



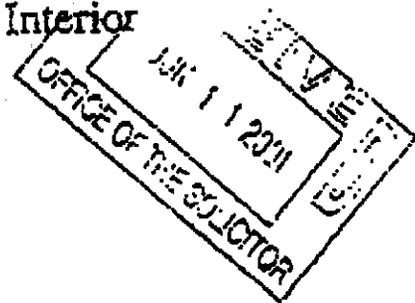
In Reply Refer To:
FWS/R4/ES

United States Department of the Interior

FISH AND WILDLIFE SERVICE

1875 Century Boulevard
Atlanta, Georgia 30345

JUN - 7 2001



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Interested Parties:

On January 5, 2001, the Court approved a Settlement Agreement (Agreement) in *Save the Manatee Club, et al. v. Ballard, et al.*, Civil No. 00-00076. Paragraph 15. E. of the Agreement provides that the Federal Defendants will furnish plaintiffs and interveners with status reports every six months. The sole purpose of these status reports is to indicate whether or not the Federal Defendants anticipate accomplishing the tasks agreed to within the Agreement within the timeframes set forth. This letter constitutes the referenced status report of the U.S. Fish and Wildlife Service (Service).

Marine Mammal Protection Act (MMPA) Rules

Paragraph 2 of the Agreement requires that within 60 days of ratification of the Agreement by the Court, the Service submit to the *Federal Register* an advanced notice of proposed rulemaking for incidental take of the manatee under the MMPA. Within this timeframe the Service also agreed to issue letters of invitation to the Corps and other entities that conduct activities which may influence factors relating to effects of watercraft on manatees, to participate in the MMPA rulemaking process.

The Service published an Advanced Notice of Rulemaking on March 12, 2001.

The Service invited the following agencies to participate in the MMPA small take regulation process:

National Park Service
U.S. Coast Guard

Florida Department of Environmental Protection
Army Corps of Engineers
South Florida Water Management District
Florida Inland Navigation District
U.S. Forest Service
West Coast Inland Navigation District
Suwannee River Water Management District
Southwest Florida Water Management District
Florida Department of Highway Safety
St. Johns River Water Management District
Florida Fish and Wildlife Conservation Commission

Responses were received from the following agencies:

West Coast Inland Navigation District (e-mail)
Florida Inland Navigation District
St. Johns River Water Management District
Army Corps of Engineers
Florida Department of Environmental Protection
U.S. Coast Guard
Florida Fish and Wildlife Conservation Commission

Copies of the written invitations and responses have been provided to you as provided in Paragraph 2 of the Agreement.

As provided in Paragraph 4.C. of the Agreement, the Service will also provided written notification by letter of its intent to prepare an Environmental Impact Statement or Environmental Assessment for the subject rules in July 2001.

Interim Guidance

In paragraph 6.A. of the Agreement, the Service agreed that within 60 days, it would provide at least 30 days of public comment on the revised draft guidance document the Service utilizes to provide assistance in analyzing the effects of proposed watercraft access facilities. To that end, the Service published a draft proposal in the *Federal Register* on March 14, 2001.

Public hearings on the proposal were conducted as follows:

1. April 16, 2001, in Miami, Florida
2. April 17, 2001, in Fort Myers, Florida
3. April 18, 2001, in St. Petersburg, Florida
4. April 19, 2001, in Marco Island, Florida

5. April 23, 2001, in Jacksonville, Florida
6. April 24, 2001, in Daytona Beach, Florida
7. April 25, 2001, in Melbourne, Florida
8. April 26, 2001, in West Palm Beach, Florida

Almost 2,000 oral and written comments were received and reviewed on the interim guidance which will be finalized by the end of June 2001, and submitted to the *Federal Register* for publication by August 5, 2001.

The Service further complied with Paragraphs 15.B. and 15.D. of the Agreement by making available copies of its "may effect" and "may effect but is not likely to adversely effect" letters, and its Biological Opinions to the plaintiffs and interveners.

Designation of Sanctuaries and Refuges

In Paragraph 11 of the Agreement, the Service agreed by April 2, 2001, to submit to the Federal Register for publication a proposed rule for new manatee refuges and sanctuaries throughout peninsular Florida. After additional discussions between the parties, the date for publishing the proposed rule was revised to May 2, 2001, in order to allow more time for the Service to coordinate its efforts with the State of Florida. On April 25, 2001, the parties further agreed that the May 2, 2001, date should be extended to May 9, 2001. Subsequently, it was determined that, on April 24, 2001, the parties in Save the Manatee v. Egbert, Civil No. 99-00-400CIV17-WS(N.D.Fla.) submitted a Stipulation and Entry of Consent Judgment to the Federal District Court for approval. Based upon the contents of this submission, the parties agreed, in lieu of publication by May 9, 2001, that a sixty (60) day extension was warranted in order to allow ample time for the Service and the State of Florida to coordinate their efforts for manatee protection. The sixty (60) day extension runs from May 2, 2001 through July 2, 2001. The Service has met and continues to coordinate its efforts with the State of Florida. In addition, the Service met with the parties on June 8, 2001, and provided a status report on its efforts with the State of Florida.

The parties to the Agreement recognized that the Service anticipated holding preliminary scoping meetings with Federal and State agency personnel, as well as one or more public workshops. The Service conducted five preliminary scoping meetings with representatives from local State and Federal agencies, and also conducted the following public workshops:

- December 4, 2000, in Crystal River, Florida
- December 5, 2000, in Fort Myers, Florida
- December 6, 2000, in St. Petersburg, Florida
- December 11, 2000, in Miami, Florida
- December 12, 2000, in Cocoa Beach, Florida
- December 13, 2000, in Palatka, Florida

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Efforts by Service and Other Agencies

Paragraph 12 of the Agreement provides that the Service will furnish plaintiffs and interveners with a letter generally describing how the Service will deploy its increased law enforcement resources in fiscal year 2001. On March 6, 2001, the Service provided the subject letter, completing its obligations under this paragraph.

Revision of the Manatee Recovery Plan

In paragraph 14 of the Agreement, the Service agreed to make available for public review and comment, a draft revised Recovery Plan and to finalize the revised Recovery Plan not later than February 28, 2001. The parties met on March 16, 2001, and agreed to a process for completing the Recovery Plan that differed from that approved in the Agreement. By letter dated April 25, 2001, the Service provided written confirmation and set forth interim steps for completion of the Recovery Plan. The necessary steps have been accomplished such that another draft Recovery Plan will be available for public review not later than the week of July 2, 2001. A revised Recovery Plan will be completed by October 31, 2001.

By letter of March 2, 2001, the parties have agreed there is due cause to extend the due date for completion of the Recovery Plan until October 31, 2001. Per that letter, the Service has provided written confirmation of the interim steps taken in the development of this plan. The necessary steps have been accomplished such that another draft Recovery Plan will be available for public review not later than the week of July 2, 2001. A revised Recovery Plan will be completed by October 31, 2001.

This concludes the status report for the time period January 5, 2001 through July 4, 2001. The Service anticipates accomplishing future tasks within the timeframes specified in the Agreement or as modified for due cause by mutual agreement. If you have any questions, please contact Mr. Kahlman Fallon of the Department of the Interior, Office of the Solicitor.

Sincerely yours,



Sam D. Hamilton
Regional Director



United States Department of the Interior

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Interim Strategy

In Paragraph 6.A. of the Agreement, the Service agreed to submit a final version of the revised guidance draft document to the *Federal Register* for publication along with the Service's response to almost 2,100 oral and written comments received during the public comment period.

On August 9, 2001, the Service submitted to the *Federal Register* the final interim strategy on Section 7 consultation under the Endangered Species Act for watercraft access projects in Florida that may indirectly effect the manatee. The *Federal Register* published the final interim strategy containing the Service's responses to these comments on August 21, 2001.

The Service continues to comply with Paragraphs 15.B. and 15.C. of the Agreement by making available copies of its "may effect" and "may effect but not likely to adversely effect" letters, and its Biological Opinions to the plaintiffs and interveners.

Revision of the Manatee Recovery Plan

The Fish and Wildlife Service has completed its obligations under Paragraph 14 to revise the Recovery Plan. A second draft of the Recovery Plan was published for public review on July 10, 2001, with the comment period closing on August 9, 2001. The final version of the Recovery Plan was signed by the Regional Director on October 31, 2001.

Designation of Sanctuaries and Refuges

The Service published a proposed rule for new manatee refuges and sanctuaries pursuant to Paragraph 11 of the settlement on August 10, 2001. The public was given sixty days to comment on the proposal and the Service conducted four public hearings. The Service anticipates completing this proposal within the revised timeframes discussed with the plaintiffs and interveners.

Marine Mammal Protection Act (MMPA) Rules

The Service has met with several interested Federal and State agencies regarding MMPA incidental take regulations and has notified you by letter of June 7, 2001, of our intention to prepare an Environmental Impact Statement in conjunction with this regulation. While the timeframes in the Agreement contemplate only the participation of the Corps of Engineers in this process, at this time the Service believes it will accomplish its obligations within the timeframes in the Agreement.

This concludes the status report for the time period July 5, 2001, through January 4, 2002. The Service anticipates accomplishing future tasks within the timeframes specified in the Agreement or as modified for due cause by mutual agreement. If you have any questions, please contact Mr. Kahlman Fallon of the Department of the Interior, Office of the Solicitor.

Sincerely yours,


for Sam D. Hamilton
Regional Director

cc:

Field Supervisor, FWS, Jacksonville, FL

Field Supervisor, FWS, Vero Beach, FL

Regional Solicitor, DOI, Atlanta, GA- Attn: Kal Fallon & Delores Young

Solicitor, DOI, Washington, D.C.- Attn: Holly Wheeler

Assistant Director- Endangered Species, FWS, Washington, D.C. (AES)

Assistant Director- Fisheries & Habitat Conservation, FWS, Washington, D.C. (AFHC)

Brooks Moore, COE, Jacksonville, FL

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Interim Strategy

In Paragraph 6.A. of the Agreement, the Service agreed to submit a final version of the revised guidance draft document to the *Federal Register* for publication along with the Service's response to almost 2,100 oral and written comments received during the public comment period.

On August 9, 2001, the Service submitted to the *Federal Register* the final interim strategy on Section 7 consultation under the Endangered Species Act for watercraft access projects in Florida that may indirectly effect the manatee. The *Federal Register* published the final interim strategy containing the Service's responses to these comments on August 21, 2001.

Consistent with the "Monitoring Implementation and Effectiveness of the State's Initiative" section of the August 21, 2001, final interim strategy, the Service developed a Manatee Assessment Report on February 28, 2002, which evaluated watercraft-related manatee mortality in areas where State law enforcement has increased from August 21, 2001, to December 31, 2001.

The Service continues to comply with Paragraphs 15.B. and 15.C. of the Agreement by making available copies of its "may effect" and "may effect but not likely to adversely effect" letters, and its Biological Opinions to the plaintiffs and interveners.

Designation of Sanctuaries and Refuges

The Service published a proposed rule for new manatee refuges and sanctuaries pursuant to Paragraph 11 of the Agreement on August 10, 2001. The public was given sixty days to comment on the proposal and the Service conducted four public hearings.

The Final Rule for the establishment of manatee refuges and sanctuaries was completed on January 7, 2002, thus satisfying Service obligations under Paragraph 11 of the Agreement. Manatee protection areas, i.e., "refuges", were established in the Barge Canal and Sykes Creek areas in Brevard County. These sites have also been posted and enforced. In the interest of manatee conservation and the recovery of the species, the Service will continue to consider establishment of additional manatee protection areas as we deem appropriate and as resources allow. The Service has announced it will make final determinations on 14 additional proposed manatee protection areas by the end of this calendar year.

Marine Mammal Protection Act (MMPA) Rules

The Service met with several interested Federal and State agencies regarding MMPA incidental take regulations and has notified you by letter of June 7, 2001, of our intention to prepare an Environmental Impact Statement in conjunction with this regulation. While the timeframes in the Agreement contemplate only the participation of the Corps of Engineers in this process, at this time the Service believes it will accomplish its obligations within the timeframes in the Agreement.

A Notice of Intent to prepare an Environmental Impact Statement for a MMPA rule for the Florida manatee was published in the *Federal Register* on June 10, 2002, with a 45-day comment period ending July 25.

This concludes the status report for the time period January 5, 2002, through July 4, 2002. The Service anticipates accomplishing future tasks within the timeframes specified in the Agreement or as modified for due cause by mutual agreement. If you have any questions, please contact Mr. Kahlman Fallon of the Department of the Interior, Office of the Solicitor.

Sincerely yours,

/s/ Sam D. Hamilton

Sam D. Hamilton
Acting Regional Director

cc:

- ✓ Field Supervisor, FWS, Jacksonville, FL
- ✓ Field Supervisor, FWS, Vero Beach, FL
- ✓ Regional Solicitor, DOI, Atlanta, GA- Attn: Kal Fallon & Delores Young
- ✓ Solicitor, DOI, Washington, D.C.- Attn: Holly Wheeler
- ✓ Assistant Director- Endangered Species, FWS, Washington, D.C. (AES)
- ✓ Assistant Director- Fisheries & Habitat Conservation, FWS, Washington, D.C. (AFHC)
- Brooks-Moort, COE, Jacksonville, FL

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