

**National Park Service  
US Department of the Interior**



**Cape Hatteras National Seashore**

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**Finding of No Significant Impact  
Oregon Inlet Marina Improvements  
Cape Hatteras National Seashore, North Carolina**

**June 2021**

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Recommended:

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## INTRODUCTION

Oregon Inlet Marina (also known as Oregon Inlet Fishing Center) is a commercial charter fishing marina located within Cape Hatteras National Seashore (Seashore), south of Nags Head, North Carolina in the region of barrier islands known as the Outer Banks. As part of the National Park Service (NPS) system, the Seashore has permitted or contracted fishing center and marina operations at Oregon Inlet since 1953 and the marina has been in operation in its current location since December 1956.

Oregon Inlet Marina (marina) is currently operated by Oregon Inlet Fishing Center, LLC (OIFC) under a 20-year lease with the NPS (2018 – 2038). In general, OIFC provides the following services at the marina: slip rentals for charter fishing boats, headboats and tour boats; booking services for charter fishing and other boats; retail sales; fuel sales; and food & beverage sales. OIFC is also authorized to provide: non-motorized watercraft rentals (such as kayaks and canoes); special events, such as fishing tournaments; and a children's play area. Under the terms of the lease with the NPS, OIFC is responsible for the repair and maintenance of the marina premises during the lease term. Additionally, the lease requires that any alterations to the marina conducted by the lessee (as defined in the lease, including construction, modifications, rehabilitation, reconstruction, and/or restoration of the lease premises), be undertaken at OIFC's expense, and approved by the NPS. The marina provides premier charter fishing experiences and OIFC estimates more than 600,000 visits to the marina in 2019 based on sales of charter fishing trips and retail sales receipts.

While Oregon Inlet Fishing Center is world-renowned and provides a premier charter fishing experience on the east coast of the United States, the marina buildings and many aspects of the lease premises (project area) do not reflect the importance of the marina and cannot support continued marina operations without substantial improvement or replacement. The existing marina buildings are vulnerable, deteriorating, have significant deferred maintenance, and do not meet elevation standards for the flood zone in which they are located (Firm Zone (AE 5')).

In addition to the need for well-functioning, sustainable and resilient buildings, the marina also needs improvements to and replacements of many site elements in order to continue operating for the remainder of the current lease (through 2038) and beyond. A well-functioning fuel system is critical to supporting charter fishing operations. The marina's fuel tanks are relatively new (2007) and have been well maintained, however, the fuel delivery infrastructure needs to be replaced and relocated in order to support modern marina operations (e.g. in-slip fueling for charter boats renting marina slips). In addition to the need to improve or replace the buildings and some elements of the fuel system, the existing parking, walkways and driveways do not meet demand or support safe and efficient traffic flows on the marina premises.

On top of the poor condition of the marina facilities and need for site improvements, projected sea level rise and climate change also present a challenge to continued marina operations based on their anticipated impacts. Over the next 30 years, sea level rise is projected to continue to impact Seashore resources, including buildings and assets such as the Oregon Inlet Marina, as well as private property, and North Carolina Highway 12. The National Oceanic and Atmospheric Administration (NOAA) reports sea level rise projections at Oregon Inlet between approximately 0.25 meters (m) and 1.1 m by 2050 (NOAA 2020b). Current sea level rise rates at Oregon Inlet are 5.32 +/- 1.16 mm/year (NOAA 2020b).<sup>1</sup>

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<sup>1</sup> Note: NOAA measures water levels at a station located within Oregon Inlet Marina (Oregon Inlet Fishing Center). Information is available at this website: <https://tidesandcurrents.noaa.gov/stationhome.html?id=8652587>

In coordination with the lessee, the NPS prepared a Site Plan and Environmental Assessment (EA)<sup>2</sup> in order to evaluate strategies to replace vulnerable structures and conduct site improvements at the marina. The purpose of and need for the project is to replace vulnerable, deteriorating structures with sustainable structures adapted to sea level rise and storm surge and to conduct additional site improvements to modernize the marina in order to provide well-functioning, sustainable and resilient infrastructure to support continued marina operations for the remainder of the current lease (through 2038) and beyond.

This project is focused on replacing existing buildings, improving safety and pedestrian/vehicle circulation at the site, and conducting additional site improvements to support the replacement buildings and modernize the marina premises (project area). The project aims to address the following key issues:

- The main marina building was constructed 1963 - 1964 and all of the buildings within the marina are in poor condition and vulnerable to storm surge and sea level rise
- The location of the marine fuel docks causes boat traffic congestion and safety hazards within the marina basin
- The existing improved parking areas are inadequate to meet customer, visitor and employee needs
- Existing pathways and driveways do not support safe and efficient pedestrian and vehicle traffic flows
- The existing viewshed, including the outbuildings and dumpsters on the northwest side of the main marina building, detract from the visitor experience and views in this area of the Seashore
- Some marina slips are too shallow to accommodate charter fishing boats and the marina will require maintenance dredging in the future

The EA evaluated two alternatives: the (A) no-action alternative and (B) proposed action/preferred alternative. The EA also analyzed the potential impacts these alternatives would have on the park's natural and cultural resources and the human environment.

The EA and this finding of no significant impact (FONSI) were prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended [42 United States Code (USC) 4332(2) (C)]; the implementing regulations of the Council on Environmental Quality (CEQ) [40 Code of Federal Regulations (CFR) 1500-1508.9]; the Department of the Interior NEPA regulations (43 CFR Part 46); and NPS Director's Order (DO) 12: *Conservation Planning, Environmental Impact Analysis and Decision-making* (DO-12) and the accompanying NPS NEPA Handbook.

## **NPS SELECTED ALTERNATIVE**

The NPS selected the proposed action/preferred alternative (alternative B), because it presents the most sustainable solution to ensuring that the marina structures are adapted to sea level rise and storm surge, and that the marina has well-functioning, sustainable and resilient site elements and infrastructure to support continued marina operations for the remainder of the current lease (through 2038) and beyond.

Through modern building construction that meets current building codes, elevating the structures out of the floodplain (above FEMA and local flood standards), and improving and replacing site elements to modern standards, the selected alternative will enable the NPS to mitigate the effects of sea level and climate change at Oregon Inlet Marina. Additionally, the selected alternative will modernize the marina, provide for an improved visitor experience and support the financial viability and sustainability of marina operations in the coming decades.

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<sup>2</sup> National Park Service. 2021. *Oregon Inlet Marina Improvements Site Plan and Environmental Assessment*.

The following section describes the changes and improvements that have been approved as the selected alternative. See Figure 1 for a graphic depiction of the conceptual design for the marina improvements. Some detailed information depicted in Figure 1, and as described below, such as locations of driveways and operational areas, and square footage of buildings or facilities, could be slightly modified during future project planning and as a result of final design, but will not measurably change what was analyzed in the EA. The following actions will be implemented by the NPS, lessee, and/or contractor/s engaged by either party.

The selected alternative includes the following activities (shown on Figure 1):

- Demolish all buildings currently in the project area (retail building - 6,577 sf., four (4) storage buildings – totaling 496 sf, an exhibit building - 168 sf, and automobile fuel station booth - 128 sf)
- Replace buildings with sustainable and resilient buildings with a first-floor elevation of 11-feet (exceeding Dare County requirements by 3 feet and FEMA requirements by 6 feet) as follows:
  - Main marina building (retail, food & beverage, and marina operations) approximately 6,393 sf first floor footprint
  - Fish cleaning building approximately 1,880 sf
- Increase formal parking infrastructure to accommodate up to approximately 293 automobiles
- Enhance vehicular and pedestrian circulation within the lease premises and between adjacent uses (NPS Boat Ramp and Recreational Vehicle (RV) pump out) by adding secondary vehicular egress in the vehicle fuel area, constructing pedestrian paths and wooden boardwalks, and adding a driveway for air pump stations
- Replace existing marine fuel docks and aged fuel infrastructure with the following:
  - An approximately 900 sf fuel dock with two (2) fueling stations for transient boats in Motts Creek (outside of marina basin)
  - Seven (7) in-slip fueling stations located throughout the marina
- Replace existing fuel docks with up to six (6) boat slips
- Replace existing vehicle fuel in a new location with a new driveway
- Construct new on-site wastewater treatment and disposal system (+/- 1,600 gpd) to accommodate replacement buildings, including food and beverage services
- Enhance stormwater management by constructing formal Stormwater Control Measures (SCMs)
- Perform maintenance dredging of marina basin and portions of Motts Creek
- Place a removable, open-air events pavilion (approximately 3,400 sf) on the lease premises, which would be the personal property of the lessee (not real property of NPS)

## Facilities

The existing retail and fish cleaning buildings, and other storage structures and outbuildings located within the lease premises (within the red line on Figure 1) will be demolished, removed and replaced with two new structures – one for retail, food and beverage, and marina operations, and one for fish cleaning operations (Figure 1). Both buildings will be elevated so that the finished floor elevation (FFE) will be at least 11.0 feet (relative to NAVD 88), which is three feet higher than the local (county) first floor requirement of 8.0 feet (NAVD 88) and six feet higher than the Federal Emergency Management Agency (FEMA) Flood Insurance requirement of 5.0 feet (NAVD 88). Currently, the FFE of the retail structure and fish cleaning building (one unit) are at an elevation of 5.95 feet (NAVD 88). The 100-year flood elevation based on the current FEMA Flood Maps and a comparison of site topography is approximately 5.0 feet (NAVD 88). The replacement buildings will not only exceed elevation requirements, but will also incorporate other elements of modern and sustainable design.

The replacement retail building will be a pile-supported structure and have a first-floor footprint of approximately 6,393 sf and a total of approximately 10,166 sf in total air-conditioned space spread over

two floors. In addition to providing space for retail, food & beverage and marina operations, it will also include space for an NPS visitor contact station, meeting rooms and office areas.

The replacement fish cleaning building will be a pile-supported or concrete block foundation structure and have a total air-conditioned footprint (one floor) of approximately 1,880 sf. It will be configured to meet operational needs and may include more cooler space than is currently available in the existing fish cleaning building. Because the fish cleaning operation depends on the ability to easily and quickly move large quantities of fish and ice into and out of the building, it will be necessary to elevate the adjacent grades of the site to elevations that will allow for the safe movement of people and vehicles to deliver the fish and ice to a building with an FFE of 11.0 feet. To achieve this, fill from the associated dredge portion of the project or an approved outside source will be used to raise the site grade in the location of the replacement fish cleaning building. The proposed dredge fill [from within the marina basin and Motts Creek] was analyzed for grain size and chemicals of concern (Toxicity Characteristic Leaching Procedure (TCLP) analyses for volatile organics, semi-volatile organics, metals, pesticides and herbicides were conducted on samples collected from Vibracore borings that were installed in representative locations throughout the area of dredge work) and much of the sediment has been found to be suitable for on-site beneficial reuse in the forms of structural and roadway fill. Only sediment that meets NPS requirements will be used.

The lessee will also install an approximately 3,400 sf removable, open air events pavilion for use during events such as fishing tournaments. Fill will be placed in the pavilion location in order to raise the grade sufficiently to accommodate adjacent ramps and access to the fish cleaning building. The open-air pavilion will have a concrete floor and will be personal property of the lessee. The pavilion and concrete floor will be removed at the termination of the lease, unless otherwise approved by the NPS.

### **Fuel**

The fuel supply lines and electrical wiring will be upgraded and all of the existing marine dispensers and cabinets will be replaced with new equipment. Fuel dispensers will be located around the basin so that boats can be fueled while docked in their designated boat slip (in-slip fueling). In addition, fuel dispensers will be installed on a transient fuel dock along the Motts Creek shoreline so that transient boaters can fuel up without having to enter the basin. Automobile fuel will be replaced in a new location with multiple fueling islands, a canopy and driveway as shown in Figure 1.

The approximately 900-sf transient fuel dock will be elevated a minimum of three feet above normal water level (NWL) at an elevation of approximately 3.5 feet (NAVD 88). In order to function as a fuel dock for boats in the water, the dock cannot be elevated above the 100-year or 500-year flood plain.

The fuel system improvements will be designed to meet current flood and safety regulations. The improvements will make the system less vulnerable to flooding, storm surge, and sea level rise than the fuel system currently in place and will also reduce environmental risks.

### **Dredging**

As part of routine marina maintenance, the marina basin will be dredged in late 2021 / early 2022 and on an as-needed basis in the future. A portion of Motts Creek (within the marina premises as shown in Figure 1) will be dredged in order to construct and maintain a transient fuel dock in this location. The majority of the marina basin (shown within the marina premises in Figure 1) does not require dredging at this time, but will likely require dredging in the future. However, there are currently slips within the marina that have filled in to depths of less than six feet (NAVD 88), which precludes the slips from being used for offshore charter boats, as intended. Figure 1 includes current water depths in the marina basin and illustrates that some slips in the corners of the marina require excavation (dredging).

Maintenance dredging of the marina basin and the dredging within Motts Creek to create the transient fuel dock will generate approximately 9,500 cubic yards of material in a one-time event. Volumes of dredge spoil are estimated based on recent bathymetric surveys. Future maintenance events will only be performed when water depths measure approximately -6.0 feet or less (Mean Lower Low Water (MLLW)).

Dredge spoils, meeting grain size and environmental contaminant requirements, will be placed on-site in open grass areas and allowed to dewater prior to being used on site for filling of the access drive, grounds around the replacement fish cleaning building and other redevelopment needs. The material within Motts Creek has been determined to be suitable for use on site for fill under roads and around the fish cleaning building based on the results of sediment sampling and analysis.

The dredge work will require permitting through the NC Division of Coastal Management and moratoriums when the work cannot occur (generally during the summer months) will apply. Typically, dredge activities are only allowed to occur in the winter months (Nov. 1 through Feb. 15). The lessee and NPS were granted a CAMA Major Permit for the actions described in the proposed action/preferred alternative in the EA (the selected alternative described in this FONSI) on April 13, 2021. The CAMA permit included a maintenance clause that specifies when maintenance dredge work can occur, along with notification requirements prior to performance of any dredge activities.

If at any point during dredge activities, in 2021/2022 or in the future, the NPS, lessee or any regulatory body with jurisdiction determines that material cannot stay on the site for any reason, (either due to grain size, organic nature, or contaminants) dredge spoil material will be disposed of off-site, outside of NPS property, in an approved upland location.

### **Parking and Roads**

Approximately 96 improved parking spaces will be added (using permeable pavement) and existing spaces within the project area will be re-oriented to bring the total parking spaces up to approximately 293 from the current 197. On busy days, there is often a shortage of formalized parking resulting in visitors and marina customers parking in the unimproved grassy areas. An approximately 4,781 sf permeable pavement loop access drive will also be added with up to five new air filling stations capable of handling the demand for air needed for re-inflating automobile tires returning from off-road driving on the nearby Seashore beaches. This service is primarily driven by the off-road vehicle use near the marina (between off-road vehicle ramps 2 and 4 on the beach). The parking improvements are shown on Figure 1.

### **Pedestrian Access**

Pedestrian access will be enhanced throughout the project area and pedestrian connections will be provided between the marina premises and the adjacent NPS public boat ramp and parking lot. This will include adding boardwalks on the peninsula on the southwest side of the marina (along Motts Creek) and on the south side of the replacement retail building. Additionally, sidewalks will be added to provide connectivity.

### **Wastewater**

New wastewater treatment and disposal will be added to support the replacement buildings and associated activities (e.g. the existing food and beverage services, which are convenience items, could be replaced with a full-service restaurant). Currently, the main marina building (retail and fish cleaning building) and NPS bathroom all share the same pump station and drain field. The NPS public bathrooms will continue to flow to the existing lift station and continue using the existing drainfield. The replacement marina fish cleaning building will flow to the existing lift station and use the existing drainfield. The replacement marina retail building will use a new wastewater treatment and disposal system. Locations of existing

and new septic tanks, pumps and drain fields are shown on Figure 1. All new wastewater facilities will be designed and constructed in accordance with applicable regulations.

**Stormwater**

A portion of the existing maintained grassed areas (Figure 1) within the project area will be converted into a stormwater control measure (SCM) to minimize runoff into adjacent areas. Implementing stormwater control measures within the project area will help with standing water mitigation during rain events and provide improved retention and treatment of stormwater (Figure 1).

The project will not add impervious surfaces to the project area. Existing impervious surface coverage of 144,484 sf will be decreased by approximately 30,087 sf through the removal of the existing marina buildings. Stormwater naturally flows toward the entrance (north and west), and the addition of a SCM in the general location as shown on Figure 1 will benefit water quality by providing nutrient uptake and minor flood control during rain events.



## MITIGATION

To minimize environmental impacts related to the selected alternative, mitigation measures will be implemented whenever or wherever feasible using best management practices. The following section provides a list of mitigation measures that will be implemented under the selected alternative. Additional and/or more specific mitigation measures may be implemented based on NPS and other relevant agency review, approval and permitting of the final design and construction plans. The following mitigation measures will be implemented:

- Obtain the following state and federal permits to support the selected actions and comply with all of the mitigation measures associated with the permits:
  - North Carolina (NC) Division of Coastal Management (DCM) Coastal Area Management Act (CAMA) Major Permit, which will include review by the United States Army Corps of Engineers (USACE) through the Joint 291 Process (obtained on April 13, 2021)
  - NC Department of Environmental Quality (DEQ) Division of Energy Mineral and Land Resources (DEMLR) stormwater permit for new impervious development (redevelopment is exempt),
  - NC DEQ DEMLR Soil Erosion and Sedimentation Control (SESC) Permit (for disturbance greater than one acre)
  - NC DEQ Division of Water Resources 401 Water Quality Permit
- Instruct all contractor employees on the sensitivity of the general environment and monitor their activities, as needed, in order to mitigate and minimize potential impacts on natural and cultural resources during construction. Corridors for construction vehicle movement will be established and defined on the ground. Staging of construction equipment will be restricted to the road corridor, parking lots, and other identified previously disturbed areas to avoid impacts to natural and cultural resources.
- All designs and construction plans will be reviewed and approved by NPS prior to construction.
- Clearly state all protection measures in the construction specifications and instruct workers to avoid conducting activities beyond the limits of disturbance.
- Fence all areas in order to keep related disturbances within an NPS-defined and minimal impact area required for construction. Limits of disturbance will be established and fencing, or other appropriate barriers will be installed to prohibit inadvertent impacts to natural and cultural resources.
- Implement standard noise abatement measures during construction. Standard noise abatement measures will include the following elements: a schedule that minimizes impacts on adjacent noise-sensitive uses, the use of the best available noise control techniques wherever feasible, the use of hydraulically or electrically powered impact tools when feasible, and location of temporary noise sources as far from sensitive uses as possible.
- Implement USFWS recommendations (USFWS Correspondence February 20, 2020, including in EA Appendix C) including submitting and implementing an approved NC DEQ DEMLR Soil Erosion and Sediment Control plan prior to construction.
- Minimize soil erosion by limiting the time that soil is left exposed and by applying other erosion control measures, such as erosion matting and silt fencing in construction areas to reduce erosion, surface scouring, and discharge to water bodies.
- Implement measures to prevent invasive plants from entering construction areas, such as ensuring that construction-related equipment arrives at the site free of mud or seed-bearing materials and certifying that all seeds and straw material are weed-free.
- Remove invasive plants that may have entered construction areas using approaches prescribed in the NPS Integrated Pest Management Program.

- Rehabilitate areas that are disturbed, either during construction or areas that were previously disturbed, with NPS-approved vegetation, as per NPS standards.
- Immediately implement National Historic Preservation Act (NHPA) Section 106 procedures if any unknown significant archeological resources are uncovered during ground-disturbing activities. If previously unknown archeological resources are discovered during construction, all work in the immediate vicinity of the discovery will be halted until the resources are identified and documented and an appropriate mitigation strategy developed, if necessary, in accordance with pertinent laws and regulations, including the stipulations of the 2008 Programmatic Agreement Among the NPS (US Department of the Interior), the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers.
- Facilities will be designed to be flood resilient in terms of materials and design and will be designed to impede flow of floodwaters as little as possible.
- The project will include a pre-construction meeting among all applicable parties, including, but not limited to, the NPS, lessee and contractor/s, as well as regularly scheduled meetings and site visits during construction, and a final inspection meeting including those parties.
- Plant only native wetland plant species such as, but not limited to, *Juncus* spp., *Spartina* spp., *Typha* spp. within any stormwater retention ponds or constructed wetlands.
- Comply with the following Endangered Species Act listed species construction conditions as described below:
  - Instruct all personnel associated with the project of the potential presence of these species and the need to avoid collisions with listed species.
  - Advise construction personnel that there are civil and criminal penalties for harming, harassing, or killing listed species, which are protected under the Endangered Species Act of 1973.
  - Siltation barriers will not be used during construction of the project due to high tidal flows and coarse sediment present within the action area. Any turbidity issues will be localized and dissipate quickly. Therefore, aquatic organisms should not become entangled or entrapped.
  - All vessels associated with the construction project should operate at “no wake/idle” speeds at all times while in the construction area and while in water depths where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will preferentially follow deep-water routes (e.g., marked channels) whenever possible.
  - If a listed species is seen within 100 yards of the active daily construction/dredging operation or vessel movement, all appropriate precautions will be implemented to ensure its protection. These precautions will include cessation of operation of any moving equipment closer than 50 feet of a listed species. Operation of any mechanical construction equipment will cease immediately if a listed species is seen within a 50-ft radius of the equipment. Activities will not resume until the protected species has departed the project area of its own volition.
  - Any collision with and/or injury to a listed species will be reported immediately to the National Marine Fisheries Service’s Protected Resources Division at 727-824-5312 and to Cape Hatteras National Seashore’s stranding hotline at 252-216-6892.

## **OTHER ALTERNATIVES CONSIDERED**

In addition to the NPS selected alternative described above, the EA also analyzed a no-action alternative (pages 13-15 of the EA).<sup>3</sup>

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<sup>3</sup> Ibid., 13–14.

## FINDING OF NO SIGNIFICANT IMPACT

As described in chapter 3 of the EA<sup>4</sup>, the NPS selected alternative will result in beneficial impacts to floodplains and visitor use and experience, and is not likely to adversely affect any federally listed endangered or threatened species, their formally designated critical habitat, or species currently proposed for listing under the Endangered Species Act.<sup>5</sup> No significant impacts were identified that require analysis in an environmental impact statement. The anticipated impacts to the affected resources are summarized below.

***Floodplains.*** The selected alternative will result in beneficial impacts to the floodplains. Under the selected alternative, existing marina buildings will be demolished, or removed and re-used, in accordance with NPS policy. Replacement structures will be constructed on pilings and raised above the 100-year floodplain along with the removal of roughly 7,996 square feet of the old building footprints bringing about a net decrease in impervious surfaces. These actions will increase the ability of the floodplain to absorb and store floodwaters and/or storm surge. Overall, the selected alternative will decrease the impervious surfaces in the project area by approximately 7,305 square feet or 0.17 acres. By elevating all replacement structures above the based flood elevation, the selected alternative reduces the square footage of structures within the floodplain and will remove impediments to the flow of floodwaters and/or storm surge during flood events and increase the infiltration capacity of the floodplain.

The improvements included in the selected alternative are consistent with the current land use in the project area. The protection of people and property is of high priority to the NPS, and measures will be taken to minimize harm to life, property, and natural resources. Flood mitigation will be undertaken by incorporating methods for protecting life and minimizing storm damage through appropriate procedures. Although specific design of the proposed structures and facilities will be determined during a future phase of the project, they will be designed to withstand flood events, while impeding water flow as little as possible. Structures and facilities will be designed to be consistent with the intent of the standards and criteria of the National Flood Insurance Program (44 CFR Part 60). Mitigations to minimize storm damage will include using sustainable design principles and using best management practices during and after construction. These mitigation measures will be in accordance with the NPS floodplain guidelines and with Executive Order 11988, “Floodplain Management.”

In summary, impacts to the floodplain as a result of the selected alternative are the removal of impervious surfaces and elevation of structures from the floodplain. Decreasing impervious surfaces will result in a benefit to the floodplain by allowing more infiltration, which will decrease water runoff. Replacing the existing structures that are located in the floodplain with structures that are elevated above the minimum building height of 8 feet plus three feet of freeboard (resulting height of 11 feet), will lessen obstructions to floodwaters within the floodway during flood events. Additionally, the replacement structures will be less likely to flood than the current structures making them easier to insure (meeting or exceeding FEMA Flood Insurance standards) and more resilient.

A Floodplain Statement of Findings was prepared for this project and included as Appendix G to the EA.<sup>6</sup>

***Visitor Use and Experience.*** The selected alternative will result in beneficial impacts to the visitor use and experience. The main attraction and purpose of the marina has been, and continues to be, charter fishing services. All of the services that are offered such as charter fishing opportunities, access to the Pamlico Sound and Atlantic Ocean, retail sale of merchandise and souvenirs, food & beverage, restrooms,

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<sup>4</sup> Ibid., 24-34.

<sup>5</sup> Ibid., 28.

<sup>6</sup> Ibid., Appendix G.

fish cleaning and services to the general public like fuel, air stations and supplies have evolved in response to needs of the visitors to the marina and to the Seashore. The NPS and lessee recognize that the marina buildings and the infrastructure that support the marina services are dated and in need of updates, but do currently provide for basic needs of the visitor.

The impact to visitor experience of the selected alternative will be beneficial, because the selected alternative will replace existing structures with new resilient structures designed to better serve the visitor with expanded services and updated modern conveniences. The selected alternative will also increase formal parking spaces, relocate fuel dispensers, add a transient fuel dock outside of the marina basin, add sidewalks and a boardwalk along the waterfront connecting adjacent uses to the project area, and provide a dedicated air station turn out lane, which will reduce vehicular and pedestrian congestion and improve visitor circulation in the project area. Through the above actions, the selected alternative will provide for a safer visitor experience through dedicated walking paths (improving pedestrian circulation) and alleviating traffic congestion in the marina through in-slip fueling and a transient fuel dock outside the marina basin.

**Listed Species and Critical Habitat.** The EA included an analysis of the following species that occur within the project area:

- Green sea turtle
- Kemp's ridley sea turtle
- Leatherback sea turtle
- Loggerhead sea turtle
- Hawksbill sea turtle
- West Indian Manatee
- Atlantic sturgeon

The NPS, in consultation with the US Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS), determined that the selected alternative is not likely to adversely affect any federally listed endangered or threatened species, their formally designated critical habitat, or species currently proposed for listing under the Endangered Species Act.

USFWS concurred with the NPS determination in a letter dated February 20, 2020. However, USFWS also stated concern about the potential sedimentation impacts the proposed action might have on aquatic species and recommended practicable measures be taken to avoid adverse impacts to aquatic species, including implementing directional boring methods and stringent sediment and erosion control measures. The USFWS recommendations will be incorporated into project implementation.

December 3, 2020 NMFS concurred with the NPS that the proposed action was not likely to adversely affect the NMFS ESA-Listed species or designated critical habitat. Impacts to the USFWS Information Planning and Consultation System (IPaC) listed species and the NMFS ESA listed species that occur within the project area were analyzed in the EA.<sup>7</sup>

Correspondence referenced in this section is included in the EA as Appendix C<sup>8</sup>.

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<sup>7</sup> Ibid, 28 – 24.

<sup>8</sup> Ibid., Appendix C.

## **CONCLUSION**

The NPS selected alternative does not constitute an action meeting the criteria that normally requires preparation of an environmental impact statement and, as noted above, impacts resulting from implementing the action will not have a significant effect on the human environment. Based on the foregoing, it has been determined that an environmental impact statement is not required for this project and thus will not be prepared.

**ATTACHMENT A:  
NON-IMPAIRMENT DETERMINATION**

The NPS has developed *Guidance for Impairment Determinations and the NPS NEPA Process* (September 2011). That guidance builds upon the statutory direction of the NPS Organic Act to manage resources “unimpaired for future generations” and the interpretation by the NPS of legislative direction in the *NPS Management Policies 2006*.

The *NPS Management Policies 2006*, Section 1.4.4, explains the prohibition on impairment of park resources and values:

While Congress has given the Service the management discretion to allow impacts within parks, that discretion is limited by the statutory requirement (generally enforceable by the federal courts) that the Park Service must leave park resources and values unimpaired unless a particular law directly and specifically provides otherwise. This, the cornerstone of the Organic Act, establishes the primary responsibility of the NPS. It ensures that park resources and values will continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them.

**WHAT IS IMPAIRMENT?**

*NPS Management Policies 2006*, Section 1.4.5, What Constitutes Impairment of Park Resources and Values, and Section 1.4.6, What Constitutes Park Resources and Values, provide an explanation of impairment.

Impairment is an impact that, in the professional judgment of the responsible NPS manager, will harm the integrity of park resources or values, including the opportunities that otherwise will be present for the enjoyment of those resources or values.

The NPS has discretion to allow impacts on park resources and values when necessary and appropriate to fulfill the purposes of a park (*NPS Management Policies 2006*, Section 1.4.3). However, the NPS cannot allow an adverse impact that will constitute impairment of the affected resources and values (*NPS Management Policies 2006*, Section 1.4.3).

Section 1.4.5 of *Management Policies 2006* states:

An impact to any park resource or value may, but does not necessarily, constitute impairment. An impact will be more likely to constitute impairment to the extent that it affects a resource or value whose conservation is:

- Necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park
- Key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park, or
- Identified as a goal in the park’s general management plan or other relevant NPS planning documents as being of significance.

An impact will be less likely to constitute impairment if it is an unavoidable result of an action necessary to preserve or restore the integrity of park resources or values and it cannot be further mitigated.

Per Section 1.4.6 of *Management Policies 2006*, park resources and values that may not be impaired include the following:

- the park’s scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; natural

visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells; water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; museum collections; and native plants and animals;

- appropriate opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing them;
- the park's role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system; and
- any additional attributes encompassed by the specific values and purposes for which the park was established.

Impairment may result from NPS activities in managing the park, visitor activities, or activities undertaken by concessioners, contractors, and others operating in the park. Impairment may also result from sources or activities outside the park, but this will not be a violation of the Organic Act, unless the NPS was in some way responsible for the action.

### **HOW IS AN IMPAIRMENT DETERMINATION MADE?**

Section 1.4.7 of *Management Policies 2006* states, "[i]n making a determination of whether there will be an impairment, an NPS decision-maker must use his or her professional judgment." This means that the decision-maker must consider any environmental assessments or environmental impact statements required by the National Environmental Policy Act of 1969; consultations required under Section 106 of the National Historic Preservation Act; relevant scientific and scholarly studies; advice or insights offered by subject matter experts and others who have relevant knowledge or experience; and the results of civic engagement and public involvement activities relating to the decision.

*Management Policies 2006* further define "professional judgment" as "a decision or opinion that is shaped by study and analysis and full consideration of all the relevant facts, and that takes into account the decision-maker's education, training, and experience; advice or insights offered by subject matter experts and others who have relevant knowledge and experience; good science and scholarship; and, whenever appropriate, the results of civic engagement and public involvement activities related to the decision."

The *Site Plan and Environmental Assessment* analyzes impacts to the following resources: floodplains; visitor use and experience; listed species and critical habitat (sea turtles, marine mammals and Atlantic sturgeon). *NPS Guidance for Non-Impairment Determinations and the NPS NEPA Process* states that:

The impairment determination does not include discussion of impacts to visitor experience, socioeconomics, public health and safety, environmental justice, land use, park operations, etc., as those do not constitute impacts to park resources and values subject to the non-impairment standard.

As a result, for purposes of this document, impairment findings are required for the resources of floodplains, and listed species and critical habitat.

### **NON-IMPAIRMENT DETERMINATION FOR THE SELECTED ALTERNATIVE**

This non-impairment determination has been prepared for the NPS selected alternative. A non-impairment determination is made for all relevant resource impact topics analyzed for the selected alternative.

### **Floodplains**

There will be no impairment to the floodplains under the selected alternative, because the selected alternative will result in beneficial impacts to the floodplains by reducing the impervious surfaces in the project area and elevating the structures from the floodplain. Decreasing impervious surfaces will result in a benefit to the floodplain by allowing more infiltration, which will decrease water runoff. Replacing the existing structures that are located in the floodplain with structures that are elevated above the minimum building height of 8 feet plus three feet of freeboard (resulting height of 11 feet), will lessen obstructions to floodwaters within the floodway during flood events. Additionally, the replacement structures will be less likely to flood than the current structures making them easier to insure (meeting or exceeding FEMA Flood Insurance standards) and more resilient. A Floodplain Statement of Findings was prepared for this project and included as Appendix G to the EA.<sup>9</sup>

### **Listed Species and Critical Habitat**

There will be no impairment to listed species and critical habitat under the selected alternative. The EA included an analysis of the following species that occur within the project area:

- Green sea turtle
- Kemp's ridley sea turtle
- Leatherback sea turtle
- Loggerhead sea turtle
- Hawksbill sea turtle
- West Indian Manatee
- Atlantic sturgeon

The NPS, in consultation with the USFWS and the NMFS determined that the selected alternative is not likely to adversely affect any federally listed endangered or threatened species, their formally designated critical habitat, or species currently proposed for listing under the Endangered Species Act. Impacts associated with the project are limited to temporary disturbance of shallow unconsolidated substrate. The selected alternative will not impact any critical habitat for any of the listed species and all in-water work will be conducted during winter months in accordance with an in-water work moratorium, which means the work will occur during times when listed species are not present in the project area. Therefore, there will be no impairment to listed species and critical habitat under the selected alternative.

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<sup>9</sup> Ibid., Appendix G.

**ATTACHMENT B:  
PUBLIC COMMENT RESPONSE**

The *Site Plan and Environmental Assessment* (the EA) was released for public review on March 5, 2021, and was available via the park's Planning, Environment, and Public Comment (PEPC) website (<https://parkplanning.nps.gov/caha>). An open public comment period was held from March 5 through April 3, 2021.

According to NPS policy, substantive comments are those that 1) question the accuracy of the information in the EA, 2) question the adequacy of the environmental analysis, 3) present reasonable alternatives that were not presented in the EA, or 4) cause changes or revisions in the proposal.

During the comment period, 15 pieces of correspondence were received. Of the 15 pieces of correspondence, 12 correspondences included comments about the project and three comments were outside the scope of the project. The majority of comments within project scope were in favor of the project, and no comments were substantive to warrant changes to the environmental assessment. However, one comment that reasonably questioned some actions in the project is addressed below.

**IMPACT TOPIC: LISTED SPECIES AND CRITICAL HABITAT**

**Concern Statement:** The area between North Carolina Highway 12 and the marina entrance road leading to the charter boat basin is a well-used migratory shorebird feeding/resting area especially following periods of high rainfall and/or when normal oceanside or soundside habitat is unavailable during storms. It should not be degraded as a storm water runoff area and dredge containment site as described in the EA.

**NPS Response:** The grass areas located between North Carolina Highway 12 and the marina have been managed by the NPS as maintained landscape, including routine grass mowing. These areas have been filled with dredge spoils and disturbed over the years during highway construction activities. Portions of these actively landscaped areas are low lying and consequentially flood with parking lot runoff during periods of heavy rainfall. However, these areas are not jurisdictional wetlands, are not maintained by the NPS as wildlife habitat, and are part of the area assigned to Oregon Inlet Fishing Center, LLC under its lease with the NPS in order to support marina operations. The conversion of these low-lying maintained areas into a stormwater feature planted with native species and designed to remove sediment and nutrients will do a better job of treating parking lot runoff and offer more protection for adjacent wetlands, groundwater, and soil quality, than the current state of the area. The EA included a review of habitat within the marina area by several federal and state biologists, permitting agencies, and regulatory agencies. The area of maintained grasses is neither jurisdictional wetlands, nor is this area habitat for any species reviewed during the EA process. Please refer to Chapter 3 in the Environmental Assessment and associated Appendices, including Appendix C: Agency and Tribal Correspondence.

## ATTACHMENT C ERRATA

These errata document changes to the text of the environmental assessment (EA). Changes to the EA text below are noted by page number; additions to the text are denoted by bold text and deletions are denoted by strikeouts. The changes described here are clarifications to the EA text and do not change the analysis conducted in the EA.

### CLARIFICATION APPLICABLE THROUGHOUT THE EA

Under the terms of the lease between the NPS and Oregon Inlet Fishing Center, LLC (OIFC or lessee), OIFC is responsible for the repair and maintenance of the marina premises during the lease term. Additionally, the lease requires that any alterations to the marina conducted by the lessee (as defined in the lease, including construction, modifications, rehabilitation, reconstruction, and/or restoration of the lease premises) be undertaken at OIFC's expense and approved by the NPS.

As described in the EA, the EA was prepared in order to evaluate strategies for the lessee (OIFC) to replace vulnerable structures and to conduct site improvements at the marina. However, the analysis conducted in the EA was not specific to the lessee conducting the actions described, and the actions mitigations and analysis in the EA apply whether the work is conducted by the lessee, NPS or another party, such as a contractor to NPS or OIFC.

Therefore, the EA provides the analysis and this FONSI provide the decision for the work described in the selected alternative to be conducted by the NPS, lessee, and/or contractor/s engaged by either party.

### CHAPTER 2, ALTERNATIVE B: PROPOSED ACTION/PREFERRED ALTERNATIVE, PAGES 15-16

- Replace buildings with sustainable and resilient buildings with a first-floor elevation of 11-feet (exceeding Dare County requirements by 3 feet and FEMA requirements by 6 feet) as follows:
  - Main marina building (retail, food & beverage, and marina operations) ~~±~~ **approximately** 6,393 sf first floor footprint
  - Fish cleaning building ~~±~~ **approximately** 1,880 sf
- Increase formal parking infrastructure to accommodate up to **approximately** 293 automobiles
- Replace existing marine fuel docks and aged fuel infrastructure with the following:
  - An ~~→~~ **approximately** 900 sf fuel dock with two (2) fueling stations for transient boats in Motts Creek (outside of marina basin)
  - Seven (7) in-slip fueling stations located throughout the marina
- Place a removable, open-air events pavilion (~~±~~ **approximately** 3,400 sf) on the lease premises, which would be the personal property of the lessee (not real property of NPS)

### CHAPTER 2, ALTERNATIVE B: PROPOSED ACTION/PREFERRED ALTERNATIVE, PAGE 16

The following statement is added below the bullet points describing the proposed actions depicted in Figure 3 and above the paragraph labeled "Facilities."

Some detailed information depicted in Figure 3 and as described below, such as locations of

driveways and operational areas, and square footage of buildings or facilities, could be slightly modified during future project planning and as a result of final design, but will not measurably change what was analyzed in this EA. The following actions will be implemented by the NPS, lessee, and/or contractor/s engaged by either party.

**CHAPTER 2, ALTERNATIVE B: PROPOSED ACTION/PREFERRED ALTERNATIVE, FACILITIES, PAGE 16**

The replacement retail building would be a pile-supported structure and have a first-floor footprint of ~~±~~ **approximately** 6,393 sf and a total of ~~±~~ **approximately** 10,166 sf in total **air-conditioned** ~~condition~~ space spread over two floors.

The replacement fish cleaning building would be a pile-supported or concrete block foundation structure and have a total **air-conditioned** footprint (one floor) of ~~±~~ **approximately** 1,880 sf.

To achieve this, fill from the associated dredge portion of the project **or an approved outside source** would be used to raise the site grade in the location of the replacement fish cleaning building.

**CHAPTER 2, ALTERNATIVE B: PROPOSED ACTION/PREFERRED ALTERNATIVE, FACILITIES, PAGE 16**

The following sentence is added to the end of the last paragraph on this page:

Only sediment that meets NPS requirements will be used.

**CHAPTER 2, ALTERNATIVE B: PROPOSED ACTION/PREFERRED ALTERNATIVE, FACILITIES, PAGE 17**

The lessee would also install a ~~±~~ **approximately** 3,400 sf removable, open air events pavilion for use during events such as fishing tournaments. ~~The pavilion would be personal property of the lessee and removed at the termination of the lease.~~ **Fill would be placed in the pavilion location in order to raise the grade sufficiently to accommodate adjacent ramps and access to the fish cleaning building. The open-air pavilion would have a concrete floor and would be personal property of the lessee. The pavilion and concrete floor would be removed at the termination of the lease, unless otherwise approved by the NPS.**

**CHAPTER 2, ALTERNATIVE B: PROPOSED ACTION/PREFERRED ALTERNATIVE, FUEL, PAGE 17**

The proposed ~~±~~ **approximately** 900-sf transient fuel dock ~~would be typical wood construction with 6-8 feet on center pilings and decking will be constructed of treated lumber (as specified by a structural engineer).~~ ~~The dock would be elevated a minimum of three feet above normal water level (NWL) at an elevation of approximately 3.5 feet (NAVD 88).~~ In order to function as a fuel dock for boats in the water, the dock cannot be elevated above the 100-year or 500-year flood plain.

## CHAPTER 2, ALTERNATIVE B: PROPOSED ACTION/PREFERRED ALTERNATIVE, DREDGING, PAGES 17-18

Under the proposed project/preferred alternative, as part of routine marina maintenance, the marina basin would be dredged in late 2021 / early 2022 and on an as-needed basis in the future (as described in the no-action alternative). Under this alternative, a portion of Motts Creek (within the marina premises as shown in Figure 3) would be dredged in **order** to construct and maintain a transient fuel dock in this location. The majority of the marina basin (shown within the marina premises on Figures 2 and 3) does not require dredging at this time, **but will likely require dredging in the future.**

Maintenance ~~dredge~~ **dredging** of the marina basin and the ~~dredge~~ **dredging** within Motts Creek to create the transient fuel dock would generate approximately 9,500 cubic yards of material in a one-time event. Volumes of dredge spoil are **estimated** based on recent bathymetric surveys. Future maintenance events will only be performed when water depths measure **approximately** -6.0 feet or less (Mean Lower Low Water (MLLW)).

Under the proposed project/preferred alternative, dredge spoils, **meeting grain size and environmental contaminant requirements**, would be placed on-site in open grass areas and allowed to dewater prior to being used on site for filling of the access drive, grounds around the replacement fish cleaning building and other redevelopment needs. The material within Motts Creek has been determined to be suitable for use on site for fill under roads and around the fish cleaning building based on the results of sediment sampling and analysis.

If at any point during dredge activities, in 2021/2022 or in the future, the NPS, lessee or any regulatory body with jurisdiction determines that material cannot stay on the site for any reason, (either due to grain size, organic nature, or contaminants) dredge spoil material will be disposed of off-site, outside of NPS property, in an approved upland location. ~~The dredge spoil material would not be deposited in wetlands or any other environmentally sensitive habitats.~~

## CHAPTER 2, ALTERNATIVE B: PROPOSED ACTION/PREFERRED ALTERNATIVE, PARKING AND ROADS, PAGE 18

The proposed action/preferred alternative would also add a ~~+~~ **approximately** 4,781 sf permeable pavement loop access drive with up to five new air filling stations capable of handling the demand for air needed for re-inflating automobile tires returning from off-road driving on the nearby Seashore beaches.

## CHAPTER 2, ALTERNATIVE B: PROPOSED ACTION/PREFERRED ALTERNATIVE, WASTEWATER, PAGES 18-19

The proposed action/preferred alternative would add new wastewater treatment and disposal to support the proposed replacement buildings and **associated activities**. ~~increased or new usage (e.g. the existing food and beverage services, which are convenience items, could be replaced with a full-service restaurant).~~ Currently, the main marina building (retail and fish cleaning building) and NPS bathroom all share the same pump station and drain field. The NPS public bathrooms would continue to flow to the existing lift station and continue using the existing drainfield. ~~The replacement marina buildings would use the new wastewater treatment and disposal system.~~ **The replacement marina fish cleaning building would flow to the existing lift station and use the existing drainfield. The replacement marina retail building would use a new wastewater treatment and disposal system.** Locations of existing and proposed septic tanks, pumps and drain fields are shown on Figure 3. All new wastewater facilities would

be designed and constructed in accordance with applicable regulations.

## **CHAPTER 2, ALTERNATIVE B: PROPOSED ACTION/PREFERRED ALTERNATIVE, STORMWATER, PAGE 19**

The proposed action/preferred alternative would convert a portion of the existing maintained grassed areas (Figure 3) within the project area into a stormwater control measure (SCM) **to minimize runoff into adjacent areas.** ~~Formalizing~~ **Implementing** the stormwater control **measures** within the project area would help with standing water mitigation during rain events and provide improved retention and treatment of stormwater (Figure 3).

The proposed action/preferred alternative would not add impervious surfaces to the project area. Existing impervious surface coverage of 144,484 sf would be decreased by **approximately 30,087 sf through the removal of the existing marina buildings.** ~~and the proposed action/preferred alternative would add 18,702 sf of pervious parking and air filling drive access.~~ Stormwater naturally flows toward the entrance (north and west), and the proposed addition of a SCM in the general location as shown on Figure 3 would benefit water quality by providing nutrient uptake and minor flood control during rain events.

## **CHAPTER 3, AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES, FLOODPLAINS: IMPACTS OF THE ACTION ALTERNATIVE, PAGE 26**

By elevating all replacement structures above the based flood elevation ~~with pile supported foundations,~~ the proposed project reduces the square footage of structures within the floodplain and would remove impediments to the flow of floodwaters and/or storm surge during flood events and increase the infiltration capacity of the floodplain.

## **CHAPTER 3, AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES, LISTED SPECIES AND CRITICAL HABITAT: IMPACTS OF THE ACTION ALTERNATIVE, PAGES 30, 32, 34**

The following edits apply to the beginning of the second paragraph in each section titled “Impacts of the Proposed Action/ Preferred Alternative” on pages 30, 32 and 34.

The proposed project/preferred alternative would include maintenance dredging of the marina basin, **new dredging and in water construction within Motts Creek** ~~in water construction and dredge work~~ that would temporarily disturb sediments during piling installation and permanently shade **approximately 792 sf** of soft subtidal substrate with slotted wooden decking in the location of the transient fuel dock. This activity would temporarily disturb the substrate ~~within Motts Creek and result~~ **resulting in increased turbidity and** deeper water depths (-8 feet MLLW) within the marina and Motts Creek.

## **CHAPTER 3, AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES, LISTED SPECIES AND CRITICAL HABITAT: ATLANTIC STURGEON, IMPACTS OF THE PROPOSED ACTION/ PREFERRED ALTERNATIVE, PAGE 34**

Impacts to the water column and substrate would be temporary, therefore, the proposed action is not likely to adversely affect would be no adverse impact to the Atlantic sturgeon or its habitat.