



**FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

BOB MARTINEZ CENTER  
2600 BLAIRSTONE ROAD  
TALLAHASSEE, FLORIDA 32399-2400

RICK SCOTT  
GOVERNOR

CARLOS LOPEZ-CANTERA  
LT. GOVERNOR

HERSCHEL T. VINYARD JR.  
SECRETARY

June 2, 2014

U.S. Army Corps of Engineers  
Jacksonville District  
Attn: Eric Summa, Chief  
Environmental Branch  
P.O. Box 4970  
Jacksonville, FL 32232-0019

Permit Modification No. 0305721-003-BN  
Permit No. 0305721-001-BI, Miami-Dade County  
Miami Harbor Phase III Federal Channel Expansion

Dear Mr. Summa:

Your requests to modify Permit No. 0305721-001-BI were received on April 4, 2014, and on April 28, 2014, and have been reviewed by Department staff. The proposed permit modification is to revise the seagrass sedimentation monitoring methodology by conducting a visual evaluation to determine the degree of sedimentation instead of using the sedimentation trap and blocks. The modification is to also allow additional time to submit the four-week hardbottom monitoring construction surveys. The permit requires that these reports along with the raw data be submitted within 30 days upon monitoring completion. The Permittee has requested that these reports be submitted within 120 days upon monitoring completion. The raw data will still be submitted within 30 days upon monitoring completion.

**Permit History**

On May 22, 2012, the Department issued Environmental Resource Permit (ERP) No. **0305721-001-BI** to the U.S. Army Corps of Engineers (Corps) to widen and/or deepen several portions of the Miami Harbor channels and turning basins. New construction included widening the easternmost portion of Cut 1 of the Entrance Channel from 500 to 800 feet, and deepening Cuts 1 and 2 of the channel from a project depth of -44 to -52 feet mean lower low water (MLLW), with a one-foot allowable overdredge, for a maximum allowable dredge depth of -53 feet MLLW; adding a turn widener at the south intersection of Cut 3 within Fisherman's Channel and deepening to 50 feet MLLW, with a one-foot allowable overdredge, for a maximum allowable dredge depth of -51 feet MLLW; increasing the Fisher Island Turning Basin from 1,200 feet to 1,500 feet in diameter, truncating the northeast section of the turning basin, and deepening from -42 to -50 feet MLLW, with a one-foot allowable overdredge, for a maximum

**Notice of Permit Modification**  
**Permit Modification No. 0305721-003-BN**  
**Miami Harbor Phase III Federal Channel Expansion**  
**Page 2 of 9**

allowable dredge depth of -51 feet MLLW; expanding the Port of Miami's (Port) berthing area by 60 feet, and widening the southern edge of Fisherman's Channel by 40 feet for a 100-foot increase in total width, and deepening from -42 to -50 feet MLLW, with a one-foot allowable overdredge, for a maximum allowable dredge depth of -51 feet MLLW; and reducing the Middle Lummus Island Turning Basin from 1,600 feet to 1,500 feet in diameter, and deepening from -42 to -50 feet MLLW, with a one-foot allowable overdredge, for a maximum allowable dredge depth of -51 feet MLLW.

The project also included maintenance dredging in the main federal channel (Cut 4), the main turning basin, and the Port berthing areas to -36 feet MLLW, with a one-foot allowable overdredge, for a maximum allowable dredge depth of -37 feet MLLW; and the Dodge Island Cut, turning basin, and adjacent Port berthing areas to -34 feet MLLW, with a one-foot allowable overdredge, for a maximum allowable dredge depth of -35 feet MLLW.

The placement options for the dredged material included disposal in the Miami Ocean Dredged Material Disposal Site (ODMDS), filling the dredged hole that will be used for the seagrass mitigation site located north of the Julia Tuttle Causeway, and use of limestone boulders to construct the offshore artificial reef mitigation areas located south of the entrance channel.

Mitigation to offset 7.9 acres of seagrass impacts included filling a dredge hole and planting to restore at least 16.6 acres of seagrass habitat. Mitigation to offset 7.07 acres of hardbottom impacts included coral relocation and the construction of 9.28 acres of artificial reef.

On May 28, 2012, the Department granted Variance No. **0305721-002-BV** to the Corps to allow deviations of the mixing zone requirements in Rule 62-4.242(2)(a)2.b., Florida Administrative Code (F.A.C.), and the antidegradation requirements in Rule 62-4.244(5)(c), F.A.C. The variance temporarily established an expanded mixing zone of 750 meters for dredging within and adjacent to the Biscayne Bay Aquatic Preserve, which is designated as Outstanding Florida Waters (OFW), and granted a maximum allowable turbidity level of 13 Nephelometric Turbidity Units (NTUs) above background at the edge of the mixing zone within OFW. At the seagrass mitigation site, which is also located in the Biscayne Bay Aquatic Preserve, the variance temporarily established a variable expanded mixing zone of up to 500 meters from the point of discharge, and a maximum allowable turbidity level of 9 NTUs above background at the edge of the mixing zone.

For additional background, please see the *Consolidated Notice of Intent to Issue Environmental Resource Permit, Variance, and Authorization to Use Sovereign Submerged Lands* for Permit No. 0305721-001-BI and Variance No. 0305721-002-BV at the following website:

[ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/dade/issued/0305721\\_Miami\\_Harbor\\_Phase\\_III\\_Federal\\_Dredging/001-BI/](ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/dade/issued/0305721_Miami_Harbor_Phase_III_Federal_Dredging/001-BI/)

**Notice of Permit Modification**  
**Permit Modification No. 0305721-003-BN**  
**Miami Harbor Phase III Federal Channel Expansion**  
**Page 3 of 9**

**Justification/Necessity**

The sedimentation traps and blocks are approximately two feet tall. According to the Permittee, installation of the sedimentation traps and blocks in water that is less than six feet deep presents a hazard because recreational and commercial boaters could run over the installations, and swimmers or personal watercraft operators could be harmed if they came in accidental contact with the installations. Furthermore, considering the purpose of the sedimentation traps and blocks, having them exposed for all, or a portion of low tide events negates the intended monitoring. Visual evaluations will be conducted to determine the degree of sedimentation instead of using the sedimentation trap and blocks.

The Permittee has requested additional time to submit the four-week hardbottom monitoring construction surveys in order to allow enough time for the monitoring team to analyze the data after collection.

**Staff Assessment**

Staff does not recommend use of sedimentation traps and blocks because these methods are shown to be ineffective for collecting accurate sedimentation data. A visual inspection to evaluate sedimentation will be an environmental benefit because this method will provide a more accurate representation of sedimentation. Submittal of the hardbottom monitoring reports within 120 days, instead of 30 days, would still be considered timely by staff.

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

27. b. Sedimentation during construction for the area south of Fisherman's Channel shall be measured at monitoring stations set up at each transect. Monitoring stations shall include three (3) sedimentation traps and three (3) sedimentation blocks. Along the transect, a sedimentation trap and a sedimentation block shall be placed at 30, 75, and 150 meters. In lieu of using the sedimentation traps and blocks, the biologist may elect to visually evaluate the degree of sedimentation along each transect using the four categories listed above.

Reference monitoring stations: A reference monitoring station, where one sedimentation trap and one sedimentation block will be set to use for comparison, shall be established for each 5 transects. The area adjacent to the southern edge of Fisherman's Channel is off limits to boating activity; therefore, an alternative reference area may need to be selected. The reference area would be located in an area that has similar conditions to Fisherman's Channel in regards to currents, species composition, etc. Proposed reference monitoring station sites shall be submitted to the Department for approval.

The sedimentation blocks utilized at the seagrass sedimentation monitoring stations shall be cemented to a 2 inch by 16 inch by 16 inch concrete tile that

**Notice of Permit Modification**  
**Permit Modification No. 0305721-003-BN**  
**Miami Harbor Phase III Federal Channel Expansion**  
**Page 4 of 9**

will be positioned level on the bottom within the seagrass beds. Observations made within seagrass beds during previous resource delineation surveys indicate the sediment accumulation blocks can be positioned in grass-free areas within the monitored seagrass beds, resulting in no impacts to living seagrass,

Sedimentation observations of all monitoring stations will be conducted by a team of certified divers and qualified biologists.

Survey frequency: Before active excavation/dredging in Fisherman's Channel, all monitoring stations shall be surveyed after completion of setup to obtain initial baseline conditions. Sedimentation traps and blocks shall be monitored and replaced, or a visual evaluation of the transects shall be conducted every 28 days.

For the duration of active construction in Fisherman's Channel, sedimentation stations within a 1500 meter radius of construction shall be surveyed, including corresponding reference sites. After the initial three (3) days of construction, surveys shall be conducted once every three (3) days, for a total of nine (9) days. If no significant impacts are observed, survey frequency shall be collected when bottles are changed out every 28 days. If sedimentation rates adjacent to the channel continually exceed those observed in reference sites, the frequency of surveys shall be increased to once every 3 days until sedimentation rates do not exceed reference sites.

After active construction is completed, monitoring of sedimentation traps and blocks, or a visual evaluation of the transects shall continue until at least 30 days after all excavation work in Fisherman's Channel has been completed, construction sections have been accepted, and all necessary agencies are notified of completeness. Until the minimum 30 day period after the completion of construction has elapsed, sedimentation blocks shall be measured and cleaned every 28 days; and sedimentation trap data shall be collected when changed out every 28 days. In lieu of using the sedimentation traps and blocks, a visual evaluation of the transects shall be conducted every 28 days.

Samples and observations shall be conducted at the reference site first. This will allow divers to notice any significant (>1.5 mm) differences between the reference site and construction monitoring sites more easily.

Reporting: Raw data documenting the accumulation measurements (blocks) prior to dredging shall be made available to the Department upon request. Upon completion of the monitoring, a summary report shall be submitted within 60 days. Raw data on sediment deposition rates obtained by the traps shall also be

**Notice of Permit Modification**  
**Permit Modification No. 0305721-003-BN**  
**Miami Harbor Phase III Federal Channel Expansion**  
**Page 5 of 9**

made available upon request. A final summary report shall be submitted within 60 days of completion.

A sediment stress event shall be defined as a significant build-up of sediment sufficient to cause any one or more of the following conditions beyond the distance of the 1:7 side slope (approximately 100 feet from the new channel edge) that is already considered a loss and provided for in the seagrass mitigation site of the project's limit:

- Increased epiphytes or biofouling of blades relative to the reference site;
- Reduced seagrass density compared to pre-construction conditions, with adjustments made for natural fluctuations as determined from monitoring data from the reference site.

Notification of a sediment stress event or the identification of a secondary impact as described in Specific Condition 27(a) iii & iv will be by phone, fax or e-mail, and followed by a written report to be submitted within 24 hours to the agencies. If necessary, survey frequency may be increased and/or dredging procedures may be modified to reduce impacts.

32. a. i. d. 3) A report will be submitted after construction detailing the results for the four week post construction surveys. This report ~~along with raw data~~ will be submitted within ~~30~~ 120 days upon monitoring completion. The raw data shall be submitted within 30 days upon monitoring completion;

After thorough review of your application, staff finds that the proposed modification is not expected to adversely affect water quality or change the determination that the project is clearly in the public interest. Since the proposed modification is not expected to result in any adverse environmental impact or water quality degradation and may be an environmental benefit, 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 May 22, 2017, expiration date, or other Specific Conditions or monitoring requirements of the permit. This letter shall 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 (F.S.), 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 applicant 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 (F.A.C.), 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 applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, 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.

**Notice of Permit Modification**  
**Permit Modification No. 0305721-003-BN**  
**Miami Harbor Phase III Federal Channel Expansion**  
**Page 7 of 9**

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 applicant 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 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.

**Notice of Permit Modification**  
**Permit Modification No. 0305721-003-BN**  
**Miami Harbor Phase III Federal Channel Expansion**  
**Page 8 of 9**

This permit modification constitutes an order of the Department. The applicant 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 applicant 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 Kristina May by email at [Kristina.may@dep.state.fl.us](mailto:Kristina.may@dep.state.fl.us), or by telephone at (850) 245-7545.

Sincerely,



Martin K. Seeling, Administrator  
Beaches, Inlets and Ports Program



**Notice of Permit Modification**  
**Permit Modification No. 0305721-003-BN**  
**Miami Harbor Phase III Federal Channel Expansion**  
**Page 9 of 9**

cc: Eric Bush, Corps  
Terri Jordan-Sellers, Corps  
Laurel Reichold, Corps  
Jim McAdams, Corps  
Matt Miller, Corps  
Shealy Bowell, Corps  
Nestor Rivera, Corps  
Craig Kruempel, Tetra Tech  
Becky Hope, Port of Miami  
Lisa Gregg, FWC  
marineturtle@myfwc.com  
Mark Thomason, DWRM  
Danielle Irwin, DWRM  
Lainie Edwards, DWRM  
Roxane Dow, DWRM  
Vladimir Kosmynin, DWRM  
Jennifer Peterson, DWRM  
Ron Miedema, EPA  
JCP Compliance Officer, DWRM  
Betsy Hewitt, OGC  
Ronnie Hoenstine, OGC  
Jason Andreotta, DEP SE District  
Joanna Walczak, CAMA  
Lauren Waters, CAMA  
Pamela Sweeney, CAMA  
Jocelyn Karaszia, NMFS  
Martha Robbart, Dial Cordy & Associates, Inc.  
Michelle Loewe, Great Lakes Dredge & Dock Co.  
Chris Pomfrett, Great Lakes Dredge & Dock Co.  
Sara Thanner, Miami-Dade County RER  
Steve Blair, Miami-Dade County RER  
Jeff Howe, FWS  
Tropical Audubon Society, Inc.  
Biscayne Bay Waterkeeper, Inc.  
Captain Dan Kipnis

**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.



06/02/14

---

Deputy Clerk

Date