



REPLY TO
ATTENTION OF

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

September 18, 2020

Regulatory Division

PUBLIC NOTICE

PROGRAMMATIC GENERAL PERMIT SAJ-71 SAJ-2005-09309(PGP-KDS)

LIVE ROCK AQUACULTURE – OFF THE COASTS OF FLORIDA

PROPOSAL: To simplify and streamline permitting of Department of Army (DA) permits, the Jacksonville District, U.S. Army Corps of Engineers (Corps) is proposing to update and re-issue the above-listed Programmatic General Permit (PGP). NOAA's National Marine Fisheries Service (NMFS), Southeast Regional Office, Constituency Services Branch, has requested authority to administer the Department of the Army permit numbered above to deposit materials for the purposes of live rock aquaculture into the Exclusive Economic Zone (EEZ) of the navigable waters of the United States in Florida subject to the special and general conditions listed below. The EEZ surrounding the state of Florida encompasses the area between approximately 9 nautical miles offshore and 200 nautical miles offshore on the Gulf coast, and the area between approximately 3 nautical miles offshore and 200 nautical miles offshore on the Atlantic coast.

AUTHORITY: Pursuant to Section 10 of the Rivers and Harbors Act of 1899 (U.S.C. 403), the Corps proposes to re-issue PGP SAJ-71 for the deposition of materials for the purposes of live rock aquaculture into the Exclusive Economic Zone (EEZ) of the navigable waters of the United States in Florida, in accordance with the following Special Conditions.

SPECIAL CONDITIONS:

1. The work authorized herein includes the deposition of approved rock material in the EEZ for the purpose of cultivating live rock. Site(s) and rock material subject to this PGP are assumed to be approved upon receipt of a NMFS permit.
2. To be authorized under this general permit for activities within the EEZ, parties shall be required to obtain a permit from the NMFS SERO to harvest and possess aquacultured live rock in the EEZ. Permit applications and other required forms can be obtained by contacting the NMFS SERO, Constituency Services Branch, 263 13th Avenue South, St. Petersburg, Florida, 33701 (telephone (727)824-5326) or at <http://sero.nmfs.noaa.gov/permits/permits.htm>.

3. Additional permits may be required for aquacultured live rock operations in areas in the EEZ which are under the jurisdiction of other federal authorities, such as the Florida Keys National Marine Sanctuary (FKNMS).

4. Aquacultured live rock sites which individually or cumulatively total more than one acre will not be authorized under this general permit.

5. Prior to the deposition of any approved rock material on a permitted site, a site evaluation report shall be submitted by the applicant to the NMFS SERO. Information on this report can be found in the *Instructions for the Federal Permit Application for Aquacultured Live Rock (new permit)* on the Permits Office website of the NMFS SERO. The site evaluation report, which shall be prepared by an independent source acceptable to NMFS, may include videotapes of underwater surveys and shall demonstrate that the proposed site:

- a. is not a hazard to safe navigation or a hindrance to vessel traffic; and
- b. avoids traditional fishing operations, or other public access; and
- c. avoids impacts to naturally occurring hard bottom habitat and submerged aquatic vegetation; and
- d. contains natural underlying substrata that is primarily hard packed sand, hard shell hash, or less than 6-12 inches of sand over rock.

6. The applicant shall identify the proposed site on a nautical chart in sufficient detail to allow for site inspection and shall provide accurate latitude and longitude coordinates so that the site can be located by Differential Global Positioning System (GPS) equipment. Site inspection may be required on a case by case basis.

7. Approved rock material deposited on the permitted live rock aquaculture site shall be geologically or otherwise distinguishable from the naturally occurring substrata or must be indelibly marked or tagged.

8. All rock material deposited on an established or new site as of the effective date of this permit shall exceed 5 inches in at least 1 dimension.

9. All approved rock material used in aquaculture operations shall be nontoxic and all deposited rock material must be free of contaminants and non-indigenous flora and/or fauna, preservatives, oil and greases, debris, litter or other pollutants.

10. Prior to each approved rock deposition, the permittee shall provide the NMFS design specifications for approval. Design specifications shall include placement configuration, density, quantity and dimensions (height, etc.) of the rock pile. Permittees may not use any other configuration or materials other than approved rock without NMFS approval.

11. When depositing approved rock material at the permitted live rock aquaculture site, Permittees and all persons working under the authority of an existing federal live rock aquaculture permit shall adhere to the National Marine Fisheries Service's *Sea Turtle and Smalltooth Sawfish Construction Conditions* located at <https://www.fisheries.noaa.gov/southeast/consultations/regulations-policies-and-guidance>.
12. Deposition of approved rock material and all other aquaculture activities shall not result in turbidity levels to exceed 29 NTUs above background levels either within the permitted live rock aquaculture site or up to 50 feet from the boundary of the site.
13. This general permit does not authorize the placement of approved rock material for the construction and/or renourishment of artificial reefs, the construction of impoundments and/or semi-impoundments of waters of the U.S., or structures such as but not limited to aquaculture docks, circulating systems including inflow and outfall structures, platforms, etc. Furthermore, this permit does not authorize the deployment of offshore and/or nearshore cages for the culture or holding of motile species or the placement of materials for lobster harvesting (such as lobster casitas).
14. Any vessel used for the purposes of live rock aquaculture shall be operated and anchored in a manner to avoid impacts to bottom communities and water quality.
15. All approved rock material must be placed on the site by hand or lowered completely to the bottom under restraint, that is, not allowed to fall freely. All approved rock material must be placed from a vessel that is anchored.
16. Approved rock material may not be placed over naturally occurring reef outcrops, limestone ledges, coral reefs, or vegetated areas.
17. A minimum setback of 50 feet shall be maintained from naturally vegetated or hard bottom habitats. The Permittee shall be required to submit "as-built" (post-activity) reports to the NMFS SERO. The reports, which may include videotapes, shall be prepared by a source acceptable to NMFS and shall depict the permitted live rock aquaculture site subsequent to each deposition activity. The actual configurations and locations of the deposited materials and the distance from existing naturally occurring hard bottom habitat and submerged aquatic vegetation shall be clearly depicted.
18. For sites located in the FKNMS, Permittees shall immediately report any accidental damage to stony corals or other sanctuary resources during live rock aquaculture activities to FKNMS staff at (305) 434-9370 and cease operations in the immediate area until guidance is provided by FKNMS.
19. Once initially deposited on a permitted live rock aquaculture site, approved rock material shall remain on the original site until harvest and may not be moved between sites to reduce the potential for disease transmission across sites.

20. The Permittee is responsible for moving or removing approved rock material at their permitted live rock aquaculture site if material is found to intersect with natural resources in a way that is in violation of required buffer areas. For sites located in the FKNMS, the Permittee shall provide an assessment of the permitted live rock aquaculture site after storm event(s), if requested by FKNMS.
21. Harvest of aquacultured live rock shall be by hand only; no mechanical dredging, drilling, blasting, etc. is authorized under this general permit.
22. Each aquacultured rock shall be visually inspected for the presence of elkhorn coral, staghorn coral, lobed star coral, mountainous star coral, boulder star coral, rough cactus coral, and pillar coral prior to harvesting. Harvest of any rock with these species attached is prohibited. Upon issuance of a live-rock aquaculture permit, NMFS SERO will provide Permittees with information on identification of elkhorn coral, staghorn coral, lobed star coral, mountainous star coral, boulder star coral, rough cactus coral, and pillar coral (hereafter referred to as "listed corals").
23. The Permittee shall be required to submit annual reports to the NMFS SERO, which document the source, type, and weight of approved rock material deposited on the permitted live rock aquaculture site each time new material is deposited.
24. The Permittee shall be required to report on the weight of aquacultured product harvested as follows:
- a. For aquacultured live rock landed *within* the State of Florida, landings shall be reported to the Fisheries Dependent Monitoring Section of the Fish and Wildlife Research Institute, Florida Fish and Wildlife Conservation Commission (FWC), 100 Eighth Avenue SE., St. Petersburg, Florida 33701-5095. The reports shall be made on standard form #33-610 (Marine Fisheries Trip Ticket) or other alternate forms approved by FWC.
 - b. For aquacultured live rock landed *outside* the State of Florida, the Permittee shall be required to report to the NMFS SERO.
25. SAJ-71 is not authorized for use within the boundaries of the following areas:
- a. State park: Lignum Vitae Key State Botanical Site and Aquatic Preserve
 - b. Areas of Critical State Concerns: Florida Keys and City of Key West Areas of Critical State Concerns
26. Cultural Resources/Historic Properties:

a. No structure or work shall adversely affect, impact, or disturb properties listed in the National Register of Historic Places (NRHP), or those eligible for inclusion in the NRHP.

b. If, during permitted activities, items that may have historic or archaeological origin are observed the Permittee shall immediately cease all activities adjacent to the discovery that may result in the destruction of these resources and shall prevent his/her employees from further removing, or otherwise damaging, such resources. The applicant shall notify both the Florida Department of State, Division of Historical Resources, Compliance Review Section at (850)-245-6333, and the Corps, of the observations within the same business day (8 hours). Examples of expected submerged historical, archaeological or cultural resources include shipwrecks, shipwreck debris fields (such as steam engine parts, or wood planks and beams), anchors, ballast rock, concreted iron objects, concentrations of coal, prehistoric watercraft (such as log "dugouts"), and other evidences of human activity. The materials may be deeply buried in sediment, resting in shallow sediments or above them, or protruding into water. The Corps shall coordinate with the Florida State Historic Preservation Officer (SHPO) and the appropriate Tribal Historic Preservation Officer(s) (THPO(s)) to assess the significance of the discovery and devise appropriate actions. Project activities shall not resume without verbal and/or written authorization.

c. Additional cultural resources assessments may be required of the permit area in the case of unanticipated discoveries as referenced in accordance with the above Special Condition and, if deemed necessary by the SHPO, THPO(s), or Corps, in accordance with 36 CFR 800 or 33 CFR 325, Appendix C (5). Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend, or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume on non-federal lands without written authorization from the SHPO for finds under his or her jurisdiction, and from the Corps.

d. In the unlikely event that unmarked human remains are identified on non-federal lands, they will be treated in accordance with Section 872.05 Florida Statutes. All work and ground disturbing activities within a 100-meter diameter of the unmarked human remains shall immediately cease and the Permittee shall immediately notify the medical examiner, Corps, and State Archaeologist within the same business day (8-hours). The Corps shall then notify the appropriate SHPO and THPO(s). Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend, or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume without written authorization from the State Archaeologist and from the Corps.

27. If the Permittee or those authorized to conduct work under the permit observe any marine mammal(s), sea turtle(s), or sawfish to be injured or in distress as a result of activities conducted under the federal aquacultured live rock program, they shall immediately call 1-888-404-FWCC (3922) to report the incident.

28. For permitted live rock aquaculture sites within the FKNMS, Permittees or those authorized to work under the permit shall adhere to the *Coral Disease Decontamination Protocol* to avoid inadvertently spreading pathogens associated with the stony coral tissue loss disease. A copy of this protocol may be requested by calling the FKNMS at (305) 809-4714 or found online at <https://floridakeys.noaa.gov/media/docs/coral-disease-decontamination-protocol.pdf>.

29. SAJ-71 is not authorized for use within State of Florida waters (i.e. within the three- or nine-mile limits as described above).

30. Conformance with descriptions and quantities contained with SAJ-71 does not necessarily guarantee authorization under the PGP.

31. The District Engineer reserves the right to require that any request for authorization under this general permit be processed as an individual permit.

32. The Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structures or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

33. The Permittee shall perform work in accordance with the attached General Conditions attached hereto and made a part of this permit.

34. This general permit will be valid for five years from the above date or until suspended or revoked by issuance of a public notice by the District Engineer. Periodic review will be conducted to determine if continuation of the permit remains "not contrary to the public interest."

AGENCY COORDINATION: This proposed PGP is being coordinated via separate letter with the U.S. Fish and Wildlife Service as required under Section 7 of the Endangered Species Act, and with the National Marine Fisheries Service – Habitat Conservation Division for Essential Fish Habitat as required under the Magnuson-Stevens Fishery Conservation and Management Act.

RESPONSE: Comments regarding this proposed reissuance of Programmatic General Permit SAJ-71 should be submitted in writing to Ms. Krista Sabin at the letterhead address or electronic mail at Krista.D.Sabin@usace.army.mil within **30 days** from the date of this notice. If no adverse comments are received, evaluation may continue without further notice.