



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

16 OCTOBER 2015

Regulatory Division

DEPARTMENT OF THE ARMY PERMIT

PROGRAMMATIC GENERAL PERMIT SAJ-99
SAJ-2007-03138

LIVE ROCK AND MARINE BIVALVE AQUACULTURE - STATE OF FLORIDA MODIFICATION #1

Upon recommendation of the Chief of Engineers, U.S. Army Corps of Engineers (Corps), pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), and Section 404 of the Clean Water Act (33 U.S.C. § 1344), on November 9, 2012, Florida Department of Agriculture and Consumer Services (FDACS) was authorized to deposit materials for the purpose of marine bivalve aquaculture. Additionally, general authority was given to the FDACS to administer the Department of the Army permit numbered above for the deposition of materials and other work, by non-FDACS entities, for the purposes of live rock and marine bivalve aquaculture, in navigable waters of the United States which are within the jurisdiction of the State of Florida (The subject waters of the State of Florida covered under this permit are limited to the area between approximately 3 marine leagues offshore and the mean high water line on shore on the Gulf coast, and the area between approximately 3 geographical miles offshore and mean high water line on shore on the Atlantic coast).

This programmatic general permit is hereby modified to allow three types of shellfish culture methodologies not included in the November 9, 2012, programmatic general permit – floating baskets, suspended baskets, and off-bottom baskets. This modification also includes clarification that the SAJ-99 authorizes, under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), pilings or other structures used to support navigational marking of aquaculture activities, and that separate authorization from the United States Coast Guard may be necessary for the aids to navigation (AToN) themselves.

The conditions of the programmatic general permit are modified as follows. All other special and general conditions in the November 9, 2012, programmatic general permit remain as written:

Special Condition 3: Individuals conducting marine aquaculture must possess an Aquaculture Certificate of Registration issued pursuant to Section 597.004, F.S., and be compliant with Rule 5L 3 Florida Administrative Code (F.A.C.). all aquaculture activities

authorized by FDACS must be performed in accordance with the State of Florida's *Aquaculture Best Management Practices*.

Special Condition 7: For the deposition of culture material for live rock aquaculture only, each lease site shall be limited to one acre of submerged lands leased by the state of Florida.

Special Condition 12: All materials for live rock aquaculture must be placed on the site by hand, or lowered completely to the bottom by crane. Deposited materials shall not be allowed to free fall to the bottom, and all deposition shall occur while the vessel is at anchor. Rocks may not be placed over naturally-occurring reef outcrops, limestone ledges, coral reefs, or vegetated areas. A minimum setback of 50 ft must be maintained from naturally vegetated or hard bottom habitats. The live rock aquaculture operation may not occupy more than 25% of the water column. The permittee shall be required to submit "as-built" (post-activity) reports to FDACS. The reports shall depict the project site subsequent to each deposition activity. The actual configurations and occurring hard bottom habitat and SAV shall be clearly depicted.

Special Condition 13: Harvest of aquacultured species and live rock shall be in accordance with Chapter 597, F.S., and the BMPs adopted therein. No drilling or blasting is authorized under this general permit. Each rock must be visually inspected for the presence of listed coral species prior to harvesting and no rock may be harvested if any listed coral species have attached. FDACS has stated they will continue to provide an informational pamphlet about listed coral species to aid in the identification of any colonies that may settle on aquacultured live rock. The National Marine Fisheries Service Protected Resources Division is working on a pamphlet for newly-listed coral species.

Special Condition 17: Aquaculture activities are limited in ESA-designated critical habitats as described below:

- *Acropora* critical habitat: Leases are allowed in the geographic limit of critical habitat; however, they must meet the criteria in Conditions 12 and 13 above.
- Gulf sturgeon critical habitat: Within the boundaries of Gulf sturgeon designated critical habitat, cultch materials for FDACS's oyster planting program shall only be allowed to be deposited on existing shell substrata. Additionally, the off-bottom basket methodology is prohibited on new leases within Gulf sturgeon designated critical habitat, but the floating basket and suspended basket or longline methodologies are allowed for shellfish aquaculture.
- Johnson's seagrass critical habitat: Aquaculture lease permits are prohibited in Johnson's seagrass critical habitat under PGP SAJ-99.
- Loggerhead critical habitat: Only one AUZ (Whitehorse Key) is located in loggerhead critical habitat. New AUZs or leases are allowed within loggerhead critical habitat under PGP SAJ-99 provided that floating or suspended aquaculture systems are set perpendicular to the nesting beach to reduce effects on hatchling egress to the open water and the transit of nesting females to and from the beach. Additionally, the linear footage of the part of the floating or

suspended aquaculture system that is parallel to the beach may not be more than 10% of the linear footage of the critical habitat unit's nesting beach.

- North Atlantic right whale critical habitat: No AUZ's or leases exist in North Atlantic right whale critical habitat and no new AUZs or leases are allowed within North Atlantic right whale critical habitat under PGP SAJ-99.
- Smalltooth sawfish critical habitat: Within the boundaries of smalltooth sawfish critical habitat, leases will be located away from any red mangroves, and in waters deeper than 36" in MLLW, so as to avoid any impacts to the essential features (i.e., shallow, euryhaline waters and red mangroves) of smalltooth sawfish critical habitat.

Special Condition 18: This programmatic general permit has undergone consultation with USFWS and NMFS on the listed species and any designated critical habitat listed on Tables 1 and 2 of the September 29, 2015, NMFS-PRD consultation letter. If an individual proposed activity does not conform to the PDCs of PGP SAJ-99 concerning listed species or critical habitat, the application shall be referred to the USACE, which will request the appropriate Service to initiate additional Section 7 consultation. Until consultation is concluded, the proposed activity cannot be authorized under PGP SAJ-99.

Special Condition 19: No work shall be authorized by PGP SAJ-99 that may adversely impact wetlands, hard or soft corals, including listed coral species: elkhorn (*Acropora palmata*), staghorn (*Acropora cervicornis*), pillar (*Dendrogyra cylindrus*), rough cactus (*Mycetophyllia ferox*), lobed star (*Orbicella annularis*), mountainous star (*O. faveolata*), and boulder star (*O. franksi*) corals, estuarine emergent, marine emergent, mangrove, and/or the following species of submerged aquatic vegetation: shoal grass (*Halodule wrightii*), paddle grass (*Halophila decipiens*), star grass (*Halophila engelmannii*), Johnson's seagrass (*Halophila johnsonii*), sago pondweed (*Potamogeton pectinatus*), clasping-leaved pondweed (*Potamogeton perfoliatus*), widgeon grass (*Ruppia maritima*), manatee grass (*Syringodium filiforme*), turtle grass (*Thalassia testudinum*), tapegrass (*Vallisneria americana*), horned pondweed (*Zannichellia palustris*), and eel grass (*Zostera marina*). Indirect effects include secondary and cumulative effects. In addition, the project cannot have adverse impacts on any other essential fish habitat identified under the Magnuson-Stevens Fishery Management Act.

In addition, the following special conditions are hereby added to the PGP SAJ-99:

Special Condition 29: Prior to authorizing any new type of aquaculture activity that is not currently being conducted on SSL within an approved lease issued under PGP SAJ-99, FDACS will certify compliance with the PDCs of PGP SAJ-99 for each individual aquaculture lease. FDACS will submit this certification along with the resource report for each individual aquaculture lease to the USACE and to NMFS Protected Resources Division, Southeast Regional Office, via email (nmfs.ser.SAJ99@noaa.gov). In addition to or as part of the information reports and surveys required by the BMPs and PDCs discussed above, the resource report will include the following information:

Provide all information as an excel spreadsheet using the formatting requirements below. Each number below shall be a column in the spreadsheet.

1. Date Sent to NMFS: This is the date the email was provided to NMFS.
2. Permit Tracking Number: This is the lease number assigned by FDACS.
3. Project Address: This is the address of the lease holder. Any formatting is fine in this category.
4. Latitude: This shall be formatted in decimal degrees to 5 places as shown in the examples.
5. Longitude: This shall be formatted in decimal degrees to 5 places as shown in the examples. Please provide a negative symbol before the longitude to denote the western hemisphere.
6. Critical Habitat Unit: This shall be provided in the following acronym style with no spaces or hyphens, as shown in the examples. This allows for accurate sorting in Excel. Projects occurring in critical habitat and proposed critical habitat are only authorized if they do not impact the essential features of said critical habitat.
 - A CH (*Acropora* critical habitat).
 - LHST CH (loggerhead critical habitat)
 - GS CH Unit # (Gulf sturgeon critical habitat, unit # = 9-14)
 - STSF CH CHEU (Smalltooth sawfish critical habitat Charlotte Harbor Estuary Unit)
 - STSF CH TTIU (Smalltooth sawfish critical habitat Ten Thousand Islands/Everglades Unit)
 - N/A (not applicable because the project is not located within a critical habitat unit)
7. Whether any of the essential features of critical habitat are located within or adjacent to the approved lease site. If yes, list the essential features present.
8. Acreage and types of activities/facilities authorized under PGP SAJ-99.
9. Description of any resources present within and adjacent to the approved lease site.
10. All PDCs Met: Are all of the applicable PDCs defined in this document being met by the proposed project? Answer "yes" or "no."

NMFS Protected Resources Division will receive a copy of the resource report via email and will have the opportunity to assess the individual proposed project's compliance with the PDCs identified above, and to ensure that additive effects of aquaculture activities permitted under PGP SAJ-99 do not result in adverse effects to protected species. Since the previous consultation, we have received 22 of these reports; all of which have met the conditions of SAJ-99. NMFS Protected Resources will have the opportunity to review the resource report for each individual activity proposed to be authorized under PGP SAJ-99 to ensure consistency with the PDCs of the PGP. If NMFS Protected Resources does not concur with FDACS's or the USACE's certification of compliance and consistency with this programmatic consultation, including the terms and requirements of PGP SAJ-99, they will notify FDACS and the USACE via email that the individual activity proposed will require further review and consultation under Section 7 of the ESA. If no notice is given by NMFS Protected Resources after 30 days, compliance is implied.

Special Condition 30: For all shellfish aquaculture leases, the Lessee shall, within 90 days from the date of execution of a lease, properly post the lease boundaries to delineate the corners and perimeters of the lease. For water column (floating or suspended baskets) leases, marking must comply with the requirements of a U.S. Coast Guard Private Aids to Navigation permit. Bottom leases must be marked pursuant to the State of Florida submerged land lease agreement. All markers shall be compliant with U.S. Coast Guard regulations to warn mariners passing in the vicinity of the lease of the potential hazards to navigation. The SAJ-99 includes approval from the USACE Section 10 of the Rivers and Harbors Act of 1899 (U.S.C. 403) for pilings and similar structures used to support navigation markers. Separate authorization for Aids to Navigation may be required from the U.S. Coast Guard.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

A handwritten signature in black ink, appearing to read "Jason A. Kirk". The signature is written in a cursive style with a large initial "J" and "K".

Jason A. Kirk, P.E.
Colonel, U.S. Army
District Commander