

14 RECOMMENDATIONS

The North Carolina State Ports Authority recommends that the Assistant Secretary of the Army (Civil Works) transmit a favorable recommendation to Congress that the existing project for deep draft navigation at Wilmington Harbor, authorized by the Water Resources Development Acts of 1986 (WRDA 86) Public Law 99-662³² and 1996 (WRDA 96) Public Law 104-303¹ and combined into a single project by Public Law 105-62 (Energy and Water Development Appropriations Act of 1998) be modified as described herein to provide for implementation of a Federal project to deepen and widen the existing Federal channels and turning basins with such modifications as in the discretion of the Secretary may be deemed advisable; at a first cost to the United States presently estimated at \$535,750,000; with an annual incremental operations and maintenance cost to the United States presently estimated at \$1,160,000.

The recommended plan, which is the most economical plan analyzed consists of deepening the main ship channel from the ocean entrance inland to the turning basin at the Lower Anchorage, from its current authorized depth of -42 feet in river reaches and -44 feet in the ocean entrance reaches to -47 feet in river reaches and -49 feet in the ocean entrance reaches. In addition to deepening, widening of the existing Federal project to provide for passage of the project design vessel is recommended (Table 14-1) in the following reaches:

³² Section 201 - WILMINGTON HARBOR-NORTHEAST CAPE FEAR RIVER, NORTH CAROLINA - The project for navigation, Wilmington Harbor-Northeast Cape Fear River, North Carolina: Report of the Chief of Engineers, dated September 16, 1980, at a total cost of \$10,000,000, with an estimated first Federal cost of \$8,300,000 and an estimated first non-Federal cost of \$1,700,000.

**Table 14-1
Existing and Proposed Channel Widths by Range**

Range Name	Channel Widths [ft]		Widening Details
	Existing Channel	Proposed	
Entrance	N/A	600	New
Bald Head Shoal Reach 3	500 - 900	600 - 900	Symmetric
Bald Head Shoal Reach 2	900	900	No Change
Bald Head Shoal Reach 1	700	900	Green Side Only
Smith Island	650	900	Red Side Only
Bald Head - Caswell	500	800	Red Side Only
Southport	500	800	Re-orientation Red Side then Green Side
Battery	500	800 - 1300	Replaced with 4000-ft Radius Curve And Green Side at Apex
Lower Swash	400	800 - 500	Green Side to Symmetric
Snows Marsh	400	500	Symmetric
Horseshoe Shoal	400	500	Symmetric
Reaves Point	400	500	Symmetric
Lower Midnight	600	600	No Change
Upper Midnight	600	600	No Change
Lower Lilliput	600	600	No Change
Upper Lilliput	400	500	Symmetric
Keg Island	400	500	Symmetric
Lower Big Island	400	500	Symmetric
Upper Big Island	660	660	No Change
Lower Brunswick	400	500	Symmetric
Upper Brunswick	400	500	Symmetric
Fourth East Jetty	500	550	Green Side Only
Between Channel	550	625	Green Side Only
Anchorage Basin	625	625 - 1509	No Change

The North Carolina State Ports Authority will:

- a. Provide 25 percent of design costs in accordance with the terms of a design agreement entered into prior to commencement of design work for the project;
- b. Provide, during the first year of construction, any additional funds necessary to pay the full non-Federal share of design costs;
- c. Provide, during the period of construction, a cash contribution equal to the following percentages of the total cost of construction of the general navigation features:

i. Twenty-five percent of the costs attributable to dredging to a depth in excess of 20 feet, but not in excess of 50 feet; plus

ii. Fifty percent of the costs attributable to dredging to a depth in excess of 50 feet;

d. Provide 50 percent of the excess cost of operation and maintenance of the project over that cost which the Federal Government determines would be incurred for operation and maintenance for depths deeper than 50 feet;

e. Pay with interest, over a period not to exceed 30 years following completion of the period of construction of the project, up to an additional 10 percent of the total cost of construction of general navigation features. The value of LERRs and deep-draft utility relocations provided by the Sponsor for the general navigation features, described below, may be credited toward this required payment. The value of deep-draft utility relocations for which credit may be afforded shall be that portion borne by the Sponsor, but not to exceed 50 percent, of deep-draft utility relocation costs;

If the amount of credit equals or exceeds 10 percent of the total cost of construction of the general navigation features, the Sponsor shall not be required to make any contribution under this paragraph, nor shall it be entitled to any refund for the value of LERRs and deep-draft utility relocations in excess of 10 percent of the total cost of construction of the general navigation features;

f. Provide all LERRs and perform or ensure the performance of all relocations and deep-draft utility relocations determined by the Federal Government to be necessary for the construction, operation, maintenance, repair, replacement, and rehabilitation of the general navigation features (including all lands, easements, and rights of way, relocations, and deep-draft utility relocations necessary for the dredged material disposal facilities);

g. Provide, operate, maintain, repair, replace, and rehabilitate, at its own expense, the local service facilities in a manner compatible with the project's authorized purposes and in accordance with applicable Federal and State laws and regulations and any specific directions prescribed by the Federal Government;

h. Accomplish all removals determined necessary by the Federal Government other than those removals specifically assigned to the Federal Government;

i. Give the Federal Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Sponsor owns or controls for access to the project for the purpose of operating, maintaining, repairing, replacing, and rehabilitating the general navigation features;

j. Hold and save the United States free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the project, any betterments, and the local service facilities, except for damages due to the fault or negligence of the United States or its contractors;

k. Keep, and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project, for a minimum of 3 years after completion of the accounting for which such books, records, documents, and other evidence is required, to the extent and in such detail as will properly reflect total cost of construction of the general navigation features, and in accordance with the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local governments at 32 CFR, Section 33.20;

l. Perform, or cause to be performed, any investigations for hazardous substances as are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675, that may exist in, on, or under lands, easements, or rights of way that the Federal Government determines to be necessary for construction, operation, maintenance, repair, replacement, or rehabilitation of the general navigation features. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigation unless the Federal Government provides the Sponsor with prior specific written direction, in which case, the Sponsor shall perform such investigations in accordance with such written direction;

m. Assume complete financial responsibility, as between the Federal Government and the Sponsor, for all necessary cleanup and response costs of any CERCLA regulated materials located in, on, or under lands, easements, or rights of way that the Federal Government determines to be necessary for the construction, operation, maintenance, repair, replacement, and rehabilitation of the project;

n. To the maximum extent practicable, perform its obligations in a manner that will not cause liability to arise under CERCLA;

o. Comply with Section 221 of Public Law 91-611, Flood Control Act of 1970, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the Sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

p. Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights of way, required for construction, operation, maintenance, repair, replacement, and rehabilitation of the general navigation features, and inform all affected persons of applicable benefits, policies, and procedures in connection with said act;

q. Comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army." The State is also required to comply with all applicable Federal labor standards requirements including, but not limited to, the Davis-Bacon Act (40 USC 3144 *et seq.*), the Contract Work Hours and Safety Standards Act (40 USC 3701 *et seq.*), and the Copeland Anti-Kickback Act (40 USC 3145 *et seq.*);

r. Provide the non-Federal share that portion of the costs of mitigation and data recovery activities associated with historic preservation, that are in excess of 1 percent of the total amount authorized to be appropriated for the project, in accordance with the cost sharing provisions of the agreement;

s. Prevent obstructions of or encroachments on the project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) which might reduce the ecosystem restoration, hinder its operation and maintenance, or interfere with its proper function,

such as any new development on project lands or the addition of facilities which would degrade the benefits of the project;

t. Do not use Federal funds to meet the Sponsor's share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds is authorized;

u. Provide a cash contribution equal to the non-Federal cost share of the project's total historic preservation mitigation and data recovery costs attributable to commercial navigation that are in excess of 1 percent of the total amount authorized to be appropriated for commercial navigation; and

v. In the case of a deep-draft harbor, provide 50 percent of the excess cost of operation and maintenance of the project over that cost which the Secretary determines would be incurred for operation and maintenance if the project had a depth of 50 feet."

The recommendation contained herein reflects the information available at this time and current departmental policies governing formulation of individual projects. It does not reflect program and budgeting priorities inherent in the formulation of a national civil works construction program or the perspective of higher review levels within the executive branch. Consequently, the recommendation may be modified before it is transmitted to the Congress as a proposal for authorization and implementation funding. However, prior to transmittal to the Congress, the North Carolina State Ports Authority (the non-federal sponsor), interested Federal agencies, and other parties will be advised of any significant modifications and will be afforded an opportunity to comment further.

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