



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
 100 Cambridge Street, Suite 900
 Boston, MA 02114

DEVAL L. PATRICK
 GOVERNOR

TIMOTHY P. MURRAY
 LIEUTENANT GOVERNOR

IAN A. BOWLES
 SECRETARY

Tel: (617) 626-1000
 Fax: (617) 626-1181
<http://www.mass.gov/envir>

July 25, 2008

**CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
 ON THE
 EXPANDED ENVIRONMENTAL NOTIFICATION FORM**

PROJECT NAME : Town of Harwich Proposed Maintenance Dredging and Beach Nourishment
PROJECT MUNICIPALITY : Harwich
PROJECT WATERSHED : Cape Cod
EEA NUMBER : 14246
PROJECT PROPONENT : Town of Harwich
DATE NOTICED IN MONITOR : May 21, 2008

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project does not require the preparation of an Environmental Impact Report (EIR).

The proposed project consists of maintenance dredging in Allen Harbor, Herring River, Wychmere Harbor and Saquatucket Harbor and use of the dredged material as beach nourishment along Nantucket Sound in the Town of Harwich. The proposed dredging and beach nourishment are a continuation of ongoing maintenance activities that have been previously permitted. With the exception of the Herring River entrance channel, authorizations for past maintenance dredging and beach nourishment are well documented. The Town of Harwich (the proponent) is seeking to combine multiple permits into a single Town-wide permit to facilitate management of dredging projects and related permits, and to provide more flexibility in distribution of dredge materials.

The project will result in alteration of Land Under Ocean, due to dredging of approximately 26 acres of navigable channels, and will alter Coastal Beaches through nourishment of four miles of beach. The project is undergoing environmental review pursuant to Section 11.03 (3)(1)(b) of the MEPA regulations, which requires a mandatory EIR for alteration of ten or more acres of any other wetlands. The project is also under review pursuant to Section 11.03(b)(3) and (4) because it involves dredging and disposal of 10,000 or more cubic yards (cy) of material.

The project requires a 401 Water Quality Certification and a Chapter 91 Permit from the Massachusetts Department of Environmental Protection (MassDEP). The project requires an Order of Conditions from the Town of Harwich (and, on appeal only, a Superseding Order from MassDEP). The project requires a Section 404 permit from the US Army Corps of Engineers and may be subject to Coastal Zone Management (CZM) federal consistency review. The project may require a National Pollutant Discharge Elimination System (NPDES) permit for construction activities. The project must be conditioned to avoid adverse effects on state-listed shorebirds, or it may result in a "take" and require a Conservation and Management Permit from the Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP).

The project is not seeking financial assistance from the Commonwealth. Therefore, MEPA jurisdiction is limited to the subject matter of required permits and extends to water quality, wetlands, waterways and tidelands, land and rare species.

Waiver Request

The Town of Harwich (the proponent) submitted supplemental information sufficient to constitute an Expanded Environmental Notification Form (EENF) with a request for a waiver from the requirement to complete an EIR for the project. I have issued a Draft Record of Decision (DROD), which will be noticed in the August 6, 2008 issue of the *Environmental Monitor*, proposing to grant a waiver from the EIR requirement. The DROD will be noticed for a 14-day comment period beginning August 6, 2008 and ending on August 20, 2008. I shall issue a Final Record of Decision (FROD) or a Scope within seven days after the close of the comments period.

EXPANDED ENF REVIEW

As described in the EENF, the access channels have been historically dredged to various depths ranging from -6.0 mean high water (MHW) to -8.0 MHW since 1926. The current dredging and beach nourishment program managed by the Town of Harwich has been ongoing since the 1980's. The EENF indicates that the volume of material dredged and used as nourishment typically ranges from 7,500 cy to 8,000 cy per dredge. As further detailed in the EENF, the Town has maintained the permits for each of the four channels since assuming the responsibilities for dredging and beach nourishment from state and federal agencies. The main difference in the proposed project is that the Herring Channel, which was last dredged in the 1970s, will be included as part of maintenance activities.

As discussed in the EENF, the access channels shoal and fill with sediment periodically but not always simultaneously, which causes problems with navigation and management of dredging schedules. The EENF considers the alternatives of maintaining existing licenses and permits, filing separate ENFs for individual channels, and pursuing a single Town-wide dredging and beach nourishment permit. The preferred alternative, to combine permits, will provide more flexibility and better control over maintenance of channels and distribution of dredged materials,

and will allow state agencies to review the entire Town-wide dredging and beach nourishment plan as a single project. MassDEP has acknowledged in its comment letter the difficulties faced by the Town in its efforts to manage multiple permits for dredging projects, and while there may be considerable work involved in developing and authorizing a Town-wide dredging and beach nourishment permit, the long-term benefits are considered to be substantial.

The Office of Coastal Zone Management (CZM), in its comment letter, has supported the Town's efforts to improve its maintenance dredging and sediment management activities through more effective planning and permitting. As noted by CZM, the material in the channels has been regularly tested and consists of clean, beach-compatible sand. The comprehensive permit is expected to result in a more flexible, cost-effective and successful approach to the Town's maintenance dredging and sediment management efforts. The Town should consult with CZM regarding the CZM federal consistency review and to ensure the project is consistent with CZM's enforceable program policies.

The Town of Harwich has submitted a Chapter 91 Permit application to MassDEP. The Town should submit to MassDEP a revised plan that illustrates the specific details of each dredge site, and shows the channel length and width, existing mean high and low water lines, soundings, adjacent structures and coastal wetlands, and appropriate cross-sections. As noted in the MassDEP comment letter, the plan accompanying the EENF indicates that many of the beaches designated for nourishment are in private ownership. Pursuant to the Waterways Regulations at 310 CMR 9.40(4), if the placement of sand will be below the MHW line, the Town of Harwich would be required to obtain easements for public access below the existing high water mark on privately owned parcels prior to beach nourishment at these locations. I refer the Town to MassDEP's comments regarding the antidegradation and other provisions of the Massachusetts Contingency Plan (MCP) that may be applicable to the project. The Town should consult with MassDEP if any notification or approval is required for material transport or disposal.

As recommended by the Division of Marine Fisheries (DMF) in its comment letter, if dredging is to take place inside the entrance jetties, the project should include a no-dredging time-of-year (TOY) restriction from January 15 through May 31 to protect winter flounder spawning and juvenile development. If dredging is to take place in the Herring River or Saquatucket Harbor, a TOY restriction should be in place from March 15 through July 31 to protect alewife and blueback migration and spawning. DMF has indicated that no TOY will be necessary if dredging is taking place only in the entrance channels outside of the harbors and river. The proponent should ensure that dredging near eelgrass beds is avoided and implement measures to avoid and minimize habitat impacts associated with use of equipment and materials. DMF has also recommended that beach fill material be placed above the MHW mark to minimize impacts on intertidal area and avoid loss of public tidelands. I ask that MassDEP incorporate conditions as appropriate in any permits issued for the project to address the concerns and recommendations of DMF.

The proposed project will occur within the actual habitat of three state-listed species: the Common Tern (*Sterna hirundo*), the Roseate Tern (*Sterna dougallii*) and the Piping Plover (*Charadrius melodus*). The proponent has submitted project plans for review pursuant to the

Massachusetts Endangered Species Act regulations (321 CMR 10.18) to the NHESP. As further detailed in the NHESP comment letter, the project must be conditioned to avoid adverse effects on the Resource Area habitats of state-listed species. To avoid a prohibited "take" of state-listed shorebirds, the project must comply with the conditions specified in the NHESP letter to the Town dated September 27, 2007. I remind the Town that if NHESP conditions are not met, the project will result in a "take" and may require a Conservation and Management Permit and a Notice of Project Change (NPC) filing. The NHESP conditions include a time-of-year restriction on beach nourishment (April 1 to August 31) unless otherwise approved by NHESP, a revised Construction Protocol to be approved by NHESP, and submission of a summary report to NHESP.

Comments from the Board of Underwater Archaeological Resources (the Board) indicate that the project is unlikely to impact submerged cultural resources. However, it is possible that there are submerged resources in the project area. If heretofore unknown submerged cultural resources are encountered during the course of the project, the Town should take steps to limit adverse effects and notify the Board as well as other appropriate agencies in accordance with the Board's Policy Guidance for the Discovery of Unanticipated Archaeological Resources (updated 9/28/06).

The Town of Harwich has committed to a range of measures to avoid and minimize or mitigate impacts, which include:

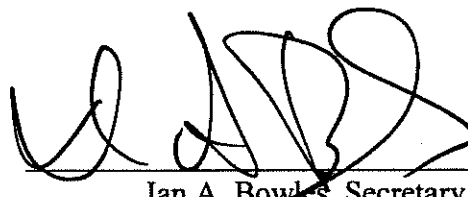
- A Construction Protocol and other conditions to address NHESP concerns (conditions related to protection of state-listed species have been incorporated into the Order of Conditions issued October 9, 2007);
- time of year restrictions and other conditions to address concerns of DMF relating to protection of resources including fish migration, spawning and juvenile development; and
- Other conditions to avoid and minimize or mitigate impacts as provided for in existing permits.

I expect that MassDEP, in developing the single Town-wide permit for dredging and beach nourishment will incorporate conditions from previous permits as well as any additional mitigation requirements, as appropriate, based on review of this EENF and comments received.

I am satisfied that the EENF has adequately described the general nature of the proposed project and proposed measures to avoid and minimize, or mitigate environmental impacts. Based on review of EENF and comments received, and consultation with relevant state agencies, I am satisfied that any remaining issues can be adequately addressed during the permit process. As noted above, I have proposed to grant a waiver of the requirement to prepare an EIR for this project as further detailed in a Draft Record of Decision, which will be subject to a 14-day public comment period. I shall issue a Final Record of Decision or a Scope within seven days after the close of the comment period.

July 25, 2008

DATE



Ian A. Bowles, Secretary

Comments Received:

6/06/08	Office of Coastal Zone Management
6/09/08	Division of Marine Fisheries
6/09/08	Board of Underwater Archaeological Resources
6/10/08	Department of Environmental Protection, Southeast Regional Office
6/18/08	Town of Harwich, Office of the Harbormaster
6/30/08	Division of Fisheries and Wildlife, NHESP
7/01/08	Division of Marine Fisheries

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