UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
9721 Executive Center Drive
St. Petersburg, Florida 33702

MAY 31 1994

Colonel Clarence C. Salt
District Engineer, Jacksonville District
U.S. Army Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32232-0019

Dear Colonel Salt:

This responds to your March 16, 1994, letter transmitting Local Operating Procedure for my signature as recommended in our current Section 404(q) Memorandum of Agreement.

The signed document is enclosed. The National Marine Fisheries Service appreciates the efforts of Dr. Hall, of your staff, in bringing this process to a successful conclusion.

Sincerely,

Andrew J. Kemmerer
Regional Director

Enclosure

cc:
F/HP1
F/SE023

LOCAL COORDINATION PROCEDURES

Purpose: To establish coordination and consultation procedures between the U.S. Army Corps of Engineers (COE) at the Jacksonville District within the South Atlantic Division; the National Marine Fisheries Service (NMFS) at Miami, St. Petersburg, and Panama City offices, Southeast Region; the Environmental Protection Agency (EPA), Region IV, and the U.S. Fish and Wildlife Service (FWS) Jacksonville, Panama City and Vero Beach Field Offices, Southeast Region, consistent with the 1992 Section 404 (q) Army, the Department of Commerce, the Environmental Protection Agency, and the Department of the Interior Memorandum of Agreement (MOA). For this document, the Department of Commerce, Environmental Protection Agency and Department of Interior are collectively referred to "resource agencies". This document is to be known as Local Coordination Procedures. Nothing in this document is intended to change the provisions of the basic MOA's between the COE and the resource agencies.

1. General Procedures:

a. The procedures under the MOA will be accomplished with the objectives of providing the applicant with a prompt, carefully reasoned, and environmentally sound decision.

b. These procedures will be accomplished with the following objectives:

(1) Provide the Corps with prompt, reasonable, and environmentally sound recommendations.

(2) Provide the applicant with prompt, reasonable, and environmentally sound decisions.

(3) Ensure the recommendations of the resource agencies at the field level are given full consideration.

(4) Ensure that the field level biologists of the resource agencies are available and responsive in a timely manner to the Corps when aquatic resources are involved in permit decisions.

c. Electronic mail and facsimile will be considered the equivalent of a hard copy and will be sent prior to the end of the public notice comment period, where applicable, and within the time frames of the 1992 MOA. All electronic messages or facsimiles requiring a signature must be signed prior to transmission. The receiving agency will consider the electronic

message or the facsimile to be the action message. The original signed document will be transmitted through regular mail, unless otherwise requested by the receiving agency.

d. The day that a signed document is transmitted electronically or by facsimile shall be day zero in every case where time constraints are imposed by the MOA. Documents received after the close of the normal business hours (5 p.m. Eastern time) shall be considered as being received on the following day.

e. In those instances where the telephone or personal visits are used to provide agency comments in lieu of regular or electronic mail, such calls or visits will be documented by the action agency (e.g. the one responsible for setting up the site visit or initiating the call) for the record and made available to both agencies prior to the end of the public notice comment period where applicable.

f. Within the constraints imposed by time and available resources, the resource agencies and the Corps agree to provide technical assistance to each other whenever requested to do so. Where substantial commitment of resources are anticipated, requests shall be in writing. The resource agencies and the Corps agree to cooperate in efforts to improve the efficiency and effectiveness of the regulatory program.

g. For those projects for which resource agencies decide not to elevate under the 404 (q) MOA, the Corps will fully consider all substantive comments received before and during the comment period. Permit instruments on such cases will be provided to the resource agency submitting comments. Decision documents will be provided if requested.

2. Interagency preapplication consultation with prospective applicants.

a. A concerted effort will be made to advise applicants prior to permit application of any expected resource impacts through preapplication meetings, onsite visits, and other coordination activities.

b. Resource agencies and the Corps agree to strongly encourage the use of preapplication consultation to include regularly scheduled interagency meetings for discussion of potential permit applications prior to submittal of such applications. In cases where preapplications meetings or site visits for projects requiring standard or individual permit procedures are requested, the Corps will ensure that the resource agencies are contacted well in advance of the planned meeting.

c. In cases where the applicant or the applicant's representative contacts a resource agency directly, the resource agency will discourage the applicant from having any preapplication meeting without a representative from the Corps being present. Where such meetings take place absent the Corps, the resource agency will provide the Corps' project manager a written summary of the meeting to the maximum extent practicable.

d. Resource agencies and the Corps shall share information about a particular permit proposal. This will include the applicant's alternative analysis, environmental assessments, and any proposed mitigation. The Corps will request that the applicant forward these type documents directly to the appropriate resource agency office in order to expedite the review process.

3. Interagency Site Visits.

a. Recognizing that resource agencies and the Corps do not have the resources to effectively inspect all permit application sites, all agencies agree to explore ways to complement each other's field inspections. For example, the Corps should provide determinations to the resource agencies. Likewise, information acquired by resource agency field visits either during the preapplication process or public notice comment period should be provided to the Corps. All agencies agree to explore complementary or joint site visits.

b. All agencies agree to explore the use of video imaging for exchange of site information.

4. Interagency Meetings with Applicants.

a. Regularly scheduled interagency meetings have historically provided an extremely useful approach to communication and coordination. All agencies agree to participate in all scheduled interagency meetings within their geographic areas of responsibility and within resource limitations where the agenda contains projects of direct interest to the agency.

b. Agency representatives to such meetings shall be empowered to commit the agency to the maximum extent practicable.

c. Interagency meetings will be scheduled quarterly, a year in advance, at locations agreeable to the agencies.

d. Some projects are of such magnitude or have substantial issues associated with them so as to warrant project specific, onsite interagency meetings. All agencies agree that

for such projects all reasonable steps will be taken to arrange and participate in site specific meetings.

5. Informal Process for Timely Resolution of Issues at the Field Level.

a. The resource agencies and the Corps will strive to resolve all issues at the staff level (primarily the project manager and field biologist level) by:

(1) communicating on all information concerning the proposed project and any new information pertaining to a project's impacts to aquatic resources,

(2) the Corps will extend invitations to meetings pertaining to a project under review, including site visits,

(3) communicating all issues in a clear and professional manner with all written comments being copied directly to the project managers at each agency (e.g., blind copies of management signed letters sent to agency project managers).

b. all comment letters and information sent by the resource agencies concerning a proposed project will be sent to the attention of the Corps project manager. The resource agencies and the Corps will designate a project manager for each project.

c. The resource agencies agree to provide the Corps within the public notice comment period, substantive, project related comments concerning potential substantive adverse environmental impacts.

d. The Corps will provide, to the best of its abilities, information available, including a complete plan of development and site location, mitigation plans, etc, on each project in order for the resource agencies to provide the Corps with prompt, reasonable, and environmentally sound comments.

e. When a resource agency has provided the Corps a "3.a" letter stating that the project may impact an aquatic resource of national importance (ARNI), the Corps project manager and the resource agency project manager will attempt to resolve impacts on aquatic resources identified prior to the end of the 25 days allotted for the resource agency to complete its determination of impacts on an ARNI.

f. If local project managers are unable to resolve resource conflicts, the resource agency will send the Corps a letter stating that the project will impact an ARNI (e.g., a 3.b letter), the resource agency that sent the "3.b" letter and the Corps should continue to coordinate and attempt to resolve issues

involving agency positions. Failure to complete this exchange will not delay the Corps decision making process on any application. All affected agencies will continue to work towards resolution of agency concerns until 5 days before the District Engineer's decision to issue a Notice of Intent (NOI).

g. Unresolved issues raised or sustained in correspondence pursuant to Part IV 3.b will promptly be discussed between the appropriate Regulatory Division/Branch or Section Chief and the resource agency counterpart (Supervisor or Assistant Acting Field Supervisor/FWS; Branch Chief/NMFS; Unit Chief/EPA). The discussions should occur as the need arises. If these discussions resolve the issues or the resource agency concludes elevated case specific review is not warranted, the resource agency will so indicate in writing (signed by their Regional Director or Regional Administrator) within 15 days relieving the Corps from the need to send a Part IV 3.c letter.

h. Failure to resolve "3.b" letter issues in discussion conducted pursuant to paragraph 5 g. will result in conference discussion between the Regulatory Division Chief and appropriate resource agency official or their "Acting" within 7 calendar days. This shall be the Field Supervisor, FWS; Section Chief (EPA); or Branch Chief (NMFS). Subsequent to this discussion the District Engineer will provide the Regional Director/Administrator a letter with appropriate attachments pursuant to Part IV 3.c.(1)-(3), with a copy to the appropriate resource agency field office.

i. The Corps will send agencies copies of all permits, denial letters, and withdrawal letters where agencies have expressed case and site specific concerns.

6. These local procedures are effective immediately upon the last signature date and will continue until modified or revoked by mutual agreement of both parties, or revoked by either party upon 30 days written notice. If the 1992 MOA is terminated by either agency, this local procedures agreement is nullified.

Terrence C. Salt
Colonel, U. S. Army
District Engineer

Date

Mr. Andrew J. Kemmerer
Regional Director
National Marine Fisheries Service

31 May 1994
Date