



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**REGION 4
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW
ATLANTA, GEORGIA 30303-8960**

July 14, 2023

Mr. Andy Strelcheck
Regional Administrator
Directorate Office
NOAA Fisheries Service
Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701

Subject: Transmittal of a Biological Evaluation and Request for Concurrence on the EPA's Approval of the State of Florida's Administration of a Clean Water Act Section 404 Program

Dear Mr. Strelcheck:

In the 1977 amendments to the Clean Water Act (CWA), Congress provided states the option of assuming administration of a Section 404 program for discharges of dredged or fill material in certain waters. On August 20, 2020, the U.S. Environmental Protection Agency, Region 4, received a complete package from the state of Florida requesting to assume administration of a CWA Section 404 program. Pursuant to the CWA Section 404 and its implementing regulations (40 C.F.R. Part 233), the EPA is the federal agency charged with approving or denying Florida's request. The EPA approved Florida's request on December 17, 2020.

The EPA previously concluded that the EPA's approval of Florida's administration of a Section 404 program would have no effect on federally-listed marine species and their critical habitat under jurisdiction of the National Marine Fisheries Service (NMFS) and thus only initiated Endangered Species Act (ESA) consultation with the U.S. Fish and Wildlife Service at that time. On March 31, 2021, the EPA received a 60-Day Notice of Intent (NOI) to sue for violations of the ESA in connection with the EPA's approval of Florida's administration of a CWA Section 404 Program. On December 20, 2021, the EPA responded to the NOI stating, "the EPA intends to initiate an ESA consultation as appropriate" with NMFS.

Enclosed with this letter is our Biological Evaluation (BE) regarding the possible effects of the EPA's approval of Florida's CWA Section 404 program on federally-listed marine species and their critical habitat under the jurisdiction of NMFS, which the EPA submits to initiate consultation under Section 7(a)(2) of the ESA. We are requesting a programmatic consultation on the possible effects of the EPA's approval of the state of Florida's administration of a CWA Section 404 program on federally listed species, proposed species, designated critical habitat, and proposed critical habitat pursuant to 50 C.F.R. §§ 402.12, 402.13, and 402.14. The enclosed BE considers whether the EPA's approval may affect listed species or designated critical habitat and if any effects are likely to adversely affect any such species or habitat.

This BE analyzes a total of 27 animal species in the state of Florida that are federally listed as endangered (15) or threatened (12), and one species that is considered a candidate for listing under the ESA) (see Table 3-1 of the BE). The action area for Florida's program means all areas to be affected directly or indirectly by the Federal Action and not merely the immediate area involved in the Action. The waters in the action area include habitats that support federally listed species within NMFS jurisdiction.

In the enclosed BE, the EPA has made an effects determination for three species and finds that the EPA's action is not likely to adversely affect those species. For the remaining species, EPA finds that EPA's action will have no effect on those species. The BE also describes a proposed coordination process that would include Florida Department of Environmental Protection, Florida Fish and Wildlife Conservation Commission, and NMFS. The EPA requests your concurrence on these determinations; to the extent that NMFS does not concur, and if time allows, the EPA requests an opportunity to review any draft Biological Opinion before it is finalized. Thank you in advance for your assistance.

We look forward to further conversations about the coordination process described in the BE. If you have any questions or need any additional information regarding this consultation request, please contact me at (404) 562-9345, or have a member of your staff contact Ms. Rosemary Calli of my staff at (404) 562-9842 or calli.rosemary@epa.gov.

Sincerely,

César Zapata, Acting Director
Water Division

Enclosure

cc: Mr. John Coates, P.E., Director
Division of Water Resources Management
Florida Department of Environmental Protection

Mr. Jason Hight, Director
Office of Conservation Planning Services
Florida Fish and Wildlife Conservation Commission