

MITIGATION BANKING: CURRENT STATUS AND TRENDS

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Tomlinson Run Mitigation Bank
Hancock County, WV

OBJECTIVES

- OVERVIEW OF MITIGATION BANKING
- CURRENT ISSUES AFFECTING THE INDUSTRY
- FEDERAL MITIGATION BANKING DATA
- FLORIDA MITIGATION BANKING
- FLORIDA 404 ASSUMPTION
- MITIGATION BANK PERMITTING
- FLORIDA TRENDS & HISTORICAL DATA
- MITIGATION BANKING CHALLENGES
- PROPOSED LEGISLATION RELATED TO MITIGATION BANKING
- FUTURE OF MITIGATION BANKS

FEDERAL REGULATIONS

WETLAND MITIGATION BANKS:

Section 404 of the
Clean Water Act

1983-FWS

Guidance prompted
first mitigation
banks established
by DOTs and other
State agencies

1995-Final Federal
Guidance Issued on
the Establishment,
Use, and Operation
of Mitigation Banks



ISSUES CURRENTLY AFFECTING THE MITIGATION BANKING INDUSTRY

- **WATERS OF THE UNITED STATES
FEDERALLY JURISDICTIONAL WATERS
DEFINED**
- **REGULATORY POLICIES/LAWS:
FEDERAL, STATE, LOCAL**

WOTUS

- Pre-2015 Waters of the United States framework based on CWA, EPA & USACE guidance documents, final regulations, and Supreme Court decisions (Rapanos)
- July 2015-Clean Water Rule increased jurisdiction
- October 2019-Repeal of the Clean Water Rule. Rollback to pre-2015 definition
- June 2020-Navigable Waters Protection Rule (NWPR)-Federal definition of WOTUS restored to 1986 terms (Scalia). Jurisdiction decreased
- September 2021-Pascua Yaqui Tribe vs EPA-NWPR vacated and remanded; Pre-2015 WOTUS definition implemented
- March 2023-USACE & EPA finalize redefinition of WOTUS codifies Pre-2015 regulations
- April 2023-North Dakota District Court issued an order preliminarily enjoined it in 28 states
- May 2023-Sackett Decision
- August 2023-EPA finalizes post-Sackett WOTUS Rule; jurisdiction decreased



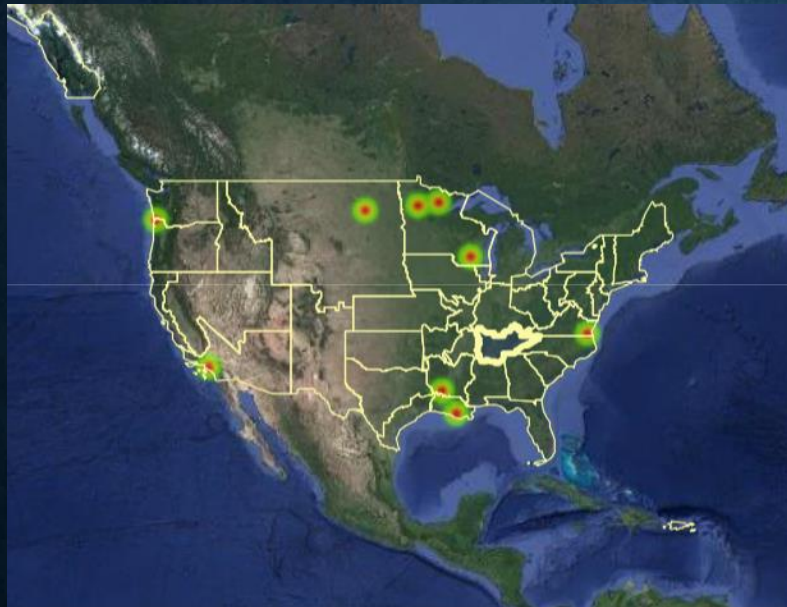
Boarshead Ranch Mitigation Bank
Pasco County, FL

OTHER REGULATORY POLICY CHANGES

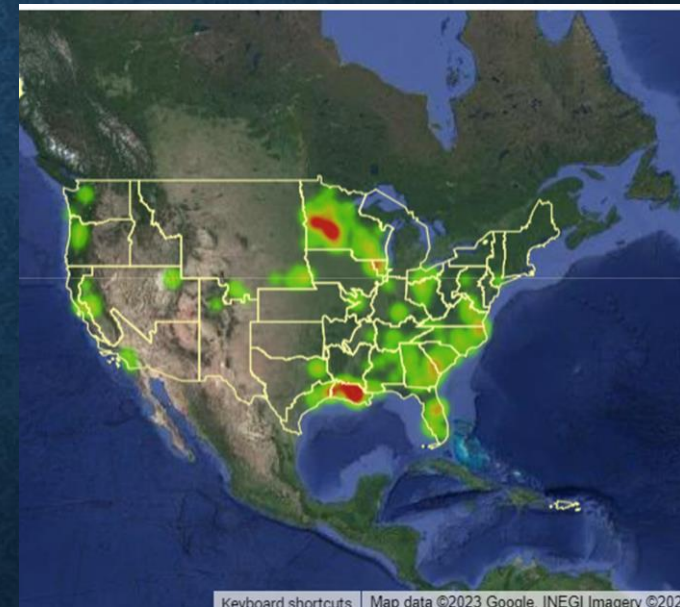
- 2008 Compensatory Mitigation Rule
- State Isolated Wetland Permitting
- County Wetland Ordinances

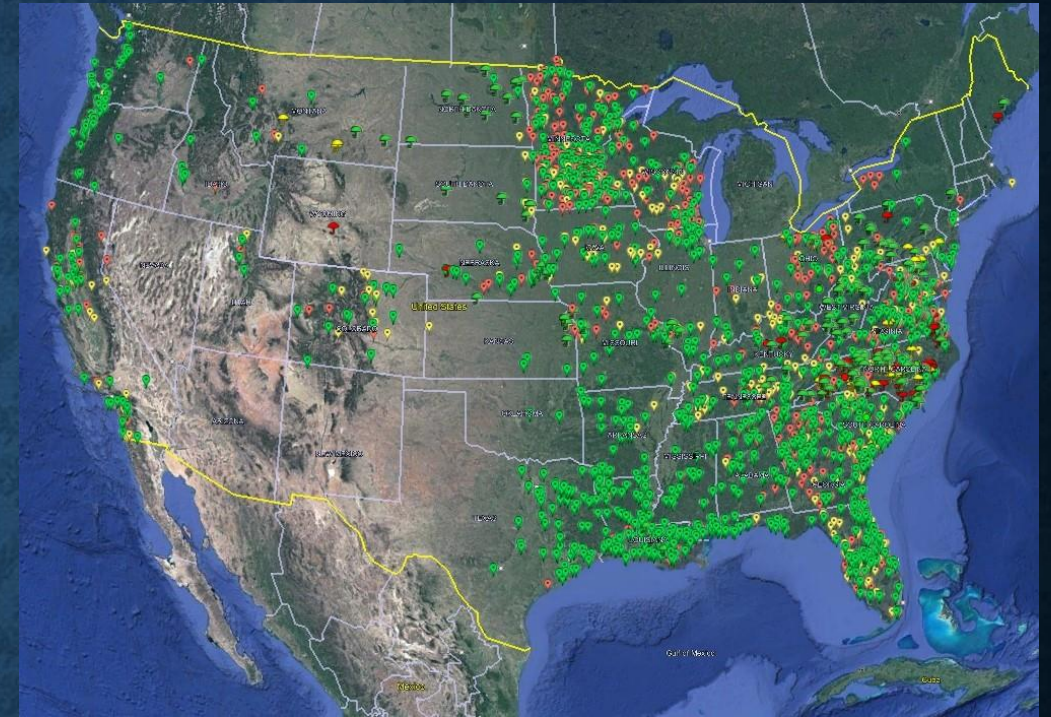
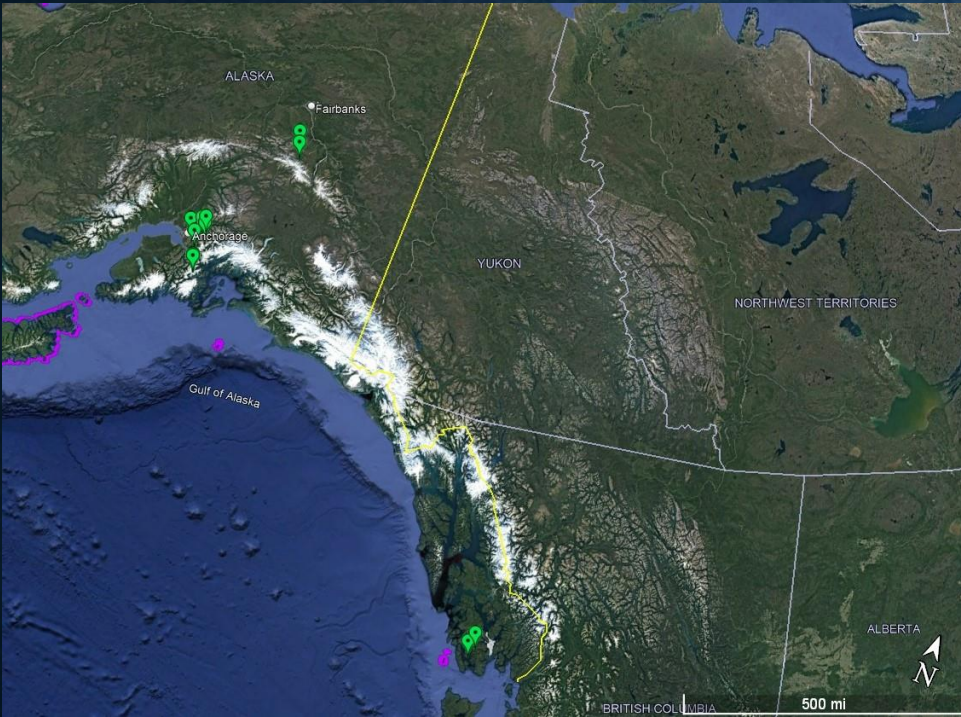
MITIGATION BANKING-WHERE IT STARTED

1980's



1990's

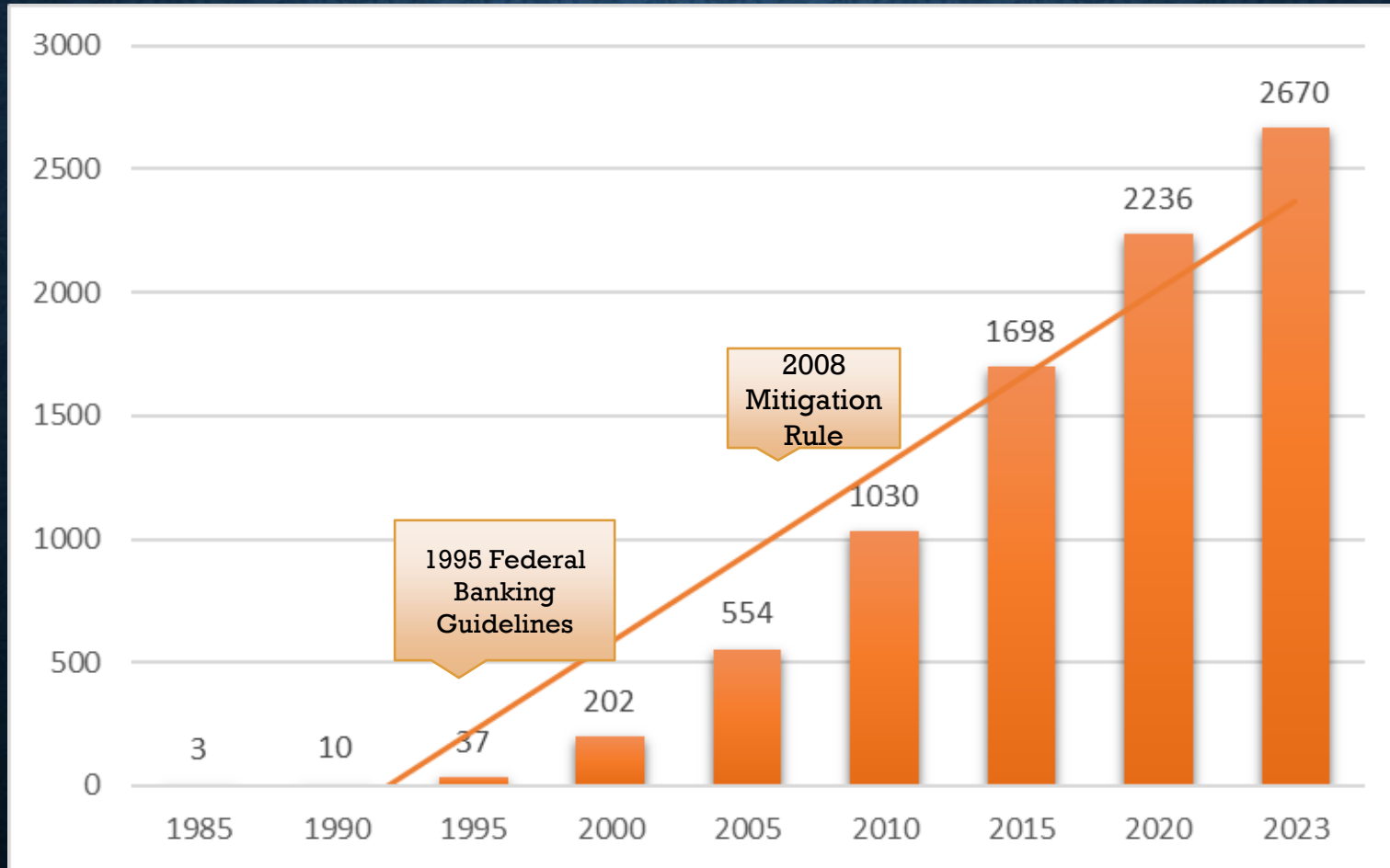




MITIGATION BANKS TODAY

- 2,500+ Approved 404 Wetland and Stream Mitigation Bank Sites
- ~500 Pending Banks
- 731,000+ Conserved Acres
- 10% Approved Banks are Single-Client Banks

HISTORICAL 404 MITIGATION BANK APPROVALS





Bullfrog Bay Mitigation Bank
Osceola County, FL

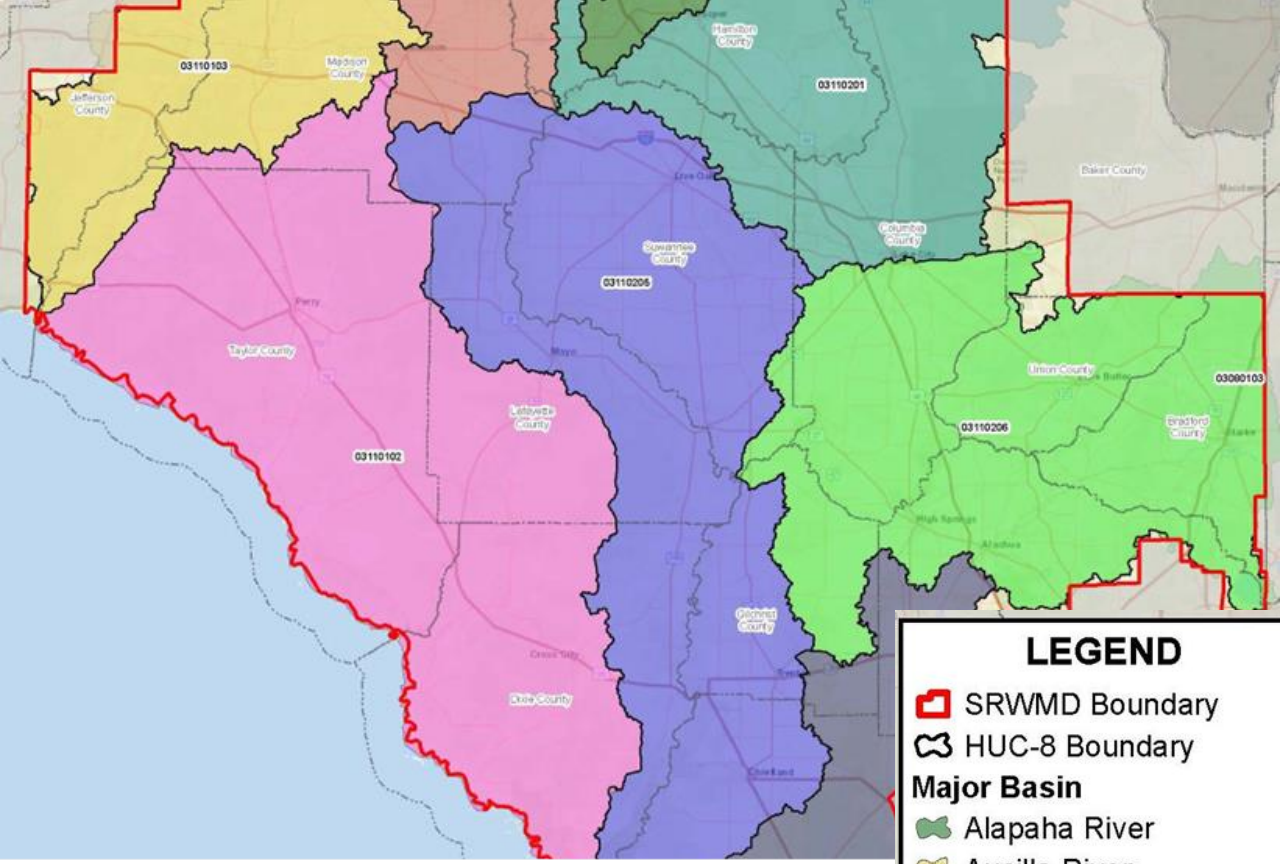
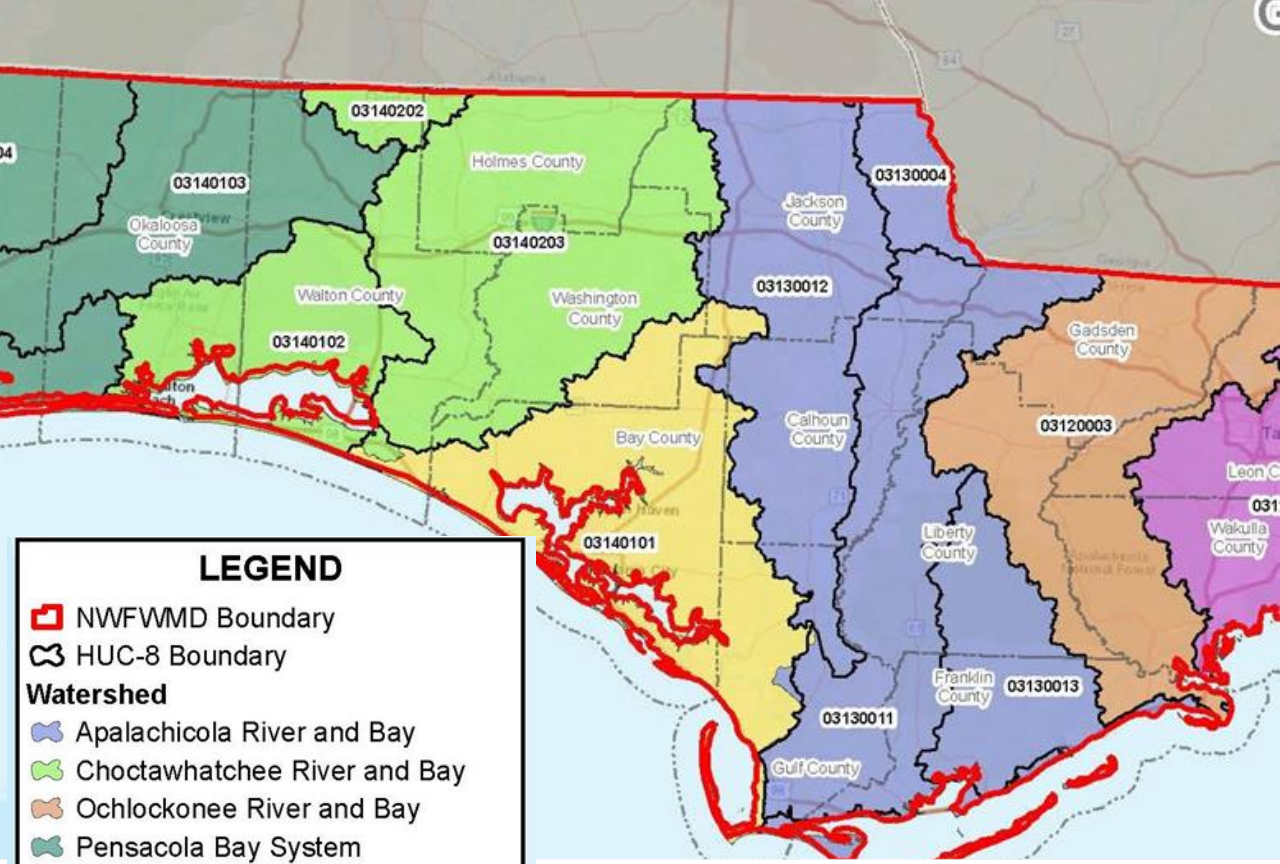
MITIGATION BANKING IN FLORIDA

FLORIDA STATE REGULATIONS

Section 373 of the
Environmental Re-
organization Act of 1993
Mitigation Banking
Program Established

Chapter 62-342 (Wetland
Mitigation Banking Rule)
established in 1994
amended in 1996

Implemented by FDEP &
Water Management
Districts



LEGEND

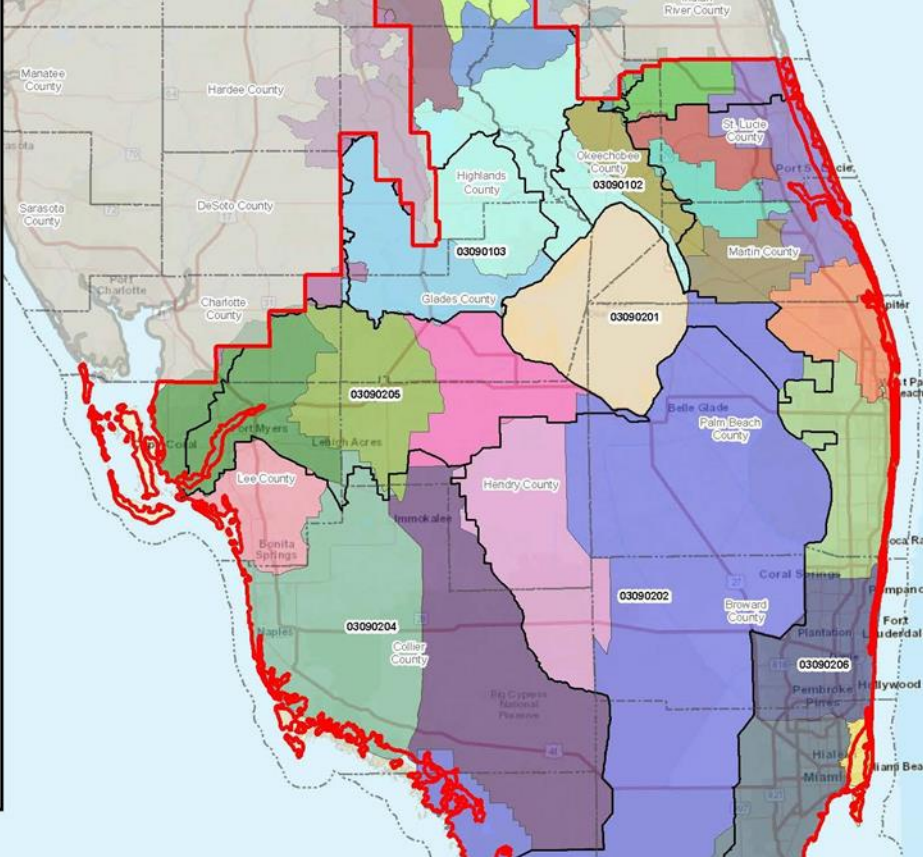
- NFWMD Boundary
- HUC-8 Boundary
- Watershed**
- Apalachicola River and Bay
- Choctawhatchee River and Bay
- Ochlockonee River and Bay
- Pensacola Bay System
- Perdido River and Bay
- St. Andrew Bay
- St. Marks River and Apalachee Bay

LEGEND

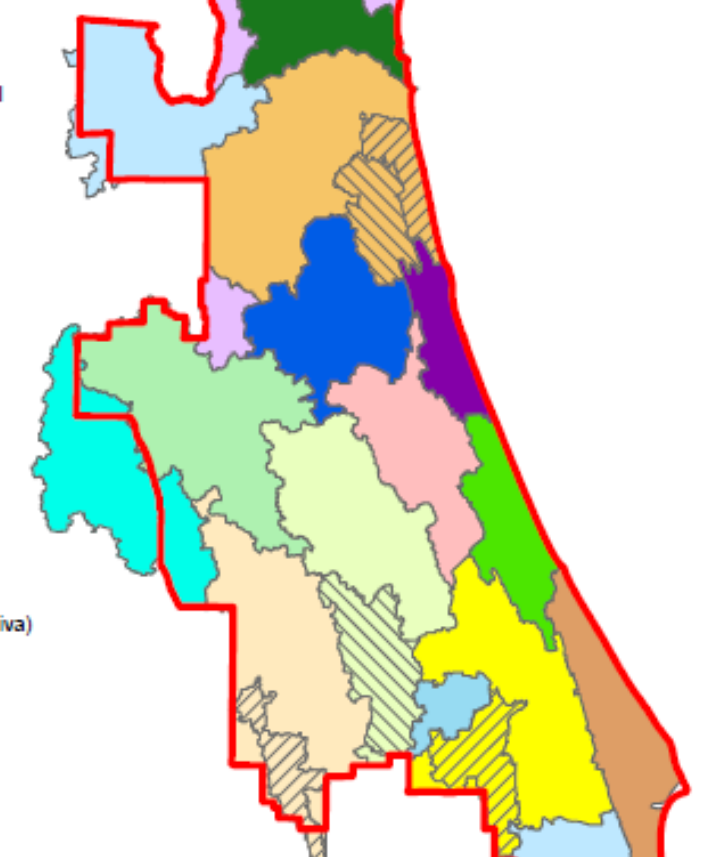
- SRWMD Boundary
- HUC-8 Boundary
- Major Basin**
- Alapaha River
- Aucilla River
- Coastal Rivers Basin
- Santa Fe River Basin
- Suwannee River Basin
- Upper Suwannee River
- Waccasassa River Basin
- Withlacoochee

FLORIDA MITIGATION BASINS

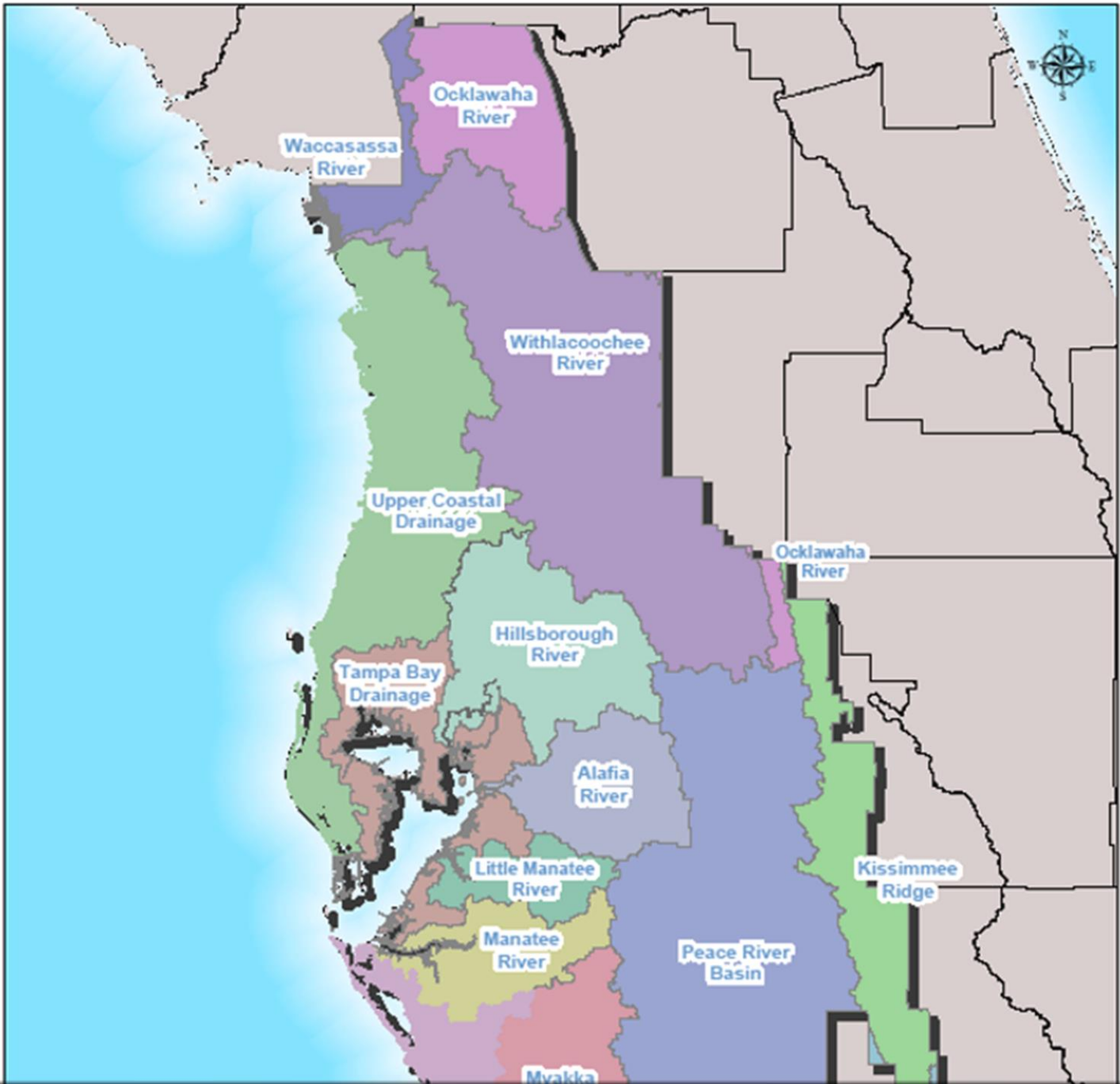
- East Everglades
- Eastern Palm Beach County
- Estero Bay
- Everglades
- Fisheating Creek
- Lake Arbuckle - SWFWMD
- Lake Gentry
- Lake Hart
- Lake Hatchineha
- Lake Kissimmee
- Lake Okeechobee
- Lake Tohopekaliga
- Loxahatchee River
- Middle Kissimmee
- New River
- North Kissimmee
- Nubbin Slough
- Reedy Creek
- SJRWMD
- SWFWMD
- Shingle Creek
- South Kissimmee
- St. Lucie
- Tidal Caloosahatchee
- West Caloosahatchee
- West Collier
- I-28 Interceptor



- 2 Middle + Lower St. Marys River
- 3 Nassau River
- 4 Northern St. Johns River + Northern Coastal
- 5 Sixmile + Julington Creeks Nested in 4
- 6 Tolomato River + Intracoastal Nested in 4
- 7 Western Etoniah Lakes
- 8 St. Johns River (Welaka to Bayard)
- 9 Pellicer Creek + Matanzas River
- 10 Florida Ridge
- 11 Northern Ocklawaha River
- 12 Southern Ocklawaha River
- 13 Palatlakaha River Nested in 12
- 14 St. Johns River (Wekiva to Welaka)
- 15 Wekiva River Nested in 14
- 16 Crescent Lake
- 17 Halifax River
- 18 St. Johns River (Canaveral Marshes to Wekiva)
- 19 Econlockhatchee River Nested in 18
- 20 Southern St. Johns River
- 21 Northern Indian River Lagoon
- 22 Central Indian River Lagoon
- 23 Lake Jesup



FLORIDA MITIGATION BASINS



FLORIDA MITIGATION BASINS

PERMITTING PROCESS

- Federal law requires no net loss of wetlands in the United States
- Mitigation Banking is a market-based solution to this challenge
- State and federal permits required, with oversight from IRT
- Multi-year endeavor until permits are issued and work can begin
- Several rounds of vegetative and hydrologic data collection
- After final success criteria achieved, bank must be maintained in perpetuity

FLORIDA'S STATE OF ASSUMPTION

- Program authorized by EPA on December 22, 2020
- Reasoning: 85% overlap of ERP and 404 Permits
- Goal: streamline permitting to reduce time and costs to applicant
- 591 404 permits transferred to FDEP Dec 2020
- USACE maintains jurisdiction over mitigation banks and ILF permits, Rivers and Harbor Act permits, traditional navigable waters

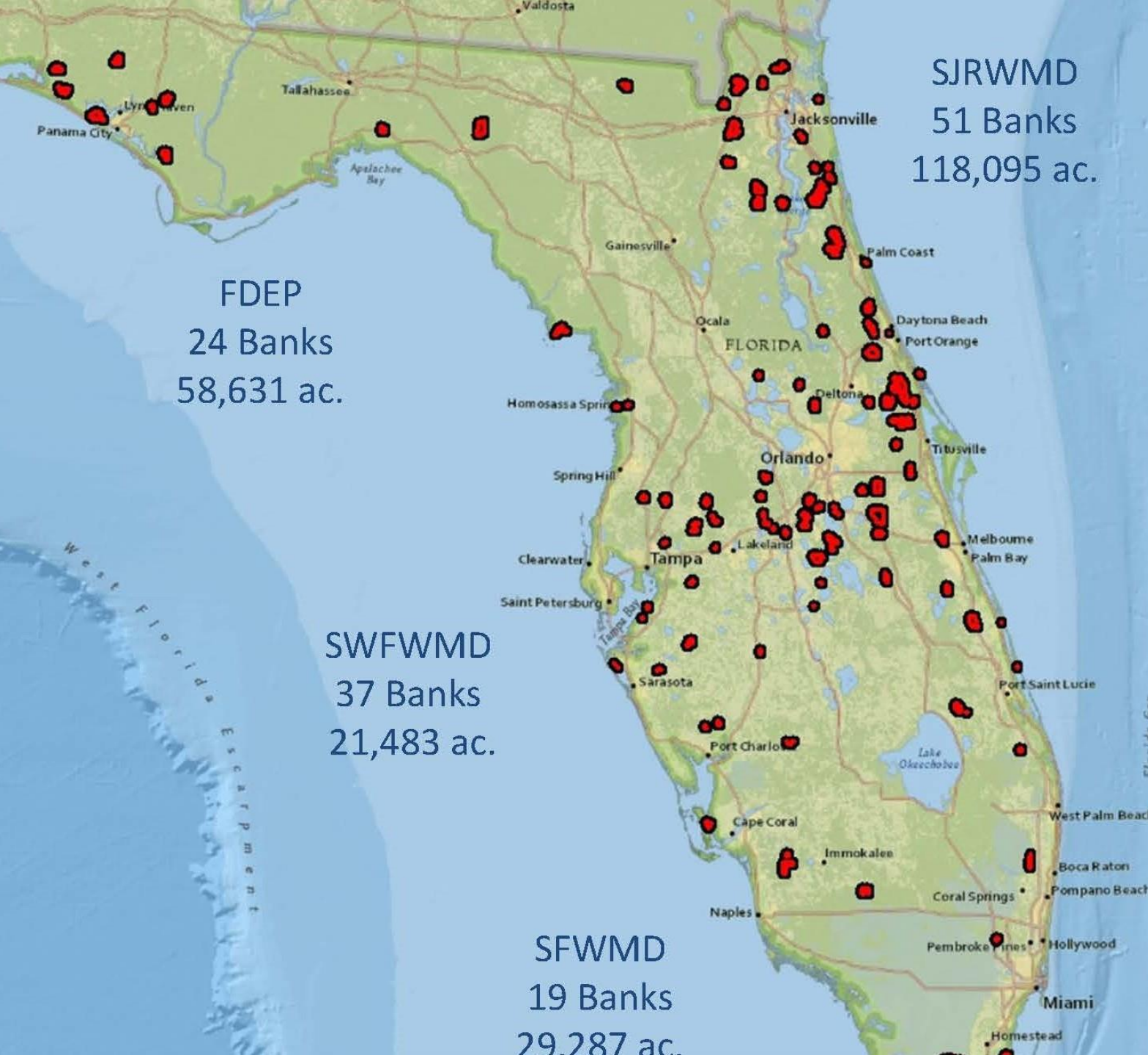


MITIGATION REQUIREMENTS

- No State mitigation hierarchy
- FDEP implements the federal mitigation hierarchy (preference given to purchase of bank credits)
- Most permits requiring mitigation purchase state and/or federal mitigation bank credits

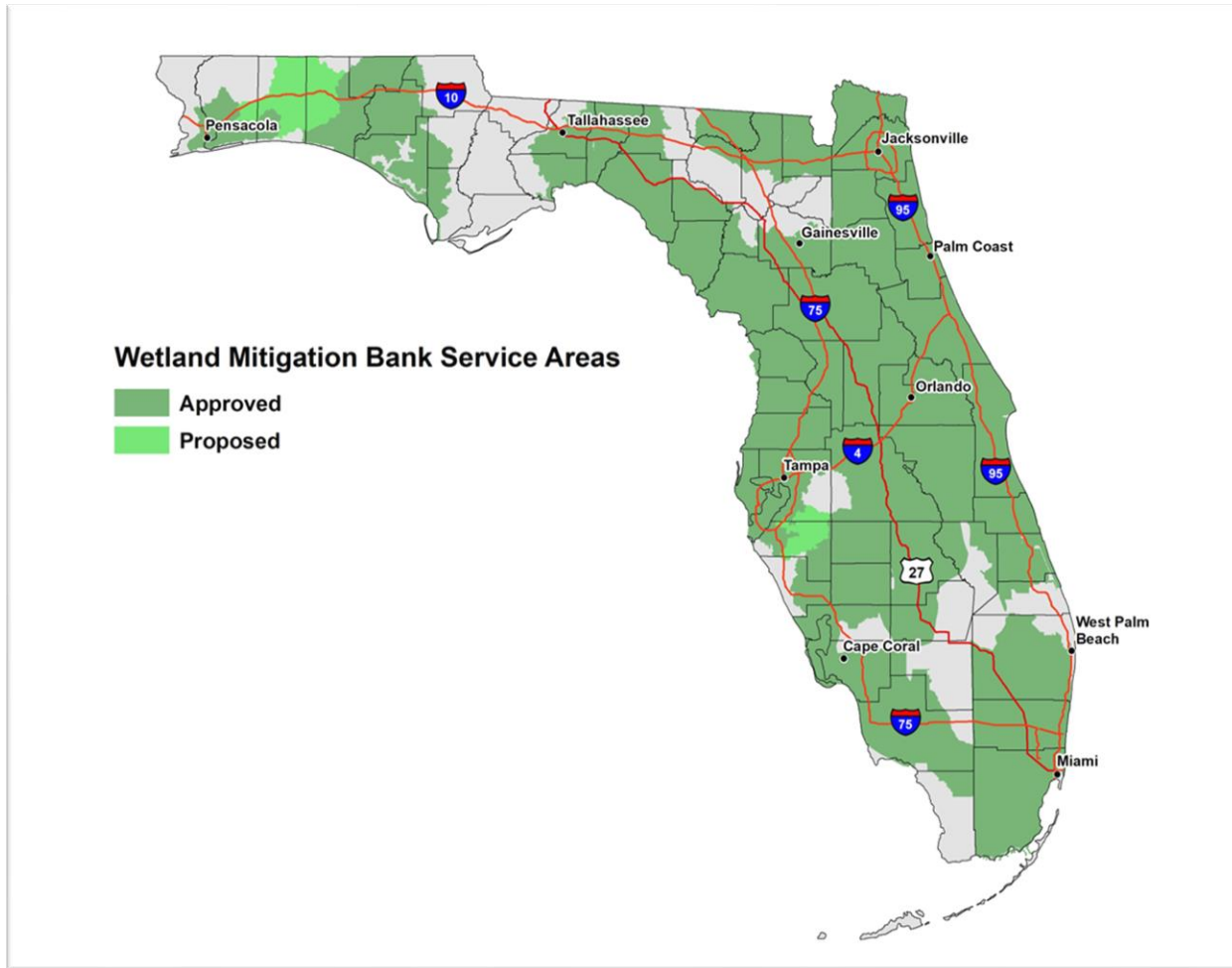
Old Florida Mitigation Bank
Citrus County, FL

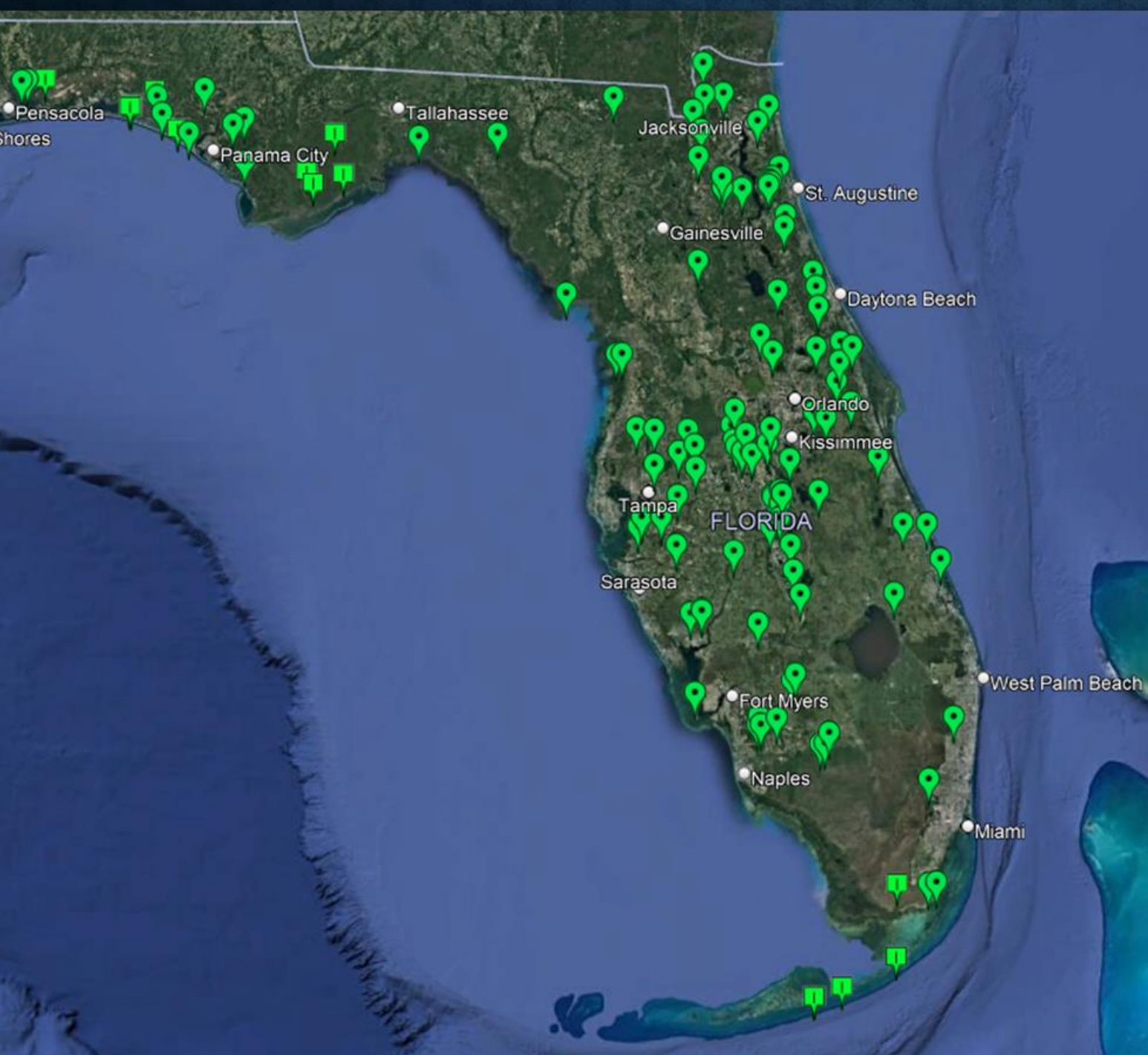
FLORIDA STATE MITIGATION BANK STATS



- 131 Approved Banks
- 227,496 Acres

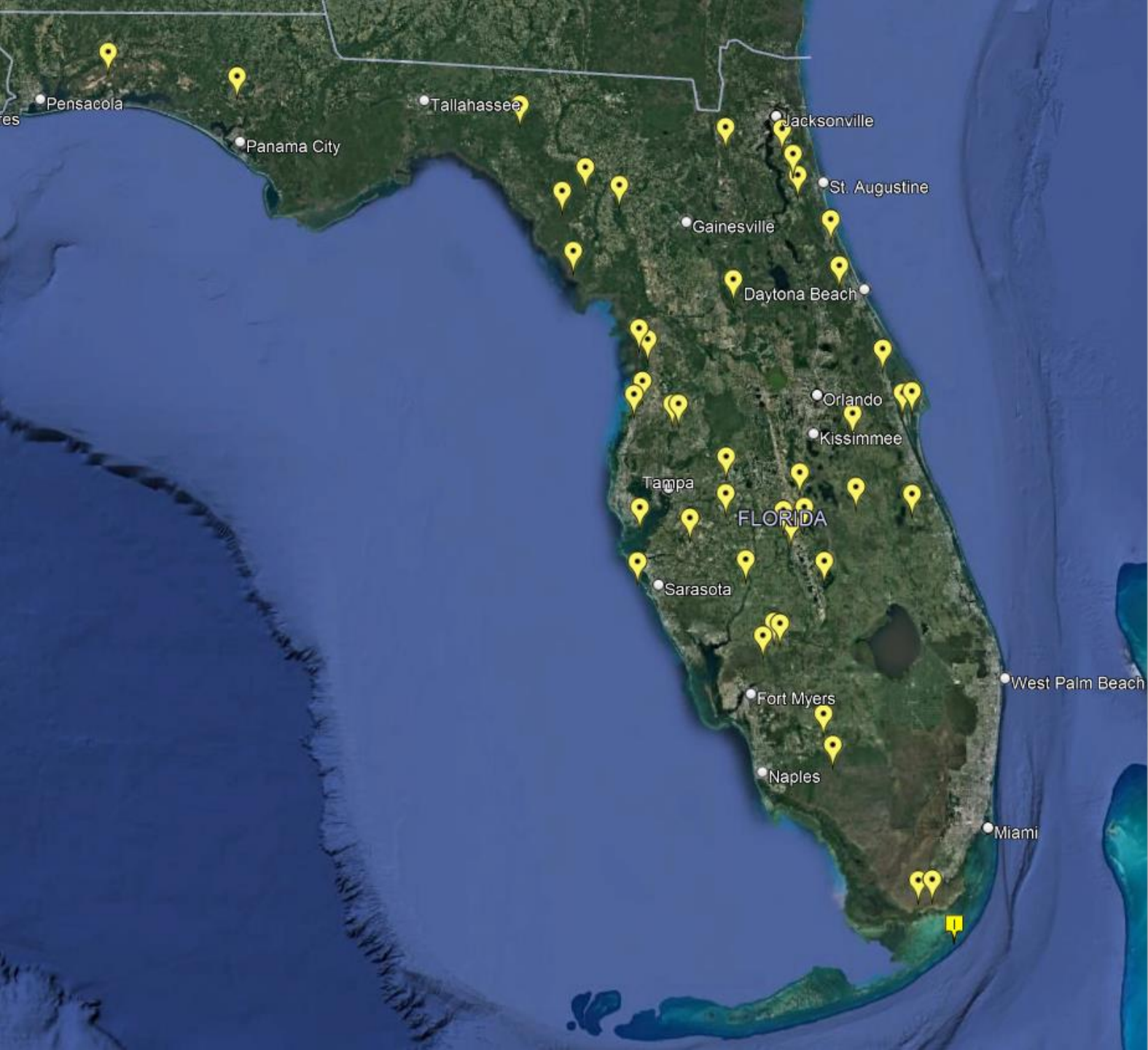
MITIGATION BANK SERVICE AREA COVERAGE





FLORIDA BANKING STATS

- 93 Approved/Active Federal Mitigation Banks
- Average Project Size: 1,748 Acres
 - 4 to 24,323 Acres
- 22% of USACE Potential Wetland Acres
 - SAJ: 129,612 Acres
 - Total USACE: 586,780 Acres
- ~15,012 Credits Available
 - (Estuarine: 326; Palustrine 14,686)
- 5.63 Project Approvals/Year (RIBITS)

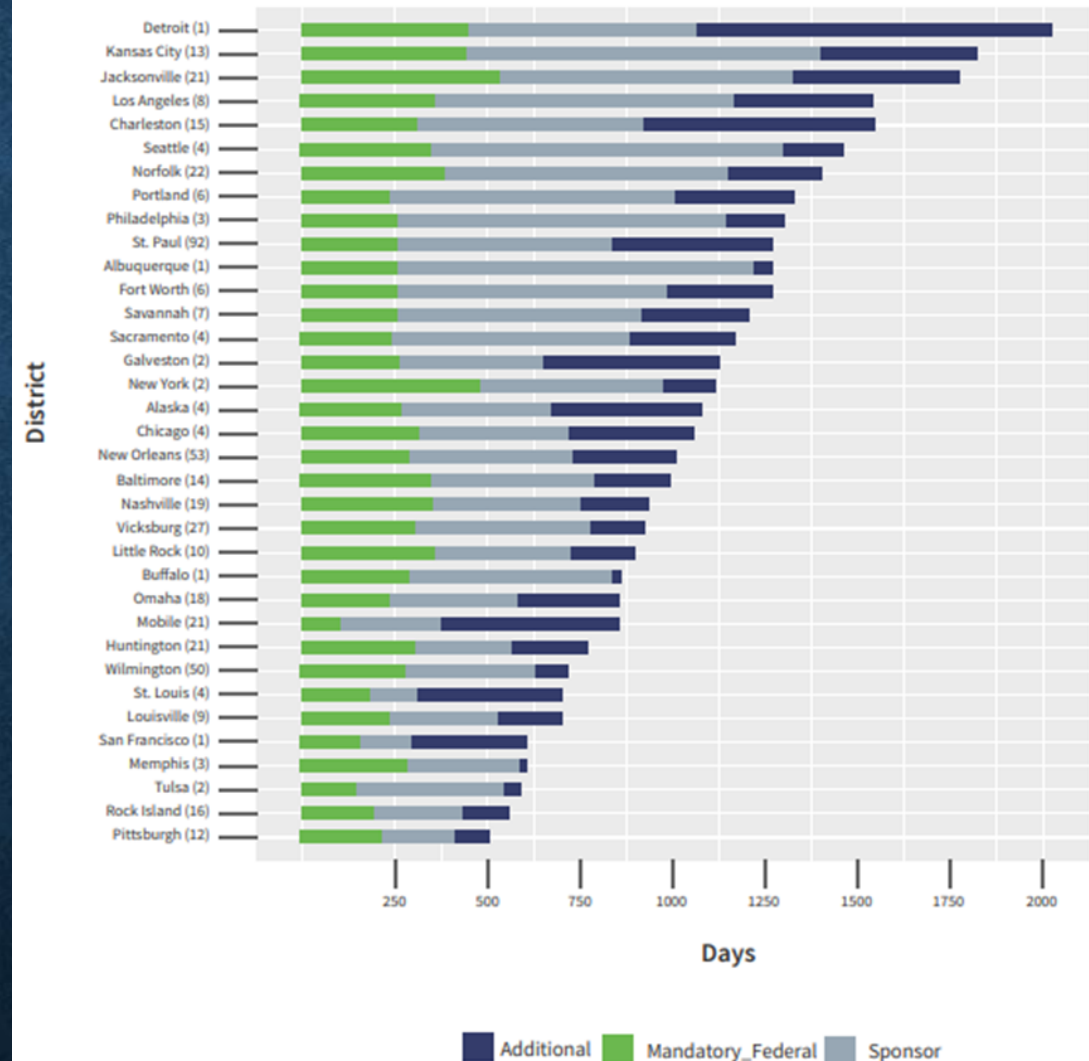


- 55 Pending MBs Projects
– 2 Pending UMBIs
- 31 Pending Modifications

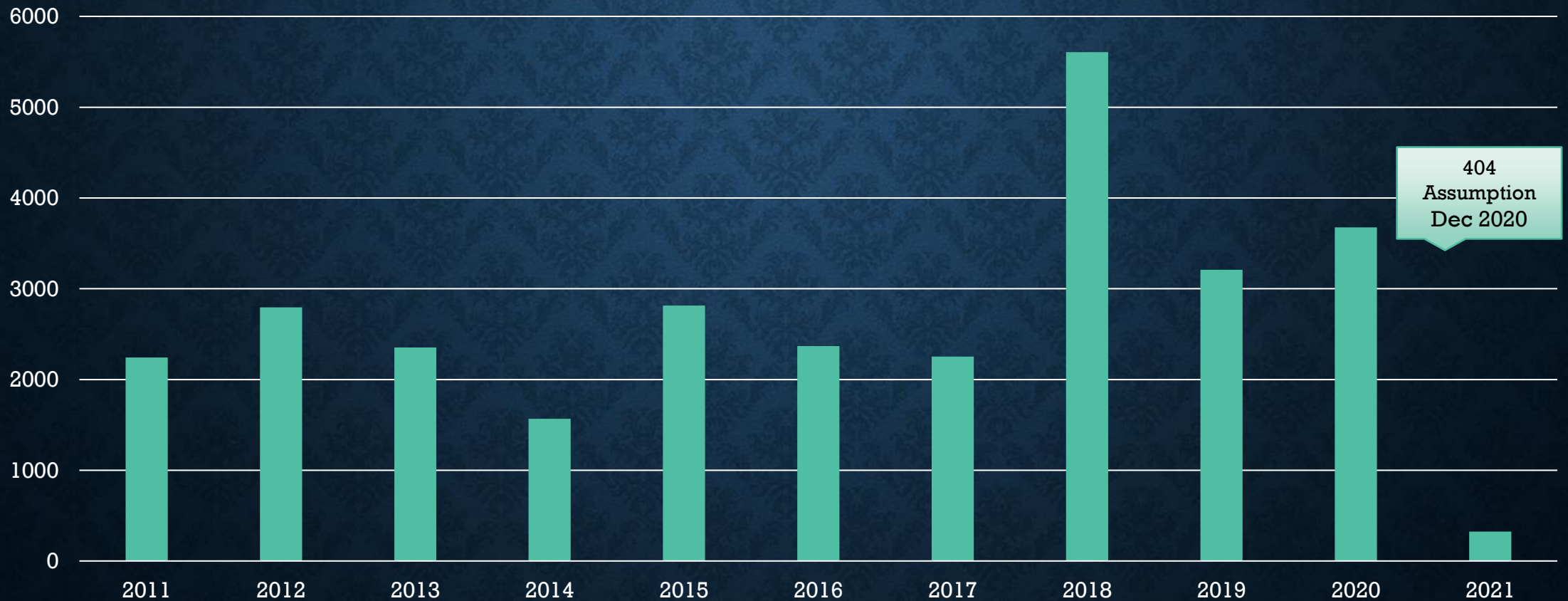
JACKSONVILLE DISTRICT BANK PERMITTING TIMELINES

- 2023 ERBA/EPIC Report
 - Average Project Decisions: 1,815 Days (4.7 years)
 - Prospectus: 204
 - Draft Instrument: 215
 - Final Instrument: 131
 - Additional Time: 452
 - Sponsor Time: 812
- Third longest decision rate in the country

Districts are ordered from shortest processing at the bottom to longest timeline at the top. The number in parentheses indicates the number of MBIs approved in the District between fiscal year 2014 - 2021.



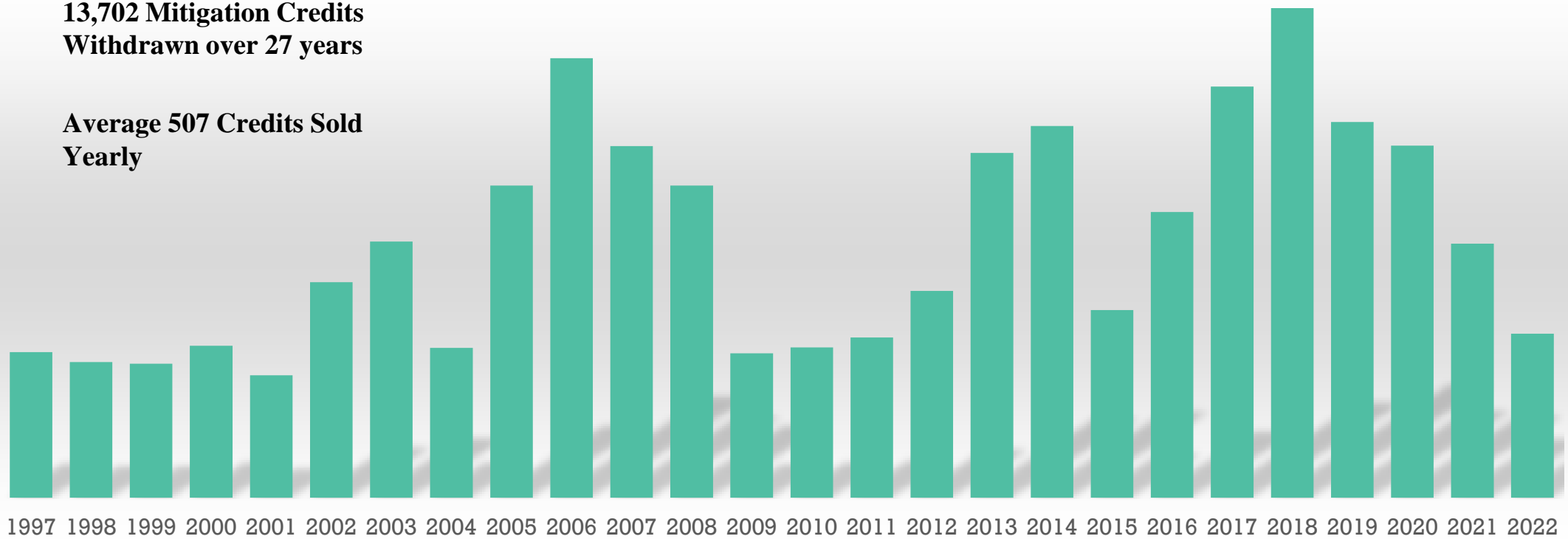
JACKSONVILLE DISTRICT HISTORICAL WETLAND IMPACTS (ACRES)



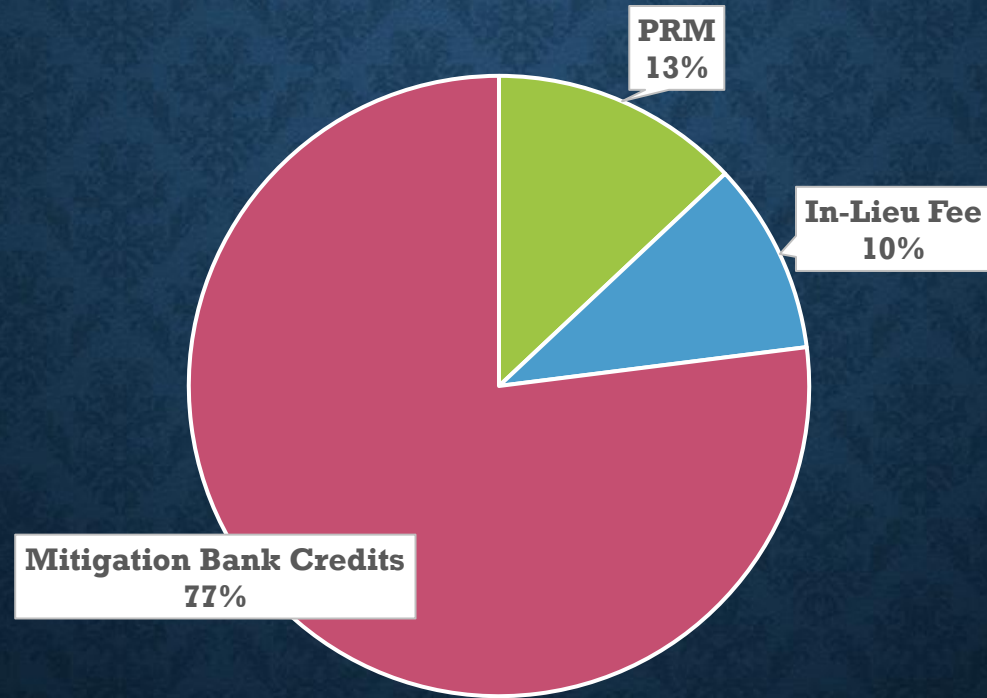
FLORIDA HISTORICAL CREDIT SALES

**13,702 Mitigation Credits
Withdrawn over 27 years**

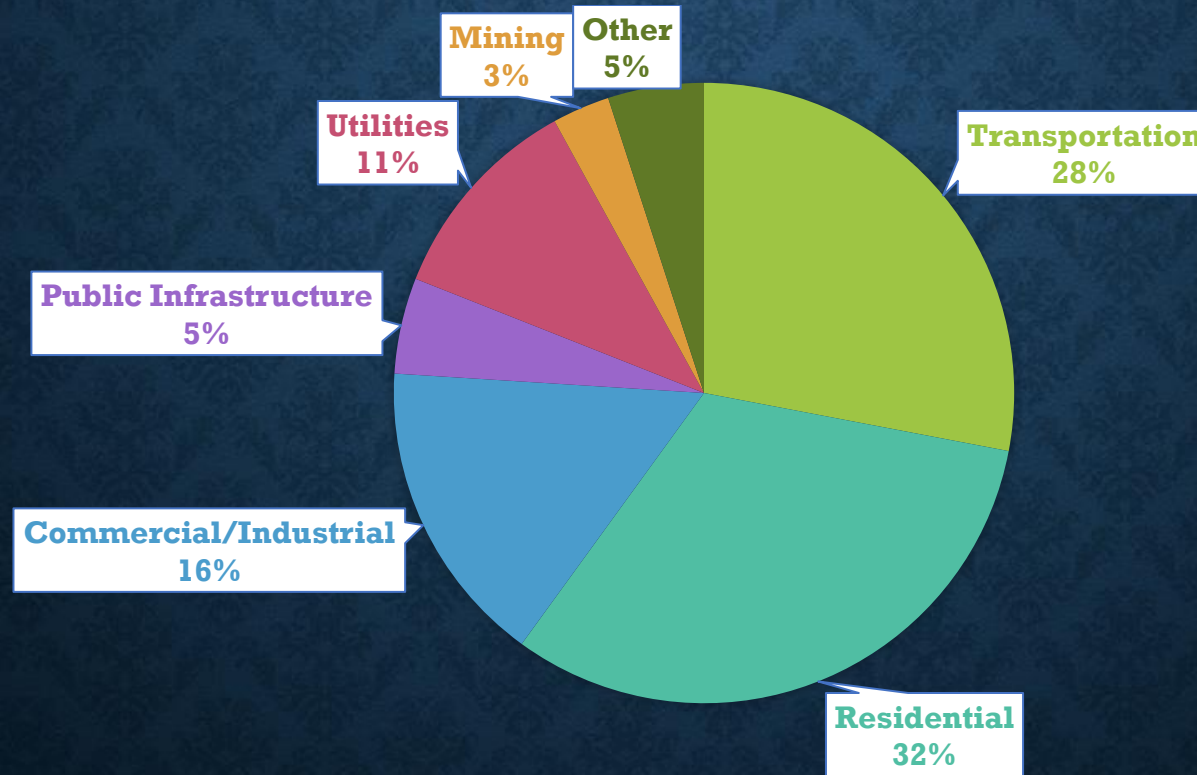
**Average 507 Credits Sold
Yearly**



FLORIDA: HISTORICAL MITIGATION OF WETLAND IMPACTS



FLORIDA: WETLAND IMPACTS BY SECTOR

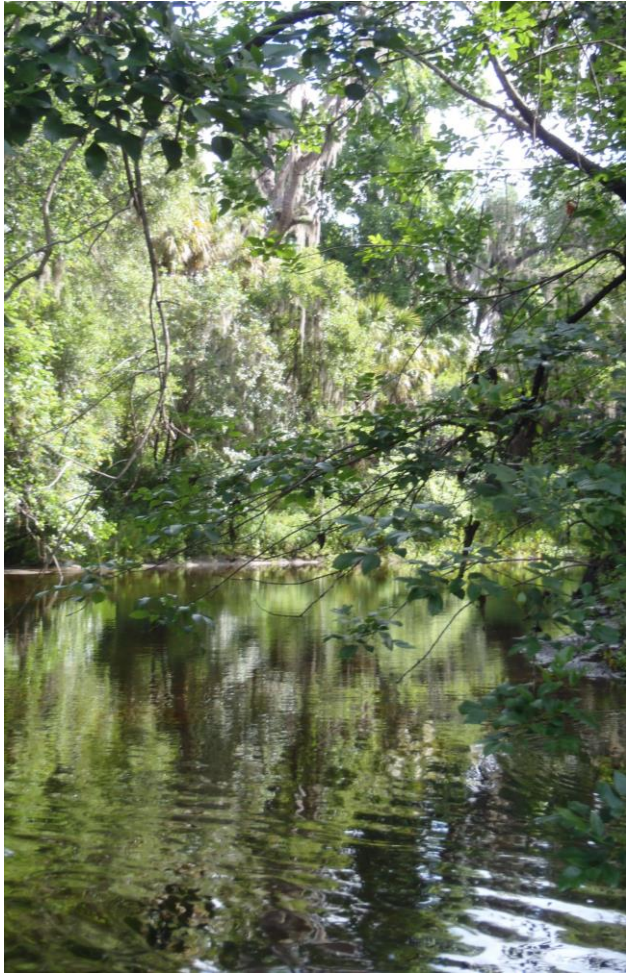


CHALLENGES

- **REGULATORY:** Lengthy Process; Delays, Frequent Regulatory Changes to MBI Template (permitting standards)
- **HIDDEN COSTS:** Legal, Mineral Rights, Easement Filings
- **CONSTRUCTION UNKNOWNNS**
- **MEETING SUCCESS CRITERIA**
- **FINANCIAL ASSURANCE (C&I and LTM)**
- **LONG-TERM MANAGEMENT**

WHAT'S NEXT FOR FLORIDA STATE MITIGATION BANKING

- Notice of rule development published on Nov. 14, 2022.
- Focus on the financial assurance aspects of the rule:
 - Considering adding endowments.
 - Rate of return (current 6%)
 - Investment options (currently limited)
 - Other potential amendments
- Potential change in mitigation bank service areas



Alafia River Mitigation Bank
Hillsborough County, FL

2024 LEGISLATIVE FOCUS

Bills currently in drafting to address state bank credit shortage in key geographies:

- Proximity Factor (FHBA)
- Use of State-owned lands by private bankers



THE FUTURE OF MITIGATION BANKING

- Advanced Credit Releases with 100% Financial Assurances upfront
- State and Federal Banking programs streamlined
- JOINT BANKING –Credits can be used to offset more than one type of impact
- MORE SPECIES AND AQUATIC BANKS (i.e. seagrass; bonneted bat)
- Other States/Local Governments implementing wetland/stream impact restrictions



QUESTIONS?

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