



United States Department of the Interior



FISH AND WILDLIFE SERVICE
South Florida Ecological Services Office
1339 20th Street
Vero Beach, Florida 32960

October 23, 2008

Oswaldo Collazo
Chief, Regulatory Division
U.S. Army Corps of Engineers
701 San Marco Boulevard, Room 372
Jacksonville, Florida 32207-8175

Attention: Stuart L. Santos

Dear Mr. Collazo:

This letter acknowledges the Fish and Wildlife Service's (Service) October 14, 2008, receipt of your October 9, 2008, letter requesting concurrence on the Army Corps of Engineers' (Corps) implementation of the revised Manatee Key and its attachments dated October 2008. This letter represents the Service's views on the potential effects of the proposed action in accordance with section 7 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) and the Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 *et seq.*). For future reference, we have assigned this concurrence letter to Service Consultation Code 41420-2009-I-0019.

The Manatee Key is a tool that has been used by the Corps' Regulatory Division since 1992 to assist in making its effect determinations, as required under 50 CFR 402.14(a), on permit applications for in-water activities such as, but not limited to, maintenance dredging, the placement of fill material for shoreline stabilization, the construction or placement of other in-water structures as well as the construction of docks, marinas, boat ramps, boat slips, dry storage or any other watercraft access structures or facilities. Your agency has determined utilization of the 2008 Manatee Key, and its attachments, to review projects in waters accessible to the endangered West Indian manatee (*Trichechus manatus*) may affect, but is not likely to adversely affect the manatee or its designated critical habitat.

Since January 2008, the Service has worked closely with the Corps and the Florida Fish and Wildlife Conservation Commission (FWC) on revising the July 2005 version of the Manatee Key and its associated maps. Many of the changes to the July 2005 Manatee Key were made to ensure consistency with the eventual implementation of the watercraft access review process co-developed by FWC, the Corps and the Service.

For all applications to construct residential dock facilities that reach a "may affect, not likely to adversely affect" determination using the 2008 Manatee Key, the Service concurs with these determinations and no further consultation with the Service is necessary. As such, the Service will not receive permit applications from the Corps for these types of facilities.



We have determined no watercraft-related manatee mortality has ever been recorded in the panhandle counties of Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, and Franklin or in Gilchrist, Lafayette, or Suwannee counties and only two watercraft-related deaths have been recorded south of Craig Key in Monroe County since 1982. Therefore, for multi-slip facilities proposed to be built in these areas that reach a “may affect, not likely to adversely affect” determination using the 2008 Manatee Key, the Service concurs with these effect determinations and no further consultation with the Service is necessary.

For all applications to repair or replace existing multi-slip facilities that do not provide new watercraft access and reach a “may affect, not likely to adversely affect” determination using the 2008 Manatee Key, the Service concurs with these determinations. As such, the Service will not receive permit applications from the Corps for these types of existing facilities since they were covered by the Service’s August 28, 2006, consultation on the 2005 Manatee Key.

All other future applications for multi-slip facilities reaching a “may affect, not likely to adversely affect” determination using the 2008 Manatee Key will be forwarded to the Service for concurrence. The Corps agreed to forward to the Service those applications that are consistent with the manatee key.

All culverts 8 inches to 8 feet in diameter must be grated to prevent manatee entrapment. To effectively prevent manatee access, grates must be permanently fixed, spaced a maximum of 8 inches apart (may be less for culverts smaller than 16 inches in diameter) and may be installed diagonally, horizontally or vertically. Culverts less than 8 inches or greater than 8 feet in diameter are exempt from this requirement. If new culverts and/or the maintenance or modification of existing culverts are grated as described above, the determination of “may affect, not likely to adversely affect” is appropriate and no further consultation with the Service is necessary.

We have examined the October 2008 version of the Manatee Key along with its attachments and agree with its structure and content. Therefore, for all future applications reviewed with the October 2008 version of the Manatee Key in which the Corps reaches a “may affect, not likely to adversely affect” determination with respect to the manatee and/or its designated critical habitat, the Service hereby concurs with those determinations in accordance with 50 CFR 402.14(b)1. As such, the July 2005 version of the Manatee Key and its attachments, as well as other earlier versions of the Manatee Key, are no longer applicable as a regulatory planning tool.

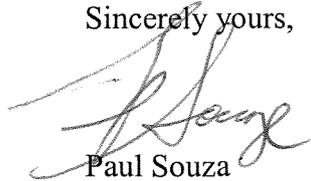
The Service does not anticipate the proposed action will result in the incidental take of manatees. Furthermore, the Service is not including an incidental take authorization for marine mammals at this time because the incidental take of marine mammals is not expected to occur and has not been authorized under section 101(a)(5) of the MMPA and/or its 1994 Amendments. Following issuance of such regulations or authorizations, the Service may reinstate consultation to include an incidental take statement for marine mammals, if deemed appropriate.

This concurrence letter fulfills the requirements of section 7 of the Act and no further action is required. If modifications are made to the project, if additional information involving potential

effects to listed species becomes available, or if a new species is listed or new critical habitat is designated that may be affected by the project, then reinitiation of consultation may be necessary.

This concurrence letter represents the collective assessment of the October 2008 version of the Manatee Key and its attachments from the Service's three field offices in Florida: Panama City, North Florida, and South Florida. If you have any questions or concerns about this consultation, please feel free to contact Kalani Cairns of this office at 772-562-3909, extension 240.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Paul Souza", written over a light blue horizontal line.

Paul Souza
Field Supervisor
South Florida Ecological Services Office

cc:

Service, Atlanta, Georgia (David Flemming)
Service, Jacksonville, Florida (David Hankla)
Service, Panama City, Florida (Gail Carmody)