

Appendix (a)-1
Overview of The Wetland and Other Surface Water Regulatory and Proprietary
Programs in Florida
July 1, 2020

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ACRONYMS

ACRONYM	TERM
ADID	Advanced Identification
AGSWM	Agricultural Ground and Surface Water Management
BMP	Best Management Practice
BOT	Board of Trustees of the Internal Improvement Trust Fund
BTLDS	Board of Trustees Land Database System
CARL	Conservation and Recreation Lands
CCCL	Coastal Construction Control Line
CERPRA	Comprehensive Everglades Restoration Plan Regulation Act
CZCC	Coastal Zone Consistency Concurrence
CZM	Coastal Zone Management
DACS	Department of Agriculture and Consumer Services
DSL	Division of State Lands, Department of Environmental Protection
EFA	Everglades Forever Act
EPA	Environmental Protection Agency
ERP	Environmental Resource Permit
ERPce	Environmental Resource Permit Compliance and Enforcement (Database)
ERPpa	Environmental Resource Permit Permit Application (Database)
F.A.C.	Florida Administrative Code
F.S.	Florida Statutes
FDOT	Florida Department of Transportation
FWC	Florida Fish and Wildlife Conservation Commission
USFWS	US Fish and Wildlife Service
GIS	Geographic Information System
JCP	Joint Coastal Permit
LIFE	Learning in Florida's Environment
MDC	Miami-Dade County
MHW	Mean High Water
MOA	Memorandum of Agreement
MS4	Municipal Separate Storm Sewer System
MSA	Mitigation Service Area
NEEPP	Northern Everglades and Estuaries Protection Plan
NPDES	National Pollutant Discharge Elimination System
NFWMD	Northwest Florida Water Management District
NWPs	Nationwide Permits
OA	Operating Agreement
OFWs	Outstanding Florida Waters
PA	Permit Application
ROMA	Regional Offsite Mitigation Area

Summary of Florida's Wetland and Other Surface Waters Regulatory Programs

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SAMP	Special Area Management Plan
SFWMD	South Florida Water Management District
SJRWMD	Saint Johns River Water Management District
SLER	Submerged Land and Environmental Resources
SOR	Save Our Rivers
SPGP	State Programmatic General Permit
SSL	Sovereign Submerged Lands
SWIM	Surface Water Improvement and Management program
TSS	Total Suspended Solids
TSV	Technical Service Department
USACE	U.S. Army Corps of Engineers
USDA-NRCS	United States Department of Agriculture-Natural Resources Conservation Service
WGSS	Water Quality Standards Section
WMDs	Water Management Districts
WOTUS	Waters of the United States
WQC	Water Quality Certification
WRP	Wetland Resource Permit
WUP	Water Use Permitting

Summary of Programs

Florida has an existing, comprehensive state regulatory program called the Environmental Resource Permitting Program (ERP) that regulates most alterations of the land that change the flow of water in uplands, wetlands, and other surface waters. In addition, activities on or using state-owned submerged lands also require applicable proprietary authorizations (including Consent by Rule, Letters of Consent, Leases, and Easements). Separate programs regulate trimming and alteration of mangroves and National Pollutant Discharge Elimination System Permits.

Florida is proposing to assume authority to implement the dredge and fill permitting program under Section 404 of the Clean Water Act. This document includes information specific to the proposed State 404 Program, however, the program and its rules will not become effective until the state's proposal is approved by the US Environmental Protection Agency (EPA). For ease of reading and to prevent confusion the proposed program will be referred to in future tense or labeled "proposed".

Major features of Florida's wetland and surface water related regulatory and proprietary programs are summarized below:

Regulatory

General

Florida implements a regulatory Environmental Resource Permit (ERP) program under the independent state authority of Part IV of Chapter 373 of the Florida Statutes (F.S.). It is in effect statewide and is implemented jointly by the Department of Environmental Protection (Department) and five water management districts (WMDs) under [Operating Agreements](#) that provide a division of responsibilities between the agencies. Provisions exist for local programs to be delegated authority to implement the program on behalf of the Department and WMDs (currently delegated to Broward and Hillsborough Counties). The ERP program operates *in addition to* the federal 404 dredge and fill permitting program that regulates activities in waters of the United States.

Florida is proposing to streamline permitting under ERP and section 404 of the Clean Water Act by pursuing assumption of the section 404 dredge and fill permitting program. The separation of ERP and the section 404 dredge and fill permitting program (State 404 Program) will continue upon approval of the State 404 Program by EPA. Florida estimates that assumption will reduce the nearly 85% duplication of effort that currently exists between ERP and 404 because applicants will be able to get both authorizations from the state.

While the ERP application is issued, withdrawn, or denied in accordance with state statutory and rule criteria, agency action on the ERP also constitutes any needed water quality certification (WQC, or waiver thereto) under Section 401 of the Clean Water Act and Coastal Zone Consistency Concurrence with Florida's federally approved Coastal Zone Management program under Section 307 (Coastal Zone Management Act), which then enables the section 404 permitting entity (Department or USACE) to take separate action to issue or deny any permit needed under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. Additional information on the relationship of the Florida programs to the federal programs is provided later in this document.

Stormwater construction National Pollutant Discharge Elimination System (NPDES) permits are not integrated into the ERP permit and are issued separately.

Florida also implements a separate permitting program for trimming or altering mangroves under Section 403.9321 through 403.9333, F.S., although mangrove trimming and alteration can be incorporated into an ERP permit. The Submerged Lands and Environmental Resources Program implements ERP, the State 404 Program, and the mangrove permitting program.

Wetland and Other Surface Waters Delineation Methodology

All state, local, and regional governments in Florida delineate wetlands in accordance with state methodology (Chapter 62-340, F.A.C.) instead of the federal method. The federal government's 2012 decision to use USDA-NRCS hydric soils criteria ensured that the state and federal lines are either identical or the state's line is more stringent because Florida's delineation rule requires that only two of the three parameters (vegetation, hydric soils, hydrologic indicators) are met, while the USACE requires all three. Currently, ERP applications are received by the Department, WMD, or delegated local government in accordance with the operating agreements referenced above. The ERP/404 applications will be received in the same manner, but any applications in wetlands and other surface waters that require both an ERP and a State 404 authorization received by the WMD or local government will be forwarded to the Department for joint processing of the ERP/404. This means that the ERP will still be processed by the WMD or local government, but the Department will work closely with the ERP processing agency to eliminate duplication in the 404 review process while the Department processes the State 404 Program application.

- Under Section 373.421, F.S., Florida adopted a wetland delineation methodology that is binding on all state, regional, and local governments throughout Florida. This methodology was adopted as Chapter 62-340 of the Florida Administrative Code (F.A.C.), which is ratified in Section 373.4211, F.S., for statewide applicability. It became effective on July 1, 1994. This methodology is a unified statewide approach to wetland and other surface water delineation and is specific to Florida, in recognition of the vegetation, hydrologic, and soil features that specifically exist in Florida.
- Florida's methodology differs from the USACE 1987 manual methodology. The USACE continues to use the 1987 federal wetland delineation manual with regional supplements for permits processed by the USACE. In real-world application, the state and federal wetland lines typically are very close or identical to one another.
- Florida has not produced a map of the wetlands as they would be delineated using the state methodology in Sections 373.421 and 373.4211, F.S. Instead, staff in the Department's Tallahassee office, Department's, district offices, and the WMDs perform wetland delineations for a specific parcel of property on request or as part of a permit application review. There are three ways such requests for wetland delineations may occur:
 - By petition for a formal determination of the landward extent of wetlands and other surface waters. These determinations are done for a fee, depending on the size of the total parcel, are subject to specified time frames, typically require the petitioner to produce a survey of the delineated wetlands, and are binding on the

- petitioner and the state agencies for a period of five years (which may be re-issued or renewed if certain criteria are met).
- As part of a permit application. There is no additional charge for this service above that required to process the permit application.
- Through an informal determination. These are normally done only for private single family landowners. A fee is required for these determinations, but they are done on an “as-resources allow” basis, are not subject to any time frames, and are not binding on any of the parties. The Department and the NFWMD charge between \$100 and \$500 for this service, depending on the size of the parcel, and all other WMDs have their own fee schedules. Due to staffing limitations, it is not always possible for the district staff to do informal determinations. When that is the case, property owners are encouraged to file a petition for a formal determination or to hire a private environmental professional to perform the service.
- Additional information regarding Wetland Evaluation and Delineation can be found at: <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/wetland-evaluation-and>

Goal of Programs

It is the intent of the Department and WMDs that the environmental permitting criteria be implemented in a manner which achieves a programmatic goal, and a project permitting goal, of no net loss of wetland and other surface water functions. Wetland functional loss and gain is determined using the Uniform Mitigation Assessment Method (UMAM) in Chapter 62-345, F.A.C. The state and the USACE both use UMAM.

What Needs a Permit?

Environmental Resource Permits:

- The ERP program regulates virtually all alterations to the landscape that exceed permitting thresholds or that are not otherwise exempt by statute or rule from regulation. Surface water management systems include activities involving the construction, alteration, operation, maintenance or repair, removal, and abandonment of dams, impoundments, reservoirs, appurtenant works, and works, which includes dredging and filling in wetlands and other surface waters (including isolated wetlands) and alterations of uplands. This includes: clearing; grading; paving; erection, alteration, or removal of structures; and new or altered stormwater management systems; all of those are generally referred to as “surface water management systems.” Most routine, customary agricultural, silvicultural, floricultural, and horticultural activities do not require a permit as long as alterations are not for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands.
- Certain activities have been exempted by statute and/or rule from the need for ERP regulatory permits; most of these exemptions are established in Section 403.813(1), and Section 373.406, F.S. Examples of exempt activities include, but are not limited to:
 - Agricultural activities described above;
 - Construction, repair, and replacement of certain private docking facilities below certain size thresholds;
 - Maintenance dredging of existing navigational channels and canals;

- Construction and alteration of boat ramps within certain size limits;
 - Construction, repair, and replacement of seawalls and rip rap in artificial waters;
 - Repair and replacement of docks, seawalls, culverts, and other structures; and
 - Certain agricultural activities (see below).
 - The Department has issued a number of general permits (GPs) for activities that are slightly larger than those that qualify for exemptions and that otherwise have been determined to have the potential for no more than minimal individual direct and secondary impacts (see the general permits in sections 62-330.402 – 62-330.635, F.A.C.). These include, but are not limited to:
 - construction and modification of boat ramps of certain sizes;
 - installation and repair of riprap at the base of existing seawalls;
 - installation of culverts associated with stormwater discharge facilities; and
 - construction and modification of certain utility and public roadway construction activities.
- Qualifying activities generally are allowed to be initiated 30 days after notice of qualification is provided to the agency, unless the agency informs the applicant that the work does not meet the terms and conditions of the GP.
- Regulated activities that exceed permitting thresholds and that do not specifically qualify for an exemption or GP require an ERP individual permit.

Components of the ERP Program

Stormwater

- Untreated stormwater runoff can significantly affect wetland and other surface water quality and functions. Activities involving new stormwater management systems that exceed permitting thresholds and that are not exempt require an ERP, whether located in uplands, wetlands, or other surface waters. In addition, all surface water management systems are evaluated for adverse effects to surface water quality and quantity.
- The ERP rule criteria for stormwater are technology-based, founded on the principle that compliance with Best Management Practices (BMP) design and performance standards (desired levels of treatment) provides a rebuttable presumption that new work will not cause violations of state water quality standards in receiving waters or adverse quantity impacts to on-site and off-site property. Currently, the stormwater quality design and performance-based rule requires stormwater systems to remove at least 80% of the post-development total suspended solids (TSS) loading (95% removal of TSSs if the stormwater system directly discharges to an Outstanding Florida Water (see Rule 62-302.700, F.A.C.); meeting these TSS requirements is a surrogate for compliance with other constituents in stormwater runoff.
- BMPs and performance standards also apply to water quantity to assure that the stormwater peak discharge rate, volume, and pollutant loading are no greater after a site is developed than before. There are certain exemptions from the need for an ERP permit for these activities, such as for individual, private single family residences constructed in the uplands that are not part of a larger plan of common development, and projects that are below certain size thresholds, depending on the WMD.

- Monitoring is a requirement to ensure practices are correctly designed and applied, and to determine the effectiveness of the BMPs in meeting water quality and quantity criteria and reasonably assuring protection of beneficial uses.

Environmental (Dredging and Filling in Wetlands or Other Surface Waters)

- In addition to stormwater, an ERP addresses dredging and filling in wetlands and other surface waters, including isolated wetlands. "Dredging" means excavation, by any means, in surface waters or wetlands, as delineated in Section 373.421(1), F.S. It also means the excavation, or creation, of a water body which is, or is to be, connected to surface waters or wetlands, as delineated in Section 373.421(1), F.S., directly or via an excavated water body or series of water bodies. "Filling" means the deposition, by any means, of materials in surface waters or wetlands, as delineated in Section 373.421(1), F.S. "Materials" means matter of any kind, such as, sand, clay, silt, rock, dredged material, construction debris, solid waste, pilings or other structures, ash, and residue from industrial and domestic processes. The term shall not include the temporary use and placement of lobster pots, crab traps, or similar devices or the placement of oyster cultch pursuant to Section 370.16, F.S.

Evaluation Criteria

- All activities requiring a permit must be found to:
 - Not cause adverse water quantity impacts to receiving waters and adjacent lands;
 - Not cause adverse flooding to on-site or off-site property;
 - Not cause adverse impacts to existing surface water storage and conveyance capabilities;
 - Not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters;
 - Not adversely affect the quality of receiving waters such that state water quality standards will be violated, which includes surface and groundwaters. Special provisions apply to allow no degradation of the water quality of OFWs (listed in Chapter 62-302.700, F.A.C.). Anti-degradation of existing uses is generally met through compliance with the ERP permitting criteria. The siting of marinas and other activities that may affect the flow of waters includes requirements for hydrographic evaluations that are useful in predicting whether water quality standards will be met.
 - Not cause adverse secondary impacts to water resources;
 - Not adversely impact the maintenance of surface or ground water levels or surface water flows;
 - Not adversely impact a work of a WMD (typically water control projects);
 - Be capable, based on generally accepted engineering and scientific principles, of being performed and of functioning as proposed;
 - Will be conducted by an entity with the financial, legal, and administrative capability of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit, if issued; and
 - Will comply with applicable special basin or geographic area criteria adopted by rule.

- In addition, activities in wetlands and other surface waters must not be contrary to the public interest, or, if the activity is located in an Outstanding Florida Water (these waters are listed in Chapter 62-302.700, F.A.C.), the activity must be clearly in the public interest. This test is based on weighing and balancing of the following criteria:
 - Whether the regulated activity will adversely affect public health, safety, or welfare, or the property of others (based solely on environmental, not economic, considerations);
 - Whether the regulated activity will adversely affect the conservation of fish and wildlife, including endangered and threatened species, or their habitats;
 - Whether the regulated activity will adversely affect navigation or the flow of water, or will cause harmful erosion or shoaling;
 - Whether the regulated activity will adversely affect fishing or recreational values or marine productivity in the vicinity of the activity;
 - Whether the regulated activity will be of a temporary or permanent nature;
 - Whether the regulated activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of Section 267.061, F.S.; and
 - The current condition and relative value of the functions being performed by areas affected by the proposed regulated activity.
- Direct, secondary, and cumulative impacts are considered for all activities requiring a permit.
 - Secondary impacts are those impacts that are very closely related and directly linked to the activity under review that may affect wetlands and other surface waters and that would not occur but for the proposed activity. Secondary impacts to the habitat functions of wetlands associated with adjacent upland activities are not considered adverse if buffers of a certain minimum size are provided abutting the wetlands (with some exclusionary provisions).
 - Cumulative impacts are residual adverse impacts to wetlands and other surface waters in the same drainage basin that have or are likely to result from similar activities (to that under review) that have been built in the past, that are under current review, or that can reasonably be expected to be located in the same drainage basin as the activity under review. Projects with mitigation that fully offsets impacts within the drainage basin where the project impacts occur are assumed to not have any adverse cumulative impacts.
- Consideration is given to upland buffers that are designed to protect the functions that uplands provide to wetlands and other surface waters. When considering impacts to the listed (endangered, threatened and special concern) species under the environmental resource permit program, the agencies may only consider adverse impacts to aquatic or wetland dependent listed species that use upland habitats for nesting and denning.
- Special provisions exist to protect waters used for shellfish harvesting.
- Florida does not have special water quality standards for wetlands. Water quality standards applicable to other surface waters (in Chapter 62-302, F.A.C.) are applied to wetlands, with consideration given to natural daily and seasonal fluctuations.
- Many local governments in Florida have their own environmental regulatory program that requires compliance with local regulatory ordinances and Acts. These local

requirements are *in addition* to the above state and federal requirements, and do not replace or supersede state and federal permitting requirements.

- As discussed below under “Proprietary”, to be issued, any activity requiring an individually-issued ERP that is located on state-owned submerged lands must also qualify for the applicable conditions for work on state-owned submerged lands.
- Provisions exist for applicants to obtain a Conceptual Approval Permit for phased activities. These permits do not authorize construction but do provide assurances that future construction permits can be issued commensurate with the level of detail contained in the Conceptual Approval permit. The Department and WMDs have Applicant's Handbook Volumes I (environmental) and II (engineering) (AH I and II) that contain detailed explanations of the criteria that are used to evaluate impacts to wetlands and other surface waters. The Department and the WMDs share AH I. There is a separate AH II for use within the boundaries of each WMD that are tailored to the geographic differences of each.

Mitigation

- Elimination and reduction of otherwise unpermittable adverse impacts to wetlands and other surface waters is required to the maximum extent practicable prior to considering whether mitigation can be accepted. However, ERP does not have an alternatives analysis like that required by Section 404 of the Clean Water Act. An alternatives analysis will be required by the State 404 Program and is described later in this document. In some cases, mitigation may not be able to offset impacts sufficiently to yield a permittable project.
- Mitigation is best accomplished through restoration, creation, enhancement, or preservation of ecological communities similar to those being impacted. However, other means or communities may be acceptable and can be considered on a case-by-case basis, as long as the impacts are offset, and the proposed mitigation provides similar functions to those that are proposed to be lost.
- Mitigation may be off-site if on-site mitigation is not expected to have long-term viability or if off-site mitigation would provide greater ecological value. Mitigation is typically located within the same basin as the impacts to avoid potential unacceptable cumulative impacts within the basin.
- Once the Department or WMD determines that mitigation is acceptable, a Unified Mitigation Assessment Method (Chapter 62-345, F.A.C.) is used to determine the amount of mitigation that is appropriate and how much “credit” can be applied to a mitigation proposal.
- Mitigation in the form of net improvement is required when an activity will cause or contribute to violations or exceedances of state water quality standards in waters that do not currently meet state water quality standards for the standard being violated/exceeded.
- Cash donation is not considered mitigation, unless specified for use in an endorsed environmental project that will serve to offset the impacts.
- Mitigation banks and “in-lieu-fee” programs are allowed, provided that they are authorized by the state and serve to offset the impacts.

Mitigation Banks and In-Lieu Fee (Regional Offsite Mitigation Areas) Programs

- Florida adopted a mitigation banking rule in 1994 (Chapter 62-342, F.A.C.; also referenced in Applicant's Handbook Volume I). This rule establishes guidelines for the operation of public or private banks. Each bank must obtain an environmental resource/mitigation bank permit, from the Department or WMD that provides for the following requirements:
 - The banker must have sufficient legal interest in the property to preserve it by a perpetual conservation easement or donation to the state prior to any release of credits;
 - A detailed mitigation plan to support viable and sustainable functional improvements for the regional watershed;
 - The number and type of potential mitigation credits must be established, as well as the environmental criteria and schedule for the release of those credits for use;
 - The mitigation bank must maintain a ledger to track the number and type of credits released and used;
 - A mitigation service area (MSA), based on watersheds and other ecological criteria, must be established;
 - A long-term management plan must be established to maintain the mitigation success in perpetuity;
 - Financial assurance must be established for both the implementation and perpetual management of the bank.
 - For more information about mitigation banks in the state, see:
<https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-and-mitigation-banking>
- In Lieu Fee Program:
 - Section 373.4135, F.S., stipulates the requirements by which the Department, WMDs, and local governments can sponsor a regional offsite mitigation area (ROMA) project that is paid for by monies accepted as mitigation.
 - A memorandum of agreement (MOA) is required between the sponsoring agency, and the Department or WMD, as appropriate, for any ROMA used for five or more projects or for more than 35 acres of impact. The MOA must address most of the same requirements required by mitigation bank permits, including: the mitigation plan and timeline, success criteria, mitigation credit and tracking, service area, acquisition, preservation, and long-term management provisions. In addition, the sponsoring agency must provide a full cost accounting of the monies received to ensure that all monies were used in the purchase, preservation, permitting, implementation and management of the mitigation area.
 - The 2012 revision of Section 373.4135, F.S. prevents governmental entities from creating or providing mitigation for a project that is not its own (including mitigation banks and ROMAs) unless the governmental entity uses land that was not previously purchased for conservation and unless it provides the same financial assurances as required for mitigation banks. Several exceptions to this are listed in Section 373.4135(1)(b), F.S.

- The major difference between a ROMA and a mitigation bank is that a ROMA can include an acquisition element.
- Florida Department of Transportation Mitigation
 - In 1995, the state established a mitigation program specific to meet the Florida Department of Transportation's (FDOT) mitigation needs (Section 373.4137, F.S.), whereby FDOT annually provides an inventory of anticipated wetland impacts to each of the regional WMDs.
 - The state's five WMDs develop mitigation plans that would serve to offset those impacts, in coordination with other state and federal regulatory agencies. The plan is presented to the WMD's governing board for conceptual approval, then submitted to the Department for state authorization and approval. Once approved, the mitigation work may commence.
 - This program does not relieve DOT from eliminating or reducing impacts to the extent practicable or obtaining permits for the impacts.
 - DOT appropriates a specified amount of money (adjusted annually) for the mitigation needed to offset each acre of impact, and this money is disbursed to the WMDs to conduct the mitigation work.
- Mitigation Database
 - Mitigation bank credit releases and uses are tracked by ledgers, which are updated when credits are released or sold. Credits used are attributed to specific permits or agency actions.
 - At this time, the Department does not maintain a central database of permitted mitigation projects, other than mitigation banks, or the success thereof.
 - Each WMD has its own tracking system:

Processing

- The Department and the WMDs use the same application forms for ERP exemption verifications and permits.
- The Department and all of the WMDs have developed electronic applications (E-app) where applicants can submit applications and supporting documents online.
- Upon receipt, the Department, WMDs, and delegated local governments have 30 days to review the application and inform the applicant of any material needed to evaluate the application in accordance with statutory and rule criteria. An applicant has 90 days to respond to the request, and upon receipt of new material submitted by the applicant, the agencies have another 30 days to review the material for completeness.
- In accordance with Section 120, F.S., and Applicant's Handbook Volume I, Section 5.5.4, the Department and WMDs must issue or deny an ERP within 60 days of receiving a complete application. Application completeness is determined by whether the applicant has submitted all the materials required by review as specified by rule and statute.
- Upon receipt, a copy of each application is also copied to the state's Fish and Wildlife Conservation Commission (FWC), and as appropriate, the State Historical Preservation Office (SHPO), Department of Economic Opportunity (DEO), and Department of Agriculture and Consumer Services, Division of Aquaculture (DACS). Comments and suggestions from these agencies are considered during processing of the application. The agencies may object to issuance of an ERP under Florida's Approved Coastal Zone

Management Act coordination process. For ERP permits, the Department and WMDs do not rely on, but will also consider, comments from the federal resources agencies (U.S. Fish and Wildlife Service and the National Marine Fisheries Service) when such comments are made in a timely manner during the processing of a state permit. Comments from federal agencies that are received for state 404 permits will be considered for the corresponding ERP permits to facilitate consistency between the ERP and 404 authorizations.

Permit Duration

ERP permits are valid for the life of the system (includes all structures and works authorized for construction or land alteration). The ERP permit does not automatically expire after the construction phase (typically a five-year period) and continues to cover *operation* (use of) and maintenance of the system.

Fees

Fees charged by Department and the NFWMD range from \$100 to verify that an activity is exempt from regulation to \$14,000 for an activity that involves a project area of more than 640 acres with more than 50 acres of work in wetlands and surface waters. The other four WMDs have their own fee structure.

Special Provisions for Agriculture and Forestry

- Sections 373.406 and 403.927, F.S., exempt certain agricultural activities from the need for an ERP. These include the rights of any person engaged in the occupation of agriculture, silviculture, floriculture, or horticulture to alter the topography for purposes consistent with the practice of such occupation, provided the alteration is not for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands. The review of all agricultural activities under ERP, including permitting, compliance, and enforcement, is the responsibility of the WMDs. Florida's Department of Agriculture and Consumer Services (DACS), in cooperation with the Department and the WMDs also have developed various Best Management Practices handbooks to assist the agriculture community in working in a manner that will minimize adverse impacts to wetlands and other surface waters.
- Certified aquaculture activities that apply appropriate best management practices adopted under Section 597.004 are exempt from the need for permits under part IV of Chapter 373, F.S. Compliance, enforcement, and permitting of such aquacultural activities are the responsibility of DACS. Compliance, enforcement, and permitting of activities that are not so certified continue to be the responsibility of the Department.
- The SWFWMD has developed a unique Agricultural Ground and Surface Water Management (AGSWM) exemption confirmation program.
 - The SWFWMD utilizes "Ag Team" staff. These staff members that operate District wide, having agricultural backgrounds and who have received specialized agricultural training, provide full service water management regulatory assistance for the agricultural community. This initiative has been underway since 1990 and is the central part of the SWFWMD AGSWM program which has received state-wide recognition.

- Ag Team members specialize in Water Use, Surface Water, and Environmental (wetland) regulation for agriculture. AGSWM was jointly developed by District staff and members of the agriculture community. AGSWM is an alternative regulatory process for agricultural operations that uses field visits, site specific conservation management planning, and technical provisions to foster agricultural production and environmental resource protection. SWFWMD staff encourages farmers who are planning activities that are subject to Environmental Resource Permitting (ERP) or Water Use Permitting (WUP) regulation to use the AGSWM pre-application review process, which can help facilitate exemption determination and/or permitting review. A few years ago, a Senate report, entitled “A Bridge Over Troubled Waters”, cited the District’s alternative agricultural regulatory process as a model for future practices.
- The SWFWMD has provided funding for the AGSWM program yearly since 1991. Currently, the funding is about \$245,000 per year for USDA-NRCS to support technical assistance that helps farmers and SWFWMD staff to implement site specific ecosystem based conservation management planning. Agricultural projects that qualify for an ERP/AGSWM exemption letter must be planned and implemented according to prescribed conservation management planning practices.

Components of the State 404 Program

Florida is proposing to streamline permitting under ERP and section 404 of the Clean Water Act by pursuing assumption of the section 404 dredge and fill permitting program. The State 404 Program will be administered separately from, but in tandem with the ERP Program. The State 404 Program and its implementing rules will not become effective until the program is approved by EPA, on a date specified by EPA in the federal register. At such time, the Department will be responsible for reviewing and acting on all applications for a State 404 Program permit.

Jurisdiction

- “Assumed waters” or “State-assumed waters” are those Waters of the United States (WOTUS) where the state will assume dredge and fill permitting authority under Section 404 of the Clean Water Act. In general, these include non-navigable freshwaters and wetlands that fall outside of a 300-foot guide line established from the ordinary high water mark or mean high tide line of a “retained water”.
- “Retained waters” are those waters where the USACE will retain Section 404 dredge and fill permitting authority. They are more specifically defined in the State 404 Program Handbook as “Those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, including wetlands adjacent thereto. The USACE will retain responsibility for permitting for the discharge of dredged or fill material in those waters identified in the Retained Waters List (Appendix A in the State 404 Program Handbook), as well as all waters subject to the ebb and flow of the tide shoreward to their mean high water mark that are not specifically listed in the Retained Waters List, including wetlands

adjacent thereto landward to the administrative boundary. The administrative boundary demarcating the adjacent wetlands over which jurisdiction is retained by the USACE is a 300-foot guide line established from the ordinary high water mark or mean high tide line of the retained water. In the case of a project that involves discharges of dredged or fill material both waterward and landward of the 300-foot guide line, the USACE will retain jurisdiction to the landward boundary of the project for the purposes of that project only.

- Florida will use the state's ratified wetland delineation rule, Chapter 62-340, F.A.C., to determine the boundary of wetlands and other surface waters. Isolated wetlands delineated in accordance with Chapter 62-340, F.A.C. will be presumed to be WOTUS unless an applicant demonstrates, and the Agency agrees, otherwise. This is a streamlining measure to eliminate the processing time it would take to perform WOTUS determinations which are often complex, especially in urban areas.

Regulated Activities

- Dredging and filling activities within assumed waters that are not otherwise exempt under Rule 62-331.020, F.A.C. Exemptions available under the State 404 Program are limited to certain agricultural, silvicultural, and maintenance activities listed in 40 C.F.R. § 232.3.

Types of Authorizations

- Available authorizations/verifications will include exemption verifications, general permits, and individual permits. Conceptual approval permits like those available under ERP are not available under the State 404 Program because such permits would conflict with federal law.

Evaluation Criteria

- Evaluation criteria required under Section 404 of the Clean Water Act are highly duplicative with the evaluation criteria of the ERP program. It is estimated that approximately 85 percent of the requirements overlap. For this reason, the State 404 Program rule, Chapter 62-331, F.A.C., references the ERP rule wherever possible. The State 404 Program Rule is intended to "bridge the gap" between existing state ERP requirements and those requirements of federal law that are not addressed under ERP, or to address those areas where the ERP rules or statutes are in conflict with federal law.
- Evaluation criteria unique to the State 404 Program include, but are not limited to:
 - Alternatives analysis – this is a detailed analysis required to demonstrate and document avoidance and minimization of impacts to resources. The alternatives analysis is described in the 404 Handbook, Appendix C - "Guidance for Conducting an Alternatives Analysis".
 - Aesthetics review – this review is intended to evaluate potential effects on human-use characteristics.
 - Mitigation hierarchy – while all types of mitigation may be proposed and considered regardless of type under ERP, the State 404 Program will require that mitigation be evaluated on a preferential scale with mitigation bank credits being the most preferred type of mitigation, where the appropriate type of credits exist to offset the proposed impacts.

- More detailed information may be found in the State 404 Program Handbook, section 8.3.
- ERP criteria that are not applicable to the State 404 Program include, but may not be limited to:
 - Section 120.60, F.S., pertaining to default of processing timeframes;
 - Section 373.4141, F.S., containing timeframes for review of ERP permits;
 - Certain provisions of Section 373.414, F.S., pertaining to mining mitigation;
 - Any provision of Chapter 378, F.S., pertaining to “life-of-the-mine” permits;
 - Sections 378.212(1)(g), and 378.404(9), F.S., pertaining to variances for certain mining reclamation activities;
 - Subsection 378.403(19), F.S., containing a definition of “Wetlands” with special provisions for certain areas included in an approved conceptual reclamation plan or modification application;
 - Section 252.363(1)(a)3., F.S., pertaining to the tolling and extension of permits pursuant to part IV of chapter 373, F.S., when the Governor declares a state of emergency, if the State 404 permit would be extended beyond five years from its effective date.
 - Paragraph 62-345.600(1)(b), F.A.C., pertaining to time lag for phosphate and heavy minerals mines;
 - AH I, Section 10.2.1.2 providing certain exceptions for reduction or elimination of impacts;
 - Rule 62-348.600, F.A.C., pertaining to mitigation for high fiber peat mines.
 - More detailed information may be found in the State 404 Program Handbook, section 8.4.
- Listed species evaluation

Any federal requirement for the conservation of ESA-listed species not already addressed by the Environmental Resource Permitting program has been addressed by adding additional criteria to the State 404 Program rules (Chapter 62-331, F.A.C.). The Clean Water Act, Section 404(b)(1) Guidelines include protections against potential impacts to the biological characteristics of aquatic ecosystems and on special aquatic sites. Major potential impacts and possible loss of values, including threatened or endangered species, from the discharge of dredged or fill material is discussed in 40 C.F.R. § 230.30. Federal requirements and permit evaluation criteria can be summarized as follows:

 - Where consultation under section 7 of the Endangered Species Act occurs between the Environmental Protection Agency and the Secretary of the Department of Interior, the conclusions of the Department of Interior concerning the impact(s) of the discharge on endangered and threatened species and their habitat is considered final.
 - The Endangered Species Act of 1973 requires federal agencies to consult with the USFWS and/or NMFS to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species.

- The Endangered Species Act of 1973 also prohibits any action that causes a “taking” of any listed species of endangered fish or wildlife, incidental or intentional.

If the dredge and fill permitting program under Section 404 of the Clean Water Act is assumed by the State of Florida, the above referenced requirements of the Clean Water Act and the Endangered Species Act directs the State to participate in the efforts to conserve ecosystems and conserve federally endangered and threatened species dependent upon those ecosystems. State 404 Program requirements and permit evaluation criteria that fulfill the needed federal requirements can be summarized as follows:

- Compliance shall be required, as applicable, with any requirements resulting from consultation with, or technical assistance by, the Florida Fish & Wildlife Conservation Commission (FWC), the US Fish & Wildlife Service, and the National Marine Fisheries Services (NMFS) for permits reviewed under the State 404 Program (Chapter 62-331, F.A.C., State 404 Handbook section 1.3.3, subsection 62-331.053(3)(a)4 F.A.C., and subsection 62-331.201(3)(k) F.A.C.)
- No permit shall be issued...[that] jeopardizes the continued existence of endangered or threatened species, or results in the likelihood of the destruction or adverse modification of a habitat which is determined to be....a critical habitat for endangered or threatened species (State 404 Program subsections 62-331.053(3)(a)4, 62-331.201(3)(k), and 62-331-248(3)(k) F.A.C.).
- If EPA enters into section 7 consultation with the USFWS, a programmatic biological opinion for the State 404 Program may be written that includes an incidental take statement (ITS). The ITS will be included if the USFWS concludes that the State 404 program implementation is not likely to jeopardize the continued existence of ESA-listed species and is not likely to destroy or adversely modify designated critical habitat. For the Department and the permittee, the ITS would provide an ESA section 9 exemption from the prohibition of “take”, contingent upon the Department’s incorporation of the ITS’s reasonable and prudent measures and terms and conditions as State 404 permit conditions and the permittee’s compliance with those conditions.

Draft general permits will be subject to the same wildlife review criteria as individual permits, and will need to go through EPA review, public notice, and state rulemaking prior to becoming effective. General permits that have been adopted by rule and require notice to the Department will also be subject to the same wildlife review criteria during permit review and will need to go through the technical assistance process with the USFWS.

- Public Notice will be required upon receipt of an “administratively complete” individual permit application, and will be conducted in accordance with Rule 62-331.060, F.A.C. Comments received during the public notice period will be considered during application review. An “administratively complete” application is one that contains sufficient information for the public to review and provide meaningful comments but may not be “technically complete”. A “technically complete” application is one that contains sufficient information for the project to be reviewed in accordance with all evaluation requirements. (See definitions in the State 404 Program Handbook, section 2.0)

Compensatory Mitigation

- Elimination and reduction of impacts will be required before any compensatory mitigation plan can be considered.
- Compensatory mitigation proposals will be required to comply with a mitigation hierarchy, outlined in section 8.5.1 of the 404 Handbook.
- To maintain consistency between state and federal 404 programs, purchase of federal mitigation credits will be required for impacts authorized by a State 404 permit where compensatory mitigation will be provided through purchase of bank credits. The USACE will maintain responsibility for reviewing and issuing mitigation banking instruments for mitigation banks under Section 404 of the Clean Water Act. However, the state will be responsible for the review of any section 404 dredge and fill permit needed to implement the bank within assumed waters.

Processing

Processing details to expand on the information below may be found in the 404 Handbook, section 5.0.

- The same application form will be used for the ERP and State 404 programs.
- The application will be available through the electronic application (E-app) systems of the Department and the WMDs.
- Where the processing timeframes and agency action procedures in Chapter 62-330, F.A.C., Applicant's Handbook Volume I, and Chapter 120, F.S., do not conflict with the requirements of the State 404 Program, those processing timeframes shall be used, as outlined in the 404 Handbook. Several procedures and rules for agency action are required by Section 404 of the CWA, but not by ERP, causing conflict between some State 404 Program and ERP program processes and timeframes. For example, when a project requires both an ERP and a State 404 Program permit, some portions of the ERP review are likely to be completed faster than the State 404 Program review because of public notice, EPA review requirements, or the need to coordinate with other state and federal agencies. This means that a project may be permittable under Chapter 62-330, F.A.C., (ERP) after the ERP review, but as a result of comments received during the 404 public notice or other aspects of the 404 review, the project may require modifications under the State 404 Program.
- The ERP and State 404 applications will be processed concurrently as much as possible. To prevent the need for subsequent modifications of an ERP where the ERP review is completed before the 404 review, the applicant will be given the choice, in the

application form, to waive the timeframes for issuance pertaining to ERP review when the State 404 Program review may take longer to complete.

- If a project requires both an ERP and a State 404 Program authorization, the State 404 Program review shall not be considered complete until the ERP review is complete, unless the activity is exempt under Chapter 62-330, F.A.C., or qualifies for a general permit under Chapter 62-330, F.A.C. This is to satisfy the requirement for reasonable assurance that State water quality standards and coastal zone consistency requirements will be met.
- Coordination with other State or federal agencies, other states, and tribes may be required during review of a notice or application for a State 404 Program authorization. Coordination agencies may include EPA, WMDs, USACE, State Historic Preservation Office (SHPO), Florida Fish and Wildlife Conservation Commission (FWC), US Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), Miccosukee and Seminole Tribes, and Alabama or Georgia for projects that cross into waters of those adjacent states.
- Public notice will be required for State 404 individual permits. The public notice process may add additional permitting time depending on the nature and type of comments received from the public and commenting agencies, and whether or not a public meeting is scheduled for the project.
- When a proposed activity includes agricultural activities and the State 404 Program permit or verification of qualification for an exemption is processed by the Department, the Department shall consult with the District within whose boundaries the project lies to determine whether the proposed activity may be considered "normal farming, silviculture or ranching" activities, and whether the activity may be considered "ongoing" for the purposes of the exemption in 40 C.F.R. Part 232.3(c)(1).

Permit Duration

- As of the date of submittal of the state's assumption package to EPA, State 404 permits will be valid (effective) for up to five years. However, if federal law changes to allow a longer duration, the State 404 Program rules are written to accommodate such a change.
- General permits expire five years from the date that they become effective in rule. General permits must be re-evaluated and re-approved by EPA before they can be re-issued. This review is not on an individual project basis but is a review of the General Permit in rule.
- Individual permits become effective when they are signed by the Agency and the applicant. Each State 404 Individual permit, when issued, will contain a signature page with signature blocks for the person who has authority to sign permits for the Department district where the permit is issued and for the applicant. The applicant will be required to sign the page and send it back to the Agency for Agency signature.
- Individual permits cannot be extended but may be administratively continued while an application for a new permit is under review in accordance with section 5.3.3 of the 404 Handbook when unexpected project delays cause a project to require more than five years to complete. The 404 Handbook, section 5.3.2 contains instructions for long-term conceptual planning for projects that will take more than five years to complete. These instructions are intended to provide guidance and a streamlined approach to permitting

such projects. Typical project types include mines, large subdivisions, and certain large commercial projects.

Existing USACE Permits

- Existing USACE permits within assumed waters will remain effective until their expiration dates, except where the project is modified after the date of assumption and the Department processes the modification.
- Any modifications other than administrative modifications will need to be processed by the Department after the date of assumption. Such modifications will be processed as a new permit and will only be valid for up to five years.
- Existing USACE permits within assumed waters will not be extended by the USACE. The permittee will need to apply for and obtain a new 404 permit from the state.

Fees

- There will be no processing fees for State 404 Program verifications, notices, applications, or permits.

Agriculture and Forestry Exemptions

- The exemptions that will apply to agriculture and forestry activities under the State 404 Program (see 40 C.F.R. § 232.3) are different from the exemptions available under ERP. The exemptions for agriculture in Section 373.406(2), F.S., Rules 62-330.051, and 62-330.0511, F.A.C., allow new activities within wetlands and other surface waters, while the State 404 Program exemption under 40 C.F.R. § 232.3 may require a permit for such activities. The requirements of both program's exemptions should be read carefully when deciding if an activity is exempt or needs a permit.

Streamlining and Coordinating ERP & 404 Reviews

The Department will issue all State 404 Program permits. Department and WMD staff will coordinate review of the ERP and State 404 permits to the greatest extent practicable. Such coordination shall include:

- When an application or notice that contains activities within state-assumed waters is received by the WMD, the WMD shall forward a copy of the application or notice to the appropriate local office of the Department.
- Department staff will accompany WMD staff on the initial site visit to verify the delineation of wetlands and other surface waters for the State 404 Program permit.
- The Department and WMD will communicate frequently to streamline the permit reviews and ensure consistency between the ERP and State 404 authorization.

The Department will coordinate review of all wildlife-related issues for ERP and State 404 permits.

The Department will provide an opportunity to the Florida Fish and Wildlife Conservation Commission (FWC), the U.S. Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS) to review all applications, and technical assistance will be required when a project has been determined to have a potential to affect listed species. The Department will determine whether a project may have a

potential to affect listed species by using available resources, or it may observe signs that the site is used by listed species during the site visit. In addition, the federal and state wildlife agencies will also assist in the determination as to whether a project has a potential to affect listed species within their jurisdictions and will provide recommendations during the technical assistance process. The Department will incorporate any requirements resulting from consultation or technical assistance into any State 404 permit issued for the project (section 5.2.3 of the State 404 Program Applicant's Handbook). The Department will also provide a copy of the public notice for all individual applications to the USFWS.

This State 404 program species assessment process is modeled after the federal processes for determining, avoiding, and minimizing effects to listed species and ensures compliance with the ESA and the CWA during State 404 Program permit application review and permit issuance. FWC is already involved in the review of many ERP applications and provides the Department with recommended wildlife-related permit conditions, including those that are federally proposed to be listed. In many cases, FWC is the lead conservation agency for federally proposed or candidate species in Florida. The FWC has partnered with the Department to assist with the coordination of federally listed species reviews, which would take place during their current review of impacts to state-listed species for the State ERP program (per Chapters 62-330, F.A.C. and 68A-27, F.A.C.). When needed, the FWC may assist the Department as the species coordination lead to be the point of contact for coordination with the USFWS.

The Department's processes and procedures to review State 404 applications will be similar to and will utilize the USFWS-approved permitting guidance that is currently used by the USACE, to ensure consistency with CWA and ESA protections. All State 404 applications will be forwarded to USFWS for review, the majority of which will include Department or FWC preliminary determinations for effects to endangered or threatened species or species proposed to be listed. These preliminary determinations may include possible effects for species found onsite, potential impacts to critical habitat, and potential protective measures that may address the effects and impacts.

The USFWS will review the applications and supplemental information provided by the Department and FWC, and provide, through technical assistance, recommendations to the Department/FWC on a project-by-project basis. This coordination will ensure adverse effects to ESA-listed species are avoided and minimized. Because the Department has committed to incorporate all avoidance and minimization measures provided by the USFWS as conditions to State 404 permits, no State 404 permits will be issued that will jeopardize the continued existence of a listed or proposed to be listed species, or result in adverse modification of critical habitat (State 404 Program subsections 62-331.053(3)(a)4, 62-331.201(3)(k), and 62-331-248(3)(k), F.A.C.). If the USFWS concludes that a permit application is likely to jeopardize or adversely modify designated critical habitat and no protection measures are available to reduce the risk to an acceptable level, the Department will issue a Notice of Intent to Deny the permit.

In addition, if the applicant for a State 404 Program permit is the holder of a valid and

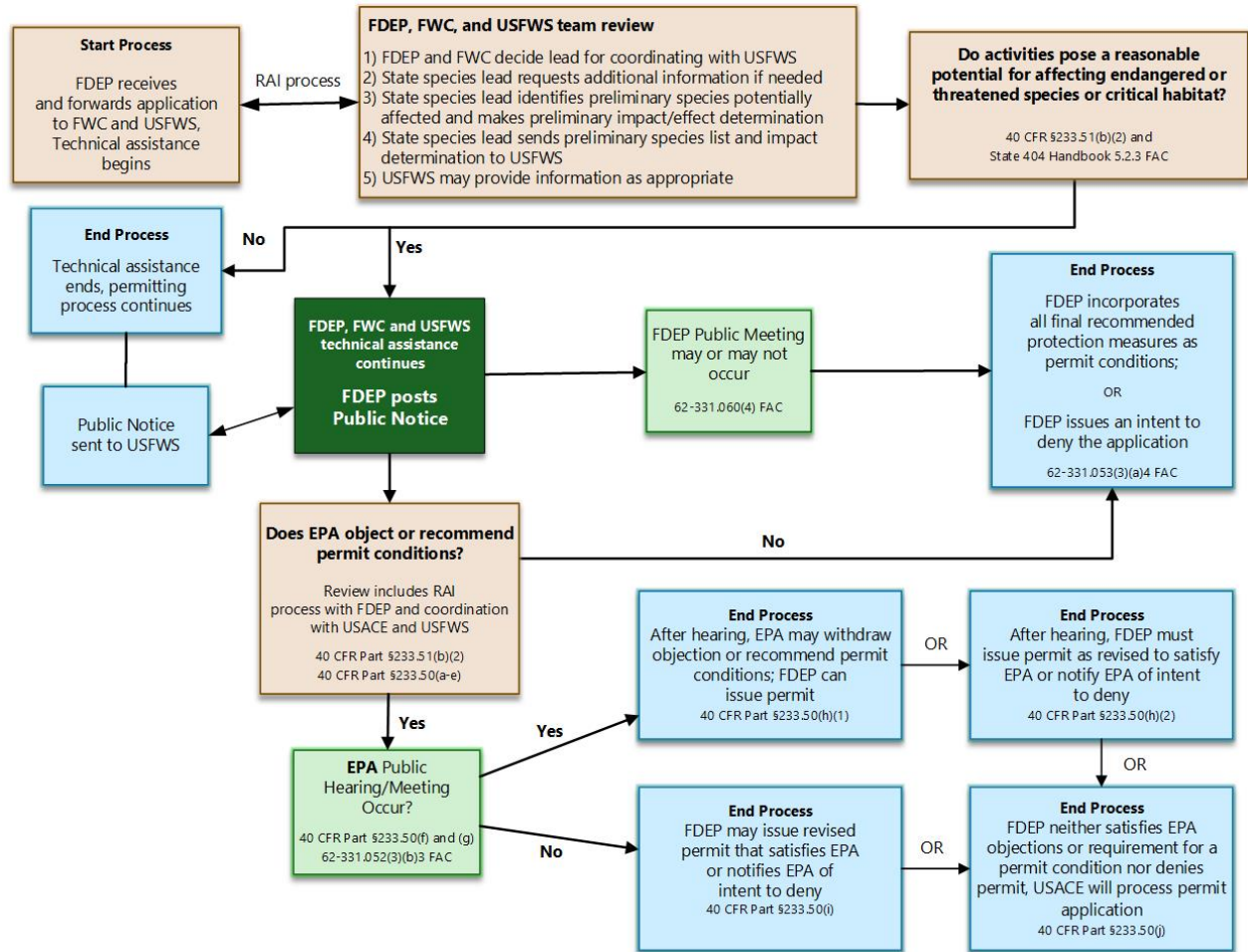
active biological opinion, or Habitat Conservation Plan Incidental Take Permit (HCP/ITP), or a similar binding agreement that is issued by the USFWS and the species and activities described in the State 404 permit application are covered in the Program assumption BiOp, HCP/ITP (or similar agreement), then no additional avoidance and minimization measures would be required. The Department would provide the documentation in order for USFWS review the project.

The State 404 program's species coordination process will include a training program and technical team to monitor and improve the process over time. Staff members from the Department, FWC, and USFWS will participate in a State 404 program species coordination technical team. This technical team will oversee the species coordination process, including but not limited to: assisting in the transition of 404 permitting by participating in training efforts; providing a process to elevate questions and decision-making to a group with technical expertise, as needed; assist in refining coordination processes, procedures, and future improvements, as needed, related to State of Florida permitting under Chapter 62-331, F.A.C. The team will collaborate on developing the training materials, and the FWC and the USFWS be invited to participate in the in-person and/or virtual training meetings for Department permit review staff.

The following Figure depicts an overview of the species coordination process.

Summary of Florida's Wetland and Other Surface Waters Regulatory Programs

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Related Programs

- Mining and Mitigation Program – Regulates activities related to mining, reclamation, and mitigation for mining activities. Mines are subject to additional and separate reclamation requirements per Chapter 378, F.S.
 - For heavy mineral, fuller's earth, and phosphate mines, the wetland mitigation is based on the reclamation requirements if the reclamation maintains or improves the water quality and the function of the biological systems present at the site prior to the commencement of mining activities (Section 373.414(6)(b) and (c), F.S.).
 - Operators of some types of mines may apply for a Life-of-the-Mine Permit, which combines the requirements of the ERP with the reclamation requirements into a single permit.
 - State 404 Program permits will be required for any dredge and fill activities within assumed waters.
 - Additional information is available at:
<http://www.dep.state.fl.us/mainpage/programs/mines.htm>

- Beaches, Inlets, and Ports Program – Activities on or affecting Florida's sandy beaches and adjacent beach and dune systems are subject to additional and separate permitting requirements per Chapter 161, F.S.:
 - Activities waterward of established Coastal Construction Control Lines (CCCL) but landward of mean high water (MHW) line require a separate CCCL or Coastal Construction permit per Chapter 62B-33 or 62B-41, F.A.C. See <http://www.dep.state.fl.us/beaches/programs/ccclprog.htm> for additional information
 - Activities seaward of the MHW line or Erosion Control Line along the Atlantic Ocean, the Gulf of Mexico, the Straits of Florida, or associated inlets that are located on state-owned submerged lands and are likely to affect the distribution of sand along the beach (such as groins, jetties, beach nourishment or re-nourishment, and offshore sand harvesting require a Joint Coastal Permit (JCP) under Chapter 62B-49, F.A.C.; a separate ERP is not required for activities authorized by under the JCP. See <http://www.dep.state.fl.us/beaches/programs/envpermt.htm> for additional information.
- Office of Ecosystem Projects – Restoration activities within the greater south Florida ecosystem in the area encompassing the Lake Okeechobee watershed, the Everglades, and coastal estuaries are regulated under the Everglades Forever Act ([EFA; Section 373.4592, Florida Statutes \(F.S.\)](#)), the [Comprehensive Everglades Restoration Plan Regulation Act \(CERPRA; Section 373.1502, F.S.\)](#), and the Northern Everglades and Estuaries Protection Plan ([NEEPP; 373.4595, F.S.](#)). A separate ERP is not required for activities authorized under these programs, though ERP permits are issued for restoration projects that fall within the umbrella of south Florida restoration activities, but were not specifically identified in statute (e.g., Kissimmee River Restoration). State 404 Permits will be required for any dredge and fill activities within assumed waters. See <http://www.dep.state.fl.us/everglades/permit.htm> for additional information.

Proprietary (State-owned Submerged Lands)

General overview

- In addition to the above *regulatory* permit programs, activities that are located on submerged lands owned by the state of Florida, otherwise called state-owned, or sovereign, submerged lands (SSL) also require a *proprietary* authorization for use under Chapter 253, F.S., and Chapter 18-21, F.A.C. Such lands generally extend waterward from the mean high water line (of tidal waters) or the ordinary high water line (of fresh waters) both inland and out to the state's territorial limit (approximately three miles into the Atlantic Ocean, and nine miles in the Gulf of Mexico).
- SSL authorizations typically are in the form of consent by rule, letter of consent, easement, or lease. Authorizations consider issues such as water dependency, riparian rights, impacts to submerged land resources, and preemption from other uses of the water by the public. These considerations originate from Public Trust Doctrine. In Florida, public lands owned by the State and the resources upon them are held in trust by the Board of Trustees of the Internal Improvement Trust Fund (BOT) for the benefit of all of the people for a public use, such as fishing, boating, and swimming. The BOT is

comprised of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

- The program is structured such that an application for both an SSL authorization and an individually-processed ERP cannot become complete until all the information required for both has been supplied, and the ERP and the SSL authorization must be issued concurrently, such that neither the ERP, nor the SSL authorization can be issued if all the conditions for issuance of *both* the ERP permit and the SSL authorization are not met. Activities that qualify for ERP exemptions and general permits are not required to be processed concurrently, but usually are processed together when the time frames for the ERP decision can be met and the activity meets all the conditions for issuance of the SSL authorization.
- Activities located within designated Aquatic Preserves must meet the requirements of Chapter 258, F.S., and Chapter 18-20, F.A.C. (all Aquatic Preserves except Biscayne Bay) or Chapter 18-18, F.A.C. (activities within Biscayne Bay).

Delegations of Authority

- The BOT has delegated the Department and WMDs to act as their staff in the review of activities that require authorizations to use SSL. For most activities, the BOT has also delegated authority to the Department and the WMDs to take final action to approve or deny the authorization, although some activities are required to be acted on directly by the BOT. The Department and the WMDs divide responsibilities for reviewing and acting on the SSL authorization in accordance with the same operating agreement that governs the ERP program, although, per Section 253.002, F.S., The Department is responsible for enforcing violations of the SSL rules and statutes.
- In accordance with Rule 18-21.0051, F.A.C., the BOT has retained authority to take final action on the following, although staff of the Department and the WMDs process the application for presentation to the BOT in the form of an agenda item:
 - Proposed leases or modifications to existing leases having a preempted areas of more than 150,000 square feet, including proposed leases for mooring fields that don't qualify for the general permit under Rule 62-330.420, F.A.C. and additions to existing docking facilities where the size of the proposed additional preempted area exceeds 10% of the existing preempted area and the total of existing and proposed additional preempted area exceeds 150,000 feet;
 - Private easements of more than 5 acres, with some exceptions;
 - Certain open-air dining areas;
 - The establishment of mitigation banks on SSL;
 - Exceptions to the maximum preemption limits for a private residential multi-family dock or pier;
 - Public mooring fields that have a preempted area of more than 150,000 square feet that don't qualify for a general permit or mooring fields that exceed certain tenancy times;
 - Activities having heightened public concern, as determined by the BOT or by Department and WMD staff.

Forms of Authorizations

- Exceptions – A limited number of activities can be conducted without authorization per section 18-21.005(1)(a), F.A.C.
- Consent by Rule – Certain regulatory exempt activities outside aquatic preserves and protected manatee areas are authorized in section 18-21.005(1)(b), F.A.C., to occur without the need for an application.
- Letter of Consent – Written authorization is required to verify that certain activities will be conducted in compliance with rule and statutory criteria to ensure they will have minimal impact to environmental resources or public use, including some public activities, per section 18-21.005(1)(c), F.A.C.; this includes all activities in an aquatic preserve that do not require a lease, easement, or other form of authorization.
- Leases – Required for all commercial (revenue generating) activities and activities that have more than a minimal impact to resources, per section 18-21.005(1)(d), F.A.C. Leases require payment of annual lease fees.
- Easements – Required for activities such as bridges, submerged cables, or breakwaters that permanently limit or preempt an area's public use per section 18-21.005(1)(e), F.A.C.

Aquatic Preserves

There are 41 aquatic preserves in Florida. These are areas of state-owned submerged land designated in Chapter 258, F.S., for special and additional protection. Aquatic preserves are established for the purpose of being preserved in an essentially natural or existing condition so that their aesthetic, biological, and scientific values may endure for future generations. All activities, except single family docks, must be determined to be clearly in the public interest. Special criteria apply to activities in aquatic preserves, as discussed under "Evaluation Criteria."

Fees

- Processing fee – Leases and easements require a processing fee separate from the ERP permitting fee. A processing fee is not required for consent by rule or letter of consent authorizations.
- Activities involving dredging and removal of the dredged material from SSL are subject to payment of severance fees, based upon the quality of the material, the amount of material removed, and by location (County). The fees are established in Rule 18-21.011(3)(a), F.A.C.
- Private easements require an appraisal, and the easement fee is based on that appraisal and an enhanced value factor, if applicable. When a private easement is renewed a new easement fee is charged based on a new appraisal and applicable enhanced value factor. Public easements are not charged an easement fee.
- Lease fees are assessed for the life of the facility and are collected annually. The annual lease fee is based on 6 percent of the annual income of the facility, the base fee, or the minimum annual fee. There are discounts for facilities open to the public and facilities designated as Clean Marinas (<https://floridadep.gov/rcp/clean-marina>). Annual lease fees are higher in Aquatic Preserves, and additional fees are required for extended term leases having lease terms of greater than 5-year duration.

- Special event leases (boat shows) are assessed a special event fee as outlined in Rule 18-21.011(1)(d), F.A.C.
- Fees may be waived for public projects.

Processing

- Exceptions do not require SSL authorization, but qualification may be verified by the Department, the WMD, or delegated local program during processing of an application for an activity that qualifies for an exception under 18-21.005(1)(a), F.A.C.
- Consent by Rule is granted automatically for certain qualified regulatory exempt activities in section 18-21.005(1)(b), F.A.C., and no application is required. However, qualification may be verified by the Department, the WMD, or delegated local program during processing of a regulatory "Request for Verification of Exemption".
- If a Letter of Consent is required under section 18-21.005(1)(c), F.A.C., the authorization may be processed at the same time as the regulatory authorization, if one is required, or it may be applied for and processed separately if the project is a regulatory exempt activity.
- Leases and Easements required under sections 18-21.005(1)(d) and (e), F.A.C., are processed at the same time as any required regulatory permit. The ERP application form is used to apply for both the regulatory permit and the SSL authorization. When staff determines that the project qualifies for both the regulatory and SSL authorization, the SSL authorization is processed as follows:
 - Single-Family Leases processed by the Department
 - The lease instrument is prepared by Department district staff and sent to the Lessee for execution. The executed lease is then sent to DSL for billing and uploading into the BTLDS electronic database.
 - Single-Family Leases processed by WMDs
 - WMD staff prepares a Delegation of Authority (DOA) document, then sends the DOA to DSL. DSL prepares the lease instrument, sends it to the lessee for execution, uploads the executed document into BTLDS, and processes the billing.
 - Multi-Family and Commercial Leases, Easements
 - The Department or WMD district staff prepare a DOA document, then send the DOA to DSL. DSL prepares the lease/easement instrument, sends it to the lessee/grantee for execution, uploads the executed document into BTLDS, and processes the billing.

Evaluation Criteria

- The review criteria for an application to use SSL include a requirement that an activity not be contrary to the public interest, and any sale (transfer of ownership) of SSL must be clearly in the public interest. Also, any activity in an aquatic preserve must be clearly in the public interest, except single family docks which have been already determined to be in the public interest.
- Evaluation factors are contained in Chapter 18-21, F.A.C.; if in an aquatic preserve, additional factors apply per Chapter 18-20, F.A.C. (all aquatic preserves except Biscayne Bay) or Chapter 18-18, F.A.C. (in the Biscayne Bay Aquatic Preserve).

Considerations include whether the activity will adversely affect state-owned submerged lands resources (such as salt marsh, grassbeds, and oyster bars), the rights of riparian property owners, navigation, water dependency, and preemption of uses of the waters by the public-at-large. Only uses that are water dependent can be approved, except for certain non-water dependent activities that have been “grandfathered”, and incidental uses that may be approved on a case-by-case basis for public projects. Many of the approval factors are very detailed, with specific restrictions on the sizes, types, and designs of activities that can be authorized as a component of managing state-owned land.

- In addition to the above, in an aquatic preserve, dredging is strongly discouraged and multi-family docks, except those that conform to single-family dock criteria, must obtain a lease. In addition to public interest, cumulative impacts are also assessed for applications in aquatic preserves.
- Docks in Biscayne Bay Aquatic Preserve, other than for a single-family residence, must meet the extreme hardship test in Chapter 18-18, F.A.C.

Mangroves

- The trimming or alteration of mangroves (tropical to sub-tropical tree species growing along the coastal areas of Florida) is regulated in accordance with the Mangrove Trimming and Preservation Act of 1996 (Sections 403.9321-403.9333, F.S.). The regulations only apply to the three native species of mangroves, *Rhizophora mangle* (red mangrove), *Avicennia germinans* (black mangrove), and *Laguncularia racemosa*, (white mangrove).
- Levels of regulation include exemptions, general permits, and individual permits, depending on the extent of trimming or alteration. For example, exemptions exist for trimming within a riparian mangrove fringe, for maintenance trimming, to restore configurations previously attained by legal trimming, and for some governmental, utility, and surveying activities. Exemptions and general permits are limited by conditions applicable to each. The Individual Permit process involves review using criteria in Part IV of Chapter 373, F.S., and may require a mitigation assessment under Chapter 62-345, F.A.C. A separate mangrove permit is not required if mangrove trimming or alteration is associated with work that requires an individually-processed ERP permit.
- Provisions exist for delegating the mangrove trimming and alteration program to local governments; to date there are seven delegated local governments.
- Special provisions apply to trimming or alteration conducted by Professional Mangrove Trimmers.
- The Department provides a certification program for Professional Mangrove Trimmers (PMT) and maintains a list of certified PMTs to assist property owners in locating a PMT for their mangrove trimming project.
- Additional information is available at: <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mangroves>

RELATIONSHIP TO FEDERAL PROGRAMS

The USACE cannot act on applications that require a federal dredge and fill permit until the state ERP, which contains the federal water quality certification and coastal zone consistency concurrence determination (or waiver thereto), has been issued, or until 180 days has passed since the time an application is considered complete if it had not yet been issued. State 404 permits will be state, not federal, actions, and will therefore not require water quality or CZM certification. However, it will be a requirement that any State 404 program permit that also requires an ERP authorization will not be considered complete until the ERP review is complete because an applicant must meet water quality standards and coastal zone management program criteria to receive an ERP.

Water Quality Certification

When a corresponding federal dredge and fill permit is required, issuance of the ERP also constitutes a water quality certification (WQC) or waiver thereto under section 401 of the Clean Water Act, 33 U.S.C. 1341. Upon issuance of an ERP, a copy of the permit containing the applicable WQC is sent to the USACE so the federal permit can be issued. The Department, WMDs, and USACE have executed an Operating Agreement (OA) that reflects how the agencies are to coordinate to process applications

(<https://floridadep.gov/ogc/ogc/content/operating-agreements>) In accordance with that OA, the Department, WMD, or delegated local program has 180 days upon receipt of a complete ERP application to issue, deny, or affirmatively waive the WQC. In addition, by letter from the Governor of Florida to the U.S. Environmental Protection Agency, Florida has identified those activities for which agency action will constitute a water quality certification or waiver thereto:



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and

Coastal Zone Consistency Concurrence (CZCC)

Issuance of an ERP in coastal counties constitutes a finding of consistency under Florida's federally approved Coastal Zone Management Program under Section 307 (Coastal Zone Management Act).

Nationwide Permits (NWP)

Every five years, the Department reviews the USACE Nationwide Permits (NWP) for consistency with WQC and CZM within Florida. The Department certifies many of the NWPs, with conditions. Four of the 2017 NWP activities do not apply in Florida, and one (NWP 8, Oil and Gas Structures on the Outer Continental Shelf) was denied a CZM. Most of the NWPs that were granted a WQC and CZM were regionally conditioned to provide that projects qualifying for the NWP must be authorized by the applicable permit or exemption required under Part IV of Chapter 373, F.S., by the Department or WMD under Section 373.069, F.S., or a local government with delegated authority under Section 373.441, F.S., and receive WQC and applicable CZCC or waiver thereto, as well as any authorizations required for the use of state-owned submerged lands under Chapter 253, F.S., and, as applicable, Chapter 258, F.S. When Florida assumes the 404 program, NWPs will no longer be applicable within assumed waters,

however, the state program plans to include general permits that are modeled after the USACE NWP's in the State 404 Program rule to provide consistency between state and federal 404 programs.

Additional information on the NWP's can be found at:

<https://www.saj.usace.army.mil/Missions/Regulatory/Source-Book/>

State Programmatic General Permit (SPGP)

On December 31, 2018, the Jacksonville District of the USACE reauthorized a revised SPGP (SPGP V-R1) to the State of Florida. The SPGP's are reviewed and re-issued every five years. SPGP V-R1 covers the geographic area throughout Florida, excluding some specified geographical areas. The purpose of the SPGP V-R1 is to avoid duplication of permitting between the USACE and the Department for minor work located in waters of the United States, including navigable waters. Delegations may also be granted to WMDs and local governments. Currently, SJRWMD, SWFWMD, and Hillsborough County are the only additional delegations.

The USACE has delegated to the Department the ability to issue the federal permit under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act for the following activities that qualify for an ERP general permit or exemption:

- Construction of shoreline stabilization activities, such as riprap and seawalls (Groins, jetties, breakwaters, and beach nourishment/re-nourishment are excluded);
- Docks, piers, associated facilities, and other minor piling-supported structures;
- Derelict vessel removal;
- Boat ramps and boat launch areas and structures; and
- Scientific devices.

Applications that are received for the above activities are first reviewed to determine if they meet all of the conditions of the SPGP. Those that do are processed as "green," in which case issuance of the Department, WMD, or local government authorization includes verification of qualification for the corresponding federal authorization. Those that do not meet the conditions are designated "red" by the Department, the WMD, or the local government, and the applicant is directed to go to the USACE for processing.

SPGP V-R1 will not be applicable within assumed waters after assumption.

NPDES

Florida has statewide authorization to implement the federal National Pollutant Discharge Elimination System (NPDES) permit program for stormwater. Areas of regulation include municipal separate storm sewer systems, certain industrial activities, and construction activities. The municipal program has jurisdiction over large and medium municipalities. The industrial program covers selected industries and are identified by Standard Industrial Code. New construction requires an NPDES stormwater permit if the clearing, grading, or excavation work disturbs one or more acres of land and discharges to either a surface water of the state or to a Municipal Separate Storm Sewer System (MS4).

The NPDES permit is not linked to the ERP program; therefore, applications and notices for NPDES activities must be submitted separately from the ERP application. Copies of the permit, application forms, guidance materials, and other information about the permit and NPDES stormwater program can be downloaded from the following website:

<https://floridadep.gov/water/stormwater>. An NPDES permit can be applied for and received electronically by submitting a Notice of Intent at: <http://www.fldeportal.com/go/>

Agricultural Conservation Easement Program (ACEP)

The 2014 Farm Bill replaced the NRCS Wetland Reserve Program with ACEP. The Wetland Reserve Program provided funding for farmers to voluntarily preserve and enhance wetlands on their agricultural lands through conservation easements. ACEP includes provisions for farmers to voluntarily enter into Wetland Reserve Easements and/or to enroll in the Wetland Reserve Enhancement Partnership. Funding is available through these programs for wetland restoration/protection in critical areas, restoration or enhancement beyond NRCS requirements, and use of innovative restoration methods and practices.

Special Area Management Plan (SAMP) and Advanced Identification (ADID)

A SAMP was developed by the USACE for Bird Drive Basin in Dade County in between 1992 and June 1995 and is still in effect. The Department and Miami-Dade County's (MDC) Department of Environmental Resources Management entered into a Memorandum of Understanding dated April 27, 1993, that directs that applicants requiring mitigation within the basin will contribute a specified amount of money to MDC, which is in turn used to implement the Hole in the Donut Mitigation Bank within Everglades National Park.

ADIDs have been developed for western Biscayne Bay (for the shoreline east of Cutler Ridge), the Florida Keys (Monroe County), the Loxahatchee River (Palm Beach County), Eastern Everglades (near the 8 1/2 square mile area), and Rookery Bay (Collier County). These help applicants identify areas where permitting difficulties can be expected, but they do not otherwise directly affect the state permitting process.

In addition to the above, the Jacksonville office of the USACE has developed an innovative Comprehensive Conservation, Mitigation and Permitting Strategy that targets areas around the state that are experiencing significant development pressure with concurrent concerns with long term habitat and water quality impacts, or where large scale projects are underway that can be expected to result in significant regional impacts. These include the Dade County Lake Belt, Santa Rosa County, St. Joe Development (in the panhandle), Walt Disney World, and an Environmental Impact Statement for South West Florida. Each of these has involved coordination with the Department and the WMDs.

STATUTES AND RULES

Regulatory Statutes and Administrative Rules

The statewide environmental resource permitting regulatory program is authorized under Part IV of Chapter 373, F.S., specifically by Section 373.4131, F.S. Overall protection of water quality and the other programs of the Department are contained in Chapter 403, F.S. The

Mangrove Trimming and Preservation Act of 1996 is contained in Sections 403.9321 through 403.9333, F.S. The WMDs are created by Section 373.069, F.S.

Florida Administrative Code regulatory rules of general applicability include chapters:

- 62-4 (including general permitting criteria, Department and NFWFMD fee requirements, water quality protection criteria for special waters, and anti-degradation criteria)
- 62-40 (Water Resource Implementation Rule)
- 62-110 (Exceptions to the Uniform Rules of Procedure)
- 62-113 (ERP Operation and Delegation Agreements)
- 62-302 (Surface Water Quality Standards)
- 62-312 (Part IV—additional criteria within Monroe County, applicable to the ERP program)
- 62-330 and Applicant's Handbook Volumes I and II (Statewide Environmental Resource Permitting)
- 62-331 and the State 404 Program Handbook (State 404 Program)
- 62-340 (statewide delineation of the landward extent of wetlands and other surface waters)
- 62-342 (mitigation banking)
- 62-344 (delegation of the ERP permit program to local governments)
- 62-345 (Uniform Mitigation Assessment Method)
- 40A-44 (ERP Agricultural and Forestry Surface Water Management Systems – NFWFMD)
- 40B-400, (Environmental Resource Permits – SRWMD)
- 40C-4 (Environmental Resource Permits –SJRWMD)
- 40C-42 (ERP Stormwater Systems – SJRWMD)
- 40C-44 (ERP Agricultural Surface Water Management Systems – SJRWMD)
- 40D-4 (Environmental Resource Permits – SWFWMD)
- 40E-4 (Environmental Resource Permits – SFWMD)
- Rules that may apply to grandfathered projects:
 - 62-25 (Old stormwater rule)
 - 62-312 (Except Part IV - old WRP/dredge and fill rule)
 - 62-343 (Old ERP rule, did not include areas within the jurisdiction of NFWFMD)
 - 62-346 (ERP within the jurisdictional boundaries of the NFWFMD)
 - Other “40X” rules within the WMDs (40B-4, 40C-1, 40C-8, 40C-40, 40C-41, 40C-400, 40D-1, 40D-40, 40D-400, 40E-1, 40E-40, 40E-41, 40E-400)

Proprietary Statutes and Administrative Rules

The proprietary program is authorized under Chapter 253, F.S. Activities on sovereign submerged lands in aquatic preserves are further authorized by Chapter 258, F.S.

Florida Administrative Code rules implementing the proprietary program include chapters:

- 18-14 (Administrative Fines)
- 18-18 (Biscayne Bay Aquatic Preserve)
- 18-20 (Aquatic Preserves)
- 18-21 (Sovereignty Submerged Lands Management)

General

All licensing and agency action determinations under the above statutes and rules are further governed by the Administrative Procedures Act, Chapter 120, F.S., and by the Rules of Uniform Procedures under Chapter 28, F.A.C., and the Exceptions to the Uniform Procedures under Chapter 62-110, F.A.C. However, the State 404 Program is not subject to the default issuance provisions of Chapter 120, F.S., because these provisions are in conflict with federal law.

The above statutes may be accessed at: <http://www.leg.state.fl.us/statutes/>

The above rules may be accessed at: <https://www.flrules.org/>

COMPLIANCE ASSURANCE

Staff from the Department that have responsibility for an ERP activity under the respective Operating Agreements are responsible for compliance and enforcement of both the regulatory and the proprietary aspects of an ERP permit or other authorization and applicable sovereign submerged lands authorization. The WMDs have full responsibility for compliance and enforcement of the regulatory components of an ERP activity but can enforce the proprietary components only if they can be corrected as part of the regulatory corrections (such as reducing the size of a dock built on SSL to comply with the regulatory permit). Enforcement remedies that are proprietary in nature (such as assessing past-due lease fees for an unauthorized structure and authorizing the structure with a lease) is the responsibility of the Department, whether the Department or a WMD processed a permit for the activity. Compliance and enforcement of State 404 Program authorizations or violations are the responsibility of the Department.

PERMIT TRACKING

The Department and each WMD have their own tracking system to record the progress of each permit application and all enforcement cases. These systems track processing time, status, and collect data about each permit/compliance case.

ROLE OF LOCAL GOVERNMENTS

- Section 373.441, F.S., and its implementing rule Chapter 62-344, F.A.C., provide the procedures and considerations for the Department to delegate the ERP program to local governments. Delegations can be granted only where:
 - the local government can demonstrate that delegation would further the goal of providing an efficient, effective, and streamlined permitting program; and
 - the local government can demonstrate that it has the financial, technical, and administrative capabilities and desire to effectively and efficiently implement and enforce the program, and protection of environmental resources will be maintained.
- Section 373.441, F.S., was amended in 2010 to make the Department responsible for processing all petitions for delegation submitted by a local government, including where

the local government is seeking delegation of WMD responsibilities in the ERP program.

- To date, two local governments (Broward County and Hillsborough County) have received limited delegations of the ERP program.
- Broward County received delegation from both the Department and the SFWMD for permitting, compliance, and enforcement of activities identified in a Delegation Agreement adopted in Chapter 62-113, F.A.C. The County was not delegated authority to process proprietary authorizations for activities.
- Environmental Protection Commission of Hillsborough County received delegation from the Department for permitting, compliance, and enforcement of activities identified in a Delegation Agreement adopted in Chapter 62-113, F.A.C. The County was not delegated authority to process proprietary authorizations.
- Miami-Dade County has a limited delegation from the Department to confirm sovereign submerged lands consents of use under Chapter 253, F.S., for activities that qualify for the Section 403.813(1)(b), F.S., regulatory exemption for private single-family docks.
- Section 403.9324, F.S. authorizes delegation of the mangrove program. To date, the following local governments have been delegated authority to implement the program: Miami-Dade, Broward, Hillsborough, Pinellas, and Sarasota Counties; the Town of Jupiter Island, and the City of Sanibel.

WATER QUALITY REGULATIONS

Rules and General Overview

- Florida's surface water quality standards are authorized under Section 403.061, F.S., and are adopted in Chapter 62-302, F.A.C. This chapter includes antidegradation policies, water classifications, specific narrative and numeric standards, and an identification of Outstanding Florida Waters (which receive the highest water quality protection).
- Additional water quality standards for Outstanding Florida Waters, including antidegradation standards for all waters are contained in Rule 62-4.242, F.A.C.
- Standards for granting mixing zones are contained in Rule 62-4.244, F.A.C.
- Chapter 62-4, F.A.C., contains additional provisions for exemptions from water quality standards, and for sampling, testing, and method detection limits for water pollution sources. An antidegradation policy is applied to wetlands, based upon designated use classifications. Special standards have been adopted for discharge of treated stormwater and wastewater into wetlands.
- ERP permits also must consider whether a regulated activity will adversely affect the groundwater standards contained in Chapters 62-520, 62-522, and 62-550, F.A.C.

Designated Uses

- All surface waters in Florida fall into one of six classifications based upon their present and future most beneficial use (designated use). The six classifications include:

<u>Class</u>	<u>Designated Use</u>
I	Potable Water Supplies
II	Shellfish Propagation or Harvesting

III	Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife
III-Limited	Fish Consumption; Recreation or Limited Recreation; and/or Propagation and Maintenance of a Limited Population of Fish and Wildlife (Used for some wholly artificial or altered waters)
IV	Agricultural Water Supplies
V	Navigation, Utility and Industrial Use

Narrative and Numeric Water Quality Criteria

- Narrative and numeric water quality criteria as listed in Chapter 62-302, F.A.C., are designed to support the aforementioned designated uses. More stringent criteria apply to waters in a “higher” classification (e.g., Class I waters have more stringent criteria than Class III waters). There are a number of biological water quality criteria contained in Chapter 62-302, F.A.C., including bacteriological quality, biological integrity, nuisance species, and nutrients.
- Wetlands are considered “waters of the State,” and are included in the six classes of waters above. Most waterbodies in Florida, including most wetlands, are classified as Class III waters. Section 373.414(10), F.S., provides the authority for the Department, in consultation with the WMDs, to establish by rule water quality criteria for wetlands, giving appropriate recognition to the water quality of such wetlands in their natural state. However, to date, no rules governing specifically the water quality in wetlands have been adopted.
- Natural background conditions (condition of waters in the absence of man-induced alterations based on the best scientific information available to the Department), such as those that exist naturally in wetlands, are considered. For example, notwithstanding specific numeric criteria, dissolved oxygen levels, which are naturally low in wetlands, that can be attributed to natural background conditions, and man-induced conditions that cannot be controlled or abated, may be established as alternative dissolved oxygen criteria for a waterbody or portion of a waterbody.

Antidegradation Policy

- Florida's antidegradation policy is contained in and implement by sections 62-302.300, 62-302.700, and 62-4.242, F.A.C. It generally provides that permit applicants demonstrate that lowering of water quality is necessary or desirable under federal standards and under circumstances that are clearly in the public interest. Paragraph 62-302.300(17), F.A.C., specifically provides that projects permitted under Part IV of Chapter 373, F.S., shall be considered to be in compliance with the antidegradation policy.

Other Water Quality Criteria (Applicable to Wetlands)

- Chapter 62-4, F.A.C., provides several relief mechanisms allowing for limited lowering of water quality, including Site Specific Alternative Criteria, mixing zones, variances, and exemptions, provided certain conditions are met.
- Certain portions of Chapter 62-611, F.A.C., are considered as water quality standards. This chapter allows for the use of some wetlands for treatment of wastewater in very limited cases.

- The review of water quality certifications for specific applications is done by the environmental resource permitting staff. The ability for an activity to meet applicable state water quality standards is determined as part of the permit application review, and the water quality certification is issued, waived, or denied in the same document that issues or denies the environmental resource permit.

OUTREACH, TRAINING, and EDUCATION

Public Outreach/Education

- The Department and the WMDs have active public outreach and education programs that provide materials on wetlands, other surface waters, and about the state's regulatory and proprietary programs. Public outreach and education programs include:
 - Visits to schools to provide interactive information in the classroom or out in the schoolyard;
 - Demonstrations involving the use of "Enviroscape" Models--including stormwater (also used for wetland education), and coastal models;
 - Programs at specific events, such as scheduled wetland activities at local state park events, fairs, or scout jamborees;
 - Staff may speak at community events;
 - Development of online activities, some with specific sites for children;
 - Involvement in specific programs such as:
 - the Florida Envirothon
 - Technical reports
 - Science fairs
 - Earth Day
- The development of many of the above programs and program tools are in part cost shared with other organizations and regulated entities capable of supplying funding and materials for wetland outreach efforts.

Internal Training

- Department and WMD staff are provided frequent training opportunities. Some training initiatives include, but are not limited to:
 - Basic ERP permitting training for new hires
 - State 404 Program permit processing and compliance training
 - CAPS Discipline Training – basic compliance training for new hires
 - Webinars – varying topics including such things as identifying wetland plants, hydrographic reviews, sovereign submerged lands authorizations, how to conduct stormwater inspections, and other ERP permitting topics.
 - Cross-training – staff are encouraged and sometimes required to cross-train across Department programs. This helps to build the knowledge base of staff, assists staff in identifying issues that may affect other Department programs, and provides opportunities for staff to transfer into other programs, if desired.

External Training

- The Department and the WMD training programs concentrate on building productive relationships with stakeholders by providing education and training on delineation of wetlands and implementation of the regulatory and proprietary rules.
- Staff regularly organize public workshops and invite appropriate stakeholders to attend (i.e., a dock permitting workshop targeted to dock contractors, a wetlands workshop targeted to consultants). Staff may also travel to professional, public, or private organizations to provide training upon request. Some of the Department's public workshops provide continuing education credits for registered professionals.
- All of the Department and WMD programs have developed websites with program information and publications concerning wetlands and surface water regulations. See "Guidebooks, Brochures, Websites, Other Educational Materials" below.

COORDINATION

There is no one "wetland team" in Florida to guide or control all the programs that regulate, acquire, and manage Florida's wetlands. However, mechanisms are in place to foster communication on issues related to wetlands and other surface waters. These include

- The Department and the WMDs frequently coordinate on individual permitting actions;
- The Department and the WMDs meet approximately four times per year on statewide issues involving implementation and coordination of the environmental resource permit program;
- The Department and the WMDs meet frequently to discuss issues related to water use and water consumption, both of which may adversely affect wetland and other surface water levels and functions;
- The Department, WMDs, local governments, and the USACE meet frequently to discuss implementation and improvement of the SPGP and other state programmatic permits.
- The Department, FWC, and USFWS meet frequently to discuss issues related to ESA-listed species conservation and protection during State 404 Program permit reviews, and coordinate on training for Department permit review staff. A technical team between all three agencies will meet annually to monitor the coordination process and develop additional training or efficiency tools. This team would also provide opinions to Department permit review staff for projects that have wildlife issues or when there is a need to resolve disputes.

CONTACTS

<https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/contacts-submerged-lands-and>