



# Florida Department of Environmental Protection

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## **CERTIFIED - RETURN RECEIPT REQUESTED**

March 29, 2010

U.S. Army Corps of Engineers  
c/o Eric Summa, Chief  
Planning Division, Environmental Branch  
Jacksonville District  
P.O. Box 4970  
Jacksonville, FL 32232

Permit Modification No. 0173188-003- JN  
Permit No. 0173188-002-JC, Miami-Dade County  
Bakers Haulover Inlet and AIWW Maintenance Dredging

Dear Mr. Summa:

Your request to modify Permit No. 0173188-002-JC was received on December 18, 2008, and has been reviewed by Department staff. The proposed permit modification is to authorize multiple events under the permit by removing the following sentence from the project description: "The current application is for a once-only event." In consideration of multiple events, the permit is also being modified to include a sediment quality assurance/quality control (QA/QC) plan, updated manatee-related conditions, and new specific conditions regarding monitoring and protection of sea turtles, shorebirds and benthic resources.

The following information describes the project history from the time of original permit issuance, and the subjects directly related to the proposed modification. For additional background, please see the *Consolidated Notice of Intent to Issue* for Joint Coastal Permit (JCP) No. 0173188-002-JC, dated October 21, 2005, available at the Bureau website:

[http://bcs.dep.state.fl.us/env-prmt/dade/issued/0173188\\_Bakers\\_Haulover\\_Inlet/002-JC/Intent%20\(06-03-05\)/](http://bcs.dep.state.fl.us/env-prmt/dade/issued/0173188_Bakers_Haulover_Inlet/002-JC/Intent%20(06-03-05)/)

### **Background**

Bakers Haulover Inlet is a man-made cut. It is stabilized with rigid inlet structures, including jetties and revetments. This Inlet connects the north end of Biscayne Bay with the Atlantic Ocean. Both the Inlet and Biscayne Bay are part of the Biscayne Bay Aquatic Preserve (BBAP). Commercial fishermen and recreational boaters access the inlet from the interior via the Atlantic Intracoastal Waterway (AIWW). Dredging of the Inlet and the AIWW is needed to maintain safe navigation. The beach-quality sand that is dredged from this area is bypassed to the downdrift beach.

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On August 4, 1989, the Department issued a 10-year permit (No. 13-1357349) to the U.S. Army Corps of Engineers (Corps) for maintenance dredging of the AIWW in the vicinity of Bakers Haulover Inlet.

In 2000, the Corps applied for a permit (File No. 0173188-001-JC) to continue maintenance dredging of Bakers Haulover Inlet. In 2002, the Corps decided to withdraw that application and reapply later, when more information became available.

On October 21, 2005, the Department issued Permit No. **0173188-002-JC**, which authorized maintenance dredging of a portion of the Atlantic Intracoastal Waterway (AIWW) in the vicinity of Bakers Haulover Inlet (Cut DA-9, Stations 21 to 60), and placement of the beach-quality dredged material south of the jetty, along Bal Harbor beach (DEP reference monuments R-28 to R-32). The initial application proposed dredging of the entire navigational complex within the vicinity of Bakers Haulover Inlet, including the flood shoal. However, due to concerns about seagrasses and corals temporarily colonizing the shoal in this highly dynamic system, and the possibility of silty material in the flood shoal, the Corps limited their request to dredge only that portion of the AIWW channel immediately impaired. The permit only authorized one dredging event, and excluded the larger channel/inlet complex, including the flood shoal. Placement of sand to the north of the inlet, along Haulover Beach, was also excluded. The Permittee placed approximately 50,000 cubic yards of sand south of the inlet when dredging last occurred in June 2006.

### **Justification for modification**

This modification was requested by the Permittee to allow multiple maintenance dredging and placement events for the remaining life of this permit. No other changes to the project description or location were proposed.

### **Staff assessment of modification**

Vibracores were collected for this project in 2008. Vibracores collected in 2006 were also submitted for review even though the channel has been dredged since they were collected. The final borrow area design contains a total of seven (7) vibracores in the channel (three (3) from 2009 and four (4) from 2006). Each vibracore was logged and sampled. Each sample was sieved, a gradation analysis was completed and grain size distribution curves were created. This information was sufficient for the Department to complete a geotechnical review.

A Sediment Quality Assurance/Quality Control (QA/QC) plan was submitted for this project pursuant to Rule 62B-41.008(1)(k), F.A.C. The final draft of the Sediment QA/QC plan dated December 17, 2009 (attached) was approved for use by the Department in conjunction with new Specific Condition 6.

### **Beach Fill Material Characterization**

The beach fill material was characterized by 14 sediment samples collected from the 7 vibracores within the final borrow area design. The sediment within the channel is poorly-sorted, fine grained sand with a composite mean grain size of 0.26 mm (1.67 phi) and a standard deviation (sorting) of 1.30 phi. The composite percent fines passing the #230 sieve is 6.48%. The average carbonate

content is 47.80%. The average visual shell content is 13.20%. The typical Munsell color value of the samples is 6 or 7 with a chroma between 1 and 4.

#### Existing Beach Characterization

A total of 15 samples were collected from Bal Harbor Beach in January 2009. The existing beach sediments area poorly sorted, fine- to medium-grained sand with a composite mean grain size of 0.57 mm (0.82 phi) and a standard deviation (sorting) of 1.11 phi. The composite percent fines passing the #230 sieve is 1.53%. The average carbonate content is 71.02%. The average visual shell content is 44.60%. The typical Munsell color value is 7 or 8 with a chroma between 1 and 3.

#### Native Beach and Borrow Area Compatibility

The material from the channel has a finer grain size and higher percentage of fines than the existing material at the beach. The channel material has lower carbonate content and visual percent shell than the existing beach. According to the Corps' Compatibility Analysis, the material may not stay on the beach as long as coarser material, but the sampled material is still compliant with the numeric standards of Rule 62B-41.007(2)(j), F.A.C.

The Florida Fish & Wildlife Conservation Commission (FWC) provided support of DEP rules that include sand compatibility with the existing sand on sea turtle nesting beaches. After reviewing the results of the geotechnical investigation, and considering the FWC's concern with beach sand compatibility, the Department suggested a condition that would limit silt content to 7%. This is higher than the 5% silt limit for material used for beach nourishment in Rule 62B-41.007(2)(j), F.A.C., but is less than the maximum silt limit of 10% for the disposal of dredged material in Rule 62B-41.007(2)(k), F.A.C. In both cases, compatibility with the turtle nesting beach (also a requirement of the rule) overrides the maximum allowable numeric criteria for silt content.

The Corps' stated concern with silt limitation is that it would hinder their overarching goal to beneficially dispose of dredged sand on the beach, rather than offshore or in upland disposal sites. The geotechnical data indicate that this 7% silt limit is unlikely to be exceeded for this project, thus the Department does not expect this limitation to place an undue burden on the Corps. After discussions, the Corps suggested the silt, which is only expected within Cut DA-9 between stations 48+00 and 51+00, be subject to special handling conditions as stipulated in the Department approved QAQC plan (dated March 29, 2010) including disposal and dewatering in the dune where it will not be subject to wave run-up. The Department agreed to this approach provided the special handling requirement was a specific condition of the permit.

#### Natural Resources

The Department raised concerns about hardbottom impacts identified after the initial project in the summer of 2006 due to the presence of a „sand wedge“ along the wall of the channel and overlying the adjacent bay bottom. Miami-Dade County DERM conducted a survey that identified these impacts, and suggested that the impacts might be due to the dredging operations. However, a review of a summary report on the project provided evidence to the contrary. The Bureau of Beaches & Coastal Systems (Bureau) accepted the findings of the report in 2006, and enforcement action for unauthorized impacts was not pursued. Due to the unclear source of the previous impact,

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the Department's Biscayne Bay Aquatic Preserve staff expressed additional concern about the potential for project-related natural resource impacts when this modification application was received. The Bureau worked with the Aquatic Preserve staff, the Permittee and the Local Sponsor to reach an agreement on revised permit conditions that may better protect natural resources adjacent to the project area from unanticipated impacts. If seagrasses or corals are found within portions of the navigation channel that will be dredged, the Permittee will inform the Aquatic Preserve staff and facilitate the relocation of benthic resources (i.e., seagrass and coral) of suitable size by the Aquatic Preserve staff. While the relocation of benthic resources provides a benefit to the environment that is in the public interest, and supports the basis for issuance of this permit modification, the Department acknowledges that mitigation is not required for impacts from maintenance dredging to corals or seagrasses that have recolonized the channel.

The FWC also recommended updated specific conditions related to marine turtles, shorebirds and manatees to better ensure the reduction or avoidance of impacts to these species due to multiple maintenance events. During the RAI process, the Corps agreed to the updated manatee conditions and to additional surveys during dredging to ensure there is no mechanical damage to natural resources. Although the Bureau would not normally make substantial additions to the marine turtle conditions or add a new set of conditions about shorebirds for a minor modification, this modification is authorizing entirely new events. The turtle and bird conditions recommended by the FWC are fairly standard conditions that would be added during periodic renewals of long-term permits. Therefore, the Department finds that the revisions to the turtle conditions and the addition of bird conditions seem to be warranted in this case. Some of these conditions will be the responsibility of the local sponsor to carry out, particularly after construction has ceased.

### **Local Sponsor Agreement**

The Department will enter into an updated contractual agreement with the local project sponsor, Florida Inland Navigation District (FIND), under which FIND will be responsible for ensuring the shorebird, manatee and turtle monitoring is conducted; post construction monitoring, mitigation, and beach maintenance activities occur; and that adequate coordination efforts occur with the Biscayne Bay Aquatic Preserve Staff to relocate resources within the dredge footprint prior to commencing construction. Even though some of these activities may be conducted by Miami-Dade County, this does not alleviate FIND from responsibility for ensuring all the required monitoring is performed. The agreement is enforceable against FIND and is independent of this permit.

The project description shall be revised as follows (~~strike throughs~~ are deletions, underlines are additions):

### **PROJECT DESCRIPTION:**

The project is to maintenance dredge a portion of the Atlantic Intracoastal Waterway (AIWW) in the vicinity of Bakers Haulover Inlet (Cut DA-9, Stations 21 to 60), and place the beach-quality material south of the jetty, along Bal Harbor beach (DEP reference monuments R 28 to R 32). The estimate of material to be dredged is 50,000 cubic yards per event. ~~The current application is for a once-only event.~~ A cutterhead suction dredge is planned for use in order to clear the indicated section of Cut DA-9, but future modifications

may be requested for periodic dredging of the larger channel/inlet complex, including the flood shoal. Placement of sand to the north, along Haulover Beach, may also be considered in subsequent events.

The specific conditions shall be revised as follows (~~strike throughs~~ are deletions, underlines are additions):

**SPECIFIC CONDITIONS:**

1. All reports or notices relating to this permit shall be sent to the DEP, Bureau of Beaches and Coastal Systems, JCP Compliance Officer, 3900 Commonwealth Boulevard, Mail Station 300, Tallahassee, Florida 32399-3000, email: JCPCCompliance@dep.state.fl.us, and cover letter only to the DEP Southeast District Office, 400 N. Congress Avenue, Suite 200, West Palm Beach, FL, 33401. When submitting any information to the Bureau, please include a transmittal cover letter clearly labeled with the following at the top of each page: "This information is submitted in accordance with Item No. [XX] of Permit No. 0173188-002- JC, Bakers Haulover Inlet and AIWW Maintenance Dredging."
  
23. ~~As soon as practicable prior to construction for the initial dredging event, and a~~ At least 28 days prior to each subsequent dredging event that may be authorized through a permit modification, the Permittee shall submit, for review by the Department, one (1) printed copy and one (1) electronic copy of detailed ***final construction plans and specifications*** for all authorized activities, ~~including an Environmental Protection Plan and Grade Stake Recovery Plan (for beach placement), to be provided by the contractor~~. The plans and specifications shall include a description of the beach and nearshore construction methods to be utilized, including details on dredge location and suction head position monitoring and controls. Any significant changes made to these documents during construction, as necessitated by field conditions, will be dealt with pursuant to General Condition #2. At least 15 days prior to each dredging event, and prior to the preconstruction meeting, the Permittee shall submit, for review by the Department, one (1) printed copy and one (1) electronic copy of the Environmental Protection Plan and Grade Stake Recovery Plan (for beach placement) to be provided by the contractor.
  
34. ~~As soon as practicable prior to commencement of the first maintenance dredging event authorized by this permit, and a~~ At least 14 days prior to each subsequent event that may be authorized through a permit modification, the ~~p~~Permittee shall conduct a conference to review the specific conditions and monitoring requirements of this permit with the Permittee's contractors (including the authorized marine turtle handler) and the area or district engineer of record. Florida Fish and Wildlife Conservation Commission personnel and Department staff representatives will be invited to attend this meeting. The Permittee shall provide written notification, at least 10 days in advance of the meeting, to the following offices advising of the date, time, and location of the pre-construction conference. This will provide an

opportunity for explanation and/or clarification of the environmental protection measures.

DEP Bureau of Beaches & Coastal Systems  
JCP Compliance Officer  
Mail Station 300  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000  
Phone: (850) 488-7708  
Email: [JCPCCompliance@dep.state.fl.us](mailto:JCPCCompliance@dep.state.fl.us) Fax: ~~(850) 488-5257~~

FWC Imperiled Species Management Section  
620 South Meridian Street  
Tallahassee, Florida 32399-1600  
Phone: (850) 922-4330  
Fax: (850) 921-4369

DEP Southeast District Office  
Submerged Lands & Environmental Resources Program  
400 N. Congress Avenue, Suite 200  
West Palm Beach, FL 33401  
Phone: (561) 681-6600  
Fax: (561) 681-6755

Biscayne Bay Aquatic Preserve  
1275A NE 79th Street  
Miami, FL 33138  
Phone: (305) 795- 3485  
Fax: (305) 795- 3470

**45. Seagrass and Hardbottom**

- a. A ~~seagrass~~ natural resource survey shall be conducted approximately 30 days prior to the initiation of construction activities. The in-water survey shall involve a visual inspection of the dredge limits, the proposed pipeline route, the 150-meter mixing zone adjacent to the dredge area, and all vessel operation areas. However, areas that are clearly revealed to be barren sand (as determined by a qualified biologist with experience in seagrass and hardbottom assessment) ~~is~~ using aerial photography taken during from the late spring/summer of the same year as the dredging event or the previous year 2005 ~~(as determined by a qualified biologist with experience in seagrass assessment)~~ need not be surveyed. Transects shall be no more than 20 meters apart, or the minimum spacing necessary for visual assessment of all marine substrate within the areas of concern. The perimeter of all seagrass beds and

hardbottom within the mixing zone shall be delineated on a map at a resolution sufficient to help the contractor avoid anchoring within these areas beds, and for use in Specific Condition No. 910.a (Water Quality Monitoring) below. Qualitative species type and abundance information shall also be noted and spatially referenced. A copy of this natural resource map shall be provided to the Contractor prior to commencing in-water operations, and to the Department with the first weekly turbidity report described in Specific Condition No. 910.

- b. At the earliest possible opportunity, the Permittee shall inform the Department (both the JCP Compliance Officer and the Biscayne Bay Aquatic Preserve staff) of the locations of any coral colonies exceeding 10 cm. in diameter, seagrass patches with more than 50 percent visual coverage and any *Halophila johnsonii* plants that are identified within the footprint of the dredge operations during the pre-construction survey. The Permittee shall provide the Department an opportunity to transplant any salvageable resources. All hard coral colonies that are within the footprint of the dredge operation, and are not otherwise slated for relocation due to size, may be collected by the University of Miami Coral Research Lab for laboratory research purposes subject to the dredging schedule. The Permittee or Local Sponsor shall facilitate transplantation efforts whenever practicable, such as authorizing direct participation by sub-contracted divers to allow more time for transplantation.
- ~~b.c.~~ The Permittee shall select a identified pipeline corridor that is shall be free of seagrass and hardbottom resources (within a 3-meter radius of the centerline), or else a quantitative estimate of seagrass and hardbottom acreage and density (including species type) within the corridor shall be determined, and reported to the Department in an application for a permit modification that proposes seagrassnatural resource avoidance, mitigation or remediation strategies.
- ~~ed.~~ The Permittee shall instruct the contractor to anchor outside of seagrass beds and hardbottom areas whenever possible. Coordinates of all dredge anchor drop points and the pipeline alignment shall be recorded in the dredge and tug operational logs (using DGPS technology, accurate to two (2) meters). Logs shall also include the dates, times and circumstances of all work stoppages, equipment malfunctions, etc. Within 90 days following construction, a copy of the dredge and tug operational logs shall be submitted to the JCP Compliance Officer, DEP, Bureau of Beaches and Coastal Systems.
- e. Seagrasses within the Biscayne Bay Aquatic Preserve are located directly adjacent to the channel to be dredged. Previous dredging events may have resulted in unanticipated impacts to resources adjacent to the channel.

although the specific cause of observed changes to the resources adjacent to the channel could not be documented. To address these concerns, the Permittee, or local sponsor, shall conduct shallow draft vessel-based visual inspections of the boundaries of the dredging areas and pipeline corridors during construction. The inspections shall occur 1) within 24 hours prior to commencement of dredging, 2) once approximately halfway through completion of the dredging, and 3) once immediately following completion of the dredging, but prior to demobilizing. If the Permittee, or local sponsor, notes any unusual or unanticipated areas of impact during or after dredging, such as deposition, denuding, or other kinds of impacts, outside of the authorized channel and its 3:1 sideslopes that were likely caused by construction activities, then in-water diver surveys shall be conducted to more accurately assess the damage. The Department acknowledges that Corps' procedures prohibit personnel from being in the water while the dredge is operating, so these surveys shall occur at times when the dredge is not operating.

- df. Within 21 days following the completion of construction and demobilization completion, a post-construction seagrass natural resource survey shall be conducted following the same approximate transect routes as were used for the pre-construction survey, except that areas previously identified as barren sand do not need to be re-surveyed. Also, divers shall visit all anchor locations that were positioned within the perimeter of a seagrass bed or hardbottom area. Within 60 days of the post-construction seagrass natural resource survey, a report (one electronic and one paper copy) shall be submitted to the Department documenting all signs of impact to the seagrass beds and hardbottom since the pre-construction survey (e.g., reduced perimeter, reduced density, and scouring), an approximate quantification of the extent of the impacts, and an evaluation of the likelihood that the listed impacts are attributable to the dredge operations.
- eg. Impacts to seagrasses and hardbottom are not approved by this permit unless so authorized through a permit modification. Unintentional impacts to seagrasses and hardbottom will require remediation and may be subject to further action.

5. At least 21 days prior to each dredge event, the Permittee will submit to the Department, for review, new geotechnical data from the areas to be dredged. a memorandum that references the specifications that are intended to ensure that the material placed on the beach complies with Rule 62B-41.007(2)(k), F.A.C. This rule states, in part, that "sandy sediment derived from the maintenance of coastal navigation channels shall be deemed suitable for beach placement with up to 10% fine material passing the #230 sieve. If this material contains between 10% and 20% fine material passing the #230 sieve by weight, and it meets all other sediment and



~~water quality standards, it shall be considered suitable for placement in the nearshore portion of the beach.~~ Sediment quality will be assessed as outlined in the Sediment QA/QC plan (attached) and as outlined in Specific Condition No. 7. Any occurrences of unacceptable material will be handled according to the protocols set forth in the DEP approved Sediment QA/QC plan (dated March 29, 2010), or a subsequently revised plan that is acceptable to the Department. The sediment testing result shall be submitted to FDEP within 90 days following the completion of beach construction.

6. The contractor shall follow the approved Sediment QA/QC plan (March 29, 2010), or a subsequently revised plan that is acceptable to the Department.
7. As noted in Specific Condition No. 5, for the first maintenance dredging event in 2010, if the material in Cut DA-9 (between stations 48+00 and 51+00 and ranges 0.0 to 62.5) is dredged, the fill material from that area must be contained landward of the highest point of wave run-up, and turbid water (i.e., greater than 0 NTUs above background) from the slurry shall not be discharged into surface waters.
87. Pursuant to General Condition # 12 and the Department's request, the ~~P~~ermittee will supply to the ~~Bureau~~ Department a copy of any drawings and surveys of the dredge area cross-sections with the statement of completion. These drawings will include pre-construction survey data and drawings, acquired within six (6) months of dredging, and following the last major storm. Both the original design and constructed elevation should be clearly shown. The statement of completion should also include volume dredged for each work area.
98. As soon as practicable, but prior to the initiation of the dredge activity, the ~~P~~ermittee shall submit to the Department drawings and surveys that depict biological resource avoidance areas for this project, including a list of specific activities that are restricted within the avoidance areas. At a minimum, these restrictions shall include:
  - a. No anchoring in seagrass beds
  - b. Pipeline shall not be placed within three (3) feet of seagrass beds
  - c. Vessels crossing seagrass beds shall have a minimum of eighteen (18) inches of water below the draft or the propeller(s), whichever is lower.

The drawings and surveys shall reference Permit No. 0173188-002-JC, and will be of sufficient resolution that both the contractor and Department staff can readily determine on-site compliance. Lack of compliance with the designated avoidance areas shall constitute a violation of this permit.

**MONITORING REQUIRED:**

**109. Water Quality Monitoring (Turbidity)**

**a. Dredge Site:**

**Frequency:** At least three (3) times daily during daytime dredging, at least four (4) hours apart, and at least once during peak flood tide (i.e., at the time of maximum incoming current through the inlet). Additional times, as necessary, when abnormally turbid plumes are spotted, or ~~as directed by~~ in consultation with Department staff following turbidity exceedances.

**Location:** Compliance 1: No more than 150 meters downcurrent of the point of dredging or unauthorized discharge, within the densest portion of any visible turbidity plume, at mid-depth.

Compliance 2: Downcurrent, at the nearest edge of any seagrass bed within 150 meters of the point of dredging or unauthorized discharge, within the densest portion of any visible turbidity plume, at mid-depth.

**Background:** At least 300 meters upcurrent of the point of dredging or unauthorized discharge, outside any visible turbidity plume and any influence of this project, at mid-depth.

**Threshold:** One (1) nephelometric turbidity unit (NTU) above background at Compliance Location 1, and 29 NTUs above background at Compliance Location 2.

**b. Disposal Site:**

**Frequency:** Twice daily, at least six (6) hours apart, after disposal has been continual for at least one (1) hour.

**Location:** Compliance: 150 meters from the discharge point, within the densest portion of any visible turbidity plume, at surface and mid-depth. If no plume is visible, samples shall be collected 150 meters downcurrent of the discharge point and 50 meters offshore.

**Background:** At least 300 meters upcurrent of the discharge point outside of any visible turbidity plume and any influence of this project, at the same distance offshore as the compliance point.

**Threshold:** 29 NTUs above background.

Weekly summaries of all turbidity monitoring data shall be submitted to the JCP Compliance Officer of the Bureau of Beaches and Coastal Systems and to the Southeast District Office within one week of collection, with documents containing the following information: (1) “**Permit Number 0173188-003-JC**”; (2) “**Bakers Haulover Inlet and AIWW Maintenance Dredging**” (3) dates and times of sampling and analysis; (4) a statement describing the methods used in collection, handling, storage and analysis of the samples; (5) a map indicating the sampling locations, current direction, plume configuration and the location of the dredge and discharge point(s); and (6) a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection and accuracy of the data. Monitoring reports shall also include the following information for each sample that is taken: a) time of day samples taken; b) depth of water body; c) depth of sample; d) antecedent weather conditions; e) tidal stage and direction of flow; f) wind direction and velocity; and g) DGPS position. Reports may be submitted electronically.

The 150-meter compliance locations given above shall be considered the limits of the temporary mixing zone for turbidity allowed during construction. If monitoring reveals that the turbidity levels at the compliance sites, including the edges of seagrass beds within the mixing zone, are greater than the indicated thresholds construction activities shall cease immediately (unless otherwise directed by the Department) and not resume until corrective measures have been taken and turbidity has returned to acceptable levels (i.e., following two consecutive measurements resulting in below-threshold values).

Any measurement greater than zero (0) NTUs above background within the Aquatic Preserve (dredge site) or 29 NTUs above background outside the Aquatic Preserve (disposal site) shall constitute a turbidity violation and must be immediately reported to the JCP Compliance Officer ([JCPcompliance@dep.state.fl.us](mailto:JCPcompliance@dep.state.fl.us)) and Biscayne Bay Aquatic Preserve Manager. Any exceedance of the thresholds stated above shall also be reported immediately, along with the associated corrective actions. Although exceedances at Compliance Station 1 that fall between the 0 NTU standard and the 1 NTU threshold do not require immediate shutdown, they must still be reported immediately. For every third exceedance of the indicated thresholds within any seven day period, which restarts each time the Permittee receives confirmation to continue operations from Department staff, the Permittee shall consult with Department staff prior to resuming construction.

#### 110. **Marine Turtles**

- a. From April 1 through November 30, all project lighting shall be limited to the immediate area of active construction only and shall be the minimal lighting necessary to comply with U.S. Coast Guard and/or OSHA requirements.

Stationary lighting on the beach and all lighting on the dredge shall be minimized through reduction, shielding, lowering, and appropriate placement of lights to minimize illumination of the nesting beach and water. Shields must be affixed to the light housing and be large enough to block light from all lamps from being transmitted outside the construction area, according to Figure 1 below.

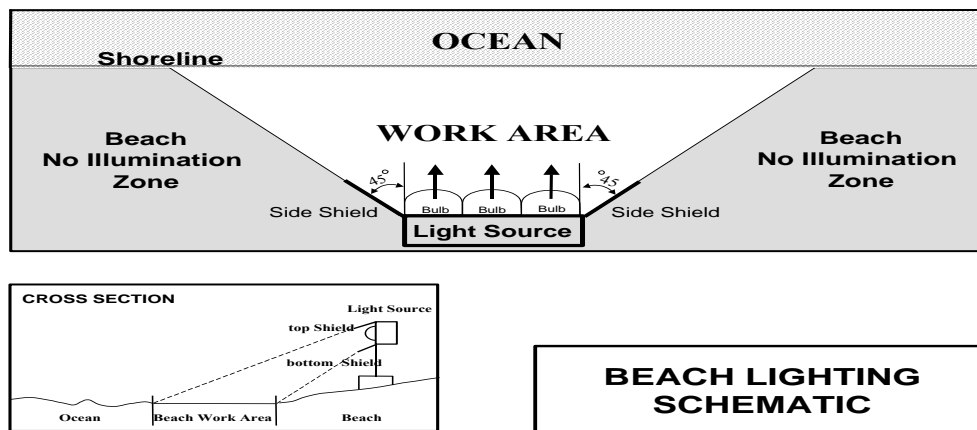


Figure 1

- b. From April 1 through November 30, staging areas for construction equipment shall be located off the beach. Nighttime storage of construction equipment not in use shall be off the beach to minimize disturbance to sea turtle nesting and hatching activities. All construction pipes that are placed on the beach shall be located as far landward as possible without compromising the integrity of the existing or reconstructed dune system.
- c.. Construction-related activities are authorized to occur on the nesting beach (seaward of existing coastal armoring structures or the dune crest) during the nesting season (May 1 through October 31) under the following conditions:
  - i. A daily marine turtle nest survey of the nesting beach in the vicinity of the project (including areas of beach access) shall be conducted starting April 1 and continue until September 30. Only those nests that may be affected by construction activities shall be relocated for this project; all other relocations shall occur in accordance with the existing Marine Turtle Permit for this beach.
  - ii. Nests requiring relocation shall be moved no later than 9 a.m. the morning following deposition to a nearby self-release beach site in a

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secure setting where artificial lighting will not interfere with hatchling orientation. Nest relocations in association with construction activities shall cease when construction activities no longer threaten nests.

- iii. Nests deposited within areas where construction activities have ceased or will not occur for 65 days shall be marked and left in place unless other factors threaten the success of the nest or in accordance with the existing Marine Turtle Permit for this beach.
- iv. Such nests will be marked and the actual location of the clutch determined. A circle with a radius of ten (10) feet, centered at the clutch, shall be marked by stake and survey tape or string. No construction activities shall enter this circle and no adjacent construction shall be allowed which might directly or indirectly disturb the area within the staked circle.
- v. No construction activity may commence until completion of the marine turtle survey each day.

It is the responsibility of the Permittee to ensure that the project area and access sites are surveyed for marine turtle nesting activity. All nesting surveys, nest relocations screening or caging activities etc. shall be conducted only by persons with prior experience and training in these activities and who is duly authorized to conduct such activities through a valid permit issued by the Fish and Wildlife Conservation Commission (FWC), pursuant to Rule 68E-1, F.A.C.

- d. If the beach nourishment project will be conducted during the period from November 1 through November 30, daily early morning sea turtle nesting surveys must be conducted 65 days prior to project initiation and continue through September 30, and eggs must be relocated per the preceding requirements.
- e. Beach compaction testing and tilling requirements are included in the attached Local Sponsor Agreement.
- f. Escarpment monitoring and maintenance requirements are included in the attached Local Sponsor Agreement.
- g. In the event a sea turtle nest is excavated during construction activities, all work shall cease in that area immediately and the permitted person responsible for egg relocation for the project ~~should~~shall be notified so the

eggs can be moved to a suitable relocation site.

- h. Upon locating a dead, injured, or sick endangered or threatened sea turtle specimen, initial notification must be made to the FWC at 1-888-404-FWCC (3922). Care should be taken in handling sick or injured specimens to ensure effective treatment and care and in handling dead specimens to preserve biological materials in the best possible state for later analysis of cause of death. In conjunction with the care of sick or injured endangered or threatened species or preservation of biological materials from a dead animal, the finder has the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.
- i. Marine turtle nest monitoring and reporting requirements are included in the attached Local Sponsor Agreement.

12. Artificial beachfront lighting in the beach nourishment area must be addressed by the Permittee or the local sponsor to ensure that nests deposited in the elevated berm are not impacted by beachfront lighting. The local sponsor must complete a survey by May 15 of all lighting visible from the nourished beach, using standard techniques for such a survey. For each light not in compliance, the local sponsor must provide documentation that the property owner(s) has been notified of the problem light with recommendations for correcting the light. A summary report of the survey and documentation of property owner notification must be submitted to FWC by June 1 of that nesting season. Additional lighting surveys must be conducted by June 15, July 15, August 15, and September 15 of that nesting season and results reported by the 1st of the following month; and a final summary report provided by December 15 of that year.

13 The Permittee shall arrange a meeting between representatives of the contractor, the Department, the FWC, and the permitted person responsible for marine turtle nest monitoring at least 30 days prior to the commencement of work on this project. At least 15 days advance notice shall be provided prior to conducting this meeting. This will provide an opportunity for explanation and/or clarification of the sea turtle protection measures.

14 Reports on all nesting activity shall be provided by the local sponsor for the initial nesting season and for a minimum of two additional nesting seasons. Monitoring of nesting activity in the seasons following construction shall include daily surveys and any additional measures authorized by the FWC. Reports submitted shall include daily report sheets noting all activity, nesting success rates, hatching success of all relocated nests, hatching success of a representative sampling of nests left in place (if any), dates of construction and names of all personnel involved in nest surveys and relocation activities. Data should be reported separately for nourished and non-nourished areas within the local sponsor's survey beach area in accordance with the

attached Table. Summaries of nesting activity shall be submitted in electronic format (Excel spreadsheets). All reports should be submitted by January 15 of the following year.

**Shorebirds:**

- 15 Shorebird surveys shall be conducted by trained, dedicated individuals (Shorebird Monitor) with proven shorebird identification skills and avian survey experience. Credentials of the Shorebird Monitor will be forwarded to the FWC Regional Biologist for review. Shorebird Monitors will use the survey protocols outlined in Specific Condition 15.
- 16 Shorebird Monitors shall review and become familiar with the general information and data collection protocols outlined on the FWC's Beach-Nesting Bird Website (<http://myfwc.com/shorebirds/>). An outline of what data should be collected, including downloadable field data sheets, is available on the website.
- a. Nesting season surveys shall begin on April 1 or 10 days prior to project commencement (including surveying activities and other pre-construction presence on the beach), whichever is later, and be conducted daily throughout the construction period by the Permittee. The local sponsor shall continue shorebird monitoring after demobilization. Weekly surveys of the project site by the local sponsor shall continue through August or through fledgling or loss of identified nests or hatchlings, whichever is later.
- b. Nesting season surveys shall be conducted in all potential beach-nesting bird habitats within the project boundaries that may be impacted by construction or pre-construction activities during the nesting season. Portions of the project in which there is no potential for project-related activity during the nesting season may be excluded.
- c. Surveys for detecting new nesting activity will be completed on a daily basis prior to movement of equipment, operation of vehicles, or other activities that could potentially disrupt nesting behavior or cause harm to the birds or their eggs or young.
- d. Surveys shall also document the presence of any piping plovers within or adjacent to the dredge site. Activities must be implemented to avoid disturbing this endangered species.
- 17 Once breeding is confirmed by the presence of a scrape, eggs, or young, the Bird Monitor will notify the Regional Nongame Biologist of the FWC at (561) 625-5122 within 24 hours.

- a. All breeding activity will be reported to the Beach-Nesting Bird website within one week of data collection.
  - b. Observations of non-breeding shorebirds shall be reported to the Shorebird-Seabird Occurrence Database and the Regional Nongame Biologist.
- 18 Within the project area, the Permittee shall establish a 300 ft-wide buffer zone around any location where shorebirds have been engaged in nesting behavior, including territory defense. Any and all construction activities, including movement of vehicles, shall be prohibited in the buffer zone. The protocols to be followed include:
- a. The width of the buffer zone shall be increased if birds appear agitated or disturbed by construction or other activities in adjacent areas.
  - b. Site-specific buffers may be implemented in coordination with FWC as needed.
  - c. Reasonable and traditional pedestrian access should not be blocked where nesting birds will tolerate pedestrian traffic. This is generally the case with lateral movement of beach-goers walking parallel to the beach at or below the highest tide line. Pedestrian traffic may also be tolerated when nesting was initiated within 300 feet of an established beach access pathway. The Permittee shall work with FWC staff to determine if pedestrian access can be accommodated without compromising nesting success.
  - d. Designated buffer zones must be posted with clearly marked signs around the perimeter. If pedestrian pathways are approved within the 300-foot buffer zone, these should be clearly marked. These markings shall be maintained until nesting is completed or terminated. In the case of solitary nesters, nesting is not considered to be completed until all chicks have fledged.
  - e. No construction activities, tilling and scarp removal, movement of vehicles, or stockpiling of equipment shall be allowed within the buffer area.
- 19 FWC-approved travel corridors shall be designated and marked outside the buffer areas. Heavy equipment, other vehicles, or pedestrians may transit past nesting areas in these corridors. However, other activities such as stopping or turning shall be prohibited within the designated travel corridors adjacent to the nesting site.
- a. Where such a travel corridor must be established within the project area it should avoid critical areas for shorebirds (known nesting sites, wintering grounds, FWC-designated Critical Wildlife Areas, and USFWS designated critical piping plover habitat) as much as possible.



and be marked with signs clearly delineating the travel corridor from the shorebird buffer areas described above.

b. To the degree possible, the Permittee should maintain some activity within these corridors on a daily basis, without directly disturbing any shorebirds documented on site or interfering with sea turtle nesting, especially when those corridors are established prior to commencement of construction. Passive methods to modify nesting site suitability must be approved by FWC Regional Biologist for that region.

20 If shorebird nesting occurs within the project area, a bulletin board will be placed and maintained in the construction area with the location map of the construction site showing the bird nesting areas and a warning, clearly visible, stating that "BIRD NESTING AREAS ARE PROTECTED BY THE FLORIDA THREATENED AND ENDANGERED SPECIES ACT AND THE STATE AND FEDERAL MIGRATORY BIRD ACTS".

21 A relatively even surface, with no deep ruts or furrows, shall be created during tilling. To do this, chain-linked fencing or other material shall be dragged over those areas as necessary after tilling. The slope between the mean high water line and the mean low water line must be maintained in such a manner as to approximate natural slopes.

22 If it will be necessary to extend construction pipes past a known shorebird nesting site or over-wintering area for piping plovers, then whenever possible those pipes should be placed landward of the site before birds are active in that area. No pipe or sand shall be placed seaward of a known shorebird nesting site during the shorebird nesting season.

#### 23. Manatees

a. All personnel associated with the project shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with and injury to manatees. The Permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.

b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.

- c. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers must not impede manatee movement.
- d. All on-site project personnel are responsible for observing water-related activities for the presence of manatee(s). All in-water operations, including vessels, must be shutdown if a manatee(s) comes within 50 feet of the operation. Activities will not resume until the manatee(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the manatee(s) has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.
- e. Any collision with or injury to a manatee shall be reported immediately to the FWC Hotline at 1-888-404-FWCC(3922). Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-731-3336) for north Florida or Vero Beach (1-772-562-3909) for south Florida.
- f. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the Permittee upon completion of the project. Awareness signs that have already been approved for this use by the Florida Fish and Wildlife Conservation Commission (FWC) must be used (see MyFWC.com). One sign which reads *Caution: Boaters* must be posted. A second sign measuring at least 8 1/2" by 11" explaining the requirements for "Idle Speed/No Wake" and the shut down of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related activities.
- a. ~~The permittee shall instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. All construction personnel are responsible for observing water-related activities for the presence of manatee(s). The observer(s) shall contact the captain of the vessel in order to reduce the speed or alter the course, as necessary, should any manatees be observed. For the smaller boats associated with this project, the vessel operator can fulfill this requirement.~~
- b. ~~The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act of 1972, The Endangered Species Act of 1973, and the Florida Manatee Sanctuary Act.~~
- e. ~~Siltation barriers shall be made of material in which manatees cannot become entangled, are properly secured, and are regularly monitored to avoid~~

~~manatee entrapment. Barriers must not block manatee entry to or exist from essential habitat.~~

- d. ~~All vessels associated with the construction project shall operate at "no wake/idle" speeds at all times while in the construction area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.~~
- e. ~~If manatee(s) are seen within 100 yards of the active daily construction/dredging operation or vessel movement, all appropriate precautions shall be implemented to ensure protection of the manatee. These precautions shall include the operation of all moving equipment no closer than 50 feet of a manatee. Operation of any equipment closer than 50 feet to a manatee shall necessitate immediate shutdown of that equipment. Activities will not resume until the manatee(s) has departed the project area of its own volition.~~
- f. ~~Any collision with and/or injury to a manatee shall be reported immediately to the FWC Hotline at 1-888-404-FWCC. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-232-2580) for north Florida or Vero Beach (1-772-562-3909) in south Florida.~~
- g. ~~Temporary signs concerning manatees shall be posted prior to and during all construction/dredging activities. All signs are to be removed by the permittee upon completion of the project. A sign measuring at least 3 ft. by 4 ft. which reads Caution: Manatee Area will be posted in a location prominently visible to water related construction crews. A second sign should be posted if vessels are associated with the construction, and should be placed visible to the vessel operator. The second sign should be at least 8 1/2" by 11" which reads Caution: Manatee Habitat. Idle speed is required if operating a vessel in the construction area. All equipment must be shutdown if a manatee comes within 50 feet of operation. Any collision with and/or injury to a manatee shall be reported immediately to the FWC Hotline at 1-888-404-FWCC. The U.S. Fish and Wildlife Service should also be contacted in Jacksonville (1-904-232-2580) for north Florida or in Vero Beach (1-772-562-3909) for south Florida.~~
- hg. At least one observer shall be present when in-water work is being performed. Observers shall have a degree in biology, marine biology, oceanography, or the equivalent, and a minimum of 40 hours of manatee survey experience. Otherwise, prior to dredging, the manatee observers must specifically be ~~reviewed~~ approved by the Department, in consultation with the FWC Imperiled Species Management Section.

- i. The names, contact information and résumés of the designated manatee observers shall be submitted to the Department a minimum of one week prior to construction. Résumés should specify projects involving documented manatee sightings.
  - ii. Within 30 days following completion of the project, a report detailing manatee sightings, boat-manatee collisions, and manatee injuries shall be submitted to the Imperiled Species Management Section, Division of Habitat and Species Conservation, 620 South Meridian Street, Mailbox 6A, Tallahassee, FL 32399-1600.
  - iii. The manatee observers must be onsite during all in-water construction activities and be given authority to advise personnel to cease operation upon sighting a manatee within 50-feet of any in-water construction activity.
- h. After sunset, vessel movement within the Biscayne Bay Aquatic Preserve will be minimized to the greatest extent possible under normal operating procedures, as the likelihood of spotting submerged animals is limited. Within Biscayne Bay, lighting should be used, as appropriate, to assist in manatee observations. No dredging shall be performed at night using a clamshell-type vessel.

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After thorough review of your application, staff finds that the proposed modification is not expected to adversely affect water quality or be contrary to the public interest. Staff has also determined that the proposed alteration does not increase the potential for adverse impact on the coastal system, public beach access seaward of the mean high water line or nesting sea turtles and hatchlings and their habitat, and that the proposed alteration does not reduce the design adequacy of the project. Since the proposed modification is not expected to result in any adverse environmental impact or water quality degradation, the **permit is hereby modified** as stated above. By copy of this letter, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **October 21, 2015** expiration date, other Specific or General Conditions, or monitoring requirements of the permit. This letter must be attached to the original permit.

This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, Florida Statutes, as provided below. The procedures for petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

## NOTICE OF RIGHTS

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in further modification of the permit or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this permit modification automatically becomes only proposed agency action on the application subject to the result of the administrative review process. Accordingly, the Permittee is advised not to commence construction or other activities under this permit modification until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time has expired.

Under Rule 62-110.106(4), Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Any intervention will be only at the discretion of the presiding judge upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the Permittee must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the permittee, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first.

Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the Permittee at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the

Notice of Permit Modification

Permit Modification No. 0173188-003-JN, Miami-Dade County

Bakers Haulover Inlet and AIWW Maintenance Dredging

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appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S.

In accordance with Rule 28-106.201, F.A.C., a petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C. Under Sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

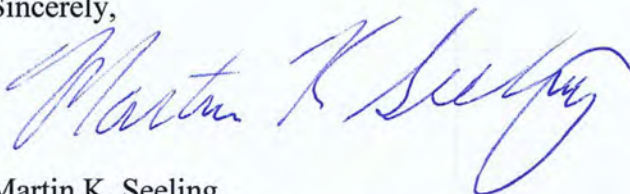
This permit modification constitutes an order of the Department. The Permittee has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.

When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in Rule 62-110.106, F.A.C., a person may request a copy of the agency action. The

Department shall upon receipt of such a request, if agency action has occurred, promptly provide the person with notice. The Department does not require notice of this agency action to be published. However, the permittee may elect to publish notice as prescribed in Rule 62-110.106, F.A.C., which constitutes notice to the public and establishes a time period for submittal of any petition.

If you have any questions regarding this matter, please contact Dr. Merrie Beth Neely at the letterhead address (add Mail Station 300) or by telephone at (850) 413-7785.

Sincerely,



Martin K. Seeling  
Environmental Administrator  
Bureau of Beaches & Coastal Systems

MKS/mbn

Four attachments: DEP Approved QAQC plan (3-29-10), turtle table 1, revised LSA (3-29-10) and manatee sign

cc: Mary Ann Poole, FWC, OPSC  
Robbin Trindell, FWC, ISMS  
Ricardo Zambrano, FWC, South Region  
Jennifer Smith, DEP, SE District Office  
Chantal Collier, DEP, CAMA  
Joanna Walczak, DEP, CAMA  
Pamela Sweeney, DEP, Biscayne Bay A.P  
. Michael Barnett, BBCS-Chief  
Robert Brantly, BBCS-CE  
Jenny Cheng, BBCS-CE  
Jennifer Koch, BBCS-CE  
Paden Woodruff, BBCS-BECP  
Richard Noyes, BBCS-BECP  
Roxane Dow, BBCS-BECP  
Martin Seeling, BBCS-JCP

Vladimir Kosmynin, BBCS-JCP  
Celora Jackson, BBCS-CCCL  
Wes Cich, BBCS-CCCL  
JCP Compliance Officer  
Steve MacLeod, BBCS- JCP  
Alex Reed, BBCS-BECP  
Major Alfredo Escanio, FWC, So. Region B  
Jocelyn Karazsia, NMFS, West Palm Beach  
Audra Livergood, NMFS, Fort Lauderdale  
Jeffrey Howe, USFWS, Vero Beach  
Ron Miedema, USEPA, West Palm Beach  
BBCS Permit File  
Bryan Flynn, Miami-Dade County  
Alfred J. Treppeda, Manager, Bal Harbour Village  
Carolyn A. Dekle, Director, SFRPC

### FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

  
\_\_\_\_\_  
Deputy Clerk

  
\_\_\_\_\_  
Date