

CHAPTER 1: INTRODUCTION

Background

The County of Walton, Florida has applied to the U.S. Fish and Wildlife Service (USFWS) for an Incidental Take Permit (ITP) pursuant to Section 10(a)(1)(B) of the Endangered Species Act (ESA or the Act) of 1973. If issued, the ITP will authorize “take” of nesting, hatchling, and live stranded sea turtles and sea turtle nests, Choctawhatchee beach mice (CBM), and non-breeding piping plovers on the County’s Gulf coast beaches causally related to *future* emergency shoreline protection measures and other coastal activities regulated and/or managed by the County. This Habitat Conservation Plan (HCP or Plan) has been developed as a requisite component of the County’s ITP application. Its preparation was funded, in part, through a USFWS HCP Planning Assistance Grant administered by the Florida Fish and Wildlife Conservation Commission (FWC) under the Cooperative Endangered Species Conservation Fund Grants Program.

Walton County’s beaches have experienced considerable erosion during the recent past, with 14.3 mi (23.0 km) of the County’s 25.6-mile (41.2-km) long coastline classified by the State of Florida as “critically eroded” as of June 2008 (FDEP 2008). Prior to September 2004, only 4.0 mi (6.4 km) of beachfront was officially classified as critically eroded. Since that time, the County has been severely affected by the passage of two major hurricanes (Ivan in 2004 and Dennis in 2005), underscoring the erosive power of major storm events. As a result of a receding shoreline, many habitable structures adjacent to the beach have become increasingly vulnerable to future storm damage.

Walton County endeavors to provide shoreline protection for beachfront properties and, in the process, to restore the lost economic potential and recreational value of its eroded beaches. To that end, the County has commissioned several beach management feasibility studies (Taylor Engineering, Inc. 2003 and 2006). The objective of these studies was to analyze coastal processes and assess associated risks to beachfront properties in order to develop a suite of effective and practical beach management strategies. Primary recommendations stemming from those studies argue for a “soft” approach to shoreline protection by placing beach quality sand on eroded sections of beach (beach nourishment) and installing native plants on dunes to trap shifting sands (dune restoration).

Until such time as these beach management strategies can be fully implemented, many beachfront structures will remain vulnerable to erosion caused by hurricanes and other severe storm events. Consequently, property owners along the County’s coastline have a compelling interest in having an alternative means of shoreline protection. That alternative approach typically equates to shoreline “armoring,” which involves the installation of rigid seawalls, revetments, bulkheads, retaining walls, geotextile bags or tubes, and similar structures.

DRAFT 4

State Regulatory Framework for Shoreline Protection

Part I, Chapter 161, Florida Statutes (FS), and Chapter 62B-33, Florida Administrative Code (FAC), set forth the rules and regulations governing the issuance of Coastal Construction Control Line (CCCL) permits for shoreline protection activities along Florida’s coastline. The Florida Department of Environmental Protection (FDEP), Bureau of Beaches and Coastal Systems (BCS), is the State agency that oversees and regulates these activities. Generally, only structures built prior to the State’s current rules regulating coastal development are eligible for the installation of permanent seawalls, revetments and other “armoring” structures. Structures built under a permit issued by the FDEP pursuant to Chapter 161.052 or 161.053, FS, on or after March 17, 1985 are generally ineligible for such armoring, as they should have been designed, sited, and constructed in a manner that considerably reduces their vulnerability to erosion during storm events. In addition to being “eligible,” a structure must also be “vulnerable,” as defined by Chapter 62B-33, FAC, before a property owner can receive a permit to install a permanent shoreline armoring structure.

If erosion resulting from a major storm event (e.g., hurricane, tropical storm, northeaster, etc.) threatens private structures or public infrastructure, and a permit for shoreline protection has not already been issued by the FDEP, a political subdivision of the State may authorize its citizens to implement temporary protection measures. This authorization must follow an official declaration of emergency by the State or Federal government or local governmental entity affected by the storm.

When issuing emergency permits, State law requires local governments to consider the potential effects of shoreline protection on the beach-dune system, protected species, and native coastal vegetation. Potential impacts to adjacent properties and preservation of public beach access must also be factored into the permitting decision. Structures placed on the beach as the result of a declared emergency must be properly sited and designed, and they must be temporary. If a structure is to remain on the beach beyond a two-month period, as specified by law, the property owner must apply for a FDEP CCCL permit to retain the temporary structure as a permanent structure.

History of Emergency Permitting in Walton County

Walton County first exercised its emergency permitting delegation under Part I, Chapter 161, FS, following the passage of Hurricane Dennis in 2005. The first permit was issued on July 15, 2005. A total of 173 emergency permits encompassing 206 properties were issued to beachfront property owners for shoreline protection measures between that date and October 28, 2005, with construction on the beach continuing until April 28, 2006. However, “temporary” structures were installed on only 196 of the 206 properties covered under the emergency permits, with one additional permit involving the repair of an existing structure. All permits issued by the County expired April 30, 2006.

During 2008, County staff initiated a survey of all beachfront armoring. A Global Positioning System (GPS) unit with sub-meter accuracy was used to approximate the east

DRAFT 4

and west terminal ends of each structure on the beach, and these data were used to determine the length of each structure. The County’s emergency permitting records were then cross-referenced with FDEP CCCL records to determine the permitting status of each. Not all differences between the two data sets could be reconciled. Thus, the numbers of affected properties and the linear extent of armoring presented in this HCP are an approximation based on best available information.

Category	Status	Number of Properties	Linear Feet
Structures Permitted Under Standard CCCL Permitting Process	Prior to Hurricane Dennis	2	357
	Post Hurricane Dennis	7	535
	Sub-total	9	892
Structures Installed After Hurricane Dennis Without CCCL Permit	<i>Installed With County-issued Emergency Permit</i>	196	18,571
	Did Not Apply for CCCL Permit ¹	4	210
	Subsequently Applied to FDEP for CCCL Permit	192	18,361
	Permit Issued	18	1,892
	Permit Denied	52	5,396
	Permit Pending	122	11,073
	<i>Installed Without County-issued Emergency Permit</i>	19	1,576
	Did Not Apply for CCCL Permit	0	0
	Subsequently Applied to FDEP for CCCL Permit	19	1,576
	Permit Issued	0	0
	Permit Denied	7	803
Permit Pending	12	773	
Total Structures On Beach		224	21,039
¹ For one of these structures, it could not be determined whether or not the property owner had applied to FDEP for a CCCL permit.			

As of December 31, 2008, approximately 224 separate properties on Walton County beaches were fronted by armoring (Table 1). FDEP records indicate that only two structures, including the one for which emergency repairs were performed under the County’s emergency authorization, existed prior to Hurricane Dennis. In addition to the 196 properties protected by “temporary” structures installed under the County’s emergency authorization, armoring was installed on another 19 properties without the requisite emergency permit. Seven properties were protected by permanent armoring installed under the standard FDEP CCCL permitting process following the passage of Hurricane Dennis.

DRAFT 4

Records indicate that of the 215 properties where emergency shoreline protection was installed (with or without County authorization), application was made to the FDEP for the retention of structures or alternative protection on all but four of the properties (Table 1). CCCL permit applications for 18 of those properties were found to conform to State rules and permits were issued, while permits for 59 properties were denied on the basis that the property was not eligible, vulnerable, and/or the structure was not appropriately sited. As explained below, the processing of CCCL permit applications for the retention of structures on the remaining 134 properties is on hold pending the outcome of the County's application to the USFWS for an ITP.

Based on the numbers presented above, Walton County has approximately 4.0 mi (6.4 km) of armored shoreline, nearly 90 percent (3.5 mi; 5.7 km) of which was initiated under the County's emergency authorization following the passage of Hurricane Dennis (Table 1). Another 0.3 mi (0.5 km) was installed after Hurricane Dennis without either a CCCL permit from the FDEP or the County's emergency authorization. As of December 31, 2008 only 0.5 mi (0.8 km) of permanent armoring has been authorized by the FDEP through a CCCL permit issued either before or after Hurricane Dennis.

Federal Regulatory Framework for Protected Species Conservation

The U.S. Congress enacted the Endangered Species Act in 1973, as amended (ESA or the Act) to protect plant and animal species that are in danger of extinction throughout all or a significant portion of their range. Federal agencies are required under Section 7 (a)(1) of the ESA to use their authorities to further conservation of listed species. The National Marine Fisheries Service (NMFS) and USFWS are responsible for administering the ESA (87 Stat. 884; 16 U.S.C. 1531 *et seq.*) for those species under their respective jurisdictions.

Section 9 of the ESA prohibits unauthorized "take" of federally listed species. Take means to "harass," "harm," pursue, hunt, shoot, kill, capture, or collect, or attempt to engage in any such activity. Harm includes significant habitat modification or degradation that results in the death of, or injury to, listed species by significantly impairing essential behavioral patterns, including, but are not limited to, breeding, feeding, or sheltering. Harass is defined as actions that create the likelihood of injury to listed species to an extent as to significantly disrupt normal behavioral patterns (50 CFR Part 17.3). Thus, both direct and indirect impacts, such as modification of habitat, constitute take under the ESA. Section 9 prohibitions described above apply to any activity conducted by states, counties, municipalities, and individuals.

The ESA was amended in 1989 to address potential conflicts between the provisions of the Act and traditional land uses on non-Federal property. Specifically, Section 10(a)(1)(B) of the ESA allows for non-Federal government and private entities to apply for permits that allow the "incidental" take of a listed species that results from, but is not the purpose of, carrying out an otherwise lawful activity. To obtain an ITP, the applicant's proposed action must meet: 1) the statutory and regulatory permit issuance

DRAFT 4

criteria under ESA Section 10(a)(2)(B) and 2) USFWS regulatory issuance criteria pursuant to 50 CFR 17.22 (b)(2)(i)(A-F). Foremost among those requirements is a determination that the taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild.

Under Section 10 of the ESA, the ITP applicant is required to submit an HCP. The HCP describes all of the programs and policies that the applicant will implement to minimize take over the term of the ITP and presents a plan for mitigating unavoidable take (USFWS and NMFS 1996). The HCP also includes a description of the area to be regulated, lists the species and activities for which incidental take authorization is being requested, provides an implementation schedule, describes program administration, provides a process for addressing unforeseen and changed circumstances, and identifies funding mechanisms to ensure the plan can be fully and effectively implemented.

Impetus for Application for ITP

Following the passage of Hurricane Dennis in 2005, Walton County authorized the installation of temporary coastal armoring along its coastline to protect private upland structures and public infrastructure. Construction was authorized and occurred during the sea turtle nesting season (May 1 to October 31) and piping plover migratory and overwintering period (July to May) and affected habitat potentially utilized or occupied by the Choctawhatchee beach mouse. As described elsewhere in this HCP, sea turtles, the piping plover, and the CBM are all federally listed species subject to protection under the ESA.

Shoreline armoring often creates obstacles to sea turtles during their nesting forays onto beaches and generally diminishes the quality of nesting habitat. Construction of these structures may also result in the fragmentation of dunes that are home to beach mice. Shorebirds including non-breeding piping plovers are affected by the loss and physical change of habitat for feeding, resting, and roosting. Additionally, armoring structures may alter physical coastal processes, destroy or diminish dune function, accelerate erosion of the beach seaward of the structure, redirect wave energy and increase erosion on adjacent properties, and inhibit natural shoreline recovery following a storm event. All of these consequences degrade the habitat of protected coastal species and constitute take under the ESA. The USFWS, the agency responsible for the conservation of nesting sea turtles, piping plovers and CBM, has determined that take of these species likely occurred in Walton County as a result of authorized emergency shoreline protection activities initiated after Hurricane Dennis, is on-going because of associated habitat modifications, and will likely occur in the future from similar emergency authorizations.

Although the County had lawful authorization to issue emergency permits for shoreline protection, there were numerous cases where the measures undertaken by coastal property owners did not conform to State law. In some cases, structures were improperly sited or were not constructed within the 60-day period allowed under the emergency permit. In other cases, the structures were placed on properties that were either ineligible for protection (e.g., vacant lots), as defined under Florida code, or were not vulnerable to future storm events. Some property owners installed permanent rather than temporary

DRAFT 4

structures, and many property owners failed to apply to the FDEP to retain their structures or remove them within the allotted 60 days.

With respect to take, Chapter 62B-33, FAC, advises local governments who anticipate authorizing installation of emergency shoreline protection structures to obtain a Federal ITP for impacts to sea turtles. Because Walton County did not anticipate authorizing installation of emergency armoring, it had not sought the Federal protection afforded under the ESA. Consequently, both the County and affected property owners were vulnerable to prosecution under the ESA and were at risk of third-party lawsuits alleging unauthorized take of federally listed species.

The regulatory dialogue that ensued following the widespread installation of armoring structures on County beaches culminated in an Intergovernmental Agreement (IGA; Appendix A) between Walton County, the FDEP, FWC, and USFWS. A key tenet of that Agreement was the County's application for Federal funds to develop a Habitat Conservation Plan and apply for an Incidental Take Permit for future emergency permitting activities. The IGA prescribes specific actions that will be undertaken by each agency with respect to: a) development of the County's HCP, b) development of a companion Federal HCP to cover the permanent retention of armoring installed under the County's previous emergency permitting authority, and c) FDEP processing of CCCL permits for retention of temporary structures permitted under the County's previous emergency authority.

Distinctions Among Past, Present, and Future Shoreline Protection Actions

With respect to FDEP CCCL permitting and Federal authorization for incidental take, there are five current and future classes of shoreline protection structures along Walton County's beaches:

1. Existing and future permanent shoreline protection structures installed under a standard CCCL permit issued by the FDEP and for which incidental take authorization was not required.
2. Existing permanent shoreline protection structures installed after Hurricane Dennis under an emergency permit issued by Walton County and for which a CCCL permit for their permanent retention was issued by the FDEP prior to the date of issuance of the County's ITP.
3. Existing "temporary" shoreline protection structures installed after Hurricane Dennis with or without an emergency permit issued by Walton County and for which a FDEP CCCL permit for their permanent retention was pending on the date of issuance of the County's ITP.
4. Future temporary and permanent shoreline protection measures initiated under local emergency authorization following issuance of the County's ITP.

DRAFT 4

5. Future permanent shoreline protection structures installed under a standard CCCL permit issued by the FDEP and for which incidental take authorization is required.

This HCP was designed primarily to cover Class 4 actions, future shoreline protection measures initiated under local emergency authorization after the effective date of the County's ITP. However, incidental take coverage for the permanent retention of some temporary structures installed after Hurricane Dennis with or without an emergency permit (Class 3 structures) may be authorized under the County's ITP or through a companion USFWS General Conservation Plan (GCP), as discussed below. Similarly, the County's ITP may serve to cover incidental take of permanent armoring structures permitted in the future through the FDEP's standard (non-emergency) CCCL permitting process (Class 5 structures), as necessary.

Class 1 – Existing and future permanent shoreline protection structures installed under a standard CCCL permit issued by the FDEP and for which incidental take authorization was not required.

This class includes any structures permitted by the FDEP through the standard (non-emergency) CCCL permitting process, whether prior to or after USFWS issuance of the County's ITP. The State has made, or will make, a determination that these permitted structures are not likely to result in incidental take, because either no suitable habitat is present at the site, the structure has been sited to avoid take, or appropriate incidental take authorization has been provided under the U.S. ESA. No action is needed by property owners with Class 1 structures.

Class 2. Existing permanent shoreline protection structures installed after Hurricane Dennis under an emergency permit issued by Walton County and for which a CCCL permit for their permanent retention was issued by the FDEP prior to the date of issuance of the County's ITP.

This class includes any structures installed between July 15, 2005 and April 30, 2006 under Walton County's emergency authorization and for which a FDEP CCCL permit for their permanent retention has since been issued. In its permit review, the State determined that these structures were not anticipated to result in take, and they met all other applicable requirements of FS 161. No action is needed by property owners with Class 2 structures.

Class 3. Existing temporary shoreline protection structures installed after Hurricane Dennis with or without an emergency permit issued by Walton County and for which a FDEP CCCL permit for their permanent retention was pending on the date of issuance of the County's ITP.

This class includes any temporary armoring structure installed between July 15, 2005 and April 30, 2006 with or without Walton County's emergency authorization and for which a FDEP CCCL permit for their permanent retention was pending on the date of issuance of the County's ITP. There are two potential reasons why CCCL permits for Class 3

DRAFT 4

structures are pending issuance: the armoring does not conform to State law (FS 161) and/or the State has determined that the structure would cause take of sea turtles. If a CCCL permit application for a Class 3 structure would be denied on the basis of sea turtle take alone (i.e. the structure being protected is vulnerable, eligible, properly designed, appropriately sited, etc.), the property owner has been requested to allow the FDEP to waive statutory time clocks for processing the application until the property owner can obtain Federal incidental take coverage for the permanent retention of the structure.

In an effort to avoid a multitude of individual ITP applications, property owners of Class 3 structures are provided with two pathways to receive incidental take coverage. They can either elect to participate in the County's HCP or they can obtain individual ITPs through the USFWS companion GCP. Property owners who choose to receive coverage under the County's ITP can submit an application to participate in the HCP. After paying an appropriate HCP implementation fee into the County's Conservation Fund (see Chapter 16), they will be given a Certificate of Participation or equivalent documentation that will serve as evidence of incidental take coverage.

Alternatively, property owners may choose to apply to the USFWS for individual ITPs under the GCP. This process, while wholly independent of the County's HCP and ITP for future emergency shoreline protection activities, is tiered off, and serves as a companion to, the County's actions under this HCP.

To obtain coverage under the County's ITP, a property owner, authorized agent, or other entity with legal rights over the affected property must demonstrate title to the property, and the structure must conform to State law.

Authorization of incidental take for Class 3 temporary armoring structures is contingent upon Walton County receiving its ITP from the USFWS for future emergency shoreline protection activities, because the mitigation measures for post-Dennis armoring will be accomplished through implementation of this HCP.

Once a property owner provides evidence of a Certificate of Participation or an individual ITP, the FDEP will complete its processing of the CCCL permit application and can then issue a permit for the permanent retention of the armoring structure, if the structure otherwise conforms with State law. At that point forward, any take of covered species resulting from the permitted structure will be authorized over the life of the County's ITP, provided the property owner complies with all terms and conditions of the HCP or GCP, as applicable, and the respective ITP.

Class 4. Future temporary and permanent shoreline protection measures initiated under local emergency authorization following issuance of the County's ITP.

This HCP describes all programs, policies and requirements associated with future shoreline protection measures initiated under local emergency authorization following issuance of the County's ITP from the USFWS. The ITP will authorize any take of listed species resulting from emergency shoreline protection measures, such as the installation

DRAFT 4

of temporary structures, as well as any longer term take resulting from the permanent retention of those structures under a FDEP CCCL permit. Property owners who initiate emergency measures under future County authorization will be covered under the Federal ESA, provided their shoreline protection structures are installed and maintained in compliance with all emergency and CCCL permit conditions and they comply with all of the requirements set forth in this HCP.

Class 5. Future permanent shoreline protection structures installed under a standard CCCL permit issued by the FDEP and for which incidental take authorization is required.

Upon issuance of the County's ITP, property owners of Class 5 structures whose CCCL permit applications are being placed on hold because the FDEP has determined that take of sea turtles is likely to occur can receive incidental take coverage under the County's ITP. The property owner, authorized agent, or other entity with legal rights over the affected property must submit an application to participate in the County's HCP. In doing so, they must demonstrate title to the property and provide evidence that the structure otherwise conforms to State law. After paying an appropriate HCP implementation fee into the County's Conservation Fund (see Chapter 16), they will be given a Certificate of Participation or equivalent documentation that will serve as evidence of incidental take coverage. The Certificate of Participation will allow the FDEP to complete its processing of the CCCL permit application. Upon issuance of the CCCL permit, any take of covered species resulting from the permitted structure will be authorized over the life of the County's ITP, provided the property owner complies with all terms and conditions of both this HCP and the CCCL permit.

Purpose of HCP

The beaches of Walton County have been identified as important nesting habitat for sea turtles and non-breeding habitat for piping plovers. The beach and dune system also serves as primary habitat for the Choctawhatchee beach mouse. The County is seeking an ITP, because take of these species is likely to occur as a result of shoreline protection activities initiated under its emergency authorization. The HCP is a statutory requirement of the Federal ITP process and must accompany an application to the USFWS for an Incidental Take Permit.

The purpose of the ITP is to authorize the take of federally listed species, while affording beachfront property owners the opportunity to protect eligible and vulnerable structures from erosion during storm events. The County has also determined the need to be covered under the Federal ESA for other activities regulated and/or managed by the County and are including those activities in the HCP. The HCP includes an assessment of impacts likely to result from those activities for which take authorization is being requested and ensures that authorized take is avoided, minimized and mitigated to the maximum extent practicable. To that end, this document presents the following:

- A description of the Plan preparation process;

DRAFT 4

- A description of the activities and species for which take authorization has been requested;
- A discussion of the goals, objectives, and anticipated benefits of the HCP;
- Geographic boundaries of the area to be covered by the HCP (Plan Area);
- A description of social, economic, and environmental conditions within the Plan Area;
- Biological information related to protected flora and fauna within the Plan Area;
- A discussion of natural factors and human activities potentially affecting listed species within the Plan Area;
- An estimate of the amount of take likely to occur as a result of authorized shoreline protection projects and other coastal activities regulated and/or managed by the County;
- An analysis of alternative methods for addressing emergency shoreline protection;
- A description of the emergency shoreline permitting process to be instituted under the HCP;
- A description of the programs, policies, and procedures that the County will implement to minimize the potential for take of covered species;
- A description of measures that the County will implement to mitigate take that is unavoidable despite the minimization measures;
- A description of the monitoring that will be performed to manage protected species within the Plan Area;
- A discussion of voluntary conservation measures to be implemented by the County;
- A description of Plan administration;
- A commitment to funding the Plan;
- An implementation schedule;
- Methods for addressing changed and/or unforeseen circumstances during the period the Plan is in effect; and
- A mechanism for assessing the performance of the HCP and amending the Plan, as needed, to address changing conditions within the Plan Area.