



U. S. Fish and Wildlife Service

## Endangered Species Act Review of the National Flood Insurance Program in the Florida Keys

### **Q1: Why did the Service revise its biological opinion on the Federal Emergency Management Agency's National Flood Insurance Program in the Florida Keys?**

A1: The District Court in south Florida issued an Order on March 29, 2005, ruling the U.S. Fish and Wildlife Service and Federal Emergency Management Agency (otherwise known as FEMA) violated the Endangered Species Act and Administrative Procedure Act in their consideration of the National Flood Insurance Program's activities in the Florida Keys. In particular, the Order agreed with three counts raised by the National Wildlife Federation, Florida Wildlife Federation, and Defenders of Wildlife, which have litigated NFIP's need for consultation under the ESA since the early 1990s.

The environmental organizations requested the Court to: (1) prohibit FEMA from issuing any new flood insurance for new development in threatened or endangered species habitat; (2) remand the biological opinion finalized by the Service in 2003 for revision; and (3) order the Service to develop a new reasonable and prudent alternative, or RPA, to protect imperiled species. The Service agreed to revise the biological opinion and develop a new RPA, but requested that the FEMA program be allowed to issue flood insurance policies during the remand period. Specifically, the Service believed the technical assistance process in place with local governments would help conserve threatened and endangered species during the remand period.

On September 12, 2005, the Court agreed with the environmental organizations' request and issued an Order requiring FEMA to stop providing flood insurance for new development in threatened and endangered species habitat, and directing the Service to complete a new biological opinion within nine months (June 9, 2006). The deadline was later extended to August 9, 2006, and the biological opinion was submitted on time.

### **Q2: What did the biological opinion conclude, and how are these findings different from previous biological opinions?**

A2: In general, the habitat loss and indirect effects identified in the revised biological opinion are more realistic than the build-out scenario assumed in the 1997 and 2003. This biological opinion's methodology benefited from advances in geographical data and a detailed lot-by-lot review guided by limitations on development implemented at the local level. The new information allowed the evaluation to focus on areas where impacts were most likely. In addition, we have a better understanding of the condition of many species and have some success stories to report. For example, the Key deer population has improved and benefited from recovery efforts.

After this detailed review of the best available information, we concluded no jeopardy for four of the species with previous jeopardy conclusions, including the Key deer, Schaus swallowtail butterfly, silver rice rat, and Stock Island tree snail. We also found the action will not cause adverse modification of silver rice rat critical habitat, again changing the previous conclusions based upon the best available information. In addition, we concluded the action will result in jeopardy of four of the species that are critically endangered, reaffirming conclusions made

previously. In particular, the Service found the action will jeopardize the Key Largo cotton mouse, Key Largo woodrat, Lower Keys marsh rabbit, and Key tree-cactus.

**Q3: How will the species in jeopardy be protected by the new RPA?**

A3: The Service and FEMA have worked closely with local governments since 1997 to implement the RPAs previously in place and are committed to implementing a streamlined technical review process that meets the Court's mandate. Specifically, we will provide technical assistance to our local government partners to help avoid and minimize impacts from development that may affect threatened and endangered species and their habitats. The Service bolstered this new RPA by clearly defining FEMA's ability to ensure that NFIP participating communities are enforcing their permit processes under their flood damage prevention ordinance. In addition, the new RPA requires a more comprehensive review of the impacts of development on listed species when considering new building applications. For those development actions that will adversely impact listed species, we will work with landowners and local partners. We plan to meet with FEMA and local government officials in October to develop this process in greater detail.

**Q4: Does this mean the current injunction on Federal flood insurance will be lifted?**

A4: The Court and Plaintiffs will review the revised biological opinion and determine whether it fully addresses the concerns raised previously. Ultimately, the Court will determine whether the injunction will be lifted.

**Q5: Is my property in potentially suitable habitat for threatened and endangered species?**

A5: The Service is now preparing a list of the properties in potentially suitable habitat and will submit it to the Court within 60 days. Using the best available information, the Service was able to more precisely determine which properties have potentially suitable habitat. As a result, the list of properties will be smaller than previously.

**Q6: What effect does this have on my ability to develop my property?**

A6: The Court issued an injunction on the issuance of new Federal flood insurance in certain areas; however, it did not prohibit development. Local governments have the authority to issue building permits. The new RPA will help avoid and minimize impacts to imperiled species when necessary.

**Q7: How can I find out more information about the revised biological opinion?**

A7: For additional information, contact Allen Webb at the Service's South Florida Ecological Services Office (772) 562-3909.

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