

1.0 INTRODUCTION

This Final Environmental Impact Statement (FEIS) has been prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended¹ [42 United States Code (USC) 4321-4347], to address the environmental effects of proposed shore protection activities on the barrier island of Bogue Banks in Carteret County (County), North Carolina (NC) (Figure 1.1). The Wilmington District, United States Army Corps of Engineers (USACE) is evaluating a request from Carteret County (Applicant) for Department of the Army (DA) authorization pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act (RHA) to implement a comprehensive, long-term beach and inlet management plan for the protection of approximately (~) 25 miles of shoreline on Bogue Banks. Concurrently, the Bureau of Ocean Energy and Management (BOEM) is evaluating a request from the Applicant for authorization pursuant to the Outer Continental Shelf Lands Act (OCSLA) [43 (USC) 1337(k)(2)] to use outer continental shelf (OCS) sand resources as a component of the proposed action. The NEPA requires federal agencies to consider the environmental effects of their actions; including the issuance of federal permits, licenses, and other regulatory approvals for non-federal activities. In the case of the Applicant's proposed action to implement a long-term beach and inlet management plan, the federal actions triggering the NEPA include a decision by the USACE to issue or deny Section 404/Section 10 permits, and a decision by the BOEM to execute or deny a negotiated lease agreement for the use of OCS sand resources. This FEIS has been developed to meet the NEPA obligations of the USACE and BOEM in exercising their regulatory approval authorities over the Applicant's proposed action (Appendix A – Lead Agency Correspondence).

1.1 What Is the Purpose of This FEIS?

The NEPA requires federal agencies to prepare a detailed Environmental Impact Statement (EIS) for major federal actions “significantly affecting the quality of the human environment.” As defined by the Council on Environmental Quality (CEQ) regulations for implementing the NEPA [40 Code of Federal Register (CFR) 1500-1508], the “human environment” encompasses the natural and physical environment and the relationship of people with that environment (i.e., socioeconomic factors such as public health and safety, jobs, property values, and aesthetics). The NEPA EIS process is intended to support informed decision making by federal agencies based on an understanding of environmental consequences, and ultimately to assist federal agencies in making decisions that protect, restore, and enhance the environment. The NEPA process is an interdisciplinary impact analysis approach that requires an evaluation of reasonable alternatives, the solicitation of public input, and an unbiased assessment of the

¹PL 91-190, January 1, 1970, as amended by PL 94-52, July 3, 1975; PL 94-83, August 9, 1975; PL 99-160, November 25, 1985; PL 100-202, December 22, 1987; PL 100- 404, August 19, 1988; PL 101-144, November 9, 1989, and PL 102-389, October 6, 1992

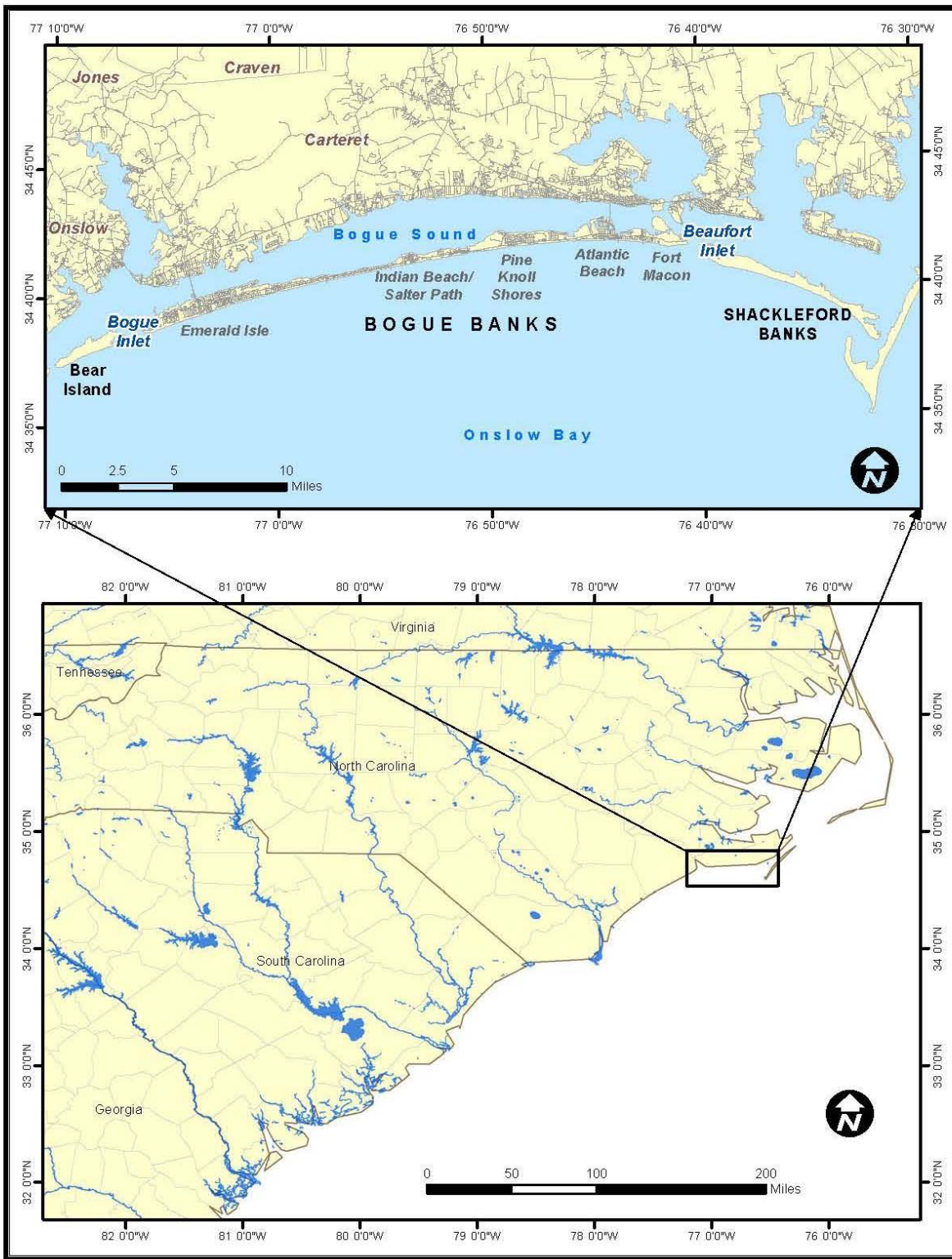


Figure 1.1. Bogue Banks Vicinity Map

environmental effects. The decision to prepare an EIS [as opposed to a less rigorous Environmental Assessment (EA)] is based on a determination by the federal action agencies that the proposed action is likely to have a “significant” effect on the environment. In regard to making determinations of significance, CEQ regulations direct federal agencies to consider spatial and temporal context as well as the intensity or severity of effects (40 CFR 1508.27). In the case of the Applicant’s proposed action, the USACE and BOEM have determined that an EIS is required based on the broad temporal and spatial scale of the proposed action (i.e., a 50-year project encompassing ~25 miles of coastline), the ecological significance and sensitive nature of the affected coastal resources (barrier island, tidal inlet, and marine/estuarine habitat), and the potential for adverse effects on a number of federally listed threatened and endangered species and critical habitats. This FEIS has been prepared in accordance with CEQ regulations and USACE NEPA Implementation Procedures for the Regulatory Program (33 CFR Part 325 Appendix B – Public Scoping Report) to fulfill the NEPA compliance obligations of the USACE and BOEM as well as the environmental review obligations of state agencies under the North Carolina State Environmental Policy Act (SEPA) (GS 113A-1).

This FEIS objectively evaluates the environmental effects of the proposed action and a range of reasonable alternatives that address the purpose and need for action (see Section 2.0). This FEIS discloses the short- and long-term direct, indirect, and cumulative effects of each alternative and presents detailed information on the Applicant’s stated purpose and need for action, the alternatives development process, the environment potentially affected by the alternatives, and mitigation measures that were incorporated to avoid or minimize adverse effects. As determined through the public scoping process, this FEIS evaluates the effects of each alternative on the natural, physical, and socioeconomic environment within the study area (Figure 1.2). The study area boundary was based on the area included in the initial evaluation of shoreline management volume needs, all potential borrow areas, and areas potentially affected by shoreline management activities.

Direct, indirect, and cumulative effects on specific resource categories are described at a level of detail commensurate with their local and regional importance and the magnitude of the anticipated effects. The analyses presented in this FEIS are based on the best available information at the time this document was prepared. If relevant new data or information becomes available during the subsequent phases of the NEPA process, such information will be considered and incorporated into future permit actions. The information in this FEIS is provided to facilitate informed agency decision-making and public participation through an understanding of the significant environmental effects as well as the basis for the analysis of effects. Opportunities for participation by the public and all interested parties will continue throughout the remainder of the EIS process. The information presented in this FEIS, in combination with input from the public, will serve as the basis for USACE, BOEM, and state agency decisions regarding the Applicant’s proposed action.

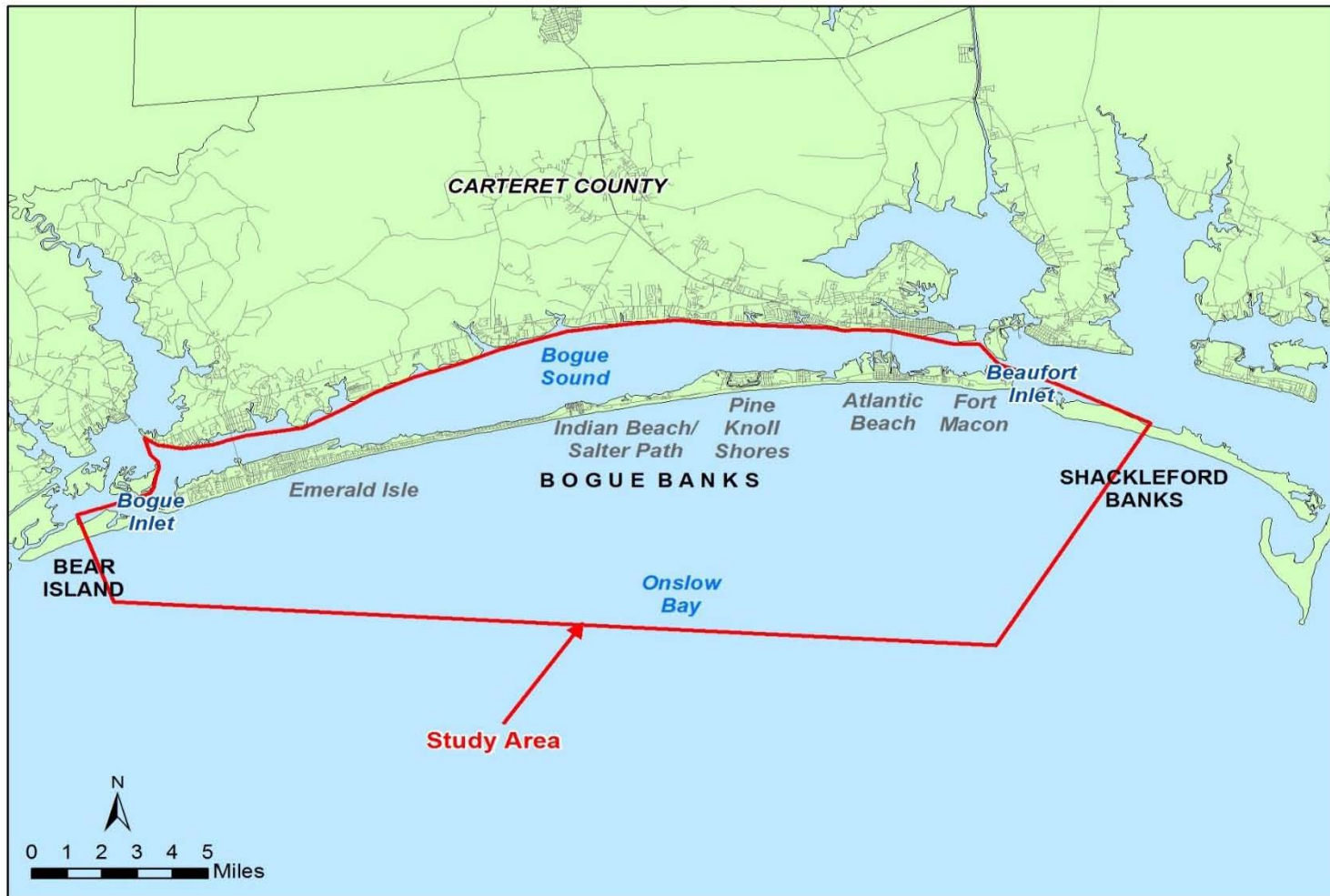


Figure 1.2. Bogue Banks EIS Study Area

1.2 What Are the Roles and Responsibilities of the Federal Action Agencies?

The USACE is the lead federal action agency responsible for NEPA compliance and management of the NEPA/EIS environmental review process for the County's proposed action. At the request of the USACE, the BOEM is participating as a cooperating federal agency in the NEPA/EIS process. Although the USACE has exclusive regulatory authority over most of the proposed action, the Applicant's proposed use of OCS sand resources falls under the exclusive regulatory authority of the BOEM. The division of regulatory authority between the two agencies corresponds to the dividing (OCS) line between state and federal waters at a distance of approximately three nautical miles (nm) from the Bogue Banks shoreline. The USACE has regulatory authority over those elements of the proposed action (e.g., sand placement and dredging) that would occur in state waters (0-3 nm) pursuant to Section 404 of the CWA and Section 10 of the RHA. Beyond the 3-nm limit in federal waters, the BOEM has regulatory authority over the Applicant's proposed use of OCS sand resources pursuant to the OCSLA. Both agencies are responsible for complying with the NEPA as it applies to their respective regulatory approval processes. However, given its authority over most of the proposed action, the USACE is the lead federal action agency responsible for the preparation of this EIS. As a cooperating agency, the BOEM is actively participating in the development of this EIS to ensure that it can be adopted for purposes of satisfying their NEPA compliance obligations under the OCSLA. As previously described, the federal actions triggering the NEPA include a Section 404/Section 10 permit decision by the USACE and a decision by the BOEM to execute or deny a negotiated lease agreement for the use of OCS sand resources.

The USACE and BOEM, through a written agreement dated 28 October 2010, have established protocols for delineating agency responsibilities (lead, cooperating, or joint) in conducting related federal consultations pursuant to the Endangered Species Act (ESA), Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), and National Historic Preservation Act (NHPA). The division of responsibilities between the two agencies is based on the division of their regulatory authorities over the proposed action at the 3-nm limit. In regard to ESA Section 7 consultation, the USACE is the lead agency for activities within the 3-nm limit, while the BOEM is the lead agency for OCS dredging activities beyond the 3-nm limit. In regard to the MSFCMA, the USACE and BOEM are consulting jointly with the National Marine Fisheries Service (NMFS), but will request that the NMFS divide any resulting responsibilities between the two agencies according to the division of their regulatory jurisdictions at the 3-nm limit. Similarly, in regard to the NHPA, the USACE and BOEM are consulting jointly with the North Carolina State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP), but will request that any resulting responsibilities be divided between the two action agencies according to their regulatory jurisdictions. Additional information regarding these consultations and the division of responsibilities between the USACE and BOEM is provided below in Section 1.5. The USACE is also responsible for consultation with the United States Fish and Wildlife Service (USFWS) pursuant to the Fish and Wildlife Coordination Act

(FWCA) and consultation with the North Carolina Division of Coastal Management (NCDCM) pursuant to the Coastal Zone Management Act (CZMA). The USACE is also coordinating with state agencies in regard to applicable NC laws, including the NCDCM in regard to the NC Coastal Area Management Act (CAMA) and the North Carolina Division of Water Resources (NCDWR) in regard to Section 401 of the CWA. Furthermore, the USACE is coordinating with the North Carolina Department of Administration (NCDA) in regard to the SEPA State Clearinghouse environmental review process. Additional information regarding these related federal and state laws and their associated regulatory procedures is provided below in Sections 1.5 and 1.6.

1.3 What Is the NEPA EIS Process?

The NEPA is a complex interdisciplinary process requiring extensive planning and coordination among the Applicant, government agencies, and the public. A critical early step in the NEPA process is the initiation of public and agency scoping to determine the scope of significant and relevant issues that will be addressed in the EIS. Input received through the scoping process is a principal consideration in defining the scope of alternatives and impacts considered, and ultimately in the development of a FEIS (Appendix B – Public Scoping Report). The FEIS discloses the environmental effects of the proposed action and provides another major opportunity for public participation through the FEIS public review and comment period. The federal action agency process of considering and addressing public and agency comments on the FEIS is the basis for the development of a Final EIS (FEIS). The FEIS incorporates the comments received and provides another opportunity for public input through an additional public review and comment period. After considering all comments on the FEIS, the lead federal action agency completes the NEPA process by issuing a Record of Decision (ROD). The ROD identifies the least environmentally damaging practicable alternative (LEDPA) and constitutes the USACE decision document and basis for the permit decision. A brief summary of each major step in the NEPA process is provided below.

Notice of Intent

Pursuant to NEPA, the EIS process is initiated by the lead federal action agency through the publication of a Notice of Intent (NOI) in the Federal Register. The NOI states the intent of the action agency to prepare an EIS, provides basic information on the proposed action, and typically initiates the EIS scoping process through the solicitation of public comments.

Scoping

Scoping is a continuing process that provides for public and agency participation throughout the EIS process. The principal purpose of early scoping is to define the scope of issues that will be addressed in the EIS based on input from persons and organizations that have an interest in the proposed action; including members of the general public, municipalities, non-profit

organizations, state and federal agencies, and other interested and affected parties. Public and agency scoping is initiated at the beginning of the NEPA process through the solicitation of written public comments, public scoping meetings, and other outreach mechanisms. Other major opportunities for public participation are provided through the FEIS public review and comment period.

Draft Environmental Impact Statement

The information acquired through the initial scoping process serves as the basis for the preparation of a Draft Environmental Impact Statement (DEIS). The DEIS describes the direct, indirect, and cumulative environmental effects of the proposed action and the reasonable alternatives that were identified through the scoping process. The DEIS is made available to the public for a 45-day review and comment period. The public review process provides an opportunity for the public to submit written comments, and may include public meetings. The information presented in the DEIS, in combination with comments received through the public review process, form the basis for the action agency decision-making process.

Final Environmental Impact Statement

The comments received on the DEIS serve as the basis for the preparation of a FEIS document. The purpose of the FEIS is to consider and address all substantive public and agency comments on the DEIS. Based on the comments received, the action agency will conduct any additional analyses that are needed and incorporate the results into the FEIS. Upon completion, the FEIS is made available for an additional public review and written comment period. Depending on the nature and extent of the FEIS comments and the associated revisions to the document, the action agency may or may not choose to hold an additional public meeting.

Record of Decision

After considering all public and agency comments on the FEIS, the agency concludes the EIS process through the issuance of a ROD. The ROD states the decision of the action agency regarding the alternative selected for implementation, and explains the reasons behind the agency's decision. The ROD includes information on the alternatives considered, including the LEDPA, and the mitigation and monitoring commitments that were incorporated to lessen environmental impacts.

1.4 How Has the Public Been Involved in the Scoping Process?

The USACE Wilmington District initiated the EIS process through the publication of a NOI in the FR on 15 September 2010 (75 FR 56080-56082) (Appendix B - Public Scoping Report). The NOI stated the intent of the USACE to prepare an EIS, provided basic information on the Applicant's proposed action, and initiated the EIS scoping process through the solicitation of

public comments. The NOI information was also made available to the public in a Public Notice (PN) that was published on the Wilmington District's webpage on 17 September 2010. Public and agency scoping for this EIS was initiated at the beginning of the NEPA process through the solicitation of written public comments, a public scoping meeting, and the formation of an interagency-stakeholder review team. The NOI and PN solicited written public comments for an initial 30-day period and invited the public to participate in a public scoping meeting that was subsequently held on 30 September 2010 at the Crystal Coast Civic Center in Morehead City, NC. Concurrently, the USACE formed an EIS Project Review Team (PRT) consisting of stakeholders with a wide range of interests in the EIS process; including federal and state agencies, local governments, universities, non-profit groups, and other stakeholders; as well as the third party contractor EIS team and the Applicant's engineering design team (Table 1.1) (Appendix C – Third Party Contract).

The PRT was established as a scoping outreach mechanism to facilitate agency and stakeholder participation in the EIS process. The PRT provides a forum for agencies and other stakeholders to provide input on the scope of the EIS and bring forward any concerns related to the proposed action. Project Review Team input provides the federal action agencies (USACE and BOEM) and the lead state agency for the SEPA (NCDCM) with critical information regarding potential effects on a wide range of interests, locally significant resource areas, and potential conflicts or problems. A principal objective of the PRT process is to identify and address concerns early in the planning process. Periodic PRT meetings also allow the federal action agencies to update stakeholders and the public on the status of the EIS process and any new developments that may be of interest to the various participants. Project Review Team meetings were held in Morehead City on 30 September 2010, 8 March 2011, 6 June 2012, and 29 October 2013.

For the DEIS, the Notice of Availability (NOA) was filed with the U.S. Environmental Protection Agency (EPA) via e-NEPA on 15 May 2017. The NOA was subsequently published in the Federal Register (Volume 82, Number 71) on 14 April 2017. A local Public Notice was issued on April 14, 2017 announcing the release of the DEIS and requesting public and agency comments. This commenting period was 45 days. The publication and review period of the DEIS coincided with the NC State Clearinghouse review process. Pursuant to the NC SEPA, the DEIS was provided to the State Clearinghouse which published the NOA in the NC Environmental Bulletin on 26 April 2017 and distributed copies of the EIS document to state/local agencies for review and comment. This FEIS will also be circulated through the State Clearinghouse in the same manner.

Appendix B (Public Scoping Report) documents the scoping process leading up to the release of the DEIS; including a record of the public scoping meeting, PRT meetings, participants, and comments received. Pursuant to the NEPA, participation in the EIS process by federal, state, and local government agencies and other interested organizations and individuals has been encouraged. Carteret County and the local municipalities on Bogue Banks; including Emerald Isle, Indian Beach, Pine Knoll Shores, and Atlantic Beach; actively participated in the EIS

Table 1.1. Project Review Team.

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Lead Federal Agency		
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Table 1.1. (concluded)

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Hoover, Tom	Emerald Isle	trhoover@ec.rr.com
Jones, Ken	Pine Knoll Shores, Mayor	mayorjones@townofpks.com
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Pickett, Stewart	Indian Beach, Mayor	townhall@indianbeach.org
Lambert, Ronda	Indian Beach, Town Administrator	indianbeach@bizec.rr.com
Other Stakeholders		
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¹ Due to the length of the scoping process, several PRT members are no longer in their prior positions, therefore multiple representatives (former and current members) are listed for some organizations.		

process under a cooperative Interlocal Agreement (see Appendix D). All the input received through scoping has been considered and integrated into this FEIS.

1.5 What Issues Were Identified through the Scoping process?

As part of the public and agency scoping process, the USACE received numerous comments covering a wide range of issues; including sand volume availability over the 50-year timeframe, the need to evaluate possible links between ocean borrow areas and beach erosional hotspots, and the logistics of potential overlap between the proposed action and the federal USACE Bogue Banks Coastal Storm Damage Reduction (CSDR) project. Written comments received through the scoping process can be found in Appendix B (Public Scoping Report). Written comments received during the DEIS commenting period and responses can be found in Appendix E (Draft DEIS Comments and Responses). All comments were evaluated and considered in the development of this FEIS.

1.6 What Federal Laws and Regulations Are Related to the EIS Process?

The federal regulatory actions that trigger the NEPA for the proposed action also trigger additional regulatory consultation and permitting requirements under a number of other federal environmental laws. Although these additional consultations are conducted independently of the NEPA under separate federal authorities, they are a vital component of the EIS scoping process that must be completed prior to the release of the FEIS. As described below, the federal action agency responsibilities for a number of these consultations are divided between the USACE and BOEM based on the division of their regulatory authorities at the 3-nm limit.

Section 10 of the Rivers and Harbors Act of 1899

Section 10 of the RHA (33 USC 403) authorizes the USACE to issue permits for work in navigable waters; including construction, excavation, and the deposition of material. Navigable waters are those that are “subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce” (33 CFR Part 329). USACE Section 10 regulatory authority extends seaward to the 3-nm limit between state and federal waters. As previously described, the issuance of Section 10 permits by the USACE for beach nourishment and dredging activities is a federal action requiring environmental review pursuant to the NEPA.

Sections 404 and 401 of the Clean Water Act of 1972

Section 404 of the CWA (33 USC 1344) authorizes the USACE to issue permits for the discharge of dredged or fill material into waters of the United States (US), including wetlands. United States Army Corps of Engineers regulatory authority under Section 404 extends seaward to the 3-nm limit between state and federal waters. As previously described, the issuance of

Section 404 permits by the USACE for beach nourishment and dredging activities is a federal action requiring environmental review pursuant to the NEPA. Section 401 of the CWA (33 USC 1341) delegates federal authority to the state to issue 401 Water Quality Certifications for the discharge of dredged and fill material into Waters of the State. All projects that require a federal Section 404 permit for the discharge of dredged and fill material also require a corresponding 401 Water Quality Certification from the NCDWR.

Outer Continental Shelf Lands Act of 1953

The OCSLA (43 USC 1331 et seq.), as amended by Public Law (PL) 103-426 (43 USC 1337), authorizes the BOEM to negotiate non-competitive lease agreements for the use of OCS sand, gravel, and shell resources in shore protection and beach restoration projects. Bureau of Ocean Management regulatory authority under the OCSLA applies to federal waters seaward of the 3-nm limit. As previously described, the execution of non-competitive lease agreements for the extraction of beach fill from the OCS is a federal action requiring environmental review pursuant to the NEPA.

Section 7 of the Endangered Species Act of 1973

Pursuant to Section 7 of the ESA (16 USC 1536), federal agencies are required to consult with the USFWS and the NMFS to ensure that actions they undertake, fund, or authorize are not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of designated critical habitat. As in the case of the NEPA, the issuance of Section 404/10 permits by the USACE and the execution of non-competitive lease agreements by the BOEM are federal actions that trigger Section 7 consultation. The USACE is the lead federal action agency responsible for consulting with the USFWS on the Applicant's proposed action, whereas the responsibility for consulting with the NMFS is divided between the USACE and BOEM at the 3-nm limit. Informal consultation has been ongoing through the PRT meetings and other channels of communication. To facilitate the consultation process, the USACE and BOEM prepared a Biological Assessment (BA) that described the status of listed species within the action area and presented their determinations as to whether the proposed action is likely to adversely affect each listed species. The USACE and BOEM consolidated their efforts into a single BA submitted to both the USFWS and NMFS on 12 September 2017. Submittal of the BA initiated formal Section 7 consultation. The Section 7 process will conclude with the issuance of separate Biological Opinions (BOs) by the USFWS and NMFS. The USFWS has provided initial comments dated 5 October 2017, expressing a confirmation that the beach placement activities are eligible for coverage under the USFWS August 28, 2017 State Programmatic Biological Opinion (SPBO) provided adherence to all the Reasonable and Prudent Measures and Terms and Conditions of the SPBO (see Appendix F – SPBO). Consultations with both agencies are ongoing.

Magnuson-Stevens Fishery Conservation and Management Act of 1996

The MSFCMA (16 USC 1801 et seq.) requires federal agencies to consult with the NMFS to ensure that actions they undertake, fund, or authorize incorporate Essential Fish Habitat (EFH) conservation into the planning process. EFH habitats are defined as those “necessary to fish for spawning, breeding, feeding, or growth to maturity.” The Fisheries Management Councils (FMCs), with assistance from the NMFS, are responsible for identifying and delineating EFH in Fishery Management Plans (FMPs). In regard to the Applicant’s proposed action, federal action agency responsibility for consulting with the NMFS is divided between the USACE and BOEM at the 3-nm limit. Informal consultation has been ongoing through the PRT meetings and other channels of communication. The USACE and BOEM, responsible for assessing the effects of their actions, prepared an EFH Assessment report that describes the affected resources, anticipated impacts, and any measures that were incorporated to mitigate EFH impacts. The USACE and BOEM consolidated their efforts into a single EFH report submitted to the NMFS on 16 January 2018, but requested the NMFS to separate its review between the two action agencies at the 3-nm limit. Submittal of the EFH Assessment initiated formal consultation, and the process will conclude with the issuance of an EFH concurrence statement by the NMFS.

Fish and Wildlife Coordination Act of 1958

The Fish and Wildlife Coordination Act (FWCA) (16 USC 661 et seq.), as amended, requires federal agencies to incorporate fish and wildlife resource conservation into the planning process for water resources development projects that they undertake, fund, or authorize. Section 2(b) of the FWCA requires the federal action agencies for water resource projects to consult with the USFWS and the state fish and wildlife agency [i.e., the North Carolina Wildlife Resources Commission (NCWRC)] to ensure that conservation is fully incorporated. The USFWS and NCWRC are responsible for identifying potential adverse impacts on fish and wildlife resources and developing recommendations to avoid, minimize, and/or compensate for impacts. The USFWS and NCWRC are responsible for presenting their findings and recommendations to the action agencies in a FWCA report that describes the affected resources, anticipated impacts, and recommended mitigation measures.

Marine Mammal Protection Act of 1972

The Marine Mammal Protection Act (MMPA) (16 USC 1361 et seq.) prohibits the take of marine mammals in US waters and authorizes programs to conserve, protect, and recover declining marine mammal populations. Although take is generally prohibited, the MMPA makes allowances for limited take through permits and incidental take authorizations. The responsibilities for implementing the MMPA are divided between the NMFS (cetaceans and pinnipeds) and the USFWS (manatees, dugongs, sea otters, walrus, and polar bears). In regard to the Applicant’s proposed action, the MMPA does not impose any specific consultation requirements on the federal action agencies; however, the USFWS comments on federal actions potentially affecting marine mammals under its jurisdiction through the FWCA

consultation process, and both the NMFS and the USFWS may provide comments pursuant to the MMPA through the NEPA review process.

Migratory Bird Treaty Act of 1918

The Migratory Bird Treaty Act (MBTA) (16 USC 703 et seq.) prohibits the take of migratory birds and authorizes the USFWS to implement programs to conserve, protect, and recover declining migratory bird populations. The MBTA does not make any allowances for incidental take; however, incidental take for species listed as threatened or endangered under the ESA may be authorized through the ESA Section 7 consultation process. In regard to the Applicant's proposed action, the MBTA does not impose any specific consultation requirements on the federal action agencies; however, the USFWS comments on federal actions potentially affecting migratory birds through the FWCA consultation process.

Coastal Zone Management Act of 1972

The Coastal Zone Management Act (CZMA) (16 USC 1451 et seq.) established a cooperative program between the federal government and the coastal states for the management and protection of coastal resources. The CZMA is carried out primarily by the coastal states through the development and implementation of federally approved coastal management programs. As described in greater detail below, NC's coastal management program was established by the NC Coastal Area Management Act (CAMA) of 1974.

National Historic Preservation Act of 1966

Pursuant to Section 106 of the NHPA (16 USC 470 et seq.), federal agencies are required to consider the effects of actions they undertake, fund, or authorize on historic properties that are listed or may be eligible for listing in the National Register of Historic Places (NRHP). Federal action agencies are required to consult with the ACHP, either directly or through SHPOs for the purpose of identifying historic properties potentially affected by the action, assessing the effects, and mitigating adverse impacts. The consultation provisions of Section 106 apply to state lands, including submerged lands underlying state waters, as well as the OCS. The USACE conducts Section 106 consultations in accordance with its own NHPA implementing regulations (33 CFR 325 - Appendix C - Third Party Contract), while the BOEM consults in accordance with the implementing regulations set forth in 36 CFR 800 (*Protection of Historic Properties*). In regard to the Applicant's proposed action, federal action agency responsibilities for Section 106 consultation are divided between the USACE and BOEM at the 3-nm limit. The USACE is responsible for consulting with the NC SHPO on those elements of the proposed action that would occur within the 3-nm limit. The BOEM is responsible for consulting with the ACHP on those elements of the proposed action that would occur on the OCS beyond the 3-nm limit. The SHPO provided a letter in response to the DEIS on 8 June 2017 and indicated they were not aware of any historic resources that would be affected by the project. Therefore, the SHPO had no comment on the project as proposed.

1.7 What State Laws and Regulations Are Related to the EIS Process?

The proposed action is also subject to the environmental review provisions of the NC SEPA and a number of state regulatory authorizations; including a Major Permit issued by the NCDCM under the NC CAMA, a Water Quality Certification issued by the NCDWR under Section 401 of the CWA, and an Erosion and Sedimentation Control Plan authorization issued by the North Carolina Division of Land Resources (NCDLR) under the NC Sedimentation Pollution Control Act. State laws that are most relevant to the proposed action are described below.

North Carolina State Environmental Policy Act of 1971

North Carolina's SEPA [General Statute (GS) 113A-1-13] is a law requiring state agencies to consider the environmental effects of their actions through an environmental review process that is essentially the state-level equivalent of the federal NEPA review process. In the case of federal actions, the NEPA process also fulfills the requirements of the SEPA. The SEPA specifies that federal NEPA documents must be reviewed through the State Clearinghouse process, which is standard USACE practice for all regulatory EIS documents. The State Clearinghouse in the NC Department of Administration is responsible for implementation and administration of the SEPA review process. The Clearinghouse forwards SEPA/NEPA documents for review and comment to state/local agencies and publishes NOAs in the NC Environmental Bulletin soliciting public review and comment. The Clearinghouse provides for a 30-45 day agency/public comment period, and is responsible for compiling agency and public comments. Upon completion of the FEIS State Clearinghouse review process, no additional SEPA coordination will be required.

North Carolina Coastal Area Management Act of 1974

North Carolina's coastal management program was established by the CAMA of 1974 (GS 133A-100 et seq.). The coastal management program is implemented jointly by the state and local coastal county governments. The NCDCM implements state CAMA responsibilities, which include the designation of Areas of Environmental Concern (AECs), the establishment of management objectives and use standards for development activities within AECs, and issuance of state CAMA Major Permits for work in AECs and excavation or filling in estuarine waters, tidelands, marshlands, and state-owned lakes pursuant to the NC Dredge and Fill Law (GS 113-229). Areas of Environmental Concern are state-designated areas of natural importance that fall under four broad categories: the estuarine and ocean system, ocean hazard system, public water supplies, and natural and cultural resource areas. The Applicant's proposed action encompasses work in AECs associated with the estuarine and ocean system and the ocean hazard system, and will require a CAMA Major Permit from the NCDCM. At the county and municipal level, CAMA policies are implemented through the development and implementation of state-approved Land Use Plans (LUPs), which establish the local rules and policies for managing land use in compliance with the state's coastal management program. The CAMA also authorizes the NCDCM to review federal actions, including federal permitting

actions, for compliance with the consistency provisions of the federal CZMA. Federal actions must demonstrate consistency with the key elements of the state's coastal management program; including state coastal management rules and policies established in Chapter 7 of Title 15A of the North Carolina Administrative Code (NCAC), the policies set forth in approved local LUPs, and the NC Dredge and Fill Law.

North Carolina Coastal Policy Reform Act of 2013² (SB 151/SL 2013-384)

The North Carolina Coastal Policy Reform Act (NCCPRA) of 2013 authorized the NCCDCM to issue CAMA Major Permits for four terminal groins along the NC coast. Subsequent provisions included in the 2015 NC State Budget allowed for the issuance of Major Permits for two additional terminal groins, raising the cap on groins from four to six. Pursuant to the NCCPRA and its implementing regulations (GS 113A-115.1), applicants for groin permits are required to provide: evidence that structures or infrastructure are threatened by erosion; an EIS prepared pursuant to the SEPA; a list of property owners and local governments that may be affected by the groin along with proof that each has been notified of the groin permit application; a construction and maintenance plan for the groin and its associated beach fill component prepared by a professional engineer licensed to practice in NC; a plan for the management of inlet, estuarine, and ocean shorelines that are adjacent to and under the influence of the inlet; and proof of financial assurance sufficient to implement long-term maintenance and monitoring, mitigation measures, and modification or removal of the groin if necessary (Appendix G – Terminal Groin Legislation).

North Carolina Sedimentation Pollution Control Act of 1973

The NC Sedimentation Pollution Control Act (SPCA) authorizes the NC Division of Energy, Mineral and Land Resources (NCDEMLR) to approve erosion and sedimentation control plans for all land-disturbing activities other than agriculture and mining. The SPCA requires the development and implementation of effective temporary and permanent control measures to prevent accelerated erosion and off-site sedimentation. An erosion and sedimentation control plan must be submitted by the applicant and approved by the NCDEMLR before any land disturbance is initiated on sites one acre or larger.

² Short Title for: An Act to Amend Marine Fisheries Laws; Amend the Laws Governing the Construction of Terminal Groins; and Clarify that Cities May Enforce Ordinances within the State's Public Trust Areas