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December 19, 2025

Submitted via electronic mail

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Re: Comments on Federal Consistency Review for the U.S. Army Corps of Engineers' Wilmington Harbor 403 Navigation Project

Dear Mr. Luck:

The Southern Environmental Law Center ("SELC") submits these comments on behalf of Audubon North Carolina, Cape Fear River Watch, Center for Biological Diversity, CleanAIRE NC, Defenders of Wildlife, NAACP North Carolina State Conference, North Carolina Coastal Federation, North Carolina Conservation Network, and North Carolina Sierra Club, to assist in the N.C. Department of Environmental Quality-Division of Coastal Management's ("DCM") determination of whether the U.S. Army Corps of Engineers' ("Corps") Wilmington Harbor 403 Navigation Project ("the Project") is consistent with the North Carolina coastal management plan ("CMP").[1] As explained throughout the letter, the Project conflicts with the State's CMP in several critical ways, and DCM should object to the Corps' determination.

The Corps proposes an economically infeasible and wholly unnecessary project that could devastate the natural resources that make coastal North Carolina unique. The Project has drawn broad opposition, as evidenced by resolutions issued by Southport,[2] the Village of Bald Head Island,[3] and Kure Beach,[4] and by the unanimous community opposition at the public hearing held by DCM. And it is no wonder why. For the mere purpose of saving shipping

[1] *See* Letter from Bret Walters, U.S. Army Corps of Eng'rs, to Cameron Luck, N.C. Division of Coastal Mgmt. (Sept. 18, 2025) [hereinafter Consistency Determination Letter]. According to N.C. DEQ staff, while the letter is dated September 18, 2025, DCM did not receive the Corps' consistency determination until October 17, 2025.
[2] *See* City of Southport, Resolution #25-1202.01: A Resolution of the Southport Board of Aldermen Urging Robust Mitigation, Long-Term Monitoring, and Adaptive Management For the Wilmington Harbor 403 Project (Dec. 2, 2025), https://perma.cc/693K-U8JS.
[3] Village of Bald Head Island, Resolution #2025-1207: A Resolution of the Village of Bald Head Island Council Urging Robust Mitigation, Long-Term Monitoring, and Adaptive Management for the Wilmington Harbor 403 Project (Dec. 12, 2025), https://perma.cc/H6QP-RH5L.
[4] Town of Kure Beach, Resolution R25-12: Resolution Urging Robust Mitigation, Long-Term Monitoring, and Adaptive Management for the Wilmington Harbor 403 Project (Dec. 15, 2025), https://perma.cc/DAG2-D4CA.

companies an unidentified amount of money, the Corps proposes to destroy more than 1,000 acres of wetlands, risk harm to threatened and endangered species, threaten groundwater quality, and increase coastal and riverine erosion—all while exacerbating the effects of sea level rise in the Wilmington area. Our organizations highlighted these and other harms that would likely result from this proposed expansion in comments submitted to the Corps on November 3, 2025 on its Draft Environmental Impact Statement ("DEIS"), which are incorporated by reference.[5]

As enshrined in our Coastal Area Management Act, "[a]mong North Carolina's most valuable resources are its coastal lands and waters,"[6] and the Lower Cape Fear River system is no exception. It encompasses estuarine, brackish, and freshwater ecosystems, forming a delicate interface between saltwater and freshwater habitats. When healthy, the river supports robust fish populations and provides important habitat for threatened and endangered species such as piping plovers, red knots, Atlantic and shortnose sturgeon, and several species of sea turtles. Near the Port, barrier islands, tidal creeks, and marshes support recreational and commercial fisheries and offer irreplaceable natural beauty. To protect these critical coastal resources, and to ensure compliance with the State's CMP, we urge DCM to object to the Corps' consistency certification and find that the Project is inconsistent with the enforceable policies of the State's CMP, including for the following reasons:

- The Project would exacerbate the impacts of sea level rise on coastal resources and communities, leading to increased flooding and reduced ecosystem resiliency;
- The Project would adversely impact the State's fisheries by destroying wetlands and other nursery habitat and exposing juvenile fish to toxic chemicals;
- The Project would threaten areas of environmental concern including coastal wetlands, estuarine waters, and public trust areas;
- The Project would harm wildlife resources, including threatened and endangered species, by increasing salinity upstream of the project area, increasing erosion in habitat areas, and exposing wildlife to the risks associated with increased amounts of maintenance dredging; and
- The Project's economic and ecological costs outweigh any purported benefits.

I. The Coastal Zone Management Act Requires DCM to Prioritize the Protection of the State's Coastal Resources When Making a Consistency Determination.

The federal Coastal Zone Management Act of 1972 ("CZMA") was created by Congress to encourage states to develop coastal planning programs that "will preserve, protect, and restore the environment of their coastal zones."[7] Congress found, among other things, that there are

[5] Letter from Hannah Nelson et al., SELC, to U.S. Army Corps of Engr'rs (Nov. 10, 2025), Exhibit 1 [hereinafter SELC, DEIS Comments].
[6] N.C. Gen. Stat. § 113A-102(a).
[7] *Shanty Town Assocs. Ltd. P'ship v. EPA*, 843 F.2d 782, 793 (4th Cir. 1988); *see also* 16 U.S.C. § 1452, *AES Sparrows Point LNG, LLC v. Smith*, 527 F.3d 120, 123 (4th Cir. 2008); *City of Sausalito v. O'Neill*, 386 F.3d 1186,

"important ecological, cultural, historic, and esthetic values in the coastal zone," and "habitat areas of the coastal zone…are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations."[8] Thus, the CZMA contains clear policy directives including to "preserve, protect, and where possible, [] restore or enhance" coastal resources; and to encourage states to develop CMPs that "achieve wise use" of coastal resources while giving "full consideration to ecological, cultural, historic, and esthetic values as well as the needs for compatible economic development."[9]

Coastal states have "substantial and significant interests in the protection, management, and development" of resources in the exclusive economic zone that are best served by state involvement in plans that impact coastal resources, as well as the development of state CMPs.[10] Accordingly, the CZMA applies to any activity within a state's coastal zone that may reasonably affect any coastal resource or coastal use and requires that such activity be consistent "to the *maximum extent practicable*" with the State CMP.[11] The maximum extent practicable means "fully consistent with the enforceable policies of management programs."[12]

North Carolina's CMP is comprised of the N.C. Coastal Area Management Act ("CAMA") and the rules promulgated thereunder, the N.C. Dredge and Fill Law, the Coastal Resources Commission ("CRC") regulations, and local land-use plans of the State's coastal counties and municipalities. The State's CMP also incorporates by reference the Coastal Habitat Protection Plan ("CHPP")[13] and the Fisheries Reform Act,[14] which provide vital protections for endangered species, coastal habitat, and the State's fisheries, respectively.[15]

CAMA establishes the State's goal to "preserv[e] and manag[e] the natural ecological conditions" of the coastal resources, to "safeguard and perpetuate their natural productivity," and to insure "the orderly and balanced use and preservation of [the State's] coastal resources on behalf of the people of North Carolina and the nation."[16] CAMA includes clear requirements

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1201 (9th Cir. 2004) ("The purpose of the Coastal Zone Management Act ("CZMA") is to "preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations.'"); *Friends of the Earth v. U.S. Navy*, 841 F.2d 927, 935 (9th Cir. 1988) ("The Coastal Zone Management Act (CZMA) was enacted to encourage wise use of coastal resources through state adoption and implementation of management programs for the coastal zone.").

[8] 16 U.S.C. §§ 1451(d)–(e).

[9] *Id.* §§ 1452(1)–(2).

[10] *Id.* § 1451(m).

[11] *Id.* § 1456(c)(1)(A) (emphasis added); *see also* 15 C.F.R. § 930.30 ("The provisions of this subpart are intended to assure that all Federal agency activities including development projects affecting any coastal use or resource will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of approved management programs."); *Shanty Town Assocs. Ltd. P'ship*, 843 F.2d at 793 ("Once a state has an approved management plan in place, the Act requires all federal agencies that conduct or support activities directly affecting the coastal zone to see that those activities are carried out in a way which is, to the maximum extent practicable, consistent with that state plan.").

[12] 15 C.F.R. § 930.32(a)(1).

[13] N.C. DEQ, North Carolina Coastal Habitat Protection Plan Amendment (2021), https://perma.cc/7B57-DDKY [hereinafter NC CHPP].

[14] Fisheries Reform Act of 1997, 1997 N.C. Laws 400.

[15] *See*, *e.g.*, 15A N.C. Admin. Code 7H.0501 (referencing natural and cultural resource areas, including endangered and threatened species and their habitat), 7H.0506 (referencing coastal complex natural areas, which support endangered and threated species).

[16] N.C. Gen. Stat. § 113A-102(b).

about when DCM must not approve a project,[17] which are expanded upon in the relevant CRC regulations. The State's Dredge and Fill Law similarly lists out circumstances under which DCM may not allow a project to proceed, including when "there will be significant adverse effect of the proposed dredging and filling on the use of the water by the public," "there will be significant adverse effect on the value and enjoyment of the property of any riparian owners," and when "there will be significant adverse effect on wildlife or fresh water, estuarine or marine fisheries."[18]

As a steward of the State's natural resources, DCM must be guided by both state and federal policy directives, as well as *all* implementing provisions of the State's CMP when making its consistency determination. As detailed below, the Project would damage coastal resources—contrary to these state statutes, regulations, and policies established to protect the State's special coastal resources.

II. Errors From the Corps' DEIS Inhibit DCM's Ability to Make an Informed Consistency Determination.

In its consistency determination, the Corps relies on the analyses in the DEIS prepared under the National Environmental Policy Act ("NEPA"). The DEIS problematically depended on flawed and unjustified assumptions that mask—or even entirely alter—the true impacts associated with the proposed expansion of Wilmington Harbor. Incorporating those assumptions into the consistency determination creates a chain of compounding errors that prevent DCM from fully evaluating whether the Project is consistent with North Carolina's CMP.

For example, the Corps concludes without any basis that fewer ships will enter the Port if Wilmington Harbor is expanded.[19] This will result in transportation efficiencies because—as the Corps assumes—the shipping companies will bring the same amount of cargo with less frequent visits on larger ships.[20] But the agency does not provide evidence that this can or will ever happen.[21] Currently, all Asia/USEC services are provided on a weekly basis and each of these vessels follow a multiport rotation, with Wilmington included as a mid-port.[22] If the Corps is to assume that fewer vessels are calling in Wilmington, there must be a similar assumption that fewer vessels will call at Savannah, Charleston, or any other port within Wilmington's rotation. The DEIS does not explain how that pattern will (or even could) change. To the contrary, the DEIS explicitly states that "modifications to the channel framework at Wilmington alone will not

[17] *Id.* § 113A-120(a).
[18] *Id.* § 113-229 (e).
[19] *See* SELC, DEIS Comments, *supra* note 5, at 7–9.
[20] U.S. Army Corps of Eng'rs, Wilmington Harbor 403 Draft Environmental Impact Statement Wilmington Harbor Navigation Project, North Carolina, EISX-202-00-K7P-1755163795 at 2-7 (Sept. 12, 2025) [hereinafter DEIS].
[21] *See generally* U.S. Army Corps of Eng'rs, Wilmington Harbor 403 Letter Report: Attachment 5 – Economic Considerations at 59 (Sept. 5, 2025) (failing to provide an explanation for how vessel traffic will shift based on the change in loading more cargo onto fewer shifts) [hereinafter Economic Considerations]; *see also* SELC, DEIS Comments, *supra* note 5, at 7–9.
[22] *See, e.g.*, *Transpacific Services Update – Amberjack & Emerald*, MSC (Feb. 19, 2023), https://perma.cc/J6VA-A6MW (showing historic route of EC2 indicating that Wilmington is a middle port of call).

be sufficient to cause changes in the vessel fleet servicing the U.S.,"[23] signaling that deepening Wilmington Harbor will not change the type or rotation of vessels calling to the east coast.

Relying on the unjustified conclusion that shipping companies will send more cargo on less ships has serious consequences for the Corps' environmental analysis and consequently DCM's consistency determination. Throughout the DEIS and its consistency document, the Corps minimizes environmental impacts of the Project by claiming that fewer vessels will be traversing the channel leading to less environmental damage. For instance, the Corps concluded that the stress put on river shorelines from vessel wakes would be reduced when compared to the no action alternative because fewer ships would be passing through the channel and therefore creating less wakes.[24] The Corps also determined that air emissions would decrease under the deepening alternatives because less vessel traffic would result in less air pollution.[25] And the Corps predicted that certain species would be at less risk of vessel strikes due to less frequent traffic.[26] As it stands, the Corps has not explained its assumption that shipping companies will consolidate more cargo onto less ships, which taints the DEIS's discussion of environmental impacts, and thus prohibits a thorough consistency review by DCM.

Unfortunately, other errors in the DEIS provide compounding consequences here. For instance, the agency modeled wake and erosion impacts using a vessel that is *smaller* than those that currently call to the Port. The proposed expansion is purportedly being sought to allow for the use of large Post-Panamax ships, a class of ships that can hold up to 15,000 twenty-foot equivalent units ("TEUs").[27] The Corps notes that Wilmington is already accommodating Post-Panamax III ships "at the present time" that can be loaded to 14,220 TEUs.[28] Nevertheless, the agency modeled wake and erosion impacts using a 12,400 TEU vessel. Doing so severely minimizes the erosive force on the river's shoreline, resulting in an underestimation of sediment impacts, the need for routine maintenance dredging, and any accompanying wildlife concerns.[29]

Additionally, the Corps ignored groundwater impacts by selecting a "yardstick" model, which the Corps admits means that "it is not precise enough to answer specific, localized questions." [30] The model "was not calibrated to predict salinity changes"—thus "salinity results are uncertain, and saltwater may move at different rates than the model suggests."[31] To make matters worse, despite the recognition that they can influence groundwater conditions "the model does not simulate daily tidal fluctuations, storm events, or seasonal variations."[32] Nevertheless, the Corps relied on the model to determine groundwater impacts will be "minor."[33] And even this

[23] Economic Considerations, *supra* note 21, at 59.
[24] DEIS, *supra* note 20, at 3-23; Consistency Determination Letter, *supra* note 1, at 14.
[25] DEIS, *supra* note 20, at 3-70.
[26] *Id.* at ES-3, 3-89.
[27] Economic Considerations, *supra* note 21, at 23.
[28] *Id.* at 26.
[29] SELC, DEIS Comments, *supra* note 5, at 18–19; Lynker Corp., Wilmington Harbor Navigation Improvement Project Draft Environmental Impact Statement Technical Review at 4 (Oct. 30, 2025), at 1–3, provided as Attachment 4 to Exhibit 1 [hereinafter Lynker Report]
[30] U.S. Army Corps of Eng'rs, Wilmington Harbor 403 Letter Report Appendix C: Geology and Geotechnical Engineering, at C-15 (2025).
[31] *Id.*
[32] *Id.*
[33] DEIS, *supra* note 20, at 3-68.

failure pales in comparison to the Corps' absolute refusal to evaluate whether per- and polyfluoroalkyl substances ("PFAS" or "forever chemicals") are present in the sediment that will be dredged up and beneficially used in the lower estuaries and bird islands.[34] The agency assumes that all material can be beneficially reused and that it will not harm fish, birds, or other exposed wildlife.[35] That might not be certain, but the agency did not even look at existing information, much less collect its own.[36]

Modeling assumptions made throughout the DEIS corrupt the Corps' determination that impacts to coastal resources will be consistent with the State's CMP. While many of these are discussed in greater detail below, we call out these compounding errors to encourage DCM to request the additional data, revised models, or other evidence necessary to make an informed decision. If the Corps cannot provide such information, DCM must find the Project inconsistent with the State's CMP.

III. The Wilmington Harbor 403 Navigation Project Would Result in Significant Impacts to the State's Coastal Resources and is Inconsistent with the State's CMP.

The proposed expansion of Wilmington Harbor violates or otherwise implicates multiple provisions of the CMP (many of which the Corps' consistency determination did not acknowledge), including provisions of the CAMA, N.C. Gen. Stat. §§ 113A-102(b), 113A-120(a), 113A-113; sections of the N.C. Dredge and Fill Law, N.C. Gen. Stat. § 113-229(e); the CHPP, and multiple CRC Regulations, 15A N.C. Admin. Code 07H.0203, .0205, .0206, .0207, .0208, .0209, .0303, .0312, .0505, .0506, .0701, .1805; 15A N.C. Admin. Code 07M.0701.

a. <u>The Project will exacerbate the impacts of sea level rise.</u>

North Carolina has integrated resiliency considerations into its CMP, in particular through its Coastal Habitat Protection Plan.[37] In that plan, the State has acknowledged that coastal resources like wetlands, dunes, and coastal forests are critical for protecting wildlife and communities from the changing climate.[38] As the CHPP explains, "[i]mpacts from climate change including sea level rise (SLR) will affect all coastal habitats and species throughout NC,"[39] and "repeated impacts and compounding losses from the effects of climate change . . . can be catastrophic not only to the coastal communities, but to the coastal habitats and the ecosystem services they support."[40]

New Hanover County too has recognized storm surge and flooding have a "great effect on the natural environment, which can include the change of the physical landscape as a result of erosion and sand migration."[41] The county acknowledges that these impacts threaten natural

[34] *Id.* at 3-7.
[35] *Id.* at 3-58.
[36] SELC, DEIS Comments, *supra* note 5, at 10, 20.
[37] *See* NC CHPP, *supra* note 13, at 29–38.
[38] *Id.* at 31.
[39] *Id.* at 29.
[40] *Id.* at 30.
[41] New Hanover County, *Comprehensive Plan 2016* (Nov. 30, 2016), at PDF 74 [hereinafter New Hanover County Land Use Plan].

habitats and could lead to the destruction of homes, businesses, and major infrastructure.[42] Recognizing that existing coastal resources are both susceptible to climate change and valuable tools in maintaining healthy watersheds and habitats, the county has made it a goal to "promote environmentally responsible growth" and "conserve environmentally critical areas."[43]

Despite the importance of ensuring resilient ecosystems and wildlife habitat, the Corps dismisses the Project's impacts on estuaries, wetlands, and shorelines under the guise that they will be "minimal" when they are compared to the impacts caused by sea level rise.[44] In short, the Corps hides behind sea level rise as a way to excuse and ignore project impacts. This is misleading to both DCM and the public, and it is not the robust analysis necessary to determine if the $1.3 billion Project is consistent with the State's CMP.

In the DEIS, the Corps acknowledges that the Project will increase the mean high water level, but the agency fails to take the critical step of evaluating whether that impact (and other changes) will exacerbate the effects of already rising tides. Research tells us it will. Deepening a channel like Wilmington's reduces friction through the water system making it easier for more water to flood into the channel—especially during storm conditions.[45] This causes a nonlinear increase in the tidal range and flooding risk,[46] resulting in "higher water levels, faster currents, and longer-lasting inundation farther inland."[47] A recent study of tidal conditions in Jacksonville, Florida show when shallow estuaries are deepened, they provide less protection against "long-waves" or storm induced flooding which can pose a significant risk to the communities nearby.[48] Similarly, a study on channel deepening in Louisiana showed that deepening allows more water to flood the system during a storm event, drastically increasing the flooded area around the channel.[49] When sea level rise is considered alongside the deepening project, there are increased flood risks caused by a larger, more powerful storm surge.[50]

Indeed, this pattern is likely already happening in Wilmington. As one oceanography professor wrote to the Corps during the DEIS comment period, "the previous harbor deepening project, which took place in 2000-2005 may have caused a more-than-doubled increase in the rate of [sea level rise] in the Cape Fear River."[51] To reach that conclusion, tidal gauges across North Carolina's coast were compared and the rate of sea level rise acceleration in Wilmington exceeded others in the State.[52] But because the Corps failed to include that data or any such

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[42] *Id.*
[43] *Id.* at PDF 119.
[44] Consistency Determination Letter, *supra* note 1, at 15; DEIS, *supra* note 20, at 3-60 to 3-61.
[45] Lynker Report, *supra* note 29, at 4; Ramin Familkhalili, Stefan A. Talke & David A. Jay, *Tide-storm Surge Interactions in Highly Altered Estuaries: How Channel Deepening Increases Surge Vulnerability*, 125 JGR OCEANS 1, 15 (2020), provided as Attachment 16 to Exhibit 1.
[46] *Tide-storm Surge Interactions* at 2.
[47] Lynker Report, *supra* note 29, at 8.
[48] Stefan A. Talke & David A. Jay, *Changing Tides: The Role of Natural and Anthropogenic Factors*, 12 ANN. REV. OF MARINE SCI. 121, 132–33 (2020), provided as Attachment 17 to Exhibit 1.
[49] Maqsood Mansur, Julia Hopkins & Qin Chen, *Estuarine Response to Storm Surge and Sea-level Rise Associated with Channeling Deepening: A Flood Vulnerability Assessment of Southwest Louisiana, USA*, 116 NAT. HAZARDS 3879, 3889 (2023), provided as Attachment 18 to Exhibit 1.
[50] *Id.* at 3890.
[51] Email from Frederick Bingham to U.S. Army Corps of Engr'rs (Nov. 1, 2025), Exhibit 2.
[52] *Id.*

analysis in the DEIS and consistency determination, neither the public nor DCM are able to review the impacts the previous deepening had on sea level rise.

Increased flooding threatens not only the communities nearby, but "will impact the distribution, range, and abundance of coastal habitats and the species that use them for nursery, forage, spawning, and refuge."[53] North Carolina has set a goal to make habitats and ecosystems more resilient,[54] and New Hanover County recognizes that this type of resiliency is important for both the natural environment and the local economy.[55] The expansion of Wilmington Harbor is not consistent with those goals.

Increased water levels bring additional concerns. Sea level rise changes the ebbs and flows of the tidal range and will drastically impact sediment transport in the system thereby making maintenance dredging less effective.[56] Also, as discussed above, the reduced friction in the channel caused by dredging can exacerbate upstream flooding and erosion, amplifying sediment movement in the project area.[57] In other words, the Corps will likely be required to perform more maintenance dredging in the project area as sea levels continue to rise. Maintenance dredging in estuarine environments like the lower Cape Fear River poses severe threats to estuarine habitats and the juvenile fish, endangered Atlantic sturgeon, and threatened and endangered sea turtles that spend time there.

In the DEIS and briefly in the consistency determination, the Corps treats sea level rise as a static phenomenon separate from the Project, rather than one that will interplay with the impacts from deepening Wilmington Harbor.[58] When considered together, it becomes clear that the Project will likely make our coastal resources and communities less resilient to the changing climate. The Project is inconsistent with the goals and priorities in the Coastal Habitat Protection Plan and the New Hanover County Land Use Plan, and thus with the CMP.

b. <u>The Project would adversely impact the State's fisheries and is therefore inconsistent with the CMP.</u>

North Carolina's commercial and recreational fishing industries are worth millions of dollars and represent a way of life for thousands throughout the State. In 2021, the landing revenue for just ten key commercial fisheries in North Carolina totaled over $90 million.[59] Recreational fishing represented over $1 billion in revenue.[60] When drafting CAMA, the General

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[53] NC CHPP, *supra* note 13, at 32–33.
[54] *Id.* at 32.
[55] New Hanover County Land Use Plan, *supra* note41 41, at PDF 74, 119.
[56] Lynker Report, *supra* note 29, at 4; Jana R. Cox et al., *Effects of Sea-Level Rise on Dredging and Dredged Estuary Morphology*, 127 J. OF GEOPHYSICAL RSCH.: EARTH SURFACE 1, 2 (2022), provided as Attachment 19 to Exhibit 1.
[57] *Tide-storm Surge Interactions*, *supra* note 45, at 2.
[58] *See* Lynker Report, *supra* note 29, at 3.
[59] U.S. Dep't of Com., *Fisheries Economics of the United States 2021: Economic and Sociocultural Status and Trends Series* (March 2024), at 152, Exhibit 3; *see also* Eric Edwards et al., *North Carolina's Wild Caught Fishing Industry Economic Impact Assessment* (2021), at 3, Exhibit 4 (noting that for the South Coast counties of New Hanover, Brunswick, Pender, and Onslow in North Carolina, commercial fishery landings totaled approximately $13,000,000).
[60] *Fisheries Economics of the United States* at 153.

Assembly emphasized the value of the State's fisheries when they found that coastal regions "are among the most biologically productive regions of this State and of the nation."[61] The General Assembly concluded that coastal and estuarine waters "provide almost ninety percent (90%) of the most productive sport fisheries on the east coast" and represent an area that "should be preserved and enhanced."[62] New Hanover County is no stranger to the importance of these fisheries. For over ten years, New Hanover County is consistently one of the top five counties with the most residents with coastal recreational fishing licenses in the entire state.[63] Likewise, the county has millions of dollars in commercial landings each year.[64] The New Hanover County land use plan recognizes the importance of the county's waters as containing "significant public fishing resources"[65] and encourages the preservation and restoration of waterways.

The Cape Fear River is home to a wide array of fish, including economically important fisheries as well as threatened and endangered species. As raised previously, the Corps' Project would severely harm the State's valuable fisheries and important fish habitat within the Project's footprint.[66] First, the Project would lead to a devastating loss of freshwater wetlands that serve as nurseries for fish and shellfish species.[67] Striped bass, Atlantic surgeon, shad, and blueback herring are all species that spend at least some portion of their life cycle in the freshwater wetlands this Project is set to adversely impact.[68] The Corps' projections indicate that there will be a decrease in the amount of available habitat for these species at the egg, larval, and spawning stages.[69] For example, the Corps projects that suitable habitat for striped bass at the larval stage will decrease by 6.5% and habitat for juvenile blueback herring with decrease by 5.9%.[70] Given the modeling errors and erroneous assumptions the Corps has made in other areas of the DEIS, these projections likely underestimate the true loss to these species. Nevertheless, a loss of habitat is more devastating when combined with the impacts of climate change, the introduction of invasive species, and overfishing.[71] That is precisely the reality for these species: all of these fisheries are in states of population decline and are consistently listed as depleted in North Carolina.[72]

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[61] N.C. Gen. Stat. § 113A-102(a).
[62] *Id.*
[63] N.C. Div. of Marine Fisheries, *2024 License & Statistics Annual Report* (Nov. 2024), at VI-26 (Table VI.14), Exhibit 5.
[64] Alan Bianchi, *An Economic Profile Analysis of the Commercial Fishing Industry of North Carolina Including Profiles for the Coastal Fishing Counties* (Sept. 2003) at 80, Exhibit 6.
[65] New Hanover County Land Use Plan, *supra* note 41, at PDF 120.
[66] SELC, DEIS Comments, *supra* note 5, at 10–11.
[67] DEIS, *supra* note 20, at 3-56.
[68] *Id.* at 3-19.
[69] U.S. Army Corps of Eng'rs, Wilmington Harbor 403 Letter Report Appendix M: Wetland and Fish Passage Mitigation Plan at M-20 (2025).
[70] *Id.*
[71] Kyle T. Rachels & J. Michael Fisk II, *Fisheries Resources of the Cape Fear River* (2021), at 7, https://perma.cc/3DVV-ZDB2 (noting that in a study of Cape Fear River fish, most fish species were primarily threatened by habitat and water quality degradation, invasive species, and the impacts of climate change).
[72] *See* N.C. Division of Marine Fisheries, *2024 Fishery Management Plan Review* (August 2025), https://perma.cc/5DEX-JBRH (showing that striped bass have had a fishing moratorium in place for over fifteen years because of population concerns; Atlantic sturgeon stock is depleted and a coastwide fishing moratorium has been in place since 1998; shad populations are "depleted"; and blueback herring have low abundance and an accompanying harvest moratorium).

PFAS contamination presents yet another problem for these fisheries. It is well known that the Cape Fear River is contaminated with PFAS, a large group of toxic chemicals that have severe health impacts, even at low levels, in humans and animals.[73] PFAS have been found in the tissue of fish taken from several stretches of the Cape Fear River.[74] Since 2023, the North Carolina Department of Health and Human Services has put in place a fish consumption advisory for the middle and lower Cape Fear River due to exposure concerns to PFOS found in sampled fish.[75] Despite the widespread contamination in the Cape Fear, the Corps has not tested the sediment they propose to dredge then place in estuarine areas[76] for PFAS to determine whether the reuse would cause consequent harm. Rather, the Corps' most recent sampling of the dredged material was done in 2020 within the ocean dredged material disposal site and tested for "PCBs, pesticides, semi-volatile organics (SVOAs), metals, total organic carbon, and butyl-ins."[77] Should the material be contaminated, the dredging process and so-called beneficial use placement will likely expose the fish of the Cape Fear to PFAS and further exacerbate harms to each species' health. Likewise, potential PFAS contamination could also threaten the health of people and wildlife who may consume these fish. Without adequate testing of this dredged material, this Project could adversely impact the State's fisheries and be inconsistent with the State's CMP.

c. The Project would threaten areas of environmental concern and is thus inconsistent with the State's CMP.

The natural environments surrounding the Wilmington Harbor boast spectacular barrier islands, tidal creeks, and marsh ecosystems rife with wildlife and natural resources. The State's CMP recognizes the diversity of habitats along the coast and designates areas of environmental concern ("AECs") in coastal wetlands, estuarine waters, public trust areas, coastal shorelines, and natural and cultural resource areas. The CRC must "conserve and manage [AECs] so as to safeguard and perpetuate their biological, social, economic and aesthetic values, and to coordinate and establish a management system capable of conserving and utilizing [AECs] as a natural resource essential to the functioning of the entire [ecosystem]."[78]Any development—defined as "any activity . . . involving . . . dredging; filling; . . . removal of clay, silt, sand, gravel or minerals" within an AEC—must be compatible with the AEC's management objective.[79]

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[73] *See, e.g.,* Zeyan Lew, Houman Goudarzi & Youssef Oulhote, *Developmental Exposures to Perfluoroalkyl Substances (PFASs): An Update of Associated Health Outcomes*, 5 CURRENT ENV'T HEALTH REPS. 1 (2023), https://perma.cc/6UM8-59Q8; *Our Current Understanding of the Human Health and Environmental Risks of PFAS*, U.S. EPA, https://perma.cc/DQH8-ZHBK (last visited Dec. 16, 2025).

[74] *See* Frannie Nilsen, *2022 Water and Fish Collection Project – Status Update* (Feb. 8, 2023), Exhibit 7 (showing heightened PFAS levels in fish species of the upper Cape Fear River, including striped bass, redear sunfish, and largemouth bass); Frannie Nilsen, *DEQ Water and Fish Study Presentation: Saltwater Samples* (Oct. 1, 2025), Exhibit 8, (showing PFAS levels for saltwater species, including southern flounder and red drum, was elevated).

[75] *NCDHHS Recommends Limiting Fish Consumption From the Middle and Lower Cape Fear River Due to Contamination With "Forever Chemicals,"* N.C. Dep't Health & Human Servs. (July 13, 2023), https://perma.cc/E8FU-N69H.

[76] DEIS, *supra* note 20, at 2-14 to 2-19; 3-61 to 3-66.

[77] U.S. Army Corps of Eng'rs, Wilmington Harbor 403 Letter Report Appendix P: Wilmington Site Management and Monitoring Plan for Offshore Disposal at 18 (2023).

[78] 15A N.C. Admin. Code 07H.0205(c) (addressing coastal wetlands), .0203 (addressing the estuarine and ocean system), .0206(c) (addressing estuarine waters), .0209(c) (addressing coastal shorelines); *see also* N.C. Gen. Stat. § 113A-113.

[79] N.C. Gen. Stat. § 113A-103(5)(a).

Management objectives vary dependent on the classification of AEC,[80] but for any category, DCM must attempt to "minimize the likelihood of significant loss of private property and public resources."[81] Activities occurring outside of AECs that impact AECs must also adhere to use standards set for each type of AEC.

The Corps' Project would adversely affect, at a minimum, the Coastal Wetlands, Estuarine Waters, and Public Trust AECs in direct contradiction to the State's mandate to safeguard these resources.[82] A discussion of a select few of these AECs is below.

i. Coastal Wetlands

Coastal Wetlands AECs are defined as "any salt marsh or other marsh subject to regular or occasional flooding by tides" and contain certain marsh plants listed in regulations.[83] The CRC did not understate the importance of wetlands; not only are coastal wetlands recognized as significant for their importance for food chains and fisheries, but also for their function as "barriers against flood damage" and controlling erosion.[84] The first priority for any land use is the conservation of existing wetlands.[85] In 2024, Governor Roy Cooper further reinforced the importance of North Carolina's wetland ecosystems with an executive order with the explicit purpose of conserving and restoring wetlands through the State.[86] And in New Hanover County, the land use plan discourages any type of development activity in wetlands and calls for the preservation of existing wetlands within the county.[87]

Despite the billions of dollars in services they provide,[88] thousands of acres of wetlands are being lost in North Carolina.[89] Most of this loss has occurred within coastal watersheds due to development, sea level rise, and climate change.[90] Additionally, hundreds of thousands of acres of wetlands have been converted or disturbed into different types of wetlands which result

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[80] For example, Estuarine and Ocean AECs, which include Public Trust AECs, must be maintained so as to protect public access to recreation, and must be conserved and managed "so as to safeguard and perpetuate their biological, economic, and aesthetic value." 15A N.C. Admin. Code 07H.0203; .0207(c). Ocean Hazard Area AECs, which include Inlet Hazard Area AECs, were established to, among other things, "preserv[e] the natural ecological conditions of the barrier dune and beach systems. *Id.* at 07H.0303(b).

[81] *Id.* at 07H.0203 ("It is the objective of the Coastal Resources Commission to conserve and manage estuarine waters, coastal wetlands, public trust areas, and estuarine and public trust shorelines, as an interrelated group of AECs, so as to safeguard and perpetuate their biological, social, economic, and aesthetic values and to ensure that development occurring within these AECs is compatible with natural characteristics so as to minimize the likelihood of significant loss of private property and public resources.").

[82] Consistency Determination Letter, *supra* note 1, at 14–15.

[83] 15A N.C. Admin. Code 07H.0205(a).

[84] *Id.* at 07H.0205(b).

[85] *Id.* at 07H.0205(d).

[86] *See* N.C. Governor, Roy Cooper, Executive Order 305: An Order to Protect and Restore North Carolina's Critical Natural and Working Lands (Feb. 12, 2024), Exhibit 9.

[87] New Hanover County Land Use Plan, *supra* note 41, at PDF 139.

[88] *Assessment of Change in North Carolina's Outer Coastal Plain Wetlands*, North Carolina Wetlands (July 2024) at 11, https://perma.cc/5FBR-VSXM (noting that the functions provided by wetlands are estimated to be worth $25.6 billion).

[89] *The Status and Trends of Wetland Loss and Legal Protection in North Carolina*, N.C. State Extension, https://perma.cc/P9K2-JTEW (last visited Dec. 11, 2025).

[90] *Id.*

in "altered ecosystem function . . . and loss of important habitat."[91] The proposed expansion of Wilmington Harbor would exacerbate the state-wide loss; under a no sea level rise scenario, the Corps posits that 1,071 acres of tidal freshwater wetlands will be lost and converted to higher salinity type wetlands.[92] As changes in interpretation of federal law[93] and consequent state law changes[94] rollback protections for many wetlands across southeastern North Carolina, it is critically important that DCM not approve additional destruction of wetlands for an unnecessary deepening project. Doing so would be inconsistent with the State's CMP.

ii. Estuarine Waters

Under CRC regulations, the estuarine waters are defined as "all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters."[95] As noted above, North Carolina's estuaries provide habitat for a diverse array of wildlife and nearly 90% of the State's commercial fisheries.[96] The CRC recognized the significance of these waters for the State's fisheries, as regulations assert that estuaries are "among the most productive natural environments of North Carolina. They support the valuable commercial and sport fisheries of the coastal area."[97] The CRC established that the management objective for Estuarine Waters AECs is to "safeguard and perpetuate their biological, social, aesthetic, and economic values."[98] Uses of the estuarine and coastal waters must be consistent with this purpose, and the "highest priority" in the management of the waters is the "conservation of . . . their vital components."[99] New Hanover County's local land use plan is especially concerned with preserving the county's estuaries through thoughtful development strategies[100] and implementing a robust water quality monitoring program for estuarine waters.[101]

We have discussed at length the impacts that this Project will have on the natural resources in its footprint, especially within the estuarine waters.[102] However, the Corps purports that compared to sea level rise projections for the area in 2086, this Project will have minimal

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[91] *Id.*
[92] DEIS, *supra* note 20, at 3-56.
[93] *See Sackett v. EPA*, 598 U.S. 651, 679 (2023) (limiting the scope to wetlands within the purview of the Clean Water Act to those with a "continuous surface connection" with a water of the United States); *Updated Definition of "Waters of the United States,"* 90 Fed. Reg. 52498, 52499 (Nov. 20, 2025) (proposed rule seeking to further limit the scope of the Clean Water Act to wetlands with a continuous surface water connection with a traditional navigable water).
[94] *See* 2023 Sess. L. 63 § 15.(c) (June 12, 2023) (adopting the federal definition of wetlands for state level protections).
[95] 15A N.C. Admin. Code 07H.0206(a).
[96] U.S. Geological Survey, *North Carolina Wetland Resources in National Water Summary-Wetland Resources* at 297, https://www.fws.gov/sites/default/files/documents/National-Water-Summary-Wetland-Resources-North-carolina.pdf (noting that "[a]bout 90 percent of [North Carolina's] commercial fish harvest is derived from estuary dependent species.")
[97] 15A N.C. Admin. Code 07H.0206(b).
[98] *Id.* at .0206(c).
[99] *Id.* at .0206(d).
[100] New Hanover County Land Use Plan, *supra* note 41, at PDF 135.
[101] *Id.* at PDF pg. 141.
[102] *See* SELC, DEIS Comments, *supra* note 5, at 18–20.

impacts on dissolved oxygen, water temperature, salinity, and total suspended solids.[103] However, as we established prior,[104] the Corps cannot hide the very real impacts of this Project behind the impacts that sea level rise will have. Further, changes to any one of these factors would mean additional harm to the Lower Cape Fear's estuarine waters, including for their valuable use as shell-fishing waters. The Corps has not demonstrated that this Project will not harm the estuarine waters of the State and thus this Project is inconsistent with the State's CMP.

iii. Public Trust Areas

The Public Trust Areas AECs are those areas reserved for the public's use in which the public has "acquired rights by prescription, custom, usage, dedication, or any other means."[105] The CRC has made clear the management objectives of these areas is to "protect public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value."[106] "In the absence of overriding public benefit," any development that stands to damage this type of AEC must satisfy the use standards provided in CRC regulations.[107] For beach fill projects in particular, all "material placed in the water and along the shoreline shall be clean sand."[108]

The Corps erroneously concludes that this Project will not have "any negative impacts to public trust areas."[109] To begin with, the purported need of this Project is to allow larger, heavier loaded ships to enter the Wilmington Port. However, larger ships create larger vessel wakes that will lead to greater coastal erosion and threaten shoreline stability.[110] As we raised prior, the Corps' modeling for erosion impacts of this Project are calibrated with too small of a ship and do not take into account the cumulative impacts of thousands of vessel wakes.[111] Given these issues with the modeling, the Corps' erosion analysis is unreliable and cannot give the true sense of how this Project could exacerbate coastal erosion, especially within public trust areas. In fact, the limited available data shows erosive force could double in certain areas, presenting conditions that could similarly threaten nearby beaches.[112] This Project is not consistent with the CMP, as it will likely contribute to coastal erosion and does not support the conservation and management of public trust areas.

There are further impacts to public trust areas. The Corps explains that the Project would involve the placement of millions of tons of sand on public beaches, including on Oak Island, Bald Head Island, and Caswell Beach.[113] However, as we raised prior,[114] the Corps has failed to test the dredged material for PFAS. Although we have repeatedly urged the Corps to fully

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[103] Consistency Determination Letter, *supra* note 1, at 15.
[104] SELC, DEIS Comments, *supra* note 5, at 12–14.
[105] 15A N.C. Admin. Code 07H.0207(a).
[106] *Id.* at 07H.0207(c).
[107] *Id.* at 07H.0207(d).
[108] *Id.* at 07H.0208(b)(8)(A)(ii).
[109] Consistency Determination Letter, *supra* note 1, at 15.
[110] *See* SELC, DEIS Comments, *supra* note 5, at 18–19; Lynker Report, *supra* note 29, at 1–3.
[111] SELC, DEIS Comments, *supra* note 5, at 15.
[112] *Id.* at 19.
[113] *See* U.S. Army Corps of Eng'rs, Wilmington Harbor 403 Letter Report Appendix D: Beneficial Use Plan at 16 (Sept. 5, 2025).
[114] SELC, DEIS Comments, *supra* note 5, at 19–20.

consider whether this Project may increase the levels of PFAS and other contaminants in the Cape Fear River ecosystem, the DEIS dismisses any effect the Project may have on exposing or distributing hazardous, toxic and radioactive waste. There is no evidence that the Corps researched existing data or conducted sampling of the water, dredged material, or riverbank for any type of PFAS that contaminates the footprint of this Project.[115]

Although clean is not defined in the CRC's regulations, PFAS contamination would almost certainly render the material outside the scope of "clean" as required under the Public Trust Areas AEC use standards. The Corps must be required to test the dredged material in order to find the proposed beach fill (and other proposed reuses) consistent with protecting public trust resources for the enjoyment of the people and the State's CMP at large.

d. The Project would harm North Carolina's threatened and endangered species and other wildlife resources and is therefore inconsistent with the State's CMP.

The legislative findings and purposes for the State's Coastal Management Program, found at N.C. General Statutes § 113A-102, specifically identify "[p]rotection, preservation, and conservation of natural resources including . . . fish and wildlife" as a priority. The enforceable policies of the State's CMP reflect this emphasis by including important protections and considerations for imperiled species and their habitat.[116]

As detailed in our comments on the DEIS, the proposed expansion of Wilmington Harbor is likely to affect numerous threatened and endangered species and harm important habitats supporting these populations. The Cape Fear River and surrounding areas to be affected by the Project are home to no fewer than *thirty-one* ESA-listed species and formally designated critical habitat for five species.[117] The Corps' DEIS acknowledges the Project is likely to adversely affect *ten* of these threatened and endangered species in the project area—and the true toll is likely higher, given the omissions and errors in the DEIS, as highlighted in the attached comments.[118]

For example, the DEIS obscured impacts to wildlife and coastal natural resources relevant to DCM's consideration. As explained in our DEIS comments, the Corps failed to mention the federally and state threatened Eastern black rail which has historically been found in the Wilmington area.[119] Further, the DEIS made no mention of state-listed species and provided only a non-exhaustive smattering of non-listed wildlife species that may inhabit the area, omitting species like the iconic Venus flytrap and the state-listed Species of Greatest Conservation Need diamondback terrapin.[120] As to the species that are mentioned, the DEIS

[115] *Id.* at 20.
[116] *See*, *e.g.,* 15A N.C. Admin. Code 07H.0505 (describing areas that sustain remnant species, including rare, threatened, or endangered species), .0506 (referencing coastal complex natural areas, which can support endangered and threated species); .0312(4)(a) (imposing seasonal restrictions on excavation and fill projects in order to protect threatened and endangered species and wildlife habitat); .1805(e) (prohibiting bulldozing in Ocean Hazard AECs between April 1 and November 15 to protect threatened and endangered species).
[117] DEIS, *supra* note 20, at 3-85 to 3-87 (species under FWS's jurisdiction), 3-13 to 3-14 (species under NMFS' jurisdiction).
[118] SELC, DEIS Comments, *supra* note 5, at 22–27.
[119] *Id.* at 26.
[120] *Id.*

gave only a cursory discussion of general impacts for mammalian species, without any discussion of direct effects to non-mammalian species. The Corps' consistency determination includes the claim that the proposed expansion "would not adversely affect any biota recognized by the State as a species of concern."[121] Despite reaching this conclusion, neither the consistency determination nor the DEIS ever discuss State species of concern. Without sufficient information about affected species, DCM cannot find this Project consistent with the CMP's aim to conserve coastal wildlife and habitat.

The DEIS was also opaque about the timing of dredging operations and the anticipated increased volume of maintenance dredging a larger harbor would necessitate. As detailed in our DEIS comments,[122] this information is critical to understanding the full scope of impacts from the Project. As DCM is aware, dredging during summer months can be particularly harmful to nesting sea turtles and other coastal wildlife that may be maimed and killed by hopper dredges.[123] In the past, DCM, the Division of Marine Fisheries, and the Wildlife Resources Commission have all raised concerns about the possible harmful effects of hopper dredging during such a timeframe, and as a result, the agencies have typically adhered to a hopper dredging window of December 1 through April 15 each year.[124] Indeed, a federal court ruled the Corps failed to adequately review and justify its attempt to abandon that traditional dredging window for maintenance dredging in Wilmington Harbor, and as a result, the agency must abide by that window until it completes a more thorough review of the environmental impacts of removing that window.[125]

Here, the Corps has not offered any such commitment. While its list of minimization measures includes a dredging timeframe item, the only seasonal restriction mentioned is for *pipeline* dredging from Reaves point to Wilmington.[126] As DCM is aware, pipeline dredging does not pose the same type or magnitude of impacts associated with hopper dredging. Because the Corps plans to utilize hopper dredging during construction and maintenance of the proposed expansion,[127] the agency must commit to abiding by the traditional hopper dredging window for

[121] Consistency Determination Letter, *supra* note 1, at 18.
[122] SELC, DEIS Comments, *supra* note 5, at 24–25.
[123] *Id.* at 24.
[124] *E.g.* N.C. DCM, Consistency Concurrence Concerning the U.S. Army Corps of Engineers (Corps) Proposed Wilmington and Morehead City Harbor Year-Round Dredging and Bed Leveling, New Hanover and Carteret Counties, North Carolina (DCM #2020045) (Dec. 23, 2020), Exhibit 10; Letter from Daniel Govoni, N.C. DEQ, to Jennifer Owens, U.S. Army Corps of Eng'rs (Feb. 12, 2020), Exhibit 11; Letter from Michael Regan, N.C. Secretary of Environmental Quality & James Trogdon, N.C. Secretary of Transportation, to General Holland, U.S. Army Corps of Eng'rs (Nov. 15, 2019), Exhibit 12; Letter from Daniel Govoni, N.C. DEQ, to Jennifer Owens, U.S. Army Corps of Eng'rs (Mar. 2, 2018), Exhibit 13; *see also* Letter from Daniel Govoni, N.C. DEQ, to Elden Gatwood, U.S. Army Corps Eng'rs (Dec. 31, 2020), Exhibit 14. We note that On November 10, 2025, we sent an email and updated set of comments to correct an inadvertent typographical error listing the dredging window dates as Nov. 1 to Apr. 30 in our original comments. Due to technological problems, the updated comments unfortunately continued to list the incorrect dates. We apologize for the inconsistency and acknowledge that the current hopper dredging window is December 1 through April 15.
[125] *Cape Fear River Watch v. United States Army Corps of Eng'rs*, No. 7:21-CV-138-FL, 2022 WL 4468268 (E.D.N.C. Sept. 26, 2022).
[126] Consistency Determination Letter, *supra* note 1, at 13.
[127] DEIS, *supra* note 20, at 2-10; 2-12 to 2-13.

construction and maintenance of the Project for DCM to find the Project consistent with the State's CMP.

Finally, the Corps' modeling errors mean that the DEIS's projected impacts are at best uncertain, and at worst, much more severe than depicted. For example, it is well understood that larger ships would lead to larger vessel wakes which can cause overwash and destroy shorebird nests, including state and federal species of concern.[128] Such impacts are already happening under current conditions, but the DEIS and accompanying appendices relied on the wrong size of design vessel—using on a smaller vessel than the 15,000 TEU ships the expansion is designed to accommodate—to predict future tidal impacts.[129] Similarly, errors and assumptions made in the Corps' review of issues such as saltwater intrusion or sea level rise likewise have a domino effect on its consideration of impacts to species, since the species impacts are premised on (and consequently, tainted by) these other reviews.

Because the Project would harm fish and other wildlife resources, including threatened and endangered species, it is inconsistent with the State's CMP. DCM should object to the Corps' Consistency Determination on this, and other grounds, or at the very least, require the Corps to commit to hopper dredging only during the scientifically backed dredging window.

e. <u>The costs of the Project likely outweigh the benefits.</u>

To the extent DCM balances economic considerations when evaluating whether a project is consistent with the State's CMP, the lack of economic benefits associated with the Wilmington Harbor expansion provides further evidence that this Project does not align with the State's goals. The Corps projects that expanding the harbor will cost more than $1.3 ***billion*** in construction costs alone.[130] Annual maintenance will tack on an additional $14.4 million per year.[131] Because the Corps acknowledges that the same amount of cargo will move through Wilmington Harbor with or without the expansion,[132] the only identified benefit associated with these significant costs is a reduction in the number of voyages large cargo vessels will have to take each year resulting in "significant cost savings to the shippers."[133] There's no evidence those cost savings will be shifted to the communities of the Wilmington area, North Carolinians more broadly, or even the national economy. In short, the Corps recommends expanding the Harbor and damaging extensive coastal resources so that international shipping companies can save money by putting more cargo on less ships.

The Corps' current benefit-cost-ratio admits that the possible benefits are narrow—the ratio is a mere 1.3, meaning that for every one dollar spent, the Corps expects 1.3 dollars in benefits.[134] With a ratio this low, practically any increase in the Project's costs or reduction in expected benefits could shift the ratio below one, meaning the projects costs will outweigh any

[128] Lynker Report, *supra* note 45, at 1–3.
[129] *See* SELC, DEIS Comments, *supra* note 5, at 18–19.
[130] U.S. Army Corps of Eng'rs, Wilmington Harbor 403 Letter Report: Attachment 4 – Cost Appendix at 12 (Sept. 5, 2025).
[131] Economic Considerations, *supra* note 21, at 58.
[132] *Id.* at 32 ("In the [future] without and in the future with project conditions, the same volume of cargo is assumed to move through Wilmington Harbor . . . ").
[133] *Id.* at 49.
[134] *Id.* at 57, 58.

benefits. As detailed in the attached DEIS comments, the Corps' economic analysis relies on multiple unsupported assumptions regarding shipping trends, the availability of beneficial reuse, and minimal mitigation measures.[135] If those assumptions prove wrong, the Project's cost could skyrocket. Given this, at least one expert in port economics has confirmed that the Project will actually cost more than it is worth.[136]

As DCM approaches its decision, it is critical that the agency understand that expanding Wilmington Harbor will cost North Carolina millions of dollars (not including the cost of damaged ecosystem services) with very little, if any, benefit to the State. These costs when paired with the associated environmental damage are not justifiable by the information provided by the Corps in the consistency determination or the DEIS. For this reason, too, the Project is inconsistent with North Carolina's CMP.

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The above impacts are substantial on their own, but when considered together create cumulative impacts that could have far-reaching implications on North Carolina's coastal resources. The Corps fails to discuss the cumulative impacts expected from the proposed expansion,[137] signaling yet another way the agency's proposal is inconsistent with the CMP.[138]

IV. Minimization Measures Proposed by the Corps are Insufficient to Mitigate Impacts on Coastal Resources.

CAMA regulations include clear provisions about minimizing and mitigating impacts to coastal resources:

> It is the policy of the State of North Carolina to *require* that adverse impacts to coastal lands and waters be mitigated or minimized through proper planning, site selection, compliance with standards for development, and creation or restoration of coastal resources. Coastal ecosystems *shall* be protected and maintained as complete and functional systems by mitigating the adverse impacts of development as much as feasible by enhancing, creating, or restoring areas with the goal of improving or maintaining ecosystem function and areal proportion.[139]

The regulation further requires that "any potential losses" be offset through mitigation and specifies that a proposal can resort to mitigation measures "only after all other reasonable means of avoidance and minimizing such losses have been exhausted."[140]

As discussed throughout these comments and our comments on the DEIS, the Corps' proposal fails to avoid and minimize many impacts. The Corps' Consistency Determination lists

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[135] SELC, DEIS Comments, *supra* note 5, at 6–11.
[136] Letter from William P. H. Cary, Brooks Pierce, to U.S. Army Corps of Eng'rs (Nov. 17, 2025), at 8, Exhibit 15 (attaching an economic analysis prepared by Dr. Asaf Ashar, an expert with experience evaluating port projects).
[137] *See generally* Consistency Determination Letter, *supra* note 1.
[138] N.C. Gen. Stat. § 113A-120(a)(10).
[139] 15A N.C. Admin. Code 07M.0701(a) (emphasis added).
[140] *Id.* at 07M.0701(b).

a scant six minimization measures,[141] most of which defer to generally applicable or programmatic requirements from other agencies rather than any project-specific avoidance or minimization actions. For example, the first minimization measure is to adhere to the existing requirements in the 2020 SARBO.[142] This is not a good faith attempt to minimize *this* Project's impacts, as the 2020 SARBO is a regional document that contains broad programmatic requirements, many of which largely loosened protections for natural resources when compared to earlier biological opinions. The 2020 SARBO's requirements also only apply to maintenance activities, and the document does not set forth parameters for new project construction like the proposed expansion.[143] Making matters more concerning, the 2020 SARBO acknowledges that Wilmington Harbor is unique and that certain mitigation measures may not be effective in the project area.[144]

In addition to the inadequate minimization and avoidance efforts, the Corps' proposed mitigation measures fail to sufficiently offset the losses of coastal resources, particularly to wetlands and species.[145] For instance, the DEIS predicts that the Project will cause the loss of 1,071 acres of tidal freshwater wetlands.[146] While the DEIS asserts these will be replaced by an equal number of higher salinity wetland types, the DEIS does not explain how or where these conversions would occur, and the DEIS minimizes and overlooks the impacts of the loss of the tidal freshwater wetlands.[147] Wetland types are not interchangeable in terms of ecosystem services, particularly if the wetlands are also changing location. But against this loss of more than 1,000 acres of tidal freshwater wetlands, the Corps proposes mitigation amounting to roughly a combined total of 673 acres.[148] And the proposed mitigation is of questionable efficacy.[149] These measures are insufficient—in quantity and quality—to fulfill CAMA's mitigation requirements.

Further, the proposed aquatic resources mitigation measures, at Locks and Dams 1 & 2, suffer from a lack of specificity, leaving questions as to the efficacy of the proposal. For example, as highlighted in our DEIS comments, it is not clear the proposed measures at Lock and

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[141] The Corps correctly does not characterize its plans to dispose of sediment on bird islands and beaches as a minimization measure itself. We underscore that these "beneficial use plans" should not be considered minimization or mitigation because the placement is a necessary byproduct of the harmful act of dredging. Further, the placement itself is not necessarily beneficial or minimizing harm. For example, the planned bird island sand placement simply continues the standard, already-occurring practice of placing sediment on Ferry Slip and South Pelican Islands up to their existing permitted size and provides no benefit to any of the other eight bird islands in the project area. Meanwhile, the nature of the majority of fine material placement is unproven and vaguely described, is unlikely to address identified habitat needs, and at some sites would endanger existing shellfish resources.

[142] Consistency Determination Letter, *supra* note 1, at 13.

[143] U.S. Army Corps of Eng'rs, *South Atlantic Regional Biological Opinion for Dredging and Material Placement Activities in the Southeast United States* 16 (2020), https://perma.cc/X2BL-VXSV.

[144] *Id.* at 330 (explaining how hopper dredging mitigation techniques are ineffective at Wilmington reducing the ability to observe and prevent take of endangered species).

[145] *See generally* SELC, DEIS Comments, *supra* note 5, at 30–33 (detailing inadequate mitigation measures).

[146] DEIS, *supra* note 20, at 3-56.

[147] SELC, DEIS Comments, *supra* note 5, at 17, 30.

[148] *Id.* at 31.

[149] *Id.* at 31–32.

Dam 1 would even be used by the target fish species,[150] falling short of the requirement to "enhance coastal resources and offset any potential losses" to these aquatic resources.[151]

The limited and inadequate avoidance, minimization, and mitigation measures render the expansion proposal inconsistent with the State's CMP.

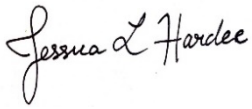
V. Conclusion

For the reasons discussed above, the Corps' Wilmington Harbor 403 Navigation Project is inconsistent with the specific enforceable policies of the State's CMP. The deepening and widening of Wilmington Harbor would adversely impact the coastal resources that DCM is obligated to preserve and enhance. We strongly urge DCM to object to the consistency determination.

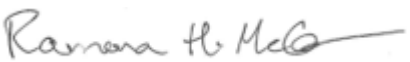
Should DCM nonetheless find the harmful Harbor expansion project consistent, the agency must ensure that the Corps incorporates robust mitigation measures that address all the above discussed impacts. These mitigation measures should include, but cannot be limited to: flood mitigation in downtown Wilmington and surrounding areas, large-scale living shoreline investments to combat storm surge, the enhancement or preservation of fishery habitat in other parts of the river system, conservation of significant acreage of coastal wetlands, and researching and funding projects identified by state resources agencies that would protect threatened and endangered species. Thank you for your consideration of these comments. If you have any questions regarding this letter, please contact us at 919-967-1450 or *hnelson@selc.org*.

Sincerely,

Hannah Nelson



Jessica Hardee



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Zach Wallace | Policy Director

[150] *Id.* at 32–33.
[151] 15A N.C. Admin. Code 07M.0701(b).

Cape Fear River Watch
Kemp Burdette | Executive Director & Cape Fear Riverkeeper

Center for Biological Diversity
Will Harlan | Southeast Director

CleanAIRE NC
Jeff Robbins | Executive Director

Defenders of Wildlife
Ben Prater | Southeast Program Director

NAACP North Carolina State Conference
Deborah Dicks Maxwell | President

North Carolina Coastal Federation
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North Carolina Conservation Network
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[Exhibits]