

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

ST. JOHNS RIVERKEEPER, INC.
Plaintiff,

Case No.: 3:17-cv-398-MMH-MCR

v.

**UNITED STATES ARMY CORPS OF
ENGINEERS,**
Defendant,

V.

JACKSONVILLE PORT AUTHORITY,
Intervenor.

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, ST. JOHNS RIVERKEEPER, INC., files this Complaint against Defendant, the UNITED STATES ARMY CORPS OF ENGINEERS ("Corps") and Intervenor, Jacksonville Port Authority, Inc. ("JaxPort").

PRELIMINARY STATEMENT

1. St. Johns Riverkeeper seeks review under the National Environmental Policy Act, 42 U.S.C. §§ 4321-4347 ("NEPA"), of the United States Army Corps of Engineers' ("Corps") Record of Decision ("ROD"), issued on April 8, 2015, approving the Final Integrated General Reevaluation Report II and Supplemental Environmental Impact Statement for the Jacksonville Harbor ("JaxPort") Channel Deepening Study (Collectively "FSEIS") and the recent decision of JaxPort and the Corps to expend federal funds in mid-December 2017 on an 11 mile project which has not been studied

or approved by the Corps, and to require a flooding evaluation in light of new information available as a result of Hurricane Irma.

2. JaxPort confirmed for the Court at the August 1, 2017 Status Conference that it had decided to pursue an 11 mile dredge plan instead of the 13 mile plan that was evaluated by the Corps.

3. The purpose of the 13 mile FSEIS study was to determine the environmental consequences and economic viability of dredging 13 miles of the St. Johns River to accommodate larger "Post Panamax generation-2" ("PPX2") container ships traversing the recently expanded Panama Canal. The Corps determined that the 13 mile dredge was economically viable because it had a positive benefit-cost ratio ("BCR") of 2.7.

4. The reduction to 11 miles would normally mean there will be lower dredging costs and therefore a higher BCR. In this case, however, the BCR will be drastically reduced because the substantial majority of the dredging benefits (70-90%) only arise when the PPX2 ships can reach the Mitsui OSK Lines terminal located beyond the 11 miles dredge, but within the 13 mile dredge. There has been no study to determine the economic or environmental viability of an 11 mile dredge. Neither has a BCR been calculated for the 11 mile dredge even though the magnitude of the benefits forfeited by stopping at 11 miles likely dwarfs any savings from the reduced dredging template.

5. Nevertheless, the Corps and JaxPort, in violation of NEPA, have decided to commit federal funds and expend them on an 11 mile dredging project for which no EIS has been prepared.

6. Separately, the Jacksonville area recently suffered devastating historic flooding from hurricane Irma. The historic nature of this flooding is new information which must be taken into account before any dredging can be permitted. This is particularly true because the Corps, using less consequential storms, has already determined that dredging could increase water levels from storm surges and tides in some areas by as much as 1 foot.

THE PARTIES

7. St. Johns Riverkeeper is a Florida non-profit membership-based corporation with its primary place of business in Jacksonville, Florida. St. Johns Riverkeeper is dedicated to the protection, preservation, and restoration of the ecological integrity of the St. Johns River watershed for current users and future generations. St. Johns Riverkeeper monitors the environmental quality of the St. Johns River and its tributaries and organizes regular boat trips for its members and citizens to educate them about the River and its management.

8. St. Johns Riverkeeper has over 1000 members who use and enjoy the waters of the St. Johns River including its tributaries and estuarine marshes for recreational, scientific, aesthetic, and commercial purposes including boating, fishing, scientific monitoring, and observing birds and other wildlife. Many Riverkeeper members live on the banks of or very near to the river and are directly affected by flooding and exacerbation of pollution caused by flooding.

9. The above-described aesthetic, conservation, recreational, commercial, scientific, and procedural interests of St. Johns Riverkeeper and its respective members have been, are being, and, unless the relief prayed for herein is granted, will continue to

be adversely affected and irreparably injured by the failure of the Defendant to comply with its obligations under environmental and procedural statutes designed to minimize needless damage to the environment.

10. Defendant United States Army Corps of Engineers is an agency of the United States Army and the Department of the Defense that constructs and operates federal engineering projects throughout the United States, primarily in rivers, coasts and wetlands. The Corps has primary management authority over the operation and maintenance of the federal navigation project in the St. Johns River at issue in this case. The Corps is an agency under the Administrative Procedure Act (5 U.S.C. § 701(b)(1)) and the National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.).

11. JaxPort is an independent governmental entity formed to manage the port of Jacksonville. It was deemed the Local Sponsor of the dredging plan.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action under 5 U.S.C. §§ 701-706 (Administrative Procedure Act), 28 U.S.C. § 1331 (federal question), § 2201 (declaratory judgment), and § 2202 (injunctive relief).

13. Venue is properly vested in this Court under 28 U.S.C. § 1391(e) because the Defendant's District Office which conducted the study is in this District and a substantial part of the events or omissions giving rise to the claims in this case occurred in this District. Additionally, the environmental and economic effects of this project will occur in the Middle District. Furthermore, members of the St. Johns Riverkeeper organization reside in this district and these members and St. Johns Riverkeeper do business here.

14. St. Johns Riverkeeper has no adequate remedy at law.

NEPA FRAMEWORK

15. The Administrative Procedure Act authorizes this Court to review final agency action under NEPA.

16. NEPA requires federal agencies to prepare an environmental impact statement ("EIS") for any major federal action significantly affecting the human environment. 42 U.S.C. § 4332(C). It is done to ensure that its environmental protection policies are integrated into environmental decision-making, and provide a means by which decision-makers, Congress, and the public, can evaluate a proposed federal action's environmental impacts and reasonable alternatives to avoid or minimize adverse impacts. 40 C.F.R. §§ 1501.1(a) & 1502.1.

17. In addition, NEPA evaluations of federal navigation projects must contain an economic analysis of the project to determine the viability of the project which is expressed as a comparison of benefits to costs known as the Benefit-Cost Ratio ("BCR").

18. With regard to a navigation project such as the proposed JaxPort dredging, an EIS must:

- a. Specify the purpose and need for the project;
- b. Contain a "hard look" at the environmental impacts, including cumulative environmental impacts;
- c. Provide mitigation for any unavoidable environmental impacts;
- d. Contain a cost-benefit analysis of the project;

- e. Contain an analysis of any induced flooding from the project, mitigation for flooding and otherwise include flooding costs in its benefit-cost analysis;
- f. Be supplemented when significant new circumstances occur or new information becomes available; and,
- g. Demonstrate that public notice and participation requirements were met.

19. Where an Agency fails to prepare an EIS for a major federal action or when an Agency's EIS fails to meet the above standards, the APA mandates that the Court hold the action unlawful or set aside the EIS, findings, and conclusions if they are arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

SUMMARY OF CLAIM

20. The Corps has violated NEPA for the JaxPort dredging because it:
- I. Has not prepared an EIS containing an economic viability study with regard to the 11 mile project that JaxPort, as the local sponsor has chosen to pursue;
 - II. failed to supplement the FSEIS when relevant and significant new circumstances relating to flooding impacts in light of the historic flooding from Hurricane Irma, including the economic and social costs associated therewith;
 - III. failed to provide an adequate mitigation plan;
 - IV. failed to adequately analyze the need for the proposed project;

- V. failed to provide an adequate comprehensive economic analysis to determine the viability of such a vast expenditure of public funds;
- VI. failed to comply with public participation requirements; and
- VII. failed to supplement the FSEIS when relevant and significant new circumstances arose such as post New Panama Canal opening data, and the impacts of obtaining a variance from turbidity criteria instead of complying with the criteria.

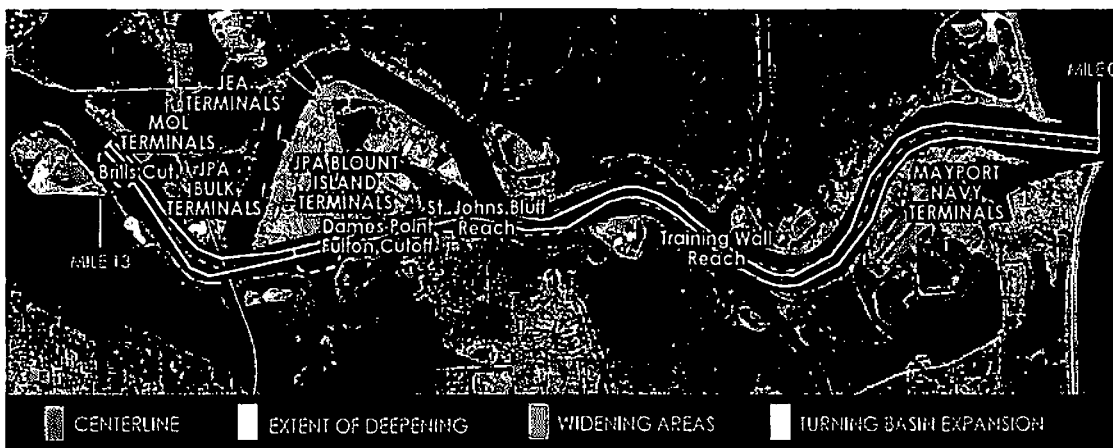
THE JAXPORT DREDGING PLAN

21. The impetus for the dredging plan is to accommodate the larger PPX2 ships expected as a result of the expansion of the Panama Canal. Container ship size is generally discussed in terms of the number of Twenty-Foot Equivalent Units containers (TEUs)¹ they can carry. At the time the FSEIS was published, the canal could accommodate a "Panamax" vessel which had a maximum vessel draft of 39.5 feet, a maximum vessel beam of 106 feet, a maximum vessel length of 965 feet and a capacity to hold up to 5,000 TEUs. The expanded Panama Canal is designed to accommodate "Post-Panamax" vessels with a maximum draft of 50 feet, a maximum beam of 160 feet, a maximum length of 1,200 feet, and a capacity to hold at least 12,000 TEUs. The Corps states that Jacksonville Harbor, as currently configured, cannot handle ships of this size. The Recommended Plan would purportedly allow Jacksonville Harbor to accommodate Post-Panamax Generation II ships – specifically those with the dimensions of the *Susan Maersk* – an S-class Maersk vessel with a

¹ The dimensions of one TEU are equal to that of a standard 20' intermodal shipping container which is 20 feet long and 8 feet tall.

maximum draft of 48 feet, a beam of 141 feet, and a length of 1,139 feet that can carry 8,000-9,000 TEUs.

22. The FSEIS approves a Recommended Plan to deepen the first 13 miles of the St. Johns River navigation channel from 40 feet MLLW² to 47 feet MLLW, to construct two turning basins – one 2,700 feet long by 1,500 feet wide and one 2,500 feet long by 1,500 feet wide, and to widen approximately six miles of the existing navigation channel by up to as much as 300 feet on each side. At the time the FSEIS was approved, the new Panama Canal locks were not open. A diagram of the Recommended Plan from the FSEIS is shown below:



23. The initial Environmental Impact Statement was prepared for the Jacksonville Harbor Channel Deepening Project in 1998. The Project was then authorized via the Water Resources Development Act in 1999, resulting in the deepening of the St. Johns River channel from 38 feet to 40 feet from the mouth of the river to River Mile 14.7.

² “Mean Low Low Water”

24. A General Reevaluation Report (“GRR”) was completed by the Corps in 2002, recommending that the deepening to 40 feet continue to River Mile 20. At that time, sufficient benefits did not exist to authorize deepening beyond 40 feet.

25. The 13 mile dredging project will require removal of 18 million cubic yards of material, much of it rock blasted from the river bottom. The number of blasting days needed to complete blasting operations is unknown. Construction is estimated to take 6 years.

RECENT EVENTS

The Decision to Expend Federal Funds in December without an EIS

26. The St. Johns Riverkeeper has learned that partial funding to dredge the first 2 – 3 miles of the river has been secured from the federal government.

27. Additionally, the Corps and JaxPort have decided to commit to the expenditure of those funds by beginning dredging in mid-December.

The Unstudied 11 Mile Plan

28. After this suit was filed alleging an air draft³ obstacle for PPX2 ships attempting to pass under the Dames Point Bridge, JaxPort determined it would shorten the dredge to 11 miles, stopping east of the Dames Point Bridge.

29. JaxPort announced this intention to only dredge 11 miles publicly. At the Status Conference in this case, JaxPort confirmed to the Court that it only intends to dredge 11 miles.

30. The entire purpose of the deepening of the St. Johns River is to accommodate the larger ships expected to traverse the new Panama Canal. In its

³ “Air draft” is the distance from the surface of the water to the highest point on a vessel.

FSEIS, the Corps determined that the substantial majority of benefits from the dredging would accrue as a result of the container ships which will call on the MOL/TRAPAC terminal west of the Dames Point Bridge and beyond the now-planned 11 mile project.

31. As part of the NEPA analysis for a navigation project, the Corps is required to calculate the benefit-cost ratio of a project. There has been no calculation of the benefit cost ratio of an 11 mile project. Because almost all of the benefits will be eliminated by an 11 mile dredge, the failure to prepare an EIS for the 11 mile project is a significant violation of the law.

32. Moreover, assuming that JaxPort and MOL/TraPac decide at some point to move MOL's facilities to Blount Island east of the Dames Point Bridge, that does not moot the need for a new BCR analysis. MOL/TraPac's terminal was built in 2009 at a cost of \$300 million. The BCR calculation must take into account the cost to move MOL/TraPac to Blount Island and the cost to move other shippers from Blount Island to accommodate MOL/TraPac.

33. Notwithstanding that there has been no EIS prepared for the 11 mile dredge and its viability is completely unknown, the Corps and JaxPort have nevertheless decided to expend federal monies in violation of the law and to begin dredging in mid-December.

34. Until the EIS is complete, NEPA prohibits expenditure of funds on the project.

Hurricane Irma Flooding and Expected Increased Dredging - Caused Flooding.

35. On September 10, 2017, Hurricane Irma, which by then had become a tropical storm, passed close to Jacksonville. It caused devastating flooding in many

areas around Jacksonville, including downtown Jacksonville, San Marco, Riverside and other areas on St. Johns River tributaries. The costs of the flooding in Jacksonville is currently unknown but is anticipated to be in the hundreds of millions of dollars. The social cost is staggering.

36. The Corps is required to determine whether the proposed project will cause any flooding. When flooding damages will occur, mitigation must be investigated and recommended if appropriate. Mitigation is appropriate when economically justified or where there are overriding reasons of safety, economic or social concerns. Any costs of mitigation and any damage from dredge-caused flooding that is not mitigated must be accounted for in the economic analysis and the impacts should be displayed and discussed in the report.

37. In its analysis of the 13 mile, 47 foot dredge, the Corps determined that the proposed dredging would cause water levels to increase from storm surge up to 7/10 of a foot and from tides up to 3/10 of a foot. This aggregates to 1 full foot of increased water height to be caused by the dredging.

38. In making this calculation, the Corps necessarily used data from pre-Irma "worst case" storms. This data requires revision in light of the new "worst case" flooding of Irma.

39. The flood plain of the St. Johns River in Jacksonville is relatively flat and extensively built up. It is crucial to evaluate the extent to which additional homes and businesses will be flooded as a result of the dredging - induced increases in storm surge and tides.

40. It is all the more important to take Irma data into account because Irma's flooding also reveals the model used by the Corps contains serious flaws.

41. The model fails to account for natural features. It shows water heights at artificial model boundaries that in reality are impossible and not supported by water levels from Irma or the tested storms because in the real world the water is over the banks – flooding homes and businesses.

42. The model also failed to account for inflow in addition to storm surge. Yet, there is rarely – if ever--a storm in which there is no inflow from rainfall. Indeed, flooding from slow moving storms can be catastrophic – the flooding in Houston caused by Hurricane Harvey being a recent example.

43. Furthermore, the flooding resulting from the dredging is not environmentally neutral. Floodwaters inevitably carry back with them numerous pollutants, including sewage, pesticides, heavy metals, and petroleum byproducts.

44. Because the Corps asserted there would not be induced flooding despite the predicted water level increases in storm surge and tides, it has also failed to analyze the associated pollution impacts from the induced flooding that will occur as a result of the dredging.

45. The failure to consider the environmental consequences associated with induced flooding, such as increased sewage runoff, pesticides, heavy metals and other pollutants violates NEPA.

46. The Corps is required to either mitigate for induced flooding, and include that cost in its BCR calculation or include the cost of the flooding in its calculations. The Corps' FSEIS did not analyze these costs.

THE ENVIRONMENTAL ANALYSIS OF THE 13 MILE PLAN

47. The St. Johns is a long, meandering, slow moving, blackwater river of widely varying widths which flows 310 miles from south to north.

48. The dredging and its direct and indirect effects will occur within the Lower St. Johns River ("LSJR"). For the first 8 miles of the 13 mile Recommended Plan, the dredging will occur in the Timucuan Ecological and Historical Preserve – a marsh estuarine system -- which is part of the National Park System. The preserve encompasses 46,000 acres, 75% of which consists of wetlands and open water. These marshes, tidal streams, and adjacent hardwood hammocks support a diverse community of plants and animals.

49. The estuary protected by the Preserve is one of the most productive in Florida and provides habitat for several federally listed rare, threatened, or endangered species including manatees, loggerhead sea turtles, green turtles, leatherback sea turtles, Atlantic sturgeon, and the North Atlantic Right Whale, one of the most endangered whales in the world. The navigation channel is critical habitat for the endangered manatee, and the area immediately off the river's mouth which includes the dredging spoil site, is critical habitat for the North Atlantic Right Whale, several of which have been observed within the river itself.

50. In this estuarine portion, salt water brought in with the tide freely mixes with freshwater flowing down the river and its tributaries.

51. The primary factor affecting the ecology of the LSJR is salinity. Salinity determines the downstream extent of submerged aquatic vegetation and the types of wetland vegetation that form the marsh communities along the River and its tributaries.

52. The LSJR includes the largest and most diverse system of salt marshes on Florida's east coast, as well as very significant fresh water wetlands. These marshes and forested wetlands are important to a wide range of species and exist in a delicate, dynamic equilibrium with the river itself. Forested wetlands are particularly vulnerable as they are impacted by very small changes in salinity and those impacts may take years to see.

Failure to Address the Salinity Impacts of Past Dredging

53. The Corps acknowledges that: a) the salinity gradient has a profound impact on species composition as the aquatic ecosystem shifts from estuarine to freshwater; b) that salinity increases with deeper and longer dredged channels; and c) that the deepened channel will result in higher saline water moving farther upstream.

54. Using modeling, the Corps determined that the impact on the river, tributaries, and marsh environment was negligible. In reaching this conclusion the Corps ignored any impacts to the salinity regime caused by a century of past projects because it decided analyses were not available to assess how past deepening may have affected salinity levels within the study area.

55. One of the main purposes of the NEPA analysis is to protect and restore the natural environment. NEPA requires the Corps to analyze the past impacts of dredging on salinity. Records exist of salinity changes, of rainfall and drought, of sea level rise, and of the dates and depths of past dredging. The Corps is not free to ignore it just because the analysis of the impacts has not yet been done.

56. The Corps' computer modeling of salinity is a theoretical construct. As always, its outputs are dependent on inputs. This is demonstrated by the conflicting

conclusions by government modelers of the impact of dredging on the St. Johns River salinity regime. The St. Johns River Water Management District performed modeling to determine the salinity increase associated with a proposed drinking water withdrawal from the river by Central Florida. For comparison purposes, those government modelers also calculated the river's salinity increases due to the expected JaxPort dredging and concluded that dredging would result in a much greater salinity increase than would the water withdrawal. Now, however, the Corps' government modelers, using the same model, have reached exactly the opposite conclusion.

57. A further failure in the Corps salinity modeling was the decision to use two incompatible programs, one to model river salinity and another to model tributary salinity. The use of the two separate programs renders the modeling unreliable.

58. Additionally, the Corps' initial analysis suggested substantially greater harm to the River. Mitigation costs of \$80 million were assigned. Then, the Corps substantially reduced its prediction of harm, such that mitigation costs fell to \$33 million, of which, only \$2.9 million is actually allocated to mitigation--in the form of conservation lands purchases. The balance, more than \$30 million, is for subsequent "monitoring."

59. The only way to address these contradictions is to use real world inputs gleaned from the actual impacts of dredging on the salinity regime. By failing to quantify the impacts of past dredging the Corps has not calibrated its model with crucial data.

60. The failure to use available data on salinity impacts from past dredging also runs afoul of NEPA's requirement to address the cumulative impacts of past activities. Salinity in the St. Johns is well-known to have increased substantially. Dredging has long been posited by experts to be chief among the reasons. It is not

enough under NEPA for the Corps to ignore the issue by saying its hands are tied because no one has analyzed the available facts.

Failure to Analyze Turbidity Impacts of Six Years of Blasting and Dredging

61. Turbidity and dredging-caused erosion was a major concern for virtually all the commenters, including St Johns Riverkeeper, the National Park Service, and the Environmental Protection Agency.

62. Although the Corps acknowledged that the Timucuan Preserve and its associated wetlands and estuarine system would be subjected to harmful turbidity because of the dredging, its response to the concerns expressed by commenters was a promise that it would meet state turbidity water quality criteria during the entirety of the dredging operations.

63. However, when it obtained its state water quality permit for the dredging, the Corps reneged on its promise and instead obtained a variance from turbidity criteria. This variance extends the full length of the 13 miles dredged, including estuaries, and will last the entire dredging period.

64. Because no analysis of turbidity impacts ever occurred, the Corps failed to take the "hard look" at this acknowledged adverse impact that will be caused by the dredging project.

Failure to Adopt an Actual Mitigation Plan or Provide Mitigation to Address the Salinity Increase and Turbidity.

65. The Corps acknowledged that there was a medium risk of its salinity analysis being wrong. Instead of doing the proper analysis to determine actual mitigation needed, the Corps has proposed to investigate after-the-fact to determine what mitigation will be needed. It calls this an "adaptive management" mitigation plan.

But what it means is that it will analyze data post-hoc, and then re-calibrate its model to determine whether its initial analysis was right. This is not permissible. If the Corps is wrong, then the St. John's salinity regime will have been irrevocably altered. At risk is our fresh water—our fisheries, our marine mammals, and thousands of acres of irreplaceable hardwood forests in riverine marshes that could be significantly stressed or killed by even very small salinity increases.

66. The irrevocable aspect is brought home by the fact that the Corps has not identified any mitigation intended to stop even the predicted increase in salinity -- let alone make progress towards restoration. The proposed mitigation--purchase of preservation of conservation lands—has no effect on salinity. It does nothing to slow, let alone stop, the dredging induced saltwater march further into our state's crucial freshwaters or offset the adverse effects of saltwater intrusion.

67. Individually and collectively, the failure to address these issues with a true mitigation plan puts at risk our fresh water, our fisheries, marine mammals and our riverine marshes. Additionally, because the Corps failed to analyze turbidity, it also failed to provide mitigation for the harm the turbidity will cause.

THE COST OF THE DREDGING AND LACK OF ECONOMIC VIABILITY

68. The Corps determined that the total economic cost of the dredging to 47 feet will be \$790,815,226 at 3.5% interest and \$871,384,226 at 7%. The economic analysis it performed shows that the project at the outset suffers from a poor benefit-cost ratio. The Corps analyzed the economics of dredging 20 miles, 14 miles and 13 miles. The 20 mile and 14 mile dredge lengths were eliminated because no benefitting vessels were expected to travel past the MOL Dames Point terminal. The Corps also

analyzed the economics of dredging depths in 1 foot increments between 41 and 50 feet. Depths of 41 – 43 and 48 – 50 feet were eliminated as non-feasible. The Corps then analyzed dredging at depths of 44, 45, 46, and 47 feet. In that range, the Corps determined that a 45 foot depth would have the highest benefit to cost ratio (“BCR”) at 3.30, followed by 44 feet with a 2.90 BCR, 46 feet with a 2.80 BCR and finally, 47 feet with a 2.70 BCR.

69. Normally, the Corps’ Recommended Plan would be the one with the highest BCR (3.30). Here, however, the lowest BCR Plan was selected in deference to JaxPort’s desires (2.70 BCR). Termed the “Locally Preferred Plan” it features a 47-foot deep channel up to JaxPort’s MOL -- TraPac container terminal west of the Dames Point Bridge. The Corps described this as “The Decision to Deliver 47 Feet.”

70. The decision to pursue a 47-foot depth over a 45-foot depth comes with numerous consequences. First, the cost of the additional 2 feet of dredging does not qualify for any federal cost share. Instead, 100% of the additional cost is the responsibility of JaxPort—a Florida public agency. Furthermore, even without federal dollars for the additional two feet, the low BCR renders the project noncompetitive with other U.S. navigation projects seeking funding from Congress.

The Conflict between the Purpose and Need Studied and the Plan Recommended

71. Anticipation of the larger ships that might transit the expanded Panama Canal set off a flurry of efforts by U.S. East Coast ports to seek Federal funding to dredge in order to accommodate post-Panamax vessels. Congress directed the Corps to assist with the challenge of allocating funding for port modernization in the age of post-Panamax vessels. The Corps provided its report and conclusions to Congress on

June 20, 2012, titled: U.S. Port and Inland Waterways Modernization: Preparing for Post-Panamax Vessels. ("Modernization Study").

72. Among the significant findings in the study is that the need for "post-Panamax" ready ports in the southeast United States would be filled by the development then underway at the Savannah, Charleston and Miami ports. If this conclusion is correct, the Nation would not benefit from an unnecessary expenditure of the \$684,200,000 the Corps estimates it will cost to dredge JaxPort to 47 feet.

73. JaxPort's stated purpose in pushing a 47-foot deep channel is to capture additional market share from the east coast ports which have already filled the National need. JaxPort's purpose is expressed in the rosy predictions of a report it commissioned from Martin & Associates which is in the Record. JaxPort heavily marketed the dredging to the public touting the Martin Report.

74. In the JaxPort FSEIS, however, the Corps failed to address either its own prior conclusion of lack of need from the Modernization Study or the Martin Report predictions. The Corps purported to analyze whether the dredging "was warranted and in the Federal interest." To do so, it assumed, in stark contrast to JaxPort's avowed purpose, that whether or not JaxPort was dredged, it would neither capture nor lose any business in relation to other ports.

75. The objective of water resources planning is to contribute to the National Economic Development ("NED") consistent with protecting the nation's environment. The Corps determined the NED for the proposed dredging which is defined as the positive changes in the economic value of the national output of goods and services.

76. However, the Corps recommended the “Locally Preferred Plan” of JaxPort, the purpose and need for which is entirely based on local benefits accruing to JaxPort by taking business from other east coast ports. The Corps never articulated that purpose nor did it analyze the impacts of the Locally Preferred Plan it was implementing on behalf of JaxPort. It therefore violated NEPA's requirement to articulate and support the purpose and need for the project.

The Economic Analysis is Deficient Because the Corps Failed to Conduct a Multi-Port Analysis

77. The Corps' economic analysis was deficient under NEPA because it did not conduct a multi-port analysis to determine if dredging JaxPort contributes to the NED. A multi-port study is required in light of the Modernization Study conclusion that Savannah, Charleston and Miami have already filled the need for deep draft ports in the Southeast U.S. It is also required because of the conflict between its own purpose analysis and the purpose of JaxPort.

78. By limiting its analysis solely to the effect on JaxPort shippers, the Corps failed to address what it stated was, and what should have been, the purpose of the study: determining whether dredging JaxPort “was warranted and in the Federal interest.” A Multi-port study would have determined if there was any national economic benefit to be gained from expenditures to deepen another Southeast U.S. port. If there is no benefit, the expenditure of \$790 to \$831 million would be a waste. In that case, dredging JaxPort would negatively affect the NED by \$790 to \$831 million.

79. Of course, a Multi-port analysis is also necessary to analyze the impact on NED of JaxPort's conflicting plan to gain market share from other ports. Considering

the substantial investments already made by the U.S. and these other ports to deepen their harbors, JaxPort's plan may prove detrimental to the NED on that basis also.

80. The Corps compounded its Multi-Port error by refusing to describe the risks and uncertainties associated with the transition of the Jacksonville with-project fleet to post-Panamax vessels over the period of analysis.

Failure to Undertake a Keel to Mast Height Analysis or Consider Vessels Actually Anticipated

81. The Corps' economic analysis is also deficient because the Corps failed to conduct a keel to mast height (KTMH) analysis to properly determine the benefits and costs associated with dredging to 47 feet west of the Blount Island powerlines and the Dames Point Bridge.

82. This is a critically important factor because post-Panamax vessels not only require dredging for greater water draft, but they also have substantially higher "air drafts" which can restrict their ability to sail where there are height restrictions.

83. For JaxPort, the Corps determined that virtually all the anticipated benefits from post-Panamax ships will be realized at the MOL -- TraPac terminal west of the Dames Point Bridge. Both the bridge and the powerlines represent height restrictive obstacles that can affect the ability of ships to access this facility.

84. The Corps has previously determined that a keel to mast height analysis is necessary to ascertain the economic benefits associated with harbor deepening projects that may be affected by air draft restrictions.

85. The Corps, in declining any JaxPort Keel to Mast Height study, simply stated, without any support, that the largest vessels expected would be in the 8-9,000 TEU level with air drafts less than the 174 foot Dames Point Bridge. This is contrary to

the Corps' own prior study for the Port of New York and New Jersey, which concluded that shippers anticipated deploying ships of 10,000 TEUs through the new Canal and that "these vessels are far taller" than the vessels currently used.⁴ Beyond that, the Corps has determined that Air Draft increases are positively correlated to increases in TEUs. The correlation is simple, the higher the containers can be stacked, the higher the ship's navigation bridge must be to meet line-of-sight safety requirements. Indeed, the Maersk "S" class vessels that the Corps used as its "design vessel" have increased their TEU capacity to add more than 1400 TEUs using structural modifications, including raising their navigation bridges.

86. A full Keel to Mast Height study is necessary to determine the economic costs of these ships either forgoing JaxPort due to depth and air draft restrictions and/or having to undertake expensive loading strategies by adding unwanted or uneconomical cargo or ballast, adjusting schedules for tides, and the myriad of other factors the Corps in the Bayonne Bridge Study found required review. Without the proper analysis, it is unknown whether the public is paying nearly \$700 million dollars to trade transportation delays and inefficiencies resulting from lack of water draft, for a new set of delays and inefficiencies resulting from lack of air draft.

87. An alternative is to raise the Dames Point Bridge and powerlines. As a comparison, the Corps determined that raising the Port of New York and New Jersey's Bayonne Bridge to a height of 215 feet to accommodate post-Panamax ships would exceed 1.5 billion dollars. This scenario would turn the JaxPort BCR upside down.

⁴ The Panama Canal has an air draft restriction of 201 feet due to the Bridge of the Americas which allows much taller vessels to pass through the Canal locks than can pass under the Dames Point Bridge.

88. The Corps' failure to address this crucial factor renders its economic feasibility study fatally flawed.

PUBLIC PARTICIPATION

89. The Corps took nine years to produce the FSEIS. The Feasibility and Cost Sharing Agreement for the study at issue is signed July 1, 2005 (and amended June 15, 2006) and the FSEIS was published in April 2014. The due date for the Final EIS was shortened by 14 months to April 2013 by President Obama's We Can't Wait Executive Order.

90. The initial draft SEIS was released on May 31, 2013; that report predicted significant environmental impacts resulting from the project. The public comment period for the May draft ended on July 15. Numerous appendices were missing from the draft EIS.

91. St. Johns Riverkeeper (among many others) commented on the inadequacy of the process: "The U.S. Army Corps of Engineers is denying the public the opportunity to engage in meaningful public participation due to lack of detail, depth of analysis, and critical information and data that is missing from the DSEIS."

92. A revised draft EIS was issued on September 3, 2013. Revised drafts are required when "a draft statement is so inadequate as to preclude meaningful analysis." 40 CFR 1502.9. Here the revised draft dramatically reduced the extent of the previously documented impacts including the impacts due to changes in salinity. Again, numerous appendices were missing from the published draft EIS which were then provided at various points during the comment period. Several were not provided until September 30, 2013, the day the comment period ended.

93. St. Johns Riverkeeper again commented (along with many others) on the inadequacy of the process: “[It] [d]enies the public of the opportunity to engage in meaningful public participation due to the piecemeal release of critical and often inconsistent information without tracking and clearly dating revisions or following conventional protocol.”

94. The Corps then extended the comment period on the revised draft EIS by 24 days to October 24, 2013, which nevertheless shortened the required period for public comment by nearly half.

OTHER SIGNIFICANT CHANGES IN CIRCUMSTANCES

Post-Panamax Circumstances

95. The expanded Panama Canal is now open. The Port of Miami, the east coast port closest to the Panama Canal, has an operational 50’ foot deep channel – not the 49’ foot deep channel described in the FSEIS’ economic analysis. The Port of Miami has already received the very first Post-Panamax ship to transit the new locks. Charleston is deepening its entrance channel to 54 feet and its inner harbor to 52 feet – not the 48’ and 50’ channels described in the FSEIS’ economic analysis. Furthermore, the cost to dredge a 52-foot channel at Charleston is nearly \$200 million less than the cost to dredge a 47-foot channel at Jacksonville. Savannah, the behemoth of Southeast Ports, has already received federal monies and it too, has begun dredging its harbor to accommodate post-Panamax ships. The Corps has determined that Savannah enjoys a competitive advantage over Jacksonville because it has the lowest overall transportation costs to Atlanta and other large Southeast markets.

96. As the FSEIS analysis points out, economies of scale have led to an increase in the size of vessels that comprise the world's container fleet. However, economies of scale don't stop at the 8,000 to 9,000 TEU container ships the Port of Jacksonville would be able to accommodate in the Recommended Plan's 47-foot deep channel. Instead, ships transiting the new Panama Canal will carry 10,000-12,000 TEUS. These ships require channel depths, breadths, and air drafts that may affect their access to the Port of Jacksonville under the proposed plan at various states of loading. Their size may reduce or reverse the economies of scale predicted. This is an issue that the Corps has utterly failed to analyze.

97. Moreover, in its Port Modernization study, the Corps noted that economic benefits, even to the shippers from port deepening, was so uncertain that it could be wiped out by higher fees extracted by the Panama Canal Authority to transit the larger locks. This issue must be evaluated.

98. The timing is ripe to properly examine the issues the Corps missed. It could properly analyze the costs and benefits by performing a multi-port analysis armed now with actual post-Panamax information on ship sizes, actual usage, and fees.

99. Individually and together, these circumstances raise the question of whether the Recommended Plan has been rendered obsolete before it is funded, much less constructed.

100. That is a question that could now be answered as expanded Panama Canal traffic is no longer conjectural.

The Turbidity Variance

101. The Corps promised that state water quality criteria for turbidity would be met during the entirety of the project. Its environmental analysis relied upon this promise.

102. After the FSEIS was complete, the Corps departed from its FSEIS position and obtained a variance from turbidity criteria for the entirety of the Project.

103. Excess turbidity has been a tremendous problem in other Corps dredging projects in Florida resulting in significant ecological and economic harm.

104. For example, unpredicted erosion has already undermined the new training walls at Mile Point—a lower St. Johns River Corps' dredging project currently underway.

105. These significant changes in circumstance require the development of a supplemental EIS that addresses the adverse turbidity impacts caused by the blasting and dredging.

CLAIMS FOR RELIEF

COUNT I

**VIOLATION OF NEPA 42 U.S.C. § 4332(1)(c), AND APA:
FAILURE TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT FOR THE 11
MILE DREDGE**

106. St. Johns Riverkeeper incorporates paragraphs 1 –34, 47 - 52, 68 – 70 and 81 – 88 by reference.

107. JaxPort has determined that it will dredge an 11 mile stretch of the river and stop east of the Dames Point Bridge, instead of dredging the 13 miles that was studied by the Corps.

108. The Corps is aware that JaxPort, its local sponsor, intends only to dredge 11 miles.

109. The Corps has not prepared an EIS for the 11 mile dredge.

110. Notwithstanding the fact that no environmental impact statement has been prepared for an 11 mile dredge, and no benefit – cost analysis has been performed, the Corps, in conjunction with JaxPort, has determined to expend federal funds on an 11 mile dredge project. This action, if permitted, would violate NEPA.

111. The APA authorizes reviewing courts to set aside federal agency action that is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. § 701-706. By proposing the use of federal funds without preparing an EIS, the Corps has acted in a manner that is not in accordance with law, in violation of NEPA and the APA. 5 U.S.C. § 701.

COUNT II

VIOLATION OF NEPA 42 U.S.C. § 4332 AND APA: FAILURE TO PREPARE A SUPPLEMENTAL EIS FOR FLOODING IMPACTS

112. St. Johns Riverkeeper incorporates by reference paragraphs 1 – 27, 35 – 52 and 68 – 70.

113. NEPA and its implementing regulations impose a continuing duty on agencies to prepare a supplemental environmental impact statement (“SEIS”) whenever “(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. §§ 1502.91(1)(i), (ii).

114. For the reasons described above, the Corps has violated NEPA and the FSEIS and ROD for the Jacksonville Harbor Channel Deepening Project are invalid because the Corps has failed to prepare a supplemental environmental impact statement after the severe flooding caused by Hurricane Irma.

115. Whether dredging – caused flooding increases are acceptable, environmentally, economically or in social costs, is currently unknown. The law requires that such an analysis be done for such a significant change in information.

116. By failing to prepare an FSEIS which meets the standards laid out in NEPA, it's implementing regulations, and governing case law, the Corps unlawfully withheld action that is legally required and/or has acted in a manner that is arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of NEPA and the APA. 5 U.S.C. § 701-706.

COUNT III

VIOLATION OF NEPA 42 U.S.C. § 4332 AND APA: FAILURE TO ADEQUATELY CONSIDER THE ENVIRONMENTAL CONSEQUENCES

117. St. Johns Riverkeeper incorporates by reference paragraphs 1 – 27, 35 – 67 and 101 - 105.

118. NEPA requires that an agency take a hard look at the environmental consequences of its proposed action. To satisfy this requirement, an agency must show that it examined the relevant data and articulated a satisfactory explanation including a rational connection between facts found and the choice made.

119. NEPA's regulations also require a federal agency to consider the cumulative environmental impacts of their actions in their environmental analyses. 40 C.F.R. § 1508.25(c). A cumulative impact is 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. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. 40 C.F.R. § 1508.7.

120. NEPA regulations further require that in conducting its environmental analysis the agency must analyze information that is important, significant, up-to-date, available, or essential, 40 C.F.R. § 1500.1, and, when such information is unavailable, the regulations require the agency to develop the information if the information is relevant to reasonably foreseeable significant adverse impacts and essential to a reasoned choice among alternatives and obtaining it would not be cost-exorbitant. 40 C.F.R. § 1502.22.

121. For the reasons described above, the Corps has violated NEPA and the FSEIS and the ROD for the Jacksonville Harbor Channel Deepening Study are invalid because they fail to adequately assess the environmental consequences of these actions, including, but not limited to, the cumulative impacts of the project.

122. The APA authorizes reviewing courts to set aside federal agency action that is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. § 701-706. By issuing an FSEIS that fails to meet the standards laid out in NEPA, it's implementing regulations, and governing case law, the Corps has acted in a manner that is arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of NEPA and the APA. 5 U.S.C. § 701-706.

COUNT IV

**VIOLATION OF NEPA 42 U.S.C. § 4332 AND APA:
FAILURE TO DEVELOP AN ADEQUATE MITIGATION PLAN**

123. St. Johns Riverkeeper incorporates by reference paragraphs 1 – 27, 35 – 67 and 101 - 105.

124. NEPA's core tenet is its requirement that "environmental information is available to public officials and citizens before decisions are made and before actions are taken" because "public scrutiny [is] essential to implementing NEPA." 40 C.F.R. § 1500.1(b) (emphasis added).

125. NEPA's regulations also require a mitigation plan to mitigate all unavoidable adverse environmental consequences of the project. 40 C.F.R. § 1502.16(h). NEPA requires mitigation of unavoidable adverse environmental consequences. 40 C.F.R. § 1502.16(h). Mitigation is defined as: (a) Avoiding the impact altogether by not taking a certain action or parts of an action; (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; (e) Compensating for the impact by replacing or providing substitute resources or environments. 40 C.F.R. § 1508.20. A mitigation plan is inadequate when mitigation measures do not meet the NEPA definition, when they are not specific, or when the mitigation measures are deferred to the future.

126. The Corps' regulations require analysis and mitigation of induced flooding. The Corps has failed to mitigate for the induced flooding the dredging will cause.

127. For the reasons described above, the Corps has violated NEPA and the FSEIS and the ROD for the Jacksonville Harbor Channel Deepening Project are invalid because a “mitigation plan” which is actually a plan to determine the environmental consequences of a proposed project after the project is constructed is not “mitigation”; it is improper avoidance of the agency’s duty to determine and reveal to the public the environmental consequences of an action before the action occurs.

128. The APA authorizes reviewing courts to set aside federal agency action that is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. § 701-706. By issuing an FSEIS that fails to meet the standards laid out in NEPA, it’s implementing regulations, and governing case law, the Corps has acted in a manner that is arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of NEPA and the APA. 5 U.S.C. § 701-706.

COUNT V

VIOLATION OF NEPA 42 U.S.C. § 4332 AND APA: FAILURE TO ADEQUATELY DETERMINE THE PURPOSE AND NEED FOR THE PROJECT

129. St. Johns Riverkeeper incorporates by reference paragraphs 1 - 34 and 71 - 76.

130. NEPA requires that agencies specify the underlying purpose and need to which the agency is responding in proposing the alternatives included in the proposed action. 40 C.F.R. § 1502.13. The purpose and need for the project must be supported by substantial evidence.

131. NEPA requires a cost-benefit analysis when that analysis is relevant to the choice among environmentally different alternatives. 40 C.F.R. § 1502.23. The Corps

is required to perform a cost-benefit analysis when evaluating alternative plans for deep draft navigation projects. 42 U.S.C. 1962a-2 and d-1. If the ratio of costs to benefits is negative (the project costs more than the benefits it produces) then there is no federal interest and consequently no justification for the proposed project. The economic analysis that supports the need for a project must be supported by substantial evidence. An analysis which is one-sided, incomplete, and misleading is an inadequate basis to determine the federal interest in a project.

132. The Corps has not studied, analyzed or quantified the 11 mile dredge that its Local Sponsor, JaxPort, has announced its intention to perform. Its economic feasibility has not been determined.

133. For the reasons described above, the Corps has violated NEPA and the FSEIS and the ROD for the Jacksonville Harbor Channel Deepening Project are invalid because the Corps failed to analyze the economic feasibility of the actual purpose and need for the Recommended (Locally Preferred) Plan as expressed by the Local Sponsor.

134. The APA authorizes reviewing courts to set aside federal agency action that is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. § 701-706.

135. By issuing an FSEIS that fails to meet the standards laid out in NEPA, it's implementing regulations, and governing case law, the Corps has acted in a manner that is arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of NEPA and the APA. 5 U.S.C. § 701-706.

COUNT VI

**VIOLATION OF NEPA 42 U.S.C. § 4332 AND APA:
MISLEADING AND INACCURATE ECONOMIC ANALYSIS**

136. St. Johns Riverkeeper incorporates by reference paragraphs 1 - 46, 68 – 70, 77 – 88 and 95 – 100.

137. NEPA and its implementing regulations require the Corps to produce an Environmental Impact Statement that is factually accurate, well supported, and that fully discloses the impacts of an action to the public. 40 C.F.R. § 1502. This includes an agency's treatment of economic data. 40 C.F.R. § 1502.23 (cost benefit analysis); § 1508.8 (EIS must evaluate economic effects).

138. For the reasons described above, the Corps has violated NEPA and the FSEIS and the ROD for the Jacksonville Harbor Channel Deepening Project are invalid because they incorporate a fundamentally misleading, incomplete, and inaccurate economic analysis which fails to determine whether there is in fact, a federal interest in the Recommended Plan, or the unstudied 11 mile plan.

139. The APA authorizes reviewing courts to set aside federal agency action that is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. § 701-

140. By issuing an FSEIS that fails to meet the standards laid out in NEPA, its implementing regulations, and governing case law, the Corps has acted in a manner that is arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of NEPA and the APA. 5 U.S.C. § 701-706.

COUNT VII

**VIOLATION OF NEPA 42 U.S.C. § 4332 AND APA:
FAILURE TO PROVIDE FOR ADEQUATE TIMELY PUBLIC PARTICIPATION**

141. St. Johns Riverkeeper incorporates by reference paragraphs 1 - 46 and 89 - 94.

142. An agency must insure that "environmental information is available to public officials and citizens before decisions are made and before actions are taken" because "public scrutiny [is] essential to implementing NEPA." 40 C.F.R. § 1500.1(b). In accordance with this mandate, NEPA regulations strictly govern notice and comment of draft Environmental Impact Statements. Agencies are required to provide no less than a 45-day comment period on a draft EIS, 40 C.F.R. § 1506.10(d), and the circulated drafts must include the appendices. 40 C.F.R. § 1502.18(d).

143. For the reasons set forth above, the Corps has violated NEPA and the FSEIS and the ROD for the Jacksonville Harbor Channel Deepening Project are invalid because the Corps failed to circulate the appendices with the original and the revised draft SEIS and because it provided only half of the required time for public review and comment after a complete revised draft EIS was finally made available on September 30, 2013.

144. The APA authorizes reviewing courts to set aside federal agency action that is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. § 701-

145. By issuing an FSEIS that fails to meet the standards laid out in NEPA, it's implementing regulations, and governing case law, the Corps has acted in a manner

that is arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of NEPA and the APA. 5 U.S.C. § 701-706.

COUNT VIII

VIOLATION OF NEPA 42 U.S.C. § 4332 AND APA: FAILURE TO PREPARE A SUPPLEMENTAL EIS

146. St. Johns Riverkeeper incorporates by reference paragraphs 1 - 25 and 95 - 105.

147. NEPA and its implementing regulations impose a continuing duty on agencies to prepare a supplemental environmental impact statement ("SEIS") whenever "(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. §§ 1502.9(c)(1)(i), (ii).

148. For the reasons described above, the Corps has violated NEPA and the FSEIS and ROD for the Jacksonville Harbor Channel Deepening Project are invalid because the Corps has failed to prepare a supplemental environmental impact statement after the opening of the expanded Panama Canal, the construction of deeper channels at competing ports, the announcement of the intent to create a super port, and the existence of actual shipping statistics triggered this duty.

149. The Corps also failed to prepare a supplemental EIS after renegeing on its promise to comply with state water quality criteria for turbidity during the duration of the Project.

150. The APA authorizes reviewing courts to compel agency action unlawfully withheld and to set aside federal agency action that is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. § 701-706.

151. By issuing an FSEIS that fail to meet the standards laid out in NEPA, its implementing regulations, and governing case law, the Corps unlawfully withheld action that is legally required and/or has acted in a manner that is arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of NEPA and the APA. 5 U.S.C. § 701-706.

PRAYER FOR RELIEF

WHEREFORE, St. Johns Riverkeeper respectfully requests that the Court:

- (1) Declare and adjudge that the Corps of Engineers has violated NEPA by failing to prepare an EIS including the required economic analysis for the 11 mile dredge for which it nevertheless proposes to expend significant federal funds.
- (2) Declare and adjudge that the Corps has violated NEPA and the APA by failing to prepare a new circumstances supplemental environmental impacts statement for the Jacksonville Harbor Channel Deepening Project regarding flooding impacts,
(Count II only)
- (3) Declare and adjudge that the FSEIS, and ROD issued by the Corps for the Jacksonville Harbor Channel Deepening Project are arbitrary, capricious and not in accordance with law and that the Corps is in violation of NEPA and the APA;
- (4) Declare and adjudge that the Corps has violated NEPA and the APA by failing to prepare a new circumstances supplemental environmental impacts statement

for the Jacksonville Harbor Channel Deepening Project for post Panama Canal completion and the turbidity variance it subsequently obtained (Count VIII only);

(5) Enjoin the Corps to withdraw the FSEIS and ROD for the Jacksonville Harbor Channel Deepening Project;

(6) Enjoin the Corps from commencing the Jacksonville Harbor Channel Deepening Project pending completion of a valid SEIS and ROD;

(7) Enjoin the Corps to commence preparation of a new FSEIS and ROD that resolve the violations of law complained of herein;

(8) Award St. Johns Riverkeeper their reasonable fees, costs, expenses, and disbursements, including attorneys' fees, associated with this litigation pursuant to 28 U.S.C. Sec. 2812; and,

(9) Grant St. Johns Riverkeeper such further and additional relief as the Court may deem just and proper.

Bledsoe Jacobson Schmidt Wright & Sussman

/s/ Kenneth B. Wright

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of November, 2017, the undersigned filed the above document which will be served via the CM/ECF system on the following: Stephen Finn, Esquire, Army Corps of Engineers, stephen.finn@usdoj.gov, efile_nrs.enrd@usdoj.gov; Christopher M. Kise, Esquire, ckise@foley.com; Herschel T. Vinyard, Jr., Esquire, hvinyard@foley.com, dcollins@foley.com; Brooks W. Moore, Esquire, brooks.w.moore@usace.army.mil, brookswilkersonmoore@yahoo.com and Brittany Berger, Esquire, Brittany.m.berger@usace.army.mil; and Emily Friend O'Leary, Esquire, eoleary@foley.com, dcollins@foley.com and Joshua Hawkes, Esquire, Jhawkes@foley.com.

/s/ Kenneth B. Wright

Kenneth B. Wright, Esquire