

## DFW-5

### Maintenance Dredging Guidance

#### I. Summary:

This guidance clarifies the Department's interpretation of the term "Maintenance Dredging", establishes the facts necessary to demonstrate when a permit for maintenance dredging may be sought, and describes the circumstances under which maintenance dredging is allowable.

#### II. Guidance:

The following is provided in order to clarify terms in the regulation and the definition of maintenance dredging.

- Tidal Wetlands regulations (6 NYCRR 661.4(r)) define maintenance dredging as: "Excavation to restore the depths of underwater lands to elevations which are demonstrated to the reasonable satisfaction of the Department to have been lawfully in existence within 20 years preceding the date of application". While dredging is a presumptively incompatible activity in a regulated area, maintenance dredging is a generally compatible activity (6 NYCRR 661.5).
- The Use and Protection of Waters Regulations, Part 608, do not define the term "maintenance dredging".
- Uniform Procedures Act regulations at 6 NYCRR 621.4(a)(4)(ii) identify "maintenance dredging occurring at least once every ten years" as a "minor" activity for the purposes of Protection of Waters permit. The term "maintenance dredging" is not specifically defined.

Part 661 is the only one of the three regulations that contains a definition of the term "maintenance dredging". The definition includes the 20 year time frame. The 20 year time frame is an integral part of the definition of maintenance dredging. Without a time frame, there would be no basis for a distinction between maintenance dredging and new dredging. The ten year time frame mentioned in Uniform Procedures is not part of a definition of the term, so it does not directly conflict with the Part 661 definition. Under these two provisions, Maintenance dredging occurring at least once every ten years is considered a minor project under UPA. Maintenance dredging occurring less frequently than once in ten years but more frequently than once in 20 years is considered UPA major, but is still maintenance dredging under tidal wetland regulation.

Maintenance dredging should be allowed to maintain water depths in support of grand-fathered or permitted water-dependent uses. It must involve only the removal of recent (i.e. within 20 years of the application date) unconsolidated sediments, such as mud, sand and gravel. Maintenance dredging does not include horizontal or vertical expansion into previously undisturbed areas. Examples of when maintenance dredging as described above applies include but are not limited to routine removal of accumulated sediment from: channel beds, harbors, marinas, boat launches, port docking facilities, channels providing access to residential docking facilities, areas surrounding permanent (fixed) water intakes or outfall pipes. Maintenance dredging is allowable for the purposes described above, if it is proved to the satisfaction of the Dept that the depths were lawfully in existence within 20 years preceding the application date.

The following offer some examples of acceptable forms of documentation of the existence of a certain depth at a location within 20 years of the date of application and aid in defining lawfully in existence . They include but are not limited to:

1. Previously issued permits authorizing dredging to the requested depth at the location in question.
2. Properly dated as-dredged depth survey of the location in question submitted to comply with a previous permit.
3. Properly dated soundings or underwater topographic survey prepared by a licensed surveyor or licensed professional engineer.

There may be times where little or no documentation is available to demonstrate previously existing water depths. However, given the totality of site specific conditions, it is reasonable to assume that deeper water existed for purposes of historical water access and/or navigation. Under such circumstances, restoring reasonable water depths in these areas would be characterized as maintenance dredging. An example would include proposed dredging of the littoral zone immediately seaward (within ten feet) of an existing bulkhead undergoing replacement or reconstruction on a residential man made canal. Such dredging usually removes backfill which has leaked through the bulkhead as the structure wears out. Other examples of such projects would include proposed dredging to remove road sediments from chronic stormwater discharge outfalls hampering navigation, or shoaling due to storm events that requires dredging for appropriate operation and maintenance of a marina, channel or other navigation related activity.

### **III. Purpose and Background:**

The term “Maintenance Dredging” appears in the Tidal Wetlands Land Use Regulations and the Uniform Procedures Regulations in association with two different time intervals, resulting in an apparent inconsistency between the two regulations and some confusion for staff. The pertinent sections of the involved regulations are analyzed, and a compatible approach for applying the requirements of both regulations as they now exist is provided. Several other issues associated with maintenance dredging requiring clarification are addressed. These include the questioning of the need for any time interval in the definition of the term, the circumstances under which maintenance dredging applies, and the identification of acceptable forms of documentation for the existence of depths to meet the definition.

### **IV. Responsibility:**

The regional Marine Habitat Protection Units and the Division of Environmental Permits are responsible for implementing this guidance document and the DFWMR Marine Habitat Section is responsible for maintaining the document.

### **V. Procedure:**

The Regional Marine Habitat Protection Unit will implement the guidance. Division of

Environmental Permits will make any Uniform Procedure Act determination that is required through the use of this guidance.

**VI. References:**

- 6 NYCRR Parts 608, 621 & 661.