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

REPLY TO
ATTENTION OF

Regulatory Division

NOV 0 9 2012

DEPARTMENT OF THE ARMY PERMIT

PROGRAMMATIC GENERAL PERMIT SAJ-99
SAJ-2007-03138

LIVE ROCK AND MARINE BIVALVE AQUACULTURE - STATE OF FLORIDA

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 (U.S.C. 403), and Section 404 of the Clean Water Act, the Florida Department of Agriculture and Consumer Services (FDACS) is authorized to deposit materials for the purpose of marine bivalve aquaculture. Additionally, general authority is hereby 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) subject to the following conditions:

COORDINATION AGREEMENT: An agreement has been signed by the Corps and the FDACS. The agreement outlines the steps each agency will take during the processing of an application under the SAJ-99, and includes reporting requirements.

SPECIAL CONDITIONS:

1. The work authorized herein includes the deposition of materials and other work in the waters of the State of Florida as described above for the purposes of live rock and marine bivalve aquaculture.

2. This general permit does not authorize the placement of materials for the construction and/or renourishment of artificial reefs, the construction of impoundments and/or semi-impoundments of waters of the US, 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).

3. Individuals conducting marine aquaculture must possess an Aquaculture Certificate issued pursuant to section 597.004, Florida Statutes, and be compliant with the Best Management Practices (BMPs) adopted by rule.

4. Individuals conducting marine aquaculture must have a current lease issued by the Board of Trustees of the Internal Improvement Trust Fund and not be in violation of its terms and conditions.

5. As part of the Aquaculture Certification and lease approval process, a site evaluation report will be completed. The report, which may include, but not be limited to videotapes of underwater surveys, photographs of underwater surveys, and/or written assessments of underwater surveys, shall be prepared by a source acceptable to the FDACS and shall demonstrate that the proposed site:

a) is not a hazard to safe navigation or a hinderance 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 mangrove (minimum 50' setback from the preceding); and

d) avoids impacts to other aquaculture activities; and

e) contains natural underlying substrata that is primarily hard packed sand, hard shell hash, or soft sediment, and

f) avoids river mouths, ocean passes/cuts, and navigation channels.

6. The applicant's lease application with the state shall identify the 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.

7. For the deposition of culture material for live rock aquaculture only, each permittee shall be limited to not more than one acre of submerged land. Deposition of material may occur in one location or in several locations. In either case, the total amount of sovereignty submerged land upon which the material is deposited shall not exceed a total of one acre per permittee.

8. Sites shall be inspected by the FDACS to confirm compliance with the special conditions in this permit.

9. Materials deposited or used on the aquaculture site must be approved by the FDACS. Materials for live rock or marine bivalve aquaculture activities must be

deployed so as to remain in place during storm events and not damage adjacent SAV or natural hard bottom communities.

10. All materials placed on the site must be in accordance with the state lease and the FDACS's BMPs. Disposition of materials outside of a state lease or in violation of the FDACS's BMPs is prohibited without a separate permit from the Department of the Army.

11. All materials used in aquaculture operations must be nontoxic and be free of contaminants and non-indigenous flora and/or fauna.

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 feet must be maintained from naturally vegetated or hard bottom habitats. The permittee shall be required to submit "as-built" (post-activity) reports to the FDACS. The reports shall depict the project 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.

13. Harvest of aquacultured species and live rock shall be in accordance with chapter 597, Florida Statutes, 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 *Acropora* spp. prior to harvesting. Additionally, the harvesting of any rock with *Acropora* spp. attached is prohibited.

14. Prior to issuance of authorization, the dichotomous key titled "The Corps of Engineers, Jacksonville District, and the State of Florida Effect Determination Key for the Manatee in Florida, March 2011," (see http://www.saj.usace.army.mil/Missions/Regulatory/SourceBook.aspx) will be used to determine potential manatee impacts. Those determined to be a "may affect" to the manatee will not be authorized until consultation on the project has been reinitiated by the Corps and concluded with the U.S. Fish and Wildlife Service in accordance with the Endangered Species Act. Additionally, depending on the location of the project, some projects determined to be "may affect, not likely to adversely affect" will not be authorized until additional consultation on the project has been concluded. *Note: The manatee key may be subject to revision at any time. It is our intention that the most recent version of this technical tool will be utilized during the evaluation of the permit application.*

15. For projects in waters accessible to manatees, the permittee will utilize the "Standard Manatee Conditions for In-Water Work, 2011" (see http://www.saj.usace.army.mil/Missions/Regulatory/SourceBook.aspx) and/or

requirements, as appropriate for the proposed activity. *Note: The manatee conditions may be subject to revision at any time. It is our intention that the most recent version of these conditions will be utilized during the evaluation of the permit application.*

16. For projects in waters accessible to sea turtles, smalltooth sawfish, Gulf sturgeon, or shortnose sturgeon, the permittee will utilize the "Sea Turtle and Smalltooth Sawfish Construction Conditions" March 23, 2006 (see http://www.saj.usace.army.mil/Missions/Regulatory/SourceBook.aspx) and/or requirements, as appropriate for the proposed activity. *Note: These conditions may be subject to revision at any time. It is our intention that the most recent version of these conditions will be utilized during the evaluation of the permit application.*

17. No new leases will be authorized within the boundaries of Gulf sturgeon designated critical habitat or Johnson's seagrass designated critical habitat. Within the boundaries of Gulf sturgeon designated critical habitat, cultch materials for the State of Florida's oyster planting program shall only be allowed to be deposited on existing shell substrata. Within the boundaries of smalltooth sawfish critical habitat leases will be located away from any red mangroves, and in water deeper than 39 inches mean low water (MLW), so as to avoid any impacts to the essential features (i.e. shallow euryhaline waters and red mangroves) of sawfish critical habitat.

18. This permit has undergone consultation with U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) on the listed species and any designated critical habitat listed on Table 1 (attached). If the proposed activity does not conform to the special conditions of SAJ-99 concerning listed species or critical habitat, the application shall be referred to the Corps who will request the appropriate Service to initiate additional Section 7 consultation. Until consultation is concluded, the proposed activity cannot be authorized under SAJ-99.

19. No work shall be authorized by SAJ-99 that may have direct or indirect adverse impacts to essential fish habitat such as but not limited to hard or soft corals, including listed 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 engelmanni*), Johnson's seagrass (*Halophila johnsonii*), sago pondweed (*Potamogeton pectinatus*), clasping-leaved pondweed (*Potamogeton perfoliatus*), widgeon grass (*Ruppia maritime*), 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.

20. 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 the ground disturbing activities and construction work within the permit area, there are archaeological/cultural materials encountered which were not the subject of a previous cultural resources assessment survey (and which shall include, but not be limited to: pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes, evidence of structures or any other physical remains that could be associated with Native American cultures or early colonial or American settlement), the Permittee shall immediately stop all work in the vicinity and notify the Corps within two calendar days. The Corps shall then notify 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.

c. A cultural resources assessment may be required of the permit area, 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 and 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 in the vicinity shall immediately cease and the Permittee shall immediately notify the medical examiner, Corps, and State Archeologist. 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 Archeologist, SHPO and the Corps.

21. SAJ-99 is not authorized within the boundaries of the following managed areas until the authorities responsible for their management have been contacted by FDACS and offered an opportunity to express their views on projects proposed in their respective areas of responsibility. All responses shall be included in the FDACS permit file.

a. Florida State Parks: All Florida State parks.

b. Aquatic Preserves: All State of Florida Aquatic Preserves

c. National Marine Sanctuaries: Florida Keys National Marine Sanctuary.

d. National Estuarine Research Reserves: All National Estuarine Research Reserves

22. Additional federal permits may be required for aquaculture operations in waters of the State of Florida which are under the jurisdiction of other federal authorities, such as U.S. Environmental Protection Agency, U.S. Coast Guard, or National Marine Fisheries Service.

23. For projects proposed adjacent to Federally-maintained channels, no structure, or work authorized under this regional general permit shall be within the established setback. The setback is normally 100' in the various Intracoastal Waterways but may vary in a few specific reaches as well as in other Federal channels. Exact locations of the proposed structures relative to the channel may need to be verified by use of the Florida State Plane (x, y) Coordinate System, calculated from the near-bottom edge of the Federal channel. Any activity within Federal rights-of-way will require the permittee to enter into a consent-to-easement with the Real Estate Division, U.S. Army Corps of Engineers, Jacksonville or Mobile District, as appropriate, prior to the commencement of any construction activity.

24. The permittee and the FDACS understand and agree 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 FDACS or permittee will be required, upon due notice from the Corps of Engineers, to have removed, relocated, or altered 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.

25. Conformance with descriptions and quantities contained herein does not necessarily guarantee authorization under this general permit.

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

27. This programmatic general permit will be valid for a period of five years from the date specified above unless suspended or revoked by the District Engineer prior to that date. If SAJ-99 expires or is revoked prior to completion of the authorized work, authorization of activities that have commenced or are under contract to commence in reliance on SAJ-99 will remain in effect provided the activity is completed within 12 months of the date SAJ-99 expired or was revoked; and that such activities are conducted in compliance with SAJ-99 and any lease agreement terms or conditions.

28. The General conditions attached hereto are made a part of this permit.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Alan M. Dodd
Colonel, U.S. Army
District Commander