

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re:

**EMERGENCY AUTHORIZATION FOR  
PROACTIVE MEASURES, RESTORATION,  
AND CERTAIN OTHER MEASURES MADE  
NECESSARY BY THE DEEPWATER HORIZON  
OIL SPILL**

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**OGC NO. 10-1610**

**SECOND AMENDED EMERGENCY FINAL ORDER**

Under Sections 120.569(2)(n) and 252.36 of the Florida Statutes ("F.S."), and upon consideration of the State of Florida Executive Order Nos. 10-99, 10-100 10-106, and the following findings of fact, the State of Florida Department of Environmental Protection ("Department") enters this Emergency Final Order ("Order"), including Findings of Fact and Conclusions of Law, in response to the imminent or immediate danger to the public health, safety, and welfare of the citizens of the State of Florida resulting from the Deepwater Horizon Oil Spill that commenced on April 20, 2010 ("the Spill"). British Petroleum ("BP") has been determined to be a responsible party for the Spill.

**SPECIAL CONSIDERATIONS**

1. Governmental entities seeking reimbursement of any activities authorized in this order must do so consistent with, and as specified in, Florida's Financial Plan for Response to the Deepwater Horizon Oil Spill.
2. Governmental entities performing any activities authorized in this order shall conduct those activities in a manner consistent with the National Contingency Plan and/or the Area Contingency Plan under the National Response System.
3. Where more than one authorization under this Order is required for a proposed activity, the Department will conduct joint inspections by staff from applicable offices of the Department to the maximum extent practical.

## FINDINGS OF FACT

1. On the 20<sup>th</sup> day of April 2010, an explosion on the mobile drilling platform Deepwater Horizon occurred in the Gulf of Mexico, approximately 130 miles southeast of New Orleans, Louisiana. The rig ultimately sank on April 22, 2010; on April 24, 2010, the United States Coast Guard ("USCG") estimated that the damaged well was releasing approximately 42,000 gallons of crude oil per day. On April 28, 2010, the USCG increased this estimate to approximately 200,000 gallons per day; refinements of this estimate are ongoing. All efforts to contain the discharge have failed and may not succeed for an extended period of time. The Spill has the potential to cause widespread damage along Florida's shoreline and coastal estuaries within the following counties: Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, Franklin, Wakulla, Jefferson, Taylor, Dixie, Levy, Citrus, Hernando, Pasco, Pinellas, Hillsborough, Manatee, Sarasota, Charlotte, Lee, Collier, Monroe, Miami-Dade, Broward and Palm Beach. These counties shall constitute the specific area covered by this Emergency Final Order. This area shall herein be referred to as the "Emergency Area."

2. By State of Florida Executive Order Nos. 10-99, 10-100, and 10-106, the Governor declared that a state of emergency exists throughout Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, Franklin, Wakulla, Jefferson, Taylor, Dixie, Levy, Citrus, Hernando, Pasco, Pinellas, Hillsborough, Manatee, Sarasota, Charlotte, Lee, Collier, Monroe, Miami-Dade, Broward and Palm Beach counties, based upon the serious threat to the public health, safety and welfare posed by the Spill.

3. The Department finds that the Spill has created a state of emergency threatening the public health, safety, welfare, and property throughout the Emergency Area. As a result of the emergency, immediate action is necessary to prevent, contain or reduce damage to natural and cultural resources and property that may occur as a result of the Spill.

4. Oil associated with the Deepwater Horizon incident has now reached the salt waters of the State of Florida. This oil is detrimental to marine resources and endangers the health, safety, and welfare of the people of the State of Florida.

5. In situ burning of discharged oil reduces the detrimental environmental impact of discharged oil on marine resources and on the health, safety, and welfare of the people of the State of Florida.

6. The clean-up burden to the state and exposure to the public may be reduced by implementing in situ burning of oil under appropriate conditions before it reaches shore.

7. The Department finds that an emergency order is required to address the need for immediate action because the normal procedures for obtaining the necessary authorizations would not result in timely action to address the emergency.

8. The Department finds that immediate, strict compliance with the provisions of the statutes, rules, or orders noted within this Order would prevent, hinder, or delay necessary action in coping with the emergency, and that the actions authorized under this order are narrowly tailored to address the immediate need for action and are procedurally fair under the circumstances.

#### **CONCLUSIONS OF LAW**

1. Based on the findings recited above, it is hereby concluded that the emergency caused by the Spill continues to pose an immediate danger to the public health, safety, or welfare and requires an immediate order of the Department.

2. Under State of Florida Executive Order Nos. 10-99, 10-100, and 10-106, and Sections 120.569(2)(n) and 252.36, F.S., the Secretary of the Department is authorized to issue this Emergency Final Order.

3. Suspension of statutes and rules as noted within this Order is required so as not to prevent, hinder, or delay necessary action in coping with the emergency.

***THEREFORE, WITHIN THE EMERGENCY AREA, IT IS ORDERED:***

**A. SOLID WASTE MANAGEMENT**

Field authorizations may be issued prior to or following a site inspection by Department personnel for staging areas to be used for temporary storage or processing of Spill-generated debris. Such authorizations are required for all facilities that will be managing oil spill debris, including staging areas where waste is brought to the site for storage and transfer, sites where decontamination activities are being conducted, and sites where waste is being processed. No such authorization is needed under this section for sites where equipment or empty containers are being stored prior to or after use, or sites where oil spill debris is initially containerized near the cleanup area. Additional authorizations may be required by the Department's Division of Air Resource Management, as well as the Department's Coastal Construction Control Line, Joint Coastal, and Submerged Lands and Environmental Resource Permitting programs.

Field authorizations may be requested by providing a notice to the local office of the Department containing a description of the staging area design and operation, the location of the staging area, and the name, address, and telephone number of the site manager. Field authorizations also may be issued by Department staff prior to receiving written notice. Written or electronic records of all field authorizations shall be created and maintained by Department staff. Field authorizations may include specific conditions for the operation and closure of the staging area, and may include a required closure date that extends beyond the expiration date of this Order.

Staging areas shall be sited to avoid wetlands, beach and dune habitat, archaeological and historical sites, and other surface waters to the greatest extent possible; such areas that are used or affected must be fully restored upon cessation of use of the area. Persons wishing to locate staging areas on or near the beach and dune system shall utilize existing disturbed areas to the maximum extent practicable and shall first consult with the Florida Fish and Wildlife Conservation Commission ("FWC"), the Department's Bureau of Beaches and Coastal Systems

and the Department of State's Division of Historical Resources. Staging areas must cease operation, and all Spill-generated debris must be removed from the site, by the expiration date of this Order, unless a different closing date or closure conditions are specified in the field authorization. Failure to comply with the conditions of the field authorization, or failure to adequately close the site by the required closure date, may result in enforcement actions by the Department. Field authorizations issued prior to the effective date of this Order remain in effect but may be modified by the Department to include conditions and closure dates as specified herein.

**B. WATERS, WETLANDS, BEACHES & COASTAL SYSTEMS, & SUBMERGED LANDS**

**1. No Notice Required**

The following activities are authorized to be undertaken pursuant to Chapters 161, 253, 258, and Part IV of Chapter 373, F.S., and the applicable rules adopted thereunder, by BP and its contractors and by governmental entities to contain and prevent the spread of oil and oil contaminants, and to clean-up oil and oil contaminants:

(a) Placement of temporary containment booms and sorbent materials. To the maximum extent practicable, all booms and sorbent materials shall be deployed and maintained so as to minimize lying on or shading wetlands and submerged aquatic vegetation, so as to not create a navigational hazard, and so as to minimize entanglement risk or other adverse impacts to aquatic and wetland dependant fish and wildlife, and minimize adverse impacts to archaeological and historical sites.

(b) Placement and use of temporary floating devices designed exclusively to contain or collect oil contaminants at the mouths of water control structures, intake structures, canals, coastal inlets and passes, rivers, and streams, provided such devices are deployed and maintained so as to not create a navigational hazard or to cause upstream flooding or other adverse impacts to water resources to the maximum extent practicable.

(c) Placement and use of temporary devices not listed above, including air bubbler curtains, designed and used exclusively to contain, collect and prevent oil contaminants from entering coastal inlets and passes, water control structures, intake structures, canals, rivers and streams, provided such devices are deployed so as to not create a navigational hazard or to cause upstream flooding or other adverse impacts to water resources to the greatest extent practicable, and to minimize impacts to archaeological and historical sites.

(d) **Along shorelines other than sandy beaches**, installation and maintenance of hay bales, temporary sandbags or other similar materials to prevent contamination, provided such installation can be conducted, and such materials can be maintained and removed, in a manner that does not result in permanent dredging, filling or loss of wetland or submerged aquatic resources, or damage to archeological or historical resources. To the maximum extent practicable, all hay bales, sandbags or other similar materials shall be deployed so as to minimize lying on or shading wetland and submerged aquatic vegetation and to minimize adverse affects to aquatic and wetland dependant fish and wildlife. Such structures and materials shall be removed once the threat of contamination has abated. This does not authorize the construction of seawalls, bulkheads, rock revetments or other forms of retaining walls.

(e) Installation and maintenance of in-water signage or buoys warning boaters of such hazards as areas where booms and skimmers have been deployed and where heavy contamination exists. Such signage shall, to the extent practicable, be consistent with FWC standards and must adequately warn mariners of the existing hazards. Buoys shall be consistent with USCG marking for navigational hazards.

(f) Manual removal of stranded oil from sandy beaches. This method consists of removal of stranded oil, including surface oil, tar balls, tar patties, tar mats, and other weathered oil products, using hands, rakes, shovels, buckets, scrapers, sorbents, pitch forks, etc., and placing in containers. No mechanized equipment shall be used except for transportation of

collected oil and debris from the beach to the upland staging area. Equipment and vehicle access shall use only the designated beach access points. Driving of equipment along the beach shall be limited to the area seaward of the wrack or debris line to the maximum extent practicable. Equipment should transit between the beach access point and the wrack line using the most direct route to minimize travel over areas of the beach landward of the wrack or debris line. If stranded oil is present in the driving zone seaward of the wrack or debris line, driving of vehicles may occur directly landward of the stranded oil. During marine turtle nesting and shorebird nesting season (February 15-October 31), all activity shall be limited to daylight hours and all equipment and materials shall be removed from the beach at night, unless specific verbal or written approval is given by the Department for nighttime cleaning operations. All activities shall be conducted in a manner that avoids archeological and historical sites, and is in compliance with the Division of Historical Resources guidelines for archaeological and historical resources, attached hereto as Exhibit C.

(g) Mechanical removal of stranded oil and oiled sediments from sandy beaches within the following counties: Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, Franklin, Wakulla, Jefferson, and Taylor. Entities undertaking activities authorized by an Incident Command Division may conduct mechanical removal of stranded oil and oiled sediments from sandy beaches. This method consists of removal of stranded oil and oiled sediments using mechanical equipment such as loaders and graders, as well as trucks, tractors and trailers for transportation of collected oil and oiled sediments. Other specialized equipment may be used for the sifting and removal of tar balls, patties, and mats. Digging of pits/trenches is authorized if subsurface oil may be present. Driving of equipment along the beach shall be limited to the area seaward of the wrack or debris line to the maximum extent practicable. Equipment should transit between the beach access point and the wrack line using the most direct route to minimize travel over areas of the beach landward of the wrack or debris line. If stranded oil is present in the driving zone seaward of the wrack or debris line, driving of vehicles may occur

directly landward of the stranded oil. During marine turtle nesting and shorebird nesting season (February 15-October 31), all activity shall be limited to daylight hours and all equipment and materials shall be removed from the beach at night, unless specific verbal or written approval is given by the Department for nighttime cleaning operations.

Mechanical removal of stranded oil and oiled sediments is authorized in accordance with the above description and the following special conditions shown below:

1. A reliable method to measure the volume of beach sediments removed during clean-up operations shall be documented and used by the entity conducting the activity. Upon completion of a section of the shoreline, an explanation of the documented method used and the recorded volume of beach sediments removed during clean-up shall be provided to the Department's Bureau of Beaches and Coastal Systems.
2. The removal of clean sand shall be minimized to the greatest extent practicable.
3. If work occurs during marine turtle and shorebird nesting seasons (February 15 – October 31), it is the responsibility of the entity conducting the activity to ensure compliance with the provisions below. Unless nighttime operations are explicitly approved as required above, all activity shall be limited to daylight hours and commence after completion of a nesting survey. All nest surveys shall be conducted only by persons with prior experience and training in the activities and who is duly authorized to conduct such activities through a valid permit issued by the FWC pursuant to Chapter 60E-1, F.A.C. All equipment and materials shall be removed from the beach at night.
  - a. Sea Turtles. Activities shall be conducted in compliance with the "Sea Turtle Nest Protection Protocols for Clean-Up Crews on Beaches in Florida, Alabama, Mississippi, and Louisiana," attached hereto as Exhibit A.
  - b. Shorebirds. Activities shall be conducted in compliance with the "Shorebird and Seabird Protection Protocols for Clean-up Crews on Beaches in Florida Operating Under DEP Emergency Order 10-1610," attached hereto as Exhibit B.

4. Activities shall be conducted in a manner that avoids archeological and historical sites, and is in compliance with the Division of Historical Resources guidelines for archaeological and historical resources, attached hereto as Exhibit C.

(h) Emergency beach access and upland staging areas. Creation of emergency beach access in order to place emergency response equipment on the beach, as well as creation of staging areas used to store equipment or to containerize oil spill debris, is authorized. Entities conducting the activity are encouraged to use existing beach access points and to avoid designated critical habitat for beach mice. Archaeological and historical sites must be avoided. Response/Construction equipment and supplies shall be stored landward of the beach/dune system during the night. Once the contamination has been abated, access and staging areas shall be restored to preexisting conditions. All such construction shall be limited to daylight hours after completion of a marine turtle nesting survey.

**2. Activities Requiring Field Authorizations or Emergency Permits**

**a. Wetlands and Other Surface Waters, Excluding Sandy Beaches.**

Field authorizations under Part IV of Chapter 373, F.S., and applicable rules adopted thereunder, may be issued to BP, its contractors, and governmental entities following notice to the Department and a field inspection by the Department as needed for the following activities in, on or over wetlands or other surface waters, but excluding activities on sandy beaches:

(1) Construction, use, and removal of temporary emergency response access roads and staging areas used to store equipment or to containerize oil spill debris. Such roads and staging areas shall be sited in uplands and shall use existing improved or previously cleared access points to the maximum extent practicable. If this cannot be done, construction and alteration must minimize work in wetlands or other surface waters and adverse impacts to aquatic and wetland dependant fish and wildlife to the maximum extent practicable.

Archaeological and historical sites must be avoided. Wetlands and other surface waters shall not be dredged to obtain any fill material to construct any access roads or staging areas. Once

the contamination has been abated, all areas disturbed to construct and use these areas shall be restored to former contours and shall be stabilized to prevent erosion, sedimentation, and turbid runoff. Fill material used to create these areas shall be removed to an upland location where it will not adversely affect surface water flows and in a manner that does not cause flooding of adjacent lands. Any wetlands or other surface waters that were disturbed to establish these areas shall be re-vegetated in a manner that will facilitate restoration to preexisting conditions.

(2) Other activities that are part of an oil spill response plan developed by BP, its contractors, or a governmental entity that are designed to protect or remediate impacts to wetlands or other surface waters that may be impacted by the Spill. These activities will be reviewed and approved by the Department on a case-by-case basis through issuance of a field authorization.

(3) Decontamination areas for vessels at in-shore secondary cleaning locations as provided for in the "Sector Mobile, AL Deep Draft Vessel Evaluation and Cleaning Plan" dated May 9, 2010, or as that Plan may be amended.

Field authorizations for the above activities must be requested by providing a notice to the appropriate Department District Office containing a description of the work requested, the location of the work, and the name, address, and telephone number of the applicant who may be contacted concerning the work. Field authorizations may not be issued unless requested on or before the expiration date of this Order. Field authorizations may include specific conditions for the construction, operation, maintenance, and restoration of the authorized activities. Field authorizations issued under this Order remain in effect for the duration specified in the authorization, but may be extended through written modification by the Department. Failure to comply with the conditions of a field authorization permit may result in enforcement actions by the Department.

These procedures also are supplemental to, and do not replace, the ability to perform temporary emergency measures within the geographic limits of the Northwest Florida Water Management District using the Class A and Class B Emergency Provisions of Rule 62-312.090, F.A.C.

**b. Activities on and Adjacent to the Sandy Beach Shoreline**

This section applies to activities conducted pursuant to Chapter 161, F.S., and the applicable rules adopted thereunder, seaward of the Coastal Construction Control Line (“CCCL”) as established by Rule 62B-26, F.A.C. Certain activities may additionally take place seaward of the Mean High Water shoreline. Emergency Permits for such activities shall be issued by the Department’s Bureau of Beaches and Coastal Systems (“Bureau”).

The Bureau may issue emergency permits to governmental entities and to BP and its contractors for the activities listed below:

(1) Protection of coastal dune lakes. Upon threat of contamination, lowering the water levels to manageable levels of coastal fresh water dune lakes that have a prior, documented connection between the lake and the Gulf of Mexico, and closing the coastal dune lake outlets to prevent contamination, may be authorized. Beach-quality sand, defined in Rule 62B-41.007(2)(j), F.A.C., or other temporary measures (such as absorbent booms) shall be used to close such outlets until the threat of contamination has been abated. Applicants are encouraged to use the sand excavated to lower lake levels in order to close the outlets. However, beach quality sand obtained from upland sources may be used upon approval by the Department. All such construction shall be limited to daylight hours after completion of a marine turtle nesting survey.

(2) Construction of emergency sand dikes. To limit the lateral extent of oil contamination, the use of beach-quality sand from upland sand sources to construct a sand dike on the existing beach berm may be authorized. Such berms shall be at an appropriate contour elevation to limit the landward extent of oil incursion. Such efforts shall not result in damage to

existing dunes or dune vegetation or archaeological or historical sites. All such construction shall be limited to daylight hours after completion of a marine turtle nesting survey and be done in coordination with FWC to ensure appropriate bird surveys or designation of bird monitors. This does not authorize the construction of seawalls, bulkheads, rock revetments or other forms of retaining walls.

(3) Beach scraping/blading. Manipulation of existing non-vegetated sand that resides on the existing beach face landward of mean high water in order to protect sand resources may be authorized. All such construction shall be limited to daylight hours after completion of a marine turtle nesting survey and be done in coordination with FWC to ensure appropriate bird surveys or designation of bird monitors. Activities shall be conducted in a manner that avoids archeological and historical sites, and is in compliance with the Division of Historical Resources guidelines for archaeological and historical resources, attached hereto as Exhibit C.

(4) Other activities that are part of an oil spill response plan developed by BP, its contractors, or a governmental entity that are designed to protect or remediate impacts to the beach/dune system that may be impacted by the Spill. These activities will be reviewed and approved by the Department on a case-by-case basis through issuance of an emergency permit.

### **3. Authorization to Use State-Owned Submerged Lands**

The activities authorized above that are located in, on, or over state-owned submerged lands are hereby granted a Letter of Consent under Rule 18-21.005(1)(c)14., F.A.C., provided:

- (a) The activities are conducted in accordance with the terms, conditions, and limitations of this Order; and,
- (b) Activities authorized under this Order must be conducted in conformance with the general conditions of Rule 18-21.004(7), F.A.C.
- (c) Archaeological and historical sites are avoided.

**4. General Conditions**

(a) Applicable environmental resource, surface water management, dredge and fill, stormwater, and CCCL or joint coastal permits under Chapters 161 and Part IV of Chapter 373, F.S., and applicable state-owned submerged lands authorizations shall be required for other activities not authorized in this Order that do not otherwise qualify as an exempt activity under statute or rule.

(b) Nothing in this Order authorizes the taking, attempted taking, killing, pursuing, harassing, harming, molesting, capturing, possessing, or transporting of any species (or the nest or eggs of any species) listed under Rule 68A-27, F.A.C., or under the Federal Endangered Species Act, nor does this order relieve anyone from complying with any other statute, rule, or order of the FWC.

(c) Nothing herein shall be construed to infringe upon private property rights of owners of non-state owned submerged lands.

(d) Materials and devices authorized under this Order must be removed and disposed of in accordance with a Department-approved waste disposal plan as soon as practicable after the structures or devices:

(1) Have lost their effectiveness in collecting and retaining oil, or otherwise are no longer functioning as intended;

(2) Are no longer needed to absorb, collect, or contain oil after the threat of contamination has subsided; or

(3) Have fallen into disrepair, have become hazardous, or are adversely affecting, or have the potential to adversely affect, the environment, navigation, or the property of others; or otherwise have the potential to be a continuing source of pollution.

(e) The nature, timing, and sequence of preventative measures authorized under this Order shall be conducted in such a manner as to provide protection to, and so as to not disturb, native salt-tolerant vegetation and listed species and their habitat, including threatened

or endangered marine turtles, endangered manatees, endangered beach mice, endangered plant communities, and migratory shorebirds to the greatest extent practicable. Such activities shall minimize to the greatest extent practicable entanglement hazards for marine turtles and must avoid dune habitat known to be occupied by beach mice, marked marine turtle nests, and nesting shorebirds. All activities shall be conducted in a manner that avoids archeological and historical sites, and is in compliance with the Division of Historical Resources guidelines for archaeological and historical resources, attached hereto as Exhibit C.

**C. AIR**

1. In situ burning of oil in marine waters of the State associated with the Deepwater Horizon incident is authorized within the Emergency Area. All such in situ burning shall be conducted in accordance with the MC-252 Nearshore In Situ Burn Operational Plan.

2. Any solid waste resulting from the in situ burn shall be collected and shall be managed and disposed of in accordance with the BP MC252 Incident Waste Management and Disposal Plan and the Florida statutes and rules regulating the management and disposal of solid waste.

3. All persons conducting in situ burning of oil within the marine waters of the State shall create and maintain a record of the date, time, location and duration of each in situ burn, and shall provide the Department with a copy of the record upon request by the Department.

**D. GENERAL PROVISIONS**

**1. General Limitations**

The Department issues this Emergency Final Order solely to address the emergency created by the Spill. This Order shall not be construed to authorize any activity within the jurisdiction of the Department except in accordance with the express terms of this Order. Under no circumstances shall anything contained in this Order be construed to authorize the repair, replacement, or reconstruction of any type of unauthorized or illegal structure, habitable or

otherwise. This Order does not convey any property rights or any rights or privileges other than those specified in this Order.

**2. Suspension of Statutes and Rules**

(a) Within the Emergency Area, the requirements and effects of statutes and rules that conflict with the provisions of this Order are suspended to the extent necessary to implement this Order.

(b) To the extent that any requirement to obtain a permit, consent of use, or other authorization is waived by this Order, it should also be construed that the procedural requirements for obtaining such permit, consent of use or other authorization, including requirements for fees and publication of notices, are suspended for the duration of this order.

(c) Field authorizations and emergency permits will be evaluated in accordance with the non-procedural requirements, standards, and criteria of the applicable rules of the Department and the Board of Trustees.

**3. Interagency Coordination**

The Department shall coordinate with the FWC on protected and imperiled species issues and the Division of Historical Resources regarding protection of archeological and historical sites during the review of field authorizations and emergency permits.

**4. Other Authorizations Required**

This Order only provides relief from the specific regulatory and proprietary requirements addressed herein for the duration of the Order, and does not provide relief from the requirements of other federal, state, water management districts, and local agencies. This Order therefore does not negate the need to obtain any other required permits or authorizations, nor from the need to comply with all the requirements of those agencies. This Order does not provide relief from any of the requirements of the Florida Statutes regarding registered professionals.

Activities subject to Federal consistency review that are emergency actions necessary for the repair of immediate, demonstrable threats to public health or safety are consistent with the Florida Coastal Management Program if conducted in strict conformance with this Order.

**5. Stormwater Management**

Impervious surfaces that are created or altered to establish any staging areas authorized or permitted under the terms of this Order must be designed, constructed, operated, and maintained in a manner that minimizes offsite discharge of contaminated runoff, and so as to not cause adverse water quantity impacts or flooding to on-site or off-site property and receiving waters. If any impervious surfaces created under this Order must remain for more than six months, the entity operating the staging area must apply to the Department for a permit under Part IV of Chapter 373, F.S., for stormwater (quantity and quality) review and authorization, which may require further alteration of the system to meet requirements of the applicable Department surface water regulations for the area.

**6. Department Inspections**

Any person conducting activities authorized by this Order shall allow any duly authorized representative of the Department to enter and inspect the property, premises, or place where such activities are being conducted for the purpose of ascertaining the state of compliance with the terms of this Order and with the rules of the Department. Department representatives shall also be allowed to inspect and copy any records required by this Order or the rules of the Department, to inspect any monitoring equipment or method, to sample for any pollutants or waste, and to obtain any other information necessary to determine compliance with the terms of this Order and the rules of the Department.

**7. Violation of Conditions of Emergency Final Order**

Failure to comply with any condition set forth in this Order shall constitute a violation of a Department Final Order under Chapters 161, 253, 258, 373, 376, and 403, F.S., and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

**8. Expiration Date**

This Emergency Final Order shall take effect immediately upon execution by the Secretary of the Department, and shall expire on January 15, 2011, unless modified, revoked, or extended by further order.

**NOTICE OF RIGHTS**

Pursuant to Section 120.569(2)(n) of the Florida Statutes, any party adversely affected by this Order has the right to seek an injunction of this Order or any authorization issued hereunder in circuit court or judicial review of it under Section 120.68 of the Florida Statutes. Judicial review must be sought by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, Mail 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 of appeal must be filed within thirty days after this Order is filed with the Clerk of the Department.

**DONE AND ORDERED** on this <sup>HL</sup> 18 day of JUNE, 2010, in Tallahassee, Florida.

FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION



Michael W. Sole, Secretary  
3900 Commonwealth Blvd  
Tallahassee, FL 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52, FLORIDA STATUTES,  
WITH THE DESIGNATED DEPARTMENT CLERK, RECEIPT OF WHICH  
IS HEREBY ACKNOWLEDGED.



(DEPUTY) CLERK

06/18/2010  
DATE

**Exhibit A**  
**Sea Turtle Nest Protection Protocols for Clean-up Crews**  
**on Beaches in Florida, Alabama, Mississippi, and Louisiana**

In Florida and Alabama, most sandy beaches have active sea turtle nesting survey and nest protection programs in place. However, some beaches in Florida are not surveyed on a daily basis due to logistical difficulties with access (e.g., Dauphin Island in Mobile County, Alabama; the Marquesas Islands in Monroe County, Florida) or are not currently surveyed at all (e.g., Dog Island in Franklin County, Cape Sable in the Everglades in Monroe County, Florida). No nesting surveys are conducted in Mississippi and Louisiana. Attached is a list of daily surveyed beaches by County and State; please follow the first set of protocols below for these beaches. For beaches that are not surveyed, please follow the second set of protocols.

**FOR BEACHES WHERE NESTING SURVEYS ARE CONDUCTED DAILY:**

1. Ensure daily sea turtle nesting surveys have been completed and that all nests have been marked by the local sea turtle permit holder with a 10-foot buffer zone before work begins each morning. The clean-up crew leader must contact the appropriate individual identified on the attached list or his/her designee daily to determine if nesting surveys have been completed and clean-up activities can begin.
2. Sea turtles may still be nesting or hatchlings may emerge after sunrise, so it is imperative that clean-up crews watch for nesting and hatchling turtles while they are on the beach and immediately report any turtles sighted to the individual identified on the attached list or his/her designee. Clean-up vehicles should travel slowly to enable a better opportunity to spot turtle crawls and avoid colliding with nesting and hatchling turtles.
3. Look for any marked nests before beginning beach cleaning activities in an area. Nests will be marked with at least eight stakes, four around the nest perimeter and four more around a 10-foot buffer zone (see photo below). Do not remove or destroy any stakes or flagging, even if they are sited up in the dune. These may be back-up stakes that were placed to ensure that future location of the nest is possible should the nest perimeter stakes be lost.



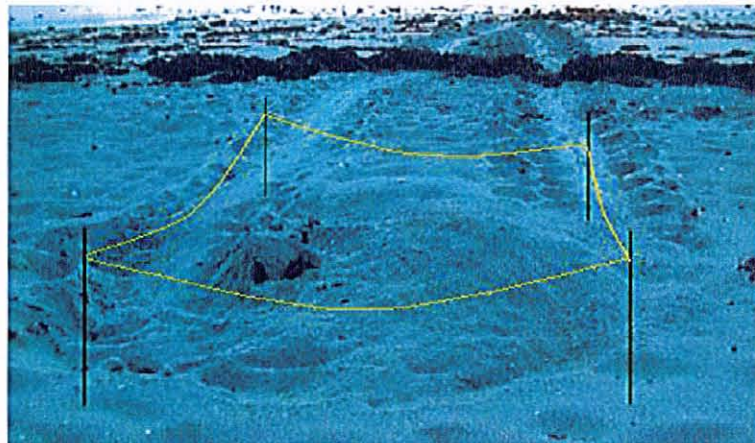
4. Mechanical equipment and hand tools should not be used within the flagged buffer area of a nest.
5. Clean-up crews should gently remove contaminated sand within the flagged area of a nest by hand and replace it with clean, damp sand taken from an area adjacent to the flagged nest area. Removal of sand over a nest should occur only under the direction of the sea turtle permit holder. The surface layer of oiled sand should be removed only to the minimum depth necessary without impacting the top of the nest. If nest flagging was removed to access the nest area, it must be securely replaced after clean-up activities have been completed.
6. All excavations and temporary alteration of beach topography shall be filled, covered, or leveled to the natural beach profile prior to 8:00 p.m. each day.

**FOR BEACHES WHERE NESTING SURVEYS ARE NOT CONDUCTED OR ARE NOT CONDUCTED DAILY:**

1. Sea turtles may still be nesting or hatchlings may emerge after sunrise, so it is imperative that clean-up crews watch for nesting and hatchling turtles while they are on the beach and immediately report any turtles sighted to the individual identified on the attached list or his/her designee. Clean-up vehicles should travel slowly to enable a better opportunity to spot turtle crawls and avoid colliding with nesting and hatchling turtles.
2. Look for any turtle crawls before beginning beach cleaning activities in an area (see photos below of turtle crawls). [In some cases, there may be marked nests on some partially surveyed beaches (steps 1-5 on the preceding page should be followed for existing nests).]



3. Follow any turtle crawls and look for signs that the turtle dug into the sand. Using stakes and flagging, mark the entire disturbed area created by a turtle digging. Under no circumstances should stakes be driven into the sand within the disturbed area created by the turtle (see photo below of a marked disturbed area – however, please double flag the nest site instead of using a single layer of flagging as shown in the photo).



4. Follow Steps 3-5 on the preceding page.

**ATTACHMENT  
SURVEYED BEACHES AND SEA TURTLE CONTACTS\***

<b>SURVEYED BEACHES</b>	<b>CONTACT NAME</b>	<b>PHONE NUMBER</b>
<b>ALABAMA</b>		
Mobile County		
Dauphin Island	Mike Reynolds	Cell: 251-747-4985 Office: 251-974-2253
Baldwin County		
Fort Morgan Peninsula, including Bon Secour National Wildlife Refuge to West Beach in Gulf Shores	Jackie Isaacs	Cell: 251-752-0654 Office: 251-540-8523
West Beach in Gulf Shores to the Alabama/Florida state line	Mike Reynolds	Cell: 251-747-4985 Office: 251-974-2253
<b>FLORIDA</b>		
Escambia County – all beaches	Robbin Trindell	Cell: 561-262-1104 Office: 850-617-6055
	Meghan Koperski (back-up)	Cell: 561-339-1001 Office: 561-575-5407 x17
Santa Rosa County – all beaches	Same as above	
Okaloosa County – all beaches	Same as above	
Walton County – all beaches	Same as above	
Bay County -- all beaches	Same as above	
Gulf County – all beaches	Same as above	
Franklin County		
St. Vincent NWR (survey frequency varies)	Same as above	
Cape St. George (survey frequency varies)	Same as above	
St. George Island	Same as above	
Alligator Point		
Pinellas County – all beaches	Same as above	
Hillsborough County – all beaches	Same as above	
Manatee County – all beaches	Same as above	
Sarasota County – all beaches	Same as above	
Charlotte County – all beaches	Same as above	
Lee County – all beaches	Same as above	
Collier County – all beaches	Same as above	
Ten Thousand Islands NWR (surveyed 3-7 days/week)	Same as above	
Monroe County – all beaches (survey frequency varies)	Same as above	

\*If the beach to be cleaned is not identified on the above list or does not fall within a County where all beaches are surveyed, then clean-up crews should follow the protocols on page 2 **FOR BEACHES WHERE NESTING SURVEYS ARE NOT CONDUCTED OR ARE NOT CONDUCTED DAILY**. If you have any questions about whether a beach is surveyed or not, contact the individuals listed above for assistance.

**Exhibit B**  
**Shorebird and Seabird Protection Protocols for Clean-up Crews on Beaches in Florida**  
**Operating Under DEP Emergency Final Order, OGC Case No. 10-1610**

Shorebirds and seabirds (beach-nesting birds) nest on Florida's beaches from February 15 – September 1. Disturbance of nesting birds may result in abandonment of nests or young. Flightless chicks can be very mobile and may forage well outside posted nesting areas. They are extremely difficult to see and are susceptible to being crushed by pedestrians and equipment.

The following measures are designed to reduce the likelihood of incidental take of protected beach-nesting bird species.

Prior to movement of vehicles or heavy equipment onto the beach associated with clean-up, notification to the Florida Fish and Wildlife Conservation Commission (FWC) Regional Species Conservation Biologist (RB) shall be provided. The RB will coordinate efforts to provide qualified FWC staff or other trained Para-professionals to act as Shorebird Monitors and assist with monitoring for beach nesting birds during clean-up. If the RB in the region can not be reached, the RB in an adjacent region should be notified.

Many bird nesting areas are marked with symbolic fencing consisting of roping (twine, string, poly rope) strung between posts (wood, PVC, Carsonite) and clearly marked signs ("No Entry"). The DEP Emergency Final Order, OGC Case No. 10-1610 does not authorize entry into designated marked beach-nesting areas. If entry is needed, authorization must be given either verbally or in writing by the FWC.

Heavy equipment and vehicles should be kept as far away from these marked areas as practicable. The posting will be erected at a sufficient distance from the nest(s) to ensure that approach does not cause the birds to flush from the nest, but will not prevent the passage of vehicles/equipment necessary to conduct the project. Should project activities require that vehicles/equipment operate (stay longer than the time it takes to transit the area) within a distance that causes birds to leave the nest, the Shorebird Monitor will assist the project manager to reduce the risks of activities resulting in nest or colony abandonment.

The Shorebird Monitor(s) can provide assistance to the operators of equipment in looking for the presence of flightless young within the project area. It is the responsibility of the project manager to ensure that equipment operators coordinate closely with the Shorebird Monitor(s) to take precautions to reduce the risk that flightless young are directly injured by equipment. .

All heavy equipment and vehicles operating in areas of highest probability of beach nesting birds should operate at speed no greater than 6 mph. FWC Regional Biologists or designated Shorebird Monitors can provide guidance regarding the specific locations where slow speed is advised. When in doubt regarding the probability of the presence of beach nesting birds, it is a recommended best management practice that all vehicles and heavy equipment operate at slow speeds. Flightless young are very susceptible to mortality by becoming trapped in tire ruts in the sand. All tire ruts should be smoothed or graded at the completion of the clean-up activity each day.

## Regional FWC Contacts for Shorebird Issues

### **Northwest Region**

Dr. John Himes  
FL Fish and Wildlife Conservation  
Commission  
3911 Highway 2321  
Panama City, FL 32409-1658  
(850) 265-3677/Fax (850) 747-5690  
Cell # 850-698-4781

### **North Central Region**

Dr. Terry Doonan  
FL Fish and Wildlife Conservation  
Commission  
3377 E. US Hwy 90  
Lake City, FL 32055  
(386) 758-0525/Fax (386) 758-0533  
Cell # 386 623-4986

### **Northeast Region**

Mr. Alex Kropp  
FL Fish and Wildlife Conservation  
Commission  
1239 S.W. 10th Street  
Ocala, FL 34474-2797  
(352) 732-1225/Fax (352) 620-7627  
Cell # 352-342-0063

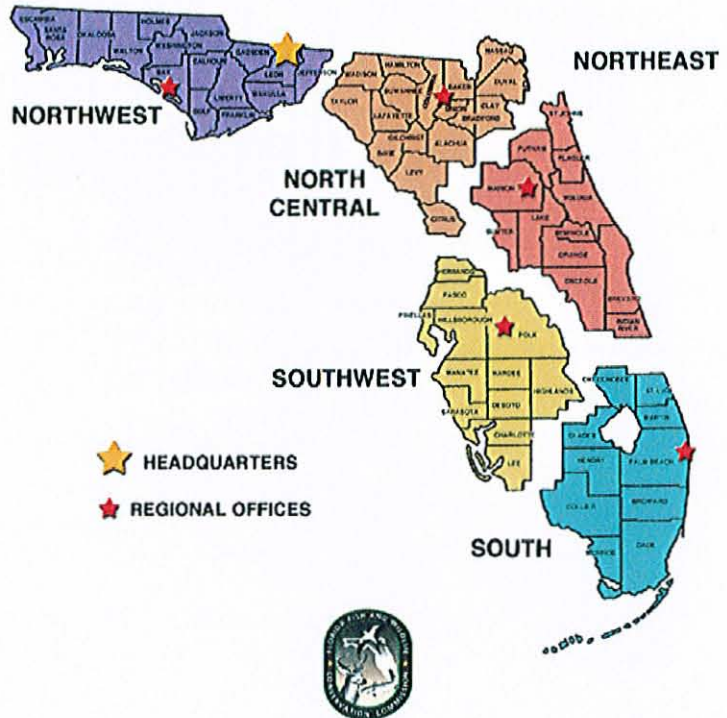
### **Southwest Region**

Ms. Nancy Douglass  
FL Fish and Wildlife Conservation  
Commission  
3900 Drane Field Road  
Lakeland, FL 33811-1299  
(863) 648-3205/Fax (863) 701-1248  
Cell # 863 581-6903

### **South Region**

Mr. Ricardo Zambrano  
FL Fish and Wildlife  
Conservation Commission  
8535 Northlake Boulevard  
West Palm Beach, FL 33412  
(561) 625-5122/Fax (561) 625-5129  
Cell # 561-248-9072

### **FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION HEADQUARTERS AND REGIONAL OFFICES**



If a Regional Biologist cannot be reached please call:

1 888 404-3922

# Florida Shoreline Cleanup & Assessment ARCHAEOLOGICAL SITE PROTECTION

Artifact Identification Guide

1. HISTORIC POTTERY & GLASS



2. HISTORIC METAL(S)



3. WOODEN VESSELS & STRUCTURES



5. SHELL MIDDEN



7. AMERICAN INDIAN POTTERY



4. AMERICAN INDIAN DUGOUT CANOES



6. AMERICAN INDIAN  
STONE TOOLS



8. AMERICAN INDIAN BONE & SHELL TOOLS



Archaeological sites and artifacts are owned by the State of Florida. Discovery of objects such as those illustrated here should be reported to the Division of Historical Resources at 850 245 6530. Discovery of human bones should be reported to local law enforcement immediately. **LEAVE IT AND REPORT IT!**

# Florida Shoreline Cleanup Assessment



## ARCHAEOLOGICAL SITE PROTECTION

### LEAVE IT AND REPORT IT!

Archaeological sites and artifacts found on state owned, state-controlled or submerged bottom lands are protected by law under Chapter 267.061, Florida Statutes; removal is not permitted.

Report the discovery of any archaeological material to the Division of Historical Resources at (850) 245 6530 immediately.

Human remains are protected by law under Chapter 872.05, Florida Statutes; removal is not permitted. Discovery of human bones should be reported to local law enforcement immediately.

Sites may include shipwreck, dugout canoes, or middens made of small shell, such as shown here:



1. Historic pottery and glass objects are characteristic of Florida's early European settlers beginning in the sixteenth century. Shown here are seventeenth century Spanish pottery fragments and late eighteenth to early nineteenth century glass bottles.

2. Historic metal objects also are characteristic of early Florida settlements and include various ship, weapon, and industry-related parts and fragments. Shown here are pieces associated with an eighteenth century flintlock musket.

3. Wooden vessels and structures are typically found along the coastline and commonly include shipwrecks, houses, bridges, docks, and fish weirs. Wooden objects such as these deteriorate rapidly once exposed and should never be removed from a wet environment.

4. American Indian dugout canoes can be found along Florida's coastal waterways. Wooden objects such as canoes, paddles, or carvings, deteriorate rapidly and should never be removed from a wet environment.

5. Shell middens, such as those shown here, are thick deposits of marine shell, animal bone, and soil associated with living surfaces and disposal of food refuse. Sometimes used for burials, shell middens are rich with cultural material, including organic objects, such as wood and fiber, that do not survive once removed from these settings.

6. American Indian stone tools include a wide range of chipped and ground stone objects, such as arrowheads, knives, scrapers, or drills, and are representative of human activity that extends back to Florida's earliest peoples around 10-12,000 years ago.

7. American Indian pottery objects are made with fired clay and include jars, bowls, platters, and dishes. Made in a variety of sizes with a variety of impressed and incised surface decorations, these are usually found in fragments and most commonly date between 2,500 and 500 years ago.

8. American Indian shell tools include a wide range of objects, such as hammers, cutting tools, dippers, net sinkers, anvils, gorgets, beads, and pendants; bone artifacts include arrow points, fish hooks, awls, hair pins, beads, and various carvings.