APPENDIX F

Environmental Compliance

Supplemental Environmental Assessment
Maintenance Dredging Fort Myers Beach Harbor, Federal Navigation Project with Expanded Beach and Nearshore Placement
Lee County, Florida
NEPA ID: SEAX-202-00-K3P-1754056029

U.S. Army Corps of Engineers
JACKSONVILLE DISTRICT

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1.1 ENVIRONMENTAL COMPLIANCE

This SEA has been prepared pursuant to NEPA and its implementing regulations. The status of the proposed project's compliance with environmental acts and E.O.s are provided in Table 6-2 and Appendix F.

The status of environmental compliance is described as follows:

Compliant: Meets all requirements of the statute for the current stage of planning (either pre-authorization or post-authorization).

In Progress: Not having met some of the requirements that normally are met in the current stage of planning or pending due notice of availability and comment public/agency comment period.

Not Applicable: No requirements for the statute required for the planning/ construction.

Table 1. Status of environmental compliance.

Reference	Law, Policy, and Regulations	Status
42 United States Code (U.S.C.) § 4321 *et seq*.	National Environmental Policy Act of 1969, as amended	In Progress
43 U.S.C. 2101-2106	Abandoned Shipwrecks Act, as amended	In Progress
42 U.S.C. §§ 1996 and 1996a	American Indian Religious Freedom Act	In Progress
16 U.S.C. §§ 757A-757G	Anadromous Fish Conservation Act	Not Applicable
54 U.S.C. 320301-320303 and 18 U.S.C. 1866(b)	Antiquities Act of 1906, as amended	Not Applicable
16 U.S.C. 469-469c	Archaeological and Historic Preservation Act	In Progress
54 U.S.C. § 312501-312508	Archaeological Resources Protection Act, as amended	Not applicable
16 U.S.C. 668-668d	Bald and Golden Eagle Protection Act	Compliant
42 U.S.C. § 7401 *et seq*.	Clean Air Act of 1972	Compliant

Reference	Law, Policy, and Regulations	Status
33 U.S.C. § 1341 and 33 U.S.C. § 1344(b)	Clean Water Act of 1972, Section 401 and Section 404(b)	In Progress
16 U.S.C. § 3501 *et seq*.	Coastal Barrier Resources Act and Coastal Barrier Improvement Act of 1990	Compliant
16 U.S.C. § 1451 *et seq*.	Coastal Zone Management Act of 1972	In Progress
16 U.S.C. § 1531 *et seq*.	Endangered Species Act of 1973	In Progress
16 U.S.C. §§ 1221-26	Estuary Protection Act of 1968	Compliant
16 U.S.C. § 460l-12 *et seq*.	Federal Water Project Recreation Act, as amended	Compliant
16 U.S.C. §§ 661-666c	Fish and Wildlife Coordination Act	In Progress
7 U.S.C. § 4201 *et seq*.	Farmland Protection Policy Act	Not Applicable
16 U.S.C. § 1801 *et seq*.	Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended	In Progress
16 U.S.C. § 1361 *et seq*.	Marine Mammal Protection Act of 1972, as amended	Compliant
33 U.S.C. § 1401 *et seq*.	Marine Protection, Research, and Sanctuaries Act	Not Applicable
16 U.S.C. §§ 703-712, 715	Migratory Bird Treaty Act and Migratory Bird Conservation Act	Compliant
54 U.S.C. § 300101 *et seq.*	National Historic Preservation Act of 1966, as amended	Compliant
25 U.S.C. § 3001 *et seq.*	Native American Graves Repatriation Act	Not Applicable

Reference	Law, Policy, and Regulations	Status
33 U.S.C. § 403	Rivers and Harbors Act of 1899, Section 10	Compliant
43 U.S.C. § 1301 *et seq*.	Submerged Lands Act of 1953	In Progress
42 U.S.C. § 4601 *et seq*.	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970	Not Applicable
16 U.S.C. § 1271 *et seq*.	Wild and Scenic River Act of 1968	Not Applicable
E.O. 11988	Floodplain Management	Compliant
E.O. 11990	Protection of Wetlands	Compliant
E.O. 11593	Protection and Enhancement of the Cultural Environment	In Progress
E.O. 13045	Protection of Children from Environmental Health Risks and Safety Risks	Compliant
E.O. 13089	Coral Reef Protection	Not Applicable
E.O. 13007	Indian Sacred Sites	In Progress
E.O. 13112	Invasive Species	Compliant
E.O. 13175	Consultation and Coordination with Indian Tribal Governments	In Progress
E.O. 13186	Responsibilities of Federal Agencies to Protect Migratory Birds	Compliant
Memorandum	Memorandum on Government-to-Government Regulations with Native American Tribal Governments	In Progress

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, AS AMENDED

This Act requires the opportunity for public participation and comment on federal projects, and requires agencies to cooperate with other federal agencies, state, and local governments, and to involve public stakeholders, and Native American Tribes. A general scoping letter was sent on February 13, 2025 to pertinent agencies, federally recognized Tribes, and stakeholders. Comments were received and integrated into the analysis prepared in this SEA (see Section 6.3.1 for additional details regarding the comments that were received). Environmental information on the project has been compiled. This Draft SEA and Proposed FONSI have been prepared and are being coordinated for federal agency, Tribal, state and public. The Preferred Alternative would be in compliance with NEPA.

ABANDONED SHIPWRECKS ACT, AS AMENDED (43 USC 2101-2106)

The Abandoned Shipwreck Act (ASA) of 1987 establishes government ownership over the majority of abandoned shipwrecks located in waters of the United States of America and creates a framework within which shipwrecks are managed. Enacted in 1988, it affirms the authority of State governments to claim and manage abandoned shipwrecks on State submerged lands. It makes the laws of salvage and finds not apply to any shipwreck covered under the Act and asserts that shipwrecks are multiple-use resources. The Act covers abandoned shipwrecks that are embedded in submerged lands, abandoned shipwrecks that are embedded in coralline formations protected by a State, and abandoned shipwrecks that are on submerged lands and included in or determined eligible for inclusion in the National Register of Historic Places. State governments have title to shipwrecks located on State lands, the US Government has title to shipwrecks located on Federal lands, and Indian tribes have title to shipwrecks located on Indian lands. However, the US Government continues to hold title to sunken US warships and other shipwrecks entitled to Sovereign Immunity, no matter where the vessels are located. Such vessels are not affected by the statute.

The Corps would conduct a submerged cultural resource assessment survey of those areas of Alternative 2 not previously surveyed prior to construction per Stipulation V of the Corps' *Programmatic Agreement Among the United States Army Corps of Engineers, The Florida State Historic Preservation Officer, The Bureau of Ocean Energy Management, and the Advisory Council on Historic Preservation Regarding Compliance with Section 106 of the National Historic Preservation Act During Implementation of the United States Army Corps of Engineers, Jacksonville District Operations, Navigation, and Shore Protection Programs* (2021). Compliance with this Act is in Progress.

AMERICAN INDIAN RELIGIOUS FREEDOM ACT (42 U.S.C. §§ 1996 AND 1996A)

The American Indian Religious Freedom Act of 1978 (42 U.S.C. § 1996) establishes protection and preservation of Native Americans' rights of freedom of belief, expression, and exercise of traditional religions. These rights include, but are not limited to, access to sacred sites, freedom to worship through traditional ceremonial rites, and the possession and use of objects traditionally considered sacred by their respective cultures. The act requires policies of all governmental agencies to accommodate access to, and use of, Native American religious sites to the extent that the use is practicable and is consistent with an agency's essential missions.

In order to determine the presence or absence of Indian Sacred Sites within the footprint of the Preferred Alternative (Alternative 2), in addition to consultation with the appropriate federally recognized Tribal Nations, the Corps would conduct a submerged

cultural resource assessment survey of those areas of Alternative 2 not previously surveyed prior to construction per Stipulation V of the Corps' *Programmatic Agreement Among the United States Army Corps of Engineers, The Florida State Historic Preservation Officer, The Bureau of Ocean Energy Management, and the Advisory Council on Historic Preservation Regarding Compliance with Section 106 of the National Historic Preservation Act During Implementation of the United States Army Corps of Engineers, Jacksonville District Operations, Navigation, and Shore Protection Programs* (2021). Compliance with this Act is in Progress.

ANADROMOUS FISH CONSERVATION ACT

The Anadromous Fish Conservation Act requires a commitment to the conservation, development, and enhancement of anadromous fishery resources. The project does not occur in an anadromous fish river or stream; therefore, no anadromous fish species are expected to be present. This Act is not applicable.

ANTIQUITIES ACT OF 1906, AS AMENDED (54 USC 320301-320303: MONUMENTS, RUINS, SITES, AND OBJECTS OF ANTIQUITY AND 18 USC 1866(B): HISTORIC, ARCHEOLOGIC, OR PREHISTORIC, ITEMS AND ANTIQUITIES)

The Antiquities Act of 1906 (54 U.S.C. §§ 320301–320303; Public Law 59-209) gives the President of the United States authority to create national monuments to protect important natural, cultural, or scientific features and resources. The act requires a permit be issued from the secretary of the department with land management responsibilities prior to any excavation of archaeological material. It further requires all material excavated as a result of an Antiquities Permit be properly housed in a museum or facility. This act is considered to be the beginning of a long tradition of cultural resources management and protection by the Federal government.

This Act is not applicable to this action as the project does not require the excavation of archaeological material.

ARCHAEOLOGICAL AND HISTORIC PRESERVATION ACT (PUBLIC LAW 93-291 AND 16 U.S.C.469-469C)

The Archaeological and Historic Preservation Act (AHPA) of 1974 amended and expanded the Reservoir Salvage Act of 1960. The AHPA required that federal agencies provide for "...the preservation of historical and archeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as the result of...any alteration of the terrain caused as a result of any federal construction project of federally licensed activity or program".

The Corps would conduct a submerged cultural resource assessment survey of those areas of Alternative 2 not previously surveyed prior to construction per Stipulation V of

the Corps' *Programmatic Agreement Among the United States Army Corps of Engineers, The Florida State Historic Preservation Officer, The Bureau of Ocean Energy Management, and the Advisory Council on Historic Preservation Regarding Compliance with Section 106 of the National Historic Preservation Act During Implementation of the United States Army Corps of Engineers, Jacksonville District Operations, Navigation, and Shore Protection Programs* (2021). Compliance with this Act is in Progress.

ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979, AS AMENDED (54 USC 312501-312508: PRESERVATION OF HISTORICAL AND ARCHEOLOGICAL DATA)

The Archaeological Resources Protection Act (ARPA) protects archaeological resources and sites on Federally owned and Indian lands and fosters increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals. The act established civil and criminal penalties for the destruction or alteration of cultural resources.

This Act is not applicable because the preferred alternative (expansion of the nearshore placement area) is not located on Federally or tribally owned land.

BALD AND GOLDEN EAGLE PROTECTION ACT

The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) (Eagle Act) prohibits the take of bald eagles and golden eagles unless pursuant to regulations (and in the case of bald eagles, take can be authorized only under a permit). The Eagle Act defines the "take" of an eagle to include a broad range of actions: "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest or disturb." "Disturb" is defined in our regulations at 50 CFR 22.3 as "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior." Many actions that were considered likely to incidentally "take" (harm or harass) eagles under the ESA may also "take" eagles under the Eagle Act, as those terms have been defined by statute and regulation. The FWC eagle nesting mapper[1] revealed that no active eagle nests occur in the study area. The last active nest was in 2016 and ~1.5 miles from the Project shoreline. The Corps would include applicable standard migratory bird

[1] The FWC eagle nesting mapper is available at https://geodata.myfwc.com/datasets/myfwc::eagle-nesting/about.

protection measures in the project plans and specifications and would require the contractor to abide by those requirements. The project complies with this Act.

CLEAN AIR ACT OF 1972

The Clean Air Act (CAA) requires Federal actions to conform to an approved state implementation plan designed to achieve or maintain an attainment designation for air pollutants as defined by the National Ambient Air Quality Standards (NAAQS). The NAAQS were designed to protect public health and welfare. The criteria pollutants include carbon monoxide (CO), ozone (O3), nitrogen dioxide (NO2), sulfur dioxide (SO2), particulate matter (PM2.5 and PM10), and lead (Pb).

The existing air quality within South Florida meets the NAAQS. Therefore, the project is exempt from the CAA conformity requirements because it is not located in a federal attainment area 40 CFR § 81.310; Rule 62-204.340, FAC. No federal permits are required. The State of Florida does not regulate emissions from off-road equipment or marine vessels; however, it can be assumed that insignificant emissions would be produced by the dredge and construction equipment during construction activities. The Preferred Alternative would not cause or contribute to violations of the National Ambient Air Quality Standards. The project complies with this Act.

CLEAN WATER ACT, SECTION 401 AND SECTION 404(B)

A WQC is required for the In-Water placement. All applicable authorizations for dredging and its associated placement would be coordinated and obtained from the state of Florida prior to construction. In accordance with the CWA, a Section 404(b)(1) Evaluation has been completed and is included as Appendix C. The Corps would obtain WQC from the State of Florida and any required National Pollutant Discharge Elimination System permits. The project would be coordinated with the state of Florida with the noticing of this draft EA document. (See Appendix C). The project would be in compliance at the time of construction.

COASTAL BARRIER RESOURCES ACT AND COASTAL BARRIER IMPROVEMENT ACT OF 1990

The Coastal Barrier Resources Act (CBRA) and the Coastal Barrier Improvement Act limit Federally-subsidized development within the CBRA Units to limit the loss of human life by discouraging development in high-risk areas, to reduce wasteful expenditures of federal, and to protect the natural resources associated with coastal barriers. CBRA provides development goals for undeveloped coastal property held in public ownership, including wildlife refuges, parks, and other lands set aside for conservation (“otherwise protected areas,” or OPAs). These public lands are excluded from most of the CBRA restrictions, although they are prohibited from receiving Federal flood insurance for new structures.

The official USFWS Coastal Barrier Resources System (CBRS) maps were reviewed (https://www.fws.gov/CBRA/Maps/Mapper.html). The Bowditch Point CBRS unit (P17A) is located within the project area, and Lovers Key Complex (P17), is located approximately 0.5 miles from the project area (**Figure 6-1**):

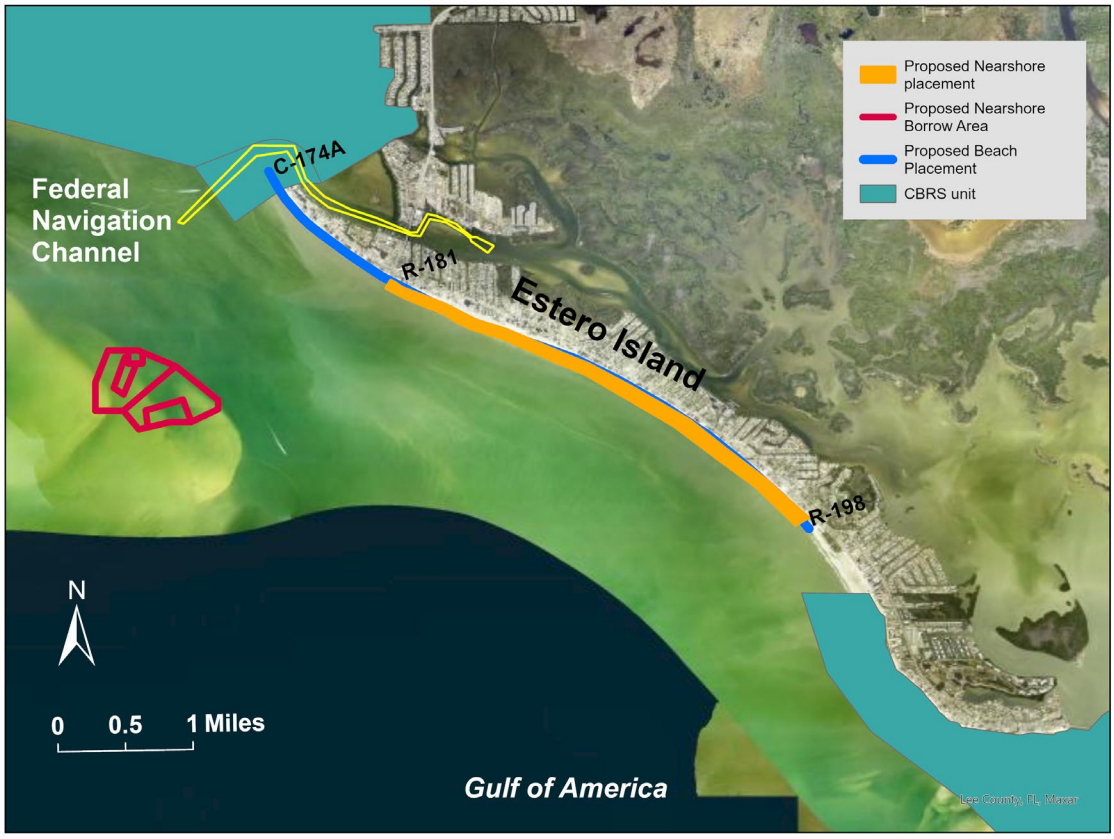

Figure 1. Location of CBRS Units Bowditch Point (north) and Lovers Key Complex (south) in the vicinity of the Fort Myers Beach, Florida project. SOURCE: https://www.fws.gov/CBRA/Maps/Mapper.html

Work associated with the Preferred Alternative may occur within the Bowditch Point CBRS units. This project, which involves maintenance of existing channel improvements and placement of dredged materials related to such improvements, is exempted from CBRA restrictions on federal spending. The exception 16 U.S.C. 3505(a)(2) reads as follows: *The maintenance or construction of improvements of existing Federal **n**avigation channels (including the Intracoastal Waterway) and related structures (such as jetties), including the placement of dredge materials related to such maintenance or construction. A Federal navigation channel or a related structure is an existing channel or structure, respectively, if it was authorized before the date on which*

the relevant System Unit or portion of the System Unit was included within the CBRS. Coordination with USFWS will occur during the noticing of this draft SEA. Compliance with this Act is in progress.

COASTAL ZONE MANAGEMENT ACT OF 1972

The goal of the Coastal Zone Management Act (CZMA) is to "preserve, protect, develop, and where possible, to restore or enhance the resources of the nation's coastal zone". The CZMA requires that federal actions that are reasonably likely to affect any land or water use or natural resource of the coastal zone be consistent, to the maximum extent practicable, with the enforceable policies of a State's Federally approved coastal management program. A federal consistency determination in accordance with 15 CFR 930 Subpart C is included in this report as Appendix B. The Corps will coordinate the consistency determination with the Florida State Clearinghouse pursuant to the CZMA concurrently with circulation of this draft SEA. The Corps has determined that the Preferred Alternative is consistent to the maximum extent practicable with the enforceable policies of Florida's CMP. Final State concurrence will be issued with the WQC . Compliance with this Act is in Progress.

ENDANGERED SPECIES ACT OF 1973

Pursuant to Section 7 of the Endangered Species Act of 1973, as amended, (ESA) the project is covered by the NMFS' GARBO as well as USFWS' P3BO and SPBO. The project would be conducted in accordance with the ESA, as amended, and would adhere to all applicable P3BO, SPBO, and GARBO T&Cs. Discussion on the existing conditions and potential effects to T&E species are included in Sections 2.3 and 4.3, respectively. The Corps' effect determinations are summarized in Table 4-1 and described in detail for this project in Section 4.3.

<u>Effect determinations for species under NMFS jurisdiction:</u>

For potential effects to Federally listed T&E species under the NMFS jurisdiction, the project has been coordinated with the NMFS through the GRBO dated November 19, 2003, as amended on June 24, 2005, January 9, 2007, and April 1, 2010. Effect determinations for ESA listed species are provided in Table 4-1. The GRBO covers the following work in the U.S. Gulf of America by the Corps' Jacksonville, Mobile, New Orleans, and Galveston Districts:

- Regular maintenance hopper dredging of navigation channels;
- Offshore sand mining for beach restoration/nourishment activities

The project would adhere to applicable GRBO T&Cs as described in Section 6.1. This project would be coordinated with NMFS through the notification of the availability of the draft NEPA document.

Effect determinations for species under USFWS jurisdiction:

For potential effects to federally listed T&E species under the USFWS jurisdiction, the project is covered under the SPBO and P3BO. Effects determinations for ESA listed species are provided in Table 4-1.

The Corps will initiate consultation with the USFWS during the draft SEA public comment period. The Corps will request concurrence from the USFWS with the Corps' previous coordination in conditions from the USFWS letter dated March 4, 2019 (see Appendix A). The project would adhere to applicable T&Cs of the SPBO and P3BO and also implement the USFWS' 2011 Standard Manatee Conditions for In-water Work, maintenance dredging would be conducted in accordance the conditions from the USFWS letter dated March 4, 2019, which includes: observers shall be dedicated for manatee observation, no night-time clamshell dredging is allowed, 2011 Standard Manatee Conditions for In-water Work, and no anchoring in seagrass would be allowed in order to minimize the risk of impacts to the Florida manatee. Pertinent correspondence is included in Appendix A. Compliance with this Act is in Progress.

ESTUARY PROTECTION ACT OF 1968

The Estuary Protection Act requires federal agencies to consider estuaries and their natural resources when planning for the development of water and land resources. The protective measures outlined in Section 4 of the 2012 EA (Corps, 2012) would ensure avoidance and minimization of impacts to San Carlos Bay, Estero Bay Aquatic Preserve, and Charlotte Harbor Aquatic Preserve from the proposed dredging. Therefore, this project is in compliance with this act.

FEDERAL WATER PROJECT RECREATION ACT, AS AMENDED

This Act requires full consideration of recreation and fish and wildlife enhancement in federal water development projects. Recreational benefits provided by FMBH and Estero Island were evaluated in the 2012 EA and the Preferred Alternative would not change the impacts to recreation. The project is in compliance with this Act.

FISH AND WILDLIFE COORDINATION ACT

The central objective of the Fish and Wildlife Coordination Act (FWCA) is to allow for equal consideration of wildlife resources. The Corps will provide a Memorandum for Record (MFR) to USFWS to be signed by both agencies during coordination of this draft SEA. The MFR will document a FWCA report is not required for this O&M project and the Preferred Alternative will be coordinated with USFWS through the NEPA review process. Compliance with this Act is in Progress.

FARMLAND PROTECTION POLICY ACT

The Farmland Protection Policy Act is intended to minimize the impact of the conversion of farmland to nonagricultural uses. No farmland exists in the project area; therefore, the Act is not applicable.

MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976, AS AMENDED

The MSFCMA reflects the Secretary of Commerce and Fishery Management Council authority and responsibilities for the protection of EFH. Federal agencies that fund, permit, or carry out activities that may adversely affect EFH are required to consult with the NMFS Habitat Conservation Division (HCD) regarding the potential effects of their actions on EFH. Per the January 22, 2019 and October 2, 2018 EFH Findings between NMFS' Southeast Regional Office and South Atlantic Division, U.S. Army Corps of Engineers and Jacksonville District, respectively, the EFH Assessment for the project is integrated within Sections 2.4 and 4.4 of this draft SEA. The Corps has determined that the project would not have a substantial adverse impact on EFH or Federally managed fish species occurring along the southeast coast of Florida. The Corps will initiate consultation with NMFS for the Preferred Alternative during the draft SEA public comment period. The Corps is complying with the Act through the NEPA review and EFH consultation processes and will be in full compliance with the Act.

MARINE MAMMAL PROTECTION ACT OF 1972, AS AMENDED

The Marine Mammal Protection Act prohibits harassing, feeding, hunting, capturing, and/or killing (referred to as "take") and importing of marine mammals and marine mammal products. The project area is accessible to marine mammals, such as the Florida manatee and whales. Noise associated with dredging and vessel strikes in transit areas are known to cause impacts. Incorporation of the USFWS 2011 Standard Manatee Conditions for In-water Work, BMPs, as well as applicable T&Cs of the GRBO and SPBO into the projects' plans and specifications would ensure that the potential adverse effects to these species are reduced to the maximum extent practicable. Maintenance dredging would be conducted in accordance the conditions from the USFWS letter dated March 4, 2019, which includes: observers shall be dedicated for manatee observation, no night-time clamshell dredging is allowed, and no anchoring in seagrass would be allowed in order to minimize the risk of impacts to the Florida manatee. Implementation of the safeguards used to protect T&E species during construction and operation would extend protections to marine mammals within the area. No take of marine mammals is anticipated. The project is in compliance with the goals of this Act and would be in full compliance with the Act at the time of construction through implementation of referenced safeguards.

MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT

The Marine Protection, Research, and Sanctuaries Act regulates the placement of dredged material into the ODMDS. Ocean disposal of dredge material is not proposed as part of the Preferred Alternative; therefore, the Act is not applicable.

MIGRATORY BIRD TREATY ACT AND MIGRATORY BIRD CONSERVATION ACT

These Acts prohibit the take (e.g., killing, capturing, selling, or trading) and/or transporting of protected migratory bird species without prior authorization by USFWS. Migratory and resident bird species have been observed within the study area and are likely to use available habitat for foraging, nesting, and breeding. Measures shall be taken to protect migratory birds, i.e. avoiding nests during dredging of suitable habitat (dry land) at Bowditch Point and should the beach placement area be used. Therefore, the project is in compliance with this Act.

NATIONAL HISTORIC PRESERVATION ACT OF 1966, AS AMENDED

Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, 36 Code of Federal Regulations (C.F.R.) Part 800, provides a regulatory framework for the identification, documentation, and evaluation of historic and cultural resources that may be affected by federal undertakings. Under the act, federal agencies must take into account the effects of their undertakings on historic properties, including resources that are listed or are eligible for listing in the National Register of Historic Places, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertaking. Additionally, federal agencies are required to consult with Indian Tribes or Native Hawaiian organizations for an understanding that may affect properties of traditional religious and cultural significance on or off Tribal lands and in accordance with section 36 CFR 800.2(c)(2)(ii)(A) “provides the Indian Tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects.

The Corps shall consult with the State Historic Preservation Officer, Miccosukee Tribe of Indians, the Muscogee (Creek) Nation, Thlopthlocco Tribal Town, the Seminole Nation of Oklahoma, and Seminole Tribe of Florida. The Corps shall conduct a submerged cultural resource assessment survey of those areas of Alternative 2 not previously surveyed prior to construction per Stipulation V of the Corps’ *Programmatic Agreement Among the United States Army Corps of Engineers, The Florida State Historic Preservation Officer, The Bureau of Ocean Energy Management, and the Advisory Council on Historic Preservation Regarding Compliance with Section 106 of the National Historic Preservation Act During Implementation of the United States Army Corps of Engineers, Jacksonville District Operations, Navigation, and Shore Protection Programs* (2021). Through the use of this Programmatic Agreement, the Corps is in Compliance with this Act.

NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT (25 U.S.C. § 3001 ET SEQ.)

The Native American Graves Protection and Repatriation Act (25 U.S.C. §§ 3001–3013; Public Law 101-601) describes the rights of Native American lineal descendants, Indian tribes, and Native Hawaiian organizations with respect to the treatment, repatriation, and disposition of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony, with which they can show a relationship of lineal descent or cultural affiliation. This Act applies to federally owned lands, including Tribal Lands as defined. As the Preferred Alternative does not impact federally owned or Tribal lands, this Act is not applicable.

RIVERS AND HARBORS ACT OF 1899

Section 10 of the Rivers and Harbors Act of 1899 prohibits obstruction to navigation of the waterway, unless recommended by the Chief of Engineers and authorized by the Secretary of the Army. The Preferred Alternative could temporarily obstruct navigable waters of the U.S. during construction. The proposed action will be subject to the public notice and other evaluations normally conducted for activities subject to the Act. The project is in compliance with this Act.

SUBMERGED LANDS ACT OF 1953

According to the Submerged Lands Act, the state holds ownership to submerged lands within three nautical miles of the coastline. Dredging and beach or nearshore placement would occur on submerged lands of the State of Florida. The proposed work and subsequent submerged lands request are exempt from obtaining a FDEP permit. In accordance with the Port Maintenance Dredging Exemption in Section 403.813(3), Fla. Stat., the proposed activity is maintenance dredging and is therefore, exempted. If a permit exemption is granted, a Sovereign Submerged Lands Letter of Consent is automatically granted as well per Section 253.77(4), Fla. Stat. This project will be coordinated with the State of Florida through the NEPA review process. The project will be in compliance with the Act.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (PUBLIC LAW 91-646)

The purpose of this Act is to ensure that owners of real property to be acquired for federal and federally assisted projects area treated fairly and consistently, and that person displaced as a result of such acquisition would not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole. This Act is not applicable as this project would not be acquiring any real estate interests from private property owners.

WILD AND SCENIC RIVER ACT OF 1968

This Act requires that selected wild and scenic rivers be preserved in free-flowing condition with the immediate environment be protected for the benefit and enjoyment of

future generations. There are no designated wild and scenic river located within the project area. This Act is not applicable.

E.O. 11988, FLOODPLAIN MANAGEMENT

E.O. 11988 directs Federal agencies to avoid siting projects in floodplains and to avoid inducing further development of flood-prone areas. To comply with E.O. 11988, the policy of the Corps is to formulate projects that, to the extent possible, avoid or minimize adverse effects associated with the use of the floodplain and avoid inducing development in the floodplain unless there is no practicable alternative.

Per guidance provided in E.O. 11988, the following factors were evaluated:

1. *Determine if a proposed action is in the base floodplain (defined by E.O. 11988 as an "area which has a one percent or greater chance of flooding in any given year").*
   Most of the land area near the project is within the 100-year flood zone as mapped by the Federal Emergency Management Agency (FEMA 2021).

2. *Conduct early public review, including public notice.*
   Public and agency coordination is described in Section 6.3. This EA was coordinated with interested stakeholders and the public via the NEPA process.

3. *Identify and evaluate practicable alternatives to locating in the base floodplain, including alternative sites outside of the floodplain.*
   The Preferred Alternative occurs on submerged lands and not occur within a floodplain.

4. *Identify impacts of the proposed action.*
   Because the Preferred Alternative occurs on submerged lands and not occur within a floodplain, no impacts to the floodplain are expected. Impacts of the proposed action to the physical, natural, and socioeconomic environment are described in Section 4 and include short-term adverse effects to aesthetics, fish and wildlife, recreation, safety, and water quality. These short-term adverse effects would cease with the completion of construction. Long-term beneficial effects associated with the action are expected to navigation, safety, economics, and needs and welfare of the people. These long-term benefits would be expected to remain for years following construction.

5. *Minimize threats to life and property and to natural and beneficial floodplain values. Restore and preserve natural and beneficial floodplain values.*
   Maintenance dredging would continue to provide navigation benefits thereby minimizing threats to life and property while maintaining socioeconomic benefits afforded by port operations (e.g., imports/exports, revenue from cruise operations, etc.). More details on the project's

purpose and need are included in Section 1. Details on the environmental commitments are included in Section 6.

6. *Reevaluate alternatives.*
   Alternatives are described in Section 3. The Preferred Alternative, described in detail in Section 5.2, best meets the purpose and need.

7. *Issue findings and a public explanation.*
   The EA describes the Preferred Alternative in Section 5.2. Public and agency coordination is described in Section 6.3.

8. *Implement the action.*
   Construction would occur after all appropriate documentation (e.g., agreements, permitting, etc.) is completed and funds are received.

The Corps concludes that the Preferred Alternative would not result in harm to people, property, and floodplain values; would not induce development in the floodplain; and that the project is in the public interest. For the reasons stated above, the project complies with this E.O.

E.O. 11990, PROTECTION OF WETLANDS

The objective of this E.O. is to avoid long and short-term adverse impacts associated with the destruction of modification of wetlands. No wetlands would be affected by the proposed project activities. Pipelines and vessels will not be anchored within seagrass. This project is in compliance with this Executive Order.

EXECUTIVE ORDER (E.O.) 11593, PROTECTION AND ENHANCEMENT OF THE CULTURAL ENVIRONMENT

Executive Order 11593, dated May 13, 1971, directs federal agencies to administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations; initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures, and objects of historical, architectural or archaeological significance are preserved, restored, and maintained for the inspiration and benefit of the people; and, in consultation with the Advisory Council on Historic Preservation (16 U.S.C. 470i), institute procedures to assure that federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural or archaeological significance.

The Corps would conduct a submerged cultural resource assessment survey of those areas of Alternative 2 not previously surveyed prior to construction per Stipulation V of the Corps' *Programmatic Agreement Among the United States Army Corps of Engineers, The Florida State Historic Preservation Officer, The Bureau of Ocean Energy Management, and the Advisory Council on Historic Preservation Regarding Compliance with Section 106 of the National Historic Preservation Act During Implementation of the United States Army Corps of Engineers, Jacksonville District*

Operations, Navigation, and Shore Protection Programs (2021). Compliance with this Act is in Progress.

E.O. 13045, PROTECTION OF CHILDREN FROM ENVIRONMENTAL HEALTH AND SAFETY RISKS

E.O. 13045 requires each Federal agency to "make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children" and "ensure that its policies, programs, activities, and standards address disproportionate risks to children that results from environmental health risks or safety risks."

The Preferred Alternative does not affect children disproportionately from other members of the population and would not increase any environmental health or safety risks to children. The project is in compliance with this E.O.

E.O. 13089, CORAL REEF PROTECTION

The objective of E.O. 13089 is to preserve and protect the biodiversity, health, heritage, social and economic value of U.S. coral reef ecosystems and the marine environment. This E.O. directs Federal agencies to expand their research, preservation, monitoring and restoration efforts with respect to actions that affect coral reef ecosystems. There are no coral reefs located within the project area. This E.O. does not apply.

E.O. 13007, INDIAN SACRED SITES

Executive Order 13007, dated May 24, 1996, directs federal agencies to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners. To the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, the co-lead agencies are to avoid adversely affecting the physical integrity of such sacred sites and to maintain the confidentiality of sacred sites when appropriate. The order encourages government-to-government consultation with tribes concerning sacred sites. Some sacred sites may qualify as historic properties under the National Historic Preservation Act. This E.O. is directed towards executive branch agencies with statutory or administrative responsibility for the management of federal lands.

In order to determine the presence or absence of Indian Sacred Sites within the footprint of the Preferred Alternative, in addition to consultation with the appropriate federally-recognized Tribal Nations, the Corps shall conduct a submerged cultural resource assessment survey of those areas of Alternative 2 not previously surveyed prior to construction per Stipulation V of the Corps' *Programmatic Agreement Among the United States Army Corps of Engineers, The Florida State Historic Preservation Officer, The Bureau of Ocean Energy Management, and the Advisory Council on*

Historic Preservation Regarding Compliance with Section 106 of the National Historic Preservation Act During Implementation of the United States Army Corps of Engineers, Jacksonville District Operations, Navigation, and Shore Protection Programs (2021). Compliance with this Act is in Progress.

E.O. 13112, INVASIVE SPECIES

E.O. 13122 is aimed to prevent the introduction of invasive species and requires that federal agencies provide for their control and minimize the economic, ecological and human health impacts that invasive species can cause. The project's plans and specifications would include conditions to avoid the introduction and/or promotion of non-native species to the region. Conditions would include thoroughly cleaning all equipment prior to the start of work and reporting all sightings of invasive and nuisance species (not identified in pre-construction conditions) within 24-hours. The Corps would require the contractor to abide by those requirements as well as submit a plan describing the protection measures (e.g., transfer prevention procedures, designated cleaning sites/locations, etc.) to be implemented by the Contractor. The Preferred Alternative is in compliance with the goals of this E.O.

E.O. 13175, CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, executive orders, and court decisions. This order directs federal agencies to formulate and establish "regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes." This consultation is meant to work toward a mutual consensus and is intended to begin at the earliest planning stages before decisions are made and actions are taken.

The Corps would continue to coordinate as required by the E.O. and the December 05, 2023 U.S. Army Corps of Engineers – Civil Works Tribal Consultation Policy.

E.O. 13186, RESPONSIBILITIES OF FEDERAL AGENCIES TO PROTECT MIGRATORY BIRDS

E.O. 13186 requires federal agencies taking actions which have or are likely to have a measurable negative effect on migratory bird populations to take certain actions which promote the conservation of migratory bird populations. Migratory and resident bird species have been observed within the project area and are likely to use available habitat for foraging and transit. The proposed project occurs on submerged lands and is not expected to destroy migratory birds, their active nests, their eggs, or their

hatchlings. The Corps would include applicable migratory bird protection requirements from the SPBO in the project plans and specifications and would require the contractor to abide by those requirements during construction to avoid impacts to nesting migratory birds. The project is in compliance with the goals of this E.O.

MEMORANDUM ON GOVERNMENT-TO-GOVERNMENT REGULATIONS WITH NATIVE AMERICAN TRIBAL GOVERNMENTS

Memorandum signed by President Clinton April 29, 1994 directs the heads of executive departments and agencies to operate within a government-to-government relationship with federally recognized tribal governments; consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments; assess the impact of federal government plans, projects, programs, and activities to tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities; and take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/ or governmental rights of the Tribes. A general public notice was published requesting comments on the proposed action. No Tribal government responded. The draft SEA will be provided to all federally Recognized Tribes for review and comment. This project will be in compliance with this E.O.