



TOWN COUNCIL AGENDA

REGULAR MEETING

January 21, 2020 @ 6:00 p.m.

*Asterisks indicate documentation is included in agenda packet

Call to Order – Mayor Bloszinsky

Invocation & Pledge of Allegiance – Rev Williams

APPROVAL OF CONSENT AGENDA ITEMS

1. *Approve Budget Amendment 20-06 totaling \$40,000 for storm water system maintenance expenses
2. *Approve application for TDA funding totaling \$237,388.99 for lifeguard services for the summer of 2019
3. *Approve application for TDA funding totaling \$24,165 for Ocean Front Park entertainment
4. *Approve application for TDA funding totaling \$5,587.81 for the 2019 Kure Beach Fantasy Christmas Show
5. *Approve Deborah Hutchings moving from an alternate member to full member of the Community Center Committee
6. *Approve the monthly report and invoice for the consulting contract in the amount of \$6,914 with Nancy Avery
7. *Minutes:
 - December 9, 2019 regular

ADOPTION OF THE AGENDA

DISCUSSION AND CONSIDERATION OF PERSONS TO ADDRESS COUNCIL

DISCUSSION AND CONSIDERATION OF COMMITTEE BUSINESS

1. Community Center Committee
2. Marketing Committee
3. Shoreline Access and Beach Protection
 - *Purchase and install the reverse side of the Beach access signs
4. Non town Committee Reports
5. Planning & Zoning Commission
 1. *Proposed text amendment to Chapter 10 (Motor Vehicles and Traffic) Article 10 (Stopping, Standing and Parking) Section 10 (Generally)
*Proposed text amendment to Chapter 10 (Motor Vehicles and Traffic) Article 10 (Stopping, Standing and Parking) Section 20 (Parking Rules)



TOWN COUNCIL AGENDA

REGULAR MEETING

January 21, 2020 @ 6:00 p.m.

*Proposed text amendment to Chapter 13 (Community Development and Public Facilities) Article 2 (In General) Section 60 (Removal of Obstructions and Encroachments)

2. *Interview Kathleen Zielinski as the P&Z alternate member

DISCUSSION AND CONSIDERATION OF DEPARTMENT HEAD BUSINESS

1. Administration

2. Building Inspections Department

3. Finance Department

4. Fire Department

5. Police Department

6. Public Works Department

Project Updates:

- LDSI Storm Water Project
- *Survey Work with Underwood Surveying
- Cleaning of three drainages ditches in buffer zone/fire lane near Alabama Avenue, K Avenue, and Davis Road
- GPS Mapping

7. Recreation Department

DISCUSSION AND CONSIDERATION OF OLD BUSINESS

1. *Additional signage at crosswalks

DISCUSSION AND CONSIDERATION OF NEW BUSINESS

1. *2019 Coastal Storm Damage Reduction Project (Oliver)
2. **"Friend of the Court" Amicus Brief Opportunity (Bloszinsky)
3. *Reschedule the March Town Council Meeting

MAYOR UPDATES (no action required)

COMMISSIONER ITEMS (no action required)



TOWN COUNCIL AGENDA

REGULAR MEETING

January 21, 2020 @ 6:00 p.m.

CLOSED SESSION

Closed session for consultation on personnel matter as per N.C.G.S. 143-318.11(a)(6)

ADJOURNMENT

CONSENT

BUDGET AMENDMENT
FISCAL YEAR ENDING JUNE 30, 2020
AMENDMENT DATE: 01/09/2020

Budget Amendment No.: 20-06

DESCRIPTION/PURPOSE OF AMENDMENT

The Storm Water Fund FY 2020 Budget included \$15,000 for system maintenance. Currently, anticipated system maintenance costs will approximate \$55,000. The increased costs relate to damages incurred during Hurricane Dorian and storm water ditch cleaning that was allowed by MOTSU. The revenue sources for the maintenance costs are an appropriation of fund balance and estimated FEMA storm damage reimbursements.

ACCOUNTS AFFECTED

<u>Account No.</u>	<u>Account Name</u>	<u>Debit</u>	<u>Credit</u>
32-610-18-00	Storm Water Maintenance	\$40,000	
32-310-00-00	Appropriate Storm Water Fund Balance		\$20,000
32-343-00-00	Hurricane Reimbursement		\$20,000

NOTE: (a) Budget Officer may transfer between line item expenditures without limitation and without a report being required up to \$10,000 at any one time. (b) The Budget Officer may transfer amounts within departments and of the same fund and reported as part of the financial statements. He/She shall make an official report immediately to Council on such transfers. (c) The Budget Officer may not transfer amounts between funds without prior Council action.

Requested By: Jimmy Mesimer, Public Works Director Date: 01/09/20

Approved By: Arlen Copenhaver, Finance/Budget Officer Date: 01/09/20

(Copies of actions/directives from Council Meeting to be attached, if required as per NOTE above).

Approved by Council 01/21/20 _____ Craig Bloszinsky, Mayor

ATTEST: _____ Mandy Sanders, Town Clerk

NEW HANOVER COUNTY TOURISM DEVELOPMENT AUTHORITY
APPLICATION FOR FUNDING FOR TOURISM RELATED EXPENDITURES

Governing Body: Kure Beach Town Council

Contact Person: Arlen Copenhaver, Finance & Budget Officer

Address: 117 Settlers Lane, Kure Beach, NC 28449

Phone: (910)-458-8216 Fax: (910)-458-7421 Email: acopenhaver@townofkurebeach.org

Date Approved by Governing Body: January 21, 2020

Date Project/ Activity Will Begin: Completed Will be Completed: Requested Annually

Total Cost of Project/Activity: \$237,388.99 Amount Requested: \$237,388.99

Description of Project/ Activity (*include its correlation to travel and tourism and its merit as a project or activity designed to enhance the area as a travel destination*):

The Town of Kure Beach respectfully requests funding for expenditures for lifeguard services for the summer of 2019. The requested funds include expenditures for two budget years, 2018 – 2019 and 2019 – 2020. The expenses to be reimbursed are calculated as follows:

Total Lifeguard Expenses Incurred FY 2018/2019	\$212,364.53
Less: Lifeguard Expenses Included on 01/28/19	
TDA Request	<u>\$ 93,095.31</u>
FY 2018/2019 Remaining To Be Reimbursed	\$119,269.22
FY 2019/2020 Lifeguard Expenses Incurred From	
7/1/19 – 12/31/19	<u>\$118,119.77</u>
Amount of This Request	<u>\$237,388.99</u>

This program is directly related to tourism as it acts to protect vacationers and visitors from harm as they swim and enjoy the beach strand in the incorporated Town limits of Kure Beach. Visitors are attracted to beaches that offer lifeguard services, particularly those with young children and older adults. Kure Beach has always been on the cutting edge of oceanfront safety. We have a proven track record of placing a high priority on protection of our visitors. The Kure Beach Lifeguard Program budget is attached to this request indicating amounts previously received and the amount of this request.

Your consideration of this funding is appreciated.

If approved, please remit payment to the attention of Arlen Copenhaver.

Submitted By: Arlen Copenhaver, Finance & Budget Officer

Date: 01/21/2020

Return Application To:
Wilmington and Beaches Convention & Visitors Bureau
Attention: Kim Hufham, Pres/ CEO
505 Nutt Street, Unit A
Wilmington, NC 28401
(910) 341-4030

NEW HANOVER COUNTY TOURISM DEVELOPMENT AUTHORITY
APPLICATION FOR FUNDING FOR TOURISM RELATED EXPENDITURES

Governing Body: Kure Beach Town Council

Contact Person: Arlen Copenhaver, Finance & Budget Officer

Address: 117 Settlers Lane Kure Beach, NC 28449

Phone: (910)-458-8216 Fax: (910)-458-7421 Email: a.copenhaver@tokb.org

Date Approved by Governing Body: January 21, 2020

Date Project/ Activity Will Begin: Completed Will be Completed: Requested Annually

Total Cost of Project/Activity: \$24,165.00 Amount Requested: \$24,165.00

Description of Project/ Activity (*include its correlation to travel and tourism and its merit as a project or activity designed to enhance the area as a travel destination*):

The Town of Kure Beach respectfully requests funding for expenditures that were incurred for entertainment provided at the Ocean Front Park during the summer and fall of 2019. The entertainment included concerts, story time, the Kure Beach Market and other family-oriented activities. These events attract tourists to Kure Beach by providing enjoyable and affordable entertainment. The expenditures were as follows:

Concerts	\$13,000.00
Family Activities	\$ 5,550.00
Kure Beach Market	<u>\$ 5,615.00</u>
Amount of This Request	<u>\$24,165.00</u>

The supporting documentation for the expenditures is attached to this request.

Your consideration of this funding is appreciated.

If approved, please remit payment to the attention of Arlen Copenhaver.

Submitted By: Arlen Copenhaver, Finance & Budget Officer

Date: 01/21/20

Return Application To:
Wilmington and Beaches Convention & Visitors Bureau
Attention: Kim Hufham, Pres/ CEO
505 Nutt Street, Unit A
Wilmington, NC 28401
(910) 341-4030

NEW HANOVER COUNTY TOURISM DEVELOPMENT AUTHORITY
APPLICATION FOR FUNDING FOR TOURISM RELATED EXPENDITURES

Governing Body: Kure Beach Town Council

Contact Person: Arlen Copenhaver, Finance & Budget Officer

Address: 117 Settlers Lane Kure Beach, NC 28449

Phone: (910)-458-8216 Fax: (910)-458-7421 Email: a.copenhaver@tokb.org

Date Approved by Governing Body: January 21, 2020

Date Project/ Activity Will Begin: Completed Will be Completed: Requested Annually

Total Cost of Project/Activity: \$5,587.81 Amount Requested: \$5,587.81

Description of Project/ Activity (*include its correlation to travel and tourism and its merit as a project or activity designed to enhance the area as a travel destination*):

The Town of Kure Beach respectfully requests funding for expenditures that were incurred for the 2019 Kure Beach Fantasy Christmas Show. The show consisted of three performances scheduled for the evenings of December 13 to December 15, 2019.

This annual event provides family entertainment for tourists visiting Kure Beach. The show includes singing, dancing and holiday-related stories. The expenditures for Fiscal Year 2019/2020 total \$5,587.81 and are supported by documentation attached to this request.

Your consideration of this funding is appreciated.

If approved, please remit payment to the attention of Arlen Copenhaver.

Submitted By: Arlen Copenhaver, Finance & Budget Officer

Date: 01/21/20

Return Application To:
Wilmington and Beaches Convention & Visitors Bureau
Attention: Kim Hufham, Pres/ CEO
505 Nutt Street, Unit A
Wilmington, NC 28401
(910) 341-4030

Beth Chase

From: Nikki Keely
Sent: Tuesday, January 14, 2020 11:36 AM
To: Beth Chase
Subject: RE: January Agenda

Follow Up Flag: Follow up
Flag Status: Flagged

Hello,

The Community Center Committee voted to move Deborah Hutchings from an Alternate Member to Full Member today. If it's not too late, can we get that on the Consent Agenda? If not, next month is fine.

They also gave the thumbs up for advertising for the open Alternate position.

Thanks so much,

Nikki Keely

Recreation Director, CPRP

Recreation Department
Town of Kure Beach
117 Settlers Lane
Kure Beach, NC 28449
910.458.8216/Fax 910.458.7421
www.townofkurebeach.org

From: Beth Chase <b.chase@townofkurebeach.org>
Sent: Monday, January 6, 2020 11:46 AM
To: Allen Oliver <a.oliver@townofkurebeach.org>; Andy Canoutas <aa.canoutas@yahoo.com>; Craig Bloszinsky <c.bloszinsky@townofkurebeach.org>; David Heglar <d.heglar@townofkurebeach.org>; John Ellen <j.ellen@townofkurebeach.org>; Joseph Whitley <j.whitley@townofkurebeach.org>; Arlen Copenhaver <a.copenhaver@townofkurebeach.org>; Ed Kennedy <e.kennedy@townofkurebeach.org>; Jim Mesimer <j.mesimer@townofkurebeach.org>; John Batson <j.batson@townofkurebeach.org>; Mike Bowden <m.bowden@townofkurebeach.org>; Nikki Keely <n.keely@townofkurebeach.org>; Craig Galbraith <galbraithc@uncw.edu>; debbie@talkinc.com; Dennis Panicali <dpanicali@gmail.com>; Sara Barham <sbarham817@aol.com>
Cc: Mandy Sanders <m.sanders@townofkurebeach.org>
Subject: RE: January Agenda

Good morning Mayor, Commissioners, Department Heads, and Committee Chair Persons,

Below are the agenda items for the January 21st (Tuesday) Council meeting that begins at 6 pm.

Please let me know of additional items or deletions by Tuesday, January 14th as the agenda packet will be printed and published Wednesday, January 15th.

APPROVAL OF CONSENT AGENDA ITEMS

Nancy Avery - Consulting monthly progress report – January 2020

Mr. Mayor and Commissioners,

As per the signed contract services agreement, this is my progress report for the month of January to be included on the Consent Agenda for the January Council meeting.

Projects:

1. CAMA grant – replace existing beach crossover #1004.5 near Oceanview with ADA compliant access.

We did receive the grant as submitted and the award letter from the governor came last week. The contract won't be received, though, for another 2-3 weeks, per my contact. Then the contract has to be approved by Council at a meeting, so we are looking at a late February start for this project. Vendors have been notified. Once the contract is signed and the construction vendor gives me a start date, I will prepare a letter for the Mayor to sign to be mailed to adjoining property owners giving notice of work in the area. I will also work with the Public Works Director to remove necessary items from the site and then work with both the Building Inspector and Public Works Director to oversee removal and construction. I will also visit the site regularly to monitor the work and ensure all invoices are approved by the Department Heads before submitting for payment to finance. I will include Mandy in all steps of this grant project process for her future knowledge.

2. Funding for Stormwater Infiltration Systems at accesses at Davis Road and F, G, H, I, J Avenue.

The Town submitted a grant through the Attorney General's Environmental Enhancement grant program last September. They received 93 applications and awards should be announced early spring.

I am writing a grant application for the Clean Water Management Trust Fund grant program that is due February 3rd, as another source of potential funding. *This is my main priority for this month because of the due date and the time involved in writing a grant of this nature.*

3. MOTSU agreements and survey

Underwood Surveying says they are 40% finished with the survey and hope to have it completed by the end of January. This survey will be used for three requests that will be submitted to MOTSU for consideration:

1. Memorandum Of Agreement for access and permission quarterly to clean storm water ditches on MOTSU property
2. Permission to install storm water pipes and associated drains from the 300 block of Settlers Lane to the ditch at K Avenue
3. Request for a new lease to utilize the vacant lot behind the Police Station/Fire Bays as a lay down/storage area

I will work with the Corps of Engineers real estate representative and the MOTSU Public Works Director on drafting these requests to make sure all legalities in language are covered. I will include Mandy through out this process also as a learning experience.

The Town did receive temporary permission to access and clean the ditches in December and I understand from the Public Works Director that the work has been completed.

4. Update of Personnel Policy and creation of needed Standard Operating Procedures

I have reviewed policies from seven other towns of similar size along with the State of NC Personnel Policy. I will be drafting an Employee Handbook also as part of this project. The handbook is not a policy but is a good tool to give to new employees with an overview of expectations of being an employee of the Town.

Other pending projects

Creation of state required ADA Transition Plan – not started

Nancy Avery

6509 Berridge Drive, Wilmington, N 28412
910-443-0410 * averynan@gall.com

Invoice # 2020-01

Date: January 20, 2020

Bill To

Town of Kure Beach
117 Settlers Lane, Kure Beach, NC 28449
910-458-8216

For

Consulting services

Item Description	Amount
Consulting services for month of January 2020	\$6,914.00
as per contract service agreement dated October 21, 2019	

Subtotal	\$6,914.00
Tax Rate	
Other Costs	
Total Cost	\$6,914.00

Make all checks payable to Nancy Avery

If you have any questions concerning this invoice, use the following contact information:

Nancy Avery, 910-443-0410, averynan@gmail.com

Due date: January 31, 2020

COMMITTEE BUSINESS

SHORELINE ACCESS & BEACH PROTECTION

Beth Chase

From: Dennis <dlpanicali@gmail.com>
Sent: Tuesday, January 7, 2020 2:00 PM
To: Beth Chase
Cc: Allen Oliver; Andy Canoutas; Craig Bloszinsky; David Heglar; John Ellen; Joseph Whitley; Arlen Copenhaver; Ed Kennedy; Jim Mesimer; John Batson; Mike Bowden; Nikki Keely; Craig Galbraith; debbie@talkinc.com; Sara Barham; Mandy Sanders
Subject: Re: January Agenda

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Beth,

SLABP would like Town Council approval to purchase and have installed, the “ Thank You for keeping or beaches Clean and Safe” signs on the reverse side of the beach access signs. These would be installed independent of the beach sponsorship program which has not yet been approved.

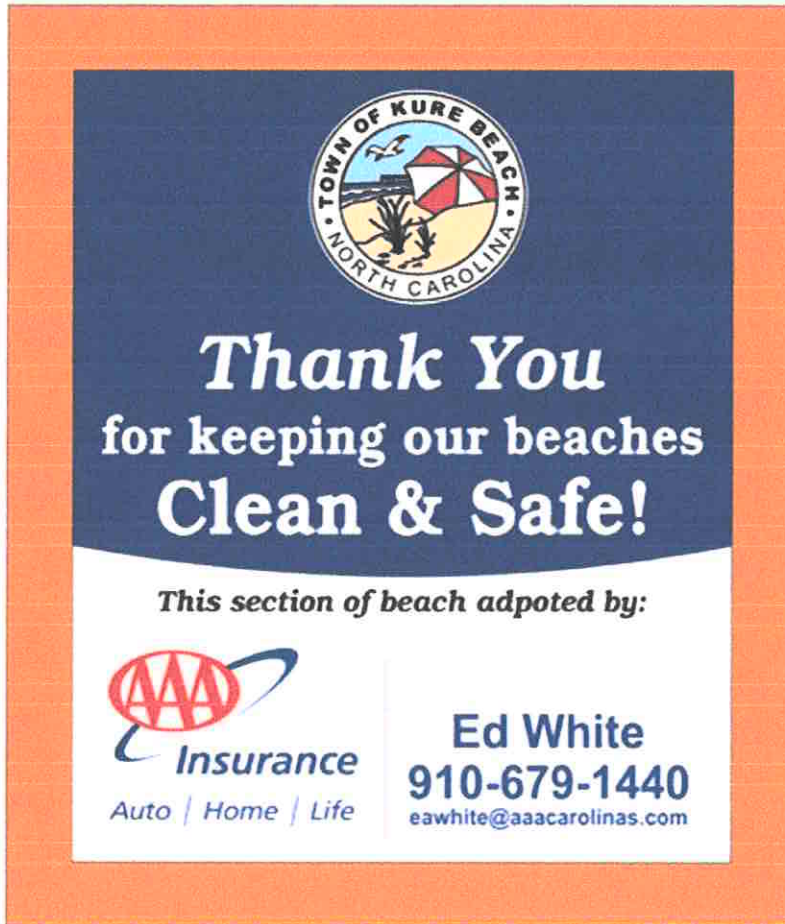
Thanks

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Sent from my iPad

On Jan 6, 2020, at 11:45 AM, Beth Chase <b.chase@townofkurebeach.org> wrote:

Good morning Mayor, Commissioners, Department Heads, and Committee Chair Persons,

Below are the agenda items for the January 21st (Tuesday) Council meeting that begins at 6 pm.

Please let me know of additional items or deletions by Tuesday, January 14th as the agenda packet will be printed and published Wednesday, January 15th.

APPROVAL OF CONSENT AGENDA ITEMS

PLANNING & ZONING

TEXT AMENDMENTS

RIGHT-OF-WAY RELATED TEXT AMENDMENTS
(January 14, 2020 PZC Review)

10.10.010. Generally

Current:

Public right-of-way. A strip of land acquired for or dedicated to public transportation purposes over which is constructed a street or highway and which includes areas adjacent thereto which may be used for, without limitation, sidewalks, planting strips, traffic circles, utilities, and/or medians.

Proposed Text Amendment (Redline):

Public right-of-way. A strip of land acquired for or dedicated to public transportation purposes over which is constructed a street or highway and which includes areas adjacent thereto which may be used for, without limitation, sidewalks, planting strips, traffic circles, utilities, and/or medians. **Private property does not extend to the street edge.**

10.19.20 Parking Rules

Current:

A. Parking in General and Manner of Parking

1. Passenger vehicles shall be parked only in designated parking spaces excepting property owners and lessors in the town's residential districts who shall be permitted to park their vehicles, without time restrictions, on the unpaved portion of the public right-of-way abutting their front yard and within the front yard setback of the property they own or lease in accordance with the applicable provisions of KBC 15.

Proposed Text Amendment (Redline):

A. Parking in General and Manner of Parking

1. Passenger vehicles shall be parked only in designated parking spaces excepting property owners and lessors in the town's residential districts who shall be permitted to park their **passenger** vehicles, without time restrictions, on the unpaved portion of the public right-of-way abutting their front yard and within the front yard setback of the property they own or lease in accordance with the applicable provisions of KBC 15. **Property owners must keep the unpaved portion of the right-of-way abutting their front yard clear of any obstacles, impediments, plantings, or structures. Property owners are specifically prohibited from barricading or roping off any portion of the right-of-way or posting signage therein. The only items permitted in the unpaved portion of the right-of-way are mailboxes.**

RIGHT-OF-WAY RELATED TEXT AMENDMENTS
(January 14, 2020 PZC Review)

13.02.060 Removal of Obstructions and Encroachments

Current:

Upon a report that there are obstructions or encroachments on any of the streets, sidewalks, wharves or other public places in the town, the town shall give written notice to any person causing such obstruction or encroachment to remove same immediately. Upon the owner's failure to remove such obstruction the town shall order such obstruction or encroachment removed. Any person refusing or failing to remove such obstruction or encroachment within ten (10) days after such notice from the town shall be subject to a civil penalty for each day such obstruction or encroachment shall continue after notification for its removal. Each day such obstruction is continued after the limit fixed for such removal shall constitute a separate and distinct offense.

Proposed Text Amendment (Redline):

Upon a report that there are obstructions or encroachments on any of the streets, sidewalks, **public right-of-ways**, wharves or other public places in the town, the town shall give written notice to any person causing such obstruction or encroachment to remove same immediately. Upon the owner's failure to remove such obstruction the town shall order such obstruction or encroachment removed. Any person refusing or failing to remove such obstruction or encroachment within ten (10) days after such notice from the town shall be subject to a civil penalty for each day such obstruction or encroachment shall continue after notification for its removal. Each day such obstruction is continued after the limit fixed for such removal shall constitute a separate and distinct offense.

**TOWN OF KURE BEACH
ORDINANCE 10.10.010**

NOW THEREFORE, be it ordained by the Council of Town of Kure Beach, in the State of North Carolina, as follows:

SECTION 1: **AMENDMENT** “10.10.010 Generally” of the Town of Kure Beach Municipal Code is hereby *amended* as follows:

B E F O R E A M E N D M E N T

10.10.010 Generally

- A. *Definitions.* For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Driveway. An area allowing ingress and egress to private residences that is not open to public vehicular traffic.

Intersection. The lateral edge of roadway lines of two or more streets or highways which join one another at any angle regardless whether one such street or highway crosses the other.

Motorcycle. A vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including, motor scooters, and motor-driven bicycles but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies, electric assisted bicycles, and mopeds.

Moped. A non-passenger vehicle, other than a motor-driven bicycle or electric assisted bicycle, that has two or three wheels, no external shifting device, a motor that does not exceed fifty (50) cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than thirty (30) miles per hour on a level surface. The motor may be powered by electricity, alternative fuel, motor fuel, or a combination of each.

Owner. A person holding legal title to a vehicle. For the purposes of this article, the lessee of a vehicle shall be considered the owner of the vehicle.

Park. The standing of a vehicle, whether occupied or not, other than temporarily for the purpose of loading or unloading.

Passenger vehicle. Registered golf carts, motorcycles, and four-wheel vehicles, including pick-up trucks, panel trucks, and vans which do not exceed ten thousand (10,000) pounds, which are not used in a delivery or freight business and/or to carry passengers for a fee.

Property-hauling vehicles.

- (a) Vehicles used for the transportation of property.
- (b) Semitrailers. Vehicles without motive power designed for carrying property or persons and for being drawn by a motor vehicle, and so constructed that part of their weight or their load rests upon or is carried by the pulling vehicle.
- (c) Trailers. Vehicles without motive power designed for carrying property or persons wholly on their own structure and to be drawn by a motor vehicle.

Public right-of-way. A strip of land acquired for or dedicated to public transportation purposes over which is constructed a street or highway and which includes areas adjacent thereto which may be used for, without limitation, sidewalks, planting strips, traffic circles, utilities, and/or medians.

Standing. Any stopping of a vehicle, whether occupied or not.

Street/highway. The entire width of a roadway between property or right-of-way lines when any part thereof is open to the use of the public for the purpose of vehicular traffic.

Vehicle. Every device in or upon which any person or property may be transported or drawn upon a street or highway excepting devices moved by human power or used exclusively upon stationary rails or tracks provided that, for the purpose of this chapter, a bicycle, moped, or a ridden animal shall be deemed a Vehicle but shall not be deemed a passenger vehicle.

(Ord. of 6-25-18(1))

B. *Obedience To Police.* No person shall refuse to comply with any lawful order or direction of a police officer. (Ord. of 6-25-18(1))

C. *Civil Penalty For Violations*

- (a) Any owner or operator of a vehicle violating the provisions of this article shall be subject to a civil penalty in the amount of twenty-five dollars (\$25.00) for each violation; provided that an owner or operator of a vehicle illegally parking in a designated handicapped parking space in violation of KBC 10.10.020 subparagraph J shall be subject to a civil penalty in the amount of two hundred and fifty dollars (\$250.00).

- (b) *Generally.* The owner or operator of any vehicle who has been notified of a violation of this article may, within the time specified in the notice, present himself or herself by mail or in person with the notice or ticket at the police department and answer the violations noted thereon by voluntarily paying the civil penalty specified on the notice or ticket. Any vehicle owner/operator receiving a notice or ticket hereunder shall be permitted to pay the civil penalty without contesting the violation by appearing in person at the Town of Kure Beach, 117 Settlers Lane, Kure Beach, NC 28449 within fifteen (15) days of issuance of the notice or ticket.
- (c) *Construction.* The civil penalty provided for herein shall in no event be construed to be enforced fines or forfeitures and shall instead be construed as civil penalties which offenders may voluntarily pay for violations of this article. Such penalty shall be paid within fifteen (15) days of the issuance of the notice or ticket or the civil penalty shall be recovered by the town in a civil action in the nature of a debt.
- (d) *Disposition of proceeds.* All civil penalties paid to the town for violations of this article shall be paid into the town's general fund.

(Ord. of 6-25-18(1))

D. *Ticketing Of Vehicles*

- (a) *Required.* Whenever an officer of the town's police department charged with enforcing this article finds that any of its provisions are being or have been violated by the owner or operator of a vehicle, the officer shall notify the owner or operator of the violation by conspicuously attaching a notice or ticket, in such form as the police chief may determine, to the vehicle.
- (b) *Contents.* The notice or ticket shall require the owner or operator to appear before the police chief or his or her designee within 15 days after such notice is given and answer to same or to return such ticket or notice by mail with the civil penalty provided for in subparagraph C above. Failure to meet this deadline shall result in a twenty-five dollar (\$25.00) late fee.
- (c) *Personal appearance.* The personal appearance of the owner or operator receiving a notice or ticket shall not be necessary provided that the payment of the civil penalty is received by the town within fifteen (15) days of the notice or ticket's issuance.

(Ord. of 6-25-18(1))

E. *Towing And Impoundment*

- (a) Any motor vehicle found parked in violation of this article may, in accordance with the provisions of G.S. § 160A-303 and KBC 8.08.070, be deemed as an abandoned vehicle and be subject to towing and impoundment without prior notice to the owner.

- (b) In the event a vehicle is towed and impounded under this subparagraph, post-hearing notice requirements, the owner's right to a probable cause hearing on the towing, redemption of the vehicle, and the sale and disposition of unclaimed vehicles shall be as set forth in G.S. Chapter 20, Article 7A and the provisions of KBC 8.08.080 through KBC 8.08.110.

(Ord. of 6-25-18(1))

AFTER AMENDMENT

10.10.010 Generally

- A. *Definitions.* For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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Moped. A non-passenger vehicle, other than a motor-driven bicycle or electric assisted bicycle, that has two or three wheels, no external shifting device, a motor that does not exceed fifty (50) cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than thirty (30) miles per hour on a level surface. The motor may be powered by electricity, alternative fuel, motor fuel, or a combination of each.

Owner. A person holding legal title to a vehicle. For the purposes of this article, the lessee of a vehicle shall be considered the owner of the vehicle.

Park. The standing of a vehicle, whether occupied or not, other than temporarily for the purpose of loading or unloading.

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- (a) Vehicles used for the transportation of property.
- (b) Semitrailers. Vehicles without motive power designed for carrying property or persons and for being drawn by a motor vehicle, and so constructed that part of their weight or their load rests upon or is carried by the pulling vehicle.
- (c) Trailers. Vehicles without motive power designed for carrying property or persons wholly on their own structure and to be drawn by a motor vehicle.

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Standing. Any stopping of a vehicle, whether occupied or not.

Street/highway. The entire width of a roadway between property or right-of-way lines when any part thereof is open to the use of the public for the purpose of vehicular traffic.

Vehicle. Every device in or upon which any person or property may be transported or drawn upon a street or highway excepting devices moved by human power or used exclusively upon stationary rails or tracks provided that, for the purpose of this chapter, a bicycle, moped, or a ridden animal shall be deemed a Vehicle but shall not be deemed a passenger vehicle.

(Ord. of 6-25-18(1))

B. *Obedience To Police.* No person shall refuse to comply with any lawful order or direction of a police officer. (Ord. of 6-25-18(1))

C. *Civil Penalty For Violations*

- (a) Any owner or operator of a vehicle violating the provisions of this article shall be subject to a civil penalty in the amount of twenty-five dollars (\$25.00) for each violation; provided that an owner or operator of a vehicle illegally parking in a designated handicapped parking space in violation of KBC 10.10.020 subparagraph J shall be subject to a civil penalty in the amount of two hundred and fifty dollars (\$250.00).
- (b) *Generally.* The owner or operator of any vehicle who has been notified of a violation of this article may, within the time specified in the notice, present himself or herself by mail or in person with the notice or ticket at the police department and answer the violations noted thereon by voluntarily paying the civil penalty specified on the notice or ticket. Any vehicle owner/operator receiving a notice or ticket hereunder shall be permitted to pay the civil penalty without contesting the violation by appearing in person at the Town of Kure Beach, 117 Settlers Lane, Kure Beach, NC 28449 within fifteen (15) days of issuance of the notice or ticket.

- (c) *Construction.* The civil penalty provided for herein shall in no event be construed to be enforced fines or forfeitures and shall instead be construed as civil penalties which offenders may voluntarily pay for violations of this article. Such penalty shall be paid within fifteen (15) days of the issuance of the notice or ticket or the civil penalty shall be recovered by the town in a civil action in the nature of a debt.
- (d) *Disposition of proceeds.* All civil penalties paid to the town for violations of this article shall be paid into the town's general fund.

(Ord. of 6-25-18(1))

D. *Ticketing Of Vehicles*

- (a) *Required.* Whenever an officer of the town's police department charged with enforcing this article finds that any of its provisions are being or have been violated by the owner or operator of a vehicle, the officer shall notify the owner or operator of the violation by conspicuously attaching a notice or ticket, in such form as the police chief may determine, to the vehicle.
- (b) *Contents.* The notice or ticket shall require the owner or operator to appear before the police chief or his or her designee within 15 days after such notice is given and answer to same or to return such ticket or notice by mail with the civil penalty provided for in subparagraph C above. Failure to meet this deadline shall result in a twenty-five dollar (\$25.00) late fee.
- (c) *Personal appearance.* The personal appearance of the owner or operator receiving a notice or ticket shall not be necessary provided that the payment of the civil penalty is received by the town within fifteen (15) days of the notice or ticket's issuance.

(Ord. of 6-25-18(1))

E. *Towing And Impoundment*

- (a) Any motor vehicle found parked in violation of this article may, in accordance with the provisions of G.S. § 160A-303 and KBC 8.08.070, be deemed as an abandoned vehicle and be subject to towing and impoundment without prior notice to the owner.
- (b) In the event a vehicle is towed and impounded under this subparagraph, post-hearing notice requirements, the owner's right to a probable cause hearing on the towing, redemption of the vehicle, and the sale and disposition of unclaimed vehicles shall be as set forth in G.S. Chapter 20, Article 7A and the provisions of KBC 8.08.080 through KBC 8.08.110.

(Ord. of 6-25-18(1))

PASSED AND ADOPTED BY THE TOWN OF KURE BEACH COUNCIL

_____.

	AYE	NAY	ABSENT	ABSTAIN
Commissioner John Ellen	_____	_____	_____	_____
Commissioner Allen Oliver	_____	_____	_____	_____
Commissioner David Heglur	_____	_____	_____	_____
Commissioner Joseph Whitley	_____	_____	_____	_____
Mayor Craig Bloszinsky	_____	_____	_____	_____
Presiding Officer		Attest		

Craig Bloszinsky, Mayor, Town of
Kure Beach

Nancy Avery, Town Clerk Town of
Kure Beach

**TOWN OF KURE BEACH
ORDINANCE 10.10.020**

NOW THEREFORE, be it ordained by the Council of Town of Kure Beach, in the State of North Carolina, as follows:

SECTION 1: **AMENDMENT** "10.10.020 Parking Rules" of the Town of Kure Beach Municipal Code is hereby *amended* as follows:

BEFORE AMENDMENT

10.10.020 Parking Rules

A. Parking In General And Manner Of Parking

- (a) Passenger vehicles shall be parked only in designated parking spaces excepting property owners and lessors in the town's residential districts who shall be permitted to park their vehicles, without time restrictions, on the unpaved portion of the public right-of-way abutting their front yard and within the front yard setback of the property they own or lease in accordance with the applicable provisions of KBC 15.
- (b) Passenger vehicles when parked in designated spaces for parallel parking shall be so parked that the curbside wheels of the vehicle shall not be more than twelve (12) inches from the curb.
- (c) Passenger vehicles when parked in designated spaces for diagonal parking shall be so parked that the vehicle's front wheels are immediately adjacent to the curb or parking bumper.
- (d) Passenger vehicles shall be parked in designated parking spaces such that the overall dimensions of the vehicle shall be entirely within the parking space as designated.
- (e) Violations of this subparagraph shall subject the offender to the imposition of a civil penalty as provided for in KBC 10.10.010 subparagraph C.
- (f) The prohibitions in this article shall not apply to emergency and public service vehicles whose operators are performing services for which they are responsible not shall these prohibitions apply to vehicles belonging to or operated by employees of third-party vendors under contract with the town to provide a public service.
(Ord. of 11-15-16(2); Ord. of 6-25-18(1); Ord. of 6-25-18(2))

B. Non-Passenger Vehicles. Only passenger vehicles shall be permitted to park in the town's designated parking spaces and all other vehicles, including property-hauling vehicles, are prohibited from parking in the designated spaces. (Ord. of 6-25-18(1))

C. Designation Of Parking Spaces, Areas, And Zones

- (a) The public works department shall, when authorized and directed to do so by town council, lay off and designate by appropriate signage and markings, parallel and diagonal parking spaces, limited parking spaces, reserved parking spaces, handicapped parking spaces, loading zones, and no parking areas.
- (b) Parallel and diagonal parking spaces shall be marked on the ground and each space shall not exceed twenty (20) feet in length.
(Ord. of 6-25-18(1))

- D. *Parking In Time-Limited Spaces.* Whenever a parking space is signed and marked as limiting the time or conditions under which a vehicle may be parked, no person shall park or let stand a vehicle in such space except in conformity with the signs and markings erected thereat. (Ord. of 6-25-18(1))
- E. *No Parking Areas.* Whenever signs or markings are placed, erected, or installed giving notice thereof, no person shall park a vehicle at any time in an area signed or marked as a no parking area. (Ord. of 6-25-18(1))
- F. *Stopping In Streets Prohibited; Exceptions.* No vehicle shall stop in or on any street, except for the purpose of parking as prescribed in this chapter, unless such stop is made necessary by the approach of emergency vehicles, the approach of a funeral or other procession which is given right-of-way, or by some other emergency. In all cases covered by these exceptions, the vehicle shall be stopped so as not to obstruct any pedestrian walkway, safety zone, bike or multi-use path, crosswalk or intersection if it can be avoided. (Ord. of 6-25-18(1))
- G. *Parking For Certain Purposes Prohibited.* No person shall stand or park a vehicle on any part of a public right-of-way for the purpose of:
- (a) Displaying it for sale.
 - (b) Washing, cleaning, waxing, greasing or repairing the vehicle, excepting repairs necessitated by an emergency.
 - (c) Vehicle storage by a garage, mechanic, repair shop, dealer or some other person/entity.
 - (d) Storage of any detached trailer or van, when the towing unit has been disconnected.
 - (e) Transferring merchandise or freight from one vehicle to another.
 - (f) Using the vehicle for advertising.
 - (g) Overnight parking except in designated parking spaces or as otherwise provided for herein; "overnight" meaning, for the purpose of this subparagraph, between the hours of sunset and sunrise.
(Ord. of 6-25-18(1))
- H. *Parking Prohibited At Certain Places.* Whether the vehicle is attended or unattended, no person shall stop, stand, or park any portion of any vehicle, except when conflict with other traffic is imminent or when directed to do so by a police officer or traffic-control device, in any of the following places:
- (a) On a sidewalk.
 - (b) In a crosswalk.
 - (c) In a bike or multi-use path.
 - (d) Within an intersection.
 - (e) Within ten (10) feet of an intersection.
 - (f) In front of a driveway.
 - (g) Within ten (10) feet of a fire plug or hydrant.
 - (h) On any part of a public right-of-way facing opposing traffic.
 - (i) Within fifteen (15) feet, on the seaward side, of any private or public beach access points.
 - (j) In a designated Handicapped parking space without the proper license plate, placard, or other evidence showing that a handicapped permit has been issued to the vehicle's operator by the proper authority.
 - (k) Other than public right-of-ways as provided for herein, on any public property, including parking lots, parks, and recreational areas, except as permitted thereat, provided that, in accordance with G.S. § 160A-303 and KBC 8.08.070 subparagraph B, any vehicle left on property owned by the town for longer than twenty-four (24) hours will be deemed to have been abandoned and may be towed and impounded as provided for herein.

(l) On any part of a public right-of-way except by passenger vehicles in designated parking spaces or as otherwise provided for herein.

(Ord. of 6-25-18(1); Ord. of 6-25-18(2))

I. *Beach Access Parking.* It shall be unlawful for any person to park or leave standing in any public beach access parking area any passenger vehicle between the hours of 1:00 a.m. and 5:00 a.m. between the months of April 1 and October 1 of each year on the following beach access areas:

1342	Fort Fisher Blvd. S.	Ocean Dune
643	Fort Fisher Blvd. S.	E Avenue
541	Fort Fisher Blvd. S.	F Avenue
443	Fort Fisher Blvd. S.	G Avenue
343	Fort Fisher Blvd. S.	H Avenue
227	Fort Fisher Blvd. S.	I Avenue
139	Fort Fisher Blvd. S.	J Avenue
334	Fort Fisher Blvd. S.	N Avenue

(Ord. of 6-25-18(1))

AFTER AMENDMENT

10.10.020 Parking Rules

A. *Parking In General And Manner Of Parking*

- (a) Passenger vehicles shall be parked only in designated parking spaces excepting property owners and lessors in the town's residential districts who shall be permitted to park their passenger vehicles, without time restrictions, on the unpaved portion of the public right-of-way abutting their front yard and within the front yard setback of the property they own or lease in accordance with the applicable provisions of KBC 15. Property owners must keep the unpaved portion of the right-of-way abutting their front yard clear of any obstacles, impediments, plantings, or structures. Property owners are specifically prohibited from barricading or roping off any portion of the right-of-way or posting signage therein. The only items permitted in the unpaved portion of the right-of-way are mailboxes.
- (b) Passenger vehicles when parked in designated spaces for parallel parking shall be so parked that the curbside wheels of the vehicle shall not be more than twelve (12) inches from the curb.
- (c) Passenger vehicles when parked in designated spaces for diagonal parking shall be so parked that the vehicle's front wheels are immediately adjacent to the curb or parking bumper.
- (d) Passenger vehicles shall be parked in designated parking spaces such that the overall dimensions of the vehicle shall be entirely within the parking space as designated.
- (e) Violations of this subparagraph shall subject the offender to the imposition of a civil penalty as provided for in KBC 10.10.010 subparagraph C.

- (f) The prohibitions in this article shall not apply to emergency and public service vehicles whose operators are performing services for which they are responsible not shall these prohibitions apply to vehicles belonging to or operated by employees of third-party vendors under contract with the town to provide a public service.
(Ord. of 11-15-16(2); Ord. of 6-25-18(1); Ord. of 6-25-18(2))
- B. *Non-Passenger Vehicles.* Only passenger vehicles shall be permitted to park in the town's designated parking spaces and all other vehicles, including property-hauling vehicles, are prohibited from parking in the designated spaces. (Ord. of 6-25-18(1))
- C. *Designation Of Parking Spaces, Areas, And Zones*
- (a) The public works department shall, when authorized and directed to do so by town council, lay off and designate by appropriate signage and markings, parallel and diagonal parking spaces, limited parking spaces, reserved parking spaces, handicapped parking spaces, loading zones, and no parking areas.
- (b) Parallel and diagonal parking spaces shall be marked on the ground and each space shall not exceed twenty (20) feet in length.
(Ord. of 6-25-18(1))
- D. *Parking In Time-Limited Spaces.* Whenever a parking space is signed and marked as limiting the time or conditions under which a vehicle may be parked, no person shall park or let stand a vehicle in such space except in conformity with the signs and markings erected thereat. (Ord. of 6-25-18(1))
- E. *No Parking Areas.* Whenever signs or markings are placed, erected, or installed giving notice thereof, no person shall park a vehicle at any time in an area signed or marked as a no parking area. (Ord. of 6-25-18(1))
- F. *Stopping In Streets Prohibited; Exceptions.* No vehicle shall stop in or on any street, except for the purpose of parking as prescribed in this chapter, unless such stop is made necessary by the approach of emergency vehicles, the approach of a funeral or other procession which is given right-of-way, or by some other emergency. In all cases covered by these exceptions, the vehicle shall be stopped so as not to obstruct any pedestrian walkway, safety zone, bike or multi-use path, crosswalk or intersection if it can be avoided. (Ord. of 6-25-18(1))
- G. *Parking For Certain Purposes Prohibited.* No person shall stand or park a vehicle on any part of a public right-of-way for the purpose of:
- (a) Displaying it for sale.
- (b) Washing, cleaning, waxing, greasing or repairing the vehicle, excepting repairs necessitated by an emergency.
- (c) Vehicle storage by a garage, mechanic, repair shop, dealer or some other person/entity.
- (d) Storage of any detached trailer or van, when the towing unit has been disconnected.
- (e) Transferring merchandise or freight from one vehicle to another.
- (f) Using the vehicle for advertising.
- (g) Overnight parking except in designated parking spaces or as otherwise provided for herein; "overnight" meaning, for the purpose of this subparagraph, between the hours of sunset and sunrise.
(Ord. of 6-25-18(1))
- H. *Parking Prohibited At Certain Places.* Whether the vehicle is attended or unattended, no person shall stop, stand, or park any portion of any vehicle, except when conflict with other traffic is imminent or when directed to do so by a police officer or traffic-control device, in any of the following places:
- (a) On a sidewalk.
- (b) In a crosswalk.

- (c) In a bike or multi-use path.
- (d) Within an intersection.
- (e) Within ten (10) feet of an intersection.
- (f) In front of a driveway.
- (g) Within ten (10) feet of a fire plug or hydrant.
- (h) On any part of a public right-of-way facing opposing traffic.
- (i) Within fifteen (15) feet, on the seaward side, of any private or public beach access points.
- (j) In a designated Handicapped parking space without the proper license plate, placard, or other evidence showing that a handicapped permit has been issued to the vehicle's operator by the proper authority.
- (k) Other than public right-of-ways as provided for herein, on any public property, including parking lots, parks, and recreational areas, except as permitted thereat, provided that, in accordance with G.S. § 160A-303 and KBC 8.08.070 subparagraph B, any vehicle left on property owned by the town for longer than twenty-four (24) hours will be deemed to have been abandoned and may be towed and impounded as provided for herein.
- (l) On any part of a public right-of-way except by passenger vehicles in designated parking spaces or as otherwise provided for herein.
(Ord. of 6-25-18(1); Ord. of 6-25-18(2))

I. *Beach Access Parking.* It shall be unlawful for any person to park or leave standing in any public beach access parking area any passenger vehicle between the hours of 1:00 a.m. and 5:00 a.m. between the months of April 1 and October 1 of each year on the following beach access areas:

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343	Fort Fisher Blvd. S.	H Avenue
227	Fort Fisher Blvd. S.	I Avenue
139	Fort Fisher Blvd. S.	J Avenue
334	Fort Fisher Blvd. S.	N Avenue

(Ord. of 6-25-18(1))

PASSED AND ADOPTED BY THE TOWN OF KURE BEACH COUNCIL

	AYE	NAY	ABSENT	ABSTAIN
Commissioner John Ellen	_____	_____	_____	_____
Commissioner Allen Oliver	_____	_____	_____	_____
Commissioner David Heglar	_____	_____	_____	_____
Commissioner Joseph Whitley	_____	_____	_____	_____
Mayor Craig Bloszinsky	_____	_____	_____	_____

Presiding Officer

Attest

Craig Bloszinsky, Mayor, Town of Kure
Beach

Nancy Avery, Town Clerk Town of Kure
Beach

**TOWN OF KURE BEACH
ORDINANCE 13.02.060**

NOW THEREFORE, be it ordained by the Council of Town of Kure Beach, in the State of North Carolina, as follows:

SECTION 1: **AMENDMENT** "13.02.060 Removal Of Obstructions And Encroachments" of the Town of Kure Beach Municipal Code is hereby *amended* as follows:

B E F O R E A M E N D M E N T

13.02.060 Removal Of Obstructions And Encroachments

Upon a report that there are obstructions or encroachments on any of the streets, sidewalks, wharves or other public places in the town, the town shall give written notice to any person causing such obstruction or encroachment to remove same immediately. Upon the owner's failure to remove such obstruction the town shall order such obstruction or encroachment removed. Any person refusing or failing to remove such obstruction or encroachment within ten (10) days after such notice from the town shall be subject to a civil penalty for each day such obstruction or encroachment shall continue after notification for its removal. Each day such obstruction is continued after the limit fixed for such removal shall constitute a separate and distinct offense.

(Code 1973, § 23-20)

A F T E R A M E N D M E N T

13.02.060 Removal Of Obstructions And Encroachments

Upon a report that there are obstructions or encroachments on any of the streets, sidewalks, public right-of-ways, wharves or other public places in the town, the town shall give written notice to any person causing such obstruction or encroachment to remove same immediately. Upon the owner's failure to remove such obstruction the town shall order such obstruction or encroachment removed. Any person refusing or failing to remove such obstruction or encroachment within ten (10) days after such notice from the town shall be subject to a civil penalty for each day such obstruction or encroachment shall continue after notification for its removal. Each day such obstruction is continued after the limit fixed for such removal shall constitute a separate and distinct offense.

(Code 1973, § 23-20)

PASSED AND ADOPTED BY THE TOWN OF KURE BEACH COUNCIL

_____.

	AYE	NAY	ABSENT	ABSTAIN
Commissioner John Ellen	_____	_____	_____	_____
Commissioner Allen Oliver	_____	_____	_____	_____
Commissioner David Heglar	_____	_____	_____	_____
Commissioner Joseph Whitley	_____	_____	_____	_____
Mayor Craig Bloszinsky	_____	_____	_____	_____

Presiding Officer

Attest

Craig Bloszinsky, Mayor, Town of
Kure Beach

Nancy Avery, Town Clerk Town of
Kure Beach

P&Z APPLICANT

Entry #: 6

Date Submitted: 11/26/2019 3:02 PM

Request for Appointment to:

Planning & Zoning Commission - Alternate

Name

Kathleen Zielinski

Kure Beach Property Address:

714 Settlers Lane, Kure Beach, North Carolina 28449

Phone:

(410) 688-7740

Email:

leenkath1@hotmail.com

Length of full-time residency in Kure Beach:

5

Employment:

Publix

Job Title

Deli Clerk, part-time

Professional Activities?

December 2016-May 2019

Building Inspections – Administrative Assistant

Planning & Zoning Commission - Secretary

Board of Adjustment – Clerk

Volunteer Activities?

KBPD – assisted with update to Policy Manual

KBCC BBQ Fundraiser

Kure Beach Village Board of Directors

Focus Group formed from Community Vision Day 2016

Other committee work, past or present?

KB Community Center Member

What is your understanding of the purpose of this committee?

To act as an advisory board for Town Council on planning and development issues, ensuring that ordinances are properly implemented. To review and recommend to Council permit applications and, when indicated, modifications to Town ordinances.

Why are you interested in serving on this committee?

I think proper planning and well-written zoning laws play a vital role in regulating long-term growth and development of Kure Beach. I feel my experience as the Administrative Assistant to the Building Inspector and Secretary for P&Z, along with my desire to serve my town, will help me in making valuable contributions to the Commission.

In what specific concerns or areas are you interested?

Since I have chosen Kure Beach as my permanent home, I am highly interested in giving my time and skills to ensure the careful planning of future growth in the downtown and residential districts.

What days and/or times between 8am-8pm, Monday through Friday, are you unable to attend meetings?

With two weeks' notice, I can be available any of these times.

Signature

Date of Application:
11/26/2019

A handwritten signature in black ink, appearing to read "Kathleen", written over a horizontal dashed line.

DEPARTMENT BUSINESS

PUBLIC WORKS DEPARTMENT

Beth Chase

From: Nancy Avery
Sent: Monday, January 6, 2020 4:22 PM
To: Beth Chase
Cc: Mandy Sanders; Joseph Whitley; Jim Mesimer
Subject: Re: Survey Work

Hi - I spoke with the surveyor today(Underwood Surveying) - 40% of the survey work is done. He said he should complete before the end of January.

Nancy Avery
910-443-0410 cell
n.avery@tokb.org

On Jan 6, 2020, at 11:37 AM, Beth Chase <b.chase@townofkurebeach.org> wrote:

Good Morning,

I hope you're doing well! Happy New Year. Commissioner Whitley is requesting an update on the survey work that is being done. Do you have any updates I could include in the agenda for Jimmy to report on?

Thank you so much,
Beth Chase
Deputy Town Clerk
Town of Kure Beach
117 Settlers Lane
Kure Beach, NC 28449
910-458-8216 (Office)

OLD BUSINESS

CROSSWALK OPTIONS

TOWN OF KURE BEACH

CROSSWALKS

There are six crosswalks within the Town's limits located at:

- Sealane
- Beach access # 630 N Fort Fisher Blvd (between Sea View and Sea Watch HOAs)
- M Avenue
- I Avenue
- E Avenue
- Fort Fisher Air Force Rec Area/Ocean Dunes

OPTION 1 – REFLECTIVE SIGNS

- Per D.O.T., reflective signs may only go in midblock crosswalks located between intersections
- There are only two midblock crosswalks located at the FF Air Force Rec Area and between Sea View and Sea Watch
- Reflective signs in the middle of crosswalks are \$400 per unit X2 plus 2 spares at total cost of \$1600.00. Vendor is Tapco Safety Company.



OPTION 2 – SOLAR FLASHING LIGHTS

- 24 hour Solar Flashing lights at all crosswalks at cost of \$28,866.89 plus installation.
- Lights would flash 24 hours a day. Drivers would have to become accustomed to constant flashing lights and homeowners in the area would probably not like the lights flashing all the time.
- Vendor - Tapco Safety Company



OPTION 3 – PUSH BUTTON SOLAR CROSSING SIGNAL

- Push button solar crossing signal at all crosswalks at cost of \$44,495.22 plus installation.
- Activated by pushing button lights on pole to light up crosswalk at night.
- Same lighting Carolina Beach has installed at crosswalks.
- Option 3 keeps the lighting the same on the island.
- Light mounted on the pole for night visibility in crosswalks
- Vendor - Tapco Safety Company



OPTION 4 – PUSH BUTTON SOLAR POWERED LIGHTS TO FLASH AND SHINE LIGHTS ACROSS CROSSWALKS

- Push button solar powered lights installed in the road at a cost of \$187,034.55 plus installation.
- Lights flash in the road when activated by pushing button.
- Takes approximately two days per crosswalk to install.
- Vendor - Tapco Safety Company



OPTION 5 – SQUARE BALLARD SIGNAL

- Square Ballard crosswalk signal at cost of \$185,601.61 plus installation.
- Has lights that shine across the road at night.
- Vendor - Emedco Safety Company



- D.O.T said it is the Town's responsibility to purchase and install the appropriate signage.
- D.O.T will not maintain any equipment purchased by the Town
- These estimates do not address the traffic light at K and Fort Fisher.
- Photos are a close representation to actual signage.

NEW BUSINESS

2019 STORM WATER DAMAGE

Memo

Report on 2019 CSDR Project

Kure Beach Town Council

January 20, 2020

On Wednesday January 8th the Wilmington-New Hanover - Port, Waterway & Beach Commission met for our regular monthly meeting. Layton Bedsole shared the final numbers on the 2019 CSDR (Coastal Storm Damage Reduction) Project. This year's project has FCCE (Flood Control & Coastal Emergencies) dollars in addition to the regular Federal, State and ROT (Room Occupancy Tax) funds.

The 2019 Project was scheduled to open bids just before Hurricane Florence arrival. The project was delayed to include damage assessment post storm. The project included significant increases in the cubic yards we received. The FCCE funds were derived from damage from Hurricanes Matthew and Florence 100% federal dollars not FEMA Funds.

Below are the numbers for Carolina and Kure Beach I included the estimated yardage Pre-Florence. I will be glad to answer and questions you may have at the January Meeting.

FY 2019	Total Cost	FCCE	Fed @ 65%	NC @ 17.5 %	ROT @ 17.5 %	Yardage	Estimated Yardage
CB CSDR	\$8,717,324.80	\$3,400,000.00	\$3,456,261.12	\$930,531.84	\$930,531.84	1,057,267	646,000
KB CSDR	\$12,134,307.63	\$3,697,900.00	\$5,483,664.96	\$1,476,371.34	\$1,476,371.34	824,216	452,000
Totals	\$20,851,632.43	\$7,097,900.00	\$8,939,926.08	\$2,406,903.18	\$2,406,903.18	1,881,483	1,098,000

AMICUS BRIEF OPPORTUNITY

Joseph Whitley
Commissioner, Town of Kure Beach
910-620-4900
<http://www.townofkurebeach.org>

Begin forwarded message:

From: "Sturgill, Randy" <rsturgill@oceana.org>
Date: December 9, 2019 at 12:26:48 PM EST
To: Joseph Whitley <j.whitley@townofkurebeach.org>
Subject: "Friend of the Court" (amicus brief) opportunity

Hello Mayor Bloszinsky, (Hoping you could add this in for discussion in tonights meeting)
Please call me too.

I am writing to make you aware of an opportunity to take action to protect your community from harmful seismic airgun blasting used to search for offshore oil and gas.

Seismic airgun blasting is an extremely loud and dangerous process used to search for potential oil and gas deposits deep below the ocean's surface and the first step toward expanding offshore drilling.^[i] Noise from these dynamite-like blasts is so loud that it can disturb, injure or even kill animals across the entire marine ecosystem-- from the smallest zooplankton to the largest whales.^[ii] The blast zone stretches from Cape May, New Jersey all the way to Cape Canaveral, Florida.^[iii] Every East Coast governor and more than 270 municipalities in states along the East Coast, including over 90 percent of coastal communities within the blast zone, have expressed opposition to this dangerous activity.^[iv] An economic analysis by Oceana found that offshore drilling activities, including seismic airgun blasting, along the Atlantic coast threaten over 1.5 million jobs^[v] and nearly \$108 billion in GDP that rely on a healthy and clean marine environment, mainly through fishing, tourism and recreation.^[vi]

If you, on behalf of Kure Beach, would like to take action to protect the Atlantic Ocean from seismic airgun blasting, you may be able to engage in the [ongoing Atlantic seismic litigation](#) as a "friend of the court" (known as an amicus curiae). As a "friend of the court," you would be providing information, expertise and/or insights on issues from your town's unique perspective, which may help the court determine whether permitting seismic airgun blasting in the Atlantic violates federal law. For example, On April 22, 2019, the court granted three North Carolina towns amicus status: Oak Island, Caswell Beach and Sunset Beach.

If you're interested in this opportunity to engage as a "friend of the court", please reach out to the following legal counsel contact via email to learn more details:

Brian Edes, Attorney

Email: briane@cmclawfirm.com

In your email, please provide (1) your name and contact information; (2) the name and location of your town; and (3) explain why you are interested in taking action to protect the Atlantic

Ocean from harmful seismic airgun blasting, including the impacts such oil and gas exploration may have on your town.

Thank you for considering this!

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

SOUTH CAROLINA COASTAL CONSERVATION LEAGUE;
CENTER FOR BIOLOGICAL DIVERSITY; DEFENDERS OF
WILDLIFE; NATURAL RESOURCES DEFENSE COUNCIL,
INC.; NORTH CAROLINA COASTAL FEDERATION;
OCEANA; ONE HUNDRED MILES; SIERRA CLUB; and
SURFRIDER FOUNDATION,

Plaintiffs,

v.

WILBUR ROSS, in his official capacity as the Secretary
of Commerce; the NATIONAL MARINE FISHERIES
SERVICE; and CHRIS OLIVER, in his official capacity as
the Assistant Administrator for Fisheries,

Defendants.

Civ. No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Oil and gas exploration companies are poised to begin seismic airgun blasting in coastal waters from Delaware to Florida. These blasts, which are used to detect oil and gas reserves beneath the ocean floor, are a precursor to offshore oil and gas drilling. They are also disruptive industrial activities in their own right. Seismic surveys for oil and gas blast the water column with dozens of high-volume airguns, generating some of the loudest sounds that humans produce in the ocean. Airguns are fired as often as every ten seconds, twenty-four hours a day, for months at a time. Each blast can produce effective sound levels in excess of 260 decibels. Noise from these blasts can disturb, injure, or even kill animals across the entire marine ecosystem, from the smallest zooplankton to the largest whales.

2. On November 30, the National Marine Fisheries Service (NMFS) authorized five companies to conduct seismic airgun surveys for oil and gas in coastal waters of the Mid- and South Atlantic Ocean. These surveys cover overlapping territory and will likely be simultaneous: the five authorizations allow nearly 850 combined days of around-the-clock activity, amounting to more than five million total seismic airgun blasts. By NMFS's own estimates, the authorized surveys will injure and disturb whales and dolphins hundreds of thousands of times, including critically endangered North Atlantic right whales.

3. The ocean is an acoustic world. Sound travels far more efficiently underwater than through the air. Whales, dolphins, and other marine species depend on sound to find mates, forage, avoid predators, navigate, and communicate—in short, for virtually every vital life function. Ocean species are acutely sensitive to acoustic disturbance, which can disrupt or prevent these vital activities.

4. Seismic surveys for oil and gas disrupt acoustic habitats across a wide geographic scale. The blasts they produce are powerful enough to be heard underwater for thousands of miles; over vast distances, their repetitive noise interferes with essential animal behavior including feeding, mating, and raising young. At close range, airgun blasts can kill and injure marine life.

5. For the North Atlantic right whale, one of the most endangered marine mammals in the world, these blasts could mean extinction. Approximately 400 right whales remain, with little more than 100 breeding females left to recover the population. The last twenty months have been devastating for the species. Twenty North Atlantic right whales have been found dead since April 2017—an unprecedented number of deaths in modern times—and new births have slowed. Only five calves were detected in the 2016-17 calving season; in the 2017-18 calving season, not a single right whale calf was detected. NMFS’s own Right Whale Recovery Program Coordinator Barb Zoodsma has stated: “It’s a pivotal moment for right whales [I]t very well could be the beginning of the end.” In a statement made on November 15—just weeks before the approval of the seismic surveys at issue here—Ms. Zoodsma further explained that “[t]he number of right whale deaths is troubling for a population of a little more than 400 animals, particularly because we estimate that there are only about 100 breeding females who are producing fewer calves each year.”

6. The seismic airgun blasts NMFS has authorized will take place in and near the North Atlantic right whales’ migration path and calving grounds. Each year, many right whales migrate from feeding grounds off New England and Canada to their only known calving grounds off Florida, Georgia, and the Carolinas; others are present in the Mid- and South Atlantic year-round. Loud, repetitive airgun blasts may disrupt these whales’ use of sound to communicate,

separate mothers from their calves, and reduce the fitness of animals that are already struggling to survive. Experts have warned that the large-scale seismic airgun blasting that NMFS has authorized is likely to push right whales closer to extinction.

7. Effects on other species will also be severe. For example, the authorized surveys will be conducted in areas in the Mid-Atlantic that have one of the highest concentrations of beaked whales observed anywhere in the world. These whales, which are among the most sensitive of all marine mammal species to acoustic disturbances, are known to react strongly to loud anthropogenic (human-made) noises. In their most severe form, these behavioral reactions can lead beaked whales to strand on beaches or dive abnormally, causing serious injury or death. More commonly, beaked whales flee from disruptive noise, abandoning productive habitat. NMFS has authorized seismic companies to harm beaked whales more than 23,000 times.

8. In total, the authorized seismic surveys could harm thirty-four species of marine mammals, including five endangered and threatened whale populations, four species of endangered sea turtles, and many species of fish and invertebrates. A substantial body of research shows that seismic airguns adversely affect marine species through disruption of vital behaviors, damage to sensory organs, and even death. As a group of marine scientists warned in 2015, the introduction of large-scale seismic surveys for oil and gas along the Atlantic coast is likely to have “significant, long-lasting, and widespread impacts” on marine mammals and other species in the region.

9. The Marine Mammal Protection Act (MMPA) prohibits activities like seismic surveys that can disturb, injure, or kill marine mammals, unless NMFS authorizes the activities after making certain findings. NMFS may give its authorization only if it finds, among other

things, that activities will injure or disturb “small numbers” of marine mammals and will have no more than a “negligible impact” on each marine mammal species or stock.

10. NMFS’s conclusions that the authorized seismic surveys in the Atlantic meet these requirements defy science, law, and common sense. NMFS violated the “small numbers” requirement by authorizing each of the five companies to harm, or “take,” up to 33 percent of each marine mammal population. Applying this threshold, NMFS authorized 91,000 instances of harassment for just one species of dolphin, and aggregate takes of more than 50 percent for at least eight whale and dolphin species. These numbers do not comport with any reasonable definition of “small.” NMFS also violated the “negligible impact” requirement by failing to determine that the five overlapping seismic surveys, considered in the aggregate, will have no more than a negligible impact on each marine mammal species or stock. Instead, the agency arbitrarily considered each company’s activities in isolation. NMFS’s analysis failed to adhere to additional statutory requirements imposed by the MMPA, as is detailed below.

11. The Endangered Species Act (ESA) prohibits NMFS from issuing harassment authorizations for seismic airgun blasting unless the agency issues a Biological Opinion that either (1) concludes that the activity is not likely to jeopardize the survival and recovery of any endangered or threatened species, specifies the amount of permissible take, and requires reasonable measures to minimize the action’s effects; or (2) concludes that the action is likely to jeopardize the survival and recovery of one or more endangered or threatened species and specifies reasonable and prudent alternatives that avoid jeopardy.

12. NMFS violated the ESA by deciding, contrary to the best available science, that the authorized seismic airgun blasts are not likely to jeopardize the continued existence of the North Atlantic right whale and other threatened and endangered species such as fin whales,

sperm whales, and four species of sea turtles that will be harmed by the authorized seismic airgun blasting.

13. Under the National Environmental Policy Act (NEPA), NMFS may authorize an activity like seismic airgun blasting only if it has fully analyzed the activity's direct, indirect, and cumulative environmental impacts; informed the public and decision makers about those impacts *before* making its decisions; and based its authorization on reliable information and accurate scientific analysis.

14. The agency failed to prepare an Environmental Impact Statement (EIS) analyzing the significant adverse impacts of the authorized seismic surveys. Instead, it relied on flawed, outdated portions of a Programmatic Environmental Impact Statement from 2014 and an inadequate Environmental Assessment. These analyses failed to consider critical recent information, including the increasingly precarious state of the endangered North Atlantic right whale and new scientific research on the harms seismic airgun blasts cause to a variety of marine life. The agency also failed to consider the cumulative impacts of the surveys, failed to consider reasonable alternatives, and otherwise failed to take the legally required "hard look" at the impacts of the surveys.

15. In approving the surveys, NMFS defied the dictates of the MMPA, the ESA, and NEPA. These violations threaten hundreds of thousands of marine mammals and the very survival of at least one species. Plaintiffs ask this Court to declare that NMFS and its named officials are violating federal law; vacate the harassment authorizations, Biological Opinion, Environmental Assessment, and Finding of No Significant Impact; and prohibit the authorized seismic airgun blasting unless and until Defendants comply with their obligations under law.

JURISDICTION AND VENUE

16. This Court has jurisdiction over these claims under 28 U.S.C. § 1331 (federal question) and 5 U.S.C. § 702 (Administrative Procedure Act). The relief sought is authorized by 28 U.S.C. § 2201(a) (declaratory relief) and 5 U.S.C. § 705 and 28 U.S.C. § 2202 (injunctive relief).

17. Venue is proper in the District of South Carolina under 28 U.S.C. § 1391(e)(1) because this civil action is brought against agencies of the United States and officers of the United States acting in their official capacities, and Plaintiff South Carolina Coastal Conservation League resides in the District of South Carolina. No real property is involved in this action.

18. Pursuant to Local Rule 3.01(A)(2), assignment to the Charleston Division is appropriate because Plaintiff South Carolina Coastal Conservation League resides in Charleston.

PARTIES

I. Plaintiffs

19. South Carolina Coastal Conservation League is a nonprofit organization founded in 1989. The League is incorporated under the laws of South Carolina, maintains its headquarters office in Charleston, South Carolina, and currently has nearly 2,700 active donors. The mission of the League is to protect the threatened resources of the South Carolina Coast—its natural landscapes, abundant wildlife, clean water, and quality of life. For years, the League has actively worked to prevent seismic surveying and offshore drilling off the coast of South Carolina, due to the many harms that these activities would cause the marine environment and wildlife.

20. Center for Biological Diversity is a nonprofit organization with offices across the United States. The Center works through science and environmental law to advocate for the

protection of endangered, threatened, and rare species and their habitats both in the United States and abroad. The Center has over 68,000 active members. Through its Oceans Program, the Center has worked for years to protect North Atlantic right whales and other marine mammals that are threatened by industrial activities in our oceans, including offshore oil and gas activities and seismic airgun blasting.

21. Defenders of Wildlife is a nonprofit, science-based conservation organization dedicated to the protection and restoration of all native wild animals and plants in their natural communities and the preservation of the habitat that they depend on. Founded in 1947, it is one of the nation's leading advocates for imperiled species, such as the endangered North Atlantic right whale, and their habitats. Defenders of Wildlife has more than 408,000 members and donors nationwide, including more than 4,500 in South Carolina.

22. Natural Resources Defense Council, Inc. ("NRDC") is a national, nonprofit environmental organization with nearly 400,000 members, including over 53,000 members in the Mid- and South Atlantic states from Delaware to Florida. NRDC is dedicated to the preservation of the environment, its wildlife, and its natural resources; and actively pursues effective enforcement of environmental laws and regulations on behalf of its members. For more than two decades, NRDC has worked to protect marine mammals and other wildlife from the harmful effects of ocean noise.

23. North Carolina Coastal Federation is a membership-supported, nonprofit organization with over 5,000 members. For more than thirty years, the Federation has worked to protect the quality of North Carolina's coastal environment, including its beaches, fisheries, and coastal and marine wildlife through advocacy, education, and coastal restoration projects.

24. Oceana is a nonprofit international advocacy organization dedicated to protecting and restoring the world's oceans through policy, advocacy, science, law, and public education. Oceana has over 817,000 members worldwide, including over 207,000 members along the Atlantic Coast. For the past six years, Oceana has supported coastal communities in South Carolina in opposing offshore drilling and seismic surveying in the Atlantic.

25. One Hundred Miles is a membership-based, nonprofit organization with over 660 members. The mission of One Hundred Miles is to preserve, protect, and enhance Georgia's 100-mile coastline and the waters that lie offshore. The preservation of marine wildlife and fisheries is a critical component of One Hundred Miles's mission, and the organization works to protect and preserve the integrity of these resources throughout coastal Georgia.

26. Sierra Club is a national environmental organization founded in 1892 and devoted to the study and protection of the earth's scenic and ecological resources—mountains, wetlands, woodlands, wild shores and rivers, deserts, plains, and their wild flora and fauna. Sierra Club has approximately 782,000 members and some sixty chapters in the United States and Canada, including over 114,000 members from Delaware to Florida. For decades, Sierra Club's chapters have been working to protect the Mid- and South Atlantic coastline from oil and gas development, including seismic airgun surveys.

27. Surfrider Foundation is a nonprofit organization dedicated to the protection and enjoyment of the world's oceans, waves, and beaches. Surfrider has approximately 39,000 members nationwide and maintains twenty-seven chapters on the east coast of the United States. Since 2015, Surfrider has been working to protect the Mid- and South Atlantic coast, including working with over 1,000 coastal recreation industry businesses to oppose offshore drilling and seismic surveying in the Atlantic.

28. For years, Plaintiffs have written to and met with NMFS and other federal agencies about the grave environmental effects of seismic airgun surveys. In comments dated July 21, 2017, they detailed for NMFS the ways in which allowing these seismic surveys would harm marine life and violate federal law.

29. Plaintiffs' members live along and visit Mid- and South Atlantic coastal waters. They fish, whale-watch, scuba dive, snorkel, kayak, boat, swim, surf, and conduct scientific research in the affected waters. They look for, study, and enjoy marine species, including North Atlantic right whales, beaked whales, and sea turtles. Plaintiffs' members derive recreational, aesthetic, and economic benefits, and gain valuable scientific knowledge, from the ocean and the diverse marine life that resides there, including marine species that are likely to be harmed by seismic surveys. Plaintiffs' members' future use and enjoyment of the affected waters depends on healthy and sustainable populations of marine mammals and other marine life.

30. NMFS's failure to comply with federal law, and the resulting harm to the marine environment, including the disturbance, injury, and death of marine mammals and other marine life, irreparably harms the interests of Plaintiffs and their members.

31. Plaintiffs' injuries will be redressed by the relief they request. Plaintiffs have no other adequate remedy at law.

II. Defendants

32. NMFS is an agency of the U.S. Government and a subdivision of the National Oceanic and Atmospheric Administration within the U.S. Department of Commerce. NMFS administers the MMPA and ESA, and is the agency that issued the harassment authorizations, Biological Opinion, Environmental Assessment, and Finding of No Significant Impact challenged here. NMFS also adopted the environmental review document that is challenged here,

which was prepared by the Bureau of Ocean Energy Management (BOEM) under the National Environmental Policy Act.

33. Chris Oliver, Assistant Administrator for NMFS, is the highest-ranking official within NMFS, and is sued in his official capacity.

34. Wilbur Ross is the Secretary of Commerce and oversees NMFS's compliance with the MMPA, ESA, and NEPA. Secretary Ross is sued in his official capacity.

STATUTORY AND REGULATORY BACKGROUND

35. To authorize seismic airgun blasting, NMFS must comply with the MMPA, ESA, and NEPA. Judicial review of NMFS's actions is governed by the Administrative Procedure Act (APA).

I. Marine Mammal Protection Act

36. In 1972, Congress enacted the MMPA because “certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man’s activities.” 16 U.S.C. § 1361(1). Congress intended to build a “conservative bias” into the Act, so that “no steps should be taken regarding these animals that might prove to be adverse or even irreversible in their effects until more is known.” H.R. Rep. No. 92-707, at 15 (1971), *reprinted in* 1972 U.S.C.C.A.N. 4144, 4148. NMFS is responsible for implementing the MMPA.

37. Central to the MMPA is a prohibition on the “take”—the harassment, hunting, capturing, or killing—of any marine mammal. 16 U.S.C. §§ 1362(13), 1371(a), 1372(a). Harassment includes any act that has the potential to (1) injure a marine mammal or marine mammal stock or (2) disturb a marine mammal or marine mammal stock by disrupting behavioral patterns such as migration, breeding, feeding, or sheltering. *Id.* § 1362(18)(A).

38. Under a limited exception to this prohibition, NMFS may authorize the take of marine mammals incidental to a specified activity other than commercial fishing. Activities that will harass marine mammals through injury or disturbance may be permitted for a period of up to one year under an incidental harassment authorization. *Id.* § 1371(a)(5)(D). Activities that will last more than a year, or that have the potential to seriously injure or kill marine mammals, cannot be authorized with an incidental harassment authorization; NMFS may only permit these activities by promulgating a regulation and issuing a letter of authorization. *Id.* § 1371(a)(5)(A)(i); 50 C.F.R. §§ 216.105-06.

39. The MMPA imposes specific limitations on the issuance of incidental harassment authorizations. First, NMFS can authorize the take of only “small numbers of marine mammals of a species or population stock.” *Id.* § 1371(a)(5)(D)(i). Second, the authorized take must have no more than “a negligible impact on such species or stock.” *Id.* § 1371(a)(5)(D)(i)(I); 50 C.F.R. § 216.103. Third, if NMFS authorizes a take, it must also prescribe “means of effecting the least practicable impact” on the marine mammal species or stock and its habitat, “paying particular attention to rookeries, mating grounds, and areas of similar significance.” 16 U.S.C. § 1371(a)(5)(D)(ii)(I). Finally, in determining whether to authorize incidental harassment, NMFS must employ “the best scientific evidence available.” 50 C.F.R. § 216.102(a).

II. Endangered Species Act

40. Congress enacted the ESA because human activities have caused many species to go extinct, and other species “have been so depleted in numbers that they are in danger of or threatened with extinction.” 16 U.S.C. § 1531(a)(1)-(2). Under the ESA, “all Federal departments and agencies shall seek to conserve endangered species and threatened species.” *Id.* § 1531(c)(1).

41. Section 7 of the ESA prohibits federal agency actions that are likely to jeopardize the survival and recovery of any threatened or endangered species. Each federal agency must “insure” that “any action authorized, funded, or carried out by [the] agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species.” *Id.* § 1536(a)(2). To “jeopardize” a species means to engage in an action that could reduce appreciably the likelihood of survival or recovery. *See* 50 C.F.R. § 402.02.

42. A federal agency’s grant of permits or authorizations constitutes agency action subject to the requirements of Section 7. *Id.* § 402.02(c).

43. Section 7 of the ESA establishes a consultation process that agencies must follow to fulfill their substantive mandate to avoid jeopardizing endangered or threatened species and adversely affecting their habitat. 16 U.S.C. § 1536(a)(2). Under this process, an agency proposing an action that may affect such species must consult with NMFS (for most marine species) or with the U.S. Fish and Wildlife Service (for land-based species) to evaluate the current status of the species and the environmental baseline, as well as the proposed action and its direct, indirect, and cumulative effects. 50 C.F.R. §§ 402.02, 402.14(a), (g). The agency proposing the action is termed the “action agency,” and NMFS or the Fish and Wildlife Service is termed the “consulting agency.”

44. As part of the consultation process, the consulting agency must make a determination as to whether the action is likely to jeopardize the continued existence of a species or result in the destruction or adverse modification of critical habitat. 16 U.S.C. § 1536(b)(3)-(4); 50 C.F.R. §§ 402.02, 402.14(g)(3)-(4). This determination is set forth in a biological opinion. 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(h)(3).

45. The biological opinion must include a summary of the information upon which the opinion is based and an evaluation of “the current status of the listed species,” the “effects of the action,” and the “cumulative effects.” 50 C.F.R. § 402.14(g)(2), (3).

46. “Effects of the action” include both direct and indirect effects of an action “that will be added to the environmental baseline.” *Id.* § 402.02. The “environmental baseline” includes “the past and present impacts of all Federal, State or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early Section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process.” *Id.* “Cumulative effects” include “future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area.” *Id.* The consulting agency must evaluate and determine whether the action, when added to the environmental baseline and together with any cumulative effects, will jeopardize the continued existence of any listed species or destroy or adversely modify any species’ critical habitat. *Id.* § 402.14(g)(3)-(4).

47. During the consultation process, each agency must use the best scientific and commercial data available. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(g)(8).

48. If the consulting agency concludes that the action is likely to jeopardize an endangered or threatened species or destroy or adversely modify critical habitat, it must list

“reasonable and prudent alternatives” that would avoid jeopardy. 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(h)(3).

49. On the other hand, if the consulting agency concludes that the action is not likely to jeopardize an endangered or threatened species or destroy or adversely modify critical habitat, but could “take” listed species, it must issue an incidental take statement that: (1) describes the amount or extent of anticipated take, (2) specifies reasonable and prudent measures to minimize adverse impacts, and (3) prescribes mandatory terms and conditions for the action. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i)(1).

50. Under Section 9 of the ESA, 16 U.S.C. § 1538(a)(1)(B), it is illegal for any person—including governmental agencies—to take any endangered species except in compliance with an incidental take statement or other authorization.

51. The ESA defines “take” as “to harass, harm, . . . wound, [or] kill.” 16 U.S.C. § 1532(19).

III. National Environmental Policy Act

52. NEPA, 42 U.S.C. §§ 4321 *et seq.*, is “our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1. NEPA requires federal agencies to take a hard look at the environmental consequences of an agency action before proceeding with that action. *See* 42 U.S.C. §§ 4321, 4332(2)(C); 40 C.F.R. §§ 1501.2, 1502.5. Agencies must “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b). Agencies’ evaluations must incorporate “[a]ccurate scientific analysis” and be based on “high quality” scientific information. *Id.*

53. NEPA requires federal agencies to prepare an EIS for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(C).

“Significan[ce]” depends on a number of factors, including the level of controversy surrounding the impact of the action, the presence of unique or uncertain risks, the potential for the action to establish precedent for future actions, whether the action has cumulatively significant impacts, and the possibility for adverse effects on an endangered or threatened species. 40 C.F.R. § 1508.27. The presence of any one of these factors is sufficient to require an EIS.

54. When an agency is uncertain whether an impact will be significant, it may prepare an environmental assessment (EA) to evaluate these criteria and determine whether a full EIS is required. *Id.* § 1508.9(a)(1). If, through preparation of an EA, the agency concludes that an EIS is not necessary, it must issue a finding that adequately explains why the project will “not have a significant effect on the human environment.” 40 C.F.R. § 1508.13. If an action *may* have a significant effect on the environment, or if there are substantial questions about whether it may, an agency must prepare an EIS.

55. An agency’s NEPA analysis must, among other things, include a “full and fair discussion” of all direct and indirect environmental impacts, 40 C.F.R. §§ 1502.1, 1508.8, and consider the cumulative effects of past, present, and reasonably foreseeable activities in combination with the proposed action. *Id.* § 1508.7. Direct effects are “caused by the action and occur at the same time and place,” whereas indirect effects are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.* § 1508.8. Cumulative effect is “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.” *Id.* § 1508.7.

56. An agency’s NEPA analysis must also analyze reasonable alternatives that would avoid or minimize the action’s adverse impacts, *id.* § 1502.1, and set out measures to mitigate

those adverse effects, *id.* § 1502.14(f). The agency’s alternatives analysis must “present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.” *Id.* § 1502.14.

57. Both EAs and EISs must specify the underlying purpose and need to which the agency is responding in proposing the action. *Id.* §§ 1502.13, 1508.9(b).

58. When a group of actions will occur in the same geographical area, or are similar in timing, impacts, or subject matter, federal agencies may prepare a programmatic EIS to consider the activities together. *See* 40 C.F.R. §§ 1502.4. The agency can then incorporate by reference, or “tier to,” relevant portions of that programmatic analysis when it analyzes the impacts of specific actions within that group of proposed actions. *Id.* §§ 1502.20, 1502.28. An agency cannot use tiering to avoid taking a hard look at the impacts of specific actions.

59. An agency may adopt another agency’s EIS, but only after undertaking an independent review to ensure the EIS is adequate. *Id.* § 1506.3(a). An agency’s adoption of an inadequate EIS does not satisfy NEPA. *See id.*

60. Even after a NEPA process is completed, if the agency becomes aware of new information or the proposed action changes in ways that will affect the environment in a significant manner or to a significant extent not already considered, the agency is required to prepare a supplemental EIS. 42 U.S.C. § 4332(C); 40 C.F.R. § 1502.9(c)(1).

IV. Administrative Procedure Act

61. The APA grants a right of judicial review of final agency actions to any person “suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action.” 5 U.S.C. § 702.

62. Under the APA, a reviewing court must “hold unlawful and set aside agency action, findings, and conclusions” found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” or adopted “without observance of procedure required by law.” *Id.* § 706(2)(A), (D). The APA grants to a reviewing court the authority to “compel agency action unlawfully withheld or unreasonably delayed.” *Id.* § 706(1). A reviewing court may “issue all necessary and appropriate process” to “preserve status or rights pending conclusion of the review proceedings.” *Id.* § 705.

FACTUAL BACKGROUND

I. Marine Resources off the Mid- and South Atlantic Coast

63. The waters of the Mid- and South Atlantic—from the mouth of Delaware Bay to Cape Canaveral, Florida—include some of the most biologically productive marine ecosystems in the world. The region provides important habitat for countless marine species, including in long deep-water canyons and along the continental shelf break where the shallow waters of the coastal shelf give way to the deeper waters of the open ocean. Two major currents meet in the region, creating an oceanic front that fosters extraordinary biodiversity. At least thirty-four species of marine mammals live in or migrate through the region, including several endangered species of large whales. Four of the world’s seven sea turtle species live in the region’s waters and nest on its beaches. The area also contains thousands of species of invertebrates and at least 600 species of fish, many of which support commercially and recreationally important fisheries.

64. These waters are home to the endangered North Atlantic right whale, one of the world’s most iconic—and imperiled—whale species. Each year, right whales migrate south from their feeding grounds off New England and Canada to their only known calving grounds in coastal and offshore waters running from the Carolinas south of Cape Hatteras through northern

Florida. More than half of their migratory route occurs within the Mid- and South Atlantic. In the spring months, some right whales migrate back north, although recent research reveals that right whales are present in the Mid- and South Atlantic year-round.

65. North Atlantic right whales are one of the most endangered marine mammal species in the world. Once considered the “right whale” to hunt, the whales were decimated by whaling in the nineteenth and early twentieth centuries. After showing signs of a slow recovery, in 2010 the whales began again to decline.

66. Scientists estimate that approximately 400 North Atlantic right whales remain, with around 100 females capable of reproduction left in the population. Since April 2017, at least twenty right whale deaths have been reported, including at least nine females. In total, nearly 5 percent of the extant population is known to have died in the last two years. The world’s foremost right whale experts and NMFS’s own staff have publicly stated that the species is on the path towards extinction.



Image of a North Atlantic right whale mother and calf

Credit: NOAA

67. NMFS has previously stated that North Atlantic right whales are in such a precarious condition that “the death or survival of one or two individual animals is sufficient to

determine whether North Atlantic right whales are likely to accelerate or abate the rate at which their population continues to decline.” NMFS has also acknowledged that the small population dynamics of North Atlantic right whales “amplify the potential consequences of human-related activities on this species,” and that “the longer North Atlantic right whales remain in these circumstances, the greater their extinction probability becomes.”

68. Many other marine mammal species also reside in these waters. The area off Cape Hatteras, North Carolina, where the warm Gulf Stream meets the cold Labrador Current, is the most biodiverse marine mammal habitat off the U.S. east coast and likely in the entire Northwest Atlantic Ocean. It is home to one of the highest concentrations of beaked whales ever observed. These deep-diving whales, which are highly sensitive to anthropogenic noise, are remarkably faithful to this habitat and depend on it for foraging. Other vulnerable marine mammal species in the region include humpback whales, pilot whales, Atlantic spotted dolphins, and endangered blue, fin, and sperm whales.

69. Four species of threatened and endangered sea turtles swim these waters to nest on coastal beaches from Florida to Virginia. Many South Carolina beaches have been designated “critical habitat” for endangered sea turtles under the ESA.

70. Fish and invertebrate populations form the foundation of recreational and commercial fisheries up and down the eastern seaboard. Economically important invertebrate populations within the survey area include the Atlantic sea scallop, northern quahog and Atlantic surf clams, blue crab, shrimp, and spiny lobster. Economically important fish populations include the menhaden, swordfish, blue and white marlin, skipjack tuna, summer flounder, and red grouper.

71. Coastal economies depend on these marine species to drive billion-dollar tourism industries. For states like South Carolina, the ocean tourism industry is a critical component of the local economy.

II. Seismic Airgun Surveys

72. Seismic airgun surveys are used to prospect for offshore oil and gas deposits as a precursor to development and drilling. Large-scale surveys use dozens of high-volume airguns towed behind vessels. The airguns fire simultaneously at regular intervals, as often as every ten seconds, blasting the water with compressed air. Sound pressure waves from seismic arrays travel down through the water column, penetrate deep into the seafloor, and rebound to the surface, where vessel receivers record the sound. Because these “deep-penetration” seismic surveys are designed to identify subsurface oil and gas deposits, the blasts must be loud enough to penetrate the seabed. Large seismic airgun arrays like those at issue here can produce effective sound levels more powerful than those of any other underwater human source except explosives.

73. The noise from seismic airgun blasts reverberates and spreads, until, at distance, the noise becomes virtually continuous. These blasts propagate through the ocean across enormous distances. Biologists listening for whale calls in the mid-Atlantic Ocean have heard seismic airguns firing off the coasts of South America and West Africa, at distances of approximately 4,000 kilometers (2,485 miles) away. Even at that distance, noise levels from seismic airgun blasts are loud enough to drown out whale calls.

74. Each of the five large seismic surveys at issue here would operate twenty-four hours per day, for months at a time.

III. Environmental Impacts of Seismic Surveys

75. Hearing is the most important sense for many marine species. Marine mammals, fish, and other marine species use sound to find mates, forage, communicate, avoid predators, and navigate—that is, for virtually every life function essential to survival. The far-reaching noise produced by seismic airguns disturbs an extraordinary diversity of ocean life, from large whales down to microscopic zooplankton.

76. Seismic surveys for oil and gas can harass, injure, or kill marine mammals. Airgun blasts interfere with a wide range of essential marine mammal behaviors, putting whales and dolphins at risk of both immediate and long-term negative consequences.

77. These disruptions can have acute and deadly effects. For example, loud anthropogenic noises like seismic airguns are known to cause extreme flight reactions in beaked whales; these whales have stranded on land or remained at depth longer than their systems can sustain, causing fatal injuries. For right whales, seismic airgun noise can drown out the calls that keep mothers and calves together, increasing the likelihood that mother-calf pairs will be separated. Premature separation can kill a right whale calf.

78. Even less extreme behavioral and physiological responses have significant consequences for individual animals and populations. Marine mammals are known to flee from approaching airguns, abandoning prime feeding, breeding, and migratory habitat. Noise-induced displacement can cause effects that last long after the noise source has left the area, including decreased reproductive success.

79. Marine mammals also alter diving and foraging patterns in response to airgun blasts. In a diversity of species, airgun blasts have been shown to cause decreased foraging, which can leave animals without sufficient energy reserves to engage in essential behavior.

80. Seismic airgun blasts are known to cause marine mammals to stop or reduce vocalizations, interfering with their ability to mate and communicate with each other. Whales can be silenced at great distances from seismic airgun blasts—on the order of hundreds of kilometers or more. At the same time, seismic airgun blasts elevate background noise over large areas of ocean, making it difficult for marine mammals to hear biologically important calls, including calls between potential mates and between a mother and her calf.

81. Marine mammals that do not flee from seismic airgun blasts are still disturbed and injured by them. At close range, seismic airgun blasts are loud enough to cause permanent and irreversible injury to an animal's hearing, resulting in partial or total deafness. Because marine animals depend on their hearing to forage, communicate, find mates, and avoid predators, hearing loss can compromise their survival and ability to reproduce.

82. Loud noises like seismic airgun blasts are also known to cause stress responses in marine mammals. If noises continue or repeat for extended periods of time, these stress responses become chronic. Chronic stress in mammals is associated with heightened mortality and disease and with reduced reproductive success.

83. Seismic surveys for oil and gas also harm a wide range of other marine species, including sea turtles, fish, and invertebrates.

84. Seismic airgun blasts can kill or injure many fish and shellfish species, including commercially important squid, lobster, and scallops. Anthropogenic noise is known to cause physical impacts to these species, including mortality, damage to internal organs, impairment of hearing and other vital sensory functions, and abnormalities in developing animals. In one recent study, a single airgun caused more than a 50 percent decline in abundance in zooplankton—the

vital prey species at the base of the ocean ecosystem—within a 1.5-mile swath around the source.

85. Additionally, catch rates of some fish species are known to decrease substantially in the wake of seismic airgun blasting for oil and gas. Surveys have been found to cause declines in catch rates for species such as cod, haddock, pollock, and tuna, in some cases by more than 50 percent.

NMFS’s Authorization of Seismic Surveys in the Atlantic

I. Prior Rejection of Seismic Surveys

86. For three decades, bipartisan efforts protected the Atlantic coast from oil and gas exploration and development.

87. In 2010, BOEM—a division of the Department of the Interior that manages offshore energy development in federal waters—announced a proposal to open the Atlantic for oil and gas drilling. Several companies sought to conduct deep-penetration seismic surveys to map oil and gas deposits beneath the ocean floor. On March 30, 2012, BOEM released a draft Programmatic EIS analyzing the environmental effects of geological and geophysical exploration activities in the Atlantic OCS area, including seismic surveys for oil and gas resources.

88. In June 2012, pursuant to the ESA, BOEM initiated consultation with NMFS on the effects of proposed seismic surveys. On July 19, 2013, NMFS issued a Biological Opinion concluding that seismic surveys were not likely to jeopardize the continued existence of any species and issued an Incidental Take Statement authorizing takes by seismic surveying.

89. BOEM released a final Programmatic EIS in February 2014. BOEM issued its Record of Decision a few months later, in July.

90. BOEM received tens of thousands of comments in response to its proposal to open the Atlantic to drilling, as well as to its draft and final Programmatic EISs, including from Plaintiffs, states, coastal cities, and regional fisheries management councils. Many commenters expressed concerns about the severity of harm and BOEM's failure to consider the full range of environmental impacts associated with seismic surveys.

91. In response to a petition from several of the Plaintiffs, BOEM reinitiated ESA consultation with NMFS in October 2015 to consider new information, including new and expanded critical habitat designations for loggerhead sea turtles and North Atlantic right whales.

92. In 2014 and 2015, five seismic survey companies—Spectrum Geo Inc., TGS-NOPEC Geophysical Company, Ion GeoVentures, WesternGeco LLC, and CGG—applied to NMFS for incidental harassment authorizations to take marine mammals during an initial year of seismic airgun blasting in the Atlantic Ocean. The same companies also submitted applications to BOEM for permits pursuant to the Outer Continental Shelf Lands Act.

93. In 2016, after years of study, BOEM rejected its earlier proposal to allow offshore oil and gas drilling in the Atlantic. The agency cited “strong local opposition, conflicts with other ocean uses, and current market dynamics.” In early January 2017, BOEM denied all pending seismic permit applications for oil and gas surveys in the Atlantic, finding that the “value of obtaining the geophysical and geological information from new seismic airgun surveys in the Atlantic does not outweigh the potential risks of those surveys’ acoustic pulse impacts on marine life.” BOEM cautioned further that “[d]eep penetration seismic airgun surveys come with an environmental burden” and that “the potential disadvantage to [the] small, critically endangered, and declining population [of North Atlantic right whales] is not worth the risk.” This was before the twenty right whale deaths that occurred later in 2017 and into 2018.

94. Shortly after BOEM denied all pending seismic permits, NMFS suspended its consideration of pending harassment authorization applications.

II. The Trump Administration's Reversal

95. When President Donald J. Trump took office, the new administration announced its intent to expand offshore oil and gas development. On April 28, 2017, President Trump issued Executive Order 13,795, directing the Departments of the Interior and Commerce to expedite consideration of, among other things, seismic survey permit applications. Secretary of the Interior Ryan Zinke then directed BOEM to expedite consideration of those applications, including the five companies' applications that had already been denied.

96. BOEM reversed its denials of the Atlantic seismic survey permit applications on May 10, 2017. That same month, NMFS resumed its review of the suspended harassment authorization applications. On June 6, 2017, NMFS proposed authorizing the five companies' large-scale seismic surveys, and issued a Federal Register notice to solicit public comments.

97. Members of the public—including Plaintiffs, a bipartisan group of members of the U.S. House of Representatives and U.S. Senate, coastal states, municipalities, business groups, scientists, and fishing alliances—submitted hundreds of pages of detailed comments setting out the reasons for their opposition to the proposed authorizations. Oceana's comment summarized the groundswell of opposition to the surveys as follows:

Over 125 municipalities along the East Coast and nearly 1,200 elected officials as well as an alliance representing . . . over 41,000 businesses and 500,000 fishing families have publicly opposed seismic airgun surveys and/or offshore drilling, citing threats to marine life, fisheries and coastal economies. All three regional fishery management councils—New England, Mid- and South Atlantic—have . . . express[ed] their concerns about the effects oil and gas exploration may have on recreational and commercial fisheries as well as the coastal economies that depend on these fisheries in the Atlantic. On June 28, 2017, over 100 Congressional representatives, including representatives from each of the Atlantic coastal states, sent a letter to Secretary Zinke opposing the issuance of

[harassment authorizations under the MMPA] as well as seismic permits [under the Outer Continental Shelf Lands Act].

In total, members of the public submitted more than 117,000 comment letters and 15 petitions with nearly 100,000 signatures. According to NMFS's own description, these comments and petitions expressed "overwhelming opposition" to oil and gas exploration in the Atlantic.

98. On November 30, 2018, NMFS approved all five companies' incidental harassment applications. That same day, NMFS issued a Biological Opinion under the ESA. The agency also issued a Finding of No Significant Impact and an EA under NEPA. In doing so, it relied on and tiered to BOEM's 2014 Programmatic EIS.

99. The five seismic survey companies must also receive permits from BOEM pursuant to the Outer Continental Shelf Lands Act. While those permits have not been issued, the Acting Director of BOEM testified before Congress on January 19, 2018, that BOEM will promulgate permits within two weeks after NMFS's issuance of MMPA harassment authorizations. A BOEM official recently stated that the agency will announce permit decisions "in the near future." Once BOEM issues permits, all five companies will be free to begin seismic surveys.

III. The Authorized Seismic Airgun Surveys

100. NMFS's harassment authorizations will allow five seismic survey companies to conduct overlapping seismic airgun blasting in an area of the Atlantic Ocean that stretches from the mouth of the Delaware Bay to Cape Canaveral, Florida—an area approximately twice the size of California.

101. NMFS has authorized marine mammal takes associated with seismic airgun blasting along over 87,000 miles of survey lines in the region, enough to circumnavigate the

globe more than three times. As many as 208 seismic airguns may be in the water at the same time. Because NMFS has authorized takes associated with nearly 850 combined days and nights of seismic activity, simultaneous blasting from multiple ships is a virtual certainty. According to NMFS's estimates, the authorizations permit more than five million airgun blasts in the region during this initial year of activity.

102. The five companies' surveys largely overlap. A large swath of the Mid- and South Atlantic will be exposed to airgun blasts from all five companies. Because seismic airgun noise travels extremely long distances underwater, many areas within the survey region will be exposed to continuous airgun blasting 24 hours per day for months at a time.

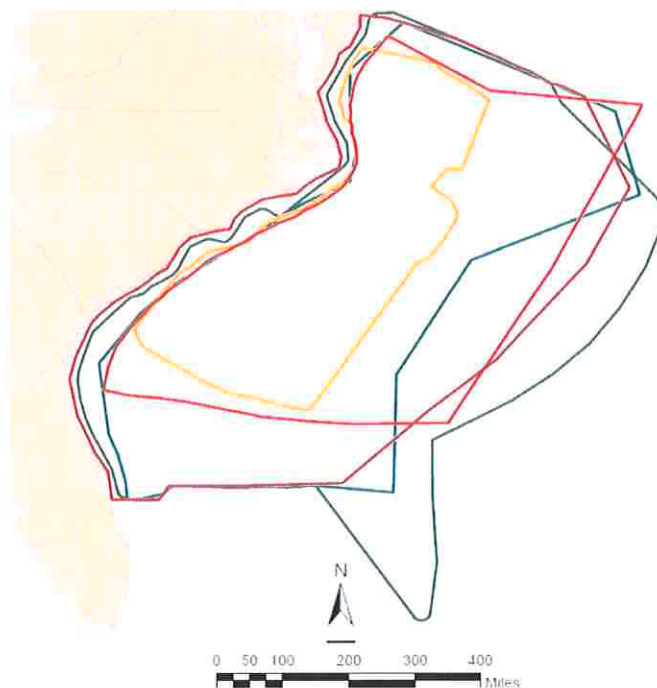


Image of overlapping survey areas in which five companies will conduct more than 87,000 miles of seismic airgun surveys

Credit: Image from <https://www.boem.gov/Atlantic-Pending-Permit-Map/>.

NMFS's MMPA Incidental Harassment Authorizations

I. NMFS's Flawed Small Numbers Analysis

103. In determining that each of the five seismic surveys met the MMPA's requirement that takes incidental to a specified activity be limited to "small numbers" of marine mammals, 16 U.S.C. § 1371(a)(5)(D)(i), the agency set a threshold of *one-third* of the total species or stock, per applicant, as a "small number." NMFS applied the same threshold to each affected species, regardless of whether that species is abundant or endangered.

104. One-third (or 33 percent) of an entire species or population is not a "small number." For example, the agency authorized just one company, WesternGeco LLC, to take over 88,000 marine mammals, including 23,000 common bottlenose dolphins, 18,000 Atlantic spotted dolphins, and nearly 5,000 beaked whales. By themselves, these numbers are not "small," and they account for only one of the five approved seismic surveys. Thus, NMFS's approach authorized a number of takes for each applicant that was not small.

105. Notwithstanding its purported one-third limit, NMFS authorized one applicant, TGS-NOPEC Geophysical Company, to take *more* than one-third of several species. Specifically, NMFS authorized over 190,000 instances of marine mammal takes by the company, including over 3,500 takes of endangered sperm whales (representing as much as 37 percent of the population), over 12,000 takes of beaked whales (representing as much as 48 percent of the population); and over 41,000 takes of Atlantic spotted dolphins (representing as much as 38 percent of the population). For this applicant and these species, NMFS did not even abide by its own threshold for small numbers.

106. Moreover, although NMFS issued all five authorizations in one document, it considered the potential impacts of each survey independently. NMFS did not analyze whether

all the surveys, operating simultaneously, would together take more than small numbers of marine mammals.

107. When considered in the aggregate, the harassment authorizations allow takes of far more than “small numbers” of marine mammals. Because NMFS asserted that it need only evaluate whether each applicant would take small numbers of marine mammals, the agency authorized multiple survey companies to take up to 33 percent of the same species. For instance, the agency authorized the five seismic surveys to take up to 93 percent of beaked whale populations—which NMFS concedes are extremely sensitive to sound—79 percent of the endangered sperm whale population, 83 percent of the rough-toothed dolphin population, and over 50 percent of five other species.

108. Given that 33 percent of a population, standing alone, is not a small number, these are certainly not small numbers.

109. In its proposed notice issuing the harassment authorizations, NMFS estimated that the applicants’ surveys would result in far more takes than even the large number of takes authorized by the agency in the final notice. In that proposed notice, NMFS estimated that four of the five surveys would cause takes in excess of the agency’s 33-percent threshold for at least one species. For example, NMFS estimated that TGS-NOPEC Geophysical Company’s seismic activities would, by themselves, disrupt up to 93 percent of the beaked whale population.

110. In the final notice, the agency revised its analysis to bring all of the companies’ take estimates below the agency’s proportional “small numbers” limit. It did so by revising both the number of takes resulting from each survey and its estimates of the total population abundance for each species.

111. Even though the data submitted by the survey companies had, with a few exceptions, remained unchanged since the proposed notice, NMFS's new analysis reduced its estimates to such a degree that all five companies were now estimated to take no more than the agency's one-third "small numbers" limit. NMFS's revised take analysis was not scientifically justified.

II. NMFS's Flawed Negligible Impact Analysis

112. NMFS's harassment authorizations include findings that each survey company's proposed activities will have no more than a negligible impact on marine mammal species or stocks. NMFS concluded that each survey "cannot be reasonably expected to" adversely affect annual rates of reproduction or survival for any marine mammal species. *See* 50 C.F.R. § 216.103.

113. In making these determinations, NMFS did not evaluate whether the *total* take from all five companies' activities will have more than a negligible impact on any marine mammal species or stock. Indeed, NMFS expressly disclaimed any responsibility for evaluating whether the aggregate impact of the five surveys would be more than negligible.

114. Nor did NMFS evaluate whether the incremental impact of each survey would be more than negligible. In other words, after authorizing the first survey, NMFS did not consider whether authorizing a second survey (in addition to the first) would lead to an impact on the species that was more than negligible, nor whether authorizing a third survey (in addition to the first and second) would lead to an impact on the species that was more than negligible, and so forth. Instead, the agency analyzed each survey in isolation, pretending that survey would be the only one in the Atlantic region during the relevant time period—even though the agency was, in

the same document, authorizing four other companies to conduct the same activity, in the same area, over the same time period.

115. NMFS's negligible impact conclusions for individual surveys are irrational in light of the agency's factual findings and analysis. For example, NMFS reached its negligible impacts conclusions, in part, by double-counting the impact of its mitigation protocols for certain species. Moreover, the conclusions do not reflect the best scientific evidence, as described in more detail below.

116. NMFS's unrealistic consideration of each survey in isolation violates the agency's responsibility under the MMPA.

III. NMFS's Failure to Use the Best Scientific Evidence

117. NMFS's analysis also fails to comport with the best scientific evidence available. NMFS relied on a number of flawed assumptions that result in a systematic underestimate of the scale of disruption the authorized surveys will cause. For instance, NMFS assumed that animals exposed to seismic airgun blasts will not be harassed unless they experience received sound levels of 160 decibels or higher. In setting that threshold, the agency ignored scientific studies on a range of marine mammal species that have repeatedly documented adverse behavioral reactions at far lower noise levels. If NMFS had selected a more accurate harassment threshold, it would have calculated a greatly expanded disturbance zone around each seismic survey, and thus a much higher number of animals likely to be harassed. The agency's reliance on its outdated 160-decibel standard underlies the agency's conclusion that marine mammals will not be harmed more than 10 kilometers away from seismic airgun blasts—and thus the agency's conclusion that its 10-kilometer "buffer zone" will adequately protect highly endangered species like the North Atlantic right whale.

118. NMFS's reliance on the 160-decibel standard is especially inappropriate for beaked whales—a species the agency has repeatedly described as being particularly vulnerable to acoustic disturbances. Indeed, in a proposed take authorization for seismic surveys issued earlier this year, NMFS's own take analysis assumed that harassment occurs for 50 percent of beaked whales at the 120-decibel received sound level, and for 90 percent of beaked whales at the 140-decibel received sound level. NMFS described these lower thresholds as “consistent with the best available science.” NMFS's harassment authorizations provide no reasonable justification for applying the outdated 160-decibel standard here.

119. In adopting its 160-decibel threshold, NMFS assumed seismic surveys are a purely impulsive noise source. But as NMFS itself has recognized, the noise produced by seismic airguns reflects and refracts through the water such that it can become continuous at distance, elevating background noise levels. An expert panel convened by NMFS itself has noted that, because of the way sound reverberates as it travels through the ocean, the sound created by seismic airgun blasts becomes virtually continuous at distance. Thus, these experts have concluded that seismic surveys should be treated as a hybrid impulsive/continuous noise source. This distinction is material, because NMFS generally assumes that marine mammal behavior will be disrupted by sound from continuous noise at lower levels of received sound than from impulsive noise. If NMFS had properly characterized seismic airguns as a hybrid impulsive/continuous noise source, and had set the threshold for behavioral harassment at 120 decibels, as it does for other sources of continuous noise, the agency's harassment estimates would likely be at least an order of magnitude higher.

120. In these and other ways, NMFS's failure to consider the best available scientific evidence on the impacts of seismic surveys on marine mammals has resulted in a gross

underestimate of the number of marine mammals that will be harassed by the approved seismic surveys.

IV. NMFS's Flawed Interpretation of Harassment

121. Behavioral harassment, as defined by the MMPA, includes any act that “has the potential to disturb a marine mammal . . . by causing disruption of behavioral patterns.” 16 U.S.C. § 1362(18)(A)(ii).

122. NMFS's harassment authorizations set a 160-decibel threshold of received sound as the level at which sound from seismic airgun blasting causes “harassment,” despite acknowledging that there is “the potential for [behavioral] harassment at exposures to received levels below 160 [decibels].” The authorizations also do not account for categories of behavioral harassment that are known to occur at received sound levels well below 160 decibels, including masking.

123. By offering a definition of harassment inconsistent with the definition set forth in the MMPA, NMFS has underestimated the number of takes the agency has authorized.

V. NMFS's Failure to Ensure Least Practicable Impact

124. NMFS also failed to ensure that the surveys would have the least practicable adverse impact on marine mammals.

125. For example, NMFS's harassment authorizations acknowledge the dire status of the North Atlantic right whale and the need to reduce adverse effects on right whales through a prohibition on all seismic airgun blasting within 90 kilometers of the coast during right whale calving season from November through April. However, the authorizations allow seismic surveying far closer to right whale calving grounds by applicants covered by a “NMFS-approved mitigation and monitoring plan.” The authorizations do not provide any explanation of the

criteria by which the agency will evaluate a mitigation and monitoring plan or any support for NMFS's determination that these alternative plans will provide adequate mitigation. Indeed, elsewhere, NMFS acknowledged that "there are limitations on what may reasonably be expected of . . . monitoring" and that "there is no expectation that [monitoring] will detect all marine mammals present."

126. Nor did NMFS adequately consider the practicability of mitigation measures that the agency recognizes as effective to mitigate impacts on marine mammals, such as quieting software and technologies for seismic exploration, application of a lowest practicable source level requirement, or broader temporal or spatial restrictions to protect the North Atlantic right whale and other vulnerable marine mammal species.

VI. NMFS's Inappropriate Use of Harassment Authorizations

127. Given the risk that the approved seismic surveys will cause the serious injury or death of marine mammals, including by stranding, injurious behavioral responses, and mother-calf separation, the only proper mechanism for authorizing these surveys is the promulgation of an incidental take regulation and issuance of letters of authorization. *See* 16 U.S.C. § 1371(a)(5)(A)(i). NMFS's decision to issue harassment authorizations, which are reserved for situations that do not involve the possibility of serious injury or death, was improper.

The ESA Biological Opinion and Incidental Take Statement

128. NMFS's November 28, 2018 Biological Opinion is the result of the agency's consultation on both the five MMPA harassment authorizations and BOEM's future seismic permits under the Outer Continental Shelf Lands Act.

129. In the Biological Opinion, NMFS acknowledged the precarious state of the North Atlantic right whale. NMFS explained that "three lines of evidence indicate the population is still

in decline.” NMFS noted that “calving rates in recent years were low”; “the preliminary abundance estimate for 2016 is 451 individuals, down approximately 1.5 percent from 458 in 2015”; and that “since June 2017, at least 19 North Atlantic right whales have died in what has been declared an Unusual Mortality Event (UME), and at least one calf died prior to this in April 2017.” NMFS further noted that “[c]urrently, none of [the North Atlantic right whale’s] recovery goals . . . have been met.”

130. According to the Biological Opinion, “recent modeling efforts indicate that low female survival, a male biased sex ratio, and low calving success are contributing to the population’s current decline In fact, there is evidence of a population wide decline in health since the early 1990s, the last time the population experienced a population decline Given this status, the species resilience to future perturbations is considered very low”

131. NMFS acknowledged that “the species may decline towards extinction if prey conditions worsen, as predicted under future climate scenarios . . . , and anthropogenic mortalities are not reduced.”

132. Coupled with the extremely dire status of North Atlantic right whales, NMFS also acknowledged the serious consequences that anthropogenic noise, including seismic airgun blasts, can have for right whales and other marine mammals. The Biological Opinion acknowledged (but wrongly dismissed) the potential impacts of seismic activity on mother-calf pairs that could prevent mothers and calves from reuniting and result in missed feeding opportunities for calves. NMFS authorized seismic surveys to take right whales up to 19 times.

133. NMFS nonetheless concluded that the take from seismic surveys will not jeopardize the survival and recovery of the North Atlantic right whale. This conclusion is contrary to the agency’s own analysis and public statements about the status of the species. It is

also not based on the best available science, which indicates that right whales are currently at a high risk of extinction and cannot withstand additional harm. *See* 50 C.F.R. § 402.14(g)(8). The combined effects of five overlapping, contemporaneous seismic surveys will exacerbate the precarious status of the species.

134. NMFS reached similar conclusions for other marine mammal species such as fin whales and sperm whales. For fin whales, NMFS acknowledged that seismic activities may cause permanent hearing impairment affecting their ability to find mates and communicate with each other. NMFS thus authorized up to 12 takes of fin whales by physical injury. For sperm whales, NMFS authorized over 7,500 takes by harassment. Significantly, NMFS admitted that its take estimates for most species do not differentiate between exposures that cause behavioral harassment and those that cause temporary hearing loss.

135. For North Atlantic right whales and other species, NMFS attempts to minimize the effects of its action by stating that seismic exposures will be “brief, lasting less than a day and in most cases only several minutes.” Thus, the Biological Opinion’s assessment of harm to all species, including vulnerable female North Atlantic right whales and their calves, relies on an unfounded assumption that harm is temporary and ceases “shortly after the seismic source becomes inactive or leaves the area.” But NMFS did not base its conclusion that endangered or threatened species’ exposures will be “brief” on any actual analysis of the temporal or geographic distribution of the five companies’ surveys. Without an analysis of the overlapping and contemporaneous nature of these five surveys, NMFS lacks any rational basis for its conclusions that exposure and take will be limited.

136. For the four threatened and endangered species of sea turtles that NMFS found will be adversely affected by seismic exploration, NMFS concluded that significant numbers will

be taken by harassment. As an example, NMFS concluded that over 54,000 adult loggerheads and over 466,000 small (juvenile) sea turtles will be taken by harassment by seismic activities. Yet the agency failed to adequately analyze whether this significant amount of take would jeopardize these species.

137. NMFS reached its no-jeopardy conclusions for each of the species in the Biological Opinion without analyzing the impacts of these five permits when added to the past and present impacts of other activities (including federal activities that have undergone Section 7 consultation) in the action area, or together with cumulative effects. *See* 50 C.F.R. § 402.14(g)(3)-(4).

138. The Biological Opinion also fails to use the best available science about the current status of North Atlantic right whales and the effects of seismic surveys. *See* 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(g)(8). Instead, the Biological Opinion relies on outdated information, including outdated information regarding North Atlantic right whale status and distribution, as well as incorrect sound thresholds for marine mammals as described above.

139. The Biological Opinion also relies on mitigation measures that are not proven to be effective, including seasonal restrictions on seismic activity that, though intended to protect North Atlantic right whales, do not account for the year-round presence of right whales in the region or adequately protect right whales from the significant threat posed by extensive seismic surveying. NMFS also relies on ineffective measures such as visual monitoring and observation that are unlikely to detect the majority of listed species.

The NEPA Programmatic EIS and Environmental Assessment

140. NMFS has not issued an EIS evaluating the environmental effects of the five simultaneous, overlapping seismic surveys in the Atlantic. Instead, in November 2018, the

agency issued one EA, tiered to BOEM's 2014 Programmatic EIS, that purports to evaluate the environmental impact of all five surveys. The agency concluded that the issuance of the harassment authorizations would not have a significant impact on the environment and issued a Finding of No Significant Impact.

141. Many of the considerations that by regulation warrant preparation of an EIS are present here. *See* 40 C.F.R. § 1508.27. First, there is significant controversy and uncertainty surrounding the environmental impacts of seismic surveys in the Atlantic. Scientists, state agencies, elected officials, coastal businesses, and environmental advocates have cast serious doubt on the agency's conclusions about the impacts of seismic airgun blasting. *See id.* § 1508.27(b)(4)-(5). Second, these surveys will adversely affect endangered and threatened species, including the North Atlantic right whale. Leading experts warn that seismic surveys could send the right whale further down the path to extinction. *See id.* § 1508.27(b)(9). Third, the five simultaneous, overlapping seismic surveys will have adverse and substantial aggregate impacts on marine wildlife and habitat. *See id.* § 1508.27(b)(7). Fourth, the agency's decision is likely to establish precedent for future actions: additional applications for permits to conduct further seismic surveys in the Atlantic in the coming years are expected. *See id.* § 1508.27(b)(6). Any one of these considerations is enough to require preparation of a full EIS.

142. A proper NEPA analysis demands consideration of the impacts of "[c]onnected actions," "[s]imilar actions," and "[c]umulative actions." *Id.* § 1508.25(a). Neither the Programmatic EIS nor the EA adequately address the impacts of the multiple concurrent seismic surveys that have been authorized as connected actions, similar actions, or cumulative actions.

143. A proper NEPA analysis must also analyze the direct, indirect, and cumulative effects of a proposed action. *Id.* §§ 1508.7, 1508.8. Neither BOEM's Programmatic EIS nor

NMFS's EA adequately consider these impacts. For example, the U.S. Navy conducts extensive operations in the Mid- and South Atlantic, and NMFS has authorized the Navy to take hundreds of thousands of marine mammals from the same populations that are imperiled by seismic airgun blasting. Yet neither the Programmatic EIS nor the EA adequately considers cumulative effects from other activities in the area, including U.S. Navy operations.

144. NEPA requires federal agencies to prepare a supplemental EIS when new information reveals significant new circumstances or information relevant to the activity or its impacts. *Id.* § 1502.9(c)(1)(ii). The status of many marine species, and our understanding of them, have changed significantly in recent years. Neither the 2014 Programmatic EIS nor the EA incorporate recent, relevant scientific information. For instance, in 2017 alone, NMFS itself declared an Unusual Mortality Event in response to the unprecedented number of North Atlantic right whale deaths, and scientific papers were published concluding that the right whale population is in decline, that the right whale calving interval is increasing and right whale reproduction is declining, and that seismic airgun blasting has extensive, fatal effects on zooplankton. This new information was not considered at all in the 2014 Programmatic EIS, and was either ignored or not adequately considered in the EA.

145. NMFS's stated "purpose" for the proposed action in the EA is "to authorize take of marine mammals incidental to the geophysical surveys proposed by the five companies, consistent with applicable legal requirements." Its stated "[n]eed" is "to determine whether and how to authorize take of marine mammals incidental to the activities described in the[] applications."

146. NMFS's EA considers only two alternatives: granting all five harassment authorizations (the proposed action) and denying all proposed harassment authorizations (the

no-action alternative). NMFS failed to consider other reasonable alternatives to the proposed action.

147. In addition, NMFS's conclusory EA improperly relies on unproven mitigation measures and unfounded assumptions about the concurrent nature of surveys to dismiss anything but minor impacts from the seismic surveys.

FIRST CLAIM FOR RELIEF

Arbitrary, Capricious, and Unlawful Action Contrary to the MMPA and APA

148. Plaintiffs incorporate by reference all preceding paragraphs.

149. Before authorizing harassment pursuant to the MMPA, NMFS must determine and ensure that the activity will take no more than "small numbers" of a marine mammal species or population stock. 16 U.S.C. § 1371(a)(5)(D)(i).

150. Before authorizing harassment pursuant to the MMPA, NMFS must determine and ensure that the activity will have no more than a "negligible impact" on the species or population stocks to be taken. *Id.* § 1371(a)(5)(D)(i)(I).

151. Before authorizing harassment pursuant to the MMPA, NMFS must use "the best scientific evidence available" to inform its decisions. *See* 50 C.F.R. § 216.102(a).

152. Before authorizing harassment pursuant to the MMPA, NMFS must set forth sufficient methods to ensure "the least practicable impact on [each affected] species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance." 16 U.S.C. § 1371(a)(5)(D)(ii)(I).

153. In granting the five harassment authorizations for seismic surveys in the Atlantic, NMFS violated every one of these requirements.

154. Further, NMFS violated the MMPA by setting a harassment threshold that is inconsistent with the statute's text.

155. NMFS improperly issued an incidental harassment authorization, instead of promulgating an incidental take regulation and then issuing letters of authorization, despite the potential for seismic surveys to cause death or serious injury to marine mammals.

156. NMFS's decision to issue the five incidental harassment authorizations violates the MMPA and its implementing regulations and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law, in violation of the APA. *Id.* § 1371(a); 5 U.S.C. § 706(2)(A).

SECOND CLAIM FOR RELIEF

Arbitrary, Capricious, and Unlawful ESA Biological Opinion

157. Plaintiffs incorporate by reference all preceding paragraphs.

158. The ESA requires NMFS to ensure that all actions it authorizes, funds, or carries out are "not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification" of a listed species' designated critical habitat. 16 U.S.C. § 1536(a)(2).

159. The challenged harassment authorizations are actions "authorized, funded, or carried out" by NMFS within the meaning of 16 U.S.C. § 1536(a)(2). The issuance of a Biological Opinion for the incidental harassment authorizations is a final agency action reviewable under the APA. *See id.* § 1536(b)(4).

160. NMFS's determination that seismic surveys are not likely to jeopardize the continued existence of the North Atlantic right whale or any other threatened or endangered species such as fin whales and sea turtles is arbitrary and capricious and fails to comply with the

requirements of the ESA. NMFS failed properly to consider the effects of the authorized take from the seismic surveys for right whales and other species when added to the impacts of past and present activities in the environmental baseline and taken together with cumulative effects, and failed adequately to analyze the grave direct and indirect effects of seismic airgun blasting on right whale survival and recovery in light of the precarious status of North Atlantic right whales. The agency's failure to do so is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law, in violation of the APA, 5 U.S.C. § 706(2). *See* 16 U.S.C. § 1536(a)(2); 50 C.F.R. §§ 402.10-16.

161. NMFS's no-jeopardy conclusions relied, in part, on mitigation measures that are not reasonably specific, not certain to occur, and ineffective. These measures include but are not limited to seasonal restrictions intended to protect North Atlantic right whales, despite right whales' year-round presence in the region and the inadequacy of these sorts of buffers more generally, and measures, such as visual monitoring for right whales and other listed species, that are unlikely to detect the majority of marine mammals or sea turtles. The agency's reliance on inadequate mitigation measures is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law, in violation of the APA, 5 U.S.C. § 706(2)(A). *See* 16 U.S.C. § 1536(a)(2); 50 C.F.R. §§ 402.10-16.

162. NMFS failed to use the best scientific and commercial data available in the Biological Opinion. Its failure to do so is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law, in violation of the APA, 5 U.S.C. § 706(2)(A). *See* 16 U.S.C. § 1536(a)(2); 50 C.F.R. §§ 402.10-16.

163. NMFS's determinations that seismic surveys are not likely to jeopardize the continued existence of any threatened or endangered species has no factual or analytical basis in

the Biological Opinion. NMFS's failure to articulate a rational connection between the facts found and the conclusions reached in the Biological Opinion is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law, in violation of the APA, 5 U.S.C. § 706(2)(A).

THIRD CLAIM FOR RELIEF

Arbitrary, Capricious, and Unlawful NEPA Analysis

164. Plaintiffs incorporate by reference all preceding paragraphs.

165. NEPA requires federal agencies to conduct environmental reviews of major federal actions that may significantly affect the environment. 42 U.S.C. § 4332(C). If an action is likely to significantly affect the environment, an agency must prepare an EIS. *Id.* An agency may decline to prepare an EIS only if it prepares an EA that takes a hard look at the effects of the action and makes a reasonable finding that there will be no significant impact.

166. In either an EIS or an EA, the agency must take a hard look at the environmental impacts of the proposed activity, including direct, indirect, and cumulative impacts. 40 C.F.R. §§ 1502.1, 1508.7, 1508.8. The agency must also evaluate a reasonable range of alternatives. 42 U.S.C. § 4332(C)(iii), (E); 40 C.F.R. § 1508.9(b). The agency's environmental review must be based on high-quality information and accurate scientific analysis. 40 C.F.R. § 1500.1(b). When significant new information or circumstances arise after an EIS has been issued, NEPA requires the agency to prepare a supplemental EIS. *Id.* § 1502.9(c)(1)(i), (ii).

167. NMFS violated NEPA by failing to prepare an EIS or supplemental EIS because the effects of the five authorized seismic surveys will be significant.

168. NMFS violated NEPA by adopting, relying on, and tiering to outdated portions of BOEM's 2014 Programmatic EIS; failing to account for more recent and relevant scientific

information; and otherwise failing to adequately consider the direct, indirect, and cumulative impacts of the seismic surveys or reasonable alternatives to the proposed action.

169. NMFS violated NEPA by preparing an EA that fails to take a hard look at the direct, indirect, and cumulative effects of the seismic surveys; fails to properly define the purpose and need; fails to examine a reasonable range of alternatives; and is not based on high-quality information and accurate analysis of the effects of the action.

170. NMFS's adoption of BOEM's Programmatic EIS and NMFS's issuance of the EA and Finding of No Significant Impact for the seismic surveys are final agency actions that are arbitrary, capricious, an abuse of discretion, not in accordance with law, and without observance of procedure required by law. 5 U.S.C. § 706(2)(A), (D). Alternatively, NMFS's failure to prepare an EIS or supplemental EIS before issuing harassment authorizations constitutes an agency action unlawfully withheld or unreasonably delayed, in violation of the APA. *Id.* § 706(1).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare that Defendants violated the Marine Mammal Protection Act;
- B. Declare that Defendants violated the Endangered Species Act;
- C. Declare that Defendants violated the National Environmental Policy Act;
- D. Declare that Defendants violated the Administrative Procedure Act;
- E. Vacate the Incidental Harassment Authorizations;
- F. Vacate the Biological Opinion and Incidental Take Statement;
- G. Vacate the Environmental Assessment and Finding of No Significant Impact;

H. Enjoin Defendants from authorizing takes of marine mammals incidental to seismic airgun blasting for purposes of oil and gas exploration in the Mid- and South Atlantic unless and until Defendants comply with all the requirements of the Marine Mammal Protection Act, Endangered Species Act, National Environmental Policy Act, and Administrative Procedure Act;

I. Grant Plaintiffs their costs of suit, including reasonable attorneys' fees to the extent authorized by law; and

J. Grant Plaintiffs such further relief as the Court deems just and proper.

Dated: December 11, 2018

Respectfully submitted,

/s/Catherine M. Wannamaker

Catherine M. Wannamaker (Bar No. 12577)
Southern Environmental Law Center
463 King Street, Suite B
Charleston, SC 29403
Telephone: (843) 720-5270
Facsimile: (843) 414-7039
Email: cwannamaker@selcsc.org

Blakely E. Hildebrand (PHV application forthcoming)
Southern Environmental Law Center
601 West Rosemary Street, Suite 220
Chapel Hill, NC 27516
Telephone: (919) 967-1450
Facsimile: (919) 929-9421
Email: bhildebrand@selcnc.org

Counsel for Plaintiffs South Carolina Coastal Conservation League, Defenders of Wildlife, North Carolina Coastal Federation, and One Hundred Miles

Sarah V. Fort (PHV application forthcoming)
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
Telephone: (202) 513-6247
Facsimile: (415) 795-4799
Email: sfort@nrdc.org

Mitchell S. Bernard (PHV application forthcoming)
Vivian H.W. Wang (PHV application forthcoming)
Natural Resources Defense Council
20 West 40th Street
New York, NY
Telephone: (212) 727-4477
Facsimile: (415) 795-4799
Email: mbernard@nrdc.org

Counsel for Plaintiff Natural Resources Defense Council

Thomas J. Perrelli (PHV application forthcoming)
Patrick W. Pearsall (PHV application forthcoming)
William K. Dreher (PHV application forthcoming)
Jennifer J. Yun (PHV application forthcoming)
David M. Manners-Weber
Jenner & Block LLP
1099 New York Avenue NW, Suite 900
Washington, DC 20001
Telephone: (202) 639-6004
Facsimile: (202) 639-6066
Email: tperrelli@jenner.com

Counsel for Plaintiff Oceana

Kristen Monsell (PHV application forthcoming)
Center for Biological Diversity
1212 Broadway Street, Suite 800
Oakland, CA 94612
Telephone: (510) 844-7137
Facsimile: (510) 844-7150
Email: kmonsell@biologicaldiversity.org

Counsel for Plaintiff Center for Biological Diversity

Stephen D. Mashuda (PHV application forthcoming)
Earthjustice
705 2nd Avenue, Suite 203
Seattle, WA 98104
Telephone: (206) 343-7340
Facsimile: (206) 343-1526
Email: smashuda@earthjustice.org

Brettny Hardy (PHV application forthcoming)
Earthjustice
50 California Street, Suite 500
San Francisco, CA 94111
Telephone: (415) 217-2000
Facsimile: (415) 217-2040
bhardy@earthjustice.org

Counsel for Plaintiffs Surfrider Foundation and Sierra Club

RESCHDULE MARCH MEETING

March

2020

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4 P&Z Commission	5	6	7
8	9	10	11	12	13 Beach Town Breakfast	14
15 Town Council Meeting	16	17	18	19	20	21
22	23	24 BOA Meeting @ 6:30 p.m.	25	26	27	28
29	30	31				

DEPARTMENT REPORTS

RECREATION REPORT: Classes, Rentals, and Events Update

Classes @ CC:

Mon	9:15-10:15am	Vinyasa Flow Yoga
Mon	10:30am-11:45am	Stretch & Restore Yoga
Mon	6:30-7:30pm	Gentle Yoga
Mon	8-10pm	Kicken It Up Line Dance Class
Tues	1-3pm	Wonderful Watercolor! (4-week program – starts 1/7)
Tues	6-9pm	Aikido
Wed	9:15-10:15am	Classical Yoga
Wed	10:30-11:30am	Slow Flow Yoga
Wed	1-3pm	Knitting by the Sea (Last Wed of Month)
Wed	5:15-6:15pm	Pre-Natal Yoga
Wed	6:30-7:30pm	Reggae Flow Yoga
Thurs	10-11am	Line Dance
Thurs	6-9pm	Aikido
Fri	9:15-10:15am	Slow Flow Yoga
Fri	10:15-11:00am	Guided Meditation

Classes @ OFP:

Sun	8:30am	Beach Church (Kure Beach First Baptist Church)
Tues	10-11am	Tai Chi

Classes @ JEP:

Sat	10am	PIDGC Workday (1 st Saturday of Month)
Sun	9:30am	PIDGC Monthly Tournament (2 nd Sunday of Month)

Private Rentals:

CC	Sat, 1/18/2020	4 hours	Birthday Dinner
OFP	Sat, 4/18/2020	4 hours	Reception
CC	Sat, 5/2/2020	All Day	Reception
OFP	Sat, 5/9/2020	3.5 hours	Reception
CC/OFP	Sat, 5/16/2020	All Day +1	Ceremony/Reception
CC/OFP	Fri, 5/22/2020	All Day +3	Ceremony/Reception
OFP	Sun, 6/14/2020	2 hours	Graduation Party
OFP	Sat, 6/20/2020	7 hours	Wedding
CC	Sat, 6/20/2019	4 hours	Family Reunion
OFP	Fri, 6/26/2020	5 hours	Family Reunion
OFP	Sat, 6/27/2020	3 hours	Ceremony
OFP	Sat, 10/10/20	6 hours	Ceremony
CC	Sat, 10/24/2020	All Day	Reception

Upcoming Events:

Red Cross Blood Drive	Fri, 1/24/2020 from 10am-3pm, CC
NHC Special Olympics Polar Plunge & 5K	Sat, 2/15/2020 from 11-3:30, OFP
Adult CPR, AED, & First Aid Certification Class	Sat, 3/7/2020 from 9am-3pm, CC
Red Cross Blood Drive	Fri, 3/27/2020 from 10am-3pm, CC
CC Committee Hosts Coffee with the Mayor	Sat, 3/28/2020 from 9-11am, CC
Kure Beach Street Festival	Sat, 4/25/2020 from 11am-5pm, OFP

Update as of 1/13/2020

Kure Beach Building Dept. Open Violations...

Number	OpenDate	Deadline	CloseDate
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Building Open

Location:	R09217-016-010-000 KURE BEACH (- -)	11/4/2019	12/4/2019
Owner:	RUTTI DEANNA C	Tenant:	414 H AVE
	414 H AVE		

Description: Shed placed without permit/ within setback
 Shed placed on property without permit and not compliant with setback requirements. Met with property owners dad with John 11/14 and discussed need to move shed.

Total number of Open Building Violations1

Property Open

Location:	R09213-007-020-000 KURE BEACH (- -)	11/8/2019	12/8/2019
Owner:	WALTERS FRANCES	Tenant:	237 N THIRD AVE
	237 N 3RD AVE		

Description: Obstructions town right of way
 Owner called on 11/14/19, she is aware of her property line, but was concerned with parking and her neighbors in the rear on M. She will move obstructions but asked for a little more time. Will follow up to discuss fencing.

Phone - 910-262-5028

Met with Ms. Walters at her property on 12/17/19. She has someone coming down in mid January to move the wood rail ties from the right of way. I agreed to follow up in January, if they are not moved by then, will have public works remove them.

Location:	R09217-004-002-000 KURE BEACH (- -)	11/20/2019	12/20/2019
Owner:	GOODSON DINA M	Tenant:	121 S FOURTH AVE
	316 VALLEY DR		

Description: Neighbor in rear complained of weeds and bushes spilling over fence and into his property. See pictures in documents tab.

Location:	R09206-003-007-000 KURE BEACH (- -)	11/20/2019	12/20/2019	11/20/2019
Owner:	HILL DEREK K PHOEBE B	Tenant:	107 ALABAMA AVE	
	12504 ANGEL FALLS RD			

Description: Obstructions (rocks) in town right of way

Location:	R09213-007-012-000 KURE BEACH (- -)	11/21/2019	12/21/2019
Owner:	205 N THIRD AVE COA	Tenant:	205 N THIRD AVE
	205 N THIRD AVE		

Number			OpenDate	Deadline	CloseDate
Property Open					
Description:	Obstructions (poles) town right of way				
Location:	R09205-007-016-000		11/21/2019	12/21/2019	
Owner:	KURE BEACH (- -)		1701 BOWFIN LN		
	PAULA LYNN HOA	Tenant:			
	PO BOX 463				
Description:	Obstructions (rocks) in town right of way				
Location:	R09205-007-025-000		11/26/2019	12/26/2019	
Owner:	KURE BEACH (- -)		207 ALABAMA AVE		
Current Owner:	AUSTIN STEVEN J CRISTIN M	Tenant:			
	AUSTIN STEVEN J CRISTIN M				
	302 WAGSTAFF RD				
Description:	Obstructions town right of way Fence built without permit and is in town right of way.				
	Owner Cristin called on 12/20/19.				
Location:	R09213-003-004-000		12/2/2019	1/1/2020	
Owner:	KURE BEACH (- -)		322 THIRD AVE N		
	WINSTEAD JAMES M CATHERINE	Tenant:			
	641 GORDONTON RD				
Description:	Obstructions (poles) town right of way Spoke with Catherine Winstead, she complains her neighbor at 318 n 3rd is parking on her lawn. She says she is the only one parking on her lawn and is the reason she put up the marker poles. I explained parking ordinance and that neighbor is not allowed to park in row in front of her property, only in front of her own and if it continues she should call PD to have her neighbors car ticketed. She said she will be down by they end of January and will remove the poles.				
Location:	R09217-015-011-000		12/3/2019	1/2/2020	
Owner:	KURE BEACH (- -)		502 H AVE		
	WAGNER KERRY J	Tenant:			
	502 H ST				
Description:	Obstructions town right of way Rock wall in ROW				
Location:	R09213-003-005-000		12/3/2019	1/2/2020	
Owner:	KURE BEACH (- -)		318 THIRD AVE N		
	LOVING LENNIS F	Tenant:			
	1204 KINGS GRANT DR				
Description:	Obstructions town right of way stakes and plantings				

Number			OpenDate	Deadline	CloseDate
Property Open					
	R09213-006-005-002		12/10/2019	1/9/2020	
Location:	KURE BEACH	(- -)	222 THIRD AVE N		
Owner:	WILLIAMS RICHARD L ETAL		Tenant:		
	PO BOX 556				
Description:	Obstructions (rocks) in town right of way				
	R09209-003-013-000		12/10/2019	1/9/2020	
Location:	KURE BEACH	(- -)	457 N FORT FISHER BLV		
Owner:	BARHAM JOHN M SARAH L		Tenant:		
	PO BOX 453				
Description:	Obstructions town right of way				
	R09213-018-002-001		12/13/2019	1/12/2020	
Location:	KURE BEACH	(- -)	114 S FIFTH AVE		
Owner:	JONES JENNINGS BRYAN		Tenant:		
	114 5TH AVE				
Description:	Obstructions (poles) town right of way				
	R09217-011-007-000		1/7/2020	2/6/2020	
Location:	KURE BEACH	(- -)	410 I AVE		
Owner:	MULLEN CHARLES D PATRICIA M		Tenant:		
	PO BOX 4				
Description:	Obstructions (poles) town right of way				
	R09209-001-007-000		1/7/2020	2/6/2020	
Location:	KURE BEACH	(- -)	636 FORT FISHER BLV N		
Owner:	NEWMAN BRIAN P IRENE		Tenant:		
	15 CEDAR LN				
Description:	Obstructions (rocks) in town right of way				
	R09205-020-007-000		1/7/2020	2/6/2020	
Location:	KURE BEACH	(- -)	826 CUTTER CT		
Owner:	COOIL ROBERT G KAREN F		Tenant:		
	3118 KENSINGTON PL				
Description:	Obstructions (poles) town right of way				
	R09217-009-009-000		1/7/2020	2/6/2020	
Location:	KURE BEACH	(- -)	202 FORT FISHER BLV S		
Owner:	WILSON STEPHEN P JENNY H ET		Tenant:		
	PO BOX 732				

Number	OpenDate	Deadline	CloseDate
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Property

Open

Description: Obstructions town right of way
wood posts along J

Total number of Open Property Violations:16

Zoning

Open

	R09217-001-001-000		11/5/2019	12/5/2019
Location:	KURE BEACH	(- -)	614 J AVE	
Owner:	RHEE JAY W		Tenant:	
	351 COMMONWEALTH AVE			

Description: Shed does not meet setback requirements
s/w dale akstin on 12/18/19 , he says he lives with the owner and is his business partner. I explained setback requirements to him. He thought setback was 5 and 5 and placed shed as such. I explained purpose of permit was to make sure setback met. He asked for more time to move shed since he needs to figure out cost and who to do and he has back injury.

Dale Akstin 607-349-0401
dale.akstin@gmail.com

Total number of Open Zoning Violations:1

Total Violations: 18

Kure Beach Building Dept.-All Permits Issue Date: 12/1/2019 - 12/31/2019

PermitNo	Issue Date	Owner	Project Addr	ParcelID	Est Cost	Fee
Building addition						
Active						
190173	12/18/2019	MCMAINS JOHN R CHRISTINA M	114 SEAWARD CT	R09205-021-010-000	\$29,685.00	\$260.00
		Enclose bottom To enclose ground floor of existing home creating new bedroom, office, bath, and other heated space of 685sf. Must comply with all state and local codes and regulations.				
Total addition 1					\$29,685.00	\$260.00
New Construction						
Active						
190171	12/13/2019	REIMEL CHARLES MICHELE	701 ALABAMA AVE	R09017-024-009-000	\$475,000.00	\$10,327.00
		New SFD To construct new 3400sf SFD. Must comply with all state and local codes and regulations.				
Total New Construction 1					\$475,000.00	\$10,327.00
Renovations						
Active						
190167	12/2/2019	JONES CHRISTOPHER S LAURA M	807 ALABAMA AVE	R09017-023-001-000	\$8,000.00	\$160.00
		Enclose bottom To enclose remaining portion of downstairs of existing home creating garage space. Must comply with all state and local codes and regulations. Must have code compliant roofing over porch area, and code compliant ceiling in garage area.				
190168	12/5/2019	MULLEN CHARLES D PATRICIA M	509 K Ave	R09213-018-002-003	\$100,000.00	\$660.00
		Addition @ 509 K Ave To construct new 1000sf addition to include new bedroom, bathroom, and kitchen. Must comply with all state and local codes and regulations.				
190174	12/20/2019	HENDRIX MICHAEL R PEGGY F	1016 OCEAN VIEW ESTATES ***	R09312-002-001-005	\$117,000.00	\$745.00
		Elevator shaft and finished space To construct new elevator shaft and to finish bottomw of existing home creating new bath, bedroom, and living area. Total new heated ~700sf. Must comply with all state and local codes and regulations.				
Total Renovations 3					\$225,000.00	\$1,565.00
Repairs						
Active						
190170	12/6/2019	HOLLON GARY LISA	418 S FORT FISHER BLV A	R09217-021-015-001	\$22,000.00	\$260.00
		LVL replacement To repair and replace rotten lvl and siding on existing structure. Must comply with all state and local codes and regulations.				
190172	12/18/2019	PONSOLL J A SUZANNE FOUNTAI	1100 FORT FISHER BLV S 1605	R09316-002-001-165	\$800.00	\$60.00
		Sheetrock To repair rated carport ceiling> Must comply with all state and local codes and regulations.				
Total Repairs 2					\$22,800.00	\$320.00
Shed						
Active						
190169	12/5/2019	RANKIN TIFFANY W ETAL	233 N FOURTH AVE	R09213-008-010-000	\$0.00	\$25.00
		New 8x9' shed To construct new 8x9' shed. Must comply with all state and local codes and regulations.				
Total Shed 1					\$0.00	\$25.00
Total Building 8					\$752,485.00	\$12,497.00
Total Permits: 8					\$752,485.00	\$12,497.00



Police Activity Reports for July – December 2019

- Page 1 Activity Log Event Summary Totals**
- Page 2 Arrest Status/Disposition Totals by Offense**
- Page 3 Citation Totals by Charge**
- Page 4 Civil Papers Summary Totals**
- Page 5 Criminal Papers Summary Totals**
- Page 6 Incident Status/Disposition Totals by Offense**
- Page 7 Ordinance Violations Summary**

Activity Log Event Summary (Totals)

Kure Beach Police Department

(07/01/2019 - 12/31/2019)

<No Event Type Specified>	1	911 Hangup	2
Accident	5	Alarm Activation	7
Animal Complaint	7	Assist Citizen	1
Assist Other Agency - Fire	3	Assist Other Agency - Law Enforcement	13
Assist Other Agency - Medical	20	Breaking & Entering - No Report	3
Check Welfare	13	Citizen Complaint	7
Civil Matter	3	Disabled / Abandoned Vehicle	1
Dispute	6	Domestic	12
Fight	5	Found Property / Other	8
Fraud	1	Gunfire	1
Information	12	Internal Information - LEO Only	4
Intoxicated Subject	5	Larceny - No Report	8
Lost or Found Property	4	Mental Illness	1
Motor Vehicle Crash - Non-Reportable	3	Noise Complaint	6
Open Door	1	Property Damage - No Report	9
Standby	2	Surrender NC Driver's License - Revocation Order	3
Suspicious Person/Vehicle	20	Trespassing	9
Vehicle Stop	2		

Total Number Of Events: 208

Arrest Status/Disposition Totals by Offense

Kure Beach Police Department

(07/01/2019 - 12/31/2019)

Offense:	Further Invest.:	Inactive:	Closed/Cleared:	Arrest/No Supp.:	Arrest/No Invest.:	Felony:	Misd.:	Juvenile:	Adult:	Offense:
0410 - Aggravated Assault	0	0	1	0	1	0	1	0	1	1
0660 - Larceny - From Buildings	0	0	1	1	0	1	0	0	1	1
0800 - Simple Assault	0	0	1	1	0	0	1	0	1	1
0810 - Simple Physical Assault	0	0	1	1	0	0	1	0	1	1
0890 - Simple Assault- All Other Simple Assault	0	0	3	2	1	0	3	0	3	3
1200 - Embezzlement	0	0	1	1	0	1	0	0	1	1
1530 - Possessing/Concealing Weapons	0	0	1	1	0	0	1	0	1	1
1810 - Drug Violations	0	0	5	5	0	3	2	0	5	5
1834 - Drug Violations - Equipment/Paraphernalia - Possessing/Concealing	0	0	1	1	0	0	1	0	1	1
1836 - Drug Violations - Equipment/Paraphernalia - Using	0	0	1	0	1	0	1	0	1	1
1890 - Drug Violations - All Other Drug Violations	0	0	1	0	1	0	1	0	1	1
2100 - DWI - Alcohol and/or Drugs	0	0	3	3	0	0	3	0	3	3
2290 - All Other Liquor Law Violations	0	0	2	2	0	0	2	0	2	2
2640 - Contempt of Court, Perjury, Court Violations	0	0	3	3	0	0	3	0	3	3
2650 - Escape From Custody or Resist Arrest	0	0	1	1	0	0	1	0	1	1
2690 - All Other Offenses	0	0	14	7	7	2	12	0	14	14
4040 - Non-Criminal Detainment (Involuntary Commitment)	0	0	1	0	1	0	1	0	1	1
Totals:	0	0	41	29	12	7	34	0	41	41

Citation Totals by Charge

Kure Beach Police Department

(07/01/2019 - 12/31/2019)

Charge:	Number of Charges:
Speeding (Misdemeanor)	1
Speeding (Infraction)	16
DWI	3
No Operator License	6
Driving While License Revoked	16
Expired Registration	12
Inspection	2
Unsafe Movement	2
Failure To Stop (Stop Sign/Flashing Red Light)	3
Failure To Reduce Speed	1
Other (Misdemeanor)	18
Other (Infraction)	1
Other (2nd Charge - Misdemeanor)	15
Other (2nd Charge - Infraction)	6
Total:	102

Civil Papers Summary Totals (by Paper Type)

Kure Beach Police Department

(07/01/2019 - 12/31/2019)

Type of Civil Paper:	Total Served:	Total Returned:	Total Ret. to Clerk:	Total Issued:	Total Issued Outstanding:
Subpoena	7	0	0	13	6
Totals:	7	0	0	13	6

Incident Status/Disposition Totals (With Percentages) by Offense

Kure Beach Police Department

(07/01/2019 - 12/31/2019)

Primary Offense:	Total Reported:	Total Unfounded:	Actual Incidents:	% Unfounded:	Cleared Arrest:	Cleared Other:	% Cleared:	Active:	% Active:	Inactive:	% Inactive:
0410 - Aggravated Assault	1	0	1	0%	1	0	100%	0	0%	0	0%
0520 - Burglary - Non-Forced Entry	1	0	1	0%	0	0	0%	1	100%	0	0%
0640 - Larceny - From Motor Vehicle	1	0	1	0%	0	1	100%	0	0%	0	0%
0650 - Larceny - Auto Parts & Accessories	1	0	1	0%	0	0	0%	1	100%	0	0%
0660 - Larceny - From Buildings	2	0	2	0%	0	0	0%	1	50.0%	1	50.0%
0690 - Larceny - All Other Larceny	5	0	5	0%	0	0	0%	4	80.0%	1	20.0%
0710 - Motor Vehicle Theft - Automobile	1	0	1	0%	0	1	100%	0	0%	0	0%
0810 - Simple Physical Assault	5	0	5	0%	2	1	60.0%	1	20.0%	1	20.0%
1120 - Fraud - Obtaining Money/Property by False Pretense	2	0	2	0%	0	0	0%	1	50.0%	1	50.0%
14-100 - Obtain Property False Pretense	1	0	1	0%	0	1	100%	0	0%	0	0%
1400 - Criminal Damage to Property (Vandalism)	2	0	2	0%	0	0	0%	1	50.0%	1	50.0%
1790 - All Other Sex Offenses	1	0	1	0%	0	1	100%	0	0%	0	0%
1810 - Drug Violations	1	0	1	0%	1	0	100%	0	0%	0	0%
2100 - DWI - Alcohol and/or Drugs	1	0	1	0%	1	0	100%	0	0%	0	0%
2690 - All Other Offenses	7	0	7	0%	0	0	0%	7	100%	0	0%
9910 - Calls for Service	6	0	6	0%	1	2	50.0%	2	33.3%	0	0%
Totals:	38	0	38	0%	6	7	34.2%	19	50.0%	5	13.2%

Ordinance Violations Summary

Kure Beach Police Department

(07/01/2019 - 12/31/2019)

Civil Citation

Dog Leash Law	1
Leaping from Fishing Pier	1
Noise Ordinance Viol	1
Vehicle on Beach	1
Total Number Of Charges for Category: 4	

Parking Viol

<No Charge Specified>	5
Blocking Private Driveway	1
Obstructing Traffic Lane	88
To Close to Fire Plug	4
To close to Intersection	10
Total Number Of Charges for Category: 108	

Total Number Of Charges: 112

**TOWN OF KURE BEACH
REVENUE AND EXPENDITURE SUMMARY
JULY 1, 2019 TO JANUARY 14, 2020**

REVENUES					EXPENDITURES				
	2020 Initial Bud.	2020 Amend. Bud.	Actual 1/14/2020	%		2020 Initial Bud.	2020 Amend. Bud.	Actual 1/14/2020	%
				Collected					Spent
GENERAL FUND					GENERAL FUND				
Property Taxes (Cur. & PY)	\$ 3,044,300	\$ 3,044,300	\$ 2,796,705	91.9%	Governing Body	\$ 38,290	\$ 50,290	\$ 29,265	58.2%
Local Option Sales Tax	\$ 960,500	\$ 960,500	\$ 605,041	63.0%	Committees	\$ 5,005	\$ 5,005	\$ -	0.0%
Garbage & Recycling	\$ 488,000	\$ 488,000	\$ 258,503	53.0%	Finance	\$ 166,660	\$ 166,660	\$ 97,866	58.7%
TDA Funds	\$ 260,000	\$ 260,000	\$ -	0.0%	Administration	\$ 549,763	\$ 549,763	\$ 287,718	52.3%
Franchise & Utility Tax	\$ 240,000	\$ 240,000	\$ 129,425	53.9%	Community Center	\$ 23,300	\$ 23,300	\$ 8,973	38.5%
Sales Tax Refund	\$ 135,000	\$ 135,000	\$ 162,969	120.7%	Emergency Mgmt./Elections	\$ 5,800	\$ 5,800	\$ 22	0.4%
Bldg. Permit & Fire Inspect. Fees	\$ 98,050	\$ 98,050	\$ 47,205	48.1%	Tax Collections	\$ 28,800	\$ 28,800	\$ 14,220	49.4%
Communication Tower Rent	\$ 84,348	\$ 84,348	\$ 46,831	55.5%	Legal	\$ 34,679	\$ 34,679	\$ 11,567	33.4%
Com Ctr/Parks & Rec/St Festival	\$ 20,700	\$ 20,700	\$ 11,505	55.6%	Police Department	\$ 1,630,215	\$ 1,630,914	\$ 783,949	48.1%
ABC Revenue	\$ 19,175	\$ 19,175	\$ 13,227	69.0%	Fire Department	\$ 805,218	\$ 789,233	\$ 447,267	56.7%
Town Facility Rentals	\$ 19,000	\$ 19,000	\$ 11,626	61.2%	Lifeguards	\$ 207,174	\$ 235,732	\$ 120,678	51.2%
Motor Vehicle License Tax	\$ 10,000	\$ 10,000	\$ 4,440	44.4%	Parks & Recreation	\$ 212,474	\$ 212,474	\$ 106,890	50.3%
Beer & Wine Tax	\$ 9,600	\$ 9,600	\$ -	0.0%	Bldg Inspection/Code Enforcement	\$ 199,788	\$ 199,788	\$ 84,885	42.5%
OFP - Bluefish Purchases	\$ 7,800	\$ 7,800	\$ 5,470	70.1%	Streets & Sanitation	\$ 897,657	\$ 897,657	\$ 434,405	48.4%
Investment Earnings	\$ 7,450	\$ 7,450	\$ 3,823	51.3%	Debt Service	\$ 716,925	\$ 716,925	\$ 462,364	64.5%
All Other Revenues	\$ 10,825	\$ 36,097	\$ 13,562	37.6%	Transfer to Other Funds	\$ 18,000	\$ 18,000	\$ 18,000	100.0%
Other Financing Sources	\$ 145,000	\$ 145,000	\$ 29,859	20.6%	Contingency	\$ 20,000	\$ 20,000	\$ -	0.0%
Total Revenues	\$ 5,559,748	\$ 5,585,020	\$ 4,140,191	74.1%	Total Expenses	\$ 5,559,748	\$ 5,585,020	\$ 2,908,069	52.1%
WATER & SEWER FUND					WATER & SEWER FUND				
Water Charges	\$ 917,050	\$ 917,050	\$ 518,040	56.5%	Governing Body	\$ 19,040	\$ 19,040	\$ 9,265	48.7%
Sewer Charges	\$ 1,301,100	\$ 1,301,100	\$ 712,883	54.8%	Legal	\$ 34,679	\$ 34,679	\$ 11,567	33.4%
Tap, Connect & Reconnect Fees	\$ 91,800	\$ 91,800	\$ 43,885	47.8%	Finance	\$ 208,446	\$ 208,446	\$ 113,701	54.5%
All Other Revenues	\$ 24,440	\$ 24,440	\$ 14,948	61.2%	Administration	\$ 312,913	\$ 312,913	\$ 186,503	59.6%
Other Financing Sources	\$ 90,000	\$ 90,000	\$ 72,483	80.5%	Operations	\$ 1,849,312	\$ 1,849,312	\$ 892,843	48.3%
Total Revenues	\$ 2,424,390	\$ 2,424,390	\$ 1,362,239	56.2%	Total Expenses	\$ 2,424,390	\$ 2,424,390	\$ 1,213,879	50.1%
STORM WATER FUND					STORM WATER FUND				
Total Revenues	\$ 335,225	\$ 356,365	\$ 170,567	47.9%	Total Expenses	\$ 335,225	\$ 356,365	\$ 225,926	63.4%
POWELL BILL FUND					POWELL BILL FUND				
Total Revenues	\$ 66,450	\$ 66,450	\$ 65,865	99.1%	Total Expenses	\$ 66,450	\$ 66,450	\$ 3,234	4.9%
SEWER EXPANSION RESERVE FUND (SERF)					SEWER EXPANSION RESERVE FUND (SERF)				
Total Revenues	\$ 17,420	\$ 17,420	\$ 10,800	62.0%	Total Expenses	\$ 17,420	\$ 17,420	\$ -	0.0%
BEACH PROTECTION FUND					BEACH PROTECTION FUND				
Total Revenues	\$ 24,500	\$ 24,500	\$ 21,125	86.2%	Total Expenses	\$ 24,500	\$ 24,500	\$ -	0.0%
FEDERAL ASSET FORFEITURE FUND					FEDERAL ASSET FORFEITURE FUND				
Total Revenues	\$ 50,000	\$ 50,000	\$ -	0.0%	Total Expenses	\$ 50,000	\$ 50,000	\$ 7,112	14.2%

**TOWN OF KURE BEACH
CASH AND INVESTMENTS
AS OF DECEMBER 31, 2019**

<u>FUND</u>	<u>CASH IN BANK</u>	<u>INVESTMENTS</u>	<u>TOTAL CASH & INVESTMENTS</u>
General	\$3,466,295	\$471,376	\$3,937,671
Water/Sewer	\$1,671,650	\$709,318	\$2,380,968
Storm Water	\$6,019	\$250,181	\$256,200
SERF	\$33,010	\$161,138	\$194,148
Powell Bill	\$172,638	\$122,597	\$295,235
Beach Protection	\$10,897	\$361,825	\$372,722
Federal Asset Forfeiture	\$97,319	\$0	\$97,319
Capital Project Funds	\$608	\$0	\$608
TOTAL	<u>\$5,458,436</u>	<u>\$2,076,435</u>	<u>\$7,534,871</u>

<u>INSTITUTION</u>		
BB&T	\$5,458,436	\$0
First Bank - Certificates of Deposit	\$0	\$675,818
NCCMT Term Portfolio	\$0	\$565,142
NCCMT Governmental Portfolio	\$0	\$835,475
TOTAL	<u>\$5,458,436</u>	<u>\$2,076,435</u>

**TOWN OF KURE BEACH
SUMMARY OF CONTINGENCY FUND AND COMMITTEE
EXPENDITURE ACTIVITY
07/01/2019 - 01/14/2020**

CONTINGENCY FUND

Fiscal Year 2020 Budget	\$20,000.00
Less:	
No activity	<u>\$0.00</u>
Remaining Budget as of 01/14/2020	<u><u>\$20,000.00</u></u>

COMMITTEE (Shoreline Access and Beach Protection) EXPENDITURES

Fiscal Year 2020 Budget	\$5,005.00
Less Expenditures:	
None	<u>\$0.00</u>
Total Expenditures	\$0.00
Projects Approved By Council But Not Yet Expended:	
None	<u>\$0.00</u>
Total Approved, Not Expended	<u><u>\$0.00</u></u>
Remaining Budget as of 01/14/2020	<u><u>\$5,005.00</u></u>

**TOWN OF KURE BEACH
DEBT LISTING
JANUARY 21, 2020**

<u>LOAN PURPOSE/DESCRIPTION</u>	<u>FUND</u>	<u>LENDER</u>	<u>DATE OF LOAN</u>	<u>AMOUNT FINANCED</u>	<u>INTEREST RATE</u>	<u>LOAN TERM (YRS)</u>	<u>DATE PAID OFF</u>	<u>BALANCE AT 01/21/20</u>	<u>PAYMENT FREQUENCY</u>	<u>PAYMENT AMOUNT</u>	<u>NEXT PAY DATE</u>	<u>INT. EXPENSE LIFE OF LOAN</u>
Fire Station/Town Hall Project (a)	G, W/S	BB&T	12/11/2017	\$5,000,000	2.58%	15	12/11/2032	\$4,333,333.32	Semi-annual	\$222,566.67	6/11/2020	\$999,750.00
Sewer Rehabilitation Project (b)	W/S	Fed Gov	5/1/2010	\$432,660	0.00%	20	5/1/2030	\$116,112.88	Annual	\$10,555.72	5/1/2020	\$0.00
Water Meter Replacement	W/S	BB&T	7/18/2019	\$1,325,000	2.78%	10	7/18/2029	\$1,258,750.00	Semi-annual	\$83,746.63	7/18/2020	\$193,383.80
Ocean Front Park (development)	G	BB&T	7/12/2011	\$347,000	4.39%	17	7/12/2028	\$183,705.92	Annual	\$28,476.45	7/12/2020	\$137,099.64
Ocean Front Park (acquisition)	G	BB&T	12/19/2007	\$3,600,000	4.28%	20	12/19/2027	\$519,230.83	Annual	\$87,126.94	12/19/2020	\$690,135.16
Kure Beach Pump Station #1	W/S	1st Bank	6/28/2017	\$475,000	2.11%	10	6/28/2027	\$365,562.43	Semi-annual	\$26,507.64	6/28/2020	\$55,152.80
334 S. 4th, 402 H & 406 H Ave.	G	BB&T	3/12/2015	\$409,471	2.49%	10	3/12/2025	\$245,682.67	Annual	\$47,064.62	3/12/2020	\$56,077.07
Street Sweeper & Dump Truck (c)	G, SW	BB&T	10/30/2018	\$233,412	3.26%	5	10/30/2023	\$189,675.69	Annual	\$51,345.54	10/30/2020	\$23,315.68
Telemetry System & 2019 Dodge Charger (d)	G, W/S	1st Bank	9/26/2019	\$102,342	2.14%	4	9/26/2023	\$102,342.00	Annual	\$26,988.23	9/26/2020	\$5,610.92
2018 GMC Sierra 2500	W/S	BB&T	8/23/2018	\$39,571	3.68%	4	8/23/2022	\$30,207.89	Annual	\$10,819.32	8/23/2020	\$3,706.28
Water Tower & Well House & Town Hall Expansion (e)	G, W/S	BB&T	4/11/2007	\$1,187,187	3.92%	15	5/7/2022	\$248,766.70	Semi-annual	\$52,716.71	5/7/2020	\$394,314.33
2016 John Deere Backhoe (f)	W/S, SW	BB&T	11/9/2016	\$105,273	1.87%	5	11/9/2021	\$43,282.87	Annual	\$22,250.35	11/9/2020	\$5,978.75
2018 Police Dodge Durango	G	1st Bank	10/19/2017	\$31,668	1.95%	4	10/19/2021	\$16,139.76	Annual	\$8,312.14	10/19/2020	\$1,558.73
2017 Freightliner Garbage Truck	G	1st Bank	8/23/2016	\$179,756	1.70%	5	8/23/2021	\$73,725.35	Annual	\$38,303.62	8/23/2020	\$9,270.57
Compact Excavator (f)	W/S, SW	1st Bank	7/28/2017	\$63,915	1.80%	4	7/28/2021	\$32,527.55	Annual	\$16,714.37	7/28/2020	\$2,901.83
(2) 2016 Police Dodge Chargers	G	1st Bank	11/9/2016	\$63,500	1.60%	4	11/9/2020	\$16,254.96	Annual	\$16,524.00	11/9/2020	\$2,560.16
O'Brien 7065 HydroJetter (f)	W/S, SW	1st Bank	8/13/2015	\$81,485	1.70%	5	8/13/2020	\$16,851.00	Annual	\$17,149.28	8/13/2020	\$4,202.44
2016 Chevrolet Silverado	G	1st Bank	7/26/2016	\$36,867	1.60%	4	7/26/2020	\$9,437.34	Annual	\$9,593.55	7/26/2020	\$1,486.39
Cutter Court Drainage Project	SW	B of A	7/23/2005	\$875,000	4.40%	15	6/23/2020	\$33,019.35	Monthly	\$6,677.76	2/23/2020	\$326,995.49

FUND CODES

G - General Fund
W/S - Water/Sewer Fund
SW - Storm Water Fund

TOTAL OUTSTANDING DEBT AT 01/21/2020:

General Fund	\$ 5,087,308.65
Water/Sewer Fund	\$ 2,603,460.07
Storm Water Fund	\$ 143,839.79
Total	<u>\$ 7,834,608.51</u>

NOTES

- (a) - 88% of loan is General Fund and 12% is Water/Sewer Fund.
(b) - Total amount borrowed was \$432,660. As part of ARRA, the unpaid balance was immediately reduced by one-half of the loan amount.
(c) - 66% of loan is General Fund and 34% is Storm Water Fund.
(d) - 70.825% of loan is Water/Sewer Fund and 29.175% is General Fund.
(e) - 78% of loan is Water/Sewer Fund and 22% is General Fund.
(f) - 50% of loan is Water/Sewer Fund and 50% is Storm Water Fund.

LOAN PAYMENTS DUE (Next 12 Months):

01/22/2020 - 03/31/2020	\$ 60,420.14
04/01/2020 - 06/30/2020	\$ 332,380.02
07/01/2020 - 09/30/2020	\$ 231,791.45
10/01/2020 - 01/21/2021	\$ 568,946.62
Total	<u>\$ 1,193,538.23</u>

**WATER METER REPLACEMENT
CAPITAL PROJECT FUND SUMMARY
AS OF 01/14/2020**

<u>EXPENDITURES</u>	<u>APPROVED BUDGET</u>	<u>ACTUAL AS OF 01/14/20</u>	<u>% OF BUDGET</u>
<u>ENGINEERING AND CONSTRUCTION ADMIN.</u>			
ENGINEERING SERVICES, P.A.			
Engineering Design Services - Specifications & Bid Documents	\$5,000	\$5,000.00	100.0%
Bidding Assistance Services	\$4,500	\$4,500.00	100.0%
Construction Administration	\$11,000	\$8,250.00	75.0%
Construction Observation	<u>\$11,000</u>	<u>\$8,250.00</u>	75.0%
Total Engineering Services, PA	<u>\$31,500</u>	<u>\$26,000.00</u>	82.5%
<u>OTHER PROJECT COSTS</u>			
LGC Loan Application Fee	\$1,250	\$1,250.00	100.0%
ICS & VC3 - Billing Software & Server Modifications	<u>\$12,341</u>	<u>\$12,340.20</u>	100.0%
Total Other Project Costs	<u>\$13,591</u>	<u>\$13,590.20</u>	100.0%
<u>CONSTRUCTION</u>			
VANGUARD UTILITY SERVICE, INC.			
Contingency	<u>\$49,634</u>	<u>\$0.00</u>	0.0%
Total Construction Costs	<u>\$1,289,074</u>	<u>\$950,601.78</u>	73.7%
<u>GRAND TOTAL EXPENDITURES</u>	<u>\$1,334,165</u>	<u>\$990,191.98</u>	74.2%
<u>PROJECT REVENUE SOURCES</u>			
Installment Financing	\$1,325,000	\$1,325,000.00	100.0%
Transfer From Water/Sewer Fund	\$9,165	\$0.00	0.0%
Interest on Project Fund Bank Account	<u>\$0</u>	<u>\$42.06</u>	
<u>GRAND TOTAL PROJECT REVENUE SOURCES</u>	<u>\$1,334,165</u>	<u>\$1,325,042.06</u>	99.3%

MINUTES



TOWN COUNCIL MINUTES

ORGANIZATIONAL/REGULAR MEETING

December 9, 2019 @ 6:00 p.m.

The Kure Beach Town Council held its organizational/regular meeting on Wednesday, December 9, 2019 at 6:00 pm. The Town Attorney was present and there was a quorum of Council members present.

COUNCIL MEMBERS PRESENT

Mayor Craig Bloszinsky
MPT David Heglar
Commissioner Joseph Whitley
Commissioner John Ellen
Commissioner Allen Oliver

COUNCIL MEMBERS ABSENT

STAFF PRESENT

Building Inspector – John Batson
Recreation Director – Nikki Keely
Financial Officer – Arlen Copenhaver
Town Clerk– Mandy Sanders
Police Chief – Mike Bowden
Public Works Director- Jimmy Mesimer
Deputy Town Clerk– Beth Chase
Fire Chief- Ed Kennedy

Mayor Bloszinsky called the meeting to order at 6:00 p.m. and Commissioner Oliver gave the invocation and Pledge of Allegiance.

APPROVAL OF CONSENT AGENDA ITEMS

1. Accept Robert Young's resignation from the Planning and Zoning Commission
2. Approve the Proposed Dates for 2020 OFP Summer Programs
3. Minutes:
 - November 11, 2019 Closed
 - November 20, 2019 Regular

MOTION- MPT Heglar made a motion to approve the consent agenda

SECOND- Commissioner Oliver

VOTE- Unanimous

ADOPTION OF THE AGENDA

MOTION – Commissioner Oliver made a motion to adopt the agenda as presented

SECOND- Commissioner Whitley



TOWN COUNCIL MINUTES

ORGANIZATIONAL/REGULAR MEETING

December 9, 2019 @ 6:00 p.m.

VOTE- Unanimous

DEPARTMENT BUSINESS

1. Administration Department

Oath of Office for Deputy Town Clerk Beth Chase effective December 1, 2019

Mayor Bloszinsky administered the oath of office to the Deputy Town Clerk Beth Chase.

DISCUSSION AND CONSIDERATION OF NEW BUSINESS

OATHS OF OFFICE FOR NEWLY ELECTED OFFICIALS

1. Craig Bloszinsky, Mayor by the Honorable Judge Rebecca W. Blackmore
2. David Heglar, Commissioner by the Honorable Judge Rebecca W. Blackmore
3. Joseph Whitley, Commissioner by the Honorable Judge Rebecca W. Blackmore

Honorable Judge Rebecca W. Blackmore administered the oath of office to Mayor Craig Bloszinsky, Commissioner David Heglar, and Commissioner Joseph Whitley.

Seating of newly elected Council

COUNCIL APPOINTMENTS

1. Mayor Pro Tem for 2 year term

MOTION- Commissioner Ellen made a motion to appoint Commissioner David Heglar as Mayor Pro Tem for a 2 year term

SECOND- Commissioner Oliver

VOTE- Unanimous

2. Liaison to Building Inspections Department – Town Code requires Council appointment

MOTION- MPT Heglar made a motion to appoint Commissioner Whitley as the Liaison to the Building Inspections Department

SECOND- Commissioner Oliver

VOTE- Unanimous

3. Two Council members to serve on Kure Beach/Carolina Beach Sewer Authority

MOTION- Commissioner Ellen made a motion to appoint MPT Heglar and Commissioner Whitley to the Kure Beach/Carolina Beach Sewer Authority

SECOND- Commissioner Oliver

VOTE- Unanimous



TOWN COUNCIL MINUTES

ORGANIZATIONAL/REGULAR MEETING

December 9, 2019 @ 6:00 p.m.

4. One Council member as banking signatory

MOTION- Commissioner Whitley made a motion to make Commissioner Ellen the banking signatory

SECOND- MPT Heglar

VOTE- Unanimous

5. Council of Governments (COG)

MOTION- Commissioner Ellen made a motion to appoint Commissioner Oliver to the Council of Governments (COG)

SECOND- MPT Heglar

VOTE- Unanimous

6. MPO Advisory Board

MOTION- Commissioner Oliver made a motion to appoint Commissioner Ellen to the MPO Advisory Board

SECOND- Commissioner Whitley

VOTE- Unanimous

7. MPO Citizens Advisory Committee

MOTION- Commissioner Oliver made a motion to appoint Town Clerk Mandy Sanders to the MPO Citizens Advisory Committee

SECOND- Commissioner Whitley

VOTE- Unanimous

8. Ports, Waterway and Beach Commission

MOTION- MPT Heglar made a motion to appoint Commissioner Oliver to the Ports, Waterway and Beach Commission

SECOND- Commissioner Whitley

VOTE- Unanimous



TOWN COUNCIL MINUTES

ORGANIZATIONAL/REGULAR MEETING

December 9, 2019 @ 6:00 p.m.

9. Tourism Development Authority (TDA)

MOTION- Commissioner Ellen made a motion to appoint Anne Brodsky as the Tourism Development Authority

SECOND- Commissioner Whitley

VOTE- Unanimous

10. MPO Bicycle and Pedestrian Committee

MOTION- Commissioner Ellen made a motion to appoint Mo Lindquist as the MPO Bicycle and Pedestrian Committee

SECOND- MPT Heglar

VOTE- Unanimous

11. Cape Fear Disability Commission

MOTION- Commissioner Ellen made a motion to appoint Dustin Robinson as the Cape Fear Disability Commission

SECOND- MPT Heglar

VOTE- Unanimous

MAYOR ANNOUNCEMENTS OF COUNCIL LIAISONS

- Administration Department - Mayor Bloszinsky
- Finance Department - Commissioner Oliver
- Fire Department - Commissioner Ellen
- Police Department - Mayor Bloszinsky
- Public Works Department - MPT Heglar
- Recreation Department - Commissioner Oliver
- Community Center Committee - Mayor Bloszinsky
- Marketing Committee - Commissioner Ellen
- Shoreline Access and Beach Protection Committee - Commissioner Whitley
- Land Use Plan Committee - Commissioner Oliver and Commissioner Whitley
- Planning & Zoning Commission and Historic Preservation Commission - Commissioner Whitley



TOWN COUNCIL MINUTES

ORGANIZATIONAL/REGULAR MEETING

December 9, 2019 @ 6:00 p.m.

COUNCIL RETREAT

Schedule date and time for 2020 Annual Council Retreat

- Monday, January 27, 2020
- Friday, January 31, 2020
- Monday, February 3, 2020
- Friday, February 7, 2020

MOTION- Heglar made a motion to schedule the 2020 Annual Council Retreat on Friday, January 31, 2020 at 8:00 a.m.

SECOND Whitley

VOTE- Unanimous

JANUARY MEETING

Reschedule January 20, 2020 Council Meeting due to Martin Luther King Holiday

MOTION- Commissioner Ellen made a motion to reschedule the January Council meeting from Monday, January 20, 2020 meeting to Tuesday, January 21, 2020 at 6:00 p.m.

SECOND- Commissioner Whitley

VOTE-Unanimous

MAYOR ITEMS:

Mayor Bloszinsky stated he would like to recognize Fire Chief Kennedy as he received a note from FEMA that states Senior Fire Officer completes the Executive Program. The Federal Emergency Management Agency FEMA U.S. Fire Administration National Fire Academy announced November 22nd the following individual from the State of NC has successfully completed the Executive Fire Program. This is a program that takes years to complete and the Town Council is proud. Also would like to discuss a paid parking information session on January 7th and January 11th. One will be held in the evening and the other will be held on Saturday morning.

MOTION- MPT Heglar made a motion to direct Mayor Bloszinsky and Commissioner Whitley to work with Town Clerk Sanders to advertise two information sessions on January 7th from 6:00-8:00 p.m. and on January 11th from 10:00-12:00 p.m.

SECOND- Commissioner Ellen

VOTE- Unanimous



TOWN COUNCIL MINUTES

ORGANIZATIONAL/REGULAR MEETING

December 9, 2019 @ 6:00 p.m.

COMMISSIONER ITEMS:

Commissioner Ellen stated at the Chamber of Commerce Dinner the Town was awarded two plaques. The first plaque was awarded to the Police Department in grateful appreciation to the Town of Kure Beach for your continued dedication and support in all events sponsored by the Pleasure Island Chamber of Commerce. The second plaque is dedicated to the Town of Kure Beach residents in grateful appreciation to the Town of Kure Beach for your continued dedication and support in all events sponsored by the Pleasure Island Chamber of Commerce.

MOTION- MPT Heglar made a motion to adjourn the meeting at 6:25 p.m.

SECOND- Commissioner Whitley

VOTE- Unanimous

ATTEST:

Mandy Sanders, Town Clerk

Craig Bloszinsky, Mayor

NOTE: These are action minutes reflecting items considered and actions taken by Council. These minutes are not a transcript of the meeting. A recording of the meeting is available on the town's website under [government>agendas&minutes](#).