

COORDINATION AGREEMENT
BETWEEN THE U.S. ARMY CORPS OF ENGINEERS
(JACKSONVILLE DISTRICT)
AND THE
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
OR DULY AUTHORIZED DESIGNEE
STATE PROGRAMMATIC GENERAL PERMIT

I. PREAMBLE:

Under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403), the Jacksonville District, U.S. Army Corps of Engineers (Corps) has regulatory jurisdiction over all obstructions or alterations of any navigable water of the United States, the construction of any structures in or over any navigable water of the United States, and any work affecting the course, location, condition, or capacity of navigable waters of the United States. Additionally, under Section 404 of the Clean Water Act (33 USC 1344), the Corps has regulatory jurisdiction over the discharge of dredged or fill material into waters of the United States. Under both authorizations, the Corps has authority to issue general permits on a statewide basis for specific categories of work.

The State of Florida, Department of Environmental Protection (FDEP), or a duly authorized designee (Designee), has regulatory authority over activities regulated under Part IV of Chapter 373 Florida Statutes, which includes dredging and filling in wetlands and other surface waters.

II. PURPOSE:

The Corps and the FDEP, in conjunction with the U.S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), the U.S. Environmental Protection Agency (EPA), and the Florida Fish and Wildlife Conservation Commission (FWC), have developed a State Programmatic General Permit (SPGP) for use in the State of Florida. The SPGP has undergone several iterations that we have designated SPGP I, SPGP II, SPGP III, SPGP III-R1, SPGP IV, and SPGP IV-R1. This Coordination Agreement, with referenced materials, will cover the implementation of the SPGP IV-R1, and is applicable in all counties within the State of Florida except Monroe County, and those other areas specifically excluded by conditions of the SPGP IV-R1. This Coordination Agreement is required to implement the processing of requests for authorization under the SPGP IV-R1.

III. PROCEDURES:

A. FDEP or Designee Procedures:

1. Upon receipt of a joint application or a request to verify qualification for an entity to use an exemption or noticed general permit under Part IV of Chapter 373, and Sections 403.813 and 403.814, F.S., the FDEP or Designee will review the project to determine whether or not the project is a candidate for review under the SPGP IV-R1 and, whether the project falls under the “green,” “yellow,” or “red” categories:

a. Green: Projects that are considered “green” will be processed by the FDEP or Designee.

b. Yellow: Projects under this category require review by the Federal commenting agencies. The Corps and the Federal resource agencies may meet to discuss the project. A combined Federal position will be forwarded to the DEP or Designee.

c. Red: The FDEP or Designee and the Corps review the project separately.

2. When using the various tools to evaluate a project’s potential effects to a Federally listed species, if the FDEP or Designee is led to the conclusion that the project has potential to adversely impact a Federally-listed threatened or endangered species or its designated critical habitat, except for Manatees, beach mice, wood storks, Smalltooth sawfish, Gulf sturgeon, freshwater mussels, and Johnson’s seagrass, which are considered separately under the paragraphs below, the application or notice for the activity shall automatically be placed in the “red” category. Regional lists of Federally threatened or endangered species by county may be found at <http://northflorida.fws.gov/>, <http://www.fws.gov/verobeach/>, and <http://www.fws.gov/panamacity/>. Adverse impacts to acroporid corals are not anticipated because other special conditions do not allow the SPGP to be authorized within their critical habitat. In the event additional information indicates that a “no effect” determination was made in error, the FWS and the NMFS retain the right to request the Corps to initiate consultation on the project.

3. The dichotomous key titled, “**The Corps of Engineers, Jacksonville District, and The State of Florida Effect Determination Key for the Manatee in Florida**,” dated March 2011, will be used to determine potential impacts to the West Indian manatee. Pertinent information related to the manatee may be found at <http://www.saj.usace.army.mil/Divisions/Regulatory/sourcebook.htm>. Assuming that there are no other Federally-listed species issues, projects that key out to “no effect” to manatees will not require further coordination with FWS and will be placed in the “green” category. Projects, except multi-slip projects, that key to “may affect, not likely to adversely affect” manatees will not require further coordination with FWS, and will be placed in the “green” category. If the key requires the inclusion of the “Standard Manatee Conditions for In-water Work,” dated 2011 (<http://www.saj.usace.army.mil/Divisions/Regulatory/sourcebook.htm>), to achieve a “may affect, not likely to adversely affect” manatees, the Standard Manatee Conditions for In-Water Work shall be

attached to the authorization letter as Special Conditions of the permit. If the proposed project is a new multi-slip facility located in Bay, Dixie, Escambia, Franklin, Gilchrist, Gulf, Hernando, Jefferson, Lafayette, Monroe (south of Seven Mile Bridge), Nassau, Okaloosa, Okeechobee, Santa Rosa, Suwannee, Taylor, Wakulla or Walton County, and the determination is “*May affect, not likely to adversely affect*” the manatee, then no further consultation with FWS is necessary and the project can qualify for the “green” category. All projects that key to “may affect” manatees and multi-slip projects in all counties other than Bay, Dixie, Escambia, Franklin, Gilchrist, Gulf, Hernando, Jefferson, Lafayette, Monroe (south of Seven Mile Bridge), Nassau, Okaloosa, Okeechobee, Santa Rosa, Suwannee, Taylor, Wakulla or Walton County that key to “may affect, not likely to adversely affect” manatees, will require the Corps to re-consult with the FWS and will automatically be considered in the “red” category.

4. Where submerged aquatic vegetation, emergent vegetation, or mangrove (aquatic vegetation) is present, adverse impacts to aquatic vegetation from construction of piling-supported structures may be avoided/minimized by adherence to, or employing alternative construction techniques that provide a higher level of protection than, the protective criteria in the joint U.S. Army Corps of Engineers’/National Marine Fisheries Service’s “**Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh, or Mangrove Habitat - U.S. Army Corps of Engineers/National Marine Fisheries Service August 2001.**” (See <http://www.saj.usace.army.mil/Divisions/Regulatory/sourcebook.htm>) Unless otherwise specifically approved by the National Marine Fisheries Service, where aquatic vegetation is present, to qualify as “green,” piling-supported structures must comply with, or provide a higher level of protection than, the criteria contained in the above-referenced construction guidelines. Applications for dock or other minor piling-supported structure construction in aquatic vegetation that do not adhere to these guidelines will be designated “red.” Applications for dock or other minor piling-supported structure construction in submerged aquatic vegetation within lagoon (as well as canal) systems on Florida’s east coast from Sebastian Inlet (Brevard County) south to and including central Biscayne Bay (Miami-Dade County) must also comply with the construction guidelines titled “**Key for Construction Conditions for Docks or Other Minor Structures Constructed in or Over Johnson’s seagrass (*Halophila johnsonii*) National Marine Fisheries Service/U.S. Army Corps of Engineers,**” dated February 2002, (<http://www.saj.usace.army.mil/Divisions/Regulatory/sourcebook.htm>) in order to qualify for the “green” category.

5. Maps (<http://www.saj.usace.army.mil/Divisions/Regulatory/sourcebook.htm>) or resource agency-supplied GIS layers will be used to determine whether a project is proposed in Anastasia Island, Southeastern, Perdido Key, Choctawhatchee, or St. Andrews beach mouse habitat, the Florida panther consultation area, Kings Bay Manatee Protection Area, or within 2,500 feet of an active nesting colony of the Wood stork. If any projects are within the above areas, the project is automatically designated “red.”

6. Maps (<http://www.saj.usace.army.mil/Divisions/Regulatory/sourcebook.htm>) or resource agency-supplied GIS layers will be used to determine if a shoreline stabilization, boat ramp or

maintenance dredging project is located in designated critical habitat for the Gulf sturgeon. If these types of projects are within Gulf sturgeon critical habitat, the project is automatically designated “red.” [Gulf sturgeon critical habitat does not include existing developed sites such as dams, piers, marinas, bridges, boat ramps, exposed oil and gas pipelines, oil rigs, and similar structures or designated public swimming areas. (68 FR 13454)]

7. Maps (<http://www.saj.usace.army.mil/Divisions/Regulatory/sourcebook.htm>) or resource agency-supplied GIS layers will be used to determine if a shoreline stabilization, boat ramp or maintenance dredging project is located in Smalltooth sawfish designated critical habitat. If these types of projects are within Smalltooth sawfish designated critical habitat, the project is automatically designated “red.” [Smalltooth sawfish critical habitat does not include areas containing existing (already constructed) federally authorized or permitted man-made structures such as channels or canals maintained at depths greater than 3 ft. at MLLW, boat ramps, docks, and marinas deeper than 3 ft. at MLLW. (74 FR 45375)]

8. For all projects in waters accessible to sea turtles, Smalltooth sawfish, Gulf sturgeon, or Shortnose sturgeon, the permittee will utilize the “Sea Turtle and Smalltooth Sawfish Construction Conditions” (see <http://www.saj.usace.army.mil/Divisions/Regulatory/sourcebook.htm>) and any added requirements, as appropriate for the proposed activity.

9. Maps (<http://www.saj.usace.army.mil/Divisions/Regulatory/sourcebook.htm>) or resource agency-supplied GIS layers will be used to determine if a shoreline stabilization, boat ramp or maintenance dredging project is located in freshwater mussel habitat (drainages of the Chipola River, Apalachicola River, Ochlockonee River, Econfina Creek, Suwannee River, New River, Escambia River, Yellow River, or the Choctawhatchee River). If these types of projects are within freshwater mussel habitat, the project is automatically designated “red.”

10. Maps (<http://www.saj.usace.army.mil/Divisions/Regulatory/sourcebook.htm>) or resource agency-supplied GIS layers will be used to determine if a project is within the range of Johnson’s seagrass, and if it is, whether it is also in the designated critical habitat of Johnson’s seagrass. Shoreline stabilization, boat ramp, or maintenance dredging projects proposed within the range of Johnson’s seagrass are automatically designated “red.” While boat dock and boat lift projects proposed within the range of Johnson’s seagrass are “green” when the permittee agrees to utilize the conditions stipulated in Special Condition 8 of the permit, boat dock and boat lift projects proposed within designated critical habitat for Johnson’s seagrass are automatically designated “red.”

Note: The information specified in conditions 3-10 may be subject to revision at any time. It is our intention that the most recent version of any of these attachments will be utilized during the evaluation of the permit application.

11. Projects that fall under the “yellow” category will be marked “Yellow” and, within 5 calendar days from receipt of the application, will be forwarded to the Corps field office that has the responsibility for reviewing projects in the respective county in which the project is proposed, and will be handled by the Corps in accordance with paragraph III.B.2, below.

12. Final Action or Actions by the FDEP or Designee:

a. For all projects that the FDEP has determined are “green,” prior to issuing the Federal authorization, and within ten calendar days of receipt of the application, the FDEP will e-mail a copy of the NMFS-generated checklist/information sheet, which demonstrates the project complies with the project design criteria to minimize impacts to listed species, to the National Marine Fisheries Service (NMFS) at the following address: nmfs.ser.programmaticreview@noaa.gov. The FDEP staff shall allow 5 calendar days for NMFS to review the information. If no response is received from NMFS after 5 calendar days have elapsed, the FDEP may proceed with issuing the Federal authorization.

For projects that qualify for the “green” category, and are authorized or verified by the FDEP or Designee, notification will be sent to the applicant. Accompanying the FDEP or Designee authorization or verification will be language noting that the project is also authorized under the SPGP IV-R1. Language in the notification shall read as follows:

“Your proposed activity as outlined on your application and attached drawings **qualifies** for Federal authorization pursuant to the State Programmatic General Permit IV-R1, and a **SEPARATE permit** or authorization **will not be required** from the Corps. Please note that the Federal authorization expires on July 25, 2016. You, as permittee, are required to adhere to all General Conditions and Special conditions that may apply to your project.” A copy of the SPGP IV-R1 with all terms and conditions and the General Conditions may be found at <http://www.saj.usace.army.mil/Divisions/Regulatory/sourcebook.htm>

Additionally, the FDEP or Designee may attach a copy of the Corps Special and General Conditions to the notification for the verified SPGP IV-R1, and where applicable, the FDEP or Designee shall attach the above construction or species guidelines to the notification for the verified SPGP IV-R1.

b. If the FDEP or Designee determines the project is a “yellow,” the FDEP should contact the Corps as soon as possible within the 5-day window to explain their determination. Because of the additional time that may be added to the overall review time, contact by telephone or e-mail is preferable.

c. For actions that are authorized by the FDEP or Designee but do not meet the criteria of “green” for the SPGP IV-R1, notification will be sent to the applicant, as part of the FDEP or Designee authorization or verification, that the project is not authorized under the SPGP IV-R1. Language in the notification shall read as follows:

“Your proposed activity as outlined on your application and attached drawings **does not qualify** for Federal authorization pursuant to the State Programmatic General Permit and a **SEPARATE permit** or authorization **shall be required** from the Corps. A copy of your permit application has been forwarded to the Corps for their review. The Corps will issue their authorization directly to you or contact you if additional information is needed. If you have not

heard from the Corps within 30 days from the date your application was received at the local FDEP Office, contact the Corps at _____ for status and further information. **Failure to obtain Corps authorization prior to construction could subject you to federal enforcement action by that agency.**

d. If the FDEP or Designee deny the State regulatory authorization for a project, then a copy of the denial and the Corps' copy of the joint application will be forwarded to the Corps, within 5 calendar days of the denial, for final Federal action.

B. Corps Procedures:

1. Projects that are determined to be "red" will be evaluated by the Corps through the Federal permitting process.

2. Projects that are determined to be "yellow" by the FDEP or Designee will be handled in the following manner.

a. If the FDEP and the Corps determine that sufficient time exists to conduct both the NMFS reporting requirement as stipulated in paragraph III.A.12.a. and coordination with other Federal agencies, the FWS, the EPA, and others, as appropriate, shall be contacted by the Corps' project manager to discuss the project. The Corps may, on a regular basis, invite the appropriate agencies to attend a meeting to discuss all projects determined to be "yellow." The meeting may be held via conference call. The goal of this meeting is to formulate a Combined Federal Position (CFP) on whether the proposed project qualifies for the SPGP as is or with the addition of special conditions, or whether the project should be put in the "red" category. The CFP shall be provided to the FDEP or Designee in writing. A CFP on a "yellow" project will be transmitted to the FDEP or Designee within 5 calendar days from the receipt of the project in the Corps field office. The CFP may be transmitted to the FDEP or Designee on a sheet titled "SPGP IV-R1 Combined Federal Position" or via e-mail. If no CFP is received by the FDEP or Designee within 5 calendar days from the receipt of the project in the Corps field office, the FDEP or Designee will automatically designate the project as "green," and process the application as outlined in paragraph III.A.12.a. If the FDEP and the Corps determine that there is not sufficient time to conduct both the NMFS reporting as stipulated in III.A.12.a. and coordination with other Federal agencies, the project will be designated "red" and treated in accordance with paragraph III.B.1. above.

b. If the CFP is that the project should be designated "red," the Corps will notify the FDEP or Designee via e-mail or telephone, within 5 calendar days from the receipt of the project in the Corps field office and process the application as outlined in paragraph III.B.1.

c. If special conditions need to be added, the Corps will notify the FDEP or Designee and will supply a copy of those conditions within 5 calendar days from the receipt of the project in the Corps' field office. Inclusion of these special conditions in the authorization would result in

the project being designated "green." These conditions would be included as part of the Federal authorization.

d. If the CFP is that there are no objections, the project will be designated "green," and FDEP or Designee should process the application as outlined in paragraph III.A.12.a.

IV. MONITORING:

The FDEP will furnish to the Jacksonville District office a report of the projects verified under the SPGP IV-R1 on a quarterly basis in a mutually agreed upon format. Where a Designee is the administering entity and the Designee is not entering data directly into the FDEP database, within ten working days of the end of the quarter, the Designee will furnish the information to the FDEP, and the FDEP will forward it to the Corps as part of the FDEP report.

V. COORDINATION WITH OTHER FEDERAL AGENCIES

A. When the SPGP IV-R1 is issued, at least 30 days prior to its implementation in each FDEP district and/or Designee locale, the Corps, the FWS, and the NMFS personnel may meet with FDEP and/or Designee personnel to familiarize them with: the Endangered Species Act, the threatened and endangered species issues within each FDEP district and/or Designee locale, the protocols utilized in contacting the appropriate personnel concerning threatened and endangered species issues, and issues surrounding essential fish habitat.

B. Once the implementation is underway, the FWS, the NMFS, and the Corps may meet with the FDEP and/or Designee on a regular interval to evaluate whether the issued permits are in compliance with the respective Federal regulations. Initially the meetings will be scheduled as needed, and the interval will be adjusted accordingly as the implementation proceeds. The meetings may be conducted telephonically if everyone agrees.

C. All parties acknowledge that under Condition 4 in the Further Information Section of the General Conditions of the SPGP IV-R1, threatened and endangered species and essential fish habitat issues are included as part of the public interest. Should any threatened and/or endangered species or essential fish habitat issues arise, it may be necessary to suspend the SPGP IV-R1, or specific sections of it, in all or portions of the authorized geographic areas, until they can be resolved.

VI. MODIFICATIONS AND TERMINATION

A. This Agreement may be modified in writing at any time as necessary by mutual consent of the Corps and the FDEP/Designee. Modifications may be made in whole, by part, or by section; and upon approval shall supersede previous versions of this Agreement. Approvals of modifications to the language of this Agreement shall be approved and signed by the District Engineer for the Corps and the Secretary of the FDEP, or their designees.

B. Either party may terminate this agreement upon 90 days written notice.



Jeff Littlejohn
Deputy Secretary for Regulatory Programs
Florida Department of
Environmental Protection



Alan M. Dodd
Colonel, U.S. Army
District Engineer

Date 7/2/12

Date 7/23/12