

**U.S. ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
PROGRAMS & PROJECT MANAGEMENT DIVISION**

Public Hearing Need Determination

1. Authority: This determination of the need for a public hearing is being taken under authority delegated to the District Engineer from the Secretary of the Army and the Chief of Engineers by 33 CFR 327, as published in the 13 November 1986 Federal Register pursuant to Section 404 of the Clean Water Act, Public Law 95-217.

2. Description, Location and Purpose of Work:

- a. The Menemsha Creek Federal Navigation Project (FNP) was authorized by the River and Harbor Act of 1945, as amended. The FNP is located in the towns of Chilmark and Aquinnah, MA. The existing FNP consists of an entrance channel 10 foot deep relative to Mean Lower Low Water (MLLW), 80 feet wide, and 700 feet long, extending between two jetties (which are also part of the FNP) at the northern entrance to Menemsha Creek; an 8 foot deep (MLLW) channel 80 feet wide and 1.2 miles long, extending south from the number #4 red nun channel marker to deep water in Menemsha Pond; and an anchorage basin, situated in the northeastern portion of the creek, that is 10 feet deep (MLLW) in the northern section and 6 feet deep (MLLW) in the southern section.
- b. The District proposes to dredge various shoals in the 8 foot and 10 foot deep channel and portions of the 6 foot anchorage within the FNP where shoaling has created hazardous conditions for the small fleet of commercial fisherman, sport fishing enterprises, and large contingent of recreational boaters that are based in or visit the harbor on an annual basis. Shoaling in these areas was made significantly worse as a result of Hurricane "Sandy" and subsequent nor'easter storms. Sandy dredged material will be placed on Lobsterville Beach located approximately 1.2 miles to the west of the FNP, to restore a portion of beach and reduce erosion impacts to an arterial road providing access to several homes and a state boat ramp.
- c. The following alternatives were investigated by the US Army Corps of Engineers:
 - (1) Alternative 1 – No Action. The No Action Alternative is required to be evaluated as prescribed by National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ). The No Action Alternative serves as a baseline against which the proposed action and alternatives can be evaluated. Under a No Action Alternative, the Federal navigation channel in Menemsha Creek would not be dredged and would allow existing conditions in the channel to continue to deteriorate resulting in restricted public access and continued

hazardous navigation conditions. As a result, the no action alternative was determined to be unacceptable.

- (2) Alternative 2 – Open Water Placement. The closest Environmental Protection Agency (EPA) approved ocean disposal site to the project is Rhode Island Sound Disposal Site (RISDS), located approximately 35 miles to the west of Menemsha Creek FNP. This alternative disposal alternative would increase the overall project cost because of the long haul distance, and has the disadvantage of removing sand from the littoral system. In addition, Corps of Engineers policy is to maximize beneficial use of dredged material where appropriate and this alternative would completely remove sediment from the local littoral system. Therefore, ocean disposal at RISDS was not selected as a viable disposal alternative.
- (3) Alternative 3 – Beneficial Use of Dredge Material. A number of beneficial use of dredge material sub alternatives were investigated and analyzed as a part of the project design. These included Nearshore Placement to create a feeder berm, Upland Placement to restore dunes, and Beach Placement to nourish eroding shoreline. Lobsterville Beach, one of the two Beach Placement sites considered for nourishment, was selected because it has the required capacity to hold all of the dredge material, experienced significant erosion due to several large storms in the recent past, and provides erosion prevention measures for a state road connecting several homes and a state boat ramp to the rest of the Martha's Vineyard.

3. Comments: The New England District received 1 letter in response to the U.S. Army Corps of Engineers public notice. This letter was in opposition to the project and contained a request for public hearing. No letters of support were received during the period of Public Notice.

- a. The letter requesting a public hearing in opposition to the project contained the following concerns:
 - (1) Increased number of vessels (traffic) into Menemsha Pond as a result of dredging south beyond the #4 red nun.
 - (2) Increased number of large vessels entering Menemsha Pond for unregulated overnight stays.
 - (3) Risk to fragile natural resources as a byproduct of a & b above.
 - (4) No potential ecological improvement identified to occur as a result of dredging.

- b. A number of letters both for and against the project were received outside (prior to) the Public Notice period, contained the following comments which were unique from above:

- (1) Concern for inexperienced recreational boaters grounding during evening hours, and the danger involved maneuvering and towing by the harbormaster at night.
- (2) Providing access to the Pond could increase the likelihood of use by personal watercraft at high speeds, such as waterskiing, and how it may endanger passive recreational users (swimmers, kayakers, etc)
- (3) Increased use by larger vessels could endanger shellfish resources through pollution from marine toilets and oil spills (pumping of bilges); physical damage to submerged aquatic vegetation resources from anchors.
- (4) Concern that opening up the Pond to larger craft could result in under utilization of Chilmark's moorings and slips in the Harbor, and significantly reduce revenues.
- (5) Additional patrolling of Menemsha Pond to cover increased usage may tax the current harbor management staff.
- (6) Concerned that if not dredged commercial vessels (even small ones) may become grounded in the channel and cause a hazard.
- (7) Not dredging the channel will not allow even shallow draft vessels into the Pond.
- (8) Not dredging will prevent access to individual's property (dock) in Menemsha Harbor, adjacent to the Menemsha Federal Channel.
- (9) The Federal Navigation Project is a "precious asset" that provides vessels needed refuge when unpredictable weather turns "ugly".

4. Extensive hydraulic modeling of Menemsha Pond undertaken by the Towns of Aquinnah and Chilmark, and Wampanoag of Gay Head Indian Tribe suggest little to no direct impact to the Menemsha Pond ecosystem by the dredging project. In addition, State and Federal resource agencies have reviewed the project design, submitted comments which have been addressed by the District, and are currently processing the necessary 401(b) Water Quality Certification and Coastal Zone Consistency Determination permits. The District expects permit issuance by Mid-October 2014.

5. Requests for a public hearing shall be granted, pursuant to 33 CFR 327.4 (b), "unless the district engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing". Issues raised in this case were clearly stated, and are readily addressed through existing information.

6. I therefore determine that it is not necessary to conduct a public hearing because through the Corps public comment process, we have sufficient information to adequately evaluate the issues raised. I acknowledge and appreciate the viewpoints which accompanied the request and will assure that this information becomes part of the administrative record to be fully considered before a final decision is made. The Corps will consider relevant new information or circumstances that may arise prior to a final decision to perform the maintenance dredging project.

A handwritten signature in black ink, appearing to be 'CJB', with a long horizontal flourish extending to the right.

Christopher J. Barron
Colonel, Corps of Engineers
District Engineer