



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
 P. O. BOX 4970
 JACKSONVILLE, FLORIDA 32232-0019

September 25, 2020

**PROPOSED REGIONAL CONDITIONS FOR 2020 NATIONWIDE PERMITS
 IN THE JACKSONVILLE DISTRICT (SAJ)**

A. BACKGROUND.

1. The following Regional Conditions have been approved on MMM DD YYYY for the Nationwide Permits (NWP) published in the MMM DD, YYYY, Federal Register. NWP General Condition #27, Regional and Case-By-Case Conditions, states: The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its Section 401 Water Quality Certification (WQC), or by the state in its Coastal Zone Management Act (CZN) consistency determination.
2. The acronym "PCN" used throughout this document refers to Pre-Construction Notification as further defined in NWP General Condition #32.
 - a. In Florida, the *Nationwide Permit Pre-Construction Notification* form (Form ENG 6082) should be used for NWP PCNs.
 - b. PCN in the Antilles⁴ shall be made through the Joint Permit Process using the most recent and valid DA Permit Application ENG Form 4345. (COE) and the form must indicate it is a NWP Pre-Construction Notification (PCN). The application must also contain the information described in General Condition 31.
3. Superscripts refer to the Definitions Section G of this document. The Definition section also lists acronyms¹³.
4. Regional Conditions are not present for the following: NWP 21 (Surface Coal Mining Operations), NWP 49 (Coal Remining Activities), NWP 50 (Coal Mining Activities) and NWP 34 (Cranberry Production Activities) because those activities do not occur in the Jacksonville District; and NWPs 26 and 47 because those NWPs are reserved.
5. NWP 24, Indian Tribe or State Administered Section 404 Programs. Regional Conditions would become effective if EPA approves FDEP's application to assume a portion of the Section 404 Program in the State of Florida.
6. NWPs A, B, C, D, and E. Regional Conditions refer to the new NWPs proposed by Federal Register notice dated September 15, 2020.

B. EXCLUDED WATERS AND/OR AREAS.

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1. A NWP cannot be used in an exclusion areas designated by the Regional Condition.
2. Designated Critical Resource Waters.
 - a. Synopsis of NWP General Condition 22. Critical resource waters include NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate additional waters. Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, , a PCN is required for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters.
 - b. In accordance with General Condition 22, Designated Critical Resource Waters in Florida are:
 - (a) Wetlands and other surface waters in National Estuarine Research Reserves, NOAA-managed National Marine Sanctuaries and marine monuments, and state designated Outstanding National Resource Waters: Biscayne National Park; Everglades National Park.
 - (b) State natural heritage sites, and the Marjorie Harris Carr Cross Florida Greenway State Recreation and Conservation Area.
 - (d) Wetlands and other surface waters in active designated State of Florida Areas of Critical State Concern, including the Green Swamp, and the Big Cypress Swamp, and surface waters of the state (as defined in rule 62-312.030, F.A.C.) in the City of Apalachicola.

C. REGIONAL CONDITIONS APPLICABLE TO ALL NWPs.

1. Endangered Species. In accordance with General Condition 18, a PCN must be submitted if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat.
 - a. NMFS species. A PCN must be submitted when the project occurs within estuarine and marine waters, including within the geographic area of designated critical habitat.
 - b. USFWS species. A PCN must be submitted if the USFWS Information for Planning and Conservation (IPaC) online database (<https://ecos.fws.gov/ipac/>) map search identifies species that may be potentially affected by activities in the location of the project.
2. Florida Historic Properties. In addition to GC#20 (Historic Properties), in Florida, if a PCN is not required (or not voluntarily submitted), the prospective Permittee

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(entity who proposes to perform work to be authorized by the NWP) shall contact the Florida Master Site File (FMSF) to conduct an historic properties search. The applicant shall provide the FMSF with the project area and Section/Township/Range information to sitefile@dos.myflorida.com or contact the FMSF office at (850) 245-6440. If the FMSF includes any historic property within 50 meters of the project area that is listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, the prospective Permittee shall submit a PCN to the Corps, including the information exchanged with the FMSF office, for further review and consultation. Submittal of a PCN is not required where the FMSF report for the property (or all properties if more than one) shows the SHPO Evaluation ('SHPO Eval' column) to be "Not Eligible" and also shows the property(ies) is/are not listed or proposed for listing on the National Register of Historic Places ('NR Status' column). However, in accordance with GC#20, a PCN is required if the prospective permittee has knowledge of a historic property that is listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties.

3. Florida Prehistoric or Historic Artifacts. In addition to GC#21 (Discovery of Previously Unknown Remains and Artifacts), in Florida, if prehistoric or historic artifacts, such as pottery or ceramics, projectile points, dugout canoes, metal implements, historic building materials, or any other physical remains that could be associated with Native American, early European, or American settlement are encountered at any time within the project site area, the permitted project shall cease all activities involving subsurface or ground disturbance within a 100 meter diameter of the discovery. The Permittee (the entity performing work authorized by the NWP) shall contact the United State Army Corps of Engineers within the same business day (8 hours). The Corps will contact the Florida Department of State, Division of Historical Resources Compliance Review Section (SHPO) at (850)-245-6333 and the appropriate Tribal Historic Preservation Officer(s) (THPO(s)) to assess the significance of the discovery and devise appropriate actions. In addition, in the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the Permittee shall notify the medical examiner, in accordance with Section 872.05, Florida Statutes, as well as the Corps and SHPO. On federal or tribal lands, or situations where the Archaeological Resources Protection Act of 1979 or Native American Graves Protection Repatriation Act of 1990 applies, the Permittee shall notify the Corps who will notify the SHPO and THPO(s). Once activities have ceased for any of the situations identified in this Regional Condition, they shall not resume without written authorization from the Corps.

D. REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NWPs.

4. In Antilles, Marine Reserves, Protected Areas or Parks.

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- a. NWPs 1, 11 and 52. Excluded within the boundaries of Designated Marine Reserves, Marine Protected Areas⁸, or Parks in the Antilles⁴, except when used within those areas by the local or federal agency responsible for the management of those areas.
5. Coral assemblages⁵.
 - a. NWP 1. In the Jacksonville District placement of aids to navigation cannot cause adverse impacts to coral assemblages⁵.
 - b. NWPs 7, 10, 11, 12, C, D, 19, 22 and 28 in Antilles. Activities cannot cause adverse impacts to coral assemblages⁵.
 - e. NWPs 4, 6, 9 and 23. 10. PCN required if within coral assemblages in depths less than 250’.
 - f. NWPs 7, 14, 15, 16, 18, 52 and 54 in Antilles. PCN required if in coral assemblages⁵.
 - g. NWPs 3, 10, 28, 35, 48, A and B. PCN required if within coral assemblages⁵.
NWPs 7, 14, 15, 16, and 18 in Antilles. PCN required if in coral assemblages⁵
6. PCN required for several NWPs in the Antilles.
 - a. NWPs 2, 13, 19, 25, 36. PCN required for all activities under this NWP in the Antilles⁴.
7. Activities affecting structures or works built by the United States. In accordance with General Condition 31, a PCN is required when the proposed activity will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project.
 - a. Synopsis of General Condition 31. A PCN is required when the proposed “... activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”).”
 - b. PCN typically required if the proposed activity: (1) is within the right-of-way for a deep draft federal navigation project; (2) does not meet the Setback Guidance from a federal navigation project; or (3) crosses (above or below) a USACE project levee, dike, dam or other water retaining structure.
 - c. USACE project real estate. Any activity within Federal project lands, including rights-of-way, may require the permittee to enter into a consent-to-easement or other real estate instrument with the Real Estate Division, U.S. Army Corps of Engineers, Jacksonville or Mobile District, as appropriate, prior to the commencement of any construction activity.

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- d. For NWP 3. If the previously authorized, serviceable, structure was destroyed by an act of nature or other event, the project will be reviewed pursuant to the setback guidance in effect at the time of the PCN. It is possible that any authorized reconstruction will not be authorized or rebuilt in the same dimensions or design as the original structure.
8. Florida Keys. PCN required for all projects in the Florida Keys. Projects require approval from NOAA Florida Keys National Marine Sanctuary (FKNMS) prior to verification by the Corps.
 9. Adjacent to Tribal lands.
 - a. NWPs 3, 18, 27, 40, 41 and 46. PCN required for projects adjacent to Tribal lands, which will require review for impacts to Tribal trust resources prior to use of this NWP when the property on which the project is occurring is adjacent to Tribal lands.
 10. Culverts in Antilles.
 - a. NWPs 3 and 14. For projects in the Antilles⁴, if bottomless culverts or single-span bridges are not feasible, culvert construction must comply with the 'Culvert Design and Construction Guidance, Antilles⁴ (http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/other_permitting_factors/2017%20Antilles%20Culvert%20Construction%20Conditions.pdf?ver=2017-01-23-143059-963). If compliance is not practical for a particular location, the PCN must include the reason(s) it was not practicable and describe how the activity will maintain necessary life cycle movements of aquatic life indigenous to the water body.
 11. Gabions, sediment removal and heavy equipment.
 - a. NWPs 3 and 13. Projects in the Antilles must meet specific design criteria to address gabions, removal of accumulated sediments around bridges, and use of heavy equipment⁹.
 12. Projects that capture and store water.
 - a. NWPs 3, 18, 27, 40, 41 and 46. Projects that capture and store water, such as Dispersed Water Management Projects (DWMP), are excluded from this NWP.
 13. Live Rock culture.
 - a. NWPs 4 and 48. Placement of materials for Live Rock culture and the harvesting of Live Rock are excluded from this NWP.
 14. Submerged aquatic vegetation^{7,10}.

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- a. NWPs 7, 14, 15, 16, 18, 19, 52 and 54 in the Antilles⁴. PCN required in submerged aquatic vegetation^{7,10}.
 - b. NWP 3, 10, 12, C, D, 22, 28, 35, 48, A and B. PCN required within submerged aquatic vegetation^{7,10}.
15. Tidal wetlands.
- a. NWP 3, 10, 12, C, D, 22, 28, 35, 48, A and B. PCN required within tidal wetlands.
16. Hard-bottom benthic habitat.
- a. NWP 52 and 54 in the Antilles⁴. PCN required in hard-bottom benthic habitat.
17. Salt flats.
- a. NWPs 7, 14, 15, 16, 18 and 19 in Antilles. PCN required in salt flats.
18. Forested wetlands.
- a. NWPs 7, 14, 15, 16, 18, 19, 29, 39, 40, 42, E, and 51 in Antilles. PCN required in forested wetlands.
 - b. NWP 12, C, D, and 22. PCN required in forested wetlands.
19. In Florida Keys, greater than 0.25 acre.
- a. NWPs 29, 39 and E. Projects in the Florida Keys that propose impacts to WOTUS greater than 0.25 acre must be coordinated with the EPA, Region IV.
20. Hopper dredging.
- a. NWPs 19 and 35. Hopper dredging is not allowed under this NWP.
21. In Antilles, greater than 0.25 acre.
- a. NWPs 40, 51 and E. In the Antilles, coordination with USFWS is required for projects that impact more than 0.25 acre of WOTUS.
22. Sediment and erosion control plan.
- a. NWPs 41, 44, 45, 46 and 53. The PCN shall include a sediment and erosion control plan.
23. Wind Energy Guidelines.
- a. NWPs 51 and 52. Projects must comply with the USFWS Land-Based Wind Energy Guidelines (https://www.fws.gov/ecological-services/es-library/pdfs/WEG_final.pdf).

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24. NWP 2. In Florida, this NWP is limited to the installation and removal of individual, single family docks/piers/swim and observation platforms and/or mooring pilings, davits, and boat lifts at single-family residences.

25. NWP 2. All dock or pier construction over submerged aquatic vegetation⁷, marsh, and/or mangroves shall comply with the joint U.S. Army Corps of Engineers'/National Marine Fisheries Service's "Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation, Marsh or Mangrove Habitat - August 2001".

26. NWP 2. Structures constructed on canals or channels shall not exceed more than 25% of the canal/channel width, excluding dense areas of shoreline vegetation such as mangrove, as measured from the project location to the opposite shoreline (in order to maintain no less than 50% of the open-water portion of the waterbody for public use).

27. NWP 3. PCN required for any work located in the Coastal Zone of the Antilles⁴, including the areas defined below for Puerto Rico¹ and U.S. Virgin Islands².

28. NWP 3. PCN required for all work in La Parguera area and Culebra Island, in the Commonwealth of Puerto Rico. Reconstruction of structures within La Parguera will not be allowed under this nationwide permit.

29. NWP 10. PCN required for all activities in the Antilles⁴.

30. NWP 11. PCN required for any structure proposed in or over SAV and/or mangroves.

31. NWP D. For water intake projects in Puerto Rico, the permittee must submit a PCN to the District Engineer prior to commencing the activity, in accordance with General Condition 32. The PCN must contain plans and drawings, a description of all WOTUS impacted by the project, amount of water to be withdrawn in MGDs, and minimum in-stream flows in MGDs after water extraction.

32. NWP 12, C and D. Where the proposed subaqueous utility or transmission line is to be installed in, under, or over, navigable waters of the United States, at least two weeks prior to the start of the authorized work, the permittee must notify the National Oceanic Atmospheric Administration (NOAA) and the Corps' office in writing that the work is commencing, and again upon completion of the work. The permittee shall notify the District Engineer at the letterhead address, attention Regulatory Division, and NOAA, at Nautical Data Branch N/CS26, Station 7317, 1315 East-West Highway, Silver Spring, MD 20910-3282. This notification shall include "as-built plans," signed and sealed by a registered surveyor/engineer licensed in the State of Florida, Commonwealth of Puerto Rico, or Territory of U.S. Virgin Islands, as appropriate, that certify the project is constructed as authorized, and must include an accurate (within plus or minus 1 foot) depiction of the location

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and configuration of the completed activity in relation to the mean high water of the navigable water.

33. NWP 18. In the Antilles⁴ PCN required for all activities proposed in the areas defined below for Puerto Rico¹ and U.S. Virgin Islands².

34. NWP 27. PCN required for Lake restoration projects proposing any type of in-lake disposal of dredged or fill material.

35. NWP 36. PCN required in areas without existing access to navigation channels where the minimum water depth for ingress to or egress from the navigation channels is less than -3 feet at mean or ordinary low water.

36. NWP 43. PCN required prior to start of all work in wetlands adjacent to Deerpoint Lake and its tributaries, Bay County, FL.

37. NWP 51. In Puerto Rico, to further protect resources, siting shall comply with the USFWS Caribbean Field Office Wildlife and Habitat Risk Map for Utility-Scale Land-Based Wind Energy Projects.

https://www.fws.gov/caribbean/es/documents/PR_Habitat_Risk_for_Wind_Energy_Version_4_22_15.pdf.

38. NWP 52. In the Antilles⁴, PCN must include a benthic survey¹⁰, which includes documentation on observed habitat types.

39. NWP 54. For projects that affect aquatic resources:

a. The completed project should result in a net gain in aquatic resource function; and,

b. the structure(s) shall be maintained as necessary in perpetuity in order to maintain the lift in function and value; and,

c. in Florida, meet the requirements established by the Florida Fish and Wildlife Conservation Commission.

40. NWP 54. Materials authorized for use under this NWP must consist mostly of natural material. Biodegradable breakwater stabilization materials, such as coir, may be used in place of plastic materials. However, in certain cases, plastic bags (Naltex) and plastic mats (UV stabilized) may be used. Concrete products (e.g., sprinkler weights) to add to the "sufficient weight." Large scale use of concrete as breakwater or substrate for oyster recruitment is prohibited. Certain metals (e.g., wire mesh) may be used for enclosing stone in gabions for breakwaters. Oyster mats should only be used in special cases (e.g., restoring dead margins of reefs, shoreward of and in association with bags in some cases, and held with cable ties and weights at all mat comers).

41. NWP 54. Sills may be constructed in a non-linear manner so as to mimic natural reefs.

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42. NWP 54. Spacing or gaps between sill material shall be no greater than 8” so as to prevent entrapment of marine mammals or marine turtles.

43. NWP 54. Breaks in structures shall be placed at least every 75 feet and shall be five feet in width.

44. NWP 54. The PCN must include a benthic survey¹⁰.

E. ACTIVITY SPECIFIC REGIONAL CONDITIONS.

Included in Section D above.

F. SECTION 401 WATER QUALITY CERTIFICATION AND/OR COASTAL ZONE MANAGEMENT ACT CONSISTENCY DETERMINATION CONDITIONS.

1. State of Florida. The ___ letter dated MM DD,YYYY, is described by the document “Description of Water Quality Certifications and Coastal Zone Determinations - ___”.
2. Miccosukee Tribe of Indians of Florida. Their letter dated MM DD, YYYY, is described by the document “Description of Water Quality Certifications for ___”.
3. Seminole Tribe Miccosukee Tribe of Indians of Florida. Their letter dated MM DD YYYY is described by the document “Description of Water Quality Certifications for ___”.
4. Puerto Rico WQC. The _____ letter dated MM DD, YYYY, is described by the document “Description of Water Quality Certifications - ___”.
5. Puerto Rico CZM. The _____ letter dated MM DD YYYY, is described by the document “Description of Coastal Zone Determinations - ___”.
6. U.S. Virgin Islands. The ___ letter dated MM DD, YYYY, is described by the document “Description of Water Quality Certifications and Coastal Zone Determinations - ___”.

G. DEFINITIONS.

1. Puerto Rico: Culebra Island; the coastal zone of La Parguera from Punta Jorobado for a distance of approximately twenty kilometers west to Cabo Rojo; Cartagena Lagoon; Tortuguero Lagoons; Mona Island; Forest Reserve Area at Piñones and Torrecilla; Las Cabezas; El Yunque; Jobos Bay; Mar Negro; Río Mameyes; Las Cucharillas Marsh; Caño Tiburones; Rio Herrera/Miñi-Miñi/Mediania area; entire Municipality of Cabo Rojo; Caño Boquillas west of PR-2; Cayures Marsh in Aguada and its contiguous wetlands; the basin wetlands of Bajuras at Isabela, Camuy, and Carrizales in Arecibo; Prieta wetlands at Vega Alta; San Pedro wetlands in Dorado and Toa Alta; Cienaga Baja in Río Grande; wetlands associated with Herrera and Espiritu Santo Rivers; coastal wetlands of Santa Isabel; and all Commonwealth designated Natural Reserve areas. Also, areas along Martin Pena

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Channel and associated wetlands; Piñones State Forest wetlands; Torrecilla Alta Pterocarpus Forest - Loiza; El Faro (Cabezas de San Juan) - Fajardo; wetlands in the Guanica State Forest; Humacao Swamp and Pterocarpus Forest; Caja de Muertos - Ponce, Jobos Bay - Salinas, Mar Negro - Salinas, Boqueron State Forest - Cabo Rojo; Dorado Pterocarpus Forest; Vieques Bioluminescent Bay; Laguna Tortuguero; Caño Tiburones; Espinar Swamp (Aguada-Aguadilla); Laguna Joyuda mangroves - Cabo Rojo; Pandura and Guardarraya Special Planning Area; and Ceiba State Forest.

2. U.S. Virgin Islands: St. Croix Annally, Green Cay, Isaac Bay, Cramer's Park and East Point, Sandy Point, Salt River, Teague Bay Reef, Vagthus Point, Altonna Lagoon; St. John -- All Cays, Lagoon Point Newfound Bay, Chocolate Hole, Fish Bay; and St. Thomas -- Botany Bay and Sandy Bay, Coki Cliffs, Mangrove Lagoon (in its entirety), Bovoni wetland area; All cays, Cane Bay, Magens Bay, Mandahl Bay, Neltjeberg Bay and Stumpy Bay.

3. <blank>.

4. Antilles: For purposes of these regional conditions, the term "Antilles" means the provision is applicable within the geographic extents of both the Commonwealth of Puerto Rico and the Territory of the U.S. Virgin Islands.

5. The term "coral assemblage" includes coral reefs and hard bottom communities, which host species of the genus *Acropora* as well as other hard and soft coral communities.

7. The term "submerged aquatic vegetation" means the occurrence of one or more species of seagrass, including, but not limited to the following: turtle grass (*Thalassia testudinum*), manatee grass (*Syringodium filiforme*), shoal grass (*Halodule wrightii*), and dwarf seagrass (*Halophila spp*).

8. Marine Protected Area: In accordance with Executive Order 13158 (May 26, 2000), a Marine Protected Area is defined as "any area of the marine environment that has been reserved by Federal, State, territorial, Tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein".

9. Use of gabions for flood control, river channelization or bank stabilization shall not provide a permanent or long term solution (DNER 2009, Guía Para el Manejo de Ríos en Puerto Rico). Gabions are subject to mesh failure, scour or undercutting, collapse and hydraulic impacts of the water itself. The use of gabions or reno mattress should not be used in coastal areas, or large river systems. The removal of accumulated sediments and debris from bridges is limited to 50 feet upstream and downstream of the bridge. Heavy equipment shall work from existing upland areas (ie bridges, upland banks) whenever possible. If heavy equipment must work in channel, the removal of riparian vegetation is limited to the access and egress point.

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The elimination of riverine features such as point bars and pools is not part of this NWP. Post construction, all temporary fords or crossings shall be removed; banks and channel shall be returned to pre-existing contours and depths. The stream banks shall be fully stabilized using stream bank restoration treatments.

10. Optimal window for benthic survey of submerged aquatic vegetation is during the period June 1 through September 30. Please access our Source Book for additional guidance and information on benthic survey protocol.

11. More information on Living Shorelines can be obtained from the following website: http://www.dep.state.fl.us/northwest/ecosys/section/living_shorelines.htm. This website link is provided for information only and does not imply support for, or opposition to, living shorelines.

12. <blank>.

13. Acronyms Used in this list of Regional Conditions:

COE: U.S. Army Corps of Engineers

CZM: Consistency with the State's Coastal Zone Management Plan

DEP: Florida Department of Environmental Protection

EEZ: Exclusive Economic Zone

FL: Florida

FKNMS: Florida Keys National Marine Sanctuary

FWC: Florida Fish and Wildlife Conservation Commission

FWS: U.S. Fish and Wildlife Service

MTIF: Miccosukee Tribe of Indians of Florida

NA: Not Applicable

NAJ: Not applicable in the Jacksonville District

NMFS: National Marine Fisheries Service

NPS: National Park Service

NOAA: National Oceanic and Atmospheric Administration

PCN: Pre-construction notification

H. DISTRICT POINT OF CONTACT.

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