RA BRIEF
FLORIDA ASSUMPTION OF STATE 404 PROGRAM

Date Updated: 11/20/2020 **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 8/20/2020, 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 11/2/2020.
4. The EPA will conduct virtual public hearings that will be held on 10/21 and 10/27/2020.
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, US FWS and NMFS on 8/28/2020 re: the State's submission of a complete package and request for comments by 11/17/2020.
    - Letters inviting general 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. USFWS transmitted their Draft Biological Opinion (BiOp) on10/2/20, requesting comments from EPA by 10/23/2020. Following the direction of senior leadership, EPA staff transmitted comments to the FWS and discussed the draft BiOp with them. The FWS transmitted the final BiOp to the EPA on 11/19/2020.
    - 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 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 pursuant to NHPA Section 106. 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 8/25/2020 to introduce teams and discuss basics of consultation. Additional NHPA activities include:
    - EPA staff invited the 8 tribes to participate in an informational webinar on 9/22/2020 regarding NHPA consultation on the State of Florida's request. The following five tribes attended: Alabama-Coushatta Tribe of Texas, Choctaw Nation of Oklahoma, Miccosukee Tribe of Indians of Florida, Mississippi Band of

Choctaw Indians, and Seminole Tribe of Indians of Florida. No substantive questions were asked.

- The Seminole Tribe of Florida confirmed their wish to pursue combined programmatic (CWA) and NHPA on 9/18/2020; a consultation call with RA Mary Walker was held on 9/28/2020.
- The Choctaw Nation of Oklahoma confirmed their wish to pursue NHPA consultation on 9/22/2020; a consultation call with WDD Jeaneanne Gettle was held on 10/1/2020. Staff are in the process of scheduling a follow-up call.
- The Poarch Band of Creek Indians confirmed their wish to pursue combined programmatic (CWA) and NHPA on 9/29/2020; a consultation call with WDD Jeaneanne Gettle was held on 10/7/2020.
- The Miccosukee Tribe of Indians of Florida confirmed their wish to pursue combined programmatic (CWA) and NHPA consultation on 9/21/2020; a consultation call with WDD Jeaneanne Gettle was held 10/8/2020.
- The Muscogee Nation confirmed their wish to pursue NHPA consultation on 10/1/2020; a consultation call with WDD Jeaneanne Gettle was held on 10/15/2020.
- Letters closing the loop with three tribes that have not responded to consultation invitations were issued on 10/19/2020.
- EPA staff shared a draft Programmatic Agreement with the ACHP on 10/21/2020 and held calls with them on Oct 26th and 29th and discussed the ACHP's feedback on the draft NHPA Programmatic Agreement (PA) that was shared on 10/21/2020.
- EPA staff and FDEP discussed the status of the NHPA consultation process on 11/6/2020.
- EPA staff invited consulting parties to participate in a meeting on 12/2/2020 to discuss the draft PA. A revised draft PA was shared with the ACHP on 11/20/2020, and staff will discuss with ACHP staff next steps on 11/20/2020, including the timing of sharing the draft PA with consulting parties.