DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

3-201
(1/97)

FEDERAL FISH AND WILDLIFE PERMIT

2. AUTHORITY-STATUTES
16 USC 1539(a)(1)(B)
REGULATIONS (Attached)
50 CFR §§ 13 & 17

3. NUMBER
TE083411-0

4. RENEWABLE	5. MAY COPY
[X] YES	[X] YES
[ ] NO	[ ] NO

6. EFFECTIVE	7. EXPIRES
6/9/2006	6/30/2023

1. PERMITTEES
MONROE COUNTY, GROWTH MANAGEMENT DIVISION
2798 OVERSEAS HIGHWAY, SUITE 410
MARATHON, FLORIDA 33050
TELEPHONE: 305/289-2517
FACSIMILE: 305/289-2536

FLORIDA DEPARTMENT OF TRANSPORTATION
1000 NW 111th AVENUE, ROOM 6103
MIAMI, FLORIDA 33172

FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS
2555 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-2100

8. NAME AND TITLE OF PRINCIPAL OFFICER (If #1 is a business)

9. TYPE OF PERMIT
THREATENED AND ENDANGERED SPECIES – INCIDENTAL TAKE

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED
BIG PINE KEY, NO NAME KEY, AND ADJACENT ISLETS AS SHOWN IN FIGURE 1.1 OF THE PERMITTEES' HABITAT CONSERVATION PLAN, PART OF THE FLORIDA KEYS, MONROE COUNTY, FLORIDA.

11. CONDITIONS AND AUTHORIZATIONS:

A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.

B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.

C. VALID FOR USE BY PERMITTEE NAMED ABOVE, AND AUTHORIZED AGENTS.

D. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEES AND ITS AUTHORIZED AGENTS UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS PERMIT AND ALL SECTIONS OF TITLE 50 CODE OF FEDERAL REGULATIONS, PARTS 13 AND 17, PERTINENT TO ISSUED PERMITS. SECTION 11 OF THE ENDANGERED SPECIES ACT OF 1973, AS AMENDED, PROVIDES FOR CIVIL AND CRIMINAL PENALTIES FOR FAILURE TO COMPLY WITH PERMIT CONDITIONS.

XX BLOCK 11 OF THIS PERMIT CONTAINS CONDITIONS A THROUGH N (10 PAGES TOTAL).

12. REPORTING REQUIREMENTS
REPORTS WILL BE PROVIDED TO THE U.S. FISH AND WILDLIFE SERVICE OFFICES APPEARING IN CONDITIONS 11.M AND 11.N OF THIS PERMIT.

ISSUED BY	TITLE	DATE
[signature]	DEPUTY REGIONAL DIRECTOR, FWS, SOUTHEAST REGION	6/9/06

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Telephone: 305/289-2517,
Florida Department of Transportation, and
Florida Department of Community Affairs
TE083411-0

Block 11:

E. The Permittees have defined the geographic area (Plan Area) covered by their April 2006 Habitat Conservation Plan (HCP) to include Big Pine Key and No Name Key and surrounding small unnamed keys in Monroe County (County), Florida.

Status surveys and annual monitoring indicate that the Plan Area provides breeding, feeding, and sheltering habitat for the Florida Key deer, *Odocoileus virginianus clavium*, and Lower Keys marsh rabbit, *Sylvilagus palustris hefneri*; and potential habitat for the eastern indigo snake *Drymarchon corais couperi*: the "covered species."

F. Subject to the continuing validity of this Permit, the Permittees, and their designated agents, successors, and assigns, are authorized to take, in the form of harassment, harm, or mortality, the covered species incidental to all commercial, institutional, and residential development set forth in the Permittees' HCP and as authorized by this Permit when conducted in conformance with the terms and conditions of this Permit. This permit does not authorize take of any covered species resulting from unlawful activities.

This Permit is based upon the Permittees' expected compliance with the provisions and commitments established in the HCP and the Permit's stated terms and conditions identified herein. Where a conflict occurs between the HCP and this Permit, the Permit shall control.

G. The Permittees shall employ the following measures to ensure that take of the covered species is minimized and mitigated. The Permittees are responsible for meeting the terms and conditions of the ITP and implementing the HCP.

1. The total impact of commercial, institutional, and residential development over the 20 year life of the HCP shall not exceed "H" = 1.1.

2. For each "H" value unit of development, three "H" units of conservation lands shall be acquired, restored, and protected in perpetuity. Over the term of this Permit, lands with a cumulative "H" value of 3.3 shall be acquired. The acquisition of mitigation lands may lag behind that required by the cumulative "H" value of development by no more than 5 percent at any time.

3. New residential development will be limited to a maximum of 200 dwelling units over the 20 year life of the HCP.

Continued...

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2798 Overseas Highway, Suite 410
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Telephone: 305/289-2517,
Florida Department of Transportation, and
Florida Department of Community Affairs

TE083411-0

Block 11:

G. (Continued).

4. Clearing of native habitat will be limited to parcels to be developed for residential use or for local road widening. The total amount of clearing over the 20 year life of the HCP will be limited to no more than 7 acres. No clearing of native habitat, other than that necessary and authorized for new residential development, local road widening, or fire breaks to protect residential areas will be allowed. All other development will occur on disturbed lands.

5. New residential development in Tier 1 (Tiers defined in HCP, Table 2.7) areas will be limited to no more than five percent of all residential units permitted over the 20-year life of the HCP (i.e., a maximum of 10 units) or a total H = 0.022 (two percent of the total H), whichever results in a lower H.

6. No new development other than single-family residential and accessory uses will be permitted in Tier 1 areas. The total H of all development in Tier 1 will not exceed H = 0.022.

7. No development will be permitted which may result in habitat loss on the Sands corridor, as shown in HCP Figure 5.2.

8. New residential and commercial development will occur progressively over the 20 year life of the HCP, thus minimizing the extent of construction impacts that occur at any given time.

9. New commercial development will be limited to infill in existing commercial areas on Tier 2 and Tier 3 lands, mainly along the US-1 corridor on Big Pine Key. This includes all current commercially zoned areas south of Lytton's Way. All new commercial development would be limited to disturbed lands, as defined in the County Code (9.5-4 [D-14][S-2]). Clearing of pinelands and/or hammock will not be permitted for commercial development activities.

10. Expansion of private non-residential facilities will be restricted primarily to within the US-1 corridor, as described in 11.G.9 above.

11. The modified Rate of Growth Ordinance will continue to give new development priority to Tier 3 lands over Tier 2 and Tier 1 lands.

12. New recreational and community facilities development would be restricted to existing developed areas that are either already publicly owned or acquired for that purpose.

Continued...

Monroe County, Growth Management Division
2798 Overseas Highway, Suite 410
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Telephone: 305/289-2517,
Florida Department of Transportation, and
Florida Department of Community Affairs

TE083411-0

Block 11:

G. (Continued).

13. Minor recreational and community facilities will be restricted to areas within existing improved subdivisions.

14. Community organizations' development will be restricted to expansions, on existing organization-owned land, up to the buildable area limits per the County Code. No clearing of native habitat will be permitted for these expansions.

15. Speed limits, traffic calming devices, and other measures will be applied to lower the probability of vehicle collisions with Key deer and Lower Keys marsh rabbit on County roads.

16. Public infrastructure development will be restricted to disturbed lands as defined in the County Code (9.5-4 [D-14][S-2]).

17. No new fences will be allowed in Tier 1 lands, unless they are authorized by the U.S. Fish and Wildlife Service (Service). The Service will review applications for fences in Tier 1 for impacts on covered species.

18. No additional fences will be allowed in the US-1 commercial corridor.

19. Fences will be subject to restrictions and guidelines established in agreement with the Service. All fencing will follow the guidelines in HCP Appendix C.

20. No development will be allowed in Lower Keys marsh rabbit habitat. No residential or commercial development will be allowed within 500 meters of marsh rabbit habitat, with the exception of isolated areas (i.e., the green hatched areas on HCP Figure 2.2). Road widening activities along US-1 will occur within existing cleared and filled portions of the FDOT right-of-way.

21. Florida Department of Transportation will avoid impacts to wetlands during US-1 widening.

22. Accessory uses will be permitted on lots adjacent to existing developed lots only in Tier 2 and Tier 3 lands. Residential accessory uses will be limited to those listed in the County Code (Chapter 9.5-4 [A-2]).

23. The County will implement an animal control education program to educate the public regarding the potential negative effect of domestic predators on the Key deer and Lower Keys marsh rabbit. The education program will also request that the public report any Lower Keys marsh rabbit road mortality to the County or the Service.

Continued...

Monroe County, Growth Management Division
2798 Overseas Highway, Suite 410
Marathon, Florida 33050
Telephone: 305/289-2517,
Florida Department of Transportation, and
Florida Department of Community Affairs
TE083411-0

Block 11:

G. (Continued).

24. The County and Service will annually review and evaluate the need and feasibility of additional regulatory measures to control the spread of domestic predators. A substantial decline in the Lower Keys marsh rabbit population will be considered a changed circumstance. If deemed necessary and feasible, measures will be enacted at a date to be determined through mutual agreement.

25. The County will ensure that standard protection measures for the eastern indigo snake will be implemented during all construction activities to minimize impacts to eastern indigo snakes.

H. Unforeseen and/or changed circumstances may become apparent either to the Permittees, authorized agents, or to personnel of the U.S. Fish and Wildlife Service. For purposes of implementation of this condition, unforeseen circumstances are defined as changes in circumstances affecting a species or geographic area covered by the HCP that could not reasonably have been anticipated by the HCP developers and the U.S. Fish and Wildlife Service at the time of the HCP's negotiation and development, and that result in a substantial and adverse change in the status of the covered species. Changed circumstances are defined as changes in circumstances affecting a species or geographic area covered by the HCP that can reasonably be anticipated by HCP developers and the U.S. Fish and Wildlife Service, and that can be planned for.

The Permittees and the U.S. Fish and Wildlife Service acknowledge that even with the above detailed provisions for mitigating and/or minimizing impacts, circumstances could arise which were not fully anticipated by this Permit and which are considered unforeseen. Such circumstances may become apparent either to the Permittees or to personnel of the U.S. Fish and Wildlife Service. For purposes of implementation of this condition, unforeseen circumstances are defined as any significant, unanticipated adverse change in the status of species; any significant, unanticipated adverse change in impacts of the Activity or in other factors upon which the HCP and Permit are based; or any other significant new information relevant to the Permit and Activity that was unforeseen by the Permittees and the U.S. Fish and Wildlife Service that could give rise to the need to review the Permittees' conservation program.

If, during the implementation of the HCP and adherence to this Permit, a significant unanticipated situation occurs that would have a serious effect on species covered by this Permit or the ability of the Permittees to continue the

Continued...

Monroe County, Growth Management Division
2798 Overseas Highway, Suite 410
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Telephone: 305/289-2517,
Florida Department of Transportation, and
Florida Department of Community Affairs

TE083411-0

Block 11:

H. (Continued).

effective implementation of the HCP and/or adherence to this Permit, the Permittees shall undertake actions described in Section 5.7 (Unforeseen Circumstances) of the HCP.

I. The Permittees and the U.S. Fish and Wildlife Service agree that modification and amendments to the Permittees' HCP and this Permit may occur through its effective term. The following procedures shall govern the modification and amendment process:

1. Any of the Permittees or the U.S. Fish and Wildlife Service may propose modifications and/or amendments to the HCP or this Permit by providing written notice. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations under the HCP and on the covered species. The U.S. Fish and Wildlife Service or the Permittees will use best efforts to respond to a proposed modification or amendment within sixty (60) days of receipt of such notice. Absent any objection from the U.S. Fish and Wildlife Service or any Permittee, and provided such proposed modification or amendment does not fall within the limits of Condition 11.I.2, the proposed modification and/or amendment will be determined as minor and shall become effective upon written concurrence by the U.S. Fish and Wildlife Service or all of the Permittees. If the Service determines that a proposed modification or amendment would exceed the limits of Condition 11.I.2, such proposed modification or amendment must be processed in accordance with Condition 11.I.3.

2. The U.S. Fish and Wildlife Service will not propose or approve minor modifications or amendments to the HCP or this Permit if the U.S. Fish and Wildlife Service determines that such modifications or amendments would result in operations under the HCP and Permit that are significantly different from those analyzed in connection with the HCP, in adverse effects on the environment that are new or significantly different from those analyzed in connection with the HCP, or in additional take of the covered species not analyzed in connection with the HCP.

3. Any amendment or modification shall conform with all applicable legal requirements, including but not limited to the Endangered Species Act, the National Environmental Policy Act, and the U.S. Fish and Wildlife Service's permit regulations at 50 C.F.R. §13 and §17.

Continued...

Monroe County, Growth Management Division
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Florida Department of Transportation, and
Florida Department of Community Affairs
TE083411-0

Block 11:

J. The Permit and HCP will be reviewed formally by the Permittees and the Service annually. A meeting between the Permittees and Service will be scheduled within 60 days of annual report submittal to review the progress of Permit and HCP implementation and discuss any problems. Intermediate reviews may be conducted informally any time when either the Service or the Permittees find it necessary.

K. By March 31 of each year this Permit is in effect, the Permittees shall submit an annual report to the U.S. Fish and Wildlife Service and other offices listed in Conditions 11.M and N. The annual report shall describe implementation of the terms of this Permit and HCP. The Permittees shall identify non-compliance and measures employed to resolve such non-compliance. The annual report shall also include the following certification from a responsible official who supervised or directed the preparation of the report:

> Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

The annual report also shall address the following:

1. Results of the Key deer census, including the calculation of the average number of deer seen.

2. A summary of Key deer mortality information, including the calculation of the number of human-related deaths. Human-related deaths include those due to road kills, entanglement, attacks from domestic predators, and poaching.

3. A discussion and interpretation of mortality data.

4. A summary discussing habitat management activities for County mitigation lands.

5. An assessment of whether the ratio of the number of human-related deaths to average deer seen remains below 1.53.

6. A compilation (in acres) of annual impacts to the 500-meter wetland buffer areas identified as important for Lower Keys marsh rabbit.

7. The cumulative impacts of all development projects affecting buffers since

Continued...

Monroe County, Growth Management Division
2798 Overseas Highway, Suite 410
Marathon, Florida 33050
Telephone: 305/289-2517,
Florida Department of Transportation, and
Florida Department of Community Affairs
TE083411-0

Block 11:

K. 7. (Continued).

permit issuance for Lower Keys marsh rabbit.

8. A summary of reported Lower Keys marsh rabbit road mortality.

9. A compilation and report of entire project area impacts (in acres) to document possible effects on eastern indigo snakes.

10. A list and map of development activities approved and completed.

11. The "H" value associated with each activity and the total "H" value of all activities for the year.

12. The cumulative "H" value of all development since permit issuance.

13. A discussion of any observations of covered species made during construction monitoring of county facilities and road expansion activities.

14. A list and map of parcels acquired as mitigation in the reporting year.

15. The "H" value for each parcel and the total "H" value of parcels acquired as mitigation during the reporting period.

16. The cumulative "H" value of all land parcels acquired as mitigation since permit issuance.

17. A discussion of management activities conducted on mitigation parcels during the reporting year.

18. An assessment of the status of all mitigation parcels, addressing the extent of invasion by exotic species, trash disposal, and other potential human-related impacts.

19. A monitoring report documenting compliance with the exotic/nuisance plant control program on County mitigation lands demonstrating no more than 20 percent aerial coverage of nuisance and 10 percent aerial coverage of invasive species identified by Florida Exotic Pest Plant Council.

20. A statement confirming that mitigation has occurred so as to maintain a three to one ratio with respect to development activities and demonstrating

Continued...

Monroe County, Growth Management Division
2798 Overseas Highway, Suite 410
Marathon, Florida 33050
Telephone: 305/289-2517,
Florida Department of Transportation, and
Florida Department of Community Affairs
TE083411-0

Block 11:

K. 20. (Continued).

that the cumulative "H" value of lands acquired as mitigation does not lag any more than 5 percent behind what is necessary to fully mitigate the cumulative "H" value of impacts authorized through the reporting period.

21. Any other pertinent information relative to the implementation of the HCP.

L. Upon locating a dead, injured, or sick specimen of any covered species or any other threatened or endangered species whose death, injury, or illness is causally related to the activities authorized by this Permit, initial notification must be made immediately to the U.S. Fish and Wildlife Service Law Enforcement Office, 10426 NW 31st Terrace, Miami, Florida 33172 (305/526-2610). Notification should also be made, by the next work day, to the contact office of the U.S. Fish and Wildlife Service noted in Condition 11.M. Care should be taken in handling sick, injured, or dead specimens to ensure effective treatment or to preserve biological materials for later analysis. In conjunction with the care of sick or injured threatened or endangered species or preservation of biological materials from a dead animal, the finder should take responsible steps to ensure that the site is not unnecessarily disturbed.

M. For purposes of monitoring compliance of the terms and conditions of this Permit, including review of annual reports, and coordination on unforeseen circumstances, the contact, address, and telephone number of the local U.S. Fish and Wildlife Service office is:

U.S. Fish and Wildlife Service
Attn: HCP Program
1339 20th Street
Vero Beach, Florida 32960-3559
Telephone: 772/562-3909
Facsimile: 772/562-4288.

Continued...

Monroe County, Growth Management Division
2798 Overseas Highway, Suite 410
Marathon, Florida 33050
Telephone: 305/289-2517,
Florida Department of Transportation, and
Florida Department of Community Affairs
TE083411-0

Block 11:

N. Copies of annual reports and any other documentation submitted in response to the operation and management of this Permit shall also be provided to:

U.S. Fish and Wildlife Service
HCP Coordinator
1875 Century Boulevard, Suite 200
Atlanta, Georgia 30345
Telephone: 404/679-7313
Facsimile: 404/679-7081

END