

United States Department of the Interior

FISH AND WILDLIFE SERVICE
South Florida Ecological Services Office
1339 20th Street
Vero Beach, Florida 32960



December 2, 2005

Colonel Robert M. Carpenter
District Engineer
U.S. Army Corps of Engineers
701 San Marco Boulevard, Room 372
Jacksonville, Florida 32207-8175

Service Log No.: 4-1-05-TR-13281

Date: May 27, 2005

Project: Town of Jupiter Island Modification
to Permit Number 199201740

Sponsor: Town of Jupiter Island

County: Martin

Dear Colonel Carpenter:

The Fish and Wildlife Service (Service) has reviewed the plans submitted by the U.S. Army Corps of Engineers (Corps) for the project referenced above and its effects on the threatened loggerhead sea turtle (*Caretta caretta*), the endangered green sea turtle (*Chelonia mydas*), the endangered leatherback sea turtle (*Dermochelys coriacea*), and the endangered hawksbill sea turtle (*Eretmochelys imbricata*). This letter is provided in accordance with section 7 of the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*) and amends the Service's January 31, 2002, Biological Opinion (Service log number 4-1-02-I-448) for Corps permit number 199201740. The original Corps permit, issued February 27, 2002 and expiring February 27, 2007, authorized the nourishment of 6.5 miles of beach shoreline from DEP Reference Monuments R-75 to R-117 in Martin County, Florida. This work was completed in April 2003. The Service's Biological Opinion for that permit authorized take associated with a one-time nourishment event. As a renourishment is now required to repair damage from hurricanes in 2004, amendments to that original permit and consultation have been proposed and are described below.

PROJECT DESCRIPTION

In response to the significant coastal erosion event caused by Hurricanes Frances and Jeanne in September 2004, the Corps has proposed to fully restore the 5-mile stretch of beachfront between DEP monuments R-76 through R-84, and between R-87 and R-111, through a second placement of 1.5 million cubic yards (cy) of beach compatible material (Figure 1). The September 2004 hurricanes caused the loss of 1 million cy of material from the shoreline of the Town of Jupiter Island. This loss occurred within the 5-mile, previously-renourished project area, and equates to a loss of 75 percent of the periodic renourishment volume of 1.5 million cy of material.



The material will be obtained by hopper dredge from two sites, identified as Borrow Area A and Borrow Area B, which are located approximately 11,000 feet (ft) and 12,000 ft offshore of the project, respectively, at depths that range from minus 65 ft to minus 31.0 ft National Geodetic Vertical Datum (NGVD; Figure 2). The silt content of Sites A and B is 1.5 percent and 0.4 percent, respectively, and mean grain sizes are 0.011 inch (in) and 0.018 in, respectively.

The berm will be constructed to a width of approximately 100 ft and an elevation of plus 9.9 ft NGVD above mean low water with a slope of 1V:10H (Vertical to Horizontal; Figure 3). Construction of the proposed project will be completed by April 30, 2006. No subsequent renourishment interval has been proposed.

The Corps determined that the project “may affect” nesting sea turtles in a letter dated May 14, 2005, and as described below.

THREATENED AND ENDANGERED SPECIES

Martin County is located within the peak nesting range for three species of sea turtles that regularly nest along the beaches of southeast Florida: loggerhead, green, and leatherback. Between 1998 and 2004, Martin County beaches supported 61,699 nests for these three turtle species. In total, 7,650 and 6,082 sea turtle nests were recorded in 2003 and 2004, respectively, along the 43.9 miles of Martin County beach included in the Florida Fish and Wildlife Conservation Commission’s (FWC) Florida Statewide Nesting Beach Survey. The distribution of nests among species in 2003 included 6,927 loggerhead sea turtles; 474 green sea turtles; and 249 leatherback sea turtles, and in 2004 included 5,130 loggerhead sea turtles; 808 green sea turtles; and 144 leatherback sea turtles. In FWC surveys, no hawksbill sea turtle nests have been recorded in Martin County since 1979.

The effects to nesting sea turtles as a result of coastal erosion during the September 2004 hurricanes are currently under evaluation by resource agencies. However, anecdotal information suggests that a significant number of incubating sea turtle nests were inundated or washed out during Hurricanes Frances and Jeanne.

The Service has reviewed our 2002 Biological Opinion for this project area, assessed the available sea turtle nesting data for the area and current status of the sea turtle nesting habitat at the project location, and considered the cumulative effects of the project. Since the time of the Service’s January 31, 2002, biological opinion on the proposed action, the Service has further revised and clarified the *Reasonable and Prudent Measures*, and the *Terms and Conditions*. They are as follows:

REASONABLE AND PRUDENT MEASURES

The Service believes the following reasonable and prudent measures are necessary and appropriate to minimize take of federally threatened loggerhead sea turtles, endangered green sea turtles, endangered leatherback sea turtles, and endangered hawksbill sea turtles:

1. Beach quality sand suitable for sea turtle nesting, successful incubation, and hatchling emergence must be used on the project site;
2. Beach nourishment activities must not occur from May 1 through October 31, the period of peak sea turtle egg laying and egg hatching, to reduce the possibility of sea turtle nest burial, crushing of eggs, or nest excavation;
3. If the beach nourishment project will be conducted during the period from March 1 through April 30, surveys for early nesting sea turtles must be conducted. If nests are constructed in the area of beach nourishment, the eggs must be relocated;
4. If the beach nourishment project will be conducted during the period from November 1 through November 30, surveys for late nesting sea turtles must be conducted. If nests are constructed in the area of beach nourishment, the eggs must be relocated;
5. Immediately after completion of the beach nourishment project and prior to the next three nesting seasons, beach compaction must be monitored and tilling must be conducted and concluded, as warranted and by March 1, to reduce the likelihood of impacting sea turtle nesting and hatching activities. The March 1 deadline is required to reduce impacts to leatherbacks that nest in greater frequency along the South Atlantic coast of Florida than elsewhere in the continental United States;
6. Immediately after completion of the beach nourishment project and prior to the next three nesting seasons, monitoring must be conducted to determine if escarpments are present and escarpments must be leveled as required to reduce the likelihood of impacting sea turtle nesting and hatching activities;
7. The applicant must ensure that contractors doing the beach nourishment work fully understand the sea turtle protection measures detailed in this incidental take statement;
8. During the early and late portions of the nesting season, construction equipment and materials must be stored in a manner that will minimize impacts to sea turtles to the maximum extent practicable; and
9. During the early and late portions of the nesting season, lighting associated with the project must be minimized to reduce the possibility of disrupting and misdirecting nesting and/or hatchling sea turtles.

TERMS AND CONDITIONS

In order to be exempt from the prohibitions of section 9 of the ESA, the Corps must comply with the following terms and conditions, which implement the reasonable and prudent measures described above and outline required reporting/monitoring requirements. These terms and conditions are non-discretionary:

1. All fill material placed must be sand that is similar to a native beach in the vicinity of the site that has not been affected by prior renourishment activities. The fill material must be similar in both coloration and grain size distribution to the native beach. All such fill material must be free of construction debris, rocks, or other foreign matter and must not contain, on average, greater than 10 percent fines (*i.e.*, silt and clay) (passing the #200 sieve) and must not contain, on average, greater than 5 percent coarse gravel or cobbles, exclusive of shell material (retained by the #4 sieve);
2. Beach nourishment must be started after October 31 and be completed before May 1. During the May 1 through October 31 period, no construction equipment or pipes will be stored on the beach;
3. If the beach nourishment project will be conducted during the period from March 1 through April 30, daily early morning surveys for loggerhead and green sea turtle nests must be conducted from March 1 through April 30 or until completion of the project (whichever is earliest), and eggs must be relocated per the following requirements:
 - 3a. Nesting surveys and egg relocations will only be conducted by personnel with prior experience and training in nesting survey and egg relocation procedures. Surveyors must have a valid FWC permit. Nesting surveys must be conducted daily between sunrise and 9 a.m. Surveys must be performed in such a manner so as to ensure that construction activity does not occur in any location prior to completion of the necessary sea turtle protection measures and
 - 3b. Only those nests that may be affected by construction activities will be relocated. Nests requiring relocation must be moved no later than 9 a.m. the morning following deposition to a nearby self-release beach site in a secure setting where artificial lighting will not interfere with hatchling orientation. Nest relocations in association with construction activities must cease when construction activities no longer threaten nests. Nests deposited within areas where construction activities have ceased or will not occur for 65 days must be marked and left in place unless other factors threaten the success of the nest. Any nests left in the active construction zone must be clearly marked, and all mechanical equipment must avoid nests by at least 10 ft;
4. If the beach nourishment project will be conducted during the period from November 1 through November 30, daily early morning surveys for loggerhead and green sea turtle nests must be conducted 65 days prior to project initiation and continue through September 30, and eggs must be relocated per the preceding requirements;
5. Immediately after completion of the beach nourishment project and prior to March 1 for 3 subsequent years, sand compaction must be monitored in the area of restoration in accordance with a protocol agreed to by the Service, the State regulatory agency, and the applicant. At a minimum, the protocol provided under 6a and 6b below must be followed. If required, the area must be tilled to a depth of 36 in and each pass of the tilling equipment must be overlapped to allow more thorough and even tilling. All tilling activity must be

completed prior to March 1. An annual summary of compaction surveys and the actions taken must be submitted to the Service. (NOTE: The requirement for compaction monitoring can be eliminated if the decision is made to till regardless of post-construction compaction levels. Also, out-year compaction monitoring and remediation are not required if placed material no longer remains on the beach);

- 6a. Compaction sampling stations must be located at 500-ft intervals along the project area. One station must be at the seaward edge of the dune or bulkhead line (when material is placed in this area) and one station must be midway between the dune line and the high water line (normal wrack line).

At each station, the cone penetrometer will be pushed to a depth of 6, 12, and 18 in 3 times (3 replicates). Material may be removed from the hole if necessary to ensure accurate readings of successive levels of sediment. The penetrometer may need to be reset between pushes, especially if sediment layering exists. Layers of highly compact material may lay over less compact layers. Replicates will be located as close to each other as possible, without interacting with the previous hole and/or disturbed sediments. The three replicate compaction values for each depth will be averaged to produce final values for each depth at each station. Reports will include all 18 values for each transect line, and the final 6 averaged compaction values and

- 6b. If the average value for any depth exceeds 500 pounds per square inch (psi) for any two or more adjacent stations, then that area must be tilled prior to March 1. If values exceeding 500 psi are distributed throughout the project area but in no case do those values exist at two adjacent stations at the same depth, then consultation with the Service will be required to determine if tilling is required. If a few values exceeding 500 psi are present randomly within the project area, tilling will not be required;
- 6. Visual surveys for escarpments along the project area must be made immediately after completion of the beach nourishment project and prior to March 1 for 3 subsequent years. Escarpments that interfere with sea turtle nesting or that exceed an 18-in height for a distance of 100 ft must be leveled to the natural beach contour by March 1. If the project is completed during the early part of the sea turtle nesting and hatching season (March 1 through April 30), escarpments may be required to be leveled immediately, while protecting nests that have been relocated or left in place. The Service must be contacted immediately if subsequent reformation of escarpments that interfere with sea turtle nesting or that exceed an 18-in height for a distance of 100 ft occurs during the nesting and hatching season to determine the appropriate action to be taken. If it is determined that escarpment leveling is required during the nesting or hatching season, the Service will provide a brief written authorization that describes methods to be used to reduce the likelihood of impacting existing nests. An annual summary of escarpment surveys and actions taken must be submitted to the Service. (NOTE: Out-year escarpment monitoring and remediation are not required if placed material no longer remains on the dry beach);

7. The applicant must arrange a meeting between representatives of the contractor, the Service, the FWC, and the permitted person responsible for egg relocation at least 30 days prior to the commencement of work on this project. At least 10 days advance notice must be provided prior to conducting this meeting. This will provide an opportunity for explanation and/or clarification of the sea turtle protection measures;
8. From March 1 through April 30 and November 1 through November 30, staging areas for construction equipment must be located off the beach to the maximum extent practicable. Nighttime storage of construction equipment not in use must be off the beach to minimize disturbance to sea turtle nesting and hatching activities. In addition, all construction pipes that are placed on the beach must be located as far landward as possible without compromising the integrity of the existing or reconstructed dune system. Temporary storage of pipes must be off the beach to the maximum extent possible. Temporary storage of pipes on the beach must be in such a manner so as to impact the least amount of nesting habitat and must likewise not compromise the integrity of the dune systems (placement of pipes perpendicular to the shoreline is recommended as the method of storage);
9. From March 1 through April 30 and November 1 through November 30, direct lighting of the beach and near shore waters must be limited to the immediate construction area and must comply with safety requirements. Lighting on offshore or onshore equipment must be minimized through reduction, shielding, lowering, and appropriate placement to avoid excessive illumination of the waters surface and nesting beach while meeting U.S. Coast Guard, EM 385-1-1, and Occupational Safety and Health Administration (OSHA) requirements. Light intensity of lighting plants must be reduced to the minimum standard required by OSHA for General Construction areas, in order not to misdirect sea turtles. Shields must be affixed to the light housing and be large enough to block light from all lamps from being transmitted outside the construction area (Figure 4);
10. A report describing the actions taken to implement the terms and conditions of this incidental take statement must be submitted to the South Florida Ecological Services Office, Vero Beach, Florida within 60 days of completion of the proposed work for each year when the activity has occurred. This report will include the dates of actual construction activities, names and qualifications of personnel involved in nest surveys and relocation activities, descriptions and locations of self-release beach sites, nest survey and relocation results, and hatching success of nests;
11. In the event a sea turtle nest is excavated during construction activities, the permitted person responsible for egg relocation for the project must be notified so the eggs can be moved to a suitable relocation site; and
12. Upon locating a sea turtle adult, hatchling, or egg harmed or destroyed as a direct or indirect result of the project, notification must be made to the FWC, Division of Law Enforcement at 888-404-3922, and the Service's South Florida Ecological Services Office, Vero Beach at 772-562-3909. Care should be taken in handling injured turtles or eggs to

ensure effective treatment or disposition, and in handling dead specimens to preserve biological materials in the best possible state for later analysis.

The Service believes incidental take will be limited to the 5 miles of beach that have been identified for sand placement. The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize the impact of incidental take that might otherwise result from the proposed action. The Service believes no more than the following types of incidental take will result from the proposed action: (1) destruction of all nests that may be constructed and eggs that may be deposited and missed by a nest survey and egg relocation program within the boundaries of the proposed project; (2) destruction of all nests deposited during the period when a nest survey and egg relocation program is not required to be in place within the boundaries of the proposed project; (3) reduced hatching success due to egg mortality during relocation and adverse conditions at the relocation site; (4) harassment in the form of disturbing or interfering with female turtles attempting to nest within the construction area or on adjacent beaches as a result of construction activities; (5) disorientation of hatchling turtles on beaches adjacent to the construction area as they emerge from the nest and crawl to the water as a result of project lighting; (6) behavior modification of nesting females due to escarpment formation within the project area during a nesting season, resulting in false crawls or situations where they choose marginal or unsuitable nesting areas to deposit eggs; and (7) destruction of nests from escarpment leveling within a nesting season when such leveling has been approved by the Service. The amount or extent of incidental take for sea turtles will be considered exceeded if the project results in more than a **one-time placement of sand** on the 5 miles of beach that have been identified for sand placement. If during the course of the action this level of incidental take is exceeded, such incidental take represents new information requiring reinitiation of consultation and review of the reasonable and prudent measures provided. The Corps must immediately provide an explanation of the causes of the taking and review with the Service the need for possible modification of the reasonable and prudent measures.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the ESA directs Federal agencies to utilize their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information:

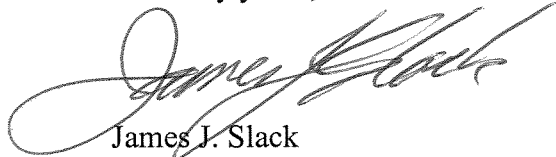
1. Educational signs should be placed where appropriate at beach access points explaining the importance of the area to sea turtles and the life history of sea turtle species that nest in the area and
2. Since the hurricane events of 2004 were unprecedented, as was the response to restore eroded beaches, a summary report should be generated to assess the impacts to fish and wildlife resources and listed species as a result of the efforts to concurrently restore federally authorized shore protection projects in Florida.

In order for the Service to be kept informed of actions minimizing or avoiding adverse effects or benefiting listed species or their habitats, the Service requests notification of the implementation of any conservation recommendations.

This concludes formal consultation on the action outlined in the reinitiation request. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation of formal consultation.

Thank you for your cooperation and effort in protecting fish and wildlife resources. Should you have any questions regarding the findings and recommendations contained in this document, please contact Mike Carlson at 772-562-3909, extension 296.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James J. Slack", written in a cursive style.

James J. Slack
Field Supervisor
South Florida Ecological Services Office

cc:

DEP, Bureau of Beaches and Wetland Resources, Tallahassee, Florida (Marty Seeling)
EPA, West Palm Beach, Florida
FWC, Bureau of Protected Species Management, Tallahassee, Florida (Robbin Trindell)
NOAA Fisheries, Miami, Florida (Jocelyn Karazsia)
Service, Jacksonville, Florida (Sandy MacPherson)





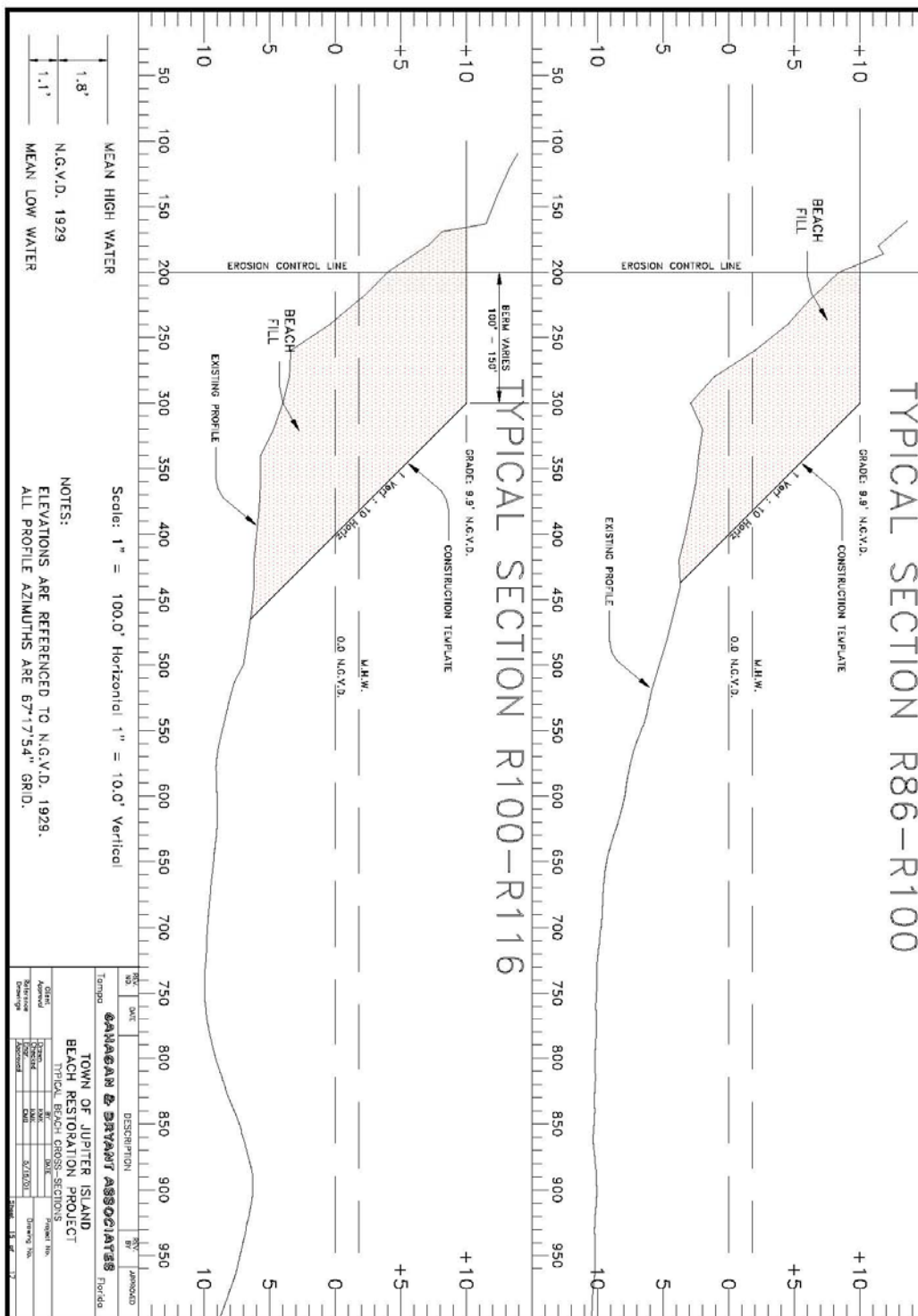


Figure 3. Typical Proposed Beach Post-Renourishment Cross-Section for Town of Jupiter Island Beach Renourishment (Gahagan & Bryant Associates, Inc.).

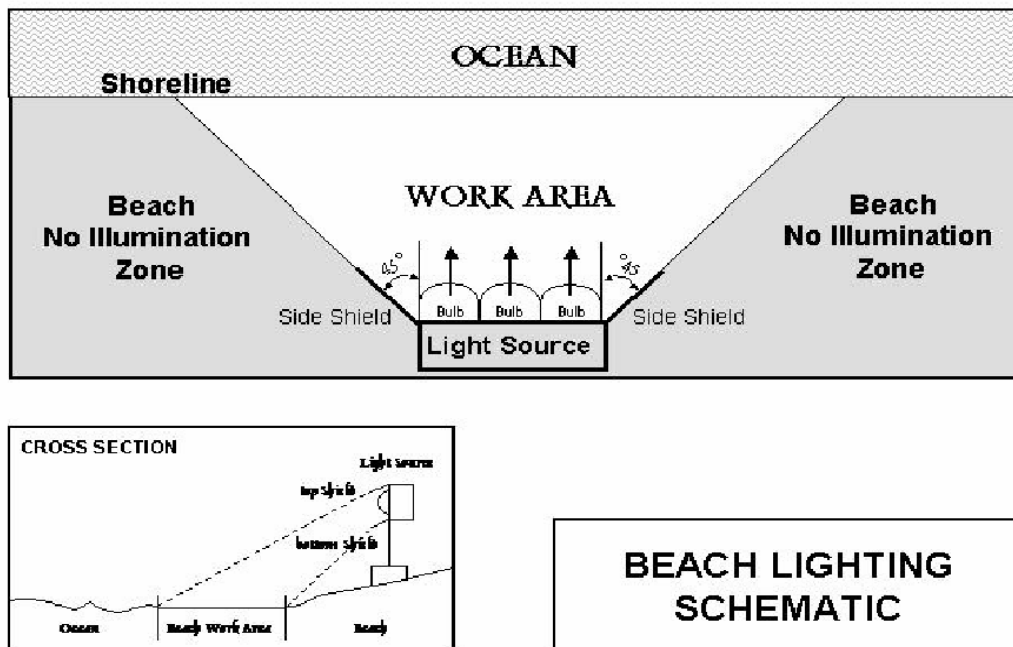


Figure 4. Fish and Wildlife Service Lighting Diagram for Town of Jupiter Island Beach Renourishment