



**US Army Corps  
of Engineers®**  
Wilmington District

---

**ENVIRONMENTAL ASSESSMENT  
&  
FINDING OF NO SIGNIFICANT IMPACT**

**Agitation and Water Injection Maintenance Dredging  
Port of Morehead City, Morehead City, NC**

**August 2018**

---

## **1.0 INTRODUCTION**

The North Carolina State Ports Authority (NCSPA) is seeking approval from the U. S. Army Corps of Engineers, Wilmington District, under 33 USC 408 and Engineer Circular (EC) 1165-2-216 (Section 408), to incorporate the use of agitation and water injection dredging to maintain the Port of Morehead City inner harbor on the Newport River in Morehead City, North Carolina. The facility is located on the Newport River across from Radio Island (Figure 1). The proposed action has the potential to affect the Morehead City Harbor, North Carolina Federal navigation project. Section 408 authorizes the Secretary of the Army to grant permission for the alteration or occupation or use of the project if the Secretary determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project. A decision on a Section 408 request is a federal action, and therefore subject to the National Environmental Policy Act (NEPA) and other environmental compliance requirements.

In accordance with EC 1165-2-216, Para. 7.c.(3)(c), a comprehensive environmental analysis for the proposed work has been conducted by the USACE Wilmington Regulatory Field Office, pursuant to their analysis under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Compliance with the National Environmental Policy Act (NEPA) is documented by Regulatory through a Statement of Findings/Environmental Assessment (Attachment). Compliance with all other applicable laws and regulations will be completed prior to issuance of the DA permit. This Environmental Assessment and Finding of No Significant Impact (EA/FONSI) has been prepared for the 408 analysis which adopts the general analysis performed by Regulatory and addresses any potential concerns that were determined to require additional consideration.

## **2.0 PURPOSE AND NEED FOR THE PROPOSED ACTION**

The Port of Morehead City, has a commercial berthing operation and is a breakbulk and bulk facility located within the waters of Bogue Sound on 113 Arendell Street, Morehead City, NC. The dredging areas consist of nine berthing area that are used for the periodic docking of large chemical container ships, barge fleeting areas (north and east), a barge dock, and an aviation fuel terminal (Radio Island side). Berths 1, 2, and 3 and the east turning basin have authorized depths of -45+2 feet, berths 4 through 9, the west turning basin, and the barge fleeting areas have authorized depths of -35+2 feet, the barge dock has an authorized depth of -12+2 feet, and the Radio Island aviation fuel terminal has an authorized depth of -38+2 feet; however, due to accelerated shoaling in the vicinity of the terminal, depths in some areas are as shallow as -14 feet. Depths shallower than the authorized depth pose a grounding and potential hull breach concern for the vessels utilizing the terminal, so maintenance dredging is necessary. Typically, the berthing area is maintained by mechanical excavation or by a hydraulic pipeline dredge with material deposited at a suitable high-ground (upland) disposal site. However, due to accelerated shoaling in the berthing area, the Port of Morehead City has requested approval to use agitation dredging to restore and



maintain the authorized deep draft at -45+2 and shallow draft at -35+2 feet berthing depths. Use of agitation and water injection dredging would provide the Port of Morehead City added flexibility in maintaining safe depths in the berthing area.

### **3.0 INCORPORATION BY REFERENCE**

This Environmental Assessment and Finding of No Significant Impact (EA/FONSI) has been prepared as part of the 408 analysis, and incorporates, by reference, the Draft general analysis performed by the Regulatory Field Office in Memorandum for Record (MFR), Subject: Department of the Army Memorandum Documenting Nationwide Permit/Regional/Programmatic General Permit No. SAW-2017-01680 (Attachment). A copy of the final version of that MFR will be retained with this EA/FONSI when it is approved and executed, and will also be incorporated by reference into this document. However, this EA also addresses any potential concerns that were determined to require additional consideration.

### **4.0 ALTERNATIVES**

#### **4.1 Proposed Action: Agitation and Water Injection Maintenance Dredging at The Port of Morehead City**

The NCSPA proposes to incorporate the use of agitation and water injection dredging, on an annual basis (one to two times per year), to maintain the Port of Morehead City Terminal berths on the Newport River. The first proposed dredging methodology will be to utilize a sled, also called an i-beam sled, towed by a tugboat or similar vessel. The sled is constructed with steel i-beams that are connected to form a triangular shape, with each leg of the triangle measuring 15 to 20 feet in length. The second proposed dredging methodology utilizes high volumes of low pressure water pumped through a series of nozzles on a horizontal jetbar to disrupt the internal friction and cohesive properties of the sediment to create a fluidized soil layer.

The POMC's inner harbor is divided into four segments: Northwest Leg, West Leg, Range C, and East Leg. Within these segments are nine berths comprising 5,366 feet (ft.) of wharf frontage. Additionally, the POMC currently has two berths (The Aviation Fuel Terminal authorized to 38'+2 and Barge Dock 12'+2') along the eastern side of Range C on Radio Island. The POMC has both shallow draft and deep draft channels, Berths 1, 2, and 3 have congressionally authorized depths of 45+2 ft. and Berths 4 through 9 are authorized to 35+2 ft. The East turning basin has a depth of 45+2 ft. (1,350 ft. diameter) and the West turning basin has a depth of 35+2 ft. (1,000 ft. diameter). Dredging will take place one to two times annually between August 1<sup>st</sup> and March 31<sup>st</sup> of any given year through year 2021, when the DA permit expires. Removal amounts for each dredging event are proposed to be about 12,000 cubic yards of material that will be suspended into the river system during outgoing tides.

#### **4.2 No Action: Mechanical or Hydraulic Maintenance Dredging at The Port of Morehead City Terminal**

Under the No Action plan, The NCSPA would continue to accomplish maintenance dredging of the berthing area using either mechanical or hydraulic dredging with disposal of dredged material in a previously approved upland disposal site.

## **5.0 IMPACTS ON SIGNIFICANT RESOURCES**

### **5.1 Physical Environment**

#### **5.1.1 Sediments**

In 2008, sediment samples were taken in the berthing areas and quays. The Northwest and East Legs primarily consisted of silty sands; however, a portion of the West Leg and Range C consisted of poorly sorted coarse sands.

The proposed action will result in the suspension of a negligible volume of dredged material during outgoing tides. Under the no action plan, dredged material would be completely removed from the river system and disposed of in an approved upland site. Implementation of the proposed action or no action would result in minor impacts to sediments.

#### **5.1.2 Water Quality**

Water quality impacts associated with the proposed action are expected to be minor. Pursuant to Section 401 of the Clean Water Act, a General Certification, with conditions, was issued by the North Carolina Division of Water Resources (NCDWR) on August 10, 2017 (Attachment).

Impacts associated with the no action plan would also be minor.

#### **5.1.3 Air Quality**

Areas of the country where air pollution levels persistently exceed the national ambient air quality standards may be designated as "non-attainment" areas. The project area is within an attainment area and there are no known air quality problems in the project area.

Air emissions would increase during construction under both the proposed action and no action plans; however, impacts to air quality would be considered negligible with implementation of the proposed action or no action. The proposed action is in compliance with Section 176 (c) of the Clean Air Act, as amended.

#### **5.1.4 Noise**

Noise levels vary in the vicinity of the project area. Typical noises include those



created by commercial and recreational vessels, as well as noise associated with land-based vehicular traffic and port activity in the Morehead City area.

Implementation of either the proposed action or no action may result in a slight increase in noise in the immediate vicinity of the berthing area; however, any impacts would be minor and of short duration. Periodic maintenance dredging by any method will not result in significant or sustained amounts of noise.

#### 5.1.5 Cultural Resources

The subject area has been heavily disturbed previously. There are no historic resources within the project area; therefore, maintenance dredging by any method (proposed action or no action) would not result in impacts to cultural resources. Reference the Attachment for a summary of coordination with the State Historic Preservation Office.

#### 5.1.6 Hazardous, Toxic and Radioactive Wastes (HTRW)

Review of documentation and HTRW databases indicate that there is no evidence of hazardous, toxic, or radioactive waste (HTRW) in the project area, therefore, it is not expected that any hazardous and toxic waste sites would be encountered during maintenance of the berthing areas. The proposed action and no action alternatives would not result in the production of hazardous waste.

### 5.2 Natural Resources

#### 5.2.1 Essential Fish Habitat (EFH)

Essential Fish Habitat potentially present in the project area and impacts of the proposed action are addressed in the Attachment. Impacts of the no action plan would be similar to impacts of the proposed action.

#### 5.2.2 Endangered and Threatened Species

Endangered and Threatened Species potentially present and impacted by the proposed agitation and water injection dredging are addressed in the Attachment. Impacts of the no action plan would be similar to impacts of the proposed action.

### 5.3 Commerce and Recreation

The navigation channel in the vicinity of the Port of Morehead City Terminal allows various-sized vessels to navigate the Newport River, as well as provides a connection to the AIWW and the Atlantic Ocean, for commerce, fishing, and recreation. The fill material that will be moved from the shoaled berthing area via agitation and water injection dredging is a negligible volume of dredged material that will be suspended during outgoing tides. It is anticipated that the material will disperse downstream of the

dredging location over a broad area and will be unobservable in the navigation channel. Under the no action plan, shoaled material would be completely removed from the system and placed in an approved upland disposal site. Impacts of the proposed agitation and water injection dredging and no action plan would be short-term and temporary and; therefore, would not adversely affect public uses of the federal channel or the aquatic ecosystem.

## **6.0 EXECUTIVE ORDERS:**

Executive Order 11988 (Floodplain Management): Neither the proposed action or the no action plan would involve placement of fill material in the floodplain, affect storm flows associated with the 100 -year flood frequency elevation, nor affect the impacts of floods on human safety, health, and welfare.

Executive Order 11990 (Protection of Wetlands): This order requires agencies to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities. Neither the proposed action or no action plan will involve placement of fill material in wetlands or waters of the United States.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low Income Communities and Low Income Populations): The EPA defines environmental justice as the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people; including a racial, ethnic, or socioeconomic group; should bear a disproportionate share of the negative environmental consequences of industrial, municipal, or commercial operations or the execution of federal, state, local, or tribal programs and policies. The proposed action or the no action plan would not have the potential for disproportionate health or environmental effects on minorities or low-income populations or communities.

Executive Order 13045 (Protection of Children from Environmental Health Risks): This order mandates Federal agencies identify and assess environmental health and safety risks that may disproportionately affect children as a result of the implementation of Federal policies, programs, activities, and standards (63 Federal Register 19883-19888). Neither the proposed action nor the no action plan would disproportionately affect children.

Executive Order 13186 (Protection of Migratory Birds): The proposed action and no action plan would not result in any significant adverse impacts to migratory bird species or their habitat. There would be no taking of birds.



## 7.0 CUMULATIVE IMPACTS

The CEQ regulations (40 CFR 1508.7) require assessment of cumulative impacts in the decision-making process for federal projects. Cumulative impacts are defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions."

Maintenance dredging of the berthing areas at the Port of Morehead City would temporarily disturb the areas shown in red below on Figure 1. All of these areas have been previously disturbed by dredging and are disturbed on a regular basis during maintenance dredging events. The proposed maintenance excavation would not remove any sediment from the system due to the method of dredging, with the material suspended in the water column. The increases in suspended sediment and turbidity levels from the dredging will be temporary, and will only occur while the dredging operation is taking place.

## 8.0 COORDINATION OF THIS DOCUMENT

This EA/FONSI will be posted on the USACE, Wilmington District website, making it available to the public.

## 9.0 POINT OF CONTACT

Any questions regarding this EA/FONSI should be addressed to:  
[jennifer.l.owens@usace.army.mil](mailto:jennifer.l.owens@usace.army.mil) or by phone at 910-251-4757

## 10.0 FINDING OF NO SIGNIFICANT IMPACT

It is my determination that the Recommended Plan does not constitute a major federal action that would significantly affect the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.



Robert J. Clark  
Colonel, U.S. Army  
District Commander

Date: 10 AUG 18

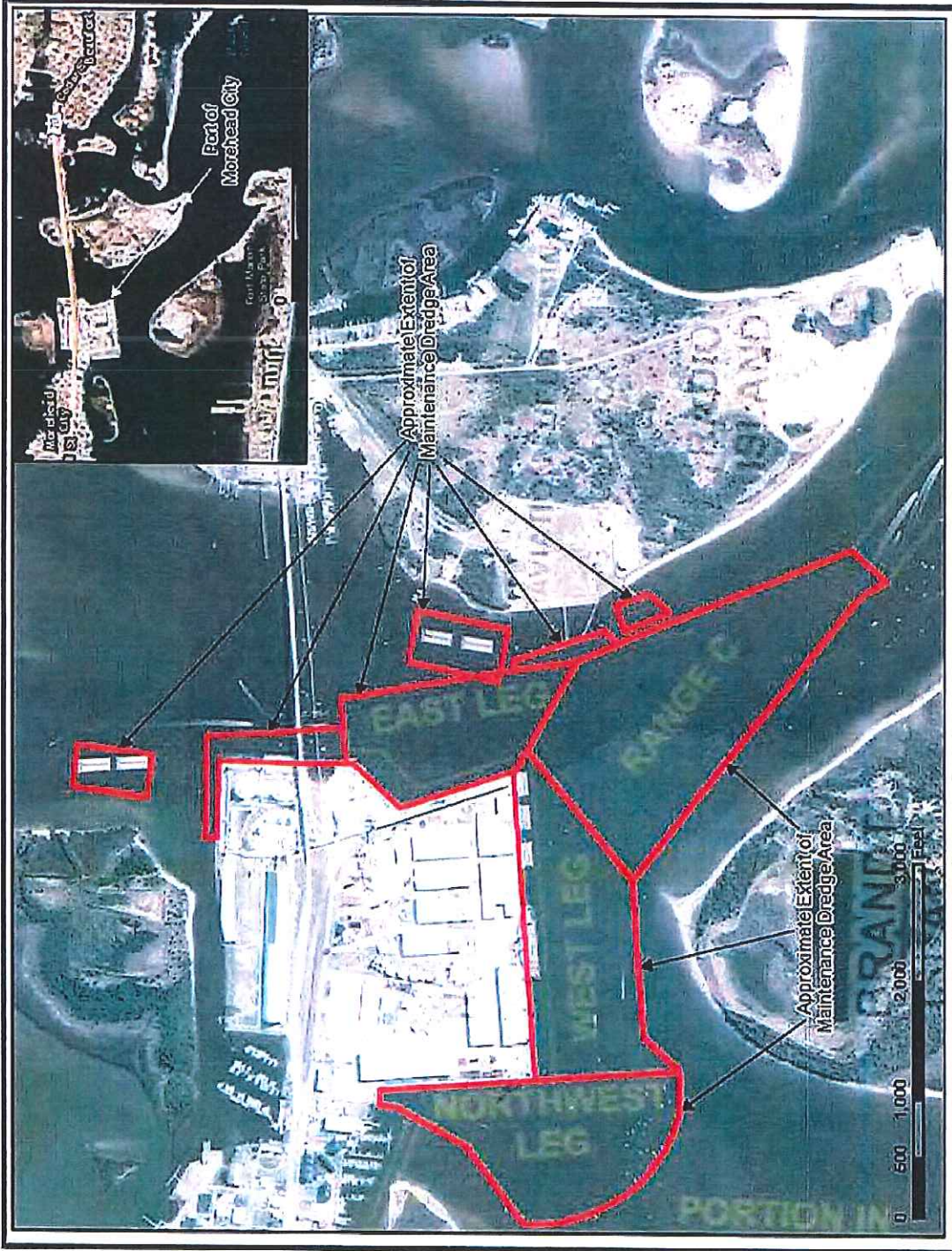


Figure 1. Project Location and Proposed Dredging Area



## REGULATORY MEMORANDUM FOR RECORD

**SUBJECT:** Department of the Army Memorandum Documenting General Permit Verification

- 1.0 **Introduction and overview:** Information about the proposal subject to one or more of the Corps regulatory authorities is provided in Section 1, detailed evaluation of the activity is found in Sections 2 through 4 and findings are documented in Section 5 of this memorandum. Further, summary information about the activity including administrative history of actions taken during project evaluation is attached (ORM2 summary).
- 1.1 Applicant name: **North Carolina State Ports Authority, Mr. Paul Cozza**
- 1.2 Activity location: Latitude: **34.714739** Longitude: **-76.698265** Location description: **The project site is located within the waters of Bogue Sound, at the existing Port of Morehead, at 113 Arendell Street, in Morehead City, Carteret County, North Carolina.**
- 1.3 Description of activity requiring verification: **This verification authorizes impacts to waters of the U.S. in association with the NC SPA agitation maintenance and water injection dredging project within the Port of Morehead City barge berths 1-3, the east turning basin, berths 4-9, west turning basin, barge fleeting areas (north and east), and the barge dock and aviation fuel terminal (Radio Island side), within the Newport River. Dredging impacts total 10,282,000 sf of previously impacted sand and silt bottom habitat. Dredging depths will not exceed -45ft (plus 2' over-dredge) below MLW, as currently authorized in berths 1-3 and the east turning basin; -35ft (plus 2' over-dredge) below MLW in berths 4-9, the west turning basin, and barge fleeting area; -12 feet (plus 2' over dredge) at the barge dock; and -38ft (plus 2' over-dredge) along the Radio Island aviation fuel terminal.**
- 1.4 Permit authority: **Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344)**
- 1.5 Applicable Permit: **PGP 291**
- 1.6 Activity requires written waiver? **No.**
- 2.0 **Evaluation of the Pre-Construction Notification**
- 2.1 Direct and indirect effects caused by the GP activity: **The direct effects of the proposed activity in waters would include the temporary sedimentation within the project area and surrounding waters. The proposed activity also has the potential to result in indirect effects to waters including excess sedimentation in downstream waters, disruption of aquatic life in the direct**

**vicinity of the project area. These indirect effects are expected to be minimal through the implementation of special conditions.**

2.2 Site specific factors: **The loss of functions associated with this specific project are expected to be minimal due to the nature of the work, and the applicant's efforts to avoid and minimize impacts to jurisdictional waters.**

2.3 Coordination

2.3.1 Was the PCN coordinated with other agencies? **Yes.**

If yes, describe results including resolution of any concerns. The Corps provided a public notice to resource agencies (USEPA, NMFS, USFWS, USCG, and other SAW branches) as part of the GP 291 process with the language and determinations below:

Pursuant to the CAMA-Corps Programmatic Permit process, the North Carolina Division of Coastal Management (NCDQM) has forwarded to our office a copy of the CAMA permit modification request, Field Investigation Report, and BioReport for the subject project. The attached notice requests federal agency comments on these project by September 14, 2017.

EFH: This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The Corps' initial determination is that the proposed projects may affect, and likely adversely affect EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the National Marine Fisheries Service. Impacts are expected to be minimized however, through the implementation of the conservation measures proposed in the attached project description. The waters within the project area are designated as PNA. SAV is not expected to be present based on aerial imagery of the project location, the high energy of the system, and ongoing dredging activities. On March 5, 2014, NMFS determined that the projects previously permitted under AMD may adversely affect EFH and provided three EFH Conservation Recommendations. The Corps will incorporate the Conservation Recommendations below into any authorization of the current proposals.

-Agitation dredging shall not be allowed within a berth when agitation dredging is occurring within another berth is less than 5, 000 feet away.

-All requests for agitation dredging outside the period October 1 to January 31 shall be coordinated with NMFS and shall include an explanation as to why the dredging could not abide by the dredging window and the additional measures that will be taken to ensure impacts to fishery resources are minimal.

-Agitation dredging shall only be conducted during outgoing/falling tides.

ESA: The Corps has reviewed the project area, examined all information provided by the applicant and consulted the latest North Carolina Natural Heritage Database. Based on available information, the Corps has determined that the project will affect, but not likely adversely affect the West Indian Manatee. The project will not affect any other species managed by the USFWS and listed as threatened or endangered or their critical



habitat formally designated pursuant to the Endangered Species Act of 1973 (ESA) within the project area. The previous authorizations for AMD included the current proposal locations for the berths and turning basin in the BA and EFHA. The use of Manatee Guidelines will be required as a permit condition and work windows will be required as proposed in any conservation recommendations.

Effects to Sturgeon and other species managed by the NMFS PRD will be addressed through coordination.

NHPA: Pursuant to Section 106 of the National Historic Preservation Act (NHPA) of 1966, Appendix C of 33 CFR Part 325, and the 2005 Revised Interim Guidance for Implementing Appendix C, the District Engineer consulted district files and records and the latest published version of the National Register of Historic Places and initially determines that no historic properties, nor properties eligible for inclusion in the National Register, are present within the Corps' permit area; therefore, there will be no historic properties affected by this change in methodology.

408: The Corps will coordinate internally and fulfill all required analysis under Section 408 in separate correspondence.

2.3.2 Was the PCN coordinated with other Corps offices? **Yes.**

If yes, describe results including resolution of any concerns: See section 2.3.1 above

2.4 Mitigation

2.4.1 Provide brief description of how the activity has been designed on-site to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site: **The applicant has avoided and minimized impacts to the maximum extent practicable.**

2.4.2 Is compensatory mitigation required for unavoidable impacts to jurisdictional aquatic resources to reduce the individual and cumulative adverse environmental effects to a minimal level?

**No.**

Provide rationale: Impacts occur in deep, open water aquatic habitat and are temporary in nature. Special aquatic sites will not be impacted.

3.0 Compliance with Other Laws, Policies and Requirements

3.1 Section 7(a)(2) of the Endangered Species Act (ESA)

3.1.1 ESA action area: **The action area includes the waters of the United States that will be directly affected by the proposed work or structures and uplands directly affected as a result of authorizing the work or structures.**

- 3.1.2 Has another federal agency taken steps to document compliance with Section 7 of the ESA and completed consultation(s) as required? **No.**
- 3.1.3 Known species/critical habitat present? **Yes.**

**Listed Species in Carteret County:**

**LISTED SPECIES**

West Indian Manatee, Atlantic and shortnose Sturgeon, Sea Turtles

Effect determination(s), including no effect, for all known species/habitat, and basis for determination(s):

Based on an evaluation of the project's design and location, and additional information (including attached biological evaluations, environmental reports, or other studies), the Corps has determined that this project **may affect, but is not likely to adversely affect** the following species protected under the Endangered Species Act (ESA) or adversely modify their proposed Critical Habitat:

Species	ESA Listing Status	Listing Rule/Date	Most Recent recovery plan date	USACE Effect Determination (Species)
Green turtle <sup>1</sup>	T	81 FR 20057/ April 6, 2016	October 1991	NLAA
Kemp's ridley turtle	E	35 FR 18319/ December 2, 1970	September 2011	NLAA
Loggerhead turtle <sup>2</sup>	T	76 FR 58868/ September 22, 2011	January 2009	NLAA
Leatherback turtle	E	35 FR 8491/ June 2, 1970	April 1992	NE
Hawksbill turtle	E	35 FR 8491/ June 2, 1970	December 1993	NLAA
Shortnose sturgeon	E	32 FR 4001/ March 11, 1967	December 1998	NLAA
Atlantic sturgeon <sup>3</sup>	E	77 FR 5914/ February 6, 2012	N/A	NLAA

\*This table represents the Corps initial effects determination for listed species managed by the NMFS Protected Resources Division.

West Indian Manatee: MANLAA

<sup>1</sup> North Atlantic and South Atlantic DPS

<sup>2</sup> Northwest Atlantic Ocean DPS

<sup>3</sup> Activities occurring within river and in-shore habitats in the action area may affect Atlantic sturgeon from the Carolina and South Atlantic DPS; however, Atlantic sturgeon from all DPS may be affected in off-shore waters within the action area.



- 3.1.4 Consultation with either the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service was initiated and completed as required, for any determinations other than "no effect" (see the attached "Summary" sheet for begin date, end date and closure method of the consultation). By letter dated September 13, 2017 the Corps requested to initiate informal consultation with the NMFS PRD. Multiple meetings, teleconferences, etc. were held with members of the Wilmington Regulatory Field Office, South Atlantic Division, and representatives of PRD to determine whether a portion of the projects could be covered under SARBO or if an individual section 7 consultation would be required. Ultimately, the Corps decided to proceed with an individual section 7 consultation and NMFS accepted the request as complete on March 9, 2018. On May 16, 2018, the Corps received concurrence from NMFS with the following effects determinations for listed species:

No Effect for all sea turtles in the above table. May Affect, Not Likely to Adversely Affect for the Atlantic and shortnose Sturgeon.

On August 14, 2017, the Corps circulated the GP 291 Public Notice to federal agencies in which we made the following determination: The Corps has reviewed the project area, examined all information provided by the applicant and consulted the latest North Carolina Natural Heritage Database. Based on available information, the Corps has determined that the project will affect, but not likely adversely affect the West Indian Manatee. The project will not affect any other species managed by the USFWS and listed as threatened or endangered or their critical habitat formally designated pursuant to the Endangered Species Act of 1973 (ESA) within the project area. The previous emergency authorizations for AMD included one of the current proposal locations for the berths at the Radio Island T-Head Pier (SAW-2014-02218/ State Permit No. 122-04). The use of Manatee Guidelines would be required as a permit condition and work windows will be required as proposed in any conservation recommendations.

The US FWS provided concurrence in a letter dated September 14, 2017.

Based on a review of the information above, the Corps has determined that it has fulfilled its responsibilities under Section 7(a)(2) of the ESA.

- 3.2 **Magnuson-Stevens Fishery Conservation and Management Act, Essential Fish Habitat (EFH) N/A, there is no essential fish habitat in this district's area of responsibility.**
- 3.2.1 Has another federal agency taken steps to comply with EFH provisions of Magnuson-Stevens Act? **No.**
- 3.2.2 Did the proposed project require review under the Magnuson-Stevens Act? **Yes.**

3.2.3 If yes, EFH species or complexes considered:

The river and estuarine waters contain unconsolidated bottom habitat for larval, juvenile, and adult finfishes of the snapper/grouper complex, coastal demersals, coastal pelagic, pinead shrimp/invertebrates, and two shark species.

Effect determination and basis for that determination: The Corps' initial determination is that the proposed projects may affect, and likely adversely affect EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the National Marine Fisheries Service. Impacts are expected to be minimized however, through the implementation of the conservation measures proposed in the attached EFHA.

3.2.4 Consultation with the National Marine Fisheries Service was initiated and completed as required (see the attached "Summary" sheet for consultation type, begin date, end date and closure method of the consultation). By email on September 1, 2017 the NMFS HCD replied to the public notice: "The NMFS has reviewed your email correspondence, dated August 14, 2017, regarding water injection dredging for North Carolina State Ports Authority (SAW-2017-01680). The NMFS has no objection to the Wilmington District moving forward with authorization for this project provided the permit include Conservation Recommendations as practicable measures to reduce environmental impacts. As with other authorized agitation maintenance projects within the NC State Ports, the NMFS recommends: (1) water injection dredging shall not be allowed within a berth when dredging is occurring within another berth is less than 5,000 feet away; (2) All requests for water injection dredging outside the period 1 October to 31 January shall be coordinated with NMFS and shall include an explanation as to why the dredging could not abide by the dredging window and the additional measures that will be taken to ensure impacts to fishery resources are minimal; and (3) Water injection dredging shall only be conducted during outgoing/falling tides to promote downstream movement of unconsolidated alluvial material." Based on review of the above information, the Corps has concluded that it has fulfilled its responsibilities under the EFH provisions of the Magnuson-Stevens Act.

3.3 **Section 106 of the National Historic Preservation Act (Section 106)**

3.3.1 Section 106 permit area: The permit area includes only those areas comprising waters of the United States that will be directly affected by the proposed work or structures. Activities outside of waters of the U.S. are not included because all three tests identified in 33 CFR 325, Appendix C(g)(1) have not been met.

Final description of the permit area: **The permit area for this project includes the waters of the United States directly impacted and the uplands that would be impacted to accomplish the work within waters of the United States**

3.3.2 Has another federal agency taken steps to comply with Section 106 of the National Historic Preservation Act and completed consultation(s) as required? **No.**



- 3.3.3 Known cultural resource sites present and/or survey or other additional information needed?

No.

Basis for effect determination(s) for all known site(s) and/or site(s) identified by a survey: **The Corps has determined the proposed action has little likelihood to cause effect to any historic property listed, or eligible for listing, in the National Register of Historic Places because there are no known historic properties within or in close proximity to the Corps permit area.**

- 3.3.4 Consultation was initiated and completed as required with the appropriate agencies, tribes and/or other parties for any determinations other than "no potential to cause effects" (see the attached "Summary" sheet for consultation type, begin date, end date and closure method of the consultation). The Corps received a letter dated September 25, 2017 via email in which the NC SHPO states "We have conducted a review and are aware of no historic resources which would be affected by the project. Therefore, we have no comment on the project as proposed."

The Corps has determined that it has fulfilled its responsibilities under Section 106 of the NHPA.

#### 3.4 Tribal Trust Responsibilities

- 3.4.1 Was government-to-government consultation conducted with Federally-recognized Tribe(s)? **No. There are no known tribal interests in the project area.**

Provide a description of any consultation(s) conducted including results and how concerns about significant effects to protected tribal resources, tribal rights and/or Indian lands were addressed. The Corps has determined that it has fulfilled its tribal trust responsibilities.

#### 3.5 Section 401 of the Clean Water Act – Water Quality Certification (WQC)

- 3.5.1 Is a Section 401 WQC required, and if so, has the certification been issued or waived? **An individual water quality certification is required, and has not been issued or waived to date. A provisional general permit will be verified for this activity.**

#### 3.6 Coastal Zone Management Act (CZMA)

- 3.6.1 Is a CZMA consistency concurrence required, and if so, has the concurrence been issued, waived or presumed? **An individual CZMA consistency concurrence is required and has not been issued, waived or presumed to date. A provisional general permit will be verified for this activity.**

#### 3.7 Wild and Scenic Rivers Act

- 3.7.1 Is the project located in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system? **No. According to <http://www.rivers.gov>, the proposed project area is not**

within a designated or study river.

**3.8 Effects on Corps Civil Works Projects (33 USC 408)**

- 3.8.1 Does the applicant also require permission under Section 14 of the Rivers and Harbors Act (33 USC 408) because the activity, in whole or in part, would alter, occupy, or use a Corps Civil Works project? **Yes.**

If yes, provide date permission is provided: **Pending 408 review**

**4.0 Special Conditions**

- 4.1 Are special conditions required to ensure minimal effects, protect the public interest and/or ensure compliance of the activity with any of the laws above? **Yes.**

If no, provide rationale:

- 4.2 Required special condition(s)

**Special Conditions  
Jet Scour Modification**

1. All work authorized by this permit must be performed in strict compliance with the attached plans, which are a part of this permit. Any modification to these plans must be approved by the U.S. Army Corps of Engineers, Wilmington District (USACE) prior to implementation.
2. Except as authorized by this permit or any USACE approved modification to this permit, no excavation, fill or mechanized land-clearing activities shall take place at any time in the construction or maintenance of this project, within waters or wetlands. This permit does not authorize temporary placement or double handling of excavated or fill material within waters or wetlands outside the permitted area. This prohibition applies to all borrow and fill activities connected with this project.
3. All mechanized equipment will be regularly inspected and maintained to prevent contamination of waters and wetlands from fuels, lubricants, hydraulic fluids, or other toxic materials. In the event of a spill of petroleum products or any other hazardous waste, the permittee shall immediately report it to the N.C. Division of Water Quality at (919) 733-5083, Ext. 526 or (800) 662-7956 and provisions of the North Carolina Oil Pollution and Hazardous Substances Control Act will be followed.
4. If the permittee discovers any previously unknown historic or archeological remains while accomplishing the authorized work, he will immediately notify USACE who will initiate the required coordination procedures.
5. The permittee shall require its contractors and/or agents to comply with the terms and conditions of this permit in the construction and maintenance of this project, and shall provide each of its contractors and/or agents associated with the construction or



maintenance of this project with a copy of this permit. A copy of this permit, including all conditions, shall be available at the project site during construction and maintenance of this project.

6. The permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the work will, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the water or wetland to its pre-project condition.

7. Violations of these conditions or violations of Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act must be reported in writing to USACE within 24 hours of the permittee's discovery of the violation.

#### Navigation Conditions

9. The authorized activity must not interfere with the public's right to free navigation on all navigable waters of the United States. No attempt will be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized work for reason other than safety.

10. The permittee shall assign a permanent maintenance dredging point of contact (POC) for the authorized berth facility (i.e., Berth POC) and shall submit the name, phone number, mailing address, and email address of the Berth POC to USACE within 30 days of the date of permit issuance. The permittee shall notify USACE of any change in the Berth POC. USACE Navigation and Regulatory POCs are listed below. The preferred method of information exchange, dredging request, report submissions, etc., is electronic.

U.S. Army Corps of Engineers  
Operations Division, Navigation Branch  
Attention: Chief of Navigation  
69 Darlington Avenue  
Wilmington, North Carolina 28403  
(910) 251-4822  
Roger.D.Bullock@usace.army.mil

U.S. Army Corps of Engineers  
Regulatory Division,  
Attention: Liz Hair  
69 Darlington Avenue  
Wilmington, North Carolina 28403  
(910) 251-4049  
Sarah.E.Hair@usace.army.mil

11. The permittee shall notify NOAA/NATIONAL OCEAN SERVICE Chief Source Data Unit N CS261, 1315 E West HWY- RM 7316, Silver Spring, MD 20910-3282 at least two weeks prior to beginning work and upon completion of work.

12. The permittee is only authorized to use agitation dredging in the identified berth/slip for the removal of accumulated sediments to maintain the facility at its authorized depth by dragging an I-beam or other similar device for the purpose of re-suspending accumulated sediment.

13. At least 7 days in advance of a planned maintenance dredging event, the permittee shall provide the Navigation POC with copies of the before dredging surveys/maps of the berth/slip and adjacent Federal channel(s) in order to obtain Corps approval. The permittee will be informed whether the proposed dredging can be conducted as scheduled and that proposed dredging events may be subject to postponement or modification. The permittee shall be responsible for resolving scheduling conflicts.

14. The following harbor conditions will be considered by the Navigation POC when scheduling a dredging event, and may result in event postponement and/or modification:

a. An approved or ongoing dredging event is within 3000' upstream or downstream of a berth where an agitation dredging event is proposed.

b. Agitation dredging in any berth that is located within 2000' upstream or downstream of a shoal in the Federal channel.

c. Ongoing or scheduled dredging in the Federal channel within 5000' upstream or downstream of a berth where an agitation dredging event is proposed.

15. The permittee shall perform required hydrographic surveys in accordance with criteria and procedures contained in the "US Army Corps of Engineers Hydrographic Surveying Manual," EM 1110-2-1003. Required hydrographic surveys shall be provided to Navigation POC as plan views and shall include the shoreline and berthing facilities, stationed to match the USACE conducted surveys.

16. The permittee shall conduct a hydrographic survey of the berth/slip no more than 15 days before and no more than 7 days after each maintenance dredging event. An event includes all maintenance dredging work performed during one or more ebb tides, in the accomplishment of one maintenance dredging cycle. In instances where a post dredging survey is not performed within 7 days of completing the dredging event, the permittee shall calculate the volume of material dredged by using the pre-event survey and the authorized berth depth (i.e., USACE will assume that the berth was dredged to its authorized depth). At least 24 hours prior to conducting the before and after dredging hydrographic surveys, the permittee will notify the Navigation POC of the scheduled survey, in the event USACE would also like to run a comparable survey at the same time.

17. The permittee shall also conduct a hydrographic survey of the Federal channel before and after every agitation event of a slip. Channel surveys shall be performed no more than 15 days before and within 7 days of completing the dredging event. Surveys



are required of the Federal channel for a distance of approximately 2000' downstream and 1000' upstream of the point where dredging occurred. The permittee is required to survey the entire width of the Federal channel.

18. Reporting. Within 20 days of the completion of an approved dredging event, the permittee shall submit the following minimum information to the USACE Regulatory and Navigation POC:

- a. Berth location and authorized depth
- b. Dredging begin and end date(s) and time(s)
- c. Calculated volume of material removed from berthing facility/slip(s)
- d. Copies of both pre and post dredging hydrographic survey sounding data (XYZ) and map of the berth/slip(s) in DWG, DGN or PDF format.
- e. Copies of both pre and post dredging hydrographic survey sounding data (XYZ) and map of the adjacent Federal channel(s) in DWG, DGN, or PDF format.

19. To obtain approval from the Navigation POC to conduct a maintenance dredging event, the permittee must be in compliance with all permit conditions including the reporting requirements listed in Special Condition 19. Failure by the permittee to maintain accurate maintenance dredging documentation, and to submit accurate and timely dredging information will result in disapproval by the Navigation POC of a request to conduct a maintenance dredging event. If the permittee is found to be non-compliant with reporting requirements, the Navigation POC will not grant approval for a requested maintenance dredging until after the permittee has posted delinquent reporting requirements and is found to be compliant with all permit conditions.

20. As determined by the District Engineer, any accumulated sediment in the federal channel caused by the agitation dredging activities shall be removed by the permittee if the accumulated sediments are determined to interfere with navigation.

#### EFH Conditions

21. Agitation dredging shall not be allowed within a berth when agitation dredging is concurrently ongoing within another berth that is less than 5,000 feet away.

22. All requests for agitation dredging outside the period October 1 to January 31 shall be coordinated with NMFS and shall include an explanation as to why the dredging could not be conducted within the sturgeon and anadromous fish work windows (October 1 to January 31), and shall provide additional measures that will be taken to ensure impacts to fishery resources are minimal.

23. All proposed activities will only occur on falling tides to maximize rapid flushing of the fluidized sediment.

## ESA Conditions

24. All in-water work must be conducted outside the Atlantic and Shortnose sturgeon moratoria dates from February 1 to September 30.

25. In order to further protect the endangered West Indian Manatee, *Trichechus manatus*, the applicant must implement the U.S. Fish and Wildlife Service's Manatee Guidelines, and strictly adhere to all requirements therein. The guidelines can be found at <https://www.fws.gov/nc-es/mammal/manatee.html>

End Special Conditions

Rationale: **See Section 2.4.2.**

### 5.0 Determination

5.1 Waiver request conclusion, if required or select N/A: **N/A.**

5.2 The activity will result in no more than minimal individual and cumulative adverse effects on the aquatic environment and will not be contrary to the public interest, provided the permittee complies with the special conditions identified above.

5.3 This activity, as described, complies with all terms and conditions of the permit identified in Section 1.5.

### PREPARED BY:

\_\_\_\_\_  
Liz Hair

Date: 5/21/2018

### REVIEWED BY:

\_\_\_\_\_  
*Enter name of appropriate level reviewer*

Date: \_\_\_\_\_

### APPROVED BY:

\_\_\_\_\_  
*Enter name of appropriate level approver*

Date: \_\_\_\_\_