



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P.O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

Regulatory Division

September 20, 2019

PUBLIC NOTICE

PROPOSED MODIFICATION TO

PROGRAMMATIC GENERAL PERMIT (PGP), SAJ-99

SAJ-2007-03138 (PGP-DEB)

“ MARINE AQUACULTURE IN THE STATE OF FLORIDA “

AUTHORITY: Upon recommendation of the Chief of Engineers, U.S. Army Corps of Engineers (Corps), pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), and Section 404 of the Clean Water Act (33 U.S.C. 1344), the Florida Department of Agriculture and Consumer Services (FDACS) has been delegated the authority to permit marine aquaculture and related activities in the State of Florida.

DELEGATION: A signed Coordination Agreement between the Agencies identifies FDACS as the administering Agency for this PGP and outlines the steps each Agency will take during the process of and application for permit under the PGP, including reporting requirements. The current PGP was authorized on November 9, 2012, modified on October 16, 2015 and renewed on August 9, 2018.

DESCRIPTION OF WORK: Work authorized under this PGP includes live rock, marine bivalve, and native plant and macroalgae species aquaculture and related activities, such as seeding, rearing, cultivating, transplanting and harvesting in navigable waters of the United States within jurisdiction of the State of Florida. Maintenance of aquaculture equipment and materials is also authorized, including raking of cultch for the purpose of propagating new growth. The FDACS is also authorized to place pilings or other structures for the purpose of navigational marking of aquaculture activities.

PURPOSE AND NEED: To improve efficiencies and economic opportunity through the expansion of marine aquaculture commodities, to include native plants and macroalgae, to meet the needs of the regulated public in the State of Florida.

LOCATION: All work would occur in territorial waters, to include those navigable waters of the United States within the jurisdiction of the State of Florida (i.e., waters between approximately 3 marine leagues offshore and the mean high-water line on the Gulf coast, and between approximately 3 geographical miles offshore and the mean high water line on the Atlantic coast).

PROPOSED MODIFICATION: The FDACS has requested a modification to this PGP to include the production of native marine plants and microalgae. The current PGP limits

authorized activities to live rock, and marine bivalve aquaculture. There are no significant changes proposed to the special conditions for this PGP. No other modifications are proposed. Since, the proposed scope of work has been revised to include the production of native marine plants and microalgae, the title of the PGP has been revised as follows: "Marine Aquaculture in the State of Florida.

SPECIAL CONDITIONS: Activities authorized by this PGP would be subject to the following Special Conditions:

1. **Activities Not Authorized:** This general permit does not authorize the placement of materials for the construction and/or renourishment of artificial reefs, the construction of impoundments and/or semi-impoundments of waters of the US, or structures (e.g., aquaculture docks, circulating systems including inflow and outfall structures, platforms). This permit does not authorize the deployment of offshore and/or nearshore cages for the culture or holding of motile species or the placement of materials for lobster harvesting (such as lobster casitas). Furthermore, this PGP does not authorize the production of exotic and/or invasive plant or microalgae species as identified by the Southeast Exotic Pest Plant Council: <https://www.fleppc.org/>

2. **Aquaculture Certificate of Registration:** Individuals conducting marine aquaculture must possess an Aquaculture Certificate of Registration issued pursuant to Section 597.004 Florida Statutes (F.S.), and be compliant with Rule 5L-3 Florida Administrative Code, including Florida's Aquaculture Best Management Practices (BMPs), November 2016.

3. **Lease Requirement:** Individuals conducting marine aquaculture on sovereign state lands must have a current lease issued by the Board of Trustees of the Internal Improvement Trust Fund and not be in violation of its terms and conditions.

4. **Site Assessment and Certification Report:** Within 60 days of constructing aquaculture infrastructure, a site certification report will be completed. The report may include, but is not limited to videotapes of underwater surveys, photographs of underwater surveys, and/or written reports of site assessments shall be compiled and prepared by FDACS and shall demonstrate that the proposed site:

- a. is not a hazard to safe navigation or a hindrance to vessel traffic. Coordination with the Corps' Navigation Section and/or the U.S. Coast Guard may be required; and
- b. avoids traditional fishing operations, or other public access; and

- c. avoids impacts to naturally occurring hard bottom habitat and submerged aquatic vegetation and mangrove (minimum 50' setback from the preceding); and
- d. avoids impacts to other aquaculture activities; and
- e. contains natural underlying substrata that is primarily hard packed sand, hard shell hash, or soft sediment, and
- f. avoids river mouths, ocean passes/cuts, and navigation channels.

5. **Site Coordinates:** The applicant's lease application with the State of Florida shall identify the site location in sufficient detail to allow for site assessment, and shall provide accurate latitude and longitude coordinates so that the site can be located by Differential Global Positioning System (GPS) equipment.

6. **Lease Site Size Limitation:** For the deposition of culture material for live rock aquaculture only, each lease site shall be limited to one acre of submerged lands leased by the State of Florida.

7. **Inspection:** Sites shall be inspected by the FDACS to confirm compliance with the special conditions in this permit.

8. **Securing Material:** Materials deposited or used on the aquaculture site must be approved by the FDACS. Materials for live rock or marine bivalve aquaculture activities must be deployed so as to remain in place during storm events and not damage adjacent SAV or natural hard bottom communities.

9. **Distinguishable Materials:** All materials placed on the site must be in accordance with the State lease and the FDACS's BMPs, which include a requirement that rocks deposited on the aquaculture site are geologically or otherwise distinguishable from the naturally occurring substrata. Disposition of materials outside of a State lease or in violation of the FDACS's BMPs is prohibited without a separate permit from the Department of the Army.

10. **Clean Materials:** All materials used in aquaculture operations must be nontoxic and be free of contaminants and non-indigenous flora and/or fauna.

11. **Proper Material Placement:** All materials for live rock aquaculture must be placed on the site by hand, or lowered completely to the bottom by crane. Deposited materials shall not be allowed to free fall to the bottom, and all deposition shall occur while the vessel is at anchor. Rocks may not be placed over naturally-occurring reef outcrops,

limestone ledges, coral reefs, or vegetated areas. A minimum setback of 50 feet must be maintained from naturally vegetated or hard bottom habitats. The live rock aquaculture operation may not occupy more than 25% of the water column. The Permittee shall be required to submit "as-built" (post-activity) reports to FDACS. The reports shall depict the project site subsequent to each deposition activity. The actual configuration and location of rocks must be clearly depicted in relation to occurring hard bottom habitat and SAV.

12. Protecting Corals: Harvest of aquacultured species and live rock shall be in accordance with Chapter 597, F.S., and the BMPs adopted therein. No drilling or blasting is authorized under this general permit. Each rock must be visually inspected for the presence of listed coral species (i.e., *Acropora spp.*) prior to harvesting and no rock may be harvested if any listed coral species have attached.

13. Manatee Protection: Prior to issuance of authorization, the dichotomous key titled "The Corps of Engineers, Jacksonville District, and the State of Florida Effect Determination Key for the Manatee in Florida, April 2013," (see <http://www.saj.Corps.army.mil/Missions/Regulatory/SourceBook.aspx>) will be used to determine potential manatee impacts. Those determined to be a "may affect" to the manatee will not be authorized until consultation on the project has been reinitiated by the Corps and concluded with the U.S. Fish and Wildlife Service in accordance with the Endangered Species Act (ESA). Additionally, depending on the location of the project, some projects determined to be "may affect, not likely to adversely affect" will not be authorized until additional consultation on the project has been concluded. Note: The manatee key may be subject to revision at any time. It is our intention that the most recent version of this technical tool will be utilized during the evaluation of the permit application.

14. Manatee Construction Conditions: For projects in waters accessible to manatees, the Permittee will utilize the attached "Standard Manatee Conditions for In-Water Work, 2011" (see <http://www.saj.Corps.army.mil/Missions/Regulatory/Source-Book/>) and/or requirements, as appropriate for the proposed activity. Activities proposed to be located in designated "Important Manatee Areas" (IMAs) are not authorized by this PGP and must undergo separate consultation with the U.S. Fish and Wildlife Service. Note: The manatee conditions may be subject to revision at any time. It is our intention that the most recent version of these conditions will be utilized during the evaluation of the permit application.

15. Protecting Sea Turtles, Sturgeon, and Smalltooth Sawfish: For projects in waters accessible to sea turtles, smalltooth sawfish, Gulf sturgeon, or shortnose sturgeon, the Permittee will utilize the attached "Sea Turtle and smalltooth Sawfish

Construction Conditions" March 23, 2006 (see <https://www.saj.Corps.army.mil/Missions/Regulatory/Source-Book/>) and/or requirements, as appropriate for the proposed activity. Note: These conditions may be subject to revision at any time. It is our intention that the most recent version of these conditions will be utilized during the evaluation of the permit application.

16. Restrictions in Critical Habitat Areas: Aquaculture activities are limited in critical habitat designated for the recovery of species protected under the Endangered Species Act as described below:

a. *Acropora spp.* critical habitat: Leases are allowed in the geographic limit of critical habitat; however, they must meet the criteria in Conditions 12 and 13 above. http://sero.nmfs.noaa.gov/maps_gis_data/protected_resources/critical_habitat/index.html

b. Gulf sturgeon critical habitat: Within the boundaries of Gulf sturgeon designated critical habitat, cultch materials for FDACS's oyster planting program shall only be allowed to be deposited on existing shell substrata. Additionally, the off-bottom basket methodology is prohibited on new leases within Gulf sturgeon designated critical habitat, but the floating basket and suspended basket or long-line methodologies are allowed for shellfish aquaculture. <https://www.fisheries.noaa.gov/action/critical-habitat-gulf-sturgeon>

c. Johnson's seagrass critical habitat: Aquaculture lease permits are prohibited in Johnson's seagrass critical habitat. <https://www.fisheries.noaa.gov/resource/map/johnsons-seagrass-critical-habitat-map>

d. Loggerhead critical habitat: New AUZs or leases are allowed within loggerhead critical habitat under this PGP provided that floating or suspended aquaculture systems are set perpendicular to the nesting beach to reduce effects on hatchling egress to the open water and the transit of nesting females to and from the beach. Additionally, the linear footage of the part of the floating or suspended aquaculture system that is parallel to the beach may not be more than 10% of the linear footage of the critical habitat unit's nesting beach. <https://www.fisheries.noaa.gov/action/critical-habitat-loggerhead-sea-turtle>

e. North Atlantic right whale critical habitat: No AUZ's or leases exist in North Atlantic right whale critical habitat and no new AUZs or leases are allowed within North Atlantic right whale critical habitat. <https://www.federalregister.gov/documents/2016/01/27/2016-01633/endangered-and-threatened-species-critical-habitat-for-endangered-north-atlantic-right-whale>

f. Smalltooth sawfish critical habitat: Within the boundaries of smalltooth sawfish critical habitat, leases will be located away from any red mangroves, and in waters deeper than 36" in MLLW, so as to avoid any impacts to the essential features (i.e., shallow, euryhaline waters and red mangroves) of smalltooth sawfish critical habitat. <https://www.fisheries.noaa.gov/resource/map/smalltooth-sawfish-critical-habitat-map>

17. Compliance with National Marine Fisheries Service (NMFS) Project Design Criteria (PDC):

The Corps has consulted on this PGP with the U.S. Fish and Wildlife Service and the NMFS on listed species and any designated critical habitat. If an individual proposed activity does not conform to the PDCs and other requirements outlined in the NMFS Biological Opinion (BO) for this PGP, dated August 13, 2015, concerning listed species or critical habitat, the application shall be referred to the Corps to initiate separate consultation pursuant to Section 7 of the ESA. Until Section 7 consultation is concluded, the proposed activity cannot be authorized under this PGP. The PDCs from the NMFS BO are included in, and made part of, the permit conditions for this PGP.

18. Protecting Wetlands, Coral, and Submerged Aquatic Vegetation: No work shall be authorized under this PGP that may adversely impact wetlands, hard or soft corals, including the following listed coral species: elkhorn (*Acropora palmata*), staghorn (*Acropora cervicornis*), pillar (*Dendrogyra cylindrus*), rough cactus (*Mycetophyllia ferox*), lobed star (*Orbicella annularis*), mountainous star (*O. faveolata*), and boulder star (*O. frankst*) corals, estuarine emergent, marine emergent, mangrove. Additionally, a project shall not be authorized under this PGP that may adversely impact the following species of submerged aquatic vegetation (SAV): shoal grass (*Halodule wrightii*), paddle grass (*Halophila decipiens*), star grass (*Halophila engelmannii*), Johnson's seagrass (*Halophila johnsonii*), sago pondweed (*Potamogeton pectinatus*), clasping-leaved pondweed (*Potamogeton perfoliatus*), widgeon grass (*Ruppia maritima*), manatee grass (*Syringodium filiforme*), turtle grass (*Thalassia testudinum*), tapegrass (*Vallisneria americana*), horned pondweed (*Zannichellia palustris*), and eel grass (*Zostera marina*). In addition, the project cannot have adverse direct or indirect impacts on any other essential fish habitat identified under the Magnuson-Stevens Fishery Conservation and Management Act. Indirect effects include secondary and cumulative effects.

19. Cultural and Historic Resources:

a. No structure or work shall adversely affect impact or disturb properties listed in the National Register of Historic Places (NRHP) or those eligible for inclusion in the NRHP.

b. If during the ground disturbing activities and construction work within the permit area, there are archaeological/cultural materials encountered which were not the subject of a previous cultural resources assessment survey (and which shall include, but not be limited to: pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes, evidence of structures or any other physical remains that could be associated with Native American cultures or early colonial or American settlement), the Permittee shall immediately stop all work in the vicinity and notify the Corps within two calendar days. The Corps shall then notify the Florida State Historic Preservation Officer (SHPO) and the appropriate Tribal Historic Preservation Officer(s) (THPO(s)) to assess the significance of the discovery and devise appropriate actions.

c. A cultural resources assessment may be required of the permit area, if deemed necessary by the SHPO, THPO(s), or Corps, in accordance with 36 CFR 800 or 33 CFR 325, Appendix C (5). Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume on non-federal lands without written authorization from the SHPO and the Corps.

d. In the unlikely event that unmarked human remains are identified on non-federal lands, they will be treated in accordance with Section 872.05 F.S. All work in the vicinity shall immediately cease and the Permittee shall immediately notify the medical examiner, Corps, and State Archeologist. The Corps shall then notify the appropriate SHPO and THPO(s). Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume without written authorization from the State Archeologist, SHPO and the Corps.

20. Restricted Areas: Authorization under this PGP is restricted within the boundaries of the following managed areas:

- a. Florida State Parks: All Florida State parks.
- b. Aquatic Preserves: All State of Florida Aquatic Preserves
- c. National Marine Sanctuaries: Florida Keys National Marine Sanctuary.
- d. National Estuarine Research Reserves: All National Estuarine Research Reserves

Requests for authorization under this PGP in the above areas, requires FDACS to

coordinate with the authorities responsible for their management. The authorities must be offered an opportunity to comment on the initial, and subsequent requests for lease renewal, when there are changes to the initial lease and/or in water work, in their respective areas of responsibility. Lease renewals will not be coordinated unless there would be a change in use, including new structures, which would require approval by the Board of Trustees of Internal Improvement Trust Fund prior to authorization. All comments received from the above authorities shall be included in the FDACS permit file.

21. Additional Permits Needed: Additional federal permits may be required for aquaculture operations in waters of the State of Florida which are under the jurisdiction of other federal authorities, such as U.S. Environmental Protection Agency, U.S. Coast Guard, or National Marine Fisheries Service.

22. Setback to Federal Channels: For projects proposed adjacent to Federally-maintained channels, no structure, or work authorized under this regional general permit shall be within the established setback. The setback is normally 100 feet in the inland Federal navigation channels but may vary in a few specific reaches as well as in other Federal channels and other Districts (e.g., Mobile District setback criteria apply in Florida from Escambia County east to the Aucilla River). Exact locations of the proposed structures relative to the channel may need to be verified by use of the Florida State Plane (x, y) Coordinate System, calculated from the near-bottom edge of the Federal channel.

23. Assurance of Navigation: The Permittee and the FDACS understand and agree that, if future operations by the United States require the removal, relocation, or other alteration, of the structures or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the FDACS or Permittee will be required, upon due notice from the Corps of Engineers, to have removed, relocated, or altered the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

24. Permit Compliance: Prior to authorizing any new lease area or aquaculture activity (i.e., not currently being conducted on SSL in an approved lease and authorized under this PGP), FDACS will certify compliance with the PDCs of PGP SAJ-99 for each individual aquaculture lease. FDACS will email this certification along with the resource report for each individual aquaculture lease to the Corps at SAJ-RD-Enforcement@usace.army.mil and to National Marine Fisheries Service (NMFS) Protected Resources Division, Southeast Regional Office, nmfs.ser.SAJ99@noaa.gov.

In addition to, or as part of the information reports and assessments required by the BMPs and PDCs discussed above, the resource report shall provide the following information as columns in a spreadsheet format:

- a. Date Corps and NMFS notified of certification by FDACS.
- b. FDACS Lease Number.
- c. Lease Holder Name, Address, and County, Information.
- d. Latitude and Longitude (in decimal degrees to 5 places).
- e. Critical Habitat Unit: This shall be provided in the following acronym style with no spaces or hyphens, as shown in the examples. This allows for accurate sorting in Excel. Projects occurring in critical habitat and proposed critical habitat are only authorized if they do not impact the essential features of said critical habitat.
 - 1) A CH (*Acropora* spp. critical habitat).
 - 2) LHST CH (loggerhead critical habitat)
 - 3) GS CH Unit # (Gulf sturgeon critical habitat, unit # 9-14)
 - 4) STSF CH CHEU (smalltooth sawfish critical habitat Charlotte Harbor Estuary Unit)
 - 5) STSF CH TTIU (smalltooth sawfish critical habitat Ten Thousand Islands/Everglades Unit)
 - 6) N/A (not applicable because the project is not located within a critical habitat unit)
- f. Whether any of the essential features of critical habitat are located within or adjacent to the approved lease site. If yes, list the essential features present.
- g. Acreage and types of activities/facilities authorized under PGP SAJ-99.
- h. Description of any resources present within and adjacent to the approved lease site.
- i. All PDCs Met: Are all of the applicable PDCs defined in this document being met by the proposed project? Answer "yes" or "no."

The NMFS Protected Resources Division will receive a copy of the resource report via email and will have the opportunity to assess the individual proposed project's compliance with the PDCs identified above, and to ensure that additive effects of aquaculture activities permitted under this PGP do not result in adverse effects to protected species. NMFS Protected Resources will have the opportunity to review the resource report for each individual activity proposed to be authorized under this PGP to ensure consistency with the PDCs of the PGP. If NMFS Protected Resources does not concur with FDACS's certification of compliance and consistency with this programmatic consultation, including the terms and requirements of this PGP, they will notify FDACS and the Corps via email that the individual activity proposed will require further review and consultation under Section 7 of the ESA. If no notice is given by NMFS Protected Resources after 30 days, compliance is implied.

25. Posting Lease Boundaries: For all shellfish aquaculture leases, the Lessee shall, within 90 days from the date of execution of a lease, properly post the lease boundaries to delineate the corners and perimeters of the lease. For water column (floating or suspended baskets) leases, marking must comply with the requirements of a U.S. Coast Guard Private Aids to Navigation permit. Bottom leases must be marked pursuant to the State of Florida submerged land lease agreement. All markers shall be compliant with U.S. Coast Guard regulations to warn mariners passing in the vicinity of the lease of the potential hazards to navigation. In accordance with Section 10 of the Rivers and Harbors Act of 1899 (U.S.C. 403), this PGP authorizes pilings and similar structures used to support navigation markers. Separate authorization for Aids to Navigation may be required from the U.S. Coast Guard.

26. Abandoned Structures/Materials: If following relinquishment of lease and if the material is abandoned, then it would no longer meet the intent of the PGP and separate permit application must be submitted to the Corps of Engineers. However, if following relinquishment of lease, the permittee wishes to remove the structures, and there is no permanent structural component or navigational concerns associated with the removal, then no Department of Army permit would be required. In State waters, if removal would result in the discharge of dredged or fill material, then a separate permit application would need to be submitted to the Corps.

27. Modification of a Federal Project: Evaluation of any request for work which may alter or modify a Federal project will require case specific review by the Jacksonville Engineering Division in accordance with 33 U.S.C. § 408 and approval from the Jacksonville District Commander prior to authorization under this PGP. Once, the project specific approval under 33 U.S.C. § 408 has been received, and all other conditions of the permit have been met, a permit verification letter may be issued.

28. Discretionary Authority: Conformance with descriptions and quantities contained herein does not necessarily guarantee authorization under this PGP. The District Engineer reserves the right to require that any request for authorization under this PGP be processed as an individual permit.

29. Compliance with Permit Conditions: In the event that the conditions of this PGP conflict with any drawings, exhibits or other (non-Federal) requirements, the conditions of this permit shall prevail.

30. Permit Expiration: This PGP will be valid through August 1, 2023. The Corps, in conjunction with the Federal resource agencies, will conduct periodic reviews to ensure that continuation of the permit is not contrary to the public interest. This PGP will not be

extended beyond August 1, 2023, but may be replaced by a new PGP. If revocation occurs, all future applications for activities covered by this PGP will be evaluated by the Corps. If this PGP expires or is revoked prior to completion of the authorized work, authorization of activities that have commenced or are under contract to commence in reliance on this PGP will remain in effect provided the activity is completed within 12 months of the date this PGP expired or was revoked; and that such activities are conducted in compliance with this PGP and any lease agreement terms or conditions.

AVOIDANCE AND MINIMIZATION: This PGP would allow for live rock aquaculture devices to be placed within primarily navigable waters near, or inshore. Unless specifically authorized, this PGP does not authorize impacts to aquatic resources, such as submerged aquatic vegetation (SAV) or wetlands. Only minor fill in navigable waters would occur as a result of authorized activities. All activities must comply with the special and general conditions of the PGP.

COMPENSATORY MITIGATION: No fill would be authorized in wetlands. Due to the minor nature of impacts, and the restrictions on placement of live rock material, no mitigation will be required for the proposed activities.

IMPACT ON NATURAL RESOURCES: This public notice constitutes a request for coordination with the U.S. Fish and Wildlife Service, Environmental Protection Agency (EPA), the National Marine Fisheries Services, and other Federal, State, and local agencies, environmental groups, and concerned citizens for the purpose of determining the impact the proposed action will have on natural resources of the area.

ARCHAEOLOGICAL AND CULTURAL RESOURCES: This public notice constitutes a request for coordination with the State Historic Preservation Officer on potential impacts to cultural and historic resources. This PGP has been conditioned to protect archaeological and historic resources and require coordination upon any discovery. Our final determination relative to historic resource impacts is subject to review by and coordination with the State Historic Preservation Officer and those Federally recognized Tribes with concerns in Florida and the Permit Area. Consultation with the Seminole and Miccosukee Tribes of Florida will be requested via separate letters.

ESSENTIAL FISH HABITAT (EFH): This letter serves as a request for consultation with the National Marine Fisheries Service (NMFS) Habitat Conservation Division on Essential Fish Habitat as required under the Magnuson-Stevens Fishery Conservation and Management Act. The Corps has determined that with adherence to the terms and conditions outlined above, that activities covered by this PGP would have only minimal adverse impact on EFH and/or Federally managed fisheries under NMFS' purview.

THREATENED AND ENDANGERED SPECIES: Consultation was first initiated with the NMFS Protected Resources Division (PRD) on June 4, 2007 and reinitiated on April 12, 2012, to address new forms of aquaculture proposed for use in Gulf sturgeon critical habitat. Consultation was concluded on August 29, 2012, and the PGP was issued on November 9, 2012. The following table lists the NMFS' effect determination for species and critical habitat per the 2012 Biological Opinion (BO), with the addition of the Nassau grouper. The BO was modified on August 13, 2015 to include two new methods of bivalve aquaculture, as well as consultation on 5 species of coral and CH designated for the loggerhead sea turtle. Since, the modification, a final Rule listing the Nassau grouper as Threatened was issued on June 29, 2016. Following this listing, this PGP's effect on the Nassau grouper was the subject of informal consultation with NMFS PRD. On October 4, 2016, the Corps received notification from NMFS PRD that the project would likely have no effect on the Nassau grouper. The Corps maintains that the proposed modification would have no effect on the Nassau grouper. No critical habitat (CH) has been designated for the Nassau grouper. In summary, the Corps provides the following Table, which identifies the MMFS' effects determination following consultation:

Common Name	Scientific Name	ESA Listing Status	Corps Effect Determination	NMFS Effect Determination
Turtles				
Green	<i>Chelonia mydas</i>	E/T	NLAA	NLAA
Kemp's ridley	<i>Lepidochelys kempii</i>	E	NLAA	NLAA
Leatherback	<i>Dermochelys coriacea</i>	E	NLAA	NLAA
Loggerhead	<i>Caretta caretta</i>	T	NLAA	NLAA
Hawksbill	<i>Eretmochelys imbricata</i>	E	NLAA	NLAA
Fish				
Smalltooth sawfish	<i>Pristis pectinata</i>	E	NLAA	NLAA
Gulf sturgeon	<i>Acipenser oxyrinchus desotoi</i>	T	NLAA	NLAA
Nassau Grouper	<i>Epinephelus striatus</i>	T	NLAA	NE
Invertebrates and Marine Plants				
Elkhorn coral	<i>Acropora palmata</i>	T	ND	NLAA
Staghorn coral	<i>Acropora cervicornis</i>	T	ND	NLAA
Boulder star coral	<i>Orbicella franksi</i>	T	ND	NE
Mountainous star coral	<i>Orbicella faveolata</i>	T	ND	NE
Lobed star coral	<i>Orbicella annularis</i>	T	ND	NE

Rough cactus coral	<i>Mycetophyllia ferox</i>	T	ND	NE
Pillar coral	<i>Dendrogyra cylindrus</i>	T	ND	NE
Johnson's seagrass	<i>Halophila johnsonii</i>	T	ND	NE
E = endangered; T = threatened; NLAA = may affect, not likely to adversely affect; ND not determined; NE = no effect				

Furthermore, the Corps makes the following effect determination on NMFS designated CH that may be affected by the proposed activities:

Species	Unit	Corps Effect Determination	NMFS Effect Determination
Smalltooth sawfish	Charlotte Harbor Estuary; Ten Thousand Islands/Everglades	NE	NE
Gulf sturgeon	Estuarine and Marine (NMFS) – Units 9, 10, 11, 12, 13, 14	NLAA	NLAA
Johnson's seagrass	All units A-J	ND	NE
Elkhorn and staghorn coral	Florida area	ND	NE
Loggerhead sea turtle	Units LOGG-N-14 through LOGG-N-33 for Nearshore Reproductive habitat, Breeding Habitat, and/or Migratory Habitat	ND	NE

The Corps has determined that the activities may affect, but would not likely adversely affect the West Indian manatee (*Trichechus manatus*), with adherence to the in-water construction conditions for the manatee, dated 2013.

The Corps has determined that the re-issuance of this PGP would have no effect on any other Federally listed species and would not adversely modify any other designated or proposed critical habitat with adherence to all conditions (which include the NMFS project design criteria). Pursuant to Section 7, Endangered Species Act, the Corps requests to re-initiate consultation with the NMFS PRD on the project's effects on species and CH within their purview, and extend the BO for this PGP an additional 5 years (i.e., five years beyond August 13, 2025). A separate letter requesting re-initiation of consultation will be sent to the NMFS PRD.

COASTAL ZONE MANAGEMENT CONSISTENCY: In Florida, State approval constitutes compliance with the approved Coastal Zone Management Plan. The Corps will coordinate modification of this PGP with the State of Florida.

PERMIT EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including cumulative impacts thereof; among these are conservation, economics, esthetics, general environmental concerns, wetlands, historical properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food, and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people.

Evaluation of the impact of the activity on the public interest will also include application of the guidelines promulgated by the Administrator, EPA, under authority of Section 404(b) of the Clean Water Act or the criteria established under authority of Section 102(a) of the Marine Protection Research and Sanctuaries Act of 1972. A permit will be granted unless its issuance is found to be contrary to the public interest.

The US Army Corps of Engineers (Corps) is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other Interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this determination, comments are used to assess impacts to endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

REQUEST FOR PUBLIC HEARING: Any person may request a public hearing. The request must be submitted in writing to the District Engineer within the designated comment period of the notice and must state the specific reasons for requesting the public hearing.

RESPONDING TO THIS PUBLIC NOTICE: Comments may be submitted on the proposed permit instrument and attachments for **30 days** from the date of this Public Notice. Following final decision, the proposed modified PGP and exhibits will be available at: <https://www.saj.usace.army.mil/Missions/Regulatory/Source-Book/> under the Permitting heading, General Permits sub-heading.

Please send any questions or comments on the above to Jacksonville District, Regulatory Division, PO Box 4970, Jacksonville, Florida 32232, Attn: Mr. Dale Beter; by telephone at 904-232-1361, or by email at dale.e.beter@usace.army.mil.

Shawn H. Zinszer 09/19/2019
Shawn H. Zinszer
Chief, Regulatory Division



Exhibit 1: Photo of Lease Site,
SAJ-2007-03138(PGP-DEB)

Arrangement

300'

Not to Scale

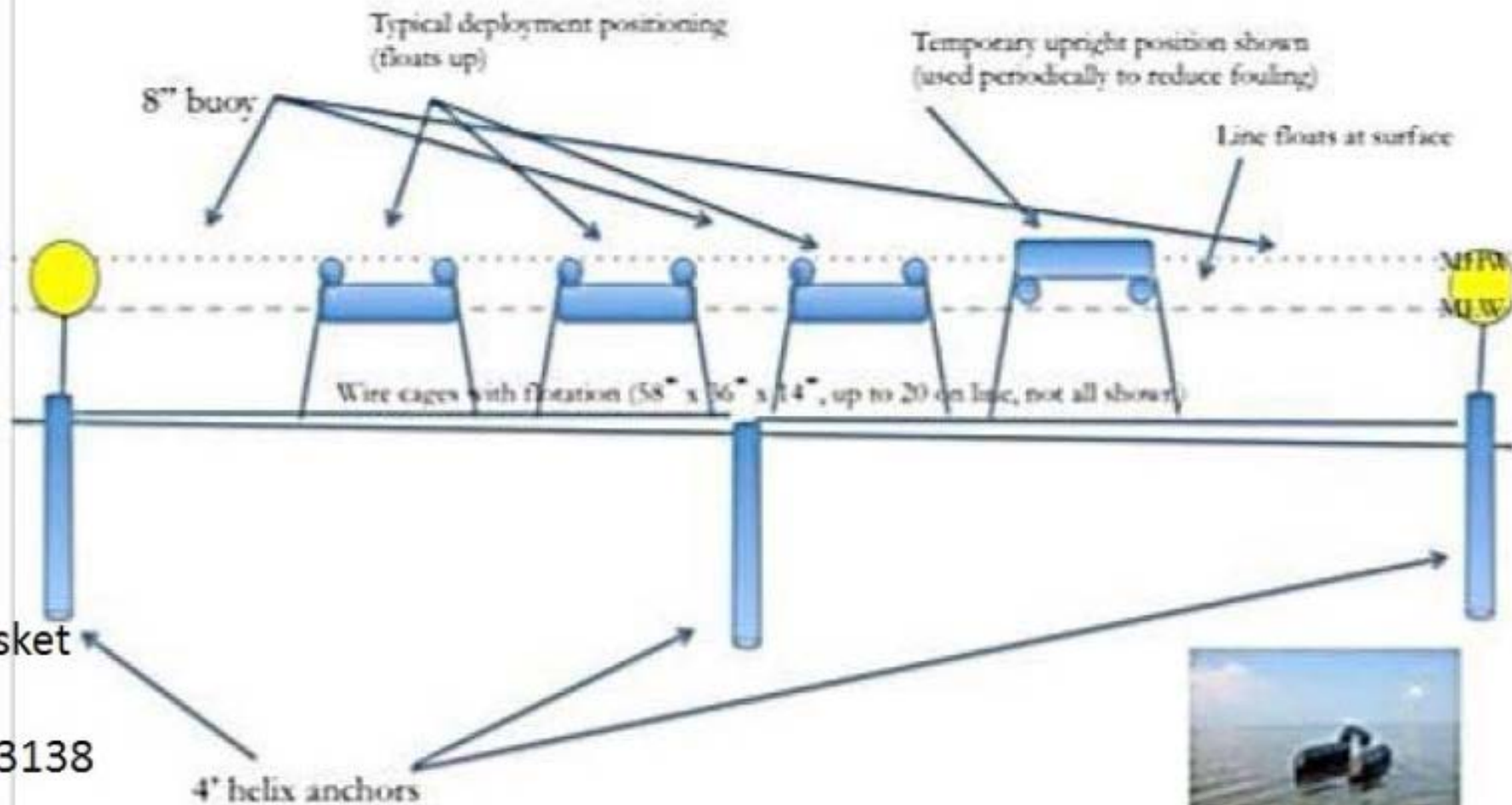


Exhibit 2.
Floating Basket
Design
SAJ-2007-03138
(PGP-DEB)

For any run, total width is 4' and length is ~310'





Exhibit 3. Off
Bottom Basket
Design
SAJ-2007-
03138(PGP-
DEB)

Arrangement

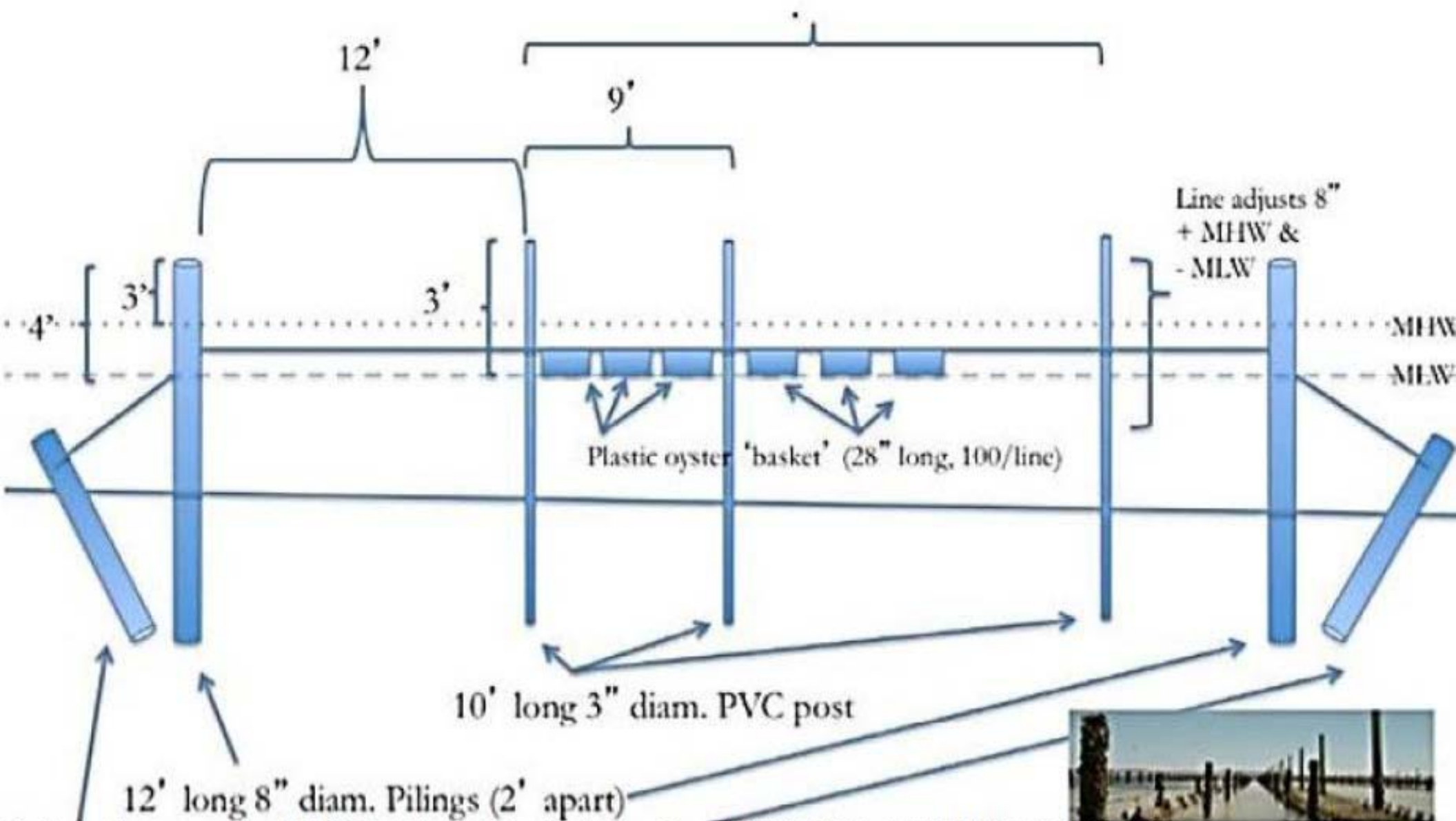


Figure 4. Suspended Off Bottom Basket Design SAJ-2007-03138(PGP-DEB)

Florida Aquaculture Use Zones



**THE CORPS OF ENGINEERS, JACKSONVILLE DISTRICT, AND THE STATE OF
FLORIDA EFFECT DETERMINATION KEY FOR THE MANATEE IN FLORIDA
April 2013**

Purpose and background of the key

The purpose of this document is to provide guidance to improve the review of permit applications by U.S. Army Corps of Engineers' (Corps) Project Managers in the Regulatory Division regarding the potential effects of proposed projects on the endangered West Indian manatee (*Trichechus manatus*) in Florida, and by the Florida Department of Environmental Protection or its authorized designee or Water Management District, for evaluating projects under the State Programmatic General Permit (SPGP) or any other Programmatic General Permits that the Corps may issue for administration by the above agencies. Such guidance is contained in the following dichotomous key. The key applies to permit applications for in-water activities such as, but not limited to: (1) dredging [new or maintenance dredging of not more than 50,000 cubic yards], placement of fill material for shoreline stabilization, and construction/placement of other in-water structures as well as (2) construction of docks, marinas, boat ramps and associated trailer parking spaces, boat slips, dry storage or any other watercraft access structures or facilities.

At a certain step in the key, the user is referred to graphics depicting important manatee areas or areas with inadequate protection. The maps can be downloaded from the Corps' web page at <http://www.saj.usace.army.mil/Missions/Regulatory/SourceBook.aspx>. We intend to utilize the most recent depiction of these areas, so should these areas be modified by statute, rule, ordinance and/or other legal mandate or authorization, we will modify the graphical depictions accordingly. These areas may be shaded or otherwise differentiated for identification on the maps.

Explanatory footnotes are provided in the key and must be closely followed whenever encountered.

Scope of the key

This key should only be used in the review of permit applications for effect determinations on manatees and should not be used for other listed species or for other aquatic resources such as Essential Fish Habitat (EFH). Corps Project Managers should ensure that consideration of the project's effects on any other listed species and/or on EFH is performed independently. This key may be used to evaluate applications for all types of State of Florida (State Programmatic General Permits, noticed general permits, standard general permits, submerged lands leases, conceptual and individual permits) and Department of the Army (standard permits, letters of permission, nationwide permits, and regional general permits) permits and authorizations. The final effect determination will be based on the project location and description; the potential effects to manatees, manatee habitat, and/or manatee critical habitat; and any measures (such as project components, standard construction precautions, or special conditions included in the authorization) to avoid or minimize effects to manatees or manatee critical habitat. Projects that key to a "may affect" determination equate to "likely to adversely affect" situations, and those projects should not be processed under the SPGP or any other programmatic general permit. For

all “may affect” determinations, Corps Project Managers shall refer to the Manatee Programmatic Biological Opinion, dated March 21, 2011, for guidance on eliminating or minimizing potential adverse effects resulting from the proposed project. If unable to resolve the adverse effects, the Corps may refer the applicant to the U.S. Fish and Wildlife Service (Service) for further assistance in attempting to revise the proposed project to a “may affect, not likely to adversely affect” level. The Service will coordinate with the Florida Fish and Wildlife Conservation Commission (FWC) and the counties, as appropriate. Projects that provide new access for watercraft and key to “may affect, not likely to adversely affect” may or may not need to be reviewed individually by the Service.

MANATEE KEY
Florida¹
April 2013

The key is not designed to be used by the Corps' Regulatory Division for making their effect determinations for dredging projects greater than 50,000 cubic yards, the Corps' Planning Division in making their effect determinations for civil works projects or by the Corps' Regulatory Division for making their effect determinations for projects of the same relative scope as civil works projects. These types of activities must be evaluated by the Corps independently of the key.

- A. Project is not located in waters accessible to manatees and does not directly or indirectly affect manatees (see Glossary).....*No effect*
- Project is located in waters accessible to manatees **or** directly or indirectly affects manatees B
- B. Project consists of one or more of the following activities, all of which are *May affect*:
1. blasting or other detonation activity for channel deepening and/or widening, geotechnical surveys or exploration, bridge removal, movies, military shows, special events, etc.;
 2. installation of structures which could restrict or act as a barrier to manatees;
 3. new or changes to existing warm or fresh water discharges from industrial sites, power plants, or natural springs or artesian wells (but only if the new or proposed change in discharge requires a Corps permit to accomplish the work);
 4. installation of new culverts and/or maintenance or modification of existing culverts (where the culverts are 8 inches to 8 feet in diameter, ungrated and in waters accessible, or potentially accessible, to manatees)²;
 5. mechanical dredging from a floating platform, barge or structure³ that restricts manatee access to less than half the width of the waterway;
 6. creation of new slips or change in use of existing slips, even those located in a county with a State-approved Manatee Protection Plan (MPP) in place and the number of slips is less than the MPP threshold, to accommodate docking for repeat use vessels, (e.g., water taxis, tour boats, gambling boats, etc; or slips or structures that are not civil works projects, but are frequently used to moor large vessels (>100') for shipping and/or freight purposes; does not include slips used for docking at boat sales or repair facilities or loading/unloading at dry stack storage facilities and boat ramps);
[Note: For projects within Bay, Dixie, Escambia, Franklin, Gilchrist, Gulf, Hernando, Jefferson, Lafayette, Monroe (south of Craig Key), Nassau, Okaloosa, Okeechobee, Santa Rosa, Suwannee, Taylor, Wakulla or Walton County, the reviewer should proceed to Couplet C.]
 7. any type of in-water activity in a Warm Water Aggregation Area (WWAA) or No Entry Area (see Glossary and accompanying Maps⁴); [Note: For residential docking facilities in a Warm Water Aggregation Area that is not a Federal manatee sanctuary or No Entry Area, the reviewer should proceed to couplet C.]
 8. creation or expansion of canals, basins or other artificial shoreline and/or the connection of such features to navigable waters of the U.S.; [Note: For projects proposing a single residential dock, the reviewer should proceed to couplet C; otherwise, project is a *May Affect*.]

9. installation of temporary structures (docks, buoys, etc.) utilized for special events such as boat races, boat shows, military shows, etc., but only when consultation with the U.S. Coast Guard and FWS has not occurred; [Note: See programmatic consultation with the U.S. Coast Guard on manatees dated May 10, 2010.].
- Project is other than the activities listed above..... C
- C. Project is located in an Important Manatee Area (IMA) (see Glossary and accompanying Maps⁴) D
- Project is not located in an Important Manatee Area (IMA) (see Glossary and accompanying Maps⁴) G
- D. Project includes dredging of less than 50,000 cubic yards E
- Project does not include dredging G
- E. Project is for dredging a residential dock facility or is a land-based dredging operation N
- Project not as above..... F
- F. Project proponent **does not elect** to follow all dredging protocols described on the maps for the respective IMA in which the project is proposed *May affect*
- Project proponent **elects** to follow all dredging protocols described on the maps for the respective IMA in which the project is proposed G
- G. Project provides new⁵ access for watercraft, *e.g.*, docks or piers, marinas, boat ramps and associated trailer parking spaces, new dredging, boat lifts, pilings, floats, floating docks, floating vessel platforms, boat slips, dry storage, mooring buoys, or other watercraft access (residential boat lifts, pilings, floating docks, and floating vessel platforms installed in existing slips are not considered new access) or improvements allowing increased watercraft usage H
- Project does not provide new⁵ access for watercraft, *e.g.*, bulkheads, seawalls, riprap, maintenance dredging, boardwalks and/or the maintenance (repair or rehabilitation) of currently serviceable watercraft access structures provided all of the following are met: (1) the number of slips is not increased; (2) the number of existing slips is not in question; and (3) the improvements do not allow increased watercraft usage N
- H. Project is located in the Braden River Area of Inadequate Protection (Manatee County) (see Glossary and accompanying AIP Map⁴) *May affect*
- Project is not located in the Braden River Area of Inadequate Protection (Manatee County) (see Glossary and accompanying AIP Map⁴) I
- I. Project is for a multi-slip facility (see Glossary) J
- Project is for a residential dock facility or is for dredging (see Glossary) N
- J. Project is located in a county that currently has a State-approved MPP in place (BREVARD, BROWARD, CITRUS, CLAY, COLLIER, DUVAL, INDIAN RIVER, LEE, MARTIN, MIAMI-DADE, PALM BEACH, ST. LUCIE, SARASOTA, VOLUSIA) or shares contiguous waters with a county having a State-approved MPP in place (LAKE, MARION, SEMINOLE)⁶ K
- Project is located in a county not required to have a State-approved MPP L

- K. Project has been developed or modified to be consistent with the county's State-approved MPP **and** has been verified by a FWC review (or FWS review if project is exempt from State permitting) **or** the number of slips is below the MPP threshold N
- Project has not been reviewed by the FWC or FWS **or** has been reviewed by the FWC or FWS **and** determined that the project is not consistent with the county's State-approved MPP *May affect*
- L. Project is located in one of the following counties: CHARLOTTE, DESOTO⁷, FLAGLER, GLADES, HENDRY, HILLSBOROUGH, LEVY, MANATEE, MONROE⁷, PASCO⁷, PINELLAS M
- Project is located in one of the following counties: BAY, DIXIE, ESCAMBIA, FRANKLIN, GILCHRIST, GULF, HERNANDO, JEFFERSON, LAFAYETTE, MONROE (south of Craig Key), NASSAU, OKALOOSA, OKEECHOBEE, PUTNAM, SANTA ROSA, ST. JOHNS, SUWANNEE, TAYLOR, WAKULLA, WALTON N
- M. The number of slips does not exceed the residential dock density threshold (see Glossary) N
- The number of slips exceeds the residential dock density threshold (see Glossary) *May affect*
- N. Project impacts to submerged aquatic vegetation⁸, emergent vegetation or mangrove will have beneficial, insignificant, discountable⁹ or no effects on the manatee¹⁰ O
- Project impacts to submerged aquatic vegetation⁸, emergent vegetation or mangrove may adversely affect the manatee¹⁰ *May affect*
- O. Project proponent **elects** to follow standard manatee conditions for in-water work¹¹ and requirements, as appropriate for the proposed activity, prescribed on the maps⁴ P
- Project proponent **does not elect** to follow standard manatee conditions for in-water work¹¹ and appropriate requirements prescribed on the maps⁴ *May affect*
- P. If project is for a new or expanding⁵ multi-slip facility and is located in a county with a State-approved MPP in place **or** in Bay, Dixie, Escambia, Franklin, Gilchrist, Gulf, Hernando, Jefferson, Lafayette, Monroe (south of Craig Key), Nassau, Okaloosa, Okeechobee, Putnam, St. Johns, Santa Rosa, Suwannee, Taylor, Wakulla or Walton County, the determination of "*May affect, not likely to adversely affect*" is appropriate¹² and no further consultation with the Service is necessary.
- If project is for a new or expanding⁵ multi-slip facility and is located in Charlotte, Desoto, Flagler, Glades, Hendry, Hillsborough, Levy, Manatee, Monroe (north of Craig Key), Pasco, or Pinellas County, further consultation with the Service is necessary for "*May affect, not likely to adversely affect*" determinations.
- If project is for repair or rehabilitation of a multi-slip facility and is located in an Important Manatee Area, further consultation with the Service is necessary for "*May affect, not likely to adversely affect*" determinations. If project is for repair or rehabilitation of a multi-slip facility and: (1) is **not** located in an Important Manatee Area; (2) the number of slips is not increased; (3) the number of existing slips is not in question; and (4) the improvements to the existing watercraft access structures do not allow increased watercraft usage, the determination of "*May affect, not likely to adversely affect*" is appropriate¹² and no further consultation with the Service is necessary.
- If project is a residential dock facility, shoreline stabilization, or dredging, the determination of "*May affect, not likely to adversely affect*" is appropriate¹² and no further consultation with the Service is necessary. **Note:** For residential dock facilities located in a Warm Water Aggregation Area or in a No Entry area, seasonal restrictions may apply. See footnote 4 below for maps showing restrictions.
- If project is other than repair or rehabilitation of a multi-slip facility, a new⁵ multi-slip facility, residential dock facility, shoreline stabilization, or dredging, and does not provide new⁵ access for watercraft or

improve an existing access to allow increased watercraft usage, the determination of “*May affect, not likely to adversely affect*” is appropriate¹² and no further consultation with the Service is necessary.

¹ On the St. Mary’s River, this key is only applicable to those areas that are within the geographical limits of the State of Florida.

² All culverts 8 inches to 8 feet in diameter must be grated to prevent manatee entrapment. To effectively prevent manatee access, grates must be permanently fixed, spaced a maximum of 8 inches apart (may be less for culverts smaller than 16 inches in diameter) and may be installed diagonally, horizontally or vertically. For new culverts, grates must be attached prior to installation of the culverts. Culverts less than 8 inches or greater than 8 feet in diameter are exempt from this requirement. If new culverts and/or the maintenance or modification of existing culverts are grated as described above, the determination of “*May affect, not likely to adversely affect*” is appropriate¹¹ and no further consultation with the Service is necessary.

³ If the project proponent agrees to follow the standard manatee conditions for in-water work as well as any special conditions appropriate for the proposed activity, further consultation with the Service is necessary for “*May affect, not likely to adversely affect*” determinations. These special conditions may include, but are not limited to, the use of dedicated observers (see Glossary for definition of dedicated observers), dredging during specific months (warm weather months vs cold weather months), dredging during daylight hours only, adjusting the number of dredging days, does not preclude or discourage manatee egress/ingress with turbidity curtains or other barriers that span the width of the waterway, etc.

⁴ Areas of Inadequate Protection (AIPs), Important Manatee Areas (IMAs), Warm Water Aggregation Areas (WWAAs) and No Entry Areas are identified on these maps and defined in the Glossary for the purposes of this key. These maps can be viewed on the [Corps’ web page](#). If projects are located in a No Entry Area, special permits may be required from FWC in order to access these areas (please refer to Chapter 68C-22 F.A.C. for boundaries; maps are also available at [FWC’s web page](#)).

⁵ New access for watercraft is the addition or improvement of structures such as, but not limited to, docks or piers, marinas, boat ramps and associated trailer parking spaces, boat lifts, pilings, floats, floating docks, floating vessel platforms, (maintenance dredging, residential boat lifts, pilings, floating docks, and floating vessel platforms installed in existing slips are not considered new access), boat slips, dry storage, mooring buoys, new dredging, etc., that facilitates the addition of watercraft to, and/or increases watercraft usage in, waters accessible to manatees. The repair or rehabilitation of any type of currently serviceable watercraft access structure is not considered new access provided all of the following are met: (1) the number of slips is not increased; (2) the number of existing slips is not in question; and (3) the improvements to the existing watercraft access structures do not result in increased watercraft usage.

⁶ Projects proposed within the St. Johns River portion of Lake, Marion, and Seminole counties and contiguous with Volusia County shall be evaluated using the Volusia County MPP.

⁷ For projects proposed within the following areas: the Peace River in DeSoto County; all areas north of Craig Key in Monroe County, and the Anclote and Pithlachascotee Rivers in Pasco County, proceed to Couplet M. For all other locations in DeSoto, Monroe (south of Craig Key) and Pasco Counties, proceed to couplet N.

⁸ Where the presence of the referenced vegetation is confirmed within the area affected by docks and other piling-supported minor structures and the reviewer has concluded that the impacts to SAV, marsh or mangroves would not adversely affect the manatee or its critical habitat, proceed to couplet O.

Where the presence of the referenced vegetation is confirmed within the area affected by docks and other piling-supported minor structures and the reviewer has concluded that the impacts to SAV, marsh or mangroves would adversely affect the manatee or its critical habitat, the applicant can elect to avoid/minimize impacts to that vegetation. In that instance, where impacts are unavoidable and the applicant elects to abide by or employ construction techniques that exceed the criteria in the following documents, the reviewer should conclude that the impacts to SAV, marsh or mangroves would not adversely affect the manatee or its critical habitat and proceed to couplet O.

- “Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat,” prepared jointly by the U.S. Army Corps of Engineers and the National Marine Fisheries Service (August 2001) [refer to the [Corps’ web page](#)], and
- “Key for Construction Conditions for Docks or Other Minor Structures Constructed in or over Johnson’s seagrass (*Halophila johnsonii*),” prepared jointly by the National Marine Fisheries Service and U.S. Army Corps of Engineers (October 2002), for those projects within the known range of Johnson’s seagrass occurrence (Sebastian Inlet to central Biscayne Bay in the lagoon systems on the east coast of Florida) [refer to the [Corps’ web page](#)],

Where the presence of the referenced vegetation is confirmed within the area affected by docks and other piling-supported minor structures and the reviewer has concluded that the impacts to SAV, marsh or mangroves would adversely affect the manatee or its critical habitat, and the applicant does not elect to follow the above Guidelines, the Corps will need to request formal consultation on the manatee with the Service as *May affect*.

For activities other than docks and other piling-supported minor structures proposed in SAV, marsh, or mangroves (*e.g.*, new dredging, placement of riprap, bulkheads, etc.), if the reviewer determines the impacts to the SAV, marsh or mangroves will not adversely affect the manatee or its critical habitat, proceed to couplet O, otherwise the Corps will need to request formal consultation on the manatee with the Service as *May affect*.

⁹ See Glossary, under “is not likely to adversely affect.”

¹⁰ Federal reviewers, when making your effects determination, consider effects to manatee designated critical habitat pursuant to section 7(a)(2) of the Endangered Species Act. State reviewers, when making your effects determination, consider effects to manatee habitat within the entire State of Florida, pursuant to Chapter 370.12(2)(b) Florida Statutes.

¹¹ See the [Corps' web page](#) for manatee construction conditions. At this time, manatee construction precautions c and f are not required in the following Florida counties: Bay, Escambia, Franklin, Gilchrist, Gulf, Jefferson, Lafayette, Okaloosa, Santa Rosa, Suwannee, and Walton.

¹² By letter dated April 25, 2013, the Corps received the Service's concurrence with “*May affect, not likely to adversely affect*” determinations made pursuant to this key for the following activities: (1) selected non-watercraft access projects; (2) watercraft-access projects that are residential dock facilities, excluding those located in the Braden River AIP; (3) launching facilities solely for kayaks and canoes, and (4) new or expanding multi-slip facilities located in Bay, Dixie, Escambia, Franklin, Gilchrist, Gulf, Hernando, Jefferson, Lafayette, Monroe (south of Craig Key), Nassau, Okaloosa, Okeechobee, Santa Rosa, Suwannee, Taylor, Wakulla or Walton County.

Additionally, in the same letter dated April 25, 2013, the Corps received the Service's concurrence for “*May affect, not likely to adversely affect*” determinations specifically made pursuant to Couplet G of the key for the repair or rehabilitation of currently serviceable multi-slip watercraft access structures provided all of the following are met: (1) the project is not located in an IMA, (2) the number of slips is not increased; (3) the number of existing slips is not in question; and (4) the improvements to the existing watercraft access structures do not allow increased watercraft usage. Upon receipt of such a programmatic concurrence, no further consultation with the Service for these projects is required.

GLOSSARY

Areas of inadequate protection (AIP) – Areas within counties as shown on the maps where the Service has determined that measures intended to protect manatees from the reasonable certainty of watercraft-related take are inadequate. Inadequate protection may be the result of the absence of manatee or other watercraft speed zones, insufficiency of existing speed zones, deficient speed zone signage, or the absence or insufficiency of speed zone enforcement.

Boat slip – A space on land or in or over the water, other than on residential land, that is intended and/or actively used to hold a stationary watercraft or its trailer, and for which intention and/or use is confirmed by legal authorization or other documentary evidence. Examples of boat slips include, but are not limited to, docks or piers, marinas, boat ramps and associated trailer parking spaces, boat lifts, floats, floating docks, pilings, boat davits, dry storage, etc.

Critical habitat – For listed species, this consists of: (1) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Endangered Species Act (ESA), on which are found those physical or biological features (constituent elements) (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the ESA, upon a determination by the Secretary that such areas are essential for the conservation of the species. Designated critical habitats are described in 50 CFR 17 and 50 CFR 226.

Currently serviceable – Currently, serviceable means usable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects – The direct or immediate effects of the project on the species or its habitat.

Dredging – For the purposes of this key, the term dredging refers to all in-water work associated with dredging operations, including mobilization and demobilization activities that occur in water or require vessels.

Emergent vegetation – Rooted emergent vascular macrophytes such as, but not limited to, cordgrass (*Spartina alterniflora* and *S. patens*), needle rush (*Juncus roemerianus*), swamp sawgrass (*Cladium mariscoides*), saltwort (*Batis maritima*), saltgrass (*Distichlis spicata*), and glasswort (*Salicornia virginica*) found in coastal salt marsh-related habitats (tidal marsh, salt marsh, brackish marsh, coastal marsh, coastal wetlands, tidal wetlands).

Formal consultation – A process between the Services and a Federal agency or applicant that: (1) determines whether a proposed Federal action is likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat; (2) begins with a Federal agency's written request and submittal of a complete initiation package; and (3) concludes with the issuance of a biological opinion and incidental take statement by either of the Services. If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required (except when the Services concur, in writing, that a proposed

action “is not likely to adversely affect” listed species or designated critical habitat). [50 CFR 402.02, 50 CFR 402.14]

Important manatee areas (IMA) – Areas within certain counties where increased densities of manatees occur due to the proximity of warm water discharges, freshwater discharges, natural springs and other habitat features that are attractive to manatees. These areas are heavily utilized for feeding, transiting, mating, calving, nursing or resting as indicated by aerial survey data, mortality data and telemetry data. Some of these areas may be federally-designated sanctuaries or state-designated “seasonal no entry” zones. Maps depicting important manatee areas and any accompanying text may contain a reference to these areas and their special requirements. Projects proposed within these areas must address their special requirements.

Indirect effects – Those effects that are caused by or will result from the proposed action and are later in time, but are still reasonably certain to occur. Examples of indirect effects include, but are not limited to, changes in water flow, water temperature, water quality (*e.g.*, salinity, pH, turbidity, nutrients, chemistry), prop dredging of seagrasses, and manatee watercraft injury and mortality. Indirect effects also include watercraft access developments in waters not currently accessible to manatees, but watercraft access can, is, or may be planned to waters accessible to manatees by the addition of a boat lift or the removal of a dike or plug.

Informal consultation – A process that includes all discussions and correspondence between the Services and a Federal agency or designated non-Federal representative, prior to formal consultation, to determine whether a proposed Federal action may affect listed species or critical habitat. This process allows the Federal agency to utilize the Services’ expertise to evaluate the agency’s assessment of potential effects or to suggest possible modifications to the proposed action which could avoid potentially adverse effects. If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required (except when the Services concur, in writing, that a proposed action “is not likely to adversely affect” listed species or designated critical habitat). [50 CFR 402.02, 50 CFR 402.13]

In-water activity – Any type of activity used to construct/repair/replace any type of in-water structure or fill; the act of dredging.

In-water structures – watercraft access structures – Docks or piers, marinas, boat ramps, boat slips, boat lifts, floats, floating docks, pilings (depending on use), boat davits, etc.

In-water structures – other than watercraft access structures – Bulkheads, seawalls, riprap, groins, boardwalks, pilings (depending on use), etc.

Is likely to adversely affect – The appropriate finding in a biological assessment (or conclusion during informal consultation) if any adverse effect to listed species may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions and the effect is not: discountable, insignificant, or beneficial (see definition of “is not likely to adversely affect”). An “is likely to adversely affect” determination requires the initiation of formal consultation under section 7 of the ESA.

Is not likely to adversely affect – The appropriate conclusion when effects on listed species are expected to be discountable, insignificant, or completely beneficial. **Discountable effects** are those extremely unlikely to occur. **Insignificant effects** relate to the size of the impact and should never reach the scale where take occurs. **Beneficial effects** are contemporaneous positive effects without any adverse effects to the species. Based on best judgment, a person would not (1) be able to meaningfully measure, detect, or evaluate insignificant effects or (2) expect discountable effects to occur.

Manatee Protection Plan (MPP) – A manatee protection plan (MPP) is a comprehensive planning document that addresses the long-term protection of the Florida manatee through law enforcement, education, boat facility siting, and habitat protection initiatives. Although MPPs are primarily developed by the counties, the plans are the product of extensive coordination and cooperation between the local governments, the FWC, the Service, and other interested parties.

Manatee Protection Plan thresholds – The smallest size of a multi-slip facility addressed under the purview of a Manatee Protection Plan (MPP). For most MPPs, this threshold is five slips or more. For Brevard, Clay, Citrus, and Volusia County MPPs, this threshold is three slips or more.

Mangroves – Rooted emergent trees along a shoreline that, for the purposes of this key, include red mangrove (*Rhizophora mangle*), black mangrove (*Avicennia germinans*) and white mangrove (*Laguncularia racemosa*).

May affect – The appropriate conclusion when a proposed action may pose any effects on listed species or designated critical habitat. When the Federal agency proposing the action determines that a “may affect” situation exists, then they must either request the Services to initiate formal consultation or seek written concurrence from the Services that the action “is not likely to adversely affect” listed species. For the purpose of this key, all “may affect” determinations equate to “likely to adversely affect” and Corps Project Managers should request the Service to initiate formal consultation on the manatee or designated critical habitat. **No effect** – the appropriate conclusion when the action agency determines its proposed action will not affect a listed species or designated critical habitat.

Multi-slip facility – Multi-slip facilities include commercial marinas, private multi-family docks, boat ramps and associated trailer parking spaces, dry storage facilities and any other similar structures or activities that provide access to the water for multiple (five slips or more, except in Brevard, Clay, Citrus, and Volusia counties where it is three slips or more) watercraft. In some instances, the Corps and the Service may elect to review multiple residential dock facilities as a multi-slip facility.

New access for watercraft – New dredging and the addition, expansion or improvement of structures such as, but not limited to, docks or piers, marinas, boat ramps and associated trailer parking spaces, boat lifts, pilings, floats, floating docks, floating vessel platforms, (residential boat lifts, pilings, floats, and floating vessel platforms installed in existing slips are not considered new access), boat slips, dry storage, mooring buoys, etc., that facilitates the addition of watercraft to, and/or increases watercraft usage in, waters accessible to manatees.

Observers – During dredging and other in-water operations within manatee accessible waters, the standard manatee construction conditions require all on-site project personnel to watch for manatees to ensure that those standard manatee construction conditions are met. Within important manatee areas (IMA) and under special circumstances, heightened observation is needed. **Dedicated Observers** are those having some prior experience in manatee observation, are dedicated only for this task, and must be someone other than the dredge and equipment operators/mechanics. **Approved Observers** are dedicated observers who also must be approved by the Service (if Federal permits are involved) and the FWC (if state permits are involved), prior to work commencement. Approved observers typically have significant and often project-specific observational experience. Documentation on prior experience must be submitted to these agencies for approval and must be submitted a minimum of 30 days prior to work commencement. When dedicated or approved observers are required, observers must be on site during all in-water activities, and be equipped with polarized sunglasses to aid in manatee observation. For prolonged in-water operations, multiple observers may be needed to perform observation in shifts to reduce fatigue (recommended shift length is no longer than six hours). Additional information concerning observer approval can be found at [FWC's web page](#).

Residential boat lift – A boat lift installed on a residential dock facility.

Residential dock density ratio threshold – The residential dock density ratio threshold is used in the evaluation of multi-slip projects in some counties without a State-approved Manatee Protection Plan and is consistent with 1 boat slip per 100 linear feet of shoreline (1:100) owned by the applicant.

Residential dock facility – A residential dock facility means a private residential dock which is used for private, recreational or leisure purposes for single-family or multi-family residences designed to moor no more than four vessels (except in Brevard, Clay, Citrus, and Volusia counties which allow only two vessels). This also includes normal appurtenances such as residential boat lifts, boat shelters with open sides, stairways, walkways, mooring pilings, dolphins, etc. In some instances, the Corps and the Service may elect to review multiple residential dock facilities as a multi-slip facility.

Submerged aquatic vegetation (SAV) – Rooted, submerged, aquatic plants such as, but not limited to, shoal grass (*Halodule wrightii*), paddle grass (*Halophila decipiens*), star grass (*Halophila engelmanni*), Johnson's seagrass (*Halophila johnsonii*), sago pondweed (*Potamogeton pectinatus*), clasping-leaved pondweed (*Potamogeton perfoliatus*), widgeon grass (*Ruppia maritima*), manatee grass (*Syringodium filiforme*), turtle grass (*Thalassia testudinum*), tapegrass (*Vallisneria americana*), and horned pondweed (*Zannichellia palustris*).

Warm Water Aggregation Areas (WWAAs) and No Entry Areas – Areas within certain counties where increased densities of manatees occur due to the proximity of artificial or natural warm water discharges or springs and are considered necessary for survival. Some of these areas may be federally-designated manatee sanctuaries or state-designated seasonal “no entry” manatee protection zones. Projects proposed within these areas may require consultation in order to offset expected adverse impacts. In addition, special permits may be required from the FWC in order to access these areas.

Watercraft access structures – Docks or piers, marinas, boat ramps and associated trailer parking spaces, boat slips, boat lifts, floats, floating docks, pilings, boat davits, dry storage, etc.

Waters accessible to manatees – Although most waters of the State of Florida are accessible to the manatee, there are some areas such as landlocked lakes that are not. There are also some weirs, salinity control structures and locks that may preclude manatees from accessing water bodies. If there is any question about accessibility, contact the Service or the FWC.

STANDARD MANATEE CONDITIONS FOR IN-WATER WORK

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The permittee shall comply with the following conditions intended to protect manatees from direct project effects:

- a. All personnel associated with the project shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with and injury to manatees. 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 cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers must not impede manatee movement.
- d. All on-site project personnel are responsible for observing water-related activities for the presence of manatee(s). All in-water operations, including vessels, must be shutdown if a manatee(s) comes within 50 feet of the operation. Activities will not resume until the manatee(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the manatee(s) has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.
- e. Any collision with or injury to a manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1-888-404-3922. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-731-3336) for north Florida or Vero Beach (1-772-562-3909) for south Florida, and to FWC at ImperiledSpecies@myFWC.com
- 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. These signs can be viewed at MyFWC.com/manatee. Questions concerning these signs can be sent to the email address listed above.

CAUTION: MANATEE HABITAT

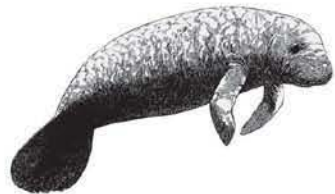
All project vessels

IDLE SPEED / NO WAKE

When a manatee is within 50 feet of work
all in-water activities must

SHUT DOWN

Report any collision with or injury to a manatee:



Wildlife Alert:

1-888-404-FWCC(3922)

cell *FWC or #FWC



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, FL 33701

SEA TURTLE AND SMALLTOOTH SAWFISH CONSTRUCTION CONDITIONS

The permittee shall comply with the following protected species construction conditions:

- a. The permittee shall instruct all personnel associated with the project of the potential presence of these species and the need to avoid collisions with sea turtles and smalltooth sawfish. All construction personnel are responsible for observing water-related activities for the presence of these species.
- b. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing sea turtles or smalltooth sawfish, which are protected under the Endangered Species Act of 1973.
- c. Siltation barriers shall be made of material in which a sea turtle or smalltooth sawfish cannot become entangled, be properly secured, and be regularly monitored to avoid protected species entrapment. Barriers may not block sea turtle or smalltooth sawfish entry to or exit from designated critical habitat without prior agreement from the National Marine Fisheries Service's Protected Resources Division, St. Petersburg, Florida.
- d. All vessels associated with the construction project shall operate at "no wake/idle" speeds at all times while in the construction area and while in water depths where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will preferentially follow deep-water routes (e.g., marked channels) whenever possible.
- e. If a sea turtle or smalltooth sawfish is seen within 100 yards of the active daily construction/dredging operation or vessel movement, all appropriate precautions shall be implemented to ensure its protection. These precautions shall include cessation of operation of any moving equipment closer than 50 feet of a sea turtle or smalltooth sawfish. Operation of any mechanical construction equipment shall cease immediately if a sea turtle or smalltooth sawfish is seen within a 50-ft radius of the equipment. Activities may not resume until the protected species has departed the project area of its own volition.
- f. Any collision with and/or injury to a sea turtle or smalltooth sawfish shall be reported immediately to the National Marine Fisheries Service's Protected Resources Division (727-824-5312) and the local authorized sea turtle stranding/rescue organization.
- g. Any special construction conditions, required of your specific project, outside these general conditions, if applicable, will be addressed in the primary consultation.

Revised: March 23, 2006

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Exhibit 9. Photo Image of Macroalgae, SAJ-2007-03138(PGP-DEB)



Exhibit 10. Photo image of macroalgae, SAJ-2007-03138(PGP-DEB)