RA BRIEF
FLORIDA ASSUMPTION OF STATE 404 PROGRAM

Date Updated: 09/18/2020 **Date Original Prepared:** 8/8/2018 **Priority:** 3

EPA Goal Supported: Cooperative Federalism, Rule of Law and Process

Issue: 404 Assumption by the State of Florida

Location: State of Florida

Context:

1. Involved Parties: EPA, Corps, USFWS, NMFS, FDEP, ACHP, Tribes, SHPO.
2. Interested parties: Florida Governor, the White House, other states, media, and various stakeholders (mining, developers, Tribes, environmental NGOs).
3. Florida submitted an official request to assume administration of a CWA section 404 program.
4. There are 6 required components of Assumption Package, which are listed below with corresponding estimates (by percentage) of the degree to which EPA staff understands Florida has completed these components.
   - Letter from Governor requesting program approval (100%)
   - Complete program description (100%)
   - Attorney General's statement (100%)
   - EPA/DEP MOA (100%)
   - Corps/DEP MOA (100%)
   - Copies of all applicable state statutes and regulations, including those governing applicable state administrative procedures (100%)

Critical Messages:

1. On August 20, 2020, the EPA received a complete package from the State of Florida requesting authorization to assume the CWA Section 404 program.
2. The EPA is required to take action on the State's request within 120 days (i.e., by 12/17/2020).
3. A notice in the Federal Register was issued on 9/16/2020, that opened a 45-day comment period that will end on November 2, 2020.
4. The EPA will conduct virtual public hearings that will be held on October 21 and 27, 2020.
5. The EPA is reviewing the State's request, consistent with the requirements of CWA Section 404(g) and in coordination/consultation with other government offices.

Considerations:

1. The EPA issued the following correspondence following the receipt of the request from the State of Florida on 8/20/2020 to assume administration of a CWA 404 program.
    - Notification letter to Governor DeSantis on 8/28/2020 regarding our determination that the package is complete.
    - Notification letters to the Corps, the FWS and NMFS on 8/28/2020 regarding the State's submission of a complete package and request for comments by 11/17/2020.
    - Letters inviting general tribal consultation to the Seminole Tribe on 8/28/2020 and to the Poarch Band of Creek Indians and the Miccosukee Tribe on 8/31/2020.
    - Letter to the U.S. Fish and Wildlife Service on 9/2/2020 initiating formal consultation under the Endangered Species Act.
    - Letter to the National Marine Fisheries Service on 9/2/2020 notifying them that EPA determined "no effect" of the State's request on species under NMFS' jurisdiction.
    - Letters to 8 tribes, the Advisory Council on Historic Preservation, the State Historic Preservation Officer, and FDEP on 9/2/2020 inviting participation to consultation under the National Historic Preservation Act.
    - Letter to interested Parties letters was issued on 9/8/2020 to more than 700 parties.
2. EPA officially opened a 45-day public comment period on 9/16/2020, providing notice of the EPA's receipt of a complete package from the State; virtual public hearings to be held on 10/21/2020 and 10/27/2020, and EPA's solicitation of comments on NHPA consultation. Notice was provided as follows:
    - Federal Register Notice publication on 9/16/2020.
    - Region 4 website update on 9/16/2020, including a link to register for the public hearings.
    - Email update on 9/16/2020 to interested parties to notify them of the FR publication and provide a link for registration for public hearings.
    - Newspaper advertisements in the Miami Herald, Orlando Sentinel, Palm Beach Post, and the Tallahassee Democrat on 9/16/2020.
    - Newspaper advertisement in the Tampa Bay Times on 9/20/2020.
3. EPA and the Advisory Council on Historic Properties (ACHP) met on Aug 25 to introduce teams and discuss basics of consultation. EPA staff are drafting a Programmatic Agreement (PA) and invited the 8 tribes to participate in an informational webinar on Sep 22 regarding NHPA consultation on the State of Florida's request.