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February 28, 2014

Ms. Harriet M. Deal, Attorney-Advisor
Office of the Solicitor
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

RE: U.S. Department of the Interior and National Oceanic and Atmospheric Administration – Natural Resource Damage Assessment – Deepwater Horizon Oil Spill; Draft Programmatic and Phase III Early Restoration Plan and Draft Early Restoration Programmatic Environmental Impact Statement (Draft Phase III ERP/PEIS) – Northwest Florida.
SAI # FL201312066786C

Dear Ms. Deal:

The Florida State Clearinghouse has coordinated the state's review of the referenced Draft Phase III ERP/PEIS under the following authorities: Presidential Executive Order 12372; § 403.061(42), Florida Statutes; the Coastal Zone Management Act (16 U.S.C. §§ 1451 *et seq*., as amended); and the National Environmental Policy Act (42 U.S.C. §§ 4321-4347, as amended).

The Florida Fish and Wildlife Conservation Commission and Florida Department of State submitted comments, concerns and recommendations regarding the Draft Phase III ERP/ PEIS in the attached letters, which are incorporated herein by this reference and made an integral part of this letter.

Based on the information contained in the Draft Phase III ERP/PEIS and the enclosed state agency comments, the state has determined that, at this stage, the proposed federal activities are consistent with the Florida Coastal Management Program (FCMP). To ensure the projects' continued consistency with the FCMP, the concerns identified by our reviewing agencies must be addressed prior to project implementation. The state's continued concurrence will be based on the activities' compliance with FCMP authorities, including federal and state monitoring of the activities to ensure their continued conformance, and the adequate resolution of issues identified during this and subsequent reviews. The state's final concurrence of the projects' consistency with the FCMP will be determined during the environmental permitting process, if applicable, in accordance with Section 373.428, Florida Statutes.

Thank you for the opportunity to review the draft document. Should you have any questions regarding this letter, please don't hesitate to contact me at Lauren.Milligan@dep.state.fl.us or (850) 245-2170.

Yours sincerely,

Lauren P. Milligan

Lauren P. Milligan, Coordinator
Florida State Clearinghouse
Office of Intergovernmental Programs

Enclosures

ec: Stephanie Willis, NOAA Office of General Counsel
Harwell Coale, III, USDA Office of the General Counsel
Gary Fremerman, USDA Office of the General Counsel
James Bove, EPA Office of General Counsel
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February 14, 2014

Lauren Milligan
Office of Intergovernmental Programs
Department of Environmental Protection
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Tallahassee, FL 32399-3000
Lauren,milligan@dep.state.fl.us

Re: U.S. Department of the Interior (DOI) and National Oceanic and Atmospheric Administration (NOAA), Natural Resource Damage Assessment of the Deepwater Horizon Oil Spill – Draft Programmatic and Phase III Early Restoration Plan /Draft Early Restoration Programmatic Environmental Impact Statement (Draft Phase III ERP/PEIS), Northwest Florida, SAI #FL201312066786C

Dear Ms. Milligan:

Florida Fish and Wildlife Conservation Commission staff has reviewed the referenced Draft Phase III ERP/PEIS dated December 2013. The Draft Phase III ERP/PEIS considers programmatic alternatives to restore natural resources, ecological services, and recreational use services that were injured or lost as a result of the Deepwater Horizon oil spill. FWC staff provides the following comments, in accordance with the National Environmental Policy Act, the Coastal Zone Management Act/Florida Coastal Management Program (CZMA/FCMP) and Chapter 379, Florida Statutes.

Project Description

In April 2010, the mobile offshore drilling unit, Deepwater Horizon, which was being used to drill a well for BP Exploration and Production, Inc., suffered a blowout and subsequently sank into the Gulf of Mexico. Millions of barrels of oil, over a million gallons of oil dispersants, and an undetermined amount of natural gas were released into the Gulf as a result. The release resulted in impacts to oceanic and coastal ecosystems of the northern Gulf, including coastal and estuarine habitats; ecologically, recreationally, and commercially important fish and wildlife species; and associated ecological and recreational use services.

Pursuant to the Oil Pollution Act (33, United States Code, Section 2701), Florida laws, and the laws of other affected states, the federal and state governments, including FWC, are designated as Trustees on behalf of the public to assess injuries to the natural environment and their services that resulted from the oil spill, and to plan for restoration to compensate for those injuries. The injury assessment and restoration planning, or natural resource damage assessment (NRDA), is designed to evaluate potential injuries to natural resources and their services, to use that information to determine whether and to what extent restoration is needed, and to identify potential restoration actions to address that need. In April 2011, DOI, NOAA and the state Trustees entered into an agreement with BP entitled "Framework for Early Restoration Addressing Injuries Resulting from the Deepwater Horizon Oil Spill," under which BP agreed to provide funding for projects to address injuries to natural resources caused by the oil spill. While the NRDA process is ongoing, the Trustees and BP have begun the Early Restoration, wherein projects are being developed, proposed for funding, and then initiated to begin to restore injured resources and services to baseline conditions prior to the completion of the NRDA.

The Draft Phase III ERP/PEIS pertains to a third phase of Early Restoration and provides descriptions and environmental assessments for specific projects being proposed by the Trustees;

30 projects are located in Florida. A Programmatic ERP and EIS have been prepared to analyze alternative approaches to continuing Early Restoration, allow for a better analysis of cumulative impacts of potential actions, and to consider multiple related actions that may occur as a result of Early Restoration. The Draft Phase III ERP/PEIS evaluates four alternatives for each of the 30 projects proposed in Florida:

- Alternative 1: No action – no additional Early Restoration at this time;
- Alternative 2: Contribute to restoring habitats and living coastal and marine resources;
- Alternative 3: Contribute to providing and enhancing recreational opportunities; and
- Alternative 4 (Preferred Alternative): Contribute to restoring habitats, living coastal and marine resources, and recreational opportunities.

On December 12, 2013, the Federal Trustees—DOI, NOAA, the U.S. Department of Agriculture, and the U.S. Environmental Protection Agency—submitted a determination that they found the proposed Phase III Early Restoration projects to be consistent with the Florida Coastal Management Program. The comments contained herein pertain to the FWC's review of the projects for consistency with its authorities under the FCMP.

General Comments

We recognize that each of the proposed projects is intended to provide benefits to the state as a whole by contributing to the restoration of habitats, their associated fish and wildlife resources, and ecological functions, and by enhancing recreational opportunities. The FWC has coordinated with the Florida Department of Environmental Protection (FDEP) and the other Trustees throughout both the NRDA process and in development of the projects. FWC staff is committed to working both internally and with the FDEP and other external partners to refine the projects in order to assure that unintended impacts to fish and wildlife resources are minimized to the fullest extent possible.

In order to maintain consistency with recommendations FWC makes for minimizing impacts to fish and wildlife resources from projects taking place in and around coastal and estuarine areas, we provide the attached standard Fish and Wildlife Protective Measures for inclusion in the Final Phase III ERP/PEIS. Additionally, we are working with FDEP on additional recommendations for certain projects and will provide a summary of these to FDEP staff under separate cover.

Project-Specific Comments

The Navarre Beach Park Gulfside Walkover Complex and Coastal Access projects propose to enhance recreational opportunities at Navarre Beach Park in Santa Rosa County by improving access to the beach and Santa Rosa Sound from existing pavilion and parking lot areas at Navarre Beach. The Gulfside Walkover Complex project proposes the construction of a dune walkover complex, which would include a driveway, parking area, restroom facility, lifeguard tower, and three pavilions with boardwalk connections to a dune walkover with access to the shoreline of the Gulf of Mexico. The Santa Rosa Sound Coastal Access project proposes construction of two new beach access boardwalks from existing parking lot areas to Santa Rosa Sound and a new kayak/canoe launch and boardwalk. The proposal also includes restoration of a one-acre area of degraded dune habitat. This restoration would involve planting gaps in the existing dune within the project area.

The Gulfside Walkover Complex and the Coastal Access projects as proposed in the Draft Phase III ERP/PEIS were discussed at a joint FDEP, FWC, and U.S. Fish and Wildlife Service meeting with Santa Rosa County on February 12, 2014. This meeting resulted in an agreement that the

project as proposed needed to be modified to avoid potential impacts to state-listed shorebird species and their habitats. The modifications discussed include relocating the parking area, restroom facility and pavilions to an area between existing facilities and relocating the dune crossover outside of the current breeding area. The County has also agreed to work with FWC and the FWS on the final designs for these facilities. Additionally, the County agreed to include speed control measures, vehicle usage of only the western park boundary for access, and educational signage to further reduce the potential for impacts. Based on this meeting, the plan designs are currently being adjusted to avoid potential impacts to state-listed shorebird species and their habitat. We further appreciate the County's recognition of the sensitive fish and wildlife resources in this area and their willingness to balance these resource needs with public access needs now and in the future.

With incorporation of the suggested Fish and Wildlife Protective Measures referenced above and with a commitment to working cooperatively with FDEP to avoid potential impacts to listed species and address specific project issues, the FWC finds that the proposed Phase III Early Restoration Projects are consistent with FWC's authorities under the FCMA.

FWC appreciates the opportunity to review this project and will continue to work cooperatively with other State of Florida and Federal Trustees. If future modifications are proposed or if further assistance or consultation is needed, please contact Jane Chabre either by phone at (850) 410-5367 or at FWCConservationPlanningServices@MyFWC.com. If you have specific technical questions regarding the content of this letter, please contact Laura DiGruttolo at (386) 758-0525 or by email at laura.digruttolo@myfwc.com.

Sincerely,

Jennifer D. Goff

Jennifer D. Goff
Land Use Planning Program Administrator
Office of Conservation Planning Services

jdg/ld
ENV 1-3-2
Deepwater Horizon Oil Spill Draft Phase III EIS-PEIS_18453_021414
Enclosure
cc: Nanciann Regalado
U.S. Fish and Wildlife Services
P.O. Box 49576
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Nanciann_regalado@fws.gov

Fish and Wildlife Protective Measures

The following recommendations are made by the Florida Fish and Wildlife Conservation Commission (FWC) for the protection of manatees, seabirds, shorebirds and marine turtles and to ensure consistency with the Florida Coastal Zone Management Act and specifically with Florida Statute 379.2431 (1) and (2) and Florida Administrative Code 68A- 1.002, - 4.001, - 16.001 and 68A-27 (rules relating to endangered or threatened species).

1. **Manatee, Marine Turtle, and Shorebird Protection Conditions**. During all authorized construction, the Permittee shall comply with the following conditions intended to protect manatees and marine turtles from direct project effects:

    a. All personnel associated with the project shall be instructed about the presence of marine turtles, manatees and manatee speed zones, and the need to avoid collisions with (and injury to) these protected marine species. 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 and marine turtles cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid entanglement or entrapment. Barriers must not impede manatee or marine turtle movement.

    d. All on-site project personnel are responsible for observing water-related activities for the presence of marine turtles and manatee(s). **All in-water operations, including vessels, shall be shutdown if a marine turtle or manatee comes within 50 feet of the operation.** Activities shall not resume until the animal(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the animal(s) has not reappeared within 50 feet of the operation. Animals shall not be herded away or harassed into leaving.

    e. Any collision with or injury to a marine turtle or manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1-888-404-3922, and to FWC at ImperiledSpecies@myFWC.com. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service (USFWS) in Jacksonville at 1-904-731-3336.

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. Temporary signs that have already been approved for this use by the FWC must be used. One sign which reads *Caution: Boaters* must be posted. A second sign measuring at least 8 ½" by 11" explaining the requirements for "Idle Speed/No Wake" and the shutdown of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related activities. Signs already approved by the FWC can be viewed at MyFWC.com/manatee. Questions concerning these signs can be sent to the email address listed above.

g. All personnel associated with the project shall be instructed about the potential presence of nesting shorebirds and the need to avoid take of (including disturbance to) these protected species.

h. All vehicles shall be operated in accordance with the FWC's Best Management Practices for Operating Vehicles on the Beach (http://myfwc.com/conservation/you-conserve/wildlife/beach-driving/). Specifically, the vehicle must be operated at a speed <6 mph and run at or below the high-tide line.

Fish and Wildlife Protection Measures for Dredging Activities:

1. ***In-water Activity.*** The 2011 Standard Manatee and Marine Turtle Construction Conditions for In-water Work (**copy attached**) shall be followed for all in-water activity.

2. ***Hopper Dredging.*** In the event a hopper dredge is utilized, the following requirements shall be met in addition to the Terms and Conditions of the applicable NMFS Regional Biological Opinion for Hopper Dredging (South Atlantic or Gulf of Mexico):

   a. Handling of captured sea turtles or sea turtle 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 Marine Turtle Permit issued by the Florida Fish and Wildlife Conservation Commission (FWC), pursuant to Florida Administrative Code (FAC) 68E-1.

   b. Standard operating procedure shall be that dredging pumps shall be disengaged by the operator, or the draghead bypass value shall be open and in use when the dragheads are not firmly on the bottom, to minimize impingement or entrainment of sea turtles within the water column. This precaution is especially important during the cleanup phase of dredging operations.

c. A state-of-the-art rigid deflector draghead must be used on all hopper dredges in all channels at all times of the year.

d. The Sea Turtle Stranding and Salvage Network (STSSN) Coordinator shall be notified at 1-904-573-3930 or via e-mail at Allen.Foley@myfwc.com of the start-up and completion of hopper dredging operations. In the event of capturing or recovering marine turtles or marine turtle parts, the STSSN should be contacted at 1-888-404-FWCC (3922).

e. Relocation trawling or non-capture trawling shall be implemented in accordance with the applicable NMFS Biological Opinion and Incidental Take authorization. Any activity involving the use of nets to harass and/or to capture and handle marine turtles in Florida waters requires a Marine Turtle Permit from FWC.

   The permittee or their contractor shall e-mail (MTP@MyFWC.com) weekly reports to the Imperiled Species Management section on Friday each week that trawling is conducted in Florida waters. These weekly reports shall include: the species and number of turtles captured in Florida waters, general health, and release information. A summary (FWC provided Excel spreadsheet) of all trawling activity, including non-capture trawling, and all turtles captured in Florida waters, including all measurements, the latitude and longitude (in decimal degrees) of captures and tow start-stop points, and times for the start-stop points of the tows, including those tows on which no turtles are captured, shall be submitted to MTP@myfwc.com by January 15 of the following year or at the end of the project.

3. Seabirds and Shorebirds. In cases where dredging activities have the potential to erode beaches or disturb Seabird or Shorebird breeding activities, *Fish and Wildlife Protection Conditions for Beach Placement of Material* apply.

Fish and Wildlife Protection Conditions for Beach Placement of Material:

1. ***Beach Maintenance.*** All derelict concrete, metal, and coastal armoring material and other debris shall be removed from the beach prior to any material placement to the maximum extent practicable. If debris removal activities will take place during shorebird breeding or sea turtle nesting seasons, the work shall be conducted during daylight hours only and shall not commence until completion of daily seabird/shorebird and sea turtle surveys each day. All excavations and temporary alterations of the beach topography shall be filled or leveled to the natural beach profile prior to 9 p.m. each day.

2. ***Pre-Construction Meeting.*** A meeting between representatives of the contractor, the U. S. Fish and Wildlife Service (FWS), the FWC, the permitted sea turtle surveyor, and Bird Monitors as appropriate shall be held prior to commencement

of work on projects. At least 10-business days advance notice must be provided prior to conducting this meeting. The meeting will provide an opportunity for explanation and/or clarification of the protection measures as well as additional guidelines when construction occurs during nesting season, such as staging equipment and reporting within the work area as well as follow up meetings during construction.

3. ***Nesting Seabird and Shorebird Protection Conditions:*** Nesting seabird and shorebird (i.e. shorebird) surveys should be conducted by trained, dedicated individuals (Bird Monitor) with proven shorebird identification skills and avian survey experience. A list of candidate Bird Monitors with their contact information, summary of qualifications including bird identification skills, and avian survey experience shall be provided to the DEP and FWC. This information will be submitted to the FWC Regional Species Conservation Biologist (**contact information attached**) and **copied to** JCPCompliance@dep.state.fl.us prior to any construction or hiring for shorebird surveys for revision and consultation. Bird Monitors shall use the following survey protocols:

   a. Bird Monitors shall review and become familiar with the general information, employ the data collection protocol, and implement data entry procedures outlined on the FWC's Florida Shorebird Database (FSD) website (www.FLShorebirdDatabase.org). An outline of data to be collected, including downloadable field data sheets, is available on the website.

   b. Breeding season varies by species. Most species have completed the breeding cycle by September 1, but flightless young may be present through September. The following dates are based on the best available information regarding ranges and habitat use by species around the state:

All Gulf Coast counties:	February 15 – September 1 **except**:
Citrus, Levy, Monroe	March 15- September 1
Dixie and Taylor	April 1 – September 1
Spoil islands in Hillsborough	March 1- September 1

All Atlantic Coast Counties:	March 15 – September 1 **except**:
St. Lucie, Martin, and Palm Beach spoil islands & estuaries	March 15 – September 1
St. Lucie, Martin, and Palm Beach coastal beaches	April 1- September 1
Broward and Miami-Dade	April 1 – September 1

   Breeding season surveys shall begin on the first day of the breeding season or 10 days prior to project commencement (including surveying activities and other pre-construction presence on the beach), whichever is later. Surveys shall be conducted through August 31st or until all breeding activity has concluded, whichever is later.

c. Breeding 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. Portions of the project in which there is no potential for project-related activity during the nesting season may be excluded. One or more shorebird survey routes shall be established in the FSD website to cover these areas.

d. During the pre-construction and construction phases of the project, surveys for detecting breeding activity and the presence of flightless chicks will be completed on a daily basis prior to movement of equipment, operation of vehicles, or other activities that could potentially disrupt breeding behavior or cause harm to the birds or their eggs or young.

e. Surveys shall be conducted by walking the length of the project area and visually surveying for the presence of shorebirds exhibiting breeding behavior, shorebird/seabird chicks, or shorebird/seabird juveniles as outlined in the FSD *Breeding Bird Protocol for Shorebirds and Seabirds*. Use of binoculars is required.

   If an ATV or other vehicle is needed to cover large project areas, operators will adhere to the FWC's Best Management Practices for Operating Vehicles on the Beach (http://myfwc.com/conservation/you-conserve/wildlife/beach-driving/). Specifically, the vehicle must be operated at a speed <6 mph and run at or below the high-tide line. The Bird Monitor will stop at no greater than 200 meter intervals to visually inspect for breeding activity.

f. Once breeding is confirmed by the presence of a scrape, eggs, or young, the Bird Monitor will notify the FWC Regional Species Conservation Biologist (**contact information attached**) within 24 hours. All breeding activity will be reported to the FSD website within one week of data collection.

4. ***Seabird and Shorebird Buffer Zones and Travel Corridors.*** Within the project area, the permittee shall establish a disturbance-free buffer zone around any location where shorebirds have been engaged in breeding behavior, including territory defense. A 300 ft-wide buffer is considered adequate based on published studies. However, a smaller, site-specific buffer may be implemented upon approval by the FWC Regional Species Conservation Biologist (**contact information attached**) as needed. All sources of human disturbance (including pedestrians, pets, and vehicles) shall be prohibited in the buffer zone.

   a. The Bird Monitor shall keep breeding sites under sufficient surveillance to determine if birds appear agitated or disturbed by construction or other activities in adjacent areas. If birds do appear to be agitated or disturbed by these activities, then the width of the buffer zone shall be increased immediately to a sufficient size to protect breeding birds.

b. Reasonable and traditional pedestrian access should not be blocked where breeding 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 breeding was initiated within 300 feet of an established beach access pathway. The permittee shall work with the FWC Regional Species Conservation Biologist to determine if pedestrian access can be accommodated without compromising nesting success.

c. Designated buffer zones must be marked with posts, twine, and signs stating "Do Not Enter, Important Nesting Area" or similar language around the perimeter which includes the name and a phone number of the entity responsible for posting. Posts should not exceed 3'in height once installed. Symbolic fencing (twine, string, or rope) should be placed between all posts at least 2.5' above the ground and rendered clearly visible to pedestrians. If pedestrian pathways are approved by the FWC Regional Species Conservation Biologist within the 300-foot buffer zone, these should be clearly marked. The posting shall be maintained in good repair until breeding is completed or terminated. Although solitary nesters may leave the buffer zone with their chicks, the posted area continues to provide a potential refuge for the family until breeding is complete. Breeding is not considered to be completed until all chicks have fledged.

d. No construction activities, pedestrians, movement of vehicles, or stockpiling of equipment shall be allowed within the buffer area.

e. Travel corridors shall be designated and marked outside the buffer areas so as not to cause disturbance to breeding birds. Heavy equipment, other vehicles, or pedestrians may transit past breeding areas in these corridors. However, other activities such as stopping or turning shall be prohibited within the designated travel corridors adjacent to the breeding site. When flightless chicks are present within or adjacent to travel corridors, movement of vehicles shall be accompanied by the Bird Monitor who will ensure no chicks are in the path of the moving vehicle and no tracks capable of trapping flightless chicks result.

f. To discourage nesting within the travel corridor, it is recommended that the Permittee should maintain some activity within these corridors on a daily basis, without disturbing any nesting shorebirds documented on site or interfering with sea turtle nesting, especially when those corridors are established prior to commencement of construction.

5. ***Notification.*** If shorebird breeding occurs within the project area, a bulletin board will be placed and maintained in the construction staging area with the location map of the construction site showing the bird breeding areas and a warning, clearly visible, stating that "NESTING BIRDS ARE PROTECTED BY LAW

INCLUDING THE FLORIDA ENDANGERED AND THREATENED SPECIES ACT AND THE STATE and FEDERAL MIGRATORY BIRD ACTS".

6. ***Marine Turtle Nest Surveys and Relocation.*** For sand placement projects that occur during the period from May 1 through October 31, daily early morning (before 9 a.m.) surveys shall be conducted, and eggs shall be relocated per the requirements below (a to c) until completion of the project . (*Note: sea turtle monitors shall not enter posted shorebird buffer areas to conduct monitoring or to relocate nests.*) Monitoring and reporting should continue throughout the nesting season and should be conducted according to *Post-construction Monitoring and Reporting Marine Turtle Protection Conditions* included in this document.

   Nesting surveys shall be initiated 65 days prior to sand placement activities or by April 15 whichever is later. Nesting surveys and egg relocations shall continue through the end of the project or September 30 whichever is earlier. If nests are laid in areas where they may be affected by construction activities, eggs shall be relocated per the requirements listed in a through c below. Monitoring should resume the following nesting season and should be conducted according to *Post-construction Monitoring and Reporting Marine Turtle Protection Conditions* included in this document.

   a. Nesting surveys and egg relocations shall only be conducted by persons with prior experience and training in these activities and who are duly authorized to conduct such activities through a valid permit issued by FWC, pursuant to F.A.C 68E-1. Please contact FWC's Marine Turtle Management Program in Tequesta at MTP@myfwc.com for information on the permit holder in the project area. It is the responsibility of the permittee to ensure that nesting surveys are completed. Nesting surveys shall be conducted daily between sunrise and 9 a.m. (in all time zones).

   b. Only those nests in the area where sand placement shall occur shall be relocated. Nest relocation shall not occur upon completion of sand placement. 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 secure setting where artificial lighting will not interfere with hatchling orientation. Relocated nests shall not be placed in organized groupings. Relocated nests shall be randomly staggered along the length and width of the beach in settings that are not expected to experience daily inundation by high tides or known to routinely experience severe erosion and egg loss, or that are subject to artificial lighting. Nest relocations in association with construction activities shall cease when sand placement activities no longer threaten nests.

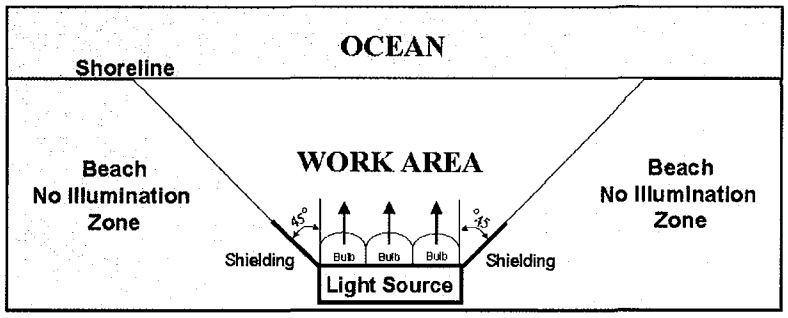
   c. Nests deposited within areas where construction activities have ceased or will not occur for 65 days or nests laid in the nourished berm prior to tilling shall be marked and left in place unless other factors threaten the success of the nest. The turtle permit holder shall install an on-beach marker at the nest site

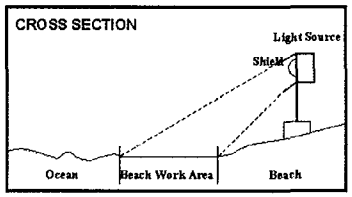
and/or a secondary marker at a point as far landward as possible to assure that future location of the nest will be possible should the on-beach marker be lost. No activity will occur within this area nor will any activities occur which could result in impacts to the nest. Nest sites shall be inspected daily to assure nest markers remain in place and the nest has not been disturbed by the project activity.

7. ***Marine Turtle or Nest Encounters.*** Upon locating a dead or injured sea turtle adult, hatchling or egg that may have been harmed or destroyed as a direct or indirect result of the project, the Corps, applicant, and/or local sponsor shall be responsible for notifying FWC Wildlife Alert at 1-888-404-FWCC (3922). Care shall be taken in handling injured sea turtles or eggs to ensure effective treatment or disposition, and in handling dead specimens to preserve biological materials in the best possible state for later analysis. In the event a sea turtle nest is excavated during construction activities, the permitted person responsible for egg relocation for the project shall be notified immediately so the eggs can be moved to a suitable relocation site.

8. ***Equipment Storage and Placement.*** Staging areas for construction equipment shall be located off the beach, if off-beach staging areas are available. Nighttime storage of construction equipment not in use shall be off the beach to minimize disturbance to shorebird and sea turtle nesting and hatching activities. In addition, 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. Pipes placed parallel to the dune shall be 5 to 10 feet away from the toe of the dune. Temporary storage of pipes shall be off the beach to the maximum extent possible. 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 shorebird nesting site during the shorebird nesting season.

9. ***Project Lighting.*** Direct lighting of the beach and nearshore waters shall be limited to the immediate construction area during the sea turtle nesting season and shall comply with safety requirements. Lighting on offshore or onshore equipment shall be minimized through reduction, shielding, lowering, and appropriate placement to avoid excessive illumination of the water's surface and nesting beach while meeting all Coast Guard, EM 385-1-1, and OSHA requirements. Light intensity of lighting equipment shall be reduced to the minimum standard required by OSHA for General Construction areas, in order not to misdirect sea turtles. Shields shall be affixed to the light housing and be large enough to block light from all lamps from being transmitted outside the construction area (**Figure below**).





BEACH LIGHTING SCHEMATIC

10. ***Fill Restrictions.*** *During the sea turtle nesting season, the contractor shall not extend* the beach fill more than 500 feet along the shoreline between dusk and the following day until the daily nesting survey has been completed and the beach cleared for fill advancement. An exception to this may occur if there is permitted sea turtle surveyor present on-site to ensure no nesting and hatching sea turtles are present within the extended work area. If the 500 feet is not feasible for the project, an agreed upon distance will be decided on during the preconstruction meeting. Once the beach has been cleared and the necessary nest relocations have been completed, the contractor will be allowed to proceed with the placement of fill during daylight hours until dusk at which time the 500-foot length limitation shall apply.

11. ***Compaction Sampling.*** Sand compaction shall be monitored in the area of sand placement immediately after completion of the project and prior to April 15th for three (3) subsequent years and shall be monitored in accordance with a protocol agreed to by the FWS, FWC, and the applicant or local sponsor. The requirement for compaction monitoring can be eliminated if the decision is made to till regardless of post-construction compaction levels. Out-year compaction monitoring and remediation are not required if placed material no longer remains on the beach.

    At a minimum, the protocol provided under a and b below shall be followed. If the average value for any depth exceeds 500 pounds per square inch (psi) for any two or more adjacent stations, then that area shall be tilled immediately prior to the following date listed above. If values exceeding 500 psi are distributed throughout the project area but in no case do those values exist at two adjacent stations at the same depth, then consultation with the FWC or FWS will be

required to determine if tilling is required. If a few values exceeding 500 psi are present randomly within the project area, tilling will not be required.

a. Compaction sampling stations shall be located at 500-foot intervals along the project area. One station shall be at the seaward edge of the dune/bulkhead line (when material is placed in this area), and one station shall be midway between the dune line and the high water line (normal wrack line).

b. At each station, the cone penetrometer shall be pushed to a depth of 6, 12, and 18 inches three times (three replicates). Material may be removed from the hole if necessary to ensure accurate readings of successive levels of sediment. The penetrometer may need to be reset between pushes, especially if sediment layering exists. Layers of highly compact material may lie over less compact layers. Replicates shall be located as close to each other as possible, without interacting with the previous hole and/or disturbed sediments. The three replicate compaction values for each depth shall be averaged to produce final values for each depth at each station. Reports will include all 18 values for each transect line, and the final 6 averaged compaction values.

c. No compaction sampling shall occur within 300 feet of any shorebird nest.

d. Any vehicles operated on the beach in association with compaction surveys shall operate in accordance with the FWC's Best Management Practices for Operating Vehicles on the Beach (http://myfwc.com/conservation/you-conserve/wildlife/beach-driving/).

12. ***Tilling Requirements.*** If tilling occurs during shorebird nesting season (See 3b above), shorebird surveys prior to tilling shall be required per the Shorebird Conditions included within this document. It is the responsibility of the contractors to avoid tilling, scarp removal, or dune vegetation planting in areas where nesting birds are present. Each pass of the tilling equipment shall be overlapped to allow thorough and even tilling. If the project is completed during the marine turtle nesting season, tilling will not be performed in areas where nests have been left in place or relocated. If compaction measurements are taken, a report on the results of the compaction monitoring shall be submitted electronically to FWC at marineturtle@myfwc.com prior to any tilling actions being taken.

a. No tilling shall occur within 300 feet of any shorebird nest.

b. If flightless shorebird young are observed within the work zone or equipment travel corridor, a Shorebird Monitor shall be present during the operation to ensure that equipment does not operate within 300 feet of the flightless young.

c. 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.

d. Tilling shall occur landward of the wrack line and avoid all vegetated areas 3 square feet or greater with a 3 square foot buffer around the vegetated areas. 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.

e. Any vehicles operated on the beach in association with tilling shall operate in accordance with the FWC's Best Management Practices for Operating Vehicles on the Beach (http://myfwc.com/conservation/you-conserve/wildlife/beach-driving/).

13. ***Escarpment Surveys.*** Visual surveys for escarpments along the project area shall be made immediately after completion of the sand placement project and during March 15 to April 15 for three (3) subsequent years if sand from the project area still remains on the beach.

Escarpments that interfere with sea turtle nesting or that exceed 18 inches in height for a distance of at least 100 feet shall be leveled and the beach profile shall be reconfigured to minimize scarp formation by April 15. Any escarpment removal shall be reported by location. If the project is completed during the sea turtle nesting and hatching season, escarpments may be required to be leveled immediately, while protecting nests that have been relocated or left in place. FWC shall be contacted immediately if subsequent reformation of escarpments that interfere with sea turtle nesting or that exceed 18 inches in height for a distance of 100 feet occurs during the nesting and hatching season to determine the appropriate action to be taken.

If it is determined that escarpment leveling is required during the nesting or hatching season, the FWS or FWC will provide a brief written authorization that describes methods to be used to reduce the likelihood of impacting existing nests. An annual summary of escarpment surveys and actions taken shall be submitted electronically to marineturtle@myfwc.com along with the annual summary as described below. If escarpment removal occurs during shorebird breeding season (See 3B), shorebirds surveys shall be required per the *Shorebird Conditions* included within this document prior to removal. (NOTE: Out-year escarpment monitoring and remediation are not required if placed material no longer remains on the dry beach).

a. No heavy equipment shall operate within 300 feet of any shorebird nest.

b. If flightless shorebird young are observed within the work zone or equipment travel corridor, a Shorebird Monitor shall be present during the operation to ensure that equipment does not operate within 300 feet of the flightless young.

c. Any vehicles operated on the beach in association with escarpment surveys or removal shall operate in accordance with the FWC's Best Management Practices for Operating Vehicles on the Beach (http://myfwc.com/conservation/you-conserve/wildlife/beach-driving/).

Post-construction Shorebird Protection Conditions:

1. If beach cleaning will occur on the nourished beach, a minimum of 30% of the biotic material within the wrack line will be left on the beach post-cleaning at the strand line in a natural configuration to ensure that the nourished beach re-establishes its function as foraging habitat for shorebirds. This shall occur for as long as the placed sand remains on the beach.

Post-construction Monitoring and Reporting Marine Turtle Protection Conditions:

1. Reports on all marine turtle nesting activity shall be provided for the initial marine turtle nesting season (**May 1 through September 30**) and for up to three additional nesting seasons as follows:

   a. For the initial nesting season and the following year, the number and type of emergences (nests or false crawls) shall be reported per species in accordance with the **Table below**. An additional year of nesting surveys may be required if nesting success for any species on the nourished beach is less than 40%.

   b. For the initial nesting season, reproductive success shall be reported per species in accordance with the **Table below**. Reproductive success shall be reported for all loggerhead, green and leatherback nests if possible. Otherwise a statistically significant number of nests for each species shall be reported.

   c. In the event that the reproductive success documented by species meets or exceeds required criteria (outlined in **Table below**) for each species, monitoring for reproductive success shall be recommended, but not required for the second year post-construction.

   d. Monitoring of nesting activity in the seasons following construction shall include daily surveys and any additional measures authorized by the FWC. Summaries shall include all crawl activity, nesting success rates, hatching success of all relocated nests, hatching success of a representative sampling of nests left in place (if any) by species, project name and applicable project permit numbers and dates of construction.

   Data should be reported for the nourished areas in accordance with the **Table below** and should include number of nests lost to erosion or washed out. Summaries of nesting activity shall be submitted in electronic format (Excel spreadsheets) to the FWC Imperiled Species Management section at

MTP@myfwc.com. All summaries should be submitted by January 15 of the following year. The FWC Excel spreadsheet is available upon request from MTP@myfwc.com.

2. Two lighting surveys shall be conducted of all artificial lighting visible from the renourished berm. The first survey shall be conducted between May 1 and May 15 the first nesting season following construction or immediately after placement if construction is not completed until after May 15, and a second survey between July 15 and August 1. The survey shall be conducted by the permittees or local sponsor and should be conducted to include a landward view from the seaward most extent of the new beach profile. The survey should follow standard techniques for such a survey and include number and type of visible lights, location of lights and photo documentation. For each light source visible, it must be documented that the property owner(s) have been notified of the problem light with recommendations for correcting the light. Recommendations must be in accordance with the Florida Model Lighting Ordinance for Marine Turtle Protection (Chapter 62B-55, F.A.C.) and local lighting restrictions. In addition to local code enforcement, actions must be taken by the permittees to ensure that no lights or light sources are visible from the newly elevated beach within their respective areas.

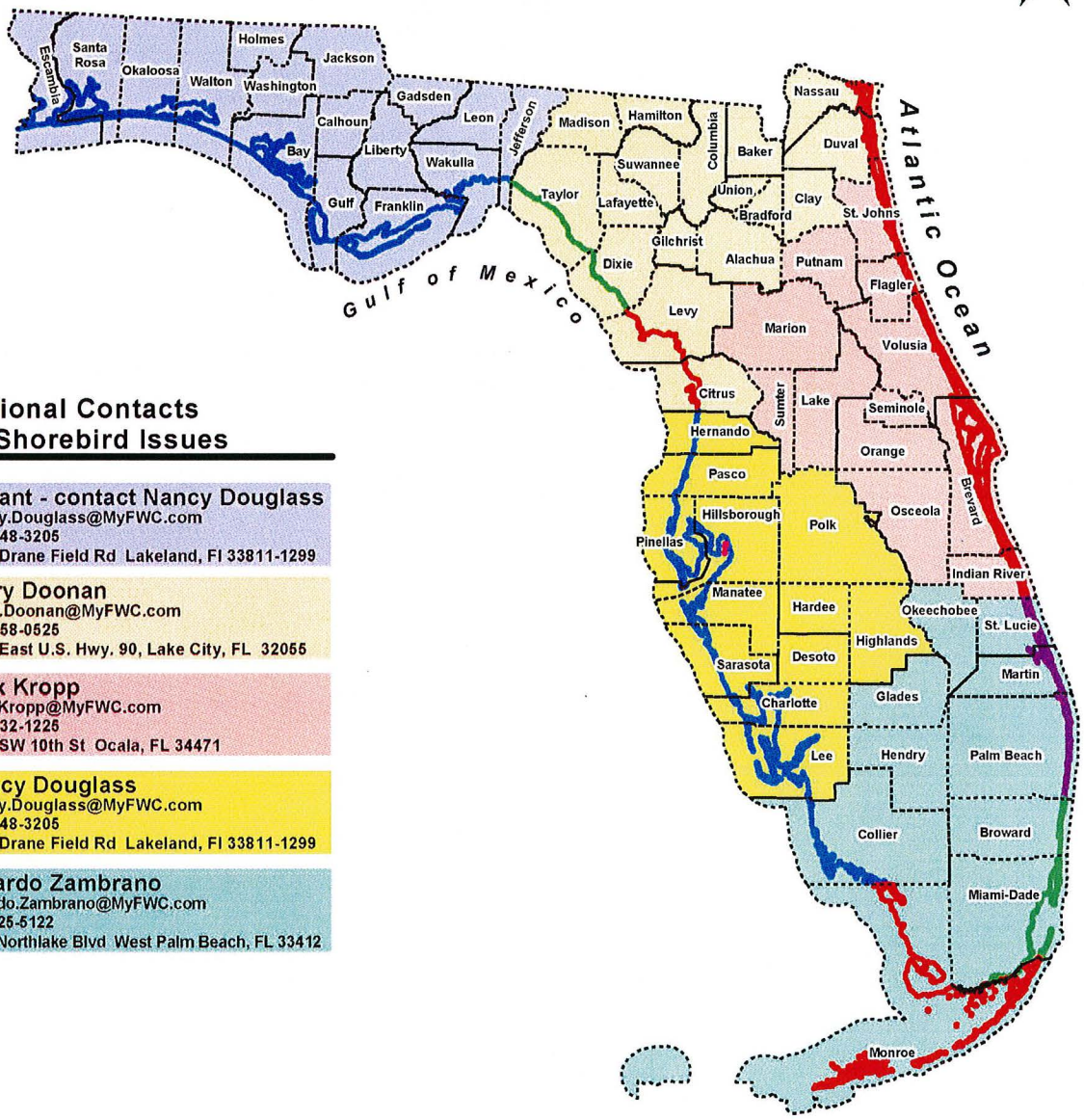
   A report summarizing all lights visible shall be submitted to FWC Imperiled Species Management Section at marineturtle@myfwc.com by the 1st of the month following survey. A summary report documenting what corrective actions have been taken provided and all compliance and enforcement actions shall also be submitted by December 15 of that year. After the annual report is completed, a meeting shall be set up with the permittees or local sponsor, county or municipality, FWC and the FWS to discuss the survey report as well as any documented sea turtle disorientations in or adjacent to the project area.

Table. Marine Turtle Monitoring for Beach Placement of Material

Metric	Duration	Variable	Criterion
Nesting Success	Year of construction, one year to two or three years post construction if placed sand remains on beach and variable does not meet criterion based on previous year	Number of nests and non-nesting emergences by day by species	40% or greater
Hatching Success	Year of construction and one to three years post construction if placed sand remains on beach and variable does not meet criterion based on	Number of hatchlings by species to completely escape egg	Average of 60% or greater (data must include washed out nests)

	previous year		
Emergence Success	Year of construction and one to three years post construction if placed sand remains on beach and variable does not meet success criterion based on previous year	Number of hatchlings by species to emerge from nest onto beach	Average must not be significantly different than the average hatching success
Disorientation	Year of construction and one to three years post construction if placed sand remains on beach	Number of nests and individuals that misorient or disorient	
Lighting Surveys	Two surveys the year following construction , one survey between May 1 and May 15 and second survey between July 15 and August 1	Number, location and photographs of lights visible from nourished berm, corrective actions and notifications made	100% reduction in lights visible from nourished berm within one to two month period
Compaction	Not required if the beach is tilled prior to nesting season each year placed sand remains on beach	Shear resistance	Less than 500 psi
Escarpment Surveys	Weekly during nesting season for up to three years each year placed sand remains on the beach	Number of scarps 18 inches or greater extending for more than 100 feet that persist for more than 2 weeks	Successful remediation of all persistent scarps as needed

Shorebird Breeding Seasons and Regional Shorebird Contacts



Regional Contacts for Shorebird Issues

Vacant - contact Nancy Douglass
Nancy.Douglass@MyFWC.com
863-648-3205
3900 Drane Field Rd Lakeland, Fl 33811-1299

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Shorebird Breeding Season

- February 15 - September 1
- Spoil Islands Hillsborough Bay March 1 - September 1
- March 15 - September 1
- April 1 - September 1
- Spoil Islands & Estuaries March 15 - September 1
  Coastal Beaches April 1 - September 1

Florida Fish and Wildlife Conservation Commission
MyFWC.com
620 South Meridian Street
Tallahassee, Florida 32399-1600

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FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

January 10, 2014

Lauren Milligan
Florida State Clearinghouse
Florida Department of Environmental Protection
3900 Commonwealth Blvd., M.S. 47
Tallahassee, FL 32399-3000

Re: SHPO/DHR Project File No.: 2014-0048
SAI#: FL201312066786C
Project: Draft Phase III ERP/PEIS

Dear Ms. Milligan:

Our office reviewed the referenced project in accordance with the National Environmental Policy Act of 1969, and implementing regulations, and in accordance with Chapters 267 and 373, *Florida Statutes*, Florida's Coastal Management Program, and implementing state regulations.

The Draft Phase III Early Restoration Project Programmatic Environmental Impact Statement contains insufficient information to make determinations on impacts to cultural resources and historic properties. We require project-level location information to determine if recorded or unrecorded resources may be impacted by the early restoration projects. It should be noted that many recorded and unrecorded prehistoric archaeological sites exist in the general areas/environments where the projects are planned, and that the projects therefore have the potential to impact cultural resources and historic properties.

This office will conduct further individual review of the projects during the Section 106 (National Historic Preservation Act of 1966) process, with the Department of the Interior acting as the lead federal agency responsible for fulfilling federal Section 106 responsibilities.

If you have any questions concerning these comments, please contact me at timothy.parsons@dos.myflorida.com or at 850-245-6333.

Sincerely,

Timothy A. Parsons, Ph.D., RPA
Deputy State Historic Preservation Officer
Compliance and Review