

COORDINATION AGREEMENT
BETWEEN THE U.S. ARMY CORPS OF ENGINEERS
JACKSONVILLE DISTRICT
AND THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
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 alternations 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 Southwest Florida Water Management District (SWFWMD) has regulatory authority over activities regulated under Part IV of Chapter 373, Florida Statutes (F.S.), which includes dredging and filling in wetlands and other surface waters.

II. PURPOSE

The Corps and the Florida Department of Environmental Protection, 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 which 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 govern the implementation of the SPGP IV-R1 by the SWFWMD. The SPGP IV-R1 will be applicable in all counties within the SWFWMD boundaries, except for those 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. For the general permit activities listed in the SPGP IV-R1, the rule cites have been updated as shown in Exhibit A to reflect the new Statewide Environmental Resource Permit rules.

III. PROCEDURES

A. SWFWMD Procedures:

1. Upon receipt of a joint application or a request to verify qualification for an entity to use an exemption or general permit under Part IV of Chapter 373, and Sections 403.813 and 403.814, F.S., the SWFWMD will review the project to determine whether the project is a candidate for review under the SPGP IV-R1. SWFWMD will also determine whether the project falls under the "green," "yellow," or "red" categories:

a. Green: Projects that are considered "green" will be processed by the SWFWMD.

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 SWFWMD.

c. Red: The SWFWMD and the Corps review the project separately.

2. If the SWFWMD concludes that a project has potential to adversely affect a Federally-listed threatened or endangered species, or its designated critical habitat, except for manatees, wood storks, smalltooth sawfish, Florida panthers, and Gulf sturgeon, all of 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/> and <http://www.fws.gov/verobeach/>. 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 April 2013 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/Portals/44/docs/regulatory/sourcebook/endangered_species/Manatee/2013_FINAL_ManateeKey.pdf. 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/Portals/44/docs/regulatory/sourcebook/endangered_species/Manatee/2011_StandardConditionsForIn-waterWork.pdf), the Standard Manatee Conditions shall be attached to the authorization letter as Special Conditions of the permit. If the project is for a new multi-slip facility and is located in Hernando County,

and the determination is “*May affect, not likely to adversely affect,*” no further consultation with the FWS is necessary. All projects that key to “may affect” manatees, and multi-slip projects in all counties other than Hernando 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 “**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/Portals/44/docs/regulatory/sourcebook/other_permitting_factors/DockGuidelines2008_Revised.pdf). Unless otherwise specifically approved by the NMFS, where aquatic vegetation is present, to qualify as “green,” piling-supported structures authorized under the SPGP IV-R1 must comply with, or provide a higher level of protection than, the criteria contained in the 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.”

5. Maps (<http://www.saj.usace.army.mil/Missions/Regulatory/SourceBook.aspx>) or resource agency-supplied GIS layers will be used to determine whether a project is proposed within 2,500 feet of an active nesting colony of the wood stork, within designated critical habitat for smalltooth sawfish or Gulf sturgeon, or within the Florida panther consultation/focus area. If any projects are within the above area, the project is automatically designated “red.”

6. For all projects in waters accessible to sea turtles, Gulf sturgeon, or smalltooth sawfish, the permittee will utilize the “Sea Turtle and Smalltooth Sawfish Construction Conditions” (see http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/permitting/general_permits/SPGP/SPGP-attach14_SmalltoothSawfish-SeaTurtles.pdf) and any added requirements, as appropriate for the proposed activity.

Note: The information specified above in paragraphs III. A. 3-6 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.

7. Projects that fall under the “yellow” category will be marked “Yellow” and, within 5 calendar days from receipt of the application, the SWFWMD will forward the application 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.

8. Final Action or Actions by the SWFWMD:

a. For all projects which the SWFWMD has determined are "green," prior to issuing the Federal authorization, and within ten calendar days of receipt of the application, the SWFWMD 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 NMFS at the following address: nmfs.ser.programmaticreview@noaa.gov. The SWFWMD 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 SWFWMD may proceed with issuing the Federal authorization.

For projects that qualify for the "green" category, and are authorized or verified by the SWFWMD, notification will be sent to the applicant. Accompanying the SWFWMD 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 U.S. Army Corps of Engineers. 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/Missions/Regulatory/SourceBook.aspx>

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

b. If the SWFWMD determines the project is a "yellow," the SWFWMD should contact the Corps as soon as possible within the 5 calendar-day window to explain the determination. Contact by e-mail is preferable to minimize additional review time that may be necessary to designate the project as either "green" or "red."

c. For actions that are authorized by the SWFWMD but do not meet the criteria of "green" for the SPGP IV-R1, notification will be sent to the applicant as part of the SWFWMD authorization or verification, providing 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 U.S. Army Corps of Engineers (Corps). A copy of your permit application has been forwarded to the Corps for review. The Corps will issue its 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 SWFWMD 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 SWFWMD denies the State regulatory authorization for a project, the SWFWMD will forward a copy of the denial and a copy of the joint application to the Corps within 5 calendar days of the denial.

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 SWFWMD will be handled in the following manner.

a. If the SWFWMD and the Corps determine that sufficient time exists to conduct both the NMFS notification requirement, as stipulated in paragraph III.A.8.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 IV-R1 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 SWFWMD in writing. A CFP on a "yellow" project will be transmitted to the SWFWMD within 5 calendar days from the receipt of the application in the Corps field office. The CFP will be transmitted to the SWFWMD in any manner acceptable to both parties. If no CFP is received by the SWFWMD within 5 calendar days from the receipt of the application in the Corps field office, the SWFWMD will automatically designate the project as "green" and process the application as outlined in paragraph III.A.8.a. If the SWFWMD and the Corps determine that there is not sufficient time to conduct both the NMFS notification, as stipulated in paragraph III.A.8.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 SWFWMD via e-mail, within 5 calendar days from the receipt of the application 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 SWFWMD and will supply a copy of those conditions within 5 calendar days from the receipt of the application in the Corps' field office. Inclusion of these special conditions in the permit authorization will result in the project being designated "green." These conditions will 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 SWFWMD should process the application as outlined in paragraph III.A.8.a.

IV. MONITORING

The SWFWMD 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.

V. COORDINATION WITH OTHER FEDERAL AGENCIES

A. Prior to the implementation of the SPGP IV-R1 by SWFWMD, the Corps, the FWS, and the NMFS personnel may meet with SWFWMD personnel to review the following: the Endangered Species Act, threatened and endangered species issues within the SWFWMD boundaries, the protocols utilized in contacting the appropriate personnel concerning threatened and endangered species issues, and issues surrounding essential fish habitat.

B. After the implementation is underway, the FWS, the NMFS, and the Corps may meet with the SWFWMD 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 all parties agree.

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 SWFWMD. 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 Executive Director of the SWFWMD, or their designees.

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

Attest:

SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT

By:

Jeffrey M. Adams, Secretary

By:

Michael A. Babb, Chairman

Date:

7-28-15

Date:

7-28-15

U.S. ARMY CORPS OF ENGINEERS
JACKSONVILLE DISTRICT

for  Jason A. Kirk

Colonel, U.S. Army
District Commander

8-12-15

Date

Exhibit A

<i>a. Shoreline Stabilization</i>	
62-330.051(12)(a), F.A.C.; 403.813(1)(i), F.S.	Construction of seawalls or riprap, including only that backfilling needed to level the land behind seawalls or riprap, in artificially created waterways
62-330.051(12)(b), F.A.C.; 403.813(1)(e), F.S.	Restoration of seawall or riprap at its previous location or upland of or within one foot waterward of its previous location
62-330.051(12)(c), F.A.C.; 403.813(1)(o), F.S.	Construction of private vertical seawalls in wetlands or other surface waters, other than in an estuary or lagoon, and the construction of rip rap revetments, and is no more than 150 feet in length
62-330.431, F.A.C.; 62-330.051(12)(d), F.A.C.	Installation of rip rap; installation of batter piles used exclusively to stabilize and repair seawalls and that do not impede navigation.
<i>b. Boat Ramps and Boat Launch Areas and Structures Associated with Such Ramps or Launch Areas</i>	
62-330.051(5)(e), F.A.C.; 403.813(1)(c), F. S.	Installation and maintenance to design specifications of boat ramps on artificial bodies of water or public boat ramps on any waters
<i>c. Docks, Piers, Associated Facilities, and other Minor Piling-Supported Structures.</i>	
62-330.051(5)(a), F.A.C.; 403.813(1)(b), F. S.	Installation, replacement or repair of mooring pilings and dolphins associated with private docks
62-330.051(5)(a), F.A.C.; 403.813(1)(b), F. S.	Installation of private docks of 500/1000 square feet or less of surface area over wetlands or other surface waters
62-330.051(5)(c), F.A.C.; 403.813(1)(i), F. S.	Construction of private docks in artificially created waterways
62-330.051(5)(d), F.A.C.; 403.813(1)(d), F.S.	Replacement or repair of existing docks and mooring piles
62-330.051(8), F.A.C.; 403.813(1)(k), F.S.	Installation of aids to navigation and buoys associated with such aids
62-330.051(11)(b), F.A.C.	Installation of piling support structures associated with water testing or monitoring equipment by the Department or District
62-330.427, F.A.C.	Construction, extension, and removal of certain piers and associated structures
62-330.475(1)(a), F.A.C.	Piling supported structures, less than 1,000 square feet. not in Outstanding Florida Waters
62-330.475(1)(b), F.A.C.	Piling supported structures, less than 500 square feet, in Outstanding Florida Waters
62-330.051(5)(f), F.A.C.; 403.813(1)(s), F.S.	Construction, installation. operation or maintenance of floating vessel platforms and boat lifts
<i>d. Maintenance Dredging of Canals and Channels (including removal of organic detrital material from freshwater lakes and rivers).</i>	
62-330.051(7)(a), F.A.C.; 403.813(1)(f), F.S.	Maintenance dredging of existing manmade canals, channels, basins, berths, and intake and discharge structures
62-330.051(3)(b), F.A.C.; 403.813(1)(r), F.S	Removal of aquatic plants, tussocks, and organic detrital material (Freshwater lakes only)
62-330.051(3)(b), F.A.C.; 403.813(1)(u), F.S	Removal of organic detrital material by individual residential property owners (Freshwater rivers and lakes only)
62-330.475(1)(d), F.A.C.	Maintenance dredging 50 cubic yards or less, spoil in uplands, turbidity control