

August 9, 2019

Tyler Crumbley, PWS
Project Manager
U.S. Army Corps of Engineers – Wilmington District
69 Darlington Avenue
Wilmington, North Carolina 28403

via email: Tyler.A.Crumbley@USACE.army.mil

**Subject: Sunset Beach Maintenance Dredging
S. Jinks Creek, Bay Area, and Feeder Channel
Response to NCCF Comments**

Dear Mr. Crumbley,

Please accept the following information in response to comments received for the Town of Sunset Beach's permit application for South Jinks Creek, the Bay Area, and the Feeder Channel. Specifically, the information below responds to the July 23, 2019 comments provided by the North Carolina Coastal Federation (NCCF). The comments received address four (4) points as outlined below:

Point 1: The comments reference 15A NCAC 07H.0208 (b) (F) and call out the projects lack of a deep-water connection, which is required by North Carolina Administrative Code.

Response: Development of the current dredge footprint and maintenance channel design proposal occurred through coordination efforts with State and Federal agencies, including the NC Division of Coastal Management (DCM), the North Carolina Division of Marine Fisheries (DMF) and the North Carolina Division of Water Resources (DWR), among other agencies through scoping. DMF and DWR have provided comments (attached for reference) on the permit application, which approve the project. Therefore, the applicant believes the current proposal meets the intent of the state environmental review agencies responsible for upholding the NCAC requirements.

Point 2: The comments request further evaluations related to classifying Jinks Creek as a Primary Nursery Area.

Response: As stated in the attached letter from the National Marine Fisheries Service, "*The State of North Carolina did not designate (Jinks Creek) as a PNA in the 1970's because the creek was a navigational route from the Atlantic Intracoastal Waterway to the Atlantic Ocean*". The applicant believes the State of North Carolina understands the importance of maintaining safe navigation and recreational access between the Atlantic Ocean and the Intracoastal Waterway. Therefore, the applicant believes the State did not designate Jinks Creek as a PNA because they understood dredging would be required at some point in the future to maintain the waterway.

Point 3. The comments reference the importance of considering potential impacts that may occur from dredging a system after nearly a half-century.

Response: The applicant developed the permit application through extensive coordination efforts with state and federal environmental staff in efforts to understand and address the potential impacts that may occur. Based on extensive discussions regarding the dredging of Jinks Creek, the applicant agreed to minimize dredging impacts by limiting the dredging to south Jinks Creek. The proposed project reflects a reasonable and prudent attempt to avoid and minimize environmental impacts (i.e. oyster habitat) while also preserving the area's historic navigational and recreational use.

Point 4. The comments state the project will create “unavoidable adverse impacts” as proposed.

Response: The applicant continues to work with the resource agencies and is committed to ensuring the proposed project avoids adverse impacts by continuous agency consultation, compliance with the Statewide Programmatic Biological Opinion Reasonable Prudent Measures and Terms and Conditions, Best Management Practices for dredging, and State sediment criteria for beach placement. As cited above, the attached comments from DWR, NMFS, and DMF as well as the reduction in dredging footprint within Jinks Creek demonstrates the applicant's efforts to work through concerns.

The Town of Sunset Beach appreciates the opportunity to provide a response to these comments and understands the complexity of the review process. The Town also appreciates your time and effort towards coordinating and reviewing the application and related correspondence. In that regard, if there are any additional questions or concerns, please feel free to contact me at your convenience at 910-218-7100.

Sincerely,



MOFFATT & NICHOL

Robert Neal, PE
Senior Coastal Engineer

Cc. Hiram Marziano, Town Administrator, Town of Sunset Beach (via email)
Lisa Anglin, Town Clerk, Town of Sunset Beach (via email)
Courtney Spears, Assistant Major Permits Coordinator, Division of Coastal Management (via email)
Tara McPherson, Compliance and Enforcement Representative, Division of Coastal Management (via email)

Division of Marine Fisheries (DMF)
Comments



NORTH CAROLINA
Environmental Quality

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON DAVIS
Director, Division of Coastal
Management

June 21, 2019

MEMORANDUM:

FROM: Courtney Spears, Assistant Major Permits Coordinator
NCDEQ - Division of Coastal Management
127 Cardinal Drive Ext., Wilmington, NC 28405
Fax: 910-395-3964 (**Courier 04-16-33**)
courtney.spears@ncdenr.gov

SUBJECT: CAMA / Dredge & Fill Application Review

Applicant: Town of Sunset Beach

Project Location: East end Canals, Feeder Channel, Bay Area of Sunset Beach, Jinks Creek and the oceanfront beach between 5th and 12th street, Adj to AIWW in Brunswick County

Proposed Project: Perform navigational dredging through residential systems

Please indicate below your agency's position or viewpoint on the proposed project and **return this form to Courtney Spears** at the address above by **July 17, 2019**. If you have any questions regarding the proposed project, contact Tara MacPherson at (910) 796-7425 when appropriate, in-depth comments with supporting data is requested.

REPLY: This agency has no objection to the project as proposed.
Additional comments may be attached

This agency has no comment on the proposed project.

This agency approves of the project only if the recommended changes are incorporated. See attached.

This agency objects to the project for reasons described in the attached comments.

PRINT NAME Curt Weychert

AGENCY DMF

SIGNATURE

DATE 7-19-19



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

STEPHEN W. MURPHEY
Director

MEMORANDUM:

TO: Courtney Spears, DCM Assistant Major Permit Coordinator

FROM: Curt Weychert, DMF Fisheries Resource Specialist 

SUBJECT: Town of Sunset Beach Navigation Dredging and Beach Armoring Project

DATE: July 19, 2019

A North Carolina Division of Marine Fisheries (DMF) Fisheries Resource Specialist has reviewed the CAMA Major Permit application for proposed actions that impact fish and fish habitats. The town of Sunset Beach is proposing a maintenance dredging and beach nourishment project. The town is proposing to dredge areas on the east end of Sunset Beach referred to as Canals A-D, the Feeder and Finger Canals, Bay Area, and an area of South Jinks Creek. 40,500 cubic yards of beach-compatible sand will be placed along 1600 linear feet of oceanfront beach. The project is located in waters classified by the NC Division of Water Resources as SA; high quality waters (HQW). The finger and feeder canals are closed to the harvest of shellfish by the NC Division of Marine Fisheries Shellfish Sanitation Program, however, the waters of the Bay Area and South Jinks Creek are open. The area of dredging near the North portion of the South Jinks Creek dredge footprint is designated as a primary nursery area (PNA) by the NC Division of Marine Fisheries (NCDMF). PNAs are estuarine waters where initial post-larval development occurs. Species within this area are early post-larval to juvenile and include finfish, crabs, and shrimp.

The proposed project has the potential to impact several different fisheries habitat types such as coastal marsh, shallow soft bottom habitat, shell bottom habitat, as well as water quality impacts associated with dredging. In the EFH documentation, the Applicant identifies the areas within the project as oligohaline. Upon review of DMF biological and environmental monitoring programs, the salinity classification is polyhaline (18-30 parts per thousand). This salinity regime would increase possible interaction with specific species such as mackerel and others mentioned in the EFH as unlikely to be impacted.

Shell bottom is an extremely productive self-building three-dimensional habitat that can be impacted long term through dredging and filling, pollution and other contaminants. This vital estuarine habitat is very limited in North Carolina, and restoration and conservation of shellfish habitat is at the forefront. The presence of live shellfish that historically or currently survive due to favorable conditions is considered shellfish habitat. Increased

 Nothing Compares

sedimentation raises concern for shellfish and shellfish habitat by either the direct burial of oyster beds or reductions in filtration efficiency, respiration rates, and/or reproduction and settlement. Larval oysters require a clean hard bottom for attachment and sedimentation as little as 1 or 2 mm may inhibit settlement. Duration of sedimentation suspension and water quality degradation has been shown to result in juvenile oyster mortality. Oysters can only survive burial for 6 days by resorting to anerobic metabolism, but experience 100% mortality on day 7 (Wilbur et al. 2001).

Through multiple scoping meetings and conversations between NCDMF and the Town of Sunset Beach, concerns were expressed regarding the removal of significant areas of shellfish habitat. After performing a shellfish survey, the applicant removed the dredging of North Jinks Creek upon the request of NCDMF and other resource agencies. While NCDMF supports the decision to remove areas of significant subtidal and intertidal shellfish habitat, it is still important to recognize that much of the intertidal areas of the Finger and Feeder Canals, and the Bay area have a significant presence of shellfish habitat which is likely to be impacted by the dredge footprint and associated sloughing. For this reason, NCDMF would request that the Town of sunset beach create a plan to relocate any shellfish resource located within the dredging footprint as well as any resource located within a buffer of 3:1 to the proposed depth of the dredge cut (see attached request for additional information dated February 12, 2019). DMF would request to review and approve this relocation plan to ensure no transfer of oysters from closed areas of harvest have the potential to lead to human consumption.

Shallow soft bottom is an important foraging habitat for juvenile and adult fish and invertebrates, and aids in storing and cycling of sediment, nutrients, and toxins between the bottom and water column. Soft bottom habitat is used to some extent by most native coastal fish species in North Carolina. The habitat is particularly productive and, by providing refuge from predators, is an important nursery area. Species dependent on shallow soft bottom include clams, crabs, flounder, spot, Atlantic croaker, sea mullet, and rays (Deaton et al. 2010). Many benthic predators are highly associated with the shallow soft bottom habitat, including flounders, weakfish, red drum, sturgeon and coastal sharks, although almost all fish will forage on microalgae, infauna, or epifauna on the soft bottom. Tidal flats are inhabited by many species that are food sources for larger marine predators. These flats are utilized by anadromous, estuarine and marine species, such as cobia, red drum, gag grouper, king mackerel, shrimp, flounder and Atlantic sharpnose sharks (USFWS 2002). These species utilize the tidal flats for refuge, corridors, and nursery and spawning purposes (Deaton et al. 2010).

The applicant has stated that dredging operations will be conducted between November 16th and April 30th of any year to reduce potential environmental impacts. Because the dredge areas are part of an inlet complex and are connected to designated PNA areas, the NCDMF would request that no dredging occur after March 31st. In other words, to avoid impacts to fisheries resources and maintain consistency with similar projects in the area, NCDMF would request a moratorium period of April 1 to September 30.



Contact Curt Weychert at (252) 808-8050 or Curt.Weychert@ncdenr.gov with further questions or concerns.

Deaton, A.S., W.S. Chappell, K. Hart, J. O'Neal, B. Boutin. 2010. North Carolina Coastal Habitat Protection Plan. North Carolina Department of Environment and Natural Resources. Division of Marine Fisheries, NC. 639 pp.

USFWS (U. S. Fish and Wildlife Service. 2002. Draft Fish and Wildlife Coordination Act Report Bogue Banks Shore Protection Project, Carteret County, North Carolina.

Wilber, D. H., and D. G. Clarke. 2001. Biological effects of suspended sediments: A review of suspended sediment impacts on fish and shellfish with relation to dredging activities in estuaries. North American Journal of Fisheries Management 21(4):855-875.





ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

STEPHEN W. MURPHEY
Director

MEMORANDUM:

TO: Courtney Spears, DCM Assistant Major Permit Coordinator
FROM: Curt Weychert, DMF Fisheries Resource Specialist 
SUBJECT: Town of Sunset Beach Navigation Project
DATE: February 12, 2019

The North Carolina Division of Marine Fisheries (DMF) requests additional information prior to the submission of a CAMA Major Permit Application pursuant to General Statute §113-131. Through scoping meetings, site visits, and correspondence with the environmental consultant, the DMF has raised concerns for shellfish resources within the proposed dredge areas of "Jinks Creek". DMF has not had the opportunity to address concerns of shellfish resources located in the proposed dredging areas of the canals.

The sides of the canal's bulkheads contain intertidal beds of shellfish and marsh. Navigation dredging has the potential to indirectly impact these shellfish and coastal wetland species through sloughing. Sloughing occurs as a result of gravity normalizing slopes of a dredged area, usually at a 3:1 ratio. If sloughing occurs in shellfish habitat, this results in a change of vertical distribution in the water column. Oysters grow in intertidal areas because it provides them refuge from predators, relief from epiphyte competition, and protection from parasites. Altering this vertical distribution in the water column could result in the direct mortality of shellfish in the project vicinity.

Instead of requiring a shellfish survey to be conducted along the impact area of the proposed dredging, DMF would request that the applicant includes in their application a shellfish relocation plan. This plan should address what will be done with shellfish that fall within the impact area of the proposed dredging. The impact area will be defined as any area within a buffer that is 3 times the dredge depth; meaning, if a channel is proposed to be dredged to -5'NLW, the impact area would be a 15-foot buffer around the edges of the dredge footprint. Any shellfish identified within this impact area should be relocated to a nearby area in the same vertical distribution along the water column. In the past, raking shellfish away from the impact area to surrounding areas where shellfish are present, transporting to non-dredged areas within the project area where oysters are present, or relocation to natural shoreline to protect marsh within the project area where oysters are present have been utilized and proven effective. The applicant should identify where relocation areas are so that the DMF may comment.

When a shellfish relocation proposal is submitted, the DMF will approve the plan or make recommendations through comments on the Major Permit application.

Contact Curt Weychert at (252) 808-8050 or Curt.Weychert@ncdenr.gov with further questions or concerns.

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Division of Water Resources (DWR)
Comments



NORTH CAROLINA
Environmental Quality

August 1, 2019

Brunswick County
DWR Project: 2002-0158v2

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

LINDA CULPEPPER
Director

Town of Sunset Beach
Mr. Hiram Marziano
700 Sunset Boulevard North
Sunset Beach NC 28468

Subject Property: **Maintenance Dredging of South Jinks Creek, The Bay Area, & Feeder Channel**

Approval of 401 Water Quality Certification with Additional Conditions

Dear Mr. Marziano,

You have our approval, in accordance with the attached conditions and those listed below, to perform maintenance dredging of approximately 18 acres of open waters (Canals A-D, the Feeder Channel, Bay Area, and an area south of Jinks Creek on the east end of Sunset Beach) and to place sand onto approximately 1,600 linear feet of beach as described in the application received by the N.C. Division of Water Resources (DWR) on June 21, 2019. After reviewing your application, we have decided that the impacts are covered by General Water Quality Certification Number 4175 (GC4175).

In addition, you should obtain or otherwise comply with any other required federal, state or local permits before you go ahead with your project including (but not limited to) Erosion and Sediment Control, Non-discharge, and stormwater regulations. Also, this approval to proceed with your proposed impacts or to conduct impacts to waters as depicted in your application shall expire upon expiration of the 404 Permit. This Certification can also be found on line at: <http://portal.ncdenr.org/web/wq/swp/ws/401/certsandpermits>.

This approval is for the purpose and design that you described in your application. If you change your project, you must notify us and you may be required to send us a new application. If the property is sold, the new owner must be given a copy of this Certification and approval letter and is thereby responsible for complying with all conditions. If total fills for this project (now or in the future) exceed one acre of wetland or 150 linear feet of stream, compensatory mitigation may be required as described in 15A NCAC 2H .0506 (h). **This approval requires you to follow the conditions listed in the attached certification and any additional conditions listed below.**



The Additional Conditions of the Certification are:

1. This approval is for the purpose and design described in your application. The plans and specifications for this project are incorporated by reference as part of the Certification. If you change your project, you must notify the Division and you may be required to submit a new application package with the appropriate fee. If the property is sold, the new owner must be given a copy of this approval letter and General Certification and is responsible for complying with all conditions. Any new owner must notify the Division and request the Certification be issued in their name {15A NCAC 02H .0501 and .0502}.
2. Any final construction plans for this project must include or reference the application and plans approved by the Division under this authorization letter and certification. The applicant will also be required to evaluate all acquired permits to assure that they are consistent and all relative impacts are accounted for and shown on the construction plans. [15A NCAC 02H .0502 (b) and 15A NCAC 02H .0506 (4)] The applicant shall require his contractors (and/or agents) to comply with all of the terms of this Certification and shall provide each of its contractors (and/or agents) a copy of this Certification.

3. Turbidity Standard

The turbidity standard of 25 NTUs (Nephelometric Turbidity Units) shall not be exceeded as described in 15 A NCAC 2B .0220. Appropriate sediment and erosion control practices must be used to meet this standard. Turbidity curtains shall be used as appropriate. Please notify this Office if any turbidity issues arise at 910.796.7215

4. This General Certification shall expire on the same day as the expiration date of the corresponding General Permit. The conditions in effect on the date of issuance of the Certification for a specific project shall remain in effect for the life of the project, regardless of the expiration of this Certification.
5. The permittee shall require its contractors and/or agents to comply with the terms of this permit in the construction and maintenance of this project and shall provide each of its contractors and/or agents associated with the construction or maintenance of this project a copy of this certification. A copy of this certification including all conditions shall be available at the project site during the construction and maintenance of this project. [15A NCAC 02H .0507 (c) and 15A NCAC 02H .0506 (b)(2) and (c)(2)]
6. Continuing Compliance:

The applicant/permittee and their authorized agents shall conduct all activities in a manner consistent with State water quality standards (including any requirements resulting from compliance with 303(d) of the Clean Water Act), and any other appropriate requirements

of State and Federal law. If the Division determines that such standards or laws are not being met, including failure to sustain a designated or achieved use, or that State or Federal law is being violated, or that further conditions are necessary to assure compliance, than the Division may reevaluate and modify this General Water Quality Certification. [15A NCAC 02H .0507(d)]

7. All mechanized equipment operated near surface waters or wetlands will be regularly inspected and maintained to prevent contamination of waters and wetlands from fuels, lubricants, hydraulic fluids or other potential toxic chemicals. In the event of a hydrocarbon or chemical spill, the permittee/contractor shall immediately contact the Division of Water Quality, between the hours of 8 am to 5 pm at the Wilmington Regional Office at 910.796.7215 and after hours and on weekends call (800) 858-0368. Management of such spills shall comply with provisions of the North Carolina Oil Pollution and Hazardous Substances Control Act. [15A NCAC 02H .0506 (b)(3) and (c)(3), 15A NCAC 02B .0200 (3)(f), and GS 143 Article 21A].
8. Fueling, lubrication and general equipment maintenance should not take place within 50 feet of a waterbody or wetlands to prevent contamination by fuel and oils. [15A NCAC 02H .0506 (b)(3) and (c)(3) and 15A NCAC 02B .0200 (3)(f)].
9. This certification grants permission to the director, an authorized representative of the Director, or DEQ staff, upon the presentation of proper credentials, to enter the property during normal business hours 15A NCAC 02H.0502(e).

10. Certificate of Completion

Upon completion of all work approved within the 401 Water Quality Certification or applicable Buffer Rules, and any subsequent modifications, the applicant and/or authorized agent is required to return a completed certificate of completion form to the NCDEQ DWR 401 and Buffers Unit North Carolina Division of Water Resources, 1617 Mail Service Center, Raleigh, NC, 27699 within ten days of project completion. The certification of completion is available at:

<http://portal.ncdenr.org/web/wq/swp/ws/401/certsandpermits/apply/forms>).

Violations of any condition herein set forth may result in revocation of this Certification and may result in criminal and/or civil penalties. The authorization to proceed with your proposed impacts or to conduct impacts to waters as depicted in your application and as authorized by this Certification shall expire upon expiration of the 404 or CAMA Permit.

This approval and its conditions are final and binding unless contested.

This Certification can be contested as provided in Articles 3 and 4 of General Statute 150B by filing a written petition for an administrative hearing to the Office of Administrative Hearings (hereby known as OAH). A petition form may be obtained from the OAH at

http://www.ncoah.com/ or by calling the OAH Clerk’s Office at (919) 431-3000 for information. Within sixty (60) calendar days of receipt of this notice, a petition must be filed with the OAH. A petition is considered filed when the original and one (1) copy along with any applicable OAH filing fee is received in the OAH during normal office hours (Monday through Friday between 8:00 am and 5:00 pm, excluding official state holidays). The petition may be faxed to the OAH at (919) 431-3100, provided the original and one copy of the petition along with any applicable OAH filing fee is received by the OAH within five (5) business days following the faxed transmission.

Mailing address for the OAH:

If sending via US Postal Service:

If sending via delivery service (UPS, FedEx, etc):

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285

One (1) copy of the petition must also be served to DEQ:

William F. Lane, General Counsel
Department of Environmental Quality
1601 Mail Service Center
Raleigh, NC 27699-1601

This letter completes the review of the Division of Water Resources under Section 401 of the Clean Water Act. If you have any questions, please telephone Chad Coburn in the DWR Wilmington Regional Office at (910)796-7379 or Chad.Coburn@ncdenr.gov.

Sincerely,

DocuSigned by:
Morella Sanchez King
E3ABA14AC7DC434...

Morella Sanchez-King, Regional Supervisor
Water Quality Regional Operations Section
Wilmington Regional Office
Division of Water Resources, NCDEQ

Enclosure: GC4175

cc: Tyler Crumbley - USACE Wilmington Regulatory Field Office (via email)
Courtney Spears – DCM Wilmington (via email)

National Marine Fisheries Service (NMFS)
Comments



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701-5505
<https://www.fisheries.noaa.gov/region/southeast>

August 2, 2019

F/SER47:FR/pw

(Sent via Electronic Mail)

Colonel Robert J. Clark., Commander
U.S. Army Corps of Engineers Wilmington District
69 Darlington Avenue
Wilmington, North Carolina 28403-1398

Attention: Tyler Crumbley

Dear Colonel Clark:

NOAA's National Marine Fisheries Service (NMFS) reviewed the public notice for Action ID No. SAW-2019-01155 dated July 3, 2019. The Town of Sunset Beach is proposing to perform navigational dredging of Canals A-D, the Feeder Channel, Bay Area, and an area of South Jinks Creek on the east end of Sunset Beach with beneficial placement of sand on 1,600 linear feet of oceanfront beach in Sunset Beach, Brunswick County. As the nation's federal trustee for the conservation and management of marine, estuarine, and diadromous fishery resources, the NMFS provides the following comments pursuant to the authorities of the Fish and Wildlife Coordination Act and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The project narrative states the proposed dredging would connect the Feeder Channel and the Finger Canals with the Bay Area via South Jinks Creek maintaining navigational corridors. The Finger Canals, Feeder Channel, Bay Area, and South Jinks Creek were dredged previously, and the current project does not exceed the original project footprint. The most recent maintenance dredging for the Finger Canals occurred in 2002, and the initial dredging of the Feeder Channel, Bay Area, and South Jinks Creek occurred in early 1970s. The applicant would use the bucket-to-barge method to remove approximately 10,700 cubic yards of material from the Finger Canals, in an area measuring 3,200 feet in length and 20 feet in width, and 22,000 cubic yards of material from the Feeder Channel, in an area measuring 3,500 feet in length and 30 to 40 feet in width. The applicant would remove an estimated 15,900 cubic yards of material from the Bay Area. The applicant will truck material to an upland disposal site. The dredging of South Jinks Creek will remove 40,500 cubic yards of material, which the applicant will place on the oceanfront beach. The total volume of dredge material is 89,100 cubic yards.

The Wilmington District's initial determination is the proposed dredging may adversely affect essential fish habitat (EFH) or associated fisheries managed by the South Atlantic Fishery management Council, Mid-Atlantic Fishery Management Council, or the NMFS. This determination is based upon the scale of impacts (18 acres of shallow subtidal soft bottom and 8.5 acres of intertidal beach habitat) and inclusions of dredging and beach fill components. No SAV is present in the project area. The State of North Carolina has not designated the project area as a Primary Nursery Area (PNA). The applicant provided an EFH Assessment with the application, which in summary predicted only short-term impacts to EFH from increases in turbidity, siltation, and noise during construction. According to the submitted Shellfish Survey Report, the proposed project may affect clams present in South Jinks Creek, however the applicant states that the existing oyster beds appear to be located outside of the dredge channels. Conservation measures submitted by the applicant include an environmental window of November 16



through April 30 for any given year for the dredging activities and beach placement. The application also states there would be a minimum buffer of ten feet from any coastal wetlands.

The NMFS staff attended several pre-application meetings and a site visit for this project. Initially, the Town of Sunset Beach proposed dredging all of Jinks Creek from the Atlantic Intracoastal Waterway to the ocean. Most of Jinks Creek has never been dredged. After the site visit, the NMFS requested a shellfish survey be conducted throughout Jinks Creek. During a meeting prior to receiving the results of the survey, the NMFS staff requested the applicant move any oysters that would be impacted by the dredging along with other mitigation.

Based on the shellfish survey, the applicant estimated there were approximately 50,000 oysters in Jinks Creek at a density of 1,131 oysters per acre. It was estimated that there would be direct impacts to approximately 13,000 oysters. Additionally, while not designated as a PNA, the NMFS and North Carolina Division of Marine Fisheries staff believe the area functions as one. The State of North Carolina did not designate the area as a PNA during the 1970s because the creek was a navigational route from the Atlantic Intracoastal Waterway to the Atlantic Ocean.

During the third pre-application meeting, the NMFS staff, with support from other resource agencies, recommended the Town eliminate the new dredging within the northern part of Jinks Creek and only apply for areas previously impacted. This would avoid disturbing some 393,800 square feet or 9.0 acres (including the side slopes) and removing about 100,000 cubic yards of material of undisturbed soft bottom/subtidal EFH. The NMFS staff informed the applicant that if they proceeded with the original application, substantial mitigation would be required.

Based on our review of the current application, the Town has accepted the NMFS recommendations to protect the northern portion of Jinks Creek. They have also proposed Conservation Measures listed above regarding dredging windows and a buffer around coastal wetlands. As a result, the NMFS offers no EFH recommendations at this time under the Magnuson-Stevens Act. If conditions change, the NMFS requests the District reinstate EFH consultation.

Thank you for the opportunity to provide these comments. Please direct related questions or comments to the attention of Mr. Fritz Rohde at our Beaufort Field Office, 101 Pivers Island Road, Beaufort, North Carolina 28516-9722, or at (252) 838-0828.

Sincerely,

/ for

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

cc: COE, Tyler.A.Crumbley@usace.army.mil
USFWS, Pete_Benjamin@fws.gov
NCDCM, Doug.Huggett@ncdenr.gov, Curt.Weychert@ncdenr.gov
NCWRC, maria.dunn@ncwildlife.org
EPA, Bowers.Todd@epa.gov
SAFMC, Roger.Pugliese@safmc.net
F/SER47, Fritz.Rohde@noaa.gov