

B R I E F I N G D O C U M E N T

**SUMMARY DOCUMENT:
CHAPTER 161 FLORIDA
STATUTES FOR THE FLORIDA
BEACHES HABITAT
CONSERVATION PLAN (HCP)
VERSION 1, REVISION 1**

Prepared for

Florida Department of Environmental Protection -
Bureau of Beaches and Coastal Systems
Florida Fish & Wildlife Conservation Commission

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This document is part of a series prepared in support of the Florida Beaches Habitat Conservation Plan (FBHCP) Section 6 ESA Grant. These resource documents are intended to provide background information about subjects integral to the development of the FBHCP, including an understanding of the Federal Incidental Take Permitting (ITP) process, the key elements of the Florida Department of Environmental Protection Bureau of Beaches and Coastal System's Coastal Construction Control Line (CCCL) permitting program and general approaches to HCP development derived from several other existing large-scale HCP/ITP programs. This document set is intended to provide project teams, which include the Project Steering Committee, the Project Work Group and the various support committees (e.g., Science Committee), with a common set of background information necessary to make informed decisions and recommendations about the project.

These documents function as a related set, meaning that each contains only a portion of the information necessary to understand the overall nature of the program. They are also presented as evolving documents with the potential for revisions and updates. To help organize track revisions, each document is provided with a version and revision number. Changes in the revision number represent minor modifications while changes in the version number represent significant changes in the content or organization of each document. Executive summaries are included in each report. Related visual presentations (PowerPoint Presentations) are also available. The list of documents given below will expand in time. An up-to-date list is available at <http://flbeacheshcp.com/Documents.aspx>.

LIST OF DOCUMENTS:

Briefing Documents:

The CCCL Program for the Florida Beaches Habitat Conservation Plan, vers.1 rev. 1.

Chapter 161 Florida Statutes for the Florida Beaches Habitat Conservation Plan, vers.1 rev. 1.

Overview of Habitat Conservation Plans for the Florida Beaches Habitat Conservation Plan, vers.1 rev. 1.

Implementation of the Florida Beaches Habitat Conservation Plan, vers.1 rev. 1

The Endangered Species Act for the Florida Beaches Habitat Conservation Plan, vers. 1 rev. 1.

Resource Documents:

Preliminary List of Data Sources for Best Management Plans for the Florida Beaches Habitat Conservation Plan, vers.1 rev. 1.

Florida Beaches Habitat Conservation Plan Framework Document, vers.1 rev. 1.

Preliminary List of Data Sources for the Florida Beaches Habitat Conservation Plan, vers.1 rev. 1.

List of Acronyms

Acronym	Definition of Acronym
BBCS	Bureau of Beaches and Coastal Systems
BECF	Beach Erosion Control Program
CCCL	Coastal Construction Control Line
FDACS	Florida Department of Agriculture and Consumer Services
FDEP	Florida Department of Environmental Protection
FOCC	Florida Oceans and Coastal Council
FS	Florida Statutes
FWC	Florida Fish and Wildlife Conservation Commission
HCP	Habitat Conservation Plan
JCP	Joint Coastal Permit
V-zone	Velocity Zone

The objective of this document is to provide an overview of Parts I, II, III and IV of Chapter 161 of the Florida Statutes (F.S.) These four parts of Chapter 161, F.S. are collectively referred to as “Beach and Shore Preservation Act.”

1. **Part I - Regulation of Construction, Reconstruction and Other Physical Activity:** Provides the statutory authority for three programs within the Bureau of Beaches and Coastal Systems at the Florida Department of Environmental Protection. These programs are the Beach Erosion Control Program, the Coastal Construction Control Line (CCCL) Program, and the Environmental Permitting Program.
2. **Part II - Beach and Shore Preservation Districts:** Empowers local governments to protect the beach and dune system, and details the authority of the Board of County Commissioners as the county beach and shore preservation authority.
3. **Part III - Coastal Zone Protection:** Establishes the Coastal Building Zone, which regulates construction landward of the Coastal Construction Control Line. Part III also regulates vehicular traffic on the beach and dunes or native stabilizing vegetation of the dune system.
4. **Part IV – Oceans and Coastal Resources Act:** Establishes the Florida Oceans and Coastal Council with a goal of maximizing the protection and conservation of ocean and coastal resources.

Chapter 161, F.S. was established because the Florida Legislature recognizes that Florida’s beaches and coastal barrier dunes represent one of the most valuable natural resources of the state by providing the following:

- Protection to upland properties from storm damage
- Recreation for Florida’s residents and visitors
- Habitat for wildlife

Therefore, the Florida Legislature recognizes that it is in the public’s best interest to preserve and protect the beaches and dunes from imprudent construction.

Content contained within all four parts of Chapter 161, F.S. relates to the proposed Florida Beaches Habitat Conservation Plan (HCP). Part I is relevant because it is the statutory authority of the CCCL Program. Part II relates because it empowers local governments to protect their beach and dune system, and the goal is to have the Florida Beaches HCP accepted by relevant local governments (i.e. counties). Part III is important because it regulates activities landward of the CCCL, which may be relevant to the HCP with regards to critical habitat designations. Finally, Part IV relates to the proposed Florida Beaches HCP because it establishes the Florida Oceans and Coastal Council, which is required to develop a “Research Plan” that may include information in regards to coastal habitat and coastal activities addressed by the HCP.

This Interim Report provides an overview of Chapter 161, Florida Statutes (F.S.) Parts I, II, III and IV and discusses how it relates to the proposed Florida Beaches Habitat Conservation Plan (HCP).

This document is organized into the following sections:

- **Section 1** – Introduction
- **Section 2** – Legislative Intent
- **Section 3** – Part I – Regulation of Construction, Reconstruction, and Other Physical Activity
- **Section 4** – Part II – Beach and Shore Preservation Districts
- **Section 5** – Part III – Coastal Zone Protection
- **Section 6** – Part IV – Oceans and Coastal Resources Act
- **Section 7** – Chapter 161, F.S. and How it Relates to the Proposed Florida HCP
- **Section 8** - Summary

The purpose of **Sections 2** through **6** is to provide a general overview of the four components (or parts) of Chapter 161, F.S. **Section 7** then discusses how Chapter 161 relates to the future, proposed Florida Beaches HCP.

The Florida Legislature has determined that Florida's beaches and coastal barrier dunes are one of the state's most valuable natural resources. The beaches and dune systems provide wildlife habitat and recreational benefits, and provide protection to upland properties from storm damage. Due to these factors and others, it is in the public's best interest to preserve and protect the beaches from imprudent construction that can have one of more of the following effects:

- Jeopardize the stability of the beach and dune system
- Accelerate erosion
- Provide inadequate protection to upland structures
- Endanger adjacent properties
- Interfere with beach access

SECTION THREE **Regulation Of Construction, Reconstruction, and Other Physical Activity**

Part I of Chapter 161, F.S. provides the statutory authority for the following three state programs overseen by the Florida Department of Environmental Protection (FDEP) Bureau of Beaches and Coastal Systems (BBCS):

1. Beach Erosion Control Program (BECP)
2. Coastal Construction Control Line (CCCL) Program
3. Environmental Permitting Program

The following three subsections briefly summarize each of these programs.

3.1 BEACH EROSION CONTROL PROGRAM

The Beach Erosion Control Program (BECP) is a financial and technical assistance program established for the purpose of working in concert with local, state and federal governmental entities, with the goal of achieving protection, preservation and restoration of Florida’s sandy beaches. The BECP was established to develop and implement the long-range, statewide beach management plan along Florida’s critically eroded beaches¹.

Under the BECP, financial assistance is available to local governments in an amount up to 50 percent of the non-federal project costs. The actual percentage of state cost share is based on “eligibility,” which takes into account public beach access, public parking and public lodging. For an activity to be eligible for funding, it must be in an area of critically eroded beach (as designated by BBCS), fronting the Gulf of Mexico, Atlantic Ocean or Straits of Florida. Examples of activities eligible for beach funding include the following:

- **Beach restoration** – could include beach restoration and nourishment, environmental studies, project design and engineering studies, shoreline and environmental monitoring, and marine habitat mitigation.
- **Inlet management** – could include inlet planning and management activities to facilitate sand bypassing (note: activities related to navigation are generally not eligible for funding under the BECP).
- **Dune protection** – examples include dune restoration, dune planting, construction of dune walkovers, and removal of exotic vegetation.
- **Structural and miscellaneous** – includes the design and construction of terminal groins, breakwaters, or other structures to enhance beach nourishment project longevity or bypassing performance.

3.2 COASTAL CONSTRUCTION CONTROL LINE

The purpose of the CCCL Program is to preserve and protect the state’s beaches from imprudent construction that can jeopardize stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public

¹ A critically eroded area is defined as a segment of shoreline where natural processes or human activity has caused or contributed to erosion and recession of the beach or dune system to a degree that upland development, recreational interests, wildlife habitat or important cultural resources are threatened or lost.

SECTION THREE Regulation Of Construction, Reconstruction, and Other Physical Activity

beach access. Coastal construction control lines are to be established on a county basis along the sandy beaches of the state fronting on the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida.

The control line is established to demark the area of the beach and dune system that is expected to be subject to severe fluctuation from a 100-year storm. The control line also represents the landward limits of the BBCS's coastal construction regulatory authority. This line varies across the state in distance landward from the mean high water line, ranging from approximately 200 feet in a portion of Florida's east coast to over 1,000 feet in a part of Florida's west coast.

Activities regulated by the CCCL Program can include everything from large multi-family developments to dune walkover structures.

The CCCL Program and its relation to the proposed Florida Beaches HCP, is detailed in a separate, interim summary/briefing document.

3.3 ENVIRONMENTAL PERMITTING PROGRAM

The Environmental Permitting Section of the BBCS evaluates beach projects to ensure that they are designed to avoid or minimize adverse impacts to the coastal system and are consistent with the laws of Florida. The Environmental Permitting Section is also responsible for administering the Joint Coastal Permit Program.

Joint Coastal Permits

The Joint Coastal Permit (JCP) Program was started in 1995, in an effort to consolidate the Environmental Resource Permit Program² with the Coastal Construction Permit Program. Prior to 1995, these permits were regulated under two different programs. The consolidation of the two programs allows for more efficient and uniform resolution of the permits and also allows for concurrent processing of applications for submerged lands authorizations.

A JCP is required for activities that meet all of the following criteria:

- Activity is located on a natural sandy beach of Florida, facing the Atlantic Ocean, the Gulf of Mexico, the straits of Florida or associated inlets.
- Activity extends seaward of the mean high water line.
- Activity extends into the sovereign submerged lands.
- Activity is likely to affect the distribution of sand along the beach.

Examples of activities that require a JCP include the following:

- Beach restoration and nourishment
- Construction of erosion control structures such as groins and breakwaters
- Public fishing piers
- Maintenance of inlets and inlet-related structures

² The Environmental Resource Permit is known as the Wetland Resource Permit in the Florida Panhandle region.

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Regulation Of Construction, Reconstruction, and Other Physical Activity

- Dredging of navigation channels that include disposal of dredged material onto the beach or in the nearshore area.

Whereas Part I of Chapter 161, F.S. provides the state’s regulatory authority to protect the beach and dune system, Part II empowers the local government (i.e. county) to set up a beach and shore preservation program and fund the local match of the project costs. As stated in Section 3.1 of the BECP, the state (FDEP) will pay up to 50 percent of non-federal project costs; therefore, the local government is responsible for the remaining project costs (local match).

Chapter 161, F.S., Part II establishes the Board of County Commissioners as the county beach and shore preservation authority. This part of Chapter 161, F.S. basically states that the board has the authority to utilize available county funds, assemble teams of professionals, and contract work or hire new employees to help assemble a suitable program for comprehensive beach and shore preservation within the county. The board is required to conduct an economic analysis of the proposed program to determine the nature and extent of the potential benefits. Once work and/or construction activities begin, the board also has the authority to regulate and supervise all the work or activity.

A summary of the roles of local governments and county regulations pertaining to beach and shore preservation is detailed in a separate, interim summary/briefing document.

In recognition of all the important roles that Florida's coastal areas play, the legislative intent of Chapter 161, F.S., Part III is to manage the most sensitive portions of the state's coastal area through the imposition of strict construction standards in order to minimize damage to the natural environment, private property, and life.

In particular, Part III discusses the "Coastal Building Zone," which extends landward of the coastal construction control line and is therefore outside the jurisdiction of FDEP (landward of the coastal construction control line). This Coastal Building Zone extends landward of the coastal construction control line 1,500 feet, and activities conducted within this zone are within the jurisdiction of the local government. The requirements for activities or construction within the coastal building zone began in 1986. The following items are included in Section 161.55, F.S., and are minimum standards for construction within the coastal building zone:

1. **Regulation of coastal minor structures** – Minor structures shall be designed to produce the minimum adverse impact on the beach and the dune system and adjacent properties and to reduce the potential for water or wind blown material. Construction of a rigid coastal or shore protection structure designed primarily to protect a minor structure shall not be permitted.
2. **Regulation of Coastal Non-Habitable Major Structures** – Non-habitable major structures shall be designed to produce the minimum adverse impact on the beach and dune system. All sewage treatment plants and water supply systems shall be flood proof to prevent infiltration of surface water from a 100-year storm event. Underground utilities, excluding pad transformers and vaults, shall be flood proofed to prevent infiltration of surface water from a 100-year storm event or shall otherwise be designed so as to function when submerged by such storm event.
3. **Location of Construction** – Construction, except for elevated walkways, lifeguard support stands, piers, beach access ramps, gazebos, and coastal or shore protection structures, shall be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability.
4. **Application to Coastal Barrier Islands** – All requirements of this part which are applicable to the coastal building zone shall also apply to coastal barrier islands. The coastal building zone on coastal barrier islands shall be the land area from the seasonal high-water line to a line 5,000 feet landward from the coastal construction control line established pursuant to s. 161.053, or the entire island, whichever is less. For coastal barrier islands on which a coastal construction control line has not been established pursuant to s. 161.053, the coastal building zone shall be the land area seaward of the most landward velocity zone (V-zone) boundary line fronting upon the Gulf of Mexico, Atlantic Ocean, Florida Bay, or Straits of Florida. All land area in the Florida Keys located within Monroe County shall be included in the coastal building zone. The coastal building zone on any coastal barrier island between Sebastian Inlet and Fort Pierce Inlet may be reduced in size upon approval of the Land and Water Adjudicatory Commission, if it determines that the local government with jurisdiction has provided adequate protection for the barrier island. In no case, however, shall the coastal building zone be reduced to an area less than a line 2,500 feet landward of the coastal construction control line. The Land and Water Adjudicatory Commission shall withdraw its approval for a reduced coastal building zone if it determines that 6 months after a local government comprehensive plan is due for submission to the state land planning agency

pursuant to s. 163.3167, the local government with jurisdiction has not adopted a coastal management element which is in compliance with s. 163.3178.

5. **Public Access** – Where the public has established an accessway through private lands to lands seaward of the mean high tide or water line by prescription, prescriptive easement, or in other legal means, development or construction shall not interfere with such right of public access unless a comparable alternative accessway is provided. The developer shall have the right to improve, consolidate, or relocate such public accessways so long as the accessways provided by the developer are:

- Of substantially similar quality and convenience to the public,
- Approved by the local government,
- Approved by the Department whenever improvements are involved seaward of the coastal construction control line, and
- Consistent with the coastal management element of the local comprehensive plan adopted pursuant to s. 163.3178.

It should be noted that the building code requirements for activities in the Coastal Building Zone were superseded by the New Florida Building Code in March 2002. Therefore, for regulations affecting activities under this portion of Chapter 161, F.S., Part III, the Florida Building Code should be referenced.

Vehicular Traffic on Coastal Beaches

Chapter 161, F.S., Part III also regulates vehicular traffic on coastal beaches. The following items from Section 161.58 pertain to vehicular traffic on the beach, dunes, or native stabilizing vegetation of the dune system:

1. Vehicular traffic, except that which is necessary for cleanup, repair, or public safety, and except for traffic upon authorized local or state dune crossovers, is prohibited on the dunes or native stabilizing vegetation of the dune system of coastal beaches. Except as otherwise provided in this section, any person driving any vehicle on, over, or across any dune or native stabilizing vegetation of the dune system shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.
2. Vehicular traffic, except that which is necessary for cleanup, repair, or public safety, or for the purpose of maintaining existing licensed and permitted traditional commercial fishing activities or existing authorized public accessways, is prohibited on coastal beaches except where a local government with jurisdiction over a coastal beach or portions of a coastal beach has:
 - Authorized such traffic, by at least three-fifths vote of its governing body, on all or portions of the beaches under its jurisdiction prior to the effective date of this act; and
 - Determined by October 1, 1989, in accordance with the rules of the department, that less than 50 percent of the peak user demand for off-beach parking is available. However, the requirements and department rulemaking authority provided in this paragraph shall not apply to counties that have adopted, prior to January 1, 1988, unified countywide beach regulations pursuant to a county home rule charter.

3. A local government authorizing such vehicular traffic on all or portions of its beaches pursuant to subsection 2 (above) may later prohibit, by a vote of at least three-fifths of its governing body, such vehicular traffic on all or portions of the beaches under its jurisdiction. Any such local government shall be authorized by a three-fifths vote of its governing body to charge a reasonable fee for vehicular traffic access. The revenues from any such fees shall be used only for beach maintenance, beach-related traffic, sanitation, lifeguard, or other staff purposes. Except where authorized by the local government, any person driving any vehicle on, over, or across the beach shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or 775.083.

Part IV of Chapter 161, F.S. establishes the Florida Oceans and Coastal Council (FOCC). This council is established with the goal of maximizing the protection and conservation of ocean and coastal resources while recognizing economic benefits. The FOCC is established within FDEP and has a total of 18 members, which include the following:

- The FDEP Secretary
- The FDEP Executive Director
- The Commissioner of the Florida Department of Agriculture and Consumer Services (FDACS) or designee
- Five members from FDEP
- Five members from the Florida Fish and Wildlife Conservation Commission (FWC)
- Five members from FDACS

Three major responsibilities of the FOCC include:

1. Conducting a Research Review, which involves the review and compilation of existing, ongoing and planned ocean and coastal research and monitoring activities.
2. Development of a Florida Oceans and Coastal Scientific Research Plan to be used by the legislature to make funding decisions. This Research Plan is to include one of 14 options that are listed in Section 161.74 (2) of Chapter 161, F.S.
3. Preparation of a comprehensive Oceans and Coastal Resource Assessment to serve as a baseline of information to support the research plan.

Please note that the FOCC and its responsibilities will be discussed in more detail in a separate summary/briefing document on Part IV of Chapter 161, F.S. That interim report will be completed in Year 2 of the Florida Beaches HCP project.

This section provides a brief description of how Parts I, II, III and IV of Chapter 161, F.S. relate to the proposed Florida Beaches HCP.

7.1 PART I – REGULATION OF CONSTRUCTION, RECONSTRUCTION, AND OTHER PHYSICAL ACTIVITY

As discussed in **Section 3** of this report, Part 1 of Chapter 161, F.S. provides the statutory authority for the CCCL Program at the BBCS of FDEP. The CCCL Program’s objective is to preserve and protect Florida’s beach and dune systems by managing the siting of beachfront construction through the issuance of CCCL permits. There are a number of activities that will be addressed under the HCP that are regulated under the CCCL Program. Therefore, a CCCL Permit will be required for these activities, assuming they occur seaward of the CCCL. As part of the permit application process, the FWC will review the permit applications if there are any potential impacts to sea turtles.

7.2 PART II – BEACH AND SHORE PRESERVATION DISTRICTS

Part II of Chapter 161, F.S. details the role of local governments, in particular the Board of County Commissioners, in regards to beach and shore preservation. Part II is important to the proposed Florida Beaches HCP because the HCP will need to be accepted by local governments. Therefore, it is important to understand the statutory authority that Part II grants these local governments when establishing programs and teams to assist in beach and shore preservation.

7.3 PART III – COASTAL ZONE PROTECTION

Part III of Chapter 161, F.S. deals with the regulation of construction activities landward of the coastal construction control line, and these activities generally will not be a factor in the Florida Beaches HCP. However, regulations pertaining to the Coastal Building Zone may interact with the Florida Beaches HCP where areas designated as critical habitats for some of the listed species extend landward of the CCCL.

7.4 PART IV – OCEANS AND COASTAL RESOURCES ACT

It is important for the working group and committees of the proposed Florida Beaches HCP to be informed about the “Research Plan,” which is a responsibility of the FOCC. As stated previously, the Research Plan is to include 1 of 14 options that are listed in Section 161.74 (2) of Chapter 161, F.S. There are several of these 14 options that may be important to the HCP, some examples of which are listed below:

- Exploring opportunities to improve the coastal ecosystem functioning and health through watershed approaches to managing freshwater and improving water quality.
- Evaluation of current habitat conservation, restoring and maintaining programs, and recommending improvements in areas of research, monitoring and assessment.
- Documenting through examination of existing and new research the impact of marine and coastal debris and current best practices to reduce debris (beach cleaning).

Chapter 161 of the Florida Statutes contains four distinct parts and is collectively referred to as the “Beach and Shore Preservation Act.” Florida’s beaches and coastal barrier dunes represent one of the most valuable natural resources of the state by providing the following:

- Protection to upland properties from storm damage
- Recreation for Florida’s residents and visitors
- Habitat for wildlife

Therefore, it is in the public’s best interest to preserve and protect the beaches and dunes from imprudent construction.

It is important for the working group and committees responsible for the development of the proposed Florida Beaches HCP to be aware that some content from all four sections of Chapter 161, F.S. is relevant to the HCP. To summarize, each part of Chapter 161, F.S. and its relevance to the HCP are repeated below:

- **Part I - Regulation of Construction, Reconstruction and Other Physical Activity** - Relevant because it establishes the statutory authority of the CCCL Program. The CCCL provisions are important because the HCP will address activities regulated by the CCCL Program.
- **Part II - Beach and Shore Preservation Districts** - Important because it empowers local governments to protect their beach and dune systems, and the goal is to have the Florida Beaches HCP accepted by relevant local governments.
- **Part III - Coastal Zone Protection** - Important because it imposes special requirements within the coastal building zone, which may be relevant to the HCP with regard to critical habitat designations.
- **Part IV – Oceans and Coastal Resources Act** - Relates to the proposed Florida Beaches HCP because it establishes the Florida Oceans and Coastal Council. This council is required to develop a “Research Plan,” which may include information in regards to coastal habitat and coastal activities addressed by the HCP.