



United States Department of the Interior



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

April 29, 2013

Colonel Alan M. Dodd
District Commander
U.S. Army Corps of Engineers
Post Office Box 4970
Jacksonville, Florida 32232-0019

Service Federal Activity Code: 41420-2008-FA-0524
Date Received: April 23, 2013
Formal Consultation Re-Initiation Date: April 23, 2013
Project: Palm Beach Harbor Operations
and Maintenance
County: Palm Beach

Dear Colonel Dodd:

The U.S. Fish and Wildlife Service (Service) has reviewed the April 23, 2013, request from the U.S. Army Corps of Engineers (Corps) to amend the Service's February 10, 2012, Biological Opinion to complete the removal of non-beach compatible material from the fill template as a result of the Palm Beach Harbor Operations and Maintenance project, Lake Worth Inlet, Palm Beach County, Florida. The Biological Opinion provided an incidental take statement for the threatened loggerhead sea turtle (*Caretta caretta*), endangered green sea turtle (*Chelonia mydas*), endangered leatherback sea turtle (*Dermochelys coriacea*), endangered hawksbill sea turtle (*Eretmochelys imbricata*), and the endangered Kemp's ridley sea turtle (*Lepidochelys kempii*). This letter is submitted in accordance with section 7 of the Endangered Species Act of 1973, as amended (Act) (87 Stat. 884; 16 U.S.C. 1531 *et seq.*).

The Service and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) share Federal jurisdiction for sea turtles under the Act. The Service has responsibility for sea turtles on the nesting beach and NOAA Fisheries jurisdiction for sea turtles in the marine environment. Our analysis will only address activities that may impact nesting sea turtles, their nests and eggs, and hatchlings as they emerge from the nest and crawl to the sea. NOAA Fisheries will assess and consult with the Corps concerning potential impacts to sea turtles in the marine environment.

PROJECT DESCRIPTION

The Corps proposed to dredge approximately 100,000 cubic yards (cy) of material from Palm Beach Harbor (Lake Worth Inlet), Palm Beach County, Florida. Using a hydraulic dredge with pump-out capability, material was removed from the entrance channel to a depth of 39 feet

between Stations 30+00 and 47+00; to a depth of 35 feet in the inner channel, turning basin, existing settling basin, and expanded settling basin north and west of the existing settling basin; and to a depth of 25 feet in the extended turning basin. Beach compatible dredge material was pumped from the dredge onto the shoreline between the Florida Department of Environmental Protection reference monuments R-76 and R-79 through a temporary pipeline positioned over the south jetty. Bulldozers moved and graded the material to produce the authorized beach design. Non-beach compatible dredge material was placed on Peanut Island (an approved dredge material management area located west of the entrance channel) or at the Palm Beach Harbor Ocean Dredged Material Disposal Site. The frequency of the proposed maintenance dredging and sand placement or disposal was proposed to not exceed more than two events annually. The intent of the project is to continue maintenance dredging of Palm Beach Harbor to maintain a safe environment for recreational and commercial vessels, and to maintain the recreational beach.

In a letter from the contractor dated April 21, 2013, they are requesting a one-time authorization to conduct non-beach compatible material removal activities through May 24, 2013. On April 5, 2013, the contractor began mobilizing the necessary equipment and, commenced rock removal operations on April 8, 2013. In order to expedite the production rate, an additional screening machine, excavator, and off-road dump truck was mobilized on April 10, 2013. In addition, on April 19, 2013, the Town of Palm Beach agreed to extend the allowable work hours Monday through Friday from 0900 to 1700, to 0900 to 2000.

Initially, the contractor estimated the area to be sifted at approximately 9.5 acres. However, due to accretion of material since their last survey, the beach area to be screened has increased to 20.5 acres based on surveys conducted on April 20, 2013. As of April 21, 2013, it is estimated that more than 200 cubic yards (cy) of material has been retaining on the ¾ inch screen and disposed of properly. That said, approximately 60 percent of the beach fill remains to be sifted.

The Service has discussed the project with the Florida Fish and Wildlife Conservation Commission and the Corps, reviewed sea turtle nesting data, other supplemental documents, and considered the cumulative effects.

Sea turtles

As of April 23, 2013, one leatherback sea turtle nest has been deposited within the area to be screened. In addition to the reasonable and prudent measures and corresponding terms and conditions as outlined in the February 10, 2012, Biological Opinion, all activities conducted from May 1 - 24, 2013, will comply with the following guidelines:

1. Only those sea turtle nests deposited directly adjacent to equipment storage areas and beach access corridors will be relocated. All other sea turtle nests will be marked with a 25-foot radius buffer to minimize any disturbance.
2. As sea turtle nesting increases within the project area, marked and avoided nests could impede the movement of equipment and overall construction activities. To avoid this

issue, the sea turtle permit holder will stay in close communication with the Service whom may authorize additional nest relocation.

3. At the completion of each day's activities, all equipment will be located at the toe of dune. To prevent sea turtles from becoming entrapped in the equipment all but the western side of the equipment will be barricaded using sections of plywood.
4. Prior to commencement of activities on May 1, 2013, an onsite meeting with the contractor, sea turtle permit holder, Florida Fish and Wildlife Conservation Commission, and the Service will take place to discuss these guidelines and obtain a sea turtle nesting update.
5. Prior to the next dredging event, the Corps will provide the Service with a sediment Quality and Assurance monitoring plan to prevent future accidents of this magnitude.
6. The Corps and Town of Palm Beach will provide additional information on the measures that will be implemented to expedite the construction activities and reduce the number of days on the beach. The Service will be updated weekly on the progress and the success of these measures.

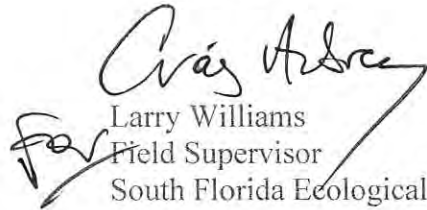
Please note the provisions of this consultation do not apply to sea turtles in the marine environment such as swimming juvenile and adult sea turtles. If applicable, you are required to consult with NOAA Fisheries concerning your project. For further information on Act compliance with NOAA Fisheries, please contact Ms. Cathy Tortorici, Chief of the Interagency Cooperation Branch by e-mail at cathy.tortorici@noaa.gov or by phone at (727) 209-5953.

Based on our review, the proposed modification will not significantly change the effects of the project on nesting sea turtles or our overall conclusion regarding take and jeopardy. Therefore, the Service authorizes a one-time extension to conduct non-beach compatible material removal activities until May 24, 2013. With the exception of the criteria as referenced above, all parts of the February 10, 2012, Biological Opinion for this project remain as written and will apply to the Corps.

This concludes formal consultation on the action outlined in the 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.

If you have any questions regarding this amendment to the Biological Opinion, please contact Jeff Howe at 772-469-4283.

Sincerely yours,


Larry Williams
Field Supervisor
South Florida Ecological Services Office

cc: electronic only

Corps, Jacksonville, Florida (Patrick Griffin)

DEP, Tallahassee, Florida (Lanie Edwards)

EPA, West Palm Beach, Florida (Ron Miedema)

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NOAA Fisheries, West Palm Beach (Jocelyn Karazsia)

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Service, St. Petersburg, Florida (Anne Marie Lauritsen)

USGS, Gainesville, Florida (Susan Walls)