



# FLORIDA DEPARTMENT OF Environmental Protection

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January 23, 2019

U.S. Army Corps of Engineers  
Jacksonville District  
Attn: Jason Spinning  
Environmental Branch  
Planning and Policy Division  
701 San Marco Blvd.  
Jacksonville, FL 32207

Permit Modification No. 0158893-012-JN  
Permit No. 0158893-05-JC, Lee County  
Project Name: Matanzas Pass Channel Restoration and Maintenance Dredging

Dear Mr. Spinning,

Your request to modify Permit No 0158893-005-JC was received on September 11, 2018, and has been reviewed by Florida Department of Environmental Protection (Department) staff. The proposed permit modification is to extend the permit duration for an additional five years, until March 6, 2024, pursuant to Rule 62B-49.011(5), Florida Administrative Code (F.A.C.) to the maximum 15-year duration.

## **Project Background**

On March 9, 2009, the Department issued Permit No. **0158893-005-JC** and Variance No. **0158893-006-BV** to the U.S. Army Corps of Engineers (Corps) to restore and maintain the channel through Matanzas Pass. All compatible material was authorized to be placed in the nearshore, seaward of the sand bar on Estero Island.

For additional background, please see the *CONSOLIDATED NOTICE OF INTENT TO ISSUE JOINT COASTAL PERMIT, VARIANCE AND AUTHORIZATION TO USE SOVEREIGN SUBMERGED LANDS* for Joint Coastal Permit No. 0158893-005-JC and Variance No. 158893-006-BV, available at the following website:

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[ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/lee/issued/0158893\\_Matanzas\\_Pass\\_Maintenance\\_Dredging/005-JC/Intent/](ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/lee/issued/0158893_Matanzas_Pass_Maintenance_Dredging/005-JC/Intent/)

On April 17, 2009, the Department issued Modification No. **0158893-007-BN** to eliminate the prohibition in Permit No. 0158893-005-JC of work on the beach after May 1<sup>st</sup>, if minimized to the maximum extent practicable.

On July 10, 2009, the Department revised Permit No. 0158893-005-JC by issuing Modification No. **0158893-008-BN** to allow a one-time only dredging event of the shoal adjoining the federal channel from Station 39 to Station 45 and laterally out to Range 550 in order to reduce the navigational hazard of this shoal.

On June 6, 2012, the Corps applied for a permit modification (File No. **0158893-009-JM**) to include the interior channel (Cuts 4 through 10) as part of the Matanzas Pass Channel Restoration and Maintenance Dredging project. At the same time the Corps also applied for a variance modification (File No. **0158893-010-BV**) to allow an antidegradation deviation of 7.5 NTU above background within Outstanding Florida Waters for Cuts 8-10 of Matanzas Pass Channel, which extends into Estero Bay Aquatic Preserve. The Department reviewed these applications and sent a request for additional information on July 3, 2012. Those applications were later withdrawn.

On December 17, 2012, the Department revised Permit No. 0158893-005-JC by issuing Permit Modification No. **0158893-011-JN** to include Cut 2A and Cut 3 in order to reduce the navigational hazard within the inlet.

### **Staff Assessment and Justification**

#### **Extending the permit duration until March 6, 2024, pursuant to revisions of Chapter 62B-49, F.A.C.**

On November 19, 2015, the Joint Coastal Permit rules were revised, and those revisions included the following:

*62B-49.011(5), F.A.C.: The Permittee or authorized agent may apply for a minor permit modification to extend the expiration date of a permit issued for less than 15 years by filing a written application with the Department before the permit expires and paying any fees required in Rule 62B-49.006, F.A.C. An application will not be considered filed until the application is received by the Department. A new joint coastal permit is required to continue maintenance of a project beyond the expiration of the permit.*

The Department has determined that the request for a time extension is consistent with Rule 62B-49.011(5), F.A.C., because the existing permit has a 10-year duration and the time extension request was timely received. Therefore, the Department will extend the duration of Permit No.

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0158893-005-JC, from March 6, 2019, to March 6, 2024, in conformance with Rule 62B-49.011(1) F.A.C.

**Minimization of Potential Impacts to Submerged Aquatic Vegetation and Monitoring for Reasonable Assurance**

Submerged aquatic vegetation (SAV) is proximate to several portions of the channel that are authorized to be dredged under this permit. Although direct impacts to SAV adjacent to the channel are neither anticipated nor authorized by this permit, project generated turbidity has the potential to adversely affect SAV. Accordingly, the existing permit requires turbidity monitoring at the edge of the nearest seagrass bed to reduce potential adverse effects of turbidity on SAV. However, the existing permit does not specify a protocol for delineating the seagrass edge to ensure compliance samples will be taken at the appropriate locations. Therefore, the Department has included Specific Conditions in the permit modification for this time extension that will provide reasonable assurance that impacts will be avoided to the maximum extent practicable and that any unpermitted impacts to SAV will be documented, if they occur. These conditions include the requirement to delineate the SAV edge during the growing season prior to construction. However, for the 2018/19 event, the best available information on seagrasses in the project area will be used for this purpose.

**Variance No. 0158893-006-BV**

When the permit was issued, provisions of Rule 62-4.244(5), F.A.C., did not allow mixing zones greater than 150 meters. Consequently, the Department granted Variance No. 0158893-006-BV to establish a temporary expanded mixing zone of 500 meters down-current from the point of sand discharge in the nearshore disposal area. Subsequent revisions to Rule 62-4.244, F.A.C., include the following:

*62-4.244(5)(c), F.A.C.: In no case shall the boundary of a Joint Coastal Permit mixing zone be more than 1000 meters from the point of discharge into the waterbody or the boundary of a dredge and fill mixing zone be more than 150 meters downstream in flowing streams or 150 meters in radius in other bodies of water, where these distances are measured from the cutter head, return flow, discharge, or other points of generation of turbidity or other pollutants.*

Consequently, a mixing zone of the size previously requested is no longer a deviation from Rule 62-4.244(5), F.A.C., so a variance to that rule is no longer required for the expanded mixing zone. **The Department hereby rescinds Variance 0158893-006-BV.**

**Updating Specific Conditions**

The Department has refined the language of certain Specific Conditions to reduce ambiguity. These changes clarify common misinterpretations and update requirements. As such, updates have been made throughout the Specific Conditions of the permit.

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**Agency Actions**

Pursuant to provisions of Rule 62B-49.011(5), F.A.C., the expiration date of Permit No. 0158893-005-JC is changed as follows:

Original Expiration Date of Construction Phase: March 6, 2019

New Expiration Date of Construction Phase: **March 6, 2024.**

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

The project is to dredge Cuts 1, 2, and 3 of the Matanzas Pass Federal Navigation channel ~~in order to restore portions of the channel and maintain other~~ these portions of the channel at an authorized depth of -12 feet MLLW plus a 2-foot allowable over depth, to a maximum depth of -14 feet MLLW. Approximately 240,000 cubic yards of dredged material will be placed in the nearshore, seaward of the sand bar on Estero Island. ~~An additional 22,000 cubic yards of material will be dredged in 2009 to remove a shoal located adjacent to the federal channel, between Station 39+00 and Station 45+00, and extending out to Range 550. This area will be dredged to a depth of -8 feet MLLW and placed in the same nearshore disposal location.~~

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

**SPECIFIC CONDITIONS:**

2. All reports or notices relating to this permit shall be ~~sent to the DEP, Bureau of Beaches and Coastal Systems, JCP Compliance Officer, 3900 Commonwealth Boulevard, Mail Station 300, Tallahassee, Florida 32399-3000 (e-mail address: submitted electronically (via email or through a file transfer site) when practicable, and shall include the project name and permit number (0158893-005-JC). Email submittals shall be sent to the Joint Coastal Permit (JCP) Compliance Officer at [JCPCCompliance@dep.state.fl.us](mailto:JCPCCompliance@dep.state.fl.us)~~ and the DEP South District Office, at [SouthDistrict@floridadep.gov](mailto:SouthDistrict@floridadep.gov) 2295 Victoria Avenue, Suite 364, Fort Myers, FL 33901-2896.
3. At least ~~30~~15 days prior to commencement of construction, the Permittee shall submit the following to the Department as confirmation of reasonable assurances made during the application review process:

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- a. ~~Two hard copies and an~~ An electronic copy of detailed ***final construction plans and specifications*** for all authorized activities that are consistent with the activity description of this permit and the attached permit drawings. The cover page shall list all documents in the set and shall be certified by a professional engineer (PE), as required by the Interagency Coordination Agreement, dated February 28, 2006. The plans and specifications shall include a description of the dredging and construction methods to be utilized and drawings and surveys that show all benthic resources and work spaces (e.g., anchoring area, pipeline corridors, staging areas, boat access corridors, etc.) to be used for this project.
- b. ***Turbidity monitoring qualifications.*** Construction at the project site shall be monitored closely by an experienced Contractor to assure that turbidity levels do not exceed the compliance standards established in this permit. Also, an individual familiar with beach construction techniques and turbidity monitoring shall be present at all times when fill material is discharged in the nearshore. This individual shall have authority to alter construction techniques or shut down the dredging or beach construction operations if turbidity levels exceed the compliance standards established in this permit. The names and qualifications of those individuals performing these functions, along with 24-hour contact information, shall be submitted.
- c. ***Benthic Resource Monitoring Qualifications.*** To ensure that individuals conducting monitoring of benthic resources have appropriate qualifications, documentation demonstrating expertise / experience in surveying the types of benthic resources that are present in the project, including oyster reefs and submerged aquatic vegetation (SAV), shall be provided to the Department for review prior to the initiation of monitoring tasks that are required by Specific Condition 25. The Department will review this information and confirm that monitors are capable of meeting the requirements in Specific Condition 25. The Department will provide written comments regarding any perceived deficits in qualifications or experience.
- d. ***Pre-construction survey results.*** An assessment of benthic resources (i.e., SAV) located within 150 meters of the area(s) to be dredged shall be completed during the summer (June – September) immediately prior to each construction event in accordance with Specific Condition 23. Surveys conducted by the local sponsor, their contractors, or third parties, may be submitted by the Permittee to meet this requirement. The Permittee shall provide the Department with a **Summary of Existing Information on Benthic Resources** based on the desktop assessment, a **geo-referenced Benthic Resource Map** showing the current boundaries of all SAV beds, a **Benthic Resource Report** with a narrative description of the current condition of SAV resources, and all **raw data** that were compiled or produced in association with these deliverables. The Permittee shall also provide

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documentation (e.g., email correspondence) verifying that their contractor has received the Benthic Resource Map and Report and that the contractor has been instructed by the Permittee to use this information to avoid impacts to benthic resources in the project area (pursuant to Specific Conditions 25 and 26).

4. At least 7 days prior to commencement of the dredging and nearshore placement activities authorized by this permit, the Permittee shall conduct a pre-construction conference to review the specific conditions and monitoring requirements of this permit with the Permittee's contractors, the Contracting Officer Representative, and Department staff representatives, those responsible for turbidity monitoring, those responsible for protected species monitoring and staff representatives of the Fish and Wildlife Conservation Commission (FWC). After coordinating with the meeting participants to arrange an acceptable time for the meeting, the Permittee shall provide written notification, at least 4 days in advance of the meeting, to the following offices advising of the date, time, location, and teleconference number of the pre-construction conference:

~~DEP Bureau of Beaches & Coastal Systems~~  
~~DEP JCP Compliance Officer~~  
~~Mail Station 300~~  
~~3900 Commonwealth Boulevard~~  
~~Tallahassee, Florida 32399-3000~~  
~~phone: (850) 414-7716 (850) 245-7539~~  
~~e-mail: [JCP.Compliance@dep.state.fl.us](mailto:JCP.Compliance@dep.state.fl.us)~~

~~DEP South District Office~~  
~~Submerged Lands & Environmental Resources~~  
~~2295 Victoria Avenue~~  
~~Suite 364~~  
~~Fort Myers, FL 33901-2896~~  
~~Phone: (239) 332-6975 (269) 344-5600~~  
~~e-mail: [SouthDistrict@floridadep.gov](mailto:SouthDistrict@floridadep.gov)~~

~~FWC Imperiled Species Management Section~~  
~~Florida Fish & Wildlife Conservation Commission~~  
~~620 South Meridian Street~~  
~~Tallahassee, Florida 32399-1600~~  
~~phone: (850) 922-4330 (850) 488-4676~~  
~~fax: (850) 921-4369~~  
~~e-mail: [marineturtle@myfwc.com](mailto:marineturtle@myfwc.com)~~

~~FWC Regional Species Conservation Biologist~~  
~~Contact list: <http://myfwc.com/conservation/you-serve/wildlife/shorebirds/>~~

Optional Attendee:  
Estero Bay Aquatic Preserve  
700-1 Fisherman's Wharf  
Fort Myers Beach, FL 33931  
phone-~~239 463 3240~~ (239) 530-1001  
fax-~~239 463 3634~~

**WATER QUALITY MONITORING REQUIRED:**

22. Turbidity shall be ~~monitored and reported as follows:~~

A. ~~—~~ ***Dredge Site:***

~~Frequency: Two times daily at least 4 hours apart during all dredging and disposal operations, and any time an excessive plume is observed to extend beyond the limits of the mixing zone such that a water quality violation may exist. Monitoring will occur provided sea, wind, visibility, traffic and other conditions allow for the safe performance of the activity. Permittee or contracted designee agrees to document all instances where turbidity monitoring within the bounds of the above parameters could not be performed.~~

~~Location: ***Background:*** at a point approximately 150 meters upcurrent from in the dredge, clearly outside of any visible turbidity plume generated by the project. Samples shall be collected from the surface and mid-depth.~~

~~***Compliance:*** at a point downcurrent from the dredge bucket or cutterhead, at a distance of no more than 150 meters or at the edge of the nearest seagrass bed, whichever is closer to the dredge, within the densest portion of any visible turbidity plume. Samples shall be collected from the surface and mid-depth.~~

B. ~~—~~ ***Nearshore Placement Site:***

~~Frequency: Two times daily at least 4 hours apart during all dredging and disposal operations, and any time an excessive plume is observed to extend beyond the limits of the mixing zone such that a water quality violation may exist. Monitoring will occur provided sea, wind, visibility, traffic and other conditions allow for the safe performance of the activity. Permittee or contracted designee agrees to document all instances where turbidity monitoring within the bounds of the above parameters could not be performed.~~

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~~Location: — **Background:** at a point approximately 500 meters up current from the discharge point, clearly outside of any turbidity plume generated by the project. Samples shall be collected from the surface and mid-depth at the same distance offshore as the compliance station.~~

~~**Compliance:** at a point no more than 500 meters down current from the point of discharge into State waters, within the densest portion of any visible turbidity plume. Samples shall be collected from the surface and mid-depth.~~

~~Intermediate (used to calibrate the size of the mixing zone for future events — NOT for compliance with the turbidity standard): at 2 points within the mixing zone (approximately 150 meters and 300 meters down current from the point of discharge into State waters), within the densest portion of any visible turbidity plume. Samples shall be collected from the surface and mid-depth.~~

~~The compliance locations given above shall be considered the limits of the temporary mixing zone for turbidity allowed during construction. If monitoring reveals turbidity levels at the compliance sites that are greater than 29 NTUs above the corresponding background turbidity levels, construction activities shall **cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Any such occurrence shall be immediately reported to the Department's Bureau of Beaches and Coastal Systems (BBCS) in Tallahassee at (850) 414-7716 (attn: JCP Compliance Officer) and the Department's South District office in Ft. Myers.~~

~~In the event elevated turbidity at the edge of the seagrass beds continues to occur, alternative measures shall be taken by the Permittee to control the problem (e.g., change dredge timing/ method so that the seagrasses will not be down-drift of the generation of turbidity). Any such occurrences shall also be immediately reported to the BBCS and the Department's South District office.~~

~~All monitoring data shall be submitted within one week of analysis with documents containing the following information: (1) permit number; (2) dates of sampling and analysis; (3) a statement describing the methods used in collection, handling, storage and analysis of the samples; (4) a map indicating the sampling locations; (5) a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection, calibration of the meter and accuracy of the data.~~

~~Monitoring reports shall also include the following information for each sample that is taken:~~

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- a) ~~time of day samples taken;~~
- b) ~~depth of water body;~~
- c) ~~depth of sample;~~
- d) ~~antecedent weather conditions;~~
- e) ~~tidal stage and direction of flow;~~
- f) ~~wind direction and velocity; and~~
- g) ~~water temperature~~

~~Monitoring reports shall be submitted electronically to the BBCS in Tallahassee (attn: JCP Compliance Officer) and to the Department's South District office. Failure to submit reports in a timely manner constitutes grounds for revocation of the permit. When submitting this information to the Department, please clearly include, at the top of each page or as a cover page to the submittal: **"This information is provided in partial fulfillment of the monitoring requirements in Permit No. 0158893-005-JC, for the Matanzas Pass Channel Restoration and Maintenance Dredging Project."**~~

Water Quality - Turbidity shall be monitored as follows:

Units:        Nephelometric Turbidity Units (NTUs).

Frequency: If a pipeline dredge is used, monitoring at the dredge site and the placement site shall be conducted 3 times daily, approximately 4 hours apart, and at any other time that there is a likelihood of an exceedance of the turbidity standard, during all dredge operations.

If a hopper dredge is used, monitoring shall be conducted for each hopper dredge load during daylight hours. At the dredge site, sampling shall be conducted after overflow from the hopper begins and the associated turbidity plume has reached the edge of the mixing zone. At the fill placement site, sampling shall be conducted after discharge from the hopper begins and the associated turbidity plume has reached the edge of the mixing zone.

All turbidity sampling shall be conducted **while the highest project-related turbidity levels are crossing the edge of the mixing zone.** Since turbidity levels can be related to pumping rates, the dredge pumping rates shall be recorded, and provided to the Department upon request. The compliance samples and the corresponding background samples shall be collected at approximately the same time, i.e., one shall immediately follow the other.

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Location: Background: Sampling shall occur at surface, mid-depth, and (for sites with depths greater than 25 feet) 2 meters above the bottom, clearly outside the influence of any artificially generated turbidity plume or the influence of an outgoing inlet plume.

**Dredge Site:** Samples shall be collected at least 300 meters up-current from the source of turbidity at the dredge site.

**Nearshore Placement Site:** Samples shall be collected at least 500 meters up-current from any portion of the nearshore placement site that has been, or is being, filled during the current construction event, at the same distances offshore as the associated compliance samples.

Compliance: Sampling shall occur at surface, mid-depth, and (for sites with depths greater than 25 feet) 2 meters above the bottom.

**Dredge Site:** Samples shall be collected 150 meters down-current from the cutterhead or the hopper dredge overflow point, or at the edge of the nearest SAV bed in the downcurrent direction, whichever is closest to the cutterhead or overflow point, **and** from any other source of turbidity generated by the dredge, in the densest portion of any visible turbidity plume. If no plume is visible, follow the likely direction of flow.

**Nearshore Placement Site:** Samples shall be collected 500 meters down-current from the discharge point, within the densest portion of the turbidity plume.

**Intermediate Monitoring** (required when using a mixing zone that exceeds 150 meters in size): At surface, mid-depth, and (for sites with depths greater than 25 feet) 2 meters above bottom. At points approximately 150 and 300 meters downcurrent from the discharge point, within the densest portion of any visible turbidity plume generated by this project. These measurements will be used to calibrate the size of the mixing zone for future events.

**Calibration:** The instruments used to measure turbidity shall be fully calibrated with primary standards within one month of the commencement of the project, and at least once a month throughout the project. Calibration with secondary standards shall be verified each morning prior to use, after each time the instrument is turned on, and after field sampling using two secondary turbidity “standards” that that bracket the anticipated turbidity samples. If the post-sampling calibration value deviates more than 8% from the previous calibration value, results shall be reported as estimated and a description of the problem shall be included in the field notes.

Analysis of turbidity samples shall be performed in compliance with DEP-SOP-001/01 FT 1600 Field Measurement of Turbidity:  
<http://publicfiles.dep.state.fl.us/dear/sas/sopdoc/2008sops/ft1600.pdf>

If the turbidity monitoring protocol specified above prevents the collection of accurate data, the person in charge of the turbidity monitoring shall contact the JCP Compliance Officer to establish a more appropriate protocol. Once approved in writing by the Department, the new protocol shall be implemented through an administrative permit modification.

23. The **compliance** locations given above shall be considered the limits of the temporary mixing zone for turbidity allowed during construction. If monitoring reveals turbidity levels at the **compliance** sites that are greater than 29 NTUs above the corresponding background turbidity levels, construction activities shall **cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Any such occurrence shall also be immediately reported to the JCP Compliance Officer via email at [JCPCompliance@dep.state.fl.us](mailto:JCPCompliance@dep.state.fl.us) and include in the subject line, “TURBIDITY EXCEEDANCE”, and the Project Name and Permit Number. Also notify the Department’s South District office.

Any project-associated turbidity source other than dredging or fill placement (e.g., scow or pipeline leakage) shall be monitored as close to the source as possible. If the turbidity level exceeds 29 NTUs above background, the construction activities related to the exceedance shall **cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. This turbidity monitoring shall continue every hour until background turbidity levels are restored or until otherwise directed by the Department. The Permittee shall notify the Department, by separate email to the JCP Compliance Officer, of such an event within 24 hours of the time the Permittee first becomes aware of the discharge. The subject line of the email shall state “OTHER PROJECT-ASSOCIATED DISCHARGE, TURBIDITY EXCEEDANCE”.

- a. When reporting a turbidity exceedance, the following information shall also be included:
- i. the Project Name;
  - ii. the Permit Number;
  - iii. location and level (NTUs above background) of the turbidity exceedance;
  - iv. the time and date that the exceedance occurred; and

- v. the time and date that construction ceased.
  - b. Prior to re-commencing the construction, a report shall be emailed to the Department with the same information that was included in the “Exceedance Report”, plus the following information:
    - i. turbidity monitoring data collected during the shutdown documenting the decline in turbidity levels and achievement of acceptable levels;
    - ii. corrective measures that were taken; and
    - iii. cause of the exceedance.
24. **Turbidity Reports:** All turbidity monitoring data shall be submitted within one week of analysis. The data shall be presented in tabular format, indicating the measured turbidity levels at the compliance sites for each depth, the corresponding background levels at each depth and the number of NTUs over background at each depth. Any exceedances of the turbidity standard (29 NTUs above background) shall be highlighted in the table. In addition to the raw and processed data, the reports shall also contain the following information:
- a. time of day samples were taken;
  - b. dates of sampling and analysis;
  - c. GPS location of sample and source. When possible, coordinates should be provided in decimal degrees with a 5 decimal level of precision (i.e., 0.000001). Please also indicate the datum;
  - d. depth of water body;
  - e. depth of each sample;
  - f. antecedent weather conditions, including wind direction and velocity;
  - g. tidal stage and direction of flow;
  - h. water temperature;
  - i. a geo-referenced map, overlaid on an aerial photograph, indicating the sampling locations, the visible plume pattern within the applicable mixing zone and direction of flow, for turbidity monitoring reports associated with the dredging activities, the turbidity sampling map shall also include the boundaries of the

benthic resources within 150 meters of the dredging activities for which turbidity was sampled. A sample map shall be reviewed by the Department prior to construction;

- j. a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection, calibration of the meter, accuracy of the data and precision of the GPS measurements;
- k. When samples cannot be collected, include an explanation in the report. If unable to collect samples due to severe weather conditions, include a copy of a current report from a reliable, independent source, such as an online weather service.

Monitoring reports shall be submitted electronically to the JCP Compliance Officer at [JCPCompliance@dep.state.fl.us](mailto:JCPCompliance@dep.state.fl.us) and to the Department's South District office. Failure to submit reports in a timely manner constitutes grounds for revocation of the permit pursuant to Chapter 403.161, F.S. When submitting this information to the Department, please clearly include, at the top of each page or as a cover page to the submittal: **"This information is provided in partial fulfillment of the monitoring requirements in Permit No. 0158893-005-JC, for the Matanzas Pass Channel Restoration and Maintenance Dredging Project."** The cover letter shall summarize any significant compliance issues. Also, please clearly reference the permit number and project name on each page of the report.

#### **MINIMIZATION MEASURES AND MONITORING FOR POTENTIAL IMPACTS TO BENTHIC RESOURCES:**

- 25. **Pre-construction benthic resource survey:** An in-water survey of benthic resources (i.e., SAV) located within 150 meters of the area(s) to be dredged shall be completed during the summer (June – September) immediately prior to each construction event. The purpose of this survey is to delineate the edges of any benthic resources and to document their current condition. This information shall be used to minimize potential impacts to benthic resources as specified below.
  - a. **Qualifications for biologists.** Documentation demonstrating expertise / experience of all individuals that will be conducting benthic resource monitoring shall be provided to the Department prior to initiation of monitoring tasks (pursuant to Specific Condition 3). All in-water survey work of benthic resources and preparation of associated deliverables shall be completed by individuals with the following qualifications:
    - i. A Bachelor of Science in either marine biology, biology with a concentration in marine sciences, environmental science with a minor in biology, or a similar degree.

- ii. Professional experience and expertise in surveying the type(s) of benthic resources that are present in the project area.
  - iii. Scientific knowledge of the types of benthic resources that are present in the project area.
  - iv. Experience and certification in SCUBA.
- b. **Desktop assessment of benthic resources.** Prior to initiation of any field work for the pre-construction survey, the biologists shall conduct a desktop assessment to identify potential benthic resources within 150 meters of the area(s) to be dredged using the best available information (e.g., historical aerial photography, data from previous surveys in the vicinity). Potential SAV habitats include areas known to be currently vegetated, as well as areas that have historically supported SAV and currently possess the appropriate water environment and sediment characteristics necessary for SAV growth. The results of this desktop assessment shall be provided in a **Summary of Existing Information on Benthic Resources**, which shall be provided to the Department at least 15 days prior to the pre-construction conference (pursuant to Specific Condition 3).
- c. **Delineation of benthic resources.** The purpose of this delineation survey shall be to produce a geo-referenced map that illustrates the spatial distribution of all benthic resources in the project area. All areas determined to potentially contain benthic resources, based on the desktop assessment, shall be surveyed, and a rapid on-site reconnaissance survey shall be conducted to determine whether any other areas within 150 meters of the area(s) to be dredged contain benthic resources that should also be surveyed. The reconnaissance survey may be completed using a towed video camera or a remotely-operated vehicle (ROV), but these survey methods are only acceptable if the video is viewed in real-time by observers on the vessel to ensure that the camera is positioned at the appropriate angle and height above the benthos and towed at the appropriate speed, and that video is of sufficient quality to identify benthic resources. Following the reconnaissance survey, biologists shall visually locate the edge of all SAV beds within 150 meters of the area(s) to be dredged and shall record the position of resource edges using a sub-meter accurate GPS unit. This delineation survey should be completed by biologists using snorkeling or SCUBA equipment (whichever is necessary to make an accurate assessment); biologists may swim or may be towed by a vessel to traverse the survey area. The Permittee shall provide the geo-referenced **Benthic Resource Map** based on this delineation survey to their contractor and to the Department at least 15 days prior to the pre-construction conference (pursuant to Specific Condition 3). The Permittee shall require their contractor to upload this geo-referenced Benthic Resource Map onto the dredge's on-board computer

navigation system and onto any other GPS equipment that will be used during construction and / or for compliance activities.

- d. **Visual assessment of benthic resources.** Concurrent with the delineation survey above, qualified biologists shall complete an in-water visual assessment of benthic resources within 150 meters of the area(s) to be dredged. Biologists shall document the species composition, above-ground biomass, epiphyte coverage, and the general condition of each SAV patch and the project area overall. A detailed narrative description and representative photographs documenting the current condition of benthic resources shall be provided to the Department in a **Benthic Resource Report** at least 15 days prior to the pre-construction conference (pursuant to Specific Condition 3).

26. **Measures to Minimize, Document, and Address Potential Impacts to Benthic Resources:** No impacts to benthic resources (i.e., SAV) are authorized under this permit; therefore, the following measures shall be implemented to minimize, document and address potential impacts to benthic resources:

- a. **Dredging near benthic resources.**
- i. **Avoidance and minimization measures.** To avoid direct impacts to benthic resources located proximate to the dredging template, dredging or dragging the dredge head on the bottom shall not occur outside of the channel top of side slopes, and undercutting the toe of the side slopes shall not occur to such an extent that it causes the side slopes of the channel to slough beyond the permitted template.
- ii. **Evaluation of physical monitoring results to verify avoidance:** Following construction, the Permittee shall evaluate the physical monitoring data (i.e., “as-built” survey results) to determine if dredging activities caused any sloughing of materials to occur beyond the permitted template in any portions of the project within 150 meters of benthic resources. Within 90 days following construction, the results of this analyses shall be submitted to the Department in an **Evaluation of Physical Monitoring Results Near Benthic Resources Report**. If any deviations from the authorized construction activities are identified, information shall be provided pursuant to Specific Condition 25 and the Permittee shall provide the pre- and post-construction bathymetric survey data to the Department concurrent with the report. These data shall consist of ASCII files containing raw x, y, and z data points for each survey. Point drawings, with area maps amassed into .pdf documents of all data collected with elevations, shall also be provided. Horizontal datum shall be the HARN NAD83/90 standard and vertical datum shall be the NAVD 88. Additionally, if requested by the

Department, the Permittee shall require their contractor to provide other evidence that the dredging occurred only within the authorized areas. Such evidence shall include, but is not limited to, electronic records of the track-lines and dredge depths showing the 3-dimensional position of the dredge head during construction, as well as the locations where anchors and/or spuds were deployed.

- b. **Work near benthic resources.** No vessels or equipment shall be anchored, stored, staged, or stockpiled within 10 meters of benthic resources (including SAV beds). If work occurs within 30 meters of benthic resources, then the Permittee shall provide documentation to verify avoidance of these resources (see Specific Condition 26.b.ii, below). The Permittee shall require their contractor to report any violations of this condition to the Department, via email to the JCP Compliance Officer, within 24 hours.
- i. **Avoidance and minimization measures.** The Permittee shall require the contractor to use the Benthic Resource Map (provided pursuant to Specific Conditions 3 and 25) to identify appropriate locations to anchor, store, stage, and stockpile equipment, including pipeline(s) and vessels, to ensure that no vessels or equipment are anchored, stored, staged, or stockpiled within 10 meters of benthic resources. During construction, as visibility allows, the Permittee shall require their contractor to visually inspect (i.e., from the vessel) the benthos prior to anchoring/spudding or emplacement of any construction vessels, equipment, or materials (including pipelines) on the benthos within 30 meters of mapped benthic resources to confirm that no benthic resources are present.
- ii. **Verification of avoidance during work near benthic resources.** The GPS coordinates of all vessels, equipment, or materials (including pipelines) that are anchored, stored, staged, or stockpiled within 30 meters of benthic resources, shall be recorded using DGPS technology, with an accuracy of no less than one (1) meter. As soon as possible, but no later than 90 days post-construction, a geo-referenced map and the GPS coordinates for these locations shall be provided to the Department in a **Work Near Benthic Resources Report**. However, this report shall be provided sooner, concurrent with the Benthic Resource Impact Assessment Report, if an impact assessment is required (pursuant to Specific Conditions 26d and 26e, below).
- c. **Protocol for pipeline rupture near benthic resources.** If a leak or rupture of the pipeline is detected within 150 meters of benthic resources, then the Permittee shall:

- i. Require their contractor to immediately stop pumping through the pipeline and take corrective actions to minimize impacts due to the pipeline rupture / leak prior to resumption;
  - ii. Provide a Pipeline Rupture Report to the Department (as soon as practicable but no later than 48 hours from identifying the leak / rupture) describing the pipeline leak / rupture, any corrective action(s) taken to remediate the situation, and the time/date of both the cessation and resumption of use; and
  - iii. Complete a Benthic Resource Impact Assessment (in accordance with Specific Conditions 26d and 26e, below) to document potential impacts as soon as practicable but no later than 30 days following the leak / rupture.
- d. **Events requiring a Benthic Resource Impact Assessment to document potential impacts.** The Permittee shall complete an in-water visual assessment of benthic resources if unauthorized impacts are observed during construction or are likely to have occurred during construction. A Benthic Resource Impact Assessment shall be required if the following events or activities occur:
- i. Unauthorized anchoring, storage, staging, or stockpiling of vessels or equipment within 10 meters of benthic resources;
  - ii. Turbidity exceedances (as documented pursuant to Specific Condition 23 during construction in portions of the channel proximate to benthic resources;
  - iii. A pipeline leak / rupture within 150 meters of benthic resources; or
  - iv. Any unauthorized or unanticipated construction-related events or activities that are likely to have resulted in potential impacts to benthic resources.
- e. **Timeline and reporting for Benthic Resource Impact Assessments:** The Permittee shall complete an assessment of potential impacts to benthic resources as soon as practicable, but no more than 30 days after receiving notification from the Department that an assessment will be required. The Permittee shall submit a **Benthic Resource Impact Assessment Report** to the Department, via email to the JCP Compliance Officer, within 30 days of the completion of this assessment, unless a time extension is granted in writing by the Department. The Impact Assessment Report shall include a narrative description of the current condition of benthic resources in the project area and representative photographs. Any visually conspicuous signs of impacts, such as sedimentation or physical damage to benthic resources caused by dredging equipment, boat groundings, propeller scars, anchors, sloughing, sedimentation, etc., shall be documented in the report.

The GPS coordinates for any locations with impacted benthic resources shall be recorded and reported; a geo-referenced map of impacted benthic resources shall also be provided. The Benthic Resource Impact Assessment Report shall describe the severity of functional losses that were observed (e.g., reduction in biomass or deposition of dredging-related sedimentation on the benthos) and the spatial extent (i.e., acreage) of impacts to benthic resources. The Benthic Resource Impact Assessment Report shall provide all information necessary for the Department to calculate the amount of compensatory mitigation that may be required to offset unpermitted impacts using the Uniform Mitigation Assessment Method.

- f. ***Corrective Action Plan for unpermitted impacts to benthic resources.*** No impacts to benthic resources are authorized under this permit. If any unauthorized impacts to benthic resources occur or are suspected to have occurred due to construction activities authorized by this permit, then the Permittee shall notify JCP Compliance within 24 hours. If the Permittee notifies the Department (or the Department notifies the Permittee) that unauthorized impacts to benthic resources have occurred as a result of construction activities, then within 14 days of notification - unless a time extension is granted in writing by the Department, the Permittee shall submit a draft **Corrective Action Plan** describing actions that will be taken by the Permittee to monitor, remediate, and / or mitigate the unauthorized impacts. The Corrective Action Plan shall be implemented by the Permittee within 30 days of receiving notification that the Corrective Action Plan has been approved by the Department, unless a time extension is granted in writing by the Department.
27. Within 90 days after completion of authorized activities, the Permittee shall submit a notice of completion to the JCP Compliance Officer that includes the following information:
- a. The permit number (0158893-005-JC) and the project name (Matanzas Pass Channel Restoration and Maintenance Dredging).
  - b. A copy of any post-construction As-Built Survey drawings required of the Contractor or survey performed by the Corps. If any of the completed activities differ substantially from the permitted plans, any substantial deviations shall be noted and explained.
  - c. The date on which authorized activities began and the date of completion;
  - d. A table identifying any exceedances of turbidity standards that occurred during dredging or disposal, the probable causes of the exceedances, and corrective measures taken to reduce turbidity.

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- e. A table identifying any impacts to benthic resources (including SAV communities), the probable causes of the impacts, and corrective measures taken.
- f. A table identifying any harm or injury to threatened species, endangered species or protected species, endangered status communities, the probable causes of the take and corrective measures taken.

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

Permit Drawings, 13 pages, Plates 1 - 13 (approved on November 06, 2018) shall supersede the previously approved permit drawings.

~~Sheets 3 of 7 and 6 of 7 (approved on October XX, 2018) will supersede the previously approved sheets 3 of 7 and 6 of 7. Sheet 6a will be added to the permit drawing package.~~

After thorough review of your application, staff finds that the proposed modification is not expected to adversely affect water quality and is not 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 marine turtles and hatchlings and their habitat, and that the proposed alterations 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 drawings, we are notifying all necessary parties of the modification.

This letter of approval extends the expiration date of the permit from March 6, 2019 to **March 6, 2024**. This letter and the attached drawings 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 action will not be final and effective until further order of the Department. Because the administrative hearing process is

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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 Rules 28-106.201 and 28-106.301, 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, 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, or via electronic correspondence at [Agency\\_Clerk@dep.state.fl.us](mailto:Agency_Clerk@dep.state.fl.us). 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 and persons entitled to written notice under Section 120.60(3), F.S., 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. The failure to file a 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.

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**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, or via electronic correspondence at [Agency\\_Clerk@dep.state.fl.us](mailto:Agency_Clerk@dep.state.fl.us), before the 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 Florida Rules of Appellate Procedure 9.110 and 9.190 with the Clerk of the Department in the Office of General Counsel (Station #35, 3900 Commonwealth Boulevard, 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 must be filed within 30 days from the date this action is filed with the Clerk of the Department.

If you have any questions regarding this matter, please contact Sean Green by email at [Sean.O.Green@floridadep.gov](mailto:Sean.O.Green@floridadep.gov) or by telephone at (850) 245-7667.

**EXECUTION AND CLERKING:**

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



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

**Attachments:** Permit Drawings, (13 pages, Plates 1 – 18, approved on Nov. 06, 2018)

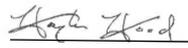
**CERTIFICATE OF SERVICE**

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: Robert Brantly, FDEP, DWRM, [Robert.Brantly@dep.state.fl.us](mailto:Robert.Brantly@dep.state.fl.us);  
Jennifer K Steele, FDEP, DWRM, [Jennifer.K.Steele@dep.state.fl.us](mailto:Jennifer.K.Steele@dep.state.fl.us) ;  
Jennifer M. Peterson, FDEP, DWRM; [Jennifer.M.Peterson@dep.state.fl.us](mailto:Jennifer.M.Peterson@dep.state.fl.us) ;  
Daniel Sensi, FDEP, South District, [Daniel.Sensi@FloridaDEP.gov](mailto:Daniel.Sensi@FloridaDEP.gov);  
Roxane Dow, FDEP, DWRM, [Roxane.Dow@dep.state.fl.us](mailto:Roxane.Dow@dep.state.fl.us);  
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Laurel Reichold, USACE, Jacksonville, [Laurel.P.Reichold@usace.army.mil](mailto:Laurel.P.Reichold@usace.army.mil) ;  
Paul Karch, USACE, Jacksonville, [Paul.J.Karch@usace.army.mil](mailto:Paul.J.Karch@usace.army.mil) ;  
JCP Compliance Officer  
[JCPCompliance@dep.state.fl.us](mailto:JCPCompliance@dep.state.fl.us) ;  
[MarineTurtle@MyFWC.com](mailto:MarineTurtle@MyFWC.com)  
[ConservationPlanningServices@myfwc.com](mailto:ConservationPlanningServices@myfwc.com)

**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.

  
Clerk

January 23, 2019  
Date