

Federal/State Wetland Delineation vs. Jurisdiction

Federal wetland boundaries are **delineated** (a.k.a. drawn) under the Federal Clean Water Act and other Federal statutes (ex. Swampbuster) utilizing the U.S. Army Corps of Engineers 1987 wetland delineation manual adopted under the oversight of EPA. The State of Florida and its political subdivisions **delineates** wetland boundaries under the provisions of ch. 62-340, F.A.C., as ratified by the Florida Legislature in sections 373.421 and .4211, F.S. As a practical matter for most projects use of the Federal and State methods results in similar wetland boundaries. However, the Federal plant list shows slash pine and galberry as wetland indicator plants while the State plant list shows these two plants as upland indicators when, in biological fact, they should be "neutral" (e.g. not indicate wetlands or uplands). In addition, the State methodology relies on the Federal Natural Resources Conservation Service (formerly Soil Conservation Service) soils manual while the Federal methodology does not in certain circumstances (ex. the use of "high organics" in the surface horizon to indicate wetlands). As a result a strict application of the Federal methodology **delineates** the wetland boundary "higher" in some pine flatwoods and improved pasture than does the State methodology.

Federal **jurisdiction** under the Federal Clean Water Act is limited to "waters of the United States". What waters constitute "Waters of the United States" was the subject of a recent U.S. Supreme Court decision commonly referred to as the SWANCC (Solid Waste of Northern Cook County) decision. This decision, as currently interpreted (it's subject to a pending Federal rule making initiative), results in a lack of Federal **jurisdiction** over certain isolated wetlands. State **jurisdiction** in Peninsular Florida under the Part IV, Ch. 373, F.S., Environmental Resource Permit program extends from property line to property line of the project area. However, within the project area only those areas that are **delineated** as wetlands (including all isolated wetlands) under the State methodology are subject to the environmental provisions of s. 373.414, F.S. The remainder of the project area is considered uplands and subject only to the "stormwater" quality and quantity provisions of the ERP program. Within Northwest Florida the State's wetland **jurisdiction** is limited to "connected" wetlands and does not extend to isolated wetlands except when an area **delineated** as an isolated wetland is part of a constructed stormwater system in which case the State has limited **jurisdiction** under the provisions of ch. 62-25, F.A.C., to address stormwater quality (not quantity/flooding) only.

In summary, both Florida and the Federal government have methods to **delineate** the boundaries of areas considered wetlands although there are differences in the methods that may produce different wetland boundaries in some situations. However, not all areas that are **delineated** as wetlands are subject State and Federal **jurisdiction** as noted above. Further within those areas that are subject to State or Federal **jurisdiction** certain activities are not **regulated** due to a variety of statutory and rule exemptions from regulation.