the Holtrachem case to avoid making resuspended mercury biologically active and jeopardizing the region's lucrative and iconic lobster and crab fishery. Ms. Tucker cited the dredging needed for installation of water in-take and wastewater outfall pipes for the proposed Nordic Aquafarm as an example where such enhanced testing would be appropriate. Ms. Tucker suggested that the group make this mercury contamination issue a general topic for its discussion for any dredging projects in this area. Chair Matt Burns noted that the group's fundamental purpose is to facilitate information sharing among local, state, and federal agencies on ACOE civil works projects (as opposed to private development activities that involve construction-related dredging), and that accordingly it has not focused in detail on project-specific, permitting-related issues of this kind at the level of detail suggested. Mr. Burns suggested he would consider whether and how it might be appropriate to address Ms. Tucker's suggestion and speak with her about that.

Kevin Roche (Save Our Shores Saco Bay) asked whether and how it might be appropriate for the group to consider beach nourishment and sediment management issues for Saco Bay as a whole. Mark Habel (ACOE) explained that in the absence of a sediment management study and plan for the Saco Bay area the ACOE considers and addresses beach nourishment and related issues on a case-by-case basis. Mr. Habel explained that while the ACOE has statutory authority (WRDA Section 7001) to develop such a regional sediment management plan it would need specific

funding to develop it, and only six such studies were funded nationally last year. Mr. Habel further explained that congressional support would be needed for such a study and that the local sponsor would be required to pay for a share of the cost – 50% for the initial study and an additional amount depending on the purpose and public benefits of any construction activity, e.g., 35% for a shoreline protection project. Mr. Habel said proposed study requests may be submitted to the ACOE annually from May-August and the ACOE's website has detailed information on WRDA Section 7001 and requirements regarding submission of study requests.

In response to Chair Matt Burns' question about the status of repair to the Bar Harbor breakwater, ACOE staff said that there has been a meeting with the local harbor master to determine the extent of damage and that the ACOE will do an assessment of repair options. ACOE staff also advised that pending WRDA legislation includes reduction of the Camden Harbor FNP's anchorage area as requested by the town to make space for additional piers and floats.

**VII. DISCUSSION OF NEXT STEPS; ACTION ITEMS.** Mr. Burns noted planning for a presentation by the Maine Geological Survey about its suggested alternative in-river disposal site for the Kennebec River FNP as an action item. No other such action items were identified.

**VIII. ADJOURN.** Mr. Burns adjourned the meeting.