



United States Department of the Interior

FISH AND WILDLIFE SERVICE
South Florida Ecological Services Office
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Vero Beach, Florida 32960



November 6, 2007

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

Service Federal Activity Code: 41420-2007-FA-0630
Service Consultation Code: 41420-2006-F-0518
Corps Application No: SAJ-2006-5054 (LOP-JDK)
Re-initiation of Formal Consultation Date: September 28, 2007
Applicant: Trinidad Condominiums
Project: Multi-slip docks
County: Lee

Dear Colonel Grosskruger:

This letter serves to amend the biological opinion for the Trinidad Condominiums project in Cape Coral, Lee County, Florida. The Fish and Wildlife Service (Service) has received revised project plans 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 multi-family dock consisting of nine slips to serve the adjacent upland condominium community (Trinidad Condominiums). The applicant has revised the project such that the proposed number of slips has been reduced from twelve to nine. 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 permits, if issued, for the project listed above.

CONSULTATION HISTORY

On March 2, 2007, the Service received a public notice from the Corps for the Trinidad Condominium project. The proposed Federal action would authorize the construction of a multi-slip dock in Reach 32, Lee County, Florida. Using their 2005 Manatee Key, the Corps provided a "may affect" determination for the manatee and requested initiation of formal consultation



under section 7 of the Act (Note - Service concurrence for the key was provided in letters dated July 12, 2005, and September 30, 2005). According to Interim II guidance, formal consultation is the outcome for multi-slip docking facilities that are inconsistent with a county's Manatee Protection Plan (MPP).

By letter to the applicant dated November 22, 2006, Lee County stated that the site could accommodate nine boat slips, three less than originally proposed. The site is located within an "area of special concern," and the project qualifies as "Conditional." In order to be consistent with the MPP, the following mitigation measures are required: use of "Standard Manatee Construction Conditions," manatee education activities, and \$546 paid to Lee County for each new slip to fund marine law enforcement.

The Florida Department of Environmental Protection (FDEP) letter dated May 14, 2007, determined that this project is exempt from the need for an Environmental Resource Permit. Therefore, the Florida Fish and Wildlife Conservation Commission (FWC) did not complete a review of this project.

In the May 16, 2007, letter and biological opinion, the Service indicated 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 October 12, 2007, the applicant provided updated information including updated plans and copies of the FDEP and Lee County correspondence referenced above. The revised plans show the number of slips reduced from twelve to nine (additional details below).

PROJECT DESCRIPTION

Ray Holton, on behalf of Trinidad Condominiums proposes to construct a new nine-slip docking facility to serve the adjacent condominium community. The project as proposed will impact 997-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 32 of the Corps' Reach Characterization Analysis. The site is located in an interior, saltwater canal in Cape Coral at 4519 Southeast 6th Place, in Section 12, Township 45 South, Range 23 East, in Lee County, Florida.

AMENDMENT TO THE BIOLOGICAL OPINION

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 Manatee Protection Plan (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.

Lee County's review of the proposed project confirmed that the construction of nine slips is consistent with the MPP, and the project has been sufficiently modified so that only nine slips are proposed. Therefore, the Service believes the proposed project is consistent with the County's MPP.

As a result of the new information regarding Trinidad Condominiums' 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, adverse effects to manatee critical habitat is not significant; and (3) the Service acknowledges the proposed project is in compliance with the Lee County MPP due to revisions.

REINITIATION - CLOSING STATEMENT

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.

This concludes the amendment to the Biological Opinion dated May 16, 2007, regarding Corps Application SAJ-2006-5054 (LOP-JDK) for Trinidad Condominiums. 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 dark ink, appearing to read "Allen D. Webb" with a stylized flourish at the end.

Paul Souza
Field Supervisor
South Florida Ecological Services Office

cc:

Corps, Ft. Myers, Florida (Skip Bergmann)
DEP, Ft. Myers, Florida (File No. 36-0267282-001)
FWC (ISM), Tallahassee, Florida (Carol Knox)
FWC, Tallahassee, Florida (Anne Richards)
NOAA-NMFS, St. Petersburg, Florida (Mark Sramek)
Regional Solicitor, DOI, Atlanta, Georgia (Delores Young)
Service, ARD-ES, Atlanta, Georgia (Ken Graham) electronic copy
Service, Jacksonville, Florida (Manatee Species Lead)

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.