

# Friends of Penobscot Bay

"People who care for Maine's biggest bay"  
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[www.penbay.net](http://www.penbay.net)

May 6, 2013

Colonel Charles P. Samaris  
District Engineer  
US Army Corps of Engineers [cenae-ep@usace.army.mil](mailto:cenae-ep@usace.army.mil)  
New England District  
696 Virginia Road  
Concord, MA 01742-2751

Attn: Engineering and Planning Division (Ms. Barbara Blumeris)

Friends of Penobscot Bay is a citizens' association dedicated to stewardship of Penobscot Bay through oversight, advocacy and public education. Our board of directors includes representatives of the lobstering, clamming, urchining, aquaculture, and tourism businesses as well as members of the general public of the Penobscot Bay area.

We are writing to express our concern over the likely and possible impacts that the proposed dredging project in Searsport will have on Penobscot Bay's living marine resources and by extension its natural resource-based economy. Having reviewed the feasibility study, we have determined that much of the information that is either outdated or inadequate for its purposes, and that proper attention has not been paid to the requirements of the National Environmental Policy Act.

Because a great deal of information is available among multiple members of the public and scientific community, who can share their information at length and in detail, we request the preparation of an Environmental Impact Statement, including the holding of at least one public hearing.

The Friends of Penobscot Bay (hereafter FOPB) do not oppose the proposed maintenance dredging detailed in the April 5, 2013, Feasibility Study and draft Environmental Assessment ("EA"), provided dredge spoils from that dredging are landfilled or otherwise deposited upland.

FOPB however, opposes the proposed "improvement" dredging project, for the following reasons.

1. There are no existing or foreseeable needs for this expansion;
2. The information used by ACOE is incomplete, outdated and inadequate.
3. More recently developed information, particularly from the DCP Midstream application review process was not considered in the ACOE Feasibility study even though some of it contradicts the earlier information

Continued on Page 2

4. The project so far does not meet the standards of the National Environmental Policy Act (NEPA), the Clean Water Act and other applicable statutory and regulatory requirements.

Our concerns are detailed below.

#### PURPOSE OF THE DREDGING

The April 5th Corps' filings propose to use \$11.2 to \$13 million of limited taxpayer resources for an optional "improvement" dredging project, with no identified or discernible public benefit or public need.

Congress directed the Corps in 2000 to study the port of Searsport to determine if it should be deepened from its existing 35 feet. The Corps' April 5<sup>th</sup> report prepared in response to that Resolution, doesn't meet the standards of applicable law. Nor do it refer to the substantial body of available high quality information evidence gathered for the rejected DCP Midstream terminal and tank proposal.

According to the Corps' information, the chief purpose of the expansion dredging project is to increase the profits and convenience of two oil importing companies (Sprague Energy and Irving Oil) by allowing larger tankers to deliver petroleum products to Mack Point. While this may increase earnings among these companies' stockholders, it is not a reasonable or proper use of limited taxpayer dollars, especially in this period of sequester-forced budget reductions.

The funds required for the proposed "improvement" dredging could be better spent on improvements for ports in Casco Bay and Cobscook Bay where it would aid existing commerce and manufacturing's import and export needs. Their need is far greater than that of Sprague Energy and Irving Oil. Funding dredging projects there would serve a significant public purpose, and have political and community

The public interest is much better reserved by those projects. That is preferable to the fiscally inappropriate and poorly evaluated project like the Searsport expansion proposal, for which there is no specific or urgent need or use. Unlike dredging projects in South Portland and Eastport there is already significant public opposition to the Searsport expansion project.

#### **POOR QUALITY INFORMATION IN THE FEASIBILITY STUDY & DRAFT EA**

The Feasibility Study and draft Environmental Assessment rely on out-dated and inadequate information on the costs and benefits of the proposed dredging project. There is no compelling factual or legal support for the Finding of No Significant Impact ("FONSI") determination that accompanied the April 5th Feasibility Study and draft EA.

To conform to NEPA standards, preparation of a full Environmental Impact Statement ("EIS") on the proposed "improvement" dredging project is necessary to evaluate the direct and indirect and cumulative impacts of the expansion dredging project on the bay ecosystem, the Penobscot Bay area's businesses and the health and quality of life of bay area citizens.

Continued on Page 3

The "improvement" dredging proposal fails to consider recent and historic scientific data. Its core sampling fails to sample from the entire depth and range of proposed dredge materials. The assessment of the chemical content of the sediments is too limited.

Only cursory review of the impacts of dredging and spoil dumping on endangered and threatened species, and commercially significant species has been carried out. Assessment of the economic impacts on the region has not used current data and information, nor changes in the energy markets. For those reasons the Corp needs to reevaluate the need for expansion dredging, based on the changes in the energy import markets and use of Mack Point since 2008;

Assessment of the contaminants in the dredge spoils and at the disposal sites is inadequate; an assessment of the impacts on the lobster industry and the reputation and marketability of Penobscot Bay lobsters; an assessment of the impacts on clamming in Upper Penobscot Bay; and public hearings conducted throughout the region - including on the islands that are the most impacted by the proposed dredging and disposal sites.

### **INADEQUATE PUBLIC NOTICE**

Public hearings with their accompanying additional time for submitting public comments is necessary, for the public has received very limited notice of this proposal, although its potential impacts are significant, wide-spread and long-lasting.

For example, the article regarding the period for filing comments just appeared in the Working Waterfront Newspaper on April 29 - giving little time for impacted lobstermen to review the lengthy April 5th materials and file proper responses with the Corps of their objections and concerns. The notice period of 30 days provided was too short for a project whose development took more than a dozen years. Accordingly a public hearing is necessary, additional for obtaining the input of interested persons who prefer to comment verbally as a communications medium for them to relate their concerns and information.

The Corps took 13 years to develop its feasibility study and environmental assessment. Giving the public only thirty (30) days to respond to it is an unacceptably brief for compiling meaningful comments from interested individuals. Additional comment time should be provided and public hearings held.

### **STANDING**

Friends of Penobscot Bay's board of directors includes representatives of the lobstering, clamming, urchining, aquaculture, and tourism businesses as well as members of the general public of the Penobscot Bay area. Two Friends of Penobscot Bay members have been judicially granted standing to challenge a proposal to develop Sears Island. Under Maine law, the standing of individual members confers standing on an incorporated organization like FOPB to similarly pursue such challenges on behalf of its members. FOPB's members are concerned that the proposed "improvement dredging" will adversely and unreasonably affect the ecosystem and environment that their livelihoods and quality of life, depend on.

Continued on Page 4

This would occur both directly, through the resuspension of wastes within the spoils unearthed during expansion dredging, and by the smothering of marine life at either of the spoil dumping sites, and indirectly by inducing port sprawl on Sears Island as well as Mack Point and nearby.

In particular, we are concerned about the inevitable, direct and indirect, primary, secondary and cumulative impacts caused by the development that this "improvement" dredging is intended to stimulate on Sears Island and at Mack Point.

The adverse impacts of changing the the port of Searsport to a more heavily industrialized use will be severe and regional in nature. Such significant, regional, adverse impacts mandate that the Corps conduct a full Environmental Impact Statement ("EIS"), pursuant to the National Environmental Policy Act ("NEPA"). The draft FONSI determination is unfounded and unsupportable and must be withdrawn.

### **BACKGROUND OF THE DREDGING PROPOSAL**

**In 2000**, a proposal was made to deepen the channel in the port of Searsport to 37' in connection with a proposed development of a portion of Sears Island as a dry container port. Both proposals created considerable public backlash and criticism.

As a result of the legitimate concerns raised, on June 26, 2000, Congress passed a Resolution authorizing the Army Corps of Engineers to conduct a study to determine whether there was justification for increasing the depth of the channel at Mack Point from 35 feet.

**On April 5, 2013**, the Corps issued a Feasibility Study and draft EA, FONSI and Clean Water Act (CWA) letter concerning the proposed dredging of the port of Searsport. ACOE proposes a more extensivel dredging of Upper Penobscot Bay than has ever been carried out before .

Instead of the 37' depth-increase proposed in 2000, this study now proposes to by remove almost one million cubic yards of dredge materials to

- (1) increase the depth of the channel to 40',
- (2) widen the channel,
- (3) create a new turn-around area, and
- 4) increase the depth at the piers to 45' (43' with up to a 2' "overdepth")

Only 37,000 cy of dredge materials would be removed to do the maintenance dredging required to maintain the current federally authorized 35' depth of the existing channel, tum around and pier areas.

The so-called "improvement" dredging of 892,000 cy of dredge spoils from the channel and turn around and 31,000 cy of dredge spoils from the pier area would deepen both the existing entrance channel and turning basin from their authorized depth of 35' to a depth of 40' mean lower low water (MLLW). The entrance channel would also be widened from its current 500' at the narrowest point to 650', and a maneuvering area would be created in Long Cove adjacent to the east berth along the State Pier.

The rectangular maneuvering area would have a length between about 875' on the west side and 1,066' on the east side and a width of 400'. This area would also be deepened to 40 feet.

### **PURPOSE OF THE DREDGING PROJECT**

The purpose of the dredging project identified by the Corps is: to improve the existing Federal navigation project for Searsport Harbor at Mack Point, Searsport, Maine to accommodate the deep draft vessels that use the existing terminals at the port. This improvement will reduce the transportation costs incurred by shippers due to tidal delays and light loading of vessels." 30-Day Public Notice, p. 1.

In an attempt to justify the unprecedented "improvement" dredging, the April 5m 30-Day Public Notice asserts that: Since completion of the State Pier and upgrades to the petroleum terminal, the size of ships calling on Mack Point/Searsport Harbor has increased. As a consequence, the existing controlling depths in the Searsport Harbor navigation channel are inadequate for the existing and future vessel traffic.

There is no record evidence to support this contention. Indeed, no data is provided on the characteristics and number of ships calling on the port of Searsport after 2008. Of the data provided through 2008, the record evidence demonstrates that fewer than 5% of all vessel traffic would have to light-load or wait for a high tide in order to use the port of Searsport under present conditions and depths, without the need for any dredging (even maintenance dredging). More importantly, the current Corps' claim that dredging is required to accommodate the deep draft vessels that use the existing terminals at the port is expressly contradicted by all of the Corps' prior representations about Mack Point and the port of Searsport, published in the 2012 EA regarding the proposed DCP Searsport LLC LPG marine import terminal at Mack Point.

In that 2012 EA, the Corps concluded that "no dredging" would be required to accommodate the 4 to 8 ocean-going, deep draft LPG tankers that the DCP facility would have been serviced by annually — ships with an anticipated draught of up to 39.7 '. The Coast Guard concurred. (reference ACOE's Administrative Record for its DCP Searsport LLC federal permit review and approval. The ACOE and USCG responses prove that the assertions of need for the proposed "improvement" dredging in the April 5, 2013, Feasibility Study, and draft EA, FONSI and CWA letter are arbitrary and capricious — unsupported even by the Corps' own recent findings about the safety and adequacy of this port area — without any dredging — for a significant increase in large, ocean-going, deep draft tanker traffic

### **DEFICIENCIES IN THE ACOE'S DOCUMENTATION OF EXISTING CONDITIONS**

Despite having thirteen years to conduct a thorough assessment of the alleged need to deepen the channel and pier area of Mack Point, the cursory and out-dated analysis on which the Corps' April 5th Feasibility Study and draft EA, FONSI and Clean Water Act (CWA) letter, is based appears to be a rush job.

Continued on Page 6

It fails to adequately consider the likely direct and indirect, primary and secondary impacts that the proposed "improvement dredging" would have on the environment of Upper Penobscot Bay, and the Bay as a whole from dumping of almost a million cubic yards of dredge spoils at least some of them with significant contaminants (including mercury and crocote).

The poor quality of the data on which they are founded, do not support the extensive "improvement" dredging project proposed. Instead these documents reveal a glaring need for the Corps to do an EIS and conduct public hearings to meet NEPA's informed decisionmaking standards.

While maintenance dredging is warranted, there is no justification for the expense and ecological disruption that the proposed "improvement" dredging project would require, especially in the absence of demonstrated economic benefit or pending project that requires such dredging to safely operate. While such improvement dredging could be useful if a Sears Island commercial or industrial port were built, there are no proposals for such a project, and the lack of response to a global advertisement several year ago of Sears Island's availability as a potential port demonstrates no need for such expansion.

The April 5th Corps' filings provide insufficient analysis of the risks, benefits or need for such a radical dredging proposal. Specifically,

- The draft Clean Water Act (CWA) analysis fails to properly evaluate the potential contaminants in the dredged materials by assessing the historical data of prior discharges of petroleum products into the area from the petroleum storage facilities that have operated at Mack Point since the 1950s (the draft CWA letter specifically states that no review or evaluation of this historical discharge data has been undertaken as part of this process. See, CWA-4, 1] 3.a.3; Feasibility, p. 194.
- The analysis fails to properly evaluate the potential contaminants in the dredged materials, including, but not limited to mercury by assessing the historical data and reports that are available (the draft CWA letter specifically states that no review or evaluation of this historical discharge data has been undertaken as part of this EA process and feasibility study). See, CWA-4, 1] 3.a.5-6, Feasibility, p. 194.
- The sampling of proposed dredge materials fails to include sufficient core samples below 1.5' to 2', although the proposed dredging would require the removal of material from the existing channel of up to 8 feet in depth, and new areas outside the existing channel and from the pier area of up to eleven feet. More than a century of mercury deposition in the tidal Penobscot River, and the discharges of a wide variety of other industrial chemicals. Serious contamination of sediments below the assessed core level is very possible and needs sampling before any action is taken.
- Most of the data and analysis on need, risks and benefits was compiled in 2007 and 2008 (or before).

The data fails to reflect the significant changes in the environment, use of the port, and the energy markets generally, that has occurred during the past five (5) years. No data on petroleum imports is included after 2008, despite the well-known fact that there has been a major change in the energy markets as a result of the fracking and tars and industries during the same five (5) year period of time that have greatly reduced the need for petroleum product importation to the United States, including to Searsport by ship. See, Feasibility, p. 15, Table 2.

- No real evaluation of the impacts on Eelgrass and the organisms that rely on Eelgrass is done.
- Much of the data relating to the impacts on threatened and endangered species, including North Atlantic salmon, Atlantic sturgeon and shortnose sturgeon is out-of-date (at least 5 years old) and fails to consider the significant resources invested in the Penobscot River project and other similar recovery projects since 2008 including dam removal.
- The Corps needs to consider the impacts of the improvement dredging on many threatened and endangered species; but in its documents the Corps fails to even acknowledge the presence of many endangered and threatened species located in the areas that would be impacted by the proposed dredging and disposal.
- The Corps tries to discount the significance of the impacts of dredging on nesting eagles and osprey in the area as well as harbor seals, and fails to properly evaluate such impacts, including the impacts of increased contaminants in the food supply on health and reproduction.
- No real evaluation is made of the impacts of dredging on the human environment from increasing and redistributing contaminants, including mercury, from Upper Penobscot Bay to more pristine areas of the Bay. including the potential damage such contamination, or even the suggestion of such contamination, could have on the reputation and marketability of Pen-Bay lobsters — a major industry in the region.

In 2006 US District Court Judge Gene Carter ordered a Mercury Study of Penobscot Bay to determine the extent of mercury contamination from a closed paper mill site in Orrington on the tidal Penobscot River. Results of the survey were released in 2008. They show elevated levels of mercury near the area proposed for “improvement dredging”.

The report concludes that ***“these results indicate that the most severe contamination of the Penobscot system is between Brewer on the lower river and about Fort Point or Sears Island in the upper estuary.”*** Given that information, the Corps needs to thoroughly sample the area proposed for improvement dredging, not only a representative sample

**Larger Excerpt** (from Page 3 of the report's executive summary)

“Clear evidence for Hg [mercury] contamination of the lower Penobscot River and upper estuary was found in suspended particles and in sediments of the Penobscot system.

Excerpt continued

Hg attached to particles suspended in the water was found to be about 2X higher downstream of the Orrington site. ...

“... Hg concentrations in the sediments of the lower Penobscot River and upper estuary were also found to be much higher than in sediments from the neighbouring St. George estuary, which has no known history of point source Hg contamination.

“The concentration of Hg in inshore sediments of the Penobscot estuary decreased with increasing distance from the mouth of the river. The high concentrations of Hg in the sediments of the lower Penobscot River and upper estuary are similar to other contaminated sites in N. America and Europe. Perhaps most significantly, these concentrations are higher than NOAA levels of concern for toxic effects on aquatic life.

“Mercury in the offshore sediments of the Penobscot estuary were highest in the upper estuary and decreased in a regular pattern to Vinalhaven Island, where they were similar to those in the uncontaminated reference estuary. Hg concentrations in riparian wetlands located in the lower river and upper estuary were also high, but showed an abrupt decrease south of Verona Island. **Taken together, these results indicate that the most severe contamination of the Penobscot system is between Brewer on the lower river and about Fort Point or Sears Island in the upper estuary.**” [Our emphasis]

**Source:** Penobscot River Mercury Study: Phase I of the Study: 2006-2007.  
Report to Judge Gene Carter, U.S. District Court (District of Maine) Portland, Maine  
(Copy attached)

- The assessment of the impact on clamming in Upper Penobscot Bay is based on out-of-date and/or inaccurate information. Penobscot Bay's mussel populations have declined drastically. Remnant mussel populations could be locally extirpated by the smothering effect of settling spoils

#### **PURPOSE NEED AND ALTERNATIVES**

The reason that the Corps provides for the “improvement” dredging of nearly a million cubic yards of potentially toxic dredge spoils is to: “reduce the transportation costs incurred by shippers due to tidal delays and light loading of vessels.”

No public benefit nor public need is shown in the for the deepening of the channel and pier areas. The heavy industrial uses and petroleum imports that this project is intended to facilitate are neither needed nor appropriate under existing zoning limitations at Mack Point and Sears Island. As noted above, a worldwide search several years ago for a potential port client for Sears Island drew no applicants. The Feasibility Study and draft EA fail to acknowledge this very important fact. In short, there is neither a “public benefit” nor a “public need” for the “improvement” dredging proposed by the Corps.

Continued on Page 9



What *are* the stated benefits the Corps hopes to achieve by the taxpayer-funded "improvement" dredging project? Strictly private benefits! It would

"[A]llow shippers to shift to larger, more cost-effective vessels, thereby achieving the lower cost per ton of larger vessels." (Feasibility, p. 51 (p. 65 of 196).

**The Corps then identifies the benefited interests:**

"[T]he most significant benefit from channel deepening identified would be the improved safety and reliability of oil and gasoline shipments that would be achieved with the project." Feasibility, p. 58 (p. 72 of 196).

*In other words*, the owners of Sprague Energy and Irving Oil would be the beneficiaries, not the public. Neither company is guaranteed to, nor has any obligation to, benefit Maine taxpayers in reduced fuel costs.

The public benefits accruing from the claimed purpose and need are insignificant. They do not justify the potentially devastating and long-term environmental harm and significant adverse impacts to, for example, Penobscot Bay's lobstering industry — which is one of the most profitable commercial fisheries in the nation, accounting for nearly 40% of all Maine lobster production.

The aforementioned Penobscot River Mercury Study notes that some of the most elevated levels of mercury in lobster claws was in samples taken less than a mile away from the area proposed for improvement dredging. If more mercury were resuspended as a result of dredging, then the contaminated lobster zone – in that location already well above EPA toxicity limits – could spread to a far greater part of the bay, particularly if the spoil material is not land dumped, but instead dumped off Belfast or Rockland. A requirement to post a mercury warning on Penobscot Bay lobsters, as well as on the output of the new lobster processing plants appearing in the outer bay and elsewhere, would be economically and culturally devastating to the region.

**IN SUMMARY**

The information used in preparation of the draft EA and Feasibility Study is far too deficient for the Army Corps of Engineers to make an informed decision about the project. Further, none of the claimed benefits would accrue directly to the public - who are funding the "improvement" project.

This inadequate "public benefit" combined with the low quality information used to inform the draft Environmental Assessment together mandates the Army Corps of Engineers either withdraw the "improvement" portion of the dredging proposal, or host a public hearing as part of preparing an Environmental Impact Study of the "improvement dredging."

The Friends of Penobscot Bay supports the maintenance dredging project at Mack Point, if sensible standards separate spoils safe for bay disposal from those needing land deposition.

Page 10

However, we reject utterly the purpose and alleged needs put forth to justify the so called "improvement dredging" plan, and urge its withdrawal.

Sincerely

*Ron Huber*

Ron Huber, secretary  
Friends of Penobscot Bay

Attachment:

Penobscot River Mercury Study: Phase I of the Study: 2006-2007. Report to Judge Gene Carter, U.S. District Court (District of Maine) Portland, Maine.