

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION**

|                                       |   |                             |
|---------------------------------------|---|-----------------------------|
| ONE HUNDRED MILES,                    | ) |                             |
|                                       | ) |                             |
| Plaintiff,                            | ) |                             |
|                                       | ) |                             |
| v.                                    | ) | Case No. <u>4:22-cv-297</u> |
|                                       | ) |                             |
| The UNITED STATES ARMY CORPS          | ) |                             |
| OF ENGINEERS and COL. JOSEPH          | ) |                             |
| GEARY, in his official capacity as    | ) |                             |
| District Commander of the U.S. Army   | ) |                             |
| Corps of Engineers Savannah District, | ) |                             |
|                                       | ) |                             |
| Defendants.                           | ) |                             |
|                                       | ) |                             |

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This case challenges the U.S. Army Corps of Engineers’ decision to remove longstanding and successful seasonal restrictions on hopper dredging in Brunswick Harbor based on a flawed and incomplete environmental review under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4347.

2. Because hopper dredging is harmful to federally protected loggerhead sea turtles and other sensitive species, the Corps has historically conducted maintenance dredging activities only in the winter months, when fewer sea turtles and other coastal wildlife are present in southeast shipping channels.

3. Despite the overwhelming success of this strategy, the Corps intends to begin year-round dredging in Brunswick Harbor in 2023, in a departure from three decades of practice.

4. According to state biologists, this shift would almost certainly kill and injure federally threatened sea turtles, as well as fish and other sensitive species.

5. This action seeks a declaration that the Corps violated NEPA and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701–706, by inadequately assessing impacts and alternative actions and by failing to prepare an environmental impact statement (EIS), and an order enjoining the Corps and its agents from proceeding with year-round hopper dredging unless and until the Corps conducts a legally sufficient environmental review under NEPA.

### **JURISDICTION AND VENUE**

6. This action arises under NEPA and the APA.

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and may issue declaratory and other relief pursuant to 28 U.S.C. §§ 2201–02.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(B) and (C) because a substantial part of the events or omissions giving rise to this claim occurred in this judicial district and because Plaintiff One Hundred Miles resides in this district.

### **PARTIES**

#### **A. Plaintiff**

9. Plaintiff One Hundred Miles (OHM) is a nonprofit organization headquartered in Brunswick, Georgia.

10. OHM’s mission is to protect and preserve Georgia’s 100-mile coast through advocacy, education, and citizen engagement. In support of this mission, OHM works to protect the coast’s threatened and endangered wildlife, including sea turtles and North Atlantic right whales.

11. As part of this work, OHM regularly evaluates project and policy proposals that impact Georgia’s coastal wildlife and advocates for science-based approaches to species protection, often relying on information disclosed during the NEPA process to do so.

12. With respect to this matter, OHM has actively opposed the Corps' decision to allow year-round hopper dredging in Brunswick Harbor and has submitted comments to the Georgia Department of Natural Resources and the Army Corps of Engineers opposing year-round hopper dredging and requesting the preparation of an environmental impact statement before any spring or summer dredging in Georgia's harbors.

13. In addition to its organizational interests, OHM has approximately 1,170 members, many of whom have individual interests in observing, photographing, studying, and protecting coastal wildlife like loggerhead sea turtles. Many of OHM's members, for example, routinely volunteer to monitor and protect threatened loggerhead sea turtles on Georgia's barrier islands.

14. OHM, its members, and its staff also have a strong interest in ensuring that the Corps complies with the substantive, procedural, and informational provisions of NEPA.

15. Because OHM and its members have interests in protecting Georgia's coastal wildlife and in ensuring that the Corps complies with NEPA and the APA, OHM is harmed by the Corps' failure to complete an adequate NEPA analysis in connection with its removal of longstanding dredging restrictions.

16. These harms would be redressed by an order from this Court.

**B. Defendants**

17. Defendant U.S. Army Corps of Engineers (the Corps) is an agency within the United States Department of Defense. The Savannah District of the Corps oversees civil works projects in Georgia, including the dredging of Brunswick Harbor.

18. Defendant Colonel Joseph Geary is the current district commander of the Savannah District. "The district commander is the Corps NEPA official responsible for

compliance with NEPA for actions within district boundaries.” 33 C.F.R. § 230.5. Colonel Geary is sued in his official capacity.

## **LEGAL FRAMEWORK**

### **A. National Environmental Policy Act**

19. NEPA is a procedural statute that “requires federal agencies to examine and disclose the environmental impacts of their proposed actions.” *Pac. Coast Fed’n of Fishermen’s Ass’n v. Blank*, 693 F.3d 1084, 1088 (9th Cir. 2012); *see also* 42 U.S.C. § 4332.

20. These dual obligations ensure that agencies “consider every significant aspect of the environmental impact of a proposed action” and “inform the public that it has indeed considered environmental concerns in its decision-making process.” *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 97 (1983).

21. For major federal actions significantly affecting the quality of the environment, NEPA requires that federal agencies prepare a detailed analysis called an Environmental Impact Statement (EIS) assessing the direct, indirect, and cumulative impacts of the proposed action and analyzing reasonable alternatives to the proposed action. 42 U.S.C. § 4332(C)(i)–(ii); 40 C.F.R. § 1508.25(c)(1)–(3) (2018).<sup>1</sup>

22. To decide whether an agency must prepare an EIS, NEPA regulations instruct agencies to decide first whether the action is one that “normally” requires an EIS. 40 C.F.R. § 1501.4(a)(1) (2018). The Corps’ NEPA regulations list certain activities that “normally

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<sup>1</sup> Although these regulations were amended effective September 14, 2020, the regulations in force prior to that date govern review of the decision in this case because the NEPA process commenced prior to the effective date and the Corps evaluated the proposal under the 1978 Council on Environmental Quality (CEQ) NEPA regulations.

require[] an EIS,” including “[p]roposed major changes in the operation and/or maintenance of completed projects.” 33 C.F.R. § 230.6(c) (2018).

23. If a proposed action does not normally require an EIS and it is not readily discernible whether the environmental effects of a proposed action will be significant, an agency may first prepare a less rigorous environmental assessment (EA) to evaluate the project’s level of impact. 40 C.F.R. §§ 1501.4(b) (2018), *id.* at 1508.9(a)(1); 33 C.F.R. §§ 230.10–.11. If the EA shows that “*any* significant environmental impacts *might* result,” however, an EIS is then required. *Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C. Cir. 1983) (first emphasis in original).

24. Agencies must consider a number of factors in determining whether impacts are likely to be significant, including (a) the nature and extent of the impacts; (b) the unique characteristics of the geographic area; (c) the degree to which the impacts are highly controversial; (d) the degree to which the possible effects are highly uncertain; (e) the degree to which the action may establish a precedent for future actions; (f) the cumulatively significant nature of the impacts; and (g) the degree to which the action may adversely affect endangered species and their habitat. *See* 40 C.F.R. § 1508.27(b) (2018).

25. Any “one of these factors may be sufficient to require preparation of an EIS in appropriate circumstances.” *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 402 F.3d 846, 865 (9th Cir. 2005).

## **B. Administrative Procedure Act**

26. Because NEPA does not contain an internal citizen suit provision, the APA governs the scope and standard of review of the Conservation Groups’ NEPA claims against the Corps.

27. The APA provides that a “person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. § 702.

28. The APA directs a reviewing court to “hold unlawful and set aside agency action, findings, and conclusions” that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;” “without observance of the procedure required by law;” or “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” *Id.* § 706(2).

29. An agency action is arbitrary and capricious under the APA where “the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### **A. Hopper dredging is harmful to sea turtles, fish, and other sensitive species.**

30. This case challenges the Corps’ decision to remove longstanding seasonal hopper dredging restrictions in Brunswick Harbor.

31. The removal of these restrictions, or “windows,” would allow the Corps to use hopper dredges for maintenance dredging in Brunswick Harbor at any time of the year.

32. Maintenance dredging involves the periodic removal of built-up sediment (as frequently as every year) from existing navigational channels in order to keep the channels at their authorized depth.

33. Although there are several methods of dredging available, the Corps typically prefers hopper dredging.

34. Hopper dredges work by removing sediments with powerful suction pipes, essentially vacuuming up everything on the bottom of the dredged area. Due to the large diameter of the suction pipes and the force of the pump (often up to 10,000 hp), hopper dredges can, and often do, pull sea turtles, fish, and other organisms into the pipes, trapping the species in a process called entrainment.

#### *Sea Turtle Impacts*

35. When sea turtles are entrained in hopper dredge pipes, the pipes' rotating blades can cause massive fractures, crushed organs, hemorrhages, and, usually, death.

36. Biologists have recognized the dangers of hopper dredging to sea turtles since at least 1980, when more than 70 turtles were killed or injured by hopper dredges between July 1980 and November 1980 in Canaveral Channel, Florida.

37. Closer to home, in 1991, a single observer documented 35 sea turtle deaths during spring and summer hopper dredging in the Brunswick and Savannah channels.

38. It is likely that these numbers do not reflect the full extent of harm, as the probability that turtles are found after injury or mortality in the water usually is typically less than 50%.

39. The harmful impacts of hopper dredging are heightened in late spring, summer, and early fall, when there are more sea turtles in Brunswick Harbor because water temperatures are higher.

40. In addition, because sea turtle nesting season begins in May, there is a much higher share of reproductively active females in Brunswick Harbor during spring and summer.

These females, who often nest several times per season, must swim past hopper dredges to reach their nesting beaches, placing them at significant risk.

41. While the loss of any turtle is unwanted, the take of reproductively active adult females—as is likely during nesting season—is particularly harmful to population recovery efforts. Unlike many species, loggerhead sea turtles do not reach sexual maturity until their early to mid-30s. As a result, any adult loggerhead killed takes more than three decades to replace from a population recovery perspective.

#### *Fish Impacts*

42. Hopper dredging also poses threats to economically and recreationally important fisheries on Georgia's coast.

43. Like sea turtles, fish are vulnerable to entrainment in the hopper dredge's suction pipes.

44. Because fish use different habitats during different seasons, the scope of impacts caused by hopper dredging entrainment can vary significantly by season, with greater impacts during key reproduction, migration, and recruitment time periods that often fall in the spring and summer.

45. For example, estuaries around Brunswick Harbor serve as important primary and secondary habitats for many coastal sharks, with pregnant females entering the estuaries to pup during spring through early summer and neonates and juveniles using these areas as nursery habitats until early fall, making spring and summer dredging in Brunswick Harbor particularly risky to these species.

46. Hopper dredging also poses other risks besides entrainment, such as increased sedimentation. Fish often avoid areas with high concentrations of suspended sediments because



the suspended sediments can affect feeding patterns and predator avoidance behavior. This is particularly true for larval fish, which rely more on visible cues and therefore may have more difficulty finding suitable habitats when suspended sediments limit visibility. Indeed, the U.S. Department of the Interior has specifically cautioned that high concentrations of suspended sediments are known to cause mortality in the eggs and larvae of economically important fish along the Atlantic Coast.

47. Because early life stages are more vulnerable to these and other risks, the harm caused by increased sedimentation, like that caused by entrainment, is typically greater during key reproductive and recruitment windows in spring and summer.

48. These fishery impacts are a particular concern in Brunswick Harbor. The South Atlantic Fishery Management Council (SAFMC), which is responsible for the conservation and management of fish stocks within the federal 200-mile limit of the Atlantic off the coasts of North Carolina, South Carolina, Georgia and east Florida, has identified essential fish habitat (EFH) for brown shrimp, white shrimp, pink shrimp, gag grouper, gray snapper, black sea bass, Spanish mackerel, summer flounder, and several shark species in or around the project area.

49. Some of this habitat has also been designated as “habitat areas of particular concern” (HAPC), which are “subsets of [essential fish habitat] that ... [are] rare, stressed by development, provide important ecological functions for federally managed species, or are especially vulnerable to anthropogenic (or human impact) degradation.” Nat’l Marine Fisheries Serv., *Habitat Areas of Particular Concern within Essential Fish Habitat*, <https://www.fisheries.noaa.gov/southeast/habitat-conservation/habitat-areas-particular-concern-within-essential-fish-habitat>.

50. In addition to serving as EFH for many species, the area around Brunswick Harbor also provides habitat for numerous other commercially and recreationally important species, including red drum, southern flounder, Florida pompano, spot, and blue crab.

**B. To avoid these impacts, the Corps, along with other state and federal agencies, has imposed seasonal hopper dredging windows for three decades.**

51. Recognizing these harms, the Corps has historically restricted hopper dredging activities in Brunswick Harbor, along with the rest of the South Atlantic, to winter months, when fewer loggerhead sea turtles and other sensitive species are present in southeast channels and harbors.

52. In Brunswick, this commitment was memorialized in the March 1998 Brunswick Harbor Deepening Project NEPA analysis, which governed maintenance dredging in Brunswick Harbor until the Corps issued the Final EA challenged here. U.S. Army Corps of Eng'rs, *Final Environmental Impact Statement: Brunswick Harbor Deepening Project* (Mar. 1998).

53. The 1998 EIS provided that “All hopper dredging will only be performed from December 15 through March,” *id.* at EIS-42, noting that “guidelines from the South Atlantic Division, COE, has established a hopper dredging window of 15 December to March to reduce potential impacts to turtles.” *Id.* at EIS-24.

54. Since the 1990s, other federal and state agencies tasked with protecting natural resources have also required Brunswick Harbor hopper dredging operations to take place outside of spring and summer months.

55. At the federal level, the National Marine Fisheries Service (NMFS) has until recently imposed winter hopper dredging windows through its South Atlantic Regional Biological Opinions, or “SARBOs,” which assess impacts to federally protected species through dredging and related activities at a regional level. *See* NMFS, *Biological Opinion: Dredging of*

*Channels in the Southeastern United States from North Carolina Through Cape Canaveral, Florida* (Nov. 25, 1991); NMFS, *Biological Opinion: Hopper Dredging of Channels and Beach Nourishment Activities in the Southeastern United States from North Carolina Through Florida East Coast* (Aug. 25, 1995); NMFS, *Biological Opinion: The Continued Hopper Dredging of Channels and Borrow Areas in the Southeastern United States* (Sept. 25, 1997).

56. At the state level, the Georgia Department of Natural Resources (DNR) has implemented winter dredging windows through the State's Clean Water Act § 401 Certifications and Coastal Zone Management Act consistency determinations.

57. Seasonal dredging windows have been tremendously effective as a mitigation tool, balancing the need for efficient dredging with protection of sea turtles, fisheries, and other wildlife.

58. Although dredge operators have tried other mitigation methods, those other methods often pose additional harm to species, particularly nesting sea turtles. For example, relocation trawling, which involves dragging large nets through waters in advance of dredging operations, can lead to drowning, loss of egg clutches, and post-interaction mortality.

59. As described by a Veterinary Medical Officer at the National Sea Turtle Program within NMFS:

I simply do not think that there are good mitigation options for dredging during times and at locations where reproductive females are present .... This is why the current dredging windows are highly effective—they avoid interactions with significant numbers of reproductive females.

Email from Brian Stacy, Nat'l Marine Fisheries Serv., to Nicole Bonine, Nat'l Marine Fisheries Serv. (Aug. 23, 2018).

60. The Georgia DNR agrees:

[D]ata and decades of experience clearly show that winter dredging windows are the best way to maintain deep water channels in Georgia and minimize mortality of threatened loggerhead sea turtles in hopper dredges.

Letter from Rusty Garrison, Dir., Wildlife Res. Div., Ga. Dept. of Nat. Res. to Margaret McIntosh, U.S. Army Corps of Eng'rs (Sept. 28, 2020).

61. Indeed, because of these concerns, DNR has unequivocally advised that “[i]n order to assure recovery of the NRU population of loggerheads, hopper dredging activity in Georgia should be restricted to winter months (15 December – 31 March)”—a request that the Corps is poised to ignore. Memorandum from Mark Dodd, Sr. Wildlife Biologist, Ga. Dep’t of Nat. Res., to Kelie Moore, Coastal Consistency Coordinator, Ga. Dep’t of Nat. Res. 9 (Feb. 22, 2021).

**C. In a substantial departure from its historical practice, the Corps intends to begin year-round dredging in Brunswick Harbor in 2023.**

*The 2021 Regional Harbor Dredging Contract and Lawsuit*

62. Despite the tremendous success of seasonal dredging windows, and over the objection of the Georgia DNR, in 2020 the Corps began quietly soliciting bids on maintenance dredging contracts for Brunswick Harbor and other regional harbors without placing any restrictions on when hopper dredging could be conducted.

63. That fall, the Corps awarded a Regional Harbor Dredging Contract, covering Brunswick, Savannah, Charleston, Morehead City, and Wilmington Harbors, that would allow spring and summer dredging in each of these southeast shipping channels beginning in spring 2021.

64. When OHM learned of the Corps’ intent to conduct hopper dredging in Brunswick Harbor in spring and summer 2021, OHM sued the Corps in this Court, alleging that the agency’s failure to conduct any environmental review of year-round hopper dredging

violated NEPA. *See One Hundred Miles v. U.S. Army Corps of Eng'rs*, 4:21-cv-00134-RSB-CLR (S.D. Ga.).

65. The Court agreed, and on May 20, 2021, preliminarily enjoined the Corps from proceeding with spring and summer hopper dredging in Brunswick Harbor during the pendency of the lawsuit.

66. In so doing, the Court recognized that the evidence established a “likelihood that spring and summer hopper dredging poses a real risk to localized [loggerhead sea turtle] populations.” *See One Hundred Miles v. U.S. Army Corps of Eng'rs*, 4:21-cv-00134-RSB-CLR, Transcript of Hearing on Motion for Preliminary Injunction at 143:9-10.

*The Amended Draft Environmental Assessment*

67. Just 20 business days later, the Corps published its purported NEPA analysis in an “Amended Draft Integrated Feasibility Report and Environmental Assessment and Draft FONSI” for the Brunswick Harbor Modifications Study (Amended Draft EA). U.S. Army Corps of Eng'rs, *Brunswick Harbor Modifications Study, Glynn County, GA: Draft Integrated Feasibility Report and Environmental Assessment and Draft FONSI* (June 2021).

68. The Amended Draft EA modified a June 2020 Draft EA (the 2020 Draft EA) that analyzed modifications to the inner harbor design using a cutterhead, not hopper, dredge.

69. In the 2020 Draft EA, the Corps noted that hopper dredging should be avoided because it “would be too costly to endangered species such as sea turtles and sturgeon.” U.S. Army Corps of Eng'rs, *Brunswick Harbor Modifications Study, Glynn County, GA: Draft Integrated Feasibility Report and Environmental Assessment and Draft FONSI*, App. H at 5 (June 2020).

70. The Amended Draft EA, however, concluded the exact opposite, finding that the effects of annual year-round hopper dredging would be “insignificant.”

71. During the public comment period for the Amended Draft EA, conservation groups, state and federal agencies, and more than 600 individuals submitted comments opposing year-round dredging and criticizing the analysis performed in the Amended Draft EA.

72. The Georgia DNR, for example, submitted comments criticizing the Amended Draft EA as “deficient” and noting that the Corps had underestimated or ignored significant risks to loggerhead sea turtles and relied on speculative and inaccurate data in its analysis. Letter from Doug Haymans, Coastal Res. Div., Ga. Dep’t of Natural Res., to Kim Garvey, U.S. Army Corps of Eng’rs 3 (July 21, 2021).

73. The Georgia DNR also disagreed with the Corps’ Finding of No Significant Impact (FONSI) and called on the Corps to perform an EIS given that “[t]he proposed alternative represents a major shift in the seasonal timing of maintenance dredging that will result in significant increased threats to loggerhead population recovery....” *Id.*

74. NMFS expressed similar concerns, noting that the Amended Draft EA was “incomplete, particularly in its review of the successful application of environmental windows to provide safe, efficient navigation while also protecting economically important and federally managed fisheries.” Letter from Rusty Swafford, Nat’l Marine Fisheries Serv., to Col. Joseph Geary, U.S. Army Corps of Eng’rs 3 (July 21, 2021). NMFS went on to point out that the Corps had ignored reports prepared by and/or funded by the Corps itself describing the benefits of environmental windows for dredging projects. *Id.*

*The Final Environmental Assessment and Finding of No Significant Impact*

75. In January 2022, the Corps issued its Final Integrated Feasibility Report and Environmental Assessment and FONSI (Final EA).

76. Like the Amended Draft EA, the Final EA is deficient in several ways.

77. First, the Final EA underestimates, misinterprets, and ignores significant environmental impacts and does not take a hard look at important considerations.

78. For example, the Final EA incorrectly assumes that sea turtle mortality rates from hopper dredging activity are comparable across seasons, and that winter dredging windows are not effective in protecting sea turtles from hopper dredging mortality. These conclusions are not supported by the scientific evidence.

79. The Final EA also improperly discounts the increased risk to adult female loggerhead sea turtles from spring and summer dredging, ignoring the fact that adult female loggerheads are primarily present in Brunswick Harbor from April 1 through August 31.

80. In addition, the Final EA overstates the value of relocation trawling as a mitigation measure and does not take a hard look at the risk to pregnant females from relocation trawling.

81. The Final EA also fails to take a hard look at the disproportionate impact that year-round dredging will have on the Northern Recovery Unit population.

82. Second, the Final EA does not include a sufficient alternatives analysis.

83. The purpose articulated in the Final EA is “to provide a safe, reliable, efficient, and environmentally acceptable navigation channel in order to achieve the economic benefits upon which Federal participation was based and in accordance with Congressional authorizations.” U.S. Army Corps of Eng’rs, *Brunswick Harbor Navigation Project*

*Modifications and Harbor Dredging Operations and Maintenance: FINAL Integrated Feasibility Report and Environmental Assessment and Finding of No Significant Impact* 1.4 (Jan. 2022).

84. The Corps considered four action alternatives to achieve this purpose: (1) a winter hopper dredging window, allowing dredging only from December 1 to March 31; (2) an extended winter hopper dredging window, allowing dredging only from September 1 to March 31; (3) a summer hopper dredging window, allowing dredging only from June 1 to August 31; and (4) a “risk assessment and risk management process,” replacing the seasonal dredging window with a so-called “risk assessment approach” that allows for year-round dredging.

85. The Corps concludes in the Final EA that the existing winter dredging window should be replaced by Alternative 4, a so-called “risk assessment and management approach.”

86. The Corps rejects the continued application of winter dredging windows, alleging that winter dredging windows may increase the risk of harm to North Atlantic right whales, which may be present during the winter season and thus susceptible to harm from high-speed dredging support vessels.

87. In rejecting traditional winter dredging windows on this basis, the Corps incorrectly assumes that shifting hopper dredging outside of right whale calving season would reduce the risk of lethal take by high-speed survey vessels. According to DNR, however, the Corps’ standard practice in Georgia channels is to conduct hydrographic surveys monthly regardless of the timing of hopper dredging activity. As a result, shifting hopper dredging windows will not meaningfully affect the risk imparted by high-speed survey vessels.

88. The Corps also did not consider other viable alternatives to achieve the stated purpose, including alternate dredge types or winter dredging windows paired with other right



whale mitigation strategies, such as a mandatory speed limit for dredging support vessels—all of which were raised by either DNR or OHM in their comments on the Draft EA.

89. Third, the Final EA underestimates and ignores many indirect and cumulative impacts that are likely to arise from its removal of seasonal dredging windows in Brunswick and other harbors around the Southeast.

#### *The Current Landscape*

90. In late September 2022, following the release of the Final EA, the Corps awarded the 2023 Regional Harbor Dredging Contract to Great Lakes Dredge & Dock Corporation. The contract involves maintenance dredging in the entrance channels of Brunswick and Savannah Harbors in Georgia, Charleston Harbor in South Carolina, and Wilmington and Morehead City Harbors in North Carolina.

91. The contract includes a winter dredging window (December 15 through March 31) for Savannah Harbor, in accordance with the Georgia DNR Section 401 Water Quality Certification dated February 16, 2011, the Savannah Harbor Expansion Project Settlement Agreement executed May 17, 2013, and the Corps' Memorandum regarding Operation and Maintenance Hopper Dredging dated July 13, 2021.

92. The contract also includes a winter dredging window (December 15 through March 31) for Charleston Harbor.

93. Although the contract did not include winter dredging windows for Wilmington or Morehead City Harbors, the United States District Court for the Eastern District of North Carolina recently vacated the EA assessing year-round dredging in that case, *Cape Fear River Watch v. U.S. Army Corps of Eng'rs*, No. 7:21-CV-138-FL, 2022 WL 4468268, at \*1 (E.D.N.C. Sept. 26, 2022), leading the Corps to issue a memorandum prohibiting spring and summer

dredging in Wilmington and Morehead City Harbors, *see* Memorandum from Col. Benjamin A. Bennett, Operation and Maintenance (O&M) Hopper Dredging: Wilmington Harbor and Morehead City Harbor (Sept. 29, 2022).

94. As a result, Brunswick Harbor is the only location covered by the Regional Harbor Dredging Contract where spring and summer dredging is scheduled to occur in 2023. Although the Regional Harbor Dredging Contract includes a winter dredging window for the base bid quantity of 1,475,000 cubic yards, it allows the option for dredging another 410,000 cubic yards between May 1 and August 31, at the height of sea turtle nesting season.

95. This Court should enjoin the Corps and its agents from proceeding this proposed spring and summer hopper dredging, and all future spring and summer hopper dredging, unless and until the Corps conducts a legally sufficient environmental review under NEPA.

### **CLAIMS FOR RELIEF**

#### **First Cause of Action National Environmental Policy Act—Failure to Prepare an EIS**

96. OHM incorporates by reference the preceding allegations.

97. The Corps' elimination of the winter dredging window is a major federal action significantly impacting the quality of the human environment.

98. The context and intensity of the action require the preparation of a full EIS.

99. The Corps' decision to eliminate the dredging window and allow year-round hopper dredging implicates multiple intensity factors under the CEQ regulations, any one of which is sufficient to trigger the EIS requirement. These factors include, but are not limited to, the action's effect on endangered and threatened species and habitat; the unique characteristics of the geographic area (specifically the area's ecologically critical areas); the controversial nature of the action; the potential for uncertain, unique, or unknown risks; the action's likelihood of

establishing a precedent for other agency actions; and the action's cumulative environmental impacts. 40 C.F.R. § 1508.27(b) (2018).

100. In addition, under the Corps' agency-specific NEPA regulations, the removal of the historic dredging window is a “[p]roposed major change[] in the operation and/or maintenance of completed projects,” and thus, because of the significant impacts mentioned above and the Corps' NEPA regulations, the agency was required to prepare an EIS. 33 C.F.R. § 230.6(c), 40 C.F.R. § 1508.27(b) (2018).

101. The Corps' failure to prepare an EIS despite the multiple significance factors under the CEQ regulations and its own regulations violates NEPA and was arbitrary, capricious, and otherwise not in accordance with law, in violation of the APA. 5 U.S.C. § 706(2)(A); 42 U.S.C. § 4332(C).

**Second Cause of Action**  
**National Environmental Policy Act—Arbitrary and Capricious Impacts Analysis**

102. OHM incorporates by reference the preceding allegations.

103. The Corps failed to adequately assess or disclose the direct, indirect, and cumulative effects of eliminating the longstanding dredging window as required under NEPA, including but not limited to its insufficient analysis of loggerhead sea turtle impacts, fishery impacts, climate change impacts, and impacts from other related projects and actions.

104. The Corps relied on inaccurate assumptions to inform its impacts analysis. In its Final EA, the Corps ignored data showing heightened risk to loggerhead sea turtles, overstated the value of other mitigation measures, and overstated the role of its risk assessment process in minimizing impacts to threatened and endangered species.

105. The Corps' analysis of direct, indirect, and cumulative impacts violates NEPA and its implementing regulations and is arbitrary, capricious, and otherwise not in accordance with law, in violation of the APA. 5 U.S.C. § 706(2)(A); 42 U.S.C. § 4332.

**Third Cause of Action  
National Environmental Policy Act—Arbitrary and Capricious Alternatives Analysis**

106. OHM incorporates by reference the preceding allegations.

107. The Corps failed to objectively evaluate a range of reasonable alternatives that would meet the project's purpose and need, including but not limited to use of dredging windows in combination with one or more of the action alternatives, using dredging windows in combination with speed restrictions on dredge support vessels, and using less harmful cutterhead dredges instead of hopper dredges.

108. The Corps' analysis of alternatives violated NEPA and its implementing regulations and is arbitrary, capricious, and otherwise not in accordance with law, in violation of the APA, 5 U.S.C. § 706(2)(A); 42 U.S.C. § 4332.

**PRAYER FOR RELIEF**

OHM respectfully requests that this Court:

A. Declare that the Corps' failure to prepare an EIS violates NEPA and is arbitrary, capricious, not in accordance with law, and without observation of procedures required by law in violation of NEPA;

B. Declare that the Corps' Final EA violates NEPA and is arbitrary, capricious, not in accordance with law, and without observation of procedures required by law in violation of NEPA;

C. Enjoin the Corps from proceeding with year-round hopper dredging in Brunswick Harbor until and unless it complies with applicable NEPA requirements;

D. Award OHM the costs of this action, including reasonable attorneys' fees, to the extent permitted by law; and

E. Grant OHM such additional relief as the Court deems just and proper.

Respectfully submitted this 15th day of December, 2022.

**SOUTHERN ENVIRONMENTAL  
LAW CENTER**

/s/ Megan Hinkle Huynh

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*Pro hac vice application forthcoming*

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