Federal Wetlands Permitting Overview

"Expediting Your Dock Application: Tips and Tricks from the Agencies"

Marco Island, 17 August 2015



U.S.ARMY

US Army Corps of Engineers

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Corps Regulatory Program Goals

Maintaining a Balance

- To enhance the efficiency of the Corps administration of its regulatory program.
- To provide strong protection of the Nation's aquatic environment, including wetlands.
- To ensure that the Corps provides the regulated public with fair and reasonable decisions.

Three Mission Elements

- **Permitting: Authorize activities in waters of the U.S.**
- **Compliance: Ensure permit applicants follow permit terms and conditions**
- **Enforcement: Investigate unpermitted activities**

Regulatory Authorities

- ***Section 10 Rivers & Harbors Act of 1899*** – Regulate all structures or work in, over or under navigable waters of the U.S.

- ***Section 404 Clean Water Act*** – Regulate discharge of dredged or fill material in waters of the U.S., including wetlands

- ***Section 103 of the Marine Protection, Research and Sanctuaries Act*** - Regulate transport of dredged material for the purpose dumping in the ocean

Typical Structures/Work Requiring a Section 10 Permit



- Docks



- Utility/Power Lines



- Marinas



- Dredging

Section 404 of the Clean Water Act

- Fill material: material placed in waters of the United States where the material has the effect of replacing any portion of a water of the U.S. with dry land, or changing the bottom elevation of any portion of a water of the U.S
  - Examples include rock, sand, soil, clay, construction debris, overburden from excavation
  - Does not include trash or garbage

- Discharge of fill material: addition of fill material into waters of the U.S.

Typical Projects Requiring a Section 404 Permit



- Road Crossings



- Utility Lines



- Energy Projects



- Residential Development

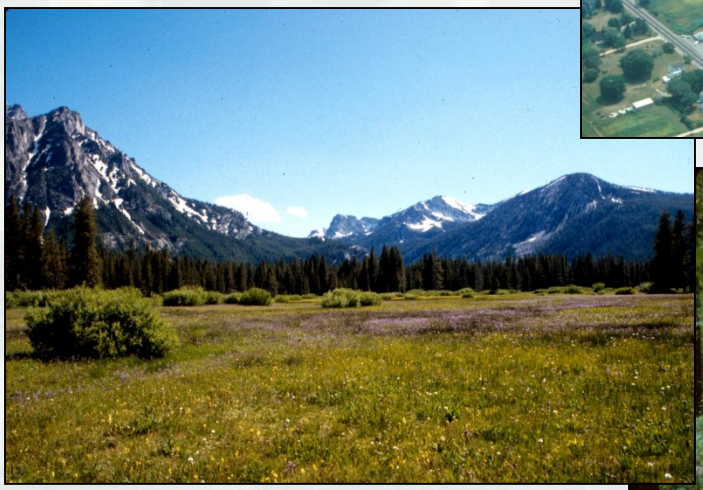


- Bank Protection/ Levee Work













Waters of the United States

Wetland Delineation

The Atlantic and Gulf Coastal Plain Regional Supplement used in the delineation of wetlands has officially changed from an Interim status to a Finalized status.

Check that you are using the latest data sheet.

The finalized version of the Atlantic and Gulf Coastal Plain Regional Supplement can be found online at:
http://www.usace.army.mil/CECW/Documents/cecwo/reg/AGCP_regsupV2.pdf



Pre-application Meetings

Advantages of pre-application meetings?

- Obtain your USACE permit application ID number.
- Identify issues that might lead to lengthy RAI's.
- Speeds up the review process – explain your project face-to-face.
- Time critical projects – strategize how to get through the process within your timeframe.
- Creates an opportunity to minimize overall risk and expenses for a particular project.

Pre-application Meetings

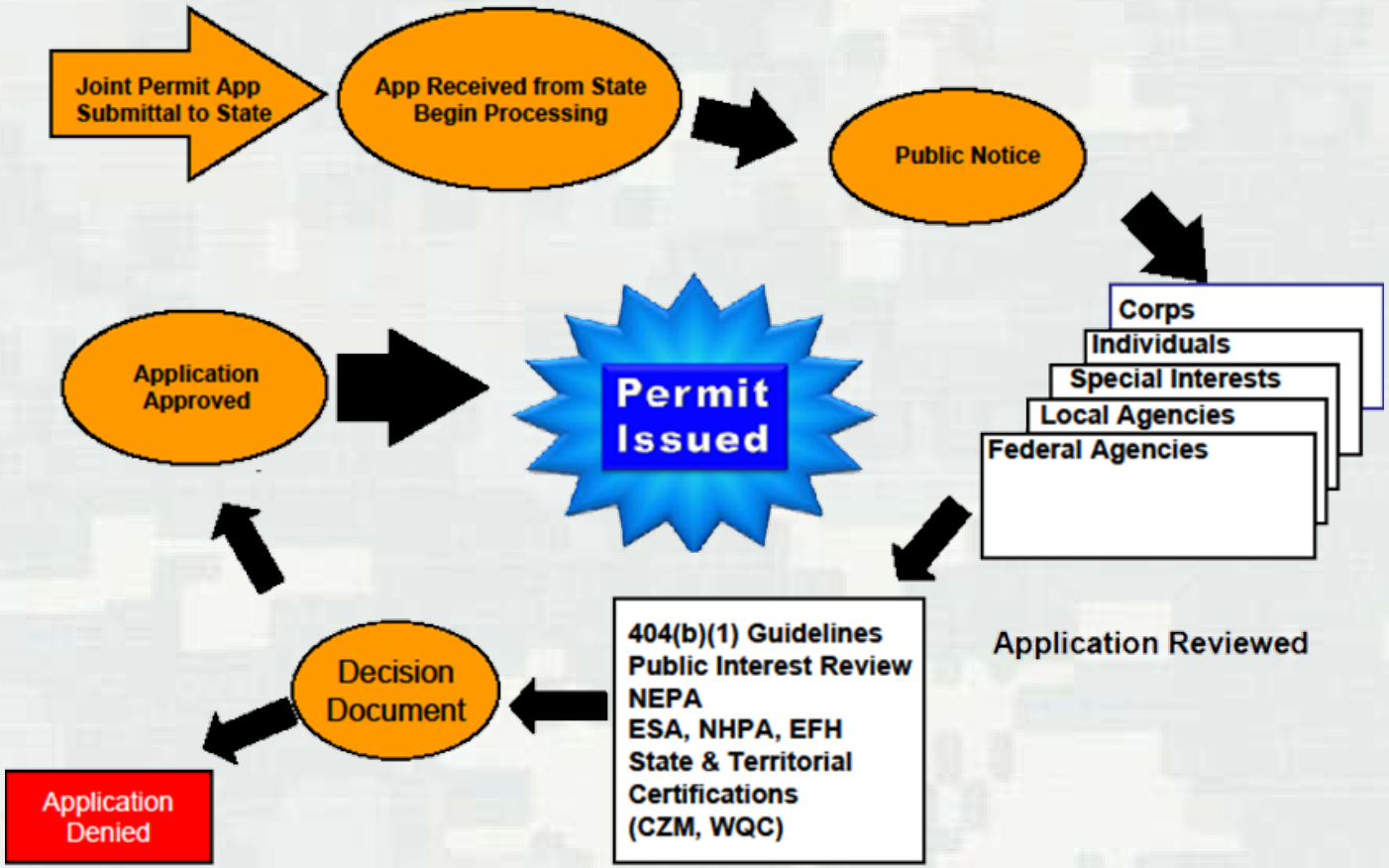
- Identify Permit Types
  - General Permits:
    - Nationwide Permits (NWP) – regional conditions
    - Regional General Permits (RGP)
    - Programmatic General Permits (PGP)
  - Individual Permits:
    - Standard Permits (SP)
    - Letters of Permission (LP)
- Discuss potential issues (ESA, SHPO, Wetlands issues).
- Discuss avoidance, minimization, and mitigation

Items for a Complete Application

Items to include in submittal package to generate a Public Notice (PN):

- Signed Application (agent letter)
- Project Description
- Adjacent Property Owners Addresses
- Statements on the Avoidance and Minimization of Wetland Impacts
- Statement on Compensatory Mitigation, or why mitigation is not offered
- One set of 8.5” x 11” drawings which include: a vicinity/location map
- Overall site plan, plan with wetland boundaries and proposed wetland impacts, and a cross section

Permit Review Process

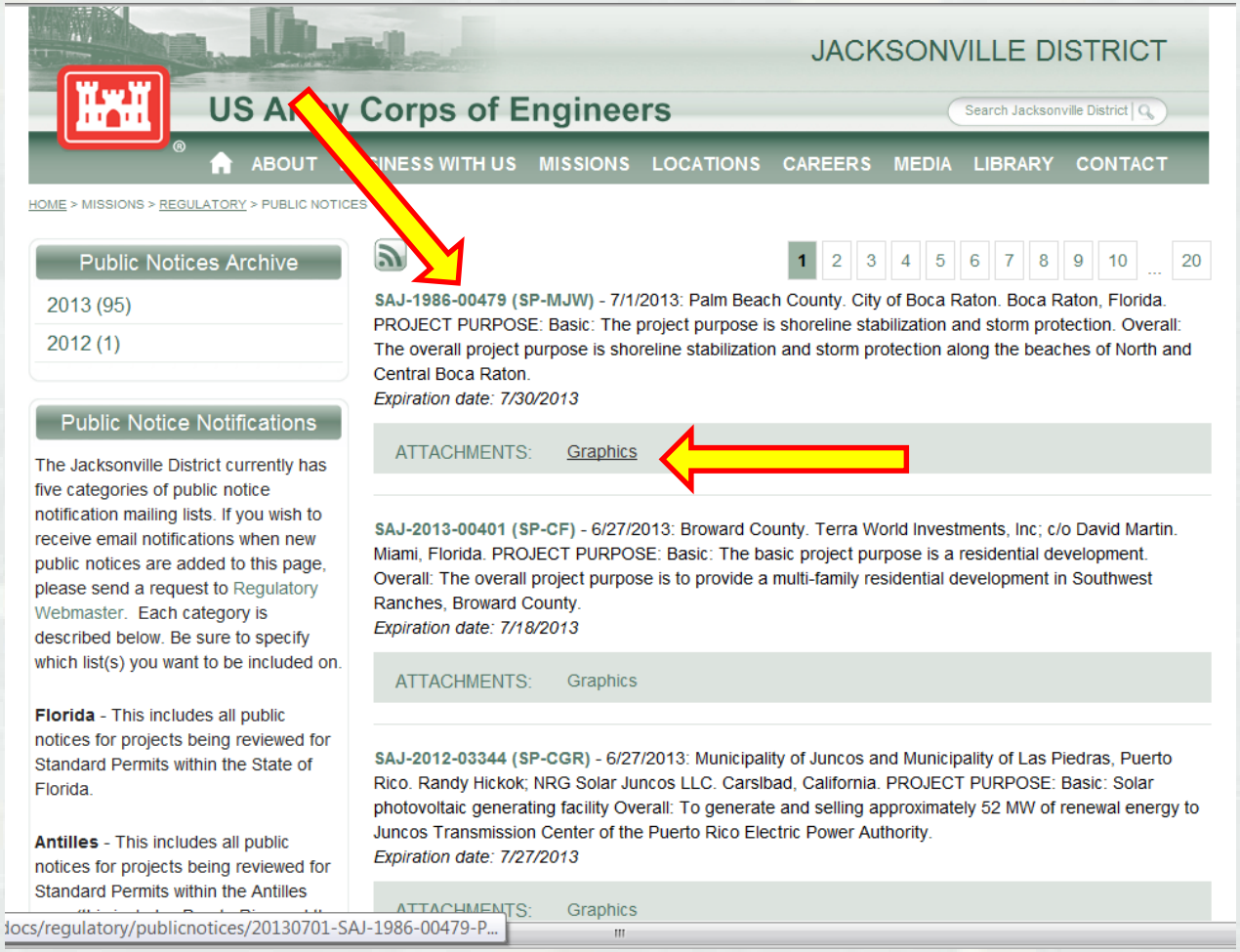


Public Notice Mailing Lists

- **Florida**
- **Antilles**
- **Tropical Storms & Other Emergencies**
- **Special Issues** - These are public notices that involve the Regulatory program but which are generally not limited to one particular geographic area.
- **Administrative Penalty**

saj-rd-webmaster@usace.army.mil

Public Notice



Agency Coordination

Agencies copied on the PN for coordination and comment:

- U.S. Fish and Wildlife Service (USFWS)
- National Marine Fisheries Service (NMFS)
- FL Department of State Division of Historical Resources (SHPO), and in some cases the Seminole and Miccosukee Tribes of Indians
- EPA
- USCG

USFWS - Listed Species

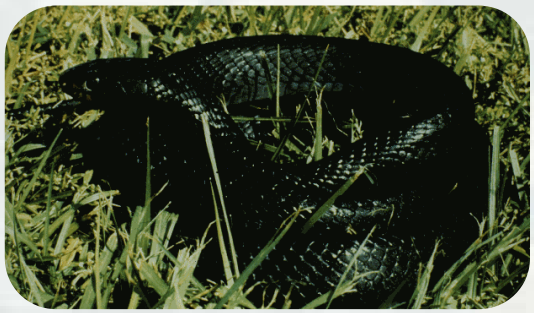
Several keys are in place to expedite the coordination process



Wood Stork



Manatee



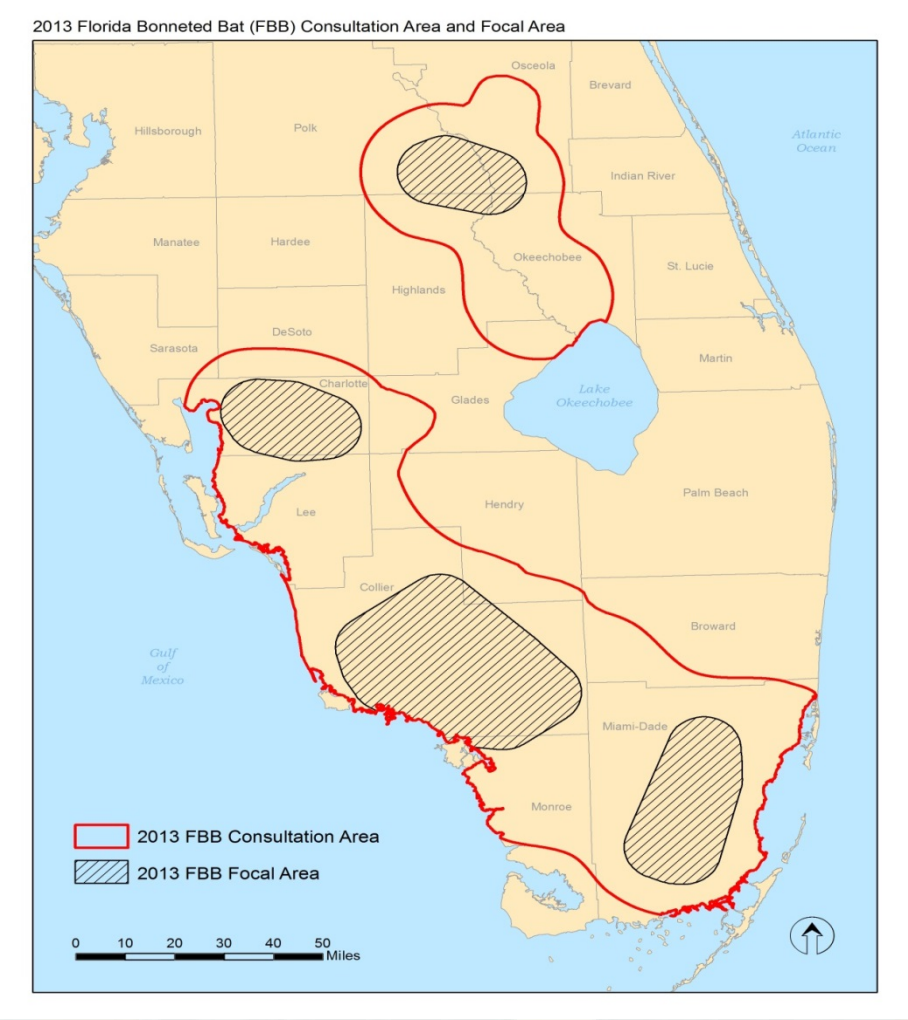
Indigo Snake



Panther

Florida Bonneted Bat





NMFS - Listed Species

The NMFS requires coordination for listed species such as the Right Whale, Smalltooth Sawfish, swimming Sea turtles, etc.



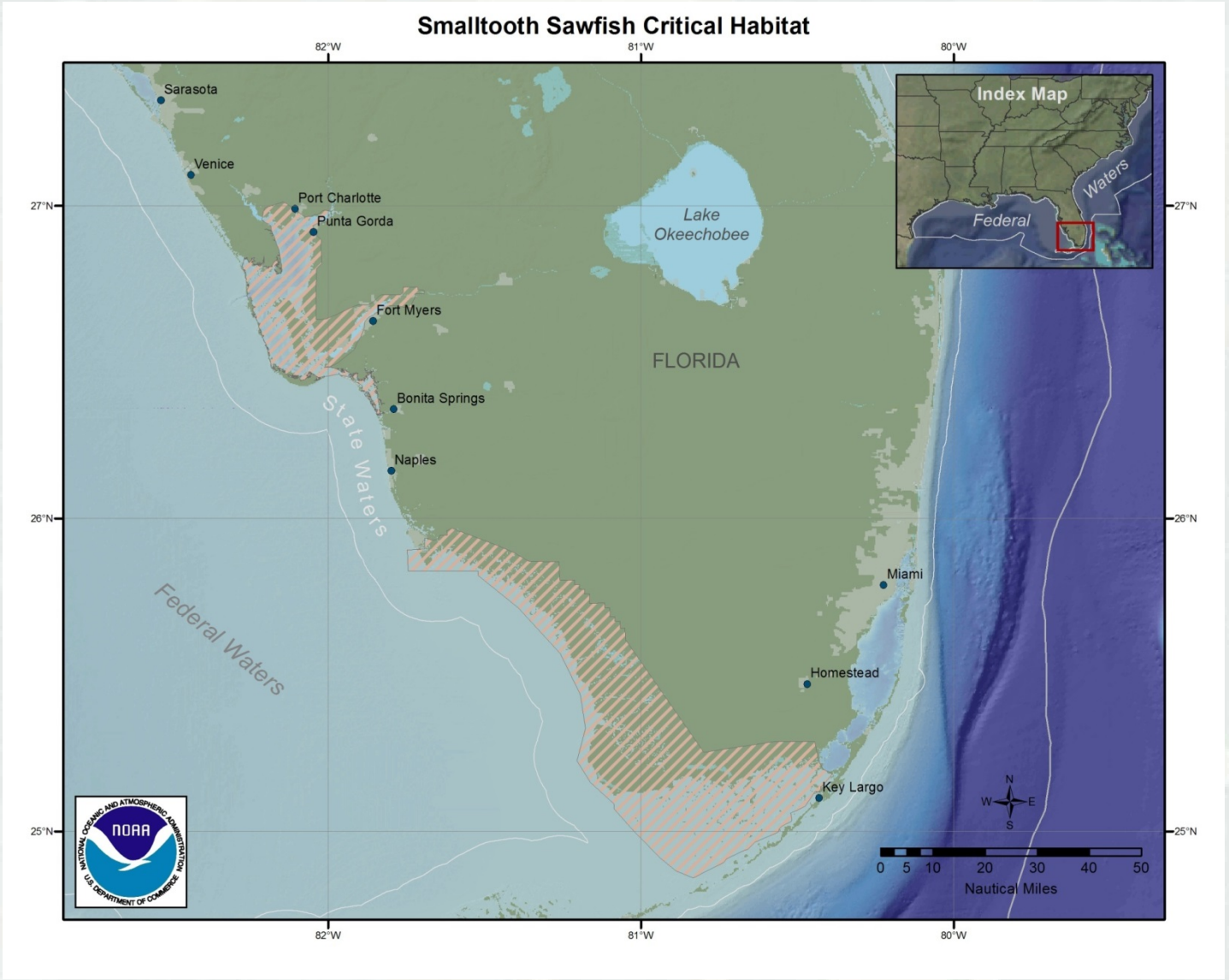




NMFS Listed Species Critical Habitat

- Smalltooth Sawfish
- Johnson's Seagrass
- *Acropora spp.*
- Gulf Sturgeon
- Right Whale

- *NMFS IS ISSUING BIOLOGICAL OPINIONS FOR PROJECTS AFFECTING CRITICAL HABITAT*
- *http://sero.nmfs.noaa.gov/pr/GISDataandMaps.htm*

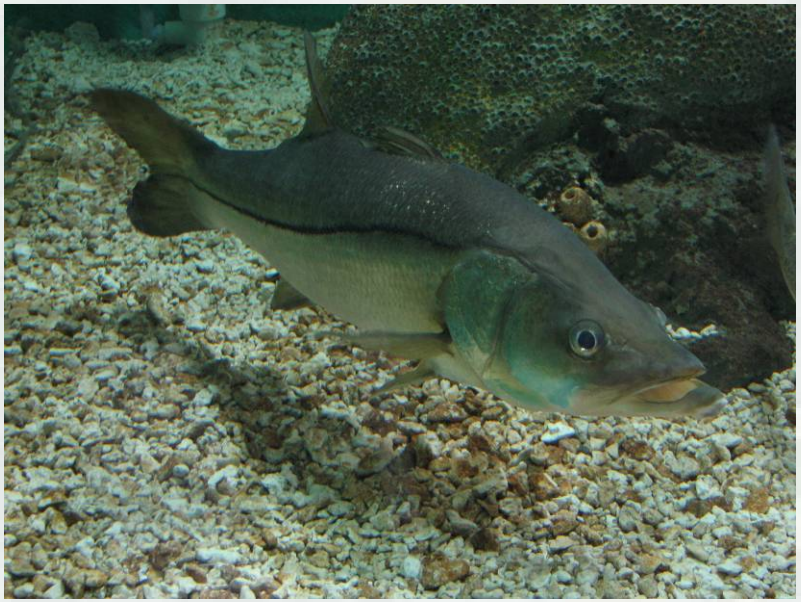


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NMFS – Essential Fish Habitat

The NMFS has a separate coordination for Essential Fish Habitat (EFH).







State Historic Properties/ Cultural Resources

- State Coordination:
- Florida Department of State Division of Historical Resources to ensure cultural resources are not adversely affected.
- Seminole and Miccosukee Tribes of Indians.



Avoidance and Minimization 404(b)(1) Guidelines

Project Purpose

- Sequential Process:
  - Avoidance
  - Minimization
  - Compensation - Mitigation
- Corps Determines Least Environmentally Damaging Practicable Alternative
- Corps Reviews Mitigation Proposal (No Net Loss of Wetland Functions and Values)

Mitigation Rule

- Promotes consistency and predictability - similar standards and criteria for all mitigation projects
- Improve long-term ecological success of mitigation projects
- Mitigation banks throughout FL are based on a watershed approach
- Mitigation Plans must include the 12 Fundamental Elements

All Mitigation Plans
(12 fundamental elements)

1. Project objectives
2. Site selection factors
3. Site protection instrument
4. Baseline information (at impact site and compensation site)
5. Credit determination methodology
6. Work plan
7. Maintenance plan
8. Performance standards
9. Monitoring requirements
10. Long-term management plan
11. Adaptive management plan
12. Financial assurances





Order of Preference for Mitigation

Mitigation rule and preferred mitigation type:

1. Mitigation bank credits
2. In-lieu fee program credits
3. Permittee-responsible mitigation under a watershed approach
4. On-site and/or in-kind permittee-responsible mitigation
5. Off-site and/or out-of-kind permittee-responsible mitigation



PERMIT MODIFICATIONS

- Increase in modifications to issued permits
- Modifications range from time extensions to total project redesign
- Compliance with special conditions of existing permit must be determined
- Special conditions must be reviewed for any changes in policy or additional endangered species listed

MODIFICATION CHECKLIST

SAJ-_____-_____ **Permit Modification Compliance Checklist & Initial Desk Review**

Current Modification #_____ Date Permit Issued _____Date Current Expiration_____

Date last Modified _____Date Mod. Request _____Date Proposed Expiration_____

Date Work Commenced _____Date Work Completed _____

Y	N	NA	
☐	☐	☐	Self- cert submitted
☐	☐	☐	Deviations (self-cert) indicated
☐	☐	☐	Deviations indicated w/i authorization
☐	☐	☐	As-builts submitted
☐	☐	☐	XY coordinates submitted
☐	☐	☐	As-builts indicate compliance w/ terms
☐	☐	☐	Bathymetric survey submitted & in compliance
☐	☐	☐	Benthic survey submitted & in compliance
☐	☐	☐	Property survey submitted & in compliance
☐	☐	☐	Compliance check by per aerial photography
☐	☐	☐	Compliance check performed per agency report
☐	☐	☐	Compliance check performed-site visit by Corps
☐	☐	☐	Project commenced in WOUS
☐	☐	☐	Consent to Easement obtained
☐	☐	☐	Other reports indicate compliance
☐	☐	☐	All reports due have been submitted
☐	☐	☐	Temporary impacts restored
☐	☐	☐	Ownership has changed (transfer needed)
☐	☐	☐	Permittee Responsible Mitigation in compliance

Y	N	NA	
☐	☐	☐	Mitigation Bank credits
☐	☐	☐	amount purchased correct
☐	☐	☐	service area correct
☐	☐	☐	habitat type correct
☐	☐	☐	functional assessment correct
☐	☐	☐	ILF credits purchased amount correct
☐	☐	☐	ILF credits purchased from correct project
☐	☐	☐	Mitigation changes consistent w/ permit decision
☐	☐	☐	Conservation Easement executed, recorded
☐	☐	☐	Conservation Easement covers required area
☐	☐	☐	Conservation Easement language approved by OC
☐	☐	☐	Terms of the Conservation Easement
☐	☐	☐	MOA/PA fully executed & in compliance
☐	☐	☐	MOA/PA treatment completed & in compliance
☐	☐	☐	Other _____
☐	☐	☐	Other _____

From: Permitting Section/PM _____ **Date:**_____ **To RD-PE:**_____

Please review/locate the following information:

Additional information/explanation:

Version 1.1

MODIFICATION TIPS

- Before requesting a permit modification:
  - Ensure you are the permittee
  - Agents must be authorized to act on behalf of the permittee
  - Read the Special Conditions
  - Check mitigation requirements timing
  - Check timing of any endangered species conditions

Time Extensions

- Are a type of modification
- First request 2 years
- Second request 5 years with Public Notice
- Third request not likely to be approved

MODIFICATIONS

- Require the PM to understand original permit (reviewer may not be the same)
- Time consuming
- No time frames for completion
- Endangered species review may have changed since the permit was issued

Questions?

