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DEPARTMENT OF THE ARMY

SOUTH ATLANTIC DIVISION, CORPS OF ENGINEERS

ROOM 313, 77 FORSYTH ST., S.W.

ATLANTA, GEORGIA 30335-6801

REPLY TO
ATTENTION OF:

CESAD-ET-PR (1105-2-10b)

29 OCT 1997

MEMORANDUM FOR

COMMANDER, CHARLESTON DISTRICT
COMMANDER, JACKSONVILLE DISTRICT
COMMANDER, SAVANNAH DISTRICT
COMMANDER, WILMINGTON DISTRICT

Subject: National Marine Fisheries Service, Regional Biological
Opinion on Hopper Dredging along the South Atlantic Coast

1. Reference the Endangered Species Act Section 7 Consultation, Biological Opinion for The Continued Hopper Dredging of Channels and Borrow Areas in the Southeastern United States, National Marine Fisheries Service (NMFS) 25 September 1997 (Encl 1).
2. The referenced document was sent to your District Sea Turtle Coordinator by electronic mail on 29 September 1997, without the signed NMFS transmittal letter. The purpose of this memorandum is to transmit copies of the complete document to you, and to provide some guidance on its implementation.
3. During the spring of 1997 we experienced an unanticipated high level of sea turtle entrainments in our hopper dredges along the Atlantic coast. Within a month of starting work, we were approaching our incidental take limit for loggerheads, despite having taken all sea turtle protection measures we had available to us. Our commitment to protect sea turtles while maintaining safe navigation channels for defense and commerce, forced us to make some very hard choices. The result was that from March until the new Regional Biological Opinion (RBO) went into effect on 1 October 1997, we had taken 29 loggerhead sea turtles, completed work at six projects and terminated the remaining six projects with less than about half of the work being completed. Fortunately we did not take any of the endangered species of sea turtles and we were able to complete most of the critical work, or critical project reaches, during that period.
4. The Corps of Engineers has a commitment to protect sea turtles, as was exemplified by our willingness to terminate Corps projects and the NMFS reciprocated by being very cooperative during the Section 7 Consultation process.

CESAD-ET-PR

29 OCT 1997

Subject: National Marine Fisheries Service, Regional Biological
Opinion on Hopper Dredging along the South Atlantic Coast

We received an Interim Biological Opinion which extended our incidental take of loggerhead sea turtles from 20 to 35, enabling us to resume our necessary hopper dredging after just a brief delay. We must continue to do everything we can to maintain this excellent working relationship with the NMFS.

5. In implementing the new 1997 RBO, we again renew our commitment to maintaining a balance between reducing sea turtle entrainments to the lowest levels we can achieve while performing necessary dredging for navigation. The Hopper Dredging Protocol for Atlantic Coast (Encl 2) is our guidance for helping achieve this objective. The Protocol is a living document and will be revised by CESAD as appropriate. Your input into improving the Protocol is welcomed at any time, as are any suggestions you may have on how we can further reduce sea turtle takes. I also encourage you to share your views and ideas on this through our Internet newsgroup, usace.sad.turtles.

6. Should you have any questions or would like additional information, you may contact John DeVeaux, CESAD-ET-CO, at (404) 331-6742 or Rudy Nyc, CESAD-ET-PR, at (404) 331-4619 or by e-mail which is preferred.

*I know you all are working
this hard... your thoughts/
suggestions are welcome -*

R. L. Vanantwerp
R. L. VANANTWERP
Brigadier General, USA
Commanding

CF (w/encls):
COMMANDER, MOBILE DISTRICT



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, Maryland 20910

SEP 25 1997

R. L. VanAntwerp
Brigadier General, U.S. Army
Division Engineer
South Atlantic Division, Corps of Engineers
Room 313, 77 Forshyth St., S.W.
Atlanta, Georgia 30355-6801

Dear Brigadier General VanAntwerp;

Enclosed is the regional biological opinion concerning the use of hopper dredges in channels and borrow areas along the Southeast U.S. Atlantic coast. This biological opinion amends the regional opinion conducted in 1995, and supersedes the interim biological opinion issued on April 9, 1997. The opinion recognizes the efforts of the Corps of Engineer's (COE) South Atlantic Division (SAD) to minimize sea turtle takes through application of new technology such as draghead deflectors, seasonal dredging windows, termination of projects in which high rates of turtle takes are observed, and elevated staff effort to identify and resolve site-specific problems. Despite these major efforts and continuing plans by the COE to improve the effectiveness of the rigid draghead deflector and to resolve dredging schedules to reduce the likelihood of sea turtle interactions, NMFS believes that further sea turtle takes are likely in future years. However, we believe that these takes are not likely to jeopardize the continued existence of any species. An annual incidental take, by injury or mortality of 35 loggerheads 7 Kemp's ridleys, 7 green turtles, 2 hawksbills, and 5 shortnose sturgeon is listed in the incidental take statement appended to the enclosed opinion. This annual take level can be monitored over fiscal years to be consistent with project contracts.

I appreciate your continued commitment to reduce sea turtle takes associated with dredging in your Division. COE Division and District staff have facilitated the excellent working relationship that exists between our offices within the SAD. We look forward to continuing these cooperative efforts in sea turtle conservation.

Sincerely,

Hilda Diaz-Soltero

Hilda Diaz-Soltero
Office Director
Office of Protected Resources



Endangered Species Act - Section 7 Consultation

Biological Opinion

Agency: U.S. Army Corps of Engineers, South Atlantic Division

Activity: The continued hopper dredging of channels and borrow areas in the southeastern United States

Consultation Conducted By: National Marine Fisheries Service, Southeast Regional Office

Date Issued:

September 25, 1997

Background

Hopper dredging in channels and borrow areas along the southeastern coast of the United States during the spring of 1997 resulted in an unanticipated high rate of loggerhead turtle take. The number of takes quickly approached the incidental take level established in the regional biological opinion (BO) issued to the Army Corps of Engineers (COE) on August 25, 1995. A formal consultation considering the take rates as well as the dredging locations and conditions was conducted and an interim biological opinion (IBO) was issued on April 9, 1997 and is incorporated herein by reference. The IBO concluded that continued hopper dredging during the 1997 fiscal year was likely to take additional sea turtles but was not likely to jeopardize the continued existence of any species. The incidental take, by injury or mortality, of seven (7) documented Kemp's ridleys, seven (7) green turtles, two (2) hawksbills, sixteen (16) loggerhead turtles, and five (5) shortnose sturgeon was set pursuant in the IBO. This modification added 15 loggerheads to the annual incidental take level, bringing the 1997 fiscal year total incidental take level to 35 loggerheads.

The history of Endangered Species Act (ESA) Section 7 consultations on the deployment of hopper dredges to maintain the depths of southeastern channels is discussed in the August 25, 1995 BO and is incorporated herein by reference. Although no endangered sea turtles have been taken in any channel dredging projects during the 1997 fiscal year, 28 loggerheads have been taken, including 9 loggerheads taken subsequent to the issuance of the IBO (Table 1).

During 1997, the COE responded to high rates of sea turtle takes by assessing each dredging project, modifying draghead deflectors when apparently necessary, conducting relative abundance surveys and relocation trawling, and ultimately ending a number of projects prior to completion (Kings Bay, Brunswick Harbor, Savannah Harbor, Morehead City).

1991 Biological Opinion

Two hundred twenty-five sea turtle takes, including 22 live turtles, were documented between 1980 and 1990 in the Southeast channels despite limited observer coverage in most channels throughout most of that decade (Table 2a.). Seventy-one of these turtles were taken in four months of dredging in the Canaveral ship channel in 1980, the first year in which observers were required. Twenty-one were observed in over two years of dredging in the Kings Bay Channel in 1987-1989, after observers were first deployed on dredges in that channel. Observers were required on most hopper dredges after 1989. Documented takes of turtles on dredges in Brunswick and other Southeast U.S. channels indicated that sea turtles were vulnerable to hopper dredges in all southeastern channels during warmer months. These observations resulted in the Section 7 consultation that concluded with a BO issued on November 25, 1991.

The November 1991 BO was the first cumulative area consultation between NMFS and COE's South Atlantic Division (SAD) regarding hopper dredging. The BO considered hopper dredging in channels from the Canaveral in Florida through Oregon Inlet, North Carolina. The 1991 BO concluded that continued unrestricted hopper dredging in Southeast U.S. channels could jeopardize the continued existence of listed sea turtles. The Opinion established a reasonable and prudent alternative to unrestricted hopper dredging which prohibited the use of a hopper dredge in the Canaveral ship channel, and from April 1 through November 30 in other southeastern channels north of Canaveral. An incidental take level was established based on assumptions that takes would be significantly reduced due to limited dredging windows, but that water temperatures in some years would result in turtle presence in channels during December and March. Observers were required on dredges equipped with outflow and/or inflow screening in March and December. The presence or absence of turtles in December would determine the further need for observer coverage into January. The documented incidental take of a total of five (5) Kemp's ridley, green, hawksbill or leatherback turtle mortalities in any combination of which no more than two (2) are Kemp's ridley, or fifty (50) loggerhead turtle mortalities was set. The Opinion anticipated that seasonal restrictions on hopper dredging would be adjusted on a channel-by-channel basis as better information on turtle occurrence was collected.

Additionally, the development and testing of a draghead deflector was promoted.

1995 Biological Opinion

Between 1992 and 1995, only 16 sea turtle takes were documented (Table 2b.), including three that were alive when collected during dredging operations in the SAD under the dredging windows established in the November 1991 BO (see above). During that period COE developed a rigid draghead deflector that appeared to be effective during videotaped dredging trials using mock turtles, as well as during experimental dredging associated with trawling in the Canaveral Channel. COE also completed a study of six Southeast channels to determine seasonal abundance and spatial distribution of these turtles. A discussion of the findings can be found in the COE report entitled "Assessment of Sea Turtle Abundance in Six South Atlantic U.S. Channels" (Dickerson et al. 1994), summarized in the 1995 BO. Based on the new information, COE requested expanded dredging windows and observer requirements. NMFS considered their request and developed alternative dredging windows and observer requirements and added requirements for the use of hopper dredges in borrow areas along the east coast.

After 1995, COE districts within the SAD generally required observers in some channels, such as Kings Bay, throughout the winter, beyond the new monitoring windows. SAD hopper dredge projects were initially conducted in the middle of the dredging windows, when nearshore waters were cool. During 1996, only nine sea turtle takes, including one green turtle and eight loggerheads, were documented (Table 2c.). No more than three takes occurred in any project. The new dredging windows and draghead deflector requirements appeared to provide good protection to sea turtles.

Hopper dredging operations contracted for the 1997 fiscal year were planned for early in the calendar year, however a number of operations were not begun until late winter. Beginning on March 2, 1997, loggerhead takes occurred in Kings Bay at rates higher than previously observed. Six turtles were taken in four days of dredging. While consulting with NMFS regarding this unprecedented rate of loggerhead takes, a COE specialist from the Waterways Experiment Station proposed some modifications to the draghead with the potential to reduce sea turtle takes. Relocation trawling was also initiated, beginning March 9, 1997; however, as can be seen on Table 2, these efforts did not preclude further sea turtle takes in Kings Bay. Dredging was terminated on March 12, 1997, with only 53 percent of the project completed.

Table 1 lists the sea turtle takes observed in hopper dredges throughout the SAD during 1997, as well as the steps taken by COE to reduce the likelihood of takes. Deflector dragheads were re-engineered to fit specific dredges wherever possible and relocation trawling was initiated. Dredging was terminated prior to completion of projects in Kings Bay, Brunswick Harbor, Savannah Harbor and Charleston Harbor. Consultation was reinitiated to consider the effects of the remaining hopper dredging projects anticipated for the 1997 fiscal year. In addition to those specific projects listed in the resulting April 1997 IBO, dredging at Reach II of the Myrtle Beach dredge disposal area is likely to begin before the fiscal year ends. Despite ongoing dredging at the Oregon Inlet, no sea turtle takes have been documented since May 15.

Proposed Activity

This consultation addresses the use of hopper dredges in channels and borrow areas along the Atlantic portion of COE's SAD within the existing dredging windows (Table 3). Channels dredged by hopper dredges include: Oregon Inlet, Morehead and Wilmington Harbors, Charleston, Port Royal and Savannah harbors, Brunswick, Kings Bay, Jacksonville, St. Augustine and Ponce de Leon inlets, West Palm Beach, Miami and Key west channels. Borrow areas that may be dredged by hopper dredges include areas off of Dade County Florida and Myrtle Beach South Carolina.

Draghead deflectors will be used on all projects and observers will be required at least during those periods identified in Table 3. Year-round observer coverage will likely be required by the COE for most channels, particularly those with histories of high sea turtle catch rates such as Kings Bay. Within the South Atlantic Division, the COE will try to schedule dredging of the highest risk areas (Canaveral, Brunswick, Savannah, and Kings Bay) during periods when nearshore waters are coolest -- after December 15 but well before March. Priority for winter dredging will also be given to areas that have substrates that reduce the efficiency of the deflector (Wilmington Harbor channel, Reach 1 of Myrtle Beach). Completion of all projects during the cold-water months will be attempted when possible.

Listed Species and Critical Habitat

Listed species under the jurisdiction of the NMFS that may occur in channels along the southeastern United States and which may be affected by dredging include:

THREATENED:

- (1) the threatened loggerhead turtle - Caretta caretta

ENDANGERED:

- (1) the endangered right whale - Eubalaena glacialis
- (2) the humpback whale - Megaptera novaeangliae
- (3) the endangered/threatened green turtle - Chelonia mydas
- (4) the endangered Kemp's ridley turtle - Lepidochelys kempii
- (5) the endangered hawksbill turtle - Eretmochelys imbricata
- (6) the endangered shortnose sturgeon - Acipenser brevirostrum

Green turtles in U.S. waters are listed as threatened, except for the Florida breeding population which is listed as endangered.

Additional endangered species which are known to occur along the Atlantic coast include the finback (Balaenoptera physalus), the sei (Balaenoptera borealis), and sperm (Physeter macrocephalus) whales and the leatherback sea turtle (Dermochelys coriacea). NMFS has determined that these species are unlikely to be adversely affected by hopper dredging activities.

Information on the biology and distribution of sea turtles can be found in the 1991 and 1995 BOs, which are incorporated by reference. Channel specific information has been collected by COE for channels at Morehead City, Charleston, Savannah, Brunswick, Fernandina and Canaveral, and is presented in detail in COE summary report entitled "Assessment of Sea Turtle Abundance in Six South Atlantic US Channels" (Dickerson et al., 1994) and in the COE Biological Assessment.

There is no significant new information regarding the status of these species that has not been discussed in the BOs that have been incorporated by reference (March 12, 1997 and August 25, 1995).

Assessment of Impacts

The Biological Opinion issued in 1991 contained strict dredging windows that appeared to be very effective at limiting the number of sea turtles taken by hopper dredges during channel maintenance dredging in the Southeast U.S. along the Atlantic coast. Between 1991 and 1995, no more than 8 turtles were taken in any year, and many of those taken were released alive. Studies conducted by the COE (Dickerson et al., 1994) documented turtle distribution and abundance in six channels that suggesting the existing windows were accurate. However, the COE requested expansion of existing windows to lessen the burden of maintenance dredging while testing and further developing a rigid draghead deflector design. The deflector was effective at pushing aside mock turtles when tested during 1994, and preliminary field trials in the Canaveral shipping channel had encouraging results. NMFS considered this new information, presented by the COE in a biological assessment forwarded to NMFS in November 1994. The resulting BO, issued August 25 1995 expanded dredging windows and modified observer requirements.

Only 9 sea turtle takes were documented in 1996, suggesting that the expanded dredging windows and the deflector requirements provided protection to sea turtles that was similar to the previously more-restrictive windows. However, the COE's internal policy resulted in conduct of most of the hopper dredging projects during months when coastal waters were still cold, consistent with the previous dredging. The increased rate of take observed during 1997 and discussed below suggests that the restriction of hopper dredging to months when nearshore waters are cold remains the best method for minimizing sea turtle takes.

Unfortunately, a number of dredging projects contracted for early 1997 in the SAD but not restricted to mid-winter months, were delayed into the Spring. This delay coincided with a unseasonably warm winter, when the waters of Kings Bay reached 60°F in early March. The incidental take of nine loggerheads in Kings Bay over only 11 days of dredging indicated that the nearshore abundance of loggerheads was high, apparently higher than during the late 1980's when observers were first deployed on hopper dredges in Kings Bay.

There were other indicators of high nearshore sea turtle abundance along the Southeast U.S. Atlantic coast during 1997. Commercial shrimp trawling conducted without the use of turtle excluder devices (TEDs) offshore of South Carolina and Georgia between May 15 and July 15 resulted in sea turtle catch rates higher than previously documented. Sixty nine sea turtles were taken in 29 days of shrimping off of South Carolina, including 65 loggerheads, 3 ridleys and 1 leatherback. Forty-six sea turtles were taken in 17 days of towing off of Georgia. The sea turtle catch per unit effort (CPUE) for this operation is about 0.35 turtles per hour of trawling, standardized to 100 feet (30.5 m) of total headrope length fished. The CPUE (same units) for commercial shrimp trawling in the 1970s and 1980s reported by Henwood and Stuntz (1987a) was only 0.0487. Loggerhead turtles were the predominant species reported by Henwood and Stuntz and have also been predominantly observed in this study. They account for most of the increase in overall CPUE. The CPUE for loggerheads alone has been greater than 0.30 turtles per hour, while the value reported in Henwood and Stuntz was 0.0456 turtles per hour. The rates of taking for leatherback and Kemp's ridley turtles in the Atlantic study area have also been higher than anticipated.

The high relative density of sea turtles during 1997 may be due to an unseasonably warm winter or other factors contributing to annual variations in abundance, due to an actual increase in the abundance of benthic immature sea turtles in the loggerhead population, or due to a combination of these factors. Trends in the status of loggerheads are generally identified at the nesting beach, when the most accessible life stage, adult nesting

females, can be counted. Because they mature at 20 to 30 years of age, increases or decreases in the abundance of benthic immature loggerheads as determined by incidental captures in nearshore waters would not be observed for decades. While nesting beach surveys suggest that the South Florida population of loggerheads increased and now appears to be stable, increases have not been apparent on nesting beaches of Georgia and South Carolina. Further work on the development of multi-year in-water sampling sites is needed to identify trends in multiple age-classes of the loggerhead population.

The COE noted that 14 of the 28 takes that occurred during 1997 were on the same dredge, the Eagle. The high rate of takes, particularly on this dredge, suggested that the deflecting draghead was not installed properly or was not being operated properly. Takes occurred in a number of the 1997 dredge projects during clean-up. Ridges left behind after the initial dredging are leveled during clean-up, but the draghead passes over troughs. Takes occurring during clean-up may be difficult to avoid since the draghead deflector must remain hard on the bottom to be effective.

The COE has been conducting meetings between districts within the SAD to discuss the results of assessments of channel conditions and dredge inspections. They have determined that the draghead deflector has not been working properly due to poor education of the dredge operators on its proper use, and due to poor tailoring of the deflector to specific dragheads. Increased efforts to educate dredge operators are planned. Additionally, since fewer than 10 private hopper dredges operate within SAD, engineers that have designed the conceptual deflector will be sent to the dredges to insure that the deflectors are adapted to each draghead and that the operators understand how to use the deflector effectively.

CUMULATIVE EFFECTS

"Cumulative effects" are those effects of future state or private activities, not involving Federal actions, that are reasonably certain to occur within the action area of the Federal action subject to consultation. These are discussed in detail in the biological opinions incorporated by reference.

Conclusion:

NMFS believes that the elevated rate of observed sea turtle takes by dredges in the southeastern United States during March of 1997 was likely due to increased abundance of loggerheads in nearshore waters due to an unseasonably warm winter. There is no way to predict whether similar conditions will be encountered in upcoming seasons. Over the past six years, the COE's SAD has

continuously expressed a commitment to minimize sea turtle takes, and has conducted research and taken repeated steps to further this goal. Repeated termination of dredging operations due to high sea turtle takes during 1997 confirms their commitment to avoid sea turtle takes. Further efforts to educate the dredging industry and recruit their interest and involvement in avoiding sea turtle takes are necessary and are planned by the COE. Additionally, the COE has committed to additional efforts to improve the effectiveness of the deflecting draghead. The sea turtle deflector should be tailored to each hopper dredge draghead and the dredge operators should be fully trained in the operation of the draghead to ensure proper use and improve effectiveness. Improvements in operator and deflector performance are necessary prior to reliance on the draghead as a mechanism for reducing sea turtle takes.

NMFS anticipates that the COE's interest in improving the performance of the deflector, their commitment to limit the use of hopper dredges in channels of high sea turtle abundance during periods when nearshore waters are likely to be cold, and their overall goal of further reducing sea turtle takes during hopper dredge activities will minimize the interactions of hopper dredges with sea turtles. However, annual variation in the abundance of sea turtles in some channels and borrow areas make it likely that sea turtle takes will still occur. Additionally, overall increases in loggerhead and Kemp's ridley populations are anticipated due to TED requirements that have reduced the mortality rates of benthic lifestages of these species. Lastly, in some years high levels of hopper dredging activity may be necessary. For example, termination of projects prior to completion during FY 1997 may result in an increase in the number and length of hopper dredging projects necessary for channel maintenance during FY 1998. Therefore, NMFS believes that up to 35 loggerheads may be taken by injury or mortality, as well as 7 Kemp's ridleys, 7 green turtles, 2 hawksbills, and 5 shortnose sturgeon. These takes are not likely to jeopardize the continued existence of these species and the ongoing commitment by the COE to further minimize takes may reduce the likelihood of sea turtle takes in the future even if nearshore sea turtle abundances increase.

Conservation Recommendations

Pursuant to section 7(a)(1) of the ESA, conservation recommendations are made to assist COE in reducing or eliminating adverse impacts to loggerhead, green, and Kemp's ridley turtles that result from hopper dredging in the southeastern United States. The recommendations made in the 1995 BO are pertinent to this consultation as well, and therefore remain valid. Further recommendations are given below.

- Because of the possibility of annual variation in water temperatures, sea turtle abundance, and hopper dredging demand, NMFS has retained the dredging windows established in the 1995 BO. However, the COE has expressed a commitment to deploy hopper dredges during cold-water periods in channels with high sea turtle abundance or with substrates that render the deflector ineffective. NMFS appreciates the COE's commitment to do this, and recommends that the SAD priority list be finalized and distributed to the Districts and NMFS prior to the initiation of dredging during FY 1998.
- The COE should work with the dredging industry to insure their understanding of the importance of sea turtle conservation and to increase the industry's interest in minimizing sea turtle takes.
- Greater than 50% of the loggerheads taken in North Carolina may be from the northern nesting assemblage of loggerheads. While recent loggerhead nesting beach surveys did not identify a decline in the number of nesting females on beaches north of Cape Canaveral, increases observed in the south Florida nesting assemblage have not been noted. High sea turtle catch rates during only the early weeks of the wood debris clean-up conducted by COE off Cape Fear during 1997, as well as preliminary work conducted in North Carolina, suggest that turtles may be abundant in North Carolina channels primarily during migration into and emigration out of North Carolina inshore waters. The COE should work with the NMFS Beaufort Laboratory and the North Carolina Division of Marine Fisheries to document the movements of sea turtles off North Carolina during spring and fall months. Results from these studies may provide insights into further safe dredging windows to minimize the likelihood of takes of loggerheads from the more vulnerable northern nesting assemblage. Summer windows would reduce the pressure to complete all SAD hopper dredging during cold-water periods.
- The COE should investigate further modifications of the draghead to minimize the need for clean-up. Some method to level the peaks and valleys created by dredging would reduce the amount of time dragheads are removed from the bottom sediments.

Incidental Take Statement

Section 7(b)(4) of the Endangered Species Act (ESA) requires that when a proposed agency action is found to be consistent with section 7(a)(2) of the ESA, and the proposed action may incidentally take individuals of listed species, NMFS will issue a statement that specifies the impact of any incidental taking of endangered or threatened species. It also states that reasonable and prudent measures, and terms and conditions to implement the measures, be provided that are necessary to minimize such impacts. Only incidental taking resulting from the agency action, including incidental takings caused by activities approved by the agency, that are identified in this statement and that comply with the specified reasonable and prudent alternatives, and terms and conditions, are exempt from the takings prohibition of section 9(a), pursuant to section 7 of the ESA.

Based on the high rate of sea turtle takes observed during of 1997, increases in the Kemp's ridley population, possible increases in the benthic lifestages of loggerhead populations, annual variation in nearshore abundance of sea turtles and hopper dredge demands, the NMFS anticipates that hopper dredging in the Southeast U.S. Atlantic area of the SAD may result in the injury or mortality of sea turtles and shortnose sturgeon. Therefore, a low level of incidental take, and terms and conditions necessary to minimize and monitor takes, are established. The annual (by fiscal year) documented incidental take, by injury or mortality, of seven (7) Kemp's ridleys, seven (7) green turtles, two (2) hawksbills, thirty-five (35) loggerhead turtles, and five (5) shortnose sturgeon is set pursuant to section 7(b)(4) of the ESA.

To ensure that the specified levels of take are not exceeded early in any project, COE should reinitiate consultation for any project in which more than one turtle is taken within 24 hours, or once five or more turtles are taken. The Southeast Region, NMFS, will cooperate with COE in the review of such incidents to determine the need for developing further mitigation measures or to terminate the remaining dredging activity.

Section 7(b)(4)(c) of the ESA specifies that in order to provide an incidental take statement for an endangered or threatened species of marine mammal, the taking must be authorized under section 101(a)(5) of the Marine Mammal Protection Act of 1972 (MMPA). Since no incidental take in the Atlantic Region has been authorized under section 101(a)(5) of the MMPA, no statement on incidental take of endangered right whales is provided.

The reasonable and prudent measures that the NMFS believes are necessary to minimize the impact of hopper dredging in channels and borrow areas in the southeastern United States have been

discussed with COE. The following terms and conditions are established, in addition to those identified in the 1995 BO, to implement these measures and to document the incidental take should such take occur.

1. The COE's draghead deflector engineer that assistant in this design design should inspect the rigid draghead deflector annually to ensure that the deflector has been tailored appropriately to each draghead. Additionally, the inspector should assess whether the dredge operator appears to be familiar with the operation of the draghead deflector and provide necessary training where appropriate.

2. If the rigid draghead deflector appears to be ineffective in Wilmington Harbor and slows the dredging project such that the amount of time the hopper dredge will be deployed is increased, the deflector should be removed from the draghead for that channel.

3. The COE should develop an educational/training program for dredge operators to increase their understanding of how the draghead deflector works and why it is necessary.

Table 2a. Sea turtle takes (includes live, injured and killed) observed on hopper dredges prior to the regional consultation. Observers were not required on all projects until 1989, after which extensive monitoring was required.

| Year | Project | Turtle Takes |
|-------------------------|------------|------------------------------|
| 1980 Total = 71 | Canaveral | 50 Cc, 3 Cm, 18 Unidentified |
| 1981 Total = 6 | Canaveral | 3 Cc, 1 Cm, 2 Unidentified |
| 1984/1985 Total = 12 | Canaveral | 1 Cc, 11 Unidentified |
| 1986 Total = 9 | Canaveral | 5 Cc |
| | Kings Bay | 1 Cc, 3 Cm |
| 1987 Total = 5 | Kings Bay | 3 Cc, 1 Cm, 1 Unidentified |
| 1988 Total = 46 | Brunswick | 1 Cc |
| | Canaveral | 13 Cc, 3 Cm, 18 Unidentified |
| | Kings Bay | 6 Cc, 3 Lk, 2 Cm |
| 1989 Total = 21 | Canaveral | 9 Cm, 2 Unidentified |
| | Kings Bay | 8 Cc, 1 Cm |
| | Savannah | 1 Cc |
| 1990 Total = 12 | Canaveral | 3 Cc, 5 Cm |
| | Kings Bay | 4 Cc |
| 1991 Total = 43 | Brunswick | 20 Cc, 1 Lk, 1 Unidentified |
| | Charleston | 3 Cc |
| | Kings Bay | 1 Cc |
| | Savannah | 17 Cc |

Cc = *Caretta caretta*, Loggerhead ; Cm = *Chelonia mydas*, Green turtle; Lk = *Lepidochelys kempi*, Kemp's ridley turtle

Table 2b. Sea turtle takes (includes live, injured and killed) observed on hopper dredges between the November 1991 and the August 1995 Regional Biological Opinion

| Year | Project | Turtle Takes |
|-------------------|----------------|--------------|
| 1992 Total = 2 | Port Royal, SC | 2 Cc |
| 1994 Total = 8 | Canaveral | 1 Cm |
| | Morehead City | 1 Cc |
| | Kings Bay | 2 Cc |
| | Savannah | 3 Cc, 1 Lk |
| 1995 Total = 6 | Canaveral | 1 Cc |
| | Palm Beach | 3 Cc, 2 Cm |

Cc = *Caretta caretta*, Loggerhead ; Cm = *Chelonia mydas*, Green turtle; Lk = *Lepidochelys kempfi*, Kemp's ridley turtle

Table 2c. Sea turtle takes (includes live, injured and killed) observed on hopper dredges after the August 25, 1995 Biological Opinion

| Year | Project | Turtle Takes |
|--------------------|------------------------------------|--------------|
| 1996 Total = 9 | Morehead City Harbor | 1 Cc |
| | Myrtle Beach (Borrow Area Reach I) | 2 Cc |
| | Kings Bay | 1 Cc |
| | Palm Beach | 1 Cc, 1 Cm |
| | Wilmington Harbor | 3 Cc |
| 1997 Total = 28 | Brunswick Harbor | 1 Cc |
| | Charleston Harbor | 5 Cc |
| | Kings Bay | 9 Cc |
| | Morehead City Harbor | 6 Cc |
| | Myrtle Beach (Borrow Area Reach 1) | 3 Cc |
| | Savannah Harbor | 3 Cc |
| | Wilmington Harbor (Ocean Bar) | 1 Cc |

**SOUTH ATLANTIC COAST HOPPER
DREDGING (Calendar Year 97)**

| Project | Dredge Period | Approximate Amount of Work Completed | Turtle Takes | Mitigative Measures Taken | Remarks |
|---------------------------------------|----------------------------|---|---|--|--|
| Kings Bay | 3/1/97 to 3/12/97 | Removed 437,000 out of 821,000 CY Approximately 53% completed. | L 3/2/97 L 3/4/97 L 3/5/97 L 3/6/97 L 3/6/97 L 3/6/97 L 3/8/97 L 3/8/97 L 3/12/97 | Sea turtle deflecting draghead used. Jacksonville Dist. specialist inspected deflector on 3/6/97. Relocation trawling started 3/9/97. Extensive, ongoing consultation with NMFS as takes occurred. All work terminated 3/12/97 due to high take levels even though relocation trawling had become operational. | Water temp. 57 to 58 F. Dredge Eagle 1. Two takes in one batch on 3/6/97 and 3/8/97. Contract required removal of relatively small veneer of material. Most takes occurred through starboard dragarm. Rapidity of takes was a surprise to all concerned. |
| Brunswick Harbor | 2/6/97 to 3/19/97 | Removed 975,400 CY. Work stopped at 50% completion. | L 3/9/97 | Sea turtle deflecting draghead used. Sea turtle abundance, based on visual observations, prompted termination of work because of potential for unacceptable levels of entrainment. | Water temp 63 F. Dredge RN Weeks. Historic abundance of sea turtles and high levels of entrainment in 1991 was part of the reason for termination of work. |
| Savannah Harbor | 3/4/97 to 3/22/97 | Removed about 545,500 CY, or about 52% of what could have been dredged. | L 3/14/97 L 3/22/97 L 3/22/97 | Sea turtle deflecting draghead used. Dredging terminated so as not to take any more sea turtles. | Water temp. 63 F. Numerous sea turtles sighted. Dredge Ouachita was 'skimming' high areas to bring depth to acceptable levels quickly before leaving for urgent work in Mississippi River. |
| Charleston Harbor | 3/14/97 to 3/26/97 | Bid qty 900,000 CY Req. qty 408,000 CY Removed qty 350,000 CY. About 39% completed. | L 3/19/97 L 3/20/97 L 3/21/97 L 3/25/97 L 3/26/97 | WES expert / developer of sea turtle deflecting draghead system, conducted onboard inspection and made recommendations. Some changes to draghead and dredging operation made. Relocation trawling performed. | Water temp. 61 F. Dredge Eagle 1. |
| Myrtle Beach borrow area (Phase 1) | 9/15/96 to 5/13/97 | Bid qty 2.5 million CY. Work completed. | L 4/15/97 L 5/04/97 L 5/09/97 | Sea turtle deflecting draghead used. Relative abundance trawling on 3/28-29/97, with 12 hours of 'nets in water', yielded one loggerhead. Trawling on 5/8 thru 5/13/97 yielded no sea turtles. | This is one of 3 phases / reaches of total project. Part of work in all phases is by pipeline dredge. Total quantity of material to be dredged is about 6 million CY |
| Morehead City Harbor | 4/25/97 to 5/16/97 | About 120,000 CY removed out of about 1,720,000 CY. About 7% of work completed. | L 4/27/97 L 4/30/97 L 5/01/97 L 5/02/97 L 5/15/97 L 5/15/97 | Sea turtle deflecting draghead. Relocation trawling began 5/8/97 and continued until termination of dredging. One loggerhead captured on 5/9/97. Nighttime trawling performed 5/10 & 5/11 with no turtles captured. Because of concern over extensive takes, dredging terminated with only 7 % of work done. | Dredge Manhattan Island |
| Wilmington Harbor (Interior Channels) | 2/14/97 to 3/13/97 | About 217,300 CY removed. Work completed. | No takes | | Dredge McFarland |
| MOTSU | 3/14/97 to 4/3/97 | About 60,000 CY. removed. Work completed. | No takes | | Dredge McFarland |
| Wilmington Harbor (Ocean Bar) | 4/3/97 to 4/30/97 | About 300,000 CY Work completed. | L 4/07/97 | Sea turtle deflecting draghead. | Dredge RN Weeks |
| Oade County Beach (Miami Reach) | 3/30/97 7/20/97 (estimate) | About 380,00 of 475,000 CY completed as of 6/6/97. | No takes | Based on past dredging and anecdotal information about sea turtles in area, takes are not anticipated. | |

L = Loggerhead

CY = Cubic Yards

TABLE 3: Current requirements for dredging windows, observer requirements and use of hopper dredges in borrow areas along the east coast established in the August 1995 BO.

| AREA | WHALE MONITORING | SEA TURTLE MONITORING: NAVIGATION CHANNELS | | SEA TURTLE MONITORING: BORROW AREAS | |
|--|---|--|---|-------------------------------------|--|
| | | WINDOWS | MONITORING | WINDOWS | MONITORING |
| North Carolina to Pawleys Island, SC (includes channels at Oregon Inlet, Morehead City and Wilmington) | One observer (daytime coverage) between 1 Dec and 31 Mar. Monitoring by dredge operator and sea turtle observer between 1 Apr and 30 Nov. | Year Round | Two observers (100% monitoring) 1 Apr - 30 Nov | Year Round | One observer (50% monitoring) 1 Apr - 30 Nov |
| Pawleys Island, SC to Tybee Island, GA (includes channels at Charleston, Port Royal and Savannah) | One observer (daytime coverage) between 1 Dec and 31 Mar. Monitoring by dredge operator and sea turtle observer between 1 Apr and 30 Nov. | 1 Nov - 31 May | Two observers (100% monitoring) 1 Nov - 30 Nov and 1 Apr - 31 May | Year Round | One observer (50% monitoring) 1 Apr - 30 Nov |
| Tybee Island, GA to Titusville, FL (includes channels at Brunswick, Kings Bay, Jacksonville, St. Augustine, and Ponce de Leon Inlet) | Aerial surveys in right whale critical habitat, 1 Dec thru 31 Mar. One observer (daytime coverage) between 1 Dec and 31 Mar. | 1 Dec - 15 Apr | Two observers (100% monitoring) 1 Apr - 15 Apr | Year Round | One observer (50% monitoring) 1 Apr - 15 Dec |
| Titusville, FL to Key West, FL (includes channels at West Palm Beach, Miami and Key West) | Whale observations are not necessary beyond those conducted between monitoring of dredge spoil. | Year Round | Two observers (100% monitoring) year round | Year Round | One observer (50% monitoring) year round |

South Atlantic Division Corps of Engineers
Hopper Dredging Protocol for Atlantic Coast
FY 98 - FY 03

1. Sea turtle deflecting dragheads will be used at all times.
2. Districts will inspect sea turtle deflecting dragheads systems to ensure that they are fully operational, prior to initiation of work.
3. Districts will ensure that draghead operators know how to properly use the sea turtle deflecting system.
4. Maintenance dredging at Savannah, Brunswick and Kings Bay Harbors must be restricted to 15 December through the end of March. Maintenance dredging at Charleston and Wilmington Harbors must be restricted to 1 December through the end of March where the sea turtle deflecting draghead system can not be used effectively. Dredging may begin as soon as mid-November in those portions of the Wilmington and Charleston Harbor channels where the sea turtle deflecting draghead can be used effectively. All Districts will cooperate to ensure that their scheduling of hopper dredging contracts, does not interfere with this Division priority work area.
5. Sea turtle observers, inflow screens and overflow screens will be used during all dredging operations, except for the months of January and February, which are optional. Variations from this provision may be granted by Division, but must be justified from a technical perspective.
6. All sea turtle takes will be reported promptly to SAD-ET-CO/PD and posted at usace.sad.turtle newsgroup on the Internet.
7. If two sea turtle takes occur within 24 hours, you should immediately notify the Division POC so that he can initiate reconsultation with National Marine Fisheries Service.
8. If a third take occurs on the project the district will cease operations and notify the South Atlantic Division. Continuation of dredging will occur only after cleared by Division. Upon taking three turtles, District will develop a risk assessment along with an appropriate risk management plan, and submit that to Division for assessment. Generally relative abundance and relocation trawling would be an integral part of a risk assessment and management plan. Should a total take of 5 sea turtles occur, for whatever reason, all work will be terminated unless other prior agreements had been reached with Division.

9. If a total of two endangered species of sea turtles are taken during a project, work will be suspended until further guidance from Division has been received.

10. Arrangements will be made for appropriate observation of all species of whales. The hopper dredge must not get closer than 750 yards of a right whale. Jacksonville and Savannah Districts will contribute their share of funding for the Right Whale Early Warning System early enough in the year to ensure that this is not a cause for delay in the program.

11. From Jacksonville District north through Wilmington District, sea turtle observers will also be responsible for monitoring takes of shortnose sturgeon. All takes of shortnose sturgeon must be reported to Division. Should a total take of three shortnose sturgeons occur, District will terminate hopper dredging until further guidance has been received from Division.