



United States Department of the Interior

FISH AND WILDLIFE SERVICE
South Florida Ecological Services Office
1339 20th Street
Vero Beach, Florida 32960



January 25, 2008

Colonel Paul L. Grosskruger
District Commander
U.S. Army Corps of Engineers
701 San Marco Boulevard, Room 372
Jacksonville, Florida 32207-8175

Service Federal Activity Code: 41420-2007-FA-1295
Service Consultation Code: 41420-2007-F-1122
Service Log Numbers: 4-1-05-PL-10544 / 4-1-02-F-940
Corps Application Number: SAJ-2001-6440 (LP-MJD)
Re-initiation of Formal Consultation Date: December 17, 2007
Applicant: Port of the Islands Development
Project: Stella Maris II/III Boat Ramp
County: Collier

Dear Colonel Grosskruger:

This letter serves to amend the biological opinion for the Port of the Islands Development project in Naples, Collier County, Florida. The Fish and Wildlife Service (Service) has received revised information for the above-listed project. In addition to reviewing the new information, we have re-examined the baseline data regarding the West Indian manatee (*Trichechus manatus*) abundance and distribution, manatee travel patterns, manatee mortality, water depths, aggregation areas, warmwater refugia, freshwater sources, seagrasses, the number of registered vessels, boating traffic patterns, existing watercraft access facilities, and manatee speed zones.

The U.S. Army Corps of Engineers (Corps) has requested the Service's review of an application to construct a new boat ramp within the Faka Union Canal for use by the residents of the Stella Maria II/III Subdivision. The applicant has revised the project such that portions of an existing seawall have been encumbered by a conservation easement in order to preclude the placement of future docks. The proposed boat ramp will provide boating access for the community and will provide 10 trailer parking spaces. These slips will effectively replace the 13 slips lost along the seawall which is now under a conservation easement. This revision has brought the project into consistency with the Collier County Manatee Protection Plan (MPP). To reduce direct construction-related effects to manatees, the Corps will incorporate the Florida Fish and Wildlife Conservation Commission's (FWC) *Standard Manatee Construction Conditions* (FWC 2005) as a condition of the Department of the Army permit, if issued, for the project listed above.



Consultation History

On November 5, 2004, the Service received a public notice from the Corps for the Villages at Stella Maris (currently known as Stella Maris II/III) project. The proposed Federal action would authorize the construction of a boat ramp in Reach 26, Collier County, Florida. Using the 2001 Manatee Key, the Corps provided a “may affect” determination for the manatee and requested initiation of formal consultation under section 7 of the Endangered Species Act of 1973, as amended (87 Stat. 884; 16 U.S.C. 1531 *et seq.*) (Note – The 2001 Manatee Key was superseded by the 2005 Manatee Key. Service concurrence for the key was provided in letters dated July 12, 2005, September 30, 2005, and August 28, 2006). According to Interim II guidance, formal consultation is the outcome for multi-slip docking facilities that are inconsistent with a county’s MPP.

In an email to the Service dated February 25, 2005, Collier County stated that a boat ramp was inconsistent with the allowable uses at this site. The conditions at the site resulted in its designation as a “protected site” and, consequently, the proposed project was not in compliance with the Collier County MPP

In the March 10, 2005, letter and biological opinion, the Service concluded the proposed project is reasonably certain to result in the incidental of West Indian manatees. An incidental take statement was not included in the letter because incidental take of marine mammals is not authorized under section 101(a)(5) of the Marine Mammal Protection Act and/or its 1994 Amendments.

On July 2, 2007, Collier County provided a letter to the Service which outlined an agreement between the County and the applicant to bring the boat ramp into compliance with the Collier County MPP. The agreement was reached by the granting of a conservation easement over those remaining portions of seawall which do not currently have docks constructed. The Conservation Easement was granted to Collier County and prohibits docking or mooring along that section of the seawall with the exception of brief, temporary mooring associated with staging of boats using the ramp. It also prohibits the alteration of the seawall within the easement in any way, including any additions of docks, davits, or other mooring devices.

On December 17, 2007, the Corps provided updated information, including a copy of the conservation easement and the Collier County correspondence referenced above. The revised information confirms the approval of the project by Collier County and its consistency with the Collier County MPP.

AMENDMENT TO THE BIOLOGICAL OPINION

PROJECT DESCRIPTION

Port of the Islands Development proposes to construct a new 10-slip private boat ramp to serve the adjacent Stella Maria II/III Subdivision. The project consists of a 20-foot by 96-foot boat

ramp and a trailer parking area that accommodates 10 vehicles. The project as proposed will impact 1,920-square feet of open waters with sand and mud bottom, and there will be no impacts to submerged aquatic vegetation. This project is within Reach 26 of the Corps' Reach Characterization Analysis. The proposed project is located at 385 Stella Maris Drive North, on the Faka Union Canal, Section 9, Township 52 South, Range 28 East, Collier County, Florida.

Concerned with an increased number of manatee mortalities and boating accidents, the Governor and Cabinet directed the Florida Department of Natural Resources (DNR) in June 1989 to make recommendations for specific actions to protect the manatee and its habitat and to make the State's waterways safer for the boating public. DNR's final report, *Recommendations to Improve Boating Safety and Manatee Protection on Florida Waterways*, found over 80 percent of all watercraft-related manatee mortality occurred in 10 counties: Brevard, Broward, Citrus, Collier, Dade (now Miami-Dade), Duval, Lee, Martin, Palm Beach, and Volusia. Though watercraft-related mortality was not high for St. Lucie, Indian River, and Sarasota, these three counties were considered important areas as travel corridors as well as foraging and resting areas for manatees.

The Governor and Cabinet directed each of these 13 coastal (= key) counties to develop a MPP. The purpose of an MPP is to present a summary of existing information about manatee use and watercraft use within the county and to develop strategies to balance manatee protection, resource protection, waterway uses, boating facility siting, speed zones and signage, boating safety, and to educate the boating public. The final report recommended new or expanded boating facilities in these key counties should be limited to one powerboat slip per 100 linear feet of shoreline (the 1:100 ratio) until the county implements its State-approved MPP, which includes a boating facility siting component. Watercraft access projects consistent with a county's MPP provide a level of boater access and activity that is within the capacity of the manatee protection measures provided. Projects not consistent with an MPP may exceed the capacity of these protective measures and, therefore, may result in the incidental take of manatees. Countywide MPPs are identified in the *Florida Manatee Recovery Plan* (Service 2001) as a method for protecting manatees and manatee habitat.

As stated above, an MPP is one means of providing adequate planning to address effects of watercraft access projects on manatees and manatee habitat. Such plans provide a level of manatee protection commensurate with a certain level of boater access. Projects consistent with a State-approved MPP provide a level of boater access and activity that is within the capacity of the manatee protection measures provided in the plan. Projects not consistent with the approved MPP may exceed the capacity of the protective measures present and, therefore, may result in adverse effects to manatees.

Collier County's review of the proposed project confirmed that the construction of this boat ramp is consistent with the MPP, and the project has been sufficiently modified so that no additional docks will be constructed along the remaining seawall. Therefore, the Service believes the proposed project is consistent with the County's MPP.

As a result of the new information regarding Port of the Islands' proposal, the Service's amendment to the biological opinion referenced above is as follows: (1) the Service believes an increase in watercraft associated with the proposed action listed above is not reasonably certain to result in the take of manatees in the form of additional deaths and injuries; (2) the Service acknowledges that impacts to resources have been avoided and potential effects to manatee critical habitat are not significant; and (3) the Service acknowledges the proposed project is in compliance with the Collier County MPP due to revisions.

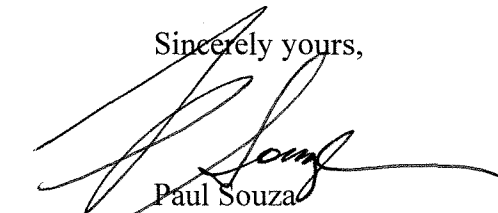
REINITIATION NOTICE

This concludes the amendment to the Biological Opinion dated March 10, 2005, regarding Corps Application SAJ-2001-6440 (LP-MJD) for Stella Maris II/III.

As provided in 50 CFR 402.15, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained and if: (1) the amount or extent of incidental take is exceeded, (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion, (3) the agency action is subsequently modified in a manner that causes an effect to listed species or critical habitat that was not considered in this opinion, or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease, pending reinitiation.

Thank you for your cooperation and effort in protecting threatened and endangered species. If you have any questions regarding this amended biological opinion, please contact Victoria Foster at 772-562-3909, extension 269.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Paul Souza', is written over a series of horizontal lines.

Paul Souza
Field Supervisor
South Florida Ecological Services Office

cc:

Regional Solicitor, DOI, Atlanta, Georgia (Delores Young)
FWC (BPSM), Tallahassee, Florida (Mary Duncan) electronic copy only
FWC, Tallahassee, Florida (Mary Ann Poole) electronic copy only
NOAA Fisheries, St. Petersburg, Florida
Service, Atlanta, Georgia (Noreen Walsh) electronic copy only
Service, Jacksonville, Florida (Manatee Species Lead)
Corps, Fort Myers, Florida (Skip Bergmann)

LITERATURE CITED

- Florida Fish and Wildlife Conservation Commission. 2005. Standard Manatee Conditions for In-water Work. Tallahassee, Florida. <<http://floridaconservation.org/manatee/permits/STANDARD%20MANATEE%20CONSTRUCTION%20CONDITIONS.pdf>>.
- U.S. Army Corps of Engineers. 2005. The U.S. Army Corps of Engineers, Jacksonville District, and the State of Florida's Effect Determination Key for the Manatee in Florida (July 2005). U.S. Army Corps of Engineers; Jacksonville, Florida.
- U.S. Fish and Wildlife Service. 2001. Florida Manatee Recovery Plan (*Trichechus manatus latirostris*), Third Revision. Atlanta, Georgia.