

(a) Description of the Scope and Structure of the State's Program
(Required by 40 C.F.R. § 233.11(a))

Purpose of Section (a)

The purpose of Section (a) is to provide the information required in 40 C.F.R. § 233.11(a), which states: *“The program description as required under §233.10 shall include: (a) A description of the scope and structure of the State's program. The description should include extent of State's jurisdiction, scope of activities regulated, anticipated coordination, scope of permit exemptions if any, and permit review criteria;”*

State 404 Program Jurisdiction

In accordance with section 373.4146, Florida Statutes (F.S.), the State 404 Program governs all dredging and filling (“activity”) in waters of the United States regulated by the State under section 404(g)-(l) of the Clean Water Act (CWA), 33 U.S.C. §§ 1344(g)-(l). The State will administer the CWA section 404 dredge and fill permitting program within assumed waters. The Army Corps of Engineers (USACE) will retain administration of the CWA section 404 dredge and fill permitting program within retained waters. The state defines the preceding terms in rule or statute as:

“Activity”, for the purposes of the State 404 Program only, means “discharge of dredged material” and/or “discharge of fill material” as those terms are defined in 40 C.F.R. § 232.2. The terms “dredge”, “fill”, “dredging”, and “filling” when used within Chapter 62-331, Florida Administrative Code (F.A.C.), or this handbook shall be interchangeable with “activity” as defined herein. [State 404 Program Applicant’s Handbook section 2.0 (b) 1.]

“Material,” when used in the context of “filling,” 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 does not include the temporary use and placement of lobster pots, crab traps, or similar devices or the placement of oyster cultch pursuant to Section 597.010, F.S. [Applicant’s Handbook Volume I section 2.0 (a) 60.]

“State assumed waters” means waters of the United States that the state assumes permitting authority over pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and rules promulgated thereunder, for the purposes of permitting the discharge of dredge or fill material. [State 404 Program Applicant’s Handbook section 2.0 (b) 47. and Section 373.4146(1), F.S.]

“Retained waters” means 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, 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 of adjacent retained waters will be

the landward project boundary of each project that proposes discharges of dredged or fill material waterward of a 300-foot guide line established from the ordinary high water mark or mean high tide line of the retained water. [State 404 Program Applicant’s Handbook section 2.0 (b) 41.]

“Surface water” means water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth’s surface. [373.019(21),F.S.]

“Wetlands” means those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow reproduce or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto.[Section 373.019(27), F.S.]

The Department will determine the landward extent of wetlands and other surface waters in accordance with Florida’s methodology in Chapter 62-340, F.A.C. Detailed information regarding Florida’s method can be found in section (h) of this program description.

The State 404 Program applies to state-assumed waters of the United States (WOTUS) as defined at 40 C.F.R. Part 120. To provide certainty, streamlining, and efficiency, the Department will consider that any wetlands or other surface waters delineated in accordance with Chapter 62-340, F.A.C., that are regulated under Part IV of Chapter 373, F.S. could be considered waters of the United States, and will treat them as if they are, unless the applicant requests a WOTUS jurisdictional determination, and provides documentation that clearly demonstrates a water is not a WOTUS, subject to Department verification and agreement.

Anticipated Coordination

Coordination with Florida’s Five Water Management Districts

The Department will implement the State 404 Program through its six district offices, the Mining and Mitigation Program (MMP), and Mitigation Banking Program (MBP) with oversight from the Tallahassee headquarters office in Leon County. The district offices, MMP, and MBP will process all State 404 Program authorizations and compliance actions. Each district will process the applications for projects within their respective administrative boundaries (Figure (a)-1), except authorizations for mining projects will be processed by MMP, and dredge and fill permits

for mitigation banks will be processed by the MBP. More information about each of the Department’s district offices may be found at <https://floridadep.gov/districts>.

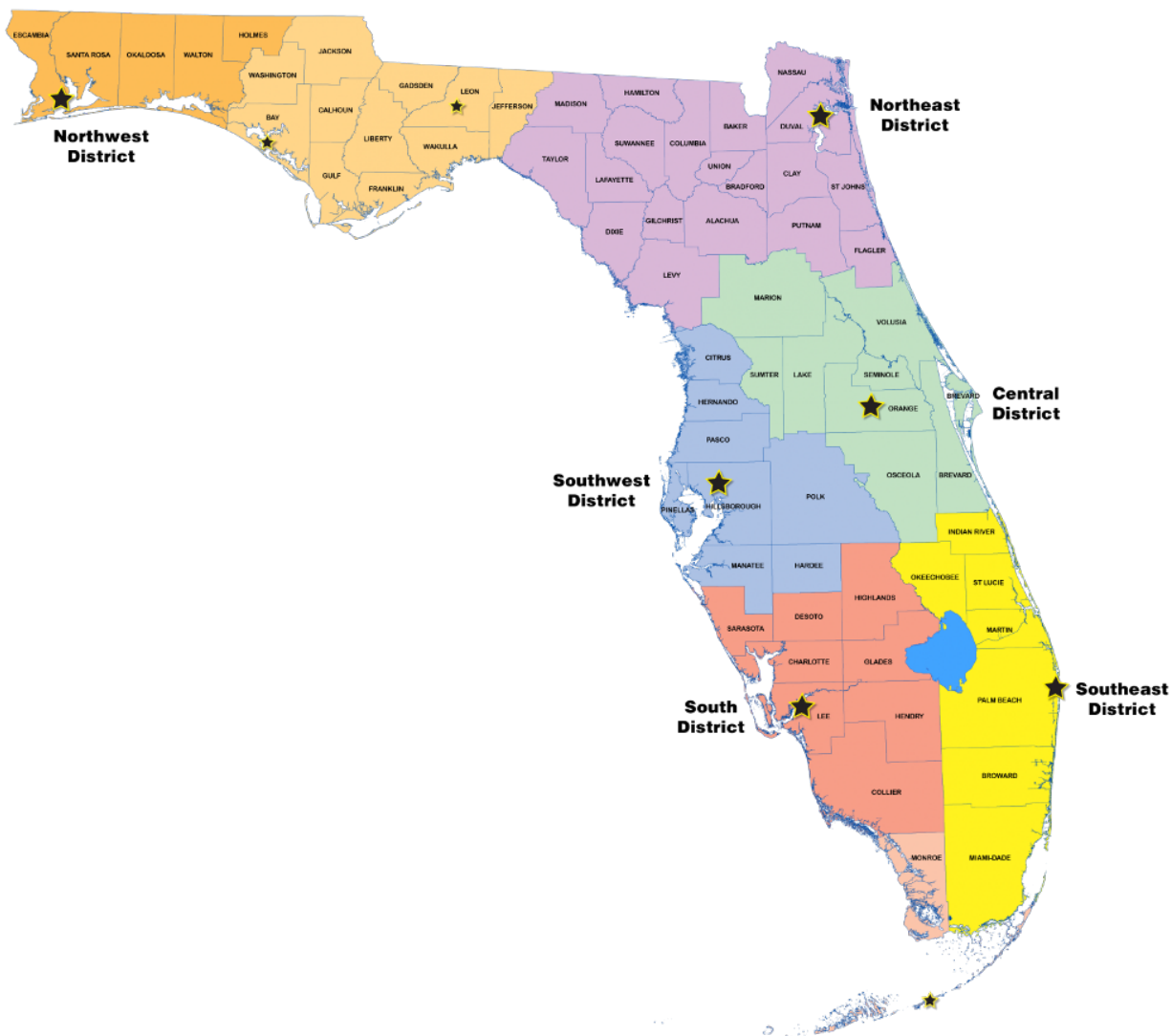


Figure (a)-1: Florida Department of Environmental Protection District Office Boundaries

Florida’s existing Environmental Resource Permitting program (ERP, Chapter 62-330, F.A.C.) will continue to be implemented in conjunction with the State 404 Program. ERP regulates the construction, alteration, operation, maintenance, repair, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, and works (including docks, piers, structures, dredging, and filling located in, on or over wetlands or other surface waters). The ERP program is implemented by the Department’s six district offices and the five Water Management Districts (WMDs) (Figure (a)-2). More information about the WMDs may be found at <https://floridadep.gov/water-policy/water-policy/content/water-management-districts>.

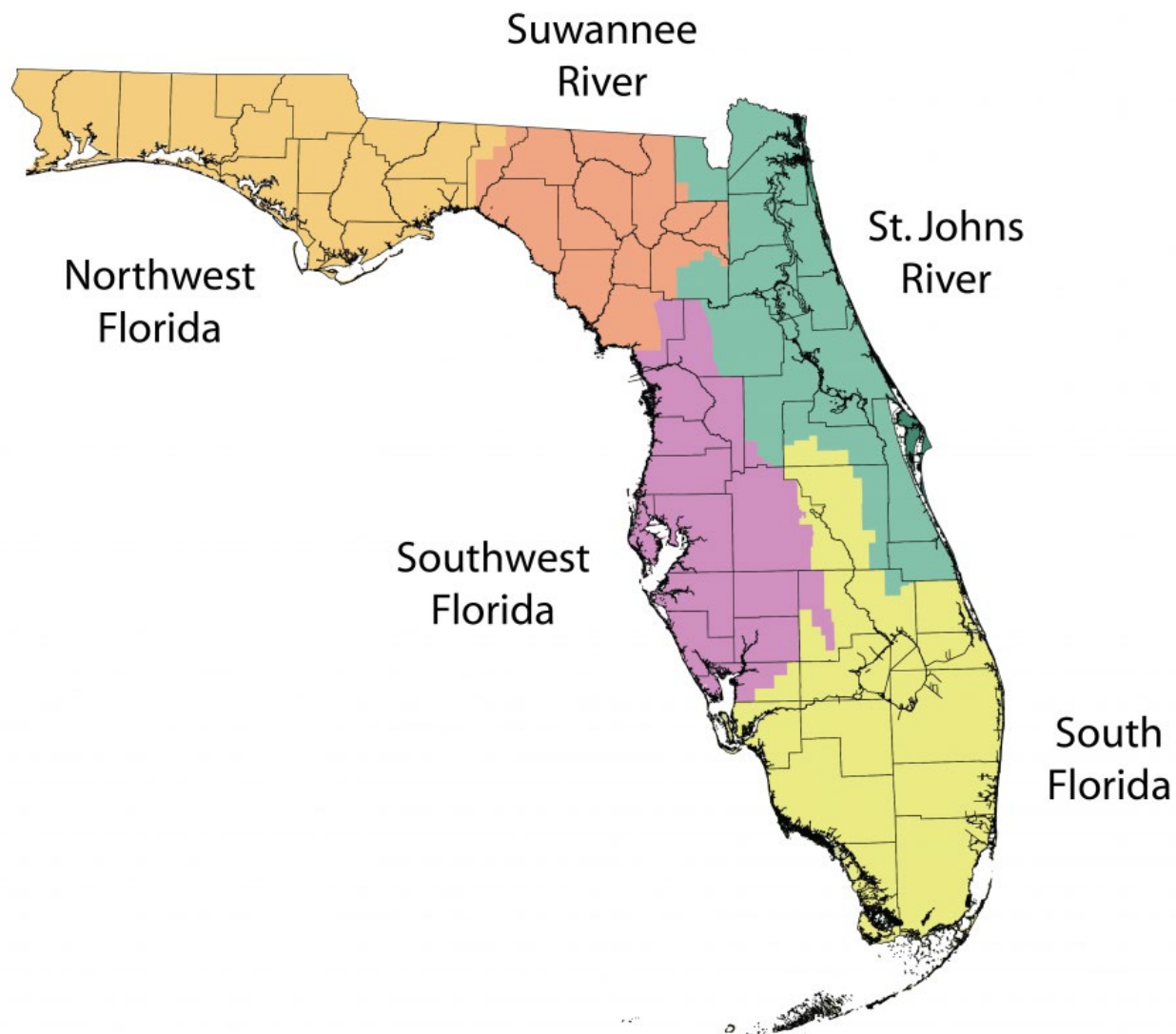


Figure (a)-2: Florida’s Five Water Management Districts

The Department will coordinate with the WMDs for those projects where the ERP permit is processed by the WMD in accordance with the division of responsibilities outlined in Operating Agreements between the Department and each WMD, which can be viewed at <https://floridadep.gov/ogc/ogc/content/operating-agreements>. The Department has general supervisory authority over the WMDs’ implementation of ERP in accordance with [Section 373.026\(7\), F.S.](#), which ensures consistency in the application of the ERP rule statewide.

The Department estimates that approximately 85% of ERP and State 404 Program requirements overlap. Coordination with the WMDs for those overlapping requirements will serve to eliminate

duplication of review, streamline the State 404 Program and ERP permitting processes, and provide consistency between the ERP and State 404 Program authorization.

Most projects that require State 404 Program authorization will also require ERP authorization. Where both ERP and State 404 Program authorization are required, an applicant must receive both authorizations prior to commencing the activity. An applicant may choose to have both authorizations issued concurrently to avoid the need for subsequent modification of the project that may occur if one authorization is issued before the other (subsection 62-331.010(10), F.A.C.).

If the WMD receives an application for a project that requires authorization under the State 404 Program, the WMD will immediately forward a copy of the application file to the Department. The Department and WMD processing staff will do a joint site visit to review site conditions and verify the landward extent of wetlands and other surface waters in accordance with Chapter 62-340, F.A.C. If requested, the Department will also review the wetlands and other surface waters to determine if they are Waters of the United States (WOTUS). To facilitate streamlining and efficiency of application reviews, the Department will assume that all wetlands and other surface waters that are jurisdictional under Chapter 62-340, F.A.C. are also WOTUS unless specifically requested by the applicant in accordance with the State 404 Program Applicant’s Handbook, section 1.1.

The Department and WMD processing staff will maintain frequent communication about the project and will share any determinations or requests for additional information received from commenting agencies and any additional information received by the applicant during the review process. The staff will discuss any suggested or required modifications to the project and any mitigation that will be required to ensure that any authorizations issued are not in conflict, to the greatest extent practicable. If the WMD authorizes an ERP that is in conflict with any State 404 Program permit issued by the Department, the applicant will be responsible for obtaining an appropriate permit modification prior to conducting the activity.

Coordination with Delegated Local Programs

The Department has delegated all or portions of the ERP program to two local governments in accordance with Section 373.441, F.S., and Chapter 62-344, F.A.C. Currently, Broward and Hillsborough Counties process ERP permits in accordance with delegation agreements which may be viewed at: <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-local-program-delegation>. The Department may coordinate with the delegated local governments in a similar manner as with the WMDs, described above. If the local government authorizes an ERP that is in conflict with any State 404 Program permit issued by the Department, the applicant will be responsible for obtaining an appropriate permit modification prior to conducting the activity.

Coordination with Other Entities

The Department shall coordinate with other entities as described in the State 404 Program Applicant’s Handbook, section 5.2, and in any EPA-approved Memoranda of Agreement, Understanding, or Operating Agreement. The Department may enter into Memoranda of

Agreement, Understanding, or Operating Agreements with other entities regarding coordination for the State 404 Program if those memoranda or agreements are approved by EPA prior to being implemented. The Department has or will enter into such agreements with the USACE, EPA, State Historic Preservation Office (SHPO), and the US Fish and Wildlife Service (USFWS)/Florida Fish and Wildlife Conservation Commission (FWC). Copies of the USACE and EPA MOAs are located in Sections D and E of this package. Copies of the SHPO OA and USFWS/FWC MOU may be found in section (j) of the program description. Other entities that may coordinate with the Department include:

- Federally Recognized Tribes
- Adjacent States (Alabama and Georgia), when a State 404 Program activity may affect the water resources of that adjacent state.

Scope of Activities Regulated by the State 404 Program

Subsection 62-331.020(2), F.A.C. requires that an applicant receive a State 404 Program permit prior to conducting any dredge or fill activities in, on, or over state-assumed waters unless the activity qualifies for an exemption. The State 404 Program provides three types of authorizations: verifications of exemption, general permits, and individual permits. Where required, applicants must submit the appropriate application with supporting documentation to the Department for review and authorization prior to commencing any regulated activity. A matrix to assist applicants in determining the appropriate application form based on the type of ERP and/or State 404 Program authorization required is located in the State 404 Program Applicant’s Handbook, section 4.3.

Typical dredge and fill activities in Florida include, but are not limited to:

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| • Dredging | • Transmission lines |
| • Filling | • Roadways |
| • Ecological restoration | • Airports |
| • Excavation | • Marinas |
| • Conversion of waters type | • Docks |
| • Commercial developments | • Piers |
| • Residential developments | • Boat ramps |
| • Single-family residences | • Dams |
| • Agriculture | • Levees |
| • Aquaculture | • Mining activities |
| • Utilities | • Mitigation |

State 404 Program Permit Exemptions

Pursuant to section 62-331.020(1), F.A.C., a State 404 Program is not required for the activities described in 40 C.F.R. §232.3. Notice to the Department is not required to conduct an exempt activity unless the activity also requires notification or authorization under ERP.

State 404 Program General Permits

Projects that do not qualify for an exemption may meet the requirements of a general permit. General permits authorize activities that, if conducted consistent with permit requirements, will cause only minimal individual and cumulative adverse environmental effects. The State 404 Program provides 48 general permits. The general permits described in Rules 62-331.201-.248, F.A.C., were modeled on the existing USACE nationwide permits (NWP) and an existing regional general permit (SAJ 92). This approach was taken to provide consistency between the federal and State 404 Programs. References and requirements for use in tidal waters were removed from the general permit language because tidal waters are not assumable. Those NWPs authorized only under Section 10 of the Rivers and Harbors Act were not included in the State 404 Program rules. An application, where required, will be submitted to the Department or forwarded to the Department by a WMD where the WMD reviews the ERP permit. The Department will review the application following the procedures described in 62-331.200(3), F.A.C.

The Department believes the general permits in Chapter 62-331, F.A.C. meet the requirements of 40 C.F.R. § 233.21(b), which states “The Director may issue a general permit for categories of similar activities if he determines that the regulated activities will cause only minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effects on the environment. Any general permit issued shall be in compliance with the section 404(b)(1) Guidelines.” The Department is relying on the USACE analysis of the nationwide or regional general permits on which the State 404 Program general permits were modeled for the first five years of the program. Those analysis are not included with this submission.

General permits must be reevaluated every five years. At the end of five years, the Department shall reassess the effects of the State 404 Program general permits by evaluating permitting data gathered during the first five years of program implementation. The Department believes this approach is consistent with the intent of the provision in 40 C.F.R. § 233.21(a), which allows a state to administer and enforce general permits previously issued by the USACE in State assumed waters and will provide the State greater control over assumed waters because the Department can reassess the effects of each general permit on state-assumed waters every five years.

In addition to the general permits adopted in state rule as described above, and in accordance with 40 C.F.R. § 233.21(a) and paragraph 62-331.200(7), F.A.C., the Department intends to assume administration of several existing regional general permits issued by the USACE within state-assumed waters. These include SAJ-13 (Aerial Transmission Lines in Florida); SAJ-14 (Sub-aqueous Utility and Transmission Lines in Florida); SAJ-86 (Residential, Commercial, Recreational and Institutional Fill in the Choctawhatchee Bay, Lake Powell, and West Bay Basins, Bay and Walton Counties, Florida); SAJ-90 (Residential, Commercial & Institutional Developments in Northeast Florida); SAJ-103 (Residential Fill in Holley By The Sea, a Subdivision in Santa Rosa County); SAJ-105 (Residential, Commercial, Recreational and Institutional Fill in the West Bay Watershed of Bay County, Florida); and SAJ-114 (Residential,

Commercial, Recreational and Institutional Fill in the Choctawhatchee Bay and St. Andrew’s Bay Watersheds located in Bay County and Walton County, Florida). These existing general permits may be viewed in the USACE Jacksonville District Regulatory Division Sourcebook at <https://www.saj.usace.army.mil/Missions/Regulatory/Source-Book/>. The Department may choose to enter rulemaking to create similar general permits prior to expiration of the USACE regional general permit.

Any new general permits created by the state must be reviewed by EPA in accordance with 40 C.F.R. § 233.50.

State 404 Program Individual Permits

An individual permit is required for any activity that does not qualify for an exemption or meet the requirements of a general permit. Applications for individual permits will be prepared in accordance with Rule 62-331.050, F.A.C., and submitted to the Department or forwarded to the Department by a WMD where the WMD reviews the ERP application. The Department will review the application following the procedures described in 62-331.052 -.053, F.A.C. Public Notice of individual permit applications shall be in accordance with section 62-331.060, F.A.C. The permitting decision will be documented in accordance with section 8.2 of the State 404 Program Applicant’s Handbook using a Technical Staff Report (see template in section (f) of this program description).

More Information

A detailed and holistic view of Florida’s wetland programs and how they all work together may be found in the “Overview of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida” (Appendix (a)-1).