

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

)	
ALTAMAHA RIVERKEEPER; ONE HUNDRED)	
MILES; SURFRIDER FOUNDATION; and)	
CENTER FOR A SUSTAINABLE COAST,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:18-cv-00251-JRH-CLR
)	
UNITED STATES ARMY CORPS OF)	
ENGINEERS, et al.,)	
)	
Federal Defendants,)	
)	
AND)	
)	
SEA ISLAND ACQUISITION, LLC,)	
)	

**FEDERAL DEFENDANTS’ ANSWER TO SECOND AMENDED COMPLAINT
FILED BY ALTAMAHA RIVERKEEPER, ONE HUNDRED MILES,
AND SURFRIDER FOUNDATION**

Pursuant to Fed. R. Civ. P. 8, the United States Army Corps of Engineers (“Corps”), an agency of the United States of America, Lieutenant General Todd T. Semonite, in his official capacity as Commanding General of the U.S. Army Corps of Engineers, and Colonel Daniel Hibner, in his official capacity as District Commander of the Savannah District (collectively, “Federal Defendants”), through undersigned counsel, hereby assert their defenses and answers to the Second Amended Complaint filed September 13, 2019. ECF No. 59. The numbered paragraphs in this Answer correspond to the numbered paragraphs in the Second Amended Complaint. Federal Defendants incorporate certain headings from the Second Amended

Complaint to assist in the structure and organization of the Answer, but in doing so do not admit any allegation contained therein or waive any defense.¹

GENERAL DENIAL

Federal Defendants deny any allegation in the Second Amended Complaint, whether express or implied, that is not expressly admitted, denied, or qualified herein.

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE

RELIEF

1. Federal Defendants admit that the Corps issued Department of the Army Permit Number SAS-2015-00742 to Sea Island Acquisition, LLC on September 11, 2018 (“Permit”). The allegation in footnote 2 purports to characterize the Corps’ Finding of No Significant Impact, “FONSI,” which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent it is inconsistent with the FONSI. The remaining allegations in paragraph 1 purport to characterize Plaintiffs’ action and require no response. To the extent a response is required, Federal Defendants deny the allegations and deny any violation of law.
2. The allegations in paragraph 2 purport to characterize the allowable actions under the Permit, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent they are inconsistent with the Permit.
3. The allegations in paragraph 3 purport to characterize Plaintiffs’ requested relief and require no response. To the extent a response is required, Federal Defendants deny the allegations, deny any violation of law, and deny Plaintiffs are entitled to the requested relief or to any relief whatsoever.

¹ When a textual sentence is followed by a citation or citations, the textual sentence and its accompanying citation are referred to as one sentence.

4. Federal Defendants deny the allegations in the second sentence of paragraph 4 and aver that the Federal Defendants filed an Answer to the Complaint filed by Altamaha Riverkeeper and One Hundred Miles on February 8, 2019 (ECF no. 39) and an Answer to the Complaint filed by Center for a Sustainable Coast on the same date (ECF no. 40). Federal Defendants admit the remaining allegations in paragraph 4.

5. Federal Defendants admit the allegation in the first sentence of paragraph 5. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 5 and, on that basis, deny the allegations.

JURISDICTION AND VENUE

6. The allegations in paragraph 6 purport to characterize Plaintiffs' action and require no response.

7. The first allegation in paragraph 7 constitutes a conclusion of law, to which no response is required. The remaining allegations in paragraph 7 constitute conclusions of law and purport to characterize Plaintiffs' requested relief, to which no response is required. To the extent a response is required, Federal Defendants deny any violation of law and deny Plaintiffs are entitled to the requested relief or to any relief whatsoever.

8. The allegation in paragraph 8 constitutes a conclusion of law, to which no response is required.

9. The allegations in paragraph 9 constitute conclusions of law, to which no response is required.

PARTIES

10. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 regarding One Hundred Miles ("OHM") and, on that

basis, deny the allegations. The remaining allegations in paragraph 10 constitute conclusions of law and purport to characterize Plaintiffs' requested relief, to which no response is required.

11. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 and, on that basis, deny the allegations.

12. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 and, on that basis, deny the allegations.

13. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 13 regarding OHM's members' participation in efforts to protect the Sea Island Spit and the wildlife that reside there and, on that basis, deny the allegations. The remaining allegations in the first sentence of paragraph 13 regarding federally protected species constitute conclusions of law, to which no response is required. Federal Defendants admit that OHM submitted comments opposing the issuance of the challenged Permit, but lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the second sentence of paragraph 13 and, on that basis, deny those allegations.

14. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 and, on that basis, deny the allegations.

15. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 and, on that basis, deny the allegations.

16. Federal Defendants deny the allegations in paragraph 16 and deny any violation of law.

17. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in first, second, and third sentences of paragraph 17 and, on that basis,

deny the allegations. Federal Defendants admit that Plaintiff Altamaha Riverkeeper submitted comments during the public comment period for this Permit action.

18. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 and, on that basis, deny the allegations.

19. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 regarding Plaintiff Altamaha Riverkeeper's members' participation in efforts to protect the Sea Island Spit and the wildlife that reside there and, on that basis, deny the allegations. Federal Defendants admit that Altamaha Riverkeeper submitted comments opposing the issuance of the challenged Permit, but lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 19 and, on that basis, deny those allegations.

20. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 and, on that basis, deny the allegations.

21. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 and, on that basis, deny the allegations.

22. Federal Defendants deny the allegations in paragraph 22 and deny any violation of law.

23. The allegations in paragraph 23 reference declarations attached to Plaintiffs' First Amended Complaint. The declarations speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the declarations. Further, Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the declarations, and on that basis, deny those allegations.

24. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 and, on that basis, deny the allegations.

25. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 and, on that basis, deny the allegations.

26. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 and, on that basis, deny the allegations.

27. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 and, on that basis, deny the allegations.

28. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 and, on that basis, deny the allegations.

29. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29 and, on that basis, deny the allegations.

30. Federal Defendants deny the allegations in paragraph 30 and deny any violation of law.

31. The allegations in paragraph 31 reference declarations attached to Plaintiffs' First Amended Complaint. The declarations speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the declarations. Further, Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the declarations, and on that basis, deny the allegations.

32. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 regarding the Conservation Groups' interests and, on that basis, deny the allegations. Federal Defendants deny the remaining allegations in paragraph 32 and deny any violation of law.

33. Federal Defendants admit that the United States Army Corps of Engineers is an agency within the United States Department of Defense. The remaining allegation in paragraph 33 constitutes a conclusion of law, to which no response is required.

34. Federal Defendants admit that Lieutenant General Todd Semonite is the current Commanding General of the United States Army Corps of Engineers. The remaining allegation in paragraph 34 constitutes a conclusion of law, to which no response is required.

35. Federal Defendants admit that Colonel Daniel Hibner is the current District Commander of the Savannah District Office. Federal Defendants deny the allegation in paragraph 35 regarding the Record of Decision. The remaining allegations in paragraph 35 constitute conclusions of law, to which no response is required.

36. Federal Defendants deny the allegation in paragraph 36 that Tunis McElwain is the “Chief of the Regulatory Branch of the U.S. Army Corps of Engineers.” Federal Defendants aver that the Chief of the Regulatory Branch of the Savannah District of the U.S. Army Corps of Engineers position is currently vacant. The remaining allegations in paragraph 36 constitute conclusions of law, to which no response is required.

37. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 and, on that basis, deny the allegations.

FACTUAL BACKGROUND

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

39. The allegations contained in paragraph 39 appear to be Plaintiffs’ characterization of a portion of Sea Island referred to as the Spit, which is detailed in the Corps’ Environmental Assessment. The Environmental Assessment speaks for itself and is the best evidence of its

contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the Environmental Assessment. Any remaining allegations are denied.

40. The allegations contained in paragraph 40 appear to be Plaintiffs' characterization of a portion of Sea Island referred to as the Spit, which is detailed in the Corps' Environmental Assessment. The Environmental Assessment speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the Environmental Assessment. Any remaining allegations are denied.

41. The allegations contained in paragraph 41 appear to characterize Sea Island Acquisition's permit application. The permit application is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the permit application. Any remaining allegations are denied.

42. Federal Defendants admit the allegations in paragraph 42.

43. The allegations in paragraph 43 purport to characterize the purpose of the proposed groin as stated in the permit application, which is detailed in the Corps' Environmental Assessment and Statement of Findings for the Permit. The permit application, Environmental Assessment, and Statement of Findings speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the permit application, Environmental Assessment and Statement of Findings, or Statement of Findings.

44. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 and, on that basis, deny the allegations.

45. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45 and, on that basis, deny the allegations.

Background on Groins

46. The allegations contained in paragraph 46 appear to be Plaintiffs' characterization of groins, which are detailed in the Corps' Environmental Assessment and Statement of Findings for the Permit. The Environmental Assessment and Statement of Findings speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the Environmental Assessment and Statement of Findings. Any remaining allegations are denied.

47. The allegations contained in paragraph 47 appear to be Plaintiffs' characterization of the effects of groins generally and on Sea Island, which are detailed in the Corps' Environmental Assessment and Statement of Findings for the Permit. The Environmental Assessment and Statement of Findings speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the Environmental Assessment and Statement of Findings. Any remaining allegations are denied.

48. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48 and, on that basis, deny the allegations. To the extent a response is required, the phrases "negative impacts" and "widely recognized" are too vague and ambiguous to permit a meaningful response, and Federal Defendants deny the allegations on that basis.

49. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49 and, on that basis, deny the allegations. To the extent a response is required, the phrases "accelerated" and "negative impacts" are too vague and ambiguous to permit a meaningful response, and Federal Defendants deny the allegations on that basis.

50. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 and, on that basis, deny the allegations. To the extent a response is required, the phrases “inhibit” and “act as a barrier” are too vague and ambiguous to permit a meaningful response, and Federal Defendants deny the allegations on that basis.

51. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 and, on that basis, deny the allegations. To the extent a response is required, the phrases “more concentrated” and “structure” are too vague and ambiguous to permit a meaningful response, and Federal Defendants deny the allegations on that basis.

52. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52 and, on that basis, deny the allegations. To the extent a response is required, the phrase “accelerated erosion” is too vague and ambiguous to permit a meaningful response, and Federal Defendants deny the allegations on that basis.

53. The allegations contained in paragraph 53 purport to characterize the Corps’ Coastal Engineering Manual (“CEM”). The CEM speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the CEM.

54. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54 and, on that basis, deny the allegations. To the extent a response is required, the phrase “near universal preference” is too vague and ambiguous to permit a meaningful response, and Federal Defendants deny the allegations on that basis.

55. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55 and, on that basis, deny the allegations.

Public and Agency Opposition to the Groin

56. The allegations contained in paragraph 55 appear to be Plaintiffs' characterization of the effects of groins on the Spit and the public's concerns with the project, which are detailed in the Corps' Environmental Assessment and Statement of Findings for the Permit. The Environmental Assessment and Statement of Findings speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the Environmental Assessment and/or Statement of Findings. To the extent a response is required, the phrase "harm" is too vague and ambiguous to permit a meaningful response, and Federal Defendants deny the allegation on that basis.

57. Federal Defendants admit the allegations in paragraph 57.

58. Federal Defendants admit the allegations in paragraph 58.

59. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59 and, on that basis, deny the allegations.

60. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60 and, on that basis, deny the allegations. To the extent the allegations in paragraph 60 purport to quote a comment submitted to the Corps, public comments are detailed in the Corps' Environmental Assessment. The Environmental Assessment speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the Environmental Assessment.

61. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 61 and, on that basis, deny the allegations. To the extent the allegations in paragraph 61 purport to quote a comment submitted to the Corps, public comments are detailed in the Corps' Environmental Assessment. The Environmental Assessment speaks

for itself and is the best evidence of their contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the Environmental Assessment.

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

62. Federal Defendants deny the allegations in paragraph 62.

63. Federal Defendants aver that Sea Island Acquisition prepared a Biological Assessment. The remaining allegations contained in paragraph 63 appear to characterize the Sea Island Biological Assessment. The Biological Assessment speaks for itself and is the best evidence of its contents. Federal Defendants deny the remaining allegations to the extent they are inconsistent with the Biological Assessment. Any remaining allegations are denied.

64. The allegation in paragraph 64 purports to characterize and quote Sea Island Acquisition's Biological Assessment. The Biological Assessment speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the Biological Assessment.

65. The allegation in paragraph 65 purports to characterize and quote Sea Island Acquisition's Biological Assessment. The Biological Assessment speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the Biological Assessment.

66. The allegation in paragraph 66 purports to characterize and quote Sea Island Acquisition's Biological Assessment. The Biological Assessment speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the Biological Assessment.

67. Federal Defendants deny the allegation in paragraph 67 with respect to the U.S. Fish and Wildlife's concurrence. Federal Defendants aver that the National Marine Fisheries Service

(“NMFS”) concurred with the initial effects determination. With respect to the remaining allegations in paragraph 67, the allegations appear to characterize the NMFS concurrence letter. The concurrence letter speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the concurrence letter. Any remaining allegations are denied.

Sea Island Acquisition’s Revised Permit Application

68. Federal Defendants aver that hurricanes Matthew and Irma caused damage to Sea Island, but deny the remaining allegations on the basis that the phrases “major hurricanes” and “substantial damage” are too vague and ambiguous to permit a meaningful response.

69. Federal Defendants aver that the storms eroded the beach face and many of the frontal dunes on the Spit, but deny the remaining allegations on the basis that the phrase “severely eroded” is too vague and ambiguous to permit a meaningful response.

70. Federal Defendants admit the allegations in paragraph 70.

71. Federal Defendants admit the allegations in paragraph 71.

72. The allegation in paragraph 72 purports to characterize the Sea Island Acquisition’s amended permit application. The amended permit application speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the amended permit application.

73. Federal Defendants admit the allegations in paragraph 73.

74. Federal Defendants admit the allegations in paragraph 74.

75. Federal Defendants deny the allegations in paragraph 75 and deny any violation of law.

76. Federal Defendants deny the allegations in paragraph 76 and deny any violation of law.

77. Federal Defendants deny the allegations in paragraph 77 and deny any violation of law.

The Supplemental Biological Assessment

78. Federal Defendants admit the allegations in paragraph 78.

79. The allegations in paragraph 79 purport to characterize Sea Island Acquisition's supplementary biological assessment. The supplementary biological assessment speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the supplementary biological assessment.

80. The allegations in paragraph 80 purport to characterize the U.S. Fish and Wildlife Service's concurrence letter, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the concurrence letter.

81. The allegations in paragraph 81 purport to characterize the U.S. Fish and Wildlife Service's concurrence letter, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the concurrence letter.

82. Federal Defendants deny the allegations in paragraph 82.

The Original Permit and NEPA Documents

83. Federal Defendants admit the allegations in paragraph 83.

84. Federal Defendants admit the allegations in paragraph 84.

85. The allegations in paragraph 85 appear to characterize the Corps' Environmental Assessment. The Environmental Assessment speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the Environmental Assessment. Any remaining allegations are denied.

Project Construction and the Modified Permit

86. Federal Defendants admits that Sea Island Acquisition began construction in November 2018. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 86 and, on that basis, deny the remaining allegations.

87. The allegations in paragraph 87 appear to be Plaintiffs' characterizations of the parameters of Sea Island Acquisition's original permit and subsequent permit modification issued by the Corps. Sea Island Acquisition's original permit and subsequent permit modification speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the parameters of the original permit and subsequent permit modification.

88. Federal Defendants admit that Sea Island Acquisition did not request a permit modification from the Army Corps of Engineers before beginning construction in November 2018. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations alleged in paragraph 88 and, on that basis, deny the remaining allegations.

89. The allegations in paragraph 89 purport to characterize and selectively quote Sea Island Acquisition's Request for Permit Modification. The Request for Permit Modification speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the Request for Permit Modification.

90. The allegations in paragraph 90 purport to characterize the Corps' Memorandum for Record which documents the Corps' review of the Request for Permit Modification. The Memorandum for Record speaks for itself and is the best evidence of its contents. Federal

Defendants deny the allegations to the extent the allegations are inconsistent with the Memorandum for Record.

91. The allegations in paragraph 91 purport to characterize and selectively quote the Corps' Memorandum for Record documenting the Corps' review of the Request for Permit Modification. The Memorandum for Record speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the Memorandum for Record.

92. The allegations in paragraph 92 purport to characterize and selectively quote the Corps' Memorandum for Record documenting the Corps' review of the Request for Permit Modification. The Memorandum for Record speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the Memorandum for Record.

93. Federal Defendants admit the allegation that the Corps modified the Sea Island Acquisition Permit on or around July 5, 2019. The remaining allegations in paragraph 93 purport to characterize the permit modification. The permit modification speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the permit modification.

94. Federal Defendants admit the allegation in paragraph 94.

LEGAL FRAMEWORK

Clean Water Act

95. The allegation in paragraph 95 purports to characterize and selectively quotes a federal statute, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the statute.

96. The allegation in paragraph 96 purports to characterize and selectively quotes a federal statute, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the statute.

97. The allegation in paragraph 97 purports to characterize and selectively quotes a federal statute, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the statute.

98. The allegation in paragraph 98 purports to characterize and selectively quotes a federal statute, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the statute.

99. The allegation in paragraph 99 purports to characterize and selectively quotes a federal statute, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the statute.

100. The allegation in paragraph 100 purports to characterize a federal statute, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the statute. In addition, the allegation in paragraph 90 constitutes a conclusion of law, to which no response is required.

101. The allegation in paragraph 101 purports to characterize a federal statute and regulations. The federal statute and regulations speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the statute and regulations. In addition, the allegation in paragraph 91 constitutes a conclusion of law, to which no response is required.

102. The allegation in paragraph 102 purports to characterize and selectively quotes a federal regulation, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the regulation.

103. The allegation in paragraph 103 purports to characterize a federal regulation, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the regulation. In addition, the allegation in paragraph 93 constitutes a conclusion of law, to which no response is required.

104. The allegation in the first sentence of paragraph 104 purports to characterize and selectively quotes a federal regulation, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the regulation. The allegations in the second and third sentences of paragraph 104 purport to characterize and selectively quote decisions from the United States Court of Appeals for the Ninth Circuit, and the Middle District of Florida. The decisions speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the decisions.

105. The allegations in paragraph 105 purport to characterize federal regulations. The federal regulations speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the regulations. In addition, the allegations in paragraph 105 constitute conclusions of law, to which no response is required.

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National Environmental Policy Act

106. The allegation in paragraph 106 purports to characterize and selectively quotes a federal statute, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the statute.

107. The allegation in paragraph 107 purports to characterize a federal statute and regulations. The federal statute and regulations speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the statute and regulations.

108. The allegation in paragraph 108 purports to characterize and selectively quotes a federal regulation, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the regulation.

109. The allegation in paragraph 109 purports to characterize and selectively quotes a federal regulation, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the regulation.

110. The allegation in paragraph 110 purports to characterize and selectively quotes a federal regulation, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the regulation.

111. The allegation in paragraph 111 purports to characterize a federal statute, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the statute.

112. The allegations in paragraph 112 purport to characterize federal regulations. The federal regulations speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the regulations.

113. The allegation in paragraph 113 purports to characterize a federal regulation, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the regulation.

114. The allegation in paragraph 114 purports to characterize and selectively quote a United States Court of Appeals for the Ninth Circuit decision, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the decision.

Endangered Species Act

115. The allegation in paragraph 115 purports to characterize and selectively quotes a federal statute, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the statute.

116. The allegation in paragraph 116 purports to characterize and selectively quotes a federal statute which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the statute.

117. The allegation in paragraph 117 purports to characterize and selectively quotes a federal statute, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the statute.

118. The allegation in paragraph 118 constitutes a conclusion of law, to which no response is required.

STANDARD OF REVIEW

119. The allegations in paragraph 119 constitute conclusions of law, to which no response is required.

120. The allegations in paragraph 120 purport to characterize a federal statute, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the statute.

121. The allegations in paragraph 121 purport to characterize a federal statute, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the statute.

122. The allegations in paragraph 122 constitute conclusions of law, to which no response is required.

123. The allegation in paragraph 123 purports to characterize and selectively quotes a federal statute, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the statute.

124. The allegation in paragraph 124 purports to characterize and selectively quote a Supreme Court case, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the case.

125. The allegation in paragraph 125 purports to characterize a federal statute, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the statute.

CLAIMS FOR RELIEF

A. Claim One: Alleged violation of 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.

126. Federal Defendants incorporate by reference the responses contained in the preceding paragraphs.

127. The allegation in paragraph 127 purports to characterize federal regulations. The federal regulations for themselves and are the best evidence of their contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the regulations.

128. The allegation in paragraph 128 purports to characterize and selectively quote a federal regulation, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the regulation.

129. Federal Defendants deny the allegations in paragraph 129 and deny any violation of law.

130. Federal Defendants deny the allegations in paragraph 130 and deny any violation of law.

131. Federal Defendants deny the allegations in paragraph 131 and deny any violation of law.

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

132. Federal Defendants incorporate by reference the responses in the preceding paragraphs.

133. The allegation in paragraph 133 purports to characterize federal regulations. The federal regulations speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the regulations.

134. The allegations in paragraph 134 purport to characterize and selectively quote a federal regulation, which speaks for itself. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the regulation.

135. The allegations in paragraph 135 purport to characterize and selectively quote a federal regulation, which speaks for itself. Federal Defendants deny the allegation to the extent the allegations are inconsistent with the regulation.

136. Federal Defendants deny the allegations in paragraph 136 and deny any violation of law.

137. Federal Defendants deny the allegations in paragraph 137 and deny any violation of law.

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

138. Federal Defendants incorporate by reference the responses contained in the preceding paragraphs.

139. The allegations in paragraph 139 purport to characterize and selectively quotes a federal statute and federal regulations. The federal statute and regulations speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the statute and regulations.

140. Federal Defendants deny the allegations in paragraph 140 and deny any violation of law.

141. The allegations contained in paragraph 141 appear to be Plaintiffs’ characterization of a portion of the Corps’ Environmental Assessment. The Environmental Assessment speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the Environmental Assessment. Any remaining allegations are denied.

142. The allegation in paragraph 142 characterizes and selectively quotes from the Federal Register, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the Federal Register.

143. Federal Defendants deny the allegations in paragraph 143 and deny any violation of law.

144. Federal Defendants deny the allegations in the first sentence of paragraph 144 and deny any violation of law. The allegations in the second sentence of paragraph 144 purport to characterize and selectively quote a federal statute. The federal statute speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the statute.

145. Federal Defendants deny the allegations in paragraph 145 and deny any violation of law.

146. Federal Defendants deny the allegations in paragraph 146 and deny any violation of law.

D. Claim Four: Alleged violation of 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.

147. Federal Defendants incorporate by reference the responses contained in the preceding paragraphs.

148. The allegation in paragraph 148 characterizes and selectively quotes a federal regulation, which speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the regulation.

149. Federal Defendants deny the allegations in paragraph 149 and deny any violation of law.

150. Federal Defendants deny the allegations in paragraph 150 and deny any violation of law.

151. Federal Defendants deny the allegations in paragraph 151 and deny any violation of law.

E. Claim Five: Alleged violation of the Endangered Species Act and the Administrative Procedure Act by failing to adequately consult with NMFS and the FWS regarding the project.

152. Federal Defendants incorporate by reference the responses contained in the preceding paragraphs.

153. The allegations contained in paragraph 153 appear to characterize the Sea Island Biological Assessment. The Biological Assessment speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent the allegations are inconsistent with the Biological Assessment. Any remaining allegations are denied.

154. The allegations in paragraph 154 purport to characterize the Sea Island Biological Assessment. The Biological Assessment speaks for itself and is the best evidence of its contents.

Federal Defendants deny the allegations to the extent they are inconsistent with the Biological Assessment.

155. Federal Defendants admit the allegation that the Corps sent the Sea Island Biological Assessment to NMFS by letter dated May 10, 2017. The remaining allegations in paragraph 155 purport to characterize the letter written on behalf of the Corps. The letter speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent they are inconsistent with the letter.

156. Federal Defendants admit the allegation that NMFS authored a letter dated October 10, 2017. The remaining allegations in paragraph 156 purport to characterize a letter written on behalf of NMFS. The letter speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegations to the extent they are inconsistent with the letter.

157. The allegation in paragraph 157 purports to characterize Sea Island Acquisition's amended permit application. The amended permit application speaks for itself and is the best evidence of its contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the amended permit application.

158. The allegations in paragraph 158 purport to characterize Sea Island Acquisition's permit application and amended permit application. The permit application and amended permit application speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegations to the extent they are inconsistent with the permit application and amended permit application.

159. The allegations in paragraph 159 purport to characterize a Corps' decision document. The decision document speaks for itself and is the best evidence of its contents. Federal

Defendants deny the allegations to the extent they are inconsistent with the Corps' decision document.

160. The allegations in paragraph 160 purport to characterize a notice of violation and an attachment to the Conservation Groups' Motion for Preliminary Injunction. The notice of violation and attachment to the Conservation Groups' Motion for Preliminary Injunction speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegations to the extent they are inconsistent with the notice and attachment.

161. Federal Defendants deny the allegations in paragraph 161 and deny any violation of law.

162. Federal Defendants deny the allegations in paragraph 162 and deny any violation of law.

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

163. Federal Defendants incorporate by reference the responses contained in the preceding paragraphs.

164. The allegation in paragraph 164 characterizes federal regulations, which speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the regulations.

165. The allegation in paragraph 165 characterizes federal regulations, which speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegation to the extent the allegation is inconsistent with the regulations.

166. Federal Defendants deny the allegation in the first sentence of paragraph 166 and deny any violation of law. The allegations in the second sentence of paragraph 166 purport to characterize the Permit. The Permit speaks for itself and is the best evidence of its contents.

Federal Defendants deny the allegations in the second sentence of the paragraph 166 to the extent they are inconsistent with the Permit.

167. Federal Defendants deny the allegations in paragraph 167 and deny any violation of law.

G. Claim Seven: Alleged violation of NEPA, the Clean Water Act, and the APA, by issuing the permit modification.

168. Federal Defendants incorporate by reference the responses contained in the preceding paragraphs.

169. Federal Defendants deny the allegations in paragraph 169 and deny any violation of law.

170. Federal Defendants deny the allegations in paragraph 170 and deny any violation of law.

PRAYER FOR RELIEF

The allegations in this section of the Second Amended Complaint constitute Plaintiffs' prayer for relief, to which no response is required. To the extent a response is required, Federal Defendants deny that Plaintiffs are entitled to the relief requested or to any relief whatsoever.

AFFIRMATIVE DEFENSE

Venue in the Savannah District is improper under Local R. 2.1(e).

Respectfully submitted October 15, 2019
by:

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