



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240

FWS/OCHR/BCH/010867

JAN 22 2003

Memorandum

To: Regional Director, Region 4

From: Director

Subject: Consultation Procedures to be Followed for All Watercraft-related Access Activities Occurring within Peninsular Florida.

The issue of incidental take of endangered manatees as a result of watercraft-related activities occurring within peninsular Florida is of continuing concern. The data recently compiled by the Fish and Wildlife Service through the preparation of a draft environmental impact statement (DEIS) and the issuance of a proposed rule on the incidental take of manatees demonstrate the relationship between boating activity and the taking of manatees. The Service has most recently used the "interim strategy," a policy developed under the Settlement Agreement in *Save the Manatee Club v. Ballard*, to carry out our Endangered Species Act section 7 consultation responsibilities with the Army Corps of Engineers and other federal agencies on an informal basis, using "concurrence letters" (based on findings that the proposed activities are not likely to adversely affect manatees) to complete the consultation process for those projects that occur within areas that are "adequately protected" and for projects connected to single family homes. However, manatee mortalities and injuries continue to increase, and the record developed through the incidental take regulatory process calls into question the appropriateness of issuing "concurrence letters" for watercraft-related activities during this interim period.

Therefore, beginning now and continuing until final incidental take regulations are issued (on or before May 5, 2003), the formal consultation procedure (50 C.F.R. § 402.14) shall be used for every proposed watercraft-related activity within peninsular Florida that "may affect" manatees. For purposes of this memorandum, the phrase "peninsular Florida" means the coastline and navigable waterways of the State of Florida from the mouth of the St. Mary's River on the Atlantic Coast to the mouth of the Aucilla River on the Gulf of Mexico Coast. As outlined in the handbook, formal consultation procedures also include consultation on projects batched together and programmatic consultations. The Service shall not issue "concurrence letters" for these proposed activities during this interim period. Instead, biological opinions must be issued in response to future consultation requests. In the incidental take statement portion of any "non-jeopardy" biological opinion, the Service must state whether the direct and indirect effects of the proposed watercraft-related activity are "reasonably certain" to result in the taking of manatees over the life of the activity. If the Service concludes that the proposed activity is not reasonably certain to result in the taking of manatees, then the consultation process is concluded.

If the opposite conclusion is reached, then the incidental take statement must state that incidental take is not authorized until the issuance of incidental take regulations under section 101(a)(5) of the Marine Mammal Protection Act, as well as the issuance of a letter of authorization pursuant to those regulations (see the section 7 handbook for standard language paragraph, page 4-57).

For those consultations involving watercraft-related activities where the project proponent or the State or county regulatory authority has incorporated into the project description specific measures that will reduce the likelihood that the proposed action will result in prohibited taking of manatees, the Service should address those measures in the incidental take statement of the biological opinion. If the implementation of such definite measures (including the assurances that the measures will be carried out throughout the life of the activity) would lessen the probability of take to a level where the direct and indirect project effects would no longer pose a "reasonably certain" risk of mortality or harassment, then the Service should state that conclusion in the biological opinion (together with the factual findings that support it), and the consultation process would be completed.

This memorandum is a management directive that is intended to prescribe uniform agency practice for all section 7 consultations conducted by Service personnel within the Southeast Region that pertain to watercraft-related activities that may affect manatees around and within peninsular Florida. It is a temporary, interim management directive that proscribes the use of "concurrence letters" as an optional approach to completing the consultation process, and it does not in any way mandate the conclusion or findings of any biological opinion.