

## FIVE

**Prior to DEP's implementation of the State 404 Program, the U.S. Army Corps of Engineers (USACE) represented that annually, they received between 750 to 1,000 applications.**

However, in the first year of administering the program, DEP received 3,881 applications – a 288% increase over the estimated workload. DEP has implemented process improvements and efficiencies and, over the last two years, DEP has closed out 8% more applications than the agency has received.

### 404 PERMITS ISSUED IN FLORIDA

	404 Permits Received	404 Permits Approved	404 Permits Denied	
<b>USACE 2014</b>	---	685	---	<div><div></div></div>
<b>USACE 2015</b>	---	702	---	<div><div></div></div>
<b>USACE 2016</b>	---	735	---	<div><div></div></div>
<b>USACE 2017</b>	---	874	---	<div><div></div></div>
<b>USACE 2018</b>	---	850	---	<div><div></div></div>
<b>DEP 2020</b>	325	---	---	<div><div></div></div>
<b>DEP 2021</b>	3556	745	50	<div><div></div><div></div><div></div></div>
<b>DEP 2022</b>	3055	1615	113	<div><div></div><div></div><div></div></div>
<b>DEP 2023</b>	2370	1450	144	<div><div></div><div></div><div></div></div>
<b>DEP 2024 *</b>	229	153	7	<div><div></div></div>

\* Through Feb. 15, 2024.

Note: 3,750 applications withdrawn since Florida assumed the program in December 2020.

Source: USACE data provided by EPA in the assumption package. Figures include individual and general permits processed by USACE in assumed waters only. Data pertaining to denials, withdrawals or received applications was not included by EPA in the package.

## SIX

**Should DEP ultimately be divested of its authority to issue State 404 Program permits in Florida, it is unclear what if any path would exist for *any* state to obtain assumption under the Clean Water Act.**

Florida's 404 Program is a textbook example of cooperative federalism, which is a cornerstone of the Clean Water Act. Not only is this program a product of a bipartisan effort spanning multiple administrations, but it is also the product of multiple state and federal agencies working together to fashion an efficient regulatory program that offers maximum environmental protection. The ability for states to take the lead in regulating their natural resources is vital, especially for a state like Florida where its growing economy is contingent on the continued protection of its environment.



## Fast FACTS on Florida's 404 Program

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## ONE

**Just before midnight on Feb. 15, 2024, a federal judge in Washington D.C. issued an order divesting, at least for now, the Florida Department of Environmental Protection (DEP) of its authority to issue State 404 Program permits in Florida.**

Judge Randolph D. Moss disagreed with the program's approach for protecting endangered species, even though it is modeled after an approach approved by a federal circuit court in 2018. Rather than adhere to previous precedent in making a decision, Judge Moss chose to disregard that authority, finding the circuit court's approval of that program to be "a critical misstep."

## THREE

**Under the state's approach, every application for a permit is provided to the U.S. Fish and Wildlife Services (FWS) and Florida Fish and Wildlife Conservation Commission (FWC) for review for potential listed species impacts, regardless of whether it is a "no affect" or "may affect" project.**

This approach ensures a comprehensive review of potential effects and impacts to federal and state-listed species and their habitats as well as any potential avoidance and minimization measures that may be needed. Florida provided more than 6,000 applications to FWS and FWC. Of those, approximately 5,000 did not require species coordination, while more than 760 received official comment letters.

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## TWO

**More than 1,000 State 404 permit applications were pending before DEP and are presently disrupted. Beyond just large-scale development projects, Judge Moss' decision directly impedes efforts to review and authorize a wide range of 404 permit applications that benefit the environment and the public, including:**

- Projects to restore America's Everglades and prevent damaging discharges from Lake Okeechobee.
- Public projects to build or improve sidewalks, bridges, utilities, roads and highways across the state.
- Solar energy projects, including solar power stations and other electric utility projects impacting grid reliability.
- Stormwater infrastructure repairs and improvements at U.S. Naval Air Station-Pensacola due to damage from Hurricane Sally.
- Projects to build or improve medical facilities, including a new emergency center in South Florida.
- Projects to construct new or improve existing school facilities, including construction of a new charter school in Jacksonville.

## FOUR

**The U.S. Environmental Protection Agency (EPA) maintains stringent oversight of the State 404 Program, including federal review and comment of draft permits.**

The State 404 Program was designed to be at least as stringent, if not more so, than the federal requirements. To that end, in the 36 months that DEP administered the program, DEP received 40 objection letters from the EPA, of which EPA subsequently withdrew 31 of them. Further, just three applications (out of more than 9,500) have been federalized, none of which were for the protection of listed species.

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