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Public Notice

Public Notice No.
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Date: 10 April 2008

Internet Homepage <http://www.nap.usace.army.mil>

In Reply Refer to: Environmental Resources Branch

DELAWARE BAY OYSTER RESTORATION PROJECT DELAWARE AND NEW JERSEY

Pursuant to Section 404 OF THE Clean Water Act of 1977 and Section 10 of the Rivers and Harbors Act of 1899, NOTICE IS HEREBY GIVEN THAT, the Philadelphia District U.S. Army Corps of Engineers (USACE) proposes to continue oyster restoration by conducting a shell-planting program that will substantially promote improvements in the oyster populations in Delaware Bay. The project, in turn, will promote the economies not only of the Delaware Bay oyster fishery, but that of the Delaware Bay regional/recreational economy as a whole by improving water quality and habitat complexity within the estuary.

The Delaware Estuary is an ecologically valuable area. The USACE seeks to address the habitat degradation and the ensuing significant losses to an indigenous natural resource. From 1990 to 1995, the oyster industry provided little in jobs or revenue in Delaware Bay. Oystering did not reopen until 2001. Since 2001, the condition of the oyster resource has deteriorated despite careful management and a limited controlled fishery, increasing the urgency for establishing a recruitment and enhancement program based on shell planting. Recognizing the problem, the New Jersey Legislature passed a joint resolution (SJR-19, 1996) establishing the "Oyster Industry Revitalization Task Force" (OIRTF) to develop recommendations that could lead to revitalization of the oyster industry and its associated economic benefits in the Delaware Bay. In 2001, representatives from both Delaware and New Jersey, including state regulatory agencies, the Delaware River and Bay Authority, the Delaware River Basin Commission, and interested citizens developed an oyster revitalization initiative based on the OIRTF. The primary goal was to enhance recruitment by enhancing natural seed supply through the planting of shell (cultch) to provide habitat for recruitment of juvenile oysters (spat). The planting of clean shell will increase oyster habitat, expand oyster abundance, and revitalize the natural resource with concomitant improvements in bay habitat quality from increased habitat complexity as well as increased water clarity brought about by the increased filtration of an abundant shellfish resource.

The proposed work is a continuation of the shell-planting project initiated in 2005. For the fourth consecutive year, shell planting will take place in portions of the natural oyster beds of Delaware Bay in the states of Delaware and New Jersey, as selected by the New Jersey Department of Environmental Protection (NJDEP) and Delaware's Department of Natural Resources and Environmental Control (DNREC) based on bottom surveys that occur annually. Approximately 286,000 bushels of shell were planted on several existing Delaware Bay oyster beds in July 2005. In 2006, approximately 500,000 bushels of shell were planted. In addition to direct shell planting, previous planted shell with spat were transplanted upbay. In 2007, approximately 555,000 bushels were planted in the bay. For the proposed 2008 program, available funding remaining under the current Section 1135 authority limits the extent of shell planting that can be achieved. Direct shell planting program of approximately 287,000 bushels will be done in July 2008. The

shell planting program was designed to specifically address the issue of low recruitment and the inability of recruitment rates on natural oyster beds to sustain population abundance over time. The program will be monitored to establish degree of success.

In accordance with the National Environmental Policy Act, a Draft Environmental Assessment (EA) has been developed for this project and is being circulated to the appropriate State and Federal agencies, and other public interests. Impacts to water quality have been evaluated in accordance with the Section 404(b)(1) guidelines of the Clean Water Act. The EA concludes that the proposed action would not have a significant adverse impact on the environment. Therefore, a draft Finding of No Significant Impact has been prepared.

In accordance with Section 401 of the Clean Water Act, Water Quality certification has been requested from the NJDEP for this project. Based on the information gathered during the preparation of the EA, and the application of appropriate measures to minimize project impacts, it was determined in accordance with Section 307 (c) of the Coastal Zone Management Act of 1972 that the plan complies with and can be conducted in a manner that is consistent with the approved Coastal Zone Management Program of New Jersey. A consistency determination from NJDEP has been requested for this project. Under a current agreement with the State of Delaware, the proposed action meets the requirements for Nationwide Permit #27 (Aquatic Habitat Restoration, Establishment, and Enhancement Activities) and therefore, the EA Section 404(b)(1) Compliance Review and Statement of Findings for Nationwide Permit #27 apply to this action. However, at DNREC's request, a water quality certification application has been submitted. Concurrence with Delaware's Coastal Zone Management Federal consistency determination has been requested.

Pursuant to Section 7 of the Endangered Species Act, as amended, the proposed work will not adversely affect listed species or their critical habitat. In addition, review of the National Register of Historic Places indicates that no registered properties, or properties listed as eligible for inclusion, would be impacted. All practicable means to avoid or minimize adverse environmental effects have been incorporated into the recommended plan.

The decision whether to accomplish the work proposed in this public notice will be based on an evaluation of the probable impact of the proposed work on the public interest. The decision will reflect the national concern for the protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonable foreseeable detriments. All factors, which may be relevant to the proposal, will be considered. Among these are conservation, fish and wildlife, general environmental concerns, economies, historic values, recreation, safety, water quality, aesthetics, and in general, the needs and welfare of the people.

The public and all agencies are invited to comment on this proposal. The public notice and draft Environmental Assessment are available for review on the Philadelphia District web page at www.nap.usace.army.mil. Any person may request in writing within the comment period specified in this notice that a public hearing be held to consider this proposal. Requests for a public hearing shall state, in detail, the reasons for holding a public hearing.

All comments on the work described above should be received by 9 May 2008.

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