

## **EXHIBIT 1**

Army Corps of Engineers, Public Notice of Maintenance and Advanced Maintenance Dredging of the Federal Navigation Project in the Kennebec River, Maine.



**US Army Corps  
of Engineers®**  
New England District

696 Virginia Road  
Concord, MA 01742-2751

# Public Notice

In Reply Refer to: William M. Kavanaugh, Jr.

[nae-pn-nav@usace.army.mil](mailto:nae-pn-nav@usace.army.mil)

Programs/Project  
Management Division

Date: **March 01, 2011**

Comment Period Closes: **March 30, 2011**

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## 30 DAY PUBLIC NOTICE

### MAINTENANCE AND ADVANCE MAINTENANCE DREDGING OF THE FEDERAL NAVIGATION PROJECT IN THE KENNEBEC RIVER, MAINE

Interested parties are hereby notified that the U.S. Army Corps of Engineers, New England District, is proposing to perform maintenance dredging work in navigable waters of this District under the provisions of Section 404 of the Clean Water Act of 1977 (P.L. 95-217) and to authorize such work in accordance with Title 33, parts 335-338 of the Code of Federal Regulations. Attachment No. 1 lists pertinent laws, regulations and directives. This Federal navigation project was adopted in 1902 and supplemented by the River and Harbor Acts of 1907, 1913 and 1940.

**Character and Purpose of Work:** The proposed work involves maintenance dredging of two portions (and advance maintenance dredging in one of those two portions) of the authorized 27 feet deep, 500 feet wide Federal Navigation Project (FNP) in the Kennebec River in the summer of 2011. Dredging is needed to remove hazardous shoals from the channel in advance of the transit of the U.S. Navy Destroyer, the "SPRUANCE", currently scheduled to depart the Bath Iron Works (BIW) on or about September 1, 2011 on its way to being commissioned. The SPRUANCE has been deemed critical to national defense and its transit from the BIW cannot be delayed. We are proposing to perform maintenance dredging in the vicinity of Doubling Point (just below Bath) and at the mouth of the river near Popham Beach. We estimate that 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 needs to be removed from the channel. The shoals, especially those in the Doubling Point area, consist of massive sand-waves oscillating within vertical and horizontal ranges; the elevation at the tips of these sand-waves vary from -19.7' to -26.8' below Mean Lower Low Water. As part of this proposal, advance maintenance may be performed to remove the sand-waves in the vicinity of Doubling Point to a maximum elevation of -32' in an effort to improve the chance that adequate depths will endure. 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 disposed of at the previously used in-river disposal site located north of Bluff Head in about 95 to 100 feet of water (Attachment 2). Material dredged from the Popham Beach area will be disposed at a previously used 500-yard circular near-shore disposal site located about 0.4 nautical miles south of Jackknife Ledge in depths of about 40 to 50 feet (Attachment 3). The proposed work is contingent upon the availability of the necessary approvals and funding.

**Additional Information:** Additional information may be obtained from Mr. Bill Kavanaugh, Programs & Civil Project Management Branch, Programs Project Management Division, at the return address shown, by email at [nae-pn-nav@usace.army.mil](mailto:nae-pn-nav@usace.army.mil) or by calling (978) 318-8328.

**Coordination:** The proposed work is being coordinated with the following Federal, State, and local agencies:

**Federal:**

U.S. Environmental Protection Agency  
U.S. Fish and Wildlife Service  
National Marine Fisheries Service

**State of Maine:**

Department of Environmental Protection  
Maine State Planning Office  
Maine Department of Transportation  
Maine Historic Preservation Office

**Environmental Impacts:** An Environmental Assessment of the proposed maintenance dredging of the Kennebec River is being prepared. I have made a preliminary determination that an Environmental Impact Statement for the proposed emergency dredging is not required under the provisions of the National Environmental Policy Act of 1969. This determination will be reviewed in light of facts submitted in response to this notice.

**Federal Consistency with Maine's Coastal Zone Management Program:** I find that dredging of the authorized navigation project is consistent with the applicable management program established as a result of the Coastal Zone Management Act of 1972. The emergency dredging operations will be conducted to the maximum extent practicable in a manner that is consistent with the approved Coastal Zone Management Program.

**Statement of Suitability:** The material to be dredged is thought to be part of a sand budget within the river and within the littoral system. Historically, the material to be dredged has always been found to be clean sand. The material to be dredged has recently undergone physical testing. Based on this testing, and, in part on a review of historical data and a lack of potential sources of contaminants, it is our determination that the material is acceptable for disposal as proposed at the previously used in-river disposal site and the previously used nearshore disposal site off of Jackknife Ledge. Our suitability determination will be coordinated with the Environmental Protection Agency, the National Marine Fisheries Service and the Maine Department of Environmental Protection.

## **Other Information:**

- a. Previous Dredging: Maintenance dredging of the Doubling Point and Popham Beach areas was last performed in 2003 when approximately 22,000 cubic yards of material were removed and disposed of as described above.
- b. Alternate Disposal Methods: Alternate disposal options that have been considered as part of this proposal include: open-ocean disposal, beach disposal and upland disposal. The material to be dredged is predominantly sand and thought to be part of a sand-budget within the river. Use of the in-river disposal site and the nearshore site off of Jackknife Ledge keeps the sand within the littoral system.
- c. Non-Federal Dredging: No private work is being considered as part of this proposal.
- d. Endangered Species: The Federally listed, endangered Shortnose Sturgeon (SNS) are known to inhabit the Kennebec River system. In addition, the Gulf of Maine Distinct Population Segment (GOMDPS) of Atlantic Salmon was listed in 2000 (the Kennebec River stock was added in 2009); the GOMDPS of Atlantic Sturgeon are also proposed for listing. A Biological Opinion prepared for the SNS in 1997 and amended in 2000, 2002 and 2003 by the National Marine Fisheries Service (NMFS) states that dredging between November 1 and April 30 may affect, but not jeopardize the continued existence of the SNS. A take statement was issued for dredging occurring during that time. Because the proposed work is outside the above mentioned dredging window, and because the Kennebec River stock of Atlantic Salmon need to be considered, re-initiation of the Section 7 consultation process with NMFS is required under the Endangered Species Act.
- e. Essential Fish Habitat Assessment: It has been determined that the proposed project may have a temporary adverse effect on Essential Fish Habitat (EFH). The project area is contained within areas designated as EFH as defined by the Magnuson-Stevens Fishery Conservation and Management Act and amended by the Sustainable Fisheries Act of 1996 for federally managed fish species. The Army Corps of Engineers has assessed the effects that dredging and disposal of dredged material are likely to have on EFH and has determined that effects will be short-term and localized and that there will be no significant impacts on the designated fisheries resources. The Corps is consulting with NMFS to assure that all impacts will be minimized to the maximum extent practicable.
- f. Floodplain Management: In accordance with Executive Order 11988, the Corps of Engineers has determined that the proposed work will not contribute to negative impacts or damages caused by floods.

- g. Alternatives: The work involves maintenance dredging of a Federal navigation project. The only alternative to dredging is the "No Action" alternative. The channel is already impassable and this alternative would allow existing conditions to remain and worsen.
- h. Cultural Resources: This proposal is being coordinated with the Maine Historic Preservation Office. The proposed work involves maintenance dredging in previously dredged areas and, disposal of dredged material at previously used disposal sites; therefore, we do not anticipate any impacts on any cultural or archaeological features.
- i. Disposal Areas: Dredged material from the Doubling Point Reach will be disposed of at the previously used in-river site north of Bluff Head in about 95-100 feet of water and dredged material from the Popham Beach area will be disposed of at the previously used nearshore disposal area off of Jackknife Ledge in about 45-50 feet of water. Transportation routes to the disposal areas will be the same routes used during the last maintenance dredging events in 2000, 2002 and 2003.

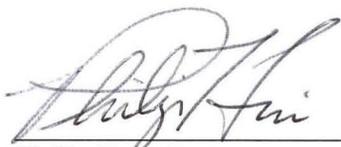
**Additional Requirements**: The Clean Water Act of 1977 requires that the work comply with State or Interstate requirements to control the discharge of dredged or fill material. These State requirements must be met where applicable before any work seaward of the ordinary high water line or adjacent to wetlands may be accomplished. The above requirement shall not be construed as affecting or impairing the authority of the Secretary of the Army to maintain navigation. Due to the coarse nature of the material, no significant water quality impacts are expected from the proposed work. We have requested a 401 Water Quality Certification for this work from the State.

The decision whether to perform the work will be based on an evaluation of the probable impact of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, will be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the proposal, will be considered. Among these are: conservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use classification, and the welfare of the people.

Any person who has an interest that may be affected by the dredging and disposal of this dredged material may request a public hearing. The request must be submitted in writing to me within 30 days of the date of this notice and must clearly set forth the interest that may be affected and the manner in which the interest may be affected by this activity.

Please bring this notice to the attention of anyone you know to be interested in this project. Comments are invited from all interested parties and should be directed to the U.S. Army Corps of Engineers, New England District, 696 Virginia Road, Concord, MA 01742-2751, ATTN: Mr. Bill Kavanaugh, Programs & Project Management Division, within 30 days of the date of this notice.

24 February 2011  
Date

  
Philip T. Feir  
Colonel, Corps of Engineers  
District Engineer

Attachments

## **Attachment 1**

### **PERTINENT LAWS, REGULATIONS, AND DIRECTIVES**

Clean Water Act, as amended (33 U.S.C. 1251 et. seq.)

Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.)

Code of Federal Regulation, Title 33, Parts 335 through 338

National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347)

Fish and Wildlife Coordination Act (16 U.S.C. 661-667e)

Fish and Wildlife Act of 1956 (16 U.S.C. 742a, et. seq.)

Migratory Marine Game-Fish Act (16 U.S.C. 760c-760g)

Coastal Zone Management Act of 1972 (16 U.S.C. 1456)

National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.)

Endangered Species Act of 1973 as amended (16 U.S.C. 1531 et seq.)

Clean Air Act, as amended (42 U.S.C. 7401 et. seq.)

Estuary Protection Act (16 U.S.C. 1221 et. seq.)

Federal Water Project Recreation Act, as amended (16 U.S.C. 460L-12 et. seq.)

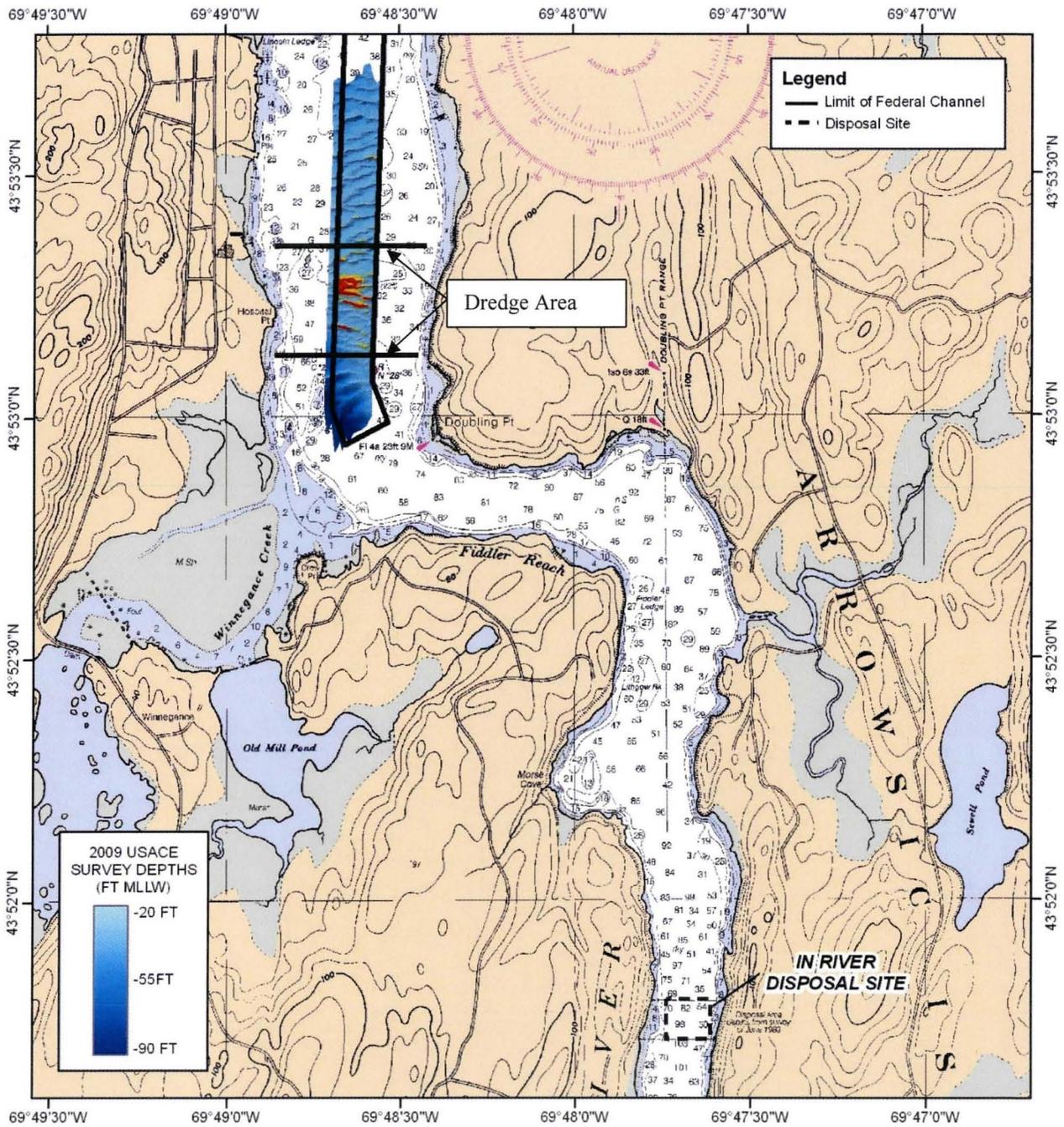
Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460L et. seq.)

Magnuson-Stevens Fishery Conservation and Management Act as amended by the  
Sustainable Fisheries Act of 1996 (16 U.S.C. 1801 et seq.)

Executive Order 11988, Floodplain Management, 24 May 1977

Executive Order 11990, Protection of Wetlands, 24 May 1977

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority  
Populations and Low Income Populations, 11 February 1994



**KENNEBEC RIVER, BATH AND PHIPPSBURG, ME**  
**VICINITY OF DOUBLING POINT**  
**AND IN RIVER DISPOSAL SITE**

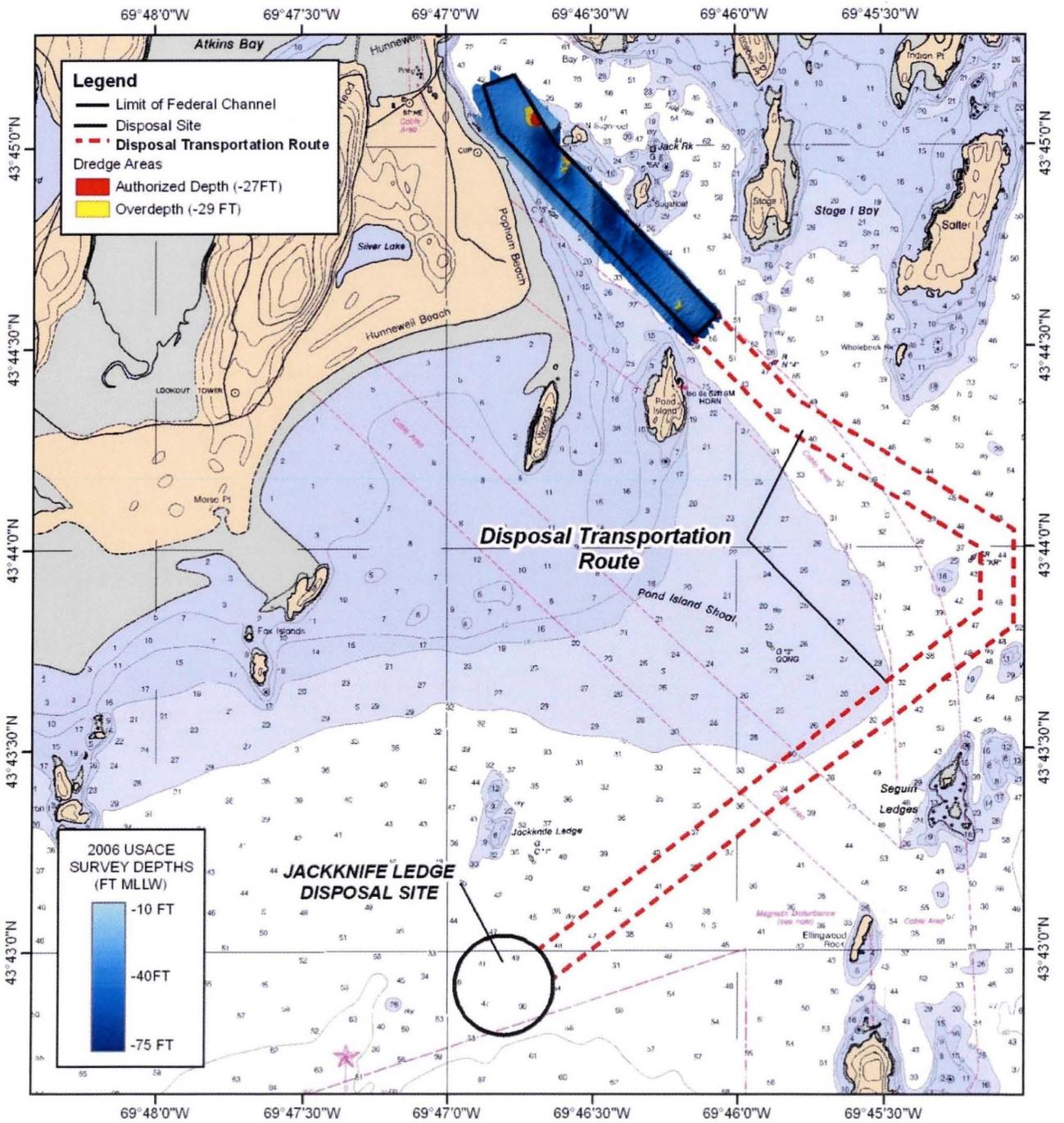
US Army Corps of Engineers  
 New England District

0 1,250 2,500 3,750 5,000 Feet  
 0 250 500 750 1,000 1,250 Meters

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**ATTACHMENT 2**

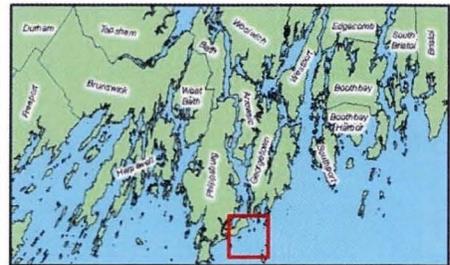


**Kennebec River, Bath and Phippsburg, ME**  
**VICINITY OF POPHAM BEACH**  
**AND NEARSHORE DISPOSAL SITE**

US Army Corps of Engineers  
 New England District

0 990 1,980 2,970 3,960 4,950 Feet  
 0 500 1,000 1,500 Meters

NOAA CHART 13295 1:24,000 GCS NAD 1983



**ATTACHMENT 3**