

CENAE-PP

16 June 2011

MEMORANDUM FOR Commander

SUBJECT: Proposed Maintenance Dredging of the Federal Navigation Project (FNP) in the Lower Kennebec River, Sagadahoc County, Maine.

Attached for your signature are the Statement of Findings, Clean Water Act Section 404 (b)(1) Evaluation, and Findings of No Significant Impact (FONSI) for the maintenance dredging at the subject project.



WILLIAM KAVANAUGH  
Project Manager

Attachments

CF:  
Cappola  
Kavanaugh  
PPMD File  
*(Kavanaugh/Kennebec11SOFfinal)*

## Statement of Findings

**Prepared by:** Dr. Valerie Cappola, Environmental Resources Section and Bill Kavanaugh, Project Manager, Programs and Project Management Division, Navigation Section

**Date Prepared:** June 15, 2011

**Waterway:** Kennebec River, Sagadahoc County, Maine

**Background:** In their November 23, 2010 letter to the US Army Corps of Engineers (ACOE), New England District (NAE), the US Navy (Navy) notified NAE that shoaling had formed in the channel near Doubling Point and that the shoaling had delayed the recent departure date and hindered the transit of the USS JASON DUNHAM (DDG 109). The Navy indicated that the USS JASON DUNHAM had to alter its line of departure (which the ACOE later had learned that this meant maneuvering the ship around the shoaling in the channel in an adjacent area to the east) and take other measures to transit the river. The Navy requested that the ACOE take immediate action to clear the channel in support of the February 15, 2011 transit of the USS SPRUANCE (DDG 111) to sea-trials. In our letter dated December 17, 2010, we responded that we would mobilize a survey crew to determine the extent of the shoaling at Doubling Point. Hydrographic surveys performed in late December 2010 of the channel and the adjacent area to the east confirmed that shoaling to a controlling depth of -19.7 feet had formed across almost the entire 500-foot width of the authorized 27 feet deep channel near Doubling Point and that the area to the east of shoal had deeper depths. On January 11, 2011, personnel from the Programs and Project Management Division, Navigation Section (Bill Kavanaugh and Ed O'Donnell) and the District Engineer met with Navy and Bath Iron Works (BIW) personnel to discuss the survey results. At that meeting, NAE advised the Navy and BIW that there were insufficient project funding and lead time to support their request to take immediate action to clear the channel in support of the upcoming transits of the USS SPRUANCE to sea-trials. It was agreed upon that the ACOE would perform additional hydrographic surveys of the channel and adjacent area to the east of the channel in support of the upcoming sea trials of the USS SPRUANCE in February and March. During the transits of the river of the USS SPRUANCE (to and from the BIW) for sea trials, the BIW navigated the USS SPRUANCE in an area outside the FNP to the east of the channel as they had with USS JASON DUNHAM previously. A second letter dated January 19, 2011, from the Navy to Major General Grisoli (HQUSACE) summarized the meeting between the Navy and NAE and stated that failure of the USS SPRUANCE to sail on her scheduled final departure date would have a critical impact on Navy fleet operations and national defense. The Navy requested that the ACOE initiate immediate action to clear the channel in support of USS SPRUANCE transit on October 1, 2011. A third letter from the Navy to Major General Grisoli dated January 31, 2011, corrected the departure date of the USS SPRUANCE from October 1, 2011 to September 1, 2011. Due to the unpredictable nature of the shoaling at Doubling Point (including how shoals can be affected by substantial runoff events occurring in the spring), a condition survey was performed in late May 2011 after the bulk of runoff events had occurred in the river to re-examine conditions in the river and to determine if maintenance dredging was still warranted. The surveys indicated that some scour of material had occurred in the channel and that the controlling depth was now -22.4 feet MLLW at Doubling Point. Furthermore, shoaling that was previously across almost the entire width of the

authorized channel at Doubling Point had begun to extend eastward into the area where the USS SPRUANCE navigated while transiting to and from the ocean for sea trials in February and March. A minor amount of shoaling identified on previous surveys remained at the mouth of the river near Popham Beach. A meeting between NAE (Bill Kavanaugh and Ed O'Donnell) and representatives from the Navy and BIW was convened on May 27, 2011 to discuss the results of the survey and to make a determination if maintenance dredging was still warranted. This determination would be made based on the operating requirements of the USS SPRUANCE, the results of the May 2011 hydrographic surveys, the projected conditions of the river in late August 2011, and in light of the contract procurement process. Based on an analysis of these factors, it was determined that maintenance dredging of the FNP was still warranted.

### **Proposed Action:**

The proposed action involves maintenance dredging of two portions (and may involve advance maintenance dredging in one of those two portions) of the authorized 27 feet deep at Mean Lower Low Water (MLLW), 500 feet wide FNP in the lower Kennebec River. Maintenance dredging is needed to remove hazardous shoals from the channel in the vicinity of Doubling Point (just below Bath) and at the mouth of the river near Popham Beach in advance of the departure date of the newly constructed USN Destroyer, the U.S.S. SPRUANCE scheduled to depart from the Bath Iron Works on or about September 1, 2011. A total of about 70,000 cubic yards (i.e. 50,000 cubic yards from Doubling Point and 20,000 cubic yards from Popham Beach) of clean sandy material could be removed from the channel as a result of the proposed action. The shoals, especially those in the Doubling Point area consist of massive sandwaves oscillating within vertical and horizontal ranges; the elevation at the tips of these sandwaves vary from -22.4 feet to -26.8 feet MLLW. As part of this proposal, advance maintenance may be performed at Doubling Point to remove the sandwaves to an elevation of -30 feet MLLW, with an allowable over-depth of up to 2 feet (to a total maximum elevation of -32 feet MLLW) in an effort to improve the chance that adequate depths will endure in the channel near Doubling Point. The quantity of material mentioned above (50,000 cubic yards) that could be removed from the channel near Doubling Point includes advance maintenance dredging. Performing advance maintenance at Doubling Point is contingent on receiving favorable bids for the project and the availability of funding. The proposed work will be performed with a hopper dredge over a three to five week period beginning on or about August 1, 2011. The material dredged from the Doubling Point area will be placed at the previously used in-river disposal site located north of Bluff Head. Water depths at the in-river disposal site range from about 30 feet to 100 feet deep. The in-river disposal site was used most recently by the ACOE in 1986, 1991, 1997, 2000, 2002 and 2003. Material dredged from the channel near Popham Beach will be placed at a previously used nearshore disposal site located about 0.4 nautical miles south of Jackknife Ledge in depths of about 40 to 50 feet below MLLW. The Jackknife Ledge disposal site was most recently used in 1989, 1997, 2000, 2002 and 2003. As in previous years, the material dredged from the channel at the mouth of the river will be transported to Jackknife Ledge within a designated haul route.

### **Coordination with Federal Agencies:**

**US Environmental Protection Agency (EPA):** The material to be dredged has undergone physical testing performed in coordination with the EPA and other agencies. The EPA concurred with our determination that the material to be dredged is suitable for disposal at the previously used in-river disposal site north of Bluff Head and the nearshore disposal site south of Jackknife Ledge. On March 3, 2011 a letter was sent to the EPA requesting review and comments relative to section 176 (c) and 309 of the Clean Air Act (CAA) along with a copy of the draft Environmental Assessment (EA). The EPA responded in their letter dated April 15, 2011 which stated that the project as proposed meets the requirements of Sections 176(c) and 309 of the CAA.

**National Marine Fisheries Service (NMFS):** Due to the presence of the Federally-listed, endangered Shortnose Sturgeon (SNS) in the Kennebec River, coordination and formal consultation with NMFS has been ongoing on this project since 1997. Upon learning from the Navy that dredging might be required outside the typical dredging window established for the SNS, Bill Kavanaugh contacted NMFS (Julie Crocker, Protected Resources Division) via email to advise them of the situation. On January 31, 2011, NAE personnel (Ken Levitt, Ed O'Donnell and Bill Kavanaugh) met with Julie Crocker of NMFS Protected Resources Division to informally discuss the project and to determine the feasibility of dredging in August 2011 from an environmental standpoint. During this meeting we discussed alternative types of dredge plant that could be employed to complete the dredging and their relative impacts on the SNS. NMFS indicated that their primary concern was with the extent of time the project would take to complete and that their preference was for the ACOE to utilize whichever dredge plant would accomplish the work in the least amount of time. On March 2, 2011 the Corps formally requested that NMFS reinitiate consultation under Section 7(c) of the Endangered Species Act (ESA) for the SNS and Atlantic salmon in the Kennebec River. A Biological Assessment for these two species was prepared by NAE and included with the letter. Based on discussions between Ken Levitt and Julie Crocker, it was suggested that the Corps also evaluate the potential effect of the proposed action on the Gulf of Maine Distinct Population Segment (GOM DPS) of Atlantic sturgeon even though this species has only been proposed for listing. On May 5, 2011 a second letter was sent to NMFS that amended the Biological Assessment; the letter included a summary of the effects of the proposed action on the GOMDPS of Atlantic sturgeon. Prior to the Corps issuing a contract solicitation for the proposed work, NMFS provided the ACOE with draft Reasonable and Prudent Measures (RPM's) and terms and conditions which included: notification of NMFS prior to commencement of dredging and again upon completion of dredging; the use of start-of-the-art deflectors on the dragheads that should be operated in a manner to reduce risk of interaction with endangered species, requiring a NOAA Fisheries/Endangered Species Observer on-board the dredge at all times when operating in the river, and all interactions with listed species during dredging operations must be properly documented and promptly reported to NMFS. These requirements were included in our solicitation for the proposed work. Section 7 Consultation with NMFS is ongoing and we have received a draft Biological Opinion (BO) from NMFS on which the ACOE provided comments. Based on the draft BO we anticipate that the final BO will result in a "no-jeopardy" BO and an incidental take statement will be generated for the work.

Essential Fish Habitat (EFH): A letter summarizing the project as well as our EFH assessment was sent to NMFS, Division of Habitat Conservation on March 1, 2011. NMFS responded in a letter dated March 30, 2011 to the public notice for the proposed work. NMFS had several EFH Conservation Recommendations that were similar to their recommendations provided after the emergency dredging in October 2003. The crux of NMFS EFH recommendations revolved around measures that NMFS believes would help to avoid dredging outside the recommended time-of-year and to avoid dredging during highly biologically productive times within the Kennebec River. For reasons outlined in our April 28, 2011 letter (responding to NMFS EFH Conservation Recommendations), the ACOE was unable to concur with and adopt the majority of the EFH Conservation Recommendations. (See correspondence at Appendix A for further detail) NMFS did not elevate the matter which concludes the EFH consultation process for the proposed work.

**U.S. Fish and Wildlife Service (USFWS):** A letter summarizing the project and requesting comments on the proposed work was sent to USFWS on March 3, 2011. The USFWS replied in a letter dated May 2, 2011 and provided comments. The Federally threatened piping plovers nest on Popham Beach and Hunnewell Beach; however, in recent years, the nesting locations were approximately 1.5 to 2 miles away from the dredge area and most plover chicks would have fledged or be close to fledging by August 1 the start of the dredging. An active tern restoration project is being conducted by the Maine Coastal Island National Fish and Wildlife Refuge on nearby Pond Island. Pond Island is expected to support a large colony of common terns and could support breeding roseate terns (Federally and state endangered). Roseate terns are known to gather in late summer at the mouth of the Kennebec and Popham Beach as a staging area prior to autumn migration. While USFWS preferred that the dredging activities occur from September 1 to May 15, by August 1 the young terns from the earliest nests will be recently fledged and young from later nests will be within 2 to 3 weeks of fledging. Additionally, the dredge area is approximately a half mile or more away from Pond Island and the project does not involve any direct beach nourishment so the dredging is not likely to have any adverse impacts to nesting terns or other sea birds in the area. Transient bald eagles may be in the general area, but there are no known nests in the project area; therefore no impacts to bald eagles are expected.

#### **Coordination with State Agencies:**

**Maine State Planning Office (MESPO):** We made a determination that the work as proposed, is consistent to the maximum extent practicable with the State of Maine's Coastal Zone Management Program (CZMP). In our February 16, 2011 letter to Ms. Kathleen Leyden, Director of the Maine Coastal Program, we requested concurrence with our CZMP consistency determination. In a letter dated June 7, 2011, the Maine State Planning Office (MESPO) concurred with our CZMP consistency determination for the proposed action.

#### **Maine Department of Environmental Protection (DEP) – Water Quality:**

On February 8, 2011 a meeting was held at the Maine DEP office in Portland, ME to discuss the feasibility of performing maintenance dredging in August 2011. In attendance were: Bill Kavanaugh, Ed O'Donnell, and Ken Levitt (ACOE), Bob Green (DEP), Kevin Rousseau and John Henshaw (MEDOT), and Brian Swan (MEDMR). A letter outlining the proposed work and

requesting a Water Quality Certification (WQC) for maintenance dredging of the Kennebec River in August was sent to the Maine State Planning Office on February 16, 2011 and a copy of the package was sent directly to the DEP. The DEP issued a WQC in April 2011, with several conditions for the proposed project. Condition number 4 of the WQC stipulated the following: “The applicant shall not dispose of dredge material in any disposal site in the intertidal portion of the Kennebec River between the mouth of the river to the Bath town line unless and until the Maine Legislature corrects the classification of the intertidal portion of the Kennebec River from the mouth of the river to the Bath town line to be Class SB waters as is currently proposed in the 125<sup>th</sup> Session of the Maine Legislature”. On June 3, 2011, Maine Governor, Paul LePage signed the emergency bill that clarified the water quality classification; this action made the existing WQC for this project valid. Three appeals (Dorothy Kelly, Douglas H. Watts, and combined appeal by The Town of Phippsburg, The Phippsburg Shellfish Conservation Commission, The Phippsburg Land and Trust, The Kennebec Estuary Land Trust, Friends of Merrymeeting Bay, Bob Cummings, Captain Ethan Deberry, Peggy Johannessen, Dot Kelly, Lawrence Pye, Laura Sewall, and Dean Doyle) were sent to the State of Maine Board of Environmental Protection concerning the WQC. A hearing on these appeals to the WQC is tentatively scheduled for July 21, 2011.

**Maine Historic Preservation Commission (MHPC):** In compliance with Section 106 of the National Historic Preservation Act, coordination with the MHPC was completed in March 2011. In a letter dated March 28, 2011, the MHPC determined that no historic properties will be affected by the proposed project as defined by Section 106.

#### **Coordination with the Public:**

On February 24, 2011, the Maine Department of Marine Resources (MDMR) held a public meeting to provide information about the proposed project; to hear concerns, and to answer questions. Bill Kavanaugh was in attendance and gave a presentation about the project. Concerns raised included potential impacts to shellfish growing areas downstream of the Bluff Head disposal site from water turbidity and siltation of the flats; potential siltation of residential shoreline areas adjacent to the Bluff Head disposal area; potential unspecified impacts to recreational fishing and other recreational activities; potential impacts to lobster at the disposal site south of Jackknife Ledge; and concerns related to the noise from dredging operations that would occur continually seven days a week and twenty four hours a day during the summer when residents would have their windows open. Suggestions were also made that the Corps better plan for anticipated dredging needs in the future, and that some sort of “safety net” in the form of compensation for shellfish harvesters impacted by dredge and disposal operations be investigated. A complete summary of the MDMR’s perspective on these concerns and comments can be found at Appendix A.

**Public Notice:** An electronic public notice that adequately described the proposed work, and that was designed to provide information about; and seek comments on the project, was issued on March 1, 2011. The comment period closed on March 30, 2011.

Seven letters were received in response to our Public Notice and from the State Public Notice concerning our application for a Water Quality Certificate (WQC).

Letters were received from Dot Kelly (via e-mail) on March 20, 2011; Town of Phippsburg Shellfish Committee, March 25, 2011; Friends of Merrymeeting Bay, March 26, 2011; Laura Sewall, March 29, 2011; Attorney Steve Hinchman, March 30, 2011; Phippsburg Land Trust, March 30, 2011; and (via e-mail) from Bob Cummings, March 25, 2011.

The primary subject matter of the comments received related to the following: the water quality classification of the Kennebec River at the Bluff Head Disposal Site, the potential economic impacts to fishermen (shellfish and lobstermen), potential impacts to commercial and recreational fishing, tourism, and the potential environmental impacts to lobsters, clams, endangered species, and marine mammals (harbor seals). Due to the public's perception on impacts to the local economy and environment resulting from the proposed dredging in August, it was requested that only the minimal amount of dredging necessary to safely allow the USS SPRUANCE to transit the river, be completed and that the material dredged from the river be disposed of at either an upland disposal site or at the Portland Disposal Site.

All concerns have been addressed within the Environmental Assessment (EA) and the summaries and responses below can be found in Section 11.4 of the EA.

**Stephan F. Hinchman, Esquire sent a letter dated March 26, 2011.** Mr. Hinchman is concerned with the effects of the dredging and disposal on the water quality, biological, economic, and recreational resources in the Kennebec River. He states that the dredging will have severe adverse impacts to virtually all other uses and users of the Kennebec River estuary and surrounding waters including shellfish harvesting, lobstering, tourism and recreation, commercial and recreational fishing, swimming, boating, hiking, property owners, wildlife and other aquatic life. He believes that there are more cost effective and less environmentally damaging alternatives to enable delivery of the USS SPRUANCE. He incorporates the comments of several local residents, who represent shellfish and lobster harvesters, recreational users, tourism and land-owners/abutters. Mr. Hinchman also states that the proposed activity is not in compliance with the Clean Water Act, due to there being another available alternative which is practicable and less environmentally damaging; which is to move the USS SPRUANCE around the channel outside the shoals as was done during the sea trials in February and March with the assistance of a local pilot. In addition, he states that the proposed dredging is in violation of the National Environmental Policy Act, since it will have a significant impact on the human environment. In support of this statement he includes the comments of the Phippsburg residents referred to in his letter as the "Phippsburg Commenters, and their interests" (See Below).

**Response:** Mr. Hinchman's comments are addressed in several locations in the Environmental Assessment (EA). Responses to those comments concerning Section 404(b)1 of the Clean Water Act; specifically the "least environmentally damaging practicable alternative" are discussed in Section 4.0, Alternatives. Comments concerning the National Environmental Policy Act are addressed throughout the EA and primarily in Section 6.0 Environmental Consequences section. In summary, to address the comment concerning the least environmentally damaging practicable alternative: shoaling has occurred in the previously used route outside of the channel (at Doubling Point) and additional shoaling is expected to occur

during the coming summer months which could make that area unavailable as an alternate transit route. To address the comment concerning the effects to local resources, (including economic): the dredging and disposal of clean sand at both the Doubling Point and Popham Beach areas is not expected have a significant long or short term negative effect on the local resources based upon the information discussed in the above noted sections of the EA.

**The Phippsburg Commenters and their interests (represented by Mr. Hinchman):**

**Bob Cummings** - Mr. Cummings is a Drummore Bay resident whose concerns include the effects of the dredging operations on recreational users and disturbance of the natural environment surrounding the Kennebec River estuary and Popham Beach areas, as well as negatively affecting the shellfish harvesters (by causing contamination) and other users of the area.

**Response:** Comments are addressed in Section 6.1.3.1 Bluff Head; Section 6.2, Biological Effects; Section 6.2.2.1.3, Lobsters; Section 6.2.2.1.4, Shellfish; Section 6.2.3.1.3, Shellfish; and Section 6.6, Social and Economic Resources.

**Capt. Ethan DeBerry** - Mr. DeBerry is a Phippsburg resident and owner and operator of recreational fishing charter and ferry service. His concern is that the dredging will impact his charter and ferry services during the height of the season as well as creating a disturbance for the fish.

**Response:** Comments are addressed in Section 6.2.2.2, Doubling Point, Section; 6.2.3.1.2, Finfish (disposal area); and Section 6.6 Social and Economic Resources.

**Brett Gilliam** – Mr. Gilliam is a Phippsburg resident and commercial lobsterman. His concerns are that the dredging of the area of Popham Beach and disposal at Jackknife Ledge would prevent him from fishing the area and cause damage to his traps, as well as destruction of lobsters and their habitat by burial with dredged material.

**Response:** Comments are addressed in Section 6.2.2.1.3 Lobsters; Section 6.2.3.1.4 Lobsters (disposal area); and Section 6.6, Social and Economic Resources.

**Peggy Johannessen** - Ms. Johannessen is the owner of a local bed and breakfast. Her concerns include the effects of dredging on tourists/visitors during the busiest time of the year. She believes that the noise of the dredging equipment will disturb guests/users and negatively impact business, since the dredging is conducted 24 hours a day.

**Response:** Comments are addressed in Section 6.6, Social and Economic Resources.

**Dot Kelly** – Ms. Kelly is a Phippsburg property owner, a member of the Phippsburg conservation committee and riverfront abutter. She is concerned about the effect of the dredging on the tidal flats adjacent to her property as well as the effects on the overall water quality in the Kennebec River. She is concerned that the entire river will become turbid with material settling out along the tidal flats covering them with a layer of silt



several inches deep. This is what she states occurred during and/or subsequent to the BIW dredging and disposal activities in November 2009.

**Response:** Comments are addressed in Section 6.1.2 Dredge Sites; 6.1.2.1, Doubling Point; 6.1.3, Disposal Areas; 6.1.3.1, Bluff Head; 6.2, Biological Effects; 6.2.2.1.4, Shellfish; Section 6.2.3.1.3, Shellfish; Section 6.2.2.1.5 Seals; 6.2.3.1.5, Seals; and Section 6.6, Social and Economic Resources.

**Dick Lemont** – Mr. Lemont is a Phippsburg resident and commercial clam harvester. He is concerned with siltation of clam flats resulting from the dredging and the potential for closure which would affect his income (as well as those of other clambers) during the peak of the clam harvesting season when the selling prices are the highest. He is also concerned about the effects on the juvenile clams which would impact future clam harvesting and income.

**Response:** Comments are addressed in Section 6.2.2.1.4, Shellfish; Section 6.2.3.1.3, Shellfish; Section 6.2.3.2, Bluff Head; and Section 6.6, Social and Economic Resources.

**Lawrence Pye** – Mr. Pye is a Phippsburg resident, Town Selectman, and commercial lobster fisherman. His concern is that the effects of the dredging at Popham Beach and disposal at Jackknife Ledge will prevent him from fishing the area and result in lost habitat and gear.

**Response:** Comments are addressed in Section 6.2.2.1.3 Lobsters; Section 6.2.3.1.4 Lobsters (disposal area); and Section 6.6, Social and Economic Resources.

**Laura Sewall** – Ms. Sewall is a Phippsburg resident near Seawall Beach. She is concerned about the potential negative effects of the dredging on recreation (swimming and kayaking) as well as usage of the Bates-Morse Mountain Conservation Area used by more than 16,000 visitors per summer. She is concerned that elevated levels of contaminants could be in the dredged material that could ultimately affect swimmers at Seawall Beach, as well as the aesthetics for users of the conservation area.

**Response:** Comments are addressed in Section 6.2.2 Dredge Sites; 6.2.2.3, Popham Beach; 6.2.3 Disposal Areas; 6.2.3.1.3, Shellfish; and 6.6 Social and Economic Resources.

**The Small Point Association (SPA)** – Owners of Seawall Beach, adjacent to Popham Beach. Their concerns are similar to those noted above from the Phippsburg Commenters. They are primarily concerned about the effects upon recreational users of the conservation area, the negative impacts to wildlife (i.e. migratory birds) on Seawall Beach and effects to clambers whose livelihood would be severely impacted from a project that occurs during the summer months.

**Response:** Comments are addressed in Section 6.2.2 Dredge Sites; 6.2.2.3, Popham Beach; 6.2.3 Disposal Areas; 6.2.3.1.3, Shellfish; 6.3 Threatened and Endangered Species; and 6.6 Social and Economic Resources.

**Friends of Merrymeeting Bay** sent a letter dated March 26, 2011. The letter states that there are violations of 1) the state water quality statute-past and proposed; 2) the proposed clarification to the water classification – Maine and Clean Water Act issues; 3) 40 CFR Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material; and 4) the Endangered Species and Marine Mammal Protection Acts. In addition, they reserved the right to present discussion and evidence covered by any or all of the pertinent laws, regulations and directives listed in their attached letter. In summary, the letter states that the waters of the Kennebec River including those in the dredging area are classified as SA, and therefore dredging and disposal operations are prohibited in these areas. In addition, the proposed clarification to the water classification is in violation of the Clean Water Act, since it requires additional public hearings as well as EPA approval. The letter also states that the dredging and disposal alternatives that are being considered are not the least environmentally damaging practicable alternatives, and recommends using upland or offshore disposal areas as well as investigating alternative pilotage solutions (to navigate the USS SPRUANCE outside of the channel). It also notes that there will be impacts to marine mammals and endangered species.

**Response:** In summary, the Maine State Legislature recently clarified the ambiguity concerning the designation of Class SA waters, to show that they do not extend to the areas stated in the above letter. Therefore, the areas of dredging and disposal are classified as SB, as originally intended at the time of designation. According to ME DEP, such a clarification is of a ministerial nature and does not represent a substantive change to water quality classification that would trigger the procedural requirements cited by the commenter. In addition, due to the recent shoaling of the areas outside of the channel at Doubling Point, using that area to transit the USS SPRUANCE is no longer considered to be a viable option. Also, disposal at offshore and upland disposal areas are not considered practicable for this project due to either extended time required to transport the material, and/or excessive cost, as well as the resulting removal of sand from the system to which the State has expressed opposition. Specific locations in the Environmental Assessment where the comments are addressed include: Section 3 Proposed Project Description, Section 4.0 Alternatives; 5.0, Affected Environment; Section 5.1 – Section 5.1.2.2 Physical and Chemical Environment (including subsections); Section 6.0 Environmental Consequences; Section 6.1.2.1, Doubling Point; Section 6.1.3, Disposal Areas; Section 6.2, Biological Effects, Section 6.2.2.1.5, Seals; Section 6.2.3.1.5, Seals; Section 6.3, Threatened and Endangered Species; and the Clean Water Act Section 404(b)(1) Evaluation. In summary, the dredging of clean sand is not considered a carrier of contaminants and is not expected to have a long term negative impact on water quality and the associated habitats. A suitability determination was made that the material to be dredged is suitable for disposal in the proposed disposal areas.

**Phippsburg Land Trust** sent a letter dated March 30, 2011. The land trust is responsible for protecting approximately 800 acres in the Phippsburg peninsula. There are six Phippsburg Land Trust preserves at Fiddlers Reach that are potentially affected by the proposed dredging and disposal activity at Bluff Head. In addition, there are approximately 10 acres at Cox's Head,

which is an area potentially affected by the dredging and disposal activity at the mouth of the river. They are concerned with the environmental and recreational impacts of the proposed project. The impacts that they are concerned with include impacts to marshy wetlands at Greenleaf Preserve which includes possible shoaling; silt deposition on wetlands which is believed to have occurred following the 2009 dredging; the noise of the dredging operations which can effect serenity for visitors; impacts to lobsterman and clambers, effects of sediment deposits caused by dredging on marine life; contaminants in the sediments, the suitability of the disposal areas, impacts of the dredging operation on biological community, the effects on the littoral system at Popham Beach/Jackknife Ledge. They suggest the Corps consider other alternatives such as that dredging should be done in winter or only minimal dredging be conducted, or that the USS SPRUANCE should transit around the shoals as was done in February and March, before planning to dredge in August.

**Response:** The comments are addressed in the EA. In summary, the dredging of clean sand is not expected to cause silt deposition on adjacent tidal flats and wetlands. The clean sand is also not expected to have significant negative impact on the biological, recreational or economic resources of the area. Although there may be noise from the dredging operations, the area is a Federal navigation channel, with existing boat traffic. These vessels also produce noise. Therefore the associated noise is expected to be temporary, and of short duration. Specific locations where these concerns are addressed include Section 4.0, Alternatives; Section 5.1.2.2, Jackknife Ledge; Section 6.0, Environmental Consequences; 6.1 Physical and Chemical Effects; Section 6.1.2; Dredge Sites; Section 6.1.2.1, Doubling Point; Section 6.1.3.2, Jackknife Ledge; Section 6.2.2.1.4, Shellfish; Section 6.2.3.1.3, Shellfish; Section 6.3, Threatened and Endangered Species and Section 6.6, Social and Economic Resources.

**Dr. Laura Sewall** sent a letter dated March 29, 2011. She had concerns that disposal at Jackknife Ledge will result in aesthetic and recreational impacts on Sewall and Popham Beaches, including elevated levels of fecal coliform bacteria. In addition, there is concern that disposal will affect the experience of the users of the Bates Morse Mountain Conservation Area. She is also concerned about the affects of dredging and disposal on lobsters, clams and the associated fisheries. She expressed concern with the “downgrading” of the water quality classification from SA to SB.

**Response:** Generally, the dredging and disposal of clean sand is not expected to cause elevated levels of fecal coliform bacteria, therefore impacts to recreational users are not expected. In addition, the material is not believed to be a carrier of contaminants. Concerning the water quality classifications, the Maine State Legislature recently clarified that classification of the waters in the vicinity and including the dredging areas are class SB, which is what they were originally designated to be and regulated as such by the DEP. Additional information concerning the comments/concerns can be found in Section 4.0, Alternatives; Section 5.1.2.2, Jackknife Ledge; Section 6.0, Environmental Consequences; 6.1 Physical and Chemical Effects; Section 6.1.2; Dredge Sites; Section 6.1.2.1, Doubling Point; Section 6.1.3.2, Jackknife Ledge; Section 6.2.2.1.4, Shellfish; Section 6.2.3.1.3, Shellfish; Section 6.3, Threatened and Endangered Species and Section 6.6, Social and Economic Resources.

**Phippsburg Shellfish Committee** sent a letter on March 25, 2011. They had concerns that the dredging and disposal operations in the Kennebec River will have a severe negative affect on the shellfish downstream from the Bluff Head disposal area as well as those near the Morse River from disposal at Jackknife Ledge. These impacts include silting in/burial of clam flats with silt, loss of productivity, closure of beds during the busiest season causing an economic impact, effects to lobsters and lobster gear, as well as finfish. In addition, there is the request that the USS SPRUANCE be brought out around the channel without dredging as was done previously.

**Response:** The comments are addressed throughout the EA. Generally, the dredging and disposal of clean sand is not expected to cause long term negative impacts to the shellfish beds downstream from Bluff Head, or in the Morse River near Jackknife Ledge. Sections of the EA that discuss these affects include Section 4.0, Alternatives; Section 5.1.2.2, Jackknife Ledge; Section 6.0, Environmental Consequences; 6.1 Physical and Chemical Effects; Section 6.1.2; Dredge Sites; Section 6.1.2.1, Doubling Point; Section 6.1.3.2, Jackknife Ledge; Section 6.2.2..1.4, Shellfish; Section 6.2.3.1.3, Shellfish; Section 6.3, Threatened and Endangered Species and Section 6.6, Social and Economic Resources.

**Robert Cummings** a member of the Phippsburg Shellfish Conservation Commission sent an email on March 25, 2011 with concerns about the suspension of shellfish harvesting during the dredging activities and the economic impact on the clammers.

**Response:** The Maine DMR is planning to monitor levels of fecal coliform bacteria during dredging to ensure that they are within mandated criteria, but there will not be a “preemptive closure” based solely on the commencement of dredging activities. Generally, the dredging and disposal of clean sand is not expected to cause significantly increased levels of bacteria downstream in the Phippsburg shellfish areas. Specific sections where this is discussed include Section 6.1.3.1, Bluff Head; Section 6.2.2.1.4, Shellfish; Section 6.2.3.1.3, Shellfish; and Section 6.6 Social and Economic Resources.

**Dot Kelly** sent a letter via e-mail on March 20, 2011. The letter states that the last dredging and disposal in November 2009 by BIW resulted in an accumulation of mud on the shoreline near her property and that alternative disposal options such as upland disposal should be should be used instead to minimize impacts. She recommended that we should use the no dredge alternative, minimal dredging, or use dragging to flatten the sand crests. Ms. Kelly’s interpretation of the Normandeau Study which found minimal water quality impacts from dredging was that the data was flawed. The study was done during a storm event and monitored above and below at only one location, which was far from the disposal area. Also, another study on clam flats did not address the effects of sedimentation on clam breathing holes. The letter also states that the choice of Bluff Head is not consistent with the Corps Regulations or 1992 dredging brochure since the disposal area has not been monitored. She noted that the depths at Bluff Head in the sampling plan are not accurate and she also questioned the current speeds in the river. She also recommended more study of the sand transport in the area be conducted before any “over-dredging,” and conducting only minimal dredging. She stated that the August dredging will disrupt numerous users of the resources, the water quality designation for the areas was Class SA and disposal of dredge material would violate water quality law, and that dredging outside the November window isn’t minimizing impacts.

**Response:** In summary, the dredging of clean sand is not expected to negatively affect the resources noted. Concerning the Normandeau study, the fact that a storm event occurred showed that the turbidities associated with dredging were within the ranges of those normally experienced during a storm event. The waters are classified as Class SB waters. Sections of the EA where the comments/concerns are addressed in more detail include Section 4.0, Alternatives; Section 5.1.2.2, Jackknife Ledge; Section 6.0, Environmental Consequences; 6.1 Physical and Chemical Effects; Section 6.1.2; Dredge Sites; Section 6.1.2.1, Doubling Point; Section 6.1.3.1, Bluff Head; Section 6.1.3.2, Jackknife Ledge; Section 6.2.2.1.4, Shellfish; Section 6.2.3.1.3, Shellfish; and Section 6.6, Social and Economic Resources.

**NOTE: THIS CONCLUDES THE COORDINATION SECTION OF THE STATEMENT OF FINDINGS**


**Private Dredging:** There will be no private dredging performed in conjunction with, or subsequent to, the Federal dredging.

**Environmental Effects and Impacts:** The attached Environmental Assessment (EA) was prepared for the proposed work and considers the environmental impacts associated with the project. The EA was coordinated with both the Federal and State of Maine resource agencies and is in compliance with all applicable environmental laws and regulations and the project as proposed complies to the maximum extent practicable with all applicable Coastal Zone Management Policies. The project as designed will not have any significant adverse impacts on the environment.

**Determination:** The attached EA includes consideration of dredging, and dredged material management alternatives (including the no-action alternative), cumulative impacts, and includes a Finding of No Significant Impact. Dredging and dredged material management alternatives (including the no-action alternative) and cumulative impacts can be found at Section 4.0 of the EA. All conditions necessary to meet the State of Maine's Water Quality standards and to be consistent with the Coastal Zone Management Program will be met to the maximum extent practicable.

**Findings and Conclusions:** In view of the foregoing, and in review of the administrative record for this project, I find that maintenance dredging and disposal of the dredged material for this project is in the general public interest and that there is no significant unaddressed objection to the project from the standpoint of navigation, natural resources, water quality, or public interest. Therefore, the maintenance dredging and disposal of the dredged material encompassed by the Federal navigation project Kennebec River, Bath and Phippsburg, Maine in Sagadahoc County, is hereby authorized.

16 June 2011  
Date

  
Philip T. Feir  
Colonel, Corps of Engineers  
District Engineer