United States Department of the Interior

FISH AND WILDLIFE SERVICE
1875 Century Boulevard
Atlanta, Georgia 30345

In Reply Refer To:
FWS/R4/ES/031506

JUN 2 9 2007

Memorandum

To: Director (D)

From: Regional Director, Southeast Region

Subject: Review of Past Endangered Species Act Actions

We were requested by the Director to evaluate the involvement of the Deputy Assistant Secretary for Fish and Wildlife and Parks (DAS) in the important Endangered Species Act (ESA) decisions made by the Fish and Wildlife Service in the Southeast Region during the years 2001 through 2007. We evaluated the administrative records of past Service decisions to determine if the DAS was involved in or commented on our final actions or decisions and whether the DAS modified our position on the scientific basis for final actions or decisions. We found two ESA actions in which there was DAS involvement.

In the first ESA action, the DAS requested changes that modified the ultimate outcome of the action. This action was the designation of critical habitat for the Gulf sturgeon. The DAS requested the exclusion of major shipping channels from the final designation based on economic and other impacts. Units 2, 8, and 9 were affected by the exclusion (68 FR 13369, March 19, 2003). The Gulf sturgeon has joint jurisdiction between the Service and the National Marine Fisheries Service. Unit 2 is under the Service's jurisdiction and Units 8 and 9 are under the National Marine Fisheries Service's jurisdiction. The shipping channels undergo regular dredging and are not expected to maintain the primary constituent elements originally identified in them. Therefore, we do not believe that the exclusion of these areas resulted in a meaningful impact to the conservation of the Gulf sturgeon and we do not find it necessary to revisit this critical habitat designation.

In another case, the DAS had some involvement in an informal consultation between the Service and Navy on the Navy's proposed Outlying Landing Field in North Carolina. The DAS was apparently contacted by the Navy regarding communications ongoing between our Raleigh Field Office and the Navy. During those communications, the Service had provided to the Navy our thoughts on potential, future "Reasonable and Prudent Measures" (RPMs) that might be included in a future biological opinion on red wolves. At this point, formal consultation had not even been initiated. However, the Navy apparently contacted the DAS and raised objections to these potential RPMs. The DAS requested a meeting with the Regional Director which occurred during February of 2007. During the meeting, the DAS indicated that the Navy alleged: 1) the

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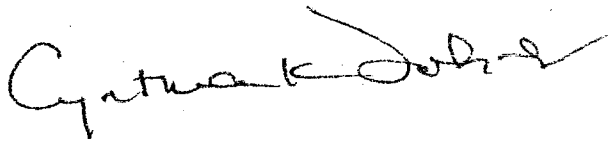
Field Office was not responsive to them; 2) the Field Office was communicating with the press instead of the Navy; 3) the Service had previously concurred with a "not likely to adversely affect" determination and there should be no need for a formal consultation; and 4) the draft RPMs under discussion were unreasonable. We explained the history of the informal consultation, the new information on red wolves that no longer allowed us to concur with a not likely to adversely affect determination, and the progress we had made regarding agreement with the Navy on potential, future RPMs (i.e., our contacts in the Navy were no longer objecting to the proposed RPMs). The DAS indicated she would have the Navy contact the Regional Director if further questions arose. The final outcome of this consultation was not modified by the DAS and therefore no action is recommended.

It is our understanding that legal, economic, procedural, and policy interpretations and Departmental positions regarding listing and critical habitat remain in place. Therefore, consistent with the discretion afforded the Secretary of the Interior under the ESA, we do not recommend revisiting any of the Southeast Region's other listing and critical habitat designations at this time unless the Department conducts a formal policy review and issues guidance that modifies current practice.

If you have any questions regarding our submission, please contact Noreen Walsh, Assistant Regional Director, Ecological Services, at 404/679-7085.