



North Carolina
Coastal Federation
Working Together for a Healthy Coast

July 23, 2019

Col. Robert J. Clark, Commander
Wilmington District Corps of Engineers
69 Darlington Avenue
Wilmington, NC 28403

Re: SAW-2019-01155 – Town of Sunset Beach Maintenance Dredging of South Jinks Creek, the Bay Area and the Feeder Channel

Colonel Clark:

On behalf of the North Carolina Coastal Federation, please accept the following comments on the Town of Sunset Beach's application to conduct navigational dredging in the water bodies known as south Jinks Creek, the Bay Area, and the Feeder Channel in Brunswick County, North Carolina (SAW-2019-01155). As proposed, this project poses impacts that are not compatible with the letter and intent of the Coastal Area Management Act (CAMA) and associated rules governing these activities, and lacks thorough evaluation as well as mitigation measures.

The federation is a non-profit organization dedicated to protecting and restoring the North Carolina coast. Our organization represents 16,000 supporters statewide. We work with the public, agencies and local governments to communicate and collaborate wherever possible towards solutions that lead to the stewardship and resiliency of our coast. Since 1982, the federation has been working with coastal communities and other partners to improve and protect coastal water quality and natural habitats, which are intricately tied to our coastal economy. By focusing primarily, but not exclusively on natural and productive estuarine shorelines, oyster and marsh restoration, coastal management and cleaning the estuaries of marine debris, we strive to support and enhance the coastal natural environment.

Specific concerns about the ecosystem impacts of the proposed maintenance dredging project are as follows:

- 1) The Applicant seeks final project depths from -5 feet MLW in the Finger Canals to -6 feet MLW in the Feeder Channel, Bay Area, and south Jinks Creek, and would not connect to deeper water within Jinks Creek and Tubbs Inlet. The proposed dredging of the Sunset Beach Finger Canals, Feeder Channel, Bay Area and south Jinks Creek lacks an adequate deep-water connection, as is required by CAMA rules. Section 15A NCAC 07H .0208(b)(F) states, "any canal or boat basin shall be excavated no deeper than the depth of the connecting waters." Dredging canals or boat basins deeper

than adjoining channels can allow sediment and pollution to build up in the basin. Per CAMA rules, connecting waterbodies of a maintained navigational channel must be at least as deep as the dredge area.

The Applicant justifies this proposed violation of state statute/rules by assuming previous dredging, said to have occurred in 1970 and 2002, would also have dredged deeper than connecting waters. The application states "since no known impacts were recorded from that event, indications suggest the current maintenance operations will also not create any adverse impacts." The federation sees two major flaws with operating under this premise.

First, this will be the first known maintenance event for south Jinks Creek and the Bay Area since original dredging, believed to have occurred in the early 1970's (2002 dredging was isolated to the Feeder Channel system). Since the action occurred prior to the establishment of CAMA in 1974, the action did not require a CAMA major permit authorization and is not thoroughly documented. Lack of documentation does not substantiate lack of impact. Without thorough evaluation and documentation of previous dredging events and their impact on surrounding environments, the Applicant cannot make such a claim.

Second, the Applicant cites shoaling and infill within south Jinks Creek, the Bay Area, and Feeder Channel system as primary justification for this project. The application also states that current shoaling patterns appear likely to continue and could potentially sever recreational access in each of the referenced work areas. If shoaling and material infilling have indeed constricted navigable access in regards to the available width and depth of each waterbody, we question the Applicant's intent to dredge deeper than the adjacent navigational channel, which could further exacerbate the buildup of sediment in the basin.

In order to meet state statute and minimize possible adverse impacts, we ask if the Applicant has considered reducing dredge depths to -2 feet MLW. A discussion of reduced dredge depths was not found in the application materials submitted in March of this year. In addition to minimizing impacts to the resource, reducing dredge depths could also reduce the potential for increased shoaling and infill within the Feeder Channel system.

As stands, the project proposal is in clear violation of state regulations regarding dredging depths, and DCM staff plainly term this finding as INCONSISTENT within the application package.

- 2) Moreover, this Feeder Channel system is ecologically unique in that it connects to a tidal creek, and not the Atlantic Intracoastal Waterway (AIWW) or a natural bay. The North Carolina Division of Marine Fisheries (DMF) has designated the boundary of Jinks Creek as primary nursery area (PNA) due to adjacent habitats potential to support shellfish and juvenile fish species.

PNAs are those areas in the estuarine and ocean system where initial post-larval development of finfish and crustaceans takes place. The North Carolina Marine Fisheries Commission designates PNAs to protect habitat, particularly the bottom structure, including sea grasses, oyster rocks, sand and mud, as well as adjacent wetlands. In addition, the North Carolina Environmental Management Commission designates all PNAs as High Quality Waters, limiting point source discharges and stormwater runoff.

Dredging is restricted in PNAs to protect water quality and fisheries, and limit stormwater runoff. As written in 15A NCAC 07H .0208(b)(1), “navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the Marine Fisheries Commission.”

Jinks Creek proper is not currently designated PNA. In the 1970’s when nursery area designations were determined from state surveys, Jinks Creek surveyors did not collect sufficient data to merit a written report and therefore Jinks Creek was deemed non-PNA by default.

DMF’s published *Fishery Nursey Area* map clearly designates all marshes and tidal creeks in and around Sunset and Ocean Isle beaches as PNA, with Jinks Creek being the only exception. Given the knowledge that Jinks Creek is completely surrounded by PNA habitat and is the connection between PNA and the Atlantic Ocean and AIWW, it is highly likely that Jinks Creek also functions as PNA.

As deemed necessary by the Coastal Resources Commission, PNAs serve to protect the resource values identified in the designation including, but not limited to, those values contributing to the continued productivity of estuarine and marine fisheries and thereby promoting the public health, safety and welfare.

With strong supposition that Jinks Creek may meet PNA designation, the federation encourages the Corps to further assess the ecological functions of the tidal creek before approving a project that would permanently alter the landscape of this essential estuarine environment.

- 3) In order to ascertain the direct, secondary, and long-term cumulative impacts of the proposed project, it is important to thoroughly review case history. The Applicant has submitted a major permit application for maintenance dredging of south Jinks Creek, the Bay Area, and the Feeder Canal, although it is unclear whether the southern end of Jinks Creek has been previously dredged.

As documented in the application and in this letter, dredging of south Jinks Creek and the Bay Area is *believed* to have occurred in 1970, but since this took place prior to the establishment of CAMA, the action did not require a CAMA major permit authorization and is thus undocumented. Support for the 1970 dredging action is

found within a pictorial atlas of North Carolina inlets depicting “before and after” conditions from 1966 and 1974, respectively.

The negative environmental impacts of dredging a natural channel are well-documented, although any dredging, including maintenance, can result in significant adverse impacts. Acting upon the assumption that dredging *did* occur in 1970, it is important to consider the impacts that additional dredging may have after nearly a half-century. Without further manmade alterations, a highly dynamic tidal system such as Jinks Creek is likely to have reestablished sensitive habitat after five decades without disturbance.

- 4) Based on local observations and findings documented within the Applicant’s February 2018 *Shellfish Survey Report*, significant shellfish resources occur within the waters of Jinks Creek.

If the proposed dredging project is approved, there will be unavoidable adverse impacts. As is required by state and federal rules and statutes, compensatory mitigation is required to replace the loss of wetland and aquatic resource functions in the watershed. While the amount and quality of compensatory mitigation does not substitute for avoiding and minimizing impacts, appropriate and practicable compensatory mitigation seeks to restore, establish, and/or preserve aquatic resources to offset the unavoidable adverse impacts that remain.

As stated in the application, the survey results indicate the proposed navigation project will most likely not be able to avoid potential impacts to the oyster resources present in Jinks Creek. Based on the calculated density of oyster potentially within Jinks Creek, the navigation project may create impacts to approximately 12,810 oysters based on the proposed dredge footprint. The dredging project is estimated to disturb 10.72 acres within Jinks Creek and is expected to have the highest impact to resources in the subtidal region.

In addition to 12,810 oyster resources, the proposed project is also expected to impact approximately 328 clams and 213 mussels, in addition to short-term impacts on local water quality and fish species.

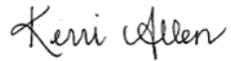
The Applicant states that “minimization efforts can help reduce the potential for impacts; however, the survey results show the oyster resources may be too diverse to avoid.” If and when the Corps is satisfied with the avoidance and minimization efforts in place, mitigation efforts are the logical next step. As such, the federation asks that such actions be reviewed and evaluated prior to implementation to establish adequate mitigation requirements to offset direct impacts from project dredging.

North Carolina Coastal Federation

Given the relative complexity, scope and potential for direct, secondary and cumulative impacts to the natural and water resources of Jinks Creek and surrounding waters, the federation recommends the Corps **deny** the proposed major permit application.

Thank you for your careful attention to this matter and for taking these comments into consideration.

Sincerely,

A handwritten signature in cursive script that reads "Kerri Allen".

Kerri Allen,
Coastal Advocate

cc: Todd Miller, Executive Director

cc: Tracy Skrabal, Coastal Scientist and Southeast Regional Manager