



# Public Notice

U.S. Army Corps of Engineers, Norfolk District

February 12, 2014

CENAO-WR-R  
14-v0147/NAO-2014-00240

## FEDERAL PUBLIC NOTICE

The District Commander has received a joint application for Federal and State permits as described below:

### APPLICANT

Virginia Marine Resources Commission  
c/o Jim Wesson  
2600 Washington Avenue  
Newport News, Virginia 23607

WATERWAY AND LOCATION OF THE PROPOSED WORK: The project(s) are located in the Rappahannock River and the Piankatank River, both are tributaries to the Chesapeake Bay, at/near Lancaster County and Middlesex County Virginia.

PROPOSED WORK AND PURPOSE: The applicant proposes to create two experimental reefs to test the suitability of ground/processed concrete pieces (without rebar) as a suitable surface for oyster spat strike(s). The average concrete piece size will range from 2.5" to 3.5" and not smaller than .75 inches. The concrete pieces will be placed at an average thickness of 6" to 8" on the subaqueous bottom in water depths ranging from 8' to 15' mean low water. The purpose is to test the material as a possible replacement for the traditional oyster shell due to shell's sparse availability and its prohibitive cost as a planting substrate. Subsequent to the proposed placement, testing/monitoring will be conducted to assess the suitability of the material.

Approximately 4,000 cubic yards of the concrete pieces will be power washed off of barges at a 5 acre location in the Rappahannock River. Also, a site is proposed in the Piankatank River that will be created by power washing approximately 15, 000 cubic yards of concrete pieces to create a 20 acre reef substrate. The activity is proposed to take place between May and the end of July 2014.

No vegetated wetlands or submerged aquatic vegetation is expected to be adversely affected by the proposal.

In addition to the required Department of the Army permit, the applicant must obtain a Virginia Water Protection Permit/401 certification from the Virginia Department of Environmental Quality assuring that applicable laws and regulations pertaining to water quality are not violated and a permit from the WHAT Wetlands Board. Project drawings are attached.

AUTHORITY: Permits are required pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), Sections 401 and 404 of the Clean Water Act (Public Law 95-217) and Title 62.1 of the Code of Virginia.

**FEDERAL EVALUATION OF APPLICATION:** The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. The decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected from the proposal must be balanced against its reasonably foreseeable detriments. All of the proposal's relevant factors will be considered, including conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use classification, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The Environmental Protection Agency's "Guidelines for Specification of Disposal Sites for Dredged or Fill Material" will also be applied (Section 404(b)(1) of the Clean Water Act).

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the **direct, indirect, and cumulative** impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. Anyone may request a public hearing to consider this permit application by writing to the District Commander within 30 days of the date of this notice, stating specific reasons for holding the public hearing. The District Commander will then decide if a hearing should be held.

Preliminary review indicates that: (1) no environmental impact statement will be required; (2) no species of fish, wildlife, or plant (or their critical habitat) listed as endangered or threatened under the Endangered Species Act of 1973 (PL 93-205) will be affected. Based on this no effect determination, no further coordination with the Fish and Wildlife Service is required.. No known properties eligible for inclusion or included in the National Register of Historic Places are in or near the permit area, or would likely be affected by the proposal. Additional information might change any of these findings. For compliance with the Coastal Zone Management Act of 1972, as amended, the applicant must certify that federally licensed or permitted activities affecting Virginia's coastal zone (Tidewater) will be conducted in a manner consistent with the Virginia Coastal Resources Management Program (VCP) and obtain concurrence from the Department of Environmental Quality, Office of Environmental Impact Review. We have not received a certification statement from the applicant prior to publication of this public notice. It is the applicant's responsibility to submit a certification statement to the Office of Environmental Impact Review for concurrence or objection and proof of concurrence must be submitted to the Corps prior to final permit issuance. A template federal consistency certification statement can be found: <http://www.deq.state.va.us/Programs/EnvironmentalImpactReview/FederalConsistencyReviews.aspx#cert>

For more information or to obtain a list of the enforceable programs of the VCP, contact the Department of Environmental Quality, Office of Environmental Impact Review at (804) 698-4330 or e-mail: [elirons@deq.virginia.gov](mailto:elirons@deq.virginia.gov).

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the

Sustainable Fisheries Act of 1996 (Public Law 104-267), requires all Federal agencies to consult with the National Marine Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). Both the Rappahannock River and the Piankatank River (EFH 10 minute square 3730 and 7620) contain Essential Fish Habitat (EFH) for the life stages of several species including the Window Pane and Summer Flounder, Bluefish, Spanish and King Mackerel, Cobia, Red Drum, Dusky and Sandbar Shark. The area that this project would affect consists solely of sub-tidal habitat in water depths ranging from 8' to 15' mean low water. No adverse impact to wetland vegetation or submerged aquatic vegetation is expected.

The broken concrete pieces will be loaded onto barges and transported to the site(s). Once in place, they will be blown off the barge with high velocity hoses using pumped sea water. Due to the size/mass of the concrete pieces, it is believed that they will rapidly sink into place and create only minimal, short term turbidity. Also, the time of the year for the proposed activity is not expected to have a recognized impact to fish breeding.

Our assessment of the project leads us to a preliminary determination that it will not have a substantial adverse effect on EFH and therefore expanded EFH consultation is not required. The rationale for this preliminary determination is based on the expected short-term nature of the direct impacts/minimal increases in turbidity/changes in water temperature or salinity caused by the proposed work/the absence of vegetated wetlands, submerged aquatic vegetation, and anadromous fish spawning habitat/ existing poor water quality/unsuitable substrate. Based on comments from the National Marine Fisheries Service in response to this public notice, further EFH consultation may be necessary.

**COMMENT PERIOD:** Comments on this project should be made in writing, addressed to the Norfolk District, Corps of Engineers (ATTN: CENAO-WR-R), 803 Front Street, Norfolk, Virginia 23510-1096, and should be received by the close of business on March 14, 2014.

**PRIVACY & CONFIDENTIALITY:** Comments and information, including the identity of the submitter, submitted in response to this Public Notice may be disclosed, reproduced, and distributed at the discretion of the U.S. Army Corps of Engineers. Information that is submitted in connection with this Public Notice cannot be maintained as confidential by the U.S. Army Corps of Engineers. Submissions should not include any information that the submitter seeks to preserve as confidential.

If you have any questions about this project or the permit process, contact Mr. Adrian R. Jennings at (804)435-9362 or at [adrian.r.jennings@usace.army.mil](mailto:adrian.r.jennings@usace.army.mil)

FOR THE DISTRICT COMMANDER:

Marshall T. Smith  
Acting Chief, Northern Virginia  
Regulatory Section

Attachment: Drawings