



DEPARTMENT OF THE ARMY  
MOBILE DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 2288  
MOBILE, ALABAMA 36628-0001

REPLY TO  
ATTENTION OF:

**U.S. ARMY CORPS OF ENGINEERS  
MOBILE DISTRICT**

**NOTICE OF AVAILABILITY OF THE  
FINDING OF NO SIGNIFICANT IMPACT FOR THE  
APALACHICOLA, CHATTAHOOCHEE AND FLINT RIVER NAVIGATION SNAG  
SHEARING AND MAINTENANCE PROJECT  
ALABAMA, FLORIDA AND GEORGIA**

**TO ALL INTERESTED PARTIES:**

The Finding of No Significant Impact (FONSI) and the Environmental Assessment (EA) for the Apalachicola, Chattahoochee and Flint River Navigation Snag Shearing and Maintenance Project, Alabama, Florida and Georgia was signed by Colonel Jon J. Chytka, U.S. Army Corps of Engineers, Mobile District on 4 April 2014.

The U.S. Army Corps of Engineers, Mobile District proposes a new technique for selective snag removal along the Apalachicola, Chattahoochee and Flint (ACF) navigation channel. The new technique for snag removal includes shearing the snag at or near its base and allowing it to fall to the bottom of the channel instead of the traditional method which utilizes a barge mounted crane with a clam-shell bucket to grasp the snag and orientate it out of the main channel along the margins of the river or other approved area. This new technique is designed to have less impact than the traditional method.

The new snagging technique will first be used on the Apalachicola River portion of the ACF navigation channel due to the current need for maintenance snagging. There are several locations on the Apalachicola River where snags are presenting a hazard to commercial vessels and boating public.

The FONSI and EA are posted on the Mobile District website at <http://www.sam.usace.army.mil/Missions/PlanningEnvironmental/EnvironmentalAssessments.aspx>.

A handwritten signature in black ink, appearing to read "Curtis M. Flakes".

Curtis M. Flakes  
Chief, Planning and Environmental  
Division

**FINDING OF NO SIGNIFICANT IMPACT (FONSI)  
FOR  
APALACHICOLA, CHATTAHOOCHEE AND FLINT RIVER NAVIGATION  
SNAG SHEARING AND MAINTENANCE PROJECT  
ALABAMA, FLORIDA AND GEORGIA**

1. **PROPOSED ACTION:** The proposed action consists of a new technique for selective snag removal along the Apalachicola, Chattahoochee and Flint (ACF) navigation channel. The new technique calls for the snags to be sheared at or near their base. Once the snag is sheared, it will be allowed to fall to the bottom of the channel and the root ball will be left intact and the snags will no longer be a hazard to navigation.

2. **NEED FOR PROPOSED ACTION:** The proposed action would provide for the continued maintenance snagging of the ACF Federal navigation project, which provides for safe navigation of the system by shearing the tree snags at or near their base. Maintenance of a safe navigation channel is critical to ensuring the Corps can respond quickly should emergency situations arise at upstream projects requiring specialized equipment or parts that can only be transported by barge or boat.

3. **ALTERNATIVE TO THE PROPOSED ACTION CONSIDERED:** Alternative to the proposed action which was considered in the study includes:

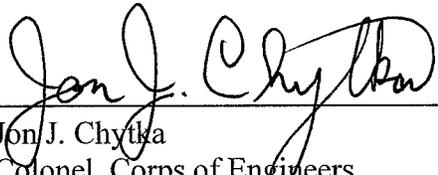
a. **Alternative A No Action.** The No Action Alternative would maintain conditions as they are and the proposed action would not be implemented. If no action is taken, no routine selective tree snagging would be conducted and safety concerns for commercial vessels and the boating public would increase.

b. **Alternative B Traditional Snag Method.** This utilizes a barge mounted crane with a clam-shell bucket to grasp the snag and orientate it out of the main channel along the margins of the river or other approved area not supporting listed mussel species. This alternative is not supported as the primary method or recommended alternative because this method would cause the snags to be removed from the navigation channel that may provide habitat to listed mussel species, impact sedimentation and turbidity in the channel and cause erosion of the streambanks.

3. 4. **FACTORS CONSIDERED IN DETERMINING THAT NO ENVIRONMENTAL IMPACT STATEMENT IS REQUIRED:** It has been determined that the proposed action will not significantly impact resources in the project area. Resource areas considered in the impacts analysis include physical habitat, land use changes, historic and archaeological resources, fishery and wildlife resources, threatened and endangered species, recreation, water quality, navigation, floodplain and wetland resources, and aesthetics. The proposed action was also determined to not significantly contribute to cumulative impacts affecting these resources. The proposed action constitutes a short-term use of man's environment and does not prohibit the maintenance and enhancement of long-term productivity in the project area.

5. **CONCLUSIONS:** An evaluation of the Environmental Assessment describing the proposed action demonstrates it would have no significant impacts on the environment. Therefore an Environmental Impact Statement is not warranted.

Date: 04 APR 14

  
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Jon J. Chytka  
Colonel, Corps of Engineers  
District Commander

**ENVIRONMENTAL ASSESSMENT  
APALACHICOLA, CHATTAHOOCHEE AND FLINT RIVER NAVIGATION  
SNAG SHEARING AND MAINTENANCE PROJECT  
ALABAMA, FLORIDA AND GEORGIA**

Prepared By:

U.S. Army Corps of Engineers  
Mobile District  
Mobile, Alabama

March 2014

**DRAFT ENVIRONMENTAL ASSESSMENT  
APALACHICOLA, CHATTAHOOCHEE AND FLINT RIVER NAVIGATION  
SNAG SHEARING AND MAINTENANCE PROJECT  
ALABAMA, FLORIDA AND GEORGIA**

## **1.0 INTRODUCTION**

The National Environmental Policy Act (NEPA) requires Federal agencies to supplement environmental assessments (EA) and environmental impact statements (EIS) in response to new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1509(c)(1)(ii)). The purpose of this EA is to evaluate the impacts associated with updating the technique for snag removal. The traditional snagging method was evaluated in the April 1976 *Final Environmental Statement Apalachicola, Chattahoochee and Flint Rivers Alabama, Florida and Georgia (Operation and Maintenance)*. The new technique for snag removal includes shearing the snag at or near its base and allowing it to fall to the bottom of the channel instead of the traditional method which utilizes a barge mounted crane with a clam-shell bucket to grasp the snag and orientate it out of the main channel along the margins of the river or other approved area not supporting listed mussel species. This new technique is designed to have less impact than the traditional method.

### **1.1 Location**

The Apalachicola, Chattahoochee and Flint (ACF) waterway is an extensive system, consisting of a navigation channel, three locks, and five Federal dams (Jim Woodruff, George W. Andrews, Walter F. George, West Point and Buford dams) and their associated reservoirs located in the States of Alabama, Florida and Georgia (see Figure 1). The principal navigation feature of the waterway is the continuous 9 foot by 100 foot wide channel which traverses 106.3 miles of the Apalachicola River from the intersection of the Gulf Intracoastal Waterway (GIWW) near Apalachicola Bay to the confluence of the Chattahoochee and Flint Rivers; thence 154.7 miles of Chattahoochee River to the Columbus Georgia/Phenix City, Alabama area; and 29 miles of the Flint River to Bainbridge, Georgia. The lower 6 miles of the Apalachicola River are technically part of the GIWW.

### **1.2 Proposed Action**

The proposed action consists of a new technique for selective snag removal along the ACF navigation channel. The new technique calls for the snags to be sheared at or near their base. Once the snag is sheared, it will be allowed to fall to the bottom of the channel and the root ball will be left intact and the snags will no longer be a hazard to navigation.



### **1.3 Purpose and Need for the Proposed Action**

The proposed action would provide for the continued maintenance snagging of the ACF Federal navigation project, which provides for safe navigation of the system by shearing the tree snags at or near their base. Maintenance of a safe navigation channel is critical to ensuring the Corps can respond quickly should emergency situations arise at upstream projects requiring specialized equipment or parts that can only be transported by barge or boat.

### **1.4 Authority**

The project was authorized by the 1945 River and Harbor Act (House Document 342, 76<sup>th</sup> Congress, First Session) and modified by the 1946 River and Harbor Act (House Document 300, 80<sup>th</sup> Congress, First Session). Recreational facilities were authorized by Section 4, Flood Control Act of 1944.

## **2.0 AFFECTED ENVIRONMENT**

The Apalachicola, Chattahoochee and Flint (ACF) waterway is an extensive system, consisting of a navigation channel, three locks, and five Federal dams (Jim Woodruff, George W. Andrews, Walter F. George, West Point and Buford dams) and their associated reservoirs located in the States of Alabama, Florida and Georgia (see Figure 1). The principal navigation feature of the waterway is the continuous 9 foot by 100 foot wide channel which traverses 106.3 miles of the Apalachicola River from the intersection of the Gulf Intracoastal Waterway (GIWW) near Apalachicola Bay to the confluence of the Chattahoochee and Flint Rivers; thence 154.7 miles of Chattahoochee River to the Columbus Georgia/Phenix City, Alabama area; and 29 miles of the Flint River to Bainbridge, Georgia. The lower 6 miles of the Apalachicola River are technically part of the GIWW.

A detailed description of the environmental setting and significant resources occurring in the project area are incorporated by reference from the April 1976 *Final Environmental Statement Apalachicola, Chattahoochee and Flint Rivers Alabama, Florida and Georgia (Operation and Maintenance)* supporting the April 7, 1976 Statement of Findings and the May 2012 *Environmental Assessment Revised Interim Operations Plan for Support of Endangered and Threatened Species Jim Woodruff Dam Gadsden and Jackson Counties, Florida and Decatur County, Georgia*.

## **3.0 RECOMMENDED PLAN**

The proposed snag work consist of a U.S. Army Corps of Engineers (USACE) tug boat transporting a barge hauling an excavator with an extended reach boom to the downstream side of each snag. Once in position, the barge is anchored in place utilizing two spuds (steel posts that extend vertically from the barge to the river bottom) and the excavator relocates the snag. The method consists of an excavator with a shearing attachment to cut the snag off at the base, below the water line. Once the tree is cut, it will be allowed to sink to the bottom of the channel where it will no longer be a hazard to navigation. This method of snag maintenance will minimize the disturbance to the bottom and shoreline by leaving an undisturbed root system.

This is particularly important for trees that have fallen into the water and maintain an intact root system at the shoreline; as this may provide bank protection and/or moderately depositional habitat for listed mussel species. It will also reduce the disturbance to the river bottom for the snags that have drifted downstream and have become lodged vertically. Though typically, mussels cannot occur in the main channel due to erosive forces and shear stress, it is possible that the relatively sheltered microhabitat immediately downstream of the snag base and trunk could support listed mussel species. Managing the snags will avoid impacts to this microhabitat.

The USACE will utilize the most current hydrographic survey data to delineate the thalweg of the river. This data will then be used to determine the river stage that provides a 9-foot channel depth. Only hazards found within or in close proximity to the thalweg and within channel depth will be targeted.

The new snagging technique of snagging will first be used on the Apalachicola River portion of the ACF navigation channel due to the current need for maintenance snagging. There are several locations on the Apalachicola River where snags are presenting a hazard to commercial vessels and boating public.

## **4.0 ALTERNATIVES**

### **4.1 No Action**

The CEQ regulations require analysis of the “no action” alternative 40 C.F.R. § 1502.14. Based on the nature of the proposed action, “no action” represents “no change” from the current management direction or level of management intensity. The no action alternative represents “no changes” to the current condition of the river system.

Both the recommended plan and the “no action” alternative minimize adverse impacts and provide support to endangered and threatened species and critical habitat occurring in the ACF navigation channel. However, the recommended plan was determined to more adequately address the needs of the endangered and threatened species while reducing safety concerns for commercial vessels and the boating public. Discretionary actions taken by the USACE that fail to adhere to the specific conditions of the Environmental Resources Permit (ERP) as described in the Florida Department of Environmental Protection (FDEP) November 27, 2013 issuance permit shall constitute grounds for the revocation of the permit and appropriate enforcement action by FDEP.

### **4.2 Traditional Snag Method**

This utilizes a barge mounted crane with a clam-shell bucket to grasp the snag and orientate it out of the main channel along the margins of the river or other approved area not supporting listed mussel species. This alternative is not supported as the primary method or recommended alternative because this method would cause the snags to be removed from the navigation channel that may provide habitat to listed mussel species, impact sedimentation and turbidity in the channel and cause erosion of the streambanks.

## **5.0 ENVIRONMENTAL IMPACTS OF THE PROPOSED ACTION**

The environmental impacts associated with the new technique for selective snagging efforts is intended to result in even less impacts than those previously considered in the April 1976 Environmental Statement.

### **5.1 Physical Impacts**

Physical habitat conditions of the project areas are largely determined by flow regime and channel geomorphology. The snag shearing technique should minimize disturbance to the stream bottom and stream banks by leaving the base of the snag intact near the substrate. Thus provide habitat stability and prevent substrate destabilization.

### **5.2 Land Use Changes**

Land uses in the ACF waterway include upland forests, wetlands, agriculture, and urban/built-up. The recommended plan does not change land use within the project area and will not impact State, area-wide and local plans and programs for land use in the area.

### **5.3 Historic and Archeological Resources**

The recommended plan is not expected to impact stream channel stability or alter channel substrate. Potentially adverse effects to cultural resources in the ACF navigation channel, such as increased erosion, deposition, and access to historic and archeological sites will not significantly change. Therefore, there will be no adverse effect on historic or archeological resources.

### **5.4 Fisheries**

The ACF reservoirs support popular sport fisheries, some of which have achieved national acclaim for trophy-size catches of largemouth bass. Important game species in the Federal reservoirs include crappie, largemouth bass, spotted bass, striped bass, walleye, white bass, gizzard shad, hybrid bass (striped bass-white bass hybrid), threadfin shad, bluegill, and redear sunfish.

Through coordination with the FDEP on the recommended plan being used on the Apalachicola River, it was determined to protect populations of striped bass and other fish species that spawn in the spring which includes the Gulf sturgeon, no snagging activities will be conducted from March through May. In addition, known sturgeon holding areas will be avoided from March through November when Gulf sturgeon is present in the river. Therefore, fisheries along the ACF navigation channel will not be impacted due to the recommended plan.

### **5.5 Wildlife**

Aquatic and riparian habitats supporting wildlife species in the ACF navigation channel and aquatic and terrestrial wildlife resources occurring in the project area will not be significantly impacted by the recommended plan.

## 5.6 Threatened and Endangered Species

From previous coordination with the US Fish and Wildlife Service (USFWS), they identified 34 threatened and endangered species (including critical habitat if designated) that occur in the ACF River Basin (Table 2), and determined that effects of the proposed action are limited to those species that depend primarily on riverine habitat (Gulf sturgeon, fat threeridge, Chipola slabshell, and purple bankclimber).

**Table 2. Threatened and Endangered Species and Critical Habitat Occurring in ACF River Basin**

SPECIES OR CRITICAL HABITAT
Frosted flatwoods salamander ( <i>Ambystoma cingulatum</i> )
Reticulated flatwoods salamander ( <i>Ambystoma bishopi</i> )
Loggerhead turtle ( <i>Caretta caretta caretta</i> )
Eastern indigo snake ( <i>Drymarchon corais couperi</i> )
Atlantic ridley ( <i>Lepidochelys kempi</i> )
Piping plover ( <i>Charadrius melodus</i> )
Wood stork ( <i>Mycteria americana</i> )
Gray bat ( <i>Myotis grisescens</i> )
Indiana bat ( <i>Myotis sodalis</i> )
West Indian manatee ( <i>Trichechus manatus</i> )
Shiny-rayed pocketbook ( <i>Lampsilis subangulata</i> )
Gulf moccasinshell ( <i>Medionidus penicillatus</i> )
Oval pigtoe ( <i>Pleurobema pyriforme</i> )
Little amphianthus ( <i>Amphianthus pusillus</i> )
Apalachicola rosemary ( <i>Conradina glabra</i> )
Telephus spurge ( <i>Euphorbia telephioides</i> )
Harper's beauty ( <i>Harperocallis flava</i> )
Black-spored quillwort ( <i>Isoetes melanospora</i> )
Pondberry ( <i>Lindera melissifolia</i> )
White birds-in-a-nest ( <i>Macbridea alba</i> )
Canby's dropwort ( <i>Oxypolis canbyi</i> )
Godfrey's butterwort ( <i>Pinguicula ionantha</i> )
Harperella ( <i>Ptilimnium nodosum</i> )
Chapman's rhododendron ( <i>Rhododendron chapmanii</i> )
Michaux's sumac ( <i>Rhus michauxii</i> )
Green pitcherplant ( <i>Sarracenia oreophila</i> )
American chaffseed ( <i>Schwalbea Americana</i> )
Florida skullcap ( <i>Scutellaria floridana</i> )
Fringed campion ( <i>Silene polypetala</i> )
Gentian pinkroot ( <i>Spigelia gentianoides</i> )
Cooley meadowrue ( <i>Thalictrum cooleyi</i> )
Florida torreyia ( <i>Torreya taxifolia</i> )
Relict trillium ( <i>Trillium reliquum</i> )
Gulf sturgeon ( <i>Acipenser oxyrinchus desotoi</i> )

Listed mussel species are not known to occur in the navigation channel. Therefore, no effect anticipated in the Chattahoochee and Flint Rivers. However, Section 7 consultation under the Endangered Species Act for maintenance tree snagging in the Apalachicola River portion of the ACF navigation project was initiated by letter dated November 20, 2013. The USACE, Mobile District determined that implementation of the recommended plan may affect, but is not likely to

adversely affect the Gulf sturgeon, fat threeridge, purple bankclimber, Chipola slabshell, or their respective designated critical habitat.

The USFWS concurred with our determination by letter dated December 3, 2013 and agreed that the snag shearing technique should minimize disturbance to the stream bottom and stream banks by leaving the base of the snag intact near the substrate. Intact snag bases should provide habitat stability and prevent substrate destabilization. Although the USFWS anticipate that the effects of snag shearing will be insignificant (i.e., not reach the level where take would occur), this method has never been employed in the Apalachicola River. Therefore, we request that representatives from our office be present on the vessel when activities are initially conducted so that we can verify that unanticipated impacts are not occurring. We will recommend reinitiating consultation under the following conditions: 1) new information reveals that the snag shearing method may affect these species or designated critical habitat in a manner or to an extent not previously considered; 2) it becomes necessary to use the traditional snagging method; or 3) the action is subsequently modified in a manner that causes an effect on a listed species or on designated critical habitat.

### **5.7 Recreation**

The recommended plan will not significantly impact recreation opportunities along the ACF navigation channel. There may be minor short-term impacts due to areas along the river not being accessible while the snagging efforts are being performed. However, there will be an overall benefit for recreation opportunities due to the snag shearing.

### **5.8 Water Quality**

Implementation of the recommended plan will not affect water quality of the ACF navigation channel. The proposed snagging technique would shear the snags at their base which will not impact erosion and turbidity because the root balls of the snags will be left intact. The snag shearing technique should minimize disturbance to the stream bottom and stream banks by leaving the base of the snag intact near the substrate. Thus the snag shearing technique would prevent substrate destabilization.

Water quality certification was obtained from the state of Florida for the Apalachicola River as part of the ERP the Corps obtained for coastal zone consistency. However, the proposed action is not considered a Section 404 fill action. Water quality certification exists for the Chattahoochee and Flint Rivers from the state of Georgia for maintenance dredging, disposal, and snagging activities. The state of Alabama water quality certification expired and it is not anticipated that the certification is needed for the proposed action because it does not constitute a Section 404 action. However, the USACE will request water quality certification should the state of Alabama require it for snag shearing work to be conducted on the Chattahoochee River.

## **5.9 Aesthetics**

The recommended plan will temporarily impact the aesthetics of the project area during snag shearing. Shearing the snags may improve the visual aesthetics along the ACF navigation channel.

## **5.10 Navigation**

The recommended plan will not significantly impact navigation along the ACF navigation channel. There will be minor short-term impacts due to barge working on the river to shear the snags. However, there will be long-term benefits to navigation because the hazardous snags to navigation will be cleared; allowing both commercial and recreation traffic to use the river system safely.

## **5.11 Floodplain/Wetlands**

The recommended plan will not impact floodplains and/or wetlands.

## **5.12 Prime and Unique Farmlands**

The recommended plan will have no effect on prime farmlands or unique agricultural lands.

## **5.13 Environmental Justice**

Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority and Low-Income Populations (11 February 1994) requires that Federal agencies conduct their programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin. The recommended plan will not create disproportionately high or adverse human health or environmental impacts on any low-income populations of the surrounding area.

## **5.14 Protection of Children**

The EO 13045, Protection of Children from Environmental Health Risks and Safety Risks (21 April 1997), recognizes a growing body of scientific knowledge that demonstrates that children may suffer disproportionately from environmental health risks and safety risks. These risks arise because children's bodily systems are not fully developed; because children eat, drink, and breathe more in proportion to their body weight; because their behavior patterns may make them more susceptible to accidents. Based on these factors, the President directed each Federal agency to make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children. The President also directed each Federal agency to ensure that its policies, programs, activities, and standards address disproportionate

risks to children that result from environmental health risks or safety risks. The recommended plan does not pose any disproportionate environmental health risk or safety risk to children.

### **5.15 Cumulative Impacts**

The CEQ regulations define cumulative impacts as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other action” 40 C.F.R. § 1508.7. Actions considered in the cumulative impacts analysis include implementation of the recommended plan and other Federal, State, Tribal, local or private actions that impact the resources affected by the recommended plan.

Within the project area, various past Federal, State, and private actions have impacted the ACF navigation channel and Apalachicola River habitat and natural flow regime including construction of the USACE dams, urban development, agricultural activities, navigation channel maintenance dredging and disposal, water withdrawals, and small impoundments. Urban development and agricultural activities have adversely affected water quality and riverine and floodplain habitat. The associated water withdrawals have also impacted the flow regime.

Adverse effects to riverine habitat from continued urbanization and agricultural activities in the ACF basin are reasonably certain to occur. However, state and local governments have regulations in place to minimize these effects, including regulations regarding construction best management practices, stormwater control, and treatment of wastewater.

Therefore, the recommended plan would not significantly contribute to the cumulative impacts affecting the ACF Federal navigation channel resources.

### **6.0 ANY IRREVERSIBLE OR IRRETRIEVABLE COMMITMENTS WHICH WOULD BE INVOLVED SHOULD THE RECOMMENDED PLAN BE IMPLEMENTED**

Any irreversible or irretrievable commitments of resources involved in the recommended plan have been considered and are either unanticipated at this time, or have been considered and determined to present only minor impacts.

### **7.0 ADVERSE ENVIRONMENTAL EFFECTS WHICH CANNOT BE AVOIDED**

Any adverse environmental effects, which cannot be avoided during implementation of the recommended plan, are expected to be minor both individually and cumulatively.

### **8.0 THE RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF MAN'S ENVIRONMENT AND MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY**

The recommended plan constitutes a short-term use of man's environment. The recommended plan consists of shearing snags at their base along the ACF Federal navigation channel. The recommended plan is intended to avoid impacts to listed species and/or designated critical habitat.

## 9.0 COORDINATION

In a November 2011 meeting between USACE, Mobile District and FDEP, the USACE, Mobile District expressed interest in obtaining a stand-alone authorization from FDEP regarding the removal of snags in the Apalachicola River. FDEP subsequently determined that the action should be addressed through an ERP from the Northwest District Office for operational and maintenance activities which would require submittal of an ERP application with the applicable project details, location maps, and agreement with the previous snagging conditions from the now denied dredging water quality certification.

On April 27, 2012, the USACE met with the FDEP for a pre-application meeting to further discuss the recommended plan and which sections of the application needed to be completed along with information needed. From the discussion of this meeting, the USACE submitted the ERP application on May 29, 2012 to FDEP for review and consideration.

By letter dated June 4, 2012, the FDEP provided the Mobile District with the Notice of Application to be published in newspapers of general circulation in the area affected. The Notice of Application was published in the Tallahassee Democrat, Jackson County Times, Jackson Floridan, The Calhoun-Liberty Journal, The County Record and The Times and copies on the proof of publication was forwarded to the FDEP.

By letter date June 28, 2012, FDEP determined that the application could not be recommended for approval and submitted an extensive Request for Additional Info (RAI) due by September 26, 2012. The Mobile District had concerns with the RAI and requested a meeting with FDEP to discuss. FDEP subsequently stated that they were working with the Fish and Wildlife Conservation Commission (FWCC) on additional draft permit conditions and extended the RAI. After several attempts to determine a meeting date, in November 2012 drafts of the Notice of Intent (NOI) and ERP permit were received.

On January 31, 2013, FDEP electronically sent the NOI to issue the permit which was published in the Tallahassee Democrat, Jackson County Times, Jackson Floridan, The Calhoun-Liberty Journal, The County Record and The Times and copies on the proof of publication was forwarded to the FDEP. Then on March 12, 2013, the FDEP forwarded a petition for an administrative hearing from the Florida Wildlife Federation, Inc. and Apalachicola Bay and River Keepers, Inc. in opposition to the FDEP NOI to issue an ERP to USACE, Mobile District. After several months of correspondences via conference calls, emails, and letters between all parties and /or FDEP and Mobile District regarding the recommended plan; the FDEP issued an ERP on November 27, 2013.

## **REFERENCES**

U.S. Army Corps of Engineers. 1976. Final Environmental Supplement Apalachicola, Chattahoochee and Flint Rivers Alabama, Florida and Georgia (Operation and Maintenance). Mobile District.

U.S. Army Corps of Engineers. 2012. Environmental Assessment Revised Interim Operations Plan for Support of Endangered and Threatened Species Jim Woodruff Dam Gadsden and Jackson Counties, Florida and Decatur County, Georgia. Mobile District.

## **Appendix A: Environmental Resources Permit Coordination**



# Florida Department of Environmental Protection

Northwest District  
160 W. Government Street, Suite 308  
Pensacola, Florida 32502-5740

Rick Scott  
Governor

Jennifer Carroll  
Lt. Governor

Herschel T. Vinyard Jr.  
Secretary

## NOTICE FOR PUBLICATION OF RECEIPT OF APPLICATION

June 4, 2012

US Army Corps of Engineers, Mobile District  
Attn: Velma Diaz, Curtis Flakes  
P.O. Box 2288  
Mobile, AL 36628-0001

Dear US Army Corps of Engineers:

Pursuant to Section 403.815, Florida Statutes, and Rule 62-110.106(6), Florida Administrative Code, you (the applicant) are required to publish at your own expense the enclosed Notice of Application. The notice shall be published once within 14 days of the date of this letter, in the legal ad section of a newspaper of general circulation in the area affected. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S., in the county (or counties) where the activity is to take place. The applicant shall provide proof of publication to the Department at 160 W. Government Street, Pensacola, FL 32502 within seven days of publication. Failure to publish the notice and provide proof of publication within the allotted time may result in the denial of the permit.

The Notice of Application should be published in as many qualifying newspapers as necessary to cover the entire affected area.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Mason".

Heather Mason  
Environmental Specialist  
Florida Department of Environmental Protection  
Submerged Lands and Environmental Resources Program

c: Jennifer Jacobson, US Army Corps of Engineers

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**NOTICE OF APPLICATION**

The Department announces receipt of an application for permit from the US Army Corps of Engineers, Mobile District, File No. 07-129424-008-EI, to conduct maintenance snagging to remove tree snags from the navigation channel in the Apalachicola River portion of the Apalachicola, Chattahoochee and Flint Rivers (ACF) Federal Navigation Project. This proposed project will be located in the Apalachicola River between River Mile 0.0 and River Mile 106.4 in Jackson, Gadsden, Calhoun, Liberty, Gulf, and Franklin Counties.

This application is being processed and is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Northwest District office at 160 W. Government Street, Pensacola, FL 32502.



# Florida Department of Environmental Protection

Northwest District  
160 W. Government Street, Suite 308  
Pensacola, Florida 32502-5740

Rick Scott  
Governor

Jennifer Carroll  
Lt. Governor

Herschel T. Vinyard Jr.  
Secretary

June 28, 2012

US Army Corps of Engineers, Mobile District  
Attn: Curtis M. Flakes – Chief, Planning and Environmental Division  
P.O. Box 2288  
Mobile, AL 36628-0001

Re: Army Corps of Engineers – Apalachicola River  
Jackson, Gadsden, Calhoun, Liberty, Gulf, and Franklin Counties,  
File Number: 07-0129424-008-EI

Dear Mr. Flakes:

This acknowledges receipt of your application, file number referenced above, on May 29, 2012 for an Individual Environmental Resource permit and authorization to use state-owned submerged lands, pursuant to part IV, Chapter 373, Florida Statutes and Chapter 62-346, Florida Administrative Code (F.A.C.), to conduct maintenance snagging (removal or relocation of woody material) associated with the Florida portions of the Apalachicola-Chattahoochee-Flint Rivers Federal Navigation Project along River Miles 0.0 to River Mile 106.4 along the Apalachicola River, in Jackson, Gadsden, Calhoun, Liberty, Gulf, and Franklin Counties, Florida.

During the review process, some issues came to light that were not discussed during the April 27, 2012 pre-application meeting between FDEP regulatory staff and the Applicant. The issues concern the history of Army Corps projects and permit applications for similar operations in the Apalachicola River. A Notice of Denial (File No: 0129424-005-DF, attached) for a dredging and snagging permit was issued by the Department on October 11, 2005. The Department understands the current application does not include dredging, however, the concerns described in the denial relating to snagging and past restoration activities have not been adequately addressed to date. Additionally, the Corps has provided outdated or incomplete information regarding the potential impacts to Federal and state listed species. Public interest concerns such as a description of the project in relation to the current RIOP and how the project can be considered clearly in the public interest despite the issues listed in this letter have not been adequately addressed.

Therefore, a preliminary staff evaluation of your application indicates that the project cannot be recommended for approval.

Our concerns are:

1. The applicant has not provided reasonable assurance that listed species and their habitats will not be adversely affected by the proposed project.
2. The applicant has not provided reasonable assurance that the restoration of the sloughs and disposal site 39 required by Wetland Resource Permit No. 0129424-001-DF will be successfully accomplished, or how this issue will be alternatively resolved. Rule 62-346.302(2), F.A.C. requires the Department to "take into consideration the applicant's violation of any Department rules adopted pursuant to Section 403.91 through 403.929, F.S., (1984 Supp.), as amended, or any Department rules adopted pursuant to Part IV, Chapter 373, F.S., relating to any other project or activity and efforts taken by the applicant to resolve these violations." Please be aware that permits authorizing the restoration work have expired, and a new permit for the work may be required.
3. The applicant has not addressed concerns related to potential impacts to existing snag habitat described in the Consolidated Notice of Permit Denial (File No. 0129424-005-DF).
4. The applicant has not provided sufficient information for the Department to evaluate the need for the proposed project in relation to the most current RIOP, current river conditions, public interest, and potential impacts to listed species and their habitats.
5. A 10-year permit, as requested by the applicant, may be inappropriate due to the Apalachicola River's status as an Outstanding Florida Water and the potential impacts to listed species and their habitats.

We suggest the project be modified to:

1. Include avoidance and minimization measures such as those recommended by the United States Fish and Wildlife Service in the attached letter dated June 25, 2012, to reduce impacts to listed species, their habitat and the waterway from proposed snagging activities. When the Section 7 consultation is complete, additional avoidance and minimization measures should be included if necessary.
2. Address concerns related to potential impacts to snag habitat described in File No. 0129424-005-DF Consolidated Notice of Permit Denial.
3. Additional modifications may be suggested after receipt of information requested in the attached Request for Additional Information.

While this is by no means a final agency action or notice of intent thereof, it does represent the staff review of your application based on a preliminary evaluation and considerable

experience in permitting matters. We are sending you this letter to allow you to consider making whatever alterations may be appropriate.

We will fully evaluate the impacts of your proposal when you submit the information requested in the attached Request for Additional Information.

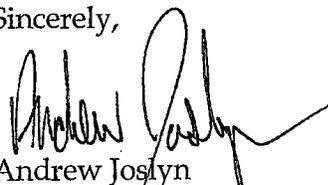
In order to review your application, we need the items listed in the enclosed Request for Additional Information (RAI) by **September 26, 2012**. If necessary, you may request an extension of up to 90 additional days. If neither the information nor a request for an extension is received by **September 26, 2012**, your application may be denied without prejudice.

The information in the attached request may require an extended amount of time to compile. The Department recommends withdrawing the application and resubmitting when all of the attached items have been addressed.

Please schedule a meeting with Department Staff to discuss this project as soon as possible, prior to submitting any additional information requested in this letter and its attachments.

We appreciate your cooperation. If you have any questions about the RAI, please contact Heather Mason at the letterhead address above, by phone at (850) 595-0608, or by e-mail at Heather.Mason@dep.state.fl.us.

Sincerely,



Andrew Joslyn  
Program Administrator  
Northwest District  
Submerged Lands & Environmental  
Resources Program

AJ:hm

Enclosures: Request for Additional Information  
Copy of File No. 0129424-005-DF Consolidated Notice of Permit Denial  
Review Comments (U.S. FWS, FFWCC)  
Letters from Interested Parties

c: Dr. Donald W. Imm, U.S. Fish and Wildlife Service  
Ted Hoehn, Florida Fish and Wildlife Conservation Commission (FFWCC)  
Bonita Gorham, FFWCC  
Steve Shea, FFWCC

Scott Sanders, FFWCC

Manley K. Fuller, Florida Wildlife Federation

Marilyn Blackwell, Help Save the Apalachicola River Group

Dan Tonsmeire, Apalachicola Riverkeeper

Janet Llewellyn, FDEP

Tim Rach, FDEP

Teresa Mussetto, FDEP

Jennifer Jacobson, USACE

Velma Diaz, USACE

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

REQUEST FOR ADDITIONAL INFORMATION

Surface Water impact/SSL REVIEW  
File No. 07-0129424-008-EI  
Army Corps of Engineers - Apalachicola River

US Army Corps of Engineers, Mobile District  
Attn: Curtis M. Flakes - Chief, Planning and Environmental Division  
P.O. Box 2288  
Mobile, AL 36628-0001

DATE RECEIVED: 05/29/2012  
DATE REVIEWED: 06/28/2012  
BY: Heather Mason

Additional Information (not a completeness item):

The Department has developed on-line help tools (<http://www.dep.state.fl.us/water/wetlands/erphelp/index.htm>) to assist applicants in submitting more complete applications and notices. Use of the help is voluntary. The help information is not intended to represent minimum requirements for acceptance of an application or notice by the Department, and cannot represent the full scope of information that may be needed to evaluate an application or notice, because each project, and each project location, is unique. However, the help may contain answers to questions you may have, and contains tips, guidelines, and checklists that should reduce the need for the Department to request additional information once the application or notice is submitted.

Requirements of Chapter 62-346, F.A.C., Applicant's Handbook Volume I,  
Chapter 18-21, F.A.C., and Part IV of Chapter 373, F.S.

The following items were either omitted or were found to be incomplete, unclear or in error in your application as submitted:

Complete Date

Item

- [            ] 1. Several comments were received regarding the dated materials on which the project request is based, specifically the 1986

Apalachicola-Chattahoochee-Flint Waterway Navigation Maintenance Plan. Currently available information indicates that the 1986 plan is outdated, and that relying on the plan may cause significant environmental damage. Please provide an analysis of possible adverse environmental impacts as well as possible adverse impacts to listed species and their habitats utilizing current or updated research and information. [Section 62-346.301, F.A.C.]

- [ ] 2. Section D, Part II, F of the application requires submittal of the results of any wildlife surveys that have been conducted on the site, and provide any comments pertaining to the project from the Florida Game and Fresh Water Fish Commission and the U.S. Fish and Wildlife Service. Minimal information was provided with the application. Please provide additional currently available information such as mussel location maps, mussel habitat maps, Gulf sturgeon holding and spawning maps, etc. [Section 62-346.301, F.A.C.]
- [ ] 3. The application indicates that the relocated snags will be placed so that as much of the snag's surface area as possible shall be placed underwater relative to the water level when the discharge from Jim Woodruff Dam is 9,300 cu. ft. per second (when the Blountstown Gage reads 2 ft.). How often do these water levels occur? Approximately how many days per year and during what months will the water reach or exceed this level (i.e. how often will the relocated snags be significantly submerged)? Please use data from the past 38 years of record and the current RIOP requirements to conduct the analysis. [Section 62-346.302, F.A.C.]
- [ ] 4. The justification for the proposed project states "Maintenance of a safe navigation channel is critical to ensuring the Corps can respond quickly should emergency situations arise at upstream projects requiring specialized equipment or parts that can only be transported by barge or boat." Please elaborate on the following: 1) What types of emergency scenarios would require transport of equipment upstream via barge? 2) How often does the Corps expect these emergencies to occur? 3) How often have such emergencies occurred in the past? Please provide examples. Was the Corps able to use the river to respond to the emergency, and if not, what was the Corps' alternate means of response? 4) What projects upstream does the Corps anticipate needing to access for emergencies? Where are they located? 5) Please explain what kind of emergency items could not be transported by other means such

as by road, rail, or air. Please describe the likelihood that these items will be needed in an emergency. [Section 62-346.302, F.A.C.]

- [ ] 5. Please explain why it is necessary to remove or relocate approximately 1,000 snags per year. How did the Corps arrive at this estimate? Comments and records indicate that this number of snags will greatly exceed the average number of snags removed in previous years. Please justify the need to relocate or remove 1,000 snags per year. Could the project objective still be met if fewer snags were removed or relocated? [Applicant's Handbook Volume I, Section 10.2.1]
- [ ] 6. Please explain what criteria will be used to determine whether or not a snag is presenting a hazard to navigation. Explain how the criteria will help prevent unnecessary snagging activities from occurring. [Applicant's Handbook Volume I, Section 10.2.1]
- [ ] 7. What is the expected fully loaded draft of barges that will be used for emergency purposes or snagging activities? Approximately how many days per year and during what months are water levels in the river adequate to allow access for these barges to the areas they will need to travel? How will the Corps gain access when water levels are too low for barge access? Will any proposed access plan be feasible considering the requirements of the current RIOP? [Section 62-346.302, F.A.C.]
- [ ] 8. How will the proposed project be funded? [Subsection 62-346.070(3), F.A.C., 62-346.301(1)(h), F.A.C, and Applicant's Handbook Volume I, Section 1.5.1]
- [ ] 9. Are all activities, including placement of relocated or removed snags, proposed to occur waterward of the mean high water line? If not, please explain what type of authorization the Corps plans to use to place snags or conduct activities on public or private riparian property? [Subsection 62-346.070(3), F.A.C.]
- [ ] 10. In the "Analysis of the expected effect of the proposed activity on the Apalachicola River system" portion of the application, the applicant states "There could be long-term beneficial impacts to create structures for habitat by relocation of the snags". Please explain how relocation of the snags provides a beneficial impact to habitat in comparison to leaving the snags where they currently lie. Please use the most current available research and information in

the discussion. [Section 62-346.302, F.A.C.]

- [ ] 11. A CD-ROM copy of 1980's and 1990's maps are referenced in the "Description of natural community within the area of influence of the proposed project - bank habitat mapping of the Apalachicola River" section of the application. The FDEP Northwest District office does not have a copy of the CD-ROM. Please provide a copy. Please also provide additional, more current maps if available, as the Apalachicola River is a dynamic system and the referenced maps may be outdated. [Section 62-346.302, F.A.C.]
- [ ] 12. The "Methods proposed to protect threatened or endangered species" section of the application states "Methods proposed to minimize and avoid adverse effects to the gulf sturgeon, fat three-ridge mussel and purple bankclimber mussel will be coordinated with U.S. Fish and Wildlife Service as it relates to the proposed removal and nearby relocation of tree snags". Please provide results of a current Section 7 consultation with the U.S. Fish and Wildlife Service pertaining to the proposed project as soon as the information becomes available. Describe any methods to protect threatened or endangered species proposed to be undertaken by the applicant as a result of the consultation. [Sections 62-346.301 and 62-346.302, F.A.C.]
- [ ] 13. In the "State-owned submerged lands" section of the application, the applicant states "The Federal position is that the Corps of Engineers does not require the state's consent for navigational uses.", then states two sentences later "Furthermore, we do not intend to submit this application for any project involving coastal navigational uses." Please clarify these statements as they relate to each other. [Chapter 18-21, F.A.C.]
- [ ] 14. What kind of advance planning will be required before undertaking snagging activities (time of year, navigation windows, etc.)? Does the applicant propose to provide advance notice that activities will be conducted to the Department, if a permit is issued? [Sections 62-346.301 and 62-346.302, F.A.C.]
- [ ] 15. Please provide documentation indicating that the Apalachicola River is still part of a Federal navigation channel. [Rule 18-21, F.A.C.]
- [ ] 16. Please explain how the proposed project will fit within the

limitations of the most current RIOP. [Section 62-346.302, F.A.C.]

- [ ] 17. Please provide a copy of the most recent draft "Annual Maintenance Report" required by Special Condition 19 of expired Permit No. 0129424-001-DF, or other snag relocation records from activities associated with Permit No. 0129424-001-DF, if available. If this documentation is not available, please explain why it is not available. [62-346.302, F.A.C.]
- [ ] 18. Please provide confirmation that your local sponsor supports this project. [Subsection 62-346.070(3), F.A.C.]
- [ ] 19. Does the applicant propose to leave all snags within the river system, or will some snags be completely removed? If some snags will be completely removed, how and where will they be disposed? [Subsection 62-346.070(3), and Sections 62-346.301 and 62-346.302, F.A.C.]
- [ ] 20. Please respond in detail to the attached letter from the U.S. Fish and Wildlife Service (dated June 25, 2012), and the Request for Additional Information from the Florida Fish and Wildlife Conservation Commission (dated June 26, 2012). Send the replies directly to the agencies and provide a copy to the Department. [Subsection 62-346.070(6), F.A.C.]
- [ ] 21. Please respond to the attached letters from the Florida Wildlife Federation (dated June 21, 2012), Help Save the Apalachicola River Group (dated June 23, 2012), and Apalachicola Riverkeeper (dated June 26, 2012). Send replies directly to the commenter and provide a copy to the Department. [Section 62-346.302, F.A.C.]
- [ ] 22. Please provide proof of publication of the Notice of Application sent to the applicant on June 4, 2012. Any comments received as a result of the publication must be sufficiently addressed before the application can be considered complete. [Section 373.413(4), F.S.]
- [ ] 23. The Apalachicola River is an Outstanding Florida Water. Please explain how the proposed project is clearly in the public interest, as required by Rule 62-346.302(1)(a), F.A.C.
- [ ] 24. Please address Paragraph 2, Page 4 of the attached Consolidated Notice of Permit Denial (File No. 0129424-005-DF) which states:

*"As a requirement of the previous permit for the Apalachicola River dredging project (Permit No. 0129424-001-DF), the USACE was required to reopen and restore 20 sloughs that had been closed off by the disposal operations. In addition, the permit required restoration of disposal site 39, which is on land owned by the Northwest Florida Water Management District (NFWMD). Only twelve slough restoration initiatives, of the required 20 slough openings, were attempted. Success has been limited due to Federal operational and maintenance restrictions, which only allow minor work within 100 feet from the navigational channel by standard equipment. Also the USACE has been unable to conduct restoration of disposal site 39 due to funding constraints."*

What actions, if any, were taken to remedy the non-compliance issues with Permit No. 0129424-001-DF described above?  
[Subsection 62-346.302(2), F.A.C.]



# Department of Environmental Protection

Jeb Bush  
Governor

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Colleen M. Castille  
Secretary

In the Matter of an  
Application for Permit/Water Quality Certification,  
and Authorization to Use Sovereign Submerged Lands by:

**APPLICANT:**

Curtis M. Flakes  
Chief, Planning and Environmental Division  
U.S. Army Corps of Engineers, Mobile District  
P.O. Box 2288  
Mobile, AL 36628-0001

**PROJECT NAME:**

Apalachicola River Maintenance Dredging  
File No. 0129424-005-DF  
Multiple Counties

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## CONSOLIDATED NOTICE OF DENIAL WETLAND RESOURCE PERMIT AND AUTHORIZATION TO USE SOVEREIGN SUBMERGED LANDS

The Department of Environmental Protection gives consolidated notice of denial of:

(a) a wetland resource permit under Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, Florida Administrative Code (F.A.C.), which also constitutes denial of certification of compliance with state water quality standards pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341; and

(b) a public easement to use sovereign submerged lands for the proposed dredged material disposal sites, under Article X, Section 11 of the Florida Constitution, Chapters 253 and 258, F.S., Title 18, F.A.C., and the policies of the Board of Trustees.

While a public easement is required for the proposed dredged material disposal sites, the Department acknowledges that maintenance dredging a federal navigation channel itself falls within one of the federal powers listed in the Submerged Lands Act under 43 USC 1311(d) or 43 USC 1314, and, under those provisions, the maintenance dredging needs no authorization from the Board of Trustees to utilize sovereignty submerged lands. However, under the provisions of the Coastal Zone Management Act (16 USC 1451-1465), both the dredging and the disposal requires Florida's concurrence with a determination of consistency with the sovereignty submerged lands provisions of Florida's approved Coastal Management program.

This consolidated denial of the wetland resource permit and the authorization to use sovereign submerged lands for dredged material disposal also constitutes a finding of

inconsistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act.

This consolidated notice of denial is based on the reasons stated below.

### **I. DESCRIPTION OF THE PROPOSED ACTIVITY**

The applicant, U.S. Army Corps of Engineers (USACE), applied on March 24, 2004, to the Department of Environmental Protection (Department) for a wetland resource permit/water quality certification and authorization to use sovereign submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) to maintenance dredge the Apalachicola River navigation channel and the Chattahoochee River (Lake Seminole) navigation channel and place the dredged material in disposal sites located within the floodplain or banks of the Apalachicola River. The Apalachicola River navigation channel is 100 feet wide and 9 feet deep (plus 2 feet for overdredging) and the Chattahoochee River (Lake Seminole) navigation channel is 100 feet wide by 9 feet deep (plus 2 feet for overdredging and 2 feet for advanced maintenance). Maintenance dredging of 50-foot wideners at river bendways is also included. The excavation would produce approximately 1.1 million cubic yards of material annually. The project also includes the rehabilitation of existing training dike structures, relocation of snags within the Apalachicola River, Lake Seminole, and Chipola Cutoff and restoration of slough, spring, and other tributary openings on the Apalachicola River.

Disposal of dredged material is proposed in many locations along the 107 mile length of the Apalachicola River and includes placement in the river floodplain, the river bed, and within-bank sites.

The activity is located in and along the Apalachicola River, Chipola Cutoff and Lake Seminole, in Calhoun, Franklin, Gadsden, Gulf, Jackson, and Liberty Counties, Class III Waters and Class II Waters prohibited for shellfish harvesting, Apalachicola River Special Waters, Apalachicola Bay Aquatic Preserve and Apalachicola National Estuarine Research Reserve, Outstanding Florida Waters.

### **II. AUTHORITY FOR REVIEW**

The Department has permitting authority under Part IV of Chapter 373, F.S., and Chapter 62-312, F.A.C. The activity qualifies for processing as a wetland resource permit pursuant to Section 373.4145, F.S. The activity is not exempt from the requirement to obtain a wetland resource permit. Pursuant to Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing this application.

The dredged material disposal activity also requires a proprietary authorization, as it is located on sovereign submerged lands owned by the Board of Trustees. The activity is not exempt from the need to obtain a proprietary authorization. Pursuant to Article X, Section 11 of the Florida Constitution, Sections 253.002 and 253.77, F.S., Sections 18-21.0040, 18-21.0051, 18-20, and 62-312.065, F.A.C., the policies of the Board of Trustees, and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department has the authority to review and take final action on this request for proprietary authorization.

### **III. BACKGROUND**

Florida's Apalachicola River begins as a tailwater discharge of Jim Woodruff Lock and Dam at the border of Florida and Georgia, and meanders 107 miles south to Apalachicola Bay. The USACE began dredging of this waterway in 1957 usually at the low water periods of the year (typically May through December), when the 9 ft. channel depth is often unavailable for commercial barge traffic. Dredging of the Apalachicola River, in an attempt to maintain a 9 ft. channel, has required the disposal of over one million cubic yards per year in more than 150 locations.

The Corley Slough reach, located south of Wewahitchka and downstream of the entrance to the Chipola Cutoff, is considered one of the main limiting factors to navigation on the river. It is dredged the most frequently due to the river bends, bank erosion, diversion of water flow through Chipola Cutoff and reduction in water surface slope, which reduce the river's sediment transport capabilities. Disposal sites 39 and 40 are in the Corley Slough reach.

The Department has previously issued 5-year duration permits for maintenance of the Apalachicola River navigation channel. The permit conditions became progressively more restrictive, particularly for dredged material disposal as evidence of environmental damage became apparent. As more material accumulated in disposal sites, limitations on height, width and distance to protected areas caused capacity maximums to be reached. Monitoring efforts by the USACE, U.S. Fish and Wildlife Service, Florida Fish and Wildlife Conservation Commission, U.S. Geological Survey, and others found adverse environmental impacts from the disposal practices to aquatic habitat, fishery resources, sloughs and floodplains, as well as possible secondary alteration of river stability, particularly at bendways and problem reaches of the river. Prior cut-offs of meanders to straighten the river for navigation are among these problem reaches. River bank habitat, slough entrances and floodplain are adversely affected by within-bank disposal, which is the most common method of dredged material disposal.

The vast majority (> 90%) of the 150 dredged material disposal sites are within-bank, i.e., shoreline areas used for dredged material disposal, located below the top of the natural riverbank, to allow recapture of material by the river during periods of high water. Recapture of sand from these sites is unpredictable due to the dependence on weather and subsequent water flow. Sand

often migrates downstream along the riverbank to the mouths of sloughs, springs, and other tributaries/distributaries of the river where it collects and creates a sill. If not removed, this eventually blocks access by recreational vessels and fish during low water conditions. Adverse impacts to the floodplain from sedimentation and altered flow through distributaries and sloughs have also become apparent. Threatened and endangered species in the floodplain, as well as listed mussels, have been adversely impacted from the dredged material disposal. The relocation and removal of tree snags, which are productive habitat for fish and macroinvertebrates, has significantly reduced the overall productivity of this lotic system.

As a requirement of the previous permit for the Apalachicola River dredging project (Permit No. 0129424-001-DF), the USACE was required to reopen and restore 20 sloughs that had been closed off by the disposal operations. In addition, the permit required restoration of disposal site 39, which is on land owned by the Northwest Florida Water Management District (NFWFMD). Only twelve slough restoration initiatives, of the required 20 slough openings, were attempted. Success has been limited due to federal operational and maintenance restrictions, which only allow minor work within 100 feet from the navigational channel by standard equipment. Also, the USACE has been unable to conduct restoration of disposal site 39 due to funding constraints.

The state agencies involved in the permit evaluation (NFWFMD, Florida Fish and Wildlife Conservation Commission (FWCC), and the Department), working as an Interagency Team with the USACE and Federal resource agencies, have attempted to find solutions to the project's disposal problems. The USACE and Tri-Rivers Waterway Development Association have held workshops to generate local interest and identify solutions. However, these efforts have not been successful in obtaining either local sponsorship or funding sources. Due to insufficient federal funding and local cost sharing, the USACE has not been able to pump sand to accessible upland disposal sites constructed outside the floodplain or to barge dredged material down the river to an upland or beach site. None of the six affected counties have been willing to provide sponsorship for the necessary rights-of-way, disposal areas or easements.

Another major issue, in addition to the environmental and hydrologic alterations of the Apalachicola River navigation channel, is the economic cost/benefit ratio of the project. The ability or necessity of maintaining a 9 ft. depth throughout the river year-round has not been proven, given the infrequent use of the entire channel by commercial vessels. On the basis of cost-per-ton mile, this waterway system is one of the most expensive maintenance operations in the country (40 to 50 times the national average). The cost of environmentally acceptable disposal options would further skew that ratio.

In addition to the difficulties in maintaining a reliable channel in an environmentally acceptable manner, the applicant's compliance with the conditions of previous permits has been problematic. These include the required restoration of sloughs, which has involved disagreement on what constitutes reestablishment of connectivity as part of the operation and maintenance

activities. As discussed above, only twelve of the required twenty slough restorations were attempted under the previous permit, and the required restoration of the Site 39 disposal area was not accomplished.

#### IV. REASONS FOR DENIAL

The Apalachicola River constitutes surface waters of the state pursuant to Section 62-340.600(1), F.A.C. The Apalachicola River and associated Apalachicola National Estuary Research Reserve are designated Outstanding Florida Waters.

##### A. Wetland Resource Permit

The applicant has not provided reasonable assurance that the construction and operation of the activity, considering the direct, secondary and cumulative impacts, will comply with the provisions of Part IV of Chapter 373, F.S., and the rules adopted thereunder. Specifically, the activity does not meet the criteria for issuance of a wetland resource permit in Section 62-312.080 F.A.C., for the following reasons:

1. Pursuant to the requirements of Section 62-312.080(1), F.A.C., the applicant has not provided reasonable assurance that the immediate and long-term impacts of the activity will not cause violations of the water quality standards set forth in Chapters 62-4 and 62-302, F.A.C., including the antidegradation provisions of Sections 62-4.242 and 62-302.300, F.A.C. The specific water quality standards listed in Chapter 62-302, F.A.C., include:

a. *Turbidity* ( 62-302.300 and 62-4.242, F.A.C.). The applicant has not provided reasonable assurance that the activity would not cause elevation above ambient background levels of turbidity in Outstanding Florida Waters outside the federally authorized navigation project. Therefore, the activity has the potential to cause degradation of the ambient water quality of Outstanding Florida Waters, in contravention of the provisions of Sections 62-4.242, and 62-302, F.A.C.; and

b. *Biological Integrity* (Rule 62-302.530(11), 62-302.300 and 62-4.242, F.A.C.). Use of the floodplain, river bed and within-bank disposal sites, as well as the unrestricted practice of snag removal have caused (and are expected to continue to cause) unacceptable reductions in the biological integrity of the system. Therefore, the floodplain, river bed and within-bank disposal activity and the practice of snag removal will cause significant degradation of the ambient biological integrity of Outstanding Florida Waters outside the federally authorized navigation project, in contravention of the provisions of Sections 62-4.242, and 62-302, F.A.C.

Consolidated Notice of Permit Denial  
File No. 0129424-005-DF, Multiple Counties  
Apalachicola River Maintenance Dredging  
Page 6 of 15

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2. Pursuant to the requirements of Section 62-312.080(3), F.A.C., the applicant has not provided reasonable assurance that the dredged material disposal activities are clearly in the public interest. In determining whether a project is clearly in the public interest, the Department must consider and balance seven factors. These factors, and their evaluation are summarized below:

a. *Whether the project will adversely affect the public health, safety, or welfare or the property of others.* The disposal activities have and will continue to adversely affect the property of others, including property of the Northwest Florida Water Management District, the Florida Fish and Wildlife Conservation Commission, and non-governmental parties. Permit No. 0129424-001-DF required the restoration of Site 39, on Northwest Florida Water Management District land, where permitted boundaries were exceeded, but this restoration has not been accomplished. The effects of the disposal activities on the public health, safety and welfare are neutral;

b. *Whether the project will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats.* The disposal activities have and will continue to adversely affect the conservation of fish and wildlife, including endangered or threatened species, and their habitats. Alteration of the river banks has and is expected to continue to adversely affect the following listed endangered and threatened species: Fat threeridge mussel (*Amblema neislerii*), purple bankclimber mussel (*Elliptoideus sloatianus*), shinyrayed pocketbook mussel (*Lampsyllis subangulata*), and the Gulf Sturgeon (*Acipenser oxyrinchus desotoi*). Loss of productive fish habitat by conversion to unstable, sand riverbed is evident from previous disposal activities. Severance of sloughs, tributaries, and distributaries from the main river channel, which threatens fish life cycles, has been shown to occur from the disposal activities. Removal of stabilizing and productive snag habitat from the main channel course has been shown to cause reduction of fish and wildlife habitat;

c. *Whether the project will adversely affect navigation or the flow of water or cause harmful erosion or shoaling.* The project is not needed by the State of Florida to enhance navigation. The within-bank disposal is expected to adversely affect the flow of water in the sloughs and cause harmful erosion or shoaling, and adversely affect recreational navigation in the sloughs;

d. *Whether the project will adversely affect the fishing or recreational values of freshwater or marine productivity in the vicinity of the project.* The disposal

**Consolidated Notice of Permit Denial**  
**File No. 0129424-005-DF, Multiple Counties**  
**Apalachicola River Maintenance Dredging**  
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activities have and are expected to continue to adversely affect the fishing or recreational values and productivity in the vicinity of the disposal sites;

e. *Whether the project will be of a temporary or permanent nature.*

Damages from the previous disposal activities have not been restored, as required in the previous permit (Wetland Resource Permit No. 0129424-001-DF). The expiration date of that permit had been extended from October 21, 2004, to February 24, 2005, in order to give the USACE more time to complete the required slough restorations, but no additional restoration was accomplished during that period nor to the present time. Permit No. 0129424-001-DF has now expired, so the adverse impacts of the disposal activities may be of a permanent nature;

f. *Whether the project will adversely affect or will enhance significant historical and archaeological resources under the provisions of s. 267.061.* The State Historic Preservation Office indicated concern about potential impacts from the new project and requested a new cultural resource survey. That survey has not been conducted by the applicant, so the activity has the potential to adversely affect significant historical and archaeological resources according to Section 267.061, F.S.; and

g. *The current condition and relative value of functions being performed by areas affected by the proposed activity.* The proposed disposal activities are expected to diminish the current condition and relative value of functions being performed by the river system, including the flow of water through the river/slough system, conservation of fish and wildlife in general, the conservation of endangered or threatened species, fish and wildlife habitats, fishing, and recreational values.

3. The previous permit for the Apalachicola River dredging project (Wetland Resource Permit No. 0129424-001-DF) resulted in cumulative impacts upon wetlands and other surface waters. That permit required restoration of the project-induced impacts to sloughs in the system. Now, after Permit No. 0129424-001-DF has expired, many of those sloughs remain clogged because climatological conditions and federal restrictions (limiting the scope of restoration to 100 feet from the navigation channel) prevented the permittee from reopening the sloughs and keeping them open. In addition, the disposal of dredged material within the bank, within the channel and in the floodplain has buried riparian and wetland habitat and those impacts were never mitigated. There is also evidence that the within-bank disposal has changed the morphology of the river and thereby degraded lotic, riparian and floodplain habitat. Therefore, continuation of this project, as currently designed, is expected to contribute to unacceptable cumulative impacts upon wetlands and other surface waters, pursuant to Section 373.414(8), F.S.

4. The proposed project would require restoration and mitigation for project impacts in order to meet the permitting criteria given above. Given the applicant's inability to conduct the restoration required under the previous permit, it is not reasonable to expect that the necessary mitigation and restoration would be completed under a new permit. This past history of non-compliance must be considered pursuant to Subsection 62-4.070(5), F.A.C.

B. Sovereign Submerged Lands Authorization

The request for authorization to use sovereign submerged lands for dredged material disposal sites is denied because the applicant has not met all applicable requirements for proprietary authorizations to use sovereign submerged lands, pursuant to Article X, Section 11 of the Florida Constitution, Chapters 253 and 258, F.S., associated Chapters 18-21 and 18-20, F.A.C., and the policies of the Board of Trustees. Specifically:

1. The disposal activities do not meet the intent of Rules 18-20.001 and 18-21.001, F.A.C., as demonstrated by the following sections:

a. Section 18-20.001(1) states: *All sovereignty lands within a preserve shall be managed primarily for the maintenance of essentially natural conditions, the propagation of fish and wildlife, and public recreation, including hunting and fishing where deemed appropriate by the Board, and the managing agency;*

b. Section 18-20.001(2) states: *Aquatic preserves which are described in Part II of Chapter 258, Florida Statutes, were established for the purpose of being preserved in an essentially natural or existing condition so that their aesthetic, biological and scientific values may endure for the enjoyment of future generations;*

c. Section 18-20.001(3) states, in part: *The preserves shall be administered and managed in accordance with the following goals: (e) To encourage the protection, enhancement or restoration of the biological, aesthetic, or scientific values of the preserves, including but not limited to the modification of existing manmade conditions toward their natural condition, and discourage activities which would degrade the aesthetic, biological, or scientific values, or the quality, or utility of a preserve, when reviewing applications, or when developing and implementing management plans for the preserves; (f) To preserve, promote, and utilize indigenous life forms and habitats, including but not limited to: sponges, soft coral, hard corals, submerged grasses, mangroves, salt water marshes, fresh water marshes, mud flats, estuarine, aquatic, and marine reptiles, game and non-*

*game fish species, estuarine, aquatic and marine invertebrates, estuarine, aquatic and marine mammals, birds, shellfish and mollusks; enhance the biological, aesthetic, or scientific values of the preserves; and (h) To maintain those beneficial hydrologic and biologic functions, the benefits of which accrue to the public at large; and*

d. Section 18-21.001(4) states the intent and purpose of the Sovereignty Submerged Lands Management rule is: *To manage and provide maximum protection for all sovereignty lands, especially those important to public drinking water supply, shellfish harvesting, public recreation, and fish and wildlife propagation and management.*

2. The disposal activity is inconsistent with the management policies, standards and criteria of section 18-21.004 and 18-20.004, F.A.C. The applicant has not provided reasonable assurance that the activity will be clearly "in the public interest", including the public interest test included in Rule 18-20.004(2), or that the activity will not be contrary to the public interest in areas outside the aquatic preserve pursuant to Rule 18-21.004(1)(a). The applicant has also not provided reasonable assurance that the activity will maintain essentially natural conditions and will not cause adverse impacts to fish and wildlife resources or public recreation. In addition, the project is inconsistent with the goals and objectives of the "Conceptual State Lands Management Plan" adopted by the Board of Trustees on March 17, 1981 and as amended on March 15, 1983. Staff further finds that the applicant has not shown demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action. There are no apparent benefits or measures to improve or enhance public access, boating and marina services, public health, safety, welfare or law enforcement, public land management, public navigation (for the State of Florida), water quality, natural habitat and functions, or endangered/threatened/unique species. However, the apparent costs include reduced/degraded water quality, reduced/degraded natural habitat and function, destruction and harm of endangered or threatened species and habitat, preemption of public use through the blockage of sloughs, reduced/degraded aesthetics, and adverse cumulative impacts. Subsection 18-20.004(3)(d) also states: *...Spoil disposal within the preserves shall be strongly discouraged and may be approved only where the applicant has demonstrated that there is no other reasonable alternative and that activity may be beneficial to, or at a minimum, not harmful to the quality and utility of the preserve.*

3. The disposal activities are inconsistent with Subsection 18-21.004(2)(i), which states: *Activities on sovereignty lands shall be designed to minimize or eliminate adverse impacts on fish and wildlife habitat, and other natural or cultural resources. Special attention and consideration shall be given to endangered and threatened species habitat.*

4. As explained in the regulatory section above, the disposal activities will result in unacceptable cumulative impacts pursuant to Rule 18-20.006, F.A.C.
5. The authorization to use sovereign submerged lands cannot be approved, in accordance with Sections 18-21.00401 and 62-312.065, F.A.C., because the disposal activities do not meet the criteria for issuance of a Wetland Resource Permit.

**C. Coastal Zone Consistency**

Based on the above, the Department has determined that the activity is inconsistent with Florida's Coastal Management Program (FCMP), as required by Section 307 of the Coastal Zone Management Act. Pursuant to Section 380.23, F.S., the Department may not issue a permit for an activity found to be inconsistent with the FCMP. The Department has recommended project design modifications which would bring the project into compliance with the Department's statutory authority under the FCMP (see below). However, the applicant has not modified the application in accordance with those recommendations.

**V. PROPOSED CHANGES**

The Department has determined that the following changes to the project may enable the Department to grant a consolidated permit and authorization to use sovereign submerged lands:

1. Provide reasonable assurances that the restoration of the sloughs and disposal site 39 required by Wetland Resource Permit No. 0129424-001-DF will be successfully accomplished, including documented federal authority and funding to conduct the work, and a schedule for timely completion of the work.
2. Eliminate the harmful practices of within-bank disposal and the continued use of disposal sites located within the river and floodplain. These disposal sites could be replaced with upland disposal sites or barging the material out of the river system.
3. Reduce the practice of snag removal to minimize the loss and degradation of habitat.

Modification of the project as specified above may enable the Department to grant a consolidated permit and authorization to use sovereign submerged lands.

**VI. COMMENTS FROM AFFECTED PARTIES**

A Notice of Application for this project was published in multiple local newspapers on April 14 and 15, 2004. The Department has received comments from the public, environmental

organizations and state agencies expressing concerns or objections about the project. These commenting entities include the Florida Fish and Wildlife Conservation Commission, Northwest Florida Water Management District, American Rivers, Apalachicola Riverkeeper, The Nature Conservancy, Florida Wildlife Federation, Help Save the Apalachicola River Group and the U.S. Fish & Wildlife Service. Also, on June 12, 2002, the Governor and Cabinet of the State of Florida passed a resolution recommending that Congress halt the dredging on the Apalachicola River.

## **VII. RIGHTS OF AFFECTED PARTIES**

This notice of denial is final agency action unless a sufficient petition for an administrative hearing is timely filed pursuant to Sections 120.569 and 120.57, Florida Statutes, as provided below. Mediation under Section 120.573, F.S., is not available for this proceeding.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in granting the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this denial automatically becomes only proposed agency action on the application subject to the result of the administrative review process.

Under Rule 62-110.106(4) of the Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

A person subject to regulation has a right to apply for a variance from or waiver of the requirements of particular rules, on certain conditions, under Section 120.542, F.S. The relief provided by Section 120.542, F.S., applies only to regulatory rules. It does not apply to proprietary rules of the Board of Trustees of the Internal Improvement Trust Fund. Nor does it apply to statutes or federal regulatory requirements. Applying for a variance or waiver does not

**Consolidated Notice of Permit Denial  
File No. 0129424-005-DF, Multiple Counties  
Apalachicola River Maintenance Dredging  
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substitute or extend the time for filing a petition for an administrative hearing or exercising any other right that a person may have in relation to the Department's action or proposed action.

The application for a variance or waiver is made by filing a petition with the Department of Environmental Protection, Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000. The petition must specify the following information:

- (a) The name, address, telephone number, and any facsimile number of the petitioner;
- (b) The name, address, and telephone number, and any facsimile number of the attorney or qualified representative of the petitioner, if any;
- (c) The applicable rule or portion of a rule from which a variance or waiver is requested;
- (d) The citation to the statute underlying (implemented by) the rule identified in (c) above;
- (e) The type of action requested;
- (f) The specific facts that demonstrate a financial hardship or a violation of principles of fairness that would justify a variance or waiver for the petitioner;
- (g) The reason why the variance or waiver would serve the purposes of the underlying statute (implemented by the rule); and
- (h) A statement whether the variance or waiver is permanent or temporary and, if temporary, a statement of the dates showing the duration of the variance or waiver requested.

The Department will grant a variance or waiver when the petition demonstrates both that the application of the rule would create a substantial hardship or violate principles of fairness, as each of those terms is defined in Section 120.542(2), F.S., and that the purpose of the underlying statute will be or has been achieved by other means by the petitioner.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Any intervention will be only at the discretion of the presiding judge upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first.

**Consolidated Notice of Permit Denial  
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Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that right. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding judge upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action; including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C. Under Sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

**Consolidated Notice of Permit Denial  
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Apalachicola River Maintenance Dredging  
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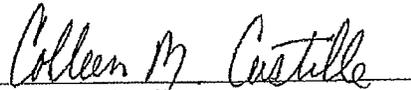
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This notice of denial constitutes an order of the Department. The applicant has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.

A copy of this Notice of Permit Denial and inconsistency with the Florida Coastal Management Program has been sent to the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management. The U.S. Army Corps of Engineers (USACE) is advised that if the USACE contends that the proposed action meets the consistent to the maximum extent practicable standard described in 15 C.F.R. 930.32, the state must be provided with a written description of the legal impediments to full consistency with the enforceable policies included in the Florida Coastal Management Program. The Corps is further advised that in accordance with 15 C.F.R. 930.44, mediation by the Secretary of the U.S. Department of Commerce or the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management may be sought pursuant to 15 CFR 930, subpart G, for serious disagreements between a state and a Federal agency with regard to direct federal action as contemplated by 15 CFR 930, subpart C.

Executed in Tallahassee, Florida.

STATE OF FLORIDA, DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



Colleen M. Castille  
Secretary

Copies furnished to:

Connie Lasher, DEP, Northeast District, SLER  
Mark Miller, DEP, Office of General Counsel  
Carol Knox, FWCC, Imperiled Species Management Section  
Tara Alford, FWCC-Division of Law Enforcement  
Ted Hoehn, FWCC

**Consolidated Notice of Permit Denial**  
**File No. 0129424-005-DF, Multiple Counties**  
**Apalachicola River Maintenance Dredging**  
**Page 15 of 15**

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Charles Mesing, FWCC  
Ken Haddad, Executive Director, FWCC  
Terry Jangula, U. S. Army Corps of Engineers, Panama City, FL  
Joanne Brandt, U.S. Army Corps of Engineers, Mobile, AL  
Dan Tonsmeire, Apalachicola Riverkeeper  
Melissa Samet, American Rivers  
Graham Lewis, Northwest Florida Water Management District  
Victoria Tschinkel, The Nature Conservancy  
Manley Fuller, Florida Wildlife Federation  
Seth Blicht, Apalachicola Estuary National Research Reserve  
Rebecca Martin, Tri-Rivers Waterway Development Assoc.  
Marilyn Blackwell, Help Save the Apalachicola River Group  
Mary Ann Poole, Director, Office of Policy and Stakeholder Coordination, FWCC  
Katherine Andrews, DEP, Coastal and Aquatic Managed Areas  
Timothy Breault, Director, Division of Habitat and Species Conservation, FWCC  
Helen Light, U.S. Geological Survey  
Mark Thompson, NOAA  
Jerry Ziewitz, U.S. Fish and Wildlife Service  
Director, OCRM, Silver Spring, MD  
Chief, NP&ED, Silver Spring, MD  
Director, FCMP, DCA  
U.S. Coast Guard  
Federal Energy Regulatory Commission  
BBCS Permit Information Center  
BBCS File

**FILING AND ACKNOWLEDGMENT**

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

  
\_\_\_\_\_  
Deputy Clerk

10.11.05  
\_\_\_\_\_  
Date



IN REPLY REFER TO:

## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Field Office  
1601 Balboa Avenue  
Panama City, FL 32405-3721  
Tel: (850) 769-0552  
Fax: (850) 763-2177

June 25, 2012

**RECEIVED**

JUN 27 2012

**NORTHWEST FLORIDA  
DEP**

Ms. Heather Mason  
Environmental Specialist  
Florida Department of Environmental Protection  
Submerged Lands and Environmental Resources Program  
160 W Government Street, Suite 308  
Pensacola, FL 32502

Re: Apalachicola River Snagging  
File No. 07-0129424-008-EI,  
Application number: 129424-  
008, U.S. Army Corps of  
Engineers, Multi-County, Florida

Dear Ms. Mason:

The purpose of this letter is to provide comments on the U.S. Army Corps of Engineers' (Corps) application for an Environmental Resource Permit (ERP) for maintenance snagging (i.e., removal and relocation of woody material) in the main channel of the Apalachicola River from the river mouth to the dam and in the Chipola Cutoff. The area proposed for snagging activities is designated critical habitat for several species protected under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The entire main channel is designated as critical habitat for the federally threatened Gulf sturgeon. The Chipola Cutoff and the Apalachicola River main channel from the dam downstream to river mile 15.3 are designated as critical habitat for the federally endangered fat threeridge mussel and federally threatened purple bankclimber mussel. These three species occur throughout their critical habitat, but the Gulf sturgeon uses the river seasonally as spawning and resting grounds from the spring through fall. The federally threatened Chipola slabshell mussel also occurs in the Chipola Cutoff, and it was recently documented in the Apalachicola River main channel in the vicinity of the Chipola Cutoff. We are providing this information to you because the Corps' supporting documentation did not include reference to the mussel critical habitat or the presence of the Chipola slabshell.

Because of the presence of these protected species and critical habitat, the Corps is required to consult with the U.S. Fish and Wildlife Service (Service) per section 7 of the Act prior to any snagging activities. The Service and the Corps have discussed this project and potential ways to avoid and minimize harm to federally-protected species. In addition, we also provide these recommendations to you for consideration in your evaluation of the Corps' ERP permit

application. These recommendations are non-regulatory, nor are they binding terms of a permit, but rather are conservation considerations that the Service finds important to maintaining ecological integrity.

Large woody material (including snags) is essential to ecological function in coastal plain rivers and streams by providing habitat diversity and stability, shaping stream morphology, and providing erosion control and flood attenuation (Ray, 1999; Shields et al., 2004; and Diehl, 1994). The removal of woody material by anthropogenic practices, such as snagging for navigation, has impacted streams and rivers through changes in sediment transport and stream morphology, erosion of banks and bars, water quality impacts, and the loss of habitat structure and species diversity (Diehl, 1994; Downs & Simon, 2001; Gippel, 1995; Shields et al., 2004; Wallerstein & Thorn, 2004).

Within the navigational channel in the Apalachicola River, we have recently documented fat threeridge and purple bankclimber mussels in deepwater habitat associated with woody material, likely due to the stable substrate provided by the snags. We are concerned that removing woody material from the navigation channel (especially material embedded in the substrate) may impact mussels directly during removal or indirectly through destabilizing the substrate. Mussels also occur outside the navigational channel along or near stream banks. We are also concerned that relocation of snags into areas with mussels may result in direct impacts during wood placement or indirect impacts through modification of flow and substrate. Snagging activities occurring from spring through fall could also directly impact Gulf sturgeon during removal and replacement, and indirect impacts may result year-round as altered channel morphology may result in the loss of sturgeon spawning and resting habitat.

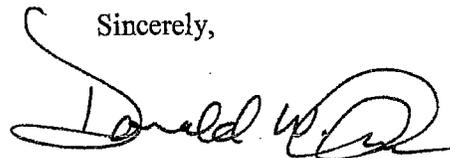
Because of the documented importance of woody material in rivers and streams, the Service recommends the following measures be implemented if a permit is granted. Many of these recommendations are modified from the recently recommended Best Management Practices for Florida sandbed streams (Cathey et al 2011):

1. Because woody material may change position under various flows, survey wood in the navigational channel immediately prior to snagging activities and identify snags that may be impeding navigation. If high flow events sufficient to transport snags occur between surveys and snagging activities, individual snags should be re-surveyed to ensure they continue to impede navigation
2. Only conduct snagging activities on snags that impede navigation; leave all other woody material (submerged, benthic, and/or embedded) in the navigational channel in place. Snags that are not an immediate navigational hazard should not be relocated or removed. Portions of this material that do present a hazard may be cut or topped without disturbing the substrate. If cutting the snag below the water line is not possible and the snag is providing important ecological function, then consider the use of navigational signage to mark the snag as a hazard instead of removal. If the Corps determines that is not possible, then mussel surveys around the woody material should be conducted to determine potential impacts.

3. Avoid removing snags within a minimum buffer distance of 25 feet from the river bank. This will minimize disturbance of woody material that is embedded in the river banks or otherwise functioning to maintain bank stability. If the Corps determines that is not possible, then mussel surveys around the woody material should be conducted to determine potential impacts. Placement of relocated snags from other areas into the 25 ft buffer may be beneficial in some areas where erosion is occurring.
4. Snags or large woody material that must be removed from the navigational channel should be placed outside the navigational channel but within the wetted width of the river at the minimum 5,000 cfs flow or next higher flow that is practicable. Placement of woody material should not occur in areas that currently support mussels unless it can be assured that flow and sediment transport will not be impacted in these locations. Surveys may be necessary in areas not known to support mussels prior to placement.
5. Snagging activities should be avoided from March-May to avoid potential impacts to sturgeon spawning. This recommendation is consistent with condition 16 of the Corps previous Wetland Resource Permit/State Water Quality Certification (#0129424-001-DF), which prohibited dredging during a Gulf sturgeon spawning window. In addition, snagging activities in known sturgeon holding areas (4-5 locations) should be avoided from March-November when Gulf sturgeon are present in the river. If the Corps determines that is not possible, then sturgeon surveys around the woody material should be conducted to determine potential impacts.
6. The Corps' should provide a clear explanation for the minimum depth required to maintain the channel for "emergency navigation" situations and also provide the range of flows when emergency navigation would be expected to occur.

The Service believes these measures will minimize the impacts to federally protected species and their designated critical habitat in the Apalachicola River. We will continue to coordinate with you, the Corps, and the Florida Fish and Wildlife Conservation Commission on this project in the future. Thank you for the opportunity to provide comments. If you have additional questions, please contact Karen Herrington at extension 250.

Sincerely,



Dr. Donald W. Imm  
Project Leader

cc:

Nick Wiley, FFWCC, Tallahassee, FL  
Mollie Palmer, DEP, Tallahassee, FL  
Janet Llewellyn, DEP, Tallahassee, FL  
Ted Hoehn, FFWCC, Tallahassee, FL  
Brian Zettle, Corps, Mobile, AL

## Literature Cited:

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June 26, 2012

**RECEIVED**  
JUN 27 2012  
NORTHWEST FLORIDA  
DEP

**Florida Fish  
and Wildlife  
Conservation  
Commission**

Ms. Heather Mason  
Environmental Specialist  
Florida Department of Environmental Protection  
Submerged Lands and Environmental Resources Program  
160 W. Government Street, Suite 308  
Pensacola, FL 32502  
[Heather.mason@dep.state.fl.us](mailto:Heather.mason@dep.state.fl.us)

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**Charles W. Roberts III**  
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**Brian S. Yablonski**  
Tallahassee

**Executive Staff**

**Nick Wiley**  
Executive Director

**Greg Holder**  
Assistant Executive Director

**Karen Ventimiglia**  
Chief of Staff

Office of the  
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MyFWC.com

RE: Apalachicola River Snagging File No. 07-0129424-008-EI, Application number: 129424-008, Request for Additional Information, U.S. Army Corps of Engineers, Multi-County, Florida

Dear Ms. Mason:

Florida Fish and Wildlife Conservation Commission (FWC) staff has reviewed the above-referenced Environmental Resource Permit (ERP) application in accordance with the Coastal Zone Management Act/Florida Coastal Management Program. Based on our review, the FWC provides the following Request for Additional Information in order to reach our final consistency determination.

**Proposed Action**

The U.S. Army Corps of Engineers (USACE) proposes to re-initiate the maintenance snagging (relocation and removal of tree snags) that may be hazardous to navigation on the Apalachicola River from River Mile 0.0 to River Mile 106.4. The USACE is seeking a water quality certification and an ERP for the proposed action for a 10-year period. The Apalachicola River is designated an Outstanding Florida Water (OFW). The USACE cites the 1986 *Apalachicola-Chattahoochee-Flint Waterway Navigation Maintenance Plan* (NMP) which indicates that snagging operations constitute "Category 1" activities that require no further study and would not result in further environmental degradation. The USACE indicates that all work would be conducted in accordance with previous conditions of past Florida Department of Environmental Protection (DEP) permits and their subsequent modifications related to the operation and maintenance of the federal navigation project. The last approved permit conditions were part of the DEP permit which was issued in 1999 and expired in 2004. The USACE's justification for the proposed action is "maintenance of a safe navigation channel is critical to ensuring that the USACE can respond quickly should emergency situations arise at upstream projects requiring specialized equipment or parts that can only be transported by barge or boat."

The USACE proposes two methods of managing snag habitat on the Apalachicola River. The primary and preferred method uses a barge-mounted crane to grasp the snag and move it out of the channel or remove it completely. The second alternative method uses an excavator with a tree shear to cut the snag from the bank, leaving its roots, and drop it to the bottom of the channel or remove it from the channel. Snags moved from the channel would be relocated along the shallow river banks with branches or roots in the water. These would be placed in areas where flows are above 9,300 cubic feet per second

(cfs), a Blountstown gage of 2.0, or to remove completely if necessary. The USACE is requesting approval for removal or relocation of an estimated 1,000 snags annually.

### Comments and Recommendations

In order to accurately assess potential fish and wildlife resource impacts of the proposed project, we request the following additional information from the USACE regarding this application:

DEP issued a Consolidated Notice of Permit Denial on 10/11/05 for the last USACE permit application as it relates to maintenance dredging and operational activities on the Apalachicola River, (File No. 0129424-005-DF found at: [http://bcs.dep.state.fl.us/env-prmt/multiple/expired/0129424\\_Apalachicola\\_River\\_Maintenance\\_Dredging/005-DF/Denial/](http://bcs.dep.state.fl.us/env-prmt/multiple/expired/0129424_Apalachicola_River_Maintenance_Dredging/005-DF/Denial/)). Reasons contained in the letter specifically identified the detrimental effects of snag removal and removal of productive snag habitat on fish and wildlife habitat, including state- and federally listed species, and are contained in Section IV.A.1.b. (*Biological Integrity*), Section IV.A.2.b. (*Whether the project will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats*), Section IV.A.1.g. (*The current condition and relative value of functions being performed by areas affected by the proposed activity*), and Section IV.A.4 (mitigation). The current application contains much of the same information with minor updates to the listed mussel descriptions. The sections identified above and the requested analyses are directly applicable to the current permit application. In Section IV.A.4 of the previously referenced Notice of Denial, commenting agencies specifically requested information related to the need to address restoration and mitigation for project impacts, which included the loss of productive aquatic habitats that support listed species, fishing and recreation, as well as information related to bank stabilization along Apalachicola River. In order to determine the degree to which the proposed activities will impact fish and wildlife resources, we reiterate the need for USACE to fully address the deficiencies as noted in the 10/11/05 Notice of Denial and to provide a more detailed analyses and mitigation plans pertaining to these specific concerns.

The ERP application, Section II, Environmental Considerations, Part F requires that results of any wildlife surveys conducted on the site be submitted with the application and for the applicant to provide any comments pertaining to the project from the FWC and the U.S. Fish and Wildlife Service (USFWS). The USACE provides a partial list of the listed species that occur in the Apalachicola River. Additional state- or federally listed mussel and turtle species that could be affected by the project include the Chipola slabshell [*Elliptio chipolaensis*, Federally Threatened (FT)], alligator snapping turtle [*Macrochelys temminckii*, Species of Special Concern (SSC)], Barbour's map turtle (*Graptemys barbouri*, SSC) and the Suwannee cooter (*Pseudemys suwanniensis*, SSC). We request that these species be added to the list of potentially affected species and impacts evaluated as part of this application. Additionally, the entire Apalachicola River and the Chipola River/cutoff has been designated as critical habitat for the Gulf sturgeon, Chipola slabshell, fat three-ridge (*Amblema neislerii* – Federally Endangered) and the purple bankclimber (*Elliptoideus sloatianus* – FT). The application does not include federally designated critical habitat; therefore, we request the applicant update these critical habitat designations and assess the project's potential impacts on these species.

The FWC, USFWS and USACE's contractor, Dr. Michael Gangloff, have been mapping and documenting listed mussel bank habitat and mussel occurrence locations over the past several years. New survey information assembled by Dr. Gangloff and the USFWS includes maps containing the location of deeper water habitats occupied by the listed mussel species, some of which is located near submerged large woody material. These maps and mussel locations were not included in the application package but are critical to identifying areas where snag habitat removal and placement could adversely affect these listed mussels; therefore, we request this information be included with the application as well as an assessment of the proposed snag removal and/or relocation activities on these documented locations of mussel bank habitat.

The USACE's request for a permit for removal or relocation of an estimated 1,000 snags annually substantially exceeds the numbers of snags relocated from 1990- 2004. The highest number of snags relocated during 1990-2004 was in 1998 with 395 snags relocated. The 15-year average is 137 snags relocated per year. The request to remove 1,000 snags annually could have substantially greater fish and wildlife resource impacts within this OFW than allowed by permits issued since the mid-1980's. We request that there be an analysis and explanation of the decline in snagging from 1990 to 2004 and a justification as to why substantially more per annum are being requested for removal than in the 1990-2004 average. The USACE has indicated that snags will be relocated to areas where flows are at or below 9,300 cfs. In order to determine if this flow value is still applicable under current operations, we request the daily time series data, an estimate of how many days in a given year, and during which months flows are predicted to be below 9,300 cfs, This should be based upon the past 38 years of record and current Revised Interim Operations Plan (RIOP) requirements.

The USACE cites the 1986 NMP as partial justification to conduct this project and also provides the same conditions from past DEP permits for operation and maintenance as further project justification; however, these conditions were previously denied by DEP. The DEP Notice of Denial (letter dated 10/11/05) and current available information indicates significant environmental problems with the NMP and its assumptions. These included activities related to snagging operations in addition to other activities conducted under past DEP permits. Without major modifications and multi-state and federal agency approval, the 1986 NMP should not serve as a reasonable justification or assessment of environmental impacts for this proposed project. We request the USACE provide further explanation on how the same proposed snag habitat removal and relocation methods or actions will now have a minimal impact upon the fish and wildlife resources and bank habitat of the Apalachicola River.

The USACE indicates that this project is needed so that they can respond quickly when emergency situations arise upstream. Given the current channel control point depths and a reduced 7-foot depth requirement for limited light loaded commercial barge traffic and the typical "snag boat," flows in excess of 15,000 cfs would be necessary for upstream or downstream navigation from the Jim Woodruff Lock and Dam to the Apalachicola Bay. Preliminary analyses suggest that any emergency barge traffic from May through November requires significant supplemental flow and draining of upstream reservoirs, and thus further reduces inflows to the Apalachicola River during subsequent months. Furthermore, the RIOP significantly reduces flow into the Apalachicola River based upon

current upstream reservoir conditions; however, without increased flows during summer and fall months, snagging operations and any commercial barge navigation cannot occur. FWC requests that the USACE provide the daily time series data, an estimate of the number days in a given year and months in which they predict there would be adequate flow to permit navigation and snagging operations, without dredging. This should be based upon the past 38 years of record and current RIOP requirements.

We would appreciate the opportunity to review this project again once the ERP application is complete and at that time will make our recommendation of consistency with our authorities under Chapter 379, Florida Statutes. If you need further assistance, please do not hesitate to contact Jane Chabre either by phone at (850) 410-5367 or at [FWCConservationPlanningServices@MyFWC.com](mailto:FWCConservationPlanningServices@MyFWC.com). If you have specific technical questions regarding the content of this letter, please contact Theodore Hoehn at 850-488-8792 or by email at [ted.hoehn@myfwc.com](mailto:ted.hoehn@myfwc.com).

Sincerely,



Bonita Gorham  
Land Use Planning Program Administrator  
Office of Conservation Planning Services

bg/th

Apalachicola River Maintenance Snagging\_16344\_062612  
ENV 1-5-2

cc: Curtis Flakes, COE, Mobile, [CESAM-PD@sam.usace.army.mil](mailto:CESAM-PD@sam.usace.army.mil)  
Don Imm, USFWS, Panama City, [donald\\_imm@fws.gov](mailto:donald_imm@fws.gov)

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NORTHWEST FLORIDA  
DEP



## FLORIDA WILDLIFE FEDERATION

*Affiliated With National Wildlife Federation*

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Post Office Box 6870, Tallahassee, FL 32314-6870

Phone: (850) 656-7113  
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June 21, 2012

Ms. Heather Mason  
Environmental Specialist  
Florida Department of Environmental Protection  
Submerged Lands and Environmental Resources Program  
160 W Government Street, Suite 308  
Pensacola, FL 32502

RE: Maintenance Snagging of the Apalachicola River portion of the Apalachicola-Chattahoochee-Flint Rivers (ACF) Federal Navigation Project. File No. 07-0129424-008-EI. Application number: 129424-008. U.S. Army Corps of Engineers. Jackson, Gadsden, Calhoun, Liberty, Gulf, and Franklin counties, Florida.

Dear Ms. Mason,

The Florida Wildlife Federation has reviewed the application by the U.S. Army Corps of Engineers (Corps) for a proposed 10-year Environmental Resource Permit (ERP) and water quality certification for the maintenance snagging on the Apalachicola River from River Mile 0.0 to River Mile 106.4.

The Corps indicates that this project is needed so that they can respond quickly should emergency situations arise upstream. However, based upon the draft 2010 Water Control Plan Scoping Report and historical flow records, navigation will only occur if there is adequate water in the system which typically occurs only in the late winter and spring. Currently flows close to 19,000 cfs at the Chattahoochee gage are required to provide a channel depth adequate for commercial interests. These "high" flows have not reached this level for several years for any length of time. In order for the Corps to provide adequate water depth in an "emergency situation", the upstream reservoirs would be significantly depleted for the short window for navigation. Such depletion of upstream reservoir storage would likely result in triggering reduced flows into the Apalachicola River based upon the May 2012 Revised Interim Operations Plan (RIOP). Artificially reduced flows would have a significant effect upon the threatened and endangered species, other fish and wildlife and their habitat, floodplain forests, and the Apalachicola Bay. Should the Corps attempt to employ "navigation windows," as were conducted previously in the 1980s and 90s, major impacts to the spawning and survival of fishery resources in the Apalachicola River are likely to occur as previously documented by the Florida Fish and Wildlife Conservation Commission (FWC). Navigation windows would likely

result in an increased mortality of the federally endangered fat three-ridge mussel (*Amblema neislerii*). Therefore, the Corps' justification for this project based upon a hypothetical emergency situation is clearly contrary to its own documentation and operations and clearly not in the public interest of the State of Florida or the upstream States of Alabama and Georgia.

Commercial navigation on the ACF system has effectively ceased since dredging ended during the droughts of 2000. Previously, commercial navigation was extremely limited and the ACF was the most expensive waterway to maintain in the US, according to the Congressional Budget Office. Recreational boaters do not need a congressionally authorized and maintained navigation channel. Most recreational boaters are able to easily avoid obstacles and navigate even at the extreme low flows that the Apalachicola River has been experiencing.

The Corps has provided minimal information and supporting information to justify or provide reasonable assurance that the proposed project will not impact the fish and wildlife resources of the Apalachicola River as well as comply with State ERP and Sovereign lands permitting requirements. The Corps relies on the outdated 1986 *Apalachicola-Chattahoochee-Flint Waterway Navigation Maintenance Plan* (NMP) and past permits as their supporting information. The Florida Department of Environmental Protection (DEP), with the expertise and support of the FWC, Northwest Florida Water Management District (NFWFMD), and the environmental community, denied the Corps last permit application in 2005 for dredging, disposal and snagging operations (see attached letter). The reasons for the denial clearly showed that the assumptions of past permits and the NMP were in fact detrimental to the resources of the Apalachicola River. Information over the past six years, compiled by the FWC and the U.S. Fish and Wildlife Service (USFWS), has increased our knowledge of the life history requirements of several listed species and their occurrence locations and fishery resources within the Apalachicola River. There is nothing in the current application that addressed DEP's reasons for the previous denial or provides new documentation that the proposed activity will have minimal or no effect upon the fish and wildlife resources and minimizes erosion along the riverbanks. It is also curious that none of the other state or federal resource agencies were identified as being present in the April 27, 2012 pre-application meeting where these application issues should have been addressed.

The Corps has neglected to provide DEP any detailed information on the potential impacts to State and federally listed species as required by the application. Instead the section addressing listed species protection is left blank and relegated to future coordination with the USFWS. No consideration or listing of other State listed species is even provided. Instead of providing current information, the Corps supplied old information referencing the 1999 bank habitat mapping effort which was a requirement of Special Condition 20 of the previous DEP permit. The Corps clearly has or can readily obtain information on the locations and habitat requirements of the federally listed mussel species based upon the May 2012 RIOP. DEP, with the assistance of the FWC and USFWS, previously developed specific conditions necessary to protect the threatened and endangered species related to the proposed Corps activities. The removal of important snag habitat and the unidentified information on relocation of this snag habitat - where it will be taken from and where it will be placed, could have a deleterious effect upon the threatened and endangered mussels and other listed species within the River.

The Corps is requesting approval for removal or relocation of an estimated 1,000 snags annually with the snag habitat being removed or relocated from the main channel or cut from the riverbank. The request for such a high number has not been reached or recorded since the 1970's and 1980's. The Corps is also suggesting placing the snag habitat at elevations (9,300 cfs) that would effectively remove their possible use as habitat by fish and wildlife resources. The Corps indicates in the "Analysis of expected effect of the proposed activity on the Apalachicola River System" that there would be "long-term beneficial impacts to create structures for habitat by relocation of the snags." Snag habitat as a source of cover and food sources for fish and wildlife has been well documented by the FWC and academic community. Snag habitat is also well known to reduce erosion along banks. While the Corps provided a copy of the 1998 Light et.al. report, they have not provided new reports developed by Light et.al. or developed by the FWC documenting the importance of snag habitat to fish and wildlife resources. Further, they have not addressed the issues related to snag habitat contained in the 2005 DEP letter of denial. The idea that removing and relocating snag habitat from where it naturally occurs to another location and that by doing so it will provide "long-term benefits" is astounding. The request for removal of snag habitat from the riverbanks and for removal of snag habitat at such high numbers, or at all, is contrary to our current knowledge; its importance in maintaining biological integrity; reducing bank erosion; and is definitely not within the public interest.

The DEP in 2005, along with FWC and the NFWFMD, documented conflicts with State statute and rule and denied a permit application from the Corps that contained similar provisions as the proposed application. The Corps has proposed nothing more than a return to part permit and operational practices which DEP and the other State resource agencies found to be detrimental to the State's resources. Further, the Corps will need Congressional funding to conduct any navigation operations on the system. This has historically been opposed by the State, the environmental community, and its Congressional delegation. The Florida Wildlife Federation strongly opposes the issuance of the proposed permit and urges the DEP, with the support of the FWC and NFWFMD, to deny the permit application and water quality certification.

Sincerely,



Manley K. Fuller  
President

Cc: Senator Bill Nelson  
Herschel Vinyard, Secretary, DEP  
Nick Wiley, Executive Director, FWC  
Jon Stevenson, Executive Director, NFWFMD  
Dan Tonsmeire, Apalachicola

Comments Submitted to The Florida Department of Environmental  
Protection  
In regards to the ACOE Permit Request to Conduct Snagging operations  
on the Apalachicola River  
June 23, 2012

As President of the Help Save the Apalachicola River Group and as one who has for many years researched the history of the Apalachicola River in relation to the Mobile Army Corps of Engineers, I ask that the following comments be given serious consideration.

I believe that a further injustice would be perpetrated on this River System, should the permitting determination be evaluated on the request alone. At least a cursory look back in history is needed and questions asked. What kind of "snags". Why are there so many? What purpose could they serve? Given just a cursory look into past history, the most important question is, "Should this project be approved"?

In years past this river was dredged, cut, dynamited, had thousands of trees cut from the banks, and re-routed. Dredged spoil was pumped out into the floodplain. Later spoil was allowed to be placed on the banks of the river. During the 1970's, spoil was allowed to be placed within the riverbanks. In the 1992 Revised maps of spoil sites on the Apalachicola River, Prepared by the Northwest Florida Water Management District and included in the COE Permit#0129424-001-DF, there were 140 spoil sites on this 106 mile long river {before the mutilation of the river began, the river was stated by the COE in 1946 to be 112 miles long} many were one-half miles long. Spoil Site 53B, across the river from Chipola Cut off, was approximately one mile long and contributed to an excess amount of water entering the Cut off which has resulted in problems to property owners and a hazard on a public road. The map also depicts 26 dike fields. Over the years, property owners who complained of loss of property due to spoil sites and dike fields causing opposite bank erosion were sent form letters from the COE stating that "Rivers meandered naturally." After some time had passed, there was no question as to what caused the erosion.

For many years approximately one million cubic yards of spoil was dredged from the ACF, the majority of which was dredged from the Apalachicola River. In the floodplain, on the banks, and within the banks of the river, this spoil caused degradation to the entire system. During seasonal high water the spoil was washed into the sloughs and creeks. Deposit sites were located just upstream of most of these water ways which fed life giving water to the swamps and flood plain. The rate of degradation in the system escalated during the 1970's when within bank spoil sites were approved. Off river lakes and ponds begin to fill with sediment. These water bodies were a source of drinking water for many land species. So many functions that existed for many of the aquatic and land species were impacted by the dredged spoil.

A question asked by a USGS staff person who came to our area while working on a report concerning the floodplain was "Where did all the sand come from"? The Apalachicola River in its natural state was a deep, narrow river. It is now a wide, shallow river. Documents from the 1940's and onward tell the sad story of the mutilation of this system while those in a position to protect, didn't. When Water Quality Permits were first required of the COE in the 1970's, The people vested with the issuance of the permits were aware of the damage being done and required that certain things were done as mitigation, i.e. open Virginia Cut, reconnect Point Pollaway but these things and others were never done. Over the years it just seemed to turn into a political game with the COE being too powerful to buck. The damage done to this treasure was a blaring dark spot on the State of Florida. Then miraculously the State denied the COE a Water Quality Permit and the Apalachicola has had a few years for convalesce. But many more years are needed.

The maps of the river that are included in the COE Permit Request are not reliable as to the number and size of the spoil sites. Also they are depicted as being located on the banks of the river when in reality they are "Within" the banks of the river. Missing also are the dike fields.

The "snags" that are now the subject of concern {or a foot in the door} are mainly trees that have fallen into the river as a result of within bank spoil sites and dike fields which has caused opposite bank erosion. If the trees are removed there will again be an open wound where more erosion will take place. Spoil sites that were located on point bars which caused the opposite bank to erode has also caused trees that lined the eroded bank to fallen in. They are a protection for that bank and could possibly catch some of sediment in the channel {which contains an overabundance} and build up that bank and combat the point bar, which continues to enlarge and creep toward the mid-channel. There are several deep bends located in the middle section of the river which are on the point of being eroded to the extent that in moderate high water, flow in the channel has created a ditch across the neck of the bend, threatening to cut the bend completely off. A plan or "natural meandering?" Why would a spoil site be located on a point bar in the first place? The practice of mechanically cutting off bends of the river was stopped years ago but like the old saying goes, "There is more than one way to skin a cat." Refer to the 1992 maps prepared by the NFWFMD of the dike fields and spoil site maps. Now, twenty years later, the necks of the bends are much more narrow. Concerning another related issue, a map of the river depicting all of the sloughs and creeks, superimposed on the referenced map will show a spoil site just up-stream and when the water level rises, spoil is washed into the mouths of these water ways which was one way to keep the water in the river for almost, non-existent commercial traffic.

Public monies have financed the many failed "restoration Projects" conducted on the river by the COE and one major project at Battle Bend which cost taxpayers two million dollars and was touted to result in flow from the river again flowing through the bend. During seasonal high water it now flows into two inlet channels at the upstream mouth of the bend and into a miles long mud flat "behind" Battle Bend and on south. I noticed in the Request for Permit, one of the projects listed under the category of "Readily implementable Maintenance Options" is this; Performance of appropriate mitigation actions {i.e. maintain open lower entrance into Battle Bend}.

Part of the history of Battle Bend is that this deep bend was mechanically cut from the river in the 1960's by the COE. In order to stop the water from entering the upstream mouth of the severed

bend, dredged spoil was placed in the upper section several times, {all according to COE documents}. This action failed and the spoil site just upstream of the upper mouth of the bend was extended across the mouth creating a sand berm across the mouth. After this failed, a borrow pit was dug just off bank and an earthen berm was built. This was somewhat successful but the lower mouth continued to close with sediment from the river during high water. On a couple of occasions, the COE excavated a channel into the lower mouth but on the first excavation, placed the spoil on the upstream bank of the bend which eroded back into the bend along with sediment from the river.

Three years ago, the FWCC proceeded with Phase one and two of a restoration of Battle Bend {The two million dollar one} that included dredging a 200-foot by 1000 foot channel into the lower mouth. A plug was left at the mouth while the dredging proceeded. Several miscalculations were made with the planning that resulted in a devastatingly failed project. Really simple issues like believing that sloughs inside the bend drained into the bend when in fact they drained out of the bend. It was unknown at the time by people who made decisions about the river that sloughs and creeks would flow in different directions at different times. When the river rose, waterways that ran into the river would run backward while filling the swamp and sloughs that flowed away from the river would flow into the river when the level of water in the river fell until the higher level in the swamp was lowered. This type of misunderstanding has caused other problems.

When the powers that be realized that during high water, the flow from the river entered into the downstream mouth of Battle Bend {as it had from the time the bend was cut from the river} Phase two of the project came into play and the two inlet channels were dredged in the upper mouth. But on into the bend, spoil that the COE had placed in the mouth had the channel plugged. So, the water entering the upstream mouth can't flow through the bend. NOW, comes the COE maintaining that keeping the lower mouth open is something that can be done right away. The plug that was left in the lower mouth by the FFWCC Contractor for dredging the big channel was never removed. We were informed by the person in charge of the project that the contractor "inadvertently" left the plug and was going to return and remove it. It now has willow trees growing on it and the 200 by 1000 foot dredged channel is behind the plug.

The Apalachicola River was never suited for the size barges that were allowed. People in the late 1800 built shallow draft boats and worked with the river and it's changing water levels. Many times in the past, people in this middle river area have sit on point bars and watched as a tug boat pushing two large barges {with a draft of 8-9 feet when loaded} struggled to maneuver around a bend of the river. The only way that would often succeed would be to crash into the bank, turn a little and repeat the procedure over and over until the turn could be made. This was the way it was even after all of the dredging, cutting, dynamiting, and bend easing.

The COE cannot "fix" the river system. Only nature itself can accomplish that feat and it will take many years. Of all the restoration projects carried out, there have been no successes. Many have caused greater problems or created new ones. Past actions will cause problems for years to come but given time, this river will regain it's glory if it is allowed and if the State of Florida will make amends for omissions in the past by protecting the system and ensuring that the water it needs is available. There is much more at stake than the three ridge and purple bank climber mussels. The river, the swamps and floodplain, {which have never really been studied} and the bay are together

an enormous treasure that Florida should be proud. Of all the parts, the Apalachicola Bay seems to have more recognition but it is not a stand alone but requires the seasonal high water to feed the bay and all it's species.

The contention that the river is the only mode of transportation for some cargo is misleading. Any thing that can be transported up the river can be moved by road, rail or air. If the cost in money and environmental destruction for years of maintenance to be able to move a certain cargo once in so many years are added up, a new road could be built instead.

Marilyn Blackwell  
President: Help Save the Apalachicola River Group  
4812 County Road 381  
Wewahitchka, FL 32465-6960

# APALACHICOLA RIVERKEEPER®

SAVING AN AMERICAN TREASURE

June 26, 2012

Ms. Heather Mason  
Florida Department of Environmental Protection  
Submerged Lands and Environmental Resources Program  
160 Governmental Street, Suite 308  
Pensacola, FL 32502

**RE: Application Number 129424-008 - U.S. Army Corps of Engineers - Maintenance Snagging of the Apalachicola River in Jackson, Gadsden, Calhoun, Liberty, Gulf, and Franklin Counties, Florida**

Dear Ms. Mason:

On behalf of our Board of Directors and a nearly 1000 Membership consisting of hundreds of residents living in the counties along the Apalachicola River, and hundreds more living in Northwest Florida, Apalachicola Riverkeeper strongly objects to issuance of a permit for the snagging activity proposed on the Apalachicola River in the referenced application.

## **Degradation and Loss of Riverine Habitat**

The proposed snagging activity will result in loss and degradation of riverine habitat and the overall biology of the ecosystem. The Apalachicola River is an alluvial river with most areas of the river bottom made up of sediments ranging in size from gravel to fine clay. In the Apalachicola, habitat diversity depends on the natural scouring process to create different environments, including hard substrates (such as limestone ledges), and woody and twiggy substrates. Limestone ledges present in the upper Apalachicola have been significantly reduced by Corps activity in the past. Scouring creates beneficial habitats including holes, hard clay banks and deeper channels. The beneficial habitats created by the scouring process have been reduced by massive in-bank dredge material deposition. This deposition has created extensive sand bottoms throughout the length of the river, making the remaining woody habitat and limestone ledges even more critical to maintain and protect.

Woody material in the flowing channel is one of the most important components of habitat diversity in the river. Tree tops that have fallen into the river provide cover for small fishes by physically shielding them from predators and creating eddies where fish can get out of the current to take advantage of food being brought to them by the current. Older, larger woody material, primarily tree trunks and large branches, persevere in the the environment for longer periods and provide the same cover and current-slowing opportunities for larger fish. The larger woody material also helps increase bottom depth diversity by forcing the current to scour around it.

Woody material located in the river's cross sections is also important. Trees that end up on the inside bend of the river are less important as fish habitat because they tend to be covered in silt by the normal sedimentation process. Trees located on the outside bends and banks are not covered by silt and are extensively used by wildlife and fish. This woody material is targeted on a large scale by the Corps' advanced snagging proposal. The proposal allows for the entire deeper water cross section of the river to be snagged from the top of the outside banks out into the deeper river.

The preponderance of snags are along the lower bank in shallower water during low flows. During dry periods and lower flows, woody material in the water is particularly important because it is the only habitat available. The duration and extent of low flows in the Apalachicola River has increased as a result of upstream water use; Corps of Engineers reservoir management, and less rainfall due to climate change. Relative to the present diverse habitat provided by the woody debris, the river bank and bottom condition are barren. History has shown that snagging reduces fish habitat in the overall main river channel. Consequences from the proposed activity could go well beyond those resulting from past river snagging.

The recent revision of the Corps' Interim Operation Plan (RIOP) lowers flows for extended periods. The RIOP disconnects the sloughs and tributaries from the main river channel, lowering flows in the main river channel and resulting in an overall reduction of habitat available to the fish. Maintenance of the remaining woody habitat in the main river channel is critical. The snagging activity proposed will result in additional loss and degradation of critical riverine habitat. No mitigation of these impacts is proposed. This loss is unnecessary and unacceptable under the federal and state designations and the guidelines and laws pertaining to the management of the Apalachicola River and Bay.

### **Undefined Emergency Use**

The Corps' definition of an upstream "emergency" is not clear. Nor is it clear how often these emergencies might occur. This term and any associated response must be further clarified and defined. Because of the extremely deleterious effects on the aquatic life of the Apalachicola River, the Corps should more fully assess all associated risks and appropriate responses to any potential/future emergencies on the River.

Apalachicola Riverkeeper strongly urges the DEP to establish a systematic review process in order to lead to a shared understanding for what constitutes an "emergency" upstream. Such a process would keep agencies, organizations and the Corps informed. This would all interested parties to adequately prepare and respond in emergency events. We strongly urge that DEP deny the current Corps' snagging proposal because of its biological impacts.

### **Proposal Contrary to Conditions of Previous Permit Denial**

The application proposes two (2) methods for snag removal. Both methods provide for relocation of approximately 1000 snags from the river and represent a significant increase in the number of snags moved. The reasons cited (summarized below) for denying Corps snagging

activity is documented in the *Consolidated Notice Denial for the Wetland Resource Permit (2005)* are:

- IV. A.1.b Biological Integrity was compromised by the unrestricted practice of snag removal and has caused unacceptable reductions in the biological integrity of the system. The practice of snag removal will cause significant degradation of the ambient biological integrity of an Outstanding Florida Water (OFW).
- IV. B. Sovereign Submerged Lands use requires Aquatic Preserves to be managed for the maintenance of essentially natural conditions, the propagation of fish and wildlife and public recreation, including fishing and hunting. The snagging activities (as proposed) do not meet these requirements.
- IV. C. The Coastal Zone Plan review found that the activity was inconsistent with the Florida Plan. This plan outlined the change in Section V. *Proposed Changes* (below) to the snagging activity to make it consistent and permissible.
- V. Proposed Changes – For approval of snagging, this section required the project to reduce snag removal to minimize the loss and degradation of habitat.

The loss of woody snag habitat will increase as the number of snags removed increase. The proposed location of snags above the current low water conditions that prevail as a result of the Corps' RIOP also reduces snag habitat. The increase in the snagging activity and associated loss of habitat is contrary to the associated permit and the management guidelines of the Apalachicola River and Bay.

#### **Future Navigation Channel Availability**

A recent report entitled "*An Evaluation of the Common Ground between Environmental and Navigation Flows in the Apalachicola-Chattahoochee-Flint Basin*" suggest alternative management practices that would allow for safe navigational use of the Apalachicola River. The Corps has the authority and responsibility for managing flows and should establish a season during which commercial barge traffic could utilize the river for transport of goods and supplies. The navigation season would occur during the typical high and medium flows that would also accommodate the ecological functions of the Apalachicola River Ecosystem.

A copy of the report was provided to the Corps in April, 2012 for their consideration. This report provides a potential alternative approach to managing the basin to meet the State of Florida's requirements to maintain and protect the ecological functions of the Apalachicola System and the Corps' congressionally authorized purpose of navigation. DEP should require the Corps to **fully** assess the need for river snagging under high flow conditions. Establishing navigation seasons would be more appropriate.

## Conclusion

The Apalachicola Riverkeeper recommends that the permit as currently proposed, be denied. On behalf of the Apalachicola Riverkeeper, our Board of Directors and the entire Riverkeeper membership, I thank the Department of Environmental Protection for its consideration of our recommendation. If you have questions regarding these comments and recommendation, or need additional information, I may be reached at (850) 508-7787.

Sincerely,



Dan Tonsmeire  
Executive Director and Riverkeeper



July 23, 2012

Additional Comments Submitted in Reference to  
COE Permit Request for Snagging on the Apalachicola River  
File No: 07-0129424-008-EI  
Application NO: 129424008

Included in the Departments Request for Additional Information, a copy of the 10-11-2005 denial to the ACOE of a Water Quality Permit was included. One of the failed requirements of the ACOE, as stated in the document was the restoration of Site 39 on the Apalachicola River. Please consider the following comments on this issue.

The Department issued a permit to the Northwest Water Management District on 7-28-2006 for the restoration of Site 39, which involved the removal of the spoil, and the removal of trees to accommodate a road to access the site. . The District turned the Project over to the Gulf County Board of County Commissioners who in turn, turned it over to the Gulf County Economic Development Committee.

Site 39 disposal site, located off river bank at mile 36 is approximately two-thirds of the size of Sand Mountain, located directly across the river from Site 39. This site was last deposited on years ago and since that time; vegetation has been established on the outside slopes of the site that prevents erosion. The weight of this amount of spoil on soft ground would assure a sizable depression would be created when the spoil is removed, much larger than the stated amount of six hundred + cy of material to fill the created depression. Where would the fill be obtained that would be compatible with the native soil? The prevention of erosion of the applied new material during seasonal high water was not addressed. There are several questionable outcomes to this possible plan being carried out. Consideration should be given to the possibility of removing a scar and creating a wound.

Degradation to the system has already taken place involving this issue. During the last couple of days that the permit was viable, a road was constructed with a bulldozer by pulling down spoil from the summit of the spoil, down to the waters edge that in turn caused erosion.

Also, An off-loading site was created just off the Chipola River adjoining the Pumping Station which pumps water from the Chipola River into a seventeen-mile long canal leading to the Port St Joe Water Treatment Plant, supplying potable water to that area. This would seem an ill-advised plan in which barges were pushed up to the withdrawal pipes supplying drinking water.

The Chipola River is much smaller than the Apalachicola and has not been subjected to the detrimental maintenance practices, as has the larger river. Also, in order to reach the off-loading site from Site 39, it would be required for the barges to either travel upstream on the Apalachicola and then downstream on the Chipola or downstream on the Apalachicola, then upstream on the Chipola. Either route would assure damage to the Chipola. All told, this Restoration Project has cost approximately one-half million dollars. Please consider these comments.

Forgive me if I repeat myself concerning the two problems in the system that concerns me. Number one is the increased flow in the Cut-Off from the Apalachicola over to the Chipola between River Mile forty-one and forty two. When the one mile plus, within bank spoil site number 53B was allowed to be established across the river from the mouth of the cut-off, the flow on the Apalachicola was directed toward the mouth of the cut-off which, over time, has increased the flow in the cut-off resulting in less water flowing downstream in the Apalachicola which has caused a sand shoal across the Apalachicola at Swift Slough.

The increase in flow in the Cut-off has caused erosion that has impacted private property and eroded a bank, which is dangerously close to Bird Parker Drive {a street that the school bus travels on}. The Board of County Commissioners now have a Permit Request {Application number: 198544-003} under review with the Department to have work done at this site {please, closely review the engineers report in this request}.

Concern number two is at Battle Bend where the bend was cut from the river in the 1960s, after which the COE repeatedly placed spoil in the upstream mouth of the bend to prevent water from entering the bend. A spoil site that was located just above the mouth was extended across the mouth and a sand berm was created. Later a barrow pit was dug off bank and an earthen berm built across the mouth. The two million dollar Restoration Project at Battle Bend, attempted by the FFWCC, was to restore water flow through the bend and increase off river habitat for aquatic species.

A 200 by 1000-foot channel was dredged at the lower mouth but the plug {left in place while dredging the channel} at the mouth was never removed so access to the bend is restricted. Two inlet channels were dug at the upstream mouth which allowed water to enter during the high water season but the water which entered, encountered spoil placed by the COE which had eroded a short distance into the bend. The flow entering the inlet channels was diverted east into the floodplain and to a mud flat which runs for miles parallel to the river from Florida River to Kennedy and Brushy Creeks.

A few years ago, American Rivers funded an Assessment Report of the Apalachicola River conducted by a very insightful geomorphologist {Matt Kondolf} which I believe the Department has a copy of. His determination was that the only way to "Fix" Battle Bend would be to reconnect it to the main stem of the river. I believe he may have been right. He has consulted on rivers here and abroad and would seem a good resource. The light is always darkest under the candle.

Should actions be considered on either of these problems, when reviewing the history of the COE and this system; I sincerely hope that the Department will live up to its title. The Apalachicola River System does not and has not ever had a strong defender who would fight for the preservation of this often-abused lady. Even now, after twenty-two years of political yapping, the COE is in charge of the water gates.

I very much appreciate this opportunity to speak.

Marilyn Blackwell  
Help Save the Apalachicola River Group  
4812 County Road 381  
Wewahitchka, FL 32465-6960



**FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**  
160 W GOVERNMENT STREET, SUITE 308  
PENSACOLA, FLORIDA 32502-5794

RICK SCOTT  
GOVERNOR

JENNIFER CARROLL  
LT. GOVERNOR

HERSCHEL T. VINYARD JR.  
SECRETARY

**NOTICE OF INTENT TO ISSUE**

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
STATE OF FLORIDA

**Environmental Resource Permit**

**In the Matter of an  
Application for Permit by:**

**Applicant:**

U.S. Army Corps of Engineers, Mobile District  
P.O. Box 2288  
Mobile, AL 36628-0001

**Authorized Agent:**

Curtis M. Flakes, Chief, Planning and Environmental Division  
U.S. Army Corps of Engineers, Mobile District  
P.O. Box 2288  
Mobile, AL 36628-0001

**Jackson, Gadsden, Calhoun, Liberty, Gulf, and Franklin Counties**

**Apalachicola River Snagging**  
Application No.: 07-0129424-008-EI

**DATE:**

January 31, 2013

## **SUBMERGED LANDS AND ENVIRONMENTAL RESOURCES PROGRAM**

### **NOTICE OF INTENT TO ISSUE**

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
STATE OF FLORIDA

Application Number: 07-0129424-008-EI  
Applicant: U.S. Army Corps of Engineers, Mobile District  
Project Name: Apalachicola River Snagging  
Counties: Jackson, Gadsden, Calhoun, Liberty, Gulf, Franklin

### **NOTICE OF INTENT TO ISSUE ENVIRONMENTAL RESOURCE PERMIT**

The Department of Environmental Protection gives notice of its intent to issue an environmental resource permit under Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, Florida Administrative Code (F.A.C.) for the activity described below (draft copy of permit attached). Issuance of the environmental resource permit also constitutes certification of compliance with state water quality standards pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341;

The Department acknowledges that maintenance snagging of the federal navigation channel falls within one of the federal powers listed in the Submerged Lands Act under 43 U.S.C. 1311(d) or 43 U.S.C. 1314, and, under those provisions, needs no authorization from the Board of Trustees to utilize sovereignty submerged lands. However, under the provisions of the Coastal Zone Management Act (16 U.S.C. 1451-1465) this activity requires the State of Florida's concurrence with a determination of consistency with the sovereignty submerged lands provisions of Florida's approved Coastal Management Program prior to federal approval of the proposed activity. The Applicant has provided affirmative reasonable assurance that the maintenance snagging activities are consistent with the sovereignty lands provisions of Florida's approved Coastal Management Program.

Where applicable (such as activities in coastal counties), issuance of the environmental resource permit also constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Management Act.

### **I. DESCRIPTION OF THE PROPOSED ACTIVITY**

The applicant, U.S. Army Corps of Engineers, Mobile District, applied on May 29, 2012 to the Department of Environmental Protection for a permit/water quality certification to conduct maintenance snagging (relocation of tree snags out of the federal navigation channel) in the Florida portion of the Apalachicola, Chattahoochee, and Flint Rivers (ACF) Federal Navigation Project.

The activity is located in the Apalachicola River between River Mile 0.0 and River Mile 106.4 in Class III, Outstanding Florida Waters (entire Florida portion of river), and Apalachicola Bay Aquatic Preserve (River Miles 0.0 – 4.5) in Jackson, Gadsden, Calhoun, Liberty, Gulf, and Franklin Counties.

The navigation project maintenance activity includes the removal and sinking or nearby relocation of tree snags hazardous to navigation on the Apalachicola River from River Mile 0.0 to River Mile 106.4. This authorization will allow the permittee to determine which snags pose a hazard to navigation and remove only those snags from the federal navigation channel.

## **II. AUTHORITY FOR REVIEW**

The Department has permitting authority under Part IV of Chapter 373, F.S., and Chapter 62-346, F.A.C. The activity qualifies for processing as an environmental resource permit pursuant to Section 373.4145, F.S. The activity is not exempt from the requirement to obtain an environmental resource permit. Pursuant to Operating Agreements executed between the Department and the water management district, the Department is responsible for reviewing this application.

## **III. BACKGROUND/BASIS FOR ISSUANCE**

### **A. General**

The proposed activity is to conduct maintenance snagging (relocation of tree snags) that pose a hazard to navigation on the Apalachicola River from River Mile 0.0 to River Mile 106.4. Previous authorizations for both dredging and snagging activities (Permits 0129424-001 through 0129424-006) expired on February 25, 2005. A second request to extend the dredging and snagging permit was denied on April 13, 2005 because the project did not meet the conditions for issuance of a wetland resource permit under Rule 62-312.080, F.A.C. (File No. 0129424-007-DF). No dredging or snagging maintenance has occurred within the federal navigation channel since the authorizations expired. The applicant applied for a snagging-only permit on May 29, 2012.

Several state and federally listed species are present in the proposed project area. Species most likely to be affected by this project include:

- Gulf Sturgeon (federally threatened)
- Fat threeridge mussel (federally endangered)
- Purple bankclimber mussel (federally threatened)
- Chipola slabshell mussel (federally threatened)

The applicant has justified the need for this project as follows:

- Maintenance of a safe navigation channel is critical to ensuring the Corps can respond quickly should emergency situations arise at upstream projects requiring specialized equipment or parts that can only be transported by barge or boat.

These activities may only be necessary due to policies which are uniquely controlled by the applicant. In fact, the hazards caused by snags may be reduced or even eliminated by raising the river level—a policy over which the applicant has control. However, the proposed activities meet the requirements of Chapter 62-346, F. A.C. and therefore qualify for an Environmental Resource Permit.

B. Specific Regulatory Basis for Issuance

Pursuant to Rule 62-346.301, F.A.C., in order to obtain an individual permit, an applicant must provide reasonable assurance that the project will meet certain conditions. The conditions and how they will be met are described below:

1. *Will not cause adverse water quantity impacts to receiving waters and adjacent lands;*
  - a. The snagging activity is not likely to cause adverse water quantity impacts.
2. *Will not cause adverse flooding to on-site or off-site property;*
  - a. The permit will be conditioned to prohibit relocation of snags in ways that are likely to cause blockages of creeks, streams, or sloughs, or cause other blockages and flooding.
3. *Will not cause adverse impacts to existing surface water storage and conveyance capabilities;*
  - a. The snagging activity is not likely to cause adverse impacts to existing surface water storage and conveyance systems.
4. *Will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters;*
  - a. The permit will be conditioned to require the applicant to complete a Section 7 consultation with the U.S. Fish and Wildlife Service as required under the Endangered Species Act of 1973 before any snagging activities are undertaken. The condition will require the applicant to adhere to any listed species management criteria required as a result of the consultation.
  - b. The permit will be conditioned to prohibit impacts to adjacent wetland areas, marsh grasses, shorelines, or other valuable habitat.
5. *Will not cause a violation of the water quality standards set forth in Chapters 62-4, 62-302, 62-520, 62-522, and 62-550, F.A.C., including the provisions of Rules 62-4.243, 62-4.244 and 62-4.246, F.A.C., the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), F.A.C., subsections 62-4.242(2) and (3), F.A.C., and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C.;*
  - a. The provisions of Rule 62-4.243, F.A.C. do not apply to this activity.
  - b. A mixing zone of no more than 150 meters downstream from each snag removed will be conditioned in the permit. This satisfies the provisions of Rule 62-4.244, F.A.C.

- c. Pursuant to the provisions of Rule 62-4.246, F.A.C., the permit will be conditioned to require turbidity monitoring and reporting. At no time will the turbidity at the edge of the mixing zone be above background levels, or the activity shall be stopped until the violations are addressed and corrected.
- d. The activity will meet the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b) as follows:
  - i. (1)(a): The activity meets this provision because it meets the requirements of Section 373.414(1), F.S.
  - ii. (1)(b)(1): The proposed project is important to and beneficial to the public health, safety, or welfare because it provides a means for the Corps to transport large items generally used for the public benefit upstream, such as the replacement power generators transported by barge on the river in December, 2000.
  - iii. (1)(b)(2): Turbidity associated with snag relocation and removal activities is expected to be short-term and minimal due to the sandy nature of the substrate. The activities will be conducted outside of spawning season for certain fish species and the Gulf sturgeon unless specific written approval to conduct activities during spawning season is granted by the Department. Minimal turbidity associated with the activities is not likely to adversely affect conservation of fish and wildlife, including endangered or threatened species, or their habitats.
  - iv. (1)(b)(3): For the reasons described in iii above, the proposed discharge (turbidity) is not likely to adversely affect the fishing or water-based recreational values or marine productivity in the vicinity of the proposed discharge.
  - v. (1)(b)(4): This provision is not applicable to the proposed activity.
- e. The activity will meet the provisions of Rule 62-4.242(2), F.A.C. because it is considered by the Department to be clearly in the public interest (described later in this document), and will comply with the requirements of 62-4.242(2)(a)(2)(b), F.A.C. as conditioned in the permit (temporary mixing zone), and the requirements of 62-242(2)(b), F.A.C. because the activity is being conducted to maintain a permitted facility (federal navigation channel). For the portions of the river north of Gulf County, the provisions of 62-4.242(2), F.A.C. do not apply to the proposed snagging activities pursuant to Rule 62-4.242(2)(f)(1), F.A.C.
- f. The provisions of Rule 62-4.242(3), F.A.C. do not apply to the Apalachicola River.
- g. The activity meets the provisions of Rule 62-302.300, F.A.C. because it meets the requirements of subsection 373.414(1), F.S. (Additional criteria for activities in surface waters and wetlands) and Rule 62-346.302, F.A.C. (Additional conditions for issuance of individual and conceptual approval permits) pursuant to 62-302.300(17), F.A.C.

6. *Will not cause adverse secondary impacts to the water resources and not otherwise adversely impact the maintenance of surface or ground water levels or surface water flows established pursuant to Section 373.042, F.S.*

- a. The permit will be conditioned to minimize adverse secondary impacts that may occur to the water resources from the proposed activity. Such secondary impacts may include erosion, sedimentation, or damage to wildlife and/or listed species habitat. The permit will contain conditions that will require snags be sunk or relocated in a way that will prevent the above mentioned secondary impacts from occurring.
7. *Will be capable, based on generally accepted engineering and scientific principles, of being performed and of functioning as proposed;*
    - a. The permit will be conditioned to ensure compliance.
  8. *Will be conducted by an entity with the financial, legal and administrative capability of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit, if issued; and*
    - a. The permit will be issued to the United States Federal Government.
    - b. The applicant has legal capability to ensure compliance with the permit in accordance with the Federal Navigational Servitude granted by the Commerce Clause of the U.S. Constitution, and by the project area's designation as a federal navigation channel.
  9. *Will comply with any applicable special basin or geographic area criteria rules incorporated by reference in this chapter. When karst features exist on the site of a proposed stormwater management system, in addition to paragraphs (a) through (h) above, the applicant must provide reasonable assurance that untreated stormwater from the proposed system will not reach the Floridan Aquifer through sinkholes, solution pipes, or other karst features.*
    - a. This provision does not apply to the project.

Pursuant to Rule 62-346.302, F.A.C., in order to obtain an individual permit, an applicant must provide reasonable assurance that the project will meet certain additional conditions. The additional conditions and how they will be met are described below:

- (a) *Located in, on, or over wetlands or other surface waters will not be contrary to the public interest, or if such an activity significantly degrades or is within an Outstanding Florida Water, that the activity will be clearly in the public interest, as determined by balancing the following criteria as set forth in sections 10.2.3 through 10.2.3.7 of Applicant's Handbook Volume I adopted by reference in Rule 62-346.091, F.A.C.:*

Based on the seven (7) items evaluated below, the Department considers the activity to be clearly in the public interest.

1. *Whether the activity will adversely affect the public health, safety, or welfare or the property of others;*

- a. The permit will be conditioned to require all snags be placed in water (within sovereign submerged lands) to prevent any adverse affects to the public health, safety, or welfare or the property of others.
  - b. The activity is likely to be beneficial to public boat traffic because hazards to navigation will be removed from the federal navigation channel.
  - c. The activity is likely to be beneficial because the applicant will be able to transport large items to upstream projects (such as the power generators transported in 2000) that are necessary or beneficial to the public.
2. *Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;*
  - a. The permit will be conditioned to require the applicant to complete a Section 7 consultation with the U.S. Fish and Wildlife Service as required under the Endangered Species Act of 1973 before any snagging activities are undertaken. The condition will require the applicant to adhere to any listed species management criteria required as a result of the consultation.
  - b. The permit will be conditioned to prohibit impacts to adjacent wetland areas, marsh grasses, shorelines, or other environmentally sensitive areas that may provide valuable habitat.
3. *Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;*
  - a. The activity is expected to be beneficial for navigation because hazards to navigation will be removed from the federal navigation channel by cutting and allowing logs to sink to the bottom of the channel or will be mechanically relocated.
  - b. The permit will be conditioned to prohibit snagging practices that could cause or exacerbate erosion, shoaling, blocking of creeks and tributaries, or cause any other potentially adverse affects to the flow of water.
4. *Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;*
  - a. The permit will be conditioned to prohibit snagging activities during spawning season for the Gulf sturgeon and certain other fish species without specific written approval from the Department.
  - b. Snagging activities are not likely to affect recreational values in the project area.
5. *Whether the activity will be of a temporary or permanent nature;*
  - a. Snags will be permanently sunken or mechanically relocated, unless they become dislodged by storms or high flows.

6. *Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of Section 267.061, F.S.; and*
  - a. The permit will be conditioned to require the applicant to stop work and notify the appropriate authorities immediately if any historical resources are encountered during the snagging operations.
  
7. *The current condition and relative value of functions being performed by areas affected by the proposed activity.*
  - a. The applicant will be required to leave snags in the waterway to provide habitat. Temporary impacts to habitat caused by snag relocation are expected to occur. It is anticipated, however, that sunken or relocated snags will continue to provide habitat functions in the long-term, once they settle in the new locations.

Through the above and based on the general/limiting and specific conditions to the permit, the applicant has provided affirmative reasonable assurance that the construction of the activity, considering the direct, secondary and cumulative impacts, will comply with the provisions of Part IV of Chapter 373, F.S., and the rules adopted thereunder. Specifically, construction of the activity will not result in violations of water quality standards pursuant to Section 373.414(1), F.S., and set forth in Chapters 62-3, 62-4, 62-302, 62-520, 62-522, and 62-550, F.A.C. and will not degrade ambient water quality in Outstanding Florida Waters pursuant to Rule 62-4.242, F.A.C. The applicant also has demonstrated that the activity is clearly in the public interest, pursuant to Section 373.414(1), F.S.

#### IV. PUBLICATION OF NOTICE

The Department has determined that the proposed activity, because of its size, potential effect on the environment or the public, controversial nature, or location, is likely to have a heightened public concern or likelihood of request for administrative proceedings. Therefore, pursuant to Section 373.413(4), F.S., and paragraph 62-346.090(2)(j), F.A.C., you (the applicant) are required to publish at your own expense the enclosed notice of this Notice of Intent to Issue. The notice is required to be published one time within **30 days**, in the legal ad section of a newspaper or newspapers of general circulation in the area affected. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S., in the county or counties where the activity is to take place. The applicant shall provide proof of publication to:

Florida Department of Environmental Protection  
Submerged Lands and Environmental Resources Program  
Attn: Heather Mason  
160 W. Government Street  
Pensacola, Florida 32502-5740

The proof of publication shall be provided to the above address within **7 days** of publication. Failure to publish the notice and provide proof of publication within the allotted time shall be grounds for denial of the permit.

## **V. RIGHTS OF AFFECTED PARTIES**

Under this intent to issue, the above applications are hereby granted subject to the applicant's compliance with any requirement in this intent to publish notice of this intent in a newspaper of general circulation and to provide proof of such publication in accordance with Section 50.051 of the Florida Statutes. This action is final and effective on the date filed with the Clerk of the Department unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57 of the Florida Statutes as provided below.

If a sufficient petition for an administrative hearing is timely filed, this intent to issue automatically becomes only proposed agency action on the application(s), subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. When proof of publication is provided, if required by this intent, and if a sufficient petition is not timely filed, the permit will be issued as a ministerial action. Because an administrative hearing may result in the reversal or substantial modification of this action, the applicant is advised not to commence construction or other activities until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time have expired and until the permit has been executed and delivered.

Mediation is not available.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Under subsection 62-110.106(4) of the Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

If a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Intervention will be permitted only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205 of the Florida Administrative Code.

In accordance with subsection 62-110.106(3) of the Florida Administrative Code, petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3) of the Florida Statutes must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first. Under Section 120.60(3) of the Florida Statutes, however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57 of the Florida Statutes.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action; and

(g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, Florida Administrative Code.

Under Sections 120.569(2)(c) and (d) of the Florida Statutes, a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

This intent to issue constitutes an order of the Department on its own behalf on the application for the regulatory permit. Subject to the provisions of Section 120.68(7)(a) of the Florida Statutes, which may require a remand for an administrative hearing, the applicant has the right to seek judicial review of the order under Section 120.68 of the Florida Statutes, by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida, 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the order is filed with the Clerk of the Department.

The applicant, or any party within the meaning of Section 373.114(1)(a) or 373.4275 of the Florida Statute, may also seek appellate review of the order before the Land and Water Adjudicatory Commission under Section 373.114(1) or 373.4275 of the Florida Statute. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within **20 days** from the date when the order is filed with the Clerk of the Department.

Executed in Pensacola, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



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Emile D. Hamilton  
District Director

Enclosures: Exhibit 1, Notice of Publication, 3 pages  
Exhibit 2, Draft Permit w/attachments, 34 pages

Copies furnished to:

FDEP, Office of General Counsel  
U. S. Army Corps of Engineers  
Jackson, Gadsden, Calhoun, Liberty, Gulf, and Franklin Counties  
Dr. Donald W. Imm, U.S. Fish and Wildlife Service (USFWS)  
Karen Herrington, USFWS  
Ted Hoehn, Florida Fish and Wildlife Conservation Commission (FFWCC)  
Charles Mesing, FFWCC  
Bonita Gorham, FFWCC  
Steve Shea, FFWCC  
Scott Sanders, FFWCC  
Manley K. Fuller, Florida Wildlife Federation  
Marilyn Blackwell, Help Save the Apalachicola River Group  
Dan Tonsmeire, Apalachicola Riverkeeper  
Janet Llewellyn, FDEP  
Tim Rach, FDEP  
Teresa Mussetto, FDEP  
Jennifer Jacobson, USACE  
Velma Diaz, USACE  
File

**CERTIFICATE OF SERVICE**

The undersigned duly designated deputy clerk hereby certifies that this INTENT TO ISSUE and all copies was mailed or emailed before the close of business on January 31, 2013, 2013, to the above listed persons.

**FILING AND ACKNOWLEDGMENT**

FILED, on this date with the designated Department Clerk, pursuant to 120.52(11), Florida Statutes, receipt of which is hereby acknowledged.

Brandy Bass  
Clerk

1/31/2013  
Date

Prepared By: Heather Mason

37 pages attached

# Exhibit 1

## STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION NOTICE OF INTENT TO ISSUE PERMIT

The Department of Environmental Protection gives notice of its intent to issue an environmental resource permit for Apalachicola River Snagging, file number 07-0129424-008-EI, to the US Army Corps of Engineers, Mobile District, at P.O. Box 2288, Mobile, Alabama 36628-0001

The purpose of the permit is to authorize maintenance snagging (relocation of tree snags out of the navigation channel) in the Florida portion of the Apalachicola, Chattahoochee, and Flint Rivers (ACF) Federal Navigation Project.

The project will be located in the Apalachicola River between River Mile 0.0 and River Mile 106.4 in Class III, Outstanding Florida Waters (entire Florida portion of river), and Apalachicola Bay Aquatic Preserve (River Miles 0.0 – 4.5) in Jackson, Gadsden, Calhoun, Liberty, Gulf, and Franklin Counties.

Based on all the above, and with the application of general and limiting specific conditions of the permit, the Department has reasonable assurance the project, as proposed, fully meets the environmental resources permitting requirements of Chapter 62-346, Florida Administrative Code, and will not harm the environment.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57 of the Florida Statute. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to re-determine final agency action on the application, the filing of a petition for an administrative hearing may result in a modification of the permit, or even a denial of the application. Accordingly, the applicant will not commence construction or other activities under this permit until the deadlines below for filing a petition for an administrative hearing, or request for an extension of time, have expired.

Under subsection 62-110.106(4) of the Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to

petition to intervene in the proceeding. Intervention will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205 of the Florida Administrative Code.

In accordance with subsection 28-106.111(2) and subparagraph 62-110.106(3)(a).4, Florida Administrative Code, petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3) of the Florida Statutes, must be filed within 14 days of publication of the notice.

Under Section 120.60(3) of the Florida Statute, however, any person who has asked the Department for notice of agency action may file a petition within 14 days of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of those rights.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, Florida Administrative Code. Under Sections 120.569(2)(c) and (d) of the Florida Statute, a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of petition this order will not be effective until further order of the Department.

This permit, when issued, constitutes an order of the Department. The applicant has the right to seek judicial review of the order under Section 120.68 of the Florida Statute, by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida, 32399-3000; and by filing a copy of the notice of the appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within **30 days** from the date when the final order is filed with the Clerk of the Department.

Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when the final order is filed with the Clerk of the Department.

The application for this permit is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays, at the Northwest District office, 160 W. Government Street, Pensacola, Florida.

# Exhibit 2

## Environmental Resource Permit

**Permittee/Grantee: U.S. Army Corps of Engineers, Mobile District**  
**Permit No: 07-0129424-008-EI**

### PROJECT LOCATION

The activities authorized by this Permit and sovereignty submerged lands authorization are located in the Apalachicola River between River Mile 0.0 and River Mile 106.4 in Jackson, Gadsden, Calhoun, Liberty, Gulf, and Franklin Counties.

### PROJECT DESCRIPTION

The permittee is authorized to conduct maintenance snagging (relocation of tree snags presenting a hazard to navigation out of the federal navigation channel) in the Florida portion of the Apalachicola, Chattahoochee, and Flint Rivers (ACF) Federal Navigation Project within the Apalachicola River, a Class III Outstanding Florida Waterbody (entire Florida portion of river) and Aquatic Preserve (River Miles 0.0 – 4.5) subject to all General and Specific Conditions in this permit. The federal navigation project maintenance activity includes the removal and nearby relocation of tree snags hazardous to navigation on the Apalachicola River from River Mile 0.0 to River Mile 106.4. This authorization will allow the permittee to determine which snags pose a hazard to navigation and remove only those snags from the federal navigation channel.

Snagging will be accomplished by two methods:

1. Use a barge-mounted excavator with a tree shear attachment to cut the snag. Once the tree is cut it will be allowed to sink to the bottom of the channel or relocated within the river where it will not longer be a hazard to navigation.
2. Use a barge-mounted crane with a clam-shell bucket to grasp the snag and orientate it out of the channel or remove the snag from its current location and relocate nearby within the river.

### AUTHORIZATIONS

#### Apalachicola River Snagging

##### Environmental Resource Permit

The Department has determined that the activity qualifies for an Environmental Resource Permit. Therefore, the Environmental Resource Permit is hereby granted, pursuant to Part IV of Chapter 373, Florida Statutes (F.S.), and Rule 62-346, Florida Administrative Code (F.A.C.).

### Sovereignty Submerged Lands Authorization

The Department acknowledges that maintenance snagging of the federal navigation channel falls within one of the federal powers listed in the Submerged Lands Act under 43 USC 1311(d) or 43 USC 1314, and, under those provisions, the U.S. Army Corps of Engineers (Corps) needs no authorization from the Board of Trustees to utilize sovereignty submerged lands for that activity. However, under the provisions of the Coastal Zone Management Act (16 USC 1451-1465), this activity requires Florida's concurrence with a determination of consistency with the sovereignty submerged lands provisions of Florida's approved Coastal Management Program prior to federal approval of the proposed activity. The State has determined that the activity is consistent with the sovereignty submerged lands provisions of Florida's approved Coastal Management Program.

### Coastal Zone Management

This permit also constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Management Act.

### Water Quality Certification

This permit also constitutes a water quality certification under Section 401 of the Clean Water Act, 33 U.S.C. 1341.

### Other Authorizations

You are advised that authorizations or permits for this project may be required by other federal, state or local entities including but not limited to local governments and homeowner's associations. This permit does not relieve you from the requirements to obtain all other required permits or authorizations.

The activity described may be conducted only in accordance with the terms, conditions and attachments contained in this document. Issuance and granting of the permit and authorizations herein do not infer, nor guarantee, nor imply that future permits, authorizations, or modifications will be granted by the Department.

### **PERMIT CONDITIONS**

The activities described herein must be conducted in accordance with:

- **The Specific Conditions**
- **The General Conditions**
- **The limits, conditions and locations of work shown in the attached drawings**
- **The term limits of this authorization**

You are advised to read and understand these conditions and drawings prior to commencing the authorized activities, and to ensure the work is conducted in conformance with all the terms, conditions, and drawings. If you are utilizing a contractor, the contractor also should read and understand these conditions and drawings prior to commencing the authorized activities. Failure to comply with these conditions, including any mitigation requirements, shall constitute grounds for revocation of the Permit and appropriate enforcement action by the Department.

## **SPECIFIC CONDITIONS**

### **PRIOR TO CONDUCTING SNAGGING ACTIVITIES**

1. Prior to the initial snagging activity undertaken pursuant to this permit, the permittee shall complete the Section 7 consultation with the United States Fish and Wildlife Service (USFWS) as required under the Endangered Species Act of 1973. The permittee shall adhere to all of the required strategies/actions for the protection of listed species and their habitats resulting from the consultation, up to and including not conducting the snagging activity.
2. The permittee shall contact the Department at 850-595-8300 or by email to [Heather.Mason@dep.state.fl.us](mailto:Heather.Mason@dep.state.fl.us) at least 48 hours before any snagging activities occur. The permittee shall provide the location where snagging will occur, the type and registration numbers of any vessels used, and the anticipated duration of activities.

### **SNAGGING ACTIVITIES**

3. If during the progress of this project prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, dugout canoes, or any other physical remains that could be associated with Native American cultures or early colonial or American settlement are encountered at any time within the project site area, the permitted project should cease all activities involving subsurface disturbance in the immediate vicinity of such discoveries. The permittee, or other designee, shall contact the Florida Department of State, Division of Historical Resources, Review and Compliance Section at (850) 245-6333 or (800) 847-7278, as well as the appropriate permitting agency office. Project activities should not resume without verbal and/or written authorization from the Division of Historical Resources. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes.
4. The permittee shall apply the following criteria when determining if relocation of a snag is necessary, and shall only relocate those snags that fit the criteria:
  - a. Snags serving as bank stabilization shall not be disturbed.
  - b. Listed species are not currently using the snag or immediately surrounding substrate as habitat.
  - c. Listed species are not currently using the area where the relocated snag will be permanently placed.
  - d. a through c above may be superseded if the snag presents a clear danger to navigation, i.e., it cannot be avoided by barge traffic. If this is the case, the snag may be relocated using methods to reduce impact to the resource.
5. No snags shall be permanently removed from the river.
6. Snags shall be placed in water as follows, in a way that will not be detrimental to the health of the river:

- a. The amount of time a snag is exposed to the air while being relocated shall be kept to a minimum.
  - b. Snags shall be spaced to facilitate randomness, and shall not be placed in piles or groups of more than 4-5 snags apiece.
  - c. Snags shall not be placed where they may cause blockages of creeks, streams, or sloughs.
  - d. Snags shall not be placed in such a way that they are likely to float away and cause log jams or flooding.
  - e. Snags shall not be placed where they may cause or exacerbate erosion.
  - f. Snags shall be placed to prevent erosion, wherever practicable.
  - g. Snags may also be placed within dike fields and on the upstream portions of sandbars or old disposal sites.
7. Snagging activities shall not cause adverse impacts to adjacent wetlands, marshlands, submerged or emergent vegetation, or other environmentally sensitive lands.
  8. At least 1 foot clearance shall be present between the bottom of fully loaded vessels and the river bed. This shall apply to all vessels utilized to conduct snagging activities or to transport emergency items upstream.
  9. To protect listed species habitat, vessels utilized to conduct snagging activities or to transport emergency items upstream shall not run aground or cause scouring.
  10. Appropriate precautions should be taken to prevent barges or other vessels from running into riverbanks.
  11. When using method 2 (mechanical relocation), a qualified wildlife biologist experienced in conducting listed species surveys in submerged environments shall accompany the permittee during snagging activities. The biologist shall perform localized surveys for each snag to be relocated to determine whether or not the snag is currently utilized by listed species. The biologist shall also examine the proposed relocation site to determine whether or not listed species habitat will be disturbed by the relocation.
  12. The applicant shall utilize current maps assembled by USACOE, USFWS, and FFWCC containing the location of shoreline and deeper water habitats occupied by the listed mussel species to assist in identifying areas where snag habitat relocation activities could adversely affect the listed mussels. Special attention should be given to the identified areas, and snagging shall be avoided in those areas to the greatest extent practicable.
  13. It shall be the permittee's responsibility to ensure compliance with all permit conditions. Any misplacement of snags, unauthorized impacts to listed species habitat, or other violation of this permit and conditions shall result in the immediate shutdown of the operation until all

actions have been taken to bring the operation into compliance with the conditions of the permit.

14. If any snag is placed outside of the authorized areas, blocks any sloughs or creeks, or is transported out of the river onto shoreline, wetland, or other valuable habitat, the Department shall be notified immediately of the violation by phone (850-595-8300) and as soon as possible by letter or email. The permittee shall fully explain the violation and indicate all measures taken to prevent reoccurrence of the violation. After this notification has been received, the Department will evaluate the environmental concerns of the violation and provide verbal and written instructions to the permittee of the necessary corrective actions.
15. To protect populations of striped bass and other fish species that spawn in the spring, including Gulf sturgeon, the permittee shall not conduct snagging activities during March through May without specific written approval from Department. To request approval for snagging prior to the end of this period, the permittee shall:
  - a. Consult with FFWCC and USFWS at least 15 days, or at the earliest planning stages, before the proposed snagging start date.
  - b. The Department's approval decision shall take into consideration the recommendations of FFWCC and USFWS.
16. Snagging activities shall not be conducted in known sturgeon holding areas during March through November when Gulf Sturgeon is present in the river.

#### **TURBIDITY AND TURBIDITY MONITORING**

(Does not apply to snagging activities completed using snagging method 1, or to any snagging activities north of Gulf County pursuant to Rule 62-4.242(2)(f)(1), F.A.C.)

17. A temporary mixing zone for turbidity is granted from the point of each relocated snag with the following size and configuration constraint(s):
  - a. The mixing zone shall extend no further than 150 meters downstream (492 feet), from the point of turbidity generation [Chapter 62-4.244(5)(c), F.A.C.].
18. Monitoring for turbidity shall be conducted for the duration of the project. Sampling will commence prior to, but no more than 24 hours before initiation of any snagging activities. Sampling shall occur at a point 150 meters downstream of each relocated snag immediately before it is relocated, and again within 30 minutes of the snag being relocated.
19. Measurements must be acquired in adherence to the Department's Standard Operating Procedure (SOP) for field turbidity, available at the website: <http://publicfiles.dep.state.fl.us/dear/sas/sopdoc/2008sops/ft1600.pdf> More specifically, the instruments used to measure turbidity shall be fully calibrated within one month prior to

commencement of the project, and at least once a month thereafter during the project. Calibration shall be verified each morning prior to use, and after each time the instrument is turned on, using a turbidity "standard" that is different from the one used during calibration. Calibration procedures shall be recorded in a permanent logbook, and copies must be submitted with the data.

20. Turbidity samples shall be collected with a Kemmerer, Van Dorn, or a similar sampler that is designed to collect in situ water samples. Samples shall be analyzed immediately after collection with a turbidimeter that produces results in Nephelometric measurements. The field sample results shall be accurately recorded to the precision capabilities (decimal place) of the instrument. Field turbidimeter results shall be rounded to the next whole number (ex. 15.23 NTUs shall be recorded; however the results shall be interpreted as 16.00 NTUs). If monitoring reveals turbidity levels above background level at the edge of the mixing zone, the permittee shall cease all work pursuant to Specific Condition 21.
21. If monitoring reveals turbidity levels above background at the edge of the mixing zone described in Specific Condition 17, the permittee shall take the following measures:
  - a. Immediately cease all work contributing to the water quality violation. Work which may contribute to the violation shall not resume until corrective measures have been taken (including installation of turbidity screens around the work area), and turbidity levels have returned to acceptable levels; and
  - b. Stabilize work areas contributing to the violation. Modify work procedures responsible for the violation, install turbidity control devices, if necessary; and
  - c. Operations may not resume until the water quality standard for turbidity has returned to background levels.
  - d. The violation(s) shall be immediately reported to the Department of Environmental Protection, Submerged Lands & Environmental Resources Program, Compliance and Enforcement Section, Suite 202, Northwest District Office, 160 West Government Street, Pensacola, Florida 32501-5794, in writing or by telephone at (850) 595-8300. The report shall include a description of the corrective actions being taken or proposed to be taken. The report shall be made to the Department as soon as normal business hours resume if violation(s) are noted after normal business hours, on holidays, or on weekends. A copy of the monitoring data sheets, which indicate violation(s), shall be forwarded immediately to the Department.

Failure to report violation(s) or to follow correct procedures before resuming work shall constitute grounds for permit revocation and may subject the permittee to formal enforcement action.

22. Monitoring reports shall also include the following information for each sample that is taken:

- a. Time of day samples taken;
- b. Depth of water body;
- c. Depth of sample;
- d. USGS 02358000 - Apalachicola River Gage stage and flow at Chattahoochee, Florida  
([http://waterdata.usgs.gov/fl/nwis/uv/?site\\_no=02358000&PARAMeter\\_cd=00065,00060](http://waterdata.usgs.gov/fl/nwis/uv/?site_no=02358000&PARAMeter_cd=00065,00060)); and
- e. Antecedent weather conditions, including wind direction and velocity.

### **SNAGGING ACTIVITY MONITORING/REPORTING**

23. By 15 April of each year, the permittee shall submit a draft Annual Maintenance Report to FDEP that summarizes the work done according to this permit during the previous calendar year. The report shall include:

- a. A summary of snagging activities
- b. A list of all snag relocations along the Apalachicola River that includes:
  - i. the latitude/longitude and/or river mile location (to the nearest 1/10 river mile) recorded for each snag before and after relocation;
  - ii. a description of the placement of the snag in the river (inside bend, outside bend, straight reach, left/right when facing downstream);
  - iii. a list of the number of snags relocated within each 5-mile bock of the Apalachicola River;
  - iv. a list of all officially reported Corps vessel groundings and hazardous material spills that were reported to the U.S. Coast Guard and a list of those reported to USACOE;
  - v. a summary of proposed snagging activities concerning the Apalachicola River for the next year;
  - vi. documentation of the threatened and endangered species surveys that were conducted to confirm that snags were not removed or relocated in habitat of these species; and
  - vii. a listing of any verified and unverified permit violations (violations that are suspected by the Department and reported to USACOE), actions taken to resolve verified violations, and steps taken to clarify unverified violations.

Within 30 days of receiving the Draft Annual Maintenance Report, the Department shall provide the permittee with comments and questions concerning the draft report. The Department's response may include comments from the interagency team (FDEP, FFWCC, USFWS, etc.). If the Department determines that any of the errors or omissions significantly affects the Department's ability to monitor USACOE's activities, the permittee will correct the errors or omissions within 30 days of receiving notification by the Department. When all errors or omissions have been corrected and approved by the Department, a Final Annual Maintenance Report shall be submitted to the Department.

#### **EMERGENCIES/ADMINISTRATIVE**

24. The construction phase expires at 11:59 p.m. on the date indicated on the cover page of this permit.
25. For emergencies involving a serious threat to the public health, safety, welfare, or environment, the emergency telephone contact number is **800-320-0519** (State Warning Point). The Department telephone number for reporting nonthreatening problems or system malfunctions is (850) 595-0663, day or night.
26. The mailing address for submittal of forms for the "Construction Commencement Notice", "As-Built Certification ...", "Request for Conversion of Stormwater Management Permit Construction Phase to Operation and Maintenance Phase", or other correspondence is FDEP, SLERP, 160 Governmental Center, Pensacola, Florida, 32502.

#### **GENERAL CONDITIONS**

1. This permit, including its general and specific conditions, must be construed in light of the February 28, 2006 Interagency Cooperative Agreement for Civil Works Projects (ICA) between the Department and the Corps. As recognized in the ICA, the Department has the authority to include reasonable conditions in this permit. All of the conditions in this permit, both general and specific, are enforceable to the extent sovereign immunity has been waived under 33 U.S.C. §§ 1323 and 1344(t). The ICA is incorporated herein by reference.
2. All activities approved shall be implemented as set forth in the drawings incorporated by reference and in compliance with the conditions and requirements of this document. The Corps shall notify the Department in writing of any anticipated changes in:
  - a. Operational plans;
  - b. Project dimensions, size or location;
  - c. Ability to adhere to permit condition;
  - d. Project description included in the permit;
  - e. Monitoring plans.

If the Department determines that a modification to the permit is required then the Corps shall apply for and obtain the modification. Department approval of the modification shall be obtained prior to implementing the change, unless the change is determined by the

Department to reduce the scope of work from that authorized under the original permit, and will not effect compliance with permit conditions or monitoring requirements.

3. If, for any reason, the Corps does not comply with any condition of limitation specified herein, the Corps shall immediately provide the Department with a written report containing the following information:
  - a. A description of and cause of the noncompliance;
  - b. The period of noncompliance, including dates and times;
  - c. Impacts resulting or likely to result from the noncompliance;
  - d. Steps being taken to correct the noncompliance; and
  - e. The steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Compliance with the provisions of this condition shall not preclude the Department from taking any enforcement action allowed under state law with respect to any noncompliance.

4. The Corps shall obtain any applicable licenses, permits, or other authorizations which may be required by federal, state, local, or special district laws and regulations. Nothing herein constitutes a waiver or approval of other Department permits or authorizations that may be required for other aspects of the total project.
5. Nothing herein conveys to the Corps or creates in the Corps any property right, any interest in real property, any title to land or water, constitutes State recognition or acknowledgement of title, or constitutes authority for the use of Florida's sovereign submerged lands seaward of the mean high-water line or an established erosion control line, unless herein provided, and the necessary title, lease, easement, or other form of consent authorizing the proposed use has been obtained from the State.
6. Any delineation of the extent of a wetland or other surface water submitted as part of the application, including plans or other supporting documentation, shall not be considered specifically approved unless a specific condition of this authorization or a formal determination under Section 373.421(2), F.S., provides otherwise.
7. Nothing herein authorizes any entrance upon or activities on property which is not owned or controlled by the Corps or local sponsor, or conveys any vested rights or any exclusive privileges.
8. This document or a copy thereof, complete with all conditions, attachments, modifications, and time extensions shall be kept at the work site of the authorized activity. The Corps shall require the contractor to review this document prior to commencement of the authorized activity.
9. The Corps specifically agrees to allow Department personnel with proper identification, at reasonable times and in compliance with Corps specified safety standards access to the

premises where the authorized activity is located or conducted for the purpose of ascertaining compliance with the terms of this document and with the rules of the Department and to have access to and copy any records that must be kept; to inspect the facility, equipment, practices, or operations regulated or required; and to sample or monitor any substances or parameters at any location reasonably necessary to assure compliance. Reasonable time may depend on the nature of the concern being investigated.

10. At least forty-eight (48) hours prior to the commencement of authorized activity, the Corps shall submit to the Department a written notice of commencement of activities indicating the anticipated start date and the anticipated completion date.
11. Within a reasonable time after completion of construction activities authorized by this permit, the Corps shall submit to the Department a written statement of completion. This statement shall notify the Department that the work has been completed as authorized and shall include a description of the actual work completed. The Department shall be provided, if requested, a copy of any as-built drawings required of the contractor or survey performed by the Corps.

If you have any questions about this document, please contact Heather Mason at 850-595-0608 or at [Heather.Mason@dep.state.fl.us](mailto:Heather.Mason@dep.state.fl.us).

Executed in Escambia County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

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Emile D. Hamilton  
District Director

**Attachments:**

Exhibit 1, Project Maps and Section/Township/Range locations, 21 pages  
Exhibit 2, Snag Relocation Data Sheet, 1 page

Copies of 62-346.900 forms can be obtained at:  
<http://www.dep.state.fl.us/water/wetlands/erp/forms.htm>

**Copies furnished to:**

U.S. Army Corps of Engineers  
FWC, Imperiled Species Management Section  
Jackson, Gadsden, Calhoun, Liberty, Gulf, and Franklin Counties  
Dr. Donald W. Imm, U.S. Fish and Wildlife Service (USFWS)  
Karen Herrington, USFWS

Project Name: Apalachicola River Snagging  
Permittee: U.S. Army Corps of Engineers, Mobile District  
Permit No: 07-0129424-008-EI  
Page 10 of 12

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Jennifer Jacobson, USACE  
Velma Diaz, USACE  
File

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this permit, including all copies, were mailed and/or emailed before the close of business on \_\_\_\_\_, to the above listed persons.

FILING AND ACKNOWLEDGMENT

FILED, on this date, under Section 120.52(7) of the Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

\_\_\_\_\_  
Clerk

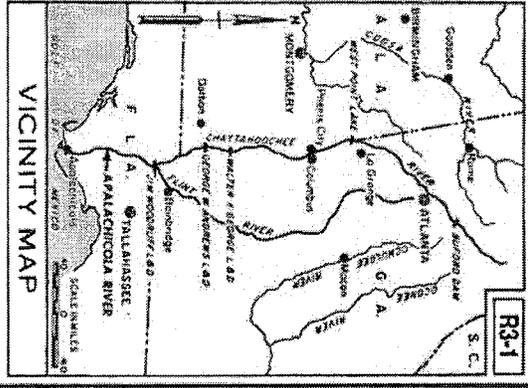
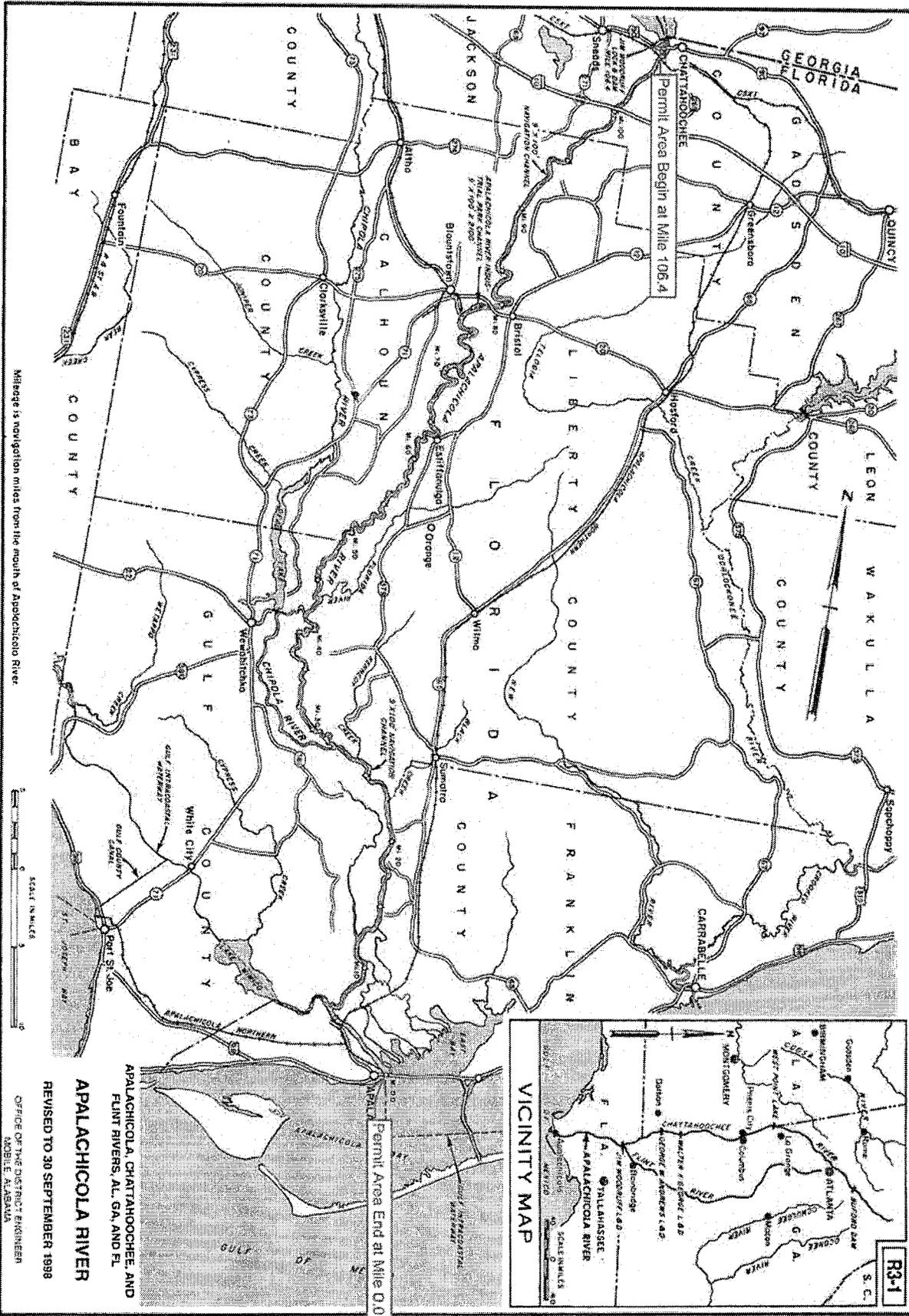
\_\_\_\_\_  
Date

Prepared By: Heather Mason

22 pages attached

# Exhibit 1

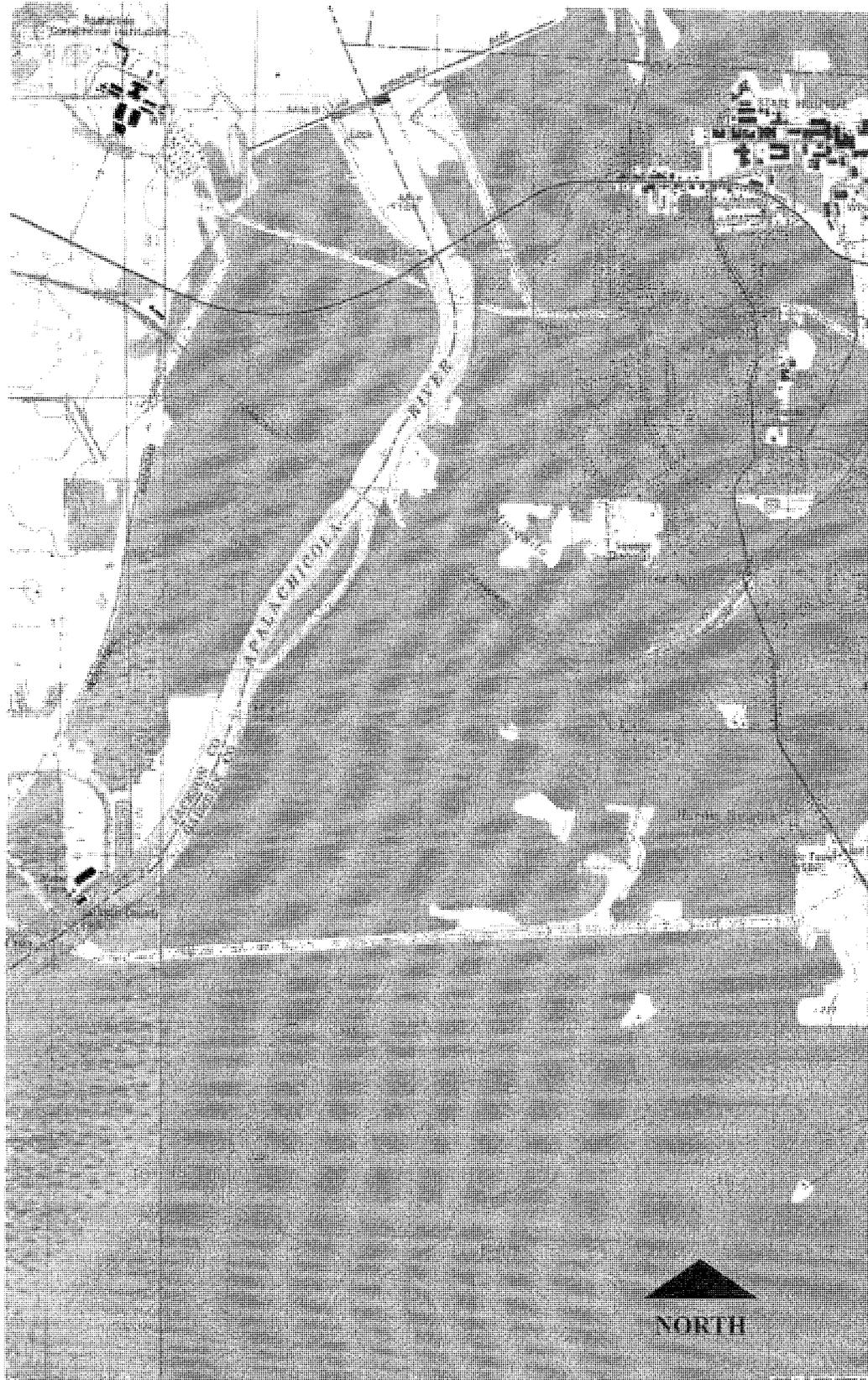
CORPS OF ENGINEERS



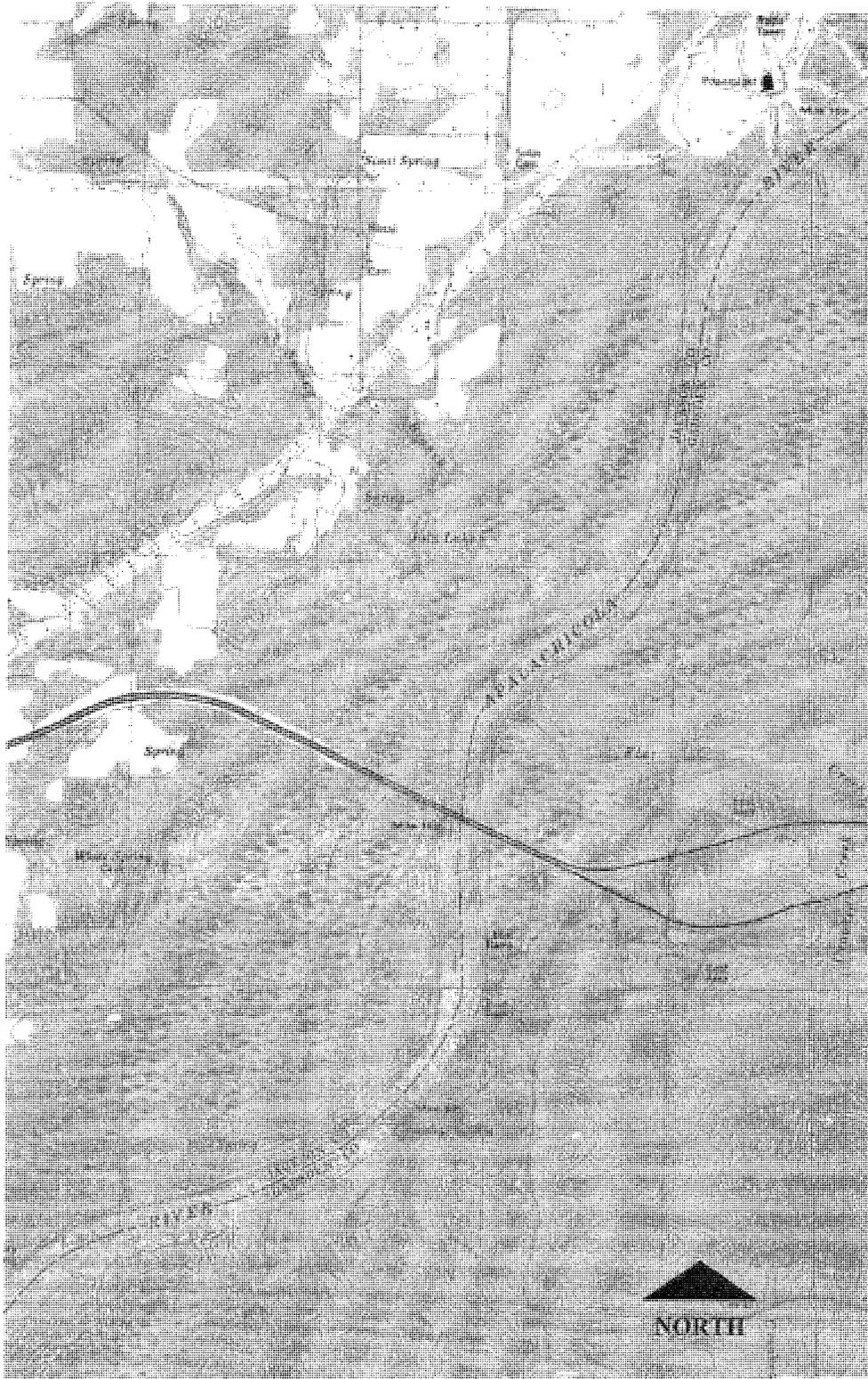
Mileage is navigation miles from the mouth of Apalachicola River

APALACHICOLA RIVER  
 REVISED TO 30 SEPTEMBER 1998  
 OFFICE OF THE DISTRICT ENGINEER  
 MOBILE, ALABAMA

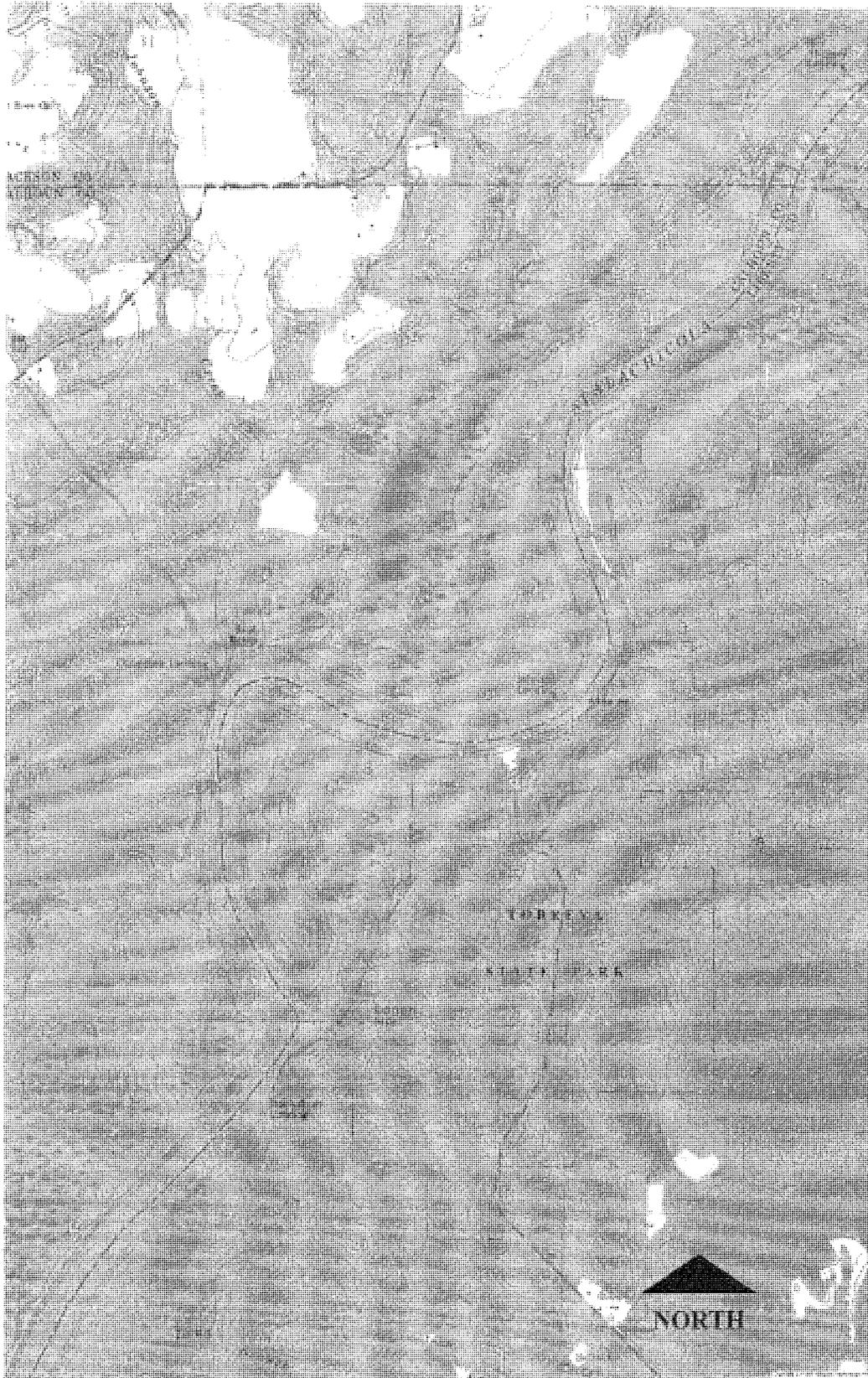
U. S. ARMY



Excerpt from Chattahoochee, FLA-GA and Sneads, FLA-GA USGS Quad Maps  
Scale: 1" = 0.5 Mile



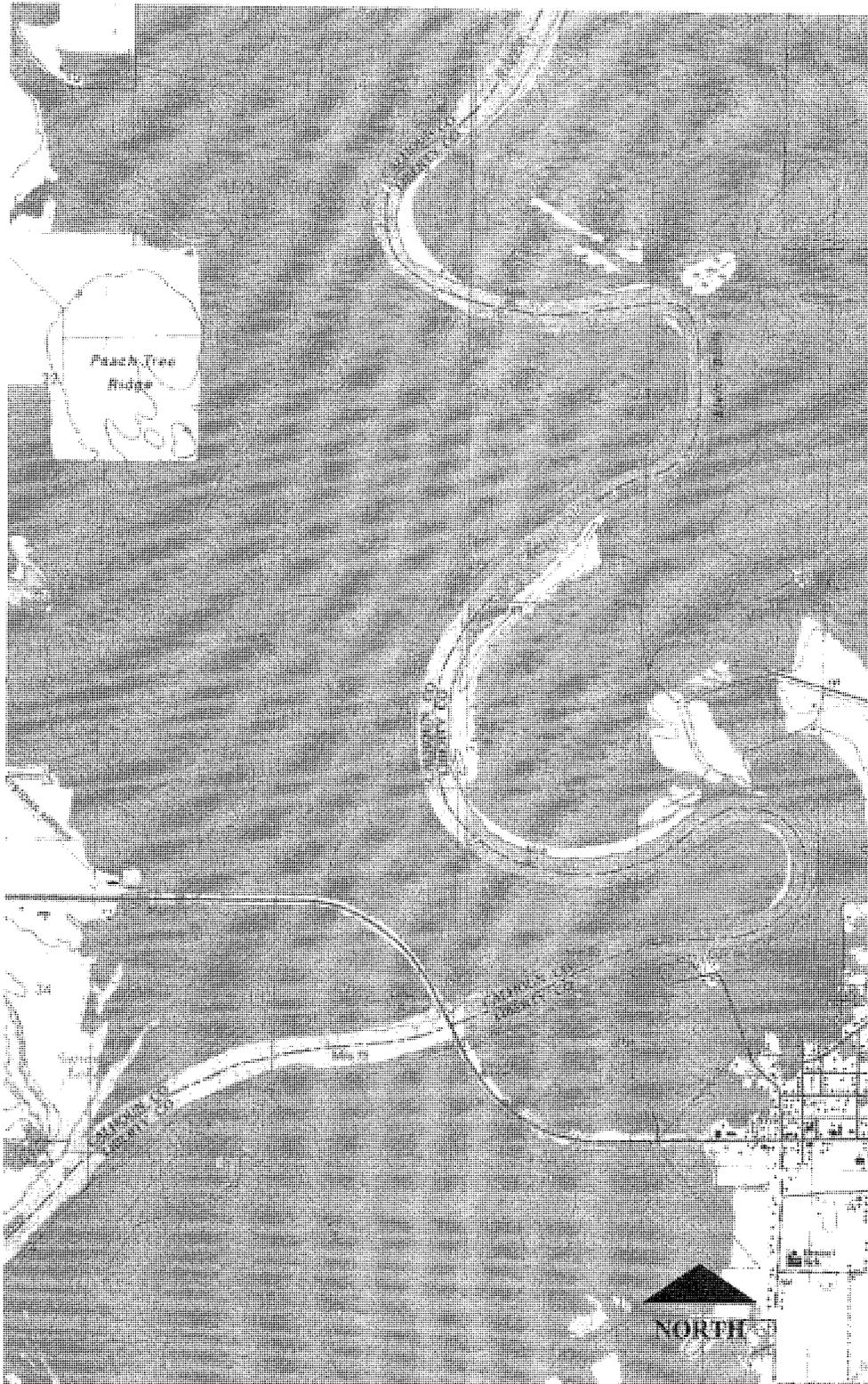
Excerpt from Sneads, FLA-GA and Rock Bluff, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



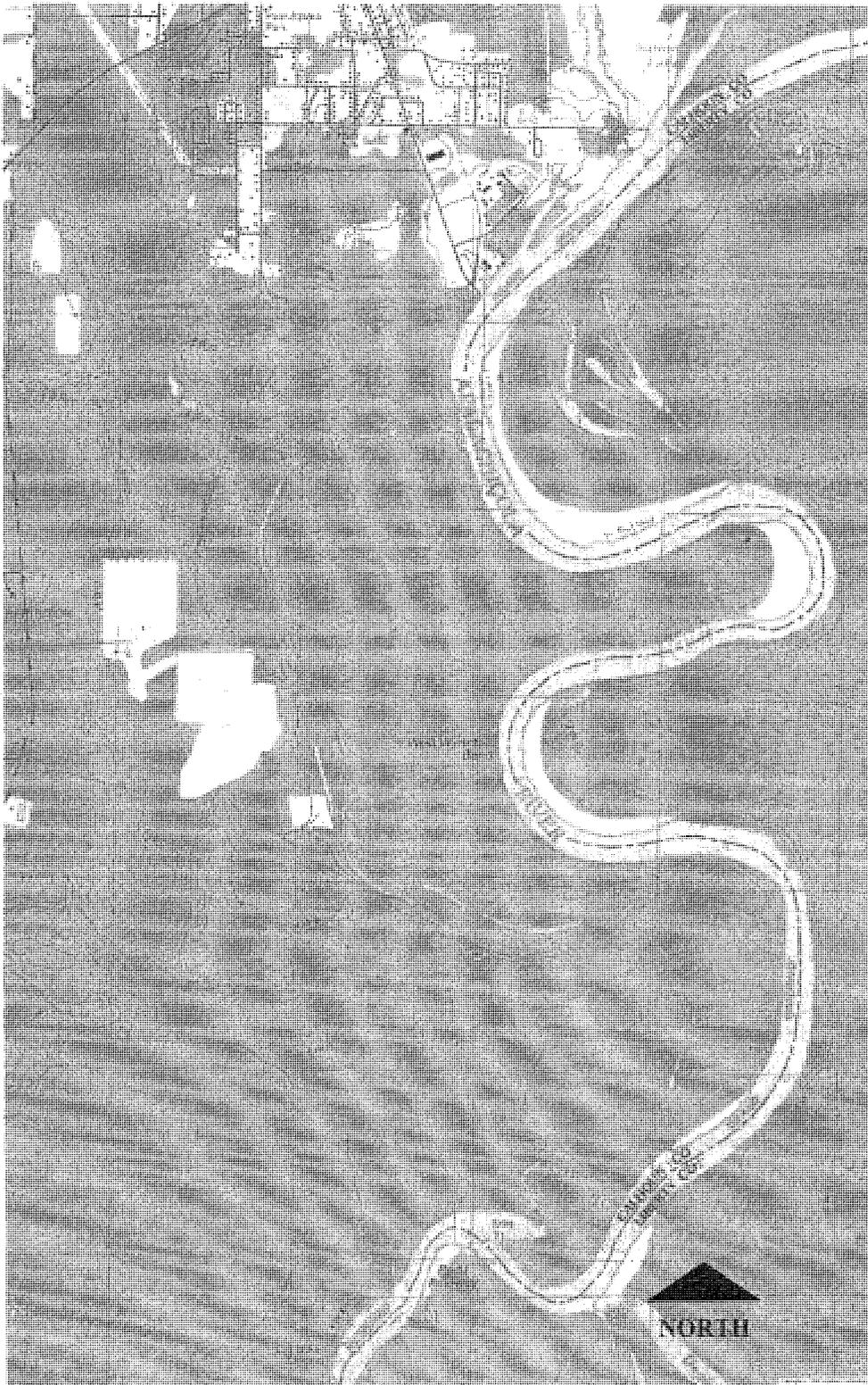
Excerpt from Rock Bluff, FLA USGS Quad Map  
Scale: 1" = 0.5 Mile



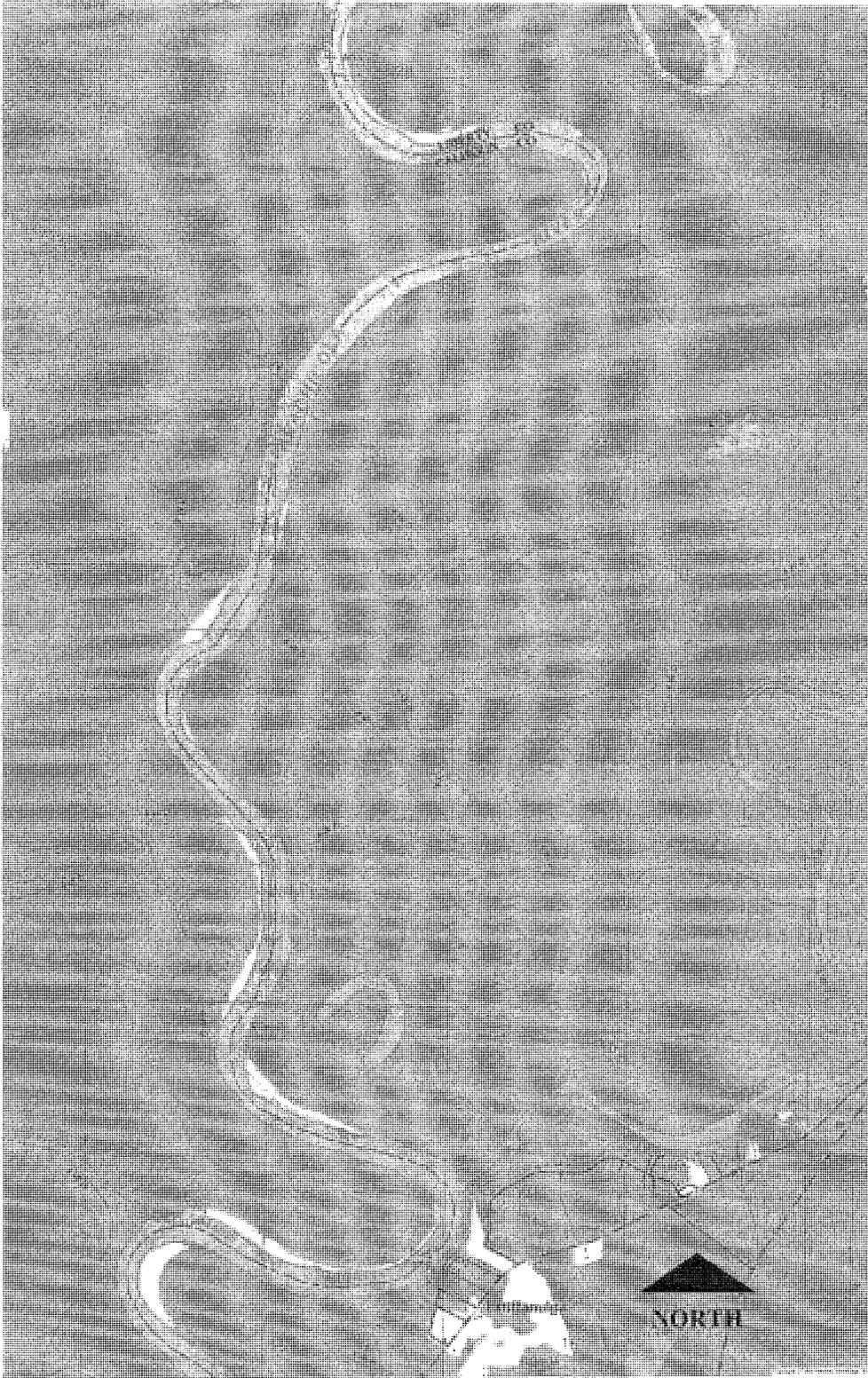
Excerpt from Rock Bluff, FLA and Bristol, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



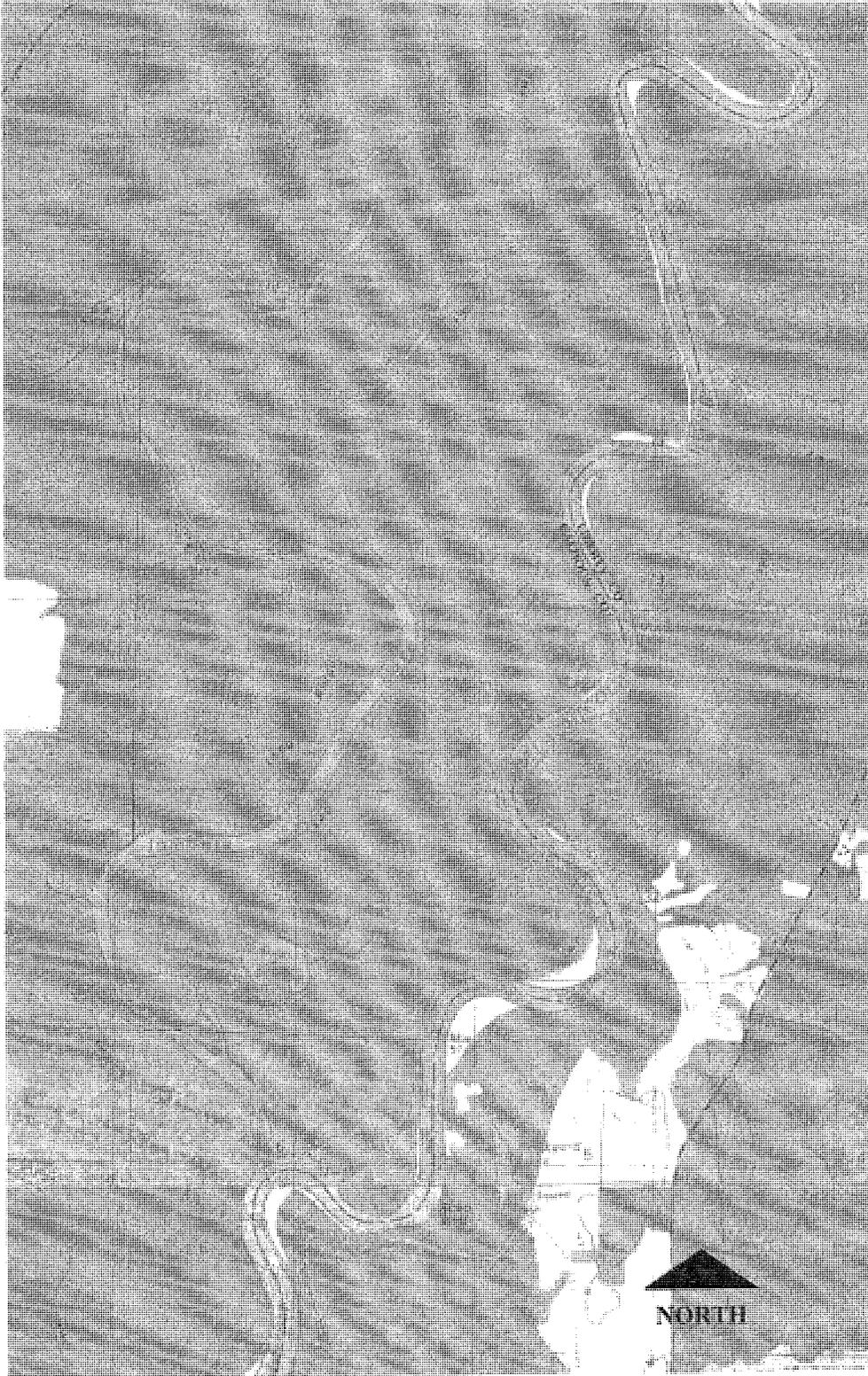
Excerpt from Bristol, FLA and Blountstown, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



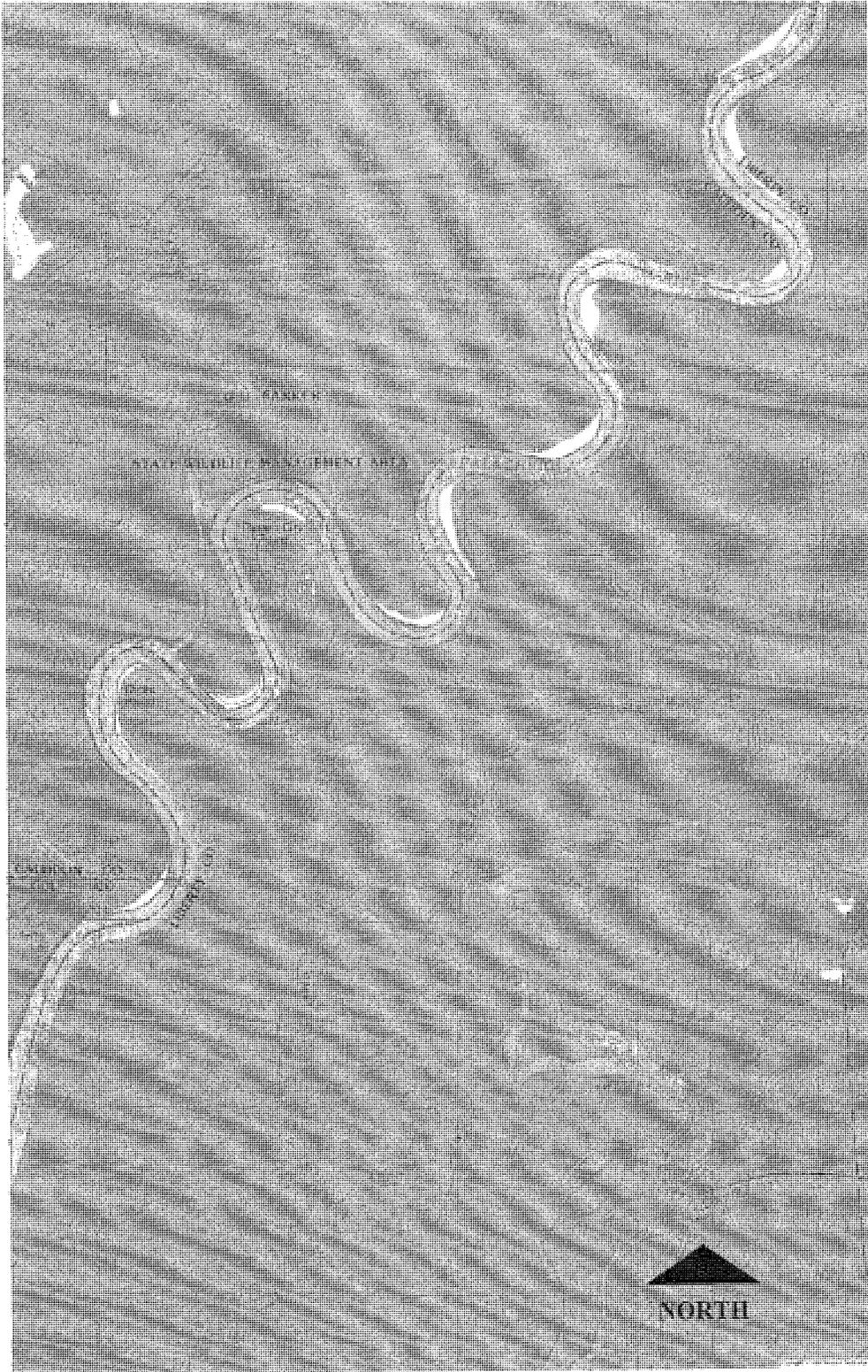
Excerpt from Blountstown, FLA and Estiffanulga, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



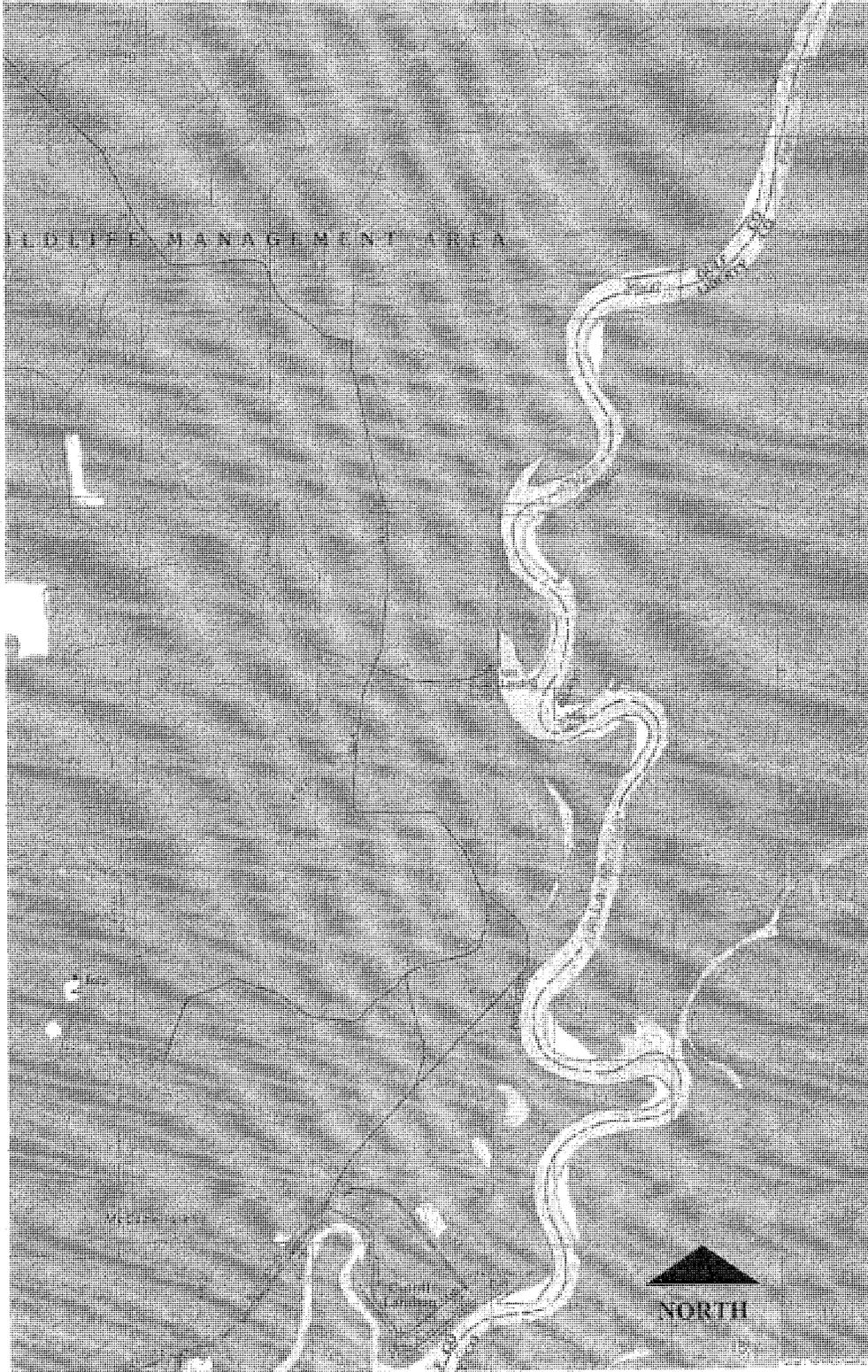
Excerpt from Estiffanulga, FLA USGS Quad Map  
Scale: 1" = 0.5 Mile



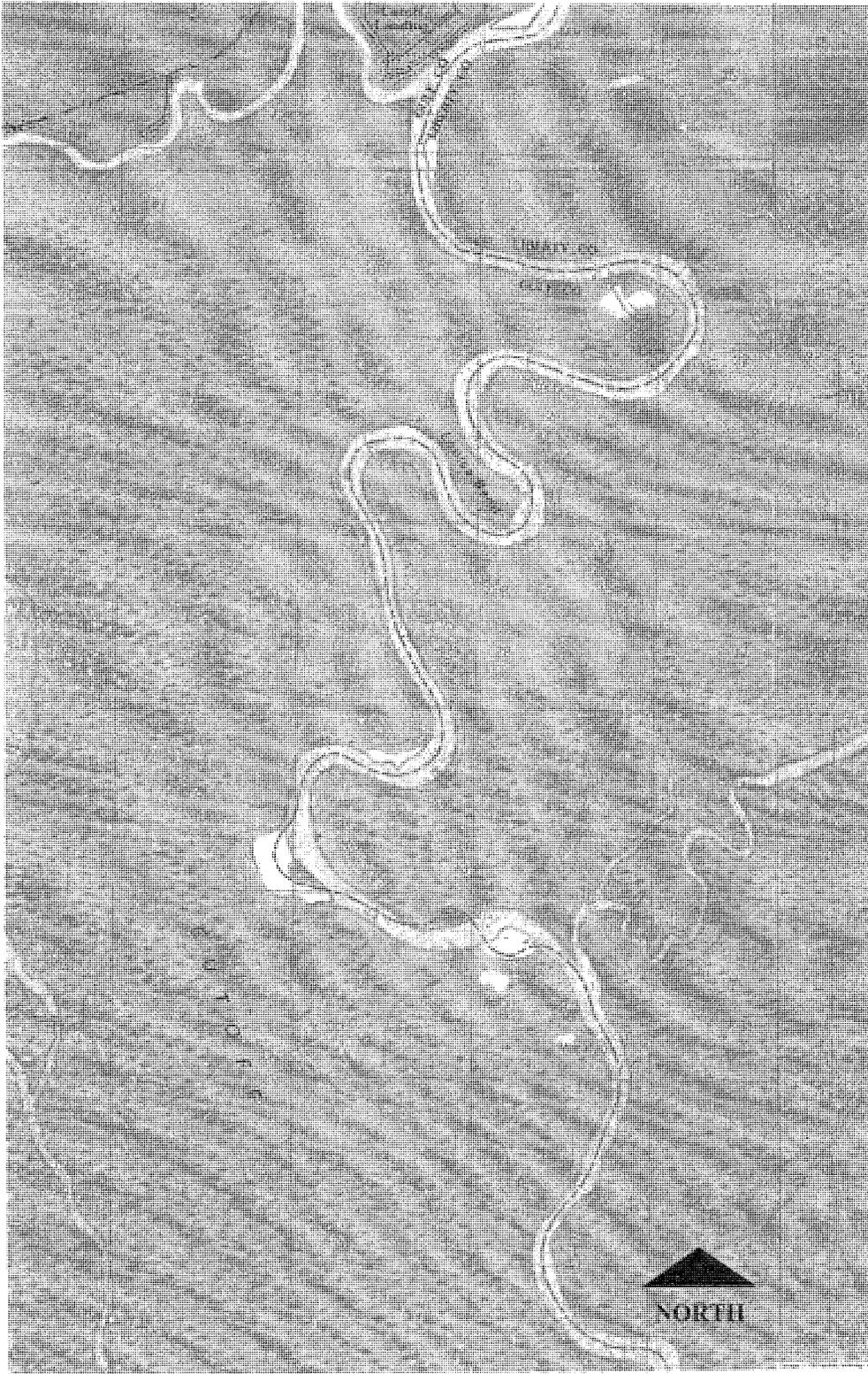
Excerpt from Estiffanulga, FLA and Orange, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



Excerpt from Orange, FLA USGS Quad Map  
Scale: 1" = 0.5 Mile



Excerpt from Orange, FLA and Dead Lake, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



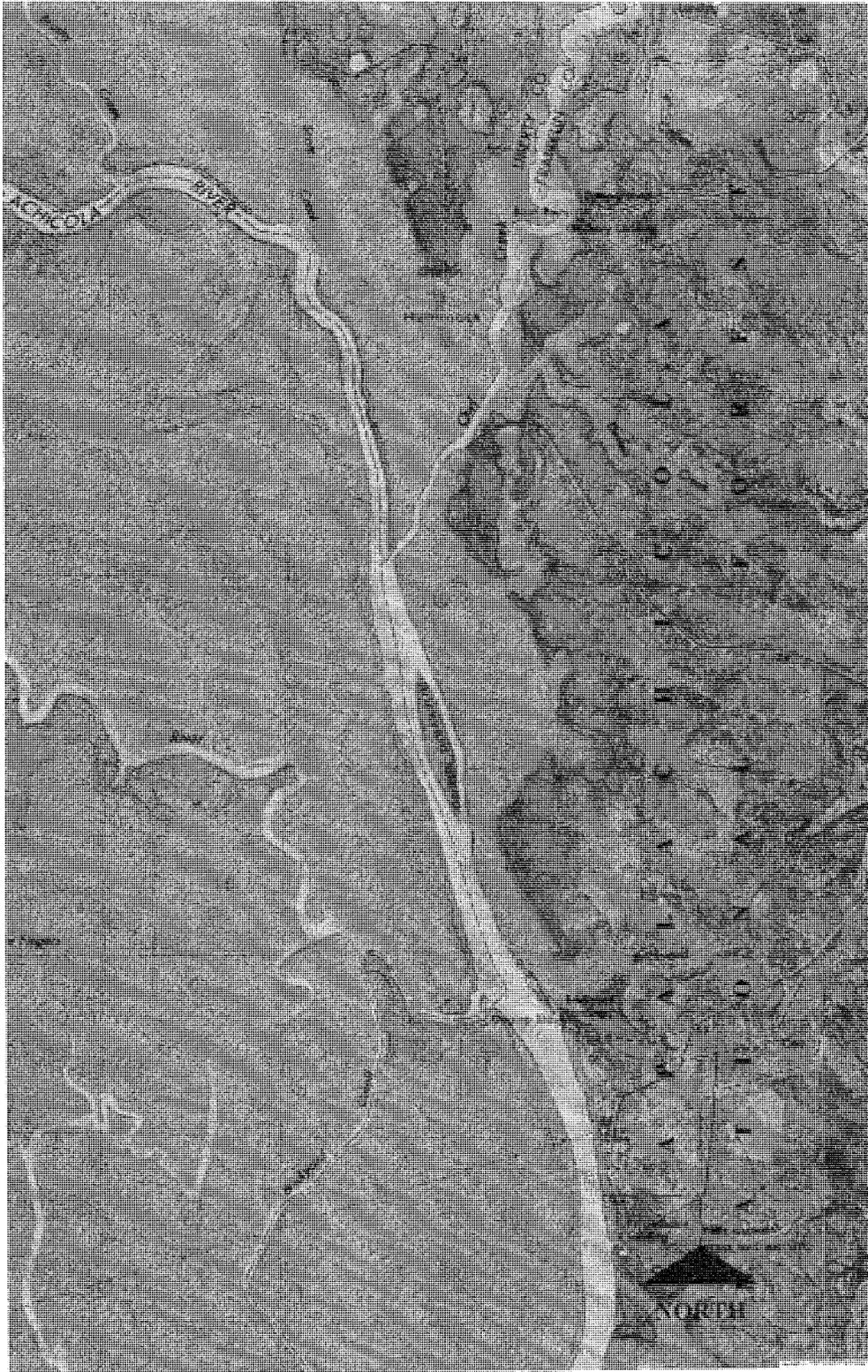
Excerpt from Dead Lake, FLA and Wewahitchka, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



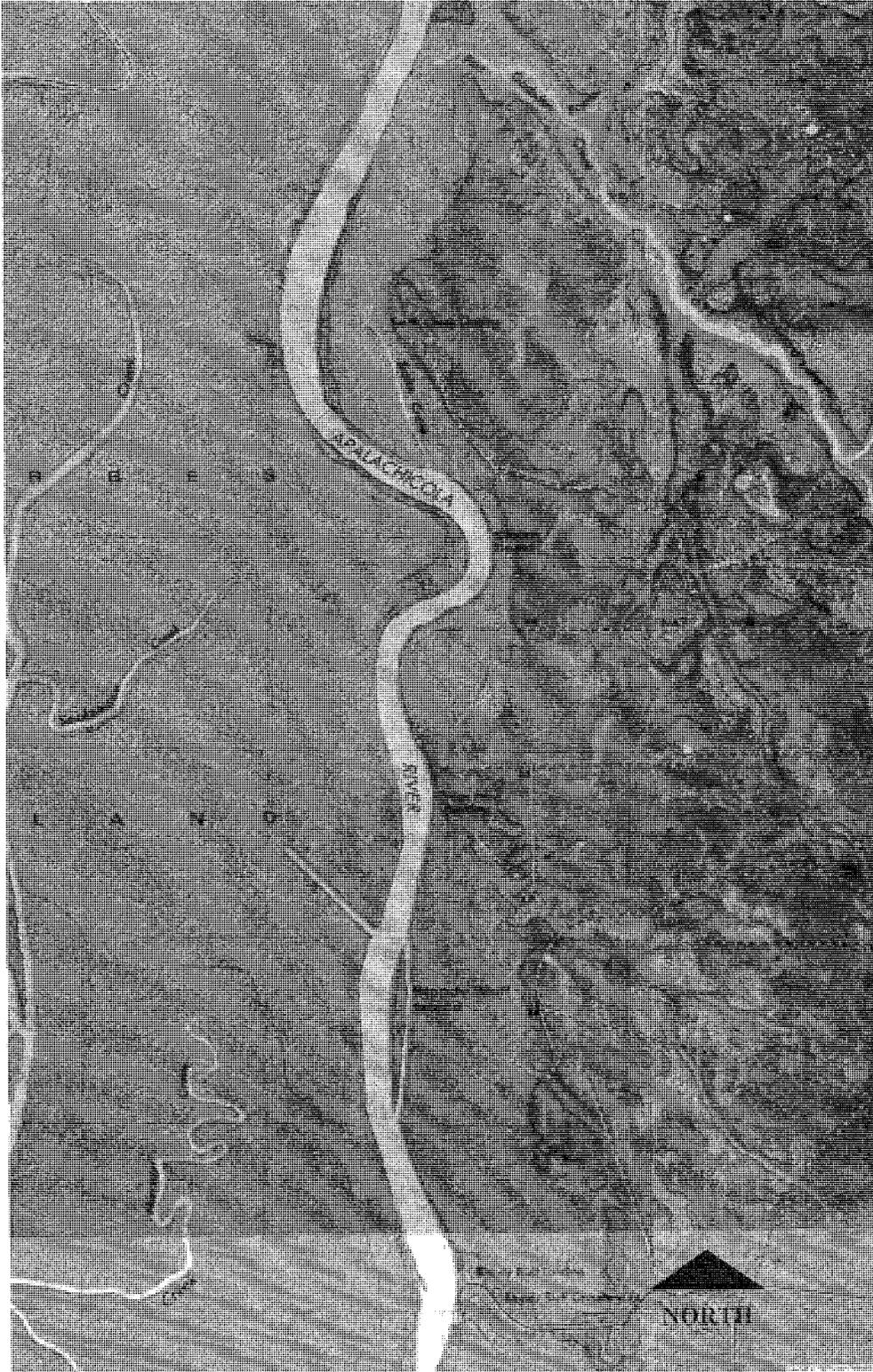
Excerpt from Wewahitchka, FLA and Kennedy Creek, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



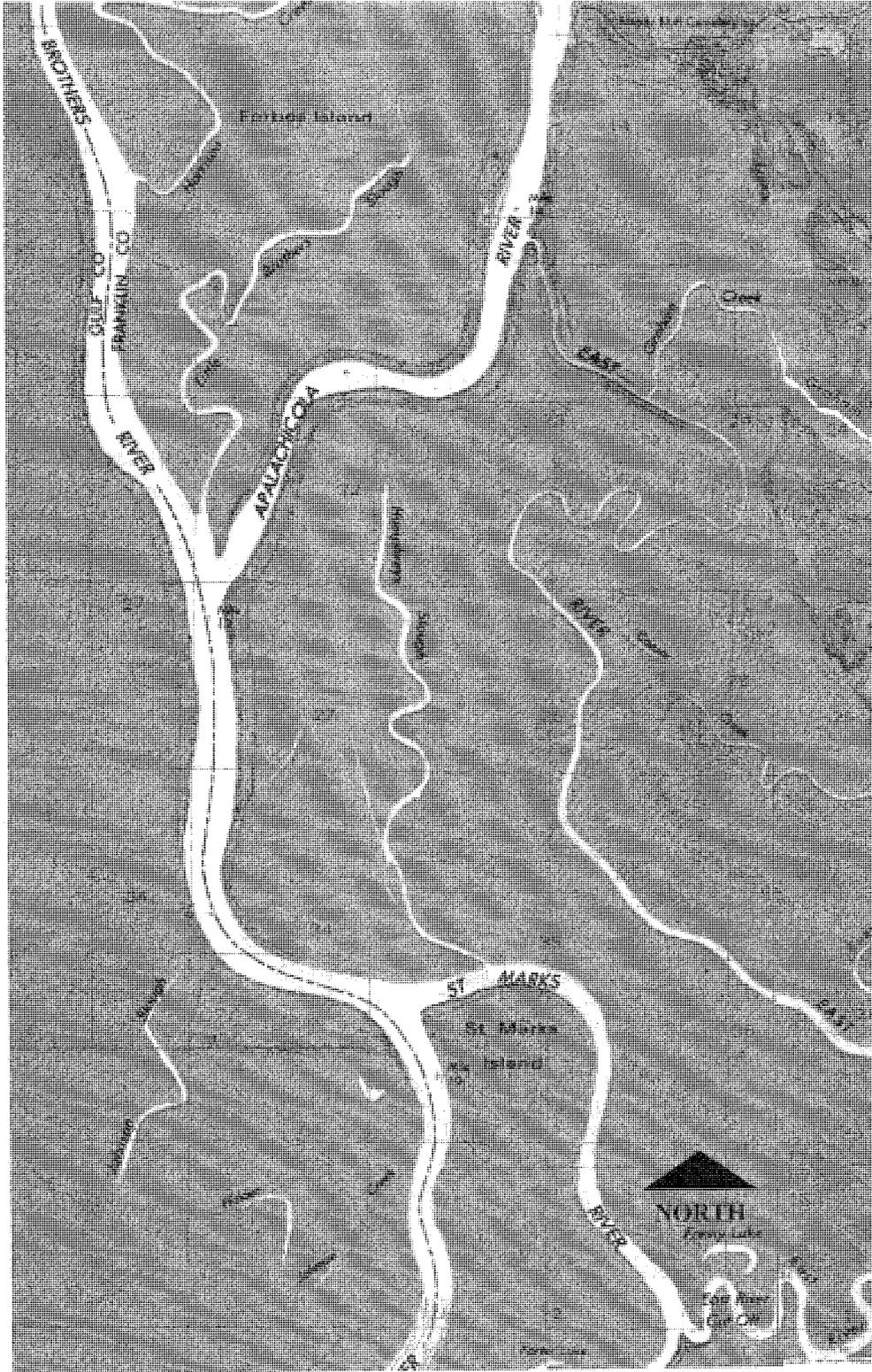
Excerpt from Kennedy Creek, FLA and Forbes Island, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



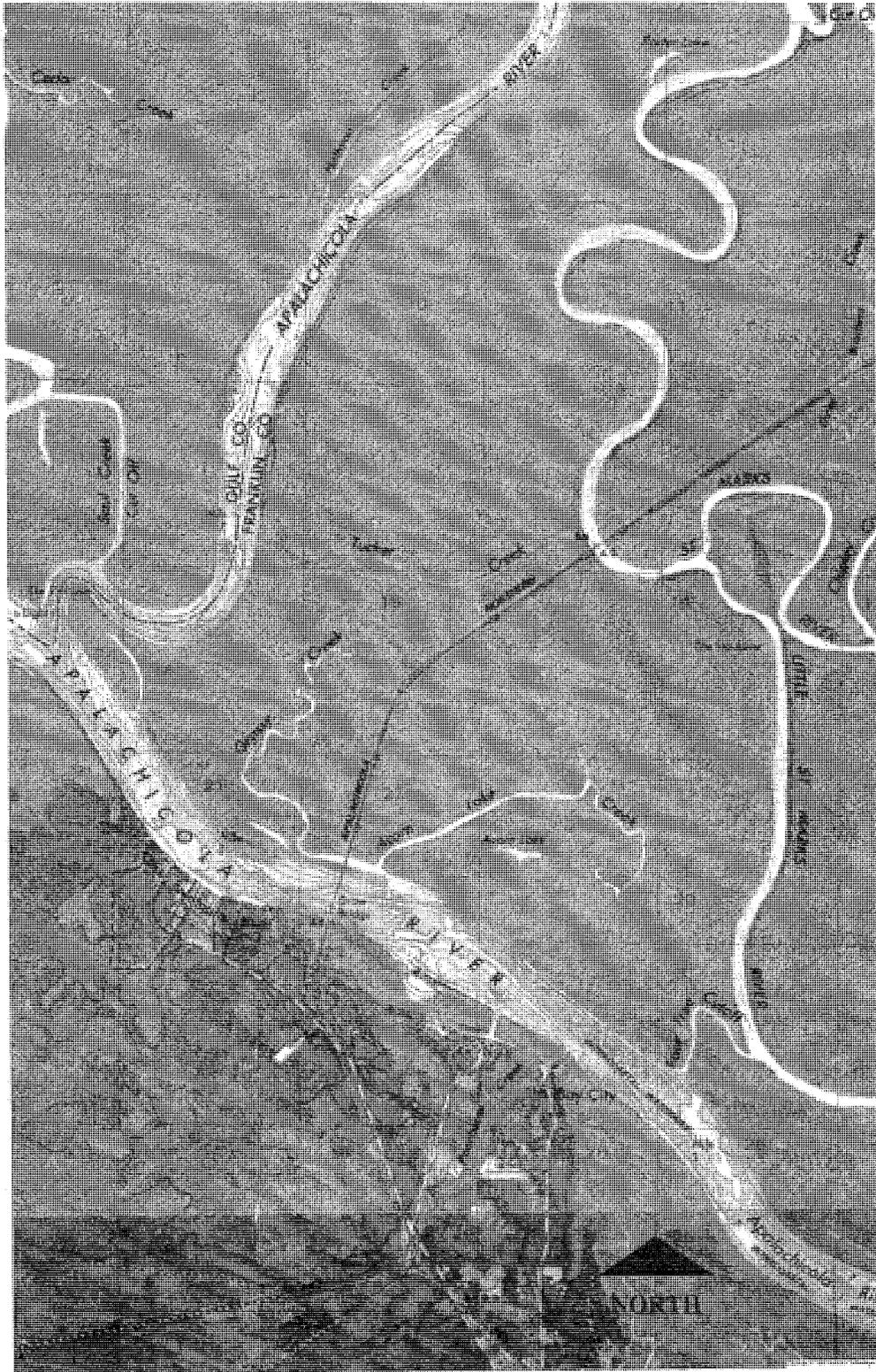
Excerpt from Forbes Island, FLA USGS Quad Map  
Scale: 1" = 0.5 Mile



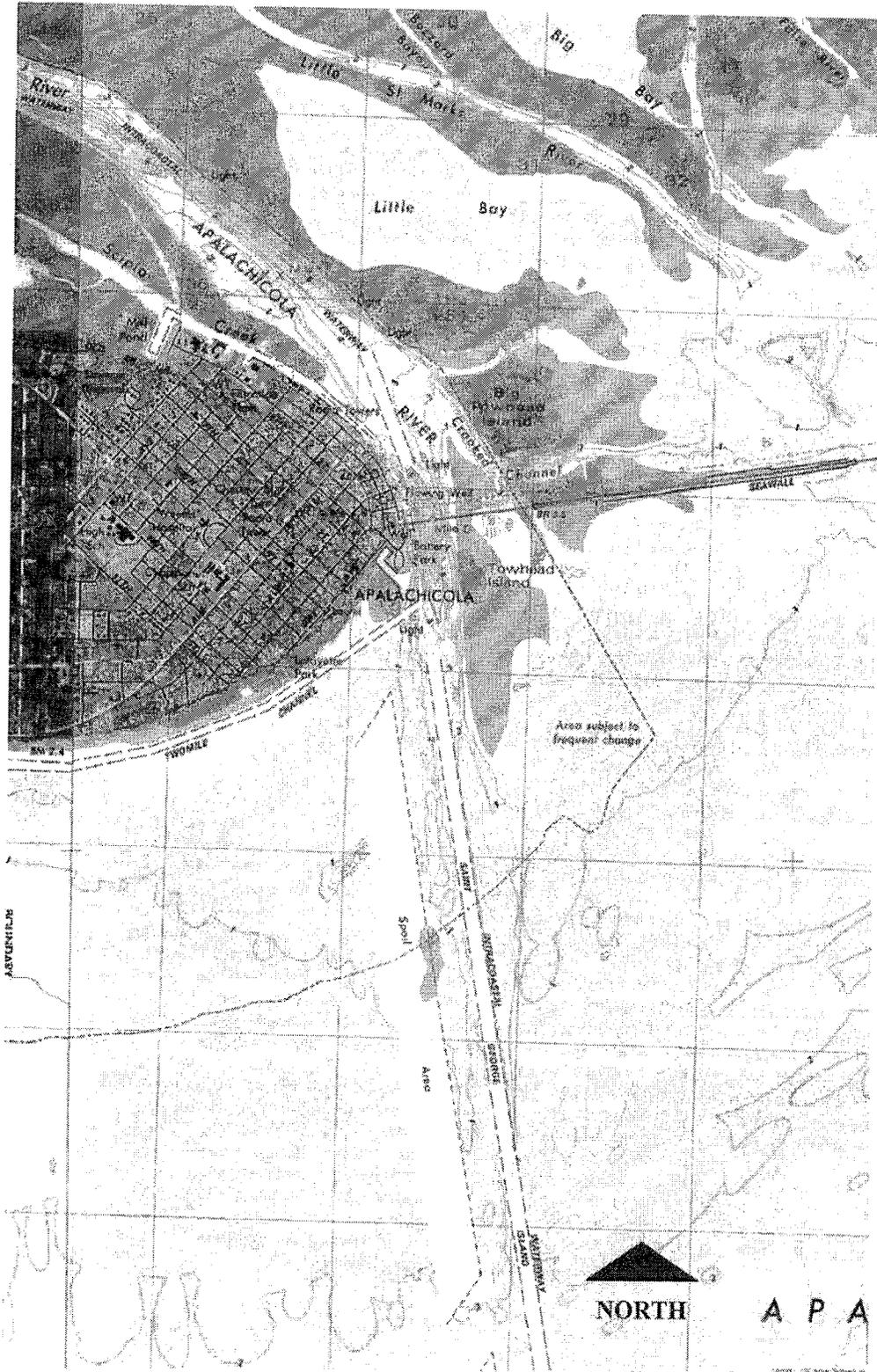
Excerpt from Forbes Island, FLA; Fort Gadsden, FLA; Jackson River, FLA;  
and Beverly, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



Excerpt from Jackson River, FLA and Beverly, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



Excerpt from Jackson River, FLA and West Pass, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



Excerpt from West Pass, FLA and Apalachicola, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile

APALACHICOLA RIVER				
COUNTY	QUADRANGLE MAP	SECTION	TOWNSHIP	RANGE
Jackson	Chattahoochee	31	4N	6W
		6,7	3N	6W
Jackson	Rock Bluff	26, 33, 34, 35	3N	7W
Gadsden	Chattahoochee	29, 32	4N	6W
		5, 6, 7	3N	6W
Gadsden	Sneads	12, 13, 23, 24, 26	3N	7W
		7	3N	7W
Gadsden	Rock Bluff	4, 5, 8, 7, 18, 19, 30	2N	7W
		25, 36	2N	8W
		1, 12	1N	8W
Calhoun	Bristol	12, 13, 14, 23, 24, 25, 26, 35, 36	1N	8W
Calhoun	Blountstown	14, 23, 26, 35, 34	1N	8W
Calhoun	Blountstown	3, 4, 9, 10, 14, 15, 22, 21	15	8W
Calhoun	Estiffanulga	21, 27, 28, 33	15	8W
		4, 5, 9, 16, 17, 20, 29, 31, 32	25	8W
Calhoun	Orange	6, 7	35	8W
		12, 13, 14, 23	35	9W
Liberty	Rock Bluff	3, 4, 9, 8, 17	2N	7W
		20, 19, 30	2N	7W
		36	2N	8W
		1, 12	1N	8W
Liberty	Bristol	12, 13, 14, 23, 24, 25, 36	1N	8W
		30, 31	1N	7W
Liberty	Blountstown	34, 35	1N	8W
		3, 10, 11, 15, 14	15	8W
		23, 22	15	8W
Liberty	Estiffanulga	21, 22, 26, 28, 33	15	8W
		4, 9, 10, 15, 16	25	8W
		17, 20, 21, 28, 29, 32	25	8W
		5	35	8W
Liberty	Orange	5, 6, 7	35	8W
		12, 13, 14, 23, 24, 22, 27	35	9W
Liberty	Dead Lake	27, 34, 33	35	9W
Liberty	Dead Lake	4, 3, 10, 9, 16	45	9W
Liberty	Wewahitchka	15, 21, 22, 28, 33, 34	45	9W
		3, 4, 9, 10, 15, 22	55	9W
Liberty	Kennedy Creek	22, 23, 24, 25	55	9W
		30, 31, 32, 33	55	8W
Liberty	Forbes Island	33	55	8W
		4, 3, 10	65	8W
Gulf	Dead Lake	27, 34, 33	35	9W
		4, 3, 9, 10, 16	45	9W
Gulf	Orange	26, 27	35	9W

APALACHICOLA RIVER (Con't)				
Gulf	Wewahitchka	16, 21, 22, 28, 33, 34	45	9W
		3, 4, 9, 10, 16, 15, 22	55	9W
Gulf	Kennedy Creek	22, 23, 24, 25, 36	55	9W
		30, 31, 32	55	8W
Gulf	Forbes Island	32	55	8W
		4, 3, 10, 15	65	8W
Gulf	Jackson River	16, 21, 27, 28, 34	75	8W
		2, 3, 10, 16	85	8W
Franklin	Forbes Island	10, 14, 15, 23, 26, 35	65	8W
		2, 11	75	8W
Franklin	Jackson River	14, 22, 23, 27, 34, 35	75	8W
		2, 3, 9, 10, 15, 16, 21, 22, 23, 27, 26	85	8W
Franklin	Apalachicola	25, 36	85	8W
		31	85	7W
		6	95	7W
CHIPOLA CUTOFF				
Gulf	Dead Lake	16, 17	45	9W



**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

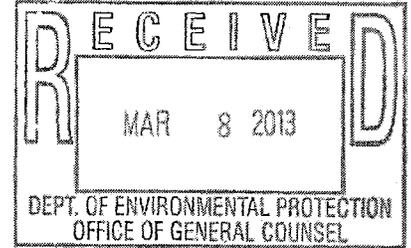
FLORIDA WILDLIFE FEDERATION,  
INC. and APALACHICOLA BAY AND  
RIVER KEEPERS, INC.,

Petitioners.

DOAH Case No:

v.

OGC Case No:



FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION and  
UNITED STATES ARMY CORPS OF  
ENGINEERS,

Respondents.

\_\_\_\_\_ /

**PETITION FOR FORMAL ADMINISTRATIVE HEARING**

The Florida Wildlife Federation, Inc. and Apalachicola Bay and River Keepers, Inc. (referred to collectively as Petitioners and individually as FWF and ABRK), pursuant to Sections 120.569, 120.57 and 403.412, Florida Statutes, and by and through undersigned counsel, respectfully file this Petition for Formal Administrative Hearing in opposition to the Florida Department of Environmental Protection's Notice of Intent (Notice) to Issue an Environmental Resource Permit (ERP) to the United States Army Corps of Engineers pursuant to Application Number 07-0129424-008-EI (Application). Petitioners will demonstrate that the Notice of Intent is inconsistent and in conflict with numerous provisions of law governing ERPs as set forth in detail below. Petitioners request that this Petition be referred to the

Division of Administrative Hearings; that a formal administrative hearing be conducted pursuant to Sections 120.569 and 120.57, Florida Statutes; that a Recommended Order be entered finding the Notice and draft ERP inconsistent and in conflict with the law governing ERPs as set forth below; and that a Final Order be entered denying the Application.

PARTIES

1. The Florida Wildlife Federation, Inc. is a duly incorporated not-for-profit corporation and has been so at all times relevant to this proceeding. For purposes of this proceeding, the mailing address, telephone number and e-mail address of FWF are those of undersigned counsel. FWF's address for general purposes is 2545 Blainstone Pines, Suite 100, Tallahassee, Florida, 32301, and its telephone number is (850) 656-7113.

2. Apalachicola Bay and River Keepers, Inc. is a duly incorporated not-for-profit corporation and has been so at all times relevant to this proceeding. For purposes of this proceeding, the mailing address, telephone number and e-mail address of ABRK are those of undersigned counsel. ABRK's address for general purposes is Post Office Box 8, 232-B Water Street, Apalachicola, Florida 32329, and its telephone number is (850) 653-8936.

3. The agency affected is the Florida Department of Environmental Protection (FDEP). FDEP is the State's environmental protection agency and is charged by statute and rule with, inter alia, protecting the water quality and water-related habitat of the State for both flora and fauna. The FDEP Agency Clerk is Lea Crandell, FDEP Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida, 32399-3000. The e-mail address for the Agency Clerk is Lea.Crandell@dep.state.fl.us. FDEP issued the Notice of Intent to Issue that is the subject of this Petition. The file number is Application Number 07-0129424-008-EI.

4. The United States Army Corps of Engineers, Mobile District (USACOE), is the applicant for the subject ERP. The authorized agent for the application is Curtis M. Flakes, Planning and Environmental Division, USACOE, Mobile District, P.O.. Box 2288, Mobile, Alabama 36628-0001. A copy of this Petition has been provided to the USACOE by First Class U.S. Mail to its authorized agent.

#### NOTICE

5. Petitioners received notice of FDEP's Notice of Intent to Issue through the agency's "e-post" system after issuance of the Notice on January 31, 2013. A Request for Extension of Time to file this Petition was submitted on February 13, 2013, and

granted. The time for filing a Petition was extended until March 8, 2013. This Petition is timely filed pursuant to the Order Granting Extension.

#### BACKGROUND

6. On May 29, 2012, the USACOE filed the Application with FDEP. The Application seeks an ERP for "snagging" activities. These activities involve the relocation of tree snags from the federal navigational channel in the Florida portion of the Apalachicola River in Jackson, Gadsden, Calhoun, Liberty, Gulf and Franklin Counties. The permit covers the entirety of the Florida portion of the River, from River Mile 0.0 to River Mile 106.4.

7. The entire area covered by the permit is Class III, Outstanding Florida Waters. River Miles 0.0-4.5 are part of the Apalachicola Bay Aquatic Preserve.

8. The snagging will be accomplished by one of two methods. The first is the use of a barge-mounted excavator with a tree shear attachment. Utilizing this method, trees will be cut and either allowed to sink or will be relocated. The second method is the use of a barge-mounted crane with a clam-shell bucket. Utilizing this method, the trees will be grasped and relocated.

9. Under the Notice and draft ERP, the permittee is given the sole discretion to determine which trees pose a navigational hazard and the authority to remove all trees it determines do

so. The permittee is also allowed to dispose of the snags in undisclosed locations within the Apalachicola River.

10. While snagging within the federal navigational channel falls within the Submerged Land Act under 43 U.S.C. 1311(d) or 43 U.S.C. 1314, the disposition of the logs on States sovereign submerged lands may require a permit that is not contemplated in the Notice of Intent to Issue. Based upon information and belief, no permit for these activities has been submitted to the Board of Trustees of the Internal Improvement Trust Fund.

11. The activities allowed under the Notice of Intent to Issue and Proposed Permit will violate numerous provisions of the law concerning ERPs. Additionally, the USACOE has not submitted a Supplemental Environmental Impact Statement for these proposed activities.

#### STANDING

12. FWF has standing pursuant to Section 403.412(6), Florida Statutes. At all times relevant to this proceeding, FWF has had more than twenty-five current members in the area subject to the multi-county Notice and draft ERP. The corporate purposes of the FWF include the protection of the environment, fish, wildlife resources and air and water quality. The Notice and draft ERP will have the effect of impairing, polluting, or otherwise harming the waters and natural resources of Florida. FWF is a not-for-profit that was formed more than one year

before the submission of the Application and the issuance of the Notice.

13. FWF has standing pursuant to Sections 120.569, 120.57 and 412.412(5), Florida Statutes. The Notice and proposed ERP will determine and affect its substantial interests. Members of FWF use and enjoy the water and natural resources of the Apalachicola River and its surrounding floodplain, which are protected by Chapters 373 and 403, Florida Statutes. The Notice and proposed ERP will adversely and substantially impact this use and enjoyment.

14. ARBK has standing pursuant to Section 403.412(6), Florida Statutes. At all times relevant to this proceeding, ARBK has had more than twenty-five current members in the area subject to the multi-county Notice and draft ERP. The corporate purposes of the ARBK include the protection of the environment, fish, wildlife resources and air and water quality. The Notice and draft ERP will have the effect of impairing, polluting, or otherwise harming the waters and natural resources of Florida. ARBK is a not-for-profit that was formed more than one year before the submission of the Application and the issuance of the Notice.

15. ARBK has standing pursuant to Sections 120.569, 120.57 and 412.412(5), Florida Statutes. The Notice and proposed ERP will determine and affect its substantial interests. Members of ARBK

use and enjoy the water and natural resources of the Apalachicola River and its surrounding floodplain, which are protected by Chapters 373 and 403, Florida Statutes. The Notice and proposed ERP will adversely and substantially impact this use and enjoyment.

16. FWF and ARBK have standing pursuant to Section 403.412(7), Florida Statutes and Chapter 120, Florida Statutes. The Notice and draft ERP contain a certification of compliance with State water quality standards and Section 401 of the Clean Water Act (CWA), 33 U.S.C. 1341. This certification of compliance with State water quality standards and CWA compliance are made pursuant to the CWA approved and delegated CWA program. The members of FWF and ARBK use and enjoy the waters and natural resources impacted by the Notice and draft ERP. FWF and ABRK both meet the standing requirements for a case and controversy pursuant to Article III of the United States Constitution.

DISPUTED ISSUES OF MATERIAL FACT

17. Whether the Notice and draft ERP will result in surface water quality violations.

18. Whether the Notice and draft ERP will result in increased scouring, shoaling and harmful erosion.

19. Whether the Notice and draft ERP will increase velocity of the River and decrease water levels.

20. Whether the Notice and draft ERP will result in increased negative impacts to the floodplain of the River.
21. Whether the Notice and draft ERP will negatively impact habitat for Federal and State listed species.
22. Whether the Notice and draft ERP will adversely impact the value of functions provided to fish and wildlife species by wetlands and the surface waters of the River.
23. Whether the Notice and draft ERP are in the public interest.
24. Whether FEDP is estopped from contending that snag removal does not negatively impact habitat.
25. Whether the USACOE is estopped from contending that navigation on the River requires the removal of snags.
26. Whether the Notice and draft ERP are necessary to serve emergency situations.
27. Whether snag removal is necessary for commercial navigation.
28. Whether the USACOE should release more water to the River for ecological restoration.
29. Whether the USACOE is required to obtain a sovereign submerged land lease for the relocation of snags.
30. Whether the USACOE has provided reasonable assurance that the activities allowed under the Notice and draft ERP will meet the conditions required by Rule 62, Florida Administrative Code.

31. Whether the Notice and draft ERP should be issued before the USACOE submits and has approved a Supplemental EIS.
32. Whether the Notice and draft ERP allow future waivers of permit requirements in violation of Florida's citizens to access the Courts.
33. Whether the Notice and draft ERP allow activities that will result in secondary impacts to water resources and surface water flows.
34. Whether the Notice and draft ERP are necessary for public boat traffic.
35. Whether the Notice and draft ERP allow activities that will adversely affect fish or recreational values or marine productivity.
36. Whether the conditions of the draft ERP, including but not limited to Conditions 12 and 15, are vague and unenforceable.

ULTIMATE FACTS ALLEGED

37. The Notice and draft ERP will result in surface water quality violations.
38. The Notice and draft ERP will result in increased scouring, shoaling and harmful erosion.
39. The Notice and draft ERP will increase the velocity of flow of the River and decrease water levels.
40. The Notice and draft ERP will result in increased negative impacts to the floodplain of the River.

41. The Notice and draft ERP will negatively impact habitat for Federal and State listed species.
42. The Notice and draft ERP will adversely impact the value of functions provided to fish and wildlife species by wetlands and the surface waters of the River.
43. The Notice and draft ERP are not in the public interest.
44. FEDP is estopped from contending that snag removal does not negatively impact habitat.
45. The USACOE is estopped from contending that navigation on the River requires the removal of snags.
46. The Notice and draft ERP are not necessary to serve emergency situations.
47. Snag removal is not necessary for commercial navigation.
48. The USACOE should release more water to the River for ecological restoration.
49. The USACOE is required to obtain a sovereign submerged land lease for the relocation of snags.
50. The USACOE has not provided reasonable assurance that the activities allowed under the Notice and draft ERP will meet the conditions required by Rule 62, Florida Administrative Code.
51. The Notice and draft ERP should not be issued before the USACOE submits and has approved a Supplemental EIS.

52. The Notice and draft ERP allow future waivers of permit requirements in violation of Florida's citizens to access the Courts.

53. The Notice and draft ERP allow activities that will result in secondary impacts to water resources and surface water flows.

54. The Notice and draft ERP are not necessary for public boat traffic.

55. The Notice and draft ERP allow activities that will adversely affect fish or recreational values or marine productivity.

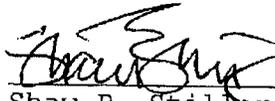
56. The conditions of the draft ERP, including but not limited to Conditions 12 and 15, are vague and unenforceable.

RULES AND STATUTES THAT REQUIRE DENIAL OF THE AGENCY'S PROPOSED ACTION

57. Chapter 62, Florida Administrative Code. Sections 373 and 403, Florida Statutes.

STATEMENT OF RELIEF SOUGHT

Petitioners request that this Petition be referred to the Division of Administrative Hearings; that a formal evidentiary hearing be conducted pursuant to Sections 120.569 and 120.57, Florida Statutes; and that a Recommended and Final Order be entered denying USACOE Application Number 07-0129424-008-EI.



Shaw P. Stiller

Attorney at Law

1510 Hasosaw Nene

Tallahassee, FL 32301

Telephone: (850) 216-0442

shawstiller@gmail.com

FBN 936110

Counsel for Petitioners

CERTIFICATE OF SERVICE

I certify that a copy of this Petition was served by U.S. Mail on the person listed below this 8<sup>th</sup> day of March, 2013.

Curtis M. Flakes, Chief  
Planning and Environmental Division  
U.S. Army Corps of Engineers, Mobile District  
P.O. Box 2288  
Mobile. AL 36628-0001

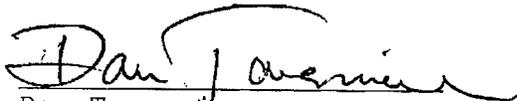


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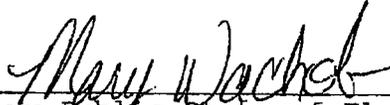
Shaw P. Stiller

Verification

I, Dan Tonsmeire, after being duly sworn, state that I am authorized by the Apalachicola Bay and River Keepers to sign this verification. I have read the attached Petition and I hereby adopt the Petition and the facts asserted concerning the Apalachicola Bay and River Keepers. I state that the proposed FDEP agency actions as described in the Petition will have the effect of impairing, polluting or otherwise injuring the waters and natural resources of the State of Florida. THE AFFIANT SAID NOTHING FURTHER.

  
Dan Tonsmeire

SWORN TO AND SUBSCRIBED before me this 8<sup>th</sup> day of March, 2013, by Dan Tonsmeire, who is known to me / has produced a valid Florida driver's license as identification.

  
Notary Public-State of Florida

Print name: Mary Wachob  
My commission expires: 6-23-15  
My commission no: EE105677



Verification

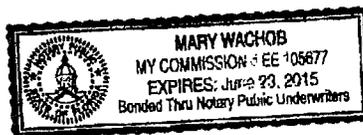
I, Manley K. Fuller, III, after being duly sworn, state that I am authorized by the Florida Wildlife Federation to sign this verification. I have read the attached Petition and I hereby adopt the Petition and the facts asserted concerning the Florida Wildlife Federation. I state that the proposed FDEP agency actions as described in the Petition will have the effect of impairing, polluting or otherwise injuring the waters and natural resources of the State of Florida. THE AFFIANT SAID NOTHING FURTHER.

Manley K. Fuller, III  
Manley K. Fuller, III

SWORN TO AND SUBSCRIBED before me this 8<sup>th</sup> day of March, 2013, by Manley K. Fuller, III, who is known to me / has produced a valid Florida driver's license as identification.

Mary Wachob  
Notary Public-State of Florida

Print name: Mary Wachob  
My commission expires: 6-23-15  
My commission no: EE 105677





DEPARTMENT OF THE ARMY  
MOBILE DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 2288  
MOBILE, ALABAMA 36628-0001

REPLY TO  
ATTENTION OF:

November 20, 2013

Inland Environment Team  
Planning and Environmental Division

Dr. Donald Imm  
Field Supervisor  
U.S. Fish and Wildlife Service  
1601 Balboa Avenue  
Panama City, Florida 32405-3721

Dear Dr. Imm:

This letter documents recent informal consultation, pursuant to Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq*), with Ms. Karen Herrington of your office regarding the U.S. Army Corps of Engineers (USACE), Mobile District, proposed selective tree snagging activities on the Apalachicola River. As you know, the USACE submitted an Environmental Resources Permit (ERP) application to the Florida Department of Environmental Protection (FDEP) requesting coastal zone consistency to the maximum extent practicable and water quality certification for maintenance snagging associated with the Florida portions of the Apalachicola, Chattahoochee, and Flint Rivers Federal navigation project. The navigation project selective maintenance snagging activity will be limited to tree snags that represent a clear hazard to navigation on the Apalachicola River from River Mile (RM) 0.0 to River Mile 106.4. The USACE will utilize the most current hydrographic survey data to delineate the thalweg of the river. This data will then be used to determine the river stage, at the Blountstown gage, that provides a 9-foot channel depth. Only hazards found within or in close proximity to the thalweg and within channel depth will be targeted. Maintenance of a safe Federal navigation channel is critical to ensuring the USACE timely response to emergency situations that may arise at upstream projects requiring specialized equipment or parts that can only be transported by barge or boat.

The snag work will consist of a USACE tug boat transporting a barge hauling an excavator with an extended reach boom to the downstream side of each snag. Once in position, the barge is anchored in place utilizing two spuds (steel posts that extend vertically from the barge to the river bottom) and the excavator relocates the snag with one of the two proposed methods. The primary method (and only method anticipated) consists of an excavator with a shearing attachment to cut the snag off near the base, below the water line. Once the tree is cut, it will be allowed to sink to the bottom of the

channel where it will no longer be a hazard to navigation. This method of snag maintenance will minimize the disturbance to the bottom and shoreline by leaving an undisturbed root system. This is particularly important for trees that have fallen into the water and maintain an intact root system at the shoreline; as this may provide bank protection and/or moderately depositional habitat for listed mussel species. It will also reduce the disturbance to the river bottom for the snags that have drifted downstream and have become lodged vertically. Though typically, mussels cannot occur in the main channel due to erosive forces and shear stress, it is possible that the relatively sheltered microhabitat immediately downstream of the snag base and trunk could support listed mussel species. The primary method of managing the snags will avoid impacts to this microhabitat.

The proposed secondary method is to use the traditional method of snag relocation. This utilizes a barge mounted crane with a clam-shell bucket to grasp the snag and orientate it out of the main channel along the margins of the river or other approved areas not supporting listed mussel species. Specific Conditions 11 and 17-22 of the ERP (listed below) describe additional conditions that are required should the secondary method of snag management be necessary. Of these, Specific Condition 11 pertains directly to listed mussel species and habitat. It requires localized surveys of the selected snag and snag relocation area by a qualified wildlife biologist to determine if listed species are present. The USACE will re-consult and work closely with the USFWS should the use of the traditional method of snag relocation become necessary.

All snag relocations will be recorded with a Global Positioning System (GPS) and reported in the Annual Maintenance Report. Specific Conditions 15 and 16 are intended to avoid adverse affects to Gulf sturgeon and include prohibitions against snagging activities during the spawning season (March-May) and in known holding areas when sturgeon are present in the river (March-November). The USACE will also include the U.S. Fish and Wildlife Service (USFWS) on any notifications or submittals required by the ERP.

The threatened Gulf sturgeon (*Acipenser oxyrinchus desotoi*), endangered fat threeridge mussel (*Amblema neisleri*), threatened purple bankclimber mussel (*Elliptioideus sloatianus*), threatened Chipola slabshell mussel (*Elliptio chipolaensis*), and areas designated as critical habitat for the Gulf sturgeon and the mussels occur in the Apalachicola River and may be affected by the proposed maintenance activity. The May 22, 2012 *Biological Opinion on the U.S. Army Corps of Engineers, Mobile District, Revised Operating Plan for Jim Woodruff Dam and the Associated releases to the Apalachicola River* and the June 1, 2008 *Biological Opinion on the U.S. Army Corps of Engineers, Mobile District, Revised Operating Plan for Jim Woodruff Dam and the Associated releases to the Apalachicola River* both describe the current status of these species. We incorporate this species information by reference, as well as, more recent observations of fat threeridge and purple bankclimber mussels associated with woody debris in deepwater habitats along the margins of the river as described in the USFWS June 27, 2012 letter to FDEP. It should also be noted that

during the deepwater habitat studies, listed mussel species were noticeably absent from the main channel (thalweg) and are not expected to occur in these turbulent areas (Kaiser, Pers Comm., 2013).

In past years, routine selective snagging had been conducted annually but for various reasons it has not occurred since the early 2000's. Table 1 below summarizes the snagging activity that occurred from 1997-2001.

1997	1998	1999	2000	2001
180	395	87	34	194

This five year period represents the last significant snagging effort and is representative of the numbers of snags typically managed. As would be expected, some river reaches require considerably more snagging than others. River miles 36-45 included considerably more snagging effort in this time frame than other areas. By letter dated, October 13, 2013, the U.S. Coast Guard (USCG) identified particularly dangerous areas in the river due to the presence of snags that are consistent with previous snagging hot spots. These include RMs 33.5, 36.5, 38, 41.5, 44.7, 50, 54, 62, 69, 75.5, 76.5, and 81. However, this list is not exhaustive and problem snag locations may have shifted due to relatively high flows on the river throughout the year. Dangerous snags will be identified utilizing visual inspection, side scan sonar, and/or notifications from local residents and the USCG.

By letter dated, June 25, 2012, your office provided comments to FDEP regarding the proposed snagging activity and ERP application (copy attached for ready reference). At the time the USFWS letter was written, the proposed work utilized the traditional mechanical relocation snagging method. Based on this informal consultation and discussions with FDEP, snagging operations were revised to incorporate (as the primary method) the USFWS's recommended technique of shearing the snag near the base, below the water line and then allowing it to sink nearby. On January 31, 2013, the FDEP issued a revised Notice of Intent to issue the ERP for the proposed selective snagging maintenance activity. On February 5, 2013, the USFWS notified FDEP that no additional comments from those provided in the June 2012 letter were necessary and that any USFWS concerns would be addressed during the Section 7 consultation with the USACE. On March 8, 2013, the Apalachicola Riverkeeper and Florida Wildlife Federation filed a petition for an administrative hearing regarding FDEP's intention to issue the ERP. After considerable coordination between FDEP, USACE, and the above organizations the request for an administrative hearing is being withdrawn. As a result of this coordination, the USACE will also take digital photographs of snags subject to specific condition 4d. In the meantime, the USACE would like to complete the consultation for the proposed activity in accordance with the provisions of the ESA. The ERP included 26 Specific Conditions and 11 General Conditions intended to protect the environment, special-status species, and state interests based on ERP regulations, and USFWS and other agency/stakeholder comments on the ERP application. All

work associated with the proposed action will be conducted in accordance with these conditions. The ERP conditions are listed below:

SPECIFIC CONDITIONS:

1. Prior to the initial snagging activity undertaken to this permit, the permittee shall complete the Section 7 consultation with the USFWS as required under the ESA. The permittee shall adhere to all of the required strategies/actions for the protection of listed species and their habitats resulting from the consultation, up to and including not conducting the snagging activity.
2. The permittee shall contact the Department at 850-595-8300 or by email to [Heather.Mason@dep.state.fl.us](mailto:Heather.Mason@dep.state.fl.us) at least 48 hours before any snagging activities occur. The permittee shall provide the location where snagging will occur, the type and registration numbers of any vessels used, and the anticipated duration of activities.
3. If during the progress of this project prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, dugout canoes, or any other physical remains that could be associated with Native American cultures or early colonial or American settlement are encountered at any time within the project site area, the permitted project should cease all activities involving subsurface disturbance in the immediate vicinity of such discoveries. The permittee, or other designee, shall contact the Florida Department of State, Division of Historical Resources, Review and Compliance Section at 850-245-6333 or 800-847-7278, as well as the appropriate permitting agency office. Project activities should not resume without verbal and/or written authorization from the Division of Historical Resources. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes.
4. The permittee shall apply the following criteria when determining if relocation of a snag is necessary, and shall only relocate those snags that fit the criteria:
  - a. Snags serving as bank stabilization shall not be disturbed.
  - b. Listed species are not currently using the snag or immediately surrounding substrate as habitat.
  - c. Listed species are not currently using the area where the relocated snag will be permanently placed.
  - d. A through C above may be superseded if the snag presents a clear danger to navigation, i.e., it cannot be avoided by barge traffic. If this is the case, the snag may be relocated using methods to reduce impact to the resource.
5. No snags shall be permanently removed from the river.

6. Snags shall be placed in water as follows, in a way that will not be detrimental to the health of the river:
  - a. The amount of time a snag is exposed to the air while being relocated shall be kept to minimum.
  - b. Snags shall be spaced to facilitate randomness, and shall not be placed in piles or groups of more than 4-5 snags apiece.
  - c. Snags shall not be placed where they may cause blockages of creeks, streams, or sloughs.
  - d. Snags shall not be placed in a way that they are likely to float away and cause log jams or flooding.
  - e. Snags shall not be placed where they may cause or exacerbate erosion.
  - f. Snags shall be placed to prevent erosion, wherever practicable.
  - g. Snags may also be placed within dike fields and on the upstream portions of sandbars or old disposal sites.
7. Snagging activities shall not cause adverse impacts to adjacent wetlands, marshlands, submerged or emergent vegetation, or other environmentally sensitive lands.
8. At least 1 foot clearance shall be present between the bottom of fully loaded vessels and the river bed. This shall apply to all vessels utilized to conduct snagging activities or to transport emergency items upstream.
9. To protect listed species habitat, vessels utilized to conduct snagging activities or to transport emergency items upstream shall not run aground or cause scouring.
10. Appropriate precautions should be taken to prevent barges or other vessels from running into riverbanks.
11. When using method 2 (mechanical relocation), a qualified wildlife biologist experienced in conducting listed species surveys in submerged environments shall accompany the permittee during snagging activities. The biologist shall perform localized surveys for each snag to be relocated to determine whether or not the snag is currently utilized by listed species. The biologist shall also examine the proposed relocation site to determine whether or not listed species habitat will be disturbed by the relocation.

12. The applicant shall utilize current maps assembled by USACE, USFWS, and Florida Fish and Wildlife Conservation Commission (FFWCC) containing the location of shoreline and deeper water habitats relocation activities could adversely affect the listed mussels. Special attention should be given to the identified areas, and snagging shall be avoided in those areas to the greatest extent practicable. Special attention should be given to the identified areas, and snagging shall be avoided in those areas to the greatest extent practicable.

13. It shall be the permittee's responsibility to ensure compliance with all permit conditions. Any misplacement of snags, unauthorized impacts to listed species habitat, or other violation of this permit and conditions shall result in the immediate shutdown of the operation until all actions have been taken to bring the operation into compliance with the conditions of the permit.

14. If any snag is placed outside of the authorized areas, blocks any sloughs or creeks, or is transported out of the river onto shoreline, wetland, or other valuable habitat, the Department shall be notified immediately of the violation by phone (850-595-8300) and as soon as possible by letter or email. The permittee shall fully explain the violation and indicate all measures taken to prevent reoccurrence of the violation. After this notification has been received, the Department will evaluate the environmental concerns of the violation and provide verbal and written instructions to the permittee of the necessary corrective actions.

15. To protect populations of striped bass and other fish species that spawn in the spring, including Gulf sturgeon, the permittee shall not conduct snagging activities during March through May without specific written approval from Department. To request approval for snagging prior to the end of this period, the permittee shall:

a. Consult with FFWCC and USFWS at least 15 days, or at the earliest planning stages, before the proposed snagging start date.

b. The Department's approval decision shall take into consideration the recommendations of FFWCC and USFWS.

16. Snagging activities shall not be conducted in known sturgeon holding areas during March through November when Gulf sturgeon is present in the river.

#### TURBIDITY AND TURBIDITY MONITORING

(Does not apply to snagging activities completed using snagging method 1, or to any snagging activities north of Gulf County pursuant to Rule 62-4.242(2)(f)(1), F.A.C.)

17. A temporary mixing zone for turbidity is granted from the point of each relocated snag with the following size and configuration constraint(s):

a. The mixing zone shall extend no further than 150 meters downstream (492 feet), from the point of turbidity generation [Chapter 62-4.244(5)(c), F.A.C].

18. Monitoring for turbidity shall be conducted for the duration of the project. Sampling will commence prior to, but no more than 24 hours before initiation of any snagging activities. Sampling shall occur at a point 150 meters downstream of each relocated snag immediately before it is relocated, and again within 30 minutes of the snag being relocated.

19. Measurements must be acquired in adherence to the Department's Standard Operating Procedure (SOP) for field turbidity, available at the website: <http://publicfiles.dep.state.fl.us/dear/sas/sopdoc/2008sops/ft1600.pdf> More specifically, the instruments used to measure turbidity shall be fully calibrated within one month prior to commencement of the project, and at least once a month thereafter during the project. Calibration procedures shall be recorded in a permanent logbook, and copies must be submitted with the data.

20. Turbidity samples shall be collected with a Kemmerer, Van Dorn, or a similar sampler that is designed to collect in situ water samples. Samples shall be analyzed immediately after collection with a turbidimeter that produces results in Nephelometric measurements. The field sample results shall be accurately recorded to the precision capabilities (decimal place) of the instrument. Field turbidimeter results shall be rounded to the next whole number (ex. 15.23 NTUs shall be recorded; however the results shall be interpreted as 16.00 NTUs). If monitoring reveals turbidity levels above background level at the edge of the mixing zone, the permittee shall cease all work pursuant to Specific Condition 21.

21. If monitoring reveals turbidity levels above background at the edge of the mixing zone described in Specific Condition 17, the permittee shall take the following measures:

a. Immediately cease all work contributing to the water quality violation. Work which may contribute to the violation shall not resume until corrective measures have been taken (including installation of turbidity screens around the work area), and turbidity levels have returned to acceptable levels; and

b. Stabilize work areas contributing to the violation. Modify work procedures responsible for the violation, install turbidity control devices, if necessary; and

c. Operations may not resume until water quality standard for turbidity has returned to background levels.

d. The violation(s) shall be immediately reported to the Department of Environmental Protection, Submerged Lands & Environmental Resources Program, Compliance and Enforcement Section, Suite 202, Northwest District Office, 160 West Government Street, Pensacola, Florida 32501-5794, in writing or by telephone at 850-595-8300. The report shall include a description of the corrective actions being taken

or proposed to be taken. The report shall be made to the Department as soon as normal business hours resume if violation(s) are noted after normal business hours, on holidays, or on weekends. A copy of the monitoring data sheets, which indicate violation(s), shall be forwarded immediately to the Department.

Failure to report violation(s) or to follow correct procedures before resuming work shall constitute grounds for permit revocation and may subject the permittee to formal enforcement action.

22. Monitoring reports shall also include the following information for each sample that is taken:

- a. Time of day samples taken;
- b. Depth of water body;
- c. Depth of sample;
- d. USGS 02358000 – Apalachicola River Gage stage and flow at Chattahoochee, Florida ([http://waterdata.usgs.gov/fl/nwis/uv/?site\\_no=02358000&PARAMeter\\_cd=00065,0060](http://waterdata.usgs.gov/fl/nwis/uv/?site_no=02358000&PARAMeter_cd=00065,0060)); and
- e. Antecedent weather conditions, including wind direction and velocity.

#### SNAGGING ACTIVITY MONITORING/REPORTING

23. BY 15 April of each year, the permittee shall submit a draft Annual Maintenance Report to FDEP that summarizes the work done according to this permit during the previous calendar year. The report shall include:

- a. A summary of snagging activities
- b. A list of all snag relocations along the Apalachicola River that include:
  - i. the latitude/longitude and/or river mile location (to the nearest 1/10 river mile) recorded for each snag before and after relocation;
  - ii. a description of the placement of the snag in the river (inside bend, outside bend, straight reach, left/right when facing downstream);
  - iii. a list of the number of snags relocated within each 5-mile block of the Apalachicola River;

iv. a list of all officially reported USACE vessel groundings and hazardous material spills that were reported to the USCG and a list of those reported to USACE;

v. a summary of proposed snagging activities concerning the Apalachicola River for the next year;

vi. documentation of the threatened and endangered species surveys that were conducted to confirm that snags were not removed or relocated in habitat of these species; and

vii. a listing of any verified and unverified permit violations (violations that are suspected by the Department and reported to USACE), actions taken to resolve verified violations, and steps taken to clarify unverified violations.

Within 30 days of receiving the Draft Annual Maintenance Report, the Department shall provide the permittee with comments and questions concerning the draft report. The Department's response may include comments from the interagency team (FDEP, FFWCC, USFWS, etc.). If the Department determines that any of the errors or omissions significantly affects the Department's ability to monitor USACE's activities, the permittee will correct errors or omissions within 30 days of receiving notification by the Department. When all errors or omissions have been corrected and approved by the Department, a Final Annual Maintenance Report shall be submitted to the Department.

#### EMERGENCIES/ADMINISTRATIVE

24. The construction phase expires at 11:59 p.m. on the date indicated on the cover page of this permit.

25. For emergencies involving a serious threat to the public health, safety, welfare, or environment, the emergency telephone contact number is 800-320-0519 (State Warning Point). The Department telephone number for reporting nonthreatening problems or system malfunctions is 850-595-0663 day or night.

26. The mailing address for submittal of forms for the "Construction Commencement Notice", "As-Built Certification...", "Request for Conversion of Stormwater Management Permit Construction Phase to Operation and Maintenance Phase", or other correspondences is FDEP, SLERP, 160 Government Center, Pensacola, Florida, 32502.

#### GENERAL CONDITIONS

1. This permit, including its general and specific conditions, must be construed in light of the February 28, 2006 Interagency Cooperative Agreement for Civil Works Projects (ICA) between the Department and USACE. As recognized in the ICA, the

Department has the authority to include reasonable conditions in this permit. All of the conditions in this permit, both general and specific, are enforceable to the extent sovereign immunity has been waived under 33 U.S.C. §§ 1323 and 1344(t). The ICA is incorporated herein by reference.

2. All activities approved shall be implemented as set forth in the drawings incorporated by reference and in compliance with the conditions and requirements of this document. The USACE shall notify the Department in writing of any anticipated changes in:

- a. Operational plans;
- b. Project dimensions, size or location;
- c. Ability to adhere to permit condition;
- d. Project description included in the permit;
- e. Monitoring Plans

If the Department determines that a modification to the permit is required then the USACE shall apply for and obtain the modification. Department approval of the modification shall be obtained prior to implementing the change, unless the change is determined by the Department to reduce the scope of work from that authorized under the original permit, and will not effect compliance with permit conditions or monitoring requirements.

3. If, for any reason, the USACE does not comply with any condition of limitation specified herein, the USACE shall immediately provide the Department with a written report containing the following information:

- a. A description of and cause of the noncompliance;
- b. The period of noncompliance, including dates and times;
- c. Impacts resulting or likely to result from the noncompliance;
- d. Steps being taken to correct the noncompliance; and
- e. The steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Compliance with the provision of this condition shall not preclude the Department from taking any enforcement action allowed under state law with respect to any noncompliance.

4. The USACE shall obtain any applicable licenses, permits, or other authorizations which may be required by federal, state, local, or special district laws and regulations. Nothing herein constitutes a waiver or approval of other Department permits or authorizations that may be required for other aspects of the total project.
5. Nothing herein conveys to the USACE or creates in the USACE any property right, any interest in real property, any title to land or water, constitutes State recognition or acknowledgement of title, or constitutes authority for the use of Florida's sovereign submerged lands seaward of the mean high-water line or an established erosion control line, unless herein provided, and the necessary title, lease, easement, or other form of consent authorizing the proposed use has been obtained from the State.
6. Any delineation of the extent of a wetland or other surface water submitted as part of the application, including plans or other supporting documentation, shall not be considered specifically approved unless a specific condition of this authorization or a formal determination under Section 373.421(2), F.S., provides otherwise.
7. Nothing herein authorizes any entrance upon or activities on property which is not owned or controlled by the USACE or local sponsor, or convey any vested rights or any exclusive privileges.
8. This document or a copy thereof, complete with all conditions, attachments, modifications, and time extensions shall be kept at the work site of the authorized activity. The USACE shall require the contractor to review this document prior to commencement of the authorized activity.
9. The USACE specifically agrees to allow Department personnel with proper identification, at reasonable times and in compliance with USACE specified safety standards access to the premises where the authorized activity is located or conducted for the purpose of ascertaining compliance with the terms of this document and with the rules of the Department and to have access to and copy any records that must be kept; to inspect the facility, equipment, practices, or operations regulated or required; and to sample or monitor any substances or parameters at any location reasonably necessary to assure compliance. Reasonable time may depend on the nature of the concern being investigated.
10. At least forty-eight (48) hours prior to the commencement of authorized activity, the USACE shall submit to the Department a written notice of commencement of activities indicating the anticipated start date and the anticipated completion date.
11. Within a reasonable time after completion of construction activities authorized by this permit, the USACE shall submit to the Department a written statement of completion. This statement shall notify the Department that the work has been completed as authorized and shall include a description of the actual work completed. The Department shall be provided, if requested, a copy of any as-built drawings required of the contractor or survey performed by the USACE.

Based on the mutually agreed upon avoidance measures reflected in the Specific Conditions of the ERP and utilization of the primary method of snag maintenance, the USACE has determined that the proposed action may affect but is not likely to adversely affect Gulf sturgeon, fat threeridge, purple bankclimber, and Chipola slabshell and that it may affect but is not likely to adversely modify Gulf sturgeon, fat threeridge, purple bankclimber, and Chipola slabshell critical habitat. Therefore, we request concurrence with this determination per section 7 of the ESA. Should any snag require the secondary method (traditional mechanical relocation) or otherwise not conform to the specific conditions described in the ERP the USACE will re-consult with USFWS prior to relocation.

We look forward to continued progress as we work with you and your staff to complete our respective consultation responsibilities. If you have any questions, please contact Mr. Brian Zettle at 251-690-2115 or by email at [brian.a.zettle@usace.army.mil](mailto:brian.a.zettle@usace.army.mil).

Sincerely,

A handwritten signature in black ink, appearing to read 'Curtis M. Flakes', with a long horizontal flourish extending to the right.

Curtis M. Flakes  
Chief, Planning and Environmental  
Division

Encl



IN REPLY REFER TO:

## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Field Office

1601 Balboa Avenue

Panama City, FL 32405-3721

Tel: (850) 769-0552

Fax: (850) 763-2177

June 25, 2012

Ms. Heather Mason  
Environmental Specialist  
Florida Department of Environmental Protection  
Submerged Lands and Environmental Resources Program  
160 W Government Street, Suite 308  
Pensacola, FL 32502

Re: Apalachicola River Snagging  
File No. 07-0129424-008-EI,  
Application number: 129424-  
008, U.S. Army Corps of  
Engineers, Multi-County, Florida

Dear Ms. Mason:

The purpose of this letter is to provide comments on the U.S. Army Corps of Engineers' (Corps) application for an Environmental Resource Permit (ERP) for maintenance snagging (i.e., removal and relocation of woody material) in the main channel of the Apalachicola River from the river mouth to the dam and in the Chipola Cutoff. The area proposed for snagging activities is designated critical habitat for several species protected under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The entire main channel is designated as critical habitat for the federally threatened Gulf sturgeon. The Chipola Cutoff and the Apalachicola River main channel from the dam downstream to river mile 15.3 are designated as critical habitat for the federally endangered fat threeridge mussel and federally threatened purple bankclimber mussel. These three species occur throughout their critical habitat, but the Gulf sturgeon uses the river seasonally as spawning and resting grounds from the spring through fall. The federally threatened Chipola slabshell mussel also occurs in the Chipola Cutoff, and it was recently documented in the Apalachicola River main channel in the vicinity of the Chipola Cutoff. We are providing this information to you because the Corps' supporting documentation did not include reference to the mussel critical habitat or the presence of the Chipola slabshell.

Because of the presence of these protected species and critical habitat, the Corps is required to consult with the U.S. Fish and Wildlife Service (Service) per section 7 of the Act prior to any snagging activities. The Service and the Corps have discussed this project and potential ways to avoid and minimize harm to federally-protected species. In addition, we also provide these recommendations to you for consideration in your evaluation of the Corps' ERP permit

application. These recommendations are non-regulatory, nor are they binding terms of a permit, but rather are conservation considerations that the Service finds important to maintaining ecological integrity.

Large woody material (including snags) is essential to ecological function in coastal plain rivers and streams by providing habitat diversity and stability, shaping stream morphology, and providing erosion control and flood attenuation (Ray, 1999; Shields et al., 2004; and Diehl, 1994). The removal of woody material by anthropogenic practices, such as snagging for navigation, has impacted streams and rivers through changes in sediment transport and stream morphology, erosion of banks and bars, water quality impacts, and the loss of habitat structure and species diversity (Diehl, 1994; Downs & Simon, 2001; Gippel, 1995; Shields et al., 2004; Wallerstein & Thorn, 2004).

Within the navigational channel in the Apalachicola River, we have recently documented fat threeridge and purple bankclimber mussels in deepwater habitat associated with woody material, likely due to the stable substrate provided by the snags. We are concerned that removing woody material from the navigation channel (especially material embedded in the substrate) may impact mussels directly during removal or indirectly through destabilizing the substrate. Mussels also occur outside the navigational channel along or near stream banks. We are also concerned that relocation of snags into areas with mussels may result in direct impacts during wood placement or indirect impacts through modification of flow and substrate. Snagging activities occurring from spring through fall could also directly impact Gulf sturgeon during removal and replacement, and indirect impacts may result year-round as altered channel morphology may result in the loss of sturgeon spawning and resting habitat.

Because of the documented importance of woody material in rivers and streams, the Service recommends the following measures be implemented if a permit is granted. Many of these recommendations are modified from the recently recommended Best Management Practices for Florida sandbed streams (Cathey et al 2011):

1. Because woody material may change position under various flows, survey wood in the navigational channel immediately prior to snagging activities and identify snags that may be impeding navigation. If high flow events sufficient to transport snags occur between surveys and snagging activities, individual snags should be re-surveyed to ensure they continue to impede navigation
2. Only conduct snagging activities on snags that impede navigation; leave all other woody material (submerged, benthic, and/or embedded) in the navigational channel in place. Snags that are not an immediate navigational hazard should not be relocated or removed. Portions of this material that do present a hazard may be cut or topped without disturbing the substrate. If cutting the snag below the water line is not possible and the snag is providing important ecological function, then consider the use of navigational signage to mark the snag as a hazard instead of removal. If the Corps determines that is not possible, then mussel surveys around the woody material should be conducted to determine potential impacts.

3. Avoid removing snags within a minimum buffer distance of 25 feet from the river bank. This will minimize disturbance of woody material that is embedded in the river banks or otherwise functioning to maintain bank stability. If the Corps determines that is not possible, then mussel surveys around the woody material should be conducted to determine potential impacts. Placement of relocated snags from other areas into the 25 ft buffer may be beneficial in some areas where erosion is occurring.
4. Snags or large woody material that must be removed from the navigational channel should be placed outside the navigational channel but within the wetted width of the river at the minimum 5,000 cfs flow or next higher flow that is practicable. Placement of woody material should not occur in areas that currently support mussels unless it can be assured that flow and sediment transport will not be impacted in these locations. Surveys may be necessary in areas not known to support mussels prior to placement.
5. Snagging activities should be avoided from March-May to avoid potential impacts to sturgeon spawning. This recommendation is consistent with condition 16 of the Corps previous Wetland Resource Permit/State Water Quality Certification (#0129424-001-DF), which prohibited dredging during a Gulf sturgeon spawning window. In addition, snagging activities in known sturgeon holding areas (4-5 locations) should be avoided from March-November when Gulf sturgeon are present in the river. If the Corps determines that is not possible, then sturgeon surveys around the woody material should be conducted to determine potential impacts.
6. The Corps' should provide a clear explanation for the minimum depth required to maintain the channel for "emergency navigation" situations and also provide the range of flows when emergency navigation would be expected to occur.

The Service believes these measures will minimize the impacts to federally protected species and their designated critical habitat in the Apalachicola River. We will continue to coordinate with you, the Corps, and the Florida Fish and Wildlife Conservation Commission on this project in the future. Thank you for the opportunity to provide comments. If you have additional questions, please contact Karen Herrington at extension 250.

Sincerely,

//s//Dr. Donald W. Imm

Dr. Donald W. Imm  
Project Leader

cc:

Nick Wiley, FFWCC, Tallahassee, FL  
Mollie Palmer, DEP, Tallahassee, FL  
Janet Llewellyn, DEP, Tallahassee, FL  
Ted Hoehn, FFWCC, Tallahassee, FL  
Brian Zettle, Corps, Mobile, AL

Literature Cited:

- Cathey, A., A. Cameron, H. Hall, S. Blair, T. T. Ankersen. 2011. Large Woody Material: Science, Policy, and Best Management Practices for Florida Sandbed Streams. UF Law Conservation Clinic, Gainesville, FL.
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U.S. Department of  
Homeland Security

United States  
Coast Guard



Commander  
U. S. Coast Guard Sector Mobile

1500 15<sup>th</sup> Street  
Mobile, AL 36615-1300  
Staff Symbol: CO  
Phone: (251) 441-5960

16000  
October 11, 2013

Colonel Jon J. Chytka  
District Engineer  
U. S. Army Corps of Engineers, Mobile District  
109 St. Joseph Street  
Mobile, AL 36602

Dear Colonel Chytka:

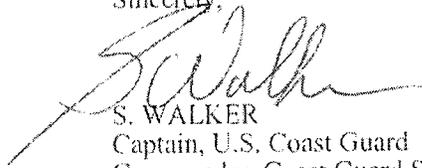
This letter is in reference to maintenance of the Apalachicola River waterway. In the past, the USACOE would carry out routine selective snagging annually as a maintenance function on this waterway. I also understand that for various reasons that activity has not occurred since the early 2000's. It has been brought to my attention that the USACE is currently proposing to conduct selective hazard removal within or in close proximity to the authorized channel on this waterway.

As both the Captain of the Port for the region and the Coast Guard entity charged with marking and maintaining this waterway, I fully support the proposed selective hazard removal activities on the Apalachicola River. Safety concerns for commercial vessels, as well as the boating public, must remain paramount for both of our current and future decisions regarding Federal waterways. My field operators are routinely constrained by the presence of snags along this waterway. We have also fielded numerous reports of boaters making contact with submerged objects.

My Waterways Management Branch previously provided your field office with locations of particularly dangerous areas along the river due to the presence of snags. These locations are generally consistent with historic snagging hot spots and include River Miles 33.5, 36.5, 38, 41.5, 44.7, 50, 54, 62, 69, 75.5, 76.5, and 81. This list should not be taken as exhaustive, and problem snag locations may have shifted due to relatively high flows on the river this year.

These snags represent a true hazard and a safety issue to users of the waterway. My field units and I stand by to provide any additional information or material support you might need during the course of this initiative. Thank you for your consideration in this matter.

Sincerely,



S. WALKER

Captain, U.S. Coast Guard  
Commander, Coast Guard Sector Mobile



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
1601 Balboa Avenue  
Panama City, FL 32405-3721

Tel: (850) 769-0552  
Fax: (850) 763-2177

December 3, 2013

Mr. Curtis Flakes  
Chief, Planning and Environmental Division  
U.S. Army Corps of Engineers  
P.O. Box 2288  
Mobile, Alabama 36628-0001

Dear Mr. Flakes:

This is in response to your letter of November 20, 2013, concerning Section 7 consultation under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), for maintenance tree snagging in the Apalachicola River portion of the Apalachicola-Chattahoochee-Flint (ACF) Federal navigation project. The U.S. Army Corps of Engineers (Corps) determined that the proposed action may affect, but is not likely to adversely affect (NLAA) Gulf sturgeon, fat threeridge, purple bankclimber, Chipola slabshell, or their respective designated critical habitat. This response is provided in accordance with provisions of Section 7 of the Act, and provides considerations for provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*).

### Endangered Species Act

All four of these species have been documented to occur in the Apalachicola River where snagging activities are proposed. Gulf sturgeon use the river seasonally as spawning and resting grounds from the spring through fall. Spawning generally occurs from March through May, after which juvenile, subadult, and adult Gulf sturgeon generally settle into the holding/resting areas listed in Table 1. These holding areas often include large woody material (i.e., snags that the Corps may need to remove). The three mussel species are also known to occur in near-bank habitats of the main channel. In addition, the U.S. Fish and Wildlife Service (Service) has

recently documented that fat threeridge and purple bankclimber mussels occur within the navigational channel in deepwater habitat associated with snags. Fat threeridge populations in deepwater snag habitats are particularly dense in the middle reach of the Apalachicola River, including previous snagging hot spots and those recently identified by the U.S. Coast Guard.

Table 1. Known Gulf sturgeon holding areas in the main channel of the Apalachicola River.

River Mile	Description
105.9 – Dam	Area around Jim Woodruff Lock and Dam
102.3 – 103.3	Area around dike field
98.0 – 99.5	Area downstream of Interstate 10
93.3 – 93.9	Area around Ocheese Landing
92.0 – 93.0	Area downstream of Ocheese Landing
23.0 – 24.2	Near mouth of Brushy Creek
21.5 – 22.5	Near mouth of Owl Creek

Past snagging activities in the Apalachicola River were completed by pulling snags out of the substrate and relocating them outside of the navigational channel. This traditional snagging method may impact mussels and sturgeon directly through injury during removal or indirectly by destabilizing the substrate, resulting in altered channel morphology and lost habitat. Relocation of snags into areas with mussels may also result in direct impacts during wood placement or indirect impacts through modification of flow and substrate.

Because mussels and sturgeon are known to occur in areas associated with snags that are likely navigation hazards, the Service worked with your staff to develop a snagging method that avoids impacts to listed species. As a result, the Corps is proposing to shear snags below the water line and allow the cut portions to sink to the bottom. The snag shearing method is the primary method of snag removal, and according to your November 20, 2013, letter, “the only method anticipated”. Your letter also describes the traditional snagging method as the secondary method of snag removal. However, you state that you will consult with the Service if this method becomes necessary. As such, we do not consider this method as part of your action at this time, and the traditional method of snagging is not covered under this consultation.

The Service agrees with the Corps that the snag shearing technique should minimize disturbance to the stream bottom and stream banks by leaving the base of the snag intact near the substrate. Intact snag bases should provide habitat stability and prevent substrate destabilization. In addition, we do not anticipate injury or harm from cut snag portions sinking to the substrate because the force of the impact will be negligible. The Corps has also further avoided potential impacts to Gulf sturgeon by not conducting activities during the spawning season (March-May), and avoiding the known holding areas in Table 1 from March through November. Additional

conservation measures include the permit conditions from the Florida Department of Environmental Protection's proposed Environmental Resources Permit.

Based on the use of the snag shearing method and additional conservation measures, the Service concurs that proposed snagging is not likely to adversely affect Gulf sturgeon, fat threeridge, purple bankclimber, and Chipola slabshell, and their designated critical habitats. Although we anticipate that the effects of snag shearing will be insignificant (i.e., not reach the level where take would occur), this method has never been employed in the Apalachicola River. Therefore, we request that representatives from our office be present on the vessel when activities are initially conducted so that we can verify that unanticipated impacts are not occurring. We will recommend reinitiating consultation under the following conditions: 1) new information reveals that the snag shearing method may affect these species or designated critical habitat in a manner or to an extent not previously considered; 2) it becomes necessary to use the traditional snagging method; or 3) the action is subsequently modified in a manner that causes an effect on a listed species or on designated critical habitat.

#### Fish and Wildlife Coordination Act

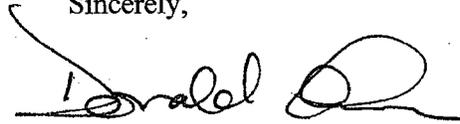
Large woody material (including snags) is essential to ecological function in coastal plain rivers and streams by providing habitat diversity and stability, shaping stream morphology, and providing erosion control and flood attenuation (Ray, 1999; Shields et al., 2004; and Diehl, 1994). The removal of woody material by anthropogenic practices, such as snagging for navigation, has impacted streams and rivers through changes in sediment transport and stream morphology, erosion of banks and bars, water quality impacts, and the loss of habitat structure and species diversity (Diehl, 1994; Downs & Simon, 2001; Gippel, 1995; Shields et al., 2004; Wallerstein & Thorn, 2004). Because of the documented importance of woody material in rivers and streams, the Service recommends the following additional measures be implemented to the maximum extent practicable without impeding navigation:

1. Because woody material may change position under various flows, survey wood in the navigational channel immediately prior to snagging activities and identify snags that may be impeding navigation. If high flow events sufficient to transport snags occur between surveys and snagging activities, individual snags should be re-surveyed to ensure they continue to impede navigation
2. Only conduct snagging activities on snags that impede navigation within the 9-ft by 100-ft navigation channel; leave all other woody material (submerged, benthic, and/or embedded) in the navigational channel in place. Snags that are not an immediate navigational hazard should not be relocated or removed. If the snag shearing method is not possible, then consider the use of navigational signage to mark the snag as a hazard instead of removal.

3. Avoid removing snags within a minimum buffer distance of 25 feet from the river bank. This will minimize disturbance of woody material that is embedded in the river banks or otherwise functioning to maintain bank stability.

We appreciate the cooperation of your staff during this consultation, especially their willingness to try a different snagging method to avoid impacts to listed species. If you have any questions, please contact Karen Herrington at 850-348-6495.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald W. Imm". The signature is fluid and cursive, with a large initial "D" and "W".

Dr. Donald W. Imm  
Project Leader

cc: Robin Goodloe, FWS, Athens, GA  
Karen Herrington, St. Charles, MO  
Ted Hoehn, FWC, Tallahassee, FL  
Heather Mason, DEP, Pensacola, FL  
Dan Tonsmiere, Apalachicola Riverkeeper, Apalachicola, FL  
Manley Fuller, Florida Wildlife Federation, Tallahassee, FL

## **Appendix B: Environmental Resources Permit**



**FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

160 W. GOVERNMENT STREET, SUITE 308  
PENSACOLA, FLORIDA 32502-5740

RICK SCOTT  
GOVERNOR  
HERSCHEL T. VINYARD JR.  
SECRETARY

**Permittee/Authorized Entity:**

U.S. Army Corps of Engineers, Mobile District  
P.O. Box 2288  
Mobile, AL 36628-0001

**Apalachicola River Snagging**

**Authorized Agent:**

Curtis M. Flakes, Chief, Planning and Environmental Division  
U.S. Army Corps of Engineers, Mobile District  
P.O. Box 2288  
Mobile, AL 36628-0001

**Environmental Resource Permit**

**State-owned Submerged Lands Authorization – Not Required**

**U.S. Army Corps of Engineers Authorization – Not Applicable**

Jackson, Gadsden, Calhoun, Liberty, Gulf, and Franklin Counties  
Permit No.: 07-0129424-008-EI

**Permit Issuance Date:** November 27, 2013

**Permit Construction Phase Expiration Date:** November 27, 2023

## **Environmental Resource Permit**

**Permittee/Grantee: U.S. Army Corps of Engineers, Mobile District**  
**Permit No: 07-0129424-008-EI**

### **PROJECT LOCATION**

The activities authorized by this Permit and sovereignty submerged lands authorization are located in the Apalachicola River between River Mile 0.0 and River Mile 106.4 in Jackson, Gadsden, Calhoun, Liberty, Gulf, and Franklin Counties.

### **PROJECT DESCRIPTION**

The permittee is authorized to conduct maintenance snagging (relocation of tree snags presenting a hazard to navigation out of the federal navigation channel) in the Florida portion of the Apalachicola, Chattahoochee, and Flint Rivers (ACF) Federal Navigation Project within the Apalachicola River, a Class III Outstanding Florida Waterbody (entire Florida portion of river) and Aquatic Preserve (River Miles 0.0 – 4.5) subject to all General and Specific Conditions in this permit. The federal navigation project maintenance activity includes the removal and nearby relocation of tree snags hazardous to navigation on the Apalachicola River from River Mile 0.0 to River Mile 106.4. This authorization will allow the permittee to determine which snags pose a hazard to navigation and remove only those snags from the federal navigation channel.

Snagging will be accomplished by two methods:

1. Use a barge-mounted excavator with a tree shear attachment to cut the snag. Once the tree is cut it will be allowed to sink to the bottom of the channel or relocated within the river where it will no longer be a hazard to navigation.
2. Use a barge-mounted crane with a clam-shell bucket to grasp the snag and orientate it out of the channel or remove the snag from its current location and relocate nearby within the river.

### **AUTHORIZATIONS**

#### **Apalachicola River Snagging**

##### Environmental Resource Permit

The Department has determined that the activity qualifies for an Environmental Resource Permit. Therefore, the Environmental Resource Permit is hereby granted, pursuant to Part IV of Chapter 373, Florida Statutes (F.S.), and Rule 62-346, Florida Administrative Code (F.A.C.).

### Sovereignty Submerged Lands Authorization

The Department acknowledges that maintenance snagging of the federal navigation channel falls within one of the federal powers listed in the Submerged Lands Act under 43 USC 1311(d) or 43 USC 1314, and, under those provisions, the U.S. Army Corps of Engineers (Corps) needs no authorization from the Board of Trustees to utilize sovereignty submerged lands for that activity. However, under the provisions of the Coastal Zone Management Act (16 USC 1451-1465), this activity requires Florida's concurrence with a determination of consistency with the sovereignty submerged lands provisions of Florida's approved Coastal Management Program prior to federal approval of the proposed activity. The State has determined that the activity is consistent with the sovereignty submerged lands provisions of Florida's approved Coastal Management Program.

### Coastal Zone Management

This permit also constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Management Act.

### Water Quality Certification

This permit also constitutes a water quality certification under Section 401 of the Clean Water Act, 33 U.S.C. 1341.

### Other Authorizations

You are advised that authorizations or permits for this project may be required by other federal, state or local entities including but not limited to local governments and homeowner's associations. This permit does not relieve you from the requirements to obtain all other required permits or authorizations.

The activity described may be conducted only in accordance with the terms, conditions and attachments contained in this document. Issuance and granting of the permit and authorizations herein do not infer, nor guarantee, nor imply that future permits, authorizations, or modifications will be granted by the Department.

### **PERMIT CONDITIONS**

The activities described herein must be conducted in accordance with:

- **The Specific Conditions**
- **The General Conditions**
- **The limits, conditions and locations of work shown in the attached drawings**
- **The term limits of this authorization**

You are advised to read and understand these conditions and drawings prior to commencing the authorized activities, and to ensure the work is conducted in conformance with all the terms, conditions, and drawings. If you are utilizing a contractor, the contractor also should read and understand these conditions and drawings prior to commencing the authorized activities. Failure to comply with these conditions, including any mitigation requirements, shall constitute grounds for revocation of the Permit and appropriate enforcement action by the Department.

## **SPECIFIC CONDITIONS**

### **PRIOR TO CONDUCTING SNAGGING ACTIVITIES**

1. Prior to the initial snagging activity undertaken pursuant to this permit, the permittee shall complete the Section 7 consultation with the United States Fish and Wildlife Service (USFWS) as required under the Endangered Species Act of 1973. The permittee shall adhere to all of the required strategies/actions for the protection of listed species and their habitats resulting from the consultation, up to and including not conducting the snagging activity.
2. The permittee shall contact the Department at 850-595-8300 or by email to [Heather.Mason@dep.state.fl.us](mailto:Heather.Mason@dep.state.fl.us) at least 48 hours before any snagging activities occur. The permittee shall provide the location where snagging will occur, the type and registration numbers of any vessels used, and the anticipated duration of activities.

### **SNAGGING ACTIVITIES**

3. If during the progress of this project prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, dugout canoes, or any other physical remains that could be associated with Native American cultures or early colonial or American settlement are encountered at any time within the project site area, the permitted project should cease all activities involving subsurface disturbance in the immediate vicinity of such discoveries. The permittee, or other designee, shall contact the Florida Department of State, Division of Historical Resources, Review and Compliance Section at (850) 245-6333 or (800) 847-7278, as well as the appropriate permitting agency office. Project activities should not resume without verbal and/or written authorization from the Division of Historical Resources. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes.
4. The permittee shall apply the following criteria when determining if relocation of a snag is necessary, and shall only relocate those snags that fit the criteria:
  - a. Snags serving as bank stabilization shall not be disturbed.
  - b. Listed species are not currently using the snag or immediately surrounding substrate as habitat.
  - c. Listed species are not currently using the area where the relocated snag will be permanently placed.
  - d. a through c above may be superseded if the snag presents a clear danger to navigation, i.e., it cannot be avoided by barge traffic. If this is the case, the snag may be relocated using methods to reduce impact to the resource.
5. No snags shall be permanently removed from the river.
6. Snags shall be placed in water as follows, in a way that will not be detrimental to the health of the river:

- a. The amount of time a snag is exposed to the air while being relocated shall be kept to a minimum.
  - b. Snags shall be spaced to facilitate randomness, and shall not be placed in piles or groups of more than 4-5 snags apiece.
  - c. Snags shall not be placed where they may cause blockages of creeks, streams, or sloughs.
  - d. Snags shall not be placed in such a way that they are likely to float away and cause log jams or flooding.
  - e. Snags shall not be placed where they may cause or exacerbate erosion.
  - f. Snags shall be placed to prevent erosion, wherever practicable.
  - g. Snags may also be placed within dike fields and on the upstream portions of sandbars or old disposal sites.
7. Snagging activities shall not cause adverse impacts to adjacent wetlands, marshlands, submerged or emergent vegetation, or other environmentally sensitive lands.
  8. At least 1 foot clearance shall be present between the bottom of fully loaded vessels and the river bed. This shall apply to all vessels utilized to conduct snagging activities or to transport emergency items upstream.
  9. To protect listed species habitat, vessels utilized to conduct snagging activities or to transport emergency items upstream shall not run aground or cause scouring.
  10. Appropriate precautions should be taken to prevent barges or other vessels from running into riverbanks.
  11. When using method 2 (mechanical relocation), a qualified wildlife biologist experienced in conducting listed species surveys in submerged environments shall accompany the permittee during snagging activities. The biologist shall perform localized surveys for each snag to be relocated to determine whether or not the snag is currently utilized by listed species. The biologist shall also examine the proposed relocation site to determine whether or not listed species habitat will be disturbed by the relocation.
  12. The applicant shall utilize current maps assembled by USACOE, USFWS, and FFWCC containing the location of shoreline and deeper water habitats occupied by the listed mussel species to assist in identifying areas where snag habitat relocation activities could adversely affect the listed mussels. Special attention should be given to the identified areas, and snagging shall be avoided in those areas to the greatest extent practicable.
  13. It shall be the permittee's responsibility to ensure compliance with all permit conditions. Any misplacement of snags, unauthorized impacts to listed species habitat, or other violation of this permit and conditions shall result in the immediate shutdown of the operation until all

actions have been taken to bring the operation into compliance with the conditions of the permit.

14. If any snag is placed outside of the authorized areas, blocks any sloughs or creeks, or is transported out of the river onto shoreline, wetland, or other valuable habitat, the Department shall be notified immediately of the violation by phone (850-595-8300) and as soon as possible by letter or email. The permittee shall fully explain the violation and indicate all measures taken to prevent reoccurrence of the violation. After this notification has been received, the Department will evaluate the environmental concerns of the violation and provide verbal and written instructions to the permittee of the necessary corrective actions.
15. To protect populations of striped bass and other fish species that spawn in the spring, including Gulf sturgeon, the permittee shall not conduct snagging activities during March through May without specific written approval from Department. To request approval for snagging prior to the end of this period, the permittee shall:
  - a. Consult with FFWCC and USFWS at least 15 days, or at the earliest planning stages, before the proposed snagging start date.
  - b. The Department's approval decision shall take into consideration the recommendations of FFWCC and USFWS.
16. Snagging activities shall not be conducted in known sturgeon holding areas during March through November when Gulf Sturgeon is present in the river.

#### **TURBIDITY AND TURBIDITY MONITORING**

(Does not apply to snagging activities completed using snagging method 1, or to any snagging activities north of Gulf County pursuant to Rule 62-4.242(2)(f)(1), F.A.C.)

17. A temporary mixing zone for turbidity is granted from the point of each relocated snag with the following size and configuration constraint(s):
  - a. The mixing zone shall extend no further than 150 meters downstream (492 feet), from the point of turbidity generation [Chapter 62-4.244(5)(c), F.A.C.].
18. Monitoring for turbidity shall be conducted for the duration of the project. Sampling will commence prior to, but no more than 24 hours before initiation of any snagging activities. Sampling shall occur at a point 150 meters downstream of each relocated snag immediately before it is relocated, and again within 30 minutes of the snag being relocated.
19. Measurements must be acquired in adherence to the Department's Standard Operating Procedure (SOP) for field turbidity, available at the website:  
<http://publicfiles.dep.state.fl.us/dear/sas/sopdoc/2008sops/ft1600.pdf> More specifically, the instruments used to measure turbidity shall be fully calibrated within one month prior to

commencement of the project, and at least once a month thereafter during the project. Calibration shall be verified each morning prior to use, and after each time the instrument is turned on, using a turbidity “standard” that is different from the one used during calibration. Calibration procedures shall be recorded in a permanent logbook, and copies must be submitted with the data.

20. Turbidity samples shall be collected with a Kemmerer, Van Dorn, or a similar sampler that is designed to collect in situ water samples. Samples shall be analyzed immediately after collection with a turbidimeter that produces results in Nephelometric measurements. The field sample results shall be accurately recorded to the precision capabilities (decimal place) of the instrument. Field turbidimeter results shall be rounded to the next whole number (ex. 15.23 NTUs shall be recorded; however the results shall be interpreted as 16.00 NTUs). If monitoring reveals turbidity levels above background level at the edge of the mixing zone, the permittee shall cease all work pursuant to Specific Condition 21.
21. If monitoring reveals turbidity levels above background at the edge of the mixing zone described in Specific Condition 17, the permittee shall take the following measures:
  - a. Immediately cease all work contributing to the water quality violation. Work which may contribute to the violation shall not resume until corrective measures have been taken (including installation of turbidity screens around the work area), and turbidity levels have returned to acceptable levels; and
  - b. Stabilize work areas contributing to the violation. Modify work procedures responsible for the violation, install turbidity control devices, if necessary; and
  - c. Operations may not resume until the water quality standard for turbidity has returned to background levels.
  - d. The violation(s) shall be immediately reported to the Department of Environmental Protection, Submerged Lands & Environmental Resources Program, Compliance and Enforcement Section, Suite 202, Northwest District Office, 160 West Government Street, Pensacola, Florida 32501-5794, in writing or by telephone at (850) 595-8300. The report shall include a description of the corrective actions being taken or proposed to be taken. The report shall be made to the Department as soon as normal business hours resume if violation(s) are noted after normal business hours, on holidays, or on weekends. A copy of the monitoring data sheets, which indicate violation(s), shall be forwarded immediately to the Department.

Failure to report violation(s) or to follow correct procedures before resuming work shall constitute grounds for permit revocation and may subject the permittee to formal enforcement action.

22. Monitoring reports shall also include the following information for each sample that is taken:

- a. Time of day samples taken;
- b. Depth of water body;
- c. Depth of sample;
- d. USGS 02358000 - Apalachicola River Gage stage and flow at Chattahoochee, Florida  
([http://waterdata.usgs.gov/fl/nwis/uv/?site\\_no=02358000&PARAMeter\\_cd=00065.00060](http://waterdata.usgs.gov/fl/nwis/uv/?site_no=02358000&PARAMeter_cd=00065.00060)); and
- e. Antecedent weather conditions, including wind direction and velocity.

### **SNAGGING ACTIVITY MONITORING/REPORTING**

23. By 15 April of each year, the permittee shall submit a draft Annual Maintenance Report to FDEP that summarizes the work done according to this permit during the previous calendar year. The report shall include:

- a. A summary of snagging activities
- b. A list of all snag relocations along the Apalachicola River that includes:
  - i. the latitude/longitude and/or river mile location (to the nearest 1/10 river mile) recorded for each snag before and after relocation;
  - ii. a description of the placement of the snag in the river (inside bend, outside bend, straight reach, left/right when facing downstream);
  - iii. a list of the number of snags relocated within each 5-mile bock of the Apalachicola River;
  - iv. a list of all officially reported Corps vessel groundings and hazardous material spills that were reported to the U.S. Coast Guard and a list of those reported to USACOE;
  - v. a summary of proposed snagging activities concerning the Apalachicola River for the next year;
  - vi. documentation of the threatened and endangered species surveys that were conducted to confirm that snags were not removed or relocated in habitat of these species; and
  - vii. a listing of any verified and unverified permit violations (violations that are suspected by the Department and reported to USACOE), actions taken to resolve verified violations, and steps taken to clarify unverified violations.

Within 30 days of receiving the Draft Annual Maintenance Report, the Department shall provide the permittee with comments and questions concerning the draft report. The Department's response may include comments from the interagency team (FDEP, FFWCC, USFWS, etc.). If the Department determines that any of the errors or omissions significantly affects the Department's ability to monitor USACOE's activities, the permittee will correct the errors or omissions within 30 days of receiving notification by the Department. When all errors or omissions have been corrected and approved by the Department, a Final Annual Maintenance Report shall be submitted to the Department.

#### **EMERGENCIES/ADMINISTRATIVE**

24. The construction phase expires at 11:59 p.m. on the date indicated on the cover page of this permit.
25. For emergencies involving a serious threat to the public health, safety, welfare, or environment, the emergency telephone contact number is **800-320-0519** (State Warning Point). The Department telephone number for reporting nonthreatening problems or system malfunctions is (850) 595-0663, day or night.
26. The mailing address for submittal of forms for the "Construction Commencement Notice", "As-Built Certification ...", "Request for Conversion of Stormwater Management Permit Construction Phase to Operation and Maintenance Phase", or other correspondence is FDEP, SLERP, 160 Governmental Center, Pensacola, Florida, 32502.

#### **GENERAL CONDITIONS**

1. This permit, including its general and specific conditions, must be construed in light of the February 28, 2006 Interagency Cooperative Agreement for Civil Works Projects (ICA) between the Department and the Corps. As recognized in the ICA, the Department has the authority to include reasonable conditions in this permit. All of the conditions in this permit, both general and specific, are enforceable to the extent sovereign immunity has been waived under 33 U.S.C. §§ 1323 and 1344(t). The ICA is incorporated herein by reference.
2. All activities approved shall be implemented as set forth in the drawings incorporated by reference and in compliance with the conditions and requirements of this document. The Corps shall notify the Department in writing of any anticipated changes in:
  - a. Operational plans;
  - b. Project dimensions, size or location;
  - c. Ability to adhere to permit condition;
  - d. Project description included in the permit;
  - e. Monitoring plans.

If the Department determines that a modification to the permit is required then the Corps shall apply for and obtain the modification. Department approval of the modification shall be obtained prior to implementing the change, unless the change is determined by the

Department to reduce the scope of work from that authorized under the original permit, and will not effect compliance with permit conditions or monitoring requirements.

3. If, for any reason, the Corps does not comply with any condition of limitation specified herein, the Corps shall immediately provide the Department with a written report containing the following information:
  - a. A description of and cause of the noncompliance;
  - b. The period of noncompliance, including dates and times;
  - c. Impacts resulting or likely to result from the noncompliance;
  - d. Steps being taken to correct the noncompliance; and
  - e. The steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Compliance with the provisions of this condition shall not preclude the Department from taking any enforcement action allowed under state law with respect to any noncompliance.

4. The Corps shall obtain any applicable licenses, permits, or other authorizations which may be required by federal, state, local, or special district laws and regulations. Nothing herein constitutes a waiver or approval of other Department permits or authorizations that may be required for other aspects of the total project.
5. Nothing herein conveys to the Corps or creates in the Corps any property right, any interest in real property, any title to land or water, constitutes State recognition or acknowledgement of title, or constitutes authority for the use of Florida's sovereign submerged lands seaward of the mean high-water line or an established erosion control line, unless herein provided, and the necessary title, lease, easement, or other form of consent authorizing the proposed use has been obtained from the State.
6. Any delineation of the extent of a wetland or other surface water submitted as part of the application, including plans or other supporting documentation, shall not be considered specifically approved unless a specific condition of this authorization or a formal determination under Section 373.421(2), F.S., provides otherwise.
7. Nothing herein authorizes any entrance upon or activities on property which is not owned or controlled by the Corps or local sponsor, or conveys any vested rights or any exclusive privileges.
8. This document or a copy thereof, complete with all conditions, attachments, modifications, and time extensions shall be kept at the work site of the authorized activity. The Corps shall require the contractor to review this document prior to commencement of the authorized activity.
9. The Corps specifically agrees to allow Department personnel with proper identification, at reasonable times and in compliance with Corps specified safety standards access to the

premises where the authorized activity is located or conducted for the purpose of ascertaining compliance with the terms of this document and with the rules of the Department and to have access to and copy any records that must be kept; to inspect the facility, equipment, practices, or operations regulated or required; and to sample or monitor any substances or parameters at any location reasonably necessary to assure compliance. Reasonable time may depend on the nature of the concern being investigated.

10. At least forty-eight (48) hours prior to the commencement of authorized activity, the Corps shall submit to the Department a written notice of commencement of activities indicating the anticipated start date and the anticipated completion date.
11. Within a reasonable time after completion of construction activities authorized by this permit, the Corps shall submit to the Department a written statement of completion. This statement shall notify the Department that the work has been completed as authorized and shall include a description of the actual work completed. The Department shall be provided, if requested, a copy of any as-built drawings required of the contractor or survey performed by the Corps.

If you have any questions about this document, please contact Heather Mason at 850-595-0608 or at [Heather.Mason@dep.state.fl.us](mailto:Heather.Mason@dep.state.fl.us).

Executed in Escambia County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



Emile D. Hamilton  
District Director

**Attachments:**

- Exhibit 1, Project Maps and Section/Township/Range locations, 21 pages
- Exhibit 2, Snag Relocation Data Sheet, 1 page

Copies of 62-346.900 forms can be obtained at:  
<http://www.dep.state.fl.us/water/wetlands/erp/forms.htm>

**Copies furnished to:**

U.S. Army Corps of Engineers  
FWC, Imperiled Species Management Section  
Jackson, Gadsden, Calhoun, Liberty, Gulf, and Franklin Counties  
Dr. Donald W. Imm, U.S. Fish and Wildlife Service (USFWS)  
Karen Herrington, USFWS

Project Name: Apalachicola River Snagging  
Permittee: U.S. Army Corps of Engineers, Mobile District  
Permit No: 07-0129424-008-EI  
Page 10 of 12

Ted Hoehn, Florida Fish and Wildlife Conservation Commission (FFWCC)  
Charles Mesing, FFWCC  
Bonita Gorham, FFWCC  
Steve Shea, FFWCC  
Scott Sanders, FFWCC  
Manley K. Fuller, Florida Wildlife Federation  
Marilyn Blackwell, Help Save the Apalachicola River Group  
Dan Tonsmeire, Apalachicola Riverkeeper  
Janet Llewellyn, FDEP  
Tim Rach, FDEP  
Teresa Mussetto, FDEP  
Jennifer Jacobson, USACE  
Velma Diaz, USACE  
File

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this permit, including all copies, were mailed and/or emailed before the close of business on November 27, 2013, to the above listed persons.

FILING AND ACKNOWLEDGMENT

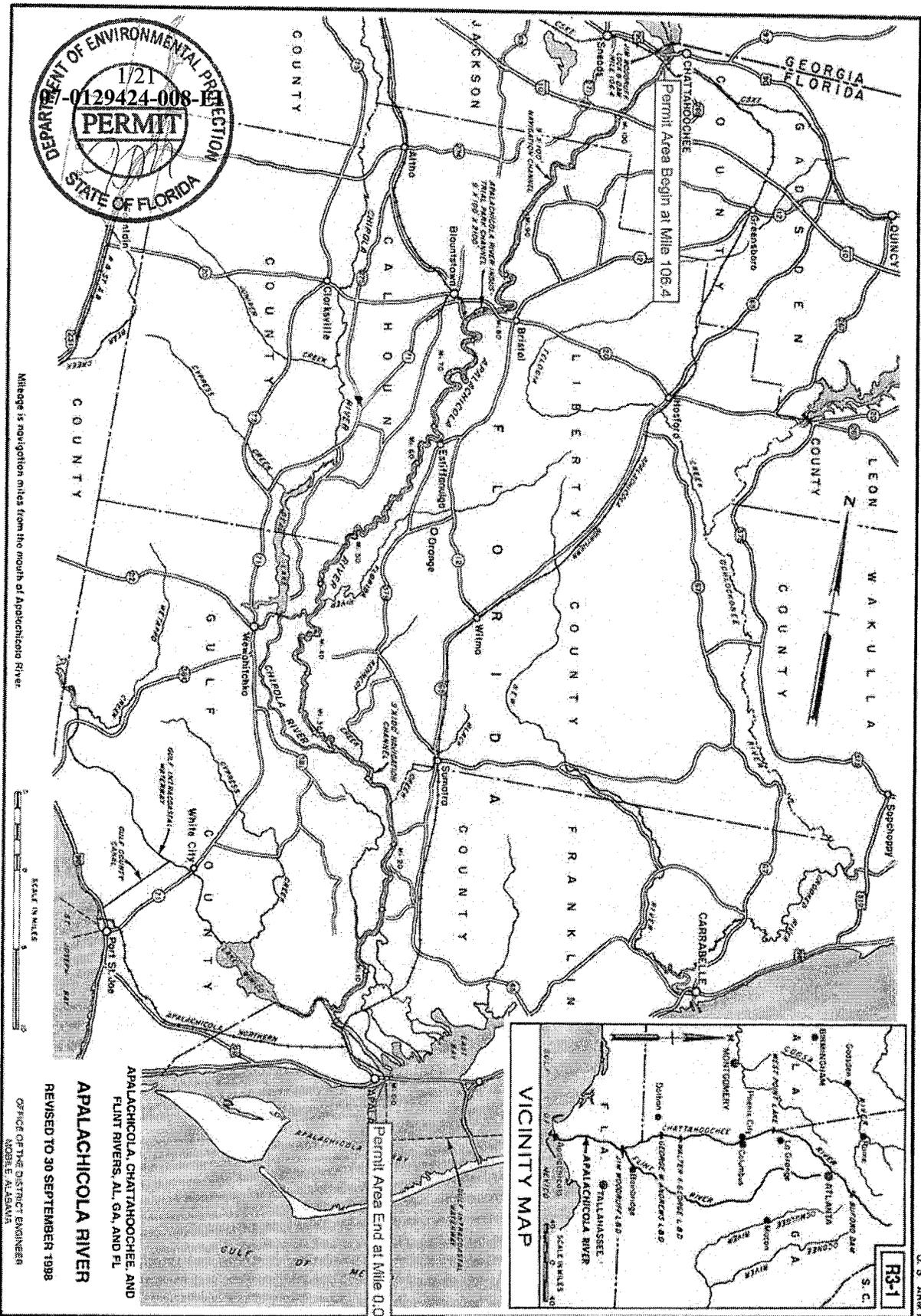
FILED, on this date, under Section 120.52(7) of the Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

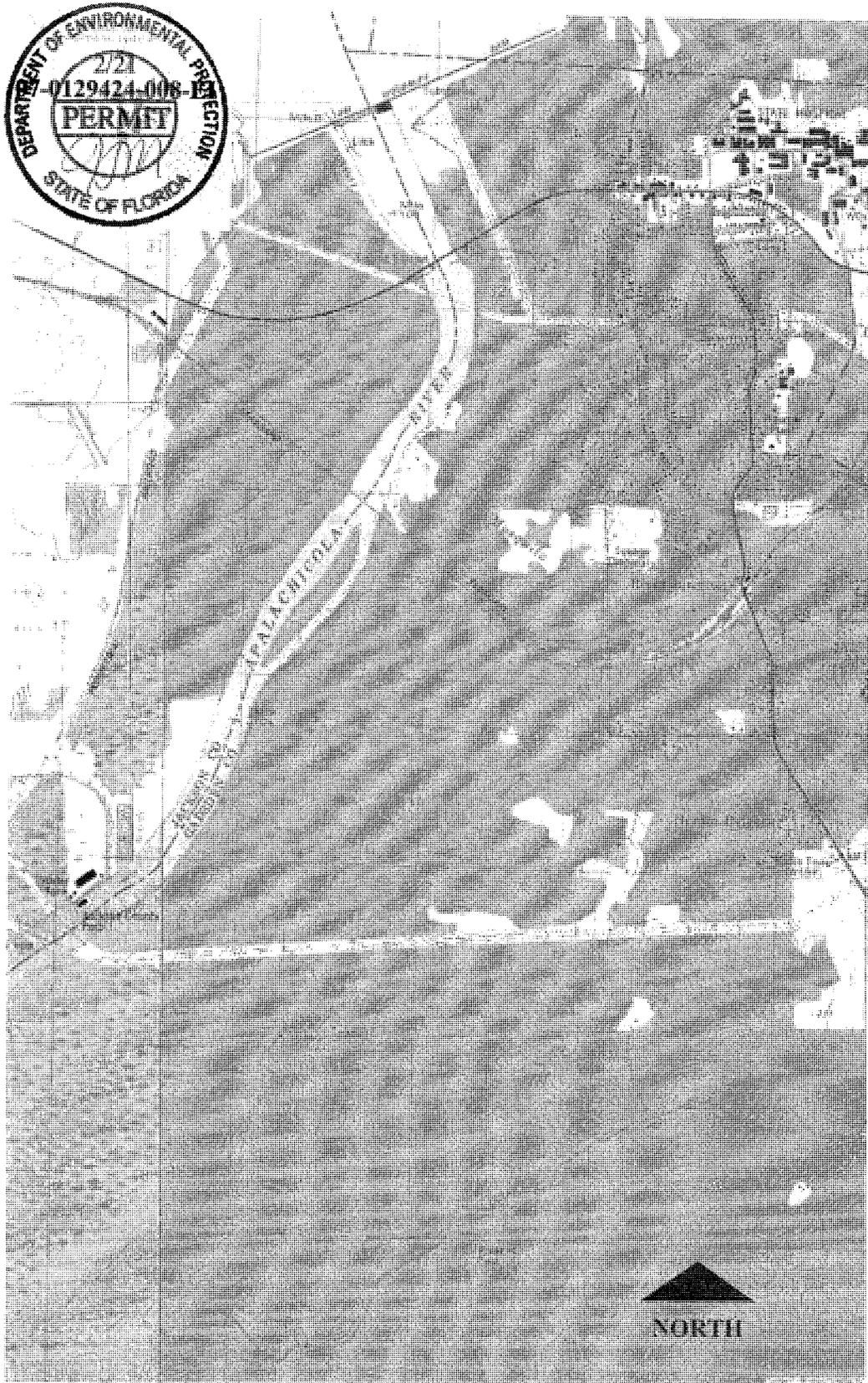
Brandy Bass                      11/27/2013  
Clerk                                      Date

Prepared By: Heather Mason

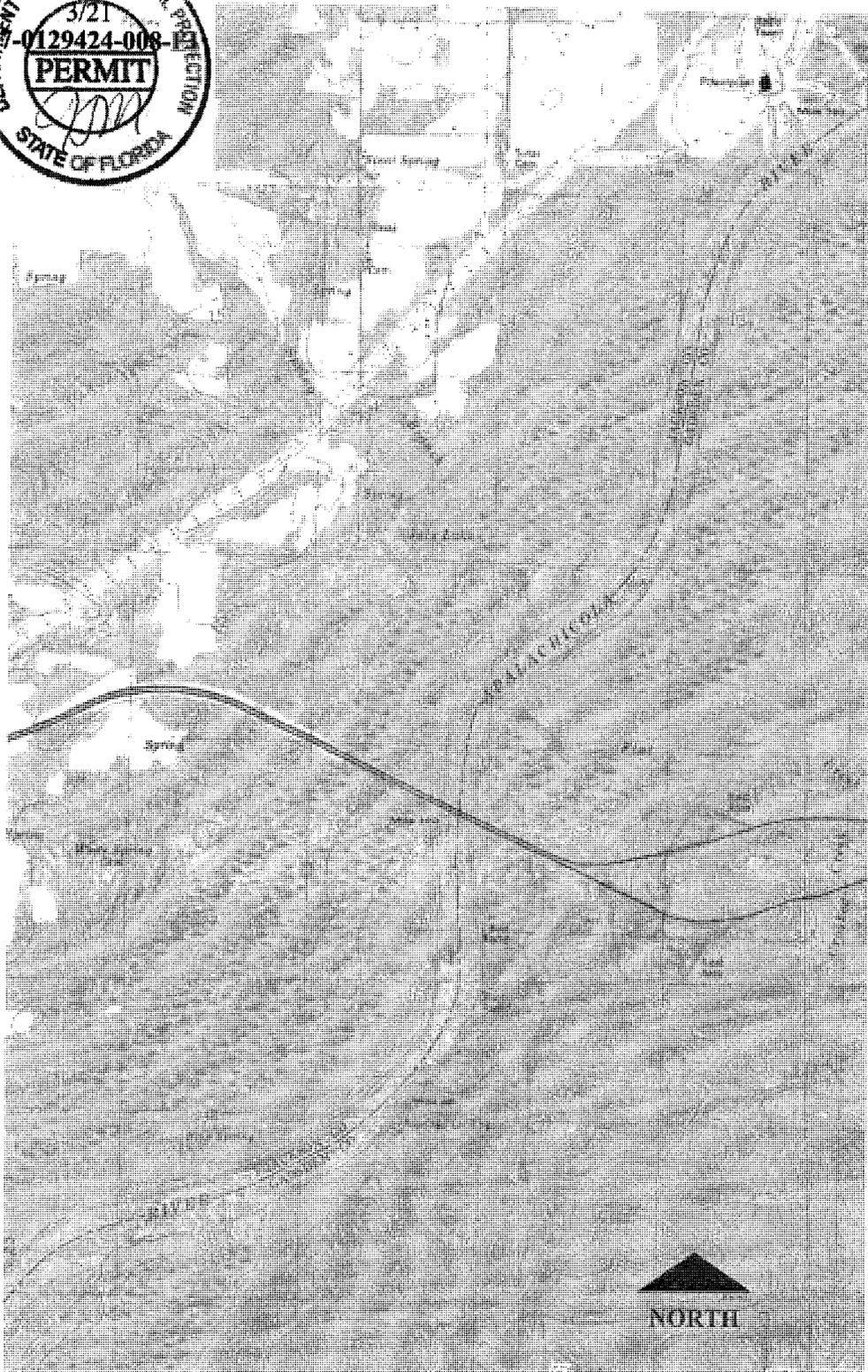
22 pages attached

# Exhibit 1

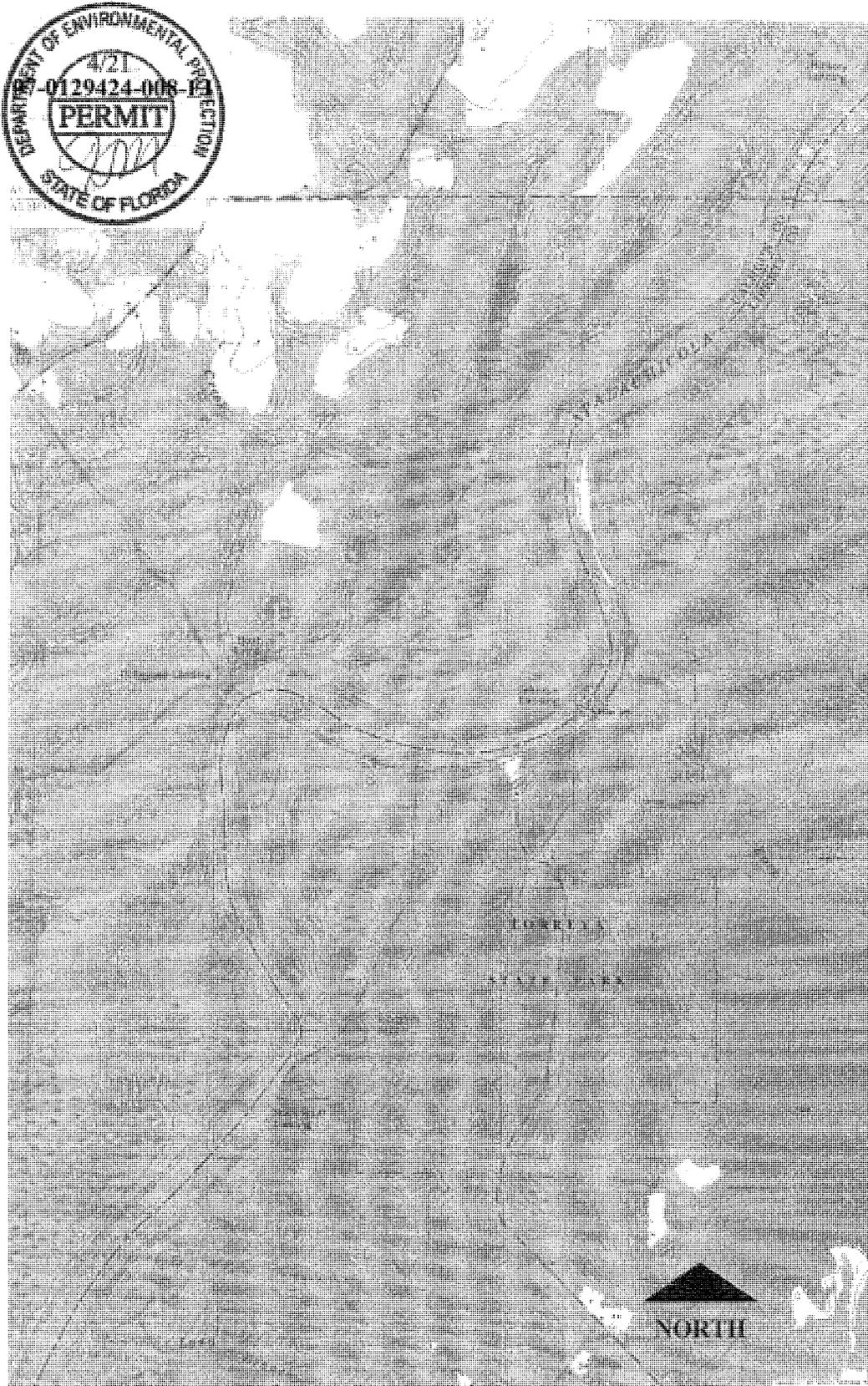




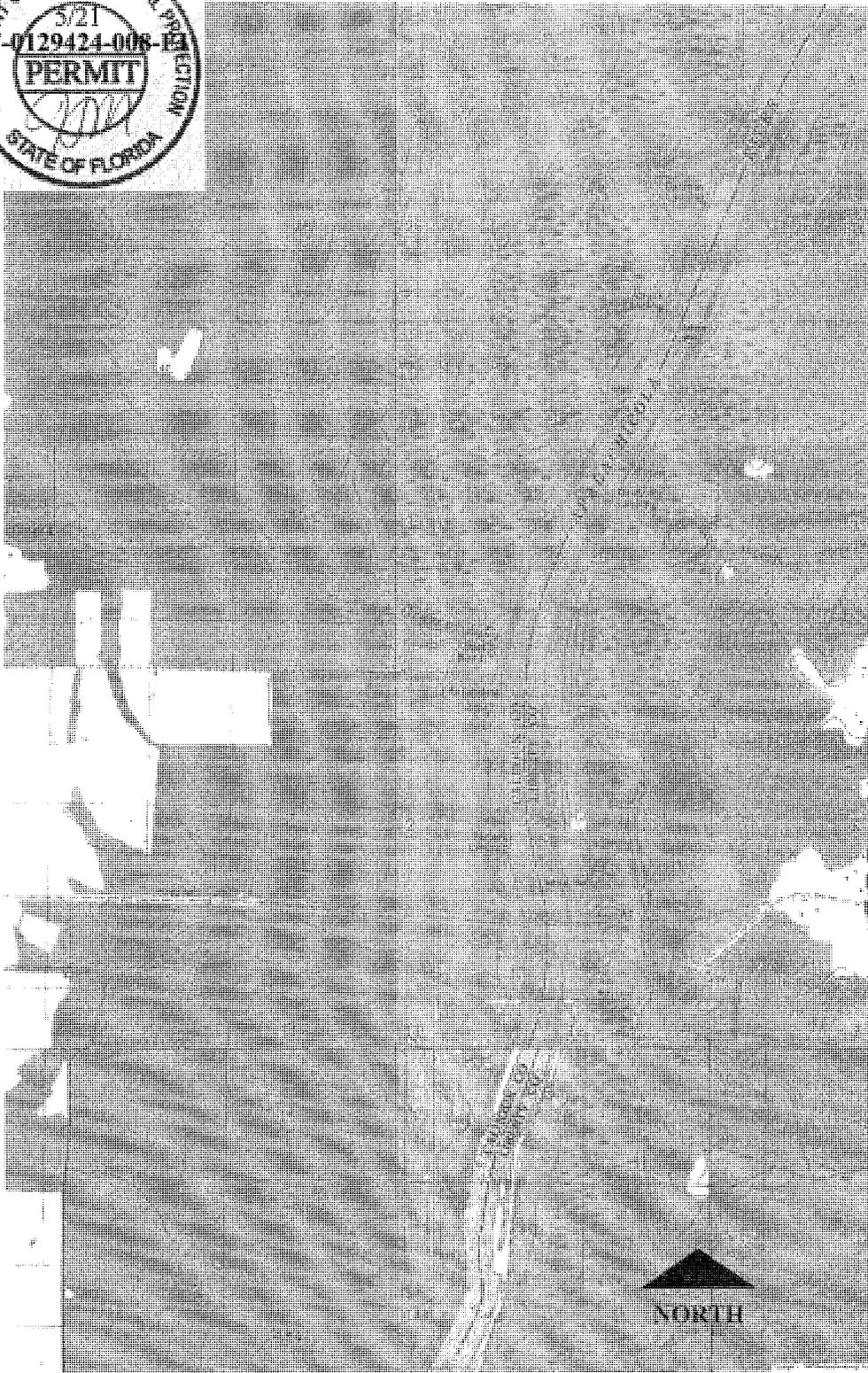
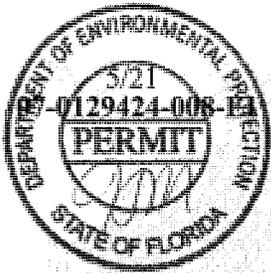
Excerpt from Chattahoochee, FLA-GA and Sneads, FLA-GA USGS Quad Maps  
Scale: 1" = 0.5 Mile



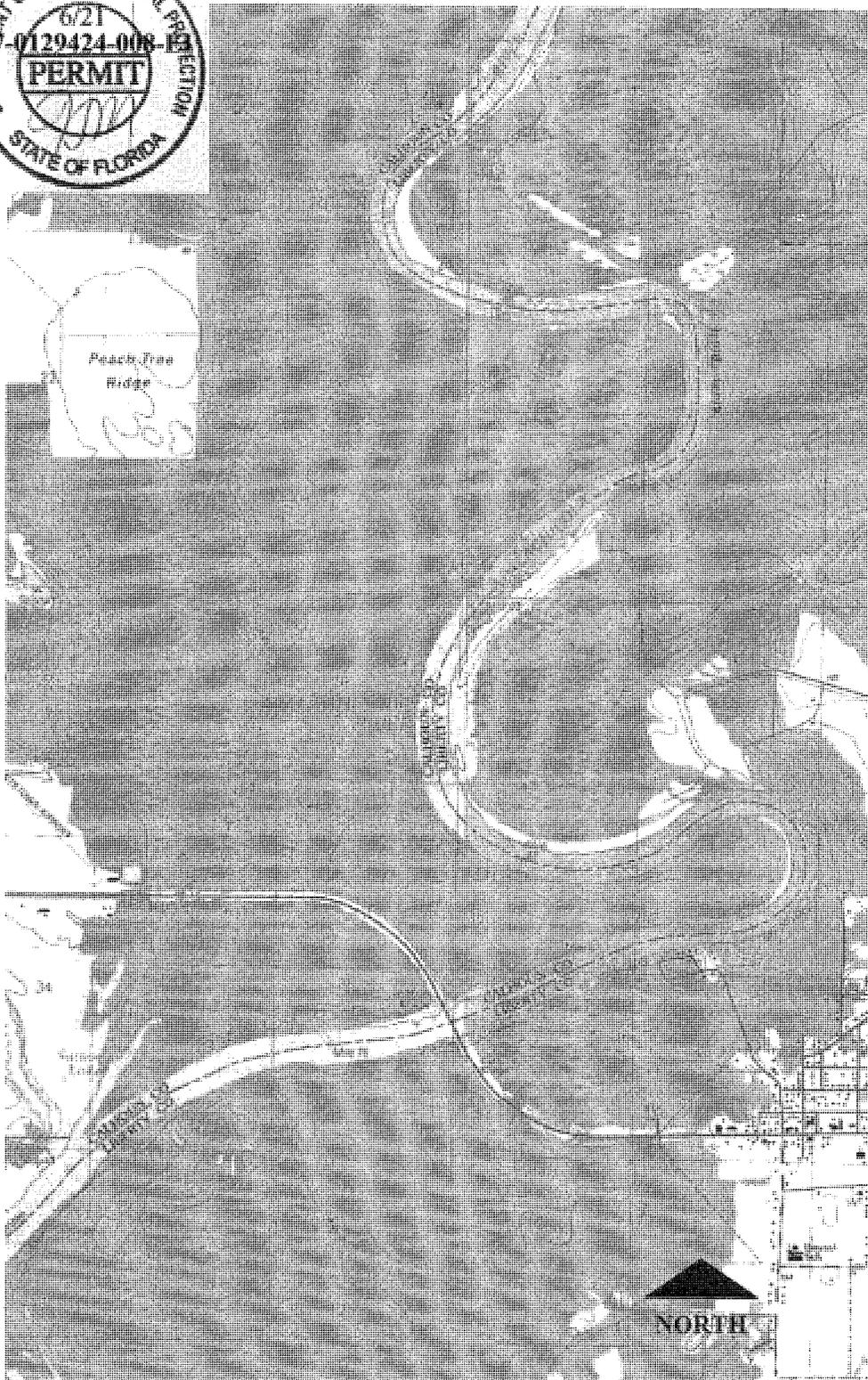
Excerpt from Sneads, FLA-GA and Rock Bluff, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



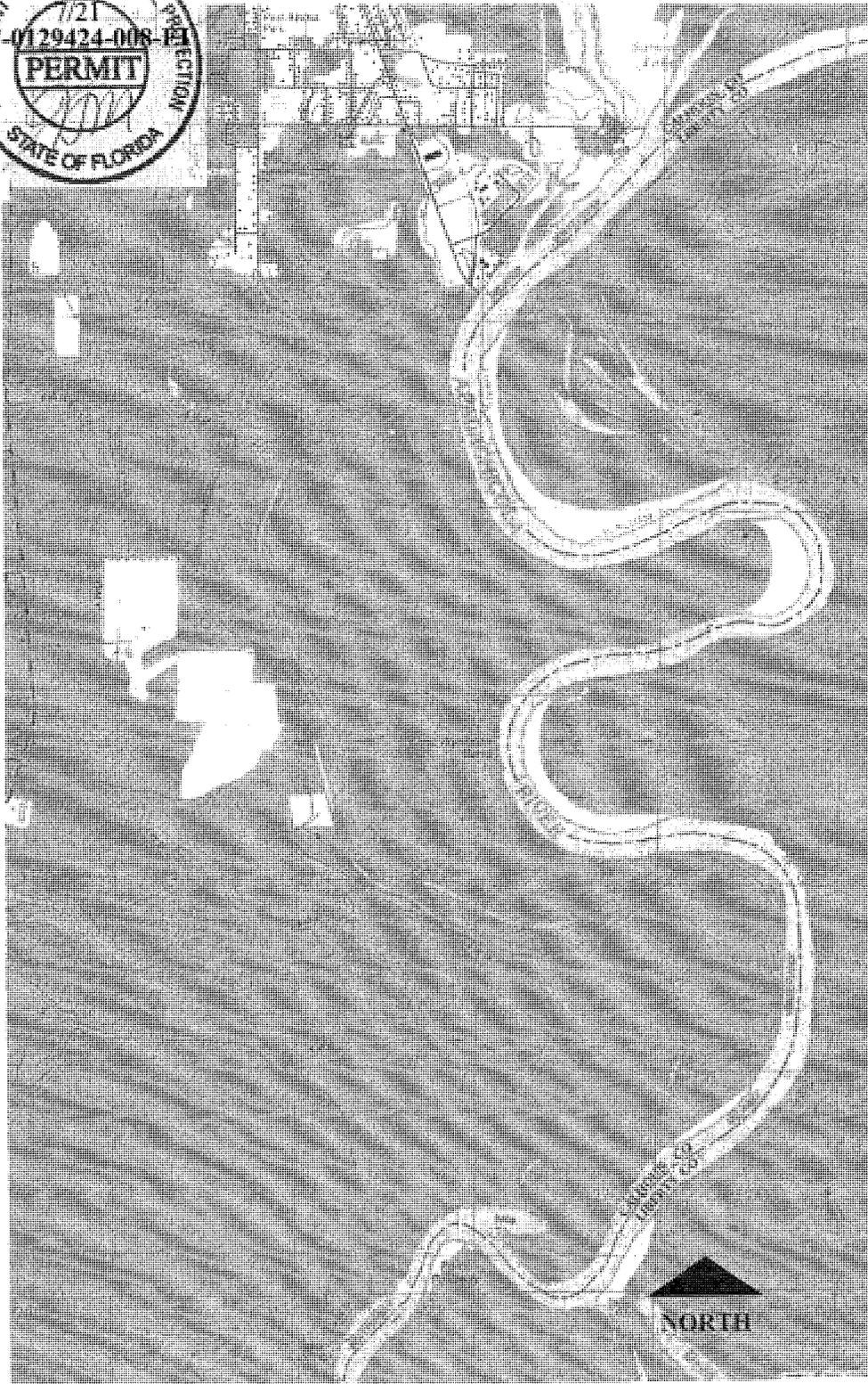
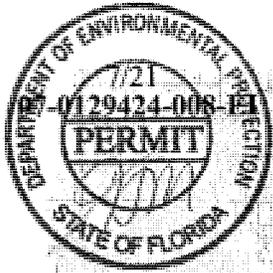
Excerpt from Rock Bluff, FLA USGS Quad Map  
Scale: 1" = 0.5 Mile



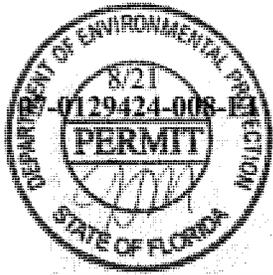
Excerpt from Rock Bluff, FLA and Bristol, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



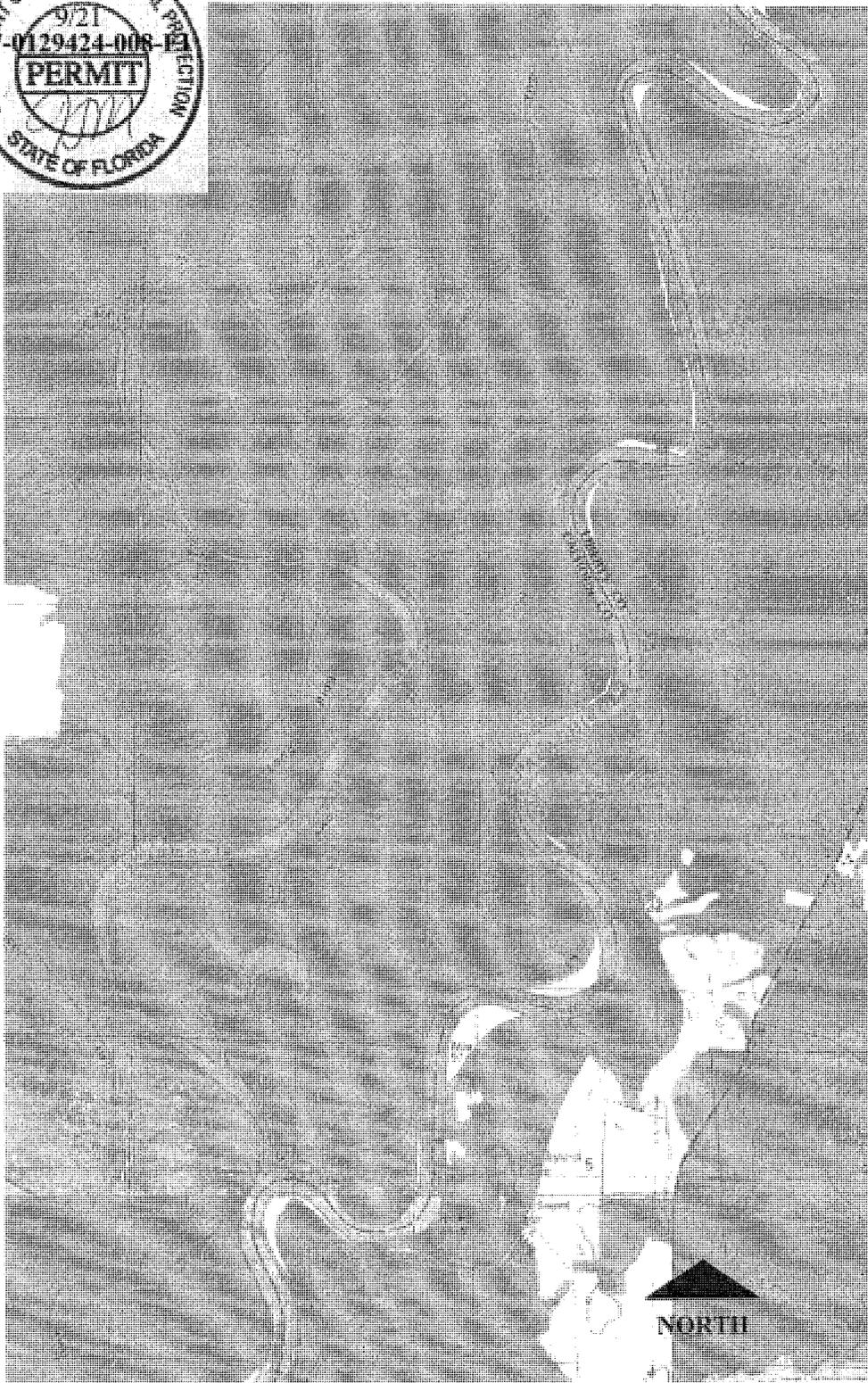
Excerpt from Bristol, FLA and Blountstown, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



Excerpt from Blountstown, FLA and Estiffanulga, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



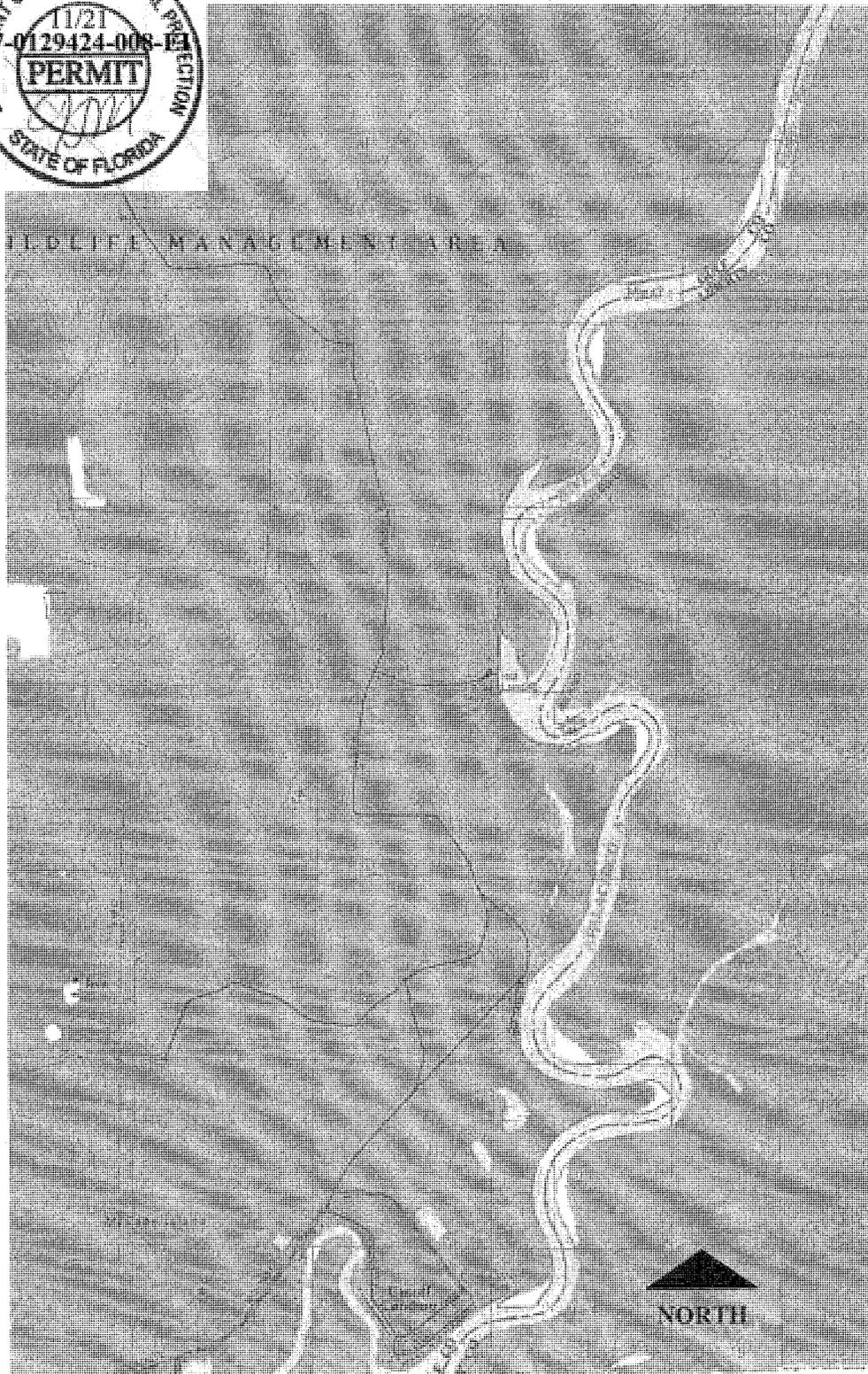
Excerpt from Estiffanulga, FLA USGS Quad Map  
Scale: 1" = 0.5 Mile



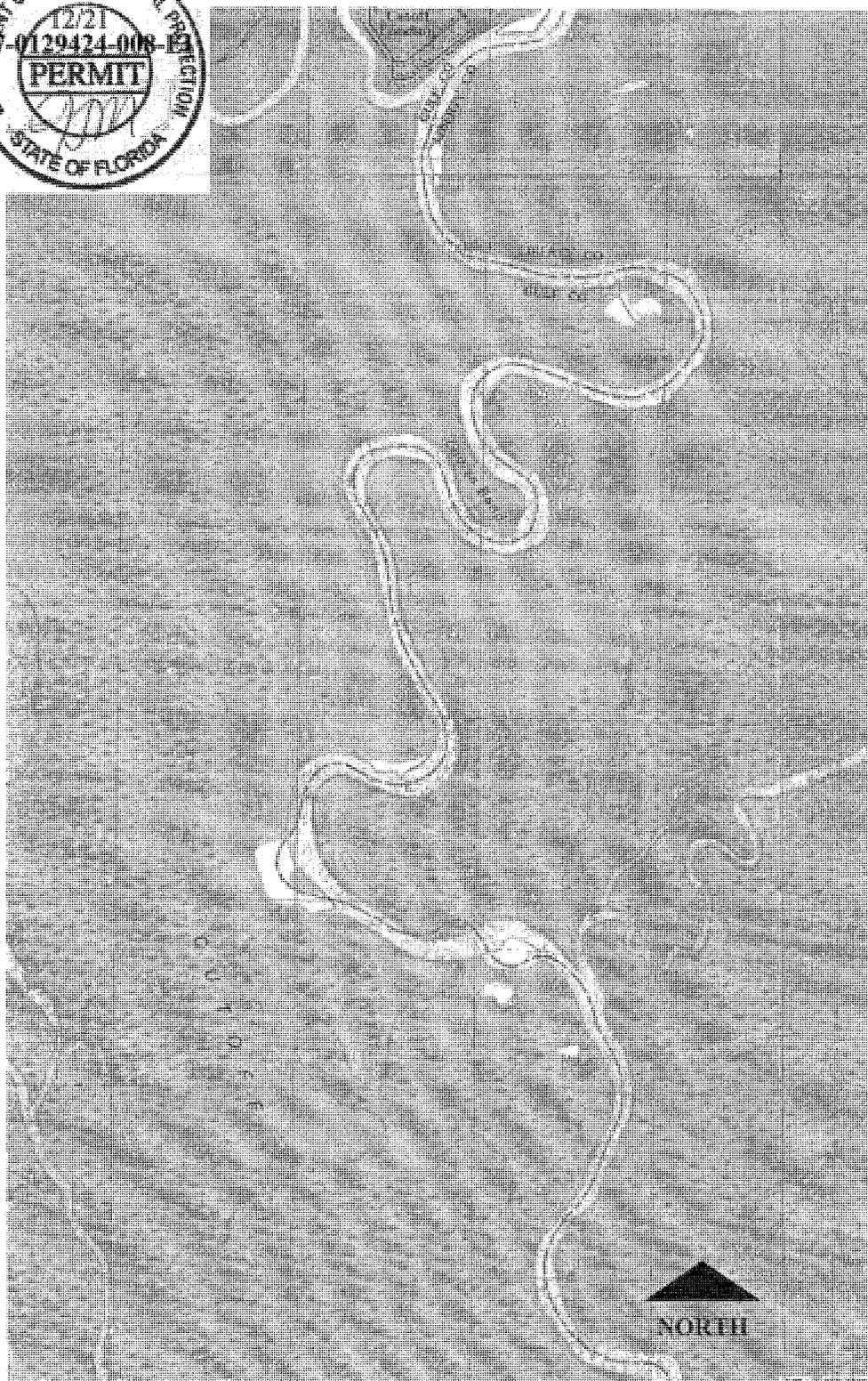
Excerpt from Estiffanulga, FLA and Orange, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



Excerpt from Orange, FLA USGS Quad Map  
Scale: 1" = 0.5 Mile



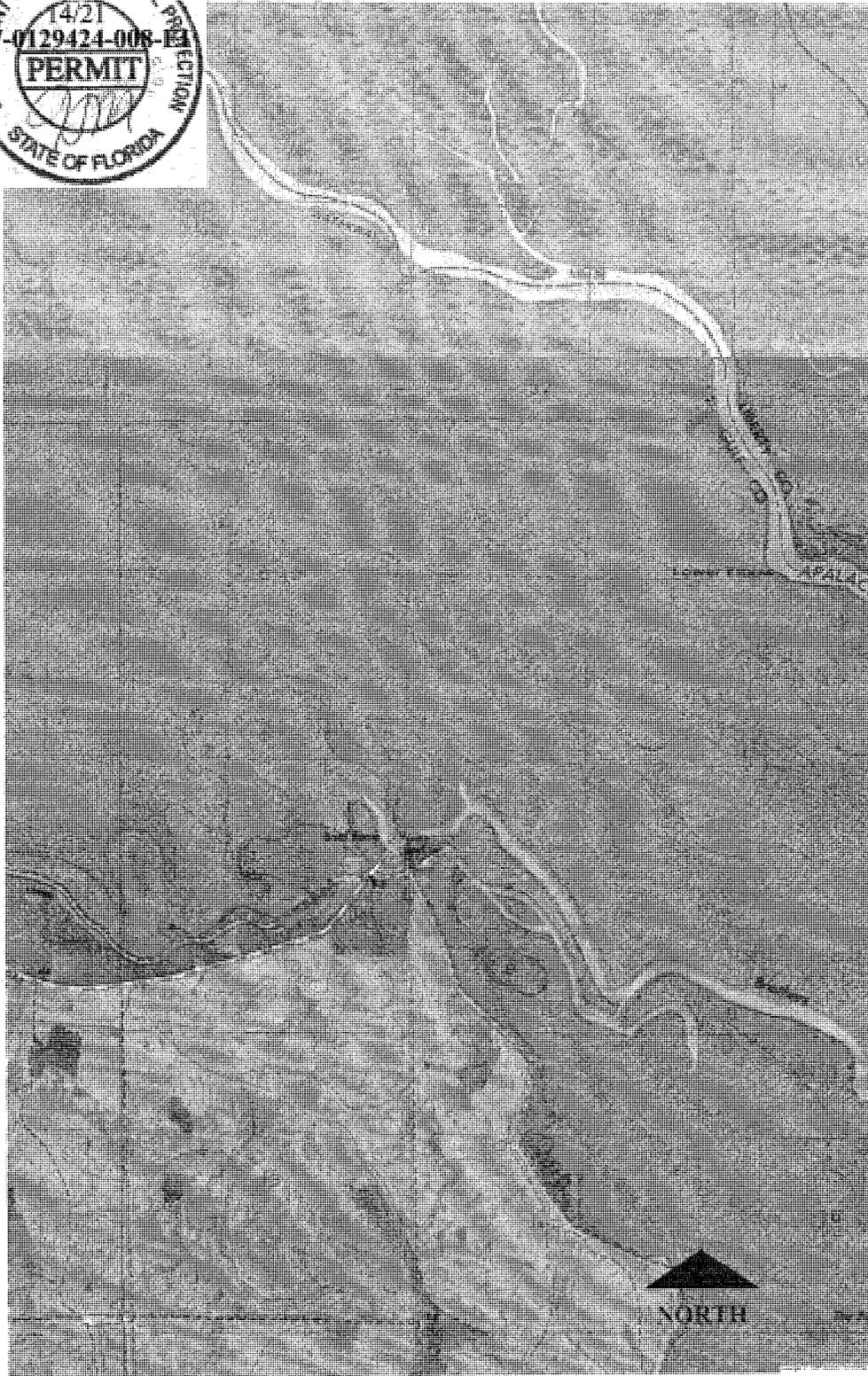
Excerpt from Orange, FLA and Dead Lake, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



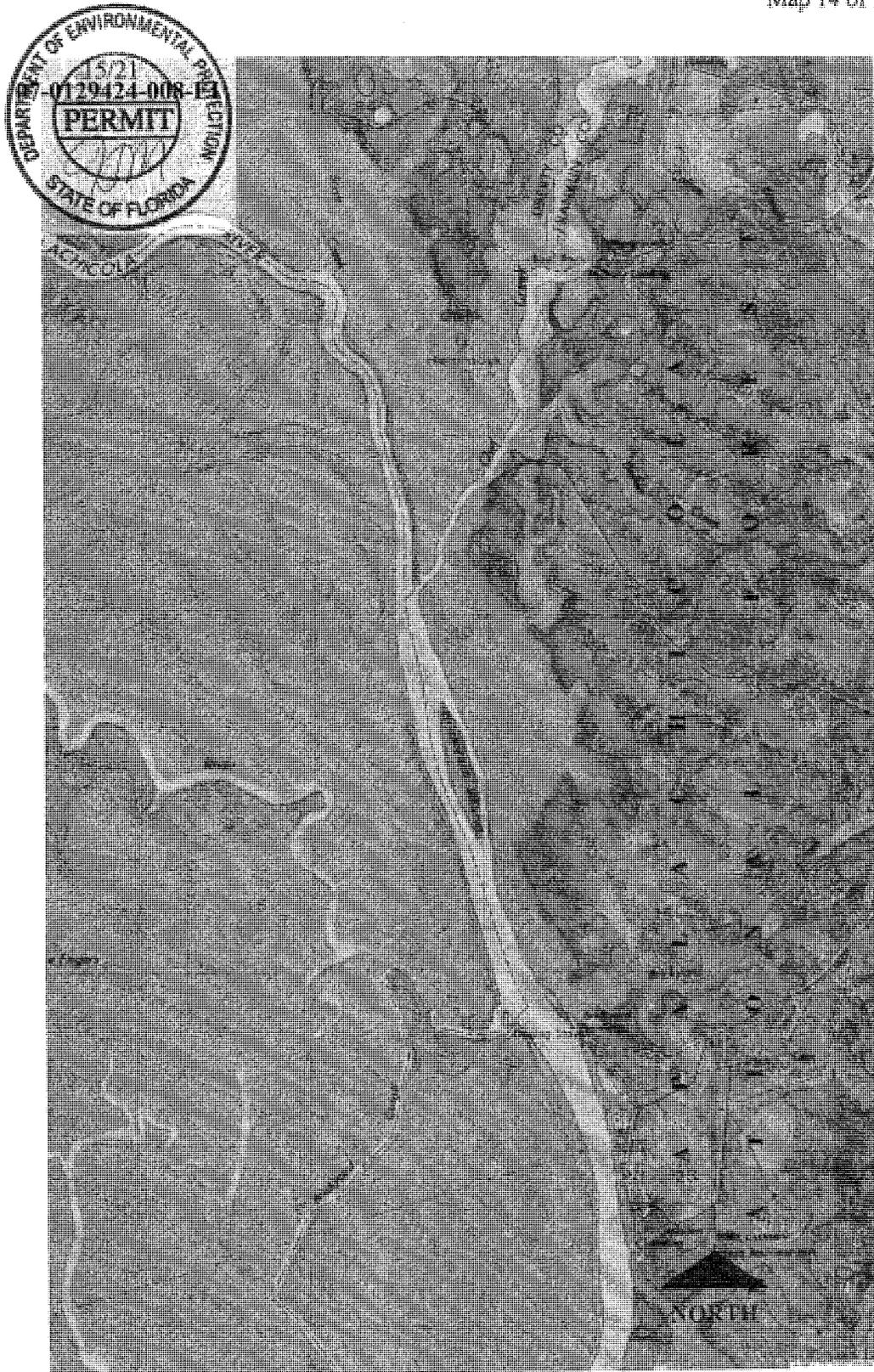
Excerpt from Dead Lake, FLA and Wewahitchka, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



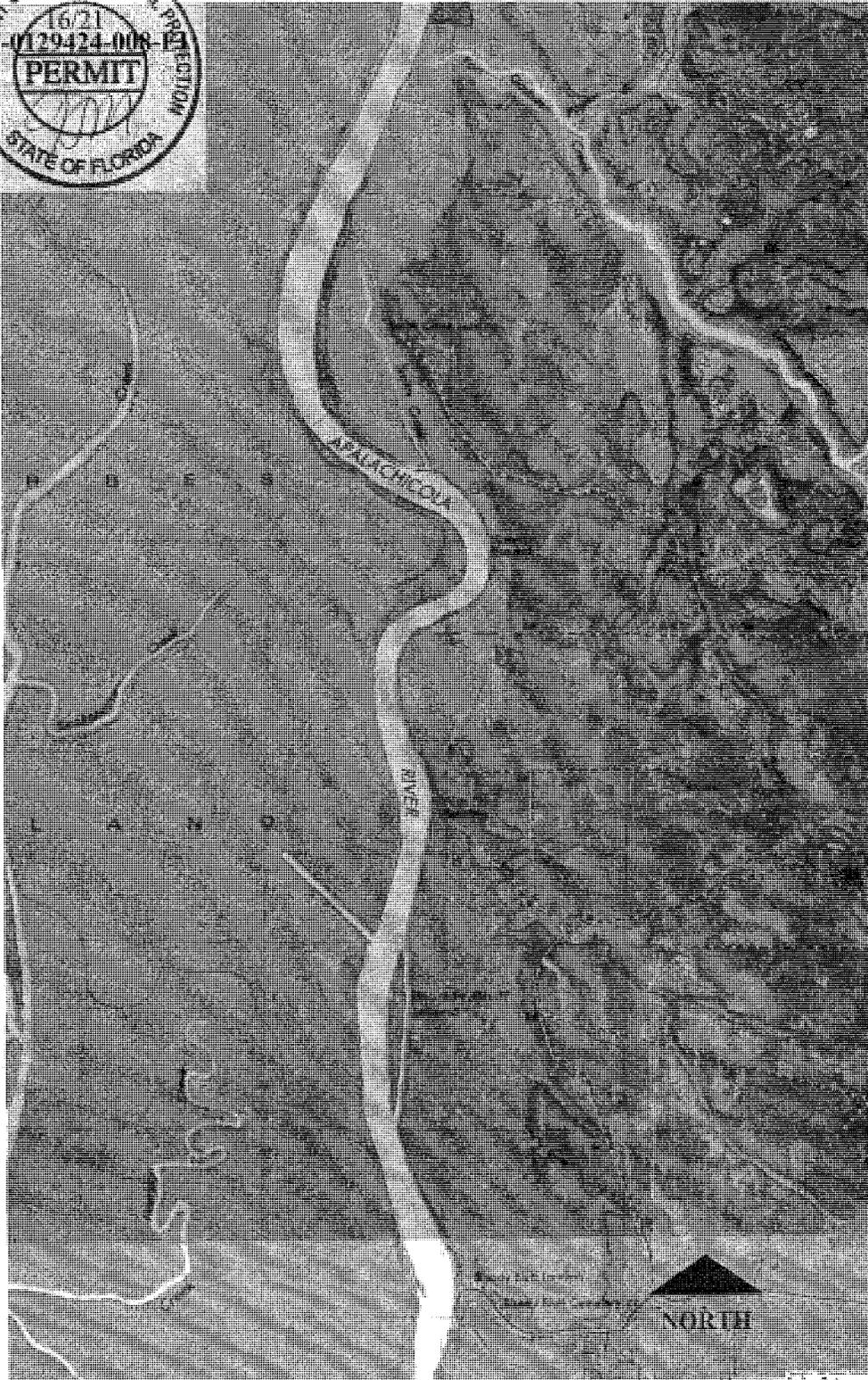
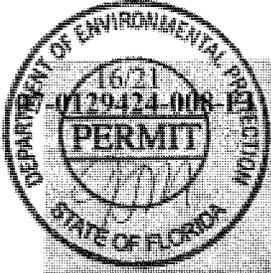
Excerpt from Wewahitchka, FLA and Kennedy Creek, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



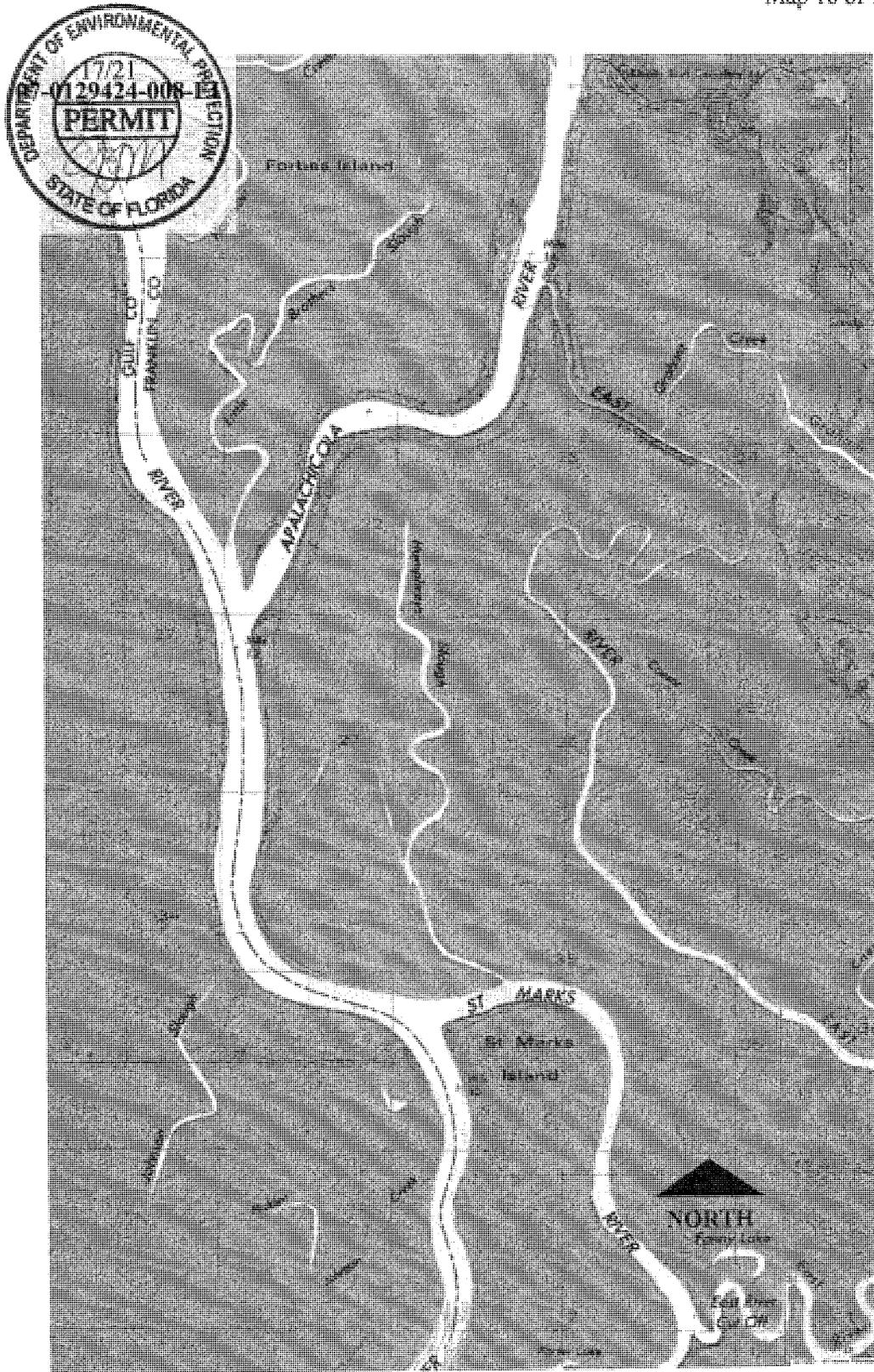
Excerpt from Kennedy Creek, FLA and Forbes Island, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



Excerpt from Forbes Island, FLA USGS Quad Map  
Scale: 1" = 0.5 Mile

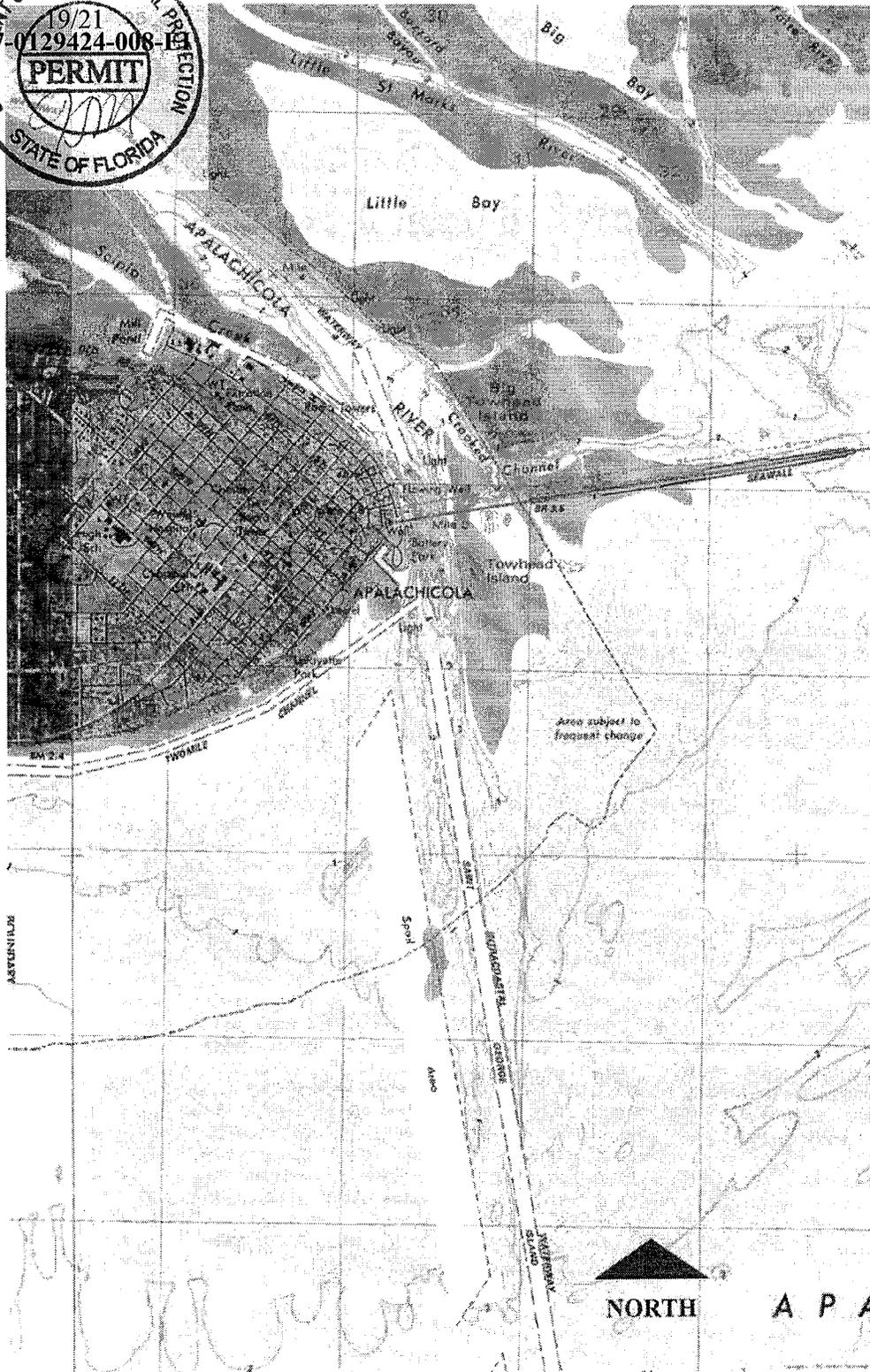
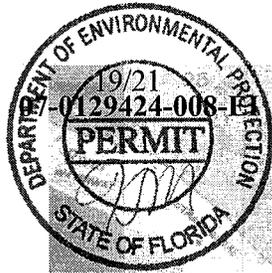


Excerpt from Forbes Island, FLA; Fort Gadsden, FLA; Jackson River, FLA;  
and Beverly, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



Excerpt from Jackson River, FLA and Beverly, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile

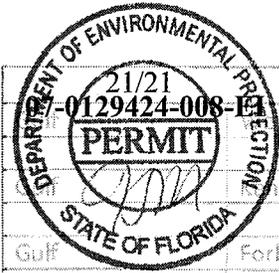




Excerpt from West Pass, FLA and Apalachicola, FLA USGS Quad Maps  
Scale: 1" = 0.5 Mile



APALACHICOLA RIVER				
	ADRANGLE	SECTION	TOWNSHIP	RANGE
	Chattahoochee	31	4N	6W
		6,7	3N	6W
Jackson	Rock Bluff	26, 33, 34, 35	3N	7W
Gadsden	Chattahoochee	29, 32	4N	6W
		5, 6, 7	3N	6W
Gadsden	Sneads	12, 13, 23, 24, 26	3N	7W
		7	3N	7W
Gadsden	Rock Bluff	4, 5, 8, 7, 18, 19, 30	2N	7W
		25, 36	2N	8W
		1, 12	1N	8W
Calhoun	Bristol	12, 13, 14, 23, 24, 25, 26, 35, 36	1N	8W
Calhoun	Blountstown	14, 23, 26, 35, 34	1N	8W
Calhoun	Blountstown	3, 4, 9, 10, 14, 15, 22, 21	15	8W
Calhoun	Estiffanulga	21, 27, 28, 33	15	8W
		4, 5, 9, 16, 17, 20, 29, 31, 32	25	8W
Calhoun	Orange	6, 7	35	8W
		12, 13, 14, 23	35	9W
Liberty	Rock Bluff	3, 4, 9, 8, 17	2N	7W
		20, 19, 30	2N	7W
		36	2N	8W
		1, 12	1N	8W
Liberty	Bristol	12, 13, 14, 23, 24, 25, 36	1N	8W
		30, 31	1N	7W
Liberty	Blountstown	34, 35	1N	8W
		3, 10, 11, 15, 14	15	8W
		23, 22	15	8W
Liberty	Estiffanulga	21, 22, 26, 28, 33	15	8W
		4, 9, 10, 15, 16	25	8W
		17, 20, 21, 28, 29, 32	25	8W
		5	35	8W
Liberty	Orange	5, 6, 7	35	8W
		12, 13, 14, 23, 24, 22, 27	35	9W
Liberty	Dead Lake	27, 34, 33	35	9W
Liberty	Dead Lake	4, 3, 10, 9, 16	45	9W
Liberty	Wewahitchka	15, 21, 22, 28, 33, 34	45	9W
		3, 4, 9, 10, 15, 22	55	9W
Liberty	Kennedy Creek	22, 23, 24, 25	55	9W
		30, 31, 32, 33	55	8W
Liberty	Forbes Island	33	55	8W
		4, 3, 10	65	8W
Gulf	Dead Lake	27, 34, 33	35	9W
		4, 3, 9, 10, 16	45	9W
Gulf	Orange	26, 27	35	9W



APALACHICOLA RIVER (Con't)				
	vahitchka	16, 21, 22, 28, 33, 34	45	9W
		3, 4, 9, 10, 16, 15, 22	55	9W
	nnedy Creek	22, 23, 24, 25, 36	55	9W
		30, 31, 32	55	8W
Gulf	Forbes Island	32	55	8W
		4, 3, 10, 15	65	8W
Gulf	Jackson River	16, 21, 27, 28, 34	75	8W
		2, 3, 10, 16	85	8W
Franklin	Forbes Island	10, 14, 15, 23, 26, 35	65	8W
		2, 11	75	8W
Franklin	Jackson River	14, 22, 23, 27, 34, 35	75	8W
		2, 3, 9, 10, 15, 16, 21, 22, 23, 27, 26	85	8W
Franklin	Apalachicola	25, 36	85	8W
		31	85	7W
		6	95	7W
CHIPOLA CUTOFF				
Gulf	Dead Lake	16, 17	45	9W

