FLORIDA DEPARTMENT OF Environmental Protection

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Tallahassee, FL 32399-2400

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Lt. Governor

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Secretary

VIA EMAIL

Read Receipt Requested

August 26, 2022
Mark DeHaven
Shellfish Harvesting Classification Program
11350 SW 153rd Ct.
Cedar Key, FL 32625
Email: Mark.DeHaven@fdacs.gov

Re: Final Audit Report for Field Performance Audit of the Shellfish Harvesting Area Classification Program- Cedar Key Office Conducted May 3, 2022

Dear Mr. DeHaven:

Thank you for responding to the preliminary audit report for the field performance audit of the Shellfish Harvesting Area Classification Program, Cedar Key Office (SHACP-CK). The Florida Department of Environmental Protection (department or DEP) has reviewed your response and determined that the proposed corrective actions are acceptable. We are confident that the indicated corrective actions will improve the quality assurance system for the SHACP-CK sampling team.

Attached is the final audit report detailing the audit procedure, audit findings, and audit conclusions. This final audit report will also be posted on the department's website at https://floridadep.gov/dear/florida-dep-laboratory/content/fdep-biological-and-audit-report-search. As noted in the report, the department concludes that the sample collection and field testing procedures used by the SHACP-CK sampling team met the data quality objectives for data used by the department according to Chapter 62-160, Florida Administrative Code, and DEP Standard Operating Procedures. There is not currently a sampling agreement between DEP and SHACP, but implementation of the correction actions outlined in the report would be expected before a future agreement between DEP and SHACP could be authorized.

Under Chapter 120 of the Florida Statutes, SHACP-CK, and any other person whose substantial interests are affected by the department's agency action, may challenge the attached final audit report, including the corrective actions and the data usability analysis. The process to challenge any portion of this agency action is described below in the Notice of Rights section.

If you have any questions or concerns about this final audit report, please feel free to contact Joy Jackson at (850)245-8074 or Sarah Noble at (850)245-8533.

Notice of Rights

This action is final and effective on the date mailed (via e-mail) unless a sufficient petition for an administrative hearing is timely filed under sections 120.569 and 120.57 of the Florida Statutes as provided below. If a sufficient petition for an administrative hearing is timely filed, this agency action becomes only proposed agency action, subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the department. Because an administrative hearing may result in the reversal or substantial modification of this action, the petitioner is advised not to proceed until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time have expired.

Petition for Administrative Hearing

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rules 28-106.201 and 28-106.301, F.A.C., a petition for an administrative hearing must contain the following information:

(a) The name and address of each agency affected and each agency's file or identification number, if known;
(b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
(c) A statement of when and how the petitioner received notice of the agency decision;
(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
(e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
(f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
(g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at Agency_Clerk@dep.state.fl.us. Also, a copy of the petition shall be mailed to SHACP-CK at the address indicated above at the time of filing.

Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant and persons entitled to written notice under Section 120.60(3), F.S., -must be filed within 21 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first. The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only

at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28- 106.205, F.A.C.

Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399- 3000, or via electronic correspondence at Agency_Clerk@dep.state.fl.us, before the deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Mediation

Mediation is not available in this proceeding.

This determination constitutes an order of the department. Subject to the provisions of paragraph 120.68(7)(a) of the Florida Statutes, which may require a remand for an administrative hearing, the applicant has the right to seek judicial review of the order under section 120.68 of the Florida Statutes, by the filing of a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida, 32399-3000, or via electronic correspondence at Agency_Clerk@dep.state.fl.us; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



David Whiting, Deputy Director
Division of Environmental Assessment and Restoration
2600 Blair Stone Road
Tallahassee, FL 32399
Tel No.: (850) 245-8191

Attachments:
Final SHACP-CK Field Performance Audit Report

Copies furnished to:
Kenneth Hayman, DEP Office of General Counsel
Kevin O'Donnell, DEP Watershed Assessment Section
File

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this determination, including all copies, was e-mailed before the close of business on August 29 , 2022, to the above listed persons.

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to 120.52(7)
Florida Statutes, with the designated Department Clerk,
receipt of which is hereby acknowledged.

Clerk 08-29-2022 Date

FINAL AUDIT REPORT

Division of Aquaculture

Shellfish Harvesting Area Classification Program

Cedar Key Office

Field Performance Audit, May 3, 2022

Aquatic Ecology and Quality Assurance Section
Water Quality Standards Program
Division of Environmental Assessment and Restoration
Florida Department of Environmental Protection

August 29, 2022

Introduction

This field performance audit of the Division of Aquaculture, Shellfish Harvesting Area Classification Program, Cedar Key Office (SHACP-CK) within the Department of Agriculture and Consumer Services (FDACS) was conducted by the Florida Department of Environmental Protection (DEP) Aquatic Ecology and Quality Assurance Section (AEQAS) in accordance with Rule 62-160.650, Florida Administrative Code (F.A.C). The audit was conducted by DEP to inform the data users of SHACP-CK's conformance with the requirements of Chapter 62-160, F.A.C., including implementation of the DEP Standard Operating Procedures for Field Activities, DEP-SOP-001/01, January 2017 (DEP SOPs), which cover sample collection, field testing, and required field documentation. The audit was also conducted to ensure that SHACP-CK is meeting requirements of the purchase order (PO) for "Surface Water Sampling in Shellfish Harvesting Area Waters" (PO #B52523) between DEP and the SHACP. The results of the audit provide the required corrective actions and recommendations that should be implemented by the SHACP-CK office to conform with the DEP SOPs.

It should be noted that this was the final sampling event under the existing agreement (PO #B52523) between DEP and FDACS' Shellfish Harvesting Area Classification Program. The items noted in this report and summarized in Table 1 are intended for samples collected specifically for DEP purposes. DEP expects that the CHACP-CK will implement the listed corrective actions before any future sampling in support of DEP projects.

Description of Sampling Event and Audit

DEP auditors, Joy Jackson and Sarah Noble, conducted the audit on May 3, 2022. Ms. Jackson and Ms. Noble met the SHACP-CK sampler, Michael Kuhman, at the office in Cedar Key to observe meter calibration and verification activities. The auditors travelled by boat and observed Mr. Kuhman sample two surface water sites within the Cedar Key sampling area. The sampler collected grab samples immediately after, and down current of deploying the anchor. DEP SOPs direct samplers when using watercraft, to take samples near the vessel's bow and avoid disturbing sediments in the immediate area of sample collection. It should be noted that the samplers typically deploy a stern-mounted power-pole and then sample up-current of the anchor but the power-pole was not operational at the time of this event. Nonetheless, caution must be taken to reduce sample contamination regardless of the equipment in use. In the field, Mr. Kuhman recorded data on the DEP sample submittal form. The auditors accompanied Mr. Kuhman on his remaining sampling route before travelling back to the office to observe the post meter verification. Mr. Kuhman indicated that he had not been receiving the supplemental field form with his

sampling kits and thus had not been noting the field conditions at the time of sampling. After discussion, and upon request by Ms. Jackson, Mr. Kuhman completed the supplemental field documentation. Mr. Kuhman then packed the samples, completed the submittal and supplemental field forms for transport, and the auditors delivered the samples to the Tallahassee DEP laboratory the following morning, May 4, 2022. Prior to departing, the auditors conducted a short exit meeting with Mr. Kuhman and fellow sampler Mark DeHaven, wherein they summarized the preliminary audit findings and expectations for the remainder of the audit process.

Preliminary Audit Report and Implementation of Corrective Actions

A preliminary report was sent to Mr. Kuhman and Mr. DeHaven on June 9, 2022 and a follow-up email was sent on July 25, 2022 inquiring about the preliminary report. An email was received on the same day from Mr. Kuhman that all findings were accepted. Audited procedures or records that did not comply with audit criteria are identified in Table 1. In summary, the findings and associated deficiencies included various minor documentation topics and specific deviations from DEP SOPs noted by the auditors. The department auditors contributing to this report are available for consultation as necessary to facilitate the determination or implementation of corrective actions, explain audit findings, and answer any other questions or provide additional information applicable to this audit, as needed.

Audit conclusions

Based on the findings of this audit, DEP has determined that SHACP-CK generally met DEP SOP requirements for the collection and preservation of samples but had a few deficiencies such as ensuring the quantitative bracketing of sample measurements for some field-testing parameters and improperly collecting field blanks. These deficiencies do not impact most uses of the data, but data users should evaluate the specific issues in Table 1. Typically, the corrective action plan must include a date or schedule for implementation to address all noted deficiencies in the "Response" column of Table 1. In this instance, because the agreement with SHACP was not renewed, an implementation date was not required. However, a future agreement between DEP and SHACP would require the implementation of these corrections before sampling could be authorized. Overall, the audit concludes that the techniques followed by SHACP-CK met the data quality objectives of their agreement with DEP and the data are usable, though some field measurements should be qualified because they were not bracketed by successful verifications. A complete list of findings and corrective action details for the audit is provided in Table 1.

Table 1. Findings of deficiency and corrective actions for surface water field sampling and field-testing performance audit of the Shellfish Harvesting Area Classification Program, Cedar Key Office (SHACP-CK), conducted on 05/03/2022 by the DEP Aquatic Ecology and Quality Assurance Section (AEQAS). Site 1 = Station 30SEAS111; Site 2 = Station 30SEAS080.

Finding Number	DEP SOP Reference	DEP SOP Requirements	Audit Finding/Auditors' Notes	Recommended or Required Corrective Action (CA)	SHACP-CK Response	AEQAS Final Response
1	FD 1100, section 2.5	Use waterproof ink for all paper documentation. Pencil on write-in-the-rain paper is acceptable.	The sampler used pencil on the submittal form.	REQUIRED CA: Use either waterproof paper or ink for field forms, use ink on submittal forms.	Findings accepted.	Acceptable
2	FD 3000, sections 1, 3	Keep maintenance logs for all equipment, with the following information: maintenance and repair procedures for equipment or instrument unit; routine cleaning procedures for each unit; filling solution replacement for probes; parts replacement for instruments or probes; calendar date for each procedure performed; names of personnel performing maintenance and repair tasks; description of malfunctions associated with any maintenance and repair; and vendor service records.	Samplers do not have a physical maintenance log or documentation of the required information for their field testing instruments.	REQUIRED CA: Develop and maintain a log with all relevant information regarding the maintenance and repair of instruments or instrument components.	Findings accepted.	Acceptable

Finding Number	DEP SOP Reference	DEP SOP Requirements	Audit Finding/Auditors' Notes	Recommended or Required Corrective Action (CA)	SHACP-CK Response	AEQAS Final Response
3	FD 4100, section 1.1	Record and retain the date of receipt, expiration date, and date of first use for all calibration standards and reagents used on the sampling project.	Samplers do not maintain a log with the required information, although they record the standard lot# and expiration date in calibration logs.	REQUIRED CA: Develop and maintain a log with all required standard information, including date of receipt, expiration date, and date of first use. It is acceptable to keep the packing slips for all standards and write this information on those.	Findings accepted.	Acceptable
4	FD 5000, section 1.2	Provide a unique identifier on each sample bottle.	The sampler was indicating multiples for the different bottles for the site, but those bottles were not for the same test. Thus, the labels were unique without "1 of 3," "2 of 3," etc.	RECOMMENDED CA: Do not label bottles "1 of 3," "2 of 3," etc. unless there are multiple bottles for the same site and test.	Findings accepted.	Acceptable
5	FD 5000, section 2.3 & 3	Record ambient field conditions for all samples.	Field conditions were not recorded on any associated field documentation.	REQUIRED CA: Record field conditions for the sampling day somewhere on the submittal forms or include them in the notes section of the supplemental field form.	Findings accepted.	Acceptable
6	FD 5100 section 1.2	Record the results of pH verification performed on preserved nutrient samples in the field.	Until requested, the sampler did not record that a pH verification was performed.	RECOMMENDED CA: Use the supplemental field form or indicate on the lab submittal form that a positive pH check has been performed.	Findings accepted.	Acceptable

Finding Number	DEP SOP Reference	DEP SOP Requirements	Audit Finding/Auditors' Notes	Recommended or Required Corrective Action (CA)	SHACP-CK Response	AEQAS Final Response
7	FQ 1214, section 1	Prepare field blanks by pouring analyte-free water into sample container.	The sampler filled the field blank containers with site water rather than analyte-free water.	REQUIRED CA: Fill field blank containers with analyte-free water.	Findings accepted.	Acceptable
8	FS 1000, section 5.1	When preservation requirements indicate cooling to a specific temperature, samples must be immersed in wet ice within 15 minutes of sample collection.	Samples were bagged and placed on top of ice. Sample bottles were not submerged in wet ice.	REQUIRED CA: Submerge samples in ice upon collection. Educate and train other staff on this technique.	Findings accepted.	Acceptable
9	FS 1002, section 1.1.1 & FS 1003, section 3	Do not insert anything (pump tubing, measurement probes, fingers, pH paper, etc.) into the sample containers or sample that have been collected for analysis.	The vial of acid was tapped on the rim of the sample bottle to ensure all the preservative went into the sample bottle.	REQUIRED CA: Avoid touching anything to the sample bottle, including preservative vial.	Findings accepted.	Acceptable
10	FS 1006, section 2. & FS 2000	Check preservation of the sample and adjust pH with additional preservative, if necessary.	The sampler forgot the pH paper and did not check the preservation in the field. If additional preservative was needed, it would have exceeded the 15-minute preservation window.	RECOMMENDED CA: Bring pH paper along on the sampling trip to ensure proper preservation has been achieved within 15 minutes of sample collection.	Findings accepted.	Acceptable

Finding Number	DEP SOP Reference	DEP SOP Requirements	Audit Finding/Auditors' Notes	Recommended or Required Corrective Action (CA)	SHACP-CK Response	AEQAS Final Response
11	FS 2100 section 2.1 and 2.3	When using watercraft, take samples near the bow. Avoid disturbing sediments in the immediate area of sample collection.	The sampler collected grab samples immediately after and down current of deploying the anchor.	RECOMMENDED CA: Either allow adequate time for disturbed sediments to settle or sample upwind/up current from potential contamination sources.	Findings accepted.	Acceptable
12	FS 2110, section 1.1.2.4	Leave adequate headspace in the sample container. This procedure allows for addition of preservative and sample expansion.	The sample containers were filled with very little headspace.	REQUIRED CA: Leave adequate headspace for preservative addition and sample expansion.	Findings accepted.	Acceptable
13	FS 2110, section 1.1.1.1 &1.1.1.2	Invert the bottle so the opening is pointing upstream or into the oncoming direction of water flow/current.	After submerging the sampling container, the sampler pointed the bottle down-current rather than into the current.	REQUIRED CA: Point sample container into the current to collect samples.	Findings accepted.	Acceptable
14	FT 1000, section 2.2.2, and FT 1200, section 3.2.5	Conduct verifications (made up of ICVs and CCVs) that bracket the range of values measured for specific conductance.	The sampler conducted verification activities for specific conductance with 1,000 µmhos/cm, 10,000 µmhos/cm and 100,000 µmhos/cm to cover the range of values expected, but salinity is what is recorded in the field and the sampler did not verify that the field measurements were quantitatively bracketed.	RECOMMENDED CA: Either convert values of conductivity standards to salinity or record field conductivity results to evaluate if the quantitative bracket is achieved each sampling day. If the bracket is not achieved, qualify data with a "J."	Findings accepted.	Acceptable

Finding Number	DEP SOP Reference	DEP SOP Requirements	Audit Finding/Auditors' Notes	Recommended or Required Corrective Action (CA)	SHACP-CK Response	AEQAS Final Response
15	FT 1400, sections 2.2.2 and 2.2.3	All sample temperature measurements must be quantitatively bracketed by calibration verifications of the temperature measurement device at several temperatures using an NIST-traceable thermometer.	The sampler did not have records of temperature verifications showing a quantitative bracket. The sampler used a thermometer used for comparison with the field instrument at room temperature, but it was not a NIST-traceable thermometer.	REQUIRED CA: Use an NIST-traceable thermometer that can measure in 0.1° C increments annually (or at another established frequency) to determine if the thermistor on the multiprobe meter is meeting DEP SOP acceptance criteria.	Findings accepted.	Acceptable
16	FD 5000, section 2.2	Record the date and time of sample collection.	The sampler recorded time of field-testing parameter collection and not surface water sample collection on the Laboratory Submittal Form.	REQUIRED. Record the time of surface water sample collection on field forms. Recorded sample time must match between the bottle labels and the Laboratory Submittal Form.	Findings accepted.	Acceptable
17	FD 4100 section 1.1.1	Document acceptable verification of any standard used after its expiration date.	The sampler opened new standards on 5/3/22; however, prior calibrations and verifications were conducted with expired standards.	REQUIRED: Use non-expired standards for all calibrations and verifications or maintain documentation of acceptable verification of any standard used after its expiration date.	Findings accepted.	Acceptable