



## United States Department of the Interior

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



October 15, 2007

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

Service Federal Activity Code: 41420-2007-FA-1539  
Section 7 Activity Code: 41420-2007-I-0993  
Corps Application No.: SAJ-2005-862 (GP-MJD)  
Date Received: March 28, 2007  
Applicant: Mr. and Mrs. Arnold Sarlo  
County: Lee

Dear Colonel Grosskruger:

This letter serves to amend the June 30, 2005, biological opinion for the project listed above in Lee County, Florida. The Fish and Wildlife Service (Service) has received additional information regarding the above-listed project's location and the fact the project is a single family dock that will result in the creation of one new slip.

### CONSULTATION HISTORY

By letter dated March 24, 2005, the Service received a letter from the Corps requesting concurrence with a "may affect" determination for the manatee and initiation of formal consultation for the proposed action. The proposed action would authorize the construction of a single-family dock project resulting in one slip.

On March 28, 2007, the Corps requested the Service rescind or amend their biological opinion for permit application number SAJ-2005-862 (GP-MJD) based on an error, which placed the project within Bokeelia AIP designated area, when in fact it was south of the Bokeelia AIP designated area and based on the corrected error, determined the project "may affect, but is not likely to adversely affect" the manatee. Furthermore, the AIP designation was removed from the Bokeelia area by the Service on January 31, 2007, which was after our biological opinion had been issued for the referenced project.

### PROJECT DESCRIPTION

The proposed action is for the construction of a 60 square foot wooden dock in a residential canal on Pine Island. The project site is located at 5250 Marina Drive, Bokeelia, in Section 21, Township 44 South, Range 22 East, Lee County, Florida.



To reduce direct construction-related effects to the manatee, the Corps will incorporate *Standard Manatee Construction Conditions* (Florida Fish and Wildlife Conservation Commission [FWC] 2005) as a condition of the Department of the Army permits, if issued, for the projects listed above. While submerged aquatic vegetation (SAV), including seagrasses and mangroves, may occur in the project areas, the potential impacts to SAV appear insignificant due to the small size of the project. Furthermore, the Corps will determine if the applicant's compensation proposal offsets the proposed impacts using a Corps-approved SAV evaluation method. Final mitigation must satisfy the Corps' "no net loss of wetland function" policy.

## **AMENDMENT TO THE BIOLOGICAL OPINION**

Manatees have been protected by Florida law since 1893. Existing State rules for coastal construction and the use of State-owned submerged lands carry out these protections. Manatees are also protected under the MMPA the Act. The incidental take of these marine mammals must meet the requirements of the MMPA and the Act; however, regulations have not been developed pursuant to the MMPA that allow the incidental take of manatees at this time. Until such regulations are developed under the MMPA, the Service cannot authorize incidental take for manatees under Act. The most common human-related cause of manatee deaths and injuries is collisions with watercraft. Intensive coastal development throughout Florida poses a long-term threat to the manatee. As partners in the ongoing efforts to recover the manatee, one approach for the Service and the Florida Fish and Wildlife Conservation Commission (FWC) to address this threat is to review and comment on applications for Federal and State permits, respectively, for watercraft access projects in manatee habitat areas and to minimize their potential effects on the species. Under section 7 of the Act, the Service reviews hundreds of permit applications annually for construction projects in waters and wetlands occupied by that include manatees or are adjacent to manatee habitat through the consultation process. FWC provides similar reviews for environmental permitting programs at the State level (Florida Department of Environmental Protection, water management districts or county governments).

In July 2005, The Service and FWC implemented a collaborative review process that addresses Federal and State permit issues as they relate to manatees. Service concurrence for the 2005 Manatee Key was provided in a letter to the Corps dated July 12, 2005. As a result of the corrected information provided by the Corps, the Service's amendment to the biological opinion listed above is as follows: the Service believes an increase in watercraft associated with the proposed action is not reasonably certain to result in the take of manatees in the form of additional deaths and injuries.

Since adverse affects from these projects are unlikely to occur, we concur with the Corps' revised finding that the project "may affect, but is not likely to adversely affect" the manatee.

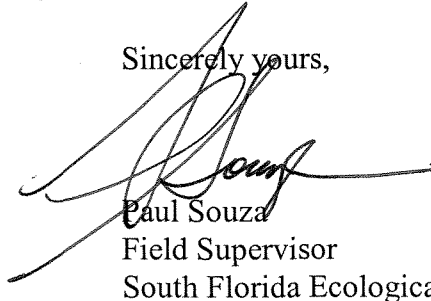
This letter fulfills the requirements of section 7 of the Act and no further action is required. If modifications are made to the project, if additional information involving potential effects to listed species becomes available, or if a new species is listed, reinitiation of consultation may be necessary.

## 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 June 30, 2005, regarding Corps Application Number SAJ-2005-862 (G{-MJD). 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 Mary Peterson at 772-562-3909, extension 327.

Sincerely yours,



Paul Souza  
Field Supervisor  
South Florida Ecological Services Office

cc:

Regional Solicitor, DOI, Atlanta, Georgia (Delores Young)  
Service, Atlanta, Georgia (Noreen Walsh) electronic copy  
Service, Jacksonville, Florida (Species Lead)  
NOAA Fisheries, West Palm Beach, Florida  
FWC (ISM), Tallahassee, Florida (Carol Knox)  
FWC, Vero Beach, Florida  
DEP, West Palm Beach, Florida  
Corps, Fort Myers, Florida (Monika Dey)

## LITERATURE CITED

Florida Fish and Wildlife Conservation Commission. 2001. *Standard Manatee Construction Conditions* <<http://floridaconservation.org/psm/permit/construct.htm>>. Tallahassee, Florida.