



PAT MCCRORY

*Governor*

DONALD R. VAN DER VAART

*Secretary*

**MEMORANDUM**

TO: ENVIRONMENTAL REVIEW COMMISSION  
The Honorable Jimmy Dixon, Co-Chair  
The Honorable Chuck McGrady, Co-Chair  
The Honorable Trudy Wade, Co-Chair

HOUSE OF REPRESENTATIVES APPROPRIATIONS SUBCOMMITTEE ON AGRICULTURE AND  
NATURAL AND ECONOMIC RESOURCES  
The Honorable Jimmy Dixon, Co-Chairman  
The Honorable Pat McElraft, Co-Chairman  
The Honorable Roger West, Co-Chairman

SENATE APPROPRIATIONS SUBCOMMITTEE ON NATURAL AND ECONOMIC RESOURCES  
The Honorable Andrew Brock, Co-Chairman  
The Honorable Bill Cook, Co-Chairman  
The Honorable Trudy Wade, Co-Chairman

FISCAL RESEARCH DIVISION

FROM: Mollie Young, Director of Legislative Affairs

SUBJECT: Cape Fear Estuarine Resource Restoration Report

DATE: April 6, 2016

Attached for is the Department of Environmental Quality, Division of Coastal Management report on the implementation of Session Law 2015-241, Section 14.6(h), which states: “the Department shall report to the Environmental Review Commission, the chairs of the Senate Appropriations Committee on Natural and Economic Resources and the House Appropriations Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division regarding its implementation of this subsection, including a copy of the Request for Information required by subdivision (2) of this subsection and any responses received to the Request.”

If you have any questions or need additional information, please contact me by phone at (919) 707-8618 or via e-mail at [mollie.young@ncdenr.gov](mailto:mollie.young@ncdenr.gov).

cc: Tom Reeder, Assistant Secretary for Environment, DEQ  
Braxton Davis, Director of Coastal Management, DEQ



**N.C. Department of Environmental Quality  
Division of Coastal Management  
Report on Cape Fear Estuarine Resource Restoration**

Pursuant to Section 14.6.(h) of the 2015 Appropriations Act, the N.C. Department of Environmental Quality (DEQ) is directed by the General Assembly to conduct steps (1)-(4) as outlined in the attached legislation (Attachment 1) and paraphrased below (in bold). This report is organized by these steps as follows:

**(1) Notify the U.S. Army Corps of Engineers of the State's intent to study the removal of the Southern Component of the New Inlet Dam.**

On Nov. 30, 2015, the Division of Coastal Management (DCM) sent a letter to Colonel Kevin P. Landers, Sr. of the U.S. Army Corps of Engineers (Corps; Attachment 2) to provide notice of the state's intent to study the removal of the Southern Component of the New Inlet Dam. DCM received a response to this letter from Mr. Justin McCorcle of the Corps dated Jan. 28, 2016 (Attachment 3).

The response letter includes the following:

- a) a summary of the history of the New Inlet Dam and Swash Defense Dam construction;
- b) an overview of the Wilmington Harbor Project;
- c) the Corps' perspectives on Section 14.6.(h) of the 2015 Appropriations Act;
- d) an overview of the regulatory processes that would be required for removal of the dam; and
- e) a list of unresolved issues that should be addressed.

As described in the attached letter, the Corps outlines several "unresolved issues to address," including the identification of the purpose and need for the project, shoaling and the need for maintenance of the navigation channel, financing of the project and project maintenance, consideration of project alternatives, evaluation of environmental impacts (both direct and indirect) and cultural resource issues, and the need for clarity regarding which entities are speaking on behalf of the state as this study moves forward.

**(2) Issue a Request for Information for a firm capable of conducting an analysis of the costs and benefits of removing the Southern Component of the Dam, including necessary permits and approvals.**

A Request for Information (Attachment 4) was published by DEQ on Jan. 8, 2016, and closed four weeks later on Feb. 4, 2016. No questions were received while the Request for Information was open. DEQ received two responses to the Request for Information, which are located in Attachment 5: Cardno, Inc. (Raleigh, N.C.) and Little Environments PLLC (Garner, N.C.). The responses provide information that should be considered if a costs and benefits analysis is pursued, including the types of permits and approvals that will likely be needed at the local, state, and federal levels, and studies and surveys that will likely be needed to inform permitting, environmental review, and assessment of navigation impacts. The responses also describe the approach the firms would take to conduct a costs and benefits analysis and provide examples of

relevant tools and projects. Information provided by the Corps in Attachment 3 and the National Oceanic and Atmospheric Administration in Attachment 7 (see below) should be considered if such an analysis is pursued. The historic nature of the Dam will also need to be taken into consideration.

**(3) Request approval from the National Oceanic and Atmospheric Administration (NOAA) to adjust the boundary for the Zeke's Island component of the N.C. National Estuarine Research Reserve by moving the western boundary of the Zeke's Island Reserve 200 feet seaward and removing the area that lies between the current and new boundary from the Reserve, and adding equivalent acreage to the northern boundary of the Reserve from adjacent acreage at the Fort Fisher State Recreation Area.**

On Nov. 30, 2015, DCM sent a letter to Ms. Erica Seiden of the National Oceanic and Atmospheric Administration (NOAA; Attachment 6) requesting information on the process and specific submission requirements the agency requires in order to consider a boundary change to a Reserve within the National Estuarine Research Reserve System. Ms. Seiden's response, dated Jan. 11, 2016, is found in Attachment 7.

Considering a boundary change is an involved, multi-step process as detailed in the NOAA response letter. NOAA requires information on why lands/waters are proposed for addition or deletion, how the change will benefit the Reserve ecologically and/or programmatically, and the implications the change may have for core and buffer designations and maintenance of Reserve site viability for its designated purposes. Additional information is required regarding ownership and management of the lands/waters to be included and potential uses.

Detailed information is needed to evaluate the ecological, research, education, and management implications that the proposed boundary change would have for the Zeke's Island Reserve in order to address the NOAA requirements. This information and evaluation is not currently available, and a detailed study would be required in order to justify and request a boundary change to NOAA that may result in significant changes to the Zeke's Island Reserve. As a result, DEQ has not submitted a boundary change request to NOAA at this time.

Although not required per the legislation, on Nov. 30, 2015 DCM also sent a letter to Mr. Mike Murphy, Director of the N.C. Division of Parks and Recreation (DPR; Attachment 8) to inform him of the legislation and declare DEQ's interest in working with DPR on any potential boundary changes at the Zeke's Island Reserve that may impact the Fort Fisher State Recreation Area. Mr. Murphy's response, dated Jan. 25, 2016, is located in Attachment 9 and requests more information on how the proposed removal may affect the Fort Fisher State Recreation Area and Bald Head Island State Natural Area. Specifically, the letter raises questions regarding potential water quality impacts on biological resources in the region, possible extensive erosion of the shoreline at Fort Fisher State Recreation Area and Bald Head Island State Natural Area potentially impacting recreation and natural resource values, and potential impacts to habitats that support a number of federally listed floral and faunal species.

- (4) If NOAA approves the boundary adjustment described above, the NC Coastal Resources Commission is then required to amend the Reserve Components Rule (15A NCAC 07O .0105) as further described in the Act.**

No action was taken on this step, as the boundary change described in #3 above was not requested from NOAA. In addition, it is DEQ's understanding that Coastal Reserve rules in 15A NCAC 07O are departmental rules per N.C. General Statute § 113A-129.2(b), and for this reason, the N.C. Coastal Resources Commission does not have the authority to amend 15A NCAC 07O .0105 in the event that a Reserve boundary adjustment is approved by NOAA in the future.

### **Response to the Proposal**

Following the introduction of House Bill 97 proposing removal of the New Inlet Dam, eight local municipalities and one association passed resolutions in June and July 2015 opposing the dam's removal. These resolutions are located in Attachment 10 and include Boiling Spring Lakes, Carolina Beach, Caswell Beach, Oak Island, Ocean Isle Beach, Southport, Sunset Beach, Village of Bald Head Island, and N.C. Beach, Inlet, and Waterway Association. Additionally, the Town of Holden Beach sent a letter to Senator Rabon and Representative Iler expressing their support of the Village of Bald Head Island's opposition to this section of House Bill 97 (Attachment 10). DEQ is not aware of any resolutions passed in favor of this proposal.

## Attachments

1. 2015 Appropriations Act Section 14.6.(h)
2. Letter from DCM Director Davis to Colonel Kevin P. Landers, Sr., U.S. Army Corps of Engineers 11.30.2015
3. Letter from Mr. Justin McCorcle, U.S. Army Corps of Engineers to DCM Director Davis 1.28.2016
4. Request for Information
5. Responses received to the Request for Information
  - a. Cardno, Inc.
  - b. Little Environments PLLC
6. Letter from DCM Director Davis to Ms. Erica Seiden, National Oceanic and Atmospheric Administration 11.30.2015
7. Letter from Ms. Erica Seiden, National Oceanic and Atmospheric Administration to DCM Director Davis 1.11.2016
8. Letter from DCM Director Davis to Mr. Mike Murphy, N.C. Division of Parks and Recreation 11.30.2015
9. Letter from Mr. Mike Murphy, N.C. Division of Parks and Recreation to DCM Director Davis 1.25.2016
10. Proposal Responses
  - a. Boiling Spring Lakes
  - b. Carolina Beach
  - c. Caswell Beach
  - d. Holden Beach
  - e. Oak Island
  - f. Ocean Isle Beach
  - g. Southport
  - h. Sunset Beach
  - i.
    1. Village of Bald Head Island
    2. Village of Bald Head Island Olsen White Paper
  - j. N.C. Beach, Inlet, and Waterway Association