

Environmental Training for Florida Turnpike Enterprise

Natural Resources and Environmental Permitting

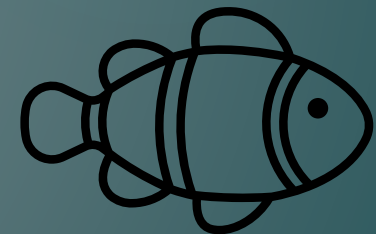
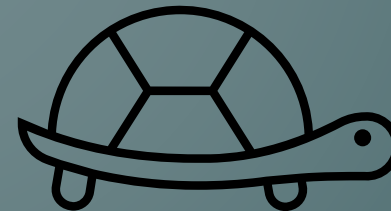


August 2020

The environmental review, consultation, and other actions required by applicable federal environmental laws described in this training are carried out by FDOT pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding dated December 14, 2016 executed by FHWA and FDOT.



**Natural Resources
Evaluation:**
Protected Species
and Habitat,
Wetlands, and
Essential Fish Habitat



Natural Resources Evaluation (NRE)

- ▶ Includes information on protected species & habitat, wetlands, and essential fish habitat
- ▶ Technical report for consultation/coordination with resource agencies
- ▶ Information from the NRE is summarized and included in the Environmental Document



Endangered Species Act



Federal Species Regulations

50 CFR Part 13 – General Permit Procedures

50 CFR Part 17 - Endangered and
Threatened Wildlife and Plants

50 CFR Part 18 – Marine Mammals

50 CFR Part 21 – Migratory Bird Permits

50 CFR Part 22 – Eagle Permits

State Species Regulations

Section 379.2291, F.S. - Endangered and Threatened Species Act

“... to conserve and wisely manage these resources, with particular attention to those species defined by the FWC, the FDEP, or the US Department of Interior, or successor agencies, as being endangered or threatened.”

68A-27, F.A.C. - Rules relating to endangered or threatened species

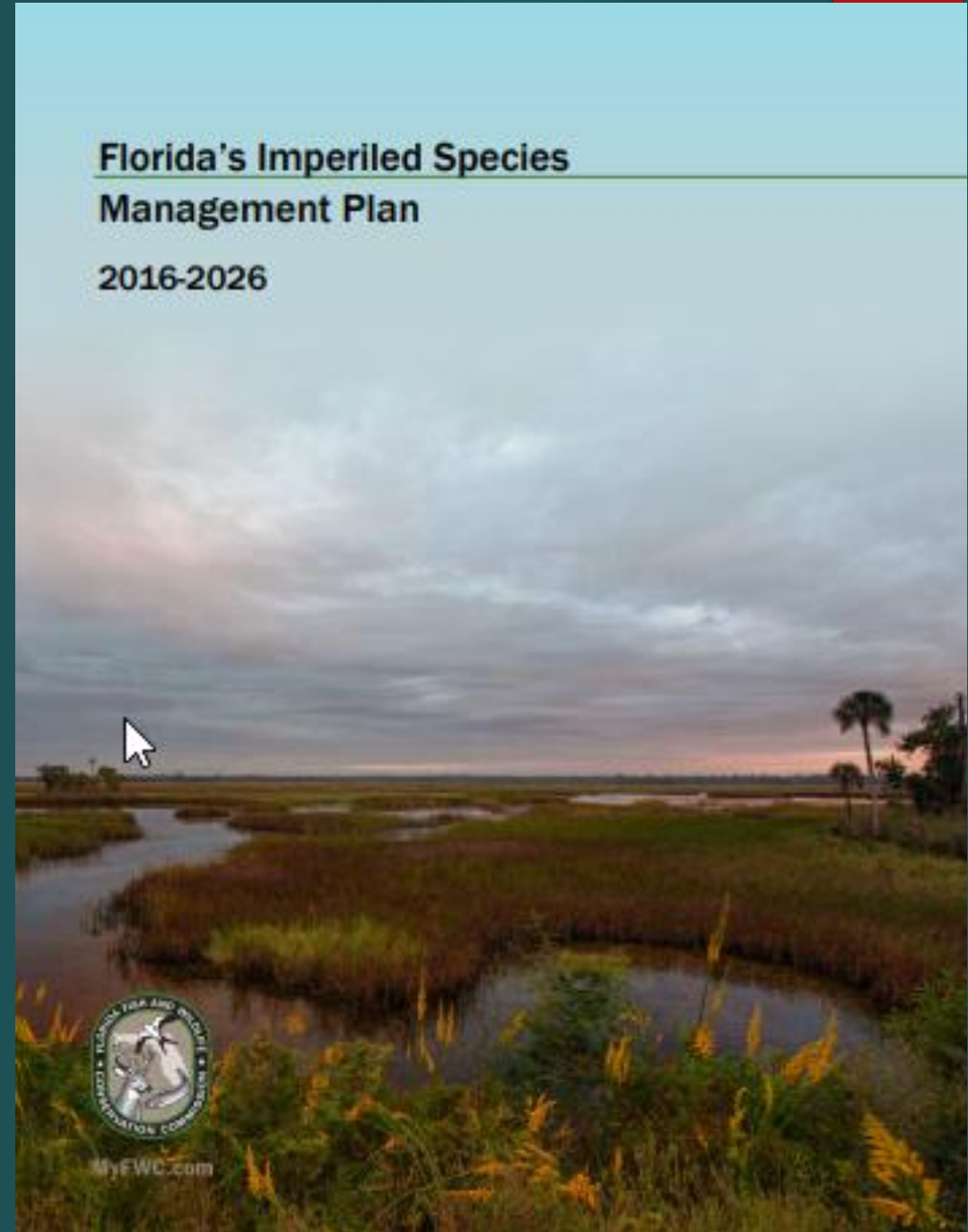
Florida's Imperiled Species Management Plan



**Florida's Imperiled Species
Management Plan**

2016-2026

Imperiled
Species
Management
Plan



MyFWC.com

State Species Regulations

Section 581.185 – Preservation of Native Flora of Florida

“...provide recognition of those plant species native to the state that are endangered, threatened, or commercially exploited...”

5B-40, F.A.C. – Preservation of Native Flora of Florida



Wetlands – federal and state definitions

33 CFR 328.3(b)

“areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

Section 373.019(27), F.S.

“areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils”



CLEAN WATER ACT



RIVERS AND HARBORS
ACT

USACE Regulations

- ▶ [33 CFR Part 320](#) - General Regulatory Policies
- ▶ [33 CFR Part 322](#) - Permits for Structures in or Affecting Navigable Waters of the U.S.
- ▶ [33 CFR Part 323](#) - Permits for Discharges of Dredged or Fill Material Into Waters of the U.S.
- ▶ [33 CFR Part 325](#) - Processing of Department of the Army Permits
- ▶ [33 CFR Part 330](#) - Nationwide Permit Program
- ▶ [33 CFR Part 332](#) - Compensatory Mitigation for Losses of Aquatic Resources

USCG Regulations

- ▶ [33 CFR 114](#)- General
- ▶ [33 CFR 115](#) - Bridge Location and Clearances, Administrative Procedures
- ▶ [33 CFR 117](#)- Drawbridge Operation Regulations
- ▶ [33 CFR 118](#)- Bridge Lighting and Other Signals

State Permitting Authority

Florida Statutes

- Chapter 373, F.S. – Water Resources
- Chapter 403, F.S. – Pollution Control

Florida Administrative Code

- 62-330, F.A.C. – Environmental Resource Permitting
- 62-340, F.A.C. – Delineation of the Landward Extent of Wetlands and Surface Waters
- 62-345, F.A.C. – Uniform Mitigation Assessment Method
- 18-21, F.A.C. – Sovereignty Submerged Lands Management

Magnuson-Stevens Fishery Conservation and Management Act

- NMFS identify and protect important marine and anadromous fish habitat, and to establish means for designating **Essential Fish Habitat** (those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity)



Anadromous Fish

- Freshwater species
- Migrate to the ocean to mature
- Return to freshwater to spawn

NRE is
prepared
for
projects
with:

Impacts to federal listed and candidate species/critical habitat consultation (informal or formal)

Wetland impacts that require either a standard/individual or regional general permit (SAJ – 92)

Substantial adverse effects to Essential Fish Habitat (EFH)

Tech Memo

Projects with minimal impacts where agency consultation is not required

Not consultation document

If programmatic effect determination keys are used, they must be included in the tech memo

Programmatic Effect Determination Keys

Species Effect Determination Keys commonly used by FDOT

Name of Key	Publication Date
Eastern Indigo Snake Programmatic Effect Determination Key (South Florida)	8/1/2017
Eastern Indigo Snake Programmatic Effect Determination Key (North Florida)	8/12/2013
Florida Panther Effect Determination Key	2/19/2007
Florida Manatee Key Programmatic Biological Opinion	Apr-13
Florida Manatee Key Programmatic Biological Opinion - Addendum*	5/13/2019
Programmatic Piping Plover Biological Opinion	5/22/2013
Wood Stork Key for Central and North Peninsular Florida	Sep-08
Associated approval to use the Wood Stork Key for Central and North Peninsular Florida for Panhandle Counties	5/1/2013
South Florida Programmatic Concurrence and Key (Wood stork)	5/18/2010
Consultation Key for the Florida bonneted bat**	10/22/2019

*Added August 2019

**Added December 2019

<https://www.youtube.com/watch?v=VVix2CVW-60&feature=youtu.be>

WOOD STORK KEY

Although designed primarily for use by Corps Project Managers in the Regulatory and Planning Divisions, and State Regulatory agencies or their designees, project permit applicants and co-sponsors of civil works projects may find this key and its supporting documents useful in identifying potential project impacts to wood storks, and planning how best to avoid, minimize, or compensate for any identified adverse effects.

- A. Project within 2,500 feet of an active colony site¹.....*May affect*
Project more than 2,500 feet from a colony site.....go to B
- B. Project does not affect suitable foraging habitat² (SFH).....*no effect*
Project impacts SFH².....go to C
- C. Project impacts to SFH are less than or equal to 0.5 acre³.....*NLAA*⁴
Project impacts to SFH are greater than or equal to 0.5 acre.....go to D
- D. Project impacts to SFH not within a Core Foraging Area⁵ (see attached map) of a colony site, and no wood storks have been documented foraging on site.....*NLAA*⁴
Project impacts to SFH are within the CFA of a colony site, or wood storks have been documented foraging on a project site outside the CFAgo to E
- E. Project provides SFH compensation within the Service Area of a Service-approved wetland mitigation bank or wood stork conservation bank preferably within the CFA, or consists of SFH compensation within the CFA consisting of enhancement, restoration or creation in a project phased approach that provides an amount of habitat and foraging function equivalent to that of impacted SFH (see *Wood Stork Foraging Habitat Assessment Procedure*⁶ for guidance), is not contrary to the Service's *Habitat Management Guidelines For The Wood Stork In The Southeast Region* and in accordance with the CWA section 404(b)(1) guidelines.....*NLAA*⁴
Project does not satisfy these elements.....*May affect*

Technical
Assistance
or
Consultation



NRE Outline

- NRE Cover Page (Form 650-050-38)
- Executive Summary
 - Project Description (brief)
 - Results of the evaluation
 - Species and Critical Habitat impacts with effect determinations
 - Wetland and other surface waters impacts
 - Essential Fish Habitat impacts with effect determinations
- Project Overview

Protected Species and Habitat

Include laws and agencies with jurisdiction

Prior agency coordination and methodology to determine involvement with protected species

Discuss Federal Listed Species and Designated Critical Habitat

Discuss State Listed Species

Other protected species

Include environmental permits that may be required

Federal Listed Species and Critical Habitat

Short paragraph for each federal listed wildlife and plant species, include listing status and brief background information

Discuss documented occurrences and include maps

Discuss survey methodology

Evaluate how project actions will impact species and habitat

Discuss avoidance, minimization and compensation if required

Include BMPs and Standard Protection Measures

NRE - Federal Species Effect Determinations

- No Effect
- May Affect, Not Likely to Adversely Affect
- May Affect, Likely to Adversely Affect
 - ✓ Requires formal consultation

State Listed Species

Follow the outline for federal listed species

Include following effect determinations

- No Effect anticipated
- No Adverse Effect anticipated
- Potential for Adverse Effect

Other Protected Species or Habitats

Not listed, but
protected by
federal or state law
(i.e. Black Bear,
Bald Eagle)

Strategic Habitat
Conservation Areas

Florida Natural
Areas Inventory
Rare Natural
Communities

Informal Consultation

- ▶ District prepares the NRE
- ▶ OEM reviews the NRE prior to agency submittal
 - ❖ Typically concurrent review with District *2 weeks
- ▶ District submits the NRE to Service(s)
- ▶ Service(s) responds within 30 days

Formal Consultation

- ▶ District prepares the NRE as the Biological Assessment (BA)
- ▶ OEM reviews the NRE prior to agency submittal
 - ❖ Typically concurrent review with District
- ▶ OEM submits the BA(NRE) to Service(s)
- ▶ ~ up to 135 days
 - ❖ Service has 30 days to review package for completeness
 - ❖ Formal consultation begins when initiation package is complete
 - ❖ Formal consultation must be completed within 90 days, but no later than 45 days after the conclusion of formal consultation

Formal Consultation - Biological Opinion

- ▶ Non-jeopardy opinion includes
 - Incidental Take Statement
 - Terms and Conditions are non-discretionary measures

Formal Consultation - Biological Opinion

Jeopardy or Adverse Modification Opinion (rare)

► FDOT may:

1. Adopt the reasonable and prudent alternatives/measures;
2. Not advance the project;
3. Request an exemption from **Section 7(a)(2)**;
4. Modify the action or offer reasonable and prudent alternatives/measures not yet considered, and reinitiate consultation; or
5. Proceed with the action if upon review of the **BO** FDOT believes that such action satisfies **Section 7(a)(2)**.

NRE - Wetlands and Other Surface Waters

- Include laws and agencies with jurisdiction
- Prior agency coordination – ETAT comments (USACE/DEP/WMDs)
- Methodology for delineation
 - Rule 62-340, FAC Wetland delineation
 - Regional Supplement to the USACE Wetlands Delineation Manual: Atlantic and Gulf Coastal Plain Region (2010)

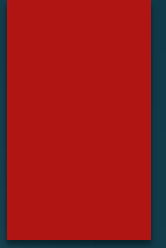
NRE - Wetlands and Other Surface Waters

- Describe and identify wetlands
 - FLUCCS and/or USFWS Classification of Wetlands and Deepwater Habitats of the US
- Discuss avoidance and minimization
- Include functional assessment of wetlands
 - Rule 62-345, UMAM
- Discuss compensatory mitigation
 - Mitigation options

NRE - Wetlands and Other Surface Waters

- Include mitigation standard statement
 - Wetland impacts which will result from the construction of this project will be mitigated pursuant to Section 373.4137, F.S., to satisfy all mitigation requirements of Part IV of Chapter 373, F.S., and 33 U.S.C. § 1344.

NRE - Essential Fish Habitat



- Include laws and agencies with jurisdiction
- Prior agency coordination
- Methodology
- Identify EFH, Habitat Areas of Particular Concern and managed species that may be affected
- Provide an analysis of the adverse effects
- Summarize proposed measures to avoid, minimize or offset adverse impacts

NRE - Essential Fish Habitat

Include effect determination

- Minimal
- More than minimal but less than substantial
- Substantial

EFH Consultation with NMFS

- An **EFH Assessment** is an analysis of a project's potential substantial adverse effects on EFH and if necessary, measures to avoid, minimize, or mitigate those effects.

EFH Assessment

1. Identification of EFH, HAPC(s), and managed species that may be affected. An analysis of the effects, including indirect and cumulative effects, of the project on EFH, HAPC(s), the managed species, and associated species by life history stage
2. Proposed measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH
3. FDOT's determination regarding the effects of the project on EFH.

NMFS Response and FDOT Action

- NMFS will prepare a written project evaluation (letter, memo, or email) with Conservation Recommendations (non-binding)
 - May include measures to avoid, minimize or mitigate adverse effects on EFH
- FDOT is required to respond within 30 days explaining how FDOT will proceed

NRE – Outline

➤ Anticipated Permits

List the anticipated environmental permits that may be required for the project

- Use tables
- Sort by federal, state, local

NRE - Outline

➤ Conclusion

- Summarize each resource section
- List implementation measures
- List commitments
- Describe next steps for agency consultation/coordination

Implementation Measures

Actions that FDOT would be required to take per procedure, standard specification, or other agency requirements and will be implemented at a later project phase. They help address or reduce project effects and need to be included in the NRE and communicated to the agencies.

- ▶ Using Best Management Practices for erosion control
- ▶ Conducting gopher tortoise surveys and obtaining relocation permit
- ▶ Conducting bald eagle or osprey nest surveys
- ▶ Updated general wildlife or plant surveys during the design phase (i.e., depending on species, such as crested caracara or specific listed plant, could be a commitment)

Commitments

An obligation to an external stakeholder to provide a feature, or perform an action, related to a project that will be implemented in a future project phase.

- ▶ Agency species standard protection measures
- ▶ Species-specific surveys

Part 2, Chapter 22 Commitments

FDOT Project Commitment Tracking Procedure

NRE Addendum

This is prepared when an agency requests additional information to be able to complete consultation on a project OR if project design changes and results in additional impacts that need to be evaluated

- Include agency comments
- Provide explanation of the revision/updates to the original NRE

Documenting NRE information in the SEIR

- Provide a summary of the analysis in the SEIR
- Include agency coordination/consultation or technical assistance
- Attach any agency concurrence letters
- Include NRE commitments in the commitments section of the SEIR

Resources

- Part 2, Chapter 16 – Protected Species and Habitat
- Part 2, Chapter 9 – Wetlands and Other Surface Waters
- Part 2, Chapter 17 – Essential Fish Habitat
- [Natural Resources Evaluation Outline and Guidance](#)
- <https://www.youtube.com/watch?v=VVix2CVW-60&feature=youtu.be>