



# United States Department of the Interior

## U. S. FISH AND WILDLIFE SERVICE

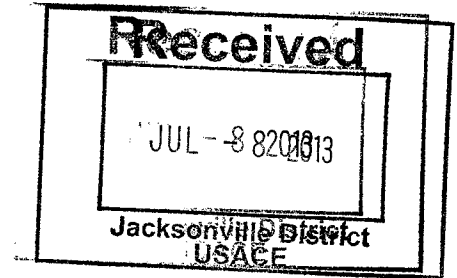
7915 BAYMEADOWS WAY, SUITE 200  
JACKSONVILLE, FLORIDA 32256-7517

IN REPLY REFER TO:

**FWS Log No. 41910-2013-F-0148**

July 02, 2013

Colonel Alan M. Dodd  
District Commander  
U.S. Army Corps of Engineers  
Post Office Box 4970  
Jacksonville, Florida 32232-0019



Dear Colonel Dodd:

This document transmits the U.S. Fish and Wildlife Service's (Service's) decision as to the application of the August 22, 2011, Statewide Programmatic Biological Opinion (SPBO) (Service 2011) and the May 22, 2013, Programmatic Piping Plover Biological Opinion (P<sup>3</sup>BO) (Service 2013), to proposed Flood Control and Coastal Emergency (FCCE) sand placement and navigation dredging projects. The U.S. Army Corps of Engineers (Corps) determined in letters to the Service (two dated April 4, one of April 5, and one of May 20, 2013) that various proposed projects located in North Florida Ecological Services Field Office (NFESFO) area of authority "may affect" the threatened loggerhead sea turtle (*Caretta caretta*), endangered leatherback sea turtle (*Dermochelys coriacea*), endangered green sea turtle (*Chelonia mydas*), endangered hawksbill sea turtle (*Eretmochelys imbricata*), and endangered Kemp's ridley sea turtle (*Lepidochelys kempi*); "may affect, but are not likely to adversely affect" the endangered West Indian manatee (*Trichechus manatus*); and would have "no effect" on listed beach mice. The letters of April 4 and 5, 2013, determined that the projects "may affect, but are not likely to adversely affect" the threatened piping plover (*Charadrius melodus*). The letter of May 20, 2013, provided determinations as to whether individual proposed FCCE projects were located in optimal piping plover habitat as defined in the P<sup>3</sup>BO. Those projects outside of optimal habitat where determined as "may affect, but are not likely to adversely affect" the piping plover. Only the St. Augustine Inlet project was determined to take place in optimal piping plover habitat, resulting in a "may affect" determination. The May, 20, 2013, letter did not address beach mice, but attached project summaries cited that the endangered Anastasia Island beach mouse (*Peromyscus polionotus phasma*) is present in the vicinity of the St. Augustine Inlet project and that the threatened southeastern beach mouse (*Peromyscus polionotus niveiventris*) is present in the vicinity of the Ponce de Leon Inlet project. Since the May 20, 2013, letter, meetings, phone calls, and emails have provided further details of the projects and Corps commitments to address listed species concerns. This letter is provided in accordance with section 7 of the Endangered Species Act of 1973, as amended (Act) (87 Stat. 884; 16 U.S.C. 1531 *et seq.*), Fish and Wildlife Coordination Act of 1958, as amended (FWCA) (48 Stat. 401; 16 U.S.C. 661 *et seq.*), and the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 701 *et seq.*).

Please note that the Service and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) share federal jurisdiction for sea turtles under the Act. The Service has responsibility for sea turtles on nesting beaches and the NMFS has jurisdiction for sea turtles in the marine environment. Our analysis will only address activities that may impact nesting sea turtles, their nests and eggs, and hatchlings as they emerge from the nest and crawl to the sea. The Corps

should consult with the NMFS concerning potential impacts to foraging and swimming sea turtles, and all other marine species under their jurisdiction within the action area. For further information on Act compliance with the NMFS, please contact Ms. Cathy Tortorici, Chief of the Interagency Cooperation Branch, by e-mail at [cathy.tortorici@noaa.gov](mailto:cathy.tortorici@noaa.gov) or by phone at 727-209-5953.

### **PROJECT DESCRIPTION**

The Corps proposes to conduct seven FCCE beach nourishment or navigation dredging projects in Brevard, St. Johns, Volusia, Pinellas and Manatee counties, Florida (Table 1). Using a cutterhead, hopper, or clamshell dredge, the authorized volume of beach compatible material will be dredged from an authorized borrow area or navigation channel, placed in authorized fill templates, and graded to the authorized profile using bulldozers. Non-beach compatible material may be placed in nearshore waters or in an offshore dredge material disposal site.

The proposed projects will take place during day and nighttime hours with a proposed construction time frame varying from 3 to 7 months (Table 1). All staging areas and beach access corridors will be sited to avoid impacts to upland habitat to the extent possible. If impacts are incurred, all impacted areas and vegetation will be restored to preconstruction condition and elevation.

The action area is defined as all areas to be affected directly or indirectly by the action and not merely the immediate area involved in the action. The Service identifies the action area to include the staging areas, pipeline corridors, beach access corridors, offshore borrow areas, sand placement fill templates, downdrift areas, and navigation channel dredge templates associated with the proposed FCCE projects. The intent of the proposed FCCE projects is to address shoreline erosion and navigation channel shoaling due to damage incurred from Tropical Storm Debby or Hurricane Sandy.

### **APPLICATION OF THE SPBO AND P3BO**

The Service has determined that the SPBO is appropriate to apply to the proposed FCCE projects. Previously, the Service and Corps predicted emergency events resulting in project effects such as in these FCCE projects to occur at a frequency of no more than once every 10 years (as reflected in the amount or extent of anticipated take for sea turtles included in the SPBO). Given that the proposed FCCE projects are scheduled to occur sooner than the 10-year frequency, in a letter dated May 2, 2013, the Service analyzed these effects under the Act, provided additional conditions, and modified the take for emergency projects under the SPBO to occur once in 7 years, for this one-time event.

The Corps has agreed to follow and implement the minimization measures, Reasonable and Prudent Measures (R&PMs), and Terms and Conditions (T&Cs) in the SPBO and those included in the May 2, 2013, letter, as they relate to nesting sea turtles. However, the Corps has requested exceptions relating to lighting surveys from T&C A11 in the SPBO and T&C 3 in the May 2, 2013, letter due to timing and funding constraints. The Corps has proposed that alternative lighting surveys be conducted just prior to construction and immediately after construction, allowing for evaluation of both “pre-construction” and “post-construction” lighting hazards. This requested exception is authorized by the Service provided that the Corps expedites all lighting survey reports, and their transmission to the Service and to the Florida Fish and Wildlife Conservation Commission (FWC). The pre-construction survey can be summarized as a brief report; however, the post construction survey report must include: methodology of the survey; a map showing the position of the lights visible from the beach; a description of each light source visible from the beach; recommendations for remediation; and any actions taken. Within a week after the post construction survey a meeting

should be scheduled to discuss results. The meeting should occur, at latest, within one month of the post construction survey (earlier if during the sea turtle nesting season). This will enable all parties to take appropriate measures to minimize lighting impacts.

Regarding the beach mice, the St. Augustine Inlet project is anticipated to impact 4,200 linear feet of beach adjacent to dunes systems and other vegetation supporting the Anastasia Island beach mouse. For this reason we conclude that the project has potential to affect the beach mouse. Provided that the project adheres to the SPBO's R&PMs and T&Cs regarding beach mice, take provisions of the SPBO would apply. For the Ponce de Leon Inlet project, habitat near the inlet is known to support the southeastern beach mouse. Currently proposed dredging and nearshore disposal alternatives that would avoid work in this habitat should not impact the southeastern beach mouse.

Provided that the Standard Manatee Conditions for In-Water Work (FWC 2011) and minimization measures outlined in the SPBO will be implemented to avoid potential impacts to manatees, the Service concurs with the Corps determination that the FCCE projects "may affect, but are not likely to adversely affect" the manatee.

The Service has also determined that the provisions of the P<sup>3</sup>BO are appropriate to apply to these FCCE projects. The conservation measures in the P<sup>3</sup>BO are applicable for projects located in both non-optimal and optimal piping plover habitat. In addition, the R&PMs, and T&Cs as outlined in the P<sup>3</sup>BO are applicable to those projects located in optimal piping plover habitat (Table 1). The Corps has agreed to follow and implement the conservation measures, R&PMs and T&Cs, that apply to the proposed projects. However, the Corps has requested an exception to T&C 8 of the P<sup>3</sup>BO relating to piping plover monitoring. Due to time and funding restraints, the Corps has determined that it cannot conduct monitoring for 1 year prior to construction and 2 years post-construction, respectively and that surveys will be limited to the term of construction (i.e., when the construction contractor is working on the beach, generally starting soon after the "notice to proceed" and ending when the contractor finishes placing sand or finishes conducting other shore protection activities on or near the beach). The requested exception is authorized by the Service and we concur with the effect determinations regarding the piping plover provided in the Corps letter of May 20, 2013.

Please note that the SPBO and P<sup>3</sup>BO dictate that the Corps and the Service will meet annually during the fourth week of August to review proposed activities, assess new data, identify information needs, and scope measures to address those needs (including but not limited to evaluations and monitoring specific to the SPBO and P<sup>3</sup>BO, reviewing results, formulating or minimizing actions that minimize take of listed species, and monitoring effectiveness of those actions). Also note that the Corps is required to submit a report by July 31 of the year immediately following construction, including information as described in T&Cs A22 or B19 in the SPBO, and T&C 9 in the P<sup>3</sup>BO.

## **FISH AND WILDLIFE RESOURCES**

This section is provided in accordance with the FWCA to address other fish and wildlife resources in the project area. All sand placement projects within the nesting season could impact nesting birds protected under the MBTA. In order to comply with the MBTA, the Corps shall follow the FWC's standard shorebird protection guidelines to protect against impacts to nesting shorebirds during implementation of these projects (Nesting season is from February 15-August 31 on the Gulf Coast and from April 1-August 31 on the Atlantic Coast).

The FCCE projects involve fill templates previously constructed; hence, hardbottom and seagrass issues have likely been addressed and appropriately mitigated. The Corps should continue to consult with the NMFS to assess all potential effects to hardbottom habitat and submerged aquatic vegetation within the dredging and sand placement templates, and shoreline downdrift areas.


### REINITIATION NOTICE

This concludes formal consultation on the actions outlined in the request. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if:

1. The amount or extent of incidental take outlined in the SPBO, P<sup>3</sup>BO, or the May 2, 2013, letter is exceeded. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation;
2. New information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion;
3. The agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or,
4. A new species is listed or critical habitat designated that may be affected by the action.

Thank you for your cooperation in the effort to conserve fish and wildlife resources. Should you have additional questions or require clarification regarding this letter, please contact Peter Plage at 904-731-3085.

Sincerely,



Dawn Jennings  
Acting Field Supervisor

cc: electronic only

Corps, Jacksonville, Florida (Ken Dugger)  
DEP, Tallahassee, Florida (Lanie Edwards)  
FWC, Tallahassee, Florida (Robbin Trindell)  
NMFS, St. Petersburg, Florida (Cathy Tortorici)  
Service, Vero Beach, (Jeff Howe)  
Service, Panama City, Florida (Patty Kelly)  
Service, St. Petersburg, Florida (Anne Marie Lauritsen)