

New Developments in Federal Wetlands Permitting

*28th Annual Environmental Permitting
Summer School*

Marco Island, July 22 – 25, 2014



Panelists

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EarthBalance®

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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.



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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



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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



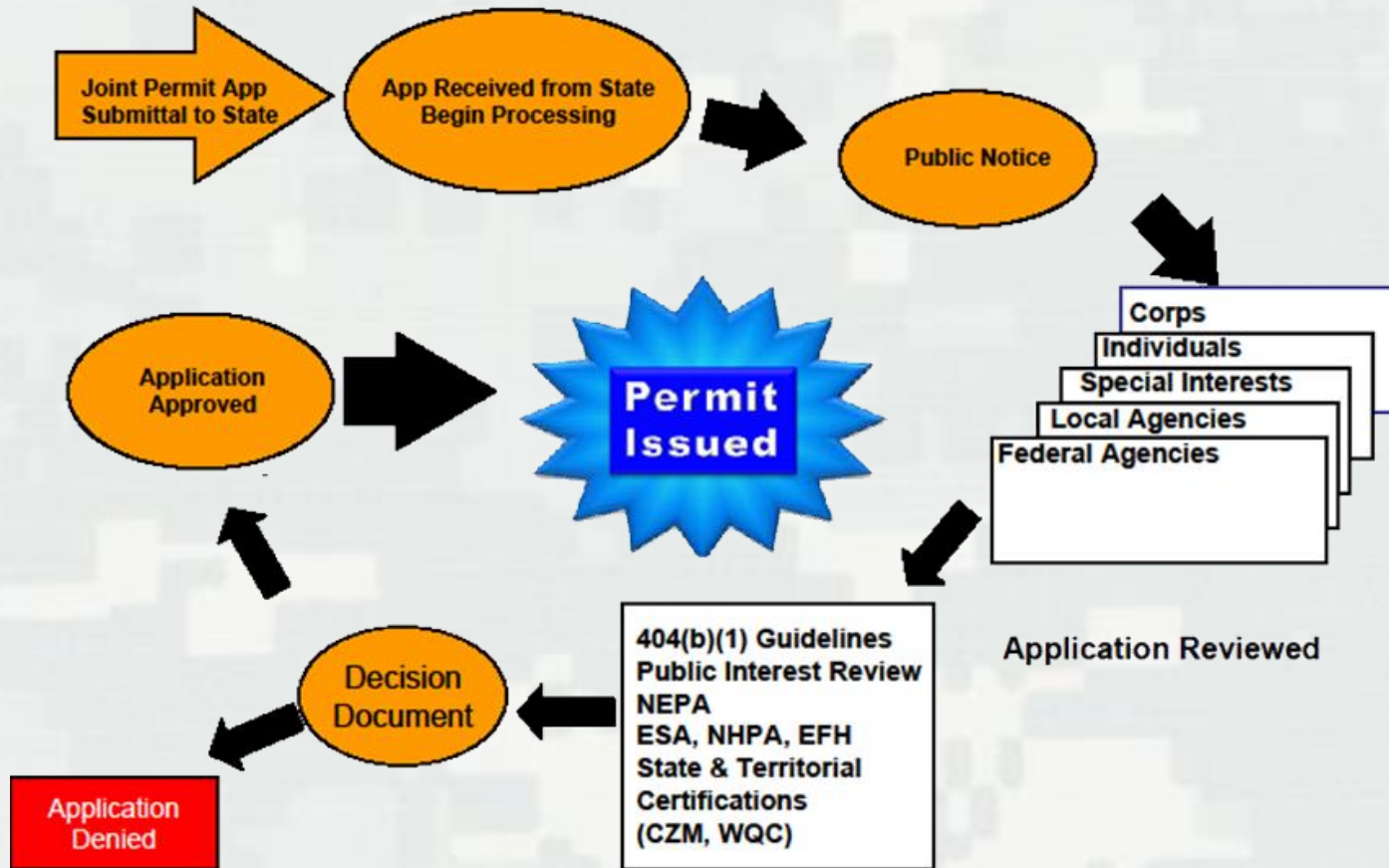
Items for a Complete Application

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

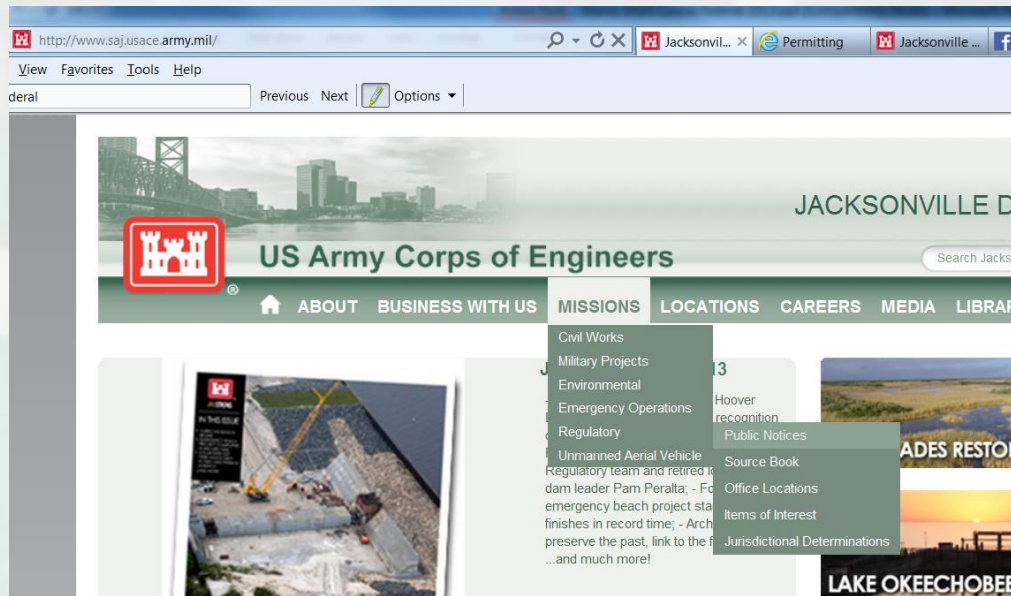


Permit Review Process



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.



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Public Notice Mailing Lists

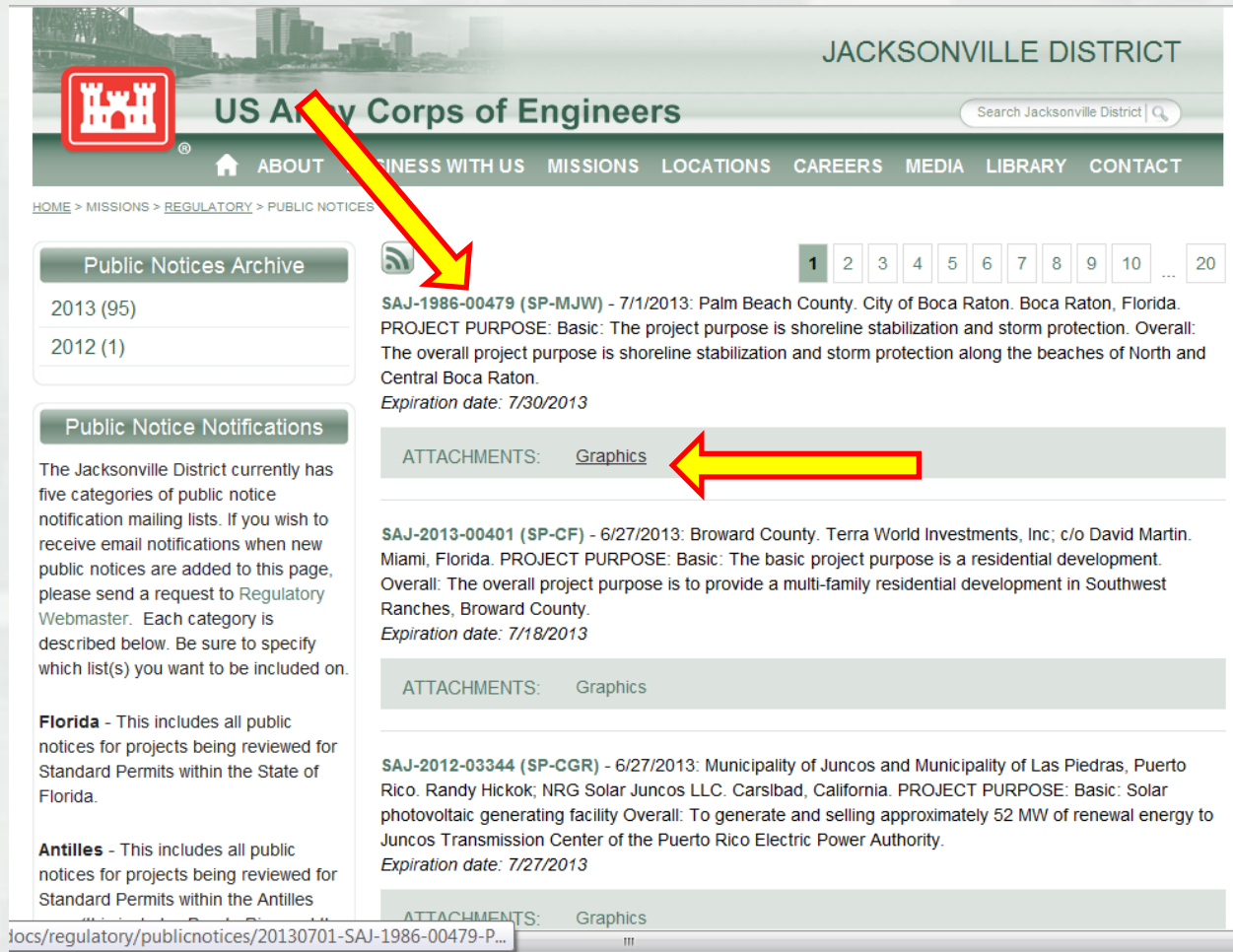
- **Florida**
- **Antilles**
- **Tropical Storms & Other Emergencies**
- **Special Issues** - These are public notices that involve the Regulatory program but which are generally not limited to one particular geographic area.
- **Administrative Penalty**

saj-rd-webmaster@usace.army.mil



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Public Notice



JACKSONVILLE DISTRICT

US Army Corps of Engineers

Search Jacksonville District

HOME > MISSIONS > REGULATORY > PUBLIC NOTICES

Public Notices Archive

2013 (95)

2012 (1)

Public Notice Notifications

The Jacksonville District currently has five categories of public notice notification mailing lists. If you wish to receive email notifications when new public notices are added to this page, please send a request to Regulatory Webmaster. Each category is described below. Be sure to specify which list(s) you want to be included on.

Florida - This includes all public notices for projects being reviewed for Standard Permits within the State of Florida.

Antilles - This includes all public notices for projects being reviewed for Standard Permits within the Antilles

SAJ-1986-00479 (SP-MJW) - 7/1/2013: Palm Beach County. City of Boca Raton. Boca Raton, Florida. PROJECT PURPOSE: Basic: The project purpose is shoreline stabilization and storm protection. Overall: The overall project purpose is shoreline stabilization and storm protection along the beaches of North and Central Boca Raton. Expiration date: 7/30/2013

ATTACHMENTS: [Graphics](#)

SAJ-2013-00401 (SP-CF) - 6/27/2013: Broward County. Terra World Investments, Inc; c/o David Martin. Miami, Florida. PROJECT PURPOSE: Basic: The basic project purpose is a residential development. Overall: The overall project purpose is to provide a multi-family residential development in Southwest Ranches, Broward County. Expiration date: 7/18/2013

ATTACHMENTS: [Graphics](#)

SAJ-2012-03344 (SP-CGR) - 6/27/2013: Municipality of Juncos and Municipality of Las Piedras, Puerto Rico. Randy Hickok; NRG Solar Juncos LLC. Carlsbad, California. PROJECT PURPOSE: Basic: Solar photovoltaic generating facility Overall: To generate and selling approximately 52 MW of renewal energy to Juncos Transmission Center of the Puerto Rico Electric Power Authority. Expiration date: 7/27/2013

ATTACHMENTS: [Graphics](#)

locs/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



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USFWS - Listed Species

Several keys are in place to expedite the coordination process



Wood Stork



Manatee



Indigo Snake



Panther

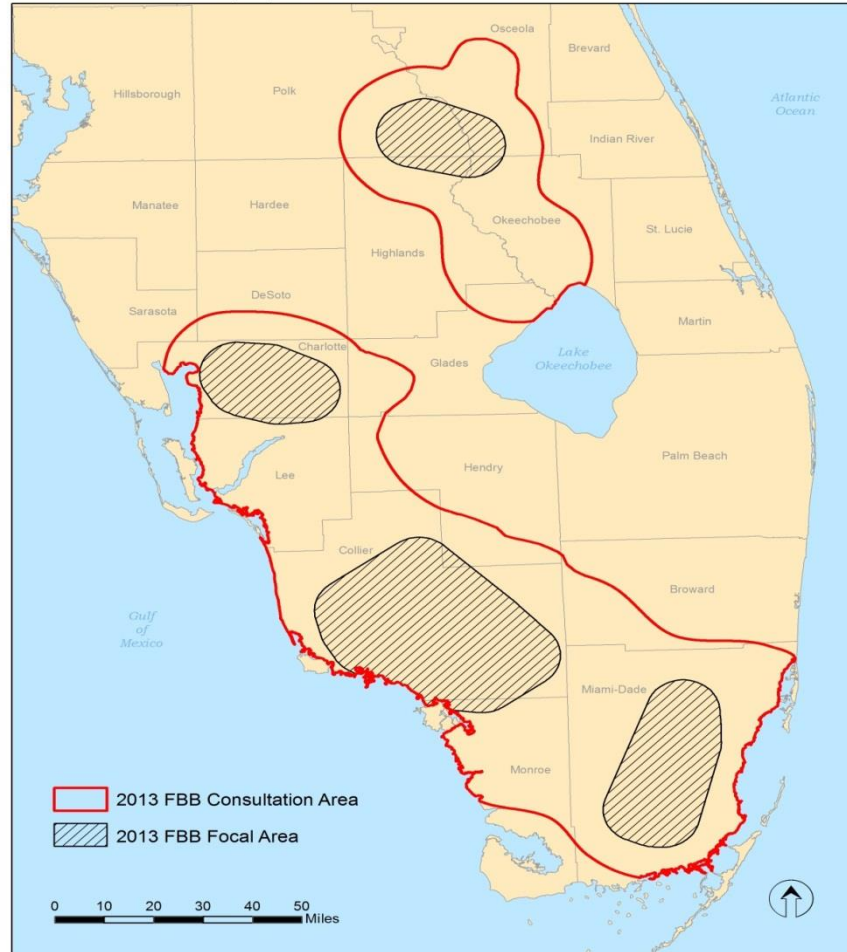


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Florida Bonneted Bat



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



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NMFS - Listed Species

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



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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



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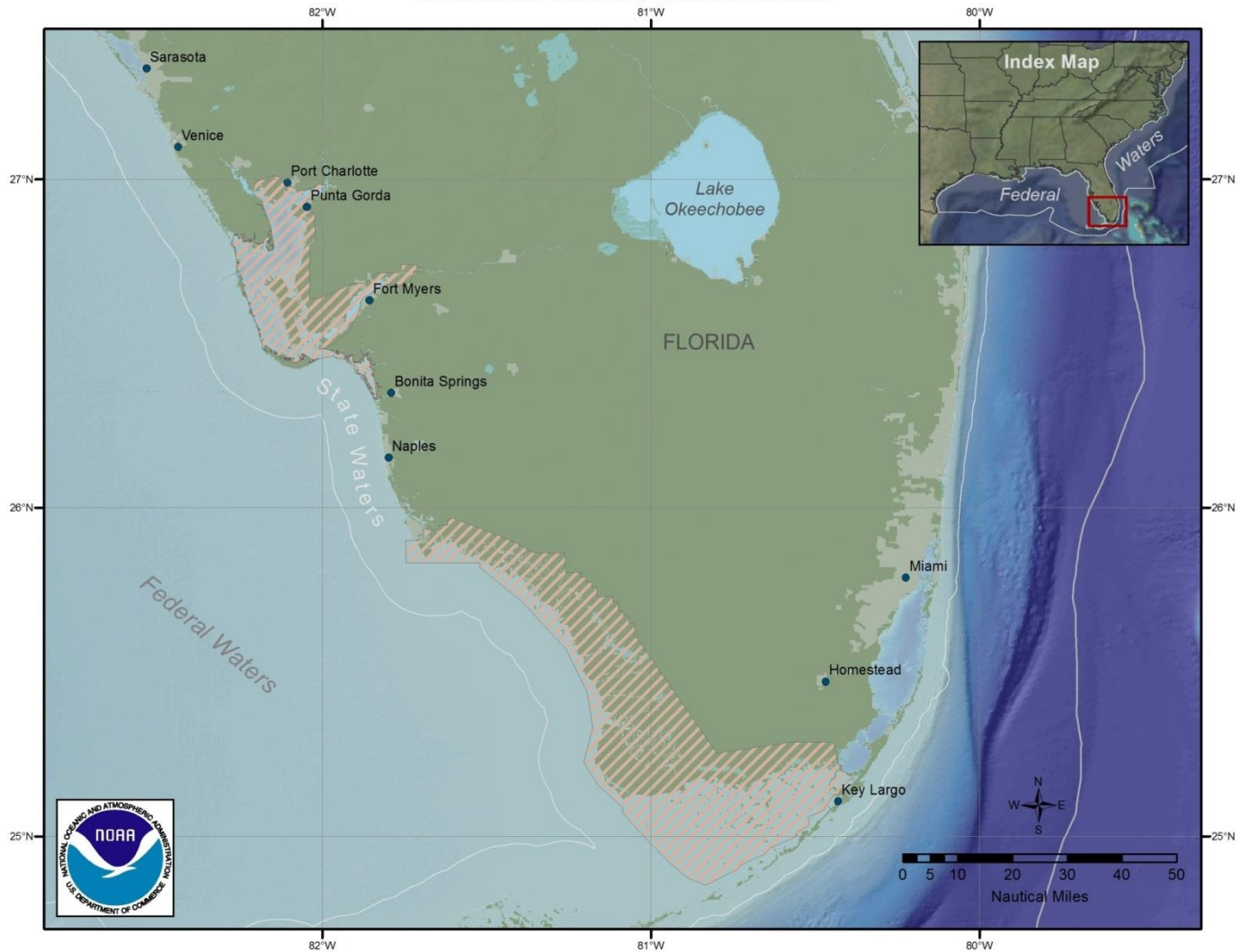
NMFS Listed Species

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>*

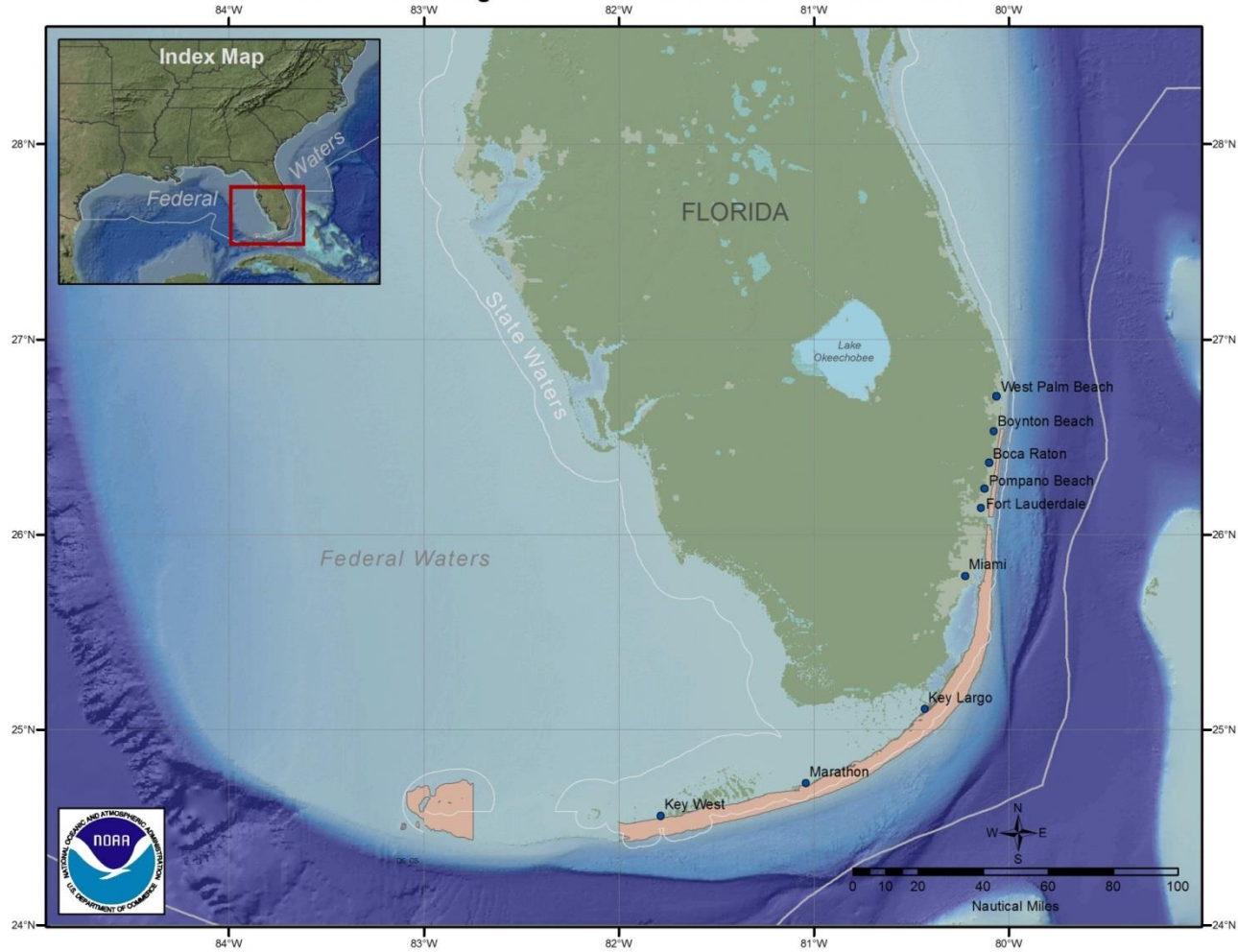


Smalltooth Sawfish Critical Habitat



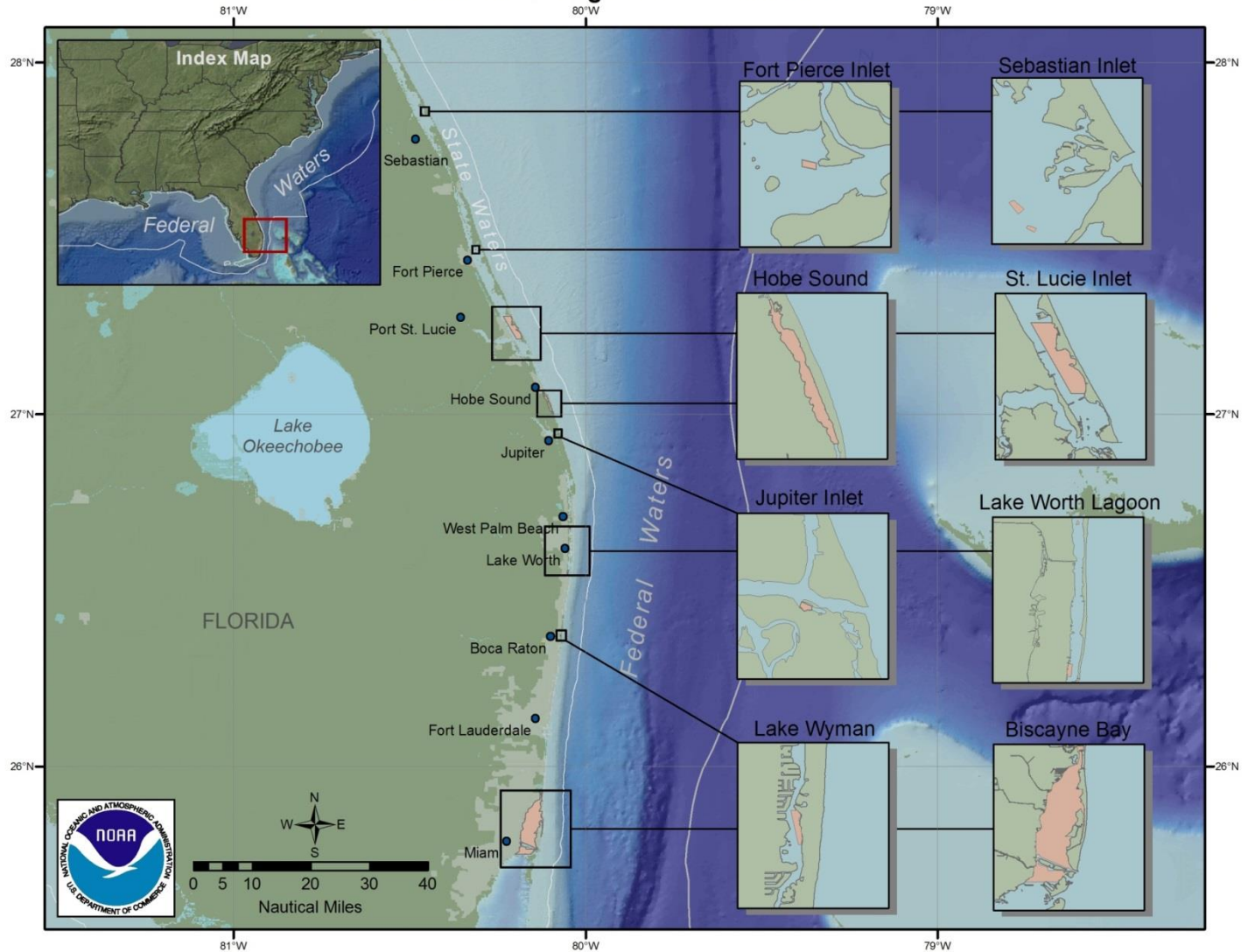
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Elkhorn and Staghorn Coral Critical Habitat - Florida Unit



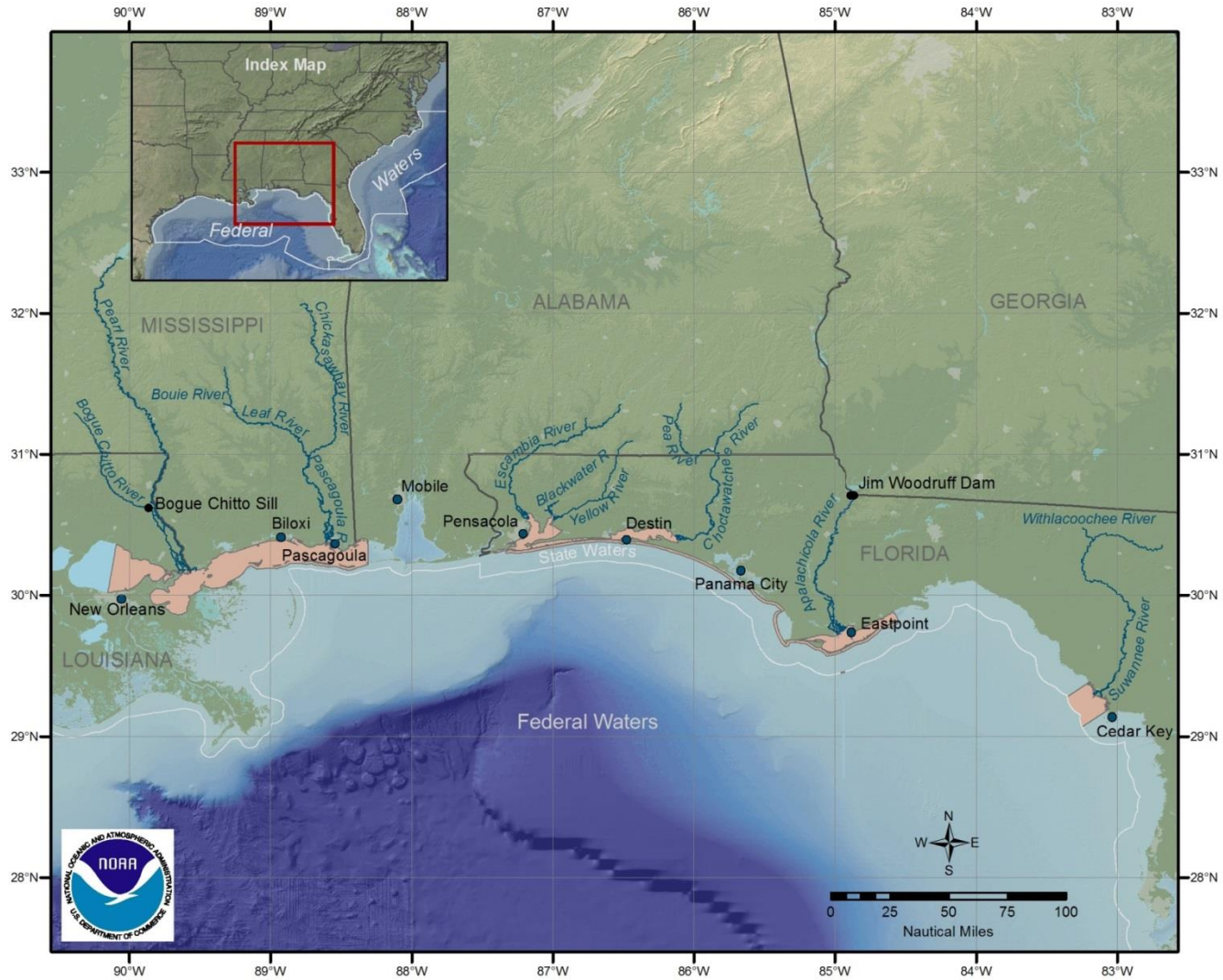
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Johnson's Seagrass Critical Habitat



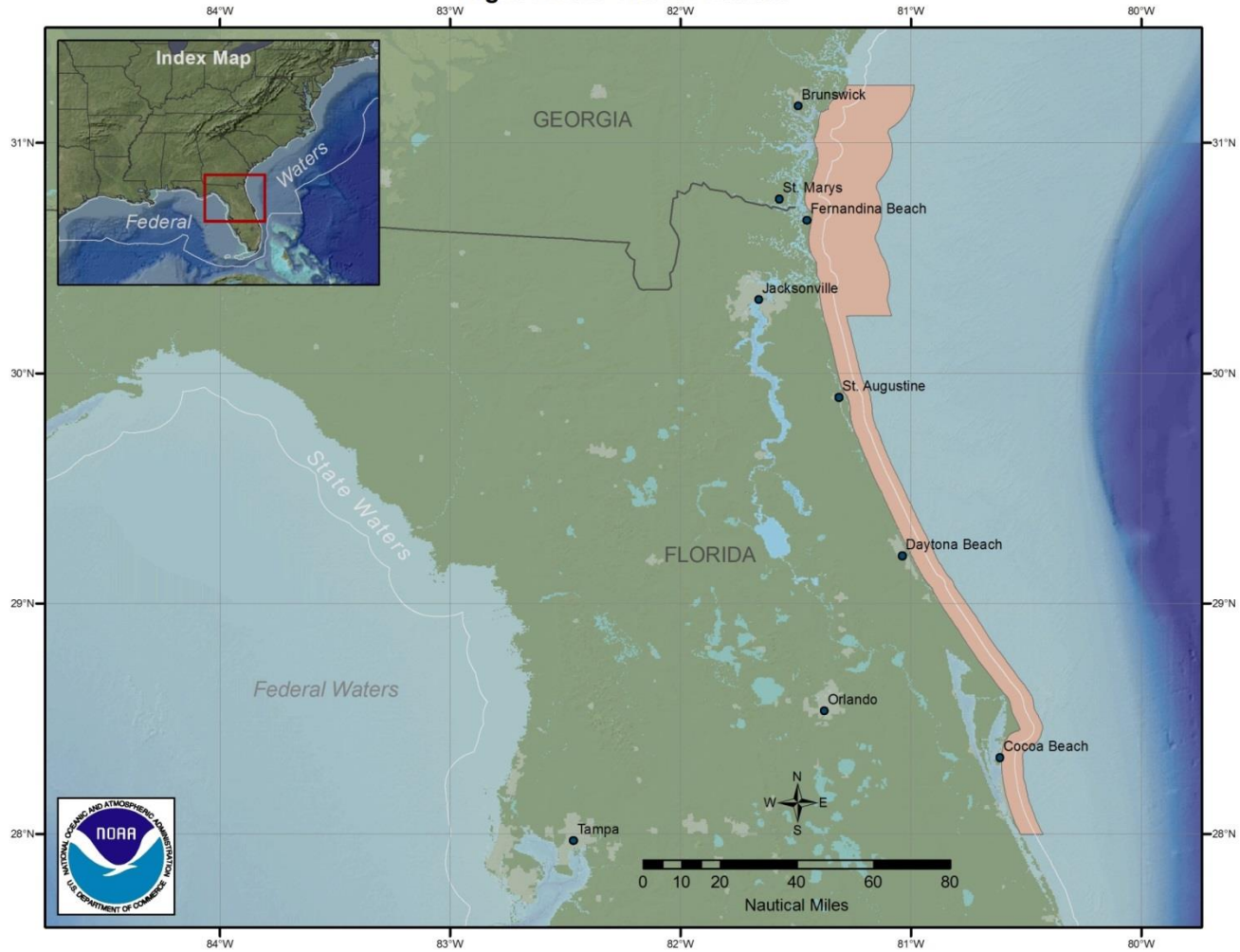
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Gulf Sturgeon Critical Habitat



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Right Whale Critical Habitat



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NMFS – Essential Fish Habitat

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



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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.



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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

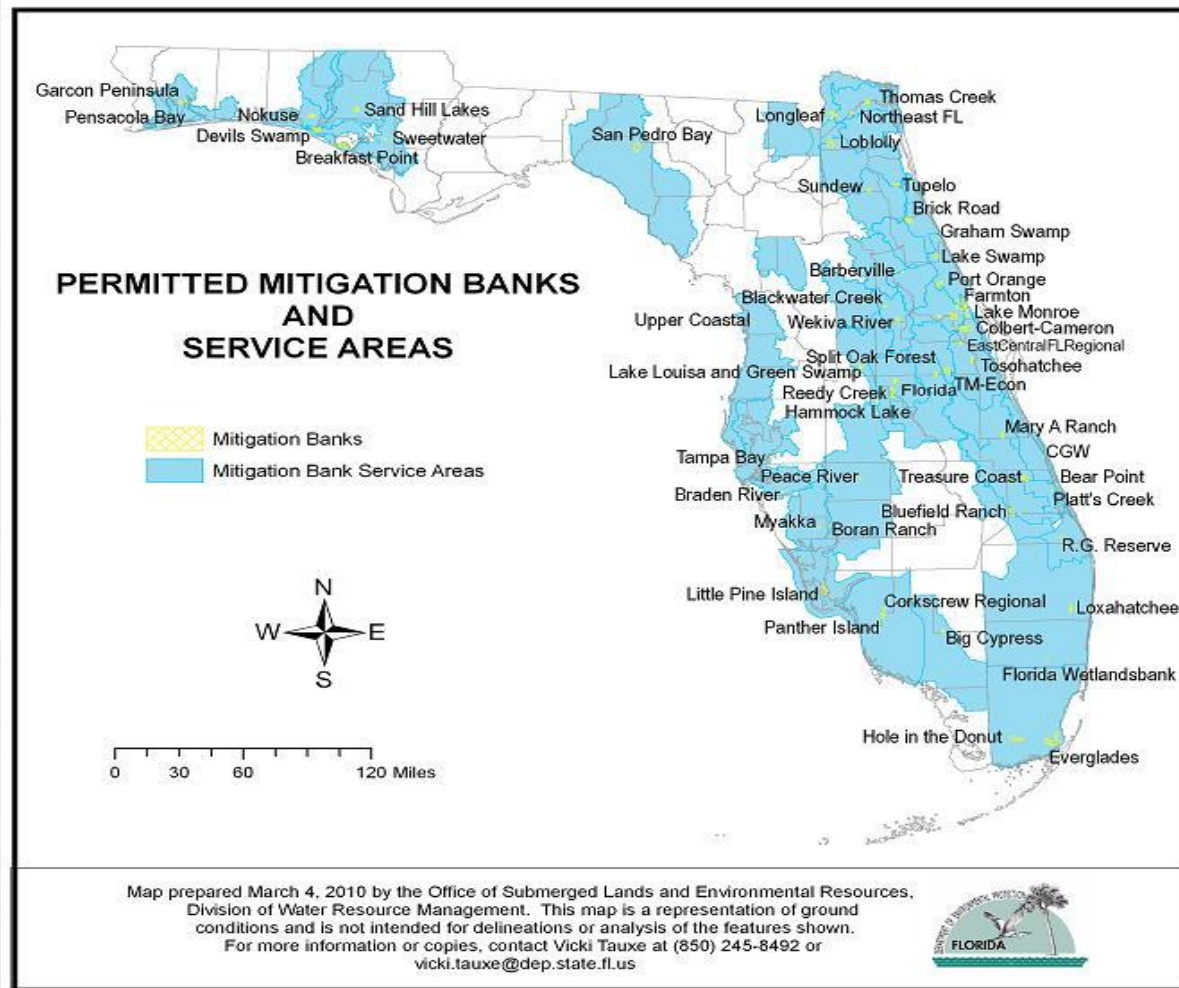
Mitigation rule and preferred mitigation type:

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



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Mitigation Banks





Navigation

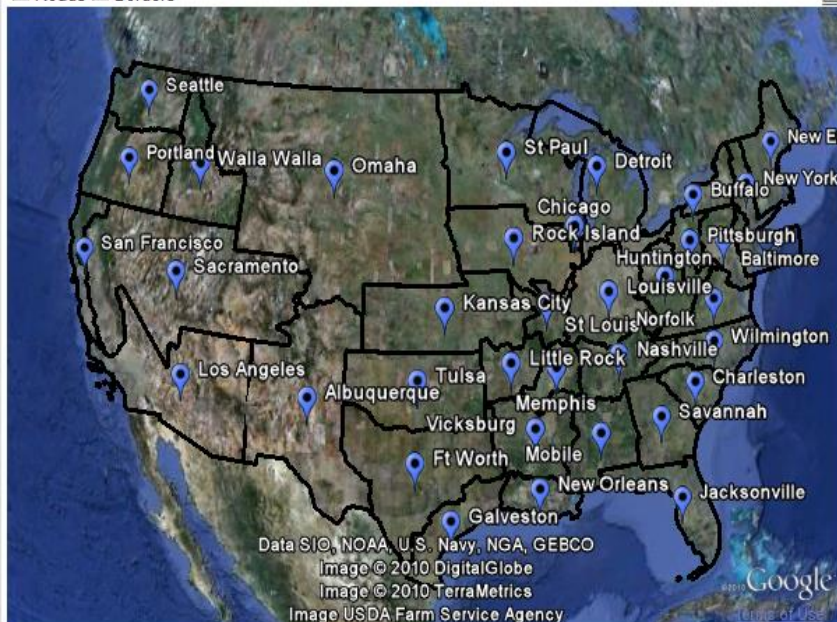
- Home
- Mitigation Concepts
- Existing Banks
- Reporting
- Bank Establishment
- Assessment Tools
- Credit Classifications
- Related Sites
- Training

Access

LOGIN

Filter ALL DISTRICTS

District Map

☐ Roads ☐ Borders

New Items

- [Plug-in Information](#)

Map Results

<https://rsgis.crrel.usace.army.mil/ribits/f?p=107:2:3253643864609913>

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What's New with the Corps?

- **Proposed Rulemaking Waters of the U.S.**
- **Interpretive Rule**
- **Jacksonville District Workforce Reshaping**
- **Permit Modifications**
- **Indirect effects tool**



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Proposed Rulemaking – Waters of the U.S.

- 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)
- Close of the comment period extended from July 21, 2014 to October 20, 2014.



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Comments Rulemaking

- Submit your comments, identified by Docket ID No. EPA–HQ–
- OW–2011–0880 by:
- *Federal eRulemaking Portal:*
<http://www.regulations.gov>.
- *Email:* ow-docket@epa.gov.



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CLEAN WATER ACT INTERPRETIVE RULE FOR 404(f)(1)(A)

- Effective on April 03, 2014
- Public Notice Can Be Found Here:
<http://www.saj.usace.army.mil/Missions/Regulatory/PublicNotices.aspx>
- Exempted from permitting certain agricultural conservation practices based on the Natural Resources Conservation Service (NRCS) conservation practice standards that are designed and implemented to protect and enhance water quality.



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INTERPRETIVE RULE CONTINUED

- This rule is in effect.
- More information can be found here:

<http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm>



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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**
- **Reduced Staffing Levels**



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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



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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 _____

<p>Y N NA</p> <p><input type="checkbox"/> Self- cert submitted</p> <p><input type="checkbox"/> Deviations (self-cert) indicated</p> <p><input type="checkbox"/> Deviations indicated w/i authorization</p> <p><input type="checkbox"/> As-builts submitted</p> <p><input type="checkbox"/> XY coordinates submitted</p> <p><input type="checkbox"/> As-builts indicate compliance w/ terms</p> <p><input type="checkbox"/> Bathymetric survey submitted & in compliance</p> <p><input type="checkbox"/> Benthic survey submitted & in compliance</p> <p><input type="checkbox"/> Property survey submitted & in compliance</p> <p><input type="checkbox"/> Compliance check by per aerial photography</p> <p><input type="checkbox"/> Compliance check performed per agency report</p> <p><input type="checkbox"/> Compliance check performed-site visit by Corps</p> <p><input type="checkbox"/> Project commenced in WOUS</p> <p><input type="checkbox"/> Consent to Easement obtained</p> <p><input type="checkbox"/> Other reports indicate compliance</p> <p><input type="checkbox"/> All reports due have been submitted</p> <p><input type="checkbox"/> Temporary impacts restored</p> <p><input type="checkbox"/> Ownership has changed (transfer needed)</p> <p><input type="checkbox"/> Permittee Responsible Mitigation in compliance</p>	<p>Y N NA</p> <p><input type="checkbox"/> Mitigation Bank credits</p> <p><input type="checkbox"/> amount purchased correct</p> <p><input type="checkbox"/> service area correct</p> <p><input type="checkbox"/> habitat type correct</p> <p><input type="checkbox"/> functional assessment correct</p> <p><input type="checkbox"/> ILF credits purchased amount correct</p> <p><input type="checkbox"/> ILF credits purchased from correct project</p> <p><input type="checkbox"/> Mitigation changes consistent w/ permit decision</p> <p><input type="checkbox"/> Conservation Easement executed, recorded</p> <p><input type="checkbox"/> Conservation Easement covers required area</p> <p><input type="checkbox"/> Conservation Easement language approved by OC</p> <p><input type="checkbox"/> Terms of the Conservation Easement</p> <p><input type="checkbox"/> MOA/PA fully executed & in compliance</p> <p><input type="checkbox"/> MOA/PA treatment completed & in compliance</p> <p><input type="checkbox"/> Other _____</p> <p><input type="checkbox"/> Other _____</p>
---	--

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



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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



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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



INDIRECT EFFECTS TOOL

- Guidance for the Assessment of Indirect and Secondary Effects and Impacts in Wetlands for Compensatory Mitigation
- PN issued June 20, 2014

<http://www.saj.usace.army.mil/Missions/Regulatory/PublicNotices.aspx>



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Chain of Command

Jacksonville District:

Col. Dodd

District Commander

Regulatory Division:

Donnie Kinard

Division Chief

Tori White

Deputy Chief

Permits Branch:

Osvaldo Collazo

North Branch Chief

Stephen Sullivan

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 Sotelo

Section Chief

Palm Beach Gardens

Susan Kaynor

Section Chief

Antilles

Sindulfo Castillo

Section Chief

Enforcement

Theresa Hudson

Section Chief

Special Projects

Deb Wegmann

Branch Chief



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