

# Federal Wetlands Permitting Overview

*"Expediting Your Dock Application: Tips  
and Tricks from the Agencies"*

*Marco Island, 17 August 2015*



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US Army Corps of Engineers  
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# 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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# Three Mission Elements

- **Permitting**: Authorize activities in waters of the U.S.
- **Compliance**: Ensure permit applicants follow permit terms and conditions
- **Enforcement**: Investigate unpermitted activities



# Regulatory Authorities

- ***Section 10 Rivers & Harbors Act of 1899*** – Regulate all structures or work in, over or under navigable waters of the U.S.
- ***Section 404 Clean Water Act*** – Regulate discharge of dredged or fill material in waters of the U.S., including wetlands
- ***Section 103 of the Marine Protection, Research and Sanctuaries Act*** - Regulate transport of dredged material for the purpose dumping in the ocean



# Typical Structures/Work Requiring a Section 10 Permit



- Docks



- Utility/Power Lines



- Marinas



- Dredging



# Section 404 of the Clean Water Act

- Fill material: material placed in waters of the United States where the material has the effect of replacing any portion of a water of the U.S. with dry land, or changing the bottom elevation of any portion of a water of the U.S.
  - ▶ Examples include rock, sand, soil, clay, construction debris, overburden from excavation
  - ▶ Does not include trash or garbage
- Discharge of fill material: addition of fill material into waters of the U.S.



# Typical Projects Requiring a Section 404 Permit



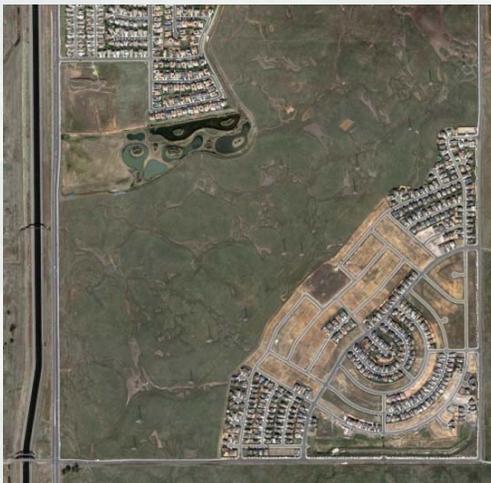
- Road Crossings



- Utility Lines



- Energy Projects



- Residential Development



- Bank Protection/ Levee Work





# Waters of the United States



# 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/AGC\\_P\\_regsupV2.pdf](http://www.usace.army.mil/CECW/Documents/cecwo/reg/AGC_P_regsupV2.pdf)



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# 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.



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# 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



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# Items for a Complete Application

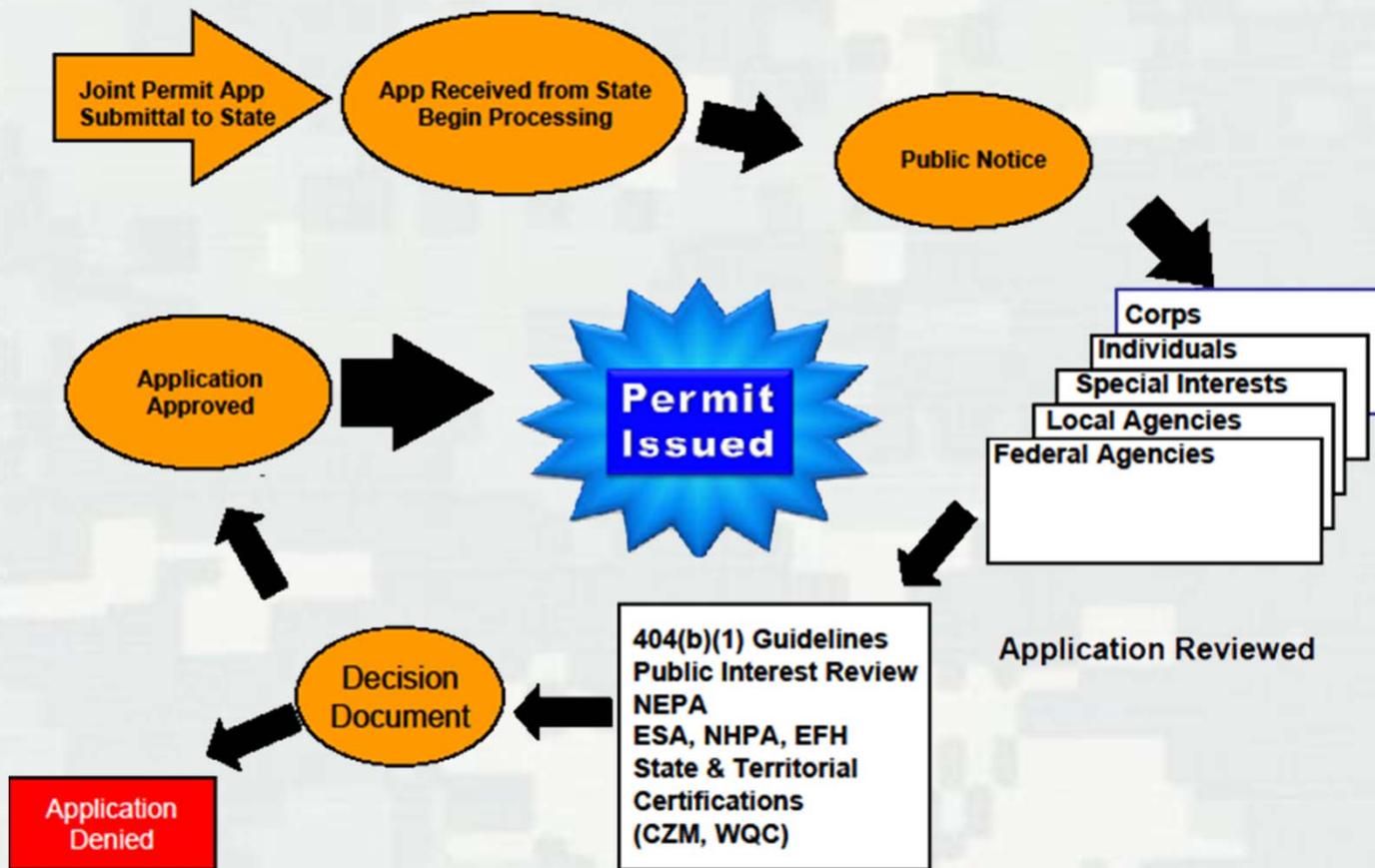
## Items to include in submittal package to generate a Public Notice (PN):

- 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



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# Permit Review Process



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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](mailto:saj-rd-webmaster@usace.army.mil)



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# Public Notice

The screenshot shows the Jacksonville District US Army Corps of Engineers website. The header includes the organization's name and a search bar. The main content area is titled "Public Notices" and features a "Public Notices Archive" with a list of notices from 2013 (95) and 2012 (1). Below this is a "Public Notice Notifications" section. The main content area displays three public notices, each with a title, date, location, project purpose, and expiration date. The first notice is SAJ-1986-00479 (SP-MJW) - 7/1/2013: Palm Beach County. City of Boca Raton. Boca Raton, Florida. The second notice is SAJ-2013-00401 (SP-CF) - 6/27/2013: Broward County. Terra World Investments, Inc; c/o David Martin. Miami, Florida. The third notice is 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. Each notice has an "ATTACHMENTS: Graphics" link. A red arrow points to the "Public Notices" link in the navigation menu, and another red arrow points to the "ATTACHMENTS: Graphics" link for the first notice.

JACKSONVILLE DISTRICT

US Army Corps of Engineers

Search Jacksonville District | Q

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

loc/regulatory/publicnotices/20130701-SAJ-1986-00479-P...

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



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# 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
- USCG



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# USFWS - Listed Species

Several keys are in place to expedite the coordination process



Wood Stork



Manatee



Indigo Snake



Panther

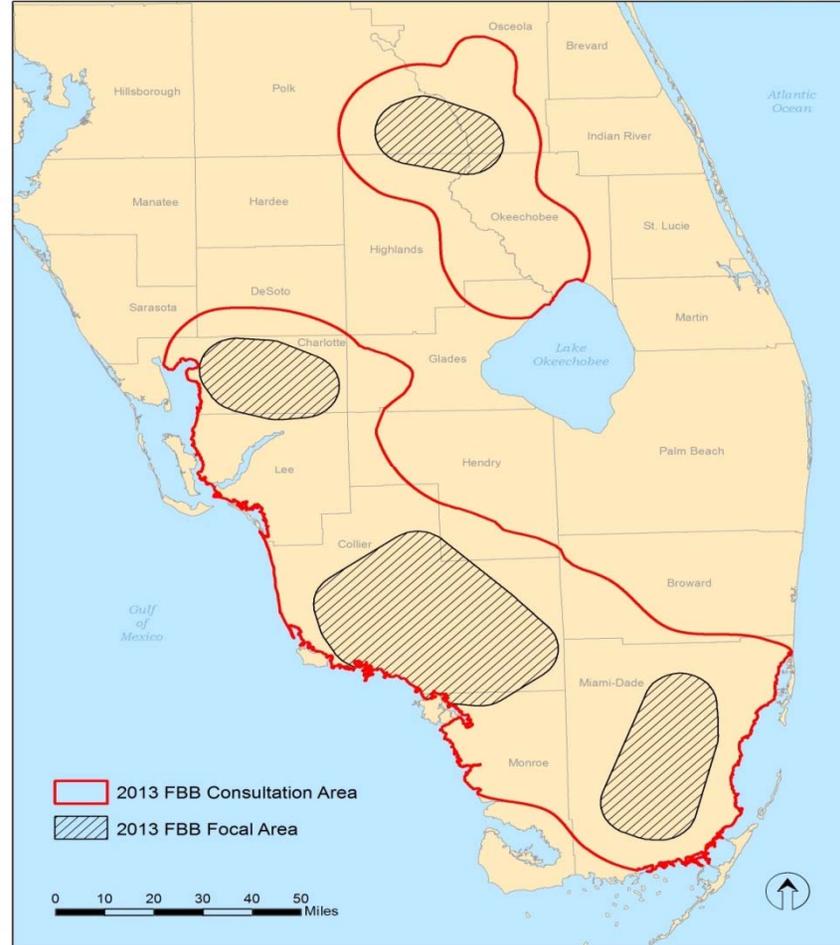


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# Florida Bonneted Bat



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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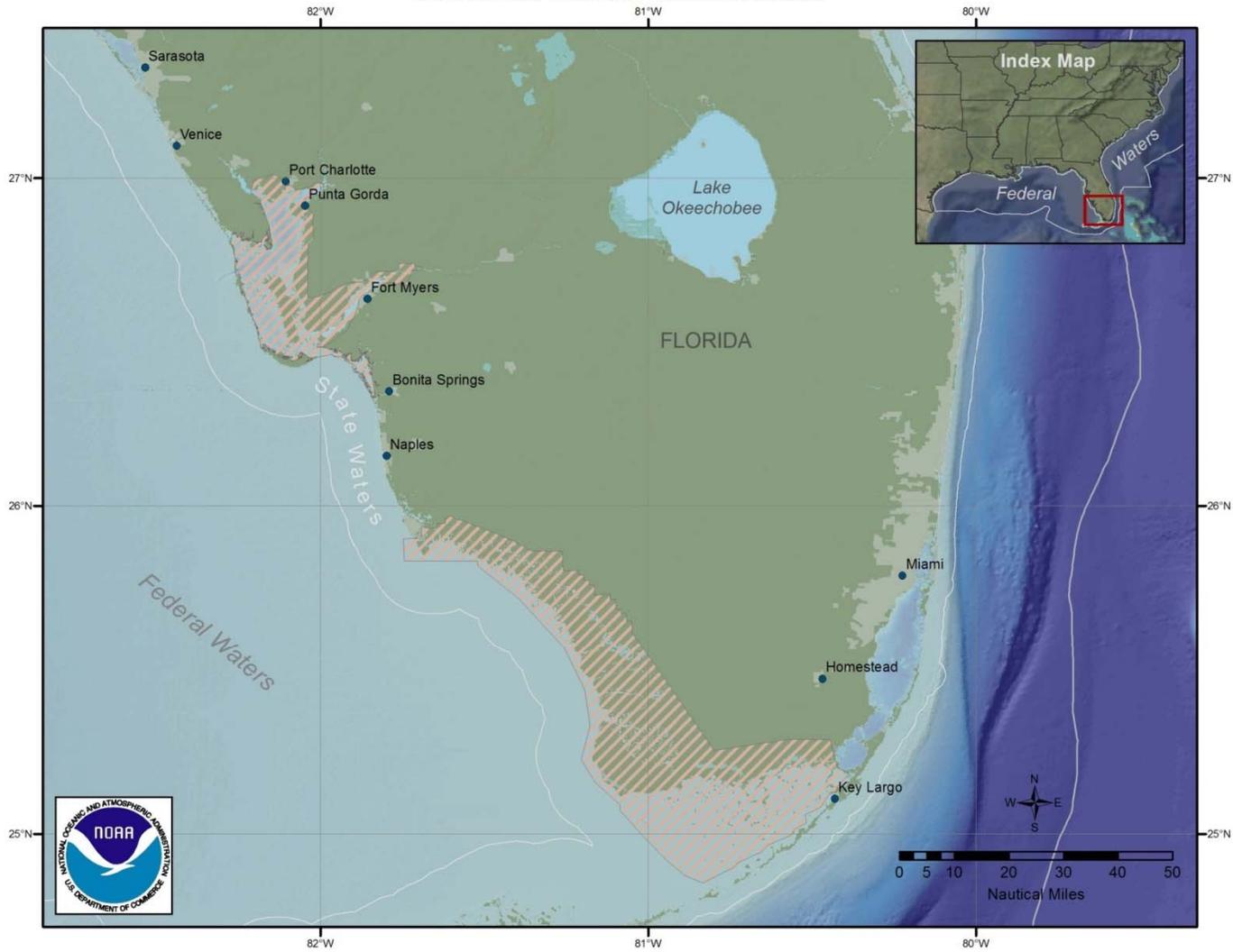
# NMFS Listed Species Critical Habitat

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



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# Smalltooth Sawfish 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)



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# 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



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# 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



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# 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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# 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 \_\_\_\_\_

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<p><small>Y N NA</small></p> <ul style="list-style-type: none"><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Self-cert submitted</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Deviations (self-cert) indicated</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Deviations indicated w/i authorization</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> As-builts submitted</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> XY coordinates submitted</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> As-builts indicate compliance w/ terms</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Bathymetric survey submitted &amp; in compliance</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Benthic survey submitted &amp; in compliance</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Property survey submitted &amp; in compliance</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Compliance check by per aerial photography</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Compliance check performed per agency report</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Compliance check performed site visit by Corps</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Project commenced in WOUS</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Consent to Easement obtained</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Other reports indicate compliance</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> All reports due have been submitted</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Temporary impacts restored</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Ownership has changed (transfer needed)</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Permittee Responsible Mitigation in compliance</li></ul>	<p><small>Y N NA</small></p> <ul style="list-style-type: none"><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Mitigation Bank credits</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> amount purchased correct</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> service area correct</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> habitat type correct</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> functional assessment correct</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> ILF credits purchased amount correct</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> ILF credits purchased from correct project</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Mitigation changes consistent w/ permit decision</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Conservation Easement executed, recorded</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Conservation Easement covers required area</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Conservation Easement language approved by OC</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Terms of the Conservation Easement</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> MOA/PA fully executed &amp; in compliance</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> MOA/PA treatment completed &amp; in compliance</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Other _____</li><li><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Other _____</li></ul>
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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



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# Questions?



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