

Process for evaluating new watercraft access in Florida

Introduction

The Florida Fish and Wildlife Conservation Commission (FWC) and U.S. Fish and Wildlife Service (Service) recognize the need to have a similar approach to evaluating watercraft access projects in Florida. The following describes how those reviews will be carried out and coordinated between the State and Federal wildlife agencies.

Background

Manatees have been protected by Florida law since 1892. Existing State rules for coastal construction and the use of State-owned submerged lands carry out these protections. Manatees are also protected under the Marine Mammal Protection Act (MMPA) as well as the Endangered Species Act (ESA). The incidental take of these marine mammals must meet the requirements of the MMPA as well as the ESA; 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 MMPA, the Service cannot allow incidental take for manatees under ESA. The most significant known 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 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 impacts on the species. Under section 7 of the ESA, the Service annually reviews hundreds of permit applications submitted to the U.S. Army Corps of Engineers for construction projects in waters and wetlands that include manatees or are adjacent to manatee habitat through the consultation process. FWC provides similar reviews to environmental permitting programs at the State level (Florida Department of Environmental Protection, water management districts or county governments). The Service and FWC believe there is a need to implement a collaborative review process that addresses Federal and State permit issues as they relate to manatees.

To that end, FWC and the Service believe that county Manatee Protection Plans (MPPs) are the appropriate tool with which to evaluate permits providing watercraft access in counties where MPPs are required. In addition to reducing the number of watercraft-related manatee mortalities and protecting manatee habitat, MPPs are designed to promote boating safety and improve enforcement of speed zones, to increase public awareness of manatees and their environment, and to minimize the amount of interaction between boats and manatees.

Manatee Protection Plans and an Interim Review Process

To date, eleven counties (Brevard, Citrus, Collier, Duval, Indian River, Lee, Martin, Miami-Dade, St. Lucie, Sarasota and Volusia counties) have completed their MPPs, which the State of Florida has approved. Implementation of a State-approved MPP will have met State standards and addressed Service concerns in maximizing benefits to the manatee while providing regulatory certainty to the public. In the counties with approved MPPs, Service reviews are coordinated with the State to ensure consistent application of the MPP provisions. If both the

State and Service agree upon the adequacy of the MPP, there should be little or no difference between the State and Service's position on a particular project. An added benefit to applicants in counties with approved MPPs is that, if their projects are consistent with the MPP, their permit reviews will be conducted more quickly and with predictable outcomes from both the State and Federal reviews.

There is also a need to implement a framework for a permit review process for counties that are required to develop MPPs, but have yet to complete them, as well as for those counties that are currently not required to implement MPPs. Presently, there are two remaining counties (Broward and Palm Beach) of the required 13 that have plans in varying stages of development. With some exceptions (see Table), the Service and FWC will conduct a comprehensive site-specific analysis for each multi-slip project proposing watercraft access in the counties without MPPs in place (as described above). Once the remaining two counties finalize their MPPs and they are approved by FWC with concurrence from the Service, they can be used in the permit review process instead of the comprehensive site-specific review that requires a longer timeframe in the permit process.

While in some cases this framework for reviewing permit applications for watercraft access is considered an interim process, in reality, there are portions of the process that are relatively permanent. For multi-slip projects in counties with approved MPPs in place, the evaluation process should not change, unless the status of the approved plans change. For example, counties where approved plans are subsequently deemed inadequate and approval is rescinded, multi-slip projects will undergo comprehensive site-specific evaluations until the plans are amended and approved. Also, multi-slip projects in counties required to have MPPs, but do not, will undergo comprehensive site-specific evaluations until they complete their MPPs.

Implementing an interim permit review process can result in shortened time frames for completing our analysis and overall permit evaluation without any reduction in protection for manatees. The interim permit review process takes advantage of MPPs and other manatee protection measures (like speed zones and enforcement for counties not required to have MPPs) to reduce unnecessary delays and expense in the permitting of watercraft access facilities. We believe that these plans and measures provide a sufficient manatee protection framework to accommodate increases in watercraft access and, more importantly, identifies the specific circumstances and locations where incidental take of manatees from new facilities is not reasonably certain to occur.

Table: This table categorizes the types of projects and status of manatee protection in the 33 counties in which watercraft-related manatee mortality has been recorded and provides guidance to prospective applicants as to the factors that will be considered in the collaborative review process between the State and Federal wildlife agencies.

Projects			FWC Recommendations for State Permits	FWS Recommendations for Federal Permits
Category	MPP	PM	Outcome	Outcome
<p>Multi-slip facility in a county required to have a MPP with a State-approved MPP in place</p> <p>[11 counties with MPPs currently in place = Brevard, Citrus, Collier, Duval, Indian River, Lee, Martin, Miami-Dade, St. Lucie, Sarasota, Volusia]</p>	Y	Y	<p>Project consistent with the MPP = project can be approved with minimal conditions (standard construction conditions, signs, education info, fenders, grates on culverts, etc.) and short timeline</p> <p>Project not consistent with or addressed by MPP = initiate comprehensive site-specific review</p>	<p>Project consistent with MPP = informal consultation¹; concurrence letter</p> <p>Project not consistent with or addressed by MPP = initiation of formal consultation²; conclusion based on comprehensive site-specific review</p>
<p>Multi-slip facility in a county required to have a MPP without a State-approved MPP, but with PM in place</p> <p>[2 counties without MPPs currently in place = Broward and Palm Beach]</p>	N	Y	<p>The number of slips does not exceed the single family dock density threshold³ = project can be approved with minimal conditions (standard construction conditions, signs, education info, fenders, grates on culverts, etc.) and short timeline</p> <p>The number of slips exceeds the single family dock density threshold³ = conclusion based on comprehensive site-specific review for adverse impacts to manatees</p>	<p>The number of slips does not exceed the single family dock density threshold³ = informal consultation¹; concurrence letter</p> <p>The number of slips exceeds the single family dock density threshold³ = initiation of formal consultation²; conclusion based on comprehensive site-specific review</p>
<p>Multi-slip facility in a county not required to have a MPP, <u>but</u> with PM in place in some areas of the county <u>and</u> watercraft mortality exceeds the annual average of one death per year for the last 10-year period⁴</p> <p>[4 counties with PM in some areas = Charlotte, Hillsborough, Manatee, Pinellas]</p>	N	Y	<p>In areas where PM are in place <u>and</u> the number of slips does not exceed the single family dock density threshold³ = project can be approved with minimal conditions and short timeline</p> <p>In areas where PM are not in place <u>or</u> the number of slips exceeds the single family dock density threshold³ = conclusion based on comprehensive site-specific</p>	<p>In areas where PM are in place <u>and</u> the number of slips does not exceed the single family dock density threshold³ = informal consultation¹; concurrence letter</p> <p>In areas where PM are not in place <u>or</u> the number of slips exceeds the single family dock density threshold³ = initiation of formal consultation²; conclusion based on comprehensive site-specific review</p>

Projects		FWC Recommendations for State Permits		FWS Recommendations for Federal Permits
Category	MPP	PM	Outcome	Outcome
			review for adverse impacts to manatees	
<p>Multi-slip facility in a county with a voluntary State-approved MPP in place <u>or</u> in a county not required to have a MPP, <u>but</u> with PM in place in some areas of the county <u>and</u> watercraft mortality is less than the annual average of one death per year for the last 10-year period⁴</p> <p>[1 county with a voluntary, State-approved MPP in place = Clay]</p> <p>[7 counties with PM in some areas = Flagler, Hernando, Lake, Levy, Putnam, St. Johns, Seminole]</p>	N	Y	<p>Project consistent with MPP or in areas where PM are in place <u>and</u> the number of slips does not exceed the single family dock density threshold³ = project can be approved with minimal conditions and short timeline</p> <p>Project not consistent with or addressed by MPP or in areas where PM are not in place, <u>but</u> the number of slips does not exceed the single family dock density threshold³ = project can be approved with minimal conditions and short timeline</p> <p>Project not consistent with or addressed by MPP or in areas where PM are not in place <u>or</u> the number of slips exceeds the single family dock density threshold³ <u>or</u> watercraft mortality exceeds the annual average of one death per year for the last 10-year period = conclusion based on comprehensive site-specific review for adverse impacts to manatees</p>	<p>Project consistent with MPP or in areas where PM are in place <u>and</u> the number of slips does not exceed the single family dock density threshold³ = informal consultation¹; concurrence letter</p> <p>Project not consistent with or addressed by MPP or in areas where PM are not in place, <u>but</u> the number of slips does not exceed the single family dock density threshold³ = informal consultation¹; concurrence letter</p> <p>Project not consistent with or addressed by MPP or in areas where PM are not in place <u>or</u> the number of slips exceeds the single family dock density threshold³ <u>or</u> watercraft mortality exceeds the annual average of one death per year for the last 10-year period = initiation of formal consultation²; conclusion based on comprehensive site-specific review</p>
<p>Multi-slip facility in a county not required to have a MPP <u>and</u> without any PM in place <u>and</u> watercraft mortality exceeds the annual average of 0.5 death per year for the last 10-year period⁴</p> <p>[3 counties without PM in place = Glades, Monroe, Pasco]</p>	N	N	<p>The number of slips does not exceed the single family dock density threshold³ = project can be approved with minimal conditions and short timeline</p> <p>The number of slips exceeds the single family dock density threshold³ = conclusion based on comprehensive site-specific review for adverse impacts to manatees</p>	<p>The number of slips does not exceed the single family dock density threshold³ = informal consultation¹; concurrence letter</p> <p>The number of slips exceeds the single family dock density threshold³ = initiation of formal consultation²; conclusion based on comprehensive site-specific review</p>

Projects			FWC Recommendations for State Permits	FWS Recommendations for Federal Permits
Category	MPP	PM	Outcome	Outcome
Multi-slip facility in a county not required to have a MPP <u>and</u> without any PM in place <u>and</u> watercraft mortality is less than the annual average of 0.5 death per year for the last 10-year period ⁴ [7 counties without PM in place = Dixie, Hendry, Marion ⁵ , Nassau, Okeechobee, Taylor, Wakulla]	N	N	Conclusion based on a site-specific review for adverse impacts to manatees; project likely to be approved with minimal conditions and short timeline	Informal consultation ¹ ; concurrence letter
Single family dock in any county, excluding AIPs [cumulative impacts analysis of numerous single family docks in specific areas to be developed]	n/a	n/a	No review by FWC for manatee impacts (State permitting rules still apply as appropriate)	Informal consultation ¹ ; concurrence letter
Any project (single family or multi-slip) in an AIP [2 counties currently with AIPs = Collier and Manatee]			Conclusion based on comprehensive site-specific review for adverse impacts to manatees, if a State permit is required	Initiation of formal consultation ²

[Note: MPP = manatee protection plan; PM = protection measures (zones, signage, enforcement); n/a = not applicable; AIP = area of inadequate protection; multi-slip facility = commercial marinas, private multi-family docks, boat ramps, dry storage facilities and other similar structures that provide multiple watercraft access to the water

¹ “may affect; not likely to adversely affect” determination as defined by the Service’s section 7 regulations.

² “may affect, likely to adversely affect” determination as defined by the Service’s section 7 regulations.

³ The single family dock density threshold can vary from county-to-county as well as within a county. Some examples of varying density thresholds include 1 powerboat slip to 100 linear feet of shoreline (1:100).

⁴ The annual average for the 10-year period is recalculated at the beginning of each new calendar year.

⁵ No watercraft-related mortality has ever been recorded in Marion County; but manatee carcasses have been recovered in the Volusia County portion of the St. Johns River shared with Marion County. Marion County is not required to develop a MPP; however, now that Volusia County’s MPP has been approved by the State, the Service will apply the conditions of that plan from bank-to-bank in the St. Johns River.