

U.S. ARMY CORPS OF ENGINEERS

Regulatory Program

Permitting Artificial Reefs and Aquaculture

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Today's Objectives

- Gulf Coast Corps Districts
- Regulatory Authorities
- Authorization Types
- Application Process
- Corps Review
- Permit Special Conditions
- Stakeholder Engagement



Gulf Coast Corps Districts



Corps Authority

- Rivers and Harbors Act, Section 10 Jurisdiction extends out to 200 nautical miles.
- Clean Water Act, Section 404 within 3 nautical miles off the coast of Florida and inland waterways.

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER II - CORPS OF ENGINEERS,
DEPARTMENT OF THE ARMY,
DEPARTMENT OF DEFENSE

PART 322 - PERMITS FOR
STRUCTURES OR WORK IN OR
AFFECTING NAVIGABLE WATERS OF
THE UNITED STATES

322.5 - Special policies.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny section 10 permits. The following additional special policies and procedures shall also be applicable to the evaluation of permit applications under this regulation.

(a) General. DA permits are required for structures or work in or affecting navigable waters of the United States. However, certain structures or work specified in 33 CFR part 330 are permitted by that regulation. If a structure or work is not permitted by that regulation, an individual or regional section 10 permit will be required.

(b) Artificial Reefs. (1) When considering an application for an artificial reef, as defined in [33 CFR 322.2\(g\)](#), the district engineer will review the applicant's provisions for siting, constructing, monitoring, operating, maintaining, and managing the proposed artificial reef and shall determine if those provisions are consistent with the following standards:



Types of Authorizations

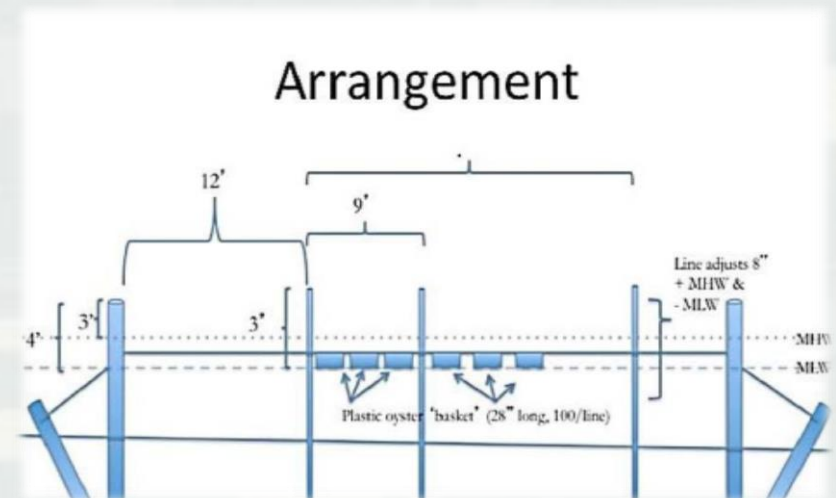
- Individual Permits - compliance with laws and regulations occurs during a case-specific analysis
 - ▶ Letters of Permission
 - Not controversial; no public notice
 - ▶ Standard Individual Permits
 - Complex, can be controversial; public notice required
- General and Nationwide Permits
 - ▶ Authorize activities with minimal adverse effects, individually and cumulatively



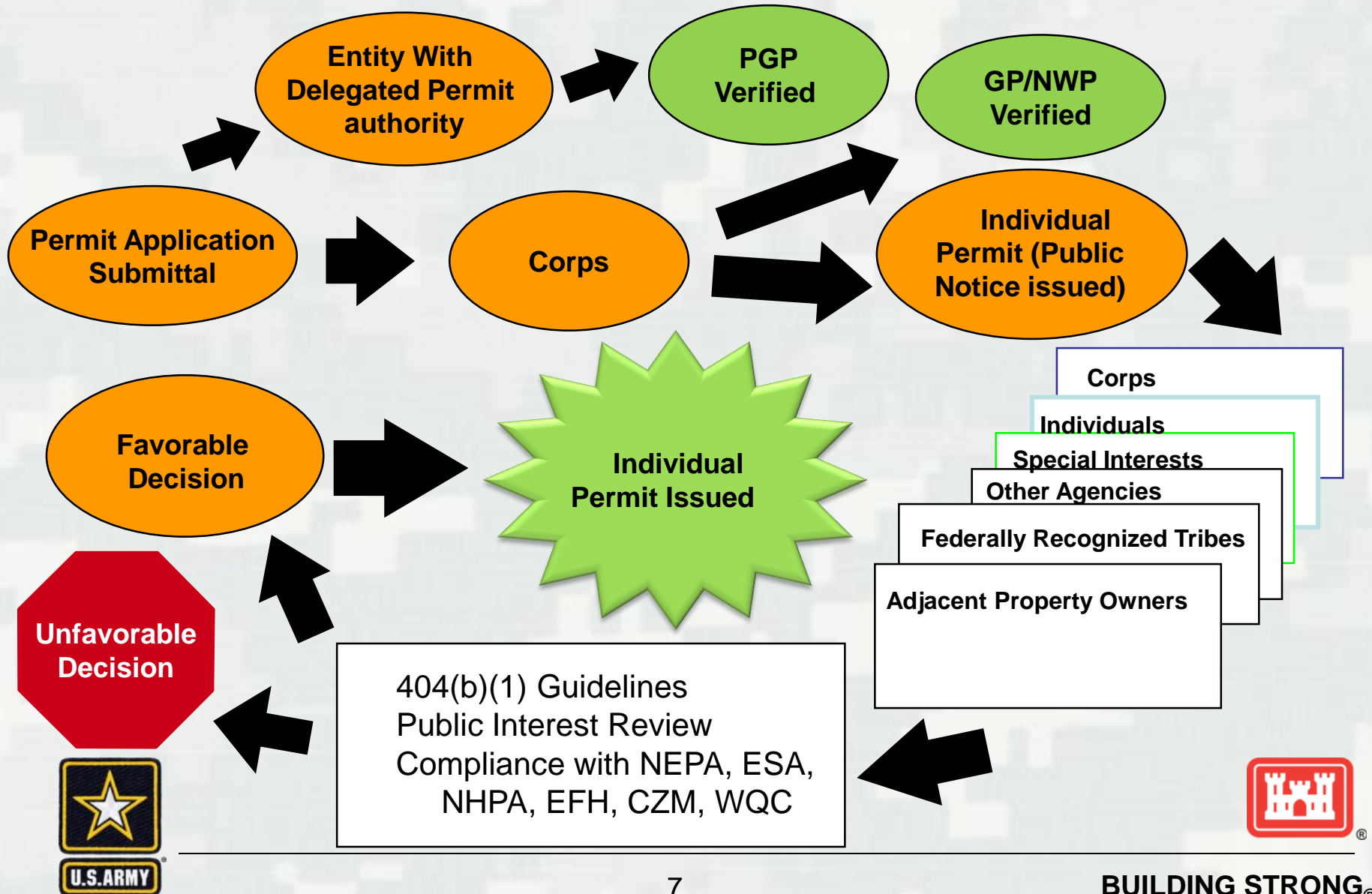
Types of Authorizations (cont.)

- Programmatic General Permits
 - ▶ Delegate authority to governmental entities for issuance of minor permits on behalf of the Corps

Ex. PGP SAJ-99 *Liverock and Marine Bivalve Aquaculture in the State of Florida*



Corps Permit Review Process



Agency Coordination

Agencies copied on the PN for coordination and comment:

- U.S. Fish and Wildlife Service (USFWS)
- National Marine Fisheries Service (NMFS)
- Environmental Protection Agency (EPA)
- State Historic Preservation Office (SHPO)
- Federally Recognized Tribes
- U.S. Coast Guard
- Port Authorities, i.e. Port of Panama City
- Military bases, i.e. Eglin, Naval Support Activity
- Non-governmental organizations, i.e. Gulf of Mexico Fishery Management Council



Public Interest Review Factors

Conservation

Economics

Aesthetics

General Environmental Concerns

Wetlands

Historic Properties

Fish and Wildlife Values

Flood Hazards

Floodplain Values

Land Use

Navigation

Shore Erosion and Accretion

Recreation

Water Supply and Conservation

Water Quality

Energy Needs

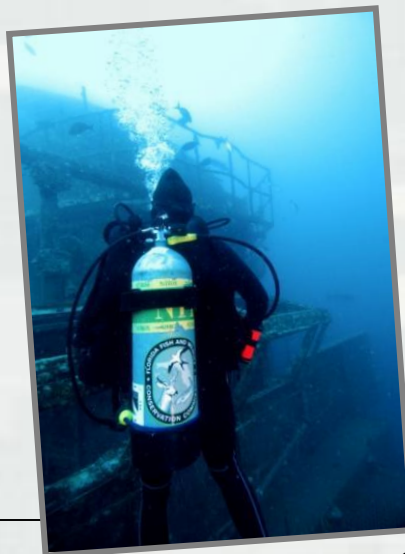
Safety

Food and Fiber Production

Mineral Needs

Property Ownership

Needs and Welfare of the People



Section 7 of the Endangered Species Act (ESA)

- The Corps is required to evaluate the effects of the proposed federal action on any federally listed threatened or endangered species or its designated critical habitat.
- For determinations other than “no effect” consultation is required with USFWS and/or NMFS.



Programmatic Consultation Tools

- Jacksonville Biological Opinion (JaxBO): Addresses consultation for NMFS species for “in-water” work authorized by all NWP, RGPs, PGPs, and SPs that meet the applicable Project Design Criteria (PDCs) for ten activities. JaxBO utilizes PDCs to comply with the ESA and concur with the Agency’s Not Likely to Adversely Affect (NLAA) determination.
- Manatee Key: Dichotomous key for certain “in-water” work provides concurrence with Agency’s NLAA determination.



Essential Fish Habitat (EFH)

- Corps completes EFH Assessment for adverse effects to EFH.
- Corps initiates consultation with National Marine Fisheries Service (NMFS).
- NMFS provides EFH Conservation Recommendations to Corps for consideration of avoidance, minimization, & compensatory mitigation into permit decision.



Section 106 (Historic Resources)

- Surveys may be required from applicants to ensure proposed reef or aquaculture structures will not impact resources.
- Requires coordination with the Corps archaeologist and State Historic Preservation Office (SHPO).



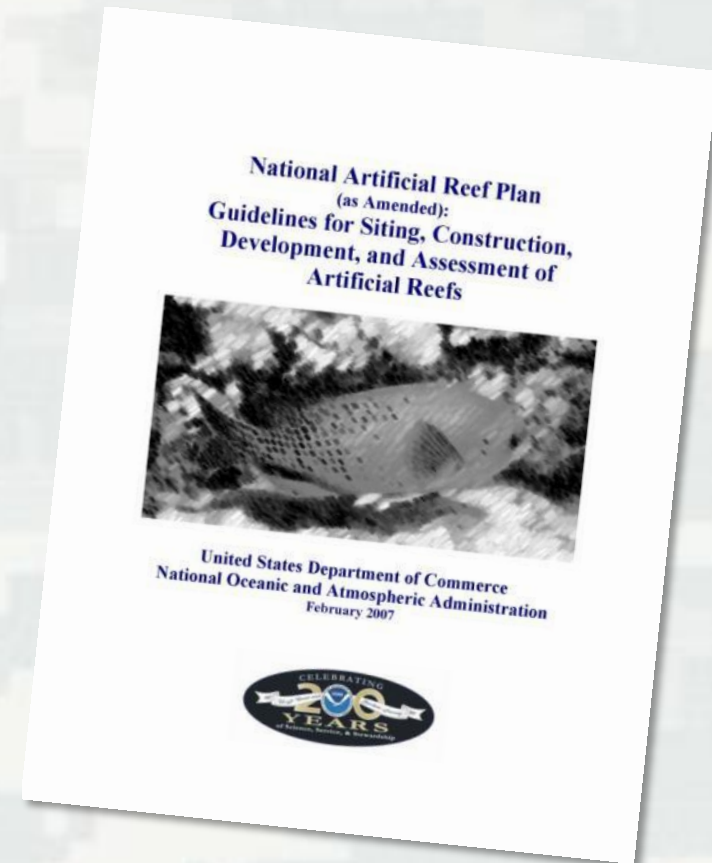
Siting

- Consider objectives of reef (restoration, enhancement, recreation, mitigation, etc.)
- Prevent unreasonable obstructions to navigation (minimum depth clearance 2X the height of the structure measured from top of structure to MLW)
- Minimize user conflicts
- Protect existing resources (deployment methodology and buffers)



National Artificial Reef Plan

- Guidelines for siting, construction, development, and assessment
- Addresses artificial reef materials criteria
- Suggests coordination with state and federal stakeholders to determine materials
- References “Guidelines for Marine Artificial Reef Material”



Materials Criteria

- Function - provide habitat to stimulate growth
- Compatibility - minimize risks and user conflicts
- Stability – proven stable design
- Durability – resistant to deterioration and breakup



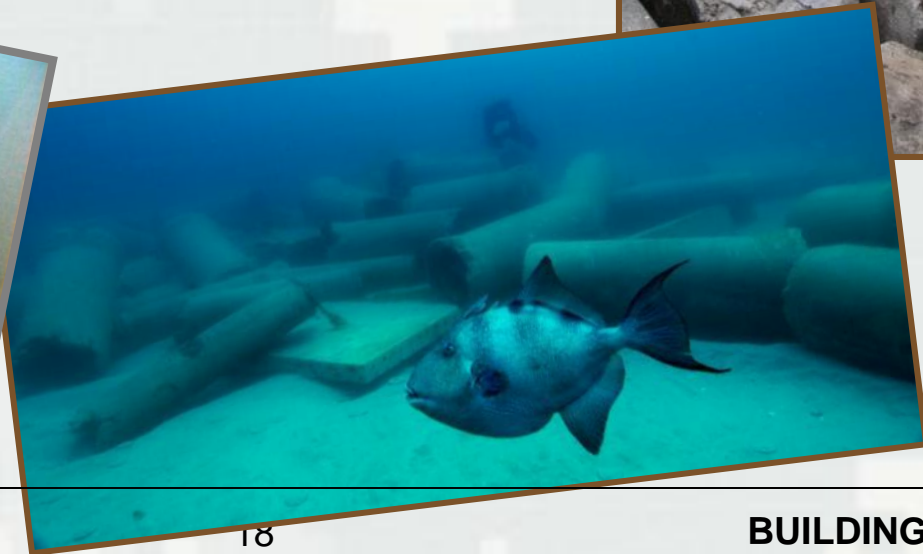
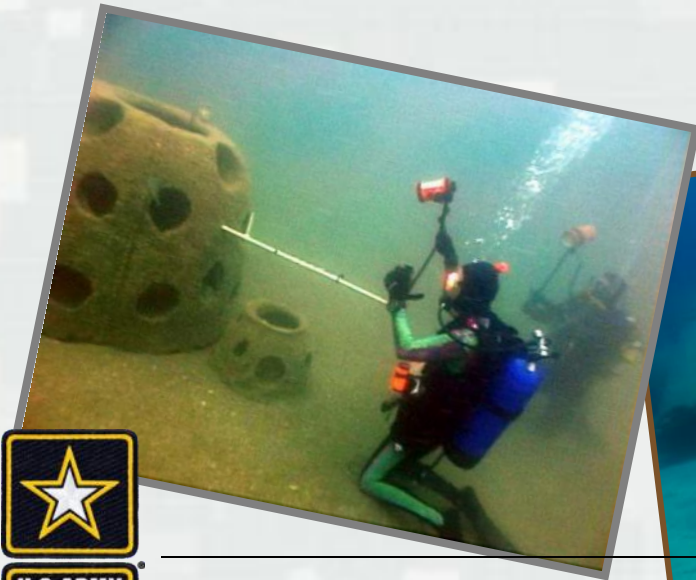
Acceptable Material Requirements

- Weight minimum of 500 pounds
- Clean – no asphalt, creosote, petroleum, or other toxic residues
- No free floating material or other harmful substances
- Stable in a 20 year storm event
- Designed, selected and deployed to avoid entrapping marine life
- Can entertain different materials through PN process



Acceptable Material Examples

- Prefabricated modules of ferrous and/or aluminum-alloy metals, concrete, rock or combination
- Pre-cast concrete material



Acceptable Material Examples

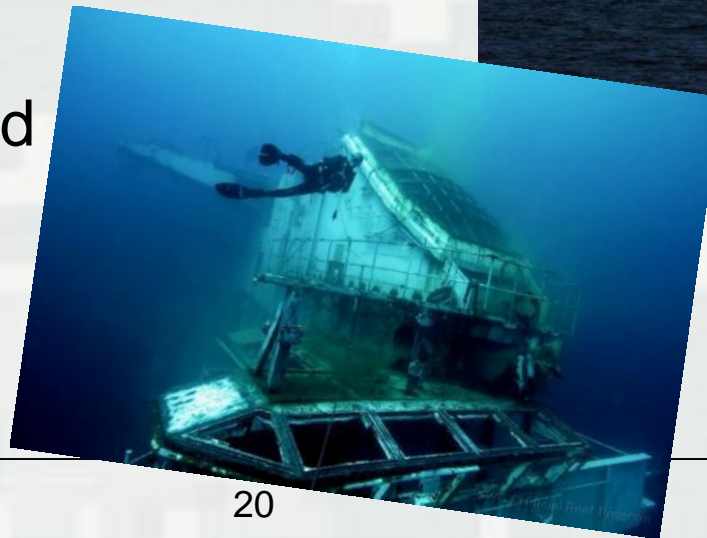
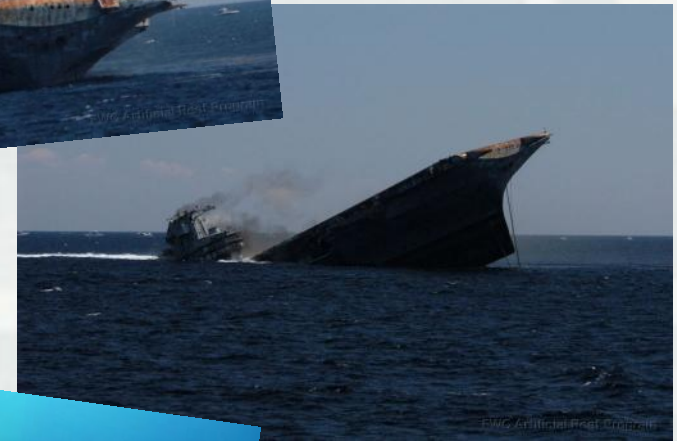
- Large concrete building demolition materials
- Heavy gauge ferrous and aluminum alloy metal components or structures



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Acceptable Material Examples

- Hulled vessels 60 feet in length
- Deployed IAW USCG & USEPA regulations and policies
- Must pass all inspections and stability analysis for 50-yr storm event based on vessel and deployment site characteristics



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Acceptable Material Examples

- Bureau of Ocean Energy Management's (BOEM) "Rigs to Reef" program
- Decommissioned oil/gas platforms



UNAcceptable Material Examples



Corps Permit Conditions

- **Initial Agency Notification:** Written notification to the Corps, NOAA Charting, and U.S. Coast Guard (USCG) of the planned deployment start date at least 2 weeks prior to the initial deployment on the authorized artificial reef site.
- **Authorized Reef Materials:**
- **Reef parameters and violation of reef parameters**
- **Protection of existing resources:** (assessment required/ 200-foot buffer).
- **Pre-deployment notification:** “Florida Artificial Reef Materials Cargo Manifest and Pre-Deployment Notification” Form.
- **Post-deployment placement report:** “Florida Artificial Reef Materials Placement Report and Post-Deployment Notification” Form.
- **Ownership/Maintenance/Liability:**
- **Assurance of Navigation and Maintenance:**



Corps Permit conditions cont.

ESA

- **Sea Turtle/Sawfish/Sturgeon Guidelines:**
- **Manatee Protection:** wharf fenders are installed to reduce the risk of a vessel crushing a manatee. The wharf fenders shall be installed with appropriate materials to provide sufficient standoff space of at least 3 feet under compression. Fenders or buoys providing a minimum standoff space of at least 3 feet under compression shall be utilized between two vessels moored together.
- **Marine Life Entrapment:**
- **Protected Species Guidance:** “Vessel Strike Avoidance Measures and Injured or Dead Protected Species Reporting” Form.
- **Right Whale Protection:** Artificial reef material shall not be transported or deployed between November 15 and April 15 for the conservation of the endangered Northern Right Whale within the boundaries of the National Marine Fisheries Service designated Northern Right Whale Southeastern United States critical habitat area.



Compliance/Enforcement

- *Section 326.6 Class I administrative penalties.*
Under §404(s) of the Clean Water Act, penalties for violations of permits issued in accordance with the Act...
- Ensure deployments are within project boundaries
- Missed-deployments need to be charted

TITLE 33 - NAVIGATION AND
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CHAPTER II - CORPS OF
ENGINEERS, DEPARTMENT OF THE
ARMY, DEPARTMENT OF DEFENSE

PART 326 - ENFORCEMENT
326.6 – Class I administrative
penalties.

(a) Introduction.

(1) This section sets forth procedures for initiation and administration of Class I administrative penalty orders under section 309(g) of the Clean Water Act, and section 205(e) of the National Fishing Enhancement Act. Under section 309(g)(2)(A) of the Clean Water Act, Class I civil penalties may not exceed \$11,000 per violation, except that the maximum amount of any Class I civil penalty shall not exceed \$27,500. Under section 205(e) of the National Fishing Enhancement Act, penalties for violations of permits issued in accordance with that Act shall not exceed



Stakeholder Engagement

Pre-Application

- State Agencies

Florida Dept. of Agriculture and Consumer Services (Aquaculture)

<https://www.freshfromflorida.com/Agriculture-Industry/Aquaculture/Aquaculture-Submerged-Land-Leasing>

Florida Fish and Wildlife Conservation Commission
(Artificial reefs)

<https://myfwc.com/fishing/saltwater/artificial-reefs/>

- Local Governments (Typically artificial reef sponsors)

- The Corps



Stakeholder Engagement

Corps Public Notices

- Galveston District

https://www.swg.usace.army.mil/Media/Public-Notices/swg_public_notice@usace.army.mil

- New Orleans District

<https://www.mvn.usace.army.mil/Missions/Regulatory/Public-Notices/>
Instant Notification feature via RSS app.

- Mobile District

<https://www.sam.usace.army.mil/Missions/Regulatory/cesam-rd@sam.usace.army.mil>

- Jacksonville District

<https://www.saj.usace.army.mil/Missions/Regulatory/Public-Notices/saj-rd-webmaster@usace.army.mil>



Thank you, any questions?

