



Record of Decision

Use of Outer Continental Shelf Sand Resources in the Atlantic Coast of Maryland Shoreline Protection Project (Ocean City, Maryland)

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**U.S. Department of the Interior
Bureau of Ocean Energy Management**

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Date

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I. Introduction

The U.S. Army Corps of Engineers Baltimore District (Corps) and the Maryland Department of Natural Resources (DNR) requests that the Bureau of Ocean Energy Management (BOEM) authorize use of up to 1,300,000 cubic yards (CY) of Outer Continental Shelf (OCS) sand resources from the Weaver Shoal W-C borrow area for nourishment of the Atlantic Coast of Maryland Shoreline Protection Project (Project) in 2021/2022. The Project includes nourishment of Fenwick Island from Ocean City Inlet, Maryland, north to a taper along the Maryland/Delaware border.

BOEM anticipates additional requests for OCS sand resources to support future nourishment events (in 4-year intervals) through 2044; those requests, which will be considered separately in the future, may involve the use of Weaver Shoal, Isle of Wight Shoal, Shoal “A,” or Shoal “B” offshore Fenwick Island. This Record of Decision (ROD) documents BOEM’s independent consideration of environmental effects, adoption of environmental documents, and its decision to enter into a negotiated agreement with the Corps and Maryland DNR to authorize OCS sand for the 2021/2022 nourishment of the Project.

II. Background

The initial feasibility report and Environmental Impact Statement (EIS) prepared by the Corps, entitled “Atlantic Coast of Maryland and Assateague Island Virginia Feasibility Report and Environmental Impact Statement (1980),” considered a suite of structural (e.g., seawall) and non-structural (e.g., beach nourishment) alternatives to reduce storm related damages. The Corps selected beach nourishment as one component of the preferred alternative. The Project was authorized by Congress under section 501(a) of the Water Resources Development Act of 1986 (Public Law 99-662) and subsequently constructed between 1990 and 1994. The Corps identified and used sand resources located in State waters to support initial construction and subsequent nourishments. Regularly scheduled and emergency nourishment events conducted between 1994 and 2017 have since exhausted all available sand resources within State waters.

To address the need for additional offshore sand resources for the remaining years of the 50-year life of the Project, the Corps (the lead agency) prepared a Supplemental Environmental Impact Statement (SEIS) in 2008. BOEM (then known as the Minerals Management Service) served as a cooperating agency during development of the SEIS because the use of OCS sand resources was proposed. The SEIS analyzed the use of four OCS shoals to support construction of the Project: Weaver Shoal, Isle of Wight Shoal, Shoal “A,” and Bass Grounds (also known as First Lump, or Shoal “B”). The SEIS identified a comprehensive suite of mitigation measures to avoid or minimize effects to environmental resources. The Corps issued a ROD in 2008 that identified the four OCS shoals as preferred to support remaining nourishment cycles through

2044 and embraced the mitigation measures considered in the 2008 SEIS. Pursuant to 40 CFR 1506.3 and 43 CFR 46.120 (2019 ed.), BOEM independently reviewed the SEIS and ensured that all Bureau and public comments were adequately addressed. However, BOEM did not adopt the SEIS or issue a ROD in 2008 as the timing and nature of the Corps' request to use OCS sand was unclear. After the 2008 SEIS was finalized and its 2008 ROD issued, the Corps continued to use its State-water sand resources until the need for OCS sand was imminent in the anticipated 2021 nourishment cycle.

In 2020, the Corps (lead agency) prepared an Environmental Assessment (EA), entitled "Offshore Shoals in Federal Waters as Sand Sources for Ocean City, Maryland," to update the analyses and findings of the 2008 SEIS and to determine whether new information or changes in the proposed action would result in significantly different environmental effects not previously analyzed and thus potentially require a supplemental EIS (40 CFR 1502.9) (2019 ed.). The 2020 EA tiered to the 2008 SEIS. BOEM again served as a cooperating agency due to the potential use of OCS sand resources for future nourishment events. In addition to the no action alternative, the 2020 EA analyzed dredging alternatives for the four OCS shoals identified in the 2008 SEIS. The 2020 EA re-evaluated use of the OCS shoals through 2044 and considered whether to modify previously established dredging mitigation, including a time-of-year construction restriction. The updated proposal for the Project included the following:

- Dredging approximately 1,300,000 cubic yards of sand from OCS shoals for each future beach nourishment cycle.
- Dredging Weaver Shoal W-C borrow area for the next nourishment cycle (2021/2022) and up to two additional nourishment cycles. Weaver Shoal W-C was identified as environmentally preferable by the Corps.
- Following measures to minimize long-term impacts to OCS shoal habitats consistent with the 2008 SEIS mitigation.
- Placing sand on the Ocean City beach about every four years, with the next sand nourishment anticipated by or before the year 2022.
- Future dredging of any of the four OCS shoals would be based on reassessment of shoal conditions in accordance with considerations of the 2008 SEIS and 2020 EA.

The EA did not identify any new significant effects and concluded that the mitigation proposed in the 2008 SEIS would avoid or minimize effects to resources. As lead agency, the Corps recommitted to implementing the relevant mitigation measures and monitoring requirements identified in the 2008 SEIS and its 2008 ROD. The Corps and BOEM released the Draft EA/Finding of No Significant Impact (FONSI) for a 30-day public review in August 2019. All comments were addressed and integrated into the Final EA as appropriate, including those directly relevant to BOEM's action. No comments were received identifying significantly different effects warranting preparation of another supplemental EIS. Therefore, a new or supplemental EIS was not required before reaching a decision on whether to proceed with the 2021/2022 nourishment cycle. The Corps signed a FONSI in 2020.

Pursuant to 40 CFR 1506.3 and 43 CFR 46.120 (2019 ed.), BOEM independently reviewed and is now adopting the Corps' 2008 SEIS and 2020 Final EA to comply with the requirements of the National Environmental Policy Act and the Council on Environmental Quality (CEQ) implementing regulations. BOEM is issuing an independent ROD based on the 2008 SEIS and

2020 Final EA to support its decision to authorize use of OCS sand from the Weaver Shoal W-C borrow area for the 2021/2022 nourishment cycle. BOEM served as a cooperating agency during the development of both environmental documents and, in accordance with 40 CFR 1502.9 and 43 CFR 46.120 (2019 ed.), independently reviewed and determined that the environmental analyses adequately assess impacts of the proposed action and alternatives. Additionally, in accordance with 43 CFR 46.120 (2019 ed.), BOEM has considered whether there are any (1) new circumstances, (2) new information, (3) changes to the proposed action, or (4) impacts not previously analyzed since completion of the 2020 EA that would result in significantly different environmental effects. BOEM has determined that the Project and associated environmental effects have been adequately analyzed and documented; that no significantly different environmental effects from those analyzed arise from changed circumstances or information; and that all BOEM related comments have been addressed and incorporated where appropriate.

III. Purpose and Need for the Proposed Action

The Corps' purpose and need to construct the Project is to reduce risk of storm damage to residential and commercial structures in the Project area. BOEM's connected action responds to the Corps' and Maryland DNR's request to use OCS sand under the authority granted to the Department of the Interior by the Outer Continental Shelf Lands Act (OCSLA). BOEM's issuance of an agreement authorizing use of OCS sand would serve the purpose of reducing risk of coastal storm damage.

IV. Authority

Congress authorized the Corps to construct the Project under section 501(a) of the Water Resources Development Act of 1986 (Public Law 99-662). Congress authorized BOEM to issue negotiated, noncompetitive agreements for OCS sand and gravel under OCSLA (43 U.S.C. § 1337(k)(2)). In 1994, Congress amended OCSLA to allow BOEM to authorize the use of OCS sand, gravel, or shell resources in a project or program for shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State, or local government agency (43 U.S.C. § 1337(k)(2)(A)(i)).

V. Alternatives Including the Proposed Action

The Corps previously analyzed a range of alternatives to implement the Project, including both structural (e.g., seawall) and non-structural (e.g., beach nourishment) measures, in its 1980 feasibility report and EIS for the Project. The Corps and BOEM subsequently evaluated several sand resource alternatives to support the beach nourishment component of the Project, including the use of the following four OCS shoals: Weaver Shoal, Isle of Wight Shoal, Shoal "A," and Bass Grounds (also known as First Lump, or Shoal "B"). The Corps considered all four OCS sand resource alternatives before making its decision on the Weaver Shoal borrow area for this nourishment event. The preferred alternative in the 2020 Final EA, and subsequent request for use of OCS sand from the Corps (as lead agency) and Maryland DNR, is to dredge approximately 1,300,000 CY from the Weaver Shoal W-C borrow area for the next nourishment cycle and up to two additional nourishment cycles. The Corps completed final borrow area engineering and design prior to submitting its lease request to BOEM for use of OCS sand resources from the Weaver Shoal W-C borrow area. A noncompetitive, negotiated agreement is required for use of OCS sand resources in this Project nourishment cycle. Because the Corps

already identified the Weaver Shoal W-C borrow area in its request, BOEM considered two practical alternatives: (1) entering into a negotiated agreement for the Weaver Shoal W-C borrow area and (2) not entering into a negotiated agreement (No Action).

Action Alternative – Enter into a Negotiated Agreement

BOEM would negotiate a one-time agreement with the Corps and Maryland DNR that would allow for the use of up to 1,300,000 CY of OCS sand from the Weaver shoal W-C borrow area for placement within the Project footprint in the 2021/2022 nourishment cycle, as detailed in the 2008 SEIS and 2020 Final EA. The Corps, as lead agency, committed to implementing the relevant mitigation measures and monitoring requirements identified in the 2008 SEIS and 2020 Final EA. As previously described, the 2008 SEIS and 2020 Final EA evaluate four possible OCS borrow areas for the remaining Federal life of the Project through 2044. While BOEM is not deciding at this time to authorize use of OCS shoals for the future iterations of the Project, BOEM recognizes the SEIS analysis that use of those shoals may be necessary in future construction cycles. Similarly, the ROD issued by the Corps identified those OCS shoals as the proposed sources for future construction cycles.

The proposed action could cause a number of short-term environmental effects; principal effects as described in the 2008 SEIS and 2020 Final EA are related to benthic invertebrates and fisheries over the recovery period following dredging. Table 6-1 of the 2008 SEIS provides a full summary of project impacts. Within several years following dredging, benthos in the borrow areas and associated fishing opportunities would be expected to largely recover to pre-dredge conditions. All practicable and appropriate means to avoid or minimize adverse environmental effects were analyzed and incorporated into the mitigation suite adopted and described below in section VII. Additionally, fishers consulted with during preparation of the 2020 Final EA recommended use of Weaver Shoal for future nourishments over other sand resource alternatives considered higher value fishing grounds. Though dredging would permanently remove sand from the offshore shoal, it would be conducted in compliance with environmental constraints to minimize long-term impacts to offshore shoal habitats, as discussed in the 2008 EIS and section 2 of the 2020 Final EA.

BOEM finds that the potential adverse environmental effects of the proposed action are generally reversible or recoverable over the long term when considering implementation of the comprehensive suite of mitigation measures. Potential longer-term beneficial effects include a reduction of coastal storm risk to infrastructure, improved recreational opportunity, and increased beach and dune habitat. Restoration of eroded beach and dune habitat could benefit multiple species of shorebirds.

No Action Alternative – Deny Request for Use of OCS Sand

BOEM would not negotiate an agreement for use of OCS sand. OCS sand would not be used to support the Project, and future Project nourishments would be jeopardized as all available sand resource alternatives in State waters have been exhausted. Absent continued nourishment provided by the Project, the beach can be expected to continue to erode, and coastal infrastructure would be increasingly vulnerable to storm damage.

VI. Consultation and Coordination

The Corps and BOEM addressed the requirements of applicable environmental laws and completed all consultations and coordination with appropriate Federal and State agencies. In initiating consultations, the Corps served as lead agency, and BOEM served in a cooperating role. All relevant consultations are complete, and the resulting terms and measures identified during the consultations have been adopted by the Corps as the action agency for this Project.

VII. Mitigation, Monitoring, and Reporting

Dredging will be conducted in compliance with a suite of requirements that will minimize long-term impacts to offshore shoal habitats, as discussed in the 2008 SEIS and 2020 Final EA. Dredging will avoid the shoal crests, and the Corps and Maryland DNR will use no more than five percent of the total sand volume from the Weaver Shoal W-C borrow area. Bathymetric surveys of the offshore shoals will be conducted before and after each dredging cycle, and the results will be used to reassess and plan for future dredging events. Only one environmental mitigation identified in the 2008 SEIS will not be carried forward. As explained in the 2020 Final EA, the recommendation to “preferentially dredge at the updrift or downdrift sides” (the leading edge) of a sand shoal did not have the scale of mitigative effect expected when the Corps reviewed monitoring data associated with a 2002 dredging event of a different shoal. The mitigation could be re-applied if the results of future monitoring support it. No compensatory mitigation is required as part of the recommended plan.

BOEM is adopting all means deemed practicable by the Corps and BOEM to avoid, minimize, reduce, or eliminate adverse environmental effects that could result from the proposed activities. The mitigation, monitoring, and reporting requirements were developed through consultation and coordination with Federal and State agencies and are based on BOEM’s experience with similar beach nourishment projects in the mid-Atlantic region.

The Corps has the authority necessary to enforce all mitigation measures and monitoring obligations through the contract the Corps will establish with its dredging contractor. The Corps will be responsible for implementing and enforcing all mitigation and monitoring commitments as adopted in its 2008 ROD and 2020 FONSI. BOEM is not requiring any new or unique mitigation that the Corps has not already adopted as lead agency under its authority to construct the Project.

VIII. Environmentally Preferable Alternative

BOEM’s environmentally preferable alternative is the No Action alternative. Negative environmental impacts would generally be less under the No Action alternative because no OCS sand would be used and dredging would not occur on the OCS. Therefore, no dredging-related changes to the physical, biological, and cultural resources of the OCS would be expected. However, if the Project is not constructed because of BOEM’s decision not to authorize access to OCS sand resources, the infrastructure and coastal environment within the Project area would continue to be at risk from storm damage and coastal erosion. The environmentally preferred alternative would not meet the Corps’ purpose and need. After consideration of the beneficial and adverse environmental consequences of both alternatives and the available mitigation measures to be implemented, BOEM has decided that the Corps’ proposed action is the preferable option in this ROD.

IX. Decision

I have decided to enter into a negotiated agreement with the Corps and Maryland DNR and to authorize use of OCS sand in the Project. I also certify that BOEM has considered all the alternatives, information, and analyses submitted by Federal, State, Tribal, and local governments as well as public commenters on the relevant environmental documents.

The Corps' initial 1980 feasibility report and EIS concluded that the beach nourishment alternative has a positive benefit-to-cost ratio due to a reduction of damages to infrastructure and increased recreation benefits. Congress subsequently authorized the Corps to construct the Project under section 501(a) of the Water Resources Development Act of 1986 (Public Law 99-662) and has since appropriated funding for initial construction of the Project (completed in 1994) and multiple nourishments (approximately every 4 years). The Project continues to realize benefits through reduction of coastal storm risk to critical infrastructure in the Project area (e.g., public boardwalks, commercial and residential property, and public roads), increased recreation and tourism opportunities, and improved beach and dune habitat in highly eroded areas.

Dredging of OCS sand from the Weaver Shoal W-C borrow area and placement along the Project shoreline associated with the 2021/22 nourishment event may result in short-term environmental effects. However, the environmental documents show that the potential environmental effects of the proposed action are generally reversible and recoverable. Adherence to the relevant mitigation and reporting requirements outlined in the 2008 SEIS, 2020 Final EA, and discussed in section VII above will be referenced in the negotiated agreement to avoid, minimize, or reduce and to track any foreseeable adverse impacts. Use of identified OCS sand resources for future nourishment events and associated effects will be re-assessed prior to any future authorization. If warranted, additional analyses may be conducted by the Corps or BOEM in the event conditions change or new information becomes available.