

# Florida's Programmatic Approach to Mitigation: Section 373.4137, Florida Statutes (F.S.) requiring mitigation for Transportation Projects

**SHRP-2 Eco-Logical Mitigation Peer Exchange  
March 2015**



# Outline

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- Florida Statute
- Section 373 – Water Resources, Florida Statutes (FS)
- Implementation
- Planning phase – Mitigation opportunities
- Project Development & Environment phase – Coordination/consultation
- NEPA – Conceptual mitigation
- Design – Final mitigation, Permitting
- Construction - Compliance

# Chapter 373, F.S., Water Resources

- Part I – State Water Resource Plan
- Part II – Permitting of Consumptive Uses of Water
- Part III – Regulation of Wells
- Part IV – Management and Storage of Surface Waters
- Part V – Finance and Taxation
- Part VI – Miscellaneous Provisions
- Part VII – Water Supply Policy, Planning, Production, and Funding

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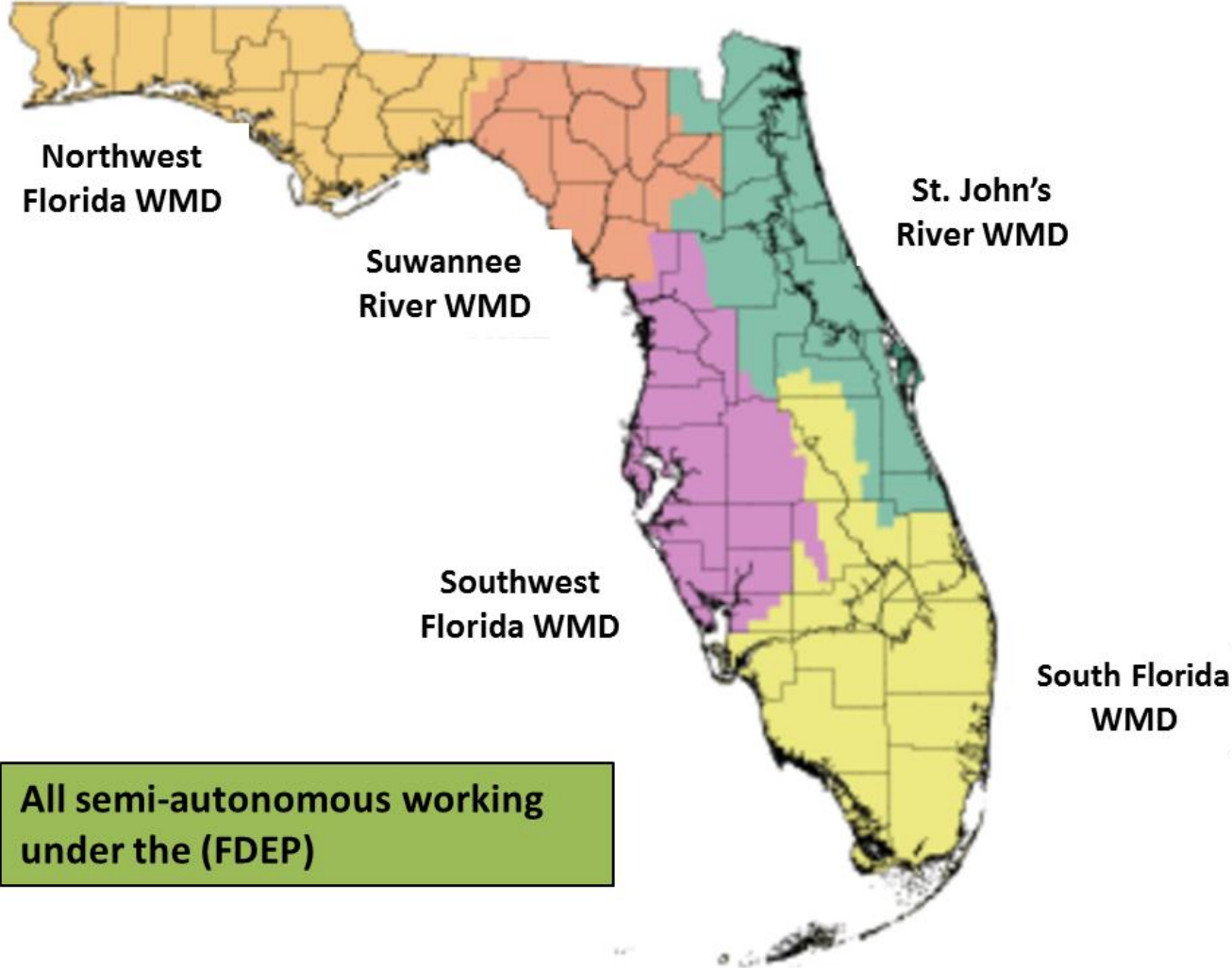
# Part IV – Management and Storage of Surface Waters

- Includes:
  - Additional Criteria for Activities in Surface Waters (s. 373.414)
  - Statewide Environmental Resource Permit (s. 373.4131)
  - Requirements of mitigation banks (s. 373.4135)
  - Establishment and operation of mitigation banks (bank instrument permits) (s. 373.4136)
  - Mitigation requirements for specified transportation projects (s. 373.4137)

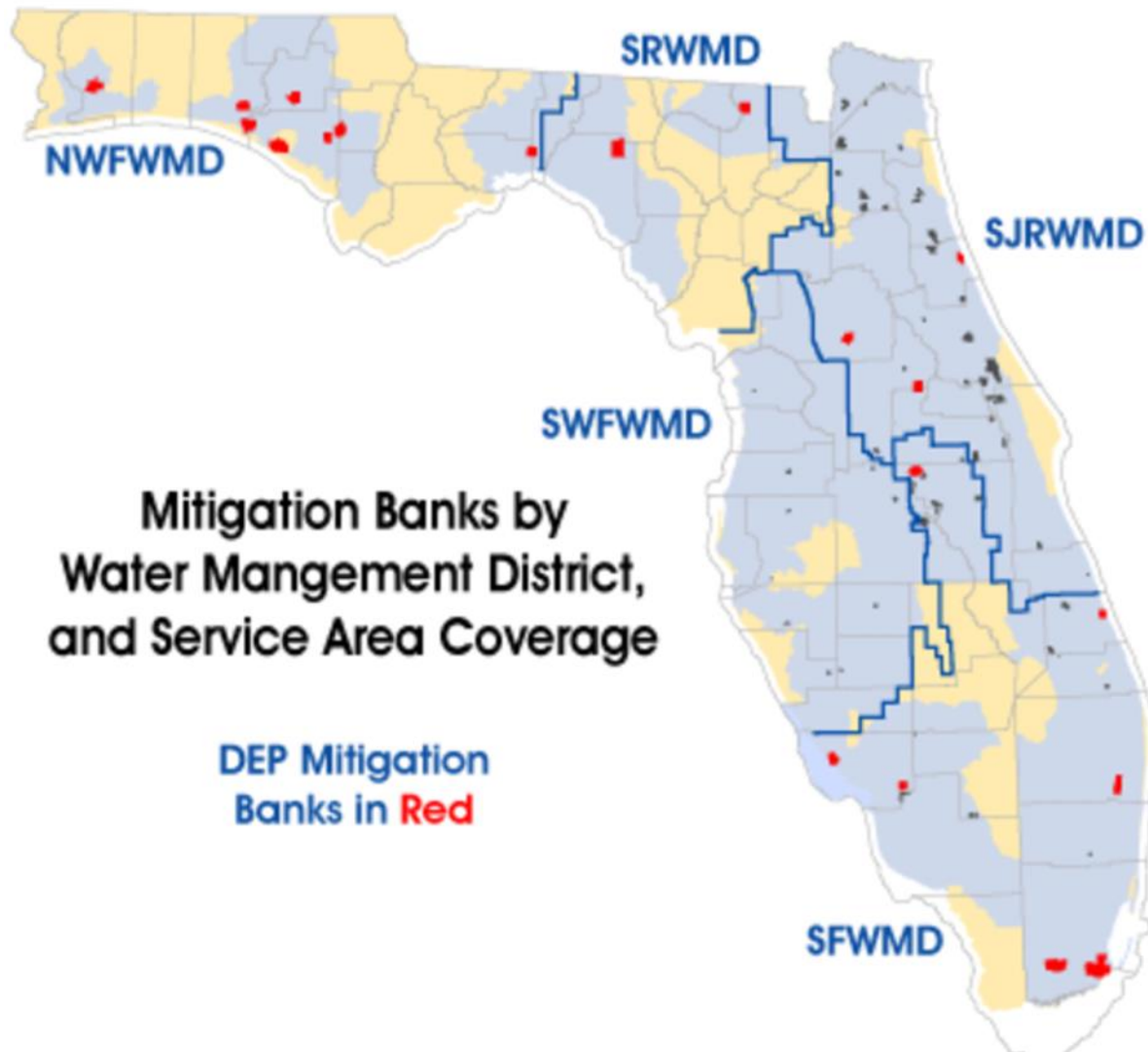
## 373.4137 – Mitigation requirements for specified transportation projects

- Codified in 1996
- Regional approach to mitigation rather than postage stamp
- FDOT must mitigate for project impacts to wetlands by funding Florida Department of Environmental Protection (FDEP) and 5 Water Management Districts (WMDs) implemented mitigation
- Mitigation based on impact acres not wetland function
- Mitigation developed for 3 years of the FDOT Work Program – Project Inventory
- WMDs develop annual mitigation plans
- Only mitigation option available is WMDs
- WMD driven process

# Florida's Water Management Districts

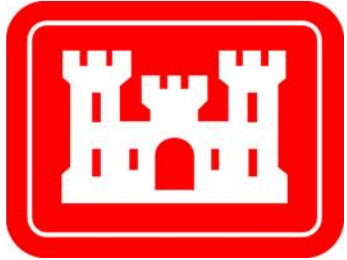


# Florida's State Permitted Mitigation Banks





# Working Together



# Public/Private Partnership

- Challenges to statutory approach raised by 2008 Wetland Mitigation Rule
- FDOT coordinated an approach with FDEP, WMDs and Mitigation Bankers to make statute current
- Clear, concise and consistent statewide application by all parties
- Open communication and coordination to ensure smooth development implementation of amendment
- Agency liaisons stay on project throughout the process
- Fully accountable process with defined milestones
- Proposed Corps “Regional General Permit” for streamlined permitting process
- Draft being finalized by Corps, public notice thereafter

# New s. 373.4137

- Enrolled May 2014, effective July 1, 2014
- FDOT can use any mitigation option meeting state and federal requirements
- Mitigation based on resulting functional loss
- Florida's Uniform Mitigation Assessment Method (UMAM) [ss. 373.414(18)] described in Florida Administrative Code, Rule Chapter 62-345
- Functional loss = credits
- Advance mitigation through mitigation banks
- Coordinated process – FDEP, WMDs, mitigation banks and Army Corps
- FDOT leads process
- Implementation of principles (procedurally) was occurring while amendment to statute was being drafted

# Implementation: Planning phase

- Coordination with FDEP and WMDs at management level
- Redrafting of interagency agreements
- Jurisdiction specific
- Action specific
- Rewriting screening approach
- Value to agency commentary
- Identification of wetland mitigation opportunities
- Advanced mitigation
- Conservation planning
- Integrated mitigation

# Planning Phase

- MPO/TPO (26 going on 27!)
- Statute ensures wetland mitigation is considered and funded (TIPs) during plan development
- FDOT and transportation authority projects are covered specifically
- Project specifics are addressed through screening process

# State Project Development Project/NEPA

- Screening information used to develop project scope
- Identified opportunities for mitigation are carried forward
- Initial functional assessment (UMAM) to determine amount of mitigation projected
- Coordination with agencies to refine mitigation options – commitments?
- Potential for advance mitigation credit purchase from banks
- Agreement from agencies with Army Corps, WMDs, USFWS, NMFS...

# Regional General Permit SAJ-92

- For screened projects and those that completed state project development process or NEPA
- 5 acres of both direct and secondary impacts per mile of project length
- Linear transportation projects
- Mitigation completed via s. 373.4137
- Exclusions
- Tidal waters (all of Monroe County)
- New alignments
- Jeopardy opinions under ESA

# Design and Permitting

- Final functional assessment performed
- Jurisdictional determinations
- Final mitigation identified
- If mitigation bank, FDOT purchases
- Permit coordination with same representatives that have been looking at the project since planning phase



# Summary

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- Coordinated approach
- Public/Private Partnership
- Supported by state law
- Leverages and improves existing FDOT processes
- Integrates federal requirements
- Expedites project delivery

# Where are we headed?

- Amended statute effective July 1, 2014
- RGP is in final stages and should be effective soon
- Currently beginning discussions regarding programmatic approaches to species and habitat
- USFWS, Florida Fish and Wildlife Conservation Commission, FAMB and various NGOs
- Modification of FDOT SOPs
- Looking at species specific Programmatic Agreements



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