

New Developments in Federal Wetlands Permitting

*29th Annual Environmental Permitting
Summer School*

Orlando, July 7 – 10, 2015



Panelists

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Stantec

Tom Roberts

E Sciences



Agenda

- **Regulatory Program Goals**
- **Delineation**
 - Regional Supplement
- **Pre-application Meeting**
- **Application Review Process**
 - Agency Coordination
 - Avoidance and Minimization
 - Mitigation Rule
 - Public Interest Review Criteria
- **What is new with the USACE?**



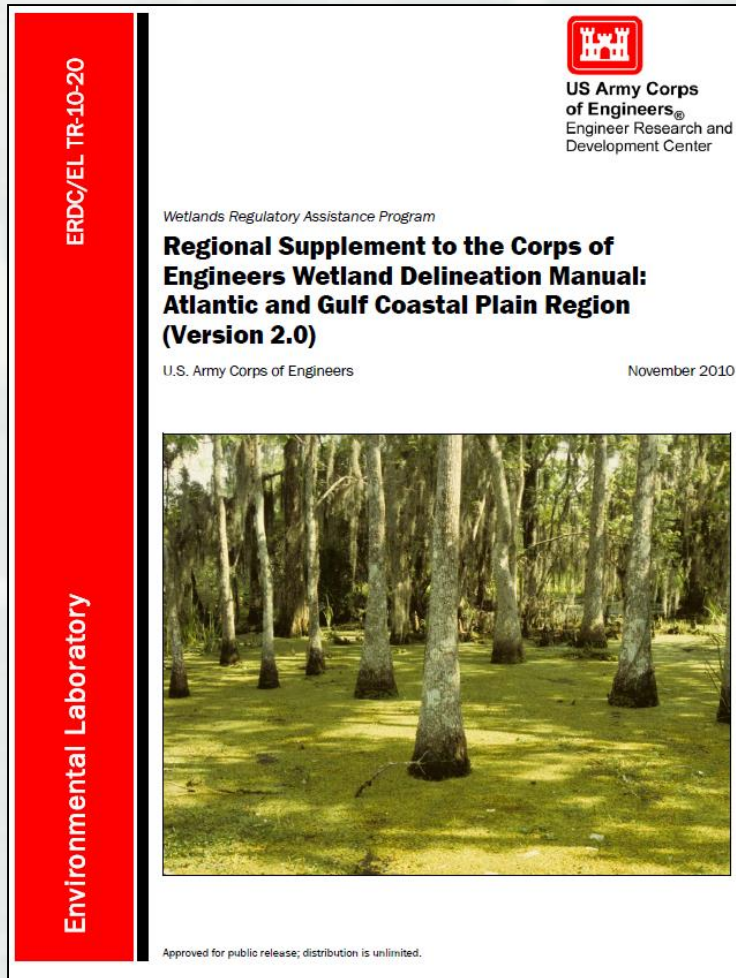
Corps Regulatory Program Goals

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.



The “New” World Order

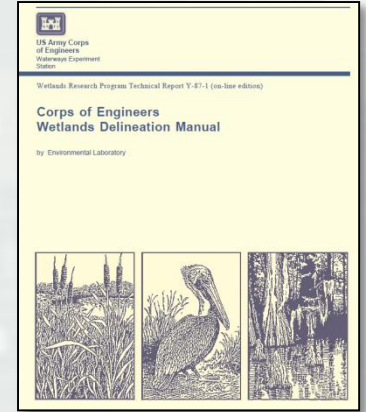


- The Corps Manual provides technical guidance and procedures from a national perspective
- Where differences occur, the Regional Supplement takes precedence over the Corps Manual...



The 1987 Corps of Engineers Wetland Delineation Manual

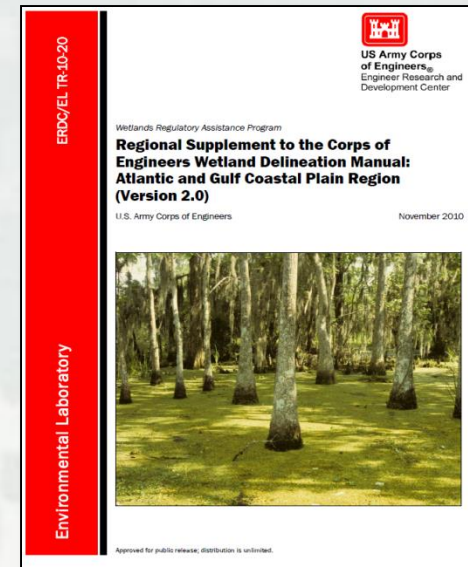
- Corps/EPA wetland definition
- Basics of three parameter approach
- General definitions of hydrophytic vegetation, hydric soils and wetland hydrology
- Preliminary data gathering (offsite sources)
- Routine and Comprehensive methods
- General guidance for Atypical Situations and Problem Areas
- Main Glossary



Regional Supplements

5 Chapters

1. Introduction / Description of the Region
2. Hydrophytic Vegetation Indicators
3. Hydric Soil Indicators
4. Wetland Hydrology Indicators
5. Difficult Wetland Situations



National Wetland Plant List

- The NWPL provides a list of wetland plants by species and their wetland ratings.
- The National Wetland Plant List has been updated and involved regional interagency panels, in cooperation with the national interagency panel.
- A final NWPL was published in the 5/09/2012 Federal Register. (77 FR 27210)
- The 2012 NWPL should be used in any wetlands delineations performed after 6/1/12.



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



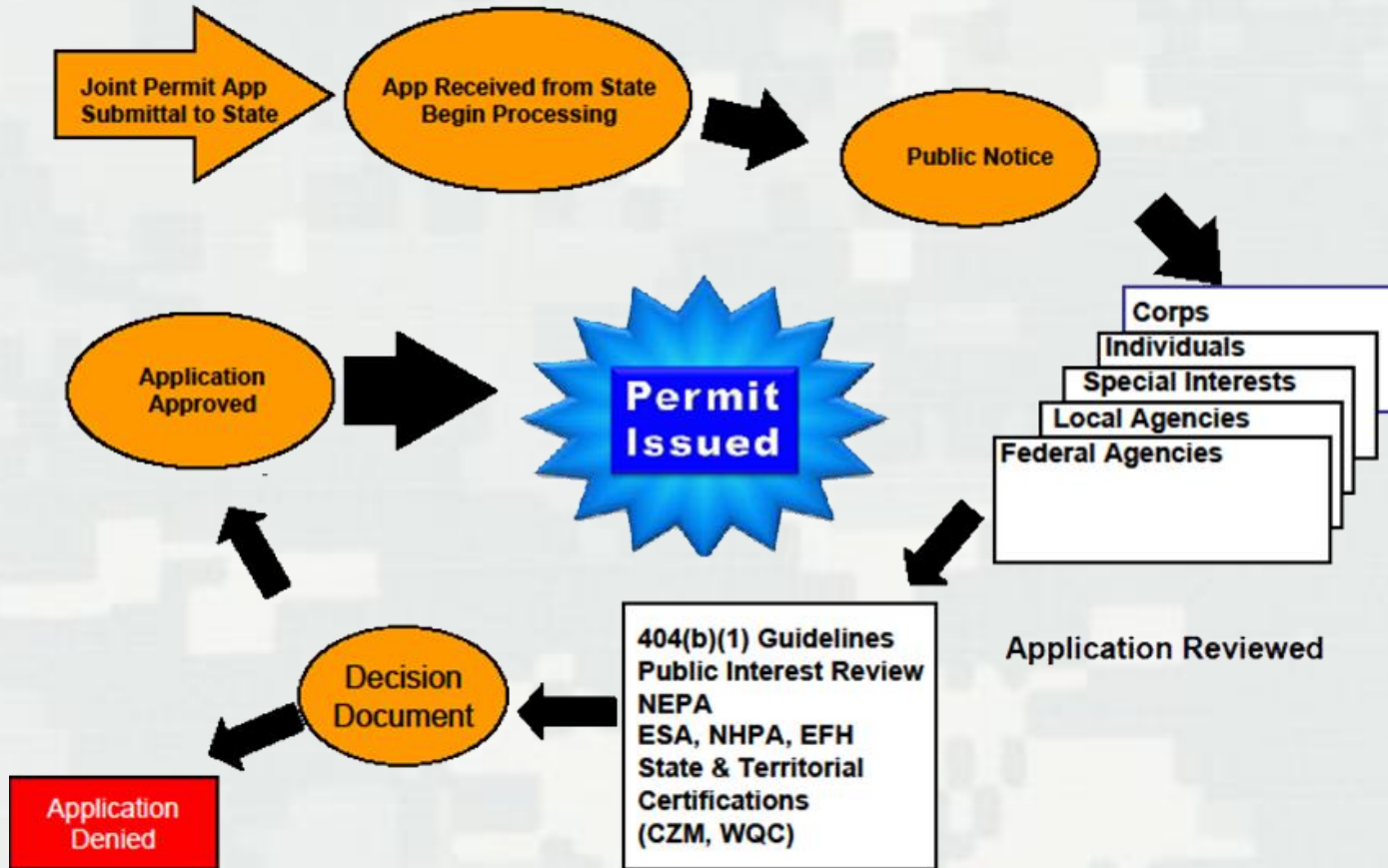
Items for a Complete Application

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

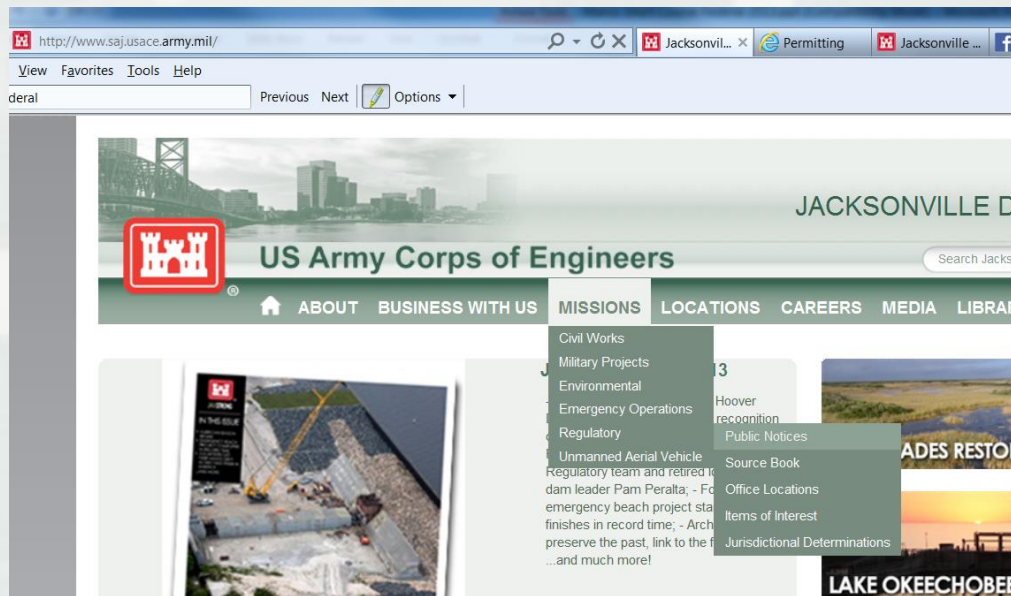


Permit Review Process



Public Notice

The Public Notice page allows the public to look up information on projects, so that they can then submit written comments and concerns to the Corps.



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

The screenshot displays the Jacksonville District website for the US Army Corps of Engineers. The header includes the Corps logo, the text "US Army Corps of Engineers", and "JACKSONVILLE DISTRICT". A search bar is present with the text "Search Jacksonville District". A navigation menu contains links for "HOME", "ABOUT", "BUSINESS WITH US", "MISSIONS", "LOCATIONS", "CAREERS", "MEDIA", "LIBRARY", and "CONTACT".

The main content area is titled "Public Notices" and includes a breadcrumb trail: "HOME > MISSIONS > REGULATORY > PUBLIC NOTICES". There are two main sections on the left: "Public Notices Archive" with counts for 2013 (95) and 2012 (1), and "Public Notice Notifications" which explains the notification process and lists categories for Florida and Antilles.

The main content area lists three public notices, each with a title, date, location, project purpose, and expiration date. The first notice is highlighted with a red arrow pointing to its title and another red arrow pointing to its "Attachments: Graphics" link. The second and third notices also have "Attachments: Graphics" links.

At the bottom of the page, there is a URL: "loc/regulatory/publicnotices/20130701-SAJ-1986-00479-P-...".



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



USFWS - Listed Species

Several keys are in place to expedite the coordination process



Wood Stork



Manatee



Indigo Snake



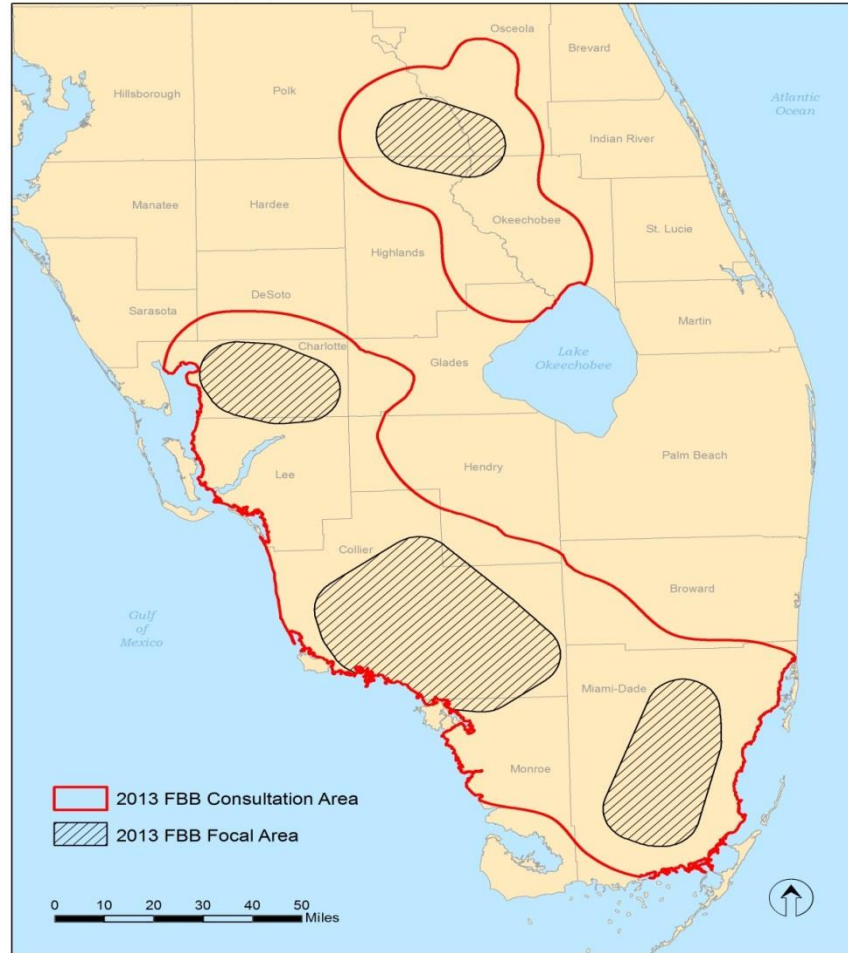
Panther



Florida Bonneted Bat



2013 Florida Bonneted Bat (FBB) Consultation Area and Focal Area



NMFS - Listed Species

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



NMFS – Candidate Listed Coral Species

- Seven Species proposed for Listing
- *Acropora spp.* proposed for endangered
- Available at NMFS website:
 - http://sero.nmfs.noaa.gov/pr/esa/82%20Coral/Corals_Distribution_Maps_SE.pdf

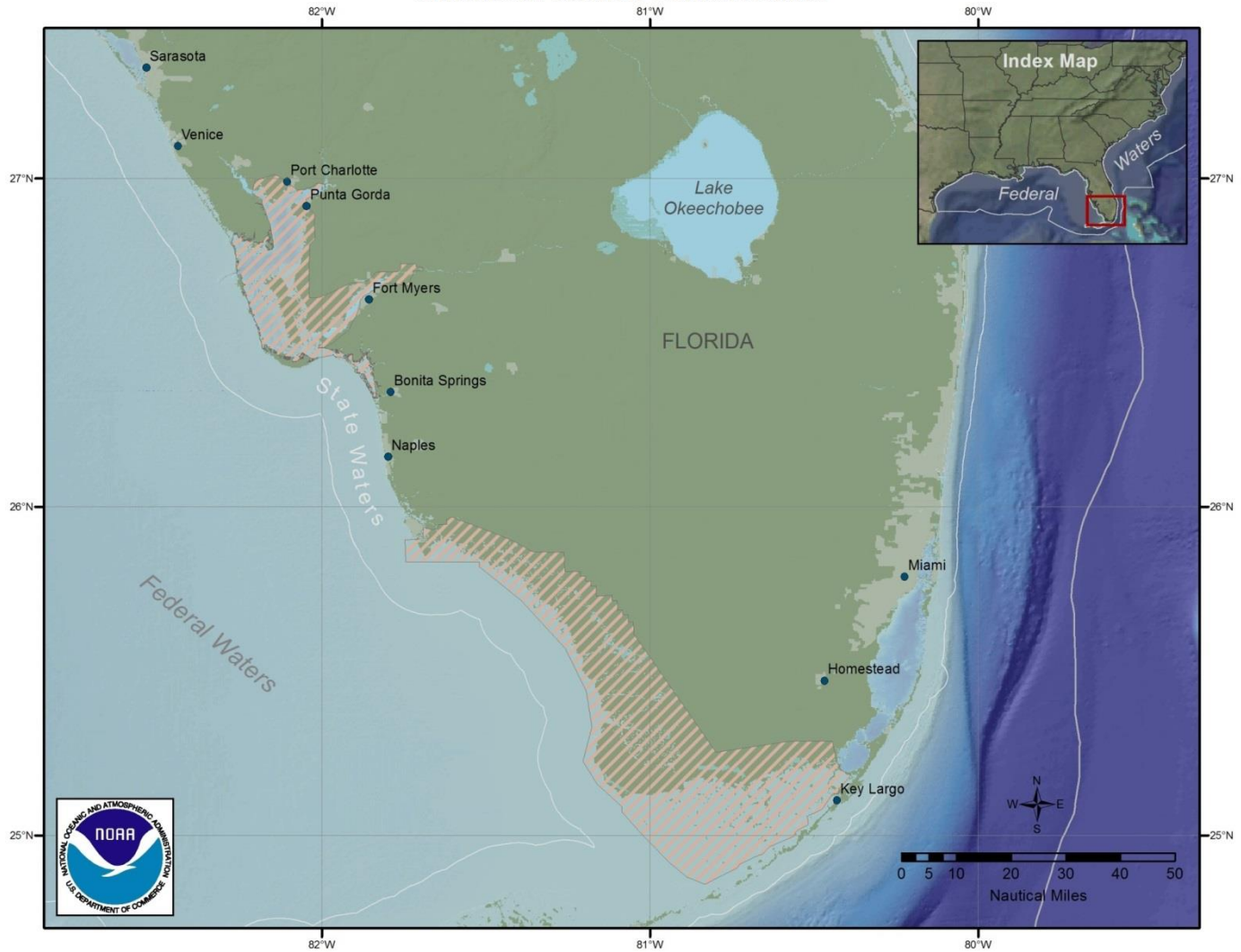


NMFS Listed Species Critical Habitat

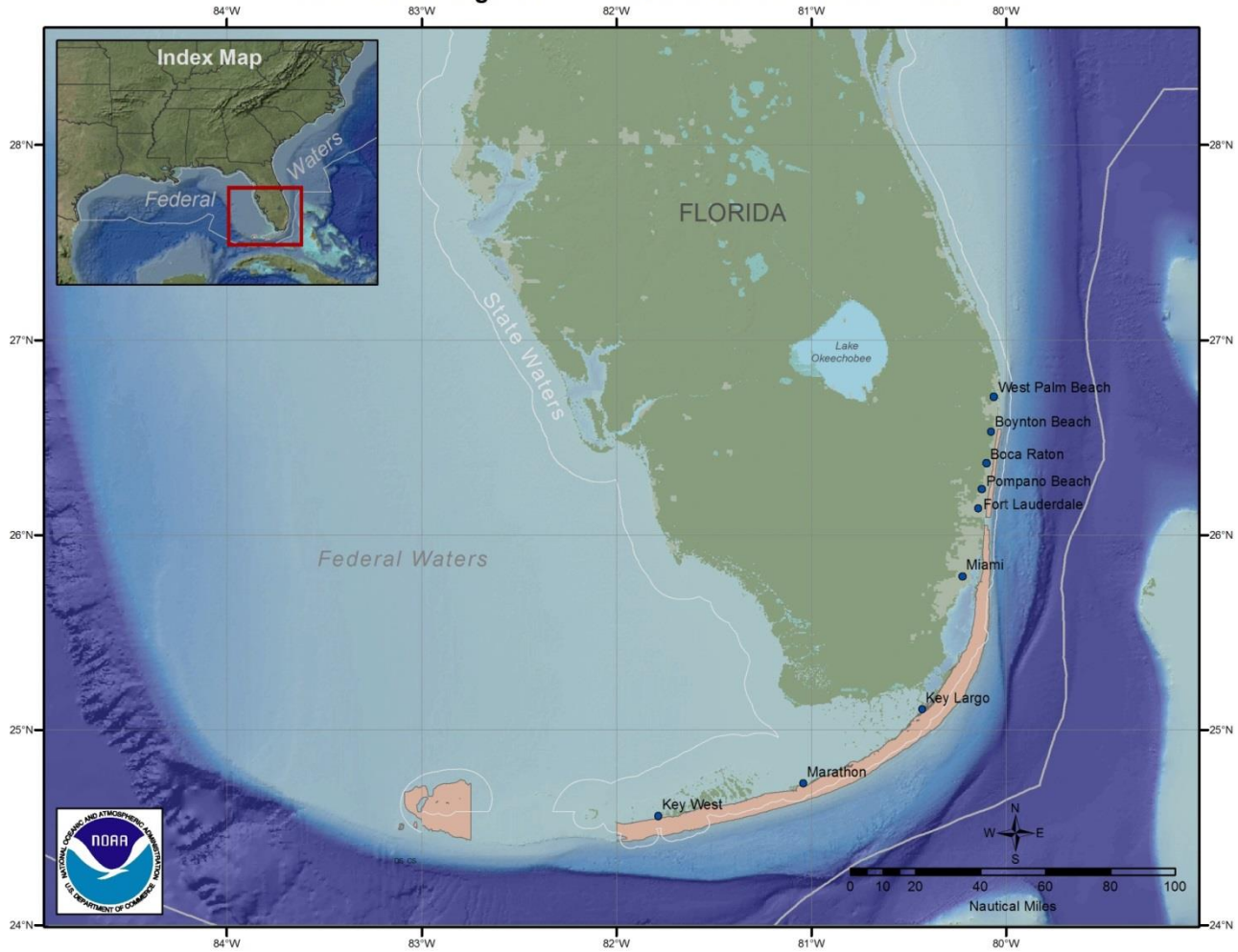
- Smalltooth Sawfish
 - Johnson's Seagrass
 - *Acropora spp.*
 - Gulf Sturgeon
 - Right Whale
-
- *NMFS IS DOING BIOLOGICAL OPINIONS FOR PROJECTS AFFECTING CRITICAL HABITAT*
 - *<http://sero.nmfs.noaa.gov/pr/GISDataandMaps.htm>*



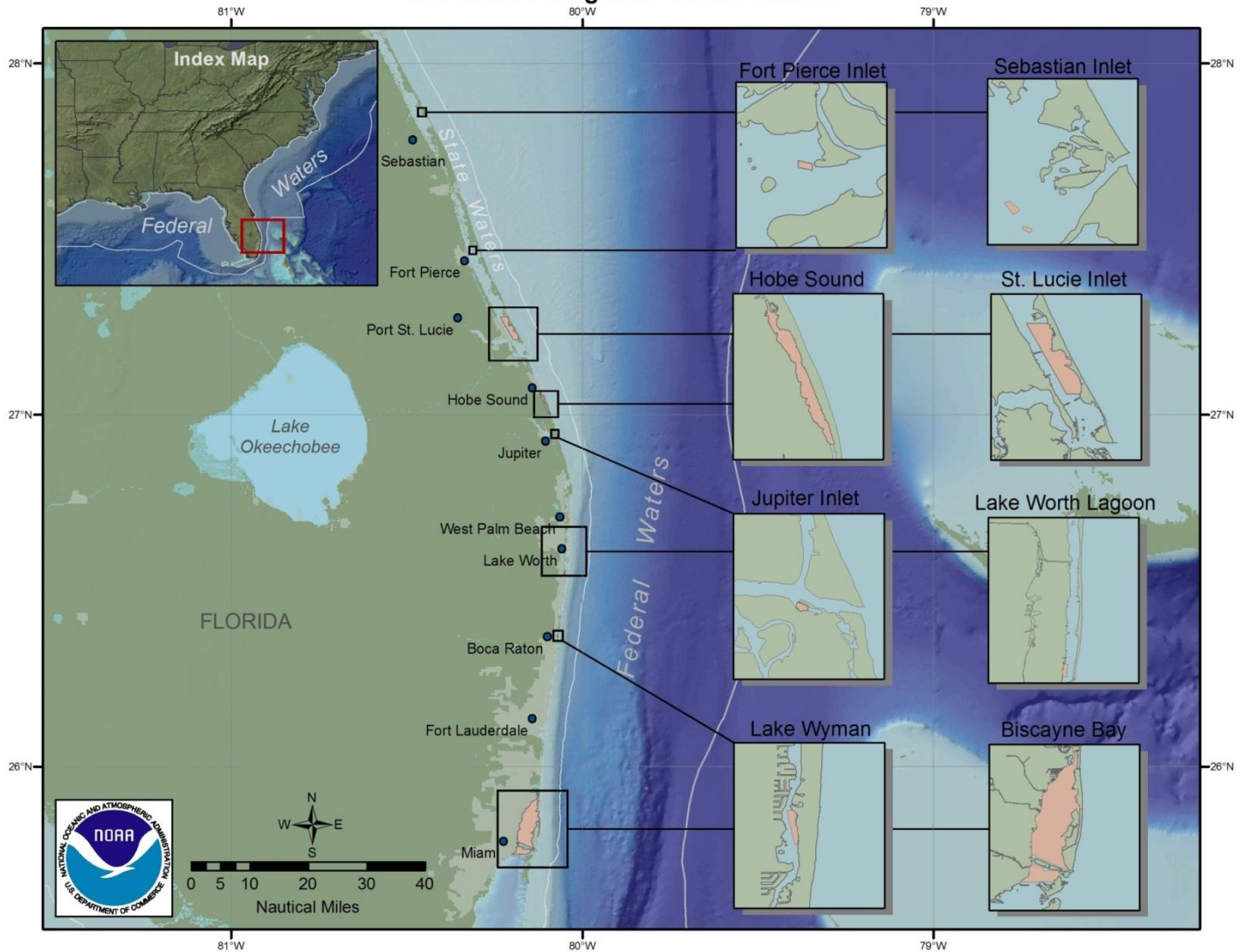
Smalltooth Sawfish Critical Habitat



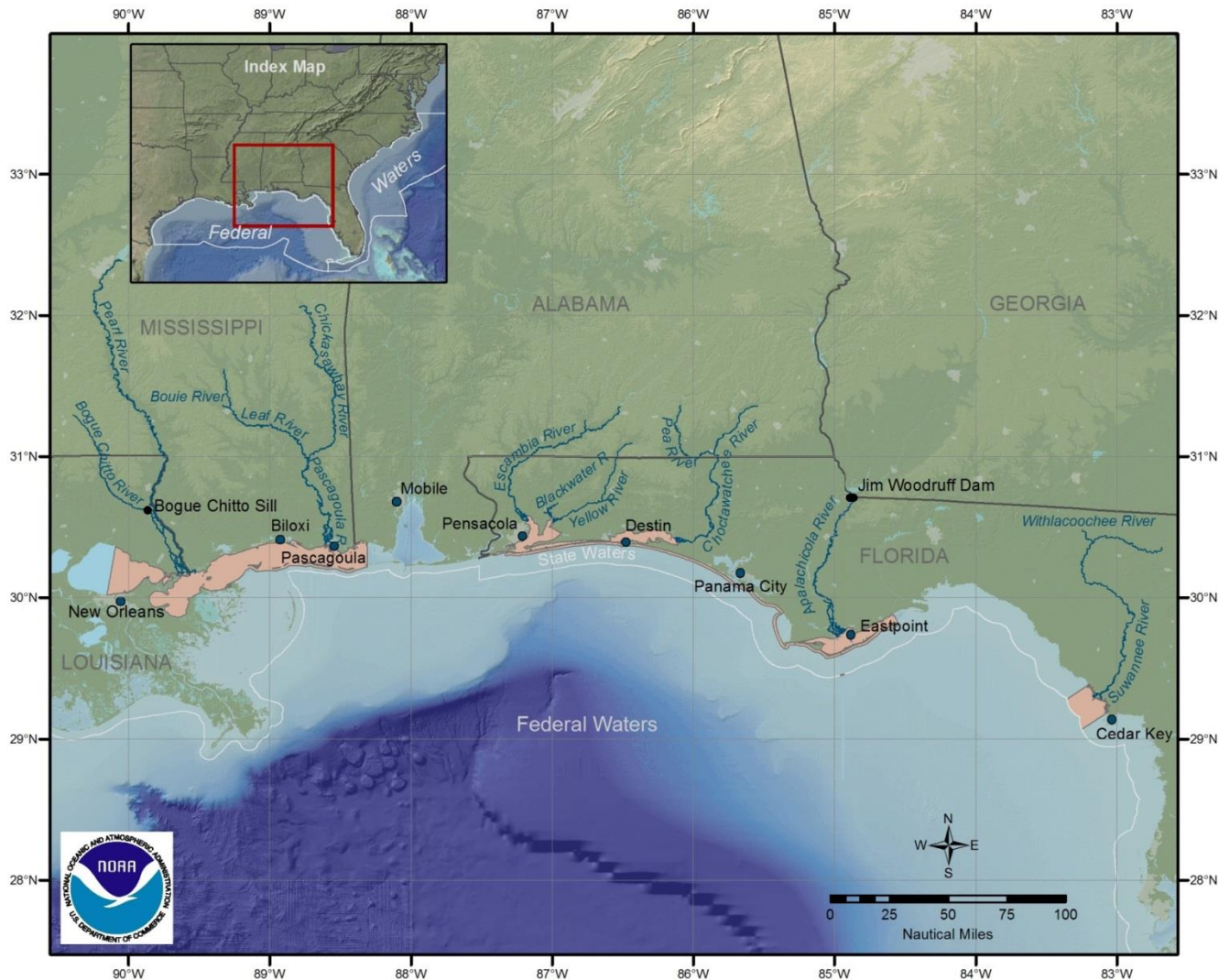
Elkhorn and Staghorn Coral Critical Habitat - Florida Unit



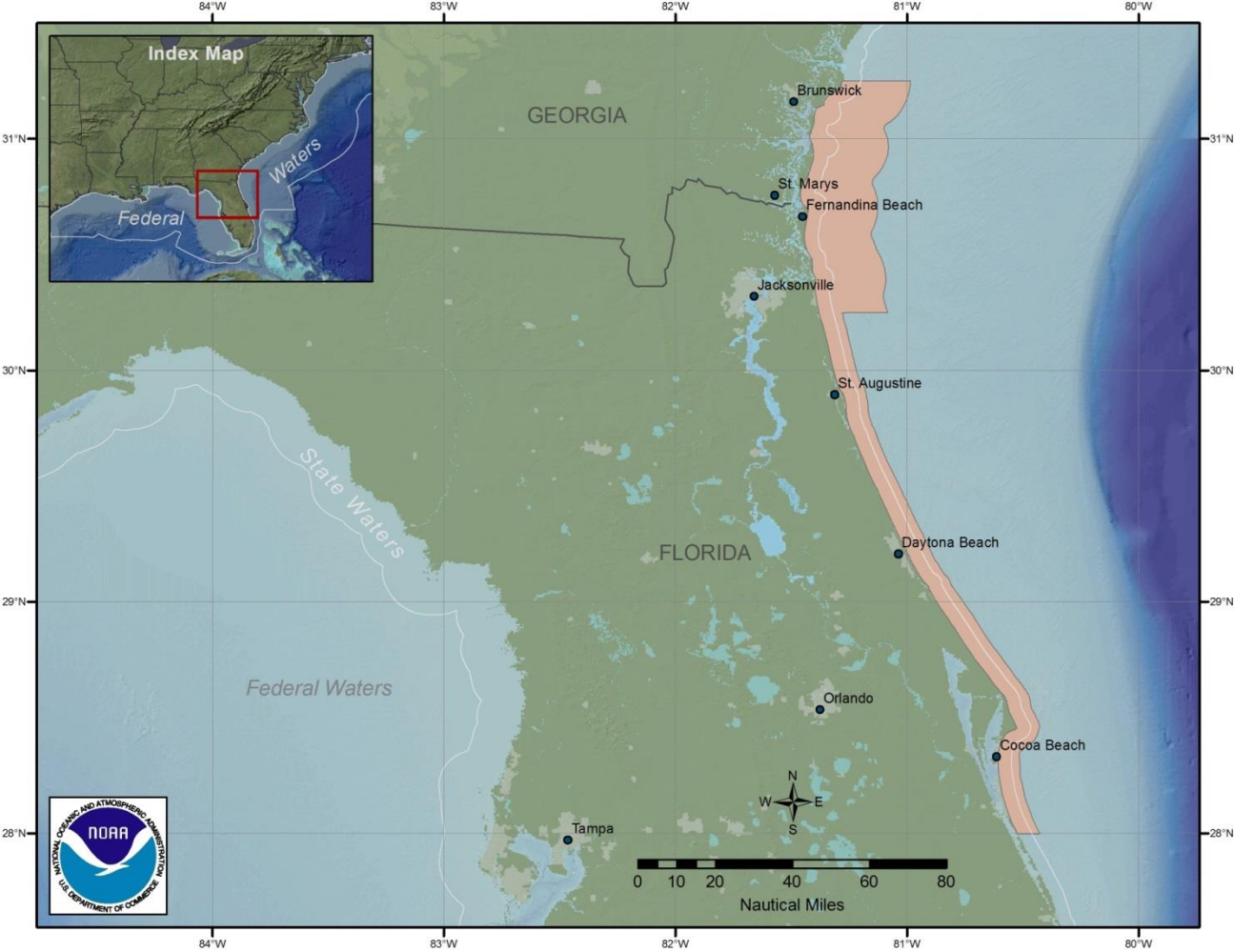
Johnson's Seagrass Critical Habitat



Gulf Sturgeon Critical Habitat

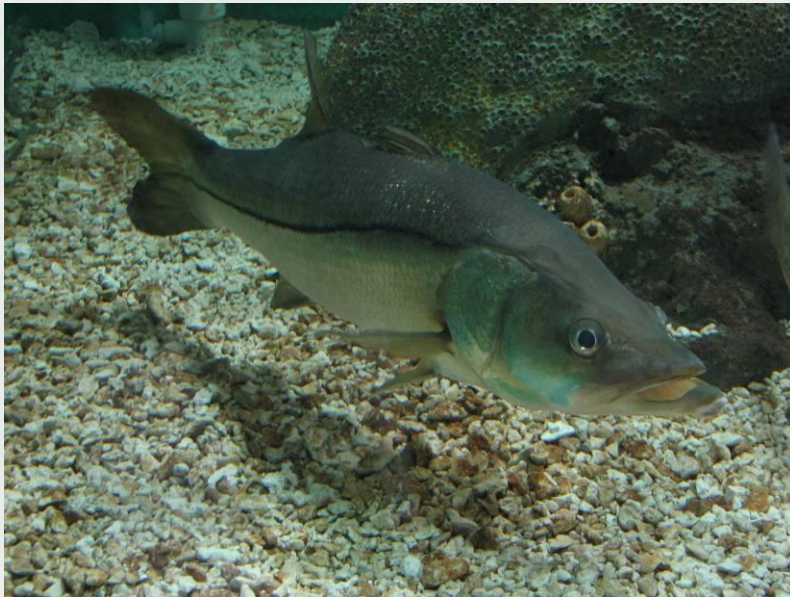


Right Whale Critical Habitat



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

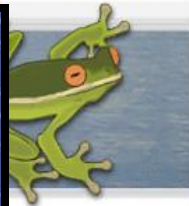
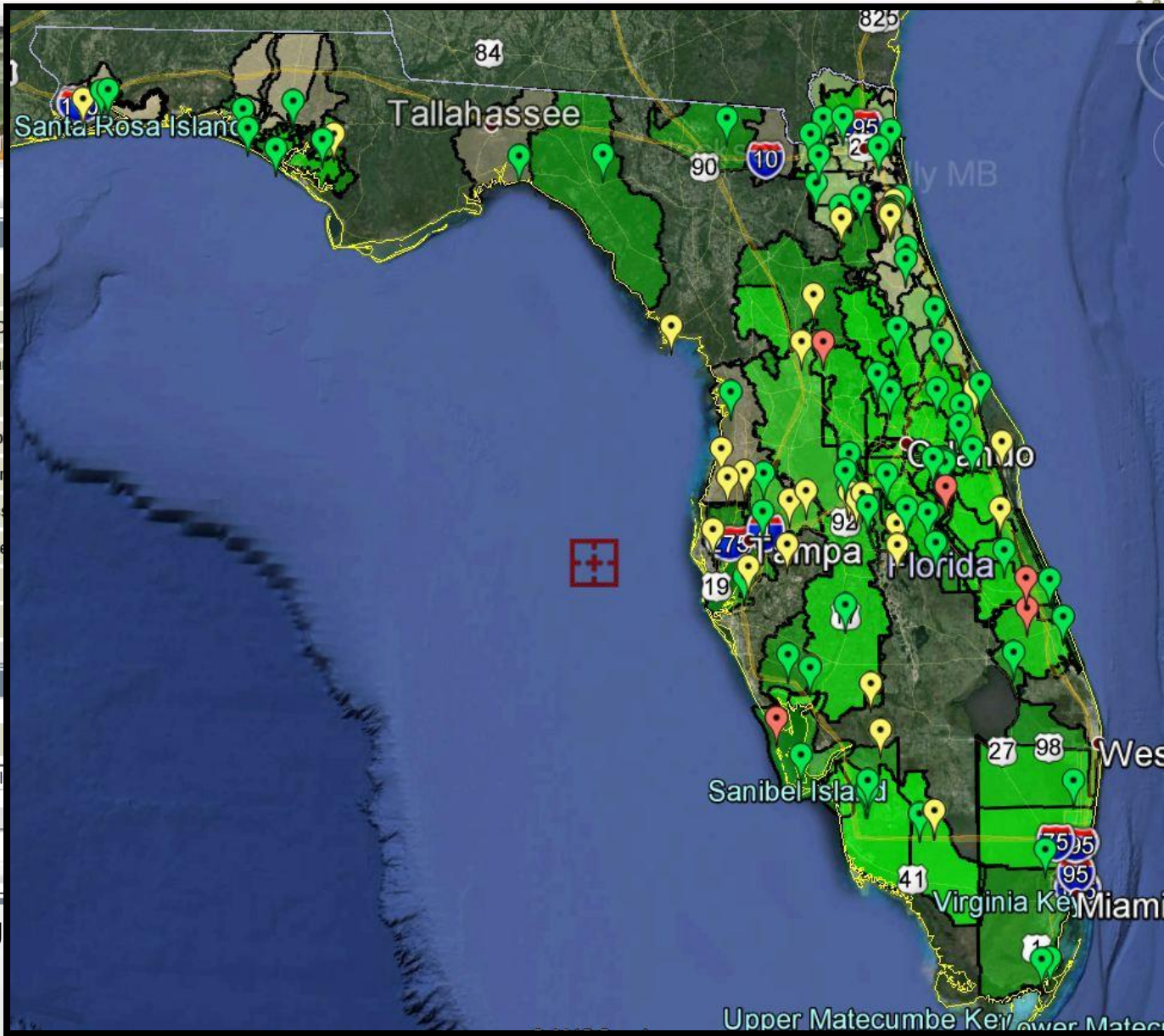


Navigation

- Home
- Mitigation C
- Existing Ba
- Reporting
- Bank Estab
- Assessmen
- Credit Clas
- Related Site
- Training

Access

- LOGIN
- Filter ALL DISTRI



Information

https://rsg





Regional Internet Bank

- Navigation
- Home
 - Mitigation Concepts
 - Existing Banks
 - Reporting
 - Bank Establishment
 - Assessment Tools
 - Credit Classifications
 - Related Sites
 - Training

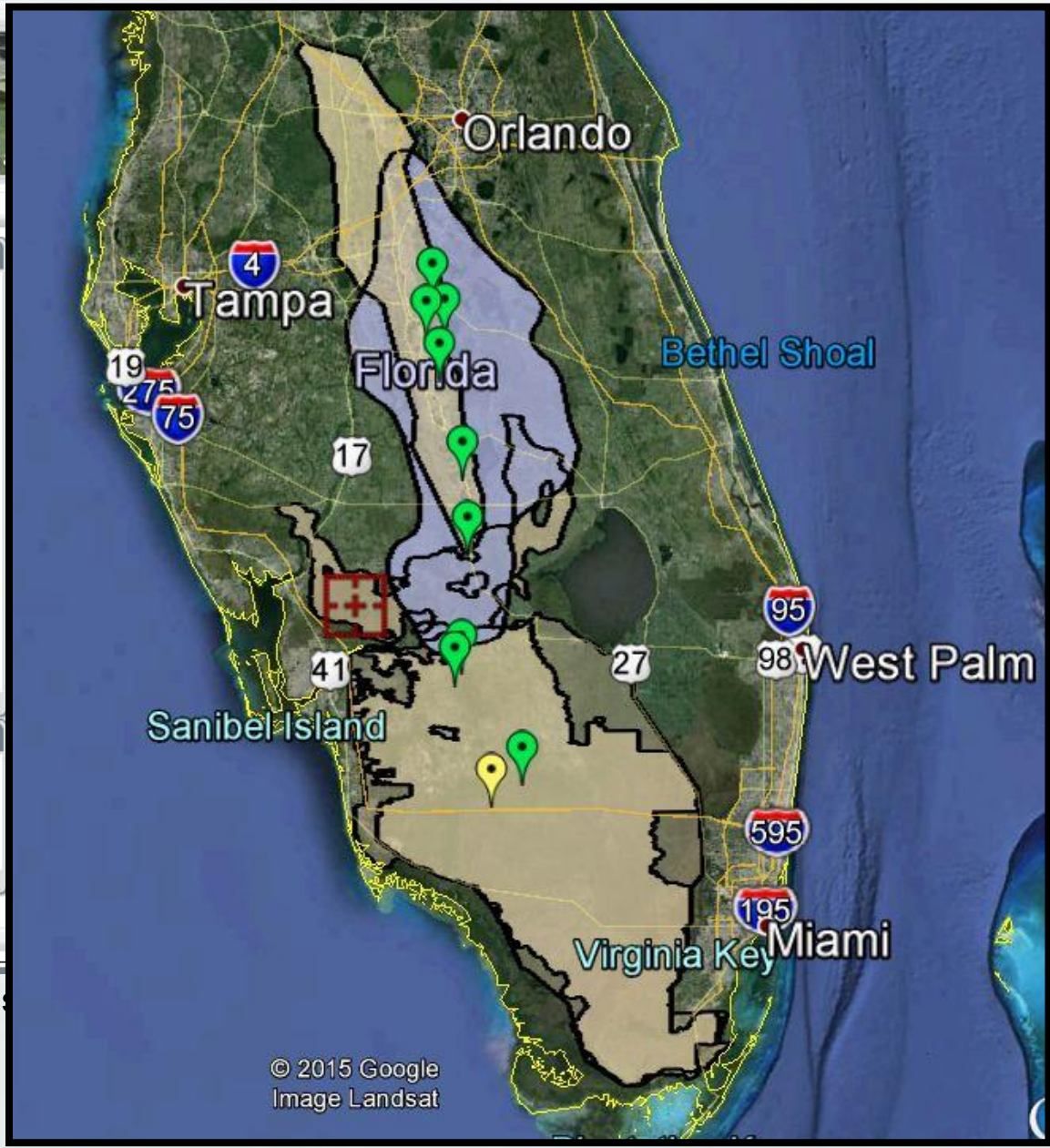
Access

LOGIN

Filter ALL DISTRICTS



- Items
- Plug-in Information
- Results



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https://rsgis.crrel.us



What's New with the Corps?

- **Clean Water Act – Definition of the Waters of the U.S., the final rule was published in Federal Register on 29 June 2015.**
- **Jacksonville District Workforce Reshaped**
- **Draft Statewide Programmatic Biological Opinion for minor activities is being reviewed by NMFS.**



Final Rule

Waters of the U.S.

- Draft rule was published in the Federal Register on April 21, 2014
- Joint EPA & Corps proposed rule to define the scope of waters protected under the Clean Water Act (CWA)
- Final rule is in the Federal Register now and will become effective 28 August 2015.



Statewide Programmatic Consultation for Minor Activities

- SWPBO will provide Endangered Species Act consultation for species under NMFS purview.
- Process started in 2013 and presently NMFS is reviewing final edits to SWPBO; we are anticipating finalization this year.
- Currently, consultation can take up to 9 months; with this biological opinion in place consultation would be completed in 10 days.



Statewide Programmatic Biological Opinion

- The SWPBO will resolve roughly **75%** of our current informal consultations with NMFS.
- As proposed there are **11** Minor Activities that will be covered include shoreline stabilization, dredging, boat ramps, living shorelines, restoration activities, aerial transmission lines; marine debris removal, temporary access/fills, and maintenance activities.

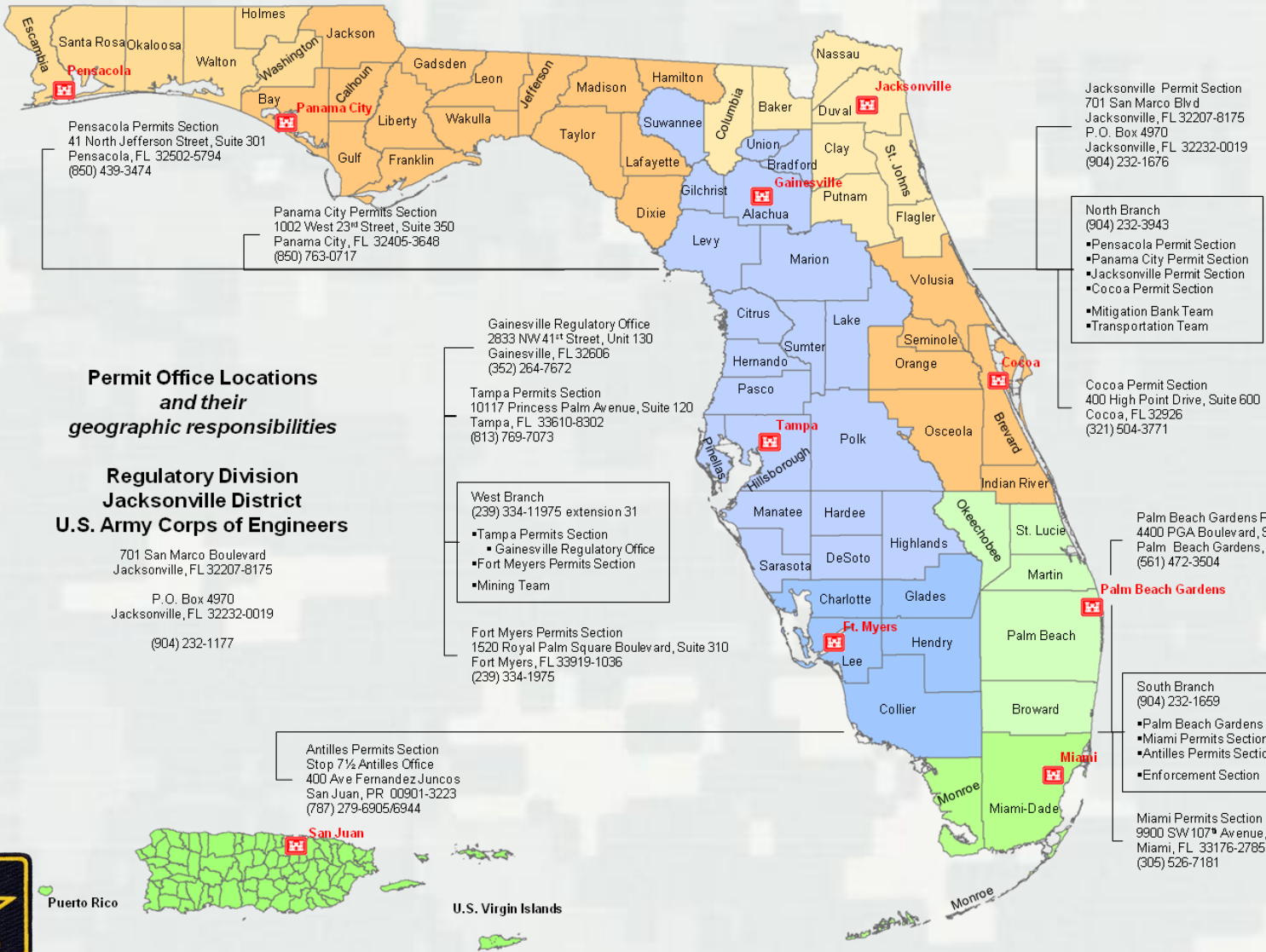


Jacksonville District Workforce Reshaping

- Reshape the Workforce to meet the challenges of reduced funding
- Establish an Objective Organization to maintain core competencies for future mission requirements
- Civil Works Budget Reduced



Permit Office Locations



**Permit Office Locations
and their
geographic responsibilities**

**Regulatory Division
Jacksonville District
U.S. Army Corps of Engineers**

701 San Marco Boulevard
Jacksonville, FL 32207-8175

P.O. Box 4970
Jacksonville, FL 32232-0019

(904) 232-1177



Puerto Rico



U.S. Virgin Islands



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Chain of Command

Jacksonville District:	Col. Kirk (Incoming)	District Commander
Regulatory Division:	Donnie Kinard	Division Chief
	Tori White	Deputy Chief
Permits Branch:	Deborah Wegmann	North Branch Chief
	Stephen Sullivan	West Branch Chief
	Kelly Finch	South Branch Chief
Sections:		
Jacksonville	Kelly Unger	Section Chief
Cocoa	Irene Sadowski	Section Chief
Tampa	Kevin O’Kane	Section Chief
Panama City	Andrew Kizlauskas	Section Chief
Pensacola	Clif Payne	Section Chief
Ft. Myers	Tunis McElwain	Section Chief
Miami	Ingrid Gilbert	Section Chief
Palm Beach Gardens	Susan Kaynor	Section Chief
Antilles	Sindulfo Castillo	Section Chief
Enforcement	Theresa Hudson	Section Chief

