

to open water disposal, including beach nourishment, habitat development, structural and nonstructural fill, and confined disposal options.

16. **The principal role of the State of Connecticut in the Federal maintenance dredging process is that of a regulator of the process. In this regard, the State acts through the Department of Environmental Protection's Office of Long Island Sound Programs,** Recent experience indicates that the principal role of the State of Connecticut in the Federal dredging process is that of a regulator of the process to ensure that no significant adverse impacts affect the State's coastal resources and water quality. (See no. 18 below.) Section 307 of the Federal Coastal Zone Management Act provides Connecticut, and all other states with Federally approved coastal management programs, with the authority to review all Federal activities affecting the State's coastal area for consistency with the State's Coastal Management Program (CMP). Under this authority, the State, acting through the Department of Environmental Protection's Office of Long Island Sound Programs, reviews proposals for maintenance dredging projects submitted by the Corps of Engineers for the purpose of determining coastal zone consistency and issuing a water quality certification. (See no. 11 above.) Prior to the submittal of an application for coastal zone consistency and water quality certification, the DEP may interact with the Corps and the affected municipality in the course of the planning process to provide input concerning the information that will be required from the Corps in order for the State to make a consistency determination. In this regard, this State involvement is similar to the sort of pre-application conference the DEP may have with an applicant proposing a nonfederal maintenance dredging project. The DEP also provides input, along with other agencies, in the development of the dredged material sampling plan and dredged material disposal plan. (See no. 11 above.)

Currently, the Connecticut Department of Transportation (DOT) does not play a major role as an advocate or facilitator of the Federal maintenance dredging process. The DOT has some statutory oversight concerning the navigable waterways of the State, but water transportation issues have not been given the same level of agency attention as highway and aviation matters.

17. **The Connecticut Coastal Management Act establishes legislative goals and policies in support of maintenance dredging of Federal channels and anchorage basins. Those goals and policies are of equal weight to the Act's goals and policies concerning coastal resources protection.** When determining the consistency of any proposed Federal action with the Connecticut Coastal Management Program, including a Federal maintenance dredging project proposed by the Corps, it is the Department of Environmental Protection's responsibility to consider the legislative goals and policies of the Connecticut Coastal Management Act (CCMA) which establishes the basis for the CMP. A legislative intent of the CCMA is to establish a balance between conservation of the State's natural coastal resources and beneficial use and development of those same resources in the public interest. The CCMA contains policies concerning "development, facilities and uses" in the coastal area as well as policies concerning the protection of coastal land and water resources. The

Act does not attach a higher priority to either category of policies. In other words, the policies for coastal resources protection are of equal significance to the policies concerning development, facilities, and uses in the coastal area.

Several provisions of the CCMA specifically address maintenance dredging of Federal channels and anchorage basins.

- a) Federal navigation projects are "water-dependent uses" and "facilities and resources in the national interest" as defined in the CCMA. "Water-dependent uses" are defined in the CCMA to include "navigation aids, basins, and channels." "Facilities and resources which are in the national interest" are defined in the CCMA to include "continued operations of existing federally-funded dredged and maintained navigation channels and basins."
- b) One of the most significant provisions of the CCMA concerns the priority and preference that must be given to water-dependent uses. A basic legislative goal is "To give high priority and preference to uses and facilities which are dependent upon proximity to the water or the shorelands immediately adjacent to marine and tidal waters." (Connecticut General Statutes Sec. 22a-92(a)(3).) In many instances, those uses and facilities are dependent on maintenance of Federal navigation projects. A basic legislative policy is "To manage uses in the coastal boundary through existing state... siting and regulatory authorities, giving highest priority and preference to water-dependent uses and facilities in shorefront areas." (CGS Sec. 22a-92(b)(1)(A).) Not only are Federal navigation channels and anchorages water-dependent uses in themselves, they are also necessary to support the viability of other water-dependent uses and activities.
- c) The CCMA establishes a policy "to encourage, through the state permitting program for dredging activities, the maintenance and enhancement of existing federally-maintained navigation channels, basins, and anchorages..." (CGS Sec. 22a-92(c)(1)(C).)

18. **State coastal managers believe it would be a conflict of interest for the Department of Environmental Protection's Office of Long Island Sound Programs to serve as an advocate or facilitator of the Federal maintenance dredging process.** In the course of the CHMA Dredging Study, representatives of the DEP's Office of Long Island Sound Programs have asserted that the DEP can not serve as an advocate or facilitator of Federal maintenance dredging projects on a State-wide basis because the agency regulates those same projects. This regulatory role is conducted primarily through the agency's review of a proposed Federal maintenance dredging project to determine its consistency with the Connecticut Coastal Management Program. (See no. 16 above.) Acting as an advocate would therefore be a conflict of interest, they say. Further, recent experience indicates that State coastal managers generally do not believe it is the role of the DEP OLISP to pursue planning programs and other initiatives to "advance" the legislative goals and policies established in the Connecticut Coastal Management Act, including the goals and policies

concerning maintenance of Federal navigation projects. Instead, it is a principal responsibility of the DEP OLISP to judge the consistency of proposed actions (including Federal maintenance dredging proposals) for consistency with the CCMA goals and policies, and most importantly with the goals and policies concerning coastal resource protection.

19. **A significant issue affecting the Federal maintenance dredging process is the presence of various contaminants, including heavy metals, petroleum hydrocarbons, and other toxic substances, in sediments to be dredged from some of the State's harbors. As a result, not all dredged material is suitable for open water disposal in Long Island Sound.** The Federal Marine Protection, Research and Sanctuaries Act (see no. 22 below) prohibits the open water disposal of dredged material found to have more than trace amounts of certain contaminants. Alternatives to open water disposal of contaminated dredged material must therefore be found. To restore authorized channel depths and maintain the viability of the Port of Bridgeport, for example, appropriate means of disposal must be found for an estimated 700,000 cubic yards of dredged material not suitable for open water disposal. Alternatives to open water disposal of contaminated dredged material are now being considered throughout the U.S., including use of dredged material for structural and nonstructural fill (fill for landfill cover and remediation of brownfield sites, for example), agricultural uses, and mine reclamation. Confined underwater disposal options are also being considered, as well as decontamination opportunities. Alternative disposal technology, however, has not been developed to the extent that the above alternatives are economically feasible on a large scale.

There is currently no State-sponsored program investigating alternative dredged material disposal options or technologies. The Corps reports that a number of its maintenance dredging projects in Connecticut will generate sandy, beach-compatible dredged material and that the Corps's regulations encourage beneficial use of dredge material for beach nourishment. Nonfederal cost-sharing is required, however, and there are currently no State-sponsored initiatives to pursue this opportunity. Also, the Corps reports that nearshore disposal of suitable dredged material for beach nourishment is a practice used with success in other New England states and elsewhere in the country, and is potentially applicable in some Connecticut locations.

Section 345 of the Federal Water Resources Development Act of 2000 authorized \$20 million for a demonstration program for the use of innovative sediment treatment technologies for dredged material from LIS; those funds have not been appropriated. Other possible alternatives to open water disposal of dredged material include use of the material for beach nourishment and wildlife habitat creation.

20. **Current Connecticut statutes and regulations concerning solid waste management affect the upland disposal of dredged material.** Current Connecticut statutes and regulations concerning solid waste management do not facilitate the beneficial use of dredged material for upland applications, including use of dredged material for structural and nonstructural fill and beach nourishment purposes. Under current statutes and regulations,

dredged material is regulated by the DEP as solid waste; special testing and a State permit are required before it can be placed on upland locations. Representatives of the DEP indicate that appropriate amendments to the statutes and regulations may be appropriate to facilitate beneficial upland use of suitable dredged material; these issues are currently being considered by the DEP.

21. **Dredging and dredged material disposal for maintenance of Federal navigation projects in Connecticut is not being planned or managed on a State-wide basis.** There is no long-range, comprehensive dredged material management plan (DMMP) for Connecticut ports and harbors and for dredged material disposal in Long Island Sound. A 1980 "Interim Plan for the Disposal of Dredged Material from Long Island Sound" is the only agreement between Connecticut and New York that addresses dredged material disposal in LIS. The Interim Plan called for development of a comprehensive, long-range DMMP and identified several tasks needed to do so. A 1998 study undertaken for the Connecticut DEP assembled background information for preparation of a LIS DMMP and presented recommendations for proceeding with development of the Plan, recognizing that the Plan will be strongly influenced by the results of the Environmental Impact Statement process for designating one or more open water disposal sites under the Marine Protection, Research, and Sanctuaries Act (See no. 23 below.) The DEP has indicated that it is committed to preparing a LIS DMMP but does not intend to proceed with development of the DMMP until the EIS process is completed.

22. **Planning for Federal maintenance dredging projects in Connecticut is currently proceeding against a complicated background of studies and issues concerning the open water disposal of dredged material in Long Island Sound.** Some of the principal issues now being addressed concern the application of the requirements of the Federal Marine Protection, Research and Sanctuaries Act to dredged material disposal in LIS. On average, 700,000 cubic yards of material, most of it from Connecticut harbors, have been placed in the four Long Island Sound disposal sites each year from 1982 to 1996, according to the DEP. The disposal sites used, however, have never been officially "designated" by the U.S. Environmental Protection Agency (EPA) in accordance with Section 102(c) of the MPRSA.

Congress amended the MPRSA in 1980 (the Ambro amendment) to require that disposal of dredged material in Long Island Sound from all Federal dredging projects and from nonfederal projects exceeding 25,000 cubic yards of material be subject to the MPRSA's environmental testing criteria. These criteria are more stringent and costly to comply with than the standards established under the Federal Clean Water Act which had previously been the principal Federal legislation controlling all dredged material disposal in LIS. (Sampling and testing costs for maintenance dredging of a typical Corps project are now on the order of \$300,000.) So that marina owners would not be unduly burdened by "an unrealistically costly set of testing standards," small dredging projects of less than 25,000 cubic yards were specifically exempted from the MPRSA criteria; those projects remain subject to the Clean Water Act criteria.

A 1988 opinion by the United States Court of Appeals for the Second Circuit (see Town of Huntington v. Marsh) describes the intention of Congress in passing the Ambro amendment to afford the Sound “equal or greater protection from polluted dredged spoils [as that afforded] to open ocean waters.” It is the stated position of the Connecticut DEP OLISP, however, that the MPRSA has provided no additional protection to LIS and that the Sound should be deleted from the MPRSA. Others, including New York State coastal managers, do not agree.

Section 102(c) of the MPRSA requires that open water sites used for the disposal of dredged material be designated by the EPA for that use and that the EPA and Corps prepare a site management plan for each designated site. None of the four historically used disposal sites in Long Island Sound—the WLIS disposal site, CLIS disposal site, Cornfield Shoals disposal site, and New London disposal site—have been designated by the EPA; nor have any site management plans been prepared under the MPRSA. Under Section 103(b) of the MPRSA, if no feasible disposal site has been designated, the Corps under certain circumstances can select an alternative disposal site to be used for a limited period of time, subject to the EPA’s concurrence.

23. **The Environmental Impact Statement (EIS) for designating one or more LIS disposal sites under the MPRSA and preparing a long-term management plan for the use of each designated site has not been completed.** In April of 1998, the EPA and Corps entered into an agreement to begin a disposal site designation process for Long Island Sound and to develop site management and monitoring plans, recognizing that this work may or may not result in the designation of any particular site or sites. The agencies agreed to complete this work by the year 2003 or earlier, if possible. They also agreed that dredged material disposal may proceed, in the meantime, if authorized by the Corps under Section 103(b) of the MPRSA. The cost of the EIS was initially estimated at between \$2 and \$6 million. In 2002 the funding is about to run out and the work has not been completed. Additional Federal funding in the amount of \$5.5 million is now needed to complete the EIS over the next four Federal fiscal years, with completion not expected before the spring of 2006. The eventual outcome of this process may have a profound effect on the future maintenance dredging of all Connecticut ports and harbors. Scientific research presented to date for the EIS appears to indicate that past use of the four LIS disposal sites has not resulted in significant adverse impacts on the ecological health of LIS.
24. **The Central Long Island Sound (CLIS) disposal site will be closed for use by Federal and large private dredging projects on February 18, 2004 unless it is designated by the EPA under the MPRSA.** Under the MPRSA, use of a nondesignated dredged material disposal site is limited to a period of five years, with a potential extension for a second five-year period. Under this legislation, the Corps reports a February 18, 2004 closure date for the CLIS site unless that site is designated under the MPRSA by that time. The EIS for site designation, however, can not be finished before Spring 2006. Several Federal maintenance dredging projects, including major maintenance of Norwalk, Bridgeport, and New Haven harbors, may be affected by closure of the CLIS disposal site. The Corps reports that none

of the other three LIS disposal sites are yet operating under the second five-year period permitted by the MPRSA.

- 25. The State of New York is a major stakeholder for resolution of the LIS dredging issues and for designation of one or more disposal sites under the MPRSA.** By virtue of their shared boundary in LIS, the states of Connecticut and New York have a common interest in the resolution of the current issues concerning open water disposal of dredged material in LIS. While most of the dredged material disposal needs are associated with Connecticut ports and harbors, both states have strong coastal management programs committed to maintaining and enhancing the ecological health of LIS. Members of New York's Congressional delegation have previously expressed concerns about the adverse environmental impacts that may be associated with open water disposal of dredged material in LIS. New York State interests were supportive of the lawsuit against the Corps (Forbes v. Corps of Engineers) filed in response to the open water disposal of contaminated material (capped with clean material) dredged from the Thames River for the Seawolf submarine project. New York coastal managers report that designation by the EPA of any open water disposal site in LIS under the MPRSA will affect New York State waters and therefore is subject to approval by the New York State Department of State—the administrator of New York's Coastal Management Program.
- 26. The DEP OLISP has suggested that the research and other efforts to date to prepare the EIS now be refocused into preparation of a comprehensive LIS Dredged Material Management Plan (DMMP).** This suggested approach would involve repeal of the Ambro Amendment of the MPRSA. It would also involve agreement by Connecticut and New York that open water disposal of dredged material in LIS would be regulated pursuant to the Federal Clean Water Act and the water quality standards and coastal management programs of the two states. The DEP OLISP suggests this approach will provide the same level of protection to LIS as completion of the EIS and designation of one or more disposal sites under the MPRSA. The agency also suggests there would also be significant cost savings under this approach when compared to the costs associated with completing the EIS.

RECOMMENDATIONS

1. **The State of Connecticut should actively encourage and facilitate timely maintenance dredging of Federal navigation projects in all Connecticut ports and harbors as necessary to maintain and enhance the viability of the State's marine-related economies, the beneficial quality of life associated with the Connecticut coast, and opportunities for public access to Long Island Sound. A specific office with powers and duties for this purpose and sufficient resources to carry out those powers and duties should be designated by the legislature.**
 - 1(a) An office of the State Coordinator of Federal Maintenance Dredging should be established. Consideration should be given to establishing this office subject to the direction and authority of the Connecticut Port Authority (CPA) authorized by Public Act No. 01-143, amended as may be necessary to facilitate this recommendation.
 - 1(b) The principal duty of the office of the State Coordinator of Maintenance Dredging will be to coordinate all interests of the State with regard to maintenance of Federal navigation projects. The office will be responsible for: long-range planning to ensure that regular maintenance dredging of these projects is performed on a timely basis; coordination of the interests of the Connecticut departments of Environmental Protection, Transportation, and Economic and Community Development in the Federal maintenance dredging process; coordination with the members of the State's Congressional delegation to obtain the Federal funds needed to implement maintenance dredging projects; coordination with municipal interests, including port authorities and harbor management commissions, pursuing Federal maintenance dredging projects; and cooperation, negotiation, and agreements on behalf of the State with the Federal government with regard to Federal dredging projects.
 - 1(c) The Office of the State Coordinator of Maintenance Dredging, in coordination with other agencies, will develop and implement a process to annually establish the State's priorities for Federal maintenance dredging and to annually evaluate the status of each Federal maintenance dredging project. The Office will collect, compile, and maintain the State's data base of information needed to facilitate the dredging process, including but not limited to information on costs and funding, rates of shoaling, authorized project dimensions, dredging history, sediment characteristics, economic benefits, environmental concerns, and dredged material disposal options. In coordination with other agencies, the Office will be responsible for establishing a schedule for completing the planning necessary to undertake each Federal maintenance dredging project.
 - 1(d) The Office of the State Coordinator of Maintenance Dredging will regularly solicit the advice and assistance of an Advisory Council appointed by the Governor consisting of 10 citizens of Connecticut knowledgeable of the needs, operations, economic impacts, environmental issues, and related matters regarding dredging and dredged material disposal in Connecticut ports and harbors and Long Island Sound.

- 1(e) The Office of the State Coordinator of Maintenance Dredging will prepare an annual report, provided to the Governor and Legislature, on the status of maintenance of Connecticut's ports and harbors. Such report will identify any issues affecting timely and economical maintenance dredging of Connecticut's ports and harbors requiring the attention of the Governor and/or Legislature.
2. **The Environmental Impact Statement to evaluate the possible designation by the U.S. Environmental Protection Agency of one or more open water dredged material disposal sites in Long Island Sound pursuant to the Federal Marine Protection, Research and Sanctuaries Act should be completed in the most timely manner, along with the site designation process.**
 - 2(a) The U.S. Congress should appropriate the additional funds needed to complete the EIS and designation process according to a specific schedule and scope of work agreed to by the EPA and Corps of Engineers with input from other stakeholders.
 - 2(b) Prior to resumption of the EIS with additional Federal funding, the principal stakeholders, including the EPA, Corps, Connecticut Department of Environmental Protection, New York State Department of State, New York Department of Environmental Conservation, National Marine Fisheries Service, and U.S. Fish and Wildlife Service should review and evaluate all work completed to date on the EIS.
 - 2(c) All stakeholders, including environmental organizations and business interests, should be provided the opportunity for meaningful participation in the EIS and site designation process throughout the remainder of that process.
 3. **Appropriate Federal legislation should be enacted to ensure that currently used open water disposal sites in Long Island Sound remain available for disposal of suitable material generated by Federal and large private (greater than 25,000 cubic yards) dredging projects while the Environmental Impact Statement and site designation process is being completed. In this regard, the February 2004 closure date of the Central Long Island Sound disposal site, currently mandated by the Marine Protection, Research and Sanctuaries Act, should be extended.**
 4. **At the same time as the Environmental Impact Statement and site designation process is being completed, work should begin on the preparation of long-range dredged material management plans (DMMPs) for maintenance of Federal navigation projects in Connecticut and New York harbors utilizing Long Island Sound disposal sites.**
 - 4(a) Preparation of the DMMPs should be through a partnership of interested stakeholders, including local, State, and Federal agencies, business interests, and environmental organizations. Through technical and funding assistance, the State of Connecticut should be an active participant in this process as it affects Connecticut's ports and

harbors. DMMPs should include specific measures needed to manage the volume of material likely to be dredged over at least a 20-year period, including material that is not suitable for open water disposal in LIS. (See no. 5 below.) The Department of Environmental Protection's Office of Long Island Sound Programs should identify development of the DMMPs as a priority of the agency and serve as the principal State agency facilitating their development.

- 4(b) Priority attention should be given to development of a DMMP for the Port of Bridgeport. A priority list for development of DMMPs for all Connecticut ports and harbors should be developed and a schedule for completion of those DMMPs should be established.
5. **Increased attention should be given to the identification of feasible alternatives to open water disposal of dredged material, including but not limited to use of dredged material for structural and nonstructural fill, including remediation of brownfields sites, and other applications such as beach nourishment. Opportunities for confined aquatic disposal and decontamination should also be evaluated.**
 - 5(a) The \$20 million authorized by the Federal Water Resources Development Act of 2000 for a demonstration program for use of innovative sediment treatment technologies for LIS dredged material should be appropriated. A suitable amount of this total should be applied to identification of feasible alternatives to open water disposal of contaminated material that must be dredged to maintain the Port of Bridgeport.
 - 5(b) Connecticut statutes and regulations concerning solid waste management should be amended as necessary to facilitate the beneficial, environmentally sound use of dredged material for upland applications.
6. **Following completion of the EIS and site designation process for Long Island Sound dredged material disposal, stakeholders should review and evaluate the status of dredged material management in LIS. That review should be for the purpose of considering any appropriate modifications of the Marine Protection, Research and Sanctuaries Act (and specifically the Ambro Amendment of that Act) as may be necessary to best balance the need for timely and economical maintenance dredging with the need to protect LIS resources.**
 - 6(a) Stakeholders conducting the review and evaluation of the status of LIS dredged material management must include the EPA, Corps, Connecticut Department of Environmental Protection, New York State Department of State (acting as the State agency responsible for implementing New York's Coastal Management Program), New York Department of Environmental Conservation, National Marine Fisheries Service, and U.S. Fish and Wildlife Service, as well as appropriate environmental organizations and business interests.

7. **All stakeholders concerned with LIS dredged material management, including governmental agencies, environmental organizations, and business interests, should recognize and respect each others' objectives as important and legitimate, and work together as partners to resolve the current issues in an objective, balanced, and practical manner.**