



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

ECP-2018-S408-0002

PUBLIC NOTICE

REQUEST FOR PERMISSION TO MODIFY A U.S. ARMY CORPS OF ENGINEERS PROJECT UNDER SECTION 408

TITLE: Cape Fear River Lock and Dam No. 1, Proposed Construction of Fish Passage Improvements

PUBLIC NOTICE COMMENT PERIOD:

Begins: November 6, 2018

Expires: December 6, 2018

Interested parties are hereby notified that an application has been received for Department of the Army Section 408 (Section 14 of the Rivers and Harbors Act of 1899; 33 U.S.C. 408) approval to conduct proposed work at a federally constructed navigation project of the United States, as described below and shown on the attached maps (Figures 1, 2). Written comments are being solicited from anyone having an interest in the requested alteration. Comments received will become part of the U.S. Army Corps of Engineers' (USACE) administrative record and will be considered in determining whether to approve the request. Comments supporting, opposing, or identifying concerns that should be considered by the USACE in its decision process are welcome. Comments providing substantive information and/or a rationale for the commenter's position are the most helpful.

This public notice is not a paid advertisement and is for public information only. Issuance of this notice does not imply USACE endorsement of the project as described.

Comments regarding the proposed work should reference the USACE public notice number (ECP-2018-S408-0002) and must reach the USACE via email or mail no later than the above comment period expiration date (December 6, 2018) to become part of the public record and be considered in the USACE's decision.

Email: Justin.P.Bashaw@usace.army.mil

Mail: U.S. Army Corps of Engineers (ATTN: Justin Bashaw)
69 Darlington Avenue
Wilmington, NC 28403

REQUESTER: In compliance with Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408; hereinafter Section 408), the Cape Fear River Watch (CFRW) has requested permission to modify the Lock and Dam No. 1 component of the Cape Fear River above Wilmington, N.C. navigation project, a

federally authorized project.

LOCATION: The proposed project is located at Lock and Dam No. 1 on the Cape Fear River, approximately 39 miles upstream from Wilmington, N.C.

REQUESTER'S PROPOSED ACTION: The proposed action includes modifications to the existing rock arch rapids structure, located immediately downstream of and abutting Lock and Dam No. 1, to improve fish passage efficiency and restore access to historic spawning grounds for anadromous fishes (Figure 2).

LOCATION MAPS AND DRAWINGS: See attached figures.

REGULATORY AUTHORITY: This request will be reviewed according to the provisions of Section 408. A requester has the responsibility to acquire all other permissions or authorizations required by federal, state, and local laws or regulations, including any required permits from the USACE Regulatory Program under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), and Section 404 of the Clean Water Act (33 U.S.C. 1344). The compliance determination for any Section 10/404 permit decision associated with the proposed action is separate from, and will not be included in, the Section 408 compliance determination. An approval under Section 408 does not grant any property rights or exclusive privileges, nor does it authorize any injury to the property or rights of others.

EVALUATION: The decision whether to grant the requested permission for federal project modification under Section 408 will be based on several factors and will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. Review of the request for modification will be reviewed by a USACE technical review team and will consider, but not necessarily be limited to, the following factors:

1. Impair the Usefulness of the Project Determination. The review team will determine if the proposed alteration would limit the ability of the project to function as authorized, or would compromise or change any authorized project conditions, purposes, or outputs. The decision whether to approve a request for modification would be based on a determination of no impairments.
2. Injurious to the Public Interest Determination. Proposed alterations will be reviewed to determine the probable impacts, including cumulative impacts, on the public interest. Evaluation of the probable public interest impacts of the proposed alteration to the USACE requires a careful weighing of all relevant factors in each particular case. Factors that may be relevant to the public interest depend upon the type of USACE project being altered and may include, but are not limited to, conservation, economic development, historic properties/cultural resources, environmental impacts, water supply, water quality, flood hazards, floodplains, residual risk, induced damages, navigation, shore erosion or accretion, and recreation. The decision whether or not to approve an alteration to a federal project will be determined by the consideration of whether benefits are commensurate with risks. If the potential detriments are found to outweigh the potential benefits, then it may be determined that the proposed alteration is injurious to the public interest.
3. Environmental Compliance. 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. While ensuring compliance is the responsibility of the USACE, the requester provides all information necessary to satisfy applicable federal laws, executive orders, regulations, policies, ordinances, and any other environmental requirements. The NEPA and other analyses completed to comply with environmental statutes, such as the Endangered Species Act, should be commensurate with the scale and potential effects of the activity that would alter the federal project. The scope of analyses for the NEPA and environmental compliance evaluations are limited to the area of alteration and adjacent areas that may be directly or indirectly affected by the alteration. A preliminary determination has been made that an environmental impact statement is not required for the proposed action.

4. Technical Analysis. The USACE will ensure that the requester provides all technical plans, maps, drawings, and specifications to facilitate a thorough review of the proposal. A USACE-led Agency Technical Review (ATR) is being conducted to determine any potential adverse impacts to the federal project.

SOLICITATION OF COMMENTS: The USACE is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of the proposed action. Any comments received will be considered by the USACE in determining whether to issue, modify, condition or deny a permission for this proposal if received before the comment period expiration date. To make its decision, the USACE will review comments received to supplement and inform its assessment of impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments will be taken into consideration in the preparation of an appropriate document pursuant to the NEPA (e.g. Environmental Assessment). Comments will also be used to determine the need for a public hearing and to determine overall public interest in the proposed action.

SUMMARY: It should be noted that materials submitted as part of Section 408 requests become part of the public record and will be available to the general public under the provisions of the Freedom of Information Act (FOIA). Individuals may submit a written request to obtain materials under the FOIA or make an appointment to view the project file at the USACE Wilmington District's Office of Counsel.

Interested parties wishing to comment on the proposed action must do so in writing no later than **December 6, 2018**. It is presumed that all parties receiving this notice will wish to respond to this public notice; therefore, a lack of response will be interpreted as meaning that there is no objection to the proposed action as described.


Jenny Owens
Section 408 Coordinator

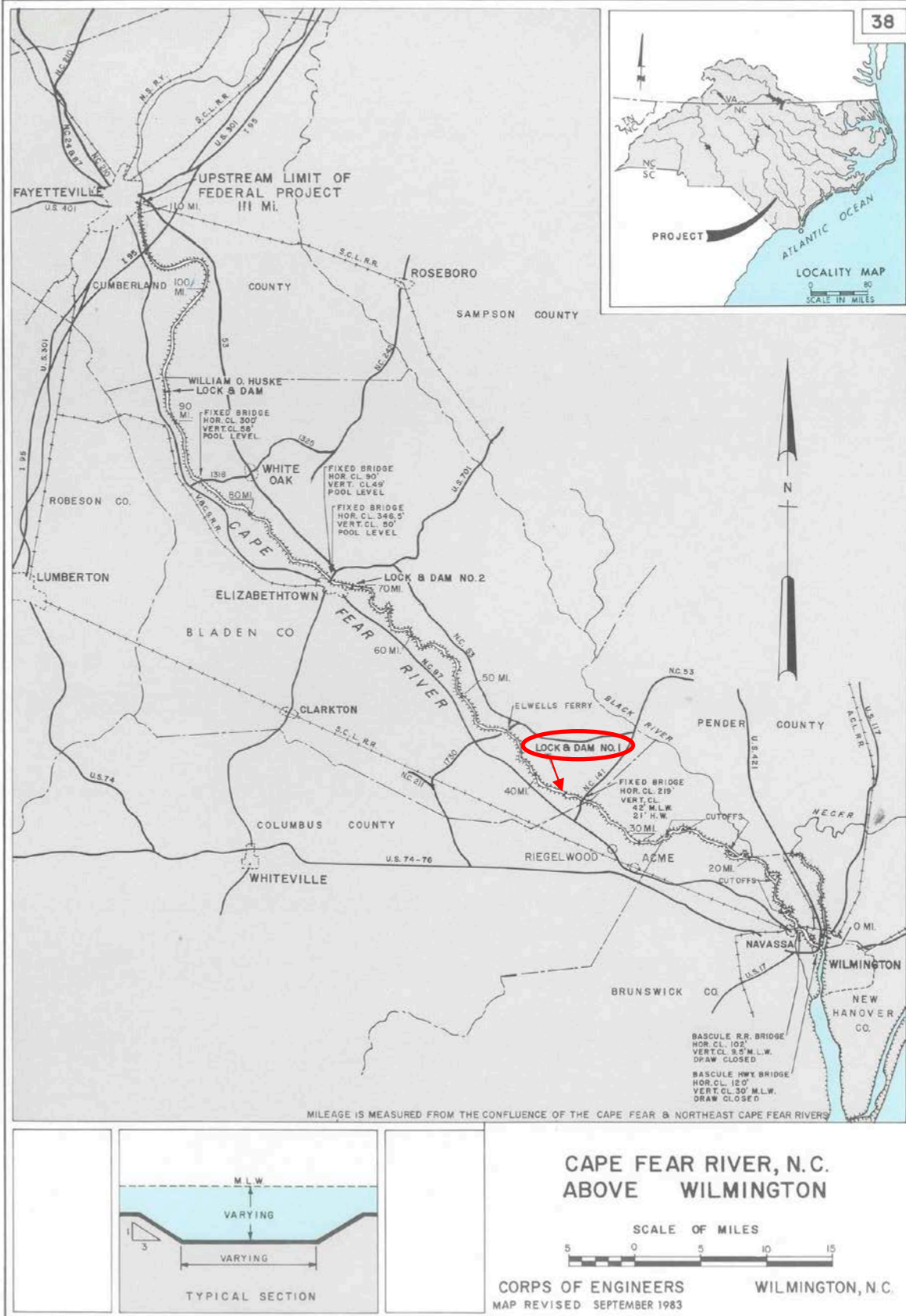


Figure 1 – Project Location, Lock and Dam No. 1

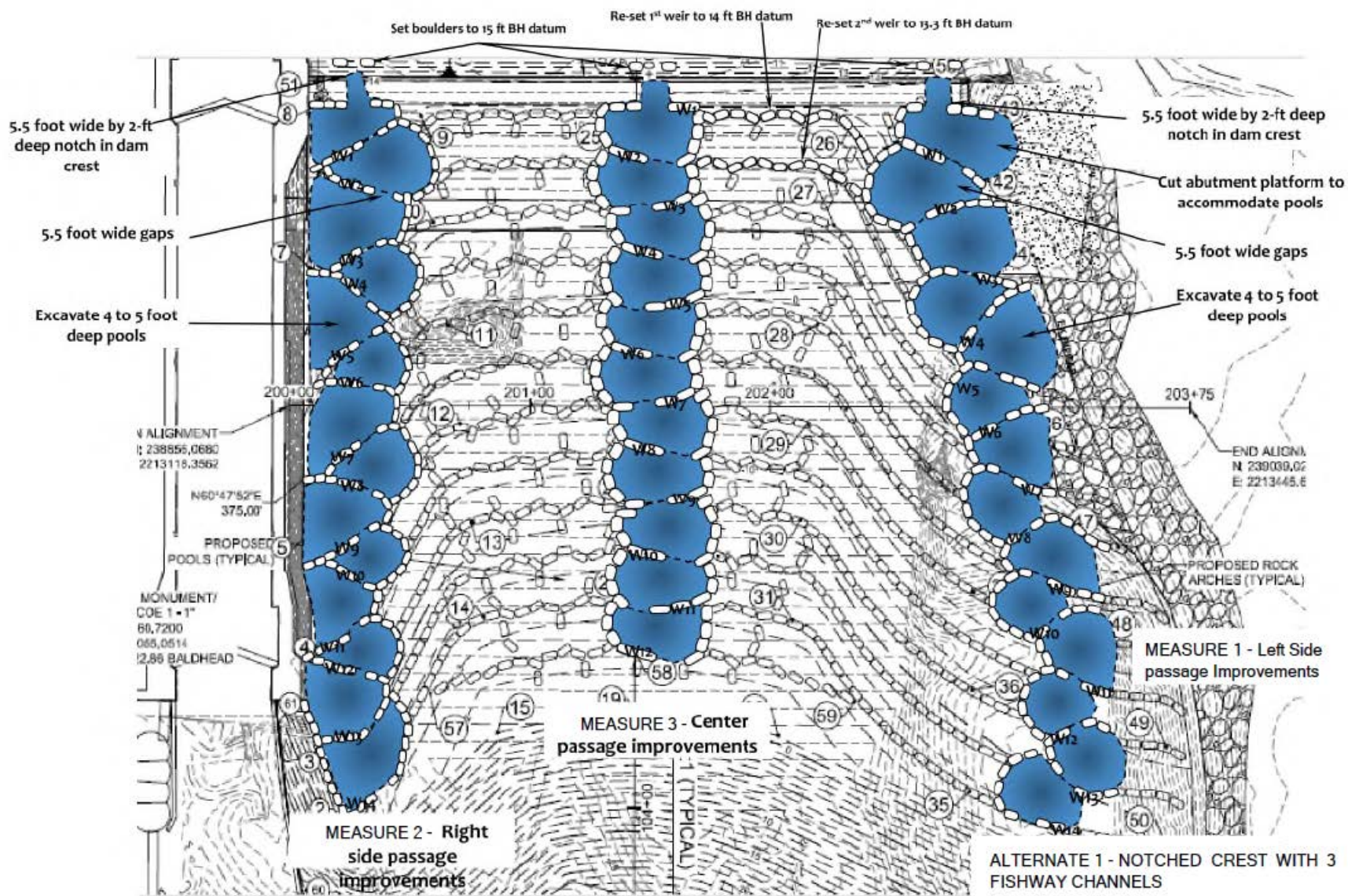


Figure 2 – Proposed Rock Arch Rapids Improvements at Lock and Dam No. 1