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

ALTAMAHA RIVERKEEPER, ONE
HUNDRED MILES, and SURFRIDER
FOUNDATION

Plaintiffs,

v.

THE UNITED STATES ARMY CORPS OF
ENGINEERS et al.,

Defendants,

and

SEA ISLAND ACQUISITION, LLC,

Intervenor-Defendant.

Docket No. 4:18-cv-00251- JRH -JEG

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 *et seq.*, challenging the United States Army Corps of Engineers' (the Corps) issuance of Permit Number SAS-2015-00742 (the Permit) pursuant to Section 404 of the Clean Water Act and of the accompanying Environmental Assessment and Finding of No Significant Impact (EA/FONSI)¹ under the National Environmental Policy Act (NEPA).

2. The Permit allows Intervenor-Defendant Sea Island Acquisition, LLC to construct a new T-head groin in front of Sea Island Acquisition's newest development, the Reserve at Sea Island; to dredge between 1,315,000 to 2,500,000 cubic yards of sand from an offshore source; and to renourish more than 17,000 linear feet of beach on Sea Island.

¹ The Corps refers to FONSI as "Statements of Findings."

3. This action seeks a declaration that the EA/FONSI and Permit are arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law, in violation of the Clean Water Act, NEPA, the Endangered Species Act, and the APA, 5 U.S.C. § 706(2)(A). This action also seeks an order vacating and enjoining reliance on the EA/FONSI and the Permit and requiring the removal of any portion of the groin built during this litigation and the restoration of any affected shoreline.

4. Plaintiffs filed a Complaint on October 31, 2018. The Government Defendants have not yet filed an answer or responsive pleading. Intervenor-Defendant Sea Island Acquisition, LLC filed an answer on December 19, 2018. During the lapse in appropriations, the Court stayed the case at the request of the Government Defendants and extended all deadlines falling during the stay commiserate with the length of the shutdown. On February 1, the Court lifted the stay.

5. Pursuant to Fed. R. Civ. P. 15(a)(1)(B), Plaintiffs now amend their original complaint.

JURISDICTION AND VENUE

6. This action arises under NEPA, 42 U.S.C. §§ 4321 *et seq.*, the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, the APA, 5 U.S.C. §§ 701 *et seq.*, and the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*

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

8. One Hundred Miles (OHM), Altamaha Riverkeeper (the Riverkeeper), and Surfrider Foundation (Surfrider) (collectively, the Conservation Groups) are entitled to bring this

action under the APA, 5 U.S.C. §§ 701-706, and the Endangered Species Act, 16 U.S.C. 1540(g).

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because a substantial part of the events giving rise to the Conservation Groups' claims occurred in this district.

PARTIES

10. OHM is a not-for-profit organization headquartered in Brunswick, Georgia. OHM's mission is to protect, preserve, and enhance Georgia's 100-mile coast, including the portion of the Sea Island adversely affected by the issuance of the Permit.

11. OHM also works to promote sustainable use of the coast for recreational, educational, scientific, aesthetic, and other uses by OHM's members and the public by advocating and communicating with citizens, business owners, community leaders, environmental scientists, and policy makers to improve policies and practices affecting Georgia's coast.

12. OHM has members that use and enjoy the areas affected by the Permit. For example, OHM members who live on and visit St. Simon's Island and Sea Island regularly walk, bird-watch, paddle, and enjoy the natural setting on the Sea Island Spit.

13. OHM and its members have participated and continue to participate in efforts to protect the Sea Island Spit and the wildlife that reside there, including federally protected species such as the Loggerhead Sea Turtle, the Piping Plover, and the Red Knot. Among other things, OHM has submitted comments opposing the issuance of this Permit and challenged the Georgia Shore Protection Act permit for the T-head groin in state court.

14. OHM's members will continue to maintain an interest in these species and areas in the future.

15. Additionally, OHM and its members and staff have an interest in ensuring that the Corps complies with all applicable laws, including the substantive, procedural, and informational provisions of NEPA, the Clean Water Act, and the Endangered Species Act.

16. OHM and its members are harmed by Defendants' actions, which will damage the Sea Island Spit, unreasonably interfere with access to and use of the public tidelands, and destroy habitat for federally listed species, including sea turtles and shorebirds.

17. Altamaha Riverkeeper is a not-for-profit corporation with its principal place of business in Macon, Georgia, and a coastal office in Darien, Georgia. The Riverkeeper is dedicated to the protection, defense, and restoration of the Altamaha River and its watershed. The Riverkeeper furthers its mission through public education, advocacy, and, litigation. The Riverkeeper is frequently involved in the public comment process, including for the Permit at issue in this case.

18. The Riverkeeper has approximately 500 members. Like OHM, the Riverkeeper has members that use and enjoy the areas affected by the Permit for recreation and business.

19. The Riverkeeper and its members have participated and continue to participate in efforts to protect the Sea Island Spit and the federally protected wildlife that reside there, including by submitting comments opposing the issuance of this Permit and challenging the Georgia Shore Protection Act permit for the T-head groin in state court.

20. The Riverkeeper and its members will continue to maintain an interest in these species and areas in the future.

21. Like OHM, the Riverkeeper also has an interest in ensuring that the Corps complies with all applicable laws, including NEPA, the Clean Water Act, and the Endangered Species Act.

22. The Riverkeeper and its members are harmed by Defendants' actions, which will damage the Sea Island Spit, unreasonably interfere with access to and use of the public tidelands, and destroy habitat for federally listed species, including sea turtles and shorebirds.

23. Declarations showing ARK's interest in this action are attached as Exhibits A and B to the Amended Complaint.

24. Surfrider Foundation is a national not-for-profit organization with its principal place of business in San Clemente, California.

25. Founded in 1984, Surfrider has over 80 chapters and more than 38,000 members throughout the U.S. dedicated to Surfrider's mission to protect our ocean, waves, and beaches. Surfrider's Georgia Chapter currently has over 100 members in the state and over 1,000 supporters (including those who engage with the Chapter as followers on social media, attendees at its events, and recipients of the Chapter's emails).

26. Some of these members and supporters use the Sea Island Spit and other places affected by the Permit for recreation.

27. Surfrider and its supporters have participated in and continue to participate in efforts to protect the Sea Island Spit, including by submitting comments opposing the issuance of this Permit, challenging the Georgia Shore Protection Act permit in state court, and taking other actions to specifically protect the Sea Island Spit.

28. Surfrider and its supporters will continue to maintain an interest in the Sea Island spit in the future, and its members and supporters will continue to use this area for recreation.

29. Like the other conservation groups, Surfrider also has an interest in ensuring that the Corps complies with all applicable laws, including NEPA, the Clean Water Act, and the Endangered Species Act.

30. Surfrider and its members are harmed by Defendants' actions, which will damage the Sea Island Spit, unreasonably interfere with access to and use of the public tidelands, and destroy habitat for federally listed species, including sea turtles and shorebirds.

31. Declarations showing Surfrider's interest in this action are attached as Exhibits C and D to the Amended Complaint.

32. Because the Conservation Groups and their members have an interest in protecting the Spit and the wildlife that live there, and because the Conservation Groups have an interest in ensuring that the Corps complies with NEPA, the Clean Water Act, and the Endangered Species Act, they are harmed by the issuance of the permit. These harms would be redressed by an order from this Court setting aside the EA/FONSI and the Permit.

33. Defendant U.S. Army Corps of Engineers is an agency within the United States Department of Defense charged with regulating construction in the waters of the United States. The Savannah District of the Corps is responsible for implementing Section 404 of the Clean Water Act in Georgia.

34. Defendant Lieutenant General Todd Semonite is the current Commanding General of the U.S. Army Corps of Engineers. Lieutenant General Semonite is sued in his official capacity.

35. Defendant Colonel Daniel Hibner is the current District Commander at the Savannah District Office. The Savannah District Commander was responsible for signing the Record of Decision and issuing the permit being challenged. Colonel Hibner is sued in his official capacity.

36. Defendant Tunis McElwain is the Chief of the Regulatory Branch of the U.S. Army Corps of Engineers. Mr. McElwain is sued in his official capacity.

37. Defendant-Intervenor Sea Island Acquisition, LLC is a private resort and real estate company that owns and operates Sea Island resorts.

FACTUAL AND PROCEDURAL BACKGROUND

38. Sea Island is a barrier island along the Georgia coast that is approximately four and a half miles long.

39. The southern portion of the island contains a fragile, undeveloped area called the Spit that provides significant habitat for state and federally protected sea turtles, shorebirds, and other species.

40. The Spit, which is largely protected by a conservation easement, is also a popular recreation area. Both residents and tourists frequently visit the public areas of the Spit below the mean high water line to paddle, surf, bird-watch, and walk.

41. Sea Island Acquisition desires to build a new development called the Reserve on the north end of the Spit north of the conservation easement boundary.

42. On October 9, 2015, Sea Island Acquisition filed an application seeking permission to construct a T-head groin immediately south of the proposed Reserve Development. The application also sought authorization to construct dunes and renourish the 1,200 feet of beach between an existing groin and the proposed groin.

43. According to Sea Island, the purpose of the proposed T-head groin is “to stabilize the eroding beach” in front of the proposed Reserve Development.

44. Currently, however, there are no houses located in the proposed development, and no lots have been sold. In other words, no existing structures are threatened by the beach erosion the proposed project seeks to avoid. Instead, the intent of the project is to protect unbuilt real estate.

Background on Groins

45. A groin is a hard structure, often constructed of rock or steel, that is built perpendicular to a beach. Its purpose, by definition, is to trap or block sand on the “updrift” side of the groin that would otherwise naturally move with the prevailing currents along the shoreline to the “downdrift” side of the groin. As this occurs, the beach downdrift of the groin retreats or erodes.

46. In a very real sense, the groin starves the downdrift beach of sand by eliminating the updrift sand supply. This phenomenon is shown in the photograph below, which shows an existing groin on Sea Island. (The Reserve is located just south of the South Groin.)



47. The negative impacts of groins are widely recognized.
48. In addition to causing accelerated downdrift erosion, groins also have negative impacts to wildlife, especially federally threatened sea turtles.
49. The T-head portion of a groin can inhibit nesting females from reaching the beach or act as a barrier to hatchlings as they attempt to migrate to the ocean.
50. Hatchlings can also become physically trapped in the groin itself or be killed by predators that are more concentrated near the structure.
51. In addition, because they cause accelerated erosion, groins can reduce important habitat for sea turtles, shorebirds, and other wildlife.
52. Because of these negative effects, the Corps' own Coastal Engineering Manual recognizes that "[c]oastal zone management policy in many countries and the United States presently discourages the use of groins for shore protection." USACE Coastal Engineering Manual at V-3-61.

53. Instead, over the past decade coastal engineers have shown a near universal preference for beach nourishment without a groin over similar projects with a groin or other stabilization structure.

54. In the southeast United States, for example, there have been 139 beach nourishment projects over the past ten years. Of those 139 projects, *only five* have involved a groin.

Public and Agency Opposition to the Groin

55. Because the proposed groin would harm the Spit, public opposition to the project has been overwhelming.

56. During the initial public comment period, the Corps received comments from 197 separate individuals or organizations. Of those 197 commenters, 194 opposed the project.

57. Of the nine commenters who live on Sea Island, seven opposed the project.

58. In addition to the federal comments, nearly one hundred individuals and organizations, including federal and state agencies, submitted comments to the Georgia Department of Natural Resources Coastal Resources Division (CRD) opposing the project.

59. For example, the Georgia Department of Natural Resources Wildlife Resources Division's Nongame Conservation Section (WRD) submitted written comments explaining that "[t]he construction of the T-head groin will result in the loss of sea turtle nesting habitat and will interfere with the conservation of sea turtle populations in Georgia."

60. Similarly, the United States Fish and Wildlife Service (USFWS) submitted comments to the state opposing the construction of the groin, advising, "We recommend denial of the permit. Construction of another groin will have negative impacts to sea turtles and have

possible adverse impacts to the Sea Island spit which is utilized habitat for federally listed shorebirds and sea turtles.”

Consultation with the National Marine Fisheries Service and the Fish and Wildlife Service

61. After the initial application, the U.S. Fish and Wildlife Service determined that at least eleven endangered or threatened species and two critical habitats could be impacted by the proposed project—the Leatherback Sea Turtle (endangered), the Loggerhead Sea Turtle (threatened), the North Atlantic Right Whale (endangered, critical habitat), the Piping Plover (endangered, critical habitat), the Atlantic Sturgeon (endangered), the Shortnose Sturgeon (endangered), the Red Knot (threatened), the Wood Stork (threatened), the West Indian Manatee (endangered), the Eastern Indigo Snake (threatened), and the Gopher Tortoise (candidate).

62. Sea Island Acquisition prepared a biological assessment to weigh the risks to these species.

63. Sea Island Acquisition’s biological assessment concluded that the proposed project “may affect, but [was] not likely to adversely affect” threatened and endangered species.

64. In many cases, Sea Island Acquisition’s determination was based in part on the fact that “no offshore borrow areas are proposed.” *See* Biol. Assessment (Oct. 2015) at 23-24.

65. In other cases, the determination was based on the fact that “[t]he project is of limited size—1,200 feet in length, a maximum of 120,000 yd³ of sand....” *See* Biol. Assessment at 1.

66. Ultimately, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (NMFS) concurred with the applicant’s initial effects determination on the 1,200 foot part of the project, despite acknowledging that the project would harm important habitat.

Sea Island Acquisition's Revised Permit Application

67. Following the initial notice and comment period, two major hurricanes, Matthew and Irma, caused substantial damage to Sea Island.

68. Among other things, the storms severely eroded the beach face and many of the frontal dunes on the Spit.

69. The storms also damaged the main reach of the Sea Island beach, stripping much of the sand from between the existing groins.

70. In light of these impacts, on March 6, 2018, Sea Island Acquisition submitted an addendum to its October 2015 permit application, seeking authorization (1) to construct the new T-head groin on the Spit; (2) to dredge between 1,315,000 to 2,500,000 cubic yards of sand from an offshore source; and (3) to renourish more than 17,000 feet of beach on Sea Island.

71. The addendum proposed using a hydraulic cutterhead dredge to retrieve substantial amounts of sand from offshore—well over 100,000 dump trucks worth—since Sea Island Acquisition now needed too much sand to use an onshore source as previously proposed.

72. The addendum also included a plan to perform periodic sand transfers within Sea Island via land-based equipment.

73. Because the changes proposed in the March 2018 addendum were substantial, the Corps issued a new public notice, and the Conservation Groups again submitted comments opposing the proposed project.

74. Among other things, the Conservation Groups noted that neither the October 2015 application nor the March 2018 addendum adequately considered the direct, indirect, or cumulative impacts of the proposed projects.

75. In addition, neither the October 2015 application nor the March 2018 addendum adequately considered less environmentally damaging, practicable alternatives.

76. For example, Sea Island Acquisition summarily dismissed nourishment without a groin as a practicable alternative to building a groin, even though this option has been chosen by coastal engineers in over 96% of similar projects in the Southeast over the last decade.

The Supplemental Biological Assessment

77. Because the March 2018 addendum increased the length of the project from 1,200 linear feet to approximately 17,000 linear feet (an over fourteen-fold increase), increased the maximum sand volume from 120,000 yd³ to 2,500,000 yd³ (an over twenty-fold increase), proposed retrieving sand from the ocean for the first time, and proposed the use of hydraulic cutterhead dredges, Sea Island Acquisition submitted a supplementary biological assessment.

78. The applicant's supplementary biological assessment again concluded that the proposed project "may affect" but was "not likely to adversely affect" threatened and endangered species.

79. The U.S. Fish and Wildlife Service ultimately concurred with this determination. However, the agency noted that "[t]he new groin is anticipated to result in decreased nesting and the loss of nests that do get laid within the project area for all subsequent nesting seasons following the completion of the proposed project." Letter from Fish and Wildlife Service to Col. Marvin Griffin (May 22, 2018) at 2. The agency also noted that "the sand project is anticipated to result in decreased nesting and loss of nests that do get laid within the project area for two subsequent nesting seasons following the completion of the proposed sand placement." Letter from Fish and Wildlife Service to Col. Marvin Griffin (May 22, 2018) at 2.

80. Given that the supplemental application involved substantial offshore dredging and the use of a hydraulic cutterhead dredge, the U.S. Fish and Wildlife Service directed the Corps to “*please refer to [the National Marine Fisheries Service] for impacts in the water.*” Letter from Fish and Wildlife Service to Col. Marvin Griffin (May 22, 2018) at 2.

81. However, rather than consult with the National Marine Fisheries Service about the supplemental application, the Corps instead concluded that no additional consultation was necessary for both the use of a cutterhead dredge and the placement of sand on the Sea Island beach.

The Permit and NEPA Documents

82. On September 11, 2018, the Corps issued a permit authorizing Sea Island Acquisition to construct the new T-head groin on the Spit; to dredge between 1,315,000 to 2,500,000 cubic yards of sand from an offshore source; and to renourish more than 17,000 linear feet of beach on Sea Island.

83. At the same time, the Corps issued an Environmental Assessment, finding that the authorized project would have no significant impact to the environment.

84. Although concluding that there would be no significant impact, the Environmental Assessment repeatedly acknowledged that the existing groins caused accelerated erosion on the Spit and the proposed project would affect sea turtles and other endangered and threatened wildlife.

LEGAL FRAMEWORK

Clean Water Act

85. In 1972, Congress passed the Clean Water Act “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

86. To achieve this objective, Section 301 of the Clean Water Act prohibits “the discharge of any pollutant” into “the navigable waters of the United States” except in accordance with permits issued under the Clean Water Act. 33 U.S.C. § 1311(a).

87. “Navigable waters” are defined as “the waters of the United States, including the territorial seas.” *Id.* § 1362(7).

88. “Pollutants” include dredged spoil, rock, dirt, and sand, among other materials. *Id.* § 1362(6).

89. Section 404 of the Clean Water Act authorizes the Secretary of the Army to issue permits for the discharge of dredged or fill material into “the waters of the United States” when certain conditions are met. 33 U.S.C. § 1344.

90. Unless exempted by Section 404(f)(1), which is not applicable here, all discharges of fill material into waters of the United States must be authorized under a Section 404 permit issued by the Corps.

91. Issuance of all Section 404 permits is governed by the Section 404(b)(1) Guidelines found at 40 C.F.R. Part 230.

92. The Section 404(b)(1) Guidelines provide that no discharge of fill material may be permitted if there is a less damaging “practicable alternative” available, or if the discharge will “cause or contribute to significant degradation” of waters of the United States. 40 C.F.R. § 230.10.

93. In conducting this analysis, the Corps may rely on information submitted by the applicant but must independently verify such information. *Id.*; 40 C.F.R. § 1506.5(a).

94. Corps regulations further require that “the Corps will, in all cases, exercise independent judgment in defining the purpose and need for the project from both the applicant’s and the public’s perspective.” 33 C.F.R. § 325, App. B(9)(b)(4). This ensures that “an applicant cannot define a project in order to preclude the existence of any alternative sites and thus make what is practicable appear impracticable.” *Sylvester v. U.S. Army Corps of Engineers*, 882 F.2d 407, 409 (9th Cir. 1989). Put differently, “the definition of a project purpose may not be used by the sponsor as a tool to artificially exclude what would otherwise be practicable alternatives to the project.” *Florida Clean Water Network, Inc. v. Grosskruger*, 587 F. Supp. 2d 1236, 1244 (M.D. Fla. 2008) (quoting *Sylvester*, 882 F.2d at 409).

95. The Section 404(b)(1) Guidelines require the Corps to deny a permit unless the applicant can show that there are no practicable alternatives with less adverse impact on the environment. 40 C.F.R. Part 230.

National Environmental Policy Act

96. Congress enacted NEPA to “promote efforts which will prevent or eliminate damages to the environment” 42 U.S.C. § 4321.

97. To achieve this goal, NEPA requires federal agencies to fully consider and publicly disclose the environmental consequences of an agency action *before* proceeding with that action. *Id.* § 4332(2)(C); 40 C.F.R. §§ 1501.2, 1502.5.

98. Agencies’ evaluation of environmental consequences must be based on scientific information that is both “[a]ccurate” and of “high quality.” 40 C.F.R. § 1500.1(b).

99. Where an agency relies on the applicant to submit environmental information, the agency “shall independently evaluate the information submitted and shall be responsible for its accuracy. . . .” 40 C.F.R. § 1506.5(a).

100. In addition, if there is “incomplete or unavailable information,” the agency preparing the EIS “shall always make clear that such information is lacking.” 40 C.F.R. § 1502.22.

101. For major federal actions significantly affecting the quality of the human environment, NEPA requires that federal agencies prepare an Environmental Impact Statement (EIS). 42 U.S.C. § 4332(2)(C).

102. Where it is not readily discernible whether the environmental effects of a proposed action will be significant, federal agencies may first prepare a less rigorous Environmental Assessment (EA) to establish the project’s level of impact. 40 C.F.R. §§ 1501.4(b), 1508.9(a)(1); 33 C.F.R. §§ 230.10-.11. If impacts are likely to be significant, however, an EIS is then required.

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

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

Endangered Species Act

105. Congress enacted the Endangered Species Act “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be preserved” 16 U.S.C. § 1531(b).

106. Under section 7(a)(2) of the Endangered Species Act, 16 U.S.C. § 1536(a)(2), the Corps, in consultation with the Fish and Wildlife Service and/or the National Marine Fisheries Service, “shall insure that any action authorized, funded, or carried out by [the agency] is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat”

107. In satisfying Section 7(a)(2), the Corps is required to “use the best scientific and commercial data available.” 16 U.S.C. § 1536(a)(2).

108. Consultations with the FWS and/or NMFS are required when a proposed action “may affect” a listed species.

STANDARD OF REVIEW

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

110. The APA confers a right of judicial review on any person adversely affected by final agency action, and provides for a waiver of the federal government's sovereign immunity. 5 U.S.C. § 702.

111. Although the Clean Water Act does contain a citizen suit provision, that provision does not govern suits brought to challenge a permitting decision made by the Corps in its capacity as a regulatory entity authorizing a discharge under Section 404. *See* 33 U.S.C. § 1365(a).

112. Therefore, the APA also governs the scope and standard of review for the Conservation Groups' Clean Water Act claim against the Corps.

113. Upon review of agency action under the APA, the court shall "hold unlawful and set aside actions . . . found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. § 706(2)(A).

114. An action is arbitrary and capricious "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. [A court] may not supply a reasoned basis for the agency's action that the agency itself has not given." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

115. The Endangered Species Act, Section 16 U.S.C. § 1540(g), allows "any person" to bring a lawsuit to enjoin a government agency that has not complied with the endangered species act.

CLAIMS FOR RELIEF

A. Claim One: The Corps violated the Clean Water Act and the APA by issuing the Permit when there is a less environmentally damaging practicable alternative to the project and by improperly limiting the “purpose and need” of the project.

116. The Conservation Groups incorporate by reference the allegations contained in the preceding paragraphs.

117. Under 40 C.F.R. §§ 230.10(a) and 230.12(a)(3)(i), the Corps may not issue a Section 404 permit if there is a less environmentally damaging practicable alternative to the project.

118. Practicable alternatives are those alternatives that are “available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” *Id.* § 230.10(a)(2).

119. Here, the Corps failed to adequately consider less environmentally damaging practicable alternatives, including but not limited to nourishment of the beach without a groin, and granted the Permit even though such alternatives existed.

120. The Corps also improperly narrowed the purpose of the project and thus failed to adequately examine all practicable alternatives, including looking for other sites in the area to develop as alternatives to the Reserve location.

121. The Corps’ inadequate evaluation of alternatives, and ultimate issuance of a permit when there was a less environmentally damaging practicable alternative to the project, is arbitrary and capricious in violation of the Clean Water Act and the APA.

B. Claim Two: The Corps violated the Clean Water Act and NEPA by failing to adequately evaluate the cumulative impacts of the authorized project.

122. The Conservation Groups incorporate by reference the allegations contained in the preceding paragraphs.

123. Under 40 C.F.R. §§ 230.11(g) (Clean Water Act) and 1508.7-.8 (NEPA), the Corps is obligated to evaluate cumulative effects of the project before granting a Permit.

124. Clean Water Act regulations define “cumulative impacts” as “the changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges of dredged or fill material. Although the impact of a particular discharge may constitute a minor change in itself, the cumulative effect of numerous such piecemeal changes can result in a major impairment of the water resources and interfere with the productivity and water quality of existing aquatic ecosystems.” 40 C.F.R. § 230.11.

125. NEPA regulations define “cumulative impact” as the “impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7.

126. The Corps failed to adequately evaluate the cumulative effects of the proposed project over the life of the project.

127. Thus, the Corps’ cumulative impacts review was arbitrary and capricious in violation of the Clean Water Act, NEPA, and the APA.

C. Claim Three: The Corps violated NEPA and the APA by failing to take a “hard look” at the environmental consequences of the proposed action and by failing to prepare an Environmental Impact Statement.

128. The Conservation Groups incorporate by reference the allegations contained in the preceding paragraphs.

129. Under NEPA, the Corps must take a “hard look” at the environmental consequences of an action before issuing a Clean Water Act permit. In so doing, the Corps must use “high quality” information, including “accurate scientific analysis.” 40 C.F.R. § 1500.1(b).

130. The Corps failed to take a hard look at the environmental consequences of the proposed action.

131. For example, the Corps did not adequately consider the impacts to piping plovers, summarily dismissing potential impacts to the federally listed species because “the listed critical habitat is located outside the project site. Therefore there would be no direct effect to critical habitat.” EA at 50.

132. According to the textual unit description published in the Federal Register, however, critical habitat for the piping plover “extends north of Gould’s inlet (Sea Island) 2.5 km (1.54 mi) starting *just south of the groin* and extends south of Gould’s Inlet (St. Simons Island) 1.6 km (1,0 mi).” 66 Fed. Reg. at 36,099 (emphasis added).

133. The Corps’ failure to adequately consider impacts to this species is arbitrary and capricious and in violation of law and violates NEPA, the Endangered Species Act, the Clean Water Act, and the APA.

134. The Corps' failure to prepare an EIS also violates NEPA. Under NEPA, the Corps must prepare or adopt an EIS before undertaking a major action that will "significantly affect[] the quality of the human environment." 42 U.S.C. § 4332(2)(C).

135. Based on the project's direct, indirect, and cumulative impacts to the sand-sharing system and to threatened and endangered species and their habitat and the controversy and uncertainty surrounding the impacts of the Permit, the issuance of the Permit meets the regulatory definition of significance that calls for the preparation or adoption of an EIS.

136. The Corps' FONSI and its decision to forgo preparing an EIS are arbitrary and capricious in violation of NEPA and the APA.

D. Claim Four: The Corps violated the Clean Water Act and the APA by issuing a permit for a structure that would create undue interference with access to and use of public tidelands.

137. The Conservation Groups incorporate by reference the allegations contained in the preceding paragraphs.

138. Under 33 C.F.R. § 320.4, "in the case of proposals which create undue interference with access to, or use of, navigable waters," the permit should generally be denied. 33 C.F.R. § 320.4(g)(3).

139. The proposed groin creates undue interference with access to at least 1,200 feet of public tidelands.

140. The Corps did not consider this access issue.

141. Thus, the Corps' issuance of the permit was arbitrary and capricious in violation of the Clean Water Act and the APA.

E. Claim Five: The Corps violated the Endangered Species Act and the Administrative Procedure Act by failing to adequately consult with NMFS and the FWS regarding the project.

142. The Conservation Groups incorporate by reference the allegations contained in the preceding paragraphs.

143. Sea Island Acquisition provided a biological assessment with their initial application documenting that eleven threatened or endangered species reside or nest in the project area, and that the Piping Plover and North Atlantic right whale have critical habitat either within or adjacent to the project area.

144. Based on Sea Island Acquisition's biological assessment, the Corps determined that the authorized activities "may affect," but were unlikely to adversely affect, listed species.

145. By letter dated May 10, 2017, the Corps sent the applicant's biological assessment to NMFS and requested concurrence with the agency's effects determination.

146. By letter dated October 10, 2017, NMFS concurred, noting that the effects of the 1,200 foot-long project were sufficiently small to be "discountable" or "insignificant."

147. After NMFS's concurrence, Sea Island Acquisition amended its application to seek renourishment of 17,000 linear feet—over fourteen times longer than the initial application that NMFS reviewed.

148. In addition to expanding the length of the project, the amended application proposed to pump up to 2,500,000 yd³—an over 20-fold increase from the initial application—from an offshore borrow site via a hydraulic cutterhead dredge. By contrast, the initial applicant proposed moving 120,000 yd³ of sand from an onshore location via truck.

149. Because NMFS had summarily examined the effects of a hydraulic cutterhead dredge on the sea turtles in an aquatic environment over two decades earlier, the Corps concluded that no additional consultation was needed despite increasing the size of the project by a multiple of fourteen, changing the project location, and adding an aquatic component.

150. Pursuant to 16 U.S.C. § 1540(g)(2), the Conservation Groups provided written notice of the violation to Defendants on October 31, 2018. A copy of the written notice is attached to the Conservation Groups' Motion for Preliminary Injunction as Exhibit S, ECF No. 5-19.

151. Neither the Corps nor NMFS has taken action to bring the Corps into compliance with the Endangered Species Act since receiving the letter.

152. The Corps' failure to consult with NMFS following the submission of a substantially amended application is arbitrary and capricious and in violation of law and violates the Endangered Species Act, the Clean Water Act, and the APA.

F. Claim Six: The Corps violated NEPA, the Clean Water Act, and the APA by failing to take adequate steps to minimize or mitigate the adverse impacts of the project.

153. NEPA regulations require an analysis of measures to mitigate the impacts of proposed actions. *See* 40 C.F.R. §§ 1502.14(f), 1502.16(h).

154. Clean Water Act regulations, 40 C.F.R. § 230.10(d), similarly require the Corps to take "appropriate and practicable steps which will minimize potential adverse impacts of the discharge on the aquatic ecosystem."

155. The Corps failed to take adequate steps to minimize or mitigate the adverse impacts of the project. For example, the Permit requires no mitigation measures for piping plover critical habitat, despite the inclusion of such measures in prior permits.

156. The Corps' failure to adequately consider mitigation measures is arbitrary and capricious in violation of NEPA and the APA.

PRAYER FOR RELIEF

The Conservation Groups respectfully request that this Court:

A. Declare that the Corps' issuance of the Permit violates the Clean Water Act and its implementing regulations and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law in violation of the APA;

B. Declare that the Corps' FONSI and its failure to prepare an EIS violate NEPA and its implementing regulations and are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law in violation of the APA;

C. Declare that the Corps' issuance of the Permit violates the Endangered Species Act and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law;

D. Vacate and enjoin reliance on the Permit;

E. Require removal of any portion of the groin built during this litigation and restoration of any affected shoreline;

F. Award the Conservation Groups the costs of this action, including their reasonable attorneys' fees; and

G. Grant the Conservation Groups such additional relief as the Court deems just and proper.

Respectfully submitted this 13th day of February, 2019.

**SOUTHERN ENVIRONMENTAL
LAW CENTER**

/s/ Megan Hinkle Huynh

William W. Sapp

Georgia Bar No. 626435

Megan Hinkle Huynh

Georgia Bar No. 877345

Admitted pro hac vice

Bob Sherrier

Georgia Bar No. 979890

Pro hac vice motion forthcoming

Ten 10th Street NW, Suite 1050

Atlanta, Georgia 30309

Phone: (404) 521-9900

Fax: (404) 521-9909

bsapp@selcga.org

mhuynh@selcga.org

bsherrier@selcga.org

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on February 13th, 2019, I electronically filed the foregoing *Amended Complaint for Declaratory and Injunctive Relief* with the Clerk of Court using the CM/ECF system.

/s/ Megan Hinkle Huynh

EXHIBIT A

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

ALTAMAHA RIVERKEEPER, ONE
HUNDRED MILES, and SURFRIDER
FOUNDATION,

Plaintiffs,

v.

THE UNITED STATES ARMY CORPS OF
ENGINEERS et al.,

Defendants.

Docket No. 4:18-cv-00251

DECLARATION OF JENIFER HILBURN

1. My name is Jenifer Hilburn. I am over the age of 18 and competent to make this declaration. The facts stated below are based on my own personal knowledge and belief.

2. I am the Executive Director of Altamaha Riverkeeper, Inc. (ARK).

3. ARK is a non-profit organization founded in 2000. ARK is incorporated under the laws of Georgia and maintains its headquarters office in Macon and a coastal office in Darien. ARK currently has approximately 1,500 members.

4. ARK's mission is to protect, defend, and restore the Altamaha River and its watershed. The Altamaha's watershed includes areas of Georgia's coast such as the Sea Island Spit, Gould's Inlet, and St. Simon's Island. In furtherance of its mission, ARK monitors activities that impact the ecological integrity of its watershed and engages in public education, advocacy, and litigation.

5. ARK has members that use and enjoy the areas affected by the permit and will continue to do so in the future. Accordingly, ARK and its members have participated and

continue to participate in efforts to protect the Sea Island Spit and the wildlife that reside there, including federally protected species of sea turtles, birds, and other marine life such as the Atlantic and shortnose sturgeon who spawn in the Altamaha River.

6. ARK opposed the Reserve development during its initial proposal and worked to obtain Sea Island Acquisition's agreement to place the Spit into a conservation easement. The property included within that easement will be adversely affected by the proposed project. ARK submitted comments on the state Shore Protection Act permit and the federal Clean Water Act permit for this project. ARK was also a party to administrative litigation challenging the state Shore Protection Act permit.

7. ARK has commented and taken action at each step of the project's development to ensure compliance with relevant environmental laws such as the National Environmental Policy Act, the Endangered Species Act, and the Clean Water Act.

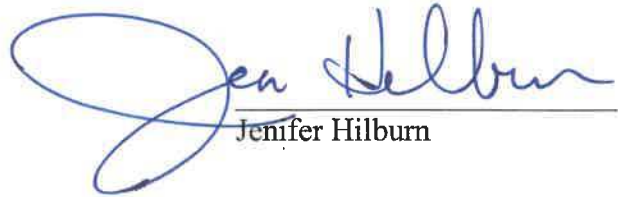
8. The activities allowed by the permit (groin construction, dredging, and beach nourishment) will adversely affect ARK and its members' interests by interfering with and disrupting the sand-sharing system, accelerating erosion of the Spit, interfering with access to a public beach, and imperiling the wildlife and endangered species within the Altamaha watershed and adjacent coastal areas. These harms are redressible by an appropriate order of this court.

9. Ensuring that the U.S. Army Corps of Engineers complies with its statutory duties to properly evaluate the environmental impacts of projects within the Altamaha watershed is germane to ARK's mission and organizational purpose.

10. Neither the claims ARK has asserted nor the relief ARK has requested requires the participation of ARK's individual members in this litigation.

Per 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 30, 2019.



Jenifer Hilburn

EXHIBIT B

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

ALTAMAHA RIVERKEEPER, ONE
HUNDRED MILES, and SURFRIDER
FOUNDATION,

Plaintiffs,

v.

THE UNITED STATES ARMY CORPS OF
ENGINEERS et al.,

Defendants.

Docket No. 4:18-cv-00251

DECLARATION OF JONI HOUSE

1. My name is Joni House. I am over the age of 18 and competent to make this declaration. The facts stated below are based on my own personal knowledge and belief.
2. I am a member of Altamaha Riverkeeper and served as President of the Board in 2015.
3. I have become aware that Sea Island Acquisition has obtained a permit to construct a groin on the Sea Island Spit and to dredge millions of cubic yards of sand from offshore to nourish three miles of Sea Island's private beaches. I am concerned about the negative impacts of this project which include disruption of the sand-sharing system, increased erosion of the Spit, and loss of wildlife habitat. I am further concerned about the potential negative impacts of the proposed dredging and nourishment project on endangered and threatened species in the area. These negative effects would not only harm the Spit, but also the adjacent coastal areas including Gould's Inlet, beaches at St. Simon's Island, and adjacent waters

and marshes. These negative impacts will adversely affect my use and enjoyment, and my family and friends' use and enjoyment, of the Spit and adjacent coastal areas.

4. I own a home located at 209 Driftwood Drive, St. Simons Island, Georgia. My home is approximately 100 yards from the beach on the east side of St. Simons which I use on a regular basis. My family and I regularly use the home and also rent it to persons who enjoy and recreate on St. Simons, the beach near my home, the marsh near East Beach Causeway, the public beach areas of the Spit, and the area in close proximity to the Spit, including Gould's Inlet and the adjacent waters and marshes. I believe that my ability to rent my home would be adversely affected by the impacts of the proposed project noted above.

5. For many decades since I was a teenager, I have engaged in recreational activities on and enjoyed the aesthetic beauty of St. Simons, the Spit, Gould's Inlet, and surrounding areas. I regularly do so throughout the year and intend to do so in the future.

6. More specifically, I have engaged in sailing, swimming, kayaking, crabbing, fishing, bird-watching, wildlife-viewing, star-gazing, beach-walking, and other activities on the Spit and in the surrounding areas. I continue to engage in many of these activities and intend to do so in the future. I particularly enjoy seeing the various bird species and other wildlife on the Spit and nearby coastal areas. Over the years since the existing groins were built on Sea Island, I have observed a significant decrease in nesting horseshoe crabs on the northeast area of East Beach.

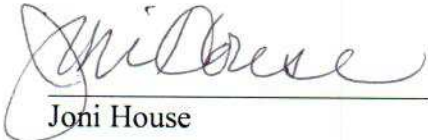
7. My family, including my parents, sisters, brothers-in-law, nephews, and great-nieces, and many friends regularly visit and use my home on St. Simons. When they do so, they frequently engage in recreational activities on East Beach, the Spit, and adjacent coastal areas.

They too enjoy the aesthetic beauty of the area and the Spit. I often engage in these activities with them. As an example, we have taught my family's younger generation and our friends how to kayak the coastal areas including the Spit. My family and friends' continued enjoyment of these areas will be adversely affected by the proposed project.

8. A healthy coastal environment is very important to me, including the area encompassing the Spit. I continue to promote and engage in environmental education and conservation projects and am concerned about endangered species on Georgia's coast. The proposed project will have negative impacts on the Spit, wildlife, and surrounding coastal areas that have brought me recreational and aesthetic joy throughout the years. Those negative impacts will also affect me financially because they will reduce the rental value and rentability of my home. These harms would be redressed by an appropriate order of this court.

Per 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 13, 2018.



Joni House

EXHIBIT C

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

ALTAMAHA RIVERKEEPER, ONE
HUNDRED MILES, and SURFRIDER
FOUNDATION,

Plaintiffs,

v.

THE UNITED STATES ARMY CORPS OF
ENGINEERS et al.,

Defendants.

Docket No. 4:18-cv-00251

DECLARATION OF STEPHEN BENJAMIN COMBS

1. My name is Stephen Benjamin Combs. I am over the age of 18 and competent to make this declaration. The facts stated below are based on my own personal knowledge and belief.
2. I am the Chapter Chairperson and a member of Surfrider Foundation Georgia Chapter.
3. The Surfrider Foundation (Surfrider) is a non-profit grassroots organization dedicated to the protection and enjoyment of our oceans, waves, and beaches. Surfrider has over 80 volunteer-based chapters across the United States, including its Georgia Chapter which currently has over 100 members in the state and over 1,000 supporters (including those who engage with the Chapter as followers on social media, attendees at its events, and recipients of the Chapter's emails).
4. The Georgia Chapter was formed when the Atlanta and Low Country/Coastal Georgia Chapters merged in 2013. I have been a member of Surfrider since 2009. I have served

various leadership roles in the Georgia Chapter (and its Atlanta predecessor) from 2011 to the present, including Executive Committee Member, Treasurer, and Chairperson. From 2014 to 2016, I also served on the Surfrider Foundation National Board of Directors. In 2013, I received the Surfrider Foundation Distinguished Service Award, an annual award which honors individuals for their outstanding volunteer efforts and support of Surfrider's mission of protecting our world's oceans, waves, and beaches.

5. Surfrider fulfills its mission through many means including public education, advocacy, and litigation. Surfrider's Georgia Chapter is focused on supporting conservation and sustainable use of Georgia's coastal resources including the Altamaha River and other watersheds adjacent to and near the Sea Island Spit. Our members, including myself, actively engage and participate in Surfrider events across the state, including beach cleanups, stand up paddle races, surfing events, movie nights, and grassroots activism on legislative issues and campaigns. These issues range from promoting plastic bag bans, to protecting coastal areas for recreational uses and from over-development, as well as preserving access to public beaches. My fellow Surfrider members and I are passionate about protecting and preserving healthy oceans and coastal environments.

6. Surfrider's members use, recreate, work, and reside near, as well as derive aesthetic enjoyment from, the waters, beaches, sandy areas, adjacent habitat, and aquatic life and wildlife along Georgia's coast including the area encompassing the Sea Island Spit, Gould's Inlet, and St. Simon's Island. They will continue to do so in the future.

7. Surfrider opposed the Reserve development during its initial proposal and worked to obtain Sea Island Acquisition's agreement to place the Spit into a conservation easement. The

property included within that easement will be adversely affected by the proposed project.

Surfrider submitted comments on the state Shore Protection Act permit and the federal Clean Water Act permit for this project. Surfrider was also a party to administrative litigation challenging the state Shore Protection Act permit.

8. Surfrider has commented and taken action at each step of the project's development to ensure compliance with relevant environmental laws such as the National Environmental Policy Act, the Endangered Species Act, and the Clean Water Act.

9. The activities allowed by the permit (groin construction, dredging, and beach nourishment) will adversely affect Surfrider and its members' interests by interfering with and disrupting the sand-sharing system, accelerating erosion of the Spit, interfering with access to a public beach, and imperiling the wildlife and endangered species of Georgia's coast. These harms are redressible by an appropriate order of this court.

10. Ensuring that the U.S. Army Corps of Engineers complies with its statutory duties to properly evaluate the environmental impacts of projects on Georgia's coast is germane to Surfrider's mission and organizational purpose.

11. Neither the claims Surfrider has asserted nor the relief Surfrider has requested requires the participation of Surfrider's individual members in this litigation.

12. Furthermore, I personally will be harmed by the proposed project. As a Georgia resident, I frequently spend time in the ocean near the Sea Island Spit surfing, stand up paddling, and spending time with friends. I have enjoyed surfing for nearly three decades around the world and frequently surf and paddle at Gould's Inlet between Sea Island and St. Simons Island. I enjoy Gould's Inlet as it is one of Georgia's best surf breaks due to sandbars in the channel south of

Sea Island. The beach on St. Simons Island adjacent to the inlet is a very popular recreational area because of its wide sandy beaches.

13. I have visited Gould's Inlet and the adjacent St. Simon's beach every year since 2013 for surfing, paddling, and Surfrider events. I surf or paddle by myself, and with friends and other Surfrider members. From there, I enjoy the beautiful and pristine natural views of the Sea Island Spit.

14. Specifically, on June 22, 2013, I organized a public event on St. Simons Island to celebrate International Surfing Day. The trip included me and other Surfrider members paddling and surfing Gould's Inlet where we enjoyed the sights of Sea Island, and the natural sandbar surf break in the Inlet.

15. On May 18, 2014, Surfrider members, St. Simons community members, and I stand up paddled approximately 27 miles for 10 hours in one day to circumnavigate Little St. Simons Island (north of and adjacent to Sea Island). The purpose of the trip was to raise awareness of Georgia's remote and beautiful coastlines and to enjoy the empty beaches in the area.

16. On September 20, 2015, the Georgia Chapter organized a beach cleanup, camping, surfing, and paddling trip on Jekyll Island for members. As part of that trip, I traveled with another Surfrider member to Gould's Inlet for more paddling and better surf conditions. The variety of recreational areas to enjoy is a compelling reason to visit the coast of Georgia, including the area where the proposed project is located.

17. Just last year I paddled to the Sea Island Spit from St. Simons Island and walked along the public foreshore to the existing south groin, an enjoyable activity that I fear I will no

longer be able to do when the proposed groin is constructed. The picture below is me standing in front of the existing south groin on that trip.



18. In the spring of this year, I testified in front of the Georgia House Energy, Utilities, and Telecommunications Committee in opposition to offshore drilling on the Georgia coast. My testimony, and my related comment letter to the Bureau of Ocean Energy Management, expressed my deep concern that unsustainable development on our coast would not only harm Georgia's economy, it would have negative impacts on Georgia's unique tidal ecosystem and the threatened and endangered marine species who reside there.

19. Similarly, Sea Island's proposed project will have negative impacts on the sand transport necessary for essential sandbars and beaches in the area, and will thus have negative impacts on my use and recreational activities. Only four of Georgia's barrier islands are accessible by car (Tybee, Sea, Jekyll, and St. Simons Islands). In addition, Sea Island is a private island with very limited access to the public. Gould's Inlet is not a typical beach break with waves that crash on the beach in shallow water. Waves at Gould's Inlet form in deep water in the channel south of Sea Island to form a wave that breaks within the channel and well offshore.

Loss of the surf area and beach cannot be remedied by relocating surfing activities to other beach areas. The proposed project will reduce my enjoyment from surfing this unique wave and enjoying the beach.

Per 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 26, 2018.



Stephen B. Combs

EXHIBIT D

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

ALTAMAHA RIVERKEEPER, ONE
HUNDRED MILES, and SURFRIDER
FOUNDATION,

Plaintiffs,

v.

THE UNITED STATES ARMY CORPS OF
ENGINEERS et al.,

Defendants.

Docket No. 4:18-cv-00251

DECLARATION OF JASON LATHAM

1. My name is Jason Latham. I am over the age of 18 and competent to make this declaration. The facts stated below are based on my own personal knowledge and belief.

2. I am a member of Surfrider Foundation, Georgia Chapter, and currently serve as the Chapter's Coastal Director.

3. I grew up near the Georgia coast and returned home in 2013 after my love of surfing took me to Oahu's famous North Shore for a few years. Since I have been back I have greatly enjoyed exploring Georgia's barrier islands on my paddleboard, from Cumberland to Sapelo.

4. I am a professional stand-up paddleboard (SUP) surfer and consider Gould's Inlet and the Sea Island Spit my home breaks. In the winter, when there are more waves, I surf the Spit on average once every other week; often more, depending on the swells. I intend to continue surfing in this area in the future.

5. I own and operate J.Lay SUP, LLC a recreational tour business where I teach SUP and offer paddling tours of the rivers, marshes, and beaches of Georgia, including the area surrounding the Sea Island Spit. I founded J.Lay SUP this year after Davis Love's Paddle & Putt on St. Simons Island closed its doors. At Paddle & Putt I had taught paddling and gave tours.

6. I frequently take clients from St. Simons Island across Gould's Inlet and up Black Bank River towards the dock and bridge by the Cloister at Sea Island. On the way back, we stop at the Spit, admire its beautiful, pristine shore and wildlife and walk the beach below the high tide mark. This year I have taken about a dozen people on this trip and will continue to do so in the future.

7. I am familiar with the proposed project to construct an additional rock groin on the Spit and to dredge and place sand along Sea Island's private beaches, and have walked all the way up to the existing groin in the past. I am concerned about the negative effects that this project may have on my surf spots and my business as well as the project's aesthetic and environmental harms. I believe the proposed project will negatively affect the sand-sharing system, cause accelerated erosion of the Spit, and reduce wildlife habitat. If the beach continues to erode, I would not be able to take my clients there in the future. I am also opposed to the further privatization of the beaches on Sea Island (given that the new groin would effectively cut off another 1,200 feet of tidelands from the public) and the encroaching development onto untouched areas.


8. The stability of the coastline and the sand-sharing system are of great concern to me as influxes of sand can change how waves break. I have personally observed the changes to the area surrounding the Spit in just the past few years, particularly in Gould's Inlet where

previously watery areas now look like deserts. Similarly, groins and jetties can dramatically alter the breaks. For example, it appears as though the existing south groin on Sea Island has shifted the peak of the wave southward down the Spit.

9. For these reasons, I have an interest in protecting the coastline on the Spit as well as downdrift. As a direct result of the U.S. Army Corps of Engineers' issuance of the permit, my personal use and enjoyment of the area and my economic interests through the tours I lead will be harmed. The harm to my interests would be redressed by an appropriate order of this court.

Per 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 28, 2018.



Jason Latham