



US Army Corps  
Of Engineers  
Wilmington District

# PUBLIC NOTICE

Issue Date: January 10, 2014  
Comment Deadline: February 11, 2014  
Corps Action ID Number: SAW-2005-00344  
(ORM #2004-00344)

The Wilmington District, Corps of Engineers (Corps) received a request from the Town of North Topsail Beach seeking a permit modification to their current Department of the Army (DA) authorization issued on May 27, 2011 to relocate the New River Inlet ebb tide channel and to conduct beach nourishment along 11.1 miles of North Topsail Beach oceanfront shoreline in Onslow County, North Carolina. The modification request consists of combining Phase 3 to the DA permit modification issued on September 26, 2013, which rescheduled the construction timeframe and implementation of Phase 5. The proposal is to construct Phase 3 and Phase 5 during a single event.

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

<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>. Also, please reference the December 2009 Final Environmental Impact Statement (EIS), the May 27, 2011 DA authorization and April 13, 2011 Record of Decision (ROD), and the September 26, 2013 DA Permit Modification.

**Applicant:** Mr. Stuart Turille, Town Manager  
Town of North Topsail Beach  
2008 Loggerhead Court  
North Topsail Beach, North Carolina 28460

**AGENT (if applicable):** Coastal Planning & Engineering of North Carolina, Inc.  
C/o: Mr. Brad Rosov  
CB&I  
4038 Masonboro Loop Road  
Wilmington, North Carolina 28409

## 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**

The Phase 3 project site, 34°29'12.59" N & 77°25'48.52"W, starts at the northeast end of Phase 5 and terminates just northeast of the NC Hwy 210 high rise bridge, encompassing approximately 2.1 miles of North Topsail Beach oceanfront shoreline; and also includes an offshore borrow source located approximately 0.5 mile directly offshore from the high rise bridge in Onslow County, North Carolina.

### **Existing Site Conditions**

Phase 1 of the original permit was implemented during the 2012/2013 dredging window and work was completed by February 2013. This phase included the relocation of the New River ebb tide channel with a cutter head dredge and the placement of an estimated 566,244 cubic yards of dredged material along approximately 7,500 linear feet of the north-northeast ocean shoreline of North Topsail Beach. No other phases, including Phase 5, of the original permit have been constructed.

The Phase 3 beach fill placement area is an approximate 2.1 mile stretch (of the original 11.1 miles) along the southwest ocean shoreline of North Topsail Beach, and shares the northeast boundary line with Phase 5. Like Phases 1-4, this section, originally part of the Central Section of the project, is located within the Coastal Barrier Resource System (CBRS), which prohibits the expenditure of Federal funds pursuant to the Coastal Barrier Resource Act of 1982 (CBRA-82) and the Coastal Barrier Improvement Act of 1990 (CBIA-90). Being in the CBRS and ineligible to receive Federal funds, this Central Section of North Topsail Beach is not included in the U.S. Army Corps of Engineers study area for the development of Topsail Island long-term Federal shoreline protection plan.

### **Applicant's Stated Purpose**

One of the main purposes for the Town's original construction timeframe, as specified in the May 27, 2011 DA permit, was due to financial limitations and scheduling. After the implementation of Phase 1, the Town secured an USDA loan to finance the construction of Phase 5, which was authorized via September 26, 2013 DA permit modification. Planned construction for Phase 5 was to take place during the 2013/2014 dredging window. However, work was not initiated as planned due to high construction bids and the low availability of dredge plants. With the year delay, the Town is requesting to include the Phase 3 segment with the Phase 5 permit modification. Town officials are currently in the process of seeking a redesignation of the Federal CBRS within their town

boundaries and a determination is expected sometime spring of 2014. If the CBRS designation is removed along the Town's oceanfront shoreline, specifically for Phase 3, then the Town would be eligible for Federal monies to conduct the nourishment activity. This will increase their probability of funding Phase 3 via additional USDA Loan, thus the desire to combine with Phase 5.

### **Project Description**

Project plans consist of combining Phase 3 with Phase 5 into a single beach nourishment event scheduled to take place during the 2014/2015 dredging window. Phase 5 would be constructed as outlined in the September 26, 2013 DA permit modification, which consist of increasing the beach fill footprint to 50-92 cubic yards per linear foot (averaging 75 cy per lft) being similar to the other phases. Phase 3 was originally scheduled to take place four years after the construction of Phase 1 (relocation of the New River Inlet ebb channel). It is expected that the inlet channel would require maintenance and the material extracted during the maintenance event would be placed along the designated Phase 3 footprint. With the initial inlet channel relocation not occurring until 2012/2013 dredging window, maintenance is not proposed. Currently, the Town's proposal is to use the approved offshore borrow site as a source of material for the 2.1 mile stretch of Phase 3 shoreline. This borrow source will be used for both Phase 3 and Phase 5 beach placement. The design template and fill density for Phase 3 remains unchanged. However, the original volume needed for beach fill will increase from 393,800 cubic yards to 560,000 cubic yards. The volume difference is accounted to the offshore borrow site containing less coarse material than the inlet channel source. Plans to use coarse material at the nearshore hardbottom areas remain unchanged and will adhere to the "perched beach method" set forth in the original permit dated May 27, 2011.

All other original plans for Phase 3, along with Phase 5, as stipulated in the FEIS, ROD, May 27, 2011 DA authorization, and September 26, 2013 Permit Modification (for Phase 5) remain unchanged. This includes the use of the offshore borrow area, utilization of a cutter head dredge, and the implementation of all mitigation, minimization, and avoidance measures outlined in Section 6.0 of the FEIS and in the Special Conditions of the DA authorization.

### **Avoidance and Minimization**

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: All mitigation, minimization, and avoidance measures outlined in Section 6.0 of the December 2009 FEIS and the May 27, 2011 DA authorization remain valid.

## Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: All mitigation, minimization, and avoidance measures outlined in Section 6.0 of the December 2009 FEIS and the May 27, 2011 DA authorization remain valid.

## Essential Fish Habitat

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, this Public Notice initiates the Essential Fish Habitat (EFH) consultation requirements. The Corps' initial determination is that the proposed project may affect, but not likely to adversely affect EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the National Marine Fisheries Service (NMFS).

With the implementation of the permit modification, no additional effects (direct, indirect, or cumulative) to fisheries are expected to be incurred outside of what has been previously documented in the original permit. All potential direct, indirect, and cumulative impacts to EFH and other fishery resources associated with the proposed modification activities can be referenced in the original September 2009 EFH Assessment. NOTE: Through coordination with NMFS on August 5, 2013, an amendment to the 2009 assessment will not be prepared for this permit modification.

## 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 historic properties, nor properties eligible for inclusion in the National Register, are present within the Corps' permit modification area (offshore borrow area and Phase 3 placement footprint); therefore, there will be no historic properties affected. The Corps subsequently requests concurrence from the SHPO.

NOTE: As a result of the January 21, 2008 cultural resource survey during the original permit review, no historic properties, nor properties eligible for inclusion in the National Register, were present within the offshore borrow area or the Phase V placement area. By letter dated March 12, 2008, SHPO concurred with the findings in that original survey. Special Condition No. 13 of the May 27, 2011 permit remains valid and states, "If submerged cultural resources are encountered during the operation, the USACE will be immediately notified so that

coordination can be initiated with the Underwater Archeology Unit (UAU) of the Department of Cultural Resources. In emergency situations, the permittee should immediately contact the UAU at (910-458-9042), Fort Fisher, so that a full assessment of the artifacts can be made.”

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 (ESA) of 1973, under purview of U.S. Fish and Wildlife Service (USFWS) and the NMFS Protective Resources Division, the Corps reviewed the project area, examined all information provided by the applicant, consulted the latest North Carolina Natural Heritage Database, and reevaluated the November 2009 Biological Assessment (BA) for the original permit and the August 29, 2013 Supplemental Biological Assessment (BA) for the Phase 5 permit modification. The August 2013 Supplemental BA included potential impacts to USFWS and NMFS’s recent and separate proposals to list Critical Habitats for the loggerhead sea turtle (*Caretta caretta*) subject to each agencies purview, and the proposed Federal listing for Rufa red knot (*Calidris canutus rufa*) subject to USFWS purview. This Supplemental BA will be cross-referenced for Phase 3 borrow source since it has been previously addressed via Phase 5 evaluation and consultation.

The project area for the Phase 3 modification request is included in the November 2009 BA overall project area and was part of the evaluation during our original ESA review and consultation. Based on this new available information:

- The Corps determines that the proposed project modification may affect, not likely to adversely affect federally listed endangered or threatened species or their formally or proposed designated critical habitat. An addendum to the Supplemental BA will be provided to USFWS and NMFS that will address potential effects of Phase 3 that have not been addressed in the November 2009 BA or the August 2013 Supplemental BA. The Corps reinitiates informal consultation and conferencing under Section 7 of the ESA with each agency and will not make a permit decision until the consultation process is complete. NOTE: In our previous consultation associated with the original permit and the Phase 5 permit modification requests, both the USFWS and NMFS concluded that the activity is not likely to adversely affect any of the listed species and/or critical habitat under their purview. All Special Conditions of the May 11, 2011 DA authorization and the September 26, 2013 DA permit modification associated with threatened and endangered species remain valid.

## **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, combined with the appropriate application fee, at the NCDWR Central Office in Raleigh constitutes initial receipt of an application for a 401 Certification. A waiver will be deemed to occur if the NCDWR fails to act on this request for certification within sixty days of receipt of a complete application. 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 regarding the application for a 401 Certification should do so, in writing, by February 11, 2014 to:

NCDWR Central Office  
Attention: Ms. Karen Higgins, 401 and Buffering Permitting Unit  
(USPS mailing address): 1650 Mail Service Center, Raleigh, NC 27699-1650

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. As the application did not include the consistency certification, the Corps will request, upon receipt, concurrence or objection from the NCDCM.

## **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 shall 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, February 11, 2014. Comments should be submitted to Mr. Mickey Sugg, Wilmington Regulatory Field Office, 69 Darlington Avenue, Wilmington, North Carolina 28403, at (910) 251-4811, or by e-mail at [mickey.t.sugg@usace.army.mil](mailto:mickey.t.sugg@usace.army.mil).