

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK**

NATIONAL AUDUBON SOCIETY,

*Plaintiff,*

v.

DAVID BERNHARDT, *et al.*,

*Defendants,*

BOROUGH OF AVALON, *et al.*,

*Defendant-Intervenors.*

Case No. 20-cv-5065 (LJL)

**DECLARATION OF STEVE GILBERT**

I, Steve Gilbert, state and declare as follows:

1. I submit this declaration in support of Plaintiffs' complaint in the above-captioned litigation.
2. The facts set forth in this declaration are based on my personal knowledge. If called as a witness in these proceedings, I could and would testify competently to these facts.
3. I reside Charleston, SC
4. I have a master's degree in biological science with a major in marine and estuarine ecology.
5. My career spans over 32 years in federal service as a senior biologist, leader, and supervisor for two Federal agencies: the U.S. Fish and Wildlife Service ("FWS") and the Coastal Services Center (now Office for Coastal Management) at the National Oceanic and Atmospheric Administration ("NOAA"). I was the Program Manager for the Coastal Learning Services

Section of the NOAA Coastal Services Center in Charleston, SC. This section develops and delivers training for Coastal Zone Management agencies, National Estuarine Research Reserves, Sea Grants, Extension Services, and local coastal governments and non-profits across the country.

6. My work with the FWS encompassed ecosystem management work on the Everglades Restoration Project, and wetland, stream, and hydropower issues, primarily in the Southeast. I also helped develop and teach many courses for the FWS at the National Conservation Training Center.

7. After my retirement, I was the primary author for a University of South Carolina “State of the Knowledge” report on the ecological effects of drought on coastal Carolina ecosystems. I have also managed two grants for the South Carolina Wildlife Federation

8. I currently consult as a Special Projects Manager for the South Carolina Wildlife Federation and have served on the Advisory Board of Audubon South Carolina since 2009, where I worked on a climate change adaptation project centered on coastal marsh migration in light of sea level rise.

9. I have been a member and board member of Audubon SC for 11 years and was a member of the National Audubon Society when this action was filed (I continue to be a member).

10. I greatly enjoy the outdoors and spend much time in natural settings, particularly along the coast, where I particularly enjoy watching shorebirds, seabirds and wading birds. This is in tandem with walks along the beachfront and boating in the estuaries creeks on the back side of barrier islands. One of my favorite activities on long holiday weekends is boating out to either Morris Island and/or Spring Point on Kiawah Island with several other close friends, where we

picnic, and enjoy the bird life. During mating season, there are areas on Morris Island that are roped off to preclude disturbance of several species of nesting native birds.

11. I became interested in bird watching after my first post-graduate job with the Florida Game and Fish Commission. Field work would often take me to remote aquatic sites where I would see and learn more about many wading, sea and shore birds. When I left Florida for my federal position FWS, I was also a field biologist and had lots of opportunities to enjoy and learn about many new species of birds. One of my most thrilling experiences while attending an FWS meeting in Nebraska was visiting the Platte River at dusk and witnessing the migration of thousands of Sandhill Cranes along with their cacophony of sound. For many years we visited the Florida Keys for two weeks every summer for snorkeling, diving and further enjoyment of woodstorks, egrets, ibis, and especially roseate spoonbills. One of my other favorite bird moments occurred when I lived in Vero Beach, Florida while working on the Everglades restoration project, and, as I was driving out of my development, saw close up two of my favorite species, roseate spoonbill and wood stork, feeding together in a road side drainage swale.

12. I reside near Coastal Barrier Resource System (“CBRS”) Units: M06 (the Morris Island Complex) and M07 (the Bird Key Complex). True and correct copies of FWS maps for these units are attached to this declaration as Exhibits A and B, respectively.

13. These are particularly dynamic systems. They are deprived of natural replenishment (from longshore sand drift along the shore) by the Charleston Harbor jetties and entrance channel. Additional sand deprivation at MO7 may also result from rock groins along Folly Beach. As a result, these units are eroding and often are reduced to relatively narrow strips of sand along the ocean.

14. MO7 and MO7P—which stretch from the western edge of Folly Beach across the Stono River Inlet to the eastern tip of Kiawah Island—are largely undeveloped except for a small portion of MO7P. These units include parts of many estuarine creek systems and their accompanying salt marsh, mud flats and oyster bars—all habitats important to wading birds. The estuarine waters include Folly River, Folly Creek, Stono River and Inlet, and Bass Creek. Bird Key Stono is a critically important bird nesting island that is in the mouth of the Stono Inlet and subject to high erosion forces. The Corps of Engineers has nourished this island with sandy materials dredged from maintenance of the Folly River Federal Navigation Channel.

15. MO6 is east of MO7 and includes undeveloped Morris Island and has a more expansive set of dunes (which can migrate landward because of lack of development). These dunes are backed by extensive salt marsh areas and estuarine creek systems including Clark Sound, an extensive marsh, mud flat and oyster bar estuarine creek system that is frequently utilized by wading birds. Shorebird nesting and migratory bird feeding occurs in this unit. However, the unit is also subject to loss of longshore drift sand blocked by the Charleston Harbor Jetties. The Morris Island lighthouse, which used to be part of the beach, is now isolated somewhat offshore of the island due to sand erosion.

16. Both units have constant sand movements, losing sand to offshore bars and islands some of which, particularly Bird Key Stono, are critically important shorebird breeding grounds.

17. Both M06 and M07 also contain excellent migratory feeding and breeding habitat for shorebirds, wading birds and seabirds such as sandpipers, plovers, brown pelicans, American oystercatcher, red knot and many more. This habitat includes a lengthy section of beach on Morris Island and areas known as Sandy Point and Bird Key in M07.

18. Because of my proximity to these Units, I routinely enjoy observing the aforementioned sea, shore and wading birds in their natural habitat. My wife and I often go for walks on the beach and I often fish, collect clams and oysters and bird watch in the estuarine creeks included in and adjacent to MO6 and MO7. We periodically visit MO6 and MO7 by boat on holiday weekends. I often pass Bird Key while boating on the Folly River. I plan on maintaining this frequency of visits for the foreseeable future.

19. Sandwiched between M06 and M07 is Folly Island. Folly Beach is the largest city on Folly Island, and is known for the recreation and development associated with its eponymous beach.

20. According to a recent United States Army Corps of Engineers Report (“Report,” attached to Plaintiff’s Memorandum in support of its Motion for Summary Judgment as Exhibit G), Folly Island experiences erosion at a rate of one to five feet per year and has been renourished with over six million cubic yards of sand since 2003. Report at 54-55. Congress authorized a project to renourish Folly Beach in the 1986 Water Resources Development Act.

21. The recent Corps of Engineers Report estimates that—notwithstanding current offshore borrow sites—Folly Beach and a smaller nearby beach (known as the Isle of Palms) will require an additional 7.6 million cubic yards of sand over the next 50 years. Report at 55.

22. I am aware that the United States Department of the Interior has issued a determination allowing sand from the Coastal Barrier Resources System to be used for renourishment outside of the System.

23. If the Department of the Interior’s new rule stands, System Unit M07 is very likely to be dredged for sand for the replenishment of Folly Beach. Beaches at M07 are closer to Folly Beach than normal offshore borrow sites and are therefore cheaper borrow areas. Indeed,

the Corps' recent report indicates that there are "proven" borrow areas within M07. Report at 57. Moreover, a second Corps report, issued on October 28, 2020 and attached hereto as Exhibit C, proposes to rely on the Rule to dredge M07 beginning in 2024. *See* Ex. C at 49, 94-96.

24. If M07 is indeed mined for the benefit of Folly Beach, I will almost certainly witness firsthand the effects of the dredging. As mentioned earlier, this CBRA Unit's dynamic stability is already somewhat compromised by loss of natural longshore drift sand replenishment. It is also highly dynamic, with large inlet and ocean currents that keep sand moving.

25. Of great concern is the potential loss of bird nesting and feeding habitat. Critically important is the maintenance of Bird Key and the continued shoreline and sand bar feeding areas that provide critical foodstuffs for migratory birds, including tiny coquina clams and horseshoe crab eggs. Bird Key is also one of only five state designated Seabird Sanctuary islands in the state, meaning that there are few places left that are as suitable for nesting and migratory stopover as Bird Key. Sand mining in this system would likely result in further damage to the sand budget and a loss of sand necessary to maintain the dynamic stability of the current movements and interchange of materials between beachfront and islands/sandbars. Those losses would put the loss of critical nesting and migratory bird feeding habitat at risk.

26. A loss of bird feeding and breeding habitat would reduce the aesthetic enjoyment of viewing and enjoying these key coastal sites for the myself and the public at large, as well as potentially reducing populations of many shorebird and seabird species.

27. These injuries would be redressed by a favorable decision from this Court, which would prevent the mining of the CBRA unit for non-CBRA beaches and therefore foreclose the injuries set forth above.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Signed this 5 day of November 2020 in Charleston , South Carolina.

A handwritten signature in black ink, reading "Steve Gilbert", is centered on a light yellow rectangular background. The signature is written in a cursive style with a long horizontal flourish extending from the end of the name.