



# Florida Department of Environmental Protection

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Secretary

December 14, 2017

U.S. Army Corps of Engineers  
Environmental Branch  
Jacksonville District  
Post Office Box 4970  
Jacksonville, Florida 32232-0019

Permit Modification No. 0183817-009-JN  
Permit No. 0183817-001-JC  
AIWW Vicinity of Volusia County

Dear Mr. Karch:

Your request to modify Permit No. 0183817-001-JC was received on September 29, 2017, and has been reviewed by Florida Department of Environmental Protection (Department) staff. The proposed permit modification is to re-authorize the nearshore placement area originally authorized under the Ponce Inlet DMMA 434/434C Offloading, Permit No. 0177220-004-JC, along with adjustments to the limits of the placement area.

## Background

On January 18, 2005, the Department issued Permit No. **0183817-001-JC** to the U.S. Corps of Engineers (Corps) authorizing 5 years of periodic maintenance dredging along the AIWW in Volusia County. Dredging included cuts V-22, north of Ponce de Leon Inlet, to cut V-40, south of the Mosquito Lagoon Aquatic Preserve. Three wideners located in cuts V-23, V-24, V-26 (labeled as "sediment basins") were also included in the dredge plan. The dredged material was to be placed in the Upland Disposal Site V26, as authorized in St. John's River Water Management District Permit No. 4-127-65055-1, or in the nearshore disposal site authorized by the Permit No. 0177220-004-JC, Ponce Inlet DMMA 434/434C offloading.

For additional background, please see the ***CONSOLIDATED NOTICE OF INTENT TO ISSUE JOINT COASTAL PERMIT AND AUTHORIZATION TO USE SOVEREIGN SUBMERGED LANDS*** for Permit No. 0183817-001-JC at the following website:

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[ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/volusia/issued/0183817\\_AIWW\\_Vicinity\\_of\\_Volusia\\_County/](ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/volusia/issued/0183817_AIWW_Vicinity_of_Volusia_County/)

On July 31, 2002, the Permittee requested a variance for an expanded mixing zone (Variance No. 0183817-002-EV), but this application was ultimately withdrawn on February 25, 2004.

On April 3, 2007, the Department issued Modification No. **0183817-003-EM**, to include an additional upland disposal site for Permit No. 0183817-001-JC. This allowed the placement of material dredged from Cuts V-22 and V-23 of the AIWW into Dredged Material Management Area (DMMA) 434C, an upland disposal site, in addition to the originally permitted upland disposal site, V-26.

The activities proposed in File Nos. **0183817-004-EM** and **0183817-005-EM** were originally submitted as one application for a permit modification, but were subsequently split into two separate applications. In File No. 0183817-004-EM, the Corps requested a permit modification to include dredging in the north and south channels leading from Ponce de Leon Inlet to the adjacent AIWW. In File No. **0183817-005-EM**, the Corps requested a modification to transfer the permit from the Corps to Volusia County. Both applications were withdrawn on September 18, 2008.

On July 27, 2009, the Department issued Modification No. **0183817-006-BN** to extend the expiration date of Permit No. 0183817-001-JC by five years, from January 18, 2010, to January 18, 2015.

On July 29, 2014, the Department extended the expiration date of Permit No. 0183817-001-JC by issuing Modification No. **0183817-007-JN**. That modification implemented the provisions of House Bill 7023, which authorized two-year extensions of Joint Coastal Permits under Part IV of Chapter 373, F.S. The new expiration date of January 18, 2017, provided a total permit duration of 12 years.

On September 9, 2016, the Department issued Modification No. **0183817-008-JN** to extend the expiration date of Permit No. 0183817-001-JC by an additional three years to allow for the maximum 15-year duration afforded by Rule 62B-49.011(5), Florida Administrative Code (F.A.C.) to continue periodic dredging within the Atlantic Intracoastal Waterway (AIWW) in Volusia County.

### **Staff Assessment and Justification**

The Permittee has requested to change the configuration of the south nearshore placement area so that it extends from monument R-158 southward to R-166 between the -8 feet and -22 feet MLLW contours. The previous authorized nearshore placement area extended from R-160 to R-177 from between the -12 feet and -32 feet MLLW contours. This modification will re-authorize

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the placement area originally authorized under the Ponce Inlet DMMA 434/434C Offloading Permit No. 0177220-004-JC along with adjustments to the limits of the placement area.

The Department has reviewed the application as well as past project performance. Per discussion between the Department and the Corps, the proposal of shifting the landward contour to -8 feet MLLW will enhance incorporation of the dredged material into the southward littoral drift and to be consistent with the landward placement contours of the concurrently authorized Ponce de Leon Inlet Maintenance Dredging nearshore placement area. Analysis performed by the Corps also indicates that a -22 feet seaward contour limit is sufficient for placing material within the depth of closure. To be consistent with the limits of the Ponce Inlet nearshore placement area, the Corps proposes a northern limit at R-158. Since Corps coordination with the State Division of Historical Resources only extends southward to R-166, a reduction of the southern limit from R-177 to R-166 is sufficient. Based on this information, the Department finds reasonable assurance to modify Permit No. 0183817-001-JC accordingly. Special conditions pertaining to Fish and Wildlife protective measures for dredging will be added.

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

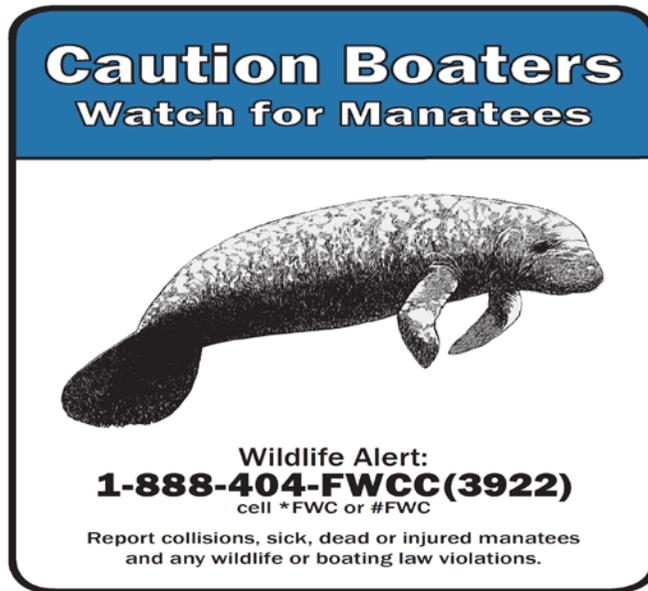
The project is to perform maintenance dredging along the Intracoastal Waterway in Volusia County. Approximately 400,000 to 800,000 cubic yards of material will be dredged every two to three years. Dredging will include cuts V-22 north of Ponce de Leon Inlet to cut V-40 south of the Mosquito Lagoon Aquatic Preserve to the 12 feet authorized depth plus 2-feet of allowable overdepth at mean low low water. Three wideners located in cuts V-23, V-24, V-26 (labeled as "sediment basins") will also be dredged to the 12 feet authorized depth plus 2-feet of allowable overdepth at mean low low water. Dredged material ~~will~~ may be placed in Upland Disposal Site V26, as authorized in St. John's River Water Management District Permit # 4-127-65055-1, or in the nearshore disposal site authorized in Permit # 0177220-001-JC. If the capacity of Upland Disposal Site V26 is full at the time of dredging, then the material dredged from cuts V-22 and V-23 may be placed within the Upland Disposal Site DMMA 434C. Dredged material may also be placed in the nearshore placement area originally authorized under the Ponce Inlet DMMA 434/434C Offloading Permit No. 0177220-004-JC. The placement area extends from monument R-158 southward to R-166 between the -8 feet and -22 feet mean lower low water (MLLW) contours.

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

**Fish and Wildlife Protective Measures for Dredging**

5. **Manatee and Marine Turtle Protection Conditions:** During all construction authorized by this permit, 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. If siltation or turbidity barriers are used, they 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 manatees. **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](mailto:ImperiledSpecies@myFWC.com). Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service (FWS) 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 shut down of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related activities. Two of these signs are attached, and signs already approved by the FWC can be viewed at [www.MyFWC.com/manatee](http://www.MyFWC.com/manatee). Questions concerning these signs can be sent to the email address listed above.



- g. At least one person shall be designated as a manatee observer when in-water work is being performed. That person shall have experience in manatee observation during dredging activities, and be equipped with polarized sunglasses to aid in observation. The manatee observer shall be on site during all in-water construction activities and advise personnel to cease operation upon sighting a manatee within 50 feet of any in-water construction activity. Two observers who have experience in manatee observation during night time dredging activity shall be used when nighttime clamshell dredging is conducted during the months of April through November.
- h. During clamshell dredging, the dredge operator shall gravity-release the clamshell bucket only at the water surface, and only after confirmation that there are no manatees within the safety distance identified in the standard construction conditions.
- i. Hydraulic dredging shall be used as much as practicable.

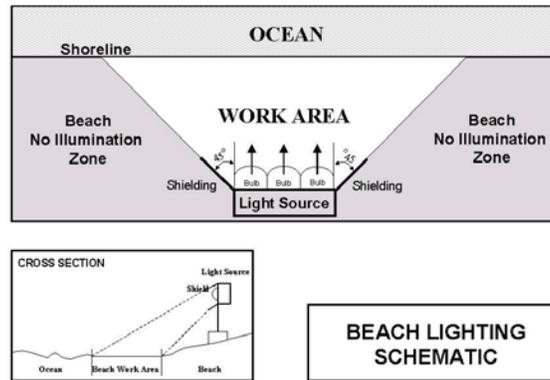
6. **Marine Turtle Protection Conditions for Dredging Activities:** The following recommendations are made to ensure consistency with the Florida Coastal Zone Management Act, specifically with Section 379.2431(1), F.S.

In the event that a small special-use dredge (such as the Corps Currituck or Murden hopper dredges) is utilized, the requirements of the March 9, 1999 Biological Opinion for US Army Corps of Engineers side-cast and split-hull hopper dredge Currituck shall be met. If any other type of hopper dredge is used, the following conditions shall be required:

- a. Handling of sea turtles captured during hopper dredging projects shall be conducted only by persons with prior experience and training in these activities and who is duly authorized to conduct such activities as a NMFS-approved sea turtle observer or have submitted documentation to the Corps of meeting the FWC Marine Turtle Conservation Guidelines specific to stranding activities (Section 3). The Corps will forward documentation to FWC and the Department for review concurrent with the submission of the contractor Environmental Protection Plan.
- b. Corps staff or their designee that transport live or dead marine turtles or marine turtle parts into, out of or within, the state of Florida shall notify FWC in writing specifying the number, species of sea turtle, type of specimen, and the destination after transport is complete. Before transport, if the turtle is believed to be alive, Corps staff or their designee will coordinate with FWC and/or NMFS to determine the appropriate facility to receive live sea turtles for rehabilitation. Corps staff or their designee shall abide by the State of Florida's FWC Marine Turtle Conservation Guidelines (<http://www.myfwc.com/wildlifehabitats/managed/sea-turtles/conservation-guidelines/>) specific to transport of live stranded turtles.

- c. Dredging Pumps: As stated in T&C #5 of the South Atlantic Regional Biological Opinion dated August 1995 - "To prevent impingement of sea turtles within the water column, every effort should be made to keep the dredge pumps disengaged when the dragheads are not firmly on the bottom." This precaution is especially important during the cleanup phase of dredging operations.
  - d. Sea Turtle Deflecting Draghead: A state-of-the-art rigid deflector draghead shall be used on all hopper dredges in all channels at all times of the year.
  - e. 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](mailto: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).
  - f. 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.
  - i. A summary (use FWC Trawl Report spreadsheet, attached) 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](mailto:MTP@myfwc.com) by January 15 of the following year.
7. **Project Lighting for Marine Turtle Protection: Direct lighting of the beach and nearshore waters shall be limited to the immediate construction area during the marine 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).



8. **Equipment Storage and Placement:** Staging areas for construction equipment shall be located off the beach, if off-beach staging areas are available, during the sea turtle nesting season. Nighttime storage of construction equipment not in use shall be off the beach. 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 vegetation line shall be 5 to 10 feet away from the toe of the vegetation line. Temporary storage of pipes shall be off the beach to the maximum extent possible. If the pipes shall be on the beach, they shall be placed in a manner that will minimize the impact to nesting habitat and shall not compromise the integrity of the dune systems. If it will be necessary to extend construction pipes past a known migratory bird 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 within or seaward of a migratory bird nesting site during the migratory bird nesting season.
  
9. **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 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 their 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 marine 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.

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10. The following species are protected by the Federal Migratory Bird Treaty Act, as well as Chapter 379, F.S., which prohibits the take and/or harassment of migratory birds and their nests and eggs for the following species: piping plover (*Charadrius melodus*), American oystercatcher (*Haematopus palliatus*), black skimmer (*Rynchops niger*), brown pelican (*Pelecanus occidentalis*), little blue heron (*Egretta caerulea*), snowy egret (*Egretta thula*), tricolored heron (*Egretta tricolor*), white ibis (*Eudocimus albus*), Wilson's plover (*Charadrius wilsonia*).
11. **Environmental Protection Plan:** The contractor's Environmental Protection Plan (EPP) shall be submitted for review and comment to the Department in coordination with FWC prior to any construction activity. This plan shall include monitoring of nesting migratory birds and marine turtle nests onsite during construction, as well as steps that will be followed to address any unavoidable take of migratory birds and/or marine turtles should that occur.

The set of approved permit drawings shall be revised as follows:

Plates 1 and 2 (dated September 2017) will be added to the set of approved drawings.

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

This letter of approval does not alter the **January 18, 2020**, expiration date of the permit. This letter and the attached drawing and associated certification page must be attached to the original permit.

This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, Florida Statutes (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**

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this

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action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the application.

**Petition for Administrative Hearing**

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. Pursuant to Rule 28-106.201, F.A.C., a petition for an administrative hearing 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, any email address, any facsimile number, 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.

The petition 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. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

**Time Period for Filing a Petition**

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. 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 failure to file a

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petition 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., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

**Extension of Time**

Under Rule 62-110.106(4), 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 for filing a petition for an administrative hearing. 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.

**Mediation**

Mediation is not available in this proceeding.

**FLAWAC Review**

The applicant, or any party within the meaning of Section 373.114(1)(a) or 373.4275, F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1) or 373.4275, F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when this order is filed with the Clerk of the Department.

**Judicial Review**

Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 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 this action 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.

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If you have any questions regarding this matter, please contact Karina Kronsis by email at [Karina.Kronsis@dep.state.fl.us](mailto:Karina.Kronsis@dep.state.fl.us) or by telephone at (850) 245-7545.

**EXECUTION AND CLERKING:**

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



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Gregory W. Garis  
Environmental Manager  
Beaches, Inlets and Ports Program  
Division of Water Resource Management

for

Lainie Edwards, Ph.D.  
Program Administrator  
Beaches, Inlets and Ports Program  
Division of Water Resource Management

**Attachments:** Plates 1 and 2 (dated September 2017)

**CERTIFICATE OF SERVICE**

The undersigned duly designated deputy clerk hereby certifies that this permit and all attachments were sent on the filing date below to the following listed persons:

cc: Paul Karch, Corps  
Jason Spinning, Corps  
Ralph Clark, DWRM  
Martin Seeling, DWRM  
Robert Brantly, DWRM  
Roxane Dow, DWRM  
Shelly Trulock, Corps  
Paul DeMarco, Corps

Gina Ralph, Corps  
Chris Ferraro, DEP, Central District  
JCP Compliance Officer, DWRM  
Lainie Edwards, DWRM  
Kellie Youmans, FWC  
Greg Garis, DWRM  
[MarineTurtle@MyFWC.com](mailto:MarineTurtle@MyFWC.com)  
[fwcconservationplanningservices@myfwc.com](mailto:fwcconservationplanningservices@myfwc.com)

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**FILING AND ACKNOWLEDGMENT**

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

*Kaslyn Massey* 12/14/2017  
Clerk Date