

APPENDIX A
LEAD AGENCY CORRESPONDENCE



United States Department of the Interior

BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT

Washington, DC 20240

Mr. William Walker
U.S. Army Corps of Engineers - Wilmington District
Regulatory Field Office
69 Darlington Avenue
Wilmington, North Carolina 28403-1343

DEC 07 2010

Dear Mr. Walker:

Thank you for your October 28, 2010, letter requesting that the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) become a cooperating agency during the preparation of a Programmatic Environmental Impact Statement (EIS) for the Bogue Banks Master Beach Nourishment Plan. The proposal being evaluated by the U.S. Army Corps of Engineers (Corps) under its regulatory authority involves the potential nourishment of 25 miles of beach in Carteret County, North Carolina using sand from multiple borrow areas, including two sites located more than 3 nautical miles offshore.

The BOEMRE welcomes the opportunity to participate in this effort and agrees to serve as a cooperating agency since the BOEMRE has jurisdiction over mineral leasing on the Outer Continental Shelf (OCS). As a cooperating agency, the BOEMRE expects to: participate and provide input in the National Environmental Policy Act (NEPA) process at the earliest possible time; assume, on the request of the Corps, responsibility for developing information and preparing environmental analyses for which the BOEMRE has special expertise; make available staff support, at the lead agency's request, to enhance the interdisciplinary capability of the Corps; provide comment on draft versions of the EIS when requested; and use our own funds to accomplish these responsibilities.

The BOEMRE also recognizes the importance of initiating and agrees to participate in the required Endangered Species Act (ESA) Section 7 consultation; the Magnuson-Stevens Fishery and Conservation Management Act Essential Fish Habitat (EFH) consultation (Section 305); the National Historic Preservation Act (NHPA) Section 106 process; and the Coastal Zone Management Act (CZMA) Section 307 consistency process. As the lead Federal agency for ESA Section 7 and the EFH consultations, the Corps must notify the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) of its lead role and BOEMRE's cooperating role. The BOEMRE would expect the Corps, as lead agency, to work with BOEMRE to ensure existing biological opinions from FWS and NMFS are applicable to BOEMRE's part of the Federal action and/or expect to jointly submit the ESA Section 7 and EFH assessments to FWS and NMFS. The BOEMRE expects the Corps to be the lead Federal agency for NHPA Section 106 and CZMA Section 307 compliance with the BOEMRE acting in a consulting role.

The BOEMRE looks forward to working with the Corps during this process. If you would like to discuss any of these items further, please contact Geoffrey Wikel at (703) 787-1283 or by e-mail at Geoffrey.Wikel@boemre.gov.

Sincerely,



James F. Bennett
Chief, Branch of Environmental Assessment

cc: Mr. Mickey Sugg
U.S. Army Corps of Engineers - Wilmington District
Regulatory Field Office
69 Darlington Avenue
Wilmington, North Carolina 28403-1343

Mr. Jim Gregson
N.C. Division of Coastal Management
Wilmington Regional Office
127 Cardinal Drive Extension
Wilmington, North Carolina 28405-3845

Mr. Roger Amato
Bureau of Ocean Energy Management, Regulation and Enforcement
Leasing Division

October 25, 2013

Regulatory Division

Action ID No. SAW- 2009-00293

Mr. James F. Bennett
Chief, Branch of Environmental Assessment
Bureau of Ocean Energy Management (BOEM)
381 Elden Street, Mail Stop 4042
Herndon, Virginia 20170

Dear Mr. Bennett:

Please reference our October 28, 2010 letter (enclosed) and your December 7, 2010 response (enclosed) regarding BOEM participation as a cooperating agency for Carteret County's development of their multi-decadal Bogue Banks Master Beach Nourishment Plan (Master Plan), which is a proposed long-term management plan for the 24-mile long Bogue Banks barrier island in Carteret County, North Carolina. To date, coordination has taken place frequently between our agencies; however, some of our roles need to be further defined due to our regulatory differences. This letter serves to further establish and properly outline our agencies responsibilities and roles for the project's consultation and coordination efforts associated with Section 7 of the Endangered Species Act (ESA), Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), National Historic Preservation Act (NHPA), and the Coastal Zone Management Act (CZMA).

As you most likely are aware, Corps' regulatory jurisdiction, under Section 404 of the Clean Water Act and Section 10 of the Rivers & Harbors Act, is measured from the baseline (generally the intersection of the shore and the open sea or mean high water) in a seaward direction a distance of three nautical miles. The only exception is with "special regulatory powers" for the construction of artificial islands, installations and other devices of the seabed, pursuant to section 4(f) of the Outer Continental Shelf Lands Act of 1953 as amended.

For this project, which is being reviewed under our Programmatic Environmental Impact Statement (PEIS) process, the dredging operation in the Offshore Dredge Material Disposal Site (ODMDS) is proposed outside of our 3-mile regulatory authority, but falls within BOEM's jurisdiction. However, the fill placement of the material on the beach is subject to our permitting authority under Section 404 of the Clean Water Act

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and Section 10 of the Rivers and Harbors Act, but does not occur within BOEM's area of jurisdiction. With overlapping regulatory authority and project scope, it is imperative that our agencies closely coordinate our review efforts for the previously mentioned laws in order to streamline both regulatory permitting processes and to comply with the National Environment Policy Act (NEPA). To accomplish this effort, plans are to utilize the same protocol set forth during a previous Corps and BOEM project review of a one-time nourishment event in 2011 for the Town of Emerald Isle.

The Emerald Isle project used the same ODMDS borrow site as proposed for the Bogue Banks long-term Master Plan. As coordinated with Ms. Jennifer Culbertson of your staff, the following is a recommended outline of agency responsibilities (lead, cooperating, or joint effort) to coordinate the project permit review as it relates to consultation for Section 7 of the Endangered Species Act (ESA), Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), National Historic Preservation Act (NHPA), and the Coastal Zone Management Act (CZMA):

- 1) ESA: The lead agency in Section 7 consultation for potential impacts on threatened and endangered species will be separated by the following activities, dredge and fill placement. In our discussion with your office, it was agreed that BOEM will be the lead agency for dredging activities in the ODMDS and will consult with the National Marine Fisheries Service (NMFS) for species under their purview, i.e. turtles in the water column and whales. The Corps will be the lead agency for the fill placement activity on the shoreline and will consult with the U.S. Fish and Wildlife Service for species under their purview, i.e. nesting turtles and bird species. At this time, our office foresees a single Biological Assessment (BA) that will be used to evaluate effects on all threatened and endangered species within the project area. The BA, developed by the applicant, will be reviewed by our offices prior to submitting to the respective consulting service agency for a final effect determination.
- 2) Magnuson-Stevens Act: BOEM and the Corps will consult jointly with NMFS, requesting them to separate the responsibility by jurisdictions. In other words, the request would detail that BOEM has consultation responsibility for Essential Fish Habitat (EFH) issues associated with the project outside the 3-mile limit or during the dredging activity; and the Corps would accept the EFH consultation responsibility for activities within the 3-mile limit associated with the beach fill placement. Again, it is anticipated that the applicant will develop one EFH Assessment document for both of our agencies.
- 3) NHPA: Similar to the Magnuson-Stevens Act effort, consultation with the North Carolina State Historic Preservation Office (SHPO) will be conducted jointly with a request to separate responsibilities by jurisdiction. BOEM will comply with NHPA outside the 3-mile limit while the Corps will consult with

SHPO concerning cultural resources inside the 3-mile limit.

4) CZMA: With the State of North Carolina jurisdictional waters limited to inside the 3-mile zone, the Corps will accept the responsibility as the lead federal agency in all coordination efforts with the State as it relates to the CZMA. Please be aware that the PEIS document is being prepared to satisfy both NEPA and SEPA requirements. Coordination with the North Carolina Division of Coastal Management has been frequent and on-going since the initial review of the County's proposal.

As we move forward with anticipation that Carteret County will request separate BOEM and Corps authorizations to implement the Master Plan, it is our intention to fully engage your agency in the development and/or approval of all required documents as they relate to the above laws, including the Corps' development of our PEIS.

Please advise us, at your earliest convenience, as to your agency's concurrence to coordinate in the manner above for the Carteret County's long-term Master Plan project. If you have any questions concerning this request, please do not hesitate to contact Mr. Mickey Sugg in the Wilmington Regulatory Field Office at (910) 251-4811.

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Sincerely, CESAW-RG-L/SUGG/aef

CESAW-RG-L/BETER/s *sv*

MAIL

CESAW-RG/FILE

Dale Beter, Chief
Wilmington Regulatory Field Office

Enclosure

Copies Furnished (without Enclosure):

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