



Florida's Assumption Process

November 4, 2020



Department Mission

The Florida Department of Environmental Protection (DEP) protects, conserves and manages the state's natural resources and enforces its environmental laws.



Agency Structure

- **Executive Branch Agency**
- **Three primary areas**
 - **Land and Recreation**
 - **Regulatory**
 - **Ecosystem Restoration**



DEP Regulatory

- **Division**
 - **Water Resource Management**
- **Program**
 - **Submerged Lands and Environmental Resources Coordination**
- **District Offices**



Existing Program

Environmental Resource Permitting (ERP)



Regulated Activities

ERP

- **Activities in, on, or over surface waters or wetlands**
 - **Dredging and filling, docks, etc.**
- **Any activity involving the alteration of surface water flows**
 - **Including new activities in uplands that generate stormwater runoff from upland construction**



Delineation

Florida has its own wetland and surface water delineation rule

- **Chapter 62-340, Florida Administrative Code (F.A.C.)**



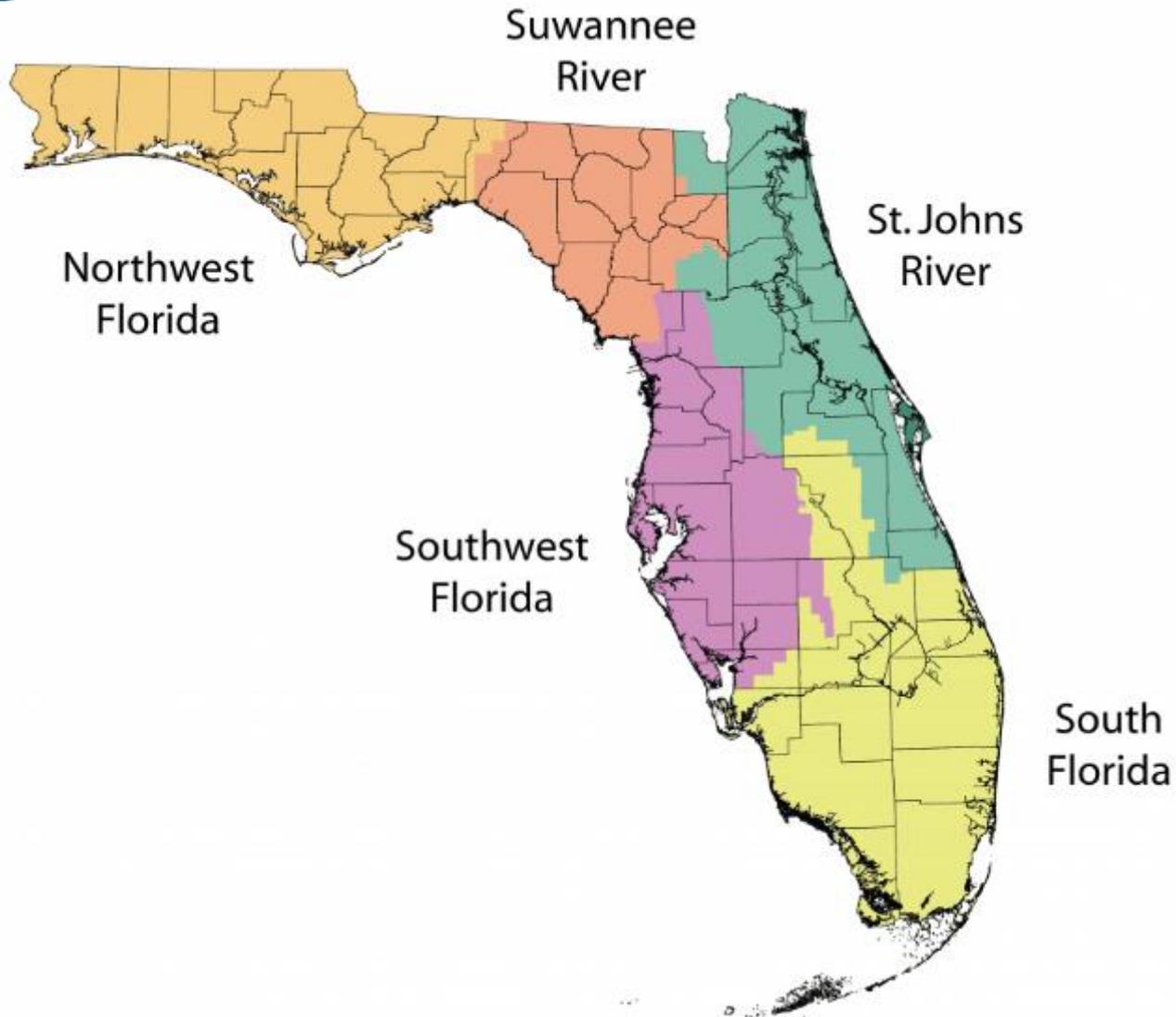
Implementation

ERP

- **DEP**
- **Five Water Management Districts (WMDs)**
- **Delegated Local Governments**
 - **Broward and Hillsborough Counties**
- **Operating Agreements**
- **Fees**



WMDs





Assumption

Florida's efforts to assume the dredge and fill permitting program under section 404 of the Clean Water Act (CWA)



History

- **1980s – 1990s**
- **2005**
- **2012**
- **2018**



Why Assume?

- **Efficiency and streamlining**
- **Greater control over state resources**
- **Better service to Florida citizens and stakeholders**



Legislative Authority

2018

- **Section 373.4146, Florida Statutes (F.S.)**
- **How did we get there?**



Two Program Approach

ERP and State 404

- **ERP**

- **Keep existing**
- **DEP/WMD/local government split**

- **State 404**

- **In addition to ERP**
- **DEP will issue all State 404 permits**



Why Two Programs?

- **ERP in retained waters**
- **Efficiency comes through coordination**
- **What might the future look like?**
 - **Possibilities include:**
 - **“Chili and cheese” (program merging)**
 - **Delegation to WMDs**
 - **Would require U.S. Environmental Protection Agency (EPA) approval**



Rulemaking

Step 1 in Florida's assumption process



Purpose of Rulemaking

To bring in requirements of federal law not already addressed by ERP.



Rulemaking Timeline

- **May 11, 2018 – Notice of Rule Development (NORD)**
 - **Three workshops**
 - **May 30, 31, and June 1, 2020**
- **February 19, 2020 – Notice of Proposed Rule (NOPR)**
 - **Five virtual public hearings**
 - **Three webinars: April 2, 6, and 10, 2020**
 - **Two teleconferences: April 24 and 27, 2020**
- **July 21, 2020 – Rule Adoption**
 - **Effective upon date EPA publishes program approval in Federal Register**



Public Comments

Interest Groups

- **Mitigation banking stakeholders**
- **Tribes**
- **Conservation groups**
- **Industry groups**
- **Individuals**



Assumption Package

Step 2 in Florida's assumption process



Package Drafting

- **Teamwork!**
- **Working with Federal Partners**
 - EPA
 - U.S. Fish and Wildlife Conservation Commission (USFWS)
 - U.S. Army Corps of Engineers (USACE)
- **Working with State Partners**
 - Florida Fish and Wildlife Conservation Commission (FWC)
 - State Historic Preservation Office (SHPO)
 - Florida Department of Transportation (FDOT)
- **Working with Tribes**
 - Seminole Tribe of Florida
 - Miccosukee Tribe of Indians of Florida
- **And many others...**



The Package

Content Highlights

- **Workload analysis and staffing**
- **Crosswalk**
- **FWC/FWS/DEP Memorandum of Understanding (MOU)**
- **SHPO/DEP Operating Agreement (OA)**
- **What about the biological assessment?**
 - **Submitted in advance**



Package Submittal

- **Submitted August 20, 2020**
- **Available on DEP website**
 - **www.FloridaDEP.gov** (search “assumption”)

OR

- **<https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/404-assumption>**



EPA Review

Step 3 in Florida's assumption process



EPA Public Notice

- **Public Notice published
September 16, 2020**
- **Comment period ends
November 2, 2020**
- **Docket: EPA-HQ-OW-2018-0640**



EPA Public Hearings

- **Webinars**
- **October 21 and 27, 2020**



EPA Decision

**Anticipated decision date is
December 17, 2020.**



Preparing to Implement

Florida's preparations to implement assumption



Training

- **Weekly internal training webinars for staff**
- **Planning external training webinars closer to date of assumption**
- **Consideration for other states:**
 - **Florida's staff are already trained in ERP review; only need to "fill the gap"**



Technology Solutions

- **Tracking databases**
- **Data collection**
- **Records database**
- **Public notice solution**



Internal Coordination

DEP/WMD/Local Governments

- **Procedures for inter-agency coordination**
- **Reduce duplication of effort**
- **Ensures consistency**



Transition Prep

USACE/DEP

- **Preparing for pending file transfer**
- **Preparing shared Geographic Information System (GIS) layers**



Staffing

New Hires/Reassignments

- **Historical/Tribal Resources Coordinator**
- **Quality control audit assistants**
- **DEP district permitting/compliance staff**



Lessons Learned

So far...



Communicate!

- **Communicate early and often**
 - **Federal/State Partners**
 - **Tribes**
 - **Stakeholders**
 - **Staff**
- **Listen and learn**



Prepare for the Unexpected!

- **Relatively new territory**
- **Life happens**
 - **Program implementation**
 - **Pandemic**
 - **Working with resources**
 - **Technological**
 - **Budgetary**



Change is Hard!

- **Human nature**
- **Read up on leading through change**
- **Take training courses, if available**
- **Communicate with staff and stakeholders, early and often**



Grow a Thick Skin!

- **Listen**
- **Learn**
- **Grow**



Build a Strong Team

Most Important!

- **Florida's assumption team is made of:**
 - **Creative thinkers**
 - **Self-starters**
 - **Problem solvers**
 - **Team players**
 - **Analytical minds**
 - **Resilience**
- **And they are AMAZING!**



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